

August 2, 2022

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

We write as state leaders of reproductive health, rights, and justice organizations to thank you for the actions proposed in your latest executive order to protect access to reproductive health care services. The actions outlined are an important first step to ensure access to care in the midst of this public health emergency. And still, this unprecedented crisis demands a whole-of-government response; to that end, we write with additional steps the Administration must take to ensure access to critical health care in the wake of the *Dobbs v. Jackson's Women's Health* decision.

As state leaders we know that greater support for abortion from this Administration is critical. Half of U.S. states are already expected to seriously restrict or ban abortion following the recent Supreme Court ruling in *Dobbs*, with the possibility of more attacks on reproductive rights to come in the future.¹ Given that nearly 45% of pregnancies in the United States are unplanned and unintended and that 42% of those end in abortion², it is critical that individuals have the capacity to make their own decisions regarding whether to carry a pregnancy to term. In addition, abortion is an integral, life-saving procedure that may be utilized throughout a pregnancy to save the life of a patient or to support fertility.

The situation on the ground in many states is changing rapidly, creating confusion and impeding access to critical and timely reproductive healthcare. As organizations closely connected to this changing environment for those seeking and providing abortion care, we are seeing:

- Patient confusion around the availability of abortion in their state, even if care is still available and they already have appointments;
- Patients are experiencing longer wait times to receive abortion care even in so-called safe states;
- Health care providers and entities preemptively changing their standard of care on a range of issues — including protocols for prescribing certain medications that may

¹ Shannon Muchmore, *Biden says White House looking into public health emergency for abortion access*, Healthcare Dive (2022), available at <https://www.healthcaredive.com/news/biden-white-house-public-health-emergency-abortion-access/626942/>.

² *Unintended Pregnancy in the United States*, Guttmacher Institute (January 2019), available at <https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us.pdf>.

impact pregnancy and delaying care for ectopic pregnancy—because of fear of being criminally charged for violating the law;

- Escalating harassment at reproductive health clinics, including emboldened protesters who inaccurately tell patients abortion is no longer legal in the state;
- Extreme anti-choice bills aimed at restricting out-of-state travel to obtain an abortion, or bills that attempt to criminalize sharing information about how to access abortion;
- Increasing concerns over breaches in patient privacy as anti-abortion lawmakers introduce legislation that escalates the surveillance of pregnant people; and
- Abortion funds and support systems forced to scale back or pause operations in restrictive states, and funds and support systems, including clinics, in permissive states struggling to keep up with the increased demand for healthcare, travel, and support services.

To that end, we urge you to take the following actions:

- 1. Use the bully pulpit to denounce ALL abortion coverage bans.** Restrictions on using federal funds for abortions have had devastating effects on reproductive freedoms, and disproportionately affect low-income, young, and people of color, in particular Black and Latina people.^{3 4} Preventing Medicaid alone from covering funding abortions means that 25% of Medicaid enrollees seeking abortion are forced instead to carry a pregnancy to term.⁵ We applaud the Biden administration for proposing a 2023 budget without the restrictive Hyde Amendment, and we ask that the 2024 budget be introduced without abortion coverage restrictions in any programs, in addition to removing the Helms and the Weldon amendments. A budget free of abortion restrictions must become an annual effort to eliminate onerous burdens for millions of people. People who obtain health insurance coverage or care through the federal government — Native Americans, servicemembers and their dependents, Peace Corps volunteers, people enrolled in CHIP, Medicaid and Medicare, federal employees and their dependents, and federal prisoners — are denied abortion coverage. Abortion should be a fundamental right for people within these health care systems and the denial of coverage for all of these groups is wrong. Abortion care is health care and expanded efforts should be put in place to ensure it is viewed as such.

³Ipas and Ibis. (2015). *U.S. funding for abortion: How the Helms and Hyde Amendments harm women and providers*. Chapel Hill, NC: Ipas.

⁴ Public Rights/Private Conscience Project of Columbia Law School and Public Health Solutions (2018). *Bearing Faith: The Limits of Catholic Health Care for Women of Color*, available at: <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/BearingFaith.pdf> (last visited Jul 13, 2022).

⁵ Ipas and Ibis. (2015). *U.S. funding for abortion: How the Helms and Hyde Amendments harm women and providers*. Chapel Hill, NC: Ipas.

