

# UNDUE BURDENS: A HISTORY OF NORTH CAROLINA ABORTION RESTRICTIONS

Decisions about reproductive health and abortion are deeply personal and private, and are best left to individuals and their doctors. Since its founding, the American Civil Liberties Union of North Carolina (ACLU-NC) has recognized that personal privacy and reproductive rights are among our most important constitutional rights. So much depends on our ability to decide—free from government interference—whether and

when to become a parent. However, all too often discussions about reproductive rights are mired in politics by lawmakers obsessed with interfering in our lives, rather than focusing on rights and health. The ACLU-NC is committed to upholding every individual’s right to reproductive freedom, including the right to access abortion and control their bodily autonomy.

# HISTORY

As early as 1923, the U.S. Supreme Court ruled that the U.S. Constitution protects personal decisions regarding marriage and the family from governmental intrusion. In 1965, the Court ruled that a state cannot prohibit a married couple from using contraception. In 1972, it extended the right to use birth control to all people, married or single. And in its 1973 ruling in *Roe v. Wade*, the Court held that the Constitution’s protections of privacy as a fundamental right encompass a woman’s decision to have an abortion.

The *Roe v. Wade* decision, which legalized abortion nationwide, led to a dramatic improvement in the lives and health of women. Before *Roe*, women who needed an abortion faced the perils and indignities of self-induced abortion, back-alley abortion, or forced childbirth. Today, *Roe* protects a woman’s right to make personal life decisions in keeping with her conscience or religious beliefs, as well as the constitutional principles of privacy and equal protection. Additionally,

by ruling that abortion access is a right, *Roe* gives women more control over their own bodily autonomy, and safeguards their ability to pursue economic and educational opportunities on a more equal basis with men.

The U.S. Supreme Court has reaffirmed this right in subsequent cases. In *Planned Parenthood v. Casey* (1992), the Court upheld the constitutional right to abortion, while also adopting a new test for evaluating restrictive abortion laws. Under the “undue burden” test, state regulations of abortion are constitutional as long as they do not place a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” In its 2016 decision in *Whole Woman’s Health v. Hellerstedt*, the Court once again affirmed a woman’s constitutional right to access abortion—this time striking down medically unnecessary regulations of abortion providers as an unconstitutional undue burden on women’s access to the procedure.

<sup>1</sup> Some language adapted from the ACLU of Tennessee and ACLU National

# NORTH CAROLINA LAWS RESTRICTING ABORTION—A TIMELINE<sup>2</sup>

1970s

- Shortly after *Roe v. Wade* guarantees an individual's right to an abortion, North Carolina passes a law that abortions after the twentieth week of pregnancy are allowed only in emergency situations and only when performed in hospitals. This law also allows medical personnel to refuse to participate in medical procedures that may result in an abortion, laying the groundwork for religious refusals to providing medical care. Additionally, providers are required to send information about the emergency situation to the North Carolina Department of Health and Human Services (DHHS), laying the groundwork to intimidate people who have decided to have an abortion and their doctors out of this constitutionally guaranteed medical procedure.
- Five years after *Roe v. Wade*, the state abortion fund is created to help individuals of lower income pay for abortion care. Almost immediately, access to the fund is restricted in numerous ways.

1980s

- Lawmakers mandate that no state funds can be used to cover abortion care, setting the stage for future restrictions on how this legal medical procedure is funded.
- Lawmakers later allow state funding for abortion care, but only in cases of fetal abnormalities, rape, incest, when the pregnant individual's life is in danger, has a developmental disability, or is a minor.
- Lawmakers further restrict when state funds can be used to cover an abortion by requiring that the abortion must happen within the first 112 days of pregnancy (approximately 3 and a half months), even though many fetal abnormalities are not detected until at least the 150th day of pregnancy (approximately 5 months).

<sup>2</sup> This timeline covers major restrictions passed in North Carolina that affect access to abortion.

