RESTORING OUR RIGHTS

The Women's Health Protection Act

CENTER FOR REPRODUCTIVE RIGHTS

About the Center for Reproductive Rights

For over two decades, the lawyers at the Center for Reproductive Rights (the Center) have been the driving force in many of the most significant legal victories ensuring access to reproductive health care across the globe. The Center's game changing litigation and advocacy work, combined with its unparalleled expertise in the use of constitutional, international, and comparative human rights law, have transformed how reproductive rights are understood by courts, governments, and human rights bodies. It has played a key role in securing legal victories in the United States, Latin America, Sub-Saharan Africa, Asia, and Eastern Europe on issues including access to life-saving obstetrics care, contraception, safe abortion services, and comprehensive sexuality information, as well as the prevention of forced sterilization and child marriage. The Center has brought groundbreaking cases before national courts, U.N. Committees, and regional human rights bodies, and it has built the legal capacity of women's rights advocates in over 60 countries. Headquartered in New York City, the Center has offices in Washington D.C., Bogotá, Nairobi, Kathmandu, and Geneva.

In the United States, the Center has won numerous victories in federal and state courts, including the Supreme Court's decision in June 2016 in *Whole Woman's Health v. Hellerstedt*. In that decision, the Court held that Texas had violated the constitutional rights of women by enacting unnecessary health regulations that served no medical purpose, yet shut down clinics and made abortion services harder to obtain for many Texas women. Prior to bringing *Whole Woman's Health* to the Supreme Court, the Center worked with champions in Congress to introduce the Women's Health Protection Act, a federal bill that invalidates medically unnecessary restrictions on abortion care, and helped launch Act for Women, a national campaign to support the bill. However, with more anti-choice officials coming into power in all levels of government, from the White House to state houses, there are more battles around the corner.

Going into its 25th year, the Center for Reproductive Rights is more committed than ever to continuing the critical work of defending reproductive rights and advancing access to health care for all women and girls in the United States and across the globe.

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For more information about the Act for Women campaign, visit actforwomen.org

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EXECUTIVE SUMMARY

Abortion rights have been under attack for years, with states passing laws that shut down clinics, impose medically unnecessary regulations, and shame women for their decisions. The impact of abortion restrictions have very real social and economic consequences for people's lives. The Women's Health Protection Act is a federal legislative response designed to fight back. It is a crucial step toward protecting access to safe, legal, essential reproductive health care and the constitutional rights of every woman in the U.S.—no matter where she lives.

The Women's Health Protection Act ensures the accessibility of abortion services by invalidating laws that single out abortion providers with medically unnecessary requirements and restrictions, do not promote women's health or safety, and limit access to abortion services. If enacted, the bill would simplify litigation to block these kinds of measures, improving abortion access across the country.

The impact of abortion restrictions falls especially hard on those with the least economic means. Even though people across a wide range of demographics have abortions, abortion patients are disproportionately poor and low income. Medically unnecessary regulations on abortion, including unconstitutional bans on abortion, create complicated logistical and financial barriers and burden those who seek care. These barriers can include the need for extra time away from work, additional childcare, transportation, and lodging; limited clinic options and overcrowding; time pressures of state-mandated two-trip waiting periods and gestational limits; and rising costs associated with each of those obstacles.[1] [2] Research has found that those denied an abortion had greater odds of ending up in poverty two years later compared to those who received abortion care.[3] **All too often, abortion regulations deny the dignity of decision making by placing personal, private matters in the hands of politicians who presume to know better.** Across the United States, women who have made the decision to end a pregnancy face a catch-22: while medically unnecessary requirements, clinic shutdown laws, insurance coverage restrictions, and abortion bans make it nearly impossible in some places to get safe, legal abortion care early in a pregnancy, they also make it illegal to get it later.

Starting with the landmark case of *Roe v. Wade*[4] - and then most recently in *Whole Woman's Health v. Hellerstedt*[5] - the Supreme Court has repeatedly reaffirmed the constitutional right to abortion. *Whole Woman's Health*, decided in June 2016, made it especially clear that the undue burden standard is a robust check on legislatures. After examining whether the abortion restrictions at issue in the case have benefits that outweigh the burdens they impose, the Court determined they did not and struck down two deceptive clinic shutdown laws in Texas calling them unconstitutional. The Women's Health Protection Act would provide an additional legal tool to challenge such onerous abortion restrictions. **By directing courts to consider the totality of the circumstances that a restriction would limit women's access**

to abortion, the federal bill is consistent with and would build upon the Supreme Court's decision in *Whole Woman's Health*.

The Women's Health Protection Act enjoys broad-based support from the public and lawmakers committed to ensuring reproductive rights. **A 2017 survey of 1,877 adults in the U.S. found that six in ten (61%) of those surveyed would support a federal law that ensures women have access to abortion care where they live.** And, whether it's sponsoring legislation, holding town hall meetings, or demonstrating how women's health issues connect with other key issues, 81% of respondents would like Congress to be more vocal about women's health issues. To further harness that support, raise awareness of the bill, and urge federal lawmakers to advance the legislation, the Act for Women campaign launched in the fall of 2015. **This campaign unites nearly 100 local, state, and national groups committed to reproductive health, rights and justice and to advancing the Women's Health Protection Act.** Act for Women is a critical effort to ensure elected officials are doing their part to protect women's constitutional rights from a range of laws aimed at blocking access to safe and legal abortion services and shaming individuals for their health care decisions.

The promise of our Constitution is one of equal rights and protections for all. But politicians are trying to sneak around the Constitution and decades of precedent, breaking that promise for millions of women. Despite the current political climate, the courts have consistently reaffirmed the constitutional right to abortion but a constitutional right is nothing if one doesn't have access to it. **We must act to ensure that our rights are never determined by a person's zip code and work together quickly to make the passage of the Women's Health Protection Act a reality.**

INTRODUCTION

In June of 2013, the nation watched as Texas Senator Wendy Davis made history. Standing for eleven hours straight, not allowed to eat, drink, sit, lean against a desk, or even go to the restroom, then-Sen. Davis' historic filibuster succeeded in blocking anti-abortion legislation that would have a devastating and far-reaching impact on Texas women's access to abortion care. By requiring abortion providers to obtain admitting privileges at local hospitals and abortion clinics to become ambulatory surgical centers, basically mini-hospitals, among several other medically unnecessary provisions, the legislation (then Senate Bill 5, now House Bill 2) threatened to close many of the existing clinics in Texas. And it did. Despite then-Sen. Davis' heroic efforts, and the support of hundreds of activists who flocked to the state capitol to rally on her behalf, the law was pushed through in a special session called by then-Gov. Rick Perry (R-TX), who signed the bill into law on July 8, 2013. As anticipated, the new law forced more than half of the forty plus clinics operating in Texas to eventually shut down.

