Testimony of Jen Jordan, Georgia State Senator

April 9, 2019

United States Senate Committee on the Judiciary Hearing on S. 160

Chairman Graham, Ranking Member Feinstein, and distinguished members of the Committee: thank you for inviting me to appear before you this morning. My name is Jen Jordan, and I currently serve as a State Senator for the Sixth District of Georgia.

I was invited to come before you today to speak to S. 160, a bill that would ban abortion at 20 weeks nationwide, as well as my experiences in my home state of Georgia with a similar state-level law that would ban abortion at 6 weeks, also known as a so-called "heartbeat" bill like many being introduced across the country right now. This type of legislation further limits women's access to basic reproductive healthcare and has very serious health ramifications for women and their families.

First, let me say I did not run for office to fight the culture wars around choice and access to reproductive healthcare. I was raised in rural south Georgia, and I spent equal time in church as I did in school. My faith is deeply important to me. But as one of the few women in state legislative bodies around the country, it is apparent that there aren't many who are willing and able to speak up for the majority of women in these states who are voiceless. But I am.

Georgia's 2012 20-Week-Ban Law:

Currently, the state of Georgia has one of the most restrictive abortion laws in the country. Enacted in 2012, the law bans all abortions, with few exceptions, when a fetus reaches 20 weeks gestational age, which is unconstitutional. It is essentially the same type of ban that is before this Committee today.

When passing its 20-week-ban, the Georgia General Assembly made findings that "there is substantial evidence that an unborn child has the physical structures necessary to experience pain" at twenty weeks.[1]

[1] The sponsor of the Georgia ban pointed to www.doctorsonfetalpain.com/ for support of these findings even though the head of the Georgia Obstetrical and Gynecological Society testified in opposition to the bill and refuted many of the findings cited in support of the legislation.

At the hearing on February 21, 2012, Dr. Anne Patterson testified:

> There is no fetal research done in this country. It has not been legal for over 30 years. . . It is pretty well known, both from looking at MRI and histochemical studies that between twenty-four

Georgia's 20-week-ban states that "no abortion is authorized or shall be performed if the probable gestational age" is determined to be twenty weeks or older. There are three exceptions to the Georgia's 20-week-ban: (1) where the pregnancy is "medically futile,"[2] as defined in section 31-9B-1 of the Act; (2) to avoid either death or "serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman;" or (3) to save the fetus. O.C.G.A. § 31-9B-1.[3]

Diagnoses based on the "mental or emotional condition of the pregnant woman," or conclusions by the expectant mother that she will intentionally harm herself are expressly excluded from the exceptions based on a "serious risk" of impairment to the mother. This means that a diagnosis based on mental health issues, threats of suicide, or self-harm cannot serve as a basis for a physician to perform an abortion after 20 weeks. This express exclusion of mental health is incredibly problematic and cruel. The health of the unborn fetus is deemed to be paramount to that of the mother.

If a suicidal or psychotic or severely mentally disabled woman needs medication to stabilize herself but those medications threaten the viability of a fetus, physicians must choose to refuse to prescribe certain medications and/or take the mother off of her medications to protect the fetus or, physicians can choose to continue prescribing medications and face criminal prosecution. This can result in loss of licensure and imprisonment up to 10 years.

There are no exceptions for rape and incest under Georgia's 20-week-ban.

> and twenty-five weeks the neurons advance into a subplate into the brain. And they sit. Past that, then they begin to grow into the cortex. So, prior to 24 weeks, we can pretty well identify that those pathways are not present that would identify pain.

Further, the American College of Obstetricians and Gynecologists and the Royal College of Obstetricians and Gynecologists dispute the twenty-week benchmark. These groups maintain that fetuses cannot experience pain until at least the twenty-ninth or thirtieth week of pregnancy. Other experts have placed the earliest date at twenty-eight weeks.

[2] "'Medically futile' means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth."

