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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. Even though the decision whether to have an abortion remains a constitutional right, for far too many in the United States, that right is not a reality.<sup>1</sup> Anti-abortion legislatures have passed barrier after barrier, including outright bans, taking away abortion access for millions across the country. In Texas, abortion is effectively banned; in 6 states, only one clinic remains; and 29 states are now considered hostile to abortion.<sup>2</sup> Abortion restrictions have the greatest impact on the most underrepresented and underserved communities.<sup>3</sup> 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 give health care providers and pregnant patients a federal right to strike at the devastating web of abortion 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 have passed nearly 90 restrictions and bans across 16 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, what is happening in Texas clearly demonstrates the immense harm and chaos that such bans are intended to wreak.<sup>6</sup>

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 are 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 average one-way distance for a Texas woman of reproductive age to reach the nearest clinic is 230 miles—that's roughly 3.5 hours each way.<sup>16</sup> While this is an extreme example, 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

Over 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. 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. This Term, the Court will review a patently unconstitutional Mississippi ban on abortion.<sup>32</sup> Given the newly constituted Court with a 6-3 majority of Justices who have signaled a willingness to allow abortion restrictions or even to overturn *Roe v. Wade* altogether, the constitutional right to abortion is in grave danger. 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.

<sup>1</sup> GUTTMACHER INSTITUTE, IMPACT OF TEXAS’ ABORTION BAN: A 14-FOLD INCREASE IN DRIVING DISTANCE TO GET AN ABORTION (Sept. 15, 2021), <https://www.guttmacher.org/article/2021/08/impact-texas-abortion-ban-14-fold-increase-driving-distance-get-abortion#> (providing that one in ten women cannot access abortion in the U.S. following enactment of Texas SBB).

<sup>2</sup> Alice F. Cartwright, et al., *Identifying National Availability of Abortion Care and Distance From Major US Cities: Systematic Online Search*, 20 J. MED. INTERNET RES. 1, 4–5 (2018), <https://asset.jmir.org/pub/assets/454a0c19b171b57f0af55cd4c22f1722.pdf>; GUTTMACHER INSTITUTE, STATE ABORTION POLICY LANDSCAPE: FROM HOSTILE TO SUPPORTIVE (August 29, 2019), <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>.

<sup>3</sup> Approximately 75% of abortions in 2014 were sought by patients with low-incomes and 65% were sought by Black and Latina individuals. Alina Salganicoff, et al., *The Hyde Amendment and Coverage for Abortion Services*, KAISER FAMILY FOUNDATION (Mar. 5, 2021), <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/>, (citing GUTTMACHER INSTITUTE, CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008 (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>).

<sup>4</sup> GUTTMACHER INSTITUTE, STATE POLICY TRENDS AT MIDYEAR 2021: ALREADY THE WORST LEGISLATIVE YEAR EVER FOR U.S. ABORTION RIGHTS (July 2021), <https://www.guttmacher.org/article/2021/07/state-policy-trends-midyear-2021-already-worst-legislative-year-ever-us-abortion>, (providing that “in total, state legislatures have enacted 1,320 restrictions in the 48 years since *Roe* was decided, including 573 restrictions enacted since 2011”).

<sup>5</sup> GUTTMACHER INSTITUTE, 2021 IS ON TRACK TO BECOME THE MOST DEVASTATING ANTIABORTION STATE LEGISLATIVE SESSION IN DECADES (April 30, 2021), <https://www.guttmacher.org/article/2021/04/2021-track-become-most-devastating-antiabortion-state-legislative-session-decades>, (finding that 83 abortion restrictions have been enacted across 16 states in 2021).

<sup>6</sup> See *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 776 (8th Cir. 2015) (granting permanent injunction of North Dakota HB 1456 ban on abortion at 6 weeks); *Preterm-Cleveland v. Yost*, 394 F. Supp. 3d 796, 804 (S.D. Ohio 2019) (declaring Ohio SB 23 unconstitutional and blocking enforcement of the 6-week ban); *SisterSong Women of Color Reprod. Just. Collective v. Bopp*, 472 F. Supp. 3d 1297, 1328 (N.D. Ga. 2020) (blocking Iowa 6-week abortion ban, HB 481); *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EOC83074, 2019 WL 312072, at \*5 (Iowa Dist. Jan. 22, 2019) (striking down 6-week abortion ban, Iowa Code § 146C.2).

