



## Statement of NARAL Pro-Choice America

### **U.S. House of Representatives Committee on Oversight and Reform Hearing on A State of Crisis: Examining the Urgent Need to Protect and Expand Abortion Rights and Access September 30, 2021**

Thank you for the opportunity to submit a statement to the Committee on this important issue. NARAL Pro-Choice America (NARAL) is a national advocacy organization, dedicated to protecting and advancing reproductive freedom, including access to abortion, contraception, paid leave, and protection from pregnancy discrimination, as a fundamental right and value. Through education, organizing, and influencing public policy, NARAL and our 2.5 million members from every state and congressional district in the country work to guarantee every individual the freedom to make personal decisions about their lives, bodies, and futures, free from political interference. For this reason, we are submitting this statement to call on federal policymakers to protect and expand abortion rights and access by enacting the Women's Health Protection Act (WHPA) (H.R. 3755/S.1975), which would safeguard the federal right to abortion against bans and medically unnecessary restrictions; passing the Equal Access to Abortion Coverage in Health Insurance (EACH) Act (H.R. 2234/S. 1021), which would eliminate federal bans on abortion coverage; and ending the Hyde amendment and all policy riders that restrict funding for abortion coverage or otherwise attack reproductive freedom.

The legal right to abortion faces its greatest threat in decades. Despite overwhelming public support (8 in 10 Americans) for the legal right to abortion, we're in the midst of an all-out assault on reproductive freedom with *Roe v. Wade* hanging in the balance. The need to enshrine the legal right to abortion in federal statute is more urgent than ever. The fact that the U.S. Supreme Court will soon hear *Dobbs v. Jackson Women's Health Organization*, a direct

challenge to *Roe v. Wade*, and that it declined to block Texas's extreme abortion ban (SB 8) allowing *Roe* to be rendered meaningless in the state, represent ominous signs for the future of abortion rights in this country.

Earlier this month, the Supreme Court failed to intervene and subsequently rejected an emergency request to block Texas Senate Bill 8 (SB 8), a blatantly unconstitutional ban on abortion. This law bans abortion at approximately six weeks before many people even know they are pregnant. It also grants private citizens the power to sue abortion providers and anyone else who helps someone access abortion care; this includes clergy members or counselors, abortion funds that assist someone in paying for abortion care, and even someone who drives a patient to their appointment, like family members, friends, and rideshare drivers. An individual who successfully sues someone for "aiding and abetting" a pregnant person seeking abortion care, would receive a financial reward of \$10,000. SB 8's impact is so far-reaching that it rendered *Roe v. Wade* meaningless for one in 10 women of reproductive age in the United States.<sup>1</sup> The Supreme Court's decision to allow SB 8 to go into effect essentially gave Texas the green light to negate Texans' constitutional right to abortion and empowered anti-choice lawmakers to use this law as a blueprint to roll back reproductive freedom in their own states. Since Texas's SB 8 went into effect earlier this month, anti-choice politicians in at least 12 states have already expressed intent to introduce similar versions of the Texas's abortion ban. In fact, just weeks later, anti-choice lawmakers in Florida introduced their own version of the law, HB 167.

The pending Supreme Court case, *Jackson Women's Health Organization*, is set against a backdrop of increasingly cruel and draconian restrictions and bans as anti-choice politicians escalate their quest to end legal abortion. Even as *Roe* stands, though it has long not been a reality for every body, the further evisceration of abortion access is ramping up. In addition to Texas's ban, state lawmakers seeking to advance their agenda of power and control have

passed hundreds of state-level attacks on abortion access over the last decade that have made care extremely difficult, if not impossible, to access for many people across the country. Systematic attacks on reproductive freedom and abortion access, including bans on abortion coverage, intentionally push access out of reach and have rendered meaningless the protections and rights afforded by *Roe v. Wade* for many people across the country.

The unprecedented threat to the right to abortion underscores the urgent need to enact the Women's Health Protection Act, which the U.S. House of Representatives passed in an historic vote last week with the support of the Democratic members of this Committee. Earlier this month, the Biden administration released an official statement supporting House passage of the Women's Health Protection Act. Every day without Senate action to protect abortion rights and expand abortion access means that more and more people are denied their constitutional right to abortion and ability to access the care that they need—and we know that this disproportionately affects women, Black, Indigenous and People of Color (BIPOC), people working to make ends meet, immigrants, young people, people with disabilities, LGBTQ+ individuals, and those living in rural and other medically underserved areas. Attacks on abortion rights and access are rooted in racism, white supremacy, and other forms of discrimination. Ending these barriers and ensuring equal access to abortion care is central to the pursuit of reproductive freedom and racial and economic justice.

