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“Protecting Roe: Why We Need the Women’s Health Protection Act”

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I. Introduction

The National Women’s Law Center fights for gender justice – in the courts, in public policy, and in our society – working across the issues that are central to the lives of women and girls, including child care and early learning, education, reproductive rights and health, income security, and workplace justice. We also house the TIME’S UP Legal Defense Fund, which connects those who experience sexual harassment or assault in the workplace with legal assistance.

Access to reproductive health care, including abortion, is vital to gender justice. The ability to make the decision of whether to have an abortion, including the ability to access available and affordable abortion care, is a key part of a person’s liberty and equality.

Despite the fact that abortion care has enabled people to participate more freely and equally in society – or perhaps because of this truth – anti-abortion lawmakers have incessantly passed cruel restrictions that erect barriers to abortion. Already, there are hundreds of interlocking state abortion restrictions that delay and obstruct care, decrease the quality of care, and deny people the ability to access the care they need. These restrictions fall hardest on communities who face existing barriers to health care. Nonetheless, in the midst of a pandemic, at a time when people need more access to care and when health disparities are so pronounced, anti-abortion state lawmakers have escalated their efforts to take critical abortion care away from people. So far in 2021, lawmakers in 47 states have introduced more than 560 restrictions on abortion, including 165 abortion bans, and enacted more than 83 restrictions. This includes the recently passed, extreme, near total ban on abortion in Texas, which – in an attempt to prevent a challenge to the law – creates as its exclusive enforcement a private right of action that allows *anyone* to sue an abortion provider or anyone who helps someone obtain an abortion.¹

One state abortion ban – a Mississippi law banning abortion at 15 weeks of pregnancy – will come before the U.S. Supreme Court in its next term, in the case *Dobbs v. Jackson Women’s Health Organization*. The law is part of the coordinated, national strategy by anti-abortion

¹ Elizabeth Nash & Lauren Cross, *2021 Is on Track to Become the Most Devastating Antiabortion State Legislative Session in Decades*, GUTTMACHER INST. (June 14, 2021), <https://www.guttmacher.org/article/2021/04/2021-track-become-most-devastating-antiabortion-state-legislative-session-decades>.

lawmakers to bring a case to the newly constituted Supreme Court to overrule *Roe v. Wade* and eliminate abortion access. If the Supreme Court follows long-standing precedent and the rule of law, this blatantly unconstitutional law will be struck down. But the fact that four Justices were willing to hear this case is a troubling signal of just how perilous the right to abortion has become.

Abortion access is in a crisis that demands immediate and comprehensive action from federal lawmakers. Congress needs to protect the right to abortion, ensure the ability to access abortion care, and stop the unrelenting attacks on the right to abortion. Congress can start by passing the Women’s Health Protection Act (WHPA). WHPA is federal legislation that creates a statutory right for health care providers to provide abortion care, and a corresponding right for their patients to receive that care, free from medically unnecessary restrictions that single out abortion and impede access. This bill would safeguard against many of the state laws that make it harder or impossible for people to access abortion. WHPA would make it clear that abortion bans like Mississippi’s – as well as the web of abortion restrictions that for too long have blocked people’s ability to exercise their constitutional right – cannot continue.

The anti-abortion laws that WHPA will address restrict people’s control over their bodies and decisions, rely on and perpetuate harmful and discriminatory sex-based stereotypes, and threaten pregnant peoples’ economic security and opportunity. In so doing, abortion restrictions limit people’s ability to dictate their life’s course and participate fully and equally in social and economic life, violating their rights under the Fourteenth Amendment. Due to these persistent violations, Congress can – and must – act to protect the right of every person to access affordable and available abortion care.

