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## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** December 4, 2017

### **RE: OPPOSITION TO SENATE BILL 3 (BROOKS)**

The American Civil Liberties Union of Pennsylvania opposes **SB 3** because it unconstitutionally interferes in a woman's most personal, private medical decisions, and threatens to block access to critical care.

**On behalf of the 53,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote 'no' on Senate Bill 3 for the following reasons:**

#### **SB 3 would impose the most extreme abortion ban in the country**

SB 3 is what is known as a "double abortion ban" and if passed, would make Pennsylvania's law the **most restrictive** in the country. First, SB 3 criminalizes abortions after nineteen weeks gestation, except in the rarest of circumstances. Second, it bans a commonly used, medically tested, and safe method of second trimester abortions – dilation and evacuation (D&E) – at any stage during pregnancy. These extreme provisions fail to consider the range of complex circumstances a woman may be facing when she seeks later abortion care.

#### **SB 3 would recklessly endanger women's lives**

Banning a safe medical procedure and limiting women's choices in sometimes tragic situations only serve to put women's lives at risk. SB 3 does not offer a true health exception; it would require women to sustain damage to their health, including severe damage, as long as the damage is not "irreversible" or impairs a "major" bodily function (a function not defined in the bill). **SB 3 contains no exceptions for rape, incest, health, or tragic fetal anomalies.** Medical professionals like the American Congress of Obstetricians and Gynecologists agree these restrictions are **without medical or scientific basis**, and in fact will cause substantial harm to patient care.<sup>1</sup>

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<sup>1</sup> From ACOG's statement: Efforts to ban specific types of procedures will limit the ability of physicians to provide women with the medically appropriate care they need, and will likely result in worsened outcomes and increased complications."  
<http://www.acog.org/About-ACOG/News-Room/Statements/2015/ACOG-Statement-Regarding-Abortion-Procedure-Bans>

**SB 3 is blatantly unconstitutional**

States may not ban abortion prior viability and may not impose an undue burden on women – SB 3 would do both. The provisions in this bill are unconstitutional for (at least) two reasons: it criminalizes abortion before viability and its health exception is so narrow that women could not get an abortion even if their pregnancies were causing damage to their health.

For over four decades, the [U.S. Supreme Court has prohibited states from banning abortion prior to viability](#) under any circumstances, regardless of whether the ban includes exceptions.<sup>2</sup> Every time a pre-viability ban has been challenged in court, it has been blocked from going into effect. Federal courts have struck down pre-viability bans in [Idaho](#)<sup>3</sup>, [Arizona](#),<sup>4</sup> [North Dakota](#), and [Arkansas](#),<sup>5</sup> among others, as unconstitutional under Supreme Court precedent. In addition, banning one of the most common and safe procedures for second trimester abortion is inconsistent with past [Supreme Court decisions that prohibit state legislatures from enacting such restrictions](#).<sup>6</sup> Violating the provisions of the abortion ban or the procedure ban would result in felony charges under SB 3. Criminalizing women's health care stands in stark opposition to the bill sponsor's stated desire to "[protect the health and well-being of pregnant female\[s\]](#)."<sup>7</sup>

Despite the constitutional right to abortion explicitly recognized by the Supreme Court and despite the clear need for safe, accessible, and compassionate abortion care, legislators at every level of government continue to attack a woman's ability to access the abortion care she needs. Our rights and freedoms are rendered meaningless if our government makes it all but impossible to exercise them.

A woman's health, not politics, should drive important medical decisions. It is time to stop criminalizing women's health care, interfering with the personal decisions of women, and substituting political agendas for the expertise of health care professionals.

**For these reasons, we urge you to vote NO on SB 3.**

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<sup>2</sup> See e.g., *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Se. Pa v. Casey*, 505 U.S. 833 (1992); see also *Stenberg v. Carhart*, 530 U.S. 914, 920-21 (2000); *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007); *Whole Woman's Health v Hellerstedt*, 136 S.Ct. 2292, 2299 (2016).

<sup>3</sup> Shepherd, Katie. "U.S. appeals court strikes down Idaho law banning abortions after 20 weeks." *Los Angeles Times*, Los Angeles Times, 30 May 2015, [www.latimes.com/nation/nationnow/la-na-nn-abortion-idaho-20150530-story.html](http://www.latimes.com/nation/nationnow/la-na-nn-abortion-idaho-20150530-story.html).

<sup>4</sup> *Isaacson v. Horne*, 716 F.3d 1213, 1231 (9th Cir. 2014).

<sup>5</sup> Guttmacher Institute, "Fact Sheet: State Policies in Brief: State Policies on Later Abortions," last modified July 1, 2015, available at [http://www.guttmacher.org/statecenter/spibs/spib\\_PLTA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf). In 2013, extremist politicians in Arkansas and North Dakota passed very early pre-viability bans on abortion that courts have permanently blocked as unconstitutional. The North Dakota law would have banned abortion as early as six weeks. The Arkansas ban would have prohibited abortion at a gestational age of pregnancy of 12 weeks or greater.

<sup>6</sup> *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) (striking a ban on the use of saline amniocentesis as a method of abortion after 12 weeks); *Stenberg v. Carhart*, 530 U.S. 914 (2000) (striking down a statute which was so broadly written that it would ban D&E abortions, the most commonly used method for second trimester abortions); *Gonzales v. Carhart*, 550 U.S. 124 (2007) (upholding a ban on one method, but resting its decision on the continued availability of D&E abortions).

<sup>7</sup> <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20170&cosponId=21603>