

An abstract graphic featuring three concentric blue circles of varying sizes. The largest circle is in the top right, a medium one in the center, and a small one in the bottom right. Thin blue lines intersect the circles and extend across the page.

# **What Factors Lead to Abortion Restrictions?**

A Case Study of Virginia and Texas  
Legislation

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## **Abstract**

Abortion legislation is something that has historically been left to the states. While the landmark case *Roe v. Wade* ensured every woman's right to have an abortion if they so choose, many states and proposed and implemented legislation that makes it significantly more difficult to obtain an abortion. In Texas a strict ultrasound requirement was passed, ensuring that women had to undergo an ultrasound by the doctor performing the abortion 24 hours prior to the procedure. These women had to look at the image on the screen or hear the fetal heartbeat while the doctor describes the image and the development of the fetus; if the woman is less than 12 weeks along they may have to undergo a trans-vaginal sonogram in order to get a clear image. With little public notice the law passed and was enacted in 2012. Later in 2012 the Virginia State Legislature attempted to pass similar legislation, but the law was blocked on several levels and received a huge public backlash. After the media firestorm the legislation was amended in an effort to pass.

What makes it possible for some of this legislation to be enacted in some states with little controversy while other states can introduce similar legislation to fierce negativity? This paper uses the ultrasound requirements in Virginia and Texas as a case study to better understand what factors contribute to abortions restrictions. Looking at how these policies were able to be passed helps us better understand how women's rights to abortion can be restricted.

## Introduction

Despite the fact that abortion is a right that every woman is entitled to, legislation is often enacted to restrict this right. When looking at abortion legislation, it is important to study state attempts to restrict abortion since the *Roe v. Wade* decision. Four states have enacted legislation banning abortions that will go into effect if *Roe* is overturned: Louisiana, Mississippi, North Dakota, and South Dakota<sup>1</sup>. These “trigger bans” were put in place after *Roe* in the event it was overturned, the criminal ban on abortion in these states could be enforced within 60 days of such a decision. Fourteen states – Alabama, Arizona, Arkansas, Colorado, Delaware, Louisiana, Massachusetts, Mississippi, Michigan, New Mexico, Oklahoma, Vermont, West Virginia, and Wisconsin – currently have unenforceable bans on abortion on the books, which they would be able to begin enforcing if *Roe* was overturned. In addition, some states have proposed and implemented legislation that makes it difficult for women to obtain abortions by placing limits to abortion access or creating requirements that women must meet before an abortion. One of the most controversial of such requirements is the ultrasound requirement put in place by 24 states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin<sup>2</sup>. Some of these requirements, like the ones in Texas and Louisiana, are stricter than others, while some states, such as Virginia, are facing bitter criticism since the introduction of this legislation.

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<sup>1</sup> “Near-Total Abortion Bans”

<sup>2</sup> “Requirements for Ultrasound”

What makes it possible for some of this legislation to be enacted in some states with little controversy or even widespread support, while other states can introduce similar legislation to fierce negativity? How are some states able to so easily restrict a woman's constitutionally-protected right to choose? While ultrasound requirements are legal because women are still able to get an abortion, they do make it more difficult for a woman to obtain an abortion. Using the ultrasound requirement legislation passed in Virginia and Texas in the past two years as a case study we can better understand what factors contribute to abortion restrictions, and how states are able to pass such restrictions.

## **History**

When looking at abortion legislation today it is important to understand the history of abortion in the United States. Until the nineteenth century abortion was something that was done privately in the home. There were few considered medical professionals, and these private abortions were often incredibly unsafe. It is almost impossible to determine how many women died or contracted an illness from abortions during this time period. In Connecticut in 1821 the first regulatory legislation was passed, banning poison administered after the first trimester in an effort to abort a fetus<sup>3</sup>. While this was introduced to protect women, it began the trend of criminalizing abortion. By 1900 all states had followed Connecticut's lead, enacting legislation that made abortion a crime.

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<sup>3</sup> Hull

During the 20<sup>th</sup> century, abortion and contraception gained more public support. Outside groups dedicated themselves to spreading knowledge and access to these services to women as best they could. In the 60's President Kennedy formed the Presidential Advisory Committee on the Status of Women which recommended the repeal of abortion restrictions<sup>4</sup>. Challenges to restrictive legislation continue throughout the 1960's with the gaining momentum of the feminist movement. In 1973 *Roe v. Wade* was brought to the Supreme Court challenging abortion laws in Texas. The Court ruled that abortion is allowed during the first trimester of pregnancy, based on the right to privacy guaranteed by the Constitution<sup>5</sup>. The *Roe* decision became the federal standard for abortion legislation.

