United States House of Representatives
Committee on Oversight and Reform

Hearing:

A State of Crisis:
Examining the Urgent Need to Protect and Expand Abortion Rights and Access

Testimony Submitted for the Record by LGBTQ Organizations

September 30, 2021
Washington, DC

Dear Chairwoman Maloney, Ranking Member Comer, and Members of the Committee:

I. Our Fundamental Rights Are in Jeopardy

As organizations committed to the equal dignity of all persons, including the right to make our own personal decisions regarding our health and our families, we submit this testimony addressing the alarming erosion of the right to essential reproductive health care.

Access to comprehensive reproductive health care is essential to people's health, well-being, and ability to participate equally in their communities. The U.S. Supreme Court has repeatedly affirmed that abortion is a fundamental right and that undue burdens on access violate the Constitution; the Court's recent failure to halt the outrageous Texas abortion ban known as SB 8 is deeply alarming.

Anti-abortion politicians continue to push increasingly extreme and harmful laws that single out abortion care for restrictions that do not apply to similar health care. These laws, often presented under the guise of being health and safety regulations, are intended to restrict or eliminate access to abortion and do nothing to protect patient well-being. Denial of abortion care can have serious long-lasting consequences on a person's health and well-being, including increasing the risk of experiencing poverty, physical health impairments, and intimate partner violence.[1] Abortion is one of the safest medical procedures in the United States,[2] and should not be singled out and treated differently from other health care, particularly through restrictions that have no medical value and do nothing to benefit the health or safety of the pregnant person.

The organizations submitting this testimony are keenly aware of how specious health and safety rationales with no real scientific basis have been used to undermine the basic rights of unpopular minorities and other powerless communities. Pseudoscientific arguments have been used against: Black and Brown people (to support, for example, anti-miscegenation laws); women (to bolster restrictions on educational and employment opportunities); and LGBTQ people (to justify forced sterilization, involuntary institutionalization, and the denial of custody and marriage rights). The disingenuous "health and safety" claims used to advance the litany of abortion restrictions enacted by states in recent years are no different. With public opinion holding steady against banning abortion, anti-abortion forces have increasingly framed restrictions on the procedure as being in women's best interest. They ignore the medical

[1] Foster DG, Ralph LJ, Biggs MA, Gerdts C, Roberts SCM, Glymour MA. "Socioeconomic outcomes of women who receive and women who are denied wanted abortions. American Journal of Public Health." (2018) Mar; 108(3):407-413. Advancing New Standards in Reproductive Health. "Turnaway Study: Long-term study shows that restricting abortion harms women." Bixby Center for Global Reproductive Health. Retrieved from: https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf.

[2] National Academies of Science, Engineering & Medicine, *The Safety and Quality of Abortion Care in the United States*, 1-16 (2018).

evidence of its safety and enact requirements that do nothing to bolster that safety, while making it difficult if not impossible for providers to keep their doors open. Texas has taken this virulent opposition to the autonomy of pregnant people to jaw-dropping heights by enacting a shocking bounty system that incentivizes perfect strangers to file lawsuits against anyone assisting someone in obtaining an abortion. The alarm bells are ringing loudly – those in favor of forced pregnancy are energized and emboldened. We must respond with equal vigor.

II. Why the LGBTQ Community Supports Access to Abortion Care

Our organizations, representing millions of LGBTQ people across this country, support access to the full range of reproductive health care, including abortion, which is vital to the health, safety and lives of our diverse communities. We know that the harm from the erosion of reproductive rights will fall hardest on those who are already marginalized in our society: Black and Brown women and non-binary and transgender people.

First, many sexual minority women and queer-identified and transgender people can and do become pregnant, and some will need abortion care if they face an unwanted pregnancy. Pregnancy is a common experience among women of all sexual identities—not just those who are heterosexual. More than 80 percent of bisexual women have experienced at least one pregnancy, and more than a third of lesbians have done so.[3] In addition, "a substantial proportion of [transgender and gender-expansive] individuals who were assigned female sex at birth may need pregnancy and/or abortion care during their lives."[4] Similarly, due in part to higher rates of sexual victimization, sexual minority women are at least as likely as heterosexual women to experience unintended pregnancies.[5] Sexual minority women are more likely than other women to experience unwanted pregnancies caused by sexual violence. Among abortion patients, sexual minority women are significantly more likely than their heterosexual counterparts to experience physical or sexual violence, "sometimes by a factor of 15 or more."[6] Transgender and nonbinary individuals also experience very high rates of sexual violence and assault, with the attendant risk of unwanted pregnancies.[7]

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[3] Barbara G. Valanis et al., Sexual Orientation and Health: Comparisons in the Women's Health Initiative Sample, ARCHIVES OF FAMILY MED., Sept.–Oct. 2000, at 843, 843 (abstract).

