STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE OFFICE

June 16, 2021

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
Chair
Senate Committee on the Judiciary
Subcommittee on the Constitution
706 Hart Senate Office Building
Washington, DC 20510

The Honorable Ted Cruz
Ranking Member
Senate Committee on the Judiciary
Subcommittee on the Constitution
127A Russell Senate Office Building
Washington, DC 20510

Dear Chairs and Ranking Members of the Committee and Subcommittee:

As the Supreme Court has consistently recognized, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[1] Accordingly, laws that impose an undue burden on a woman's right to choose to terminate a pregnancy are unconstitutional. Nonetheless, many states across the country have enacted laws in the name of promoting women's health that do not, in fact, advance women's health or safety but are instead designed to restrict access to abortion services. These include laws requiring physicians have admitting privileges at hospitals and setting arbitrary requirements at women's health clinics for the size of procedure rooms and corridors. As the Attorneys General of our respective states, we write in support of the Women's Health Protection Act, which would protect the constitutional right to abortion by prohibiting medically unnecessary restrictions that specifically target abortion providers and undermine the availability of abortion services.

The Women's Health Protection Act (WHPA) targets onerous state laws that have been adopted in a concerted strategy to restrict access to abortion. In *Whole Woman's Health v. Hellerstedt,* 136 S. Ct. 2292 (2016), the Supreme Court ruled that a Texas law that required abortion

[1] Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992).

providers to maintain admitting privileges at a local hospital failed to advance women's health and posed an undue burden on women seeking an abortion. Last year, a coalition of 22 attorneys general helped to win another victory in *June Medical Services v. Gee*, 140 S. Ct. 2103 (2020), in which the Supreme Court held that a similar law in Louisiana was unconstitutional. Rather than waiting for medically unnecessary restrictions to continue to be challenged in the courts—a process that can often take years— Congress should pass the WHPA to ensure that such restrictions are not imposed in the first place. Medically unnecessary restrictions targeting abortion providers actually disserve women's health and safety and pose challenges for states that aim to provide a full range of reproductive health services, including abortion services.

Often, strict requirements imposed on abortion providers are presented as measures to protect and advance women's health. Yet evidence shows that these restrictions instead lead to worse health outcomes for women. One recent study in Texas found that the maternal mortality rate in the state doubled between 2010 and 2012, a period in which access to women's health care services, including abortion services, had become more difficult to obtain.[2] Women who find themselves too far from an abortion provider may have to delay obtaining an abortion, which can lead to health risks and add to the cost of the procedure.[3] Alternatively, some women may resort to "black market" or self-induced abortions, which can be extremely dangerous and lead to serious injury or even death.[4] And women who are forced to carry a pregnancy to term after being denied abortion services are four times more likely to develop potentially life-threatening health conditions and are substantially more likely to experience physical violence from abusive partners or family members.[5] These statistics illustrate the very real cost to women throughout the United States from burdensome laws that restrict the availability of safe and legal abortion care. The widely known negative effects of laws targeting abortion providers undermines any argument that such laws are intended to promote women's health.

At the same time, the consequences of these laws are already evident across the country. Research from 2017 found that thirty-eight percent of women between the ages of 15 to 44 live in counties without an abortion clinic.[6] Between 2014 and 2017, twenty-five abortion clinics

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[2] Marian F. MacDorman, et al., *Recent Increases in the U.S. Mortality Rate: Disentangling Trends from Measurement*, 128 Obstetrics & Gynecology 447, 451-52 (2016).

[3] Bonnie Scott Jones & Tracy A. Weitz, *Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences*, 99 Am. J. of Pub. Health 623, 624 (Apr. 2009); Ushma D. Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104 Am. J. Pub. Health 1687, 1687 (2014); Eleanor A. Drey et al., *Risk Factors Associated With Presenting for Abortion in the Second Trimester*, 107 Obstetrics & Gynecology 128, 128 (2006).

[4] David A. Grimes et al., *Unsafe abortion: the Preventable Pandemic*, 368 The Lancet 1908, 1908-1919 (2006).