Since the decision, many states have attempted to restrict abortion and have succeeded in putting limits on abortions despite the standard set forth by *Roe*. The most high profile challenge to *Roe* came in 1992 with *Planned Parenthood of Southeastern Pennsylvania v. Casey*. The Court upheld the right to have an abortion however; they altered the standards for analyzing the restrictions to this right<sup>6</sup>. The new standard asks whether a state abortion regulation has the purpose – or effect – of imposing an undue burden. This undue burden is defined as “a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability<sup>7</sup>.” More simply put, the right to choose is a constitutional right, but like any right it can be limited; when placing limitations on the right they are not able to place an undue burden on the woman, or limit her so much that the right to choose is essentially eliminated. This became

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<sup>4</sup> Ibid.

<sup>5</sup> *Roe v. Wade*

<sup>6</sup> *Planned Parenthood of Southeastern Pennsylvania v. Casey*

<sup>7</sup> Ibid.

the new standard by which to evaluate abortion legislation. It is with these undue burden standards that many restrictions to abortions are found to not violate women's rights to abortions, even if they make it significantly more difficult to obtain one. Mandatory waiting periods, parental consent, and ultrasounds have been found to not impose an undue burden and are legal under these standards.

## **State Legislation**

In 2011 a record number of laws were enacted on the state level that restricted access to abortion. 1,100 reproductive health-related provisions were introduced, 135 of which were enacted by year's end<sup>8</sup>. 92 of these new provisions restricted abortion, 68% of the reproductive health provisions enacted in that year. A huge jump from previous years, which can be explained by the resurgence of Conservatives and the rise of the Tea Party to the national level in the 2010 midterm elections; pro-life support was definitely popular at this time. States such as Mississippi introduced referendums that would define life as starting at conception, which if passed would have most definitely posed a legal challenge to *Roe*<sup>9</sup>. The nick-named "personhood amendment" was defeated as a ballot initiative overwhelmingly. Other states enacted legislation such as instituting a waiting period, prohibiting insurance companies from covering abortions, and mandating ultrasounds before an abortion. Texas, which currently has the strictest ultrasound requirement, introduced and enacted this legislation in 2011 and the law was upheld by a district

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<sup>8</sup> "2012 Saw Second-Highest Number of Abortion Restrictions Ever."

<sup>9</sup> Ibid.

court in early 2012. North Carolina and Oklahoma passed similar legislation, however it is not being enforced currently because it is being challenged in court.

Women's issues were highly debated in the political sphere recently, and especially in 2011 and 2012. President Obama's health care plan helped to shed some spotlight on these issues, igniting the debate with the growing conservative movement. Because people's opinions on abortion are often grounded in religious or moral beliefs, it does not always necessarily coincide with people's feminist views. Abortion also tends to be a polarizing topic. With such wide-spread and vocal conservative outrage over the health care plan, specifically the contraception mandates, more people became involved in the debate. Conservative state legislatures joined the fight by making it clear where they stood on this issue. Enacting legislation restricting abortion was part of this vocal outcry against women's rights.

Pro-life and pro-choice groups have great influence over legislatures. Through lobbying and campaign donations, many groups are able to put their agenda front and center. Pro-life groups are some of the most vocal lobbying groups; annually pro-life groups make a trip to Washington, D.C. and visit Congressmen in an effort to support a pro-life agenda. These groups can be very influential in state legislatures. The Americans United for Life put out an annual report detailing their legislative goals, as well as ranking each state on how committed they are to a "pro-life America." One of their legislative models, titled the "Woman's Ultrasound Right to Know Act" proposes that mandatory ultrasounds help women receive all the information on "the reality and status of her pregnancy and of her unborn child...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 between two alternatives: giving birth or having an abortion<sup>10</sup>.” They suggest that a woman must undergo an ultrasound 24 hours before having an abortion, and must also be made aware of the opportunity to see the ultrasound and/or hear the fetal heartbeat. Several states have passed legislation similar to this ideal, or even more extreme.

In 2012 there was a decline in the number of restrictions to abortions enacted. The number, 43, was down from the year before, however 2012 did see the second-highest number of abortion restrictions passed in a single year<sup>11</sup>. While abortion, contraception and other women’s health issues were given national attention during the Presidential Election, not a single state enacted legislation that would facilitate or improve access to abortions. States passed legislation as diverse as restricting insurance coverage for abortions, mandating parental involvement for minors seeking an abortion, and mandating non-necessary procedures like ultrasounds before an abortion. Legislation introduced in Virginia in early 2012 requiring a vaginal ultrasound before an abortion started a political firestorm; a weaker version of the bill was passed that year as a result.

