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In Opposition to HB 3512
Before House Judiciary Committee
April 6, 2011

The ACLU of Oregon opposes HB 3512. Although there is much we could address about this proposal, we will leave it to our coalition partners to cover many of these details and we will focus our testimony on that fact that HB 3512 is an unconstitutional proposal that interferes in a woman’s most personal, private medical decision.

The U.S. Supreme Court has recognized that the U.S. Constitution protects a woman’s ability to make the decision of whether to proceed with her pregnancy or to obtain an abortion. The Court specifically held that: (1) a state may not ban abortion prior to fetal viability; and (2) a state may ban abortion after viability only if there are exceptions to protect the woman’s health and life. Roe v. Wade, 410 U.S. 113, 163-64 (1973). These principles have been repeatedly reaffirmed, as well they should: A woman shouldn’t be denied basic health care or the ability to make the best decision for her circumstances because some politicians disagree with her decision.

Because of the inherently private nature of her decision, the U.S. Supreme Court has recognized that a woman should “be free from unwarranted governmental intrusion” when deciding whether to continue or terminate a pre-viability pregnancy. Planned Parenthood v. Casey, 505 U.S. 833, 851 (1992). HB 3512, in conflict with the law, in disregard of medical science, and for reasons unrelated to viability, would take away a woman’s decision-making ability after a certain number of weeks. Banning abortions starting at 20 weeks – which is a pre-viability stage of pregnancy – directly contradicts longstanding U.S. Supreme Court precedent.

In the context of viability, the U.S. Supreme Court has said a legislature cannot declare any one element – “be it weeks of gestation or fetal weight or any other single factor – as the determinant of when the State has a compelling interest in the life or health of the fetus.” See Colautti v. Franklin, 439 U.S. 379, 388-89 (1979). And similarly, here, outside the context of viability, a state cannot draw a line based on any single factor to prohibit abortions. Simply stated, a 20-week ban on abortions is unconstitutional.

In fact, a similar 20-week provision enacted by the Utah legislature has already been struck down as unconstitutional by the 10th Circuit Court of Appeals. Jane L. v. Bangerter, 102 F.3d 1112 (10th Cir. 1996). If HB 3512 is enacted, Oregon will face
costly litigation simply to be told what already has been clearly established: a 20-week statutory ban on abortions is unconstitutional. For the Legislature to pass such legislation at a time of extreme budgetary constraint, when doing so would be likely to result in the state having to pay the attorney fees of successful plaintiffs who would sue to overturn this law, is difficult to understand.

In addition, HB 3512 provides only very narrow exceptions to its ban. Even if this ban applied only to post-viability abortions, which it does not, the U.S. Supreme Court has made it clear that a post-viability ban must make an exception where an abortion is “necessary, in appropriate medical judgment, for the preservation of the life or health” of the woman. *Casey*, 505 U.S. at 879 (emphasis added); *see also*, *Roe*, 410 U.S. at 165. The U.S. Supreme Court has rejected the notion that a health exception may be limited to only major physical functioning. *See, e.g.*, *Doe v. Bolton*, 410 U.S. 179, 192 (1973). Many things can go wrong during a pregnancy. A woman’s health could be at risk in ways that we cannot even imagine. When complications develop, a woman should be able to get the care she needs. In addition to being unconstitutional, it is callous to impose one rule on every woman, regardless of the specific circumstances of her pregnancy.

HB 3512 is unconstitutional and a proposal that ignores a woman’s health and well being. For all of these reasons, we urge you to oppose HB 3512.