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June 9, 2022

Sent via Electronic Mail

The Honorable Nancy Pelosi
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Chuck Schumer
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Speaker Pelosi and Majority Leader Schumer:

We are grateful for your efforts to codify *Roe* through the Women’s Health Protection Act, and remain steadfast in our support for its passage, regardless of the final decision in *Dobbs v. Jackson Women’s Health*. People from across the country are already losing access to essential health care due to state restrictions and bans, and if the leaked draft majority opinion in *Dobbs* is adopted, this problem will become precipitously worse with tragic consequences. Moreover, for many people, the right to choose abortion under *Roe* has not guaranteed access to abortion care in practice. We urge you to continue to work toward protecting the right to an abortion, and to expeditiously take steps to protect access to reproductive health care to the fullest extent possible.

The constitutional right recognized by the *Roe* decision has never been enough to ensure reproductive justice for all. We must guarantee protections for the people furthest from reproductive justice, who are disproportionately low-income or Black, Indigenous, and people of color (BIPOC). These communities will bear the brunt of the harm caused by state-level restrictions on reproductive health care. If the Supreme Court overturns *Roe* and Congress fails to act with the urgency this moment requires, those who have been historically oppressed, have the least access to justice, and have the least resources will be disproportionately and unjustly harmed.

We request your consideration of the following proposals to move us closer to reproductive justice, whether or not *Roe* is overturned. These proposals would protect and expand access to abortion and other reproductive health care, prevent states from implementing or enforcing laws that criminalize accessing and providing abortion care, and ensure that voters—who support access to abortion by a wide margin—are able to exercise their right to vote and elect officials committed to upholding their rights, not imposing minority rule:

- Make critical changes in health insurance policy to increase access to reproductive health services. According to the U.S. Census, 91.4 percent of people in the United States had some health insurance coverage for all or part of 2020. In 2020, private health insurance coverage continued to be more prevalent than public coverage (66.5 percent versus 34.8 percent, respectively). Of the subtypes of health insurance coverage, employment-based insurance was the most common, covering 54.4 percent of the population for some or all of the calendar year, followed by Medicare (18.4 percent), Medicaid (17.8 percent), direct-purchase coverage (10.5 percent), TRICARE (2.8 percent), and Department of Veterans Affairs (VA) or Civilian Health and Medical Program of the Department of Veterans Affairs coverage (0.9 percent).¹ Specifically, we urge Congress to:
 - Pass legislation to require that commercial insurance plans cover abortion care if they also cover maternity benefits, and require the same for self-insured plans governed by the Employment Retirement Income Security Act (ERISA). In 2018, Washington State passed the Reproductive Parity Act.² This law requires health insurance plans to cover all FDA-approved contraceptive methods without co-pays, and to cover over-the-counter contraceptives without a prescription. The law also requires health insurance plans that cover maternity care to also cover abortion care. In 2015, California passed Senate Bill 1053, the Contraceptive Coverage Equity Act. Effective as of January 1, 2016, this law requires health insurance coverage of the full range of FDA approved methods of birth control without restrictions or co-pays. This legislation ensures that people in California enrolled in private health insurance and Medi-Cal can choose the most appropriate method of birth control and makes certain that choice is covered by their health plan. Congress should adopt these requirements at the federal level.
 - Eliminate the rider in the appropriations bill that prohibits the District of Columbia from using local funds for abortion services. The federal government’s control over District policy deprives the District of the same opportunity that states have to fund medically necessary abortions through its Medicaid plan, or otherwise use its own locally-raised funds to support its residents.
 - Eliminate the Hyde Amendment from the federal budget. In 2022, as in 2021, President Biden’s proposed budget did not include the Hyde Amendment. Since 1976, the Hyde Amendment has prohibited Medicare and Medicaid funds from being used to cover abortion—even when the patient’s health is at risk and the doctor recommends an abortion. According to the Guttmacher Institute, compared with higher-income women, low-income women’s rates of unintended pregnancy and abortion are five times as high.³ Due to systemic economic injustice, BIPOC

¹ Keiser-Starkey, Katherine, “Health Insurance Coverage in the United States: 2020,” U.S. Census Bureau, September 14, 2021, <https://www.census.gov/library/publications/2021/demo/p60-274.html>, (last accessed June 7, 2022).