Clinic closures across the state led to huge barriers in abortion care, including overcrowding in remaining facilities, longer wait times, farther distances to travel, and increased financial burdens — all resulting in limited access and less personalized care for women. In Texas, the number of facilities providing abortion fell from forty-one in 2012 to just seventeen by June 2016. Before any of the provisions of House Bill 2 went into effect in the state, about 10,000 women of reproductive age lived more than 200 miles from a facility that provided abortion; by November 2013, after the law went into effect, that number skyrocketed to 290,000 women.[6] Even after the U.S. Supreme Court declared admitting privileges and ambulatory surgical center requirements as unconstitutional in *Whole Woman's Health v. Hellerstedt* in June 2016, much of the damage was already done, and it will take years to re-open clinics and bring access back to the level it was before the law passed.[7]

Unfortunately, what happened in Texas is not unique. Safe and legal abortion is under near constant attack from state and federal lawmakers who introduce, and all-too-often pass, hundreds of restrictions every year, creating a country where some have access to their constitutional right to abortion and others do not simply by virtue of their zip code. In fact, states have quietly passed more than 300 abortion restrictions into law since 2010.[8] These restrictions and regulations have nothing to do with improving the quality of care women receive. Instead, they are specifically designed to shut down clinics, limit or ban access to care outright, or shame women for decisions they are entitled to make. These restrictions also have a disproportionate impact on women with the least economic means, a cruel reality that should not be overlooked.

This growing health care crisis demands action from our elected officials. After years of relentless assaults on women's health, safety, and constitutional rights, it's far time we had a federal law that puts our health and rights first. The Women's Health Protection Act[9] would

prohibit states from imposing restrictions on abortion that are not applied to other similar medical procedures, interfere with patients' personal decision-making, and block access to safe, legal abortion care. If passed, the Women's Health Protection Act would ensure and protect access to safe and legal abortion, regardless of where a woman lives, and maintain the protection for abortion first recognized in *Roe v. Wade* and reaffirmed later in *Whole Woman's Health v. Hellerstedt*.

This report will present an explanation of the legal necessity for the Women's Health Protection Act, offer evidence of the harms caused by abortion restrictions through stories of women impacted by them, and showcase the widespread support that exists for the law's passage. This federal bill, first introduced in 2013 and then reintroduced in each Congress since, is a crucial step toward protecting access to safe, legal, essential reproductive health care and the constitutional right of every woman in the United States to abortion care — regardless of where she lives. It **is a necessary and long-awaited response to the reproductive health and rights crisis we now face. With 61% of people supporting a federal response to this crisis, now more than ever,** elected officials, advocates, activists, and others across this country who care about preserving our constitutional rights must contest the threat of severely diminished access to abortion care, and fight for bills like the Women's Health Protection Act.

"The Women's Health Protection Act would safeguard against the unrelenting wave of restrictions on safe, legal abortion that continue to sweep the country. A woman's ability to get high-quality, constitutionally protected health care should never depend on her zip code or the ever-changing political winds."

Nancy Northup, president and CEO of the Center for Reproductive Rights

This report features the stories of those impacted by the harms of abortion restrictions. The stories shared reflect the real experiences and obstacles women face when attempting to access abortion care. Many were featured in amicus briefs submitted to the Supreme Court in support of the plaintiff in *Whole Woman's Health v. Hellerstedt*. In addition to the burdens state restrictions place on women, those who share their story publicly are often subject to harassment and shame. The stories shared throughout this report respect the privacy of each storyteller and how they choose to share their identity and experience; none of the photos depict the actual women themselves.

STATE ATTACKS ON ABORTION: A PATCHWORK OF ACCESS

Endless attacks on reproductive care at the state and federal level have resulted in a patchwork of access to abortion care across the United States. This landscape exists despite the Supreme Court's repeated affirmation that a woman should not be deprived of her right to control her reproductive life, shape her destiny, and make the most intimate and personal decision about whether or not to carry a pregnancy to term.

In recent years, state legislatures have been more active than ever in passing sham laws and burdensome requirements that interfere with medical practice and the safe provision of abortion care. In 2016 alone, eighteen states enacted fifty new abortion restrictions, bringing the total number of new abortion restrictions enacted since 2010 to a staggering 338.[10] The Guttmacher Institute, a leading research and policy organization committed to advancing sexual and reproductive health and rights around the world, also noted that, in 2016, 57% of American women of reproductive age lived in a state considered either "hostile or extremely hostile" to abortion rights, based on how many restrictions the state had on abortion access.[11] They found that nearly all the states in the South and most of those in the Midwest are "extremely hostile" to abortion rights.[12]

The ability to access abortion should not be unduly burdened by law. Private, personal decisions should be made based on one's values, unique circumstances, and the advice of trusted medical professionals — not the agenda of politicians who presume to know better. Unconstitutional and medically unnecessary restrictions on abortion have divided women into those who can and those who cannot exercise their constitutional rights. We cannot allow politicians to make an end-run around the Constitution in complete disregard for a woman's ability to make her own personal health care decisions.

"Ana," a 21-year-old Latina, tried to obtain an abortion in Austin where she lives (August 2015). She was informed she would have to wait 25 days for an appointment at one clinic and 26 days at a second, pushing her into her second trimester and drastically increasing the cost of the procedure. Seeing little possibility of being able to afford a second-trimester abortion, Ana's only option was to travel to McAllen, [Texas] where she was able to get an earlier appointment… Ana expressed relief and gratitude that she was able to get care in McAllen. Reflecting on her experience, she said, **"WHAT IF SOMEONE ELSE NEEDS THE CARE, AND THIS PLACE IS NOT HERE?"** … Ana left Austin at 12:30 a.m. on Thursday night, after her restaurant shift ended, and drove 312 miles overnight. Ana had to return for her next shift, and had no choice but to get a surgical abortion. Her work shifts did not allow her to stay in McAllen long enough to return for the state-mandated medication administration and required follow-up.

