STANDING UP FOR REPRODUCTIVE RIGHTS:

A LOOK BACK AT THE 114TH CONGRESS

CENTER FOR REPRODUCTIVE RIGHTS

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THE CENTER'S MISSION AND VISION

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best reproductive healthcare available; where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.

INTRODUCTION

Yesterday is not ours to recover, but tomorrow is ours to win or to lose. I am resolved that we shall win the tomorrows before us.

President Lyndon B. Johnson

The 115th Congress, like its predecessor, will undoubtedly be sharply divided. Some lawmakers will want to move the nation forward and promote human dignity, equality, and prosperity by advancing the reproductive health and freedom of all people. Others will seek to roll back decades of reproductive rights advances and revert back to a time when the lack of reproductive autonomy often dictated the contours of women's social and economic lives.[1]

In Congress, what is past is prologue. Political fights are refought in successive congressional sessions. Bills are introduced and reintroduced again and again. A vision bill in one session, with no chance of passage, may become law in a future session. While no two congressional sessions are identical, there is often more continuity than sharp difference between them.

While this report tells the story of the 114th Congress as it pertains to reproductive freedom, it is not intended to be merely a historical catalogue of past events. Rather, it is intended to chronicle the congressional session as a means of highlighting legislative battles that are likely to continue in the 115th Congress, with an eye towards equipping congressional staffers, journalists, and the public with context necessary to "win the tomorrows before us."

In many ways, the 114th Congress was not unlike the 113th Congress; reproductive rights were under a sustained assault from the very beginning of the session. The assault in the 114th Congress intensified as lawmakers opposed to women's health snuck abortion restrictions in several unrelated bills, and it plateaued through the fall of 2016 with hearings and reports attacking the Affordable Care Act's contraceptive-coverage benefit, Planned Parenthood, and low-income women and women of color who exercised their right to terminate a pregnancy. At the same time, congressional champions of reproductive health, rights, and justice fought back, most notably by introducing the groundbreaking Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act in the summer of 2015.

The narrative section of this report provides an overview of the 114th Congress; it is divided into topical sections, highlighting key bills as well as relevant hearings and events. Appendix 1 profiles several of the key bills (highlighted in bold in the text of the report) that were introduced during the congressional session, including messages that resonated with lawmakers and the public. Appendix 2 contains an extensive catalogue of reproductive-rights-related bills, both progressive and regressive, that were introduced during the 114th Congress. And finally, Appendix 3 contains a "cheat sheet" of federal abortion coverage restrictions.

KEEPING CLINICS OPEN

Abortion is an extremely common procedure—in the United States, one in five pregnancies ends in abortion.[2] It is also one of the safest medical procedures: Only 1 in 2,000 first-trimester abortions lead to major complications requiring hospital care,[3] making it much safer than giving birth.[4] But despite its safety, abortion has been under near-constant attack from state and federal legislators who have passed literally hundreds of restrictions under the guise of making abortion safer. In reality, these are thinly veiled attempts to try to regulate abortion out of existence, with state legislators passing 334 abortion restrictions between 2011 and July 2016.[5] A woman's access to abortion now depends on where she lives, even though abortion is a constitutionally protected right reaffirmed by the U.S. Supreme Court in 2016.[6]

The danger of abortion access being determined by one's zip code demands a federal response. In 2013, reproductive rights champions in the 113th Congress introduced the Women's Health Protection Act, which would preclude states from passing medically unnecessary restrictions on abortion providers, or other restrictions singling out abortion for harsher regulation. Members of the 114th Congress reintroduced the bill, and civil-society groups supported the reintroduction with the Act for Women campaign.

Reintroduction of the Women's Health Protection Act

On January 21st, 2015, on the eve of the 42nd anniversary of the Supreme Court's historic decision in *Roe v. Wade*, Senator Richard Blumenthal (D-CT) and Representative Judy Chu (D-CA) reintroduced the **Women's Health Protection Act (H.R. 448/S. 217)**. The bill was originally introduced in the 113th Congress with enthusiastic support from members of Congress, and by the end of the 114th Congress the reintroduced bill had the support of 36 Senators and 147 House members.

