

## From the UMHS ObGyn Program in Sexual Rights and Reproductive Justice



**University of Michigan  
Health System**

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**BREAKING NEWS**

**PROPOSED PERSONHOOD AMENDMENT TO MI CONSTITUTION**

In November 2011, members of the Michigan legislature proposed an amendment to the state constitution that would redefine personhood by establishing the right to life for humans as beginning with the start of their biological development, including fertilization. Several other states have also attempted to redefine “personhood,” including AL, CA, CO, FL, GA, MD, MO, MS, MT, NV, ND, SC, and VA.

### New State Laws

#### Michigan Bans Partial-Birth Abortions

After numerous failed attempts, the state legislature passed a law banning partial-birth abortions. There is no exception to preserve the mother's health in the new law, but there is an exception to save the mother's life. Partial-birth procedures are already illegal under federal law. However, now that Michigan has mirrored the federal language in a state law, partial-birth abortion will be illegal in Michigan even if the federal ban is overturned in the future.

### Proposed Legislation in Michigan

#### Bill to Require Screening for Coercion to Abort and Domestic Violence

While House Bill 5134 may sound reasonable on its face, it is among the Michigan Legislature's recent attempts to impose conditions on abortion procedures that serve no medical purpose. The proposed legislation would require abortion providers to screen patients for “coercion to abort and domestic violence.”

If a woman discloses coercion to abort, the doctor would be required to inform her that such coercion is illegal and is grounds

for a civil action. She would then have to wait at least 24 hours before she can obtain an abortion. If a woman under 18 discloses coercion to abort or domestic violence, the doctor would have to report it to a Child Protective Services office.

Proponents of the bill see it as a step towards protecting women who are victims of domestic violence. Critics see it as a deceptive measure that would impinge on the doctor-patient relationship, run contrary to informed consent standards, and discount a woman's ability to make reproductive decisions.

Please consult UMHS' Medical-Legal Handbook for ObGyn Health Care Professionals for more information about medical-legal issues: <http://www.med.umich.edu/obgyn/research/ssrj/>

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**UPDATE: Fetal Remains Bills**

Earlier this year, a series of fetal remains bills were introduced to amend the state public health code. The bills would require institutions where a dead fetus is delivered to make arrangements for its disposition and would require physicians who attend the delivery of a dead fetus outside an

institution to inform the family that Michigan law requires their authorization for the disposition of the fetal remains.

Medical providers and cooperating waste disposal companies would be significantly affected by this legislation because it would require the separation of “fetal remains” from “medical waste.” Facilities would

either have to pay high premiums for a waste company to separate the remains or obtain a permit in order to perform cremations. Senate Bills 25 and 54 passed the Michigan Senate 33-5 on October 19, 2011. All three are tie-barred to each other, meaning that none would take effect unless all were enacted.

**Bill to Impose Additional Fetal Viewing Options Before Providing Abortions**

Introduced in April, Senate Bill 313 is a proposed amendment to the state's health code that indicates a lack of trust in women's ability to make reproductive decisions for themselves.

State law requires that a physician provide an ultrasound to any pregnant woman seeking an abortion and give her the option to view the image. The bill would impose several additional requirements on physicians performing ultrasounds, including providing women with a diagnostic ultrasound at least two hours before an abortion and giving them the option “to view the active ultrasound image of the fetus, hear the fetal heartbeat, receive a physical picture of the ultrasound image of the fetus, and hear an explanation of the ultrasound image of the fetus.” It would also require the equipment

used to be the most technologically advanced equipment in the facility, capable of providing the most visibly clear image of the anatomical development of the fetus and the audible fetal heartbeat.

According to the bill, “the knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice regarding abortion,” and “the receipt of accurate information about abortion and its alternatives is essential to the physical and psychological well-being of a woman considering an abortion.”

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**Bill to Create Jury Exemption for Nursing Mothers**

House Bill 4691 seeks to amend Michigan’s juror qualifications, by adding a section that reads: “A nursing mother may claim exemption from jury service for the period during which she is nursing her child and shall be exempt upon making the request if she provides a letter from a physician or a certified nurse midwife verifying that she is a nursing mother.” Currently, 12 states and Puerto Rico exempt breastfeeding mothers from jury duty, and multiple states have introduced similar bills.