Anonymous Texas Woman, National Latina Institute for Reproductive Health Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*[13]

Texas abortion restrictions unlawful under the Women's Health Protection Act[14]

- Ban on abortion after 20 weeks of pregnancy
- Requirement that clinics to become ambulatory surgical facilities
- Requirement that abortion providers have admitting privileges at a local hospital
- Requirement that only licensed physicians can administer medication abortion
- Restrictions on how providers can prescribe medication abortion
- Ban on the use of telemedicine to provide medication abortion
- Ban on abortion after viability without exceptions for the woman's life or health
- Requiring an ultrasound
- Requiring two trips to clinic – once for the ultrasound and one for the abortion

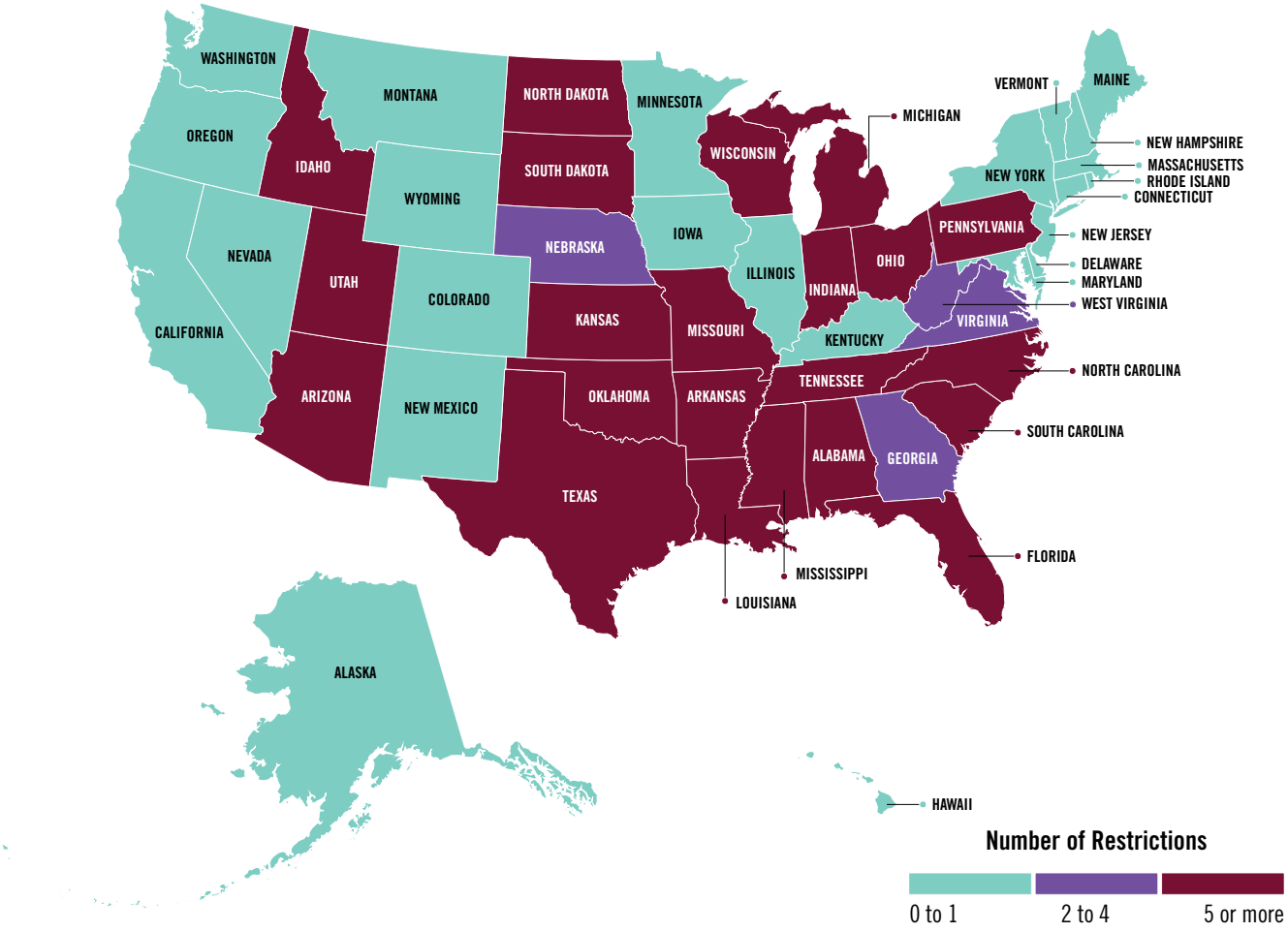
I had been admitted into the hospital for an unrelated condition .... They didn't give me my birth control due to their beliefs on such things, so I missed a pill and became pregnant. The OBGYN I was seeing at the time noticed my blood pressure rising (a sign that the pregnancy was endangered), but they declined to do an abortion, and handed me a paper [listing] clinics inside and outside of West Virginia that did the procedure. I was told by my insurance [that] they didn't cover such things and ended up having to put the procedure on my credit card and the travel to get back to Maryland, where [I wouldn't be required] to go to a crisis pregnancy center for biased counseling and wait the waiting time period in West Virginia. My husband and I traveled to Hagerstown, Maryland. ... **I GOT THE ABORTION AND FELT A GREAT SENSE OF RELIEF AFTERWARD.** My regular OBGYN treated me oddly after the procedure, so I ended up having to find a new OBGYN and go back to Hagerstown to make sure everything was fine... So all in all: two trips from West Virginia to Maryland, about 1,000 dollars with car costs and such, a new OBGYN, and a great sense of relief. But it shouldn't be that way.

Rachel Barnes, Advocates for Youth Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*[15]

West Virginia abortion restrictions unlawful under the Women's Health Protection Act[16]

- Requirement that if an ultrasound is performed prior to an abortion, the provider must offer the woman the opportunity to see the image, whether or not the provider believes it is appropriate
- Ban on abortion after 20 weeks of pregnancy
- Pre-viability ban on a safe and common method to end a pregnancy in the second trimester

Abortion restrictions that would violate the Women's Health Protection Act



This map highlights existing state laws and regulations as of January 1, 2017 that the Women's Health Protection Act would invalidate. This is not intended as a comprehensive guide to abortion restrictions. Some of these laws have been enjoined. For further information please see the Act for Women State Fact Sheets under Tools and Resources at actforwomen.org

Being BOLD to Guarantee Abortion Coverage[17]

When working to ensure abortion access in the United States, advocates and lawmakers must address all the challenges women face in accessing care, including financial obstacles. The passage of the Hyde Amendment in 1976 established discriminatory restrictions on public insurance coverage of abortion, severely limiting abortion access for low-income women and those who receive their health coverage or care through the federal government. While the Women's Health Protection Act would ensure that abortion services are protected, the Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act is a federal bill that would help make abortion care more affordable. The EACH Woman Act would eliminate federal coverage restrictions for abortion care, such as the Hyde Amendment's ban on abortion coverage for Medicaid and Medicare enrollees, a restriction that often makes it impossible for low-income women to pay for the procedure. This bill would also protect private insurance providers from political interference in their decision to cover abortion. It prohibits restrictions on insurance coverage for abortion that do not belong in public policy. If enacted, together the Women's Health Protection Act and EACH Woman Act would have the power to remove significant barriers to safe, high-quality abortion services, empowering more women to take control of their reproductive lives.