<sup>7</sup> GUTTMACHER INSTITUTE, TARGETED REGULATION OF ABORTION PROVIDERS (TRAP) LAWS (Jan. 2020), <https://www.guttmacher.org/evidence-you-can-use/targeted-regulation-abortion-providers-trap-laws>.

<sup>8</sup> *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2132 (2020) (holding that the hospital admitting privileges requirement places a substantial obstacle on abortion access while offering no significant health-related benefits).

<sup>9</sup> GUTTMACHER INSTITUTE, THE U.S. ABORTION RATE CONTINUES TO DROP: ONCE AGAIN, STATE ABORTION RESTRICTIONS ARE NOT THE MAIN DRIVER (Sept. 18, 2019), <https://www.guttmacher.org/gpr/2019/09/us-abortion-rate-continues-drop-once-again-state-abortion-restrictions-are-not-main>.

<sup>10</sup> GUTTMACHER INSTITUTE, COUNSELING AND WAITING PERIODS FOR ABORTION (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion>.

<sup>11</sup> GUTTMACHER INSTITUTE, COUNSELING AND WAITING PERIODS FOR ABORTION (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion>.

<sup>12</sup> GUTTMACHER INSTITUTE, WAITING PERIODS FOR ABORTION (Jan. 2020) <https://www.guttmacher.org/evidence-you-can-use/waiting-periods-abortion>; GUTTMACHER INSTITUTE, REQUIREMENTS FOR ULTRASOUND (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/requirements-ultrasound>.

<sup>13</sup> Sarah C. M. Roberts, et al., *Do 72-Hour Waiting Periods and Two-Visit Requirements for Abortion Affect Women’s Certainty? A Prospective Cohort Study*, 27 WOMEN’S HEALTH ISSUES 400, 401 (2017); NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, THE SAFETY AND QUALITY OF ABORTION CARE IN THE UNITED STATES (2018), <https://doi.org/10.17226/24950>.

<sup>14</sup> ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH, THE TURNAWAY STUDY (2020), <https://www.ansirh.org/research/ongoing/turnaway-study>.

<sup>15</sup> Br. of Amici Curiae National Women’s Law Center and 47 Addition Organizations Committed to Equality and Economic Opportunity for Women in Supp. of Pet’rs at 14–15, *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), [https://nwlcl.org/wp-content/uploads/2016/01/RRH\\_Whole-Womens-Health-Amicus-Brief\\_1.4.16.pdf](https://nwlcl.org/wp-content/uploads/2016/01/RRH_Whole-Womens-Health-Amicus-Brief_1.4.16.pdf).

<sup>16</sup> GUTTMACHER INSTITUTE, IMPACT OF TEXAS’ ABORTION BAN: A 14-FOLD INCREASE IN DRIVING DISTANCE TO GET AN ABORTION (Sept. 2021), <https://www.guttmacher.org/article/2021/08/impact-texas-abortion-ban-14-fold-increase-driving-distance-get-abortion#>.

<sup>17</sup> Cartwright AF, et al., *Identifying National Availability of Abortion Care and Distance From Major US Cities: Systematic Online Search*, 20 J. MED INTERNET RES. 1, 2 (2018), <https://www.jmir.org/2018/5/e186/>.

<sup>18</sup> Lisa Fuentes, et al., *Distance Traveled to Obtain Clinical Abortion Care in the United States and Reasons for Clinic Choice*, 28 J. OF WOMEN’S HEALTH 1623, 1625 (2019), <https://www.liebertpub.com/doi/10.1089/jwh.2018.7496>.

<sup>19</sup> ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH, THE TURNAWAY STUDY (2020), <https://www.ansirh.org/research/ongoing/turnaway-study>.

<sup>20</sup> Br. for If/When/How: Lawyering for Reproductive Justice, et al. as Amici Curiae Supporting Pet’rs at 4–8, *June Medical Services L.L.C. v. Russo*, 140 S. Ct. 35, Nos. 18-1323, 18-1460 (2019), <https://www.ifwhenhow.org/resources/amicus-brief-june-v-gee/>, (discussing the negative impacts of abortion stigma on the lives of people seeking abortion).