The Women's Health Protection Act promises to put women's health, safety, and rights ahead of politics and ensure that the constitutional rights of every woman in the United States are secure, regardless of where she lives. It would invalidate state laws that single out abortion providers for requirements and restrictions that are medically unnecessary, that do not promote women's health or safety, and that limit access to abortion services. (See the Fact Sheet on page 23 for more information about the bill.)

The bill is supported by dozens of national, state, and local organizations that joined together to launch the Act for Women campaign. The campaign unites these organizations in support of the Women's Health Protection Act as a federal policy solution to a nationwide abortion-access problem, and it provides a platform to raise awareness of that problem and the importance of ensuring safe and legal access to abortion care. Members include reproductive health, rights, and justice organizations, medical groups, faith-based organizations, health care providers, and student groups.

With enthusiasm and a great sense of urgency, Act for Women brought over 140 health care providers, advocates, and leaders from 28 states to Washington, D.C., in May 2016 to advocate in favor of the Women's Health Protection Act and to hear from the bill's sponsors. Attendees participated in some 115 meetings with lawmakers and their staff, and explained to them how the abortion-access crisis is playing out in their state and its devastating impact on women's lives.

There are women languishing around the country who cannot speak for themselves. Women who've had services closed in their face. Poor women. College women. Hispanic women. How dare someone say to these women, whose rights should be equal to everyone, "You cannot have access to health services."

Rep. Sheila Jackson Lee (D-TX), speaking at a May 2016 Advocacy Day event

Whole Woman's Health v. Hellerstedt

While advocates were organizing, activating their base, and urging Congress to take action on the Women's Health Protection Act, perhaps the most far-reaching discussion about the importance of ensuring access to safe abortion was occurring across the street, at the U.S. Supreme Court. On March 2, 2016, the Supreme Court held oral arguments in *Whole Woman's Health v. Hellerstedt*, the most significant abortion-rights case in almost 25 years. The case was brought by the Center for Reproductive Rights and concerned the constitutionality of Texas House Bill 2—a piece of legislation that, among other provisions, forced abortion providers to acquire admitting privileges at local hospitals and mandated that clinics adhere to the same standards as ambulatory surgical centers (effectively requiring clinics to turn into mini-hospitals). The law threatened to close three-fourths of the abortion clinics in Texas, decimating access for millions of Texas women.

On the day of the oral argument, the Center for Reproductive Rights and its allies held a historic rally of over 3,000 people in front of the U.S. Supreme Court as the justices heard the arguments in the case. Abortion providers, women's rights advocates, faith leaders, and several members of Congress, including Senators Richard Blumenthal (D-CT) and Patty Murray (D-WA), spoke. Several women—including noted actress Amy Brenneman—took to the podium to share the stories of their own abortions.

On June 27, 2016, the United States Supreme Court issued its decision and reaffirmed a woman's constitutional right to access safe, legal abortion. The Court struck down both the admitting privileges and ambulatory surgical center requirements imposed by the Texas legislation:


Can't just
MUST BE LITERALLY
I STAND WITH WHOLE WOMAN'S HEALTH
WHOLE WOMAN'S HEALTH
CENTER FOR REPRODUCTIVE RIGHTS
ABORTION: SAFE, LEGAL & ACCESSIBLE
naf
NATIONAL ABORTION FEDERATION

> We conclude that neither of these provisions offers medical benefits sufficient to justify the burdens upon access that each imposes. Each places a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access, and each violates the Federal Constitution.[7]

In deciding the case, the Court identified a range of burdens the Texas law would impose—including clinic closures, increased travel distances, fewer doctors, overcrowded conditions, longer wait times, and fewer opportunities for individualized medical attention. And the restrictions would provide "few, if any, health benefits for women"[8] given that "abortions taking place in an abortion facility are safe—indeed, safer than numerous procedures that take place outside of hospitals and to which Texas does not apply its surgical-center requirements."[9]

While the Supreme Court's *Whole Woman's Health* decision was an important victory, Congress has an essential role in ensuring that the reproductive rights of women nationwide are respected without the need for seeking relief in the courts. States continue to erect new barriers to abortion access, and while women's-rights lawyers can now use the decision to try to strike down these laws, the most effective solution is for states not to pass these constitutional burdens in the first place. That is why the Women's Health Protection Act is a vital next step following on the heels of the *Whole Woman's Health* decision. In addition to prohibiting laws like Texas House Bill 2, it also makes unlawful other medically unnecessary restrictions that prevent women from accessing safe abortion care and that shame women for their health care decisions.