Can't just be
THEORETICALLY LEGAL
MUST BE LITERALLY ACCESSIBLE

A PROACTIVE RESPONSE: THE WOMEN'S HEALTH PROTECTION ACT

The Women's Health Protection Act is a federal legislative response to the onslaught of abortion restrictions passed in recent years. The legislation ensures the accessibility of abortion services by invalidating laws that (1) single out abortion providers with medically unnecessary requirements and restrictions, (2) do not promote women's health or safety, and (3) limit access to abortion services. These kinds of laws run the gamut, from sham clinic shutdown laws that impose bogus regulations that grossly exceed what is necessary to ensure high standards of patient safety and quality care to obstructive anti-abortion policies that shame women for decisions they are well within their rights to make to unconstitutional bans on abortion before viability. If enacted, the bill would simplify litigation to block these kinds of measures across the country, improving abortion access for women no matter where they live.

The Women's Health Protection Act would prohibit states from imposing the following types of restrictions:

- *Requiring unnecessary tests and procedures:* These mandates force women to undergo medically unnecessary treatments, like getting an ultrasound, that only serve to increase costs and delays while undermining a patient's relationship with her doctor. These coercive laws frequently go against the judgment and expertise of health care professionals.
- *Requiring that the same clinician who performs the abortion also perform all services related to the abortion:* Requiring the same physician to provide all services, including for example delivering state-mandated information and performing an ultrasound, fails to recognize that much of the care a patient receives can be done by other highly qualified medical professionals in a clinic. These types of requirements are not current medical practice in the provision of abortion services or in medicine generally.
- *Limiting clinicians' ability to prescribe or dispense drugs based on current evidence based regimens:* Restrictions on medication abortion that take aim at how providers can prescribe it are designed to cut off access to this popular method of abortion care. These limitations flout scientific evidence, sound medical judgment, and advances in medicine. They restrict women's access to a viable alternative to surgical abortion that has been widely recognized as safe and effective by medical experts and organizations

worldwide, including the American Congress of Obstetricians and Gynecologists and the World Health Organization.[18]

- *Limiting the use of medication abortion via telemedicine:* Providing medical abortion via telemedicine is effective, safe, and leads to high rates of patient satisfaction for those who choose this method.[19] Laws that outlaw the use of telemedicine *only* when it applies to abortion virtually eliminate this option for women in rural and underserved areas, which is particularly egregious considering that in 2014 some 90% of U.S. counties had no clinics that provided abortion care, and 39% of women aged fifteen to forty-four lived in those counties.[20]

- *TRAP (Targeted Regulation of Abortion Providers) Laws:* These restrictions impose onerous requirements on facilities and providers, while doing nothing to improve health outcomes for patients, and make it difficult for health care providers to keep their doors open. These mandates include forcing abortion clinics to transform themselves into ambulatory surgical facilities, basically mini-hospitals, a medically unnecessary, cost prohibitive requirement, or requiring providers to obtain admitting privileges at local hospitals, which are business arrangements with hospitals that have nothing to do with a doctor's qualifications or patient safety.

- *Requiring women to make one or more medically unnecessary visits to a facility:* Forcing a woman who has already made the decision to terminate a pregnancy to nonetheless get state-mandated counseling *in person* and then wait a specific period of time before being permitted to obtain an abortion, delays care and creates tremendous burdens for the patient. It is particularly insulting when patients are required to visit so-called crisis pregnancy centers, which provide misleading information about abortion in an attempt to dissuade women from going through with a termination.

- *Prohibiting or restricting medical training for abortion procedures:* A steady decline in the number of abortion providers over the last thirty years[21] has coincided with a decline in routine abortion training in residency programs. This decline has been exacerbated by politically motivated legislative efforts designed to further restrict access to training, leaving a profound impact on medical residents interested in getting trained in abortion care. Credible academic bodies, not politicians with their own ideological agendas, should be responsible for determining medical residency curricula.

- *Pre-viability bans:* Laws that prohibit abortion before viability, including twenty-week bans, six-week "heartbeat" bans, and bans on the most common abortion procedures, are patently unconstitutional. These kinds of laws seek to deny women the dignity of making their own decisions by placing the personal, private matter of deciding whether to continue or end a pregnancy in the hands of politicians who presume to know better and, in many cases, pose a very real threat to a woman's well-being, health, and even life.

- *Post-viability bans that do not make exceptions for a woman's health or life:* Serious complications can arise at any point in a pregnancy. The U.S. Supreme Court has held that even a ban on abortion after viability must include exceptions for situations in which an abortion is necessary to preserve the life or health of a woman.[22]

- *Delaying a woman's ability to receive abortion care when that delay would cause a health risk:* It is imperative that health care providers are able to treat any patient facing imminent danger. The same holds true for pregnant patients who should not have to risk grave health consequences because state laws restrict how and when they can receive care that may put the pregnancy at risk.

- *Reason-based bans:* Bans on abortion based solely on a woman's reason for seeking to end her pregnancy, such as sex or race selection, are blatantly unconstitutional. While doing nothing to combat the root causes of gender or racial discrimination, they instead target women of color, perpetuate stereotypes, and are in fact attempts to cut off access to abortion.

The Women's Health Protection Act strikes an important balance, preserving the strong system of regulations in place that truly ensure women's safety in medical settings (as with all medical care) while prohibiting disingenuous and dangerous laws that shut down clinics and do nothing to advance women's health.