[5] Caitlin Gerdts et al., *Side Effects, Physical Health Consequences & Mortality Associated with Abortion and Birth After an Unwanted Pregnancy*, 26 Women's Health Issues 55, 58-59 (2016); Sarah C.M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC Medicine art. 144 (2014); Lauren J. Ralph et al., *Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study*, 171 Annals of Internal Med. 238, 238-247 (2019); *see also* Diane Greene Foster et al., *Socioeconomic outcomes of women who receive and women who are denied wanted abortions in the United States*, 108 Am. J. Pub. Health 407, 407-413 (2018).

[6] Rachel K. Jones, et al., *Abortion Incidence and Service Availability in the United States, 2017*, New York: Guttmacher Institute, 2019, https://www.guttmacher.org/report/abortion-incidence-service-availability-us-2017.

shuttered in the South and the Midwest.[7] As of June 2019, six states have only a single abortion clinic remaining.[8] As providers close due to the impact of medically unnecessary restrictions, women are likely to be forced to travel farther and make greater sacrifices to get access to services. Unfortunately, these burdens often fall disproportionately on lower-income women who cannot afford to travel, take time off work, or find childcare in order to get to the nearest provider.

As Attorneys General, we are committed to ensuring that each state satisfies its constitutional obligation to protect the right to choose to terminate a pregnancy within its borders. Among other things, we are deeply concerned about protecting the constitutional rights of our residents who may need medical care while present as students, workers, or visitors in states with drastically restricted abortion access. In addition, a substantial reduction in the availability of abortion services in some states can cause women to seek medical care in other states, thereby straining their health care systems. Indeed, history shows that many women will cross state lines, if they have the means to do so, when abortions are unavailable in the states where they live. For example, in the nearly three years between New York State's liberalization of its abortion laws in 1970 and 1973 when the United States Supreme Court in *Roe v. Wade* ruled that the right to choose was constitutionally protected, close to 350,000 women came to New York from other states where abortions were entirely or largely unavailable.[9] In the wake of recent abortion restrictions, some states, including several of our own, have experienced a substantial influx of out-of-state patients seeking abortions as a result of reduced access in their home states.[10]

Our states stand ready and willing to provide reproductive care services to those who need them. However, a significant and sudden increase in patients seeking abortions, especially as a consequence of laws that do not advance women's health and decrease available services, runs the risk of straining the health care systems of less restrictive states. This in turn can impair the availability of care and affect the reproductive choices of both residents and non-residents alike in those states. Our states aim to continue providing a wide range of reproductive health care services, including abortion services, but our ability to do so could be substantially burdened by the responsibility of ensuring that all women in need of abortions are able to safely obtain one. The WHPA would address this problem by safeguarding access to abortion services in all states.

We support the passage of the WHPA given how it will help to restore and facilitate access to abortion services throughout the United States, upholding this critical constitutional right. We look forward to working with you and your committees as you consider this legislation. Please let us know how we may be of assistance during this process.

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[7] Guttmacher Inst., "Appendix Table 1: Total number of abortion-providing facilities, 2014 and 2017, and percentage change, by region and by state." https://www.guttmacher.org/sites/default/files/report_downloads/abortion-incidence-service-availability-us-2017-appendix-tables.pdf

[8] Holly Yan, *These 6 states have only 1 abortion clinic left. Missouri could become the first with zero*, CNN (June 21, 2019), https://www.cnn.com/2019/05/29/health/six-states-with-1-abortion-clinic-map-trnd/index.html.

[9] Rachel Benson Gold, *Abortion and Women's Health: A Turning Point for America?* 3 (1990).

[10] *See, e.g.*, *EMW Women's Surgical Ctr. P.S.C. v. Glisson*, No. 17-cv-189, 2018 WL 6444391, at *9 (W.D. Ky. Sept. 28, 2018), *appeal filed* No. 18-6161 (Nov. 15, 2018); David Crary, *Abortions Declining in Nearly All States*, Associated Press (June 7, 2015).

Sincerely,

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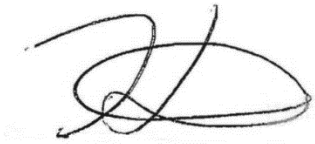

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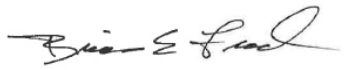

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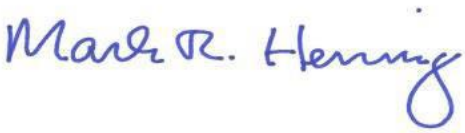

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