



2012: A LOOK BACK

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REPRODUCTIVE RIGHTS IN 2012: A LOOK BACK AT THE STATES

Every year, the Center for Reproductive Rights tracks hundreds of legislative measures proposed by anti-choice state legislators who intend to erode women's rights to abortion and reproductive health care. Some of the bills aim to restrict access by imposing mandatory waiting periods, ideologically biased counseling provisions, and other burdensome, unnecessary requirements. Other proposals are far more extreme, including those designed to ban abortion or prohibit women from accessing contraception.

After an intense onslaught of anti-choice legislation 2011, pro-choice advocates and legislators went into this year more determined than ever to stop harmful legislation from becoming law. Citizens, advocates, and many stalwart legislators throughout the country have fought back, standing up for women and their access to reproductive health care. In addition, the Center and other advocates have taken some of the most invasive and unconstitutional restrictions to the courts, where many measures have been enjoined or struck down entirely. Although anti-choice legislators and activists introduced hundreds of restrictive bills, as they do every year, fewer passed in 2012 than in 2011, and, as usual, most were rejected. Nonetheless, over 40 pieces of anti-woman, anti-abortion, anti-contraception legislation became law. Several blatantly unconstitutional laws were so immediately harmful to women's health and rights that the Center, along with allies in advocacy, immediately filed suit:

Arizona: The Center, along with the ACLU, deflected a setback in district court and secured a preliminary injunction against the most extreme anti-abortion law in recent memory—a ban on abortion that threatens the lives and health of women. (See pp. 6-7 or **our website** for additional details on law and the case.)

Mississippi: Anti-choice legislators are trying to shutter the state's last abortion clinic and deprive women of constitutionally protected reproductive health care. The Center has so far blocked this inappropriate targeted regulation of abortion providers, or TRAP law, from taking effect. (See pp. 8 and **our website** for more details.)

As we prepare for 2013, the Center offers this recap of the major trends of 2012, a state-by-state analysis of the past year's enacted laws, notes on some of the positive legislation enacted that will improve women's health and safeguard their rights, and a look at what the next legislative session may bring.

MAJOR TRENDS IN 2012

INSURANCE RESTRICTIONS

Spurred by the passage of the federal Affordable Care Act (ACA), state legislatures considered for the third year in a row a number of proposals to limit or eliminate women's access to insurance coverage for abortion. Most of the 15 states in which such legislation was introduced focused on the state health exchanges that will be created as a result of ACA. Under the ACA, states may ban abortion coverage from state exchanges altogether, and in 2012, four states—Alabama, South Carolina, South Dakota, and Wisconsin—passed bans that prohibit coverage in the exchanges, with only limited exceptions. Other states considered much broader restrictions for abortion both in and outside of the exchange. At the very end of the year, the Michigan legislature enacted legislation that would have prohibited insurers from offering insurance coverage for abortion in any situation other than to prevent a woman's death, but Gov. Rick Snyder vetoed the bill, citing a number of concerns, including the intrusion into the private market and the lack of exception for women's health or in cases of rape or incest.

These bills go against the very purpose of health insurance, prohibiting individuals from protecting themselves from unpredictable and costly health care and discriminating against women in the most fundamental way.

TELEMEDICINE RESTRICTIONS

Anti-abortion legislators sought to limit women's access to medication abortion in 2012, with at least 10 states considering proposals to prohibit the provision of medication abortion through telemedicine. For rural and low-income individuals, telemedicine has become a critical delivery method for health care, enhancing the quality of care for many people in the United States. In the context of medication abortion, a rural patient may visit a local health clinic and be examined by an on-site health care professional, then talk with a physician working remotely who can review her health records, answer her questions, and provide the medication abortion. By the end of 2012, Wisconsin and Michigan had banned the use of telemedicine for medication abortion, and Oklahoma had added further restrictions to its existing telemedicine ban. On a positive note, while the Minnesota legislature passed a similar proposal, Gov. Mark Dayton vetoed that bill in May. **Read the Center's veto letter to Gov. Dayton.**

TARGETED RESTRICTIONS OF ABORTION PROVIDERS (TRAP)