### **Virginia Legislation: Informed Consent or State-mandated Rape?**

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<sup>10</sup> Burke, 187.

<sup>11</sup> "2012 Saw Second-Highest Number of Abortion Restrictions Ever."



The Guttmacher Institute said that in 2008 about 159,400 women became pregnant, and that 18% of these pregnancies resulted in induced abortions<sup>12</sup>. About 28,500 women obtained abortions that year. Abortions in Virginia account for less than 3% of all abortions in the United States. During this year there were 40 abortion providers in Virginia, a number that continues to decline; 85% of the counties in Virginia had no abortion providers.

According to the Americans United for Life's ranking system, Virginia ranked 16<sup>th</sup> as one of the most pro-life conscious states as of 2010. According the AUL Virginia "provides fairly comprehensive protection for women, the unborn, and the newly born<sup>13</sup>." They note that Virginia legislation regarding abortion has been challenged and upheld on several occasions, most notably the provision that a second trimester abortion must be performed in a hospital or ambulatory clinic. Virginia, like other states, formed their law after the AUL's model ultrasound law. When Virginia introduced the "informed consent" bill, the ALU referred to it as the "gold standard of medical care<sup>14</sup>."

Introduced in January 2012, the Virginia law required all women seeking an abortion undergo a trans-vaginal ultrasound and see the image 24 hours before having an abortion<sup>15</sup>. Kathy J. Byron sponsored the bill in the House of Delegates with support from the House Republicans and, initially, Governor Bob McDonnell<sup>16</sup>. Originally McDonnell indicated strong support for the bill before it was passed in an attempt to prove his conservatism as he campaigned for a spot on the Presidential ticket as the Vice Presidential candidate.

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<sup>12</sup> "State Facts About Abortion: Virginia."

<sup>13</sup> Burke

<sup>14</sup> Bassett

<sup>15</sup> Kliff

<sup>16</sup> Lithwick

While the bill did not specifically mandate vaginal ultrasounds, in practice that is the only way a doctor would have been able to get a clear enough picture to meet the standards set forth by the law. Women who were too early in their pregnancy for a standard trans-abdominal ultrasound to detect fetal age would be forced to undergo the more invasive procedure<sup>17</sup>. While there was very little media surrounding the introduction of the bill in the state legislature, a media firestorm ignited when the bill was passed. Dahlia Lithwick wrote a scathing critique of the bill for *Slate*, likening the ultrasound requirement to state-mandated rape; she said, “the law provides that women seeking an abortion in Virginia will be forcibly penetrated for no medical reason...under any other set of facts that would constitute rape under the federal definition<sup>18</sup>.” Conservative media outlets such as The Weekly Standard defended the bill, saying that ultrasounds were already considered “procedure” and calling public outcries against it “gross misrepresentations<sup>19</sup>.” However, the bill was gaining national attention and women were beginning to protest.

Gaining the women’s vote was essential for any candidate running in 2012. In the 2008 elections they proved to be one of the key demographics in electing Barack Obama, and 2012 would further prove the same. Upon broader media coverage, women voters voiced their concerns about the bill to state legislators. Democratic State Senator Barbara Favola said that “we had hundreds of women line the walkway between General Assembly and the Capitol in silent protest” of the bill<sup>20</sup>. House Republicans continued to stand by the bill, when asked about

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<sup>17</sup> Bassett

<sup>18</sup> Lithwick

<sup>19</sup> McCormack

<sup>20</sup> Bassett

the invasiveness of the procedure Byron said, “if we want to talk about invasiveness, there's nothing more invasive than the procedure that she is about to have<sup>21</sup>.” Despite unwavering Republican support for the bill, Governor McDonnell rescinded his support for the bill, saying that he would support an ultrasound requirement, but not one mandating trans-vaginal ultrasounds.

McDonnell encouraged the House to re-work the bill. The original legislation was tabled and in February they introduced a bill that required women to undergo either a trans-vaginal or abdominal ultrasound, and give the woman the opportunity to view the image and hear the heartbeat<sup>22</sup>. The bill was introduced, debated and voted on all in the same day. Democrats in the House and Senate still fiercely opposed the bill. Senator Janet Howell said, “We have taken out the state-required rape from the bill, but the way it is now is still an assault because it's an unwanted touching...the woman to have that happen in order to exercise her constitutional right to an abortion<sup>23</sup>.”

