September 22, 2016

The Honorable Trent Franks
Chair, Subcommittee on the Constitution and Civil Justice
Judiciary Committee
2435 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on the Constitution and Civil Justice
Judiciary Committee
2404 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks and Ranking Member Cohen:

We, the undersigned medical and public health organizations, stand in strong opposition to H.R. 3504 and restrictions on insurance coverage for abortion such as those imposed by the Hyde Amendment. Both policies represent government intrusion into private health care decisions.

H.R. 3504 is a departure from current law. It injects politicians into the patient-physician relationship, disregarding a provider's training and clinical judgment and undermining her ability to determine the best course of action with her patients. Patients need and deserve access to compassionate and appropriate medical care. Every woman is unique and needs to be able to make the decision that is best for her and her family. But H.R. 3504 would impose criminal and civil penalties on providers in an attempt to discourage them from providing care, limiting access for their patients.

The disproportionate and harmful impacts of the Hyde Amendment on low-income women and women of color have been well documented.[1] The American Congress of Obstetricians and Gynecologists has called for the repeal of the Hyde Amendment and similar restrictions.[2] All patients deserve access to safe and legal abortion care, regardless of where they live or how much money they have. Coverage bans like the Hyde Amendment have stigmatized abortion and women who have abortions for decades. It is time for this marginalization to end.

Abortion is a safe and legal medical procedure in the United States. Abortion providers comply with existing laws and provide excellent care. Women seeking abortion care deserve the highest quality medical treatment based on their individual health circumstances. Both H.R. 3504 and the Hyde Amendment undermine these principles by attempting to put abortion care out of reach. We urge lawmakers to protect the autonomy and dignity of patients and stand against the insertion of politics into personal health decisions.

Sincerely,

American Congress of Obstetricians and Gynecologists
American College of Nurse-Midwives
American Public Health Association

[1] A. Dennis, R Manski, K Blanchard, Does Medicaid coverage matter?: A qualitative multi-state study of abortion affordability for low-income women, J. Health Care Poor Underserved (November 2014). Available at http://www.ncbi.nlm.nih.gov/pubmed/25418228.

[2] ACOG Committee Opinion, Committee on Health Care for Underserved Women, Increasing Access to Abortion (November 2014). Available at http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-

American Medical Student Association
American Medical Women's Association
American Society for Reproductive Medicine
Association of Women's Health, Obstetric and Neonatal Nurses
Association of Reproductive Health Professionals
Gay and Lesbian Medical Association
Jacobs Institute of Women's Health
Medical Students for Choice
National Abortion Federation
National Alliance to Advance Adolescent Health
National Association of Nurse Practitioners in Women's Health
National Family Planning and Reproductive Health Association
Physicians for Reproductive Health
Planned Parenthood Federation of America
Society for Maternal-Fetal Medicine

30 Religious & Faith-based Organizations Oppose the Hyde Amendment

September 22, 2016

US House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution and Civil Justice
2138 Rayburn House Office Building
Washington, DC 20515

RE: Subcommittee Hearing on the Hyde Amendment and the Born Alive Infants Protection Act, scheduled for September 23, 2016

Dear Representatives:

Enclosed for the congressional record is letter signed by national faith-based and religious organizations and communities who share a commitment to ensuring access to affordable health coverage for all. This commitment extends to the full range of reproductive health care, including abortion.

While we come from a variety of faith traditions and perspectives, our shared values unite us in opposition to the Hyde Amendment and similar bans that deny abortion coverage to individuals based on their income or insurance. Moreover, as the enclosed letter illustrates, we strongly support a current congressional proposal to lift Hyde and similar bans, the Equal Access to Abortion Coverage in Health Insurance Act (EACH Woman Act, HR 2972), introduced in July 2015.

Thank you for considering our perspective on this issue. For further information, please contact Amy Cotton, National Council of Jewish Women Senior Policy Manager, amy@ncjwdc.org or 202 375 5067.

Sincerely,

Nancy K. Kaufman, CEO
National Council of Jewish Women, *on behalf of the 30 organizations listed in the enclosed*

Enclosure

September 22, 2016

US Senate
Washington, DC 20510

US House of Representatives
Washington, DC 20515

Dear Senator and Representative:

The undersigned national faith-based and religious organizations and communities share a commitment to ensuring access to affordable health coverage for all. **Together, we urge you to support the Equal Access to Abortion Coverage in Health Insurance Act (EACH Woman Act, HR 2972).** This legislation would end bans that deny abortion coverage to individuals based on their income or insurance.