Anti-abortion legislators in 12 states considered bills that would regulate the provision of abortion services by imposing burdensome requirements on abortion providers that are different and more stringent than regulations applied to comparable medical practices. Michigan passed legislation requiring most abortion facilities to become licensed as "freestanding outpatient surgical facilities," essentially forcing them to meet the standards of small hospitals. **Read the Center's veto letter to Gov. Rick Snyder.** Mississippi and Tennessee both passed TRAP legislation requiring any physician who provides abortion services to have admitting privileges

at a local hospital. As always, the purpose and effect of TRAP legislation is to make it harder for women to exercise their constitutional right to choose abortion. In fact, the legislators and supporters of the Mississippi legislation proclaimed far and wide that their intention with their bill was to close down the only abortion provider in the state. The Center has challenged this bill in federal court and secured a partial preliminary injunction that allows the clinic to remain open and provide needed services to Mississippi women. See the section on Mississippi below for more information. Finally, while a very harmful TRAP bill was passed by the Minnesota legislature, Gov. Dayton vetoed it. **Read the Center's veto letter to Gov. Dayton.**

REFUSALS

Politicians on both the federal and state level have hidden behind the mantle of religion and moral belief to reduce access to health care for women. Legislation was introduced in 10 states that would have created or expanded “refusal clauses”—laws that allow individuals and institutions to assert religious or moral objections to deny patients health care. In 2012, Arizona, Kansas, and Missouri enacted new “conscience provisions,” expanding the types of entities that can refuse to provide care or insurance to patients or employees.

BANS ON LATER ABORTION

In the last three years, a small but growing number of states have banned abortions at 20 weeks post-fertilization age, which is prior to viability. These laws endanger the health of pregnant women, who have a constitutional right to access this essential reproductive health care, and they prevent physicians from exercising their best medical judgment in caring for their patients.

While most of these proposals seek to ban abortion at 20 weeks post-fertilization age (i.e., 22 weeks from the woman's last menstrual period (Imp)), Arizona passed a law in 2012 that bans abortion even earlier, at 20 weeks Imp. In July, the Center along with the ACLU filed a lawsuit in federal court to block this law. Although the district court initially refused to enjoin the law and upheld it, the 9th Circuit Court of Appeals issued a preliminary injunction in August, just before the law was set to go into effect. See the section on Arizona below for more details. In addition to the even earlier and more restrictive Arizona bill, in 2012 eight states considered bans on abortion at 20 weeks post-fertilization, and Georgia and Louisiana passed them. Georgia's law has also been challenged in court, by the ACLU, and is currently enjoined. **Read the Center's veto letters to Gov. Nathan Deal and Gov. Jan Brewer.**

BALLOT INITIATIVES – FLORIDA AND MONTANA

Two states had proposals on their ballots aimed at restricting women's access to abortion. In Florida, the legislature placed a proposed constitutional amendment on the ballot that, if approved by the voters, would have rolled back the right to privacy found in the Florida constitution and enshrined in the constitution a prohibition on public funding for abortion except where necessary to save a woman's life or in cases of rape or incest. Florida voters soundly rejected the initiative, making it clear to the legislature that they are not interested in giving up their critical right to privacy or in allowing the government to stand between women and their doctors.

In Montana, voters were asked to approve a law that would require parental notification or a court order before a minor can obtain an abortion. The legislature had passed a similar bill in 2011, but Gov. Brian Schweitzer vetoed it, in part because it was unconstitutional under the Montana constitution. Nonetheless, voters approved the initiative, meaning that young women who, for any number of serious reasons, cannot involve their parents in their reproductive decisions, will be forced to go to court, if possible, before being permitted to exercise their constitutionally protected right to seek an abortion.

STATE BY STATE: MAJOR RESTRICTIONS ON WOMEN'S ACCESS TO REPRODUCTIVE HEALTH CARE

ALABAMA

Insurance Restrictions

Alabama passed SB 10, banning coverage of abortions under health plans offered in the state exchanges, except when the life of the woman is at risk and for victims of rape or incest.