In addition, the Women's Health Protection Act prohibits laws similar to those listed above but not specifically enumerated, and directs courts to examine various factors in evaluating such restrictions. These factors include whether the measure or action:

- Interferes with an abortion provider's ability to provide care and render services in accordance with her or his good faith medical judgment
- Is reasonably likely to delay some women in accessing abortion services
- Is reasonably likely to increase the costs of providing or obtaining abortion services
- Is reasonably likely to result in a decrease in the availability of abortion services in the state
- Is effectively going to necessitate extra, unnecessary trips to the abortion provider
- Imposes criminal or civil penalties that are harsher or not imposed at all on other health care professionals for comparable conduct or failure to act, or
- Has a cumulative impact when combined with other new or existing restrictions.

Finally, the Women's Health Protection Act would newly empower the Department of Justice to block unlawful measures that restrict access to abortion. Given the continued assault on abortion by state legislatures, and the Department of Justice's mission "to ensure fair and impartial administration of justice,"[23] it could be a powerful and key partner in safeguarding a woman's right to abortion when under the leadership of an administration committed to protecting reproductive rights.

When I discovered I was pregnant, the first person I called was my sister, a nurse midwife who lives and practices in California. She helped me navigate my options… At the time, I was 25 years old and my health insurance coverage was still obtained through my father's employer until I turned 26. However, the insurance plan's coverage was very limited in Louisiana and Texas. Therefore, I might risk my insurance being denied, or having huge costs associated, at one of three places: the ultrasound I would obtain in Louisiana or Texas, the possible medical abortion (pills taken rather than surgical procedure) if I was under 7 weeks pregnant, or the [surgical procedure] I would need if I was over 7 weeks pregnant. Then, I factored in travel costs. If I travelled to Shreveport, Louisiana, or Houston, Texas, **THE COST OF MY GAS AND/OR PLANE TICKET, PLUS THE LODGING I WOULD NEED DURING MY ABORTION AND RECOVERY, WOULD HAVE [BEEN] HUNDREDS OF DOLLARS.**

All these factors led to me making the decision to buy a plane ticket to California, which was pretty much the same cost as a ticket to Houston. I knew my sister could arrange an ultrasound through her practice … My insurance at the time would cover the cost in full through that practice and hospital — a bill that would have been over two thousand dollars if I was not covered. Plus, I could stay with my sister while I recovered. The decision was relatively easy for me to make based on all these things, but I was lucky to have these options available to me.

Saiya Miller, Advocates for Youth Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*[24]

Louisiana abortion restrictions unlawful under the Women's Health Protection Act[25]

- Requirement that abortion providers have admitting privileges at a local hospital
- Requirement that clinics meet structural and other regulatory standards
- Ban on the use of telemedicine to provide medication abortion
- Requirement that only licensed physicians can administer medication abortion
- Ban on abortion after 20 weeks of pregnancy
- Requiring an ultrasound
- Requirement that if an ultrasound is performed prior to an abortion, the provider must offer the opportunity to see the image, whether or not the provider believes it is appropriate
- Requirement of two separate trips to a provider
- Pre-viability ban on a safe and common method to end a pregnancy in the second trimester
- Requirement that embryonic and fetal tissue from abortions be buried or cremated
- Ban on abortions based on genetic anomaly after 20 weeks

PROTECTING OUR CONSTITUTIONAL RIGHTS: BUILDING UPON *WHOLE WOMAN'S HEALTH V. HELLERSTEDT*

In the landmark case of *Roe v. Wade*,[26] the U.S. Supreme Court recognized the right to abortion as a fundamental liberty protected by the 14th Amendment of the Constitution. Since this decision, the Court has repeatedly reaffirmed the Constitution's protection of this essential liberty, which guarantees each individual the right to make personal family and childbearing decisions. Most recently, in June 2016, the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt*[27] reaffirmed the constitutional right to abortion and provided clarity regarding the standard under which courts evaluate the constitutionality of abortion restrictions — the undue burden standard. *Whole Woman's Health* made it clear that the undue burden standard is a robust check on legislatures that requires courts to examine whether abortion restrictions have benefits that outweigh the burdens they impose and strike them down if they fall short. In this lawsuit, one of the most important abortion cases in nearly twenty-five years, the Court struck down two deceptive Texas clinic shutdown laws being challenged: one that required an abortion provider to have admitting privileges at a local hospital and another that required clinics providing abortions to convert themselves into mini-hospitals. This critical decision ensures that existing clinics in Texas can remain open, or those previously forced to close can now re-open, and will enable more clinics to open their doors in the state.

Whole Woman's Health was a resounding victory for abortion rights, casting doubt on the constitutionality of similar laws on the books in states across the country. And while it is essential that the Supreme Court continues to uphold our constitutional rights, it is also the responsibility of lawmakers at all levels to take their own steps to protect the right to access safe and legal abortion care.

Enacting the Women's Health Protection Act would build upon the Supreme Court's decision in *Whole Woman's Health* and provide an additional legal tool to challenge onerous abortion restrictions.

The Women's Health Protection Act directs courts to consider the totality of the circumstances that a restriction would limit women's access to abortion. This approach is consistent with and further builds upon the undue burden standard clarified in *Whole Woman's Health*. This analysis requires courts to consider burdens such as lengthy driving distances, costly fees, and unnecessary delays as well as a woman's experience with the medical care she receives, and how these burdens compound one another. The bill identifies specific factors to consider when reviewing the burdens a law may have on abortion access. It makes clear that burdens including delays, increased costs, and additional trips to the clinic or another facility are relevant when evaluating a restriction's impact on women's lives. These factors capture many of the restrictions currently posed in anti-abortion legislative efforts, providing an important tool to challenge them in court.

"We conclude that neither of these provisions offers medical benefits sufficient to justify the burdens upon access that each imposes. Each places a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access, and each violates the Federal Constitution."

Justice Stephen Breyer, Whole Woman's Health v. Hellerstedt *Decision*[28]

"Jane" is Hispanic and was 22 years old. She did not have any children and lived with her family in San Antonio, Texas. She was in school and worked part-time at Valero to pay for her classes when she became pregnant. She made an appointment at the Planned Parenthood in San Antonio and was seen two days later for her first visit. However, since Jane was not able to take a full shift off from work, she had to complete the state-mandated visit in two separate appointments. She then had to wait four days before her procedure could be completed. As Jane was 13 weeks pregnant, she was told by Planned Parenthood staff that she would have to be seen in the next week since at that particular health center, procedures past 14 weeks are not permitted. Jane told her employer that she had a doctor's appointment and could secure the time off. However, Jane 's supervisor made it clear that she would be required to make up all of the hours that she would miss immediately. Jane worked the late shift (until 1 a.m.) for two weeks straight to meet her hour requirements. She explained that since there were no buses running when she left work at 1 a.m., she had to walk 20 minutes home. When asked if this walk was safe, she replied "most of the time." Jane arrived home at 1:30 a.m. and then woke up at 6 a.m. for her classes. The only time she studied and prepared for class was on the bus to the campus and on the breaks, in between her classes. Jane explained that for her, she knew that an abortion was the right choice for her at this point in her life. "I was walking everywhere, had no car and any money that I made went to school or to our house. It was stressful getting around — how would I raise a kid doing all this at once?" Further, she said, **"EVEN THOUGH PEOPLE SEE IT AS A BAD THING, THEY NEED TO LOOK AT IT FROM THE POINT OF VIEW FROM THOSE WHO ARE STRUGGLING.**

I want kids but right now it's a big struggle…we used protection but it didn't work…people against it have to see the other side, whether it be on accident or unexpected or if someone was raped. They have to see the perspective of the other person."