The bill was strongly supported in the state House and Senate, and Governor Bob McDonnell signed it in March. It took effect on July 1, 2012 and Virginia became the eighth state to require women to undergo an ultrasound before an abortion<sup>24</sup>. Several states were getting ready to introduce similar legislation when the firestorm against the original bill began. While

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<sup>21</sup> Lithwick

<sup>22</sup> VA H.B. No. 462

<sup>23</sup> Bassett

<sup>24</sup>“Monthly State Update: Major Developments in 2012.”

the huge backlash not only forced Virginia to pass weaker legislation, it also halted efforts to pass similar laws in Alabama, Idaho, and Pennsylvania<sup>25</sup>.

### **Texas Legislation: More Restrictions, Less Scrutiny**

579,700 women in Texas became pregnant in 2008, and 15% of these women obtained an abortion that year according to the Guttmacher Institute<sup>26</sup>. Abortions in Texas represented 7% of all abortions in the United States that year. There were 67 abortion providers in Texas: 92% of Texas counties had no abortion provider, however only 33% of Texas women lived in these counties.

Texas was ranked as the number four most pro-life conscious state by the AUL in 2010<sup>27</sup>. Governor Rick Perry was very proud of this ranking on the AUL's scorecard: he said, "This state-by-state scorecard of progress in the effort to defend life lets elected officials, grassroots activists, and citizens know exactly where we are on our shared priority. I am proud that the report reflects the sweeping reforms we have enacted in Texas, saving thousands of lives in the process<sup>28</sup>." The state appropriated "millions of dollars to supporting abortion alternatives<sup>29</sup>." Their high ranking is due solely to the restrictions the state has put in place to obtaining an abortion. They have a strict informed consent law. Texas also passed an enforceable abortion prohibition that can be enacted if the Constitution is amended or if *Roe v. Wade* is overturned in

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<sup>25</sup> "Laws Effecting Reproductive Health and Rights: Trends in the First Quarter of 2012."

<sup>26</sup> "State Facts About Abortion: Texas."

<sup>27</sup> Burke

<sup>28</sup> Burke, 773

<sup>29</sup> Burke, 774

the Supreme Court. When these rankings were published one of the only suggestions that the AUL made for Texas to help the state become even more pro-life conscious was to implement an ultrasound requirement under their informed consent law. The bill that Texas proposed was largely based on the AUL's model legislation.

In 2011 the Texas state legislature passed a bill requiring that all women seeking abortion must have a sonogram done 24 hours before the abortion by the doctor who will perform the procedure<sup>30</sup>. The doctor must show the ultrasound image to the woman, while also describing the sonogram in detail: they must give the dimensions of the fetus, as well as a description of what organs have developed including arms, legs and the heart. They must also make the heart beat audible for the woman to listen to. While this was not mandated in the legislation, if the woman is less than 12 weeks pregnant a trans-vaginal sonogram will most likely be used to get the best possible image of the fetus. There are very limited exceptions to the law in the case of rape, incest, and medical emergency.

Unlike the Virginia law, the Texas bill gained very little national attention, nor was there as big of a fight in the House or Senate. This is not to say that Texas Democrats in the legislature were not outraged, but they had a very difficult fight. With an ultra-conservative House and Senate it would have been very difficult for them to defeat the bill on the floor; Conservative leaders made sure of that. Upon introduction the bill was supported by Speaker Joe Straus, who had been criticized as not being "adequately pro-life" before the session began<sup>31</sup>. In an effort to assert his conservatism, Straus publicly backed the bill on numerous occasions. Governor Rick

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<sup>30</sup> "Woman's Right to Know."

<sup>31</sup> Rapoport

Perry also backed the bill, naming it as an “emergency item” in an effort to fast-track the bill and streamline the process as much as possible. He promised to sign the bill when it crossed his desk.

Before the bill was voted on Democrats were able to send the bill back to committee by coming forward with points of order<sup>32</sup>. Democratic Representative Carol Alvarado from Houston attempted to kill the bill with an impassioned speech against the legislation. Holding a vaginal ultrasound probe Alvarado graphically described the procedure and offered an amendment that would kill the bill. She said, “this is government intrusion at its best...this is a way to shame and guilt women<sup>33</sup>.” When the speech and proposed amendments failed to sway House Republicans’ opinions Democrats came forward with several points of order, all dealing with when and how the committee posted announcements on hearing the bill. After much delay the bill’s sponsor Sid Miller moved that the bill be sent back to committee. However, while this was a victory for the Democrats it was short lived: the House debated the bill on the floor again the very next day.