Specifically, the EACH Woman Act would ensure that every woman who receives care or insurance through the federal government will have coverage for all pregnancy-related care, including abortion. Further, it would prohibit interference by federal, state and local legislators in decisions of private insurance companies to offer abortion coverage, including in the health insurance marketplaces created under the Affordable Care Act.

As people of faith, we believe each individual has a basic human right to make their own reproductive decisions based on their own morals, beliefs and conscience. Our nation is home to people of many different beliefs and religious affiliations; we cannot limit an individual's religious liberty by enshrining one set of religious beliefs into law. Decisions about how to respond to a pregnancy are sacred and deeply personal. We respect the right of each person to make such decisions for themselves, and oppose efforts that seek to interfere or cultivate judgment and shame about these decisions.

We also believe in the equal worth of all people and our shared responsibility to build a just society. We are, therefore, called to treat all individuals with dignity, no matter their income, insurance, gender, race or other factors. Currently, bans that deny abortion coverage fall hardest on individuals struggling to make ends meet, who are more likely to be women of color, immigrant women, transgender or gender non-conforming individuals, and young people. Such restrictions can have far reaching consequences; a woman who wants to end a pregnancy but is denied is more likely to fall into poverty than one who can obtain an abortion. Access to reproductive health care should not depend on a person's income or type of insurance. We must ensure that each of us has access to the full range of reproductive health care options, including abortion.

The EACH Woman Act would respect each woman's ability to make her own faith-informed or conscience-based decisions about pregnancy, ensuring she can afford to obtain safe medical care — however much she earns, no matter how she is insured, and wherever she lives. We urge you to support meaningful policy change for women and families by cosponsoring the EACH Woman Act.

Sincerely,

1. Ameinu (Our People)
2. Anti-Defamation League
3. Association of Humanistic Rabbis
4. Bend the Arc Jewish Action

5. Catholics for Choice
6. Central Conference of American Rabbis
7. Disciples for Choice
8. Disciples Justice Action Network
9. Equal Partners in Faith
10. Global Justice Institute
11. Habonim Dror North America
12. Jewish Women International (JWI)
13. Metropolitan Community Churches
14. Midwest Access Coalition
15. Muslims for Progressive Values
16. NA'AMAT USA
17. National Council of Jewish Women
18. Planned Parenthood Federation of America Clergy Advocacy Board
19. Presbyterian Feminist Agenda Network
20. Presbyterians Affirming Reproductive Options
21. Reconstructionist Rabbinical College/Jewish Reconstructionist Communities
22. The Religious Coalition for Reproductive Choice
23. Religious Institute
24. SisterReach
25. Society for Humanistic Judaism
26. Union for Reform Judaism
27. Unitarian Universalist Association
28. Unitarian Universalist Women's Federation
29. Women of Reform Judaism (WRJ)
30. Women's Alliance for Theology, Ethics, and Ritual (WATER)

CENTER FOR REPRODUCTIVE RIGHTS

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.

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New York | Washington, DC | Geneva | Bogotá | Kathmandu | Nairobi

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.[1] 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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[1] 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.[2] 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.[3] 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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[2] 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.

[3] 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.[4] 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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[4] 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.

The Honorable Trent Franks
Chair, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on the Constitution and Civil Justice
House Judiciary Committee
Washington, DC 20515

September 21, 2016

Re: Hearing on "The Ultimate Civil Right: Examining the Hyde Amendment and the Born Alive Infants Protection Act"

Dear Chairman Franks and Ranking Member Cohen:

Thank you for the opportunity to submit this statement on behalf of the Guttmacher Institute in opposition to the Hyde Amendment and H.R. 3504, the Born-Alive Abortion Survivors Protection Act, on which a hearing is being held before the House Judiciary Committee, Subcommittee on the Constitution and Civil Justice on Friday, September 23, 2016. As an organization committed to advancing sexual and reproductive health and rights through a program of research, policy analysis and public education, the Guttmacher Institute has collected and analyzed a great deal of information about the provision of abortion in the United States and about women who obtain abortions.

The **Born-Alive Abortion Survivors Protection Act** is unnecessary and represents yet another attempt to politicize women's health and limit access to abortion. The Born-Alive Infants Protection Act of 2002 already confirms that a fetus delivered alive is entitled to emergency medical care, while also not undermining the rights protected under *Roe v. Wade*. The Born-Alive Abortion Survivors Protection Act would not only roll-back this carefully crafted bipartisan agreement reached in 2002, it would also add new criminal penalties against doctors and clinicians as a scare tactic that serves the sole purpose of scaring women way from seeking safe, legal abortion.

