40th ANNIVERSARY of ROE V. WADE

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

FACT SHEET

# 40 Threats to A Woman's Right to Decide Whether to Have an Abortion

*January 22, 2013 is the 40th Anniversary of Roe v. Wade. Unfortunately, this historic Supreme Court decision and the fundamental constitutional right to abortion that it confirmed have been under ever-increasing attack. The following items summarize 40 of the current threats to Roe and to a woman's right to safe, legal abortion.*

## Who Sits on the Courts and is Elected to Office is Vitally Important to Women's Right to Safe, Legal Abortion

*Although the Supreme Court has repeatedly upheld the core principle of Roe v. Wade—that women have a fundamental constitutional right to decide whether to have an abortion—decisions the court has issued after Roe have changed the contours of that right and have allowed the federal government and the states to pass laws seriously restricting women's access to abortion.*

### 1. One Seat on the Supreme Court Makes a Difference:

The U.S. Supreme Court has the ultimate say in whether Roe is upheld or further weakened. Currently, two justices on the court believe Roe v. Wade should be overturned. Three others have voted to cut back on Roe's protections. The composition of the U.S. Supreme Court is vital to ensuring that Roe remains the law of the land and is not further undermined.

### 2. The Lower Courts Also Make Decisions That Could Limit Women's Access to Abortion:

The U.S. Supreme Court only hears a small number of cases per year, leaving lower courts to make the majority of decisions that affect women's access to reproductive health care. For example, in 2012, a federal appeals court upheld a Texas law that requires a woman seeking an abortion to undergo a medically unnecessary, physically intrusive ultrasound, and requires her doctor to show and describe the ultrasound image to her. This is why it is crucial that judges appointed to lower courts will uphold Roe v. Wade.

### 3. The Majority of State Legislatures Are Opposed to Abortion:

Since states pass laws on abortion, state legislatures and governors have a great deal of influence on women's ability to access abortion. The last two years have seen the highest number of restrictions on women's reproductive health care ever enacted in the states in the 40 years that Roe v. Wade has been the law of the land. According to NARAL Pro-Choice America, after the 2012 elections, legislatures controlled by opponents of reproductive health outnumber legislatures controlled by proponents. And in 21 states, both a majority of the legislature and the governor oppose abortion.

### 4. In Congress, Only a Few Votes in the Senate Hold the Line against Serious Abortion Restrictions:

Despite the 2012 election of several new members of Congress who support Roe, ultimately the make-up of both the House of Representatives and the Senate changed very little. The House retained an anti-choice majority and the Senate remains closely divided with a very narrow majority that supports Roe. Last Congress, the House took approximately 50 votes on topics related to women's health. Luckily, the Senate kept most of those bills from being enacted. Already in the new Congress, three bills to restrict women's reproductive health have been introduced.

### 5. Other Officials Have Also Used Their Office to Restrict Access to Abortion:

Other elected and appointed officials also have been known to use their power to restrict access to abortion. The Attorney General of Virginia recently bullied the board of health into approving medically unnecessary and extremely burdensome regulations on abortion providers, with the goal of forcing clinics to close. A former attorney general in Kansas used his office to over-zealously prosecute abortion providers.

## People Are Using Their Religious Beliefs to Decide What Health Services Women Can Get – Including Abortion

*There is an organized effort by people opposed to abortion to pass laws that allow people to use religion and other personal beliefs to discriminate against women by taking away their ability to make their own personal health decisions. While people are certainly entitled to their religious beliefs, this does not give them the right to use them to harm others. These laws would also give institutions (hospitals, HMOs and employers) the ability to keep women from getting the health care that is appropriate for them.*

### 6. Individuals and Institutions are Refusing to Play a Role in Providing Abortion Services:

Across the nation, patients are being denied abortion by individual health care providers and by institutions, such as hospitals, HMOs, and employers, who believe that their personal beliefs should come before patients' needs. Women denied needed services are forced to bear the additional costs, delays, and health risks incurred by going elsewhere or never receiving the services. These burdens fall most heavily on poor women and those living in rural areas.