When the bill was debated on the floor before the final vote the debate lasted for seven hours. The Democrats fought the bill with 36 amendments, only one of which was not struck down<sup>34</sup>. The amendments were both practical and symbolic. On the practical side Representative Ana Hernandez Luna fought for an exemption for rape and incest, Representative Eddie Lucio attempted to clarify the bill’s definition of medical emergency and broadening it to include non-pregnancy related emergencies. Other amendments were more symbolic, including a proposed amendment that would require a mandatory vasectomy for the father of the abortion-seeking woman’s child if they are not married. The only successful amendment to be attached to the bill

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<sup>32</sup> Rapoport

<sup>33</sup> Ibid.

<sup>34</sup> Garcia-Ditta

required that a woman is provided with paternity and child support information at the clinic when she gets the sonogram.

The amendments did little to sway the Conservatives who supported the bill. Representative Patricia Harless argued that a trans-vaginal sonogram is similar to a pap smear, and is hardly more invasive<sup>35</sup>. In regards to criticism about the trans-vaginal ultrasound Miller said, “any time you abort a human life that’s the most tragic procedure you can perform...is a sonogram more invasive than abortion<sup>36</sup>?” He also insisted that does not interfere with doctor-patient relationship, but rather creates one by providing the woman with more information. In the end the House passed the bill 103-42, a stricter version of the bill the Senate had passed earlier. In May Governor Perry signed the bill into law.

In August 2011 the law was blocked by a federal judge after the Center for Reproductive Rights challenged the law’s constitutionality<sup>37</sup>. In January 2012, the U.S. Court of Appeals for the Fifth Circuit lifted the injunction and allowed the law to be enforced. The opinion follows the precedent set by *Casey* that providing truthful, non-misleading facts does not pose and undue burden on the woman<sup>38</sup>. The law was enacted in February and is the strictest ultrasound requirement in the country to date.

## Analysis

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<sup>35</sup> Rapoport

<sup>36</sup> Ibid.

<sup>37</sup> Getty

<sup>38</sup> *Texas Medical Providers v. Lakey*

Despite the fact that the Texas law and the Virginia law are very similar, the Texas bill was easily passed by the state legislature with very little national attention while the Virginia law was put under national scrutiny and was not able to be passed without major modifications to the legislation. There are several factors that explain this. The makeup of the state legislature can have a huge effect on the kinds of abortion legislation that is passed. 17.9% of Texas's state legislature is female, compared with 20.4% of Virginia's legislature<sup>39</sup>. It has been found that the more females that sit in the state House and Senate the less restrictive the abortion legislation is in general<sup>40</sup>. In general female legislators, especially Democratic female legislators, are more opposed to abortion restriction. As seen in Texas, the representatives leading the charge against the bill were all female Democrats. Similarly in Virginia the charge against the bill was led by the female Democrats, and then joined by other liberal legislators. Because the Virginia Senate and House are smaller, and have a larger proportion of female legislators, they were able to have a much greater influence and change the legislation to be less restrictive. This follows a national trend in the United States: states with more male-dominated legislatures pass more restrictive abortion legislation<sup>41</sup>.

Another factor that influences a state's abortion restrictions is the number of Roman Catholics in the state<sup>42</sup>. Roman Catholic teaching strictly forbids abortion and Catholic leaders have been very vocal in support of abortion restrictions. According to the United States Conference of Catholic Bishops, Virginia is home to 642,000 Catholics; Catholics make up

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<sup>39</sup> "Women in State Legislatures: 2012 Legislative Session."

<sup>40</sup> Medoff

<sup>41</sup> Medoff

<sup>42</sup> Medoff



about 8.3% of the state's total population<sup>43</sup>. In comparison, Catholics make up 27.2% of Texas's population with over 6,000,000 Catholics living in the state<sup>44</sup>. With such a large Catholic population, state legislators in Texas would be more inclined to pass more conservative abortion legislation to satisfy their constituents. In the same vein, it would be difficult for the legislators of Virginia to pass such restrictive legislation when they have a much larger non-Catholic population. The USCCB has been one of the most socially conservative religious groups, and Catholics have been extremely vocal on their views against abortion. This could have a huge impact on state legislatures if their constituents are largely Catholic. In addition to Catholic lobbying, state legislators respond to other pro-life lobbying organizations as well.

One of the biggest reasons that the Virginia law failed while the similar Texas law was enacted is the major backlash Virginia received in the national media. The legislative process in Texas when this bill was being considered was not covered by the national media. Almost all news articles on the sonogram law are from state and local newspapers. In comparison, Virginia's sonogram law was discussed in much larger national newspapers. *The Washington Post* reported on the law extensively while it was being voted on; while it is not a national newspaper, *The Post* does have a significantly larger readership than a Texas newspaper. Broadcast news gave airtime to the Virginia debate, yet the Texas bill was virtually ignored when it was signed into law and when it was implemented.

