



AMERICAN CIVIL LIBERTIES UNION

Michigan

## House Judiciary

### House Bills 4320 & 4321

Position: Opposed

May 7, 2019

The ACLU of Michigan works to preserve and strengthen the constitutional liberties, including the right to reproductive freedom, of every person in Michigan. We oppose House Bills 4320 and 4321 because they will ban a very safe method of abortion used by many physicians because of its proven record through years of research and medical practice. In addition, the legislation targets physicians that provide critical reproductive health care by criminalizing the use of this safe procedure.

Multiple Supreme Court and lower court decisions have consistently reaffirmed the right of a woman to end a pregnancy safely and legally for the past four decades. This ban flies in the face of clear Supreme Court precedent which has squarely held that a ban on the most commonly-used method of abortion is unconstitutional.<sup>1</sup> In *Stenberg v. Carhart*, the Court held specifically that a D&E method ban, similar to one contemplated by SB 229, was unconstitutional.<sup>2</sup> Moreover, in *Gonzales v. Carhart*, the Court ruled that a ban on another second-trimester procedure, D&X, was constitutional in reliance on the continued availability of D&E, the most commonly used method of second trimester abortion.<sup>3</sup> Accordingly, courts have blocked D&E bans each time they have been challenged over the past 4 years, specifically in Alabama, Arkansas, Kansas, Kentucky, Louisiana, Ohio, Oklahoma, and Texas.

This law is not only unconstitutional but dangerous. A woman must be able to make her own decisions with the advice of the health care professional she trusts – without interference from politicians who presume to know better. Medical professionals like the American Congress of Obstetricians and Gynecologists oppose these bans because doctors, at threat of prosecution, would be forced to perform a procedure in a manner dictated by politicians rather than best medical standards, even if they think it is inappropriate for their patient. In no other field of medicine would this be acceptable.

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<sup>1</sup> See *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Stenberg v. Carhart*, 530 U.S. 914, 945-6 (2000); *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 77-79 (1976).

<sup>2</sup> See *Stenberg*, 530 U.S. at 945-46.

<sup>3</sup> See *Gonzales v. Carhart*, 550 U.S. 124, 147, 164-65 (2007).

A woman's health, not politics, should guide important medical care at every point in a pregnancy. Many things can go wrong during a pregnancy. A woman's health could be at risk in ways that we cannot even imagine, especially if complications develop. It is callous to impose one rule on every woman, regardless of the circumstances of her pregnancy. Every pregnancy is different and we cannot presume to know all the circumstances surrounding a personal, medical decision to have an abortion.

We've seen what happens when politicians interfere in these deeply personal medical decisions. In states that have passed other abortion bans, some women and their families have been put into unimaginable situations - needing to end a pregnancy, but unable to do so.

Criminal laws should not be used to endanger women's health. We therefore urge you to oppose House Bills 4320 and 4321 because they are unnecessary, unconstitutional, and unsafe.

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