ARIZONA

Ban on Later Abortions—Refusals/Insurance Restrictions— Defunding of Services

Arizona enacted several anti-choice bills this session, including HB 2036, the most extreme abortion law in recent memory. This bill contains several restrictions on abortion that are clearly unconstitutional. HB 2036 prohibits abortions after 20 weeks from the woman's last menstrual period (Lmp)—the earliest gestational age limit in the nation. The bill lacks even the most basic protections for women's lives and health, allowing abortions after 20 weeks Lmp only in dire medical emergencies where the woman's life or physical health is in immediate danger. In addition, the bill unconstitutionally restricts women's access to medication abortion and includes a number of other burdensome regulations on both providers and patients.

Read the Center's veto letter to Gov. Brewer.

The Center Takes Action: *Isaacson et al. v. Horne et al.*

On behalf of physicians who perform abortions and serve women with high-risk pregnancies, the Center and the ACLU have filed a lawsuit in federal court on July 12, 2012, challenging this dangerous and unconstitutional legislation. The plaintiffs asked the court for a preliminary injunction to prevent the law from going into effect. In August, the district court both denied the motion and issued a final judgment upholding the law. The Center and the ACLU immediately filed an appeal to the 9th Circuit, which granted a preliminary injunction in August, and heard argument on the merits of the case in November.

Arizona passed two other bills that restrict Arizona women's reproductive rights. HB 2625 weakens the state's contraceptive equity statute, which currently requires insurance plans to cover contraceptive drugs and devices in the same manner as other prescription drugs. An older law exempts only "religious employers" from this requirement, but HB 2625 expands the exemption to any employer that identifies itself as "religiously motivated." In addition, the bill eliminates explicit protection against discrimination against employees who choose to obtain contraceptive coverage elsewhere due to their religious employer's refusal to cover it.

In addition, Arizona enacted HB 2800, a law that seeks to prohibit Planned Parenthood from receiving state funding. The bill prohibits the state and local governments from entering into a contract with or making a grant to any entity that provides abortions or that maintains or operates a facility where abortions are provided, other than those performed to save

the woman's life or in cases of rape or incest. Planned Parenthood provides a full range of reproductive health care, including abortion. This bill would limit women's access to a range of reproductive health services, such as birth control, Pap smears, and cancer screenings, and disproportionately harm low-income and uninsured women, for whom Planned Parenthood is often the only available provider. In July, Planned Parenthood and the ACLU filed a lawsuit to block the law from taking effect, and the U.S. District Court granted a temporary injunction in October. In late November, the state of Arizona appealed the district court's ruling to the 9th Circuit Court of Appeals, and the appeal is still pending.

GEORGIA

Ban on Later Abortion

By a narrow margin, Georgia enacted extreme and draconian legislation, HB 954, which bans abortion at 20 weeks post-fertilization. The bill provides limited exceptions for cases where an abortion would be necessary to either save a woman's life, to prevent the risk of substantial and irreversible physical impairment of a major bodily function, or in cases of medically futile pregnancies, which encompasses only a small number of situations in which the fetus has "a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth."

In November, the ACLU filed a lawsuit challenging the law as unconstitutional under the Georgia constitution, and in late December, the state court granted a preliminary injunction, putting the law on hold until the case is settled.

KANSAS

Refusals—Defunding of Reproductive Health Services

In 2012, Kansas sought to further restrict the availability of abortion and health services for women by passing SB 62, which broadly permits health care providers and institutions to refuse to provide critical health care. Kansas law already protects individuals and hospitals from participating in an abortion procedure if they object to doing so, but SB 62 goes further, allowing all health care facilities and their employees to refuse to participate in or refer for an abortion, reaching a broader group of individuals, entities, and activities than the previous law. The bill also allows individuals and entities to refuse to provide or refer for "any device or drug...an effect of which the person reasonably believes may result in the termination of a pregnancy." Some individuals may interpret this provision as allowing them to refuse to provide or refer for certain forms of contraception.

Kansas also passed a budget provision (SB 294) that prohibits any state funding for abortion, unless the life of the woman is at risk.