2. **Convene hospital lawyers to ensure providers are protected when they make decisions to provide care under EMTALA.** The Department of Health and Human Service’s guidance to clarify that EMTALA includes life-saving abortion services is a key step to insulate some providers from prosecution. However, this guidance will only be implemented to the extent a hospital leadership and legal counsel allows. The Administration should take steps to convene hospital leadership and lawyers to ensure they understand the full extent of the law, defray fears of prosecution for abiding HHS guidance and are informed of the consequences of failing to do so.
3. **Provide vouchers for abortion care, child care and travel.** People living in states where abortion has or will soon be banned are more likely to live in poverty, and will have the fewest resources available to them for travel and reproductive healthcare.⁶ Vouchers for childcare, travel, and healthcare could be lifesaving to the more than 900,000 people (not counting those who use pills outside of clinical settings) who get abortions yearly in the U.S., approximately half of whom will now live in states where abortion is restricted.⁷ Major private companies have already recognized the importance of this issue and begun providing similar vouchers for their employees.⁸ The government has a responsibility to similarly recognize the essential nature of these vouchers and fill in the gaps for those either unemployed or not employed with participating companies.
4. **Work with Congress and health insurance companies to provide expanded geographical coverage for individuals in need of abortion care that is only offered in a different state.** Presently, some states are taking efforts to ban Planned Parenthood and independent abortion clinics from their Medicaid programs. “HHS could explore more aggressively enforcing federal requirements that guarantee Medicaid beneficiaries have the ability to seek family planning services from their provider of choice.”⁹ In addition to helping secure Medicaid beneficiaries the ability to seek medical care at Planned Parenthood, the Administration should also adopt measures aimed at encouraging health insurance companies to provide expanded geographical coverage for individuals in need of abortion care. Sometimes it is easier for people because of geography and abortion access deserts to travel out of state for care. However, if this ease comes at the cost of insurance coverage for the procedure, there is still too high a cost involved. Enforced and

⁶ Analysis by Ronald Brownstein, *Analysis: “A recipe for a lot of suffering”*: How abortion bans may strain the red states, CNN (2022), available at

<https://www.cnn.com/2022/07/05/politics/red-states-roe-v-wade-social-safety-net/index.html>.

⁷ Jeff Diamant & Besheer Mohamed, *What the data says about abortion in the U.S.*, Pew Research Center (2022), available at <https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/>.

⁸ Kate Gibson, *These companies are paying for abortion travel*, Cbsnews.com (2022), available at <https://www.cbsnews.com/news/abortion-travel-companies-paying-benefits-amazon-starbucks-target/>.

⁹ U.S. Senate, Letter to the President of the United States on Abortion (July 7, 2022), available at <https://www.warren.senate.gov/imo/media/doc/2022.06.07%20Letter%20to%20POTUS%20on%20Abortion%20EO.pdf>.

enhanced free choice provider requirements are one mechanism to help ensure equitable abortion access.

- 5. Federal protections for interstate mailing of abortion inducing drugs.** Despite the Food and Drug Administration (FDA) recently taking steps to ease the onerous and unnecessary restrictions on the drugs used as part of a medication abortion protocol, twenty states have introduced legislation aimed at curtailing access—which includes banning medication abortion by mail.¹⁰ While states may have greater latitude to do this within their own borders, the Administration could take additional steps to protect interstate commerce and the mailing of mifepristone and misoprostol.
- 6. Twelve month contraceptive dispensing and insurance coverage.** In 2013, the Centers for Disease Control and Prevention released a recommendation that contraception should be dispensed for 12 months in order to reduce the risk of pregnancy.¹¹ Approximately 1.2 million unintended pregnancies in the United States annually are attributed to inconsistent or incorrect use of contraception.¹² Ensuring contraceptive equity through requiring insurance to cover and dispense a year’s supply of co-pay free contraception at the point-of-sale is one method to help eliminate inconsistent use.¹³ Contraceptives enable people to plan if and when they want to start a family, have healthier pregnancies, time births, and achieve their desired family size, ultimately improving the economic stability of women, family stability, and the well-being of children.
- 7. Commit to changing filibuster rules in the Senate.** The Administration has expressed interest in carving out an exception to the filibuster to strengthen abortion rights, and we urge you to use the bully pulpit to further these calls.¹⁴ The filibuster’s sixty-vote threshold for passing Senate legislation has repeatedly stymied efforts to pass the *Women’s Health Protection Act* and codify *Roe v. Wade* and voting rights protections, and blocked progress on universal child care and paid family leave. Allowing Democrats to overcome this antiquated Senate procedure would be the most direct way to solidify reproductive freedom in the U.S and protect democracy from threats to the right to vote.

