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

After the Supreme Court declared away the constitutional right to abortion in *Dobbs v. Jackson Women's Health Org.*¹ states have criminalized abortion, decimating access throughout the country. Abortion is either illegal or unavailable in a growing number of states across the country, and in other states, politicians continue to push medically unnecessary restrictions on abortion access.² These anti-abortion lawmakers are leaving millions of individuals without legal abortion care in their communities, jeopardizing their lives, health, wellbeing, and safety.³ Congress must take action to ensure abortion is available and accessible for everyone and that our care is not dependent on our zip code. The Women's Health Protection Act (WHPA) would help do that, by establishing a nationwide standard that protects abortion access from bans and restrictions.

Anti-abortion state legislators are criminalizing and targeting patients, providers, and supporters and creating difficult – in many cases, insurmountable – barriers to care.

The *Dobbs* decision was devastating and destabilizing, causing intersecting legal and public health crises by taking away a fundamental right and allowing states to make abortion care illegal. Within 100 days of the Supreme Court's ruling in *Dobbs*, 66 clinics across 15 states were forced to stop offering abortion care,⁴ leaving nearly one-third of the total U.S. population of women of reproductive age in states where abortion is either unavailable or severely restricted. In the year since *Dobbs*, there have been nearly constant new attacks on abortion in the states and nationwide, with the ensuing chaos confusing pregnant patients and creating massive disruptions in care.⁵ All told, without a federal constitutional right to abortion, heavily gerrymandered states will continue the assault on abortion care, creating a situation where large swaths of the country will experience severely restricted access to care for years to come.

When people are denied abortions, it jeopardizes their health, wellbeing, and economic stability.⁶ Abortion bans and restrictions force people to travel far distances, including across multiple states.⁷ Since *Dobbs*, travel times to an abortion clinic have more than tripled.⁸ For example, one study found that, for

individuals from Texas and Louisiana seeking an abortion, median travel times increased from roughly fifteen minutes to more than six hours after *Dobbs*, with an average increase of eight hours in Texas.⁹ As distances to an abortion facility increase, so do the burdens for accessing care. Longer travel times demand more time off work or school, mean more lost wages, and create higher transportation, lodging, and child care costs.¹⁰ Taken together, these barriers either force patients to pay dearly to receive abortion care, sometimes much later than they want, or force them to lose out on care entirely, carrying a pregnancy against their will. In just the first two months after the *Dobbs* decision, a study showed that there were 10,670 fewer people who had abortions as compared to pre-*Dobbs*.¹¹

Besides increased out-of-pocket costs and challenging logistics for accessing abortion care, the *Dobbs* decision has created significant legal uncertainty for patients, their loved ones, and providers. Providers, patients, and people who support them fear being criminalized, prosecuted, and targeted for their actions to seek or provide care, or to help someone else obtain an abortion. There are a range of devastating consequences: Hospitals have stopped their doctors from providing emergency care to pregnant people in life threatening moments.¹² A Texas man sued friends of his ex-wife who helped her get an abortion.¹³ The Alabama Attorney General's office suggested that women seeking abortion care can be prosecuted under existing criminal law, separate from their ban on abortion.¹⁴ Missouri legislators threatened to pass a law prohibiting travel across state lines for abortion care.¹⁵ A rural hospital in northern Idaho announced it will stop providing childbirth services because ob-gyns are fleeing the state over its abortion laws, fearing they will be criminalized for providing care.¹⁶

The current bans and restrictions build on a harmful web of existing state restrictions on abortion access.

Before the Supreme Court took away the constitutional right to abortion, state lawmakers had passed hundreds of laws to obstruct access to abortion care. Short of banning abortion, lawmakers passed laws meant to shut down clinics and target people seeking abortion care. These include:

- Restrictions imposed on abortion providers' practices with the goal of making it impossible for them to provide care.¹⁷ For example, states have required providers to secure privileges to admit a patient to a hospital even though it is not necessary for care

and when no local hospital would be willing to do so. Similarly, states have imposed requirements on clinic structures, like demanding clinics have water fountains, dictating certain hallway widths, and mandating specific sizes of procedure rooms. These restrictions did nothing to advance patient safety but were successful in forcing abortion clinics across the country to close.