The **Hyde Amendment**, which has been incorporated into annual appropriations law since 1976, sharply limits abortion coverage for women insured by Medicaid, the main public health insurance program for low-income Americans. The Hyde Amendment is explicitly targeted at women who struggle financially, and this deeply unjust aim is reflected in the policy's detrimental impact on low-income women in general and women of color in particular. Poor women experience unintended pregnancies at five times the rate of their more affluent peers, and abortion has become increasingly concentrated among this group.

Because of systemic social and economic inequality, women of color are disproportionately likely to be poor and insured through Medicaid—and are therefore disproportionately impacted by the Hyde Amendment.

Many women denied abortion coverage by Hyde—who may also be affected by other abortion restrictions—struggle to come up with the money to pay for their procedure. As a result, they often experience delays obtaining an abortion or divert money from other urgent needs, like paying rent and utilities or even feeding their family. Some women are forced to carry their unwanted pregnancy to term.

The harmful impact of the Hyde Amendment is only mitigated for women who happen to live in one of the 15 states that use their own funds to provide abortion coverage for Medicaid recipients. But the majority (60%) of women of reproductive age who are enrolled in Medicaid live in states that do not cover abortion except in very limited circumstances. This amounts to some seven million women aged 15–44—including 3.4 million women living below the federal poverty level. Slightly more than half of the seven million women subject to the Hyde Amendment are women of color.

For a detailed analysis of the Hyde Amendment and its harmful impact, please see the attached 2016 article from the *Guttmacher Policy Review*: "Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters."

The Guttmacher Institute strongly urges you to oppose the Hyde Amendment and H.R. 3504. The Hyde Amendment has already operated to limit access to safe and legal abortion care for 40 years and H.R. 3504 would further restrict access and endanger women's health. Thank you for the opportunity to provide these comments.

Sincerely,

Heather D. Boonstra
Director of Public Policy

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Guttmacher Policy Review

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Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters

By Heather D. Boonstra

Abortion has been legal throughout the United States for more than 40 years, but it remains one of the country's hottest political flashpoints. Republican presidential candidate Donald Trump stumbled into it when he said in a TV interview that if abortion were made illegal, women seeking one should be criminally punished—a statement that he later tried to reframe with a more formal announcement that he is "prolife with exceptions."[1] Meanwhile, Democratic presidential hopefuls Hillary Clinton and Bernie Sanders have both called for expanding access to abortion by ending the Hyde Amendment. At a campaign rally in January, Clinton said the policy only makes it harder for low-income women to exercise their full rights: "Any right that requires you to take extraordinary measures to access it is no right at all," she said.[2]

The Hyde Amendment, named after the late Rep. Henry Hyde (R-IL), is in many ways the grandfather of all abortion restrictions. It was passed in 1976, went into effect in 1977 and was upheld by the U.S. Supreme Court in 1980. Since that time, the Hyde Amendment has severely restricted abortion coverage for women insured by Medicaid and, in turn, has made real reproductive choice a privilege of those who can afford it, rather than a fundamental right.

Having presidential candidates firmly commit to lifting the Hyde Amendment is not new, but it is a welcome advancement to reproductive rights activists. (Similar endorsements from congressional candidates will be important too, given that ending the Hyde Amendment will require an act of Congress.) While policymakers supportive of abortion rights have devoted much effort trying to stave off the surge of abortion restrictions in recent years, challenges to the Hyde Amendment—in the states and Congress—mostly have languished on the back burner. Now, advocates for abortion rights are working to change that by shining a light on the importance of abortion coverage and putting the abortion rights movement back on the offensive.

HIGHLIGHTS

- *Although the U.S. abortion rate has reached its lowest level since 1973, abortion is increasingly concentrated among low-income women.*
- *The Hyde Amendment, in effect since 1977, essentially bans federal dollars from being used for abortion coverage for women insured by Medicaid, the nation's main public health insurance program for low-income Americans.*
- *Women who are low-income and lack insurance coverage for abortion often struggle to come up with the money to pay for the procedure. As a result, they often experience delays obtaining an abortion or are forced to carry their unintended pregnancy to term.*
- *Supporters of abortion rights have coalesced behind several state- and national-level initiatives that aim to end the Hyde Amendment so that the nation's poorest women have greater access to safe and legal abortion care.*

Abortion and Low-Income Women

Over the last several decades, substantial progress has been made toward enabling American women and their partners to control their childbearing. Improved contraceptive use has helped women to better avoid unintended pregnancies, and as a result of fewer unintended pregnancies,

the overall abortion rate declined to 17 per 1,000 women aged 15–44 in 2011, the lowest since 1973 (see "New Clarity for the U.S. Abortion Debate: A Steep Drop in Unintended Pregnancy Is Driving Recent Abortion Declines," 2016).[3,4]

But not all women are sharing equally in this progress. Although the rate of unintended pregnancy among low-income women declined between 2008 and 2011, major disparities remain. In 2011, the unintended pregnancy rate among women with an income below the federal poverty level ($18,530 for a family of three that year[5]) was more than five times that among women with an income at or above 200% of poverty (112 vs. 20 per 1,000 women aged 15–44).[6] And because of this high rate of unintended pregnancy, women who are struggling financially experience high levels of abortion.