Whole Woman's Health v. Hellerstedt – Members of Congress Weigh In

The *Whole Woman's Health* case attracted national attention, and a notable 45 *amicus* briefs were filed in support of Whole Woman's Health. Of particular note was a brief submitted by members of Congress.

In January 2016, 39 Senators, including Senate Democratic Leader Harry Reid, Senate Judiciary Committee Ranking Member Patrick Leahy, Senator Richard Blumenthal, and Senator Patty Murray, and 124 Representatives, including House Democratic Leader Nancy Pelosi, House Judiciary Committee Ranking Member John Conyers Jr., and Representatives Diana DeGette and Louise Slaughter, submitted an *amicus* brief in support of Whole Woman's Health. The members of Congress argued that laws such as the Texas regulations in question would effectively overturn longstanding precedent in *Roe v. Wade* and *Planned Parenthood v. Casey* and would make "[o]ne's freedom to exercise a fundamental right . . . tied to the state in which she lives."[10]

"In short," the legislators concluded, the Supreme Court "must ensure that all constitutional rights are not only protected, but also exercisable."[11] They warned the Court that leaving Texas H.B. 2 intact would set a precedent under which "a woman's ability to exercise her fundamental rights becomes dependent upon where she lives and the moral views of her state's legislators."[12]

BEING BOLD: ENSURING AFFORDABLE REPRODUCTIVE HEALTH CARE FOR ALL

For forty years, an annual appropriations rider known as the Hyde Amendment has barred federal Medicaid coverage of abortion except under very limited circumstances, a restriction affecting the more than 1 in 6 women of reproductive age who are insured through the program.[13] Of these women, 60 percent live in states that also restrict state Medicaid coverage of abortion.[14]

The Hyde Amendment—and similar coverage restrictions imposed on federal employees, women in immigration detention, federal prison inmates, and Native Americans accessing the Indian Health Service—exacerbates existing health and economic disparities, disproportionately harming vulnerable populations, especially low-income individuals and persons of color. These restrictions are listed in the Spotlight on Abortion Coverage Restrictions chart on page 49. Studies have shown that when a woman seeks an abortion but is denied, she is three times more likely to fall into poverty than a woman who is able to get an abortion, demonstrating the unacceptable financial burden that lack of insurance coverage inflicts on that right.[15] Because of the Hyde Amendment, more than a million women have been denied the ability to make their own decisions about bringing a child into the world in the context of their own circumstances and those of their families. And many more women and families have been pushed into greater poverty as they struggle to find the money for an abortion.

The Historic Introduction of the EACH Woman Act

Despite the entrenched legacy of the Hyde Amendment, reproductive rights champions in Congress were emboldened by a large, diverse group of advocates and supporters urging them to work proactively to ensure abortion coverage for all people. On July 8, 2015, Representatives Barbara Lee (D-CA), Jan Schakowsky (D-IL), and Diana DeGette (D-CO) introduced the groundbreaking **Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act (H.R. 2972)** before an elated crowd outside the U.S. Capitol. The bill, which had 129 cosponsors by the end of 2016, ensures that the government provides coverage for abortion care alongside other health services, including when the government operates a health insurance program (such as Medicaid and Medicare), when the government acts as an employer or health plan sponsor (for example, with respect to federal employees), or when it provides health services directly. The bill also prohibits the government from restricting coverage of abortion by state, local, and private health plans. (See the Fact Sheet on page 25 for more information about the bill.)

