



## DELAWARE SECTION

### Talking Points on HB 52 "The Pain-Capable Unborn Child Protection Act"

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The Delaware Section of the American College of Obstetricians and Gynecologists (ACOG) urges Delaware lawmakers to reject legislative proposals that are not based on sound science or that attempt to replace the physicians' medical judgement with political ideology. Interference in how physicians should care for their patients poses a threat to women's health. Politicians are not medical experts. Many circumstances exist in which a woman may need to seek an abortion after 20 weeks. Her decision should be based on individual circumstances and personal beliefs without interference from politicians. The so-called "Pain-Capable Unborn Child Protection Act" represents a dangerous government intrusion into private health-care decisions.

- **This legislation is based on a false premise.**  
There is no credible scientific evidence that a fetus is capable of feeling pain prior to the third trimester. In fact, studies have proven that arguments purported to substantiate pain do not stand, and they rely on analogies that lead to erroneous conclusions.
- **Making informed decisions about abortion will be more difficult under HB 52.**  
Numerous fetal anomalies (including some lethal ones) are only detected during anatomic survey at 18-20 weeks. HB 52, which seeks to create a hard line at 20 weeks, will force some women, because of time constraints, to consider termination of pregnancy before they have complete or confirmatory information and appropriate counseling on neonatal outcomes.
- **Women who live in rural and underserved areas of Delaware will be particularly harmed by HB 52.**  
The time constraints previously mentioned are further accentuated for women who reside in rural and underserved areas.
- **The real intent of HB 52 is to take the decision about abortion away from women and their doctors.**  
Medical decision-making regarding abortion, particularly in the case of fetal anomalies detected in the second trimester, is complex and nuanced. Each decision is incredibly personal and individualized and best made without intrusion of the state.

#### ACOG Supporting Documents

ACOG Statement of Policy, *Abortion*, 1993, revised and approved 2014

Wisconsin Section ACOG position paper on 20-Week Abortion Ban Legislation

ACOG joint letter with AMWA APHA to US Senate, 2019

## TALKING POINTS on STATE LEGISLATION

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Delaware HB 53

### Government Mandates: Ultrasound and Abortion

#### *Legislative Landscape*

Twenty states (as of January 2012) have passed ultrasound requirements on women seeking an abortion and doctors who perform them. The earliest laws date to the mid-1990s. These laws require an ultrasound to be offered and/or performed prior to an abortion. Some laws also require a simultaneous explanation of what the ultrasound is depicting and require the ultrasound images to be displayed so the pregnant woman may view them. In several states, physicians could face civil or criminal penalties for not following the law's requirements.

Ultrasound mandates are unique in ways that should concern all physicians. The government is dictating specific diagnostic protocols physicians must follow before performing a medical procedure and how they must counsel patients.

### Talking Points

- **This bill sets a dangerous precedent by legislating specific diagnostic protocols physicians must follow before performing a medical procedure.** These decisions are the doctor's, not the government's. Decisions about a patient's medical care and management are always best made between the patient and the expert in medical care, the physician.
- **This bill will not enhance the health or safety of patients.** This bill substitutes a government mandate for a doctor's judgment. The government will require ultrasounds even though in most cases providers are already performing an ultrasound to rule out ectopic pregnancy and confirm gestational age. In cases where an ultrasound is not done, the provider uses a clinical exam and patient history.
- **Some women are referred from outside clinics and have already had an ultrasound.** Mandating another one is an unnecessary duplication of an expensive test and adds financial stress to an already difficult decision.
- **All medical procedures must be done consensually within the privacy of a doctor's relationship with the patient – not by state intrusion.** A patient's decision about medical care must be voluntary – not dictated by government –and no procedure should be done without a patient's consent. But under this bill, women requesting abortions would lose this autonomy.



- **This bill is about government mandates, not patient rights.** This bill is not about a woman's right to know all of the medical information before she makes a decision about a treatment plan or procedure. Women already have that right. As health professionals, we have a legal, professional and ethical obligation to share with the patient all relevant information about the range of health care choices that are available, the benefits and risks of treatments, and to respect the patient's decision. There is no evidence to suggest that doctors are not complying with this obligation prior to performing abortions. This bill is demeaning and disrespectful to the women of our state, and insulting to the doctors and nurses who care for them.
- **Patients deserve their physicians' best medical judgment.** This bill misuses the long-standing practice of informed consent whereby a patient and her doctor openly discuss the diagnosis, prognosis and possible options – privately, without outside interference. This legislation interferes with the exercise of professional judgment and imposes unduly burdensome and questionable obligations on women's health care providers.
- **Mandating an unnecessary medical diagnostic test will increase costs to the health care system, including patients.** We urge lawmakers to consider legislation that would more appropriately utilize health care dollars to improve access to cancer screenings, preconception care and family planning for women and their families. ACOG would welcome a dialogue about maximizing limited resources to improve the health care of the women of our state.

