

February 2, 2022

DELIVERED VIA EMAIL

Chair Manny Diaz  
Health Policy Committee  
Florida Senate  
530 Knott Building  
Tallahassee, FL 32399

Re: ACLU FL Written Testimony in Opposition to SB 146/HB 5, Banning Abortion



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
acluf.org

Kirk Bailey  
Political Director

Kara Gross  
Legislative Director

Dear Chair Diaz and members of the Health Policy Committee:

The ACLU of Florida is a nonpartisan organization whose mission is to protect, defend, strengthen, and promote the constitutional rights and civil liberties of all people in Florida. On behalf of our 180,000 members and supporters in Florida, we write in opposition to SB 146/HB 5, and respectfully request that you vote “No” on this unconstitutional and dangerous bill.

### **What This Bill Does**

Among other things, SB 146/HB 5 would prevent individuals from accessing safe and legal abortions after 15 weeks and would criminalize medical professionals who provide such critical abortion care.

SB 146/HB 5 does not provide any exceptions for pregnant individuals who are the victims of rape, incest, domestic violence, or human trafficking. Additionally, there is no exception for significant, ultimately life-threatening fetal anomalies if they will not result in *imminent* death. Just to be clear: this bill will force a pregnant person to continue a pregnancy against their will and force a person to bring a child into the world knowing that medical professionals have determined that the fetal diagnosis is incompatible with life and that their child will not survive past the first year. The bill contains only a very narrow medical exception that requires certification by *two* physicians before a patient facing potentially life-threatening health risks can receive the abortion they urgently need.

SB 146/HB 5 poses a serious threat to the health and well-being of individuals seeking abortion care and ignores a pregnant person’s individual needs and circumstances. SB 146/HB 5 inserts the Government into private healthcare decisions and makes politicians the ultimate decisionmaker over a pregnant person’s bodily autonomy and the direction of their lives.

SB 146/HB 5 disavows what the majority of Floridians’ desire -- the freedom to control their lives, their bodies, their healthcare, and their future.

## **This Bill is Blatantly Unconstitutional and Part of a Nationwide Strategy**

The introduction of this bill doesn't come in isolation. It is part of a nationwide dangerous, unpopular, and coordinated effort to deny access to safe and legal abortion care. The majority of Americans support the right to abortion, support *Roe v. Wade*, and oppose bans on abortion. Every time unconstitutional bans are passed, they have been challenged in the courts and have been blocked. The only reason this bill is moving now is in anticipation of the recently configured U.S. Supreme Court gutting or overturning fifty years of precedent established in *Roe v. Wade*. But no matter what the Supreme Court does, the ACLU of Florida will continue to fight to protect our rights.



Legislating unpopular and unconstitutional bans on abortion is an irresponsible diversion from the real issues that Floridians need our legislature to address – unemployment, healthcare, affordable housing, COVID, clean air and water.

Personal health care decisions should be made by a patient and their doctor, not politicians. SB 146/HB 5 is an unconstitutional and ideological attack on both *Roe v. Wade* and Florida's state constitutional protections against government overreach into our personal decisions and would contravene decades of case law on this issue on which Floridians have come to rely.

Every Floridian should be able to make their own personal, private health care decisions without politicians blocking the way. In a state that prides itself on being free, this is an unprecedented and unacceptable level of government overreach and intrusion. The Florida Constitution provides an explicit right to privacy that is even greater and more protective than the federal constitution.

Specifically, Article 1, Section 23, of the Florida Constitution, entitled "Right of privacy" states that "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life..." As the Florida Supreme Court has repeatedly held, "Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words 'unreasonable' or 'unwarranted' before the phrase 'governmental intrusion' in order to make the privacy right as strong as possible." *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1252 (2017) (quoting *Winfield v. Div. of Pari-Mutuel Wagering, Dep't of Bus. Regulation*, 477 So.2d 544, 547 (Fla. 1985)).