LOUISIANA

Mandatory Ideological Counseling—Ban on Later Abortion

Louisiana, continuing its long track record of enacting restrictions on abortion, passed two harmful anti-abortion laws. First, SB 708 requires women seeking an abortion in Louisiana to view an ultrasound image, listen to a description of that image, and hear the fetal heartbeat. Most women must visit the clinic at least 24 hours in advance to go through this process,

although the bill contains a narrow exception for women who are victims of sexual assault, and allows women who live 100 miles or more from the closest abortion provider to wait two hours as opposed to 24.

With a second law, SB 766, Louisiana joined the states that ban abortion at 20 weeks post-fertilization. Louisiana's law includes exceptions for an abortion that would be necessary to either save a woman's life, to prevent the risk of substantial and irreversible physical impairment of a major bodily function, or medically futile pregnancies.

MISSISSIPPI TRAP

In November 2011, voters in Mississippi resoundingly rejected a "personhood" proposal that could have banned abortion, as well as common forms of contraception and some fertility treatments. This year, politicians in Mississippi tried to accomplish through TRAP legislation what they could not accomplish with last year's **personhood initiative**.

The legislature passed, and the governor signed, HB 1390, which requires all physicians "associated with" an abortion facility to have admitting privileges at a local hospital and "staff privileges to replace local hospital on-staff physicians." This bill was touted by its supporters as being intended to close the only abortion clinic in the state and, therefore, end women's access to abortion in Mississippi. There is no medical reason to require such privileges; no other physician who provides office-based surgery is required to have them.

There are many reasons why some physicians, including some abortion providers, do not have such privileges. As a general rule, a hospital extends such privileges to physicians who regularly admit patients to that hospital. Because of the inherent safety behind abortion procedures, providers rarely have to admit patients.

The Center Takes Action: *Jackson Women's Health Organization & Willie Parker, M.D., M.P.H., M.Sc. v. Mary Currier, M.D., M.P.H. & Robert Shuler Smith*

In June, the Center challenged the bill in federal court in Mississippi, arguing that it amounts to a ban on abortion. Soon thereafter, **the judge temporarily blocked enforcement of the law** and, after hearing argument, partially enjoined the application of the law so that the clinic could remain open and serve patients while the admitting-privileges process moves forward and the litigation continues. Since then, the board certified OB/GYNs at Jackson Women's Health Organization were denied privileges at all area hospitals. As a result, the Center went back to court in November asking the court to enjoin the entire law during the pendency of the litigation to prevent the now-inevitable revocation of the clinic's license under the admitting privileges requirement of HB 1390.

MICHIGAN TRAP—Telemedicine Restrictions—Mandatory Ideological Counseling

At the very end of the 2012 session, the Michigan legislature rammed through several restrictions on abortion. Although Gov. Snyder vetoed a bill that would have prohibited insurance coverage for abortion both in and out of the exchanges, he signed into law HB 5711, an omnibus bill that includes TRAP provisions, restrictions on medication abortion, and state-

mandated screening and signage requirements. ([Click here for the Center's veto letter to Gov. Rick Snyder](#)). Among the specific restrictions included in the bill are:

1. a prohibition of the provision of medication abortion through telemedicine;
2. a requirement that any facility that provides 120 or more surgical abortions per year and publicly advertises its services must become licensed as a freestanding surgical outpatient facility—essentially a mini-hospital;
3. a requirement that all abortion providers conduct extensive screening of their patients using state-created screening tools; and
4. a requirement that all abortion facilities post large signs telling their patients that is unlawful to coerce anyone to have an abortion.

Taken as a whole, this burdensome piece of legislation was designed to make it harder for health care providers to offer abortion services to their patients—and thus harder for women to access abortion in Michigan.

MISSOURI

Refusal

Missouri's legislature passed SB 749, a broad "conscience" bill that amends the state's existing contraceptive equity law. SB 749 allows employers and insurers to refuse, for either religious or moral reasons, to provide insurance coverage for abortion, contraception, or sterilization. And for the first time, insurers are allowed to exclude contraceptive coverage from their health plans. Instead of attempting to balance an employee's right to access equal coverage with potential objections to that coverage, as Missouri's existing contraceptive equity law does, SB 749 allows an insurer's moral convictions or religious beliefs to dictate the type of care subscribers and employers can access.