¹⁰ Christine Vestal, *As Abortion Pills Take Off, Some States Move to Curb Them*, PEW (Mar. 16, 20220, available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/03/16/as-abortion-pills-take-off-some-state-s-move-to-curb-them>).

¹¹ U.S. Selected Practice Recommendations for Contraceptive Use, 2013, available at <http://www.cdc.gov/mmwr/pdf/rr/rr62e0614.pdf>.

¹² A. Choi and A. Dempsey, *Strategies to improve compliance among oral contraceptive pill users: a review of the literature*, Dove Medical Press 5 (2014) 17-22
https://www.dovepress.com/strategies-to-improve-compliance-among-oral-contraceptive-pill-users-a-peer-reviewed-fulltext-article-OAJC#r_ref46.

¹³ One study found that compared with a three-month supply of contraceptives, a one year supply of contraceptives decreased the likelihood of an unintended pregnancy by 30%. Diana Greene Foster, et. al, *Number of Oral Contraceptive Pill Packages Dispensed and Subsequent Unintended Pregnancies*, *Obstetrics and Gynecology* 117 (2011): 566-572. <http://www.ncbi.nlm.nih.gov/pubmed/21343759>.

¹⁴ Maegan Vazquez, *Watch Biden call for filibuster rule change to codify abortion rights into law*, CNN (2022), available at <https://www.cnn.com/2022/06/30/politics/biden-abortion-rights-filibuster/index.html>.

- 8. Combat medical misinformation and proliferation of fraudulent and deceptive practices.** The Administration has expressed a commitment to ongoing outreach and public education efforts to ensure that people have access to reliable and accurate information about their rights and access to care, while ensuring the protection of private, sensitive health information and data. While sexual and reproductive health care providers in the U.S. are subject to the *Health Insurance Portability and Accountability Act*, many anti-abortion crisis pregnancy centers (CPCs) do not offer medical services and are not beholden to the same level of oversight. Although these organizations do have important first amendment rights, privacy is non-negotiable and is an essential component of exercising bodily autonomy and reproductive freedom. In recent years, the anti-abortion movement has expanded and elevated the role of CPCs, in part by facilitating the coordination of sophisticated data collection and exploitation systems through their national and international affiliate networks, as highlighted in this study.¹⁵ The CPC industry is capable of functioning as surveillance infrastructure for the anti-abortion movement, and we urge implementation of solutions to protect consumers from potential privacy violations, medically inaccurate misinformation, and fraudulent or deceptive practices utilized by these organizations.
- 9. End the practice of mandatory drug screening of pregnant people and withhold federal funds from hospitals that require this.** As a result of the *Dobbs* decision, pregnant people are facing the criminalization of their bodies. Mandatory drug screening during pregnancy and at birth in a post-*Roe* America creates a womb to prison pipeline, immediately flagging child and parent and putting them into the criminal justice system. If the pregnant individual suffers a miscarriage and is found to have used drugs at some point in their pregnancy, they are extremely vulnerable to criminalization. Furthermore, a mere positive test for a substance such as marijuana leads to the intervention of Child Protective Services and too often ends in family separation. Health care providers have a duty to help people facing substance use disorder, they do not have a duty to report substance use to law enforcement. The Administration should not allow for the further criminalization of pregnant people and should bar all hospitals who receive federal funds from reporting substance use screening results to law enforcement. Many medical practitioners misunderstand their obligations under CAPTA/CARA and wrongly think that testing and reporting is required. The federal government should issue guidance clarifying that CAPTA/CARA does not require testing and reporting, and that such testing and reporting in fact leads to harmful results for both parents and infants.