Standing with and supporting Hill champions, the All* Above All campaign is comprised of over 110 organizations and thousands more individuals working to build a movement to support this bill and to overturn the Hyde Amendment. In October 2015, All* Above All brought 200 advocates from across the country to Congress to discuss the need for the EACH Woman Act with their representatives. Ongoing social media and local actions have sustained momentum for the EACH Woman Act and reflect the vibrancy of the campaign.

Fighting Back Against Hyde and Sneak Attempts to Expand and Make Abortion Coverage Bans Permanent

Despite the momentum in the country motivated by the work of All* Above All and pro-choice lawmakers who support the campaign's mission, conservative lawmakers elected to the 114th Congress came to Washington with an almost single-minded focus on attacking women's access to reproductive health services.

Only four days into the congressional session, anti-choice members in the House swapped out a vote on a controversial abortion ban on the eve of its scheduled vote and replaced it with the so-called **No Taxpayer Funding for Abortion Act (H.R. 7).**[16]

H.R.7 would make the onerous restrictions of the Hyde Amendment—which are voted upon annually through the appropriations process—permanent. Disproportionately affecting low-income women, H.R.7 would permanently ban abortion coverage for millions, including federal employees, women enrolled in Medicaid, military servicewomen, Peace Corps volunteers, and many others who receive health care and insurance coverage through the federal government. It would also ban health facilities, including those on military bases, from offering abortion services, and prohibit abortion coverage from being offered in multi-state health insurance plans created under the Affordable Care Act. The discriminatory bill passed the House on January 22, 2015 (242-179). (See the Fact Sheet on page 27 for more information about the bill). A Senate companion bill (S. 582) was introduced several days later but failed to advance.

Scheduling a last-minute vote on legislation undermining women's access to safe, legal abortion care wasn't the only measure opponents of reproductive choice in the 114th Congress used to try to interfere with women's access to abortion care. In fact, anti-choice members leapt at any opportunity to expand the reach of the Hyde Amendment even in unrelated bills, such as the Justice for Victims of Trafficking Act (H.R. 181/ S. 178). The Act was intended to help survivors of human trafficking, in part by establishing a fund to support survivors using fines levied against traffickers. But abortion coverage restrictions modeled after the Hyde Amendment were quietly added to the Act prior to its passage, and the language was only amended after an agreement was reached to restrict the fund to non-health-related expenses, thus ensuring the Hyde Amendment language would not be extended to a new program.

Hyde Amendment-like restrictions were also quietly slipped into the Medicare Access and CHIP Reauthorization Act of 2015 (H.R. 2), legislation enacted in April 2015 that established a new way for Medicare providers to be reimbursed. Further, an amendment introduced by pro-choice members in June 2015 to remove the coverage restrictions from the 21st Century Cures Act (H.R. 6), a bill to enhance funding for biomedical research conducted by the National Institutes of Health and the Food and Drug Administration, was defeated on the House floor.

These underhanded attempts to enshrine and expand the Hyde Amendment must be understood for what they are—a dangerous assault on the reproductive rights and health of low-income women, and an attempt to use Congress's spending power as a means of constricting the reproductive decision-making of vulnerable segments of the nation's population.


HYDE HAS GOT TO GO!
End Coverage Bans
These barriers to care disproportionately impact
LOW-INCOME PEOPLE
WOMEN OF COLOR
TRANS + GNC PEOPLE
IMMIGRANTS
YOUNG PEOPLE
#BeBoldEndHydeNow
The Dude
DOES NOT
#BeBoldEndHyde
UNITED FOR ABORTION
*BOLD VISION
HYDE
BE BOLD
END HYDE
ABOVE ALL

Exporting Bad Policy: The Helms Amendment Hurts Women Worldwide

While the Hyde Amendment restricts the reproductive decision-making of women within the United States, its foreign-policy analogue, the Helms Amendment, applies to women overseas who benefit from U.S. foreign assistance. Around the world, tens of thousands of women, nearly all of whom live in the developing world, die each year due to unsafe abortion, a leading cause of preventable maternal mortality. Another 5 million women sustain serious injuries due to unsafe abortion.