### 7. Proposed Laws Would Give Bosses and Insurers the Ability to Take Away Women's Ability to Make Decisions About Some of Their Health Needs:

In 2012, the Senate voted on the Blunt Amendment, which set a dangerous precedent because it would have given virtually limitless and unprecedented license to any employer or insurance plan, religious or not, to exclude any health service, no matter how essential, in the health services they cover. This would have created a huge loophole in the ACA's coverage requirements. Allowing such broad, undefined refusals would result in millions of individuals losing vital health service coverage. The Senate narrowly defeated this dangerous provision by only 2 votes.

### 8. Hospital Mergers Take Away Women's Access to Abortion:

Women's access to reproductive care is threatened when secular hospitals merge with religiously affiliated hospitals. For example, the Ethical & Religious Directives for Catholic Health Care Services govern Catholic-affiliated hospitals and prohibit abortion, contraception, tubal ligations, and in vitro fertilization. Currently one in six patients in the United States is cared for in a Catholic hospital. This number will only increase as market forces put additional pressure on secular and religiously affiliated hospitals to merge.

### 9. Abortion Opponents Would Permit Hospitals to Refuse to Provide Life-Saving Emergency Abortion Care:

Under current federal law, hospitals must provide stabilizing treatment to individuals in medical emergencies. In October 2011, the House voted to permit hospitals to refuse to perform emergency abortions even if the woman would die in the absence of this care.

## Abortion Opponents Have Made it Clear that their Goal is to Overturn Roe v. Wade

*Their strategy is to pass unconstitutional laws banning abortion, with the hope that a lawsuit will reach the Supreme Court and give the court an opportunity to declare that a woman's right to abortion is no longer protected by the U.S. Constitution.*

### 10. If the Supreme Court were to overturn Roe, groups on both sides agree that at least 30 states are poised to make abortion illegal within a year:

Some states already have abortion bans on the books, either because the laws predate Roe, or because they were enacted in the hope that the Supreme Court will overrule Roe. Abortion opponents in additional states would likely pass bans on abortion if Roe were overturned.

### 11. There are Advocates for a Constitutional Amendment to Overturn Roe:

Many opponents of reproductive health support an amendment to the U.S. Constitution that would take away a woman's right to decide whether to have an abortion. In fact, in 2012, a major political party included this amendment in their party platform.

### 12. Abortion Opponents Are Pushing "Personhood" Measures to Outlaw Abortion:

Abortion opponents continue to push extreme "personhood" bills that would establish legal rights for fertilized eggs, and would not only result in a total ban on abortion without exception, but could also outlaw certain forms of contraception and some fertility treatments. Not even a month into the new year, "personhood" measures have already been introduced in South Carolina and Oklahoma and in Congress.

### 13. Abortion Opponents are Passing Bans on Abortions at 20 Weeks to Directly Challenge Roe:

Abortion opponents in state legislatures are passing laws that criminalize virtually all abortions starting at 20 weeks of pregnancy. Because these bans would apply to pre-viability fetuses, they directly challenge a central holding of the Roe decision. These laws now exist in 7 states, while an additional 2 state laws are being challenged in the courts. In addition, the House of Representatives passed a bill in 2012 that would have imposed this ban on the District of Columbia with no exception to protect a woman's health.

## Abortion Opponents Do Not Trust Women, and Legislators are Passing Restrictions with the Intent of Shaming and Judging Women Who Seek Abortions

*Politicians think they know better than women, and they continue to pass laws that reveal their distrust of women's ability to make decisions and erect hurdles to make it even more difficult for women to get an abortion.*

### 14. The Supreme Court's Gonzales v. Carhart Decision is Based on a Distrust of Women:

In 2007, the U.S. Supreme Court upheld a federal ban on a medically-approved abortion method in every state across the nation with no exception to protect a woman's health. The decision was terrible for many reasons, but one of the most troubling aspects was the court's justification that politicians could step in to protect women from the "harmful" consequences of their own decisions. In other words, women who decide to abort don't know what they're doing, so politicians should make decisions for them.

### 15. State Laws Force Women to Have Medically Unnecessary, Physically Invasive Ultrasounds:

There are now 8 states that subject a woman seeking an abortion to a medically unnecessary, physically invasive ultrasound. These laws were created with the belief that women will change their minds if forced to view an ultrasound. Besides creating an additional hurdle to obtaining an abortion, this reasoning represents a profound disrespect for women's decision-making.