Indeed, over the last few decades, abortion has become increasingly concentrated among the poor. In 2014, 49% of abortion patients had a family income below the federal poverty level—up from 27% in 2000.[7,8] An additional 26% of abortion patients in 2014 had an income that was 100–199% of the poverty threshold. In other words, 75% of abortions in 2014 were among low-income patients.

The reasons women give for having an abortion underscore their understanding of the economic impact unplanned childbearing would have on themselves and their families. Most abortion patients say that they cannot afford a child or another child, and most say that having a baby would interfere with their work, school or ability to care for their other children.[9] Most women also cite concern for or responsibility to other individuals as a factor in their decision to have an abortion. These concerns make particular sense when one considers that six in 10 women who have an abortion are already a parent.[7]

Unfortunately, for a pregnant woman who is already struggling to get by, the cost of an abortion may be more than she can afford on her own. The average amount paid for an abortion at 10 weeks' gestation was $480 in 2011–2012.[10] The University of California, San Francisco Turnaway Study—a five-year longitudinal study of roughly 1,000 women seeking abortion care at 30 facilities across the United States—found that for more than half of women who received an abortion, their out-of-pocket costs (for the procedure, as well as for travel and hotel, if needed) were equivalent to more than one-third of their monthly personal income.[11]

Other studies show that many Americans do not have adequate savings to cover a financial emergency of any kind. In 2013, the Federal Reserve Board conducted a nationally representative household survey designed to "monitor the financial and economic status of American consumers."[12] The survey asked respondents how they would pay for a $400 emergency, and 47% said either that they would cover it by borrowing or selling something, or that they would not be able to come up with the money.

Enter Hyde

In 2015, roughly 90% of Americans had health insurance coverage to help defray the costs of any medical bills.[13] However, unlike most other types of health care services, abortion is highly politicized, and insurance coverage for abortion has been the target of severe restrictions.

Forty years ago, in the wake of *Roe v. Wade,* Congress passed the Hyde Amendment—which bans the use of federal funds for abortion services in all but the most extreme circumstances—by attaching it to the annual spending bill funding what is now the Department of Health and Human Services. From the start, antiabortion politicians have acknowledged that, without a path to ban abortion outright, they have used the power of the purse to interfere with women's decision-making around abortion. During debate over the measure, Hyde told his colleagues, "I certainly would like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle-class woman, or a poor woman. Unfortunately, the only vehicle available is the...Medicaid bill."[14]

The Hyde Amendment was hotly debated throughout the 1970s and has changed over time. In 1980, the U.S. Supreme Court upheld the Hyde Amendment, ruling that the Hyde restrictions do not interfere with the right recognized in *Roe* because "a woman's freedom of choice [does not carry]

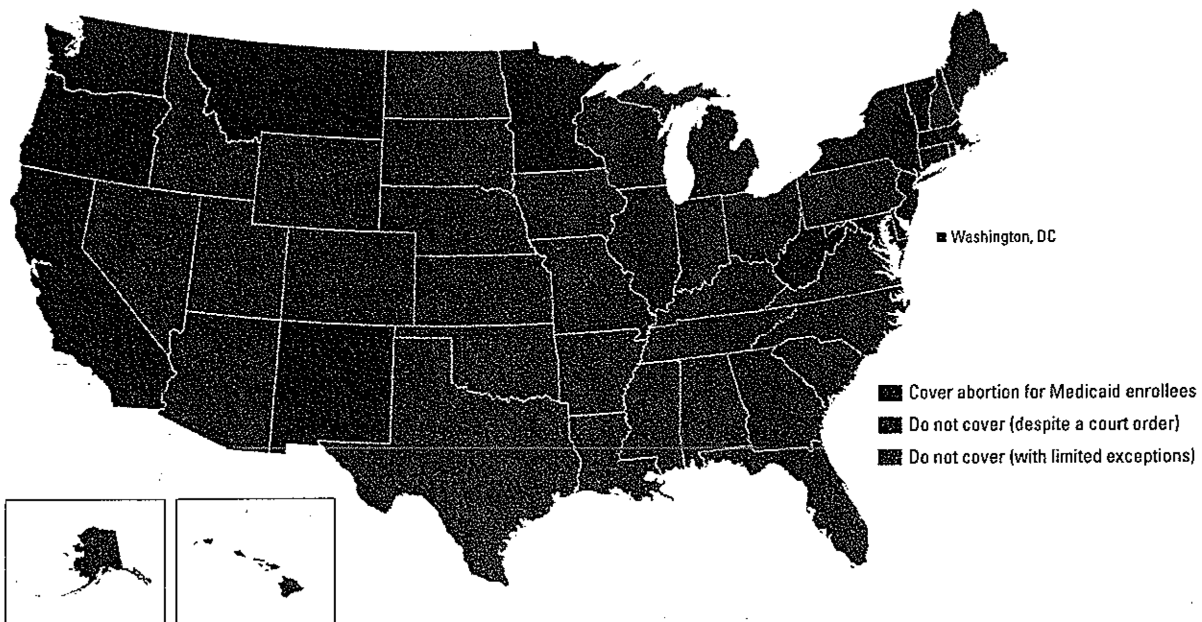
with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices." Justice William Brennan wrote in a dissenting opinion that the Hyde Amendment "is nothing less than an attempt by Congress to circumvent the dictates of the Constitution and achieve indirectly what *Roe v. Wade* said it could not do directly." Also of concern to the justices was the fact that Hyde specifically targets the constitutional rights of poor women. The Hyde Amendment, wrote Justice Thurgood Marshall, "is designed to deprive poor and minority women of the constitutional right to choose abortion."

