

CHOICE/LESS 306: Running Out of Time: Kentucky's 20-week Abortion Ban

Heather Hyden: Kentucky is the perfect model of what's going on at the national level right now, and when you have a lot of young, new legislators, it's easy to get 20-week bans passed, because folks want to do what's best for the party, but you don't know what's in the bill. This is actually hurting mothers, hurting lives, and so it needs to be corrected.

Jenn Stanley: For Rewire Radio, I'm Jenn Stanley and this is CHOICE/LESS.

Earlier this fall, the Republican-dominated U.S. House of Representatives passed a bill criminalizing abortions after 20 weeks gestation. Though it has not been brought to the Senate floor for debate yet, President Donald Trump has repeatedly said that if the bill makes it to his desk, he will sign it into law.

Similar bills have been introduced before, at the state and national level, even as federal judges have ruled that they're unconstitutional. They're currently on the books in 21 states, but in two of those states, Arizona and Idaho, these laws have been blocked by federal judges.

Though these bans come in a few different forms, with different purported justifications, the most common is based on model legislation drafted by the National Right to Life Committee, the country's oldest anti-choice organization, and its state affiliates. The U.S. House of Representatives and 16 states have passed their model legislation called the Pain-Capable Unborn Child Act, alluding to the unsupported and unscientific claim that fetuses can feel pain at 20 weeks gestation. That has been debunked by major medical groups, including the American Congress of Obstetricians and Gynecologists. Still, with a total disregard for that science, lawmakers continue to pass this legislation, even when they're told it can be devastating for pregnant people, their families, and the physicians who care for them.

Today's storyteller experienced this firsthand. Heather Hyden, a 30 year old woman living in Lexington, Kentucky was about nine weeks along in her first pregnancy, when she and her partner Jimmy learned that there might be something wrong with the fetus.

Heather Hyden: I mean, we were terrified. I just felt like ... I don't know, like we were naïve in thinking that, "Oh, we'll get pregnant and have a baby." I was really scared that it was something genetic with the two of us, so maybe we could never have a healthy baby.

Jenn Stanley: But the tests weren't definitive, and some even seemed to contradict one another. They needed more tests to see if they could save this very wanted pregnancy, but they were running out of time. When she was about 15 weeks along, she learned that Republican state lawmakers were fast-tracking a bill to ban abortion at 20 weeks. It was introduced by State Senator Brandon Smith, a Republican from Hazard, Kentucky, and was debated in the Veterans, Military Affairs, and Public Protections Committee as an emergency measure, meaning that if it was passed and signed into law, it would go into effect immediately.

Heather Hyden: And so we agreed to get the amniocentesis, and right before we got the amniocentesis is when we found out about the 20-week abortion ban coming up in the state legislature. I immediately messaged my friend from the ACLU and said, "This is effecting me directly. I want to testify." The hearing was the next day, and Jimmy came with me, and we stayed up almost all that night, organizing people to come with us and writing our testimony. So it was not like someone found me. I wanted to speak out about this, because I had learned so much. I was so ... I got a very quick education about what fetal anomalies are with it happening to me personally, and felt like it was really important for others to hear what this is in great detail, and how it was impacting our lives.

We had found out that the diagnosis had gotten a lot worse. The morning that we went to the hearing, we found out that our baby had developed hydrops fetalis, which is an ultrasound marker where her whole body was filled with fluid. There was fluid all around her heart and lungs, so we found that out, and then we rushed to Frankfort to testify. The next hearing that we went to, we actually got ... I got a minute to speak to Brandon Smith, who was the sponsor, and I held his hand and looked at him in the face, and I said, "Brandon, we're not trying to do anything crazy here. We're just trying to get an exception for women and for families in my position," and he cried and left, and then came back for the testimony, and after we spoke, he went on his crazy tirade again about crushing fetal organs, and how if this was puppies, we wouldn't be so cold.

I don't think there was one single woman on the Military and Veterans Affairs Committee. It was like being in a dystopic movie, all of these men just pretending like they couldn't even see me, watching me as I was trying to share with them how dangerous this legislation was for me, and how it was going to basically put us on a conveyor belt of time, where it just speeds up everything. It amplifies everything. It makes ... It scares you so much that you are worried like, "Okay, should I even get this test done? How do we wait for results? What are we going to do if the results are positive?" It gives you absolutely zero chance to just take care of yourself.