It was not just the mainstream media that ignored Texas: bloggers, social media, and other news outlets also expressed outrage over the Virginia legislation without so much as a

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<sup>43</sup> "U.S. Catholic Population by State."

<sup>44</sup> Ibid.

word about similar legislation in Texas. While liberal online news sources such as Jezebel and the Huffington Post did report on the Texas law, most of the coverage focused on challenges to the law in the courts system after it had been passed. Despite the sensational fight the Democrats put up during debate of the bill, those stories are missing from the more popular blogs. Without any coverage from the mainstream media or these other popular news sources, it would have been impossible for a social media firestorm to start. However, in Virginia, people took to social media before the bill was passed or implemented. With sites like Slate and Jezebel critiquing the bill, and conservative blogs such as The Weekly Standard defending the bill, the legislation was thrust into the public's eye. On *The Daily Show* Jon Stewart attacked the Virginia legislation saying, "During the entire wand forcibly inserted in your most private are experience, you still have complete and total control over which way your head is turned<sup>45</sup>." There was even a Saturday Night Live sketch mocking the Virginia legislation. With such negative attention from the media it is obvious why McDonnell withdrew his support and why it was so difficult to pass the original legislation in Virginia. Texas was able to easily pass the bill because there was little to no national focus on their legislation.

## **Conclusion**

Virginia's proposed bill set off a negative firestorm that led to weakened legislation, and may have had an impact on other states thinking about proposing ultrasound legislation. In contrast, Texas's sweeping ultrasound legislation has not been challenged in the same way,

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<sup>45</sup> Stewart

despite being equally, or more, restrictive on women's rights. A male-dominated, conservative state legislature in Texas, as well as a high Catholic population, helps to explain why the Texas bill was passed so easily in that state. In Virginia the media set the legislative agenda, weakening support for the bill and forcing it to be reworked before being passed. Why did the media and the public take such a great interest in the Virginia bill and virtually ignore the Texas bill?

The answer lies in our perceptions of each state; even though they both have Republican majorities in their legislative chambers they are not equally Conservative. Texas is viewed as a conservative bastion, a solidly red state with Republican ideals: every statewide elected official is Republican. Virginia, on the other hand, is more of a swing state: they elected President Obama in 2008 and 2012 as well as two Democratic U.S. Senators, but also voted for McDonnell in 2009. Being a more conservative state, Texas generally passes more conservative legislation. The AUL consistently ranks Texas as one of the most pro-life friendly states, while Virginia is ranked more towards the middle of the list<sup>46</sup>. In short, there was no national backlash against Texas because everyone expected legislation like this to come out of Texas. The passing of the bill came right after several efforts in the state to defund Planned Parenthood, and no one was particularly surprised at the State legislature's actions. Representative Garnet Coleman (D-Houston) told the Texas Tribune, "I hate to say this, but in Texas we can fight all day long, but there's a propensity to write us off...they think, 'That's Texas. Texas is a place where those kinds of things happen'<sup>47</sup>." Texas has even introduced further legislation that place strict requirements on where abortions can be performed; Senate Bill 537 states that the minimum standards for an

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<sup>46</sup> Burke

<sup>47</sup> Ramshaw

abortion facility must be equivalent to the minimum standards for ambulatory surgical centers<sup>48</sup>.

This legislation would, in all likelihood, close most abortion facilities in Texas, and yet there has again been little national attention.

In addition, the media took a great interest in the Virginia legislation because of the time that it was introduced. The Virginia bill came into the public's view at the same time that many other women's rights were being challenged and attacked and many viewed the legislation as an extension of the war on women. A month before the legislation was introduced the Susan G. Komen Foundation cut funding to Planned Parenthood, the Obama administration amended contraception coverage requirements for religious organizations, and Republican presidential candidate Rick Santorum said that contraception is dangerous and that states should be able to outlaw it<sup>49</sup>. After these instances, and other similar attacks, the Virginia legislation was only viewed as a continuation of the war on women. Further attacks against women's right to abortion and contraception will not be tolerated. Had the Virginia legislation been introduced earlier, the original legislation may have been able to be passed without such public scrutiny.

