

## **Vote “NO” on Senate Bill 1183**

**The ACLU of Idaho stands in opposition to SB 1183 as this legislation would impose an unconstitutional abortion ban pre-viability.**

Embryonic cardiac activity can be detected as early as six weeks from a person’s last menstrual period. In contrast, viability – typically defined as the ability of a fetus to survive outside the womb with or without artificial support – does not occur until approximately twenty-four weeks from the last menstrual period. Thus, so-called “heartbeat”<sup>1</sup> bans operate as unconstitutional pre-viability abortion bans and, in many cases, effectively act as a *total* ban on abortion.

**Six weeks from a person’s last menstrual period, most people do not even know they are pregnant.** A number of factors other than pregnancy can cause a late period. Moreover, people may have irregular periods for a myriad of reasons, including certain medical conditions or the use of contraceptives. People can also experience light bleeding early in pregnancy, which can be mistaken for a period.

**Even when a person has quickly identified a missed period, a six-week ban would only allow them two weeks, at most, to decide whether to have an abortion and to seek and obtain abortion care – including raising the money, getting permission for time off work, securing transportation, setting up child care if needed, and complying with Idaho’s mandatory waiting period.** Accordingly, this legislation poses a particularly unobtainable timeline for low-income, rural Idahoans.

**Next, the mandatory reporting requirement ignores the realities of many sexual violence survivors.** In order to obtain an abortion, a sexual assault survivor would be forced to engage in a time-consuming and emotional process. SB 1183 would require those seeking an exemption to report to law enforcement and provide a copy of the report to the physician who is to perform the abortion. This requirement is problematic for a myriad of reasons. First, it is incredibly difficult, if not impossible, for a survivor of sexual assault to obtain a report because police will not release reports during active investigations. Secondly, applying for an exemption asks victims to undertake an onerous process that can compound the trauma of being raped and becoming pregnant. The obligation to show “proof” of rape or incest places an additional burden on survivors and implicitly suggests that the survivor’s version of the events cannot be believed without verification from the state. Additionally, rape exemptions fail to take into account that many survivors do not wish to report their assault to law enforcement and do not want to involve the criminal legal system.<sup>2</sup>

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<sup>1</sup> The term “fetal heartbeat” is a misnomer. First, cardiac activity can be detected before a fully-functioning heart has formed. Second, this activity can be detected during the embryonic stage of pregnancy, i.e., before an embryo has developed into a fetus.

<sup>2</sup> National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015). <https://www.thehotline.org/wp-content/uploads/media/2020/09/NDVH-2015-Law-Enforcement-Survey-Report-2.pdf>



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**SB 1183 is also harmful because it would require patients to undergo an invasive and medically unnecessary transvaginal ultrasound, which involves inserting an ultrasound wand into the vagina.** A transvaginal ultrasound is the only way to detect activity from the fetal pole this early on in pregnancy. Requiring a transvaginal ultrasound for Idahoans' is incredibly invasive, and can be particularly traumatic for survivors of sexual violence.

**Lastly, it goes without saying that this legislation is clearly unconstitutional. It puts Idaho at risk for costly lawsuits. Other states have attempted to pass 6-week abortion ban bills—none have survived legal challenge.**

For these reasons, we ask you to oppose SB 1183.