### 16. State Laws Force Women to Listen to Biased Counseling:

Many states subject women seeking an abortion to state-mandated counseling. These laws often go beyond traditional informed consent, requiring that women receive medically inaccurate, biased information. Politicians think they know better than women what information should factor into their decision-making on abortion.

### 17. State Laws Force Women to Wait to "Be Sure" About their Decision:

Many states require that after a woman receives state-mandated counseling, she must wait a specified period of time before undergoing an abortion. Utah and South Dakota recently passed 72-hour mandatory waiting periods, the longest in the nation. These laws reveal disdain for women's decision-making and create additional burdens for women, especially for low-income women, who often struggle to get time off from work or pay child-care costs to have the procedure, and for rural women, who often have to travel hours to reach the closest abortion provider.

## Abortion Opponents Are Creating Obstacles to Doctors Providing the Procedure

*Since abortion opponents have failed to outlaw abortion altogether, they are targeting abortion providers in an attempt to drive them out of existence. These tactics include passing medically unnecessary regulations, enacting laws that would eliminate funding unrelated to abortion for reproductive health providers, and targeting of providers by extremists for harassment and violence.*

### 18. Large Parts of the Country Do Not Have Abortion Providers:

It is increasingly difficult to find a doctor to perform an abortion—particularly if you do not live in a big city. In fact, 87 percent of U.S. counties don't have an abortion provider.

### 19. Both Congress and the States Are Trying to Defund Planned Parenthood and Other Reproductive Health Providers:

Both state and federal opponents of reproductive health have tried to stop funding for Planned Parenthood and other reproductive health clinics. In 2011, the House voted to eliminate all federal funding for Planned Parenthood—part of a targeted campaign to shut down the health centers that serve three million women each year—which would jeopardize women's access to basic, preventive health care and abortion. Nine states have disqualified certain family planning providers like Planned Parenthood from receiving family planning funds.

### 20. States Laws are Regulating Abortion Providers out of Existence:

States are passing targeted regulations of abortion providers (TRAP laws) that are medically unnecessary and excessively burdensome, such as specifying the widths of hallways, minimum square footage requirements, and requiring abortion providers to have hospital admitting privileges. The goal of these laws is to drive abortion providers out of practice. In Mississippi, a 2012 law requires doctors that provide abortions to have admitting privileges at a local hospital, but doctors who provide abortions at the sole abortion clinic in the state have been denied privileges at every hospital to which they've applied.

### 21. Congress Has Tried to Block Funding of Medical Training:

Another tactic to limit the number of doctors who provide abortions? Make sure they don't learn how. In 2011, abortion opponents in the House twice voted in favor of prohibiting funding for medical residency training—including obstetrics and gynecology and family practice training—that teaches physicians to perform abortions in a safe fashion.

### 22. Anti-Abortion Extremists are Targeting Abortion Providers with Violence and Harassment:

Anti-abortion extremists resort to threats, harassment and even violence to scare doctors from performing abortions. Since 1991, eight doctors who provided abortion have been killed. The most recent was Dr. George Tiller, who was shot at his church in 2009. In 2011, a man was arrested in Wisconsin who planned to shoot two abortion providers, and in 2010, another man was arrested when he went online to get instructions for building a bomb to kill abortion providers. In addition to these higher-profile crimes, recent studies report that nearly 25 percent of clinics providing abortions have experienced serious violence—including stalking, death threats and facility invasions.

## Abortion Opponents are Limiting Insurance Coverage of Abortion

*Most private health insurance plans cover abortion. However, the battle over abortion coverage in the Affordable Care Act brought this issue into the spotlight. Although the health care law allows abortion coverage (with some statutory limitations), an increasing number of states have banned this coverage. In addition, since 1977, the federal government has banned public insurance programs from covering abortion as well.*

### 23. Women Who Depend on the Federal Government for their Health Insurance Do Not Get Abortion Coverage:

The Supreme Court held in Harris v. McRae, 448 U.S. 297 (1980) that Roe does not require the federal government to pay for abortions in the Medicaid program. Since that decision, Congress has not only banned most abortion coverage in Medicaid, but in all programs where the federal government offers health coverage or health services. These include health care programs for women serving in the military, civilian federal employees, Native American women, and members of the Peace Corps, among others. Most of these bans do include exceptions for coverage if the pregnancy is the result of rape or incest or the life of the mother is endangered—but women in the Peace Corps can't even get coverage in those circumstances. These bans are unfair and keep women from receiving needed health care.