So, what makes it possible for a state to enact such strict policies? The makeup of the state's legislature, as well as the state's constituent population, certainly both have an impact on what legislation is introduced. More importantly though the media and the public reaction to legislation play a larger role in determining which legislation is passed and enacted in a state. In Virginia we see that timing incited a media firestorm, resulting in a water-downed version of the legislation they intended to pass. This was not the case in Texas, where stricter legislation was

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<sup>48</sup> TX SB No. 537

<sup>49</sup> Ramshaw

passed easily because there was no national attention drawn to the debate. The media is involved in legislation and agenda setting, often in ways that we do not realize; this case study is just an example of how the media's involvement can influence the public policy process. In order to better understand how women's rights to abortion are being restricted we need to look at how the policies are able to be passed, and the media plays a large role in that.

## Works Cited

- "2012 Saw Second-Highest Number of Abortion Restrictions Ever." *News in Context*. Guttmacher Institute, 2 Jan. 2013. Web. <<http://www.guttmacher.org/media/inthenews/2013/01/02/index.html>>.
- Bassett, Laura. "Virginia Mandatory Ultrasound Bill Passes In State Senate." *The Huffington Post*. TheHuffingtonPost.com, 28 Feb. 2012. Web. <[http://www.huffingtonpost.com/2012/02/28/virginia-mandatory-ultrasound-bill\\_n\\_1307472.html](http://www.huffingtonpost.com/2012/02/28/virginia-mandatory-ultrasound-bill_n_1307472.html)>.
- Burke, Denise M., Mailee R. Smith, Clarke D. Forsythe, and Jessica J. Sage. *Defending Life 2010: Proven Strategies for a Pro-life America: A State-by-state Legal Guide to Abortion, Bioethics, and the End of Life*. Washington, DC: Americans United for Life, 2010. Print.
- Camobreco, John F., and Michelle A. Barnello. "Democratic Responsiveness and Policy Shock: The Case of State Abortion Policy." *State Politics & Policies Quarterly* 8.1 (2008): 48-65. Print.
- Ehrenreich, Nancy. *The Reproductive Rights Reader: Law, Medicine, and the Construction of Motherhood*. New York: New York UP, 2008. Print.
- Garcia-Ditta, Alexa. "After 7 Hours, Texas House Passes Strict Sonogram Bill." *The Texas Observer*. 4 Mar. 2011. Web. <<http://www.texasobserver.org/after-7-hours-texas-house-passes-strict-sonogram-bill/>>.

- Getty, Katherine. "Federal Appeals Court Allows Enforcement of Texas Abortion Sonogram Law." *Jurist.org*. University of Pittsburgh School of Law, 11 Jan. 2012. Web. <<http://jurist.org/paperchase/2012/01/federal-appeals-court-allows-enforcement-of-texas-abortion-sonogram-law.php>>.
- Gohmann, Stephan F., and Robert L. Ohsfeldt. "Predicting State Abortion Legislation From U.S. Senate Votes: The Effects Of Apparent Ideological Shirking." *Review of Policy Research* 9.4 (1990): 749-62. Print.
- Hull, N.E.H, and Peter Charles Hoffer. *Roe v. Wade: The Abortion Rights Controversy in American History*. Lawrence, Kan.: University of Kansas, 2001. Print.
- Johnson, Luke. "Texas Sonogram Law Will Not Be Blocked By Federal Judge." *The Huffington Post*. TheHuffingtonPost.com, 06 Feb. 2012. Web. <[http://www.huffingtonpost.com/2012/02/06/texas-sonogram-law-judge-wont-block\\_n\\_1258334.html](http://www.huffingtonpost.com/2012/02/06/texas-sonogram-law-judge-wont-block_n_1258334.html)>.
- Kliff, Sarah. "Is Virginia's Ultrasound Bill the Future of Abortion Regulation?" *The Washington Post*, 18 Feb. 2012. Web. <[http://www.washingtonpost.com/blogs/wonkblog/post/is-virginias-ultrasound-bill-the-future-of-abortion-regulation/2012/02/18/gIQAzqgvLR\\_blog.html](http://www.washingtonpost.com/blogs/wonkblog/post/is-virginias-ultrasound-bill-the-future-of-abortion-regulation/2012/02/18/gIQAzqgvLR_blog.html)>.
- "Laws Affecting Reproductive Health and Rights: Trends in the First Quarter of 2012." *State Trends on Abortion, Family Planning, Sex Education and Insurance*. Guttmacher Institute, 2012. Web. <<http://www.guttmacher.org/statecenter/updates/2012/statetrends12012.html>>.