Since fiscal year 1994, the Hyde Amendment has limited federal reimbursement for abortions under Medicaid to cases of rape, incest or when a woman's life is threatened. The harmful impact of the Hyde Amendment is only mitigated for women who happen to live in states that use their own funds to provide abortion coverage for Medicaid recipients. Seventeen states have a policy (either voluntarily or by court order) requiring the use of state funds to cover abortions for low-income women enrolled in Medicaid, but just 15 states appear to be doing so in practice (see map).[15] (Arizona and Illinois are funding so few abortions that they appear to be in violation of their court orders.[16]) In states where Medicaid covers abortion services, 89% of abortion patients with Medicaid used their insurance to access abortion care.[7]

In addition to the Hyde Amendment itself, Congress has enacted numerous laws that similarly restrict abortion coverage or services for other groups of women who obtain their health insurance or health care from the federal government, including federal employees, military personnel, federal prison inmates, poor residents of the District of Columbia (because Congress has jurisdiction over the District's policy) and Native American women (see graphic). These policies have changed over time and all now mirror the Hyde Amendment, in that they include exceptions in cases of rape, incest or when a woman's life is endangered.

Unequal Access

Most states follow the Hyde Amendment and do not cover abortion for low-income women enrolled in Medicaid; however, 15 states have a policy to cover abortion with state funds and appear to be doing so in practice.



Source: Guttmacher Institute.

Demonstrated Impact

The number of women potentially affected by the Hyde Amendment is substantial. Of women aged 15–44 enrolled in Medicaid, 60% live in the 35 states and the District of Columbia that do not cover abortion, except in limited circumstances.[17] This amounts to roughly seven million women of reproductive age, including 3.4 million who are living below the federal poverty level.

The Hyde Amendment falls particularly hard on women of color. Because of social and economic inequality linked to racism and discrimination, women of color are disproportionately likely to be insured by the Medicaid program: Thirty percent of black women and 24% of Hispanic women aged 15–44 are enrolled in Medicaid, compared with 14% of white women (see graphic).[17]

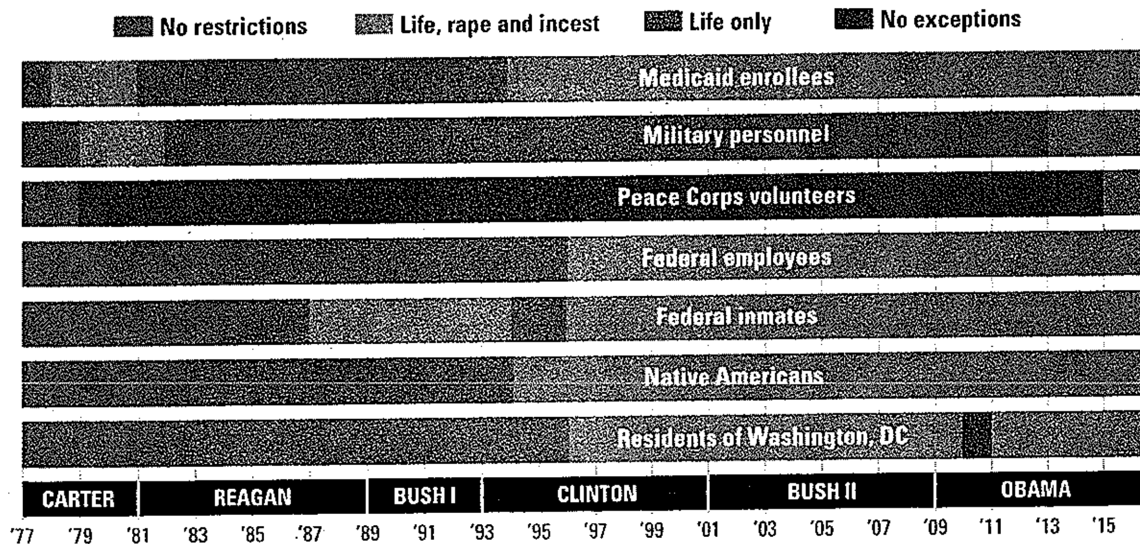
A number of studies conducted over the last four decades have assessed the impact of the Hyde Amendment.[18] To afford an abortion, many low-income women without coverage for the procedure delay or forgo paying utility bills or rent, or buying food for themselves and their children;[19] others rely on family members for financial help, receive financial assistance from clinics or sell their personal belongings.[7,19]