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Also, creates this environment of fear with doctors too. We went to that hearing. The bill passed, I think there were only two people on that whole committee that voted against it.

Jenn Stanley: The bill was passed in the Senate, then in the House, and signed by Governor Matt Bevin within a week.

Heather Hyden: After the hearing, we were really freaked out. Our doctor, it seemed like at that point, she was concerned about what this ban was going to mean for her practice. It was very unclear, because they passed it in a week, so it was all hands on deck trying to interpret it and figure out, what do they count as ... What is 20 weeks to this bill? And we found out that it meant 20 weeks post fertilization, but in medical terms, that's 21 weeks and six days, so that was very confusing, trying to figure out where we stand, because we were trying to get our amniocentesis, and we had been told that the results can take two weeks or longer to get your results back, so it was just a rush to try to get these tests done.

We got the test, we got the amniocentesis done, and it was horrible. We had two weeks to wait for the results, and it confirmed that we were having a girl, and that it was monosomy X, so it was Turner's Syndrome, and we found out that the baby, that I was losing amniotic fluid, so there was hardly any amniotic fluid left, and the fluid was getting worse. This was about the time when some people get a full fetal anatomy scan, and they could barely even do it, because I had such little amniotic fluid, you couldn't even make out legs really, a leg or a foot.

And then, this is the point when things got really serious with our conversation with our doctor about what our options were, and what she thought was happening. She said that I was going to have a miscarriage. She said that it was going to happen any day, or that it could happen within the week, and so our options were wait and have the miscarriage, and we'll take care of you here at the hospital. We only lived two miles from the hospital. "If you're experiencing anything, like your water breaks or you have contractions or you start to bleed, come in and we'll take care of you." And then the other option was to go to EMW, to the abortion clinic.

Jenn Stanley: Kentucky Governor Matt Bevin ran on a platform wanting to close down all of the abortion clinics in Kentucky, and so far, he appears to be seeing that promise through. When he took office in 2016, Kentucky had three abortion clinics. Now, EMW Women's Surgical Center in Louisville is the only clinic left in the state, and EMW is currently in a legal battle with the state to try to stay open. Since Kentucky only has one abortion clinic now, anti-choice activists can concentrate their efforts there, and we'll actually have more on that next week.

And reproductive rights and birth justice activist told Rewire that the cost of complying with Kentucky's strict and medically unnecessary anti-abortion laws have made abortions in Kentucky some of the most expensive in the country.

Heather Hyden: EMW is the only abortion clinic left in Kentucky. There was one in Lexington up until last year, and I'm in Lexington. EMW is in Louisville. It's about a 75 mile drive from Lexington to Louisville, and it's a three day procedure, essentially, because you have to get ... Because there was another law passed that requires an ultrasound, and you have to do that the day before, and then you go in for one day, and then you go in for a second day as well, for a late second trimester abortion, so we wanted to avoid EMW at all costs. We had been through so much emotionally and physically, and we were just really afraid that we were going to get accosted by protesters and yelled at, and these people just have no idea what we've been through.

Speaker 3: [crosstalk 00:12:36] at absolutely no cost to you, but it's free adoption placement. Another organization that works with [crosstalk 00:12:46].

Heather Hyden: I have my perception because I have seen the protests outside of the clinic, but also I knew clinic escorts, and I knew that someone had, I think that week, been physically pushed down onto the street.

Speaker 4: Men don't kill their babies!

Heather Hyden: A woman trying to get care, and I just didn't think I could handle that.

Speaker 4: Mary, mother of God. Pray for us sinners, now at the hour of our death, amen.

Heather Hyden: I thought, our doctor says this is going to happen this week, so let's wait and see what happens, because I really wanted to stay at my hospital with my doctors. The other reason why we really wanted to wait was because I wanted to deliver my daughter vaginally. I didn't want to have to go through a surgery. I wanted to give birth to her, and I wanted to be able to find out, send her down to Pathology and find out exactly what was wrong with her, and I wanted to be able to have her organs donated for research, so that was really important to us, because her diagnosis, it was monosomy X, but she had just so many different symptoms that were going on with her that we just felt like she was a really rare case.