Interview of Anonymous Texas Woman, conducted by National Latina Institute for Reproductive Health Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*

Texas abortion restrictions unlawful under the Women's Health Protection Act can be found on page 7[29]

CUTTING OFF ABORTION ACCESS: ECONOMIC AND SOCIAL CONSEQUENCES

Tiffany is a 30 year old woman from Texas who had an abortion in mid-October 2015. After Tiffany became aware of her pregnancy at 11 weeks gestation, she obtained an estimate of the cost of an abortion and learned that she would need time to save money to afford the procedure because she was uninsured. After she saved $300, she sought to schedule an appointment in Dallas, encountering another delay in obtaining an appointment due to congestion at the clinic. By the time Tiffany had raised $300 and obtained an appointment in Dallas, she had reached 18 weeks gestation and the cost of the abortion had risen to $1,700, well beyond the sum she could afford or raise. In addition to the cost of the procedure, Tiffany also struggled to afford the cost of transportation to Dallas, three hours round trip, plus an overnight hotel stay. **TO SAVE MONEY FOR THE PROCEDURE AND LOGISTICAL COSTS, TIFFANY CUT EXPENSES WHEREVER POSSIBLE. SHE LIMITED HER OWN**

MEALS, OFTEN ONLY TO SOUP. Tiffany left her young daughter in the care of her mother so that her mother would pay for her daughter's meals allowing Tiffany to save additional funds for her abortion. When she left for Dallas for two days to have the abortion, she left her daughter with her mother, but could not tell her mother where she was going. With all the obstacles that Tiffany faced, up until the moment she was on the road, she was justifiably afraid that something would happen to stop her from obtaining an abortion. Had Tiffany not been able to obtain funding from the Texas Equal Access Fund for the abortion and hotel, and costs of travel to and from the clinic, she would not have been able to obtain an abortion. She reports that since she works paycheck to paycheck without insurance, paying for the procedure was hard, but it would have been harder not to have the abortion. She believes that having the baby would have left her worse off, possibly forcing her onto public assistance.

Said Tiffany, "I just feel like what's the point of having to have a child that's gonna [sic] be always in the system of always having food stamps, Medicaid, all this government help…It's not easy to just have a kid and not have the money to support them. I think that if I would have went [sic] through with it, I think that I wouldn't have been good off [sic]. I would have been asking for a lot of help."

National Network of Abortion Funds and 41 Member Abortion Funds Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*[30]

Texas abortion restrictions unlawful under the Women's Health Protection Act can be found on page 7[31]

Abortion is a common procedure and critical component of reproductive health care. Nearly half of all pregnancies in the United States are unintended, and four in ten unintended pregnancies end in abortion.[32] Disparities in abortion rates are related to disparities in unintended pregnancy and lack of access to health care, including contraception, as well as a variety of structural factors.[33] According to a national survey of abortion patients by the Guttmacher Institute, those seeking abortion are a diverse group. The majority of abortion patients are in their twenties and thirties (85%), nearly three in five (59%) already have one or more children, and two-thirds (66%) have some college or a college degree.[34] Overall, abortion patients identify with a variety of religious affiliations and come from all racial and ethnic groups. Despite the fact that people across a wide range of demographics have abortions, abortion patients are disproportionately poor and low-income. Three-fourths (75%) of abortion patients in 2014 were poor or low-income; of those patients, 26% had incomes between 100-199% of the federal poverty level and 49% had incomes of less than 100% of the federal poverty level ($15,730 for a family of two).[35]

The reasons for ending a pregnancy indicate a clear understanding of the responsibilities of parenthood and family life. In a longitudinal study of women seeking abortion in twenty-one states, researchers examined their reasons for seeking abortion care and found that 40% of women cited financial reasons, 36% said the pregnancy happened at the wrong time, 31% were concerned about their partner, and 29% reported the need to focus on their other children, with many of the participants mentioning more than one reason.[36] While access to abortion care allows women to make the best decisions for themselves and their families, policies and other barriers that deny women access to care, or make it more expensive for them, can have a detrimental impact on their economic well-being. Preliminary analysis of the same longitudinal study found that those denied an abortion had greater odds of ending up in poverty two years later compared to those who received abortion care.[37] When a woman is living paycheck to paycheck, an unintended pregnancy can upend her and her family's financial security, highlighting the importance of reproductive health care for a woman's economic security and equal participation in social and economic life. In other words, "the woman struggling to pay for contraception or abortion services is also the woman trying to find a job, pay her bills, and feed her children."[38]

These economic realities hit home when clinics are forced to close because of medically unnecessary regulations, forcing patients to travel farther distances for care. Laws that require multiple visits or additional procedures can also add to the financial obstacles patients must overcome to get care. These circumstances create complicated logistical and financial barriers to accessing abortion and burden those who seek care, with the hardest impact falling on low-income and poor people. These barriers can include the need for extra time away from work, arranging childcare, and finding transportation and lodging accommodations; limited clinic options and overcrowding; time pressures associated with state-mandated waiting periods and gestational limits; and rising costs associated with each of these obstacles.[39] [40] In the current landscape, not only are there often multiple restrictions in place at once, creating an overwhelming challenge for many women accessing care, but their experiences can be further complicated by their immigration or relationship status, sexuality, gender identity, age, and whether or not they have insurance coverage for abortion care.[41]

While many laws target women seeking abortions themselves, there are also those that single out abortion facilities and the doctors who care for women. Known as TRAP (Targeted Regulation of Abortion Providers) laws, these types of laws jeopardize women's access to safe, legal abortion because they can force clinics to shut down or struggle to stay open. In 2014, some 90% of U.S. counties lacked an abortion clinic,[42] and in 2017, seven states only have one remaining clinic.[43] Clinic closures increase congestion at the remaining clinics and force women to travel farther for care, if they're able to access care at all. The Texas Policy Evaluation Project found that after the clinic closings in Texas, from November 2014 to September 2015, wait times for an abortion

appointment in metropolitan areas increased to as many as twenty days.[44] Ultimately, the Texas Policy Evaluation Project research found that increased distances to abortion providers in Texas was associated with a decrease in the number of abortions reported to the Texas Department of State Health Services. Counties that saw an increase of 100 miles or more had a 50% decline in the number of reported abortions, whereas counties with no change in distance did not see a significant change in the number of reported abortions.[45] Given this context, it is critical to consider whether a woman traveled out of state for abortion care, chose to self-induce instead, or was unable to obtain an abortion altogether, questions that researchers continue to investigate.