*ACOG supports a woman's right with the help of her physician to make decisions about her pregnancy and her right to safe, competent and legal abortion. The intervention of the Legislature into medical decision-making is inappropriate, ill-advised and dangerous.*

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**ACOG Supporting Documents:**

ACOG Guidelines for Women's Health Care, 3rd Edition, 2007.

ACOG Practice Bulletin 67, *Medical Management of Abortion*, 2005.

ACOG Committee Opinion 424, *Abortion Access and Training*, 2009.

ACOG Statement of Policy, *Abortion*, 1993, reaffirmed July 2011.

**Steven Aden**

3:21 PM March 5, 2019  
to me, Catherine

**77.8% is exact figure**

Also, Senator, here's the source of the 78% statistic:

In 2013, the National Institute of Family and Life Advocates conducted a survey of its medical clinics. NIFLA asked the clinics to report the number of ultrasounds provided to abortion-at-risk patients and to tally the percentage of such patients who decided against abortion in favor of allowing their preborn children to live.

The clinics reported 75,318 ultrasounds performed for pregnant patients identified as either abortion-minded or abortion-vulnerable. Of those mothers, 58,634 chose to allow their children to live, about 78%. [1]

[1] Thomas A. Glessner, National Survey of Pro-life Pregnancy Centers Shows Major Influence of Ultrasound on a Mother's Choice for Life, Christian News Wire (Mar. 3, 2015), <https://bit.ly/2tHbopX>.

Steven H. Aden, Esq.  
*Chief Legal Officer & General Counsel*  
National Institute of Family and Life Advocates



**House Health Committee 4/17/19 HB 53 – Ultrasound**  
**Dr Agatha Berger, OB/GYN Assist Dir Family Plannin**  
**Christiana Care Health Systems**

Representative Bentz and members of the committee:

I regret that I could not attend the meeting today however I have asked this testimony be provided to the Committee. I am an Obstetrician/Gynecologist and Assistant Director of Family Planning with Christiana Care Health Systems.

An ultrasound mandate is very concerning to physicians and patients, as the government is then dictating specific diagnostic protocols that physicians must follow before performing a medical procedure and how they must counsel patients. This bill sets a dangerous precedent, as medical decision-making should be left to a patient and her physician.

There is no enhancement to patient health or safety with such a mandate, and in fact, mandating an unnecessary medical test has a negative outcome in increasing costs to both the health care system as well as the patient. Additionally, in many instances, many women will already have had an ultrasound and such a mandate would result in duplication of a test.

This bill primarily seeks to stigmatize and shame women who are seeking abortion services, which they legally have a right to do. Rather than supporting patient rights, it interferes in patient rights by disrespecting the patient and insulting the health care provider. It interjects in the private discussion between patient and doctor and such an outside interference disrupts a relationship of trust. As health

to not support this bill, and rather focus energy and resources on improving access to health services for women and their families.

Mr. Chairman and Committee members, I thank you for the opportunity to speak today. My name is Kim Luton and I am a voting citizen here in Delaware. I am here today to speak in favor of HB53, the Women's Right to Know Act, and ask the committee to vote the bill out of Committee on its merits for full House vote. I want to tell you why I am in favor of this bill.

I have never spoken publically regarding my abortion experiences. I've had two abortions, one when I was a teen at age 15 and again at age 25. I thought at those times in my life that I was making the best decision for my life and my unborn children, but as I've had time to reflect, I realize these decisions have haunted me because I was uninformed of all of my options outside having an abortion.

I have stood on the sidelines and lived in the shadows of the pro-choice/pro-life arguments because I felt it would be hypocritical of me to take a stand one way or another because I had abortions. However, with the recent New York law decision to allow abortion up to the time of delivery and the conversation about letting babies die post abortively without medical care, my heart has been seared and I must speak up.