Moreover, women who have decided to have an abortion can get caught in a cruel cycle, in which the delays associated with raising the funds to pay for the abortion can lead to additional costs and delays. Abortion in the second trimester can cost 2–3 times as much as abortion in the first trimester.[10] Because of the time and effort needed to scrape together the funds, many low-income women have to postpone their abortion: Fifty-four percent of women in the Turnaway study sample reported that having to raise money for an abortion delayed their obtaining care.[11] In addition, the risk of complications from abortion—although exceedingly small at any point—increases with gestational age.[20]

Although most low-income women who want an abortion manage to obtain one, some do not, and the result is an unplanned and often unwanted birth. A number of studies published over the course of decades have examined how many

Decades of Restrictions

Congress has long barred federal funds from going toward abortion coverage and services for many groups of U.S. women who receive their health insurance and health care through the federal government.



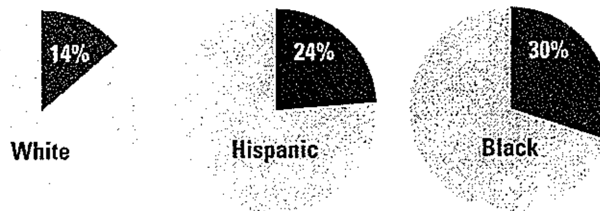
Notes: Segments are for fiscal years (FYs), not calendar years. For Medicaid enrollees in FY 1978–1979 and for military personnel in FY 1979, the law also included an exception for severe and long-lasting physical health damage. *Source:* Guttmacher Institute.

women are forced to forgo their right to abortion and bear children they did not intend. A 2009 literature review published by the Guttmacher Institute identified studies from five states that compared the ratio of abortions to births before and after coverage ended.[18] The review concludes that among women with Medicaid coverage subject to the Hyde Amendment who seek an abortion, one in four are unable to obtain one because of lack of abortion coverage.

The Turnaway study examined the reasons for not obtaining an abortion after being denied one because of provider gestational limits. Among those who considered having an abortion elsewhere, but never obtained one, 85% reported that the reason for not obtaining an abortion was the cost of the procedure and travel.[21] The study also found that when a woman who is already struggling to get by is denied an abortion, she is especially likely to fall into poverty.[22] Women denied an abortion who subsequently had a child (or another child) were more likely than women who received an abortion to be unemployed, receiving public assistance and living below the federal poverty level one year after their clinic visit—despite the fact that there were no economic differences between the women a year earlier.

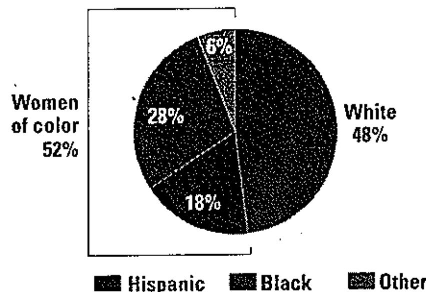
Who Is Hurt By Hyde?

Because of social and economic inequality, women of color are disproportionately likely to be insured by Medicaid.



60% **of reproductive-aged women on Medicaid live in states that do not cover abortions with state dollars.**

Just over half of the seven million women subject to the Hyde Amendment are women of color.



Note: All data are for women aged 15–44 enrolled in Medicaid, 2014. *Source:* Guttmacher Institute.