[3] The main differences between S. 160 and Georgia law are found in the exceptions. S. 160 has exceptions for rape and incest (albeit exceedingly narrow ones with requirements that would create impossible barriers to care for many women). Georgia does not. S. 160 does not recognize an exception for "medical futility." And S. 160 requires that a physician trained in neonatal resusciation be present at every abortion. Currently, Georgia's 20-week-ban does not and, this would be almost impossible to comply with in over 50% of the state due to a severe rural health crisis and lack of basic obstetric care.

In line with this, Georgia law requires medical facilities make their records available to the district attorney.

Ramifications of Georgia's 20-Week-Ban Law:

Since its passage in 2012, Georgia's 20-week-ban has had a profound and deadly affect for the women of the state. Whether that is the intent or not, it is certainly the outcome. And I have seen it in my rural, South Georgia hometown just as I have seen it in the Atlanta-metro area.

Currently, it is exceedingly difficult to get an abortion in Georgia, but it is just as difficult to give birth in Georgia. No doubt in part to the 20-week-ban, there are no winning options for many of the women of this state.

50% of our Georgia counties do not have a single OB-Gyn. 31 Georgia Labor & Delivery Units have closed over the last 21 years (19 in rural areas). Only 59 of Georgia's 159 counties have a Labor & Delivery Unit. 17 rural hospitals have closed in the last decade. Rural counties and the women that live in them have been the hardest hit. And if there is any doubt, since the passage of Georgia's 20-week-ban in 2012, we have seen the maternal mortality rate double in Georgia. I do not believe this is a coincidence.

Georgia's 6-week Abortion Ban:

Although the state of Georgia ranks 50 out of 50 states for maternal mortality, it has not sought to expand access to healthcare to poor women in rural Georgia. It has now acted to do the opposite.

On March 29, 2019, the Georgia General Assembly passed House Bill 481. Proponents of the bill call it the "Heartbeat Bill."

This is important to note, because House Bill 481, in large part, mirrors legislation passed in some of your states: Iowa (Senator Grassley and Senator Ernst), Missouri (Senator Hawley), and Tennessee (Senator Blackburn).

It ensures that women cannot seek abortions after a fetus is 6 weeks gestational age.

As a state Senator, I heard testimony in committee, I met with doctors, organizations, and mothers. My colleagues and I struggled as we worked through the specifics of this bill.

It is difficult to fix something that is so wrong from the start. This bill and every other one just like it are patently unconstitutional. It is so by design.

And while I don't doubt the conviction of those who believe that abortion bans are necessary. However, a deeply held conviction does not allow one to adopt a view counter to scientific and legal fact.

Counter to all medical experts, state law attempts to establish that a zygote, an embryo, a fertilized egg at 5.5 weeks has a beating heart. This is simply not true. At the earliest stages of pregnancy, certain embryonic cardiac activity can only be detected with a transvaginal ultrasound.

Our new law, currently awaiting signature from the Governor, will effectively ban all abortions – before an embryo or fetus is viable outside of a uterus and before a woman or girl even knows that she is pregnant at six weeks. Six weeks pregnant means that maybe the woman is about 1-2 weeks late after an expected menstrual period. This, assuming she is not one of the many women who have irregular cycles.

When signed into law, the state of Georgia will now legally recognize all fertilized eggs, zygotes, and embryos as natural persons in the state, entitled to the rights and benefits of any other person.

There is nothing creative, nothing novel, about the "heartbeat" bills - except their shared scientific inaccuracies. This is a nationwide effort, targeting states in certain federal circuits, in an effort to reverse *Roe* and its progeny. Part of the "personhood" movement, the sponsors sought to define "personhood" for a 6 week old fetus. That is why the seemingly bizarre provisions, including a fetus in state census counts and giving fetal income tax deductions, were significant for the proponents even if they prove to be completely unworkable and absurd.

But it does not stop there. With the passage of H.B. 481, Georgia will now make women criminals for seeking basic reproductive care by subjecting them to prosecution and imprisonment for up to 10 years if they terminate a pregnancy, even at its earliest stages, in violation of the ban.