In addition, the bill prohibits the state government from penalizing a broad array of entities, including employers, health care providers, and health care plans, for "refusing to obtain or provide coverage for, pay for, participate in, or refer for abortion, contraception or sterilization in a health plan." Although Gov. Jay Nixon vetoed this legislation ([click here for the Center's veto letter to Gov. Nixon](#)), the Missouri legislature overrode his veto.

NEW HAMPSHIRE

Parental Involvement Restrictions—Ban on Partial Birth Abortion

In 2011, the New Hampshire legislature enacted a law—over the governor's veto—requiring parental notification when a minor seeks an abortion, unless there is a medical emergency or the minor seeks a waiver from a judge. The law required judges to rule on waiver petitions within 48 hours.

In the 2012 session, the legislature passed HB 1723, lengthening the amount of time a court may take to rule on a waiver petition to two "court days." As a result, a minor could be delayed as many as four days while waiting for the judge to rule on her petition—making it even more difficult and time-consuming for a minor to obtain an abortion if she feels she cannot involve a parent.

The legislature also passed HB 1679, a bill banning so-called “partial birth abortion” that would be more onerous than the federal ban that was upheld by the U.S. Supreme Court in 2007. The federal ban contains a limited exception allowing the banned procedure if it is necessary to save a woman’s life. HB 1679 further restricts and delays a physician’s ability to provide lifesaving care by requiring another physician, who is neither legally or financially affiliated with the first, to agree on the need for the abortion before the procedure could be performed. Although Gov. John Lynch vetoed the bill, citing concerns about its impact on women in emergency medical situations, the New Hampshire legislature overrode his veto.

NORTH CAROLINA

Defunding of Reproductive Health Services

In 2011, North Carolina passed a budget, over the governor’s veto, that prohibited Planned Parenthood from receiving any state funds. Planned Parenthood took the state to court and successfully blocked that part of the budget from taking effect. This year, the legislature passed another appropriations bill with the renewed goal of defunding Planned Parenthood.

HB 950 requires that state funding for family-planning and pregnancy-prevention services go directly to local health department recipients, rather than permitting the state or local departments to contract with other family-planning providers as they have traditionally done. As noted previously, Planned Parenthood provides a full range of reproductive health care services and is often the only provider of these services for low-income women. Gov. Bev Perdue vetoed this legislation, but the North Carolina legislature overrode her veto, enacting into law a budget that will harm the many women who rely on Planned Parenthood for reproductive health services.

OKLAHOMA

Ultrasound—TRAP—Telemedicine Restrictions

As it has for the last several years, Oklahoma’s legislature once again spent a significant portion of its session focused on reducing women’s access to health care and restricting women’s reproductive rights. Although many proposals were defeated, including a controversial personhood bill, the legislature ultimately enacted three new anti-abortion laws.

First, HB 1274 requires any patient obtaining an abortion after eight weeks to be offered the opportunity to hear the fetal heartbeat. This law, which is similar to other measures that either offer or force women to view images and hear descriptions of ultrasounds, is motivated by legislators’ belief that women are incapable of making their own thoughtfully considered decisions without intervention by the state.

Second, HB 2561 imposes additional civil liability on abortion providers—but not any other type of health care provider—who have otherwise been found negligent in the provision of medical care.

Finally, HB 2381 expands Oklahoma’s existing ban on the use of telemedicine for mifepristone to ban telemedicine for any type of medically induced abortion.

The Oklahoma legislature also debated, but did not pass, a “personhood” bill. At the same time, anti-abortion activists were attempting to place another personhood proposal on the Oklahoma ballot for November 2012 that, if approved by voters, could have banned abortion, and could have effectively banned many forms of birth control and certain types of fertility treatments. The Center sued to prevent this proposal from being placed on the ballot, and in May, the Oklahoma Supreme Court unanimously found that the measure was clearly unconstitutional and thus “void on its face.” Subsequently, the proponents of the personhood measure appealed that decision to the U.S. Supreme Court for review. On October 29, the U.S. Supreme Court refused to hear the appeal, leaving the strong Oklahoma Supreme Court decision as the final word on personhood in Oklahoma.