[4] Heidi Moseson et al., Abortion Experiences of Transgender, Nonbinary, and Gender-Expansive People in the United States, 224 AM. J. OBSTETRICS & GYNECOLOGY 376, 376 (2021).

[5] Caroline Sten Hartnett et. al., Congruence Across Sexual Orientation Dimensions and Risk for Unintended Pregnancy Among Adult U.S. Women, 27 WOMEN'S HEALTH ISSUES 145, 145 (2017) (finding that unintended pregnancies are at least as common for sexual minority women as for heterosexual women); Bethany G. Everett et al., Sexual Orientation Disparities in Mistimed and Unwanted Pregnancy Among Adult Women, PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH, Sept. 2017, at 157, 161-62 (finding that adult and adolescent sexual minority women are at greater risk of unintended pregnancy than are their heterosexual counterparts).

[6] Rachel K. Jones et al., Sexual Orientation and Exposure to Violence Among U.S. Patients Undergoing Abortion, OBSTET. & GYNECOL., Sept. 2018 at 605, 609.

[7] Dep't of Justice, Office for Victims of Crime, *Responding to Transgender Victims of Sexual Assault: The Numbers* (2014); Michelle M. Johns et al., Centers for Disease Control and Prevention, *Transgender Identity and Experiences*

Second, many abortion and family planning clinics have expanded their services to include cancer and STI screening and various wellness services, and they have become trusted providers of reproductive and other medical care to the LGBTQ community. Many queer people, and especially those who are transgender, avoid medical care based on legitimate fears of being turned away or facing discrimination and ignorance. Members of the LGBTQ community have historically struggled to access basic health care because of stigma arising from social and political beliefs about sex, gender roles, and childbearing. This stigma has led the LGBTQ population to experience significant health disparities compared to other populations.[8] In response, many clinics that provide abortion and other reproductive health services now offer affirming, judgment-free care to members of this community, providing critical medical services for those who would otherwise go without. The LGBTQ community looks to these clinics to provide contraception and abortion services, as well as wellness services, examinations, STI testing and treatment, hormone replacement therapy, and insemination services. These clinics provide these healthcare services in a safe, nurturing, and affirming environment—free from the discrimination and mistreatment often faced by LGBTQ individuals in the larger health care system. When these essential sites of care are forced to close because of the proliferation of specious health and safety regulations designed to thwart abortion access, it is not only abortion care that is lost.

Third, the movements for reproductive freedom and LGBTQ equality share deeply linked interests and concerns. We are all seeking control over our own bodies – the freedom to decide whether to become or remain pregnant, whether and with whom to have intimate relationships, and whether to seek medical care to help our bodies align with our gender identities. We seek the freedom to form our families on our own terms – to partner with and marry whom we love, to have children or not, and to live as our true selves as determined by us, not by someone else.

Fourth, abortion restrictions are a form of sex discrimination, a persistent scourge that harms all women, including LBTQ women, as well as non-binary people and GBTQ men. Discrimination based on sex often occurs because of a desire to retain rigid and outdated gender roles that dictate how one should behave, who someone should love, and one's role in the family, economy and society. It is one of the animating forces behind restrictions on abortion – those

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of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017, Morbidity and Mortality Weekly Report, Jan.25, 2019, at 67, 68-69.

[8] The National Institutes of Health formally designated sexual and gender minorities as a health disparity population in 2016. See Director's Message, "Sexual and Gender Minorities Formally Designated as a Health Disparity Population for Research Purposes," Oct. 6, 2016, https://www.nimhd.nih.gov/about/directors-corner/messages/message_10-06-16.html; *see also* National Academies of Sciences, Engineering, and Medicine. 2020. Understanding the Well-Being of LGBTQI+ Populations. Washington, DC: The National Academies Press. https://doi.org/10.17226/25877.

who would remove from women[9] the ability to determine whether to continue a pregnancy believe that bearing a child should be that woman's primary, or even only, priority.