² RCW 48.43.072.

³ “Abortion rates by income,” Guttmacher Institute, October 19, 2017, <https://www.guttmacher.org/infographic/2017/abortion-rates-income> (last accessed June 7, 2022).

women disproportionately live below the poverty line and are more likely than white women to be enrolled in government insurance.⁴ BIPOC women also have higher rates of premature births, low birth weights, and maternal and infant morbidity and mortality.⁵ The Hyde Amendment has disproportionately harmed BIPOC people and must be eliminated to provide people, regardless of economic status, with meaningful access to abortion care.

- Affirm that all people and their spouses and dependents who receive abortion care services through federal agencies—including the Departments of Defense and Veterans Affairs, the Bureau of Prisons, and the Indian Health Service—can have abortion care paid for as part of their health insurance. Furthermore, coverage should not be limited to circumstances in which the federal government believes an abortion is appropriate. Currently, for example, TRICARE⁶ provides abortion coverage only in situations in which the “pregnancy is the result of an act of rape or incest” or “the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.”⁷ All pregnancies involve health risks, and the decision to carry a pregnancy to term should not be dictated by insurance coverage or lack thereof.
- Establish a federal program to provide funding to non-profit organizations that assist people seeking abortions, but for whom the costs, whether from travel, lost wages, childcare needs, or other considerations, are prohibitive.
- Protect access to medication abortion by expressly preempting state restrictions on access to abortion-related medications approved by the Food and Drug Administration (FDA) and state restrictions on access to telehealth, including with providers in other states.
- Expressly permit the use of the U.S. Postal Service to distribute FDA-approved abortion-related medications.

⁴ Berchick, E., Barnett, J., and Upton, R., “Health Insurance Coverage in the United States: 2018,” U.S. Census Bureau, November 2019, p. 14, <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf> (last accessed June 7, 2022).

⁵ Shapiro-Mendoza, C., Barfield, W., Henderson, Z., James, A., Howse, K., Iskander, J., and Thorpe, P., “CDC Grand Rounds: Public Health Strategies to Prevent Preterm Birth,” Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, August 19, 2016, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6532a4.htm> (last accessed June 7, 2022); “Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths,” Centers for Disease Control and Prevention, September 5, 2019, <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> (last accessed June 7, 2022); “Infant Mortality Rates by Race and Ethnicity, 2018,” Centers for Disease Control and Prevention, <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm#mortality> (last accessed June 7, 2022).

⁶ <https://www.tricare.mil/About>. TRICARE is the health care program for almost 9.4 million service members, retirees and their families around the world (see: <https://www.militaryonesource.mil/health-wellness/healthcare/tricare-101-military-health-benefits-basics-in-five-minutes-or-less/#:~:text=TRICARE%20is%20the%20health%20care,support%20to%20ensure%20mission%20readiness>).

⁷ “Abortions,” TRICARE, available at www.tricare.mil/CoveredServices/IsItCovered/Abortions (last accessed June 3, 2022).