### 24. States are Prohibiting Women from Buying Insurance Coverage of Abortion:

Twenty states have passed laws that prohibit women from buying an insurance plan that includes coverage of abortion, either in the new health insurance exchanges or in all private insurance plans that exist in the state. These bans endanger women's health, take away access to health benefits that most women already have—making abortion more unaffordable—and interfere with a woman's ability to make her own health care decisions.

### 25. The House of Representatives Has Repeatedly Tried to Ban Private Insurance Coverage of Abortion:

In 2011, the House passed two bills (H.R. 3 and H.R. 358) that would have resulted in de facto bans on coverage of abortion. The first would have impacted all private insurance and the second would have affected plans in the new health insurance exchanges.

### 26. The House Tried to Dissuade Employers from Providing Insurance Coverage for Abortion by Raising Taxes:

In May 2011, the House voted to raise taxes on potentially millions of small businesses and people if they simply kept their current insurance plans. It also would have increased taxes on women who had abortions, and would have limited or shut down the private market for insurance coverage that included abortion.

### 27. Congress Barred DC from Covering Abortions with Its Own Funds:

In 2011, a budget deal to avert a government shutdown included a provision prohibiting the District of Columbia from deciding for itself whether to spend its own locally-raised tax dollars on abortion care for the District's low-income residents. With that deal, anti-choice members of Congress stripped D.C. of a power that all 50 states currently have: the power to make decisions about how to spend locally-raised revenue.

# Abortion Opponents Are Targeteting Specific Groups of Women, Making It More Difficult for Them to Obtain An Abortion

*One tactic of abortion opponents is to target different groups of women when they see an opportunity to limit their personal decision-making.*

### 28. Survivors of Rape and Incest's Access to Abortion is Still Being Targeted:

Many opponents of abortion are so extreme that wish to bar even victims of rape or incest from access to abortion. In fact, the very first anti-abortion bill introduced in the House this year does not include an exception for rape or incest—or even to protect the life of the woman. And, just last week, Representative Gingrey defended Todd Akin's outrageous claim that women cannot get pregnant from a rape.

### 29. Our Servicewomen Don't Have Access to Abortion and Other Reproductive Health Services:

It has been documented that women in the military often face barriers to receiving reproductive health care. These barriers are particularly high when it comes to abortion. Currently, federal law bars military health facilities from providing abortions with a few exceptions—even if the procedure is paid for by the woman herself. A woman deployed overseas may have no other options for getting the health care she needs. It is ironic that women protecting our constitutional rights can't access those rights themselves.

### 30. So-called "Crisis Pregnancy Centers" Mislead and Deceive Women Facing an Unintended Pregnancy:

So-called "crisis pregnancy centers" (CPCs) want to reduce abortion, so they often use deceptive tactics—like advertising that suggests they provide abortions—to lure in women who are facing an unintended pregnancy and need help. Once women are inside a CPC, they are often given misleading and inaccurate information about birth control and abortion. CPCs that use such tactics undermine women's ability to make an informed decision about whether to carry or terminate a pregnancy and may even threaten women's health.

### 31. Abortion Opponents are Targeting Women of Color:

Abortion opponents are targeting communities of color with billboards that claim abortion is "black genocide" and by opening deceptive "crisis pregnancy centers" in order to convince women of color not to have abortions. These efforts undermine women of color's decision-making and ignore the real factors that contribute to higher abortion rates among women of color.

### 32. Some Abortion Opponents Would Subject Women Seeking Abortion to Racial Profiling:

In 2012, The House voted on, and thankfully defeated, the Prenatal Nondiscrimination Act (PRENDA) (H.R. 3541). This supposed ban on "race and sex selective" abortions would have required providers of abortion care to subject women to additional scrutiny based on their race or ethnicity, thus raising constitutional questions under the equal protection clause of the 14th amendment.