Sadly, the Helms Amendment limits these vulnerable women's access to safe terminations by prohibiting the use of U.S. foreign assistance funds to support the "performance of abortions as a method of family planning." As a result of the Helms Amendment, safe abortion remains out of reach for many women in developing nations, contributing to preventable deaths and injuries.

Just as alarming is the fact that U.S. foreign assistance does not even support the limited safe abortion services that *are* permitted by the Helms Amendment—abortions that are not performed as a method of family planning, including abortions in the cases of rape, incest, or a pregnancy that threatens a woman's life. This refusal to fund *any* safe abortion services—even those that are currently permitted under U.S. law (and that are funded domestically under the Hyde Amendment) affects some of the world's most vulnerable women, such as women raped in conflict settings, or destitute women who face life-endangering pregnancies.

Thankfully, members of Congress have fought back. On August 3, 2015, Representatives Jan Schakowsky (D-IL) and Eliot Engel (D-NY), ranking member of the House Committee on Foreign Affairs, along with 79 of their House colleagues, sent a letter to President Obama calling on him to clarify that the Helms Amendment presently permits abortions in the cases of rape, incest, or a danger to a woman's life. The letter noted that countries like Kenya and Ethiopia—two key U.S. allies—are among the 24 U.S. Agency for International Development priority countries where 70 percent of worldwide maternal deaths occur, and that both have exceptionally high rates of sexual violence. The House letter urged President Obama to implement the Helms Amendment correctly and begin supporting the termination services already permitted under the law to improve the lives of women and girls worldwide.

In addition, on October 22, 2015, Senator Richard Blumenthal (D-CT) and 27 fellow Senators similarly urged President Obama in an open letter to put an end to the incorrect implementation of the Helms Amendment. The letter called for the Obama Administration to issue guidance to relevant government agencies to support safe abortion services, highlighted the terrible impact of the use of rape as a war tactic by Boko Haram and ISIS, and asked President Obama to act to make reproductive health services available to women in conflict-affected areas.

UNCONSTITUTIONAL ATTEMPTS TO BAN ABORTION

Women across the country face a growing health crisis because of sham laws and discriminatory policies designed to block access to the full range of essential reproductive health care—including family planning services, contraception, and safe, legal abortion care. Laws that ban abortion prior to viability are unconstitutional; over 40 years ago in its *Roe v.* Wade decision, the Supreme Court recognized a woman's constitutional right to decide for herself whether to continue or end a pregnancy prior to viability. In 1992, the Court in its *Planned Parenthood vs. Casey* decision reaffirmed that a "woman's right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce."[17]

Despite this clear constitutional imperative, politicians in 18 states have attempted to outlaw previability abortions, with legislators at the federal level attempting to follow suit.[18] These proposed laws also fly in the face of evidence-based medicine: The American Congress of Obstetricians and Gynecologists (ACOG) and the American Academy of Pediatrics oppose these proposed laws because they intrude on the patient-provider relationship and use junk science in an attempt to shame women and ban abortion altogether.[19]

A woman's health should drive important medical decisions throughout her pregnancy, including whether to have an abortion as her pregnancy progresses. As ACOG has emphasized, "safe, legal abortion is a necessary component of women's health care."[20] Politicians are not medical experts and should not be interfering with a woman's decision to have an abortion; instead, a woman, with the advice of a trusted health care professional, should make the personal decisions that are best for her own circumstances.

It is evident that opponents of reproductive choice remain intent on punishing and demeaning women who attempt to exercise their constitutionally guaranteed rights. On the very first day of the 114th congressional session, anti-choice advocate Rep. Trent Franks (R-AZ) re-introduced the **Pain-Capable Unborn Child Protection Act (H.R. 36).**[21] In its first iteration, H.R. 36 would have banned virtually all abortions at or after 20 weeks' gestation, regardless of the woman's health or that of her pregnancy. The bill threatened doctors with a harsh penalty of up to five years in prison for performing such an abortion.[22]

The vote on H.R. 36 was strategically slated to coincide with the 42nd anniversary of *Roe v. Wade* on January 22, 2015. However, following the opposition of some Republican women members of Congress over the bill's cruel, narrow exceptions for rape and incest survivors, anti-choice members of the House pulled the vote at the last minute.[23] Instead, they advanced the **No Taxpayer Funding for Abortion Act (H.R. 7)**, which would permanently ban abortion coverage in insurance plans offered through the federal government.