In the 1970s and 1980s, the catch phrase used by abortion providers was, "It's only a blob of cells, it's not really a baby," to help women feel more comfortable in having an abortion. Both times I had an abortion, I was told this by the abortion provider.

Had I been offered to see an ultrasound of my children, I believe it would have changed my course of action in having those abortions. My children were not just a "blob of cells" but a fetus with a heartbeat, developing organs, and live, breathing human beings had I allowed them to continue developing. I was not offered that opportunity at either of my abortions. I was not offered any kind of alternative counseling regarding keeping my babies or adoption at those times.

Once abortion staff knew I wanted abortions, it set wheels into motion to complete those abortions, even though for my first one, I was a teen making a life changing decision with no adult input.

As a result of my actions, I have not had any natural children. I have not had the joy of carrying a child to full term in my womb, holding my children in my arms, or experiencing the love of seeing my children grow.

Had there been an ultrasound requirement when I had those abortions, I believe my decisions might have been changed. The ultrasound should have been done at the abortion provider's location and the cost of the ultrasound included in the cost of the procedure. Please allow women the opportunity to see their unborn children before aborting. Having an ultrasound will empower women to make more informed decisions. Some will say that showing an ultrasound to a woman will make no difference, but if one child is allowed to continue and not be aborted, this law will make a difference to that one child.



Testimony 4/17/19 – US Bill 53

My name is Jayne Mitchell-Werbrich. I have been a registered nurse for over 30 years. I worked at Planned Parenthood of Delaware. I have seen firsthand the meat market style assembly line care Planned Parenthood provides to women.

All abortion patients must receive an ultrasound to confirm viability, gestation, and that the pregnancy is within the uterus. These ultrasound pictures along with a report are placed in every abortion patient's medical chart. **So, there are no addition costs in allowing a woman to see her ultrasound.**

During my Planned Parenthood "training", I was instructed to conceal the ultrasound pictures from the patients. I asked **why** we would need to conceal them and reminded the nurse manager at Planned Parenthood that patients have a **right** to see **their** ultrasounds.

I was told by the nurse manager the reason the ultrasounds were not shown to the patients was because it *could* cause **confusion for the patients which may cause them to change their minds about going through with an abortion**. The nurse manager then demonstrated how to hold two pages of the chart together so the patients would not see the ultrasound *pictures*.

One day, while completing paperwork in a chart with a patient, the two pages I was instructed to pinch together to conceal the ultrasound slipped and the ultrasound pictures were exposed.

Immediately, the patient stated, "Is that my ultrasound? **Can I see it?**" I said, "absolutely, you can see it". The women pointed to the fetus and said, "is that it". I responded, "yes". The patient then said, "I don't know if I should be doing this". I told the patient it was ok if she needed more time to think things out and that she did **not need** to make **this decision right** now.

That patient with tears in her eyes looked at me and stated, "Thank you...I don't belong here". She left that day **after seeing that ultrasound**. I will **NEVER** forget that patient and the **profound effect** seeing her ultrasound had on her.

Please support House Bill 53. As a registered nurse, I have a duty and responsibility to advocate for ALL patients. **Please** before voting on this Bill, please ask yourself Why.....**Why any medical institution would deny the rights of**

<sup>she</sup>  
a woman all the medical information available so that... that woman could make  
an informed decision regarding HER OWN healthcare. Women deserve better!

I would be honored to provide more in-depth information regarding this bill.  
Thank you.



I'm writing to you to voice my opposition to HB 52 and HB 53, two bills that I believe will adversely effect women in Delaware.

I write to you as the rabbi of the largest Jewish congregation in Delaware, which itself a member of the Union for Reform Judaism, the largest denomination of Judaism in North America.

For forty-six years, *Roe v. Wade* has guaranteed that safe, legal abortion procedures could be performed in the United States of America. Since last year, that right has been reaffirmed in the First State. This is a life-saving measure that gives women the ability to consult a doctor about the viability and survivability of a pregnancy, and the choice to terminate a pregnancy without having to resort to unsafe, back-alley abortions provided by the uncaring and the unscrupulous. As a Jew, my faith teaches me that abortion is sometimes necessary, especially when the health or life of the mother is threatened. To limit this ability by women and their doctors would do undue harm to those who need it most, often under already stressful and upsetting circumstances.

Therefore, as a and faith leader in this community, and as a proud citizen of this state, I oppose HB 52 and HB 53 and urge you to do the same.

Thank you for your time.