- Strengthen data privacy laws to protect the privacy rights of those seeking reproductive care:
 - Ban geofencing near clinics and health care facilities that provide reproductive health care. Geofencing is the use of location data to target people in a defined area, usually with digital advertising. Geofencing can be abusive when it digitally harasses people or interferes with someone’s privacy or reasonable expectation of privacy. In 2017, Massachusetts Attorney General Maura Healey obtained a settlement prohibiting a company that used geofencing to target people entering reproductive health facilities. The company targeted patients with advertisements that, if clicked, sent the person to a website with information about abortion alternatives and access to a live chat with a “pregnancy support specialist.”⁸
 - Prohibit the use of cell phone location data, internet search history, personal data entered into period tracking and other health applications, and other personal and sensitive data to enforce state laws criminalizing accessing abortion, contraception, or other reproductive health care. Data-extraction tools can be used to obtain a full, searchable copy of cell phone data, including emails, text messages, photos, location and app data, and more. This data could be used to enforce laws restricting abortion access. Significantly, BIPOC and low-income people disproportionately rely solely on their cell phones to connect to the internet, and thus lack options to avoid the harvesting and sharing of their personal data. According to the PEW Research Center, a quarter of Latinx adults are “smartphone-only” internet users—meaning they own a smartphone but lack traditional home broadband services. By comparison, 12% of white adults fall into this category.⁹ As of early 2021, 27% of adults living in households earning less than \$30,000 a year are smartphone-only internet users.¹⁰ BIPOC communities will almost certainly be particularly harmed by the use of cell phone data to enforce laws criminalizing accessing abortion and other types of care.
- Finally, we urge the Senate to pass the John R. Lewis Voting Rights Advancement Act. Protecting voting rights is critical to protecting abortion access. A large majority of Americans support protecting access to abortion. If Congress fails to act now, states where officials have successfully enacted extremist voter suppression laws will further solidify the power of the minority to thwart the will of the people. For example, on May 11, the Senate cloture vote on the motion to proceed to a vote on the Women’s Health Protection Act (WHPA) failed by a vote of 49-51. The 51 senators who voted against

⁸ Office of Attorney General Maura Healey, “AG Reaches Settlement with Advertising Company Prohibiting ‘Geofencing’ Around Massachusetts Healthcare Facilities,” April 4, 2017. <https://www.mass.gov/news/ag-reaches-settlement-with-advertising-company-prohibiting-geofencing-around-massachusetts-healthcare-facilities> (last accessed May 10, 2022).

⁹ Atske, S., and Perrin, A., “Home broadband adoption, computer ownership vary by race, ethnicity in the U.S.,” Pew Research Center, July 16, 2021, <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/> (last accessed June 8, 2022).

¹⁰ Vogels, Emily, “Digital divide persists even as Americans with lower incomes make gains in tech adoption,” Pew Research Center, June 22, 2021, <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/> (last accessed June 8, 2022).

bringing the WHPA to a vote represent 40 million fewer people than the 49 senators who voted yes.

State laws criminalizing abortion could also have a direct impact on voting rights, particularly in states that deny voting rights to people with felony convictions. Many states criminalizing abortion also disenfranchise their BIPOC residents by implementing racist voter suppression measures, and through racist enforcement of laws designed to have a disproportionate impact on BIPOC populations, particularly Black voters. Enforcement of felony abortion laws will only exacerbate this grave form of injustice.

This is a non-exhaustive list of critical areas for policy and statutory changes to improve protections for people seeking to access reproductive health care nationwide. We urge you to ensure that comprehensive reproductive health care is accessible to every person in this country without fear of repercussions. The right to bodily autonomy is essential to realizing justice. We must urgently push for reproductive justice and fight back against any efforts to overturn essential civil rights—now and into the future. Please contact our offices if we can assist you with these or any other efforts to further reproductive justice.

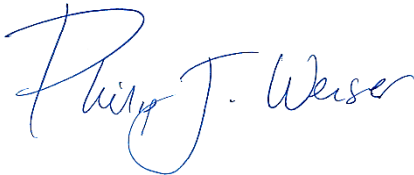
Sincerely,



Bob Ferguson
Washington State Attorney General



Rob Bonta
California Attorney General



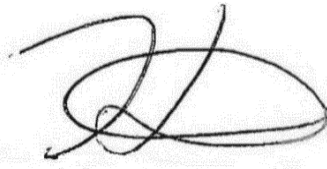
Phil Weiser
Colorado Attorney General



William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



Karl A. Racine
District of Columbia Attorney General



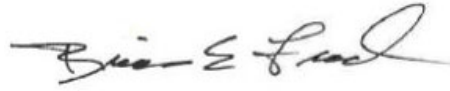
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