In May 2015, however, the House revisited and passed (242-184) an amended version of H.R. 36 that would ban abortion in the U.S. at 20 weeks—an unconstitutional measure with very limited exceptions. The bill would effectively create a 48-hour mandatory delay for rape survivors and require minors who have become pregnant as a result of rape

or incest to report the crime. While the bill contains an extremely narrow exception for women facing life-threatening conditions, it fails to make an exception for threats to the health of the woman—thereby disregarding decades of previous U.S Supreme Court rulings. H.R. 36 failed a vote for cloture in the Senate on September 22, 2015, but with anti-choice politicians determined to roll back the clock on women's constitutional right to abortion, we know we will see similar legislation in the 115th Congress. (See the Fact Sheet on page 29 for more information about the bill.)

The Prenatal Nondiscrimination Act (PreNDA): Policing Women's Reasons for Having an Abortion

In addition to proposing unconstitutional 20-week abortion bans, anti-choice members of the 114th Congress also advanced unconstitutional bans on abortion based solely on a woman's reason for seeking to end her pregnancy. These reason-based bans commonly take the form of sex-selection and race-selection bans that target women of color and would lead to racial profiling by health care providers. Indeed, these policies use offensive stereotypes as a pretext for achieving the real purpose of curtailing access to safe and legal abortion care.

The disingenuously named **Prenatal Nondiscrimination Act (H.R. 4924/S. 48),** or **PreNDA**, was introduced in the Senate on January 7, 2015 and in the House on April 13, 2016. Both bills would impose criminal penalties, which could include a fine and up to five years in prison, on doctors who perform an abortion on a woman knowing that she is seeking to end the pregnancy because of the sex of the fetus or on someone who transports a woman into the U.S. or across state lines for a sex-selective abortion. It would allow the woman, her partner, or her parent (if she is a minor) to sue a provider for alleged violations. The House version of the bill also bans so-called race-selective abortions. (See the Fact Sheet on page 31 for more information about the bill.)

This bill claims to fight discrimination against women and people of color, but it actually creates barriers to women's health and promotes racial profiling. It suggests that minority women, like me, can't make decisions about our own bodies and families.

Rep. Judy Chu (D-CA), April 26, 2016
House Subcommittee on the Constitution and Civil Justice Hearing

Upon introduction of the House bill in April 2016, the House Judiciary Committee's Subcommittee on the Constitution and Civil Justice held a contentious hearing on the controversial bill. The anti-choice majority and its witnesses tried to frame their assault on abortion access as necessary for gender equality and as a civil rights struggle, likening "unborn children" to the victims of slavery and the Holocaust. Pro-choice members of the committee were quick to refute such statements and underscore that the bill is an unconstitutional attack on the right to choose, and not an appropriate response to enduring discrimination and social injustice in this country.

EXPANDING ACCESS TO AFFORDABLE BIRTH CONTROL

Cost has historically been a significant barrier to accessing birth control. For example, a 2010 survey found that 1 in 3 women voters had struggled to afford prescription birth control; the number was significantly higher among young women ages 18-34 (55 percent); among young Latina woman (57 percent); and among young African-American women (54 percent).[24] The Affordable Care Act (ACA) dramatically improved access to birth control by requiring that most private health insurance plans cover FDA-approved contraception and related counseling as a preventive service with no co-pay or deductible. In the wake of the policy, the percentage of women paying no co-pay for contraception shot up dramatically. For example, in the fall of 2012, about 15 percent of privately insured women paid nothing out of pocket for oral contraceptives; in the spring of 2014 (after the contraceptive-coverage benefit went into effect), that number had more than quadrupled to 67 percent.[25]

However, while the contraceptive-coverage benefit has made it easier for many women to afford contraception, the benefit only applies to prescription birth control. Thus, while contraception may no longer require an out-of-pocket payment, it still requires a doctor's visit, making it out of reach for some women. Making oral contraceptives available over-the-counter has great potential to increase accessibility and convenience for those unable or unlikely to visit a health care provider for a prescription and could help reduce the number of unintended pregnancies. But this is only possible if they are affordable and available to all who need them.