Like anti-LGBTQ discrimination, abortion bans discriminate based on sex. In *Bostock v. Clayton County*, the U.S. Supreme Court held that discrimination because of a person's sexual orientation or transgender status necessarily discriminates based on sex.[10] Because being LGBTQ is a sex-based trait, "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."[11]

By the same logic, laws that restrict abortion also facially discriminate based on sex. Like being LGBTQ, pregnancy is a sex-based characteristic; it is "inextricably bound up with" an individual's sex.[12] Accordingly, laws that force a pregnant woman to bear a child necessarily discriminate based on sex, as would a law that barred a reproductive medical procedure available only to men. For example, if a state barred men from obtaining vasectomies, such a law would discriminate based on sex and would be upheld only if the state could show "an exceedingly persuasive justification."[13] The LGBTQ community is invested in ensuring that no forms of sex discrimination – including those that seek to deprive pregnant people of their agency – become or remain enshrined in our laws.

Finally, our community has a deep interest in exposing the false premise upon which these politically-motivated abortion restrictions are based. As noted above, appeals to public health and safety have often been invoked by policymakers seeking to limit the rights and freedoms of disfavored groups. In the early twentieth century, laws based on pseudoscience authorized the sterilization, forced commitment, deportation and criminal prosecution of LGBTQ people, as well as bans on their public employment. Even after homosexuality was formally de-pathologized in the early 1970s, states continued to cite dubious science in denying marriage equality and parenting rights to LGBTQ people. Today, we are witnessing cruel attempts by state legislators to bar medical professionals from providing care to transgender youth, despite the overwhelming consensus of the medical profession that such care is medically necessary.

The policymakers pushing restriction after restriction on abortion care similarly ignore the evidence of the safety of abortion and the informed opinion of the medical profession when they enact sham "health and safety" measures that they claim protect patients but in fact do the opposite by reducing access. This unending stream of legislative proposals introduced by extremist lawmakers – from abortion restrictions to barring transgender youth from receiving essential health care – distorts science and coopts medicine in pursuit of an ideological agenda

[9] While not all people with the capacity for pregnancy are women, the vast majority do identify as women and for purposes of addressing sex discrimination it is necessary to recognize the fact that abortion restrictions target women in part out of a desire to force them into childbearing roles, traditionally seen as the purview of women.
[10] 140 S. Ct. 1731, 1737 (2020).
[11] *Id*. at 1741.
[12] *Id*. at 1742; *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 733 n.6 (2003) (a "pregnancy disability leave" that is not based on gender-neutral medical criteria is a "gender-discriminatory policy").
[13] *United States v. Virginia*, 518 U.S. 515, 531 (1996).

that denies to individuals the ability to live as their true selves and make their own decisions regarding childbearing and family formation. As they have done in the past, these policymakers wrap themselves in the language of pseudoscience to disguise animus as concern for health and safety.

III. Congress Must Act

Our constitutional rights and ability to access comprehensive health care should not depend on our zip codes. We are thrilled that the House of Representatives last week passed the Women's Health Protection Act, which establishes a statutory right for health care providers to provide, and their patients to receive, abortion care without medically unnecessary restrictions, limitations, and bans that single out abortion and impede access to care. The bill would put a stop to these harmful restrictions and bans, and it would protect the right to access abortion care for all, no matter where someone happens to live. We urge the Senate to take up and pass the Women's Health Protection Act and send it to President Biden's desk.

We commend this committee for holding a hearing on this critical issue.

Sincerely,

National Center for Lesbian Rights
Athlete Ally
Bay Area Lawyers for Individual Freedom
Equality California
Family Equality
GLBTQ Legal Advocates & Defenders
Human Rights Campaign
Lambda Legal
LPAC Action Network
Mazzoni Center
National Black Justice Coalition
National LGBTQ Task Force Action Fund
Queer and Trans Abortion Storytellers of We Testify
SIECUS: Sex Ed for Social Change
Whitman-Walker Institute
Woodhull Freedom Foundation