II. Congress Must Pass WHPA to Address Abortion Restrictions.

A. Congress Has Authority Under the Fourteenth Amendment to Pass WHPA.

Congress can and must pass WHPA to remedy states’ systematic violations of the Fourteenth Amendment. Section 5 of the Fourteenth Amendment “grants Congress the power ‘to enforce’ the substantive guarantees of” that Amendment, including both the Due Process and Equal Protection Clauses, “by enacting ‘appropriate legislation.’” *Nevada Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 727 (2003) (citing U.S. CONST. amend. XIV, § 5). This enforcement authority includes the power both “to remedy and to deter” unconstitutional state action. *Id.* Because abortion restrictions violate liberty and equality rights guaranteed under the Fourteenth Amendment, Congress has authority to pass WHPA to remedy these violations and to deter further state action.

The ability to decide whether, when, and how to parent is vital to a person’s rights to liberty and equality. This decision lies “at the very heart” of the fundamental right to liberty enshrined in the Constitution. *See Carey v. Population Servs. Int’l*, 431 U.S. 678, 685 (1977). Likewise, the “constitutional guaranty of just and equal laws” protects people from laws that target a group’s reproductive capacities, *see Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), in particular when those state laws are premised on sex-based stereotypes of people’s proper role in society, *see Hibbs*, 538 U.S. at 721. These principles of liberty and equality, viewed together, support the

Supreme Court’s announcement in *Casey* that the ability of people “to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992).

Nonetheless, states have been and continue to be relentless in their assault on the fundamental right to abortion, in plain violation of the liberty and equality principles of the Fourteenth Amendment. Anti-abortion lawmakers continue to pass state laws that violate these fundamental rights – including laws that make it harder or impossible for people to access abortion, laws that shutter clinics by targeting abortion providers with unnecessary and onerous regulations, laws that force providers to give medically inaccurate or misleading information to their patients, and laws that require patients to undergo medically unnecessary and sometimes invasive procedures. In light of the widespread and persistent state action that targets the fundamental rights to liberty and equality encompassed by the right to abortion, it is incumbent on Congress to use its Section 5 authority to pass WHPA to remedy and to deter these harmful abortion restrictions.

B. Abortion Restrictions Undermine People’s Ability to Participate Equally in Society, Abridging Their Rights to Both Equality and Liberty.

Restrictions on abortion – by denying people control over their bodies and decisions, reinforcing antiquated sex stereotypes, and limiting peoples’ economic security and opportunity – undermine people’s liberty to “define their views of themselves and their places in society,” and thus to “participate equally in the economic and social life of the Nation.” *Casey*, 505 U.S. at 856.

1. Abortion Restrictions Violate People’s Fundamental Right to Control Their Body and Their Destiny.

WHPA is an important safeguard against the denial of bodily autonomy caused by abortion restrictions. The right to control one’s body, and thus one’s destiny, is central to the principles of liberty and equality guaranteed by the Constitution. As early as 1891, the Supreme Court held that “[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others” *Union Pacific R. Co. v. Botsford*, 141 U. S. 250, 251 (1891). And for over seventy years, the Supreme Court has recognized that people’s decisions about their bodies, including whether and when to have children, are among “the most intimate and personal choices a person may make in a lifetime,” and thus central to the concepts of autonomy, liberty, and equality. *Casey*, 505 U.S. at 851; *see also Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

Abortion restrictions, such as the ones addressed by WHPA, strip those fundamental rights from those seeking abortion care. When states pass restrictions attempting to dissuade people from their decision to obtain an abortion, or restricting their access to abortion, they are depriving people of the authority to make decisions that impact their bodily autonomy and impact their life’s course, which “is an element of basic human dignity.” *Casey*, 505 U.S. at 915 (Stevens, J., concurring in part and dissenting in part). As discussed below, this denial of bodily autonomy has severe repercussions for pregnant people’s equality, since coercing a person to continue a pregnancy can force them to assume sex-based stereotypes of women’s proper role in society and

threaten their economic security and opportunity, undermining their ability to participate equally in society.

2. Abortion Restrictions Are Based on and Reinforce Harmful Sex-Based Stereotypes.

Abortion restrictions chip away at the liberty of people who can become pregnant, as a class, by perpetuating the archaic and discriminatory stereotype that “the female [is] destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.” *Stanton v. Stanton*, 421 U.S. 7, 14–15 (1975). This and other sex-based stereotypes rely on a worldview dictated by a gender binary that denies all people with the ability to become pregnant – including women, transgender men, non-binary individuals, and those who identify with a different gender – the ability to make decisions about their bodies and reproductive lives. When state laws seek to control a class of people’s “existence or control [over] their destiny,” the law not only “burden[s] the[ir] liberty” but also “abridge[s] central precepts of equality.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015).