Going on the Offensive

Over the last several years, antiabortion legislators have been alarmingly successful at pursuing abortion restrictions at the federal and state levels, which have made it ever more difficult for women who are already struggling economically to access abortion care. Although policymakers who support abortion rights have stood up against these new restrictions, many have been more reticent to take up the fight to repeal the Hyde Amendment. Given a political environment so intensely hostile to abortion rights, many of these elected officials have asserted that this is not the optimal time to force a reopening of the issue of Medicaid coverage for abortion, which has been banned longer than many of them have been in office.

But abortion rights advocates are hoping to change that perception. In 2013, activists with All* Above All—a nationwide network of reproductive rights and justice organizations—launched a series of grassroots and communications campaigns aimed at building support for lifting the Hyde Amendment. "The name All* Above All reflects our positive and powerful belief that each of us, not just some of us, must be able to make the important decision of whether to end a pregnancy," the campaign explains on its website. "For too long, politicians have been allowed to deny a woman's abortion coverage just because she is poor....We are standing up to say 'enough.'"[23]

All* Above All is using several different tactics to bring the Hyde Amendment back into the national conversation. It has developed a social media effort to drum up support for repealing Hyde. Activists have visited college campuses to get young people involved with these efforts. And it launched a "Be Bold" road trip in August 2014 that, after a six-week tour through 12 cities, ended in Washington, DC with a petition urging Congress to repeal the Hyde Amendment.

The centerpiece of this campaign is the Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act, which was introduced by Reps. Barbara Lee (D-CA) and Jan Schakowsky (D-IL) in 2015, and now has a list of 117 cosponsors. The bill would restore abortion coverage for those insured by the Medicaid program, as well as those who receive their health coverage and care through other federal programs. In addition, it would prohibit states and the federal government from banning or limiting abortion coverage in the private insurance market.

The bill is based on the principle that abortion is basic health care and, therefore, deserving of health insurance coverage, whether public or private. "The EACH Woman Act put the pro-choice movement back on the offensive," says Lee. "Politicians shouldn't be meddling in a woman's personal healthcare decision just because she's poor."[24]

Several other proactive initiatives that address abortion restrictions more broadly are also underway. In 2013 and again in 2015, Sen. Richard Blumenthal (D-CT) and Rep. Judy Chu (D-CA) introduced the Women's Health Protection Act, in response to the unprecedented number of state-level restrictions on abortion. With 33 cosponsors in the Senate and 144 in the House, the bill is designed to reaffirm women's right to abortion by making it unlawful for states to enact burdensome requirements—such as previability abortion bans and unwarranted doctor and clinic regulations—that do not advance women's health and safety and that make abortion services more difficult to access, especially for poor women. The drive to eliminate these types of restrictions received a major boost with the U.S. Supreme Court's June 2016 decision in *Whole Woman's Health v. Hellerstedt,* which struck down several such provisions in Texas.

Another proactive effort, this one aimed at state-level policymakers, kicked off in January 2016, with the release of *A Playbook for Abortion Rights.*[25] The Playbook was launched by the Public Leadership Institute—a nonprofit educational group organized to raise public awareness on key issues of equity and justice—and it provides model state bills for improving women's access to abortion care. Among those model bills that would particularly affect low-income women is the Abortion Coverage Equity Act, which would require that abortion be covered in all types of health insurance offered, sold or purchased in the state.

In addition, several digital campaigns are underway that encourage women to share their abortion stories as a way to destigmatize the procedure. Some of these efforts (such as The Abortion Diary) are not necessarily political, whereas others (the 1 in 3 Campaign or the #ShoutYourAbortion campaign) have a strong relationship with activism and political organizing. Although not directly targeted at the Hyde Amendment, these campaigns are using storytelling to strengthen support for abortion access, bring the perspectives of low-income women to the debate about reproductive freedom and choice, and "soften the ground" for policy change.

Each of these campaigns endeavors in its own way to raise awareness among the general public and move elected officials to recognize that low-income women deserve the same reproductive rights and access as those who are more fortunate. In many ways, it is "back to the future" for abortion rights advocates. Some 45 years ago, the effort to legalize abortion nationwide that led to *Roe v. Wade* was driven in large part by a concern with disparities, because low-income women were disproportionately affected by the criminalization of abortion. Even in states where abortion was illegal, women with financial means often had access to a safe albeit clandestine procedure, whereas less-affluent women had few options aside from a dangerous, back-alley abortion. And after the fight to legalize abortion was won, one of the first battlegrounds to follow was over the Hyde Amendment.

