

MEMORANDUM

To: Congressional staff

From: Advocates for Youth, American Civil Liberties Union, Catholics for Choice, Center for Reproductive Rights, National Abortion Federation, National Asian Pacific American Women's Forum, National Council of Jewish Women, National Latina Institute for Reproductive Health, National Partnership for Women & Families, National Women's Health Network, Physicians for Reproductive Health, and URGE: Unite for Reproductive & Gender Equity

Date: September 2017

RE: **Message Guidance: Federal 20-Week Abortion Ban (H.R. 36)**

Topline Supporting Messages: Politicians Shouldn't Interfere With Personal Medical Decisions

- However we may feel about abortion, we can all agree that a woman's health, not politics, should drive important medical decisions. We're [Politicians are] not medical experts and this is not an area where we [politicians] should be intruding.
- We should not interfere with a health care provider's ability to provide the care that is best for their patients.
- It is not always possible for a woman to get an abortion as soon as she would like because politicians are often standing in the way of effective and affordable methods of abortion care.
- A woman considering (needing) an abortion at this point in pregnancy (or later in pregnancy) is already facing challenging circumstances. We're not in her shoes. We should not deny her the ability to make a decision based on her own conscience and in consultation with those she trusts.
- A woman should be able to focus on making the decision that is best for herself and her family, not trying to navigate a dangerous obstacle course that a federal ban would put between patients, their medical care providers, and safe abortion care by imposing arbitrary and medically unnecessary time constraints/limits.

Protecting women's health and safety

- This bill would take decision-making away from patients and their trusted medical care providers and put it in the hands of politicians. Providers and their patients should have available to them the full range of effective and medically proven methods of care to determine the best medical option for a variety of circumstances, including the health or life of the woman.
- This bill contains extremely narrow exceptions for abortion care after 20 weeks. It prohibits a doctor from providing care even if there could be severe and irreversible damage to a woman's health, or if the fetus is diagnosed with a condition incompatible with life. The ban would force a woman to suffer through severe medical conditions, knowing she can only obtain the care she needs if her condition becomes life threatening.
- The bill also provides a narrow and callous exception in cases of rape and incest. Adult women who are survivors of sexual assault would have to jump through unnecessary hurdles and endure a 48-hour mandatory delay, even if the situation is medically urgent. Women 17 years old and younger who are survivors of sexual assault would have to

report their assault to the authorities to obtain abortion care. Women 18 years and older who are survivors of incest would still be unable to obtain the abortion care they need.

- H.R. 36 would impose harsh federal criminal penalties, including five years in prison, on medical professionals. This criminalization of care would have a chilling effect on the provision of abortion care in the U.S.—exactly the motive of the bill’s extreme, anti-abortion supporters.
- Abortion is one of the safest medical procedures provided in this country, due in large part to the skill and expertise of abortion providers who offer high-quality care to women. Abortion is already heavily regulated by the states. Extreme, anti-choice legislation that denies pregnant women access to medical experts only jeopardizes their health and safety.

Placing women at risk by ignoring individual circumstances & health needs

- Only 1.3% of abortions in the U.S. occur after 20 weeks. While it may be a small number of women who face these circumstances, for each and every one of them, the ability to make these personal and private decisions without the meddling of politicians is essential.
- Our families are too important to put them at risk. Restrictions that prevent women from getting the care they need with medically unnecessary time limits risk their health, their futures, and their lives.
- Young women, women of color, low-income women, and immigrant women already face barriers to accessing the health care they need. Abortion bans only makes access to care harder and could put a woman’s health in jeopardy.
- When a woman experiences a complex health situation, she needs care from the medical professionals she trusts—not interference from politicians who presume to know better.

Criminalizing abortion and attacking women’s constitutional rights

- Women do not need a new federal law limiting their health care decisions and criminalizing their health care providers. Congress should not be in the business of denying anyone their constitutional rights.
- Today, a majority of Americans—7 in 10—supports upholding *Roe*. This ban clearly violates that Supreme Court decision.
- More than 40 years ago, the Supreme Court’s decision in *Roe v. Wade* recognized a woman’s constitutional right to decide whether to continue or end a pregnancy prior to viability.
- The U.S. Supreme Court has affirmed time and again that state actors cannot ban abortion before viability. Just last year, the Supreme Court reaffirmed *Roe* in *Whole Woman’s Health v. Hellerstedt*. The Court made it very clear that a law may not impose a burden on a woman’s access to abortion that outweighs the health benefits it confers. This bill does not enhance a woman’s health in any way; instead, it burdens her with yet another unnecessary obstacle to exercising her constitutional right.
- Courts have consistently applied *Roe*’s viability principle in striking these bans down as unconstitutional. No 20 week ban has withstood this judicial scrutiny. The U.S. Court of Appeals for the Ninth Circuit has permanently blocked 20-week bans in Arizona and Idaho. In 2014, the Supreme Court refused to review the decision permanently enjoining Arizona’s ban.