Although “now untenable,” for generations “the lawbooks of our Nation were rife with overbroad generalizations about the way men and women are.” *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689–91 (2017). For example, state laws excluded women from certain professions, including the practice of law, *see, e.g., Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872); limited the hours women could work outside the home, *see, e.g., Muller v. Oregon*, 208 U.S. 412 (1908); discouraged women’s involvement in political and civic affairs, such as their exemption from jury duty, *see, e.g., Hoyt v. Florida*, 368 U.S. 57 (1961), *overruled, Taylor v. Louisiana*, 419 U.S. 522 (1975); condemned gender fluidity, including prosecuting cross-dressing, *see* Hugh Ryan, *How Dressing in Drag Was Labeled a Crime in the 20th Century*, History, <https://bit.ly/3wpKYqV>; and upheld the exclusion of LGBTQI+ people from social and legal customs by, for instance, defining marriage as between one man and one woman, *see e.g., Defense of Marriage Act*, Pub. L. No. 104–199, 110 Stat 2419 (September 21, 1996), *invalidated by United States v. Windsor*, 570 U.S. 744 (2013).

Of course, such views are no longer consistent with our understanding of the Constitution and our world. Today, our “societal understandings can reveal unjustified inequality” within systems “that once passed unnoticed and unchallenged.” *Obergefell*, 135 S. Ct. at 2590. We can fully understand that sex classifications “may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women” or any gender identity. *Virginia*, 518 U.S. at 534 (internal citation omitted). Thus, in *Hibbs*, the Supreme Court held that Congress may exercise its Section 5 enforcement power to remedy equal protection violations that occur when persistent state action regulates people (including pregnant people) based upon sex-based expectations of their proper role in society. 538 U.S. at 736.

And yet, unjustified inequality persists in laws that restrict access to abortion. Like other laws predicated upon outdated sex-based generalizations, abortion restrictions both invoke and perpetuate antiquated stereotypes about the capabilities of people who can become pregnant. For example, 18 states require counseling that subjects patients who have decided to have an abortion to medically inaccurate, misleading, and coercive information before they can get the

care they need.² Twenty-five states mandate waiting periods before getting an abortion – based on the assumption that with more time, patients will reconsider their decisions – with the effect that patients are subjected to unnecessary, costly, and sometimes prohibitive delays.³ And 27 states have laws that regulate the provision of ultrasounds, including forcing a provider to offer or perform a medically unnecessary ultrasound, assuming patients have not made an informed decision and that an ultrasound will force them to reconsider.⁴ These laws ignore the reality that most people are certain about their decisions to end a pregnancy,⁵ instead presuming that pregnant people are incapable of making decisions about their own health, bodies, and lives. At their core, they are premised on an “antiabortion shibboleth”: that those “who have abortions come to regret their choices, and consequently suffer from [s]evere depression and loss of esteem.” *Gonzalez v. Carhart*, 550 U.S. 124 (Ginsburg, J., dissenting). As a remedy, anti-abortion lawmakers deem it necessary to protect people by restricting their “right to make an autonomous choice.” *Id.* Abortion restrictions thus harken back to an outdated view of the sexes, wherein the woman was “placed in a class by herself” and in need of “legislation designed for her protection.” *Muller*, 208 U.S. at 422. This form of discrimination was – and still is – “rationalized by an attitude of ‘romantic paternalism,’” which puts pregnant people “not on a pedestal, but in a cage.” *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