Since 2004, a coalition of health care providers, researchers, and rights advocates known as the "Oral Contraceptives Over-the-Counter (OTC) Working Group" has been working to remedy this problem and bring an oral contraceptive over the counter. As this has become closer to being a reality, the issue has also become a hot topic for politicians. During the 2014 midterm elections, various candidates expressed support for bringing oral contraception over the counter as a way of making it more accessible. However, their proposals for supporting such an action—given that the authority to authorize the sale of any drug without a prescription ultimately lies with the Food and Drug Administration (FDA)—greatly vary.

Champions of women's health in the 114th Congress recognized that expanding the no-copay coverage mandate to OTC oral contraceptives is a crucial component of making birth control truly accessible and affordable for all women and girls of reproductive age. In the summer of 2015, Senator Patty Murray (D-WA) and Representatives Tammy Duckworth (D-IL), Patrick Murphy (D-FL), and Joseph Crowley (D-NY) introduced the **Affordability is Access Act (H.R. 3163/S. 1532)**, which would extend private insurance coverage under the ACA to OTC birth control pills purchased without a prescription. The bill explicitly gives deference to the FDA regarding making birth control pills available OTC, noting that the FDA's "processes ensure that the appropriate scientific and medical personnel make the determination of safety, quality, and efficacy of drugs marketed to

the people of the United States."[26] (See the Fact Sheet on page 33 for more information about the bill.)

Crucially, the Affordability is Access Act emphasizes that "in order to increase women's access to oral birth control, it must be both easier to obtain and affordable and, to make it either easier to obtain or more affordable, but not both, is to leave unacceptable barriers in place for women."[27] Speaking about the bill, Senator Patty Murray said:

> I believe strongly that women should be able to get the comprehensive health care they need, when they need it—without being charged extra, without asking permission, and without politicians interfering. Making approved birth control pills available over-the-counter is another important step forward in terms of women's access to health care. But anyone will tell you that if something is too expensive, it doesn't matter how easy it is to get. It might as well be on the moon.[28]

Conservative members of Congress also introduced their own bills designed to make oral contraception available without a prescription. In the spring of 2015, Senator Kelly Ayotte (R-NH) introduced the **Allowing Greater Access to Safe and Effective Contraception Act (S. 1438)**, followed a year later by a bill introduced by Representative Mia Love (R-UT), the **Over-the-Counter Contraceptives Act of 2016 (H.R. 5138)**. These identical bills grant priority FDA review for OTC oral contraception applications and waive the drug manufacturer's filing fee. Unfortunately, they also include a politically motivated age restriction designed to keep oral contraceptives out of the hands of adolescents. But such an age restriction is not justified by science; in fact, emergency contraception is already available over the counter without an age restriction.

In addition, the bills make no provision for insurance coverage of oral contraceptives in the event the FDA approves them for over-the-counter sale. This risks creating the precise scenario the Affordability is Access Act sought to avoid, whereby oral contraceptives are available without a prescription but are no longer covered by health insurance plans, making them less accessible, not more. This concern is bolstered by the fact that it is unclear whether attaining over-the-counter status would lower the price of oral contraceptives; so far, assumptions that OTC status would result in a significantly lower price point for emergency contraception have not been borne out. Without addressing the issue of insurance coverage, the Ayotte and Love bills would be ineffective in actually expanding access to affordable birth control to those who would benefit most from over-the-counter oral contraceptives. (See the Fact Sheet on page 34 for more information about the bills.)

