

**Testimony of the Center for Reproductive Rights**

**“The Ultimate Civil Right:  
Examining the Hyde Amendment and the Born Alive Infants Protection Act”**

**House Judiciary Subcommittee on the Constitution and Civil Justice  
Friday, September 23, 2016**

Chairman Franks, Ranking Member Cohen, and Members of the Subcommittee:

The Center for Reproductive Rights respectfully submits the following testimony to the House Judiciary Subcommittee on the Constitution and Civil Justice. Since 1992, the Center for Reproductive Rights has worked toward the time when the promise of reproductive freedom is enshrined in law in the United States and throughout the globe. We envision a world in which every woman is free to decide whether and when to have children; every woman has access to the best reproductive health care available; and every woman can make medical decisions without coercion or discrimination. In short, we envision a world in which every woman participates with full dignity as an equal member of society.

Unfortunately, both the Hyde Amendment and H.R. 3504 are an affront to women’s dignity and limit women’s decision-making. The **Hyde Amendment targets low income people for denial of constitutionally protected health care**. It disproportionately affects young people, people of color, immigrants, and those in rural communities, populations who already suffer from disparities in access to health care. **H.R. 3504 is an unnecessary and intrusive regulation of abortion providers**. Together, these restrictions serve to limit women’s access to safe, legal abortion care and to criminalize doctors for providing competent, compassionate care. We urge this Committee to reject the Hyde Amendment and H.R. 3504 for the following reasons:

- I. The Hyde Amendment interferes with one’s ability to make personal decisions;
- II. The Hyde Amendment exacerbates existing health and economic disparities, disproportionately harming those who are lower-income, immigrant, young, of color, or living in rural areas;
- III. H.R. 3504 would harshly penalize compassionate medical providers and prevent people from accessing safe, medically appropriate care.
- IV. H.R. 3504 is nothing more than another attempt to curtail access to safe, legal abortion care by having a chilling effect on providers.

## **I. THE HYDE AMENDMENT INTERFERES WITH ONE'S ABILITY TO MAKE PERSONAL DECISIONS**

The U.S. Supreme Court recognized the constitutional right to abortion over 45 years ago in the seminal case *Roe v. Wade* 410 U.S. 113 (1971). People have autonomy over their own body and have inherent dominion to make personal decisions concerning their well-being. However, a right without the ability to exercise it is only a right in theory and not in reality. Having the right to choose to end a pregnancy is like not having the right at all if one cannot afford the procedure.

For almost as long as *Roe* has been a part of U.S. jurisprudence, the Hyde Amendment ("Hyde") has discriminated against low-income people in need of abortion care with broad-reaching effects. Hyde bars federal programs in the Labor, Health and Human Services, Education, and Related Agencies appropriations legislation from covering abortion care, except in extremely limited cases – when the pregnancy is a result of rape or incest or the woman faces a life-endangering physical condition. Hyde has been included in that appropriations bill every year since 1976. Primarily, Hyde bans federal Medicaid funds from covering abortion care, except in those extremely limited circumstances, and Medicaid provides health coverage to low-income people. It also denies coverage to Medicare enrollees and those in the Indian Health Services; and several other federal coverage restrictions on abortion care are modeled after the Hyde amendment. As a result, while *Roe* recognizes abortion as a legal reproductive health care option, Hyde limits its availability to those with either the means or the private health insurance to cover the cost of procedure.

Insurance coverage can mean the difference between getting abortion care and being denied. When policymakers place severe restrictions on Medicaid coverage of abortion, it forces one in four low-income women seeking abortion to carry an unwanted pregnancy to term.<sup>1</sup> For one-quarter of low-income women, their choice is taken from them and a decision is forced upon them by the federal government. It is not for politicians to interfere with personal decisions about pregnancy and parenting.

## **II. THE HYDE AMENDMENT EXACERBATES EXISTING HEALTH AND ECONOMIC DISPARITIES, DISPROPORTIONATELY HARMING THOSE WHO ARE LOWER-INCOME, IMMIGRANT, YOUNG, OF COLOR, OR LIVING IN RURAL AREAS**

Since 1976, not only have anti-choice politicians continued to pass Hyde year after year, they have added similar abortion coverage and funding bans to other appropriations bills that impact federal employees and their dependents; Peace Corps volunteers; Native Americans; federal prisoners and detainees, including immigrant detainees; people who receive health care from community health centers; survivors of human trafficking; and

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<sup>1</sup> STANLEY K. HENSHAW ET. AL., GUTTMACHER INST., *RESTRICTIONS ON MEDICAID FUNDING FOR ABORTIONS: A LITERATURE REVIEW* (2009), <http://www.guttmacher.org/media/nr/2009/07/08/>.

low-income people in the District of Columbia. These communities are unable to pay for or receive abortion care with their federal health insurance or from their federal health care provider.

In addition to these federal bans, policymakers in 25 states have restricted coverage of abortion in insurance plans offered through health exchanges and policymakers in 10 of these states have also banned coverage in all private plans.<sup>2</sup> Each restriction is intended to further their ultimate goals of making abortion unaffordable and unavailable for as many people as possible and to shame, stigmatize, and punish those who seek abortion care. For specific communities—namely, people of color, low-income people, young people, immigrant people—many people live paycheck to paycheck and a coverage ban acts as a ban on abortion all together, with devastating consequences for real people’s lives. Our government should not deny our nation’s resources to people who are already limited in their access to quality health care. When someone who wants an abortion is forced to carry the pregnancy to term, they are more likely to fall into poverty than one who can get an abortion.<sup>3</sup> Policies like the Hyde amendment compel poor people across the country to risk their families’ economic security to obtain the health care they need. Those who are struggling to make ends meet should not have to make the decision about whether to end a pregnancy or not based on how they get their health coverage or how much money they have.

### **III. H.R. 3504 WOULD HARSHLY PENALIZE DOCTORS AND PREVENT PEOPLE FROM ACCESSING SAFE, MEDICALLY APPROPRIATE CARE**

H.R. 3504 grossly interferes with medical practice, inappropriately inserting legislators into the relationships between patients and their doctors. Legislators are not qualified to dictate standard of care in any medical situation. The bill’s requirements on how doctors must provide medicine are so vague—and yet are coupled with criminal penalties of up to five years in prison for failing to comply—that it is clear the real purpose of the bill is to shame and scare both providers and women seeking safe, quality abortion care.

Onerous and medically unnecessary restrictions on abortion care serve only to drive good reproductive health care providers out of practice and make safe and legal abortion care that much more difficult to obtain. For poor and marginalized communities, which already face greater barriers to access, the obstacles may become insurmountable, leading to tragic results when women have no safe place to turn.

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<sup>2</sup> GUTTMACHER INST., *State Policies in Brief: Restricting Insurance Coverage of Abortion* (Jun 2016), [https://www.guttmacher.org/sites/default/files/state\\_policy\\_overview\\_files/spib\\_rica.pdf](https://www.guttmacher.org/sites/default/files/state_policy_overview_files/spib_rica.pdf).

<sup>3</sup> D.G. Foster, SCM Roberts and J Mauldon, abstract, *Socioeconomic consequences of abortion compared to unwanted birth*, presented at the annual meeting of the American Public Health Association, San Francisco (Oct. 27–31, 2012), <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>.

#### **IV. H.R. 3504 IS NOTHING MORE THAN ANOTHER ATTEMPT TO CURTAIL ACCESS TO SAFE, LEGAL ABORTION BY HAVING A CHILLING EFFECT ON PROVIDERS**

H.R. 3504 would amend the Born Alive Infants Protection Act of 2002 by adding new criminal penalties against doctors and clinicians. The measure is clearly part of a larger strategy to cut off access to abortion care and make it illegal.

Proponents of this bill are trying to mislead the public into believing there is a problem, yet there is no evidence to suggest anyone is violating existing law. Instead, by threatening doctors with imprisonment, this bill would have a chilling effect on abortion providers while wasting this Committee's time when there are other real problems that need to be addressed, such as passing emergency funding to combat the Zika virus. Studies show that states that pass numerous abortion restrictions tend to have fewer evidenced-based policies known to support women and children and have poorer health and well-being outcomes for those groups.<sup>4</sup> The United States Congress should not seek to emulate such misplaced priorities, rather, we call upon this body to expand access to health care instead of limiting it.

#### **CONCLUSION**

**The real goal of proposals like the Hyde Amendment and H.R. 3504 is to erode access to constitutionally protected reproductive health care.**

The Hyde Amendment and H.R. 3504 are attacks on our constitutional right to abortion, on women's access to reproductive health care services, and ultimately on women's ability to make personal decisions about their health care. These bills don't stand alone, but are part of a broader attack on women's health, autonomy, and reproductive rights. We urge the Subcommittee and Congress to reject the Hyde Amendment and H.R. 3504 and hold a hearing on H.R. 2972, the EACH Woman Act.

The EACH Woman Act ensures everyone with public or private health insurance will be covered for all pregnancy-related care, including abortion, however much they earn or however they are insured. If someone gets their care or insurance through the federal government, the EACH Woman Act makes it so that she will be covered for all pregnancy-related care, including abortion. The bill also prohibits political interference with the decisions of private health insurance companies to offer coverage for abortion care.

When it comes to the most important decisions in life, such as whether and when to become a parent, it is vital that people are able to consider all of the options available to them, however little money they make or however they are insured. No one should ever be

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<sup>4</sup> CTR. FOR REPRODUCTIVE RIGHTS, EVALUATING PRIORITIES: MEASURING WOMEN'S AND CHILDREN'S HEALTH AND WELL-BEING AGAINST ABORTION RESTRICTIONS IN THE STATES, (2014), <http://www.reproductiverights.org/document/evaluating-priorities-measuring-womens-and-childrens-health-against-abortion-restrictions>.

denied critical reproductive health services, including safe and legal abortion, because their health insurance refuses to cover their care. Yet for decades, politicians have allowed the discriminatory Hyde Amendment to block low-income women from the full range of reproductive health care coverage they need and deserve.

It's not our place, and it is definitely not the place of our government, to decide for someone else whether or not they should have an abortion. It is better that the pregnant individual make that personal decision themselves and have the support necessary to get the health care they need.

When someone decides to end their pregnancy, it is important that they have access to safe medical care. Providing insurance coverage helps ensure that they will be able to see a licensed, quality health provider.