Abortion restrictions also invoke and perpetuate antiquated stereotypes about the proper roles of people who can become pregnant. Just as previous state limitations on women’s ability to participate in public life presumed that the “paramount destiny and mission of woman are to fulfil[] the noble and benign offices of wife and mother,” *Bradwell*, 83 U.S. (16 Wall.) at 141, laws that deprive people of their ability to decide whether to end a pregnancy force them to fulfill that same destiny. For instance, Arkansas passed a law specifically intended to reduce the number of abortions performed in the state and referred to it as the “Every Mom Matters Act.”⁶ A South Dakota law on data collection refers to those seeking abortions as “pregnant mothers.”⁷ These laws illustrate the thinking behind abortion restrictions: those who become pregnant are destined to become mothers, regardless of their decisions. It is unsurprising, then, that recent polling indicates that views on abortion are strongly correlated with these misogynistic beliefs: those who oppose abortion rights and access tend to favor traditional gender roles and reject the existence of systemic gender inequities.⁸ Abortion restrictions, at their core, insist upon a caged

² *An Overview of Abortion Laws*, GUTTMACHER INST. (June 1, 2021), <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

³ *Id.*

⁴ *Requirements for Ultrasound*, GUTTMACHER INST. (June 1, 2021), <https://www.guttmacher.org/state-policy/explore/requirements-ultrasound>.

⁵ *See, e.g.*, ADVANCING NEW STANDARDS IN REPROD. HEALTH, WOMEN’S EXPERIENCES WITH A 72-HOUR WAITING PERIOD FOR ABORTION (Mar. 2016), https://www.ansirh.org/sites/default/files/publications/files/ansirh_issue_brief_utah_72-hour_waiting_period.pdf.

⁶ H.B. 1195, 93rd Gen. Assemb., 2021 Reg. Sess. (Ark. 2021), <https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2021R%2FPublic%2F&file=90.pdf&ddBieaniumSession=2021%2F2021R>.

⁷ H.B. 1190, 2019 Leg. Assemb., 94th Sess. (S.D. 2019), <https://mylrc.sdlegislature.gov/api/Documents/54059.pdf>.

⁸ *See* PERRYUNDEM, ABORTION + THE 2020 PRESIDENTIAL ELECTION 27 (Jan. 18, 2021), https://view.publitas.com/perryundem-research-communication/abortion-and-2020-election_optimized/page/1. Only 28 percent of voters who are against abortion rights and access indicated that they would be more likely to vote for a candidate for political office who “perceives systemic gender inequities” compared to 75 percent of voters who support abortion rights and access. *Id.* Similarly, 25 percent of anti-abortion voters agreed that “men generally make better political leaders than women,” compared to just 4 percent of those who support abortion access. *Id.*

“vision of a woman’s role,” *Casey* 505 U.S. at 852, and rest on the sexist “assumption . . . that women can simply be forced to accept the ‘natural’ status and incidents of motherhood.” *Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part and dissenting in part).

To achieve the promise of liberty and equality, all people must be trusted to control their own bodies and reproductive lives, including the decision about whether to have an abortion. By rejecting people’s decisions about how to live their lives freely from sex stereotypes, abortion restrictions limit opportunities for people with the ability to become pregnant to participate fully and equally in society, as discussed below. These harmful stereotypes are “mutually reinforcing” and “create[] a self-fulfilling cycle of discrimination.” *Hibbs*, 538 U.S. at 736. WHPA counters these stereotypes and affirms the equality and liberty principles of the Fourteenth Amendment. Thus, it is critical for Congress to act swiftly and pass WHPA to address many of the abortion restrictions that subscribe to and reinforce an outdated and discriminatory vision of binary gender roles.

3. Abortion Restrictions Threaten People’s Economic Security and Opportunity.

Abortion restrictions erect barriers to abortion access that wreak devastating, immediate, and long-term consequences for people’s financial well-being, job security, workforce participation, and earnings. These costs have particularly detrimental effects on those struggling to make ends meet, including Black, Indigenous and People of Color, members of the LGBTQI+ community, immigrants, young people, those living in rural communities, and people with disabilities – compounding existing inequities and the systemic economic disparities forced upon these communities. By threatening people’s economic security and opportunity, abortion restrictions inhibit people’s ability to “participate equally in the economic and social life of the Nation,” *Casey*, 505 U.S. at 856, thereby denying their constitutional rights to both equality and liberty.