- Members of Congress shouldn't be wasting taxpayer dollars proposing unconstitutional legislation.

Faith-Based Messages

- Each woman must be able to follow her own beliefs, moral code, and conscience when making personal life decisions, including those surrounding pregnancy. A ban on abortion would interfere with a woman's moral autonomy and religious liberty—her ability to make a critical decision based on her own moral or religious beliefs and personal circumstances.
- People of many religious traditions believe that protecting women's health and safety is paramount and ensuring access to safe medical care is a moral obligation. When a woman needs to end a pregnancy, she must have access to safe, accurate, and quality medical care, which this abortion ban puts in jeopardy. Health care that does not include access to abortion at different points in pregnancy does not meet what women and society need.
- In addition to supporting compassion, respect, and the inherent dignity of all people, a core tenet of most faiths is a commitment to economic and/or social justice. As such, it is immoral to threaten the economic security or well-being of women and their families, particularly those who are low-income, by reducing their access to reproductive health care.
- The Supreme Court's ruling in *Roe v. Wade* also recognized that different moral and religious traditions have differing views of abortion. Protecting a woman's ability to make her own decision about ending a pregnancy is critical to respecting her religious freedom. It is unjust for lawmakers to privilege the views of those who oppose abortion, seeking to impose those beliefs on everyone, as doing so would directly block a woman from making her own faith-informed decision on this personal matter.

Disparate Impact Messages

- Many women already face barriers to accessing timely abortion care: low-income women may need time to raise funds, women living in rural areas frequently struggle to find transportation to access clinics, and immigrant women often face language or other barriers in finding a provider. This ban will disproportionately prevent already underserved communities from accessing safe, necessary care.
- Young people, in particular, are more likely to face barriers to accessing safe abortion care and may be forced to delay an abortion until later in pregnancy. The prevalence of low-paying, inflexible jobs among young people means they need time to assemble the funds to pay for an abortion or to obtain available transportation and reach a provider. This ban would put abortion care out of reach for young people just as they begin to establish their independent lives.

Responding to Argument that U.S. is One of Only Seven Countries that Allows Abortion Beyond 20 Weeks

- Globally, and over the past six decades, many countries have been moving towards *opening up* their abortion laws and guaranteeing women access to safe and legal abortion services. If the U.S. is looking to be in line with the rest of the world when it comes to access to abortion care, then we should support laws and policies that expand access to the services women need, and not erect massive barriers to care—which is exactly what this unconstitutional abortion ban does.

- Thanks to proactive, effective policies and practices, women in similarly developed countries, particularly in Western Europe, have greater access than women in America to legal abortion services earlier in their pregnancies. Subsidized or fully-covered abortion services, greater access to abortion care providers, less stigma, and fewer legal barriers like mandatory delays and forced look-and-listen ultrasounds in these countries reduce some of the need for abortions later in pregnancy.
- When comparing the reality of abortion access in the United States to other countries, it is important to look at how women’s access to reproductive health care exists in practice, and not just in the laws on the books. Focusing only on the comparison of the *legal* gestational limits for abortion without restriction is disingenuous and misleading. It does not convey the full story of how other countries interpret their laws, which in many cases means granting a wide range of exceptions for abortion care after the legal limit.

Proactive Policies to Promote Women’s Access to Comprehensive Health Care

Women across the U.S. face a growing health crisis because of sham laws designed to block women’s access to the full range of essential reproductive health care—including family planning services, contraception, and safe, legal abortion care.

Politicians who truly care about women’s health and well-being should focus on policies and laws that advance healthy pregnancies and address the very serious and real needs of women who seek abortion care as their pregnancy progresses. Congress must advance real measures to restore access to basic women’s health services for the millions who have had it taken away, not political measures that would only worsen the crisis and deny more women critical care. Some of these measures include:

- Passing the Women’s Health Protection Act (S. 510/H.R. 1322).
- Restoring or expanding insurance coverage (public and private) for abortion care and contraception—including repealing all abortion funding bans—such as supporting and passing the EACH Woman Act (H.R. 771).
- Supporting Medicaid expansion, including Medicaid coverage for family planning.
- Prenatal care coverage for immigrant women by passing a clean DREAM Act to protect DACA recipients, the HEAL for Immigrant Women and Families Act to remove political interference and restore coverage so that immigrants can participate in the healthcare programs their tax dollars support, and the Protecting Sensitive Locations Act so that immigrants can access healthcare services without fear of deportation.
- Improving access to abortion care by expanding the types of clinicians who can provide care.
- Ensuring young people have confidential access to a full range of sexual and reproductive health care services—including comprehensive sex education.
- Allowing families to thrive economically by increasing the minimum wage, instituting paid family and medical leave and paid sick days, and protecting pregnant workers from discrimination and unfair treatment.