¹⁵ The Alliance: State Advocates for Women’s Rights and Gender Equality, *Designed to Deceive: A Study of the Crisis Pregnancy Center Industry in Nine States* (2021), available at <https://alliancestateadvocates.org/wp-content/uploads/sites/107/Alliance-CPC-Study-Designed-to-Deceive.pdf>

This crisis demands a whole-of-government response, and it is critical that these proposed actions are acted upon swiftly to ensure reproductive freedoms for all Americans. With the overturning of the *Roe* decision, the United States has become an outlier by rolling back reproductive freedoms, joining only 11 countries that have restricted abortion access in the last three decades (including Russia and North Korea).¹⁶ In the same timeframe, almost 60 countries have expanded abortion access.¹⁷

As leaders of state-based organizations working to advance reproductive health, rights, and justice, we are deeply concerned by recent remarks from the White House stating that your “goal in responding to *Dobbs* is not to satisfy some activists who have been consistently out of step with the mainstream of the Democratic Party.”¹⁸ This statement implies a dangerous misunderstanding of the scale and impact of this crisis on every single American. This issue is not about appeasing a group of activists, but about restoring widely popular abortion protections to stave off an impending public health and economic disaster. It also ignores the overwhelming data that shows Americans—and especially Democratic voters—are extraordinarily concerned about abortion rights.

Polling conducted before the *Dobbs v. Jackson Women's Health Organization* decision found that 61% of Americans support abortion access in all or most cases; this number is 80% among Democrats.¹⁹ This decision will have a profound impact on the upcoming midterm election. Polling conducted in the weeks leading up to the decision found that voters in key four battleground states (Arizona, Georgia, Pennsylvania and Wisconsin) are more than twice as likely to vote for candidates who support abortion rights than they are to vote for those who would support a ban.²⁰

We urge you to heed the warnings of a majority of Americans and recognize the *Dobbs* decision for what it truly is: a blatant infringement of personal rights, a decision not based in medical or historical realities, and a horrific misstep by the United States that will result in a public health and economic crisis unless addressed boldly and immediately. Half-measures and tentative actions may well lead to an irrevocable lapse of freedom in this country. The time for decisive and unapologetic action is now.

Thank you for your attention to this important issue.

¹⁶ FP Staff, *Roe Abolition Makes U.S. a Global Outlier on Abortion Rights*, Foreign Policy (2022), available at <https://foreignpolicy.com/2022/06/24/roe-v-wade-overturned-global-abortion-laws/>.

¹⁷ *Id.*

¹⁸ Olafimihan Oshin, *Former Biden campaign official “took offense” to White House statement on abortion action*, The Hill (2022), available at <https://thehill.com/homenews/administration/3551835-former-biden-campaign-official-took-offense-to-white-house-statement-on-abortion-action/>.

¹⁹ Hannah Hartig, *About six-in-ten Americans say abortion should be legal in all or most cases*, Pew Research Center (July 13, 2022), available at <https://www.pewresearch.org/fact-tank/2022/06/13/about-six-in-ten-americans-say-abortion-should-be-legal-in-all-or-most-cases-2/>.

²⁰ <https://http://lakeresearch.com/moveon.choice.battleground>

Sincerely,

ACCESS Reproductive Justice
Amplify Georgia Collaborative
Avow
Birth In Color RVA
Boulder Valley Women's Health Center
Cascade AIDS Project & Prism Health
Cedar River Clinics
Chicago Abortion Fund
Cobalt
Colorado Organization for Latina Opportunity and Reproductive Rights
Elephant Circle
El Pueblo
Family Forward Oregon
Feminist Women's Health Center
Florida National Organization for Women
Healthy and Free Tennessee
Indigenous Women Rising
La Fuerza NC
Latino Network
Legal Voice
Liberate Abortion
Louisiana Coalition for Reproductive Freedom
National Council of Jewish Women, Essex County Section
National Council of Jewish Women, Tennessee
National Council of Jewish Women, Virginia
National Council of Jewish Women, Washington State Policy Advocate
New Era Colorado
Northwest Abortion Access Fund (NWAAF)
One Colorado
Oregon National Organization for Women (NOW)
Planned Parenthood of the Rocky Mountains
Pro-Choice Connecticut
Pro-Choice Maryland
Pro-Choice Missouri
Pro-Choice North Carolina
Pro-Choice Ohio
Pro-Choice Oregon

Pro-Choice Washington
REPRO Rising Virginia
Reproductive Equity Now
Soul 2 Soul Sisters
The National Latina Institute for Reproductive Justice
Trust Women
Virginia National Organization for Women (NOW)
Western States Center
Women's Foundation of Florida
Women's Foundation of Oregon