- Liebert, Tobe. *Abortion in the United States: A Compilation of Federal and State Laws*. Buffalo, NY: William S. Hein, 2013. Print.
- Linton, Paul Benjamin. *Abortion under State Constitutions: A State-by-state Analysis*. Durham, NC: Carolina Academic, 2008. Print.
- Lithwick, Dahlia. "Virginia's Proposed Ultrasound Law in an Abomination." *Slate Magazine*. 16 Feb. 2012. Web.  
<[http://www.slate.com/articles/double\\_x/doublex/2012/02/virginia\\_ultrasound\\_law\\_women\\_who\\_want\\_an\\_abortion\\_will\\_be\\_forcibly\\_penetrated\\_for\\_no\\_medical\\_reason.html](http://www.slate.com/articles/double_x/doublex/2012/02/virginia_ultrasound_law_women_who_want_an_abortion_will_be_forcibly_penetrated_for_no_medical_reason.html)>.
- McCormack, John. "Grossly Misrepresenting Virginia's Proposed Ultrasound Law." *The Weekly Standard*. 21 Feb. 2012. Web. <[http://www.weeklystandard.com/blogs/grossly-misrepresenting-virginias-proposed-ultrasound-law\\_631691.html](http://www.weeklystandard.com/blogs/grossly-misrepresenting-virginias-proposed-ultrasound-law_631691.html)>.
- Medoff, Marshall H. "The Determinants and Impact of State Abortion Restrictions." *American Journal of Economics and Sociology* 61.2 (2002): 481-93. Print.
- "Monthly State Update: Major Developments in 2012." *State Update: Legislation Enacted*. Guttmacher Institute, 31 Dec. 2012. Web.  
<<http://www.guttmacher.org/statecenter/updates/index.html>>.
- "Near-Total Abortion Bans." *NARAL Pro-Choice America*. 2012. Web.  
<<http://www.prochoiceamerica.org/what-is-choice/fast-facts/near-total-abortion-bans.html>>.
- Palmer, Louis J. *Encyclopedia of Abortion in the United States*. Jefferson, NC: McFarland, 2002. Print.



*Planned Parenthood of Southeastern Pennsylvania v. Casey*. Supreme Court. 29 June 1992.

Print.

Ramshaw, Emily. "In Texas and Virginia, Different Reactions to Sonogram Bills." *The Texas Tribune*. 23 Feb. 2012. Web. <<http://www.texastribune.org/texas-legislature/2011-abortion-sonogram-bill/tx-and-va-sonogram-bills-faced-different-challenge/>>.

"Requirements for Ultrasound." *State Policies in Brief*. Guttmacher Institute, 1 Feb. 2013. Web. <[http://www.guttmacher.org/statecenter/spibs/spib\\_RFU.pdf](http://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf)>.

Rapoport, Abby. "House Democrats Delay Sonogram Bill (and the Inevitable)." *The Texas Observer*. 3 Mar. 2011. Web. <<http://www.texasobserver.org/democrats-delay-sonogram-bill-and-the-inevitable/>>.

Rapoport, Abby. "Where Was the Outrage Over Texas's Sonogram Law?" *The American Prospect*. 23 Feb. 2012. Web. <<http://prospect.org/article/where-was-outrage-over-texas-sonogram-law>>.

*Roe v. Wade*. Supreme Court. 22 Jan. 1973. Print.

Rose, Melody. *Safe, Legal, and Unavailable?: Abortion Politics in the United States*. Washington, D.C.: CQ, 2007. Print.

"State Facts About Abortion: Texas." *State Center*. Guttmacher Institute. Web. <<http://www.guttmacher.org/pubs/sfaa/texas.html>>.

"State Facts About Abortion: Virginia." *State Center*. Guttmacher Institute. Web. <<http://www.guttmacher.org/pubs/sfaa/virginia.html>>.

*Texas Medical Providers v. Lakey*. Fifth Circuit, United States Court of Appeals. 10 Jan. 2012.

Web.

TX HB No. 15 (2012) (enacted). Print.

TX SB No. 537 (2013) (introduced). Print.

"U.S. Catholic Population by State." *USCCB - (Office of Media Relations)*. United States

Conference of Catholic Bishops, 3 Nov. 2008. Web.

<<http://old.usccb.org/comm/archives/2008/08-160.shtml>>.

VA HB No. 462 (2012) (enacted). Print.

"Woman's Right to Know." *Texas Department of State Health Services, Woman's Right to Know*

*Act*. 5 Feb. 2013. Web. <<http://www.dshs.state.tx.us/wrtk/>>.

"Women in State Legislatures: 2012 Legislative Session." *National Conference of State*

*Legislatures*. 17 Sept. 2012. Web. <<http://www.ncsl.org/legislatures-elections/wln/women-in-state-legislatures-2012.aspx>>.

“On my honor, I submit this work as my own, that I have abided by the American University Academic Code, and I have neither given nor received improper aid in completing this assignment.”