"If the stated goal of a state legislature is to ensure the best possible health care for residents, then policies that cause bottlenecks for needed procedures and increase strains on doctors and staff are not indicative of a good-faith effort to achieve that goal."

Daniel Grossman et al., Journal of the American Medical Association, 2017[46]

"There's a sorry situation in the United States, which is essentially that poor women don't have choice. Women of means do. They will, always. Let's assume *Roe v. Wade* were overruled and we were going back to each state for itself, well, any woman who could travel from her home state to a state that provides access to abortion, and those states never go back to old ways…So if you can afford a plane ticket, a train ticket, or even a bus ticket you can control your own destiny but if you're locked into your native state then maybe you can't. That we have one law for women of means and another for poor women is not a satisfactory situation."

Justice Ruth Bader Ginsburg, Duke University, July 2015[47]

UNCONSTITUTIONAL ABORTION BANS: HEALTH AND LIFE CONSEQUENCES

Policies that aim to ban abortion outright for various reasons have a detrimental impact on the ability of women to access the care they need. Each year, it is estimated that more than 4,000 U.S. women are denied an abortion because of gestational limits, forcing them to carry unwanted pregnancies to term.[48] Restrictions that dictate gestational limits, such as twenty-week bans, can force those facing medical complications to wait until conditions become life-threatening to receive care, placing a woman's health and life at severe risk. In other cases, research shows that being denied an abortion because of gestational limits increases a woman's chance of remaining tethered to an abusive partner.[49] While it may only be a small number of women who face these kinds of unconstitutional gestational limits (less than 2% of abortions in the United States occur after twenty weeks[50]), for each and every one of them, the ability to make these personal and private decisions without the meddling of politicians is essential.

"Bertha," a 25-year-old mother of 2 and 4-year old children, lives with her verbally and physically abusive boyfriend. Bertha's boyfriend limits her access to their car. Bertha feared that if her boyfriend knew she was pregnant, he would accuse her of getting pregnant by someone else, physically harm her, and throw her and their children out of their home. To obtain an abortion at the clinic in September 2015, Bertha had to make appointments at times when her eldest child was at school and when she could be back early enough that her boyfriend would not suspect anything. For women like Bertha, whose every move is monitored by an abusive partner, the increased travel distances and time would make access to abortion virtually impossible.

National Latina Institute for Reproductive Health Amicus Brief in support of petitioners, *Whole Woman's Health v. Hellerstedt*[51]

Texas abortion restrictions unlawful under the Women's Health Protection Act can be found on page 7[52]

Across the United States, women who have made the decision to end a pregnancy face a catch-22: while medically unnecessary requirements, clinic shutdown laws, insurance coverage restrictions, and abortion bans make it nearly impossible in some places to get safe, legal abortion care early in a pregnancy, they also make it illegal to get it later. Furthermore, abortion bans disproportionally impact young people and communities of color who already are more likely to face barriers in accessing safe abortion care because they may be forced to delay an abortion until they are able to assemble the funds to pay for the procedure or obtain available transportation to reach a provider.[53]

There are also abortion bans and other laws intended to shame and force women to rethink their decision to end a pregnancy by policing their reasons or imposing medically unnecessary procedures or visits. In some cases, these restrictions can have a chilling effect. For example, reason-based bans, such as sex- and race-selective abortion bans, open the door for politicians to intrude on a woman's personal decision-making and define what reasons are and are not acceptable for seeking to end a pregnancy. These kinds of bans force providers to attempt to discern a woman's reason for seeking an abortion, can foster racial profiling and discrimination and, in some cases, prevent women from seeking safe and legal care in the first place.[54] And yet, research shows that those trying to access abortion care are certain of their decision. In one study, 95% of women who had abortions felt that it was the right decision for them both immediately and three years later.[55] Another study discovered that women seeking an abortion were more certain about their decision than women and men deciding whether to have reconstructive knee surgery and more certain than men deciding to have prostate cancer treatments.[56]

On July 31, 2015, I found out I was pregnant. Because I have high blood pressure, it was considered a high-risk pregnancy, and I was referred to a specialized maternal fetal doctor in Austin, TX. Around the 12-week mark, they suspected that something was not quite right with the brain. Results from genetic testing came back normal so I went home and tried to stay relaxed. When I came back for the ultrasound at 14 weeks, my doctor was still concerned that the brain was not forming like it should, but she couldn't say for sure. But at 16 weeks, the fetus was diagnosed with Holoprosencephaly, when the forebrain of the embryo fails to develop into two hemispheres and the doctor told me that this fetal anomaly is 100 percent incompatible with life. 100 percent.

I chose to terminate the pregnancy. The doctor explained that to terminate this pregnancy I would have to have an elective abortion at Planned Parenthood. I asked if I could schedule for the next day but was told it was "going to be difficult because Texas clinics are having 3 or 4 week wait times." But I was at 16 weeks. After 20 weeks, you can't have an abortion [in Texas]. Besides, I knew there was no way I could mentally wait 3 or 4 weeks.

A friend worked at Winnie Palmer Hospital, a Florida hospital with a facility for women who terminate pregnancies for medical reasons. On a Thursday, they said they could fit me in on Saturday at 8 a.m. I booked a flight, a hotel, and a rental car. It was done by 1 p.m. I stayed in Florida for a couple of days in case there were complications and they faxed the progress notes back to my doctor in Texas so that I could follow up at home.