<sup>21</sup> TEXAS POLICY EVALUATION PROJECT, IMPACT OF ABORTION RESTRICTIONS IN TEXAS (2013) [http://www.utexas.edu/cola/txpep\\_files/pdf/TxPEP-ResearchBrief-ImpactofAbortionRestrictions.pdf](http://www.utexas.edu/cola/txpep_files/pdf/TxPEP-ResearchBrief-ImpactofAbortionRestrictions.pdf), (finding one-third of patients reported that implementation of stigmatizing restrictions like ultrasounds and waiting periods had a negative effect on their emotional well-being); ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH, *Perceived abortion stigma and psychological well-being over five years after receiving or being denied an abortion*, THE TURNAWAY STUDY (Jan. 29, 2020), <https://www.ansirh.org/research/research/perceived-abortion-stigma-and-psychological-well-being-over-five-years-after>.

<sup>22</sup> Jill E. Adams and Jessica Arons, *A Travesty of Justice: Revisiting Harris v. Mcrae*, 21 WM. & MARY J. WOMEN & L. 5, 6 (2014), <https://scholarship.law.wm.edu/wmjowl/vol21/iss1/3/>, (describing the socio economic impact of abortion restrictions on people with low-incomes).

<sup>23</sup> Jamila Taylor, *Women of Color Will Lose the Most if Roe v. Wade Is Overturned*, CENTER FOR AMERICAN PROGRESS (Aug. 23, 2018), <https://www.americanprogress.org/issues/women/news/2018/08/23/455025/women-colorwill-lose-roe-v-wade-overturned/>; GUTTMACHER INSTITUTE, *The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion* (May 2021), <https://www.guttmacher.org/fact-sheet/hyde-amendment>.

<sup>24</sup> ACLU, LAWS RESTRICTING TEENAGERS’ ACCESS TO ABORTION (2020), <https://www.aclu.org/other/laws-restricting-teenagers-access-abortion>.

<sup>25</sup> Tina Vasquez, *Self-Induced Abortion’s Risks Could Leave Immigrant Women Choiceless*, REWIRE NEWS (Jan. 17, 2019), <https://rewirenews.com/article/2019/01/17/self-induced-abortion-risks-could-leave-immigrant-women-choiceless/>, (providing that “39 percent of undocumented Latinas reported that they were afraid of seeking health care out of fear of deportation. This percentage was higher in more rural areas”).

<sup>26</sup> CENTER FOR REPRO. RIGHTS, SHIFTING THE FRAME ON DISABILITY RIGHTS FOR THE U.S. REPRODUCTIVE RIGHTS MOVEMENT (March 2017), <https://www.reproductivejustice.org/sites/rrc.civicaactions.net/files/documents/Disability-Briefing-Paper-FINAL.pdf>, (highlighting that “20 percent of U.S. women or approximately 27 million women are living with a disability”).

<sup>27</sup> GUTTMACHER INSTITUTE, IMPROVING ACCESS TO ABORTION VIA TELEHEALTH (May 16, 2019), <https://www.guttmacher.org/gpr/2019/05/improving-access-abortion-telehealth>.

<sup>28</sup> GUTTMACHER INSTITUTE, NOT UP FOR DEBATE: LGBTQ PEOPLE NEED AND DESERVE TAILORED SEXUAL AND REPRODUCTIVE HEALTH CARE (Nov. 16, 2020), <https://www.guttmacher.org/article/2020/11/not-debate-lgbtq-people-need-and-deserve-tailored-sexual-and-reproductive-health>.

<sup>29</sup> NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, BAD MEDICINE: HOW POLITICAL AGENDA IS UNDERMINING ABORTION CARE AND ACCESS 15 (3rd ed. 2018), <https://www.nationalpartnership.org/our-work/resources/repro/bad-medicine-third-edition.pdf>.

<sup>30</sup> NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, BAD MEDICINE: HOW POLITICAL AGENDA IS UNDERMINING ABORTION CARE AND ACCESS 15 (3rd ed. 2018), <https://www.nationalpartnership.org/our-work/resources/repro/bad-medicine-third-edition.pdf>, (providing that a “majority of Black people in the United States live in the South, where many states, such as Louisiana and Mississippi, are hostile to abortion and have multiple types of abortion restrictions in place”).

<sup>31</sup> Brief of Amici Curiae Nat’l Women’s Law Ctr. et al. at 3-10, Dkt # 116-1, *Olkader v. Giles*, 7:20-cv-0024-WLS (M.D. Ga. Mar. 4, 2021).

<sup>32</sup> *Dobbs v. Jackson Women’s Health Org.*, 209 L. Ed. 2d 748 (May 17, 2021).