Many people seeking abortion care already struggle to make ends meet. In 2014, nearly half of abortion patients were women with family incomes below the Federal Poverty Level (FPL); women whose families earned less than 200 percent of the FPL made up an additional quarter of abortion patients.⁹ The cost of abortion care can consume the monthly budget of a person with low income; even before the COVID-19 pandemic, nearly four in ten (37 percent) adults in the U.S. would have difficulty paying an unexpected \$400 expense.¹⁰

By creating numerous obstacles to care, abortion restrictions compound the out-of-pocket costs of seeking abortion care, driving those already struggling to make ends meet further into economic insecurity. First, many restrictions cause patients to delay care, which often means a more expensive procedure. In one study, more than one-third of women who had an abortion in the second trimester would have preferred to have the procedure earlier but could not because

⁹ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 AM. J. PUB. HEALTH 1904, 1906 (2017).

¹⁰ BD. GOVERNORS FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, FEATURING SUPPLEMENTAL DATA FROM APRIL 2020, at 21 (May 2020), <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

they needed time to raise the necessary funds.¹¹ As a result, individuals become caught in a vicious cycle of trying to raise money while abortion care costs increase. This can make that care prohibitively expensive; a 2014 survey of known abortion providers throughout the U.S. found that the average cost of a surgical abortion at 10 weeks of gestation was \$508 compared to a median cost of \$1,195 at 20 weeks.¹²

Abortion restrictions also exacerbate the attendant costs of obtaining an abortion. For example, state restrictions, particularly those targeting abortion providers, have forced many abortion clinics to close their doors.¹³ As a result, nearly 90 percent of U.S. counties do not have an abortion provider.¹⁴ This forces people to travel farther to get an abortion,¹⁵ adding not only travel expenses, but also the costs of lodging and child care.¹⁶ Moreover, due to mandatory delays, mandatory ultrasounds, and other state laws that require multiple clinic visits before a person can obtain an abortion, many people must incur these costs multiple times.¹⁷ Oftentimes people will need to take leave from work in order to travel long distances for multiple clinic visits,¹⁸ but having to take time off of work can mean the loss of a paycheck or even a job, particularly for workers in low-paid and part-time jobs without sick leave and flexible schedules,

¹¹ Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 *CONTRACEPTION* 334, 335 (2006).

¹² Rachel K. Jones et al., *Differences in Abortion Service Delivery in Hostile, Middle- Ground, and Supportive States in 2014*, 28 *WOMEN'S HEALTH ISSUES* 212, 215–16 (2018).

¹³ See Elizabeth Nash & Joerg Dreweke, *The U.S. Abortion Rate Continues to Drop: Once Again, State Abortion Restrictions Are Not the Main Driver*, GUTTMACHER INST. (Sept. 18, 2019), <https://www.guttmacher.org/gpr/2019/09/us-abortion-rate-continues-drop-once-again-state-abortion-restrictions-are-not-main> (“Between 2011 and 2017, TRAP regulations resulted in the closure of roughly half of all clinics that provided abortion in four states—Arizona, Kentucky, Ohio and Texas—and the closure of five clinics in Virginia, including two of the state’s largest providers.”).

¹⁴ RACHEL K. JONES ET AL., GUTTMACHER INST., *ABORTION INCIDENCE AND SERVICE AVAILABILITY IN THE UNITED STATES, 2017*, AT 7–8 (Sept. 2019), https://www.guttmacher.org/sites/default/files/report_pdf/abortion-incidence-service-availability-us-2017.pdf.

¹⁵ For example, after Texas passed H.B. 2 – which the Supreme Court held violated the Constitution for imposing an undue burden on people seeking abortion care in the state – more than half of Texas’s abortion facilities closed, causing the number of women of reproductive age living more than 50 miles from a clinic to double. See *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2296 (2016). As another example, Louisiana Act 620 – which the Supreme Court also held was unconstitutional for creating an undue burden – would have drastically reduced the number of abortion providers in the state, leaving just one provider in one clinic in a state with nearly one million women of reproductive age. See *June Med. Servs. v. Russo*, 140 S. Ct. 2103, 2129 (2020). A resident relying on public transportation would either be forced to travel out of state or pay to travel to the one remaining clinic in the state, which could involve nearly twenty hours of round-trip travel time for just one trip. *Id.* at 2130.