SOUTH CAROLINA

Insurance Restrictions

South Carolina joined the states targeting women’s access to insurance coverage for abortion by passing SB 102, a ban on abortion coverage in the state exchange except in cases where an abortion is necessary to save the life of a woman threatened by physical illness or in cases of rape or incest.

SOUTH DAKOTA

Insurance Restrictions—Mandatory Biased Counseling

In 2012, South Dakota continued its years-long attack on women’s health and rights, passing two different restrictions on abortion. Under HB 1185, insurers in the health care exchange are prohibited from offering coverage for abortion unless the procedure averts a woman’s imminent death or serious health risks.

Second, South Dakota amended a law passed in 2011 that created an unconstitutional requirement that forces women to make several trips to their abortion provider, wait three days between those visits, and go to a crisis pregnancy center for forced counseling before being allowed to obtain an abortion. The law also required the physician providing the abortion to go through a vague set of “risk factors” with each patient, regardless of whether they were relevant to the patient and without adequate guidance as to how to determine which risk factors to cover. The ACLU and Planned Parenthood sued the state, and a federal court enjoined the 2011 law.

This year, the legislature passed SB 1274, amending part of the 2011 law associated with the risk factor screening but retaining the same 72-hour waiting period and required visit to a crisis pregnancy center. The ACLU and Planned Parenthood have added claims against those provisions to their ongoing case.

TENNESSEE

TRAP

As in Mississippi, the Tennessee legislature enacted a law, HB 3808, restricting access to abortion by requiring any physician who provides abortion services to have admitting privileges at a nearby hospital. See the section above about Mississippi (p. 8) for more on why admitting privileges are a TRAP.

UTAH

Waiting Period

This session, Utah, with HB 461, enacted the longest “waiting period” currently being enforced in the country. The previous law required an abortion patient to receive state-mandated, in-person counseling at least 24 hours prior to the abortion. HB 461 lengthens that waiting period to 72 hours. By extending the waiting period an extra two days, the state is clearly sending a message that it does not believe women are capable of making their own decisions and punishing women for making decisions the state does not agree with. **Read the Center’s veto letter to Gov. Gary R. Herbert.**

Requiring women to make multiple trips to a health care provider before being allowed to receive an abortion imposes significant burdens, especially on low-income women who need child care or who lack access to transportation. These laws also impose onerous burdens on women who are experiencing domestic violence, as pregnancy is a particularly dangerous time in an abusive relationship. The logistics associated with two trips to a clinic often increase the risk that the abuser will attempt to thwart the woman’s ability to obtain care.

VIRGINIA

Ultrasound—Mandatory Waiting Period

Amid intense controversy, Virginia passed HB 462, which requires any woman seeking an abortion to visit the health care provider at least 24 hours in advance and to be given an ultrasound during that first visit. The woman must be offered an opportunity to view and receive a printed copy of the ultrasound image, and to hear the fetal heartbeat. The law contains narrow exceptions for women in specific situations, such as victims of sexual assault or incest who have reported the crimes to law enforcement, and allows women who live 100 miles or more from the closest abortion provider to wait two hours as opposed to 24. See the section on Utah for more on why two-trip requirements harm women.

WISCONSIN

Insurance Restrictions—Telemedicine Restrictions

This year, Wisconsin took several steps to limit women’s access to reproductive health care. First, Wisconsin joined the states seeking to limit women’s access to abortion by eliminating insurance coverage. SB 92 prohibits any insurance plan offered through the state health care exchange from covering an abortion, unless the woman has been the victim of sexual assault or incest and has reported such incident to the authorities, or if the abortion is necessary to save the woman’s life or to prevent grave, long-lasting physical damage.

Second, SB 306 restricts the provision of medication abortion. The bill bans telemedicine for the provision of medication abortion and also imposes a variety of other burdensome and, in some cases, vague requirements on providers. Due to these ambiguous provisions and the criminal penalties associated with any violation of them, some of the providers in the state have ceased providing medication abortions altogether. In December, Planned Parenthood of Wisconsin filed a lawsuit in federal court to strike down the law. The court has yet to rule on the lawsuit.