I ALWAYS SAY THAT I'M VERY THANKFUL THAT I HAD THE MEANS TO DO WHAT I DID. IT HURTS ME TO THINK ABOUT WOMEN WHO DON'T HAVE THE MEANS. The great majority of women who have to terminate for medical reasons would either have had to wait those three weeks to get an appointment in Texas or would have been forced to carry the baby to term. And I know that the type of ultrasound I was getting is something that normally women get around the 20-week mark. Had I not been a high-risk pregnancy, I would not have known any of this until it was too late.

Dr. Valerie Peterson, National Abortion Federation Patient Partnership

Texas abortion restrictions unlawful under the Women's Health Protection Act can be found on page 7[57]

GARNERING WIDESPREAD SUPPORT: ORGANIZATIONS, LAWMAKERS, INDIVIDUALS, AND THE ACT FOR WOMEN CAMPAIGN

"The introduction of the Women's Health Protection Act means we are going on offense. We're not merely fighting against bad policy, but we're also proposing good legislation that takes a stand for the protection and expansion of women's freedom. We have more work to do, but NARAL Pro-Choice America is proud to be part of this moment."

Ilyse Hogue, President of NARAL Pro-Choice America

Photo by Mike Morgan

"What happened in Texas is happening in Ohio and happening in Pennsylvania. We are raising awareness among policymakers and committed supporters of reproductive health, rights, and justice of the assault on access to abortion care as a national crisis. We know the impact of abortion restrictions on Black Women. With the economic hardships we face, work, child care, school, family obligations and transportation, abortion restrictions make it nearly impossible to access. That is why we have joined the Act for Women campaign and support the Women's Health Protection Act. Congress must Trust Black Women!"

La'Tasha D. Mayes, Founder and Executive Director of New Voices for Reproductive Justice

The Women's Health Protection Act would provide widespread protection against attacks on reproductive health care and much-needed relief to people across the country seeking abortions, to those who support them, and to health care providers, especially those who provide abortion care. When that is coupled with the fact that seven in ten people in the United States oppose government intrusion on access to abortion care,[58] it is no surprise that the legislation has broad-based support from the public and lawmakers committed to ensuring reproductive rights.

The Women's Health Protection Act enjoys broad-based support from the public and lawmakers committed to ensuring reproductive rights. A 2017 survey of 1,877 adults in the U.S. found that six in ten (61%) of those surveyed support a federal law that protects women's legal right to abortion and prevents restrictions that make access to safe and legal abortion care increasingly expensive and difficult.[59] Support was particularly high among people of color, with 66% of African Americans, 64% of Latinos, and 66% of Asian American and Pacific Islanders supporting a bill like the Women's Health Protection Act. This robust support for proactive congressional action was even found in conservative states like Texas, where 54% of those surveyed expressed support for such a law that would prevent restrictions that make it more expensive and difficult to access safe, legal abortion. Furthermore, two-thirds of those surveyed (66%) support women having access to abortion care near where they live. In the same survey, 59% viewed the trend of laws restricting women's access to safe, legal abortion as steps in the wrong direction. Clearly, people want their lawmakers to be bold and take action. Whether it's sponsoring legislation, holding town hall meetings, or demonstrating how women's health issues connect with other key issues, 81% of respondents would like Congress to be more vocal about women's health issues.

61% of voters would support a federal bill that ensures women have access to abortion care where they live.

To further harness that support, raise awareness of the bill, and urge federal lawmakers to advance the legislation, the Act for Women campaign launched in the fall of 2015. **This campaign unites nearly 100 local, state, and national groups committed to reproductive health, rights and justice and to advancing the Women's Health Protection Act.** Act for Women is a critical effort to ensure elected officials are doing their part to protect women's constitutional rights from a range of laws aimed at blocking access to safe and legal abortion services and shaming individuals for their health care decisions.

Under the leadership of the Center for Reproductive Rights, the campaign sponsors advocacy days in Washington, D.C.; supports state-based efforts to advance the bill, including tele-town hall meetings, in-district hearings, and municipal resolutions; and provides information, toolkits, and other materials about the Women's Health Protection Act to local and state advocates, national organizations, and members of Congress.

As an unabashedly proactive bill that supports abortion access, the Women's Health Protection Act enjoys strong support in Congress. Senator Richard Blumenthal (D-CT) and Representative Judy Chu (D-CA), along with Senator Tammy Baldwin (D-WI) and Representatives Marcia Fudge (D-OH) and Lois Frankel (D-FL) — all champion lawmakers committed to women's health and rights — have reintroduced the bill in each of the last three congressional sessions. With backing from the Act for Women campaign, the bill garners increased support in both the House of Representatives and the Senate each session. Upon reintroduction in 2017, the bill secured over forty cosponsors in the Senate, an important milestone for ensuring a filibuster against any newly proposed medically unnecessary abortion restrictions in Congress, and it consistently enjoys well over 100 cosponsors in the House.

"Reproductive rights are under attack in ways we have not seen since *Roe v. Wade* — in states across the country and in the halls of Congress. That is why we need federal protections to stop anti-choice legislators from obstructing and blocking women from essential health care and reproductive rights. Requirements and procedures — ranging from ultrasounds and admitting privileges to physical clinic layouts — are not only unwarranted but unconscionable. I am determined to stand with American women and families against state laws that are abhorrent and antithetical to well-established rights."

Senator Richard Blumenthal (CT)[60]

"A woman's right to choose is meaningless if she's stripped of her options. State laws eroding access to abortion create unnecessary hurdles and jeopardize women's health. We're introducing the Women's Health Protection Act to ensure every woman can access safe medical care regardless of where she lives."

Representative Judy Chu (CA-27)[61]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CONCLUSION

The Women's Health Protection Act is a federal solution we need to address the reproductive health care crisis happening throughout the United States. In many parts of the country it has become extremely difficult to safely and legally end a pregnancy. Legislators continuously pass laws under the guise of improving health outcomes, but the reality is that these are actually thinly veiled attempts designed to shame women and regulate abortion out of existence. Despite this climate, the courts have consistently reaffirmed the constitutional right to abortion — most recently in June 2016 in the Supreme Court decision in *Whole Woman's Health v. Hellerstedt* — but a right is nothing if one doesn't have access to it. We must act to ensure that our rights are never determined by a person's zip code, and work together quickly to make the passage of the Women's Health Protection Act a reality.

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14 This highlights existing state laws and regulations as of January 1, 2017 that the Women's Health Protection Act would invalidate. This is not intended as a comprehensive guide to abortion restrictions. Some of these laws have been enjoined. For further information and details please check out the Act for Women State Fact Sheets under Tools and Resources at actforwomen.org.

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