



MEMORANDUM

TO: The Pennsylvania House Health Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 21, 2021

RE: OPPOSITION TO HB 904 P.N. 891 (BOROWICZ)

Bill summary: [HB 904](#) (PN 891) would amend the Abortion Control Act ([Title 18 Chapter 32](#)) to prohibit an abortion at roughly six weeks gestation. Under current law, a woman can obtain an abortion at any time up to 24 weeks after her last menstrual period if a physician deems it necessary. Any violation would be graded as a felony of the third degree, punishable by up to seven years in prison and fines of up to \$15,000. Doctors would also be civilly liable to the patient for damages.

On May 17, the U.S. Supreme Court announced that it will review [Dobbs v. Jackson Women's Health Organization](#), Mississippi's ban on nearly all abortions starting at 15 weeks of pregnancy. The Court will consider whether states can ban at least some abortions before fetal viability — directly challenging its decision in *Roe v. Wade*. This is the first time the Court has agreed to review a gestational age ban since *Roe*. [As of May 19, 2021](#), 549 abortion restrictions, including 165 abortion bans, have been introduced across 47 states. A staggering 70 of those restrictions have been enacted already across 15 states, including ten bans.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 904.

HB 904 is extreme; it would effectively ban all abortion in Pennsylvania.

Make no mistake: this bill would ban all abortion in Pennsylvania once a pregnancy has reached roughly 6 weeks — a mere two weeks after a missed period. This is before many people even know that they are pregnant, making it both medically and logistically impossible for most people to arrange for safe, legal abortion care in time to beat the 6-week deadline. HB 904 would take away a person's right to make their own medical decisions before they even know they have a decision to make.

HB 904 relies on vague, inaccurate, and misleading medical information.

Given that people may face felony charges for violating the ban proposed by HB 904, the bill is recklessly vague about the exact gestational point when the alleged criminal activity occurs. HB 904 seeks to criminalize abortion after a "fetal heartbeat" is detected but does not define fetal heartbeat — instead, it requires the physician to use their best clinical judgment of whether cardiac activity is present. HB 904 provides a nonsensical definition of "cardiac activity" and then falsely conflates "fetal heartbeat" with "cardiac activity." Cardiac activity can be detected at 6 weeks; but [what is detected](#)¹ is an [electrically induced flickering](#) in the tissue. It is not a "heartbeat" because at 6 weeks, the pregnancy is an embryo, not a fetus, and therefore no heart exists at that point.

HB 904 is dangerous, especially for people already marginalized and oppressed by structural inequities.

As we have seen with COVID-19, racial and ethnic disparities in health care exist in every state and are exacerbated by policies and systemic barriers that can make it difficult, if not nearly impossible, to access reproductive health care. Restrictions on abortion have a disproportionate impact on those who already experience these barriers to health care, including young people, women of color, those with disabilities, lower

¹ Salomon, L.J., et. al. "[ISUOG Practice Guidelines: performance of first-trimester fetal ultrasound scan](#)." *Ultrasound in Obstetrics & Gynecology*. 41:102–113, 2013.

incomes, people who live in rural areas, or those that are undocumented. Pre-viability bans would force people to go to extreme and costly lengths to access abortion safely and legally.

Furthermore, the exceptions for medical emergencies and health-damaging pregnancies are so narrow that doctors will be forced to turn away women experiencing miscarriages or ectopic pregnancies. And six weeks does not adequately allow physicians to exercise their medical judgment to protect pregnant people's health in all circumstances. As the American Congress of Obstetricians and Gynecologists (ACOG) [notes](#), many complications that threaten pregnant people's health can't be detected until later in pregnancy. So taking away access to abortion could lead to serious complications, and even maternal mortality.

HB 904 is brazenly unconstitutional; courts have routinely struck down similar pre-viability bans.

For nearly 50 years, the Supreme Court has held — and repeatedly reaffirmed — that states may not, for any reason, ban abortion before viability. Nevertheless, [other states](#) have attempted to enforce similar pre-viability bans, including North Dakota, Arkansas, Iowa, Mississippi, Kentucky, Utah, Louisiana, Missouri, Georgia, and Alabama. Each of those bans were struck down by the courts, eight of which were blocked in 2019 alone.

If these laws take effect, depriving women of the constitutional right affirmed in *Roe v. Wade*, women will face the devastating and life-threatening consequences of losing access to safe, legal abortion. It wasn't that long ago when, in 1965, [one out of every six women who died](#) from pregnancy-related causes had obtained an illegal abortion — and that's just according to official reports; doctors believe the actual number was higher.

For these reasons, we urge you to oppose House Bill 904.