### 33. Low-Income Women Face Additional Barriers to Obtaining Abortion:

Denying public funding for abortion care has the most devastating effects on the poorest women. Low-income women denied abortion coverage may have to postpone paying for other basic needs like food, rent, heating, and utilities in order to save the money needed for an abortion. The time needed to save money often results in poor women experiencing delays in obtaining an abortion. The greater the delay in obtaining an abortion, the more expensive and less safe the procedure becomes.

### 34. Abortion Opponents are Creating Obstacles to Rural Women Getting Abortions:

Most women living in rural areas have limited access to doctors—and even more limited access to doctors who provide abortions. One of the great breakthroughs in bringing health care to rural America was the advent of telemedicine. However, state legislatures and Congress are trying to block the use of telemedicine for providing medication abortion. Seven states have banned the use of telemedicine for this purpose, and the U.S. House of Representatives voted to adopt an amendment that restricts the Food and Drug Administration's (FDA) ability to monitor and ensure the safety of an FDA-approved medical abortion drug, mifepristone (RU–486).

### 35. Women in Prison are Being Denied Abortions:

Prison officials have sought to deny women in prison access to abortion by requiring them to get a court order to obtain abortion care and by refusing to transport them to abortion providers. By erecting barriers to obtaining abortion care, prison officials can effectively keep a woman from having an abortion. Incarcerated women are a particularly vulnerable group with high rates of unintended pregnancies. They are also more likely to have high risk pregnancies or to have suffered sexual or physical abuse.

### 36. States Deny Younger Women Access to Abortion:

Thirty-eight states have laws that require a minor to involve at least one parent in her decision to have an abortion. Although many teens do involve a parent in this personal health decision, sadly there are some teens that cannot—either because they live in an abusive home or are pregnant due to rape or incest. States must allow teens, in a limited number of circumstances, to go to court rather than telling a parent. However, these "judicial by-pass" procedures can be daunting and create a serious obstacle to younger women getting the health care they need.

## Women Are Silenced in the Public Debate about Abortion, Which Often Includes Offensive Stereotypes and Misinformation

*Despite the fact that abortion is a procedure that only women use, women are shockingly locked out of the public discussion of abortion. When women do speak out about the issue, they are often subjected to ridicule and harassment. Not only is the tone of the debate often wrong, many of the so-called "facts" thrown around about abortion are wrong as well.*

### 37. Men Do Most of the Talking about Women's Reproductive Health Decisions:

Although women's issues were front and center in the 2012 elections, women's voices were oddly missing from the debate. In fact, leading up to the election, men were four to seven times more likely than women to be quoted in front page stories about women's reproductive health. And it isn't any better in Congress and the state legislatures. Men still make up the vast majority of elected officials—which means they are the ones passing laws that affect women's reproductive health.

### 38. When Women's Voices Are Heard, They Are Often Ridiculed:

Sandra Fluke became famous in 2012 for a very unfortunate reason. First, a member of Congress blocked her from joining a panel to talk about contraceptive coverage. And when she finally was given the chance to speak out, Rush Limbaugh infamously called her a "slut" on his radio show. Sadly, Sandra Fluke is not the only woman to have been treated this way. Last year in Michigan, Rep. Lisa Brown was thrown off the House floor for saying the word "vagina" when discussing a bill that would affect women's reproductive health.

### 39. Many Elected Officials Continue to Spread Offensive and Horribly Incorrect Information about Women:

During the election, there was an out-cry when former Rep. Todd Akin—a member of the House Science Committee who was running for Senate—said that woman could not become pregnant from rape, because her body has a way to "shut that whole thing down." But that was not the end of the offensive commentary on rape—recently, Rep. Phil Gingrey defended Akin's statement and those of other officials like State Representative Roger Rivard, who continues to claim that "some girls rape easy". Representative Joe Walsh even took women's lives for granted when he stated that it is physically impossible for pregnancy to kill a woman.

### 40. Abortion Opponents Spread False Medical Information About Abortion:

Although abortion is one of the safest medical procedures, opponents attempt to scare women and confuse lawmakers with false information, such as that abortion increases the risk of breast cancer. And in an attempt to confuse lawmakers and other officials, opponents continue to falsely claim that emergency contraception is an abortifacient, despite the fact that the drug is actually a form of birth control.