That's why we were trying to do that, but we waited a week, and nothing had happened, and we actually rented a home fetal doppler monitor so that we could listen for the heartbeat, and then if anything happened, we could go directly to the hospital. And then we waited a second week, and I was starting to feel what I thought were contractions, and ended up going into the hospital three different times, trying to see if I had any kind of symptoms of labor, and during that time, I was told by my doctor that if I had just dilated a centimeter, that they would take me in, but that their hands were tied, and that ... It was explained to us that the hospital policy says that, as long as there's a heartbeat, there's nothing that they could do.

I was so exhausted and physically, I just could barely get up in the morning. It was just really hard to go through every day, and not knowing if you were going to have a miscarriage or not.

Jenn Stanley: They asked their doctor if they could petition the hospital's ethical review board to terminate the pregnancy there. The doctor said she would look into it, but Heather and Jimmy said they never heard back from her, so Heather started looking for other options.

Heather Hyden: It was getting to the point where I was 19-weeks pregnant, and I was terrified that we were going to have to go out of state to get care, because of the new 20-week ban. I was calling any person that I knew that could possibly be a resource, because I was desperate. I called the nurse at 3 o'clock in the morning at some point, just begging her, "Can't you do something? Why would you let someone suffer like this? Is there no one who can take care of me? Is there no ... Are we working with the wrong doctor? Are we working with the wrong hospital? Is all of this because we're at a Catholic hospital? Why aren't we getting care?"

And I finally got into a conversation with the executive director of the Kentucky Health Justice Network, and we were talking about the abortion doula in Memphis, and she told me that there was an abortion doula in Louisville, and I said, "Okay, well I would really like to be connected with this person, because maybe they could help me." At that point, I was just looking for any kind of help, from anything, any resource, any tiny window opening. And so I called her and she came straight to Lexington the next day, and came and stayed with us for the night, and tried to help me relax.

I remember taking a ... She made me this amazing bubble bath that I'll never forget. It was the best bubble bath of my life, I think, because there was so much care ... She was just trying to help me relax and just get in touch with what was happening to me, and really get clear. The doula that we were working with immediately got in touch with people that she knew in her birth networks and were asking this question, "What can this mother do? She's 19-weeks pregnant. They're saying that the baby is not going to survive. What are her options?" And she found out that there were two doctors that could care for us at another hospital, and that was ... Getting that call from the doctor saying, "Hey, I can help you," was ... I couldn't believe it. It was a miracle or something.

But there were still hoops. She had to get it approved by their ethics review board. We had to get insurance approval, because this could cost a crazy amount of money. We were told that it could be up to \$20,000 out of pocket, and so they were trying to be careful for us, to make sure that we could actually afford the care through my insurance company, and then we also had to schedule the appointment.

At that point, I think that there was a part of me that was still hoping, "Well maybe I will go into labor and still be able to be at my hospital." I was still holding on to that hope, but it was like every day, I would wake up and I didn't know if we were going to get approved for the insurance. I didn't know if we were going to be able to get the appointment in time, before the timing ran out, because of the new restrictions. I didn't know if I was going to start hemorrhaging blood and have a miscarriage. It was just horrible.

We finally did get approval, and we were able to move forward. We were able to schedule the appointment for me to be induced at 20 weeks and three days, so being with the deadline by a week. We still had to travel all the way to Louisville, and we still had to go through the required ultrasound, even though we had been having so many ultrasounds, because every time I would go in to the doctor, even when I thought ... It was the point where I thought I was having contractions, I still had to get ultrasounds, so it was just completely superfluous that I had to get an ultrasound and be reminded again that my baby wasn't going to live.

Our doula was with us. I was able to start the induction medication, so we started on that early in the day on a Saturday, and my doula was there the entire time. Jimmy was there with me. We had family there with us, and my best friend in the world came to be with me. It was all hands on deck, let's not do this alone, and it was labor. It was real labor. It was 12 hours of labor. I had horrible contractions. I was in extreme pain. I had to get hooked up to an IV. I had pain meds that I was taking. I was in the labor and delivery room, but honestly, it was like even though it was so painful, it was the best thing that could have happened.

I delivered her at 2:28 in the morning, early that morning, and we were able to hold her. We were able to take pictures of her. We were able to get her footprints. I guess since I was 20 weeks and 4 days, it's technically a stillbirth, and so we got a birth certificate. The greatest thing was that we had that time to really be able to interact with her. She was born without a heartbeat, so she was dead when she was born, but they were able to do a scan. They found where her neural tube defect was on her back, on a dimple ... There was a little dimple at the bottom of her back that they found.