**DID YOU KNOW...** That under sex discrimination laws, employers can treat men and women differently if the gender of the employee is a bona fide occupational qualification that is reasonably necessary to the normal operations of the business?

**WHEN IS SEX A BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ)?**  
 Sex is a BFOQ in the following instances:

- 1) Physical sex features are required for the job (Ex. Wet nurse)
- 2) Sex authenticity is required (Ex. Model, actress)
- 3) Conventional decency or privacy should be maintained (Ex. Restroom attendant, hospital orderly/nurse in the L&D area)
- 4) The job increases vulnerability to sexual assault (Ex. Prison guard)

Sex is NOT a BFOQ where the employer asks that only men apply to jobs that require heavy lifting because a woman may be capable of lifting the weight and should have an equal opportunity to be considered.

**Pending Federal Legislation**

**Protect Life Act**

In October, the House of Representatives passed the “Protect Life Act,” which prohibits women from purchasing health insurance that covers abortion under the Affordable Care Act (ACA). The act also makes it legal for hospitals to refuse abortions to pregnant women in life-threatening situations. The ACA does not provide for taxpayer-funded abortions, but the bill goes beyond the issue of where tax dollars flow and places limits on how a woman spends her money. If the bill becomes law, a woman could not buy a private insurance plan that includes abortion coverage through a state health care exchange, even though the majority of insurance plans currently cover abortion.

Even more alarming are the provisions in the bill that would allow hospitals (such as ones with religious affiliations) to refuse an emergency abortion to a woman who needs the procedure to save her life. While there are refusal laws with conscience clauses that have been passed, none have blatantly overridden emergency care protections thus far. Opponents call this law the “Let Women Die Act,” showing again how much language matters.

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## Attacks on Planned Parenthood Funding

### National Level—Budget Negotiations Stall Over Bill to Defund Planned Parenthood; New Efforts to Cut Title X

In February, the House of Representatives passed a spending bill amendment that would have defunded Planned Parenthood (PP). Anti-abortion groups claim federal funding of PP is government subsidization of abortions. Abortions make up less than 3% of PP's services, and funding is not directly applied to abortion services. Millions of women who obtain primary and preventative health care through PP will lose access to breast and pelvic exams, breast and cervical cancer screening, and STD/STI counseling and testing if national defunding initiatives succeed. Budget

negotiations stalled over the spending bill, but the attempt to defund PP was defeated in the Senate after a budget deal was brokered by President Obama and Speaker Boehner. However, some members in the House of Representatives are renewing their efforts. In October, the House Appropriations Committee drafted legislation proposing that PP be banned from receiving federal funds unless the organization certifies that it will stop performing abortions. If it passes, the bill would also cut all funding to the Title X family planning program that provides birth control and preventative health services for more than 5 million low-income people annually (which saves U.S. taxpayers huge sums of money in Medicaid costs).

### State Level—States Defund Planned Parenthood in 2011

**Indiana**

Earlier this year, Indiana's governor signed legislation that bars any entity that performs abortions (including PP) from contracting with Medicaid to provide other health care. Indiana was the first state to deny Medicaid funds to PP for general health services. The law can affect 9,300 women who rely on PP for health care.

**North Carolina**

North Carolina also defunded PP through their state budget, overriding the governor's veto. The bill entitled "Prohibit Use of All Funds for Planned Parenthood Organizations" reads: "For fiscal years 2011-2012 and 2012-2013, the [DHHS] may not provide State funds or other funds administered by the Department for contracts or grants to Planned Parenthood, Inc., and affiliated organizations."

**Kansas**

Unlike Indiana, which took a legislative approach, Kansas defunded PP through its state budget. The state reprioritized how family planning funds are distributed: first to public entities and then to private entities that provide comprehensive health care on top of family planning—which PP is not equipped to do.

**In Indiana, Kansas, and North Carolina, courts in each state have ordered temporary injunctions that reinstate funds to PP because state governments may not punish a particular health provider for offering a legal, constitutionally protected medical service. Others states that have taken significant steps to defund PP include Wisconsin, New Hampshire, Texas, and Tennessee.**