The looming threat to the future of legal abortion across the country is the result of a decades-long far-right strategy to advance a radical and out-of-touch ideological agenda. In the late 1970s, radical conservatives weaponized the formerly non-political, back-burner issue of abortion rights as political cover for their efforts to maintain white patriarchal control amidst diminishing support for racist policies like school segregation, which had previously been the backbone of their movement. In the years immediately preceding and following *Roe v. Wade*, Evangelical Christians, who now form the backbone of the GOP, were overwhelmingly

indifferent on the issue of abortion. But through the carefully crafted messages of Paul Weyrich, Jerry Falwell, and other architects of the Radical Right, abortion became the political tool of choice for a movement determined to maintain control in a changing world, and the trojan horse for a far-reaching array of ideologies meant to thwart social progress.<sup>2</sup>

In the intervening years, opposition to abortion has become a litmus test in far-right circles for a host of political and judicial positions. In order to advance their agenda—one that has always stood in direct opposition to the values of the majority of Americans—they developed and implemented a strategy for capturing and maintaining minority rule. This strategy included pushing regressive boilerplate legislation chipping away at access to abortion through state legislatures and Congress, as well as stacking the federal judiciary with anti-choice ideologues.

Anti-choice activists have spent decades building their influence over the federal judiciary through well-funded, secretive networks like the Federalist Society. Conservative activists have never been shy about the fact that their takeover of the federal judiciary is part of a broad strategy to quell the majority and cement minority rule, but the election of Donald Trump took this tactic to new heights. In May 2016, Trump pledged to only nominate anti-choice judges, a promise he doubled down on in 2020.<sup>3,4</sup> And with the help of Mitch McConnell, Trump installed anti-choice federal judges with lifetime appointments at a breakneck pace. More than a quarter of currently active federal judges are now Trump appointees, including Supreme Court justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—tipping the balance of the Court to a supermajority unmistakably hostile to reproductive freedom.<sup>5</sup> We have already seen this majority use the so-called “shadow docket” to undermine the right to abortion and abortion access.<sup>6</sup> There is no denying that the threat to *Roe v. Wade* is real.

Anti-choice lawmakers, emboldened by the anti-choice supermajority on the Court, have accelerated their push to pass blatantly unconstitutional bans and restrictions on abortion—introducing, advancing, or passing over 330 bills attacking abortion access this year alone, some going as far as criminalizing pregnant people and doctors who provide abortion care. Now, more than ever, the anti-choice movement is advancing its extremist agenda in plain sight. Already this year, at least eight states have enacted laws that criminalize doctors for providing abortion care. When abortion care is criminalized, lives are on the line. Ending legal abortion would roll back the clock for our rights, but it would not eliminate abortion. It would only isolate and endanger people trying to make the best decisions for their lives and their futures.

The interrogation and punishment of people who are pregnant is not far-fetched—it is already happening. People across the country are already being charged or prosecuted for pregnancy outcomes including pregnancy loss, self-managing abortion care, or even the suspicion of it. Criminalizing people for having an abortion, experiencing a miscarriage or stillbirth, or any other pregnancy outcome only exacerbates racial inequities and is just one of the many ways that Black, Indigenous, and People of Color have been criminalized.

For over four decades, unable to make abortion illegal, anti-choice legislators have tried to make abortion nearly impossible to access. One of their most aggressive tactics has been to put abortion services financially out of reach for as many people as possible through coverage bans such as the Hyde amendment. Since 1976, this harmful policy, which has passed annually as an anti-choice rider to many appropriations bills, has banned coverage of abortion in many federal health care programs with only very narrow exceptions (i.e. life endangerment, rape, and incest). For far too long, politicians have allowed the appropriations process to be used as a vehicle to impose restrictions on abortion coverage for millions of Americans, including Medicaid, Medicare and Children's Health Insurance Program enrollees;

federal employees; Native Americans; people in federal prisons and detention centers, including immigration detention centers; Peace Corps volunteers; and people with low incomes in the District of Columbia. These coverage bans disproportionately impact Black, Indigenous, and People of Color, individuals with low incomes, immigrants, young people, transgender and gender nonconforming people, and others already facing barriers to healthcare.

The legal right to abortion does not ensure access to abortion care; it has to be affordable as well. Pregnant people may struggle to afford abortion care or be forced to delay care because of their income, zip code, or source of insurance. Currently, 33 states and the District of Columbia fail to correct for discriminatory federal policies and restrict access to care for people with low incomes only in cases of life endangerment, rape, and incest, and one state restricts access to abortion without exception for people who rely on Medicaid for health care coverage, in violation of federal law.<sup>7</sup> On the other hand, 16 states have filled the gap left by the federal government by using state funds to cover abortion services for people with low incomes, with nine states funding abortion services beyond cases of life endangerment, rape, and incest, and seven states imposing no restrictions on coverage of abortion services.<sup>8</sup> This state by state variation in the availability of abortion coverage leaves people's reproductive health in the hands of state legislatures or judges and creates disparate access to a constitutional right based on one's zip code.

The short-term and long-term consequences of these policies on real people are many and far-reaching. Studies show that when policymakers place restrictions on Medicaid coverage of abortion, it forces one in four Medicaid-eligible women to carry an unwanted pregnancy to term.<sup>9</sup> Pregnant people whose insurance does not cover abortion care are forced to choose between receiving critical care and paying rent, food or other necessary expenses.<sup>10</sup>

When a woman wants to get an abortion but is denied, she is more likely to fall into poverty, less likely to have a full-time job, and twice as likely to experience intimate partner violence.<sup>11</sup>

Reproductive justice groups led by women of color have tirelessly led the fight to end Hyde and other abortion coverage bans and we're proud to stand alongside them. Their efforts have shed light on the negative impact of these harmful policies and their disproportionate effects on Black, Indigenous, and People of Color, resulting in politicians finally recognizing the importance of removing harmful limitations on insurance coverage of abortion.