“This year, lawmakers and advocates successfully defeated the vast majority of the harmful bills that would have restricted women’s access to reproductive health care.”



REPRODUCTIVE HEALTH AND RIGHTS VICTORIES IN 2012

This year, lawmakers and advocates successfully defeated the vast majority of the harmful bills that would have restricted women's access to reproductive health care. In addition, legislators and advocates advanced new laws that will increase access to reproductive health care and protect reproductive rights. Here are the highlights of those legislative victories:

ANTI-SHACKLING LEGISLATION—A POSITIVE TREND IN REPRODUCTIVE HEALTH LAW

In adult and juvenile correctional and detention centers throughout the United States, pregnant women are frequently restrained during labor and delivery, even though the practice is prohibited by the Federal Bureau of Prisons and has been condemned by two major American medical organizations. In addition, several United Nations experts and human rights bodies have criticized the practice: The UN's special rapporteur on violence against women, charged with investigating violence against women worldwide and reporting findings to the UN Human Rights Council, has found that the practice may be considered cruel and unusual. In addition, the UN body of experts that monitors compliance with the International Covenant on Civil and Political Rights, a human rights treaty to which the U.S. is a party, has urged the U.S. to prohibit the practice. This practice is cruel and humiliating to detained pregnant women, and violates their human rights.

Fortunately, states are increasingly recognizing the cruelty of shackling incarcerated women during labor and delivery, and have banned the practice in growing numbers over the past few years. Prior to 2012, 14 states had laws on the books prohibiting the shackling of incarcerated women during labor (California, Colorado, Hawaii, Idaho, Illinois, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and West Virginia). This year, four new states passed anti-shackling legislation (Arizona, Delaware, Florida, and Louisiana) and two states improved the anti-shackling laws already on the books (California and Illinois).

STATE BY STATE: MAJOR VICTORIES FOR WOMEN'S ACCESS TO REPRODUCTIVE HEALTH CARE PASSED

ARIZONA

While Arizona enacted some of the most hostile and restrictive legislation for women's reproductive rights this year, the state also acted to protect its pregnant inmates and detainees who had previously been subjected to unjustifiable treatment during pregnancy. SB 1184 prohibits the use of shackles or restraints on an inmate or detainee in a state, county, or juvenile detention facility either during transportation for delivery or during labor.

CALIFORNIA

In 2012, California took a number of steps to improve child and maternal health, and to increase access to reproductive health care. Two new laws expand access to contraception: AB 2348 will make it easier for women to access birth control by expanding the scope of practice for registered nurses to allow them to dispense hormonal contraceptives and administer injectable forms of birth control. SB 951 and AB 1453 together ensure that more people will have health insurance coverage for contraceptives. Beginning on January 1, 2014, the Affordable Care Act (ACA) will require that many health policies provide a minimum level of coverage that includes essential health benefits, but the law leaves the definition of the benefits to the states. SB 951 and AB 1453 remove any vagueness about what is covered and ensure that California insurance plans will cover contraceptives.

California further strengthened reproductive rights by passing SB 623, making it easier for women to access first trimester abortions. The bill extends a five-year pilot project that trains nurse practitioners, certified nurse-midwives, and physician assistants to perform first trimester abortions. The study has been successful thus far, and SB 623 will provide expanded access while continuing to evaluate the safety and efficacy of allowing health care professionals other than doctors to perform first trimester abortion care.

California also enacted AB 2386, which protects women who choose to breastfeed from discrimination in employment by amending the definition of sex discrimination to include breastfeeding or medical conditions related to breastfeeding.

California also increased its protection of the rights of pregnant women who are incarcerated. Prior law prohibited shackling women when they were in active labor. AB 2530 added prohibitions on shackling while a woman is in labor, delivery, or recovery after delivery. These standards cover adults and juveniles in state and local correctional facilities.