There is no greater government intrusion into a person's private life than politicians dictating whether and when an individual should become a parent. Bans like these are blatantly unconstitutional.

## **Historically Oppressed Communities Will Be Most Harmed by this Legislation**

While abortion has been legal for nearly five decades, many communities have never experienced true access to abortion care. Since abortion became legal,



politicians have consistently pushed abortion care out of reach for those struggling financially, young people, LGBTQ people, Black, Indigenous, and people of color. This proposed legislation will most directly impact health outcomes for these already marginalized communities.

Low-income patients, as always, are hit especially hard by restrictions and barriers to access. SB 146/HB 5 is a cruel legislative attempt to make abortions harder to access, and to criminalize the work that dedicated doctors do to provide this safe and essential care. If this bill passes, the closest state to access abortion care beyond 15 weeks of pregnancy will be North Carolina, which requires traveling through two states and traversing over 500 miles depending on where in Florida you live. While no one should have to leave their home state to get the care they need, those with resources will at least have that option. However, those who do not will be denied the care they need and forced to carry a pregnancy against their will. When people are turned away from the abortion care they seek, they are more likely to live in poverty, stay in abusive relationships, and face other adverse health, economic, and social outcomes.

Abortion bans do nothing to address the serious economic and health challenges facing Floridians, and instead exacerbate these challenges for those most in-need. SB 146/HB 5 harms families and jeopardizes health outcomes. Every Floridian should be able to get the health care they need, including abortion care, without interference from politicians.

This bill ignores the reality that: 1) it is not always possible for someone to get an abortion within 15 weeks, and 2) individuals might receive new information after they are already 15 weeks pregnant that change the course of their family planning. Many obstacles stand in the way of a pregnant person and access to abortion care, from delays in finding out they are pregnant; to not being able to afford an abortion and the transportation, childcare, and time off work to get to a provider; to a lack of doctors who provide abortion nearby; to numerous other barriers put in place by politicians, such as bans on insurance covering abortion. It is impossible for lawmakers to anticipate every potential situation that may cause someone to consider getting an abortion. Throughout pregnancy, a patient's health and their individualized circumstances, not politics, should drive important medical decisions.

### **This Bill is Dangerous and Costly to Floridians**

Nearly one in four women will have an abortion before the age of 45. Three-quarters of all patients who obtain an abortion are living at or near the poverty line. And nearly two-thirds of patients who obtain an abortion already have at least one child.

Whether you are aware of it or not, chances are very good that you know, perhaps even love, someone in your life who has had an abortion or will need one in the future. The costs of banning abortion are not just financial, they may well be

personal – someone you love may desperately need this care and if this bill passes, it may not be available to them.

Abortion is and always has been necessary, and Floridians must be free to avail themselves of this care, regardless of the personal opposition of some of our elected officials. It is a waste of our legislature's time and resources, and our taxpayer dollars, to hold hearings on unconstitutional bills. The government should not have the power to decide whether and when a person will have a child. We need to trust pregnant people – not legislators -- to make these important decisions in consultation with their health care providers and those closest to them.

### **Conclusion**



Addressing unemployment, affordable housing, education and our unprecedented public health crisis should be the legislature's top priority – not making it harder to access constitutionally protected and safe health care. The decision about whether and when to become a parent is one of the most important decisions we make. We should be free to make this decision in consultation with medical providers and those we love and trust, and without barriers, political interference, and government regulating our bodies.

For all these reasons, we urge you to vote “No” on this unconstitutional, dangerous, and costly bill. Please do not hesitate to contact Kara Gross, Legislative Director of the ACLU Florida, at [kgross@aclufl.org](mailto:kgross@aclufl.org) if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kara Gross".

Kara Gross  
Legislative Director &  
Senior Policy Counsel

Cc: Kirk Bailey, Political Director, ACLU FL  
Neisha-Rose Hines, ACLU FL