- Restrictions targeting individuals seeking abortion care are developed with the goal of shaming and judging patients and blocking them from getting the care they need. For example, forced ultrasounds and mandatory counseling that requires providers to read from a medically inaccurate script are meant to mislead, confuse, and shame patients seeking care.¹⁸ Anti-abortion lawmakers employ these insidious tactics to make it harder for patients to access abortion.¹⁹

Before the Court overturned *Roe* and allowed states to ban abortion, these restrictions – when woven together – created logistical and financial barriers that made it harder, and often impossible, for patients to access abortion care.²⁰ Now, in states across the country where abortion is not banned, these restrictions are often still in effect and continue to impact care.

Abortion bans and restrictions most harm those who already face barriers to care.

Abortion bans and 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,²¹ Black, Indigenous, and other people of color,²² young people,²³ immigrants,²⁴ people with disabilities,²⁵ people who live in rural communities,²⁶ and LGBTQ people.²⁷ Women of color are disproportionately impacted by abortion restrictions due to economic barriers, geographic challenges, and longstanding forms of structural racism within the U.S. healthcare system.²⁸ For example, Black women are more likely to live in Southern regions, where states have banned abortion and the geography is more rural, with less access to providers.²⁹ Efforts to control the bodily autonomy and futures of these communities is rooted in a long history of systemic racism in our nation,³⁰ and these attacks on abortion only continue this shameful legacy.

The Women's Health Protection Act is one of the many tools needed to address the bans and restrictions.

WHPA would provide an important mechanism for undoing the abortion bans in effect across the country. WHPA would also untangle the web of restrictions put into place by state lawmakers over the past 50 years.

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 bans, restrictions, or limitations that treat abortion differently from other medical care. WHPA specifically names the range of restrictions and bans that are taking away people's access to care, and 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. The bill would also help protect the constitutionally protected right to travel and provide protections for those who assist patients in accessing abortion care. Under WHPA, the federal Department of Justice, a provider, or a patient who is harmed by abortion restrictions may go to court to enforce their rights.

WHPA is one step that Congress needs to take to defend abortion access in this critical moment. Congress must also prioritize other efforts to ensure abortion is available and affordable, such as measures that would: eliminate barriers to insurance coverage; expand and protect the health care workforce engaging in abortion care; create funds for abortion care and any related expenses including travel; and ensure that our democracy is working, including confirming judges that are committed to protecting people's rights and equality. Everyone, no matter their zip code or income, must be able to access abortion in their communities without barriers, stigma, discrimination, or shame, and with support and resources.

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- 3 *The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study*, ADVANCING NEW STANDARDS IN REPROD. HEALTH (April 16, 2020), https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.
- 4 Marielle Kirstein et al., *100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care*, GUTTMACHER INST. (Oct. 6, 2022), <https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care>.
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- 7 Society of Family Planning, *#WeCount Report 3* (2023) (providing that states bordering states with abortion bans have seen the largest increases in the total number of abortions provided by a clinician during the six-month period after the Dobbs decision, including Florida, Illinois, North Carolina, Colorado, and Michigan); https://www.societyfp.org/wp-content/uploads/2023/03/WeCountReport_April2023Release.pdf.
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- 9 Benjamin Radar et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, 328 JAMA 2041, 2044 (2022), <https://jamanetwork.com/journals/jama/article-abstract/2798215>.
- 10 Br. of Amici Curiae Nat'l Women's Law Cr. and 47 Additional Orgs. Committed to Equal. and Econ. 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://nwl.org/wp-content/uploads/2016/01/RRH-Whole-Womens-Health-Amicus-Brief-1.4.16.pdf>.
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