Any woman who suffers a miscarriage could be subject to scrutiny. She would be at risk of a criminal indictment for virtually any perceived self-destructive behavior during pregnancy which could cause miscarriage, to wit: smoking, drinking, using drugs, using

legal medications, or any other dangerous or reckless conduct. And taken to its extreme, prohibitions during pregnancy could also include the failure to act, such as the failure to secure adequate prenatal medical care.[4]

The rural healthcare crisis and lack of OB-Gyns in the poorest areas of rural Georgia will only be exacerbated. There are now significant concerns being voiced by medical providers that H.B. 481 will eliminate the ability of OB-Gyn programs at Georgia medical schools to maintain accreditation for graduate medical education and for hospitals to maintain OB-Gyn residency programs.

If the intervening years of Georgia's 20-week-ban has taught us nothing else, it is that if you want more healthy women and babies, if you want to care for women and babies, if you value life truly—you would listen to the people who dedicate their lives to this practice: physicians. And, you would listen and trust women.

Conclusion:

Every woman has a story. Every single one of them. Most never say anything because of its effect on their soul. But these stories are powerful because they are the reality of women's lives, every single day. And I know this because, like every woman in this country, I have a story too.

The deepest, darkest times of my life have occurred in the presence of and with my physician. You see I have been pregnant 10 times. I have seen what many have called a heartbeat 10 times. But I have only given birth twice.

I have lost 7 pregnancies in varying points of time before 20 weeks. And one after 5 months. I have laid on the cold examination table while a doctor desperately looked for a "heartbeat." I have been escorted out the back door of my physician's office so as not to upset the other pregnant women in the waiting area - my grief on full display and uncontainable.

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[4] The fact of the intent to extend criminal liability to pregnant women is confirmed by the inclusion of a new affirmative defense from criminal prosecution:

"(h) It shall be an affirmative defense from prosecution under this article [Criminal Abortion Article] if:

(5) A woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency."

Further, my attempts to amend the law to bar the prosecution of women, as seen in S. 160, were denied.

I have been on my knees time after time in prayer to my God about my losses. I have loved each and every single one of those potential lives, and my husband and I have grieved each passing.

But no matter my faith, my beliefs, my losses – I have never, ever strayed from the basic principle that each woman must be able to make her decisions – in consultation with her God and her family. It is not for the government to insert itself in the most personal, private, and wrenching decisions that women make every single day.

My experience wasn't about abortion. But I believe that it is what's at stake here, whether we are talking about S. 160 or H.B. 481. It's about the fundamental right to privacy of women. Matters such as a woman's ability to choose to start a family or to terminate a pregnancy involve the most intimate and personal decisions a person can make.

The mother who carries a child to term is subject to pain that only she must bear.

While the constitutional parameters have always been set by the ability of a fetus to live outside of a woman's uterus (e.g., fetal viability). Georgia's 20-week-ban and S. 160 effectively outlaw all abortion at 20 weeks gestational age – this despite the fact that a baby born at 20 weeks cannot survive outside of a woman's uterus.[5] This despite the fact that viability has been the legal line in the sand since *Roe v. Wade* and *Casey v. Planned Parenthood* and every single decision to come out of the United States Supreme Court over the last 40-plus years. Decisions that sought to balance the fundamental rights of women with those of the state in protecting potential lives – once that potential life reaches the point of medical viability.

Plainly put, the effort to introduce a federal 20-week-ban on abortion stands in stark contrast to the long established constitutional parameters. States like Georgia have already served as "test cases" for these unconstitutional bans. And the women in my state have already suffered the consequences. We do not need to continue along this path.

Like each of you, I took an oath to uphold the Constitution. This oath should mean something. Because without the rule of law, we have nothing.

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[5] Periviability, also referred to as the limit of viability, is defined as the stage of fetal maturity that ensures a reasonable chance of extrauterine survival. With active intervention, most infants born at 26 weeks and above, at this point in time, have a high likelihood of survival, and virtually none below 22 weeks gestational age will survive.

Thank you for allowing me to be here today. It is an honor.