The proactive campaigns to heighten attention and call for action to cover abortion care under health insurance—especially for low-income women on Medicaid—seem to be gaining some traction among candidates who support abortion rights. Increasingly, more seem comfortable talking about the issue and fighting for reform. With a new administration and Congress taking office next year, and elections in all 50 states too, advocates are hopeful about rebuilding support—however long it takes—toward achieving true access to abortion care for low-income women, regardless of the state in which they live. This is and should be the heart of the abortion rights struggle in this country. ■

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September 21, 2016

The Honorable Trent Franks
Chairman
House Judiciary Committee
Subcommittee on the Constitution and Civil Justice

The Honorable Steve Cohen
Ranking Member
House Judiciary Committee
Subcommittee on the Constitution and Civil Justice

Dear Chairman Franks and Ranking Member Cohen:

The undersigned organizations are committed to advancing reproductive health, rights, and justice with a vision of accessible reproductive health care for all. We believe that the amount of money a woman has should not prevent her from being able to have an abortion. To this end, we strongly support lifting the Hyde Amendment and all other bans on insurance coverage of comprehensive reproductive health care, which includes abortion.

Safe, quality abortion services should be available and affordable to every person regardless of their ability to pay, source of insurance, or where they live. This helps to ensure that each of us can make personal health decisions based on what is best for ourselves and our families. However, since the passage of the Hyde Amendment in 1976, the appropriations process has been used as a vehicle to systematically deny access to comprehensive reproductive health care. Similar provisions have also been enacted, resulting in restrictions on insurance coverage of abortion for: (i) Medicaid, Medicare, and Children's Health Insurance Program beneficiaries; (ii) federal employees and their dependents; (iii) Peace Corps volunteers; (iv) Native American women; (v) women in federal prisons and detention centers, including those detained for immigration purposes; and (vi) low-income women in the District of Columbia through the use of local funds.

Withholding coverage for abortion care creates profound hardships for people across the country, particularly for those who already face significant barriers to receiving high-quality health care, such as low-income women, immigrant women, young women, women of color, and transgender and gender-nonconforming people. For many, coverage for abortion means the difference between getting the health care they need and being denied that care.

For 40 years, politicians have used the Hyde Amendment to interfere in women's health decisions and push abortion out of reach for those struggling to make ends meet. Studies show that when policymakers place restrictions on Medicaid coverage of abortion, it forces one in four poor women to carry an unintended pregnancy to term. Additionally, a woman who seeks an abortion, but is denied, is more likely to fall into poverty than one who is able to get an abortion.

We commend the members of Congress who have stood up against these attacks, including many members of the Judiciary Committee. Congresswoman Barbara Lee introduced the Equal Access to Abortion Coverage in Health Insurance (EACH) Woman Act (H.R. 2972) with more than 70 colleagues in July of 2015. The bill now has a total of 122 cosponsors, and polling shows that a majority of American voters would support a bill that would require Medicaid coverage of abortion.

These policies have harmed our families, our communities, and our health for far too long. However one feels about abortion, politicians should not be allowed to deny a woman's health coverage for it just because she's poor. We urge you to lift the Hyde Amendment and all policy riders that restrict funding for abortion coverage and invite you to work with us to build a future where reproductive health decisions are treated with dignity and compassion.

Sincerely,

A is For
Abortion Care Network
Allentown Women's Center
Alliance for Justice
American Civil Liberties Union
Backline
California Latinas for Reproductive Justice
California Women's Law Center
Catholics for Choice
Center for Reproductive Rights
Center on Reproductive Rights and Justice at UC Berkeley
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)
Emergency Medical Assistance, Inc.
Equality for HER
Feminist Majority Foundation
Forward Together
Gender Justice
Healthy and Free Tennessee
Hmong National Development
Ibis Reproductive Health
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Ipas
Lady Parts Justice League
Mabel Wadsworth Women's Health Center
NARAL Pro-Choice America
NARAL Pro-Choice North Carolina
NARAL Pro-Choice Oregon
NARAL Pro-Choice Texas
NARAL Pro-Choice Virginia
National Abortion Federation
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Council of Asian Pacific Americans (NCAPA)
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Health Law Program
National Institute for Reproductive Health
National Korean American Service and Education Consortium
National Latina Institute for Reproductive Health
National Partnership for Women & Families
National Women's Health Network
National Women's Law Center
Nursing Students for Choice

Physicians for Reproductive Health
Planned Parenthood Federation of America
Pro-Choice Resources
Religious Coalition for Reproductive Choice
Religious Institute
Reproductive Health Access Project
Sea Change Program
SisterSong: National Women of Color Reproductive Justice Collective
Southwest Women's Law Center
SPARK Reproductive Justice Now!
The Reproductive Health Technologies Project
Union for Reform Judaism
Unite for Reproductive & Gender Equity (URGE)
Western States Center
Women Donors Network
Women of Reform Judaism
Women's Media Center
Women's Medical Fund (PA)
WV FREE