¹⁶ See ALYSSA LLAMAS ET AL., GEO. WASH. JACOBS INST. OF WOMEN’S HEALTH, *PUBLIC HEALTH IMPACTS OF STATE-LEVEL ABORTION RESTRICTIONS: OVERVIEW OF RESEARCH & POLICY IN THE UNITED STATES 20-22* (Apr. 2018), https://publichealth.gwu.edu/sites/default/files/downloads/projects/JIWH/Impacts_of_State_Abortion_Restrictions.pdf.

¹⁷ *Id.* at 10, 21-25.

¹⁸ Additionally, women are at risk of being fired by an employer for taking time off to seek abortion care. For instance, Nicole Ducharme was fired from her job as a bartender and server in Louisiana in 2017. She told her manager that she was pregnant and needed two days off to have an abortion, but was fired on the day of the procedure. See Angela Underwood, *U.S. District Court Rules that State Law Forbids Abortion Discrimination in Workplace*, LA. REC. (July 1, 2019), <https://louisianarecord.com/stories/512676950-u-s-district-court-rules-that-state-law-forbids-abortion-discrimination-in-workplace>.

who are disproportionately women and women of color.¹⁹ These costs force many already struggling to make ends meet to forgo paying for basic necessities – such as bills, food, and even rent – in order to pay for an abortion.²⁰ These burdens fall hardest on, and perpetuate historic and on-going oppressions against, those who already face hurdles to seeking care, including Black, Indigenous and other people of color who are especially likely to live in poverty and to face discrimination when seeking health care, by deepening existing economic disparities.²¹

All of these restrictions compound and may result in devastating consequences, as accessing abortion care may become unattainable altogether. At some point, “the additional costs associated with travel—including gas, tolls, hotel room stays, bus tickets, lost wages and childcare—may reach a tipping point where they become too great for a household to bear and the woman would not be able to get the abortion that she desired.” *See Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 991 (W.D. Wis. 2015) (internal quotation marks and alterations omitted), *aff’d sub nom. Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, (7th Cir. 2015).

For those unable to access abortion, abortion restrictions impose long-lasting and harmful effects on their economic security and opportunity. To begin with, pregnancy and childbirth impose significant, direct health care costs. Pregnant people without health insurance may bear these costs in their entirety.²² Beyond these immediate health costs, forcing women to continue their pregnancies can undermine their economic security.²³ Pregnant workers often face discrimination in the workplace.²⁴ For example, pregnant workers, who often work in physically-demanding and low-paid jobs and have a medical need for temporary accommodations such as

¹⁹ CLAIRE EWING-NELSON, NAT’L WOMEN’S LAW CTR., PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND MOST ARE WOMEN 1, 5 (Feb. 2020), <https://nwlc.org/wp-content/uploads/2020/02/Part-Time-Workers-Factsheet-2.26.20.pdf>.

²⁰ One study found that one-third of women getting an abortion had to delay or forgo paying bills, food, and even rent. One-half relied on financial assistance from others, but such assistance is never assured. *See Rachel K. Jones et al., At What Cost? Payment for Abortion Care by U.S. Women*, 23 WOMEN’S HEALTH ISSUES e173, e176 (2013).

²¹ *See generally*, AMANDA FINS, NAT’L WOMEN’S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES, 2020 (Dec. 2020), <https://nwlc.org/wp-content/uploads/2020/12/PovertySnapshot2020.pdf>.

²² UNITED HEALTH FOUND., AM.’S HEALTH RANKINGS, NAT’L UNINSURED WOMEN (2020), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Uninsured_women/state/LA (finding 12.6 percent of women aged 19-44 have no health insurance).

²³ CTR. FOR AM. PROGRESS, LINKING REPRODUCTIVE HEALTH CARE ACCESS TO LABOR MARKET OPPORTUNITIES FOR WOMEN 18 (Nov. 2017), https://cdn.americanprogress.org/content/uploads/2017/11/16060404/110817_ReproRightsEconOpportunity-report1.pdf (women in states with more barriers to reproductive health care experience worse overall economic conditions).

²⁴ NAT’L P’SHP FOR WOMEN & FAMILIES, BY THE NUMBERS: WOMEN CONTINUE TO FACE PREGNANCY DISCRIMINATION IN THE WORKPLACE 1 (Oct. 2016), <http://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/by-the-numbers-women-continue-to-face-pregnancy-discrimination-in-the-workplace.pdf> (nearly 31,000 charges of pregnancy discrimination were filed between fiscal years 2010 and 2015 with the U.S. Equal Employment Opportunity Commission and state-level agencies).

avoiding heavy lifting,²⁵ too often have requests for accommodation denied.²⁶ Pregnant women may also be denied promotions because of employers' preconceptions about pregnant women's career plans.²⁷

Forced parenthood imposes significant direct and indirect costs. It can cost anywhere from \$12,350 to \$13,900 per year to raise a child,²⁸ and the total costs of raising a child account for 27 percent of low-income families' gross income.²⁹ Indeed, a 2013 study found that 40 percent of women surveyed sought abortions because they were not prepared to support a child financially, while nearly 30 percent cited their need to focus on parenting existing children.³⁰

Beyond the immediate costs associated with having a child, women also face diminished earnings, interference with their career advancement, disruption of their education, and fewer resources for children they already have.³¹ This is especially true with respect to childbirth from unintended pregnancies.³² Studies show that having a child creates both an immediate decrease in women's earnings and a long-term drop in their lifetime earning trajectory.³³ Mothers overall make just 75 cents for every dollar paid to white, non-Hispanic fathers³⁴; and the disparities are more staggering for many women of color: Black mothers make just 52 cents,³⁵ Native American

²⁵ MORGAN HARWOOD & SARAH DAVID HEYDEMANN, NAT'L WOMEN'S LAW CTR., BY THE NUMBERS: WHERE DO PREGNANT WOMEN WORK?, at 1, 3 (Aug. 2019), <https://nwlc.org/wp-content/uploads/2019/08/Pregnant-Workers-by-the-Numbers-v3-1.pdf>.

²⁶ NAT'L WOMEN'S LAW CTR. & NAT'L LATINA INST. FOR REPROD. HEALTH, ACCOMMODATING PREGNANCY ON THE JOB: THE STAKES FOR WOMEN OF COLOR AND IMMIGRANT WOMEN 1 (May 2014), https://www.nwlc.org/sites/default/files/pdfs/the_stakes_for_woc_final.pdf.

²⁷ JOANNA BARSH & LAREINA YEE, MCKINSEY & CO., UNLOCKING THE FULL POTENTIAL OF WOMEN AT WORK 7 (2012), <https://online.wsj.com/public/resources/documents/womenreportnew.pdf>.

²⁸ MARK LINO ET AL., U.S. DEP'T OF AGRIC., EXPENDITURES ON CHILDREN BY FAMILIES, 2015, at i (2017), https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf.

²⁹ *Id.* at 10.

³⁰ M Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, BMC WOMEN'S HEALTH, July 2013, at 6.

³¹ While the data are specific to women here, transgender and non-binary individuals consistently face higher rates of discrimination in the workforce, compounding the economic hardships of parenthood. Studies show that 90 percent of transgender workers have experienced discrimination and harassment in the workplace, which often pushes them into unemployment or low-paid jobs that do not offer benefits such as health insurance. See KELLAN BAKER ET AL., CTR. FOR AM. PROGRESS, THE MEDICAID PROGRAM AND LGBT COMMUNITIES: OVERVIEW AND POLICY RECOMMENDATIONS 6 (Aug. 9, 2016), <https://ampr.gs/37m9Eq7>.

³² Christine Dehlendorf et al., *Disparities in Abortion Rates: A Public Health Approach*, 103 AM. J. PUB. HEALTH 1772, 1775 (2013) ("Unintended childbirth is associated with decreased opportunities for education and paid employment[.]"); ADAM SONFIELD ET AL., GUTTMACHER INST., THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN'S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN 14–15 (Mar. 2013), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

³³ See, e.g., SONFIELD ET AL., *supra* note 32 (reviewing studies that document how controlling family timing and size contribute to educational and economic advancements).

³⁴ NAT'L WOMEN'S LAW CTR., MOTHERHOOD WAGE GAP FOR MOTHERS OVERALL — MAY 2021, <https://nwlc.org/wp-content/uploads/2021/04/Motherhood-Wage-Gap-Overall-Table-2021.pdf> (last visited June 16, 2021).

³⁵ NAT'L WOMEN'S LAW CTR., MOTHERHOOD WAGE GAP FOR BLACK MOTHERS — MAY 2021, <https://nwlc.org/wp-content/uploads/2021/04/Motherhood-Wage-Gap-Black-Table-2021.pdf> (last visited June 16, 2021).

mothers make 50 cents,³⁶ and Latina mothers make only 46 cents for every dollar paid to white, non-Hispanic fathers.³⁷ Moreover, compared to women who obtained abortion care, women who were denied such care were four times more likely to live below the FPL.³⁸ In addition, women who were unable to obtain an abortion were more likely to be receiving public assistance and less likely to have a full-time job six months later.³⁹ Other studies show women earn 3 percent more for each year of delayed childbearing,⁴⁰ and women without children have greater employment rates than both mothers and pregnant women.⁴¹ In short, the costs of forced motherhood will have significant economic and social consequences on people unable to obtain an abortion.

When people are struggling to make ends meet, abortion restrictions can drive them further into economic insecurity. The “dramatic impact” that being denied an abortion can have on a person’s “educational prospects, employment opportunities, and self-determination” denies them the fundamental right to control their own lives and be equal members of society. *See Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part and dissenting in part). It is critical, then, for Congress to pass WHPA to help put a stop to this vicious cycle and protect the fundamental liberty and equality rights of women and all people who can become pregnant.

III. Conclusion

WHPA is critical to bringing us closer to a world where all people can control their bodies and lives, including the decision about whether to have an abortion. The Fourteenth Amendment grants Congress authority to pass legislation to protect individuals from state action that violates the fundamental rights of liberty and equality. Laws that restrict access to abortion care abridge both rights by inhibiting bodily autonomy, perpetuating outdated and discriminatory sex-based stereotypes, and threatening pregnant people’s economic security and opportunity. Congress must exercise its authority to ensure the constitutional promise of equality and liberty are a reality for women and all who can become pregnant. For these reasons, we urge swift passage of the Women’s Health Protection Act.

Thank you.

³⁶ NAT’L WOMEN’S LAW CTR., MOTHERHOOD WAGE GAP FOR NATIVE AMERICAN MOTHERS — MAY 2021, <https://nwlc.org/wp-content/uploads/2021/04/Motherhood-Wage-Gap-Native-American-Table-2021.pdf> (last visited June 16, 2021).

³⁷ NAT’L WOMEN’S LAW CTR., MOTHERHOOD WAGE GAP FOR LATINA MOTHERS — MAY 2021, <https://nwlc.org/wp-content/uploads/2021/04/Motherhood-Wage-Gap-Latina-Table-2021.pdf> (last visited June 16, 2021).

³⁸ Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AM. J. PUB. HEALTH 407, 412-13 (2018).

³⁹ *Id.* at 409.

⁴⁰ KELLEEN KAYE ET AL., NAT’L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY, THE BENEFITS OF BIRTH CONTROL IN AMERICA: GETTING THE FACTS STRAIGHT 4 (2014), <https://powertodecide.org/sites/default/files/resources/primary-download/benefits-of-birth-control-in-america.pdf>.

⁴¹ Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749, 795–96 (2018).