DELAWARE

Delaware joined the states protecting the rights of pregnant women who are incarcerated or detained by passing SB 190. The legislation prohibits the shackling of or use of restraints on inmates or detainees during labor and delivery. Restraints may be used on an inmate during labor or delivery only if there is an extraordinary circumstance, such as a substantial flight risk, or medical or safety risk. Even then, if a health professional treating the patient asks that no restraints be used, corrections official must immediately remove them. This robust anti-shackling law also prohibits the use of leg or waist restraints under *any* circumstance.

FLORIDA

Florida also passed an anti-shackling law to ensure humane treatment of pregnant women who are incarcerated or detained in the state. SB 524 regulates all state and private correctional and detention facilities, including juvenile facilities. The law prohibits the use of restraints on a woman during labor, delivery, and postpartum recovery, unless correctional staff determines there is an extraordinary public safety risk. The law also prohibits leg, ankle, and waist restraints under any circumstances during labor and delivery. Further, SB 524 prohibits leg, ankle and waist restraints during the third trimester of pregnancy or at any time during the pregnancy if the physician treating the woman requests no restraints, unless there are significant, documentable security reasons that they be used.

ILLINOIS

Although Illinois was one of the earliest states to pass an anti-shackling law, the law was ineffective in protecting the rights of pregnant inmates and detainees because its provisions were vague and there was a lack of enforcement. This year, Illinois enacted HB 1958, which greatly improves and expands the 2000 law. The legislation prohibits the use of restraints during the course of pregnancy as well as labor, delivery, and post-partum care for women in any correctional or detention facility. Restraints may be used only if the corrections official makes an individual determination of an extraordinary circumstance or if requested by medical personnel for psychiatric or medical reasons. Leg irons, leg shackles, or waist shackles may not be used in any circumstance. Corrections officials must also immediately remove shackles at the written or oral requests of medical personnel.

LOUISIANA

Louisiana passed SB 256, which restricts the use of restraints on pregnant incarcerated women in adult and juvenile correctional facilities. The law bans certain uses of restraints on inmates in the second or third trimester of pregnancy and dictates that when used, they must be applied in the least restrictive manner. The bill bans the use of restraints during labor unless medical staff order them because the prisoner is a danger to herself, her unborn child, or others. The measure prohibits the use of metal handcuffs and shackles during labor. The bill also requires correctional staff to honor requests by medical staff not to use restraints.

NEBRASKA

In 2012, the Nebraska legislature, over Gov. Dave Heineman's veto, enacted LB 599 which will remove eligibility restrictions based on immigration status for a government-funded health insurance program that provides pregnancy related care to low-income individuals, thus ensuring access to prenatal care for undocumented immigrants.

SOUTH DAKOTA

This year, South Dakota passed legislation to expand exemptions for pregnant women or new parents when they are summoned for jury duty. HB 1177 relieves from jury service parents of children not older than six weeks and mothers breastfeeding children under one year old as long as the parent gives written notice to the court. The law also allows those who expect the birth of a child immediately before or during the jury service to request an exemption.

CONCLUSION

Following on the heels of the worst year for reproductive health and rights in a generation, 2012 still saw more restrictions on abortion and other reproductive health care than in almost any other year. By the end of the year, at least 19 states had enacted over 40 harmful laws.

At the same time, however, we saw a new wave of positive activism and legislation. Eight states passed legislation to improve women's access to reproductive health care. Legislators, advocates, providers, and patients came forward in droves to make their voices heard and to protest the harmful legislation introduced and pushed by anti-choice activists. (Nearly 200,000 people, and counting, have signed their support to the Center's Bill of Reproductive Rights that ultimately seeks far greater protection from these recent waves of attacks on reproductive health care.)

Looking forward to 2013, we urge legislators and advocates to find ways to improve women's access to health care and increase women's ability to determine the course of their reproductive lives, rather than passing legislation designed to harm them and prevent them from accessing the health care they need and deserve.

The Center for Reproductive Rights stands ready to work with allies all over the nation in moving forward the cause of reproductive freedom and improving women's access to the full range of reproductive health care.

For more information on individual states' new laws and state legislative activity across the country, please contact **Jordan Goldberg**, State Advocacy Counsel, at jgoldberg@reprorights.org. For press inquiries, please contact **Kate Bernyk** at kbernyk@reprorights.org or 917.637.3637.