1990s

- Lawmakers require that no state funds may be used to cover abortions except when a woman is not eligible for Medicaid, below the poverty line, the victim of rape or incest, or the pregnancy endangers her life. This is yet another financial attack on North Carolinians' ability to access abortion.

- North Carolina passes a parental consent law, taking the personal decision to have an abortion out of the hands of young people. This applies except in medical emergencies, or when a young person obtains a court order allowing them to bypass parental consent in some narrow circumstances. The law also makes it a Class 1 misdemeanor for a doctor to perform an abortion when a minor does not have parental consent, a provision designed to further intimidate abortion providers.

2000s

- After assisting people of lower income for decades to cover the cost of an abortion, the state abortion fund is repealed. This repeal is a direct attack on the ability of people of lower income, people of color, immigrants, transgender people, and gender nonconforming people to access a legal medical procedure.

2010s

- North Carolina bans the use of state funds for abortions and bans government health plans and insurance policies from covering abortion. This move places a disproportionate burden on millions of people of lower income, people of color, immigrants, transgender people, and gender nonconforming people by denying them insurance coverage for abortion.

- North Carolina passes the deceptively named "Woman's Right to Know Act" in 2013, which enacts wide-ranging restrictions on abortion access, including, but not limited to:

- A mandatory 24-hour waiting period for individuals seeking an abortion, during which counseling is required that includes state-mandated and medically unnecessary information. This type of restriction is not required for any other medical procedure.

- In the case of minors, this state-mandated counseling is required for both the young person and the parent or guardian who will ultimately be required to give consent on behalf of the young person—adding another burdensome layer to the "parental consent law" passed in 1995.

## 2010s (CONT.)

- Forced ultrasounds that must be performed four hours before a woman can have an abortion (except in emergencies), and the individual is required to view the ultrasound images. Abortion providers are required to explain presence, location, and dimensions of the fetus; provide a medical description of the images; and offer listening to the fetal heart tone.

**A federal court put this restriction on hold before it could go into effect and later struck it down as unconstitutional in a case brought by the ACLU-NC and other groups. A federal appeals court later upheld that ruling.**

- People other than the individual who had an abortion are allowed to bring lawsuits against abortion providers who, in their opinion, have failed to follow the “Woman’s Right to Know Act.” Additionally, if the patient wants to maintain their anonymity in the lawsuit, this law requires that it is the court, not the patient, who determines if the patient’s anonymity will be preserved, even if the patient is not the person who brought the lawsuit. This opens the door to further intimidation of individuals who have sought legal abortion care, as well as the doctors who provide that care.

- North Carolina bans state teacher and employee insurance plans, as well as city and county employee insurance plans, from covering abortion (with some exceptions made for cases of rape, incest, or the person’s life being at risk). This denial of insurance coverage disproportionately and negatively impacts people of lower income, people of color, immigrants, transgender people, and gender nonconforming people.

- North Carolina continues its attack on abortion access, especially for people of lower income, by prohibiting Affordable Care Act health insurance plans offered in the state from including abortion coverage (exceptions made for rape, incest, and if life of the individual is endangered by physical disorder, illness, injury, including any physical conditions arising from the pregnancy).

- North Carolina passes a law prohibiting “sex-selective” abortions, even though there is no evidence that people in the U.S. choose to have abortions based on the sex of the fetus. The purpose of this law is to simply add another medically unnecessary restriction on abortion, and it also preys upon stereotypes and fear of immigrants and refugees.