There were so many ultrasounds where we could see this fluid and everything, and I was terrified of seeing her for a long time, but we decided two days before we went in to the hospital that we did want to see her. We knew we would regret it if we didn't. That's just our choice. That was our direction that we wanted to go in. We had gotten so many tests. This had been a complete rollercoaster of diagnoses for us, so we felt like we needed to see what was going on with her, to really see her outside of ultrasound imagery.

She was barely a pound. She was very sick. She looked really sick. She was swollen, her belly was especially super swollen with fluid, all of her fingers, all of her toes, her legs, her face. It was exactly the way that the ultrasound showed it to be, honestly. She didn't really look like a baby, but she also didn't look as bad as we thought she could look. We had been preparing ourselves since that nine week ultrasound that we were possibly going to lose our baby, so I think that we had gone through a little bit of ... We didn't go through denial in that moment, and I think that that was important, because we had found out so early, so we had a lot of time to process that we weren't going to be taking her home, but I think that the childbirth, to me, was really important.

I guess I wanted that experience. I felt like it was really important to find out, was the placenta okay? There's just so many things that they can study and look at and research now after birth to help you understand what might have gone wrong with your pregnancy, and we had a healthy placenta. This was literally just one of those things where the cells did not divide in the right ways at the right time during conception. This was nothing that I could have changed that would have made our daughter live.

Jenn Stanley: Heather and Jimmy are still processing all of this, finding comfort in support groups for people who've miscarried, had stillbirths, or who've lost an infant. Even though she's still working through her own grief, Heather continues to advocate on behalf of pregnant people against Kentucky's anti-choice legislation. Here's what Jimmy had to say:

Jimmy: In the midst of all ... In the midst of the most horrible thing that you've ever gone through, to constantly have in the forefront of your mind to advocate for other people is just the most beautiful thing that I've ever seen anyone do.

I mean, that's it. Just to see somebody continually sacrifice their time and their energy. She just keeps going, so anyway.

Jenn Stanley: Heather says she keeps going, because she doesn't want other people to have to go through what she went through, and that people should not have to navigate religiously, politically motivated laws that have no grounding in medical science while they're trying to make difficult medical decisions.

Heather Hyden: In this country ... It's just really opened my eyes to all ... I knew, I've worked with birth advocates, but you just never know until it happens to you, or it happens to your best friend, or it happens to your sister, or it happens to your mother, or your girlfriend, or your wife, or any woman that you're close to. You just don't know how dysfunctional our medical system is until you go through it.

Pregnancy is very random, and it's not a given, and it's not something that we need anyone else scaring us about. It is hard enough to feel like ... It's hard enough to go through pregnancy just carrying all this weight, and carrying all the burdens of it, but to also have this political climate, this political pressure put on our doctors and our nurses and all of the folks who are trying to take care of women, who went to a decade of medical school because they cared about women and wanted to make sure that more healthy babies were able to make it into the world, and then you put all of this political pressure on them and make them scared to do their job.

I do not think that it's the constituents that are pressuring the lawmakers to do this. I think that there are organized groups that are pressuring lawmakers to do this. It was so important to me that another mother never have to go through this experience that I did, and if there was any way that I could contribute, for research or to share what I've been through, that's what ... I have to believe that there's some kind of, I don't know, reason for all of it, that there's some kind of purpose.

Jenn Stanley:

This episode was produced by me, Jenn Stanley, for Rewire Radio. Mark Faletti is our Executive Producer and Director of Multimedia, Jodi Jacobson is our Editor in Chief, Brady Swenson is our Director of Technology. Music for CHOICE/LESS is by Doug Helsel. Thank you to all the staff at Rewire, especially Rachel Perrone, Lauren Gutierrez, and Stacey Burns, our Communications and Social Media team, for getting the word out about CHOICE/LESS.

Next week, we'll have a special two part episode where we'll learn more about the efforts to close the last abortion clinic in Kentucky, and how a group of far-right religious extremists, once seen as fringe even by anti-choice activists, are newly emboldened and have a seat at the table in today's current political climate.

Thanks for listening.