FIGHTING BACK AGAINST EXTREMISM

Attacks on Planned Parenthood

In the summer of 2015, David Daleiden, an extremist anti-abortion activist and founder of the disingenuously named Center for Medical Progress (CMP), released a heavily edited undercover video depicting a Planned Parenthood executive discussing how the health care entity donates fetal tissue for scientific research. In the months to come, CMP would release additional videos intended to incriminate Planned Parenthood. Despite the fact that fetal tissue donation is entirely legal and has been used by researchers since the 1930s to advance medical research and develop life-saving cures,[29] anti-abortion lawmakers were quick to falsely accuse Planned Parenthood of seeking to sell fetal tissue for profit—a claim that has no basis in fact.

Though the videos were quickly and widely discredited, the smear campaign fueled a legislative onslaught of calls among anti-abortion politicians to defund Planned Parenthood, which receives federal funds to provide much needed health care services—including life-saving cancer screenings, birth control, and testing and treatment for sexually transmitted infections—to underserved communities through Medicaid and the Title X program. Planned Parenthood is prohibited from using federal funds for nearly all abortions under Medicaid because of the Hyde Amendment (discussed above), and is likewise prohibited from using Title X funds in programs where abortion is a method of family planning.[30]

Despite the critical, life-saving services Planned Parenthood provides to millions of people—roughly twenty percent of women have relied on a Planned Parenthood health center for care in her lifetime—anti-choice members of the 114th Congress continued their crusade against basic women's health care services like contraception and cancer screenings, further kindling the worsening climate of overheated rhetoric and hostility toward providers of essential health care services.

The false accusations of selling fetal tissue prompted no fewer than four House and Senate committees to launch investigations into Planned Parenthood, five Congressional hearings in the House and Senate, and twelve bills intended to "defund" the organization by prohibiting federal Medicaid and Title X funds from going to cover health care services provided by Planned Parenthood affiliates. The House passed seven bills and resolutions that would have done everything from prohibiting federal entities from contracting with a person or entity who donates or matches employee donations to Planned Parenthood, to banning any federal funds from going to Planned Parenthood for one year unless the organization pledged to stop offering nearly all of its safe and legal abortion services (H.R. 3134).

While the Senate was able to filibuster or otherwise kill the House-passed stand-alone defunding bills, anti-choice leaders in Congress used the budget reconciliation process—which only requires a simple majority to advance a measure—in December 2015 to circumvent Democratic opposition. Congress sent President Obama a measure attached to a budget bill (H.R. 3762) that would have not only stripped Planned Parenthood of

Medicaid funds for one year, but would have also dismantled essential elements of the ACA, such as the individual and employer mandates, ACA marketplace subsidies, and Medicaid expansion, cutting off affordable access to health care coverage for millions of people across the U.S. President Obama vetoed the measure on January 8, 2016.

Select Investigative Panel

As if those attacks were not enough, and despite the absence of any evidence that Planned Parenthood violated the law, the House passed a resolution on October 7, 2015, establishing a select investigative panel with the exclusive purpose of investigating federal funding to abortion providers, abortion practices, and the handling of and policies regarding fetal tissue.[31] Chaired by Rep. Marsha Blackburn (R-TN), the Panel spent $1.5 million in taxpayer dollars and, in 2016, issued 42 subpoenas—including 35 sent without any effort to seek voluntary compliance —to various entities ranging from abortion providers to medical researchers. The majority on the Panel led an ideologically-driven assault on access to abortion; intimidated and endangered health care providers and researchers; and negatively impacted the advancement of scientific research to develop cures for diseases like Alzheimer's and multiple sclerosis, all with the clear purpose of using their investigation to delegitimize women's health care providers.

The Select Panel has been undeterred by overwhelming lack of evidence suggesting illicit action. Not only have no judges or juries found cause to indict Planned Parenthood, but a grand jury in Texas chose to indict instead two employees of CMP.[32] In December 2016, the Select Panel released a 427-page final report devoid of any proof that fetal tissue had been illegally bought or sold.[33]

Unfortunately, the harm caused by the backlash against Planned Parenthood and other reproductive health care providers has an impact that ripples beyond issues of Congress and funding. The National