## 2010s (CONT.)

- Building on the groundwork laid in 1973, North Carolina creates a “conscience clause” for medical professionals and hospitals, which says that any provider who states “an objection to abortion on moral, ethical, or religious grounds” shall not be required to perform nor participate in any procedures that result in an abortion.
- North Carolina puts additional restrictive rules in place for abortion clinics, including mandating at least annual inspections by the North Carolina Department of Health and Human Services (DHHS) and requiring that clinics seek medically unnecessary transfer agreements with local hospitals.
- North Carolina updates existing state laws on abortion in 2015 via another deceptively named bill—the “Women and Children’s Protection Act”—to include numerous overreaching restrictions that, among other issues, raise serious privacy concerns:
  - Triples the waiting period for people seeking an abortion from 24 hours to 72 hours, making North Carolina one of the states with the longest waiting periods in the country.
  - Requires that doctors send the ultrasounds of people who have had an abortion after 16 weeks of pregnancy to DHHS for stockpiling. DHHS says these private medical records will not be made public and that officials will protect patient and doctor information. However, this requirement raises deeply disturbing privacy concerns for individuals who have had an abortion and their doctors, as well as concerns about forcing doctors to violate doctor-patient confidentiality and federal laws governing medical privacy and patient rights.
  - No one under 18 is allowed to work at a clinic where abortions are performed (except hospitals). There is no reason for this restriction, and it results in fewer people who are available to work at clinics and fewer job opportunities for young people.
  - DHHS is now required to collect annual reports on “medical and demographic characteristics of abortions.” While DHHS says this demographic information about women who have had abortions will not be public record, this provision raises privacy concerns about medical and personal information.

# RESOURCES

**If you need assistance covering the cost of an abortion, you can contact:**

**Carolina Abortion Fund**  
**Hotline: 1-855-518-4603**

*(You must have your appointment scheduled before calling.)*

**National Abortion Federation**  
**Hotline: 1-800-772-9100**

Weekdays: 7:00 AM - 11:00 PM Eastern time  
Saturdays and Sundays: 9:00 AM – 9:00 PM Eastern time

**Abortion Clinics in North Carolina** *(as of January 2017; list does not include hospitals or private doctor offices)*

Planned Parenthood South Atlantic  
Asheville, NC  
(828) 252-7928  
[plannedparenthood.org/health-center/NC](http://plannedparenthood.org/health-center/NC)

Planned Parenthood South Atlantic  
Chapel Hill, NC  
(919) 942-7762  
[plannedparenthood.org/health-center/NC](http://plannedparenthood.org/health-center/NC)

A Preferred Women's Health Center  
Charlotte, NC  
(888) 562-7415  
[apwhc.com](http://apwhc.com)

A Woman's Choice of Charlotte  
Charlotte, NC  
(704) 367-2255

Family Reproductive Health, Inc.  
Charlotte, NC  
(704) 551-0808 / (800) 952-9034  
[familyreproductive.com](http://familyreproductive.com)

North Durham Women's Health  
Durham, NC  
(919) 908-6449 / (855) 443-4892  
[northdurhamwomenshealth.com](http://northdurhamwomenshealth.com)

Hallmark Women's Clinic  
Fayetteville, NC  
(910) 323-3792 / (800) 662-0502  
[ahallmarkwomensclinic.com](http://ahallmarkwomensclinic.com)

Planned Parenthood South Atlantic  
Fayetteville, NC  
(866) 942-7762  
[plannedparenthood.org/health-center/NC](http://plannedparenthood.org/health-center/NC)

A Woman's Choice of Greensboro, Inc.  
Greensboro, NC  
(844) 219-7668  
[awcgreensboro.com](http://awcgreensboro.com)

A Preferred Women's Health Center, Raleigh  
Raleigh, NC  
(888) 562-7415  
[apwhc.com](http://apwhc.com)

A Woman's Choice of Raleigh  
Raleigh, NC  
(919) 781-6934 / (800) 540-5690  
[awomanschoiceinc.com](http://awomanschoiceinc.com)

Planned Parenthood South Atlantic  
Winston-Salem, NC  
(336) 768-2980  
[plannedparenthood.org/health-center/NC](http://plannedparenthood.org/health-center/NC)



To learn more and to take action to protect reproductive freedom, visit **[www.acluofnorthcarolina.org](http://www.acluofnorthcarolina.org)**.

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