Most notably, this summer, the U.S. House of Representatives passed historic appropriations bills free of the Hyde amendment's discriminatory ban on coverage of abortion care for those who receive their health insurance through Medicaid. House FY'22 federal spending bills also excluded the D.C. abortion ban and the Hyde amendment's ban on coverage of abortion care for federal employees and Peace Corps volunteers. House appropriators also commendably removed the Hyde amendment's ban on abortion coverage for pregnant people who are incarcerated; however, that spending bill has not yet received a vote on the floor. We applaud Appropriations Chair DeLauro and reproductive freedom champions for introducing clean appropriations bills that did not include the Hyde amendment and related abortion coverage restrictions, and for blocking attempts to insert these restrictions in Committee and on the floor. These are critical steps to guaranteeing everybody can exercise their constitutional right to abortion care regardless of their income or source of health insurance. We now call on the U.S. Senate to do the same.

NARAL strongly supports WHPA and the EACH Act. WHPA, which was re-introduced this year by Representatives Judy Chu (D-CA), Lois Frankel (D-FL), Ayanna Pressley (D-MA), and Veronica Escobar (D-TX), and Senators Richard Blumenthal (D-CT) and Tammy Baldwin (D-WI), would protect the right to access abortion care throughout the United States by safeguarding access against bans and medically unnecessary restrictions. We commend House leadership

and reproductive freedom champions in Congress for voting to pass WHPA on Friday, September 24th, 2021 and urge members of the Senate to follow suit. The EACH Act, which was re-introduced this year by Representatives Barbara Lee (D-CA), Jan Schakowsky (D-IL), Ayanna Pressley (D-MA), and Diana DeGette (D-CO), and Senators Tammy Duckworth (D-IL), Mazie Hirono (D-HI), and Patty Murray (D-WA), would ensure that federal health plans and programs cover abortion care by lifting the bans currently applied to those enrolled in Medicaid, Medicare, the Indian Health Service, U.S. servicemembers and veterans, federal employees, low-income people in Washington, D.C., and others. This legislation would also support access to private insurance coverage across the country by prohibiting the federal government from interfering with abortion coverage by private insurance companies.

Together, these two bills can protect and transform abortion access across the country—bringing us closer to a world where all people can access and afford abortion care. *Roe v. Wade* and access to abortion care are on the line like never before and this moment requires urgent action from the Senate. All people—no matter who they are or where they live—should have the freedom to make their own decisions about whether to start or grow a family, free from political interference.

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<sup>1</sup> Elizabeth Nash, *Impact of Texas' Abortion Ban: A 14-Fold Increase in Driving Distance to Get an Abortion*, Guttmacher (Sep. 15, 2021), <https://www.guttmacher.org/article/2021/08/impact-texas-abortion-ban-14-fold-increase-driving-distance-get-abortion>. (stating that Texas has almost seven million women aged 15–49, out of a total of 75 million in the entire country).

<sup>2</sup> Randall Balmer, *The Real Origins of the Religious Right*, POLITICO MAGAZINE (May 27, 2014), <https://www.politico.com/magazine/story/2014/05/religious-right-real-origins-107133>.

<sup>3</sup> *Trump Letter on Pro-Life Coalition*, Sept. 2016, <https://www.sba-list.org/wp-content/uploads/2016/09/Trump-Letter-on-ProLife-Coalition.pdf>.

<sup>4</sup> *Pro-Life Voices for Trump 2020*, Sept. 3, 2020, [https://cdn.donaldjtrump.com/public-files/press\\_assets/pro-life-letter-potus.pdf](https://cdn.donaldjtrump.com/public-files/press_assets/pro-life-letter-potus.pdf).

<sup>5</sup> John Gramlich, *How Trump compares with other recent presidents in appointing federal judges*, PEW RESEARCH CENTER (Jan. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/>.

<sup>6</sup> *Whole Woman's Health v. Jackson*, No. 21A24, 2021 WL 3910722 (U.S. Sept. 1, 2021); *Food & Drug Admin. v. American College of Obstetricians & Gynecologists*, 141 S.Ct. 578 (2021).



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<sup>7</sup> NARAL Pro-Choice Am., *Who Decides? The Status of Reproductive Rights in the United States* (2021).

<sup>8</sup> *Id.* at 31.

<sup>9</sup> Stanley K. Henshaw et. al., *Restrictions on Medicaid Funding for Abortions: A Literature Review*, 26, (2009), available at <https://www.guttmacher.org/report/restrictions-medicaid-funding-abortions-literature-review> (last visited Dec. 7, 2020).

<sup>10</sup> *Ibis Reprod. Health*, *The Hyde Amendment: Frequently Asked Questions About its Impact*, 1 (Sept. 2020).

<sup>11</sup> *Id.*