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# The Women's Health Protection Act Will Help Ensure that Abortion is Available and Accessible in Our Communities

Abortion access has been decimated across the country, with the greatest impact on the most underrepresented and underserved communities.<sup>1</sup> In Texas, abortion is effectively banned;<sup>2</sup> in 6 states, only one clinic remains; and 29 states are now considered hostile to abortion.<sup>3</sup> And the Supreme Court is poised to overturn or eviscerate the constitutional right to abortion. It is the responsibility of Congress to ensure abortion is available and affordable to all—not just the privileged few—and it can start by passing the Women's Health Protection Act (WHPA, H.R. 3755/S. 1975). WHPA would establish a federal law that protects abortion access nationwide from bans and restrictions.

## In the Past Decade, State Lawmakers Have Passed Hundreds of Abortion Restrictions

Since 2010, state lawmakers across the country have passed more than 500 restrictions on abortion.<sup>4</sup> Just in 2021 alone, state legislatures passed 108 restrictions in 19 states.<sup>5</sup> These laws range from outright abortion bans, to medically unnecessary restrictions on the providers who offer abortion care, to burdensome, harmful requirements on patients that undermine their access to abortion.

Abortion bans passed by state legislatures in the past decade include arbitrary bans based on gestational age, like Texas's ban on abortion after 6 weeks or Mississippi's ban on abortion at 15 weeks. They also include bans on abortion based on the reason a patient seeks that care. Although most of these bans are struck down by courts for being blatantly unconstitutional,<sup>6</sup> what is happening in Texas clearly demonstrates that anti-abortion lawmakers are not deterred, will continue to push the limits, and will invent new ways to ban abortion and evade judicial review.

At the same time, anti-abortion legislators have been quietly successful in effectively eliminating abortion access without having to ban it outright. They have passed laws that force abortion clinics to close by making them comply with impossible-to-meet, medically unnecessary physical specifications for their facilities, including dictating the width of hallways and size of procedure rooms.<sup>7</sup> They also target health care providers with laws that impose medically unjustifiable conditions on their practice, in order to force

them to stop providing abortion care.<sup>8</sup> Between 2011 and 2017, targeted regulations forced the closure of nearly half of all clinics providing abortion within four states—Arizona, Kentucky, Ohio, and Texas.<sup>9</sup>

On top of these requirements aimed at health care providers, state lawmakers have targeted people seeking abortion. State lawmakers have passed a series of restrictions that shame, mislead, and make it more difficult for a pregnant patient to get an abortion. For example, states have forced health care providers to recite a state-mandated script to patients seeking abortion care.<sup>10</sup> The script can include outright lies, such as telling a patient that the abortion procedure can be reversed or that the person will be at more risk for suicide—all of which is untrue.<sup>11</sup> States have also forced people seeking abortion to undergo medically unnecessary ultrasounds and have imposed mandatory waiting periods.<sup>12</sup> These restrictions are intended to change the minds of patients seeking abortion, but in reality they only delay care and make abortion harder to access.<sup>13</sup> When people are denied abortions, it jeopardizes their health, wellbeing, and economic stability.<sup>14</sup>

## Abortion Restrictions and Bans Deny People Access to the Health Care They Need

When woven together, these restrictions create logistical and financial barriers between patients and access to care, forcing patients to take extended time off of work, make long-distance trips, take on hotel and childcare costs, and seek abortion care later than they would like.<sup>15</sup> Following the enactment of SB8 in Texas, data show that the one-way distance for a Texas woman of reproductive age to reach the nearest clinic is 247 miles—that's roughly 3.5 hours each way.<sup>16</sup> Data shows that even before SB8 took effect, it was not uncommon for people seeking abortion care to have to travel significant distances; 90% of U.S. counties<sup>17</sup> do not have an abortion provider and nearly one-fifth of U.S. abortion patients travelled more than 50 miles one-way to the nearest abortion clinic.<sup>18</sup> In some instances, these hurdles are insurmountable and make it impossible for people to get the abortion care they need.<sup>19</sup>

These restrictions not only make abortion more difficult to access, but also stigmatize abortion and cause people seeking abortion care to feel judged or ashamed.<sup>20</sup> While most people feel relief after having an abortion, those who feel ashamed of their decision due to stigma are more likely to suffer long-term emotional distress.<sup>21</sup>

## Abortion Restrictions Most Harm Those Who Already Face Barriers to Care

Abortion restrictions disproportionately affect those who already face multiple and often intersecting barriers to accessing basic needs, including health care. Abortion restrictions fall most heavily on people with low incomes,<sup>22</sup> Black, Indigenous, and other people of color,<sup>23</sup> young people,<sup>24</sup> immigrants,<sup>25</sup> people with disabilities,<sup>26</sup> people who live in rural communities,<sup>27</sup> and LGBTQ people.<sup>28</sup> Women of color are disproportionately impacted by abortion restrictions due to economic barriers, geographic challenges, and racism that are a longstanding and unfortunate part of the U.S. health care system.<sup>29</sup> For example, Black women are more likely to live in Southern regions, where states are more hostile to abortion and the geography is more rural.<sup>30</sup> Efforts to control the bodily autonomy and futures of these communities is rooted in a long history in our nation,<sup>31</sup> and these attacks on abortion only continue this shameful legacy.

## The Women's Health Protection Act Would Systematically Address the Destructive Web of Abortion Restrictions

This scheme of abortion restrictions at the state level demands a federal response. The Women's Health Protection Act (WHPA) would provide an important mechanism for untangling the web of restrictions. WHPA creates a federal statutory right for health care providers to provide abortion care, and a corresponding right for patients to receive that care without medically unnecessary restrictions or limitations that treat abortion differently from other medical care. WHPA also sets out criteria that a court must consider when determining whether an additional restriction not otherwise listed violates the statutory right to abortion, including whether it would impede access to abortion services and whether it singles out abortion providers. Under WHPA, the Department of Justice or any individual—the provider or the patient—who is harmed by abortion restrictions may go to court to enforce their rights.

## The Women's Health Protection Act Would Restore a Strong Right to Abortion

Almost 50 years ago, when the Supreme Court recognized the constitutional right to abortion in *Roe v. Wade*, it established a strong standard for reviewing abortion

restrictions, striking down many efforts to restrict abortion.<sup>32</sup> But over time, as new justices joined the Court, it began to steadily weaken the constitutional standard, allowing lawmakers to pass many of the harmful restrictions that make abortion unaffordable and unavailable today.<sup>33</sup> Before the end of the summer, the Court will issue a decision in *Dobbs v. Jackson Women's Health Organization*, a case in which Mississippi banned abortion at 15 weeks of pregnancy, and has asked the Court to overturn *Roe v. Wade*.<sup>34</sup> Even if the Court upholds the right to abortion, it is likely to be a right in name only, given that the Court allowed Texas's 6-week abortion ban to remain in effect even though the law clearly defies decades of constitutional law.<sup>35</sup>

Given how much leeway the newly constituted Court appears to be willing to give to states that are intent on banning abortion, it is critical that new federal protections for abortion access are put into place. Congress must swiftly pass the Women's Health Protection Act to provide federal protections, restoring a meaningful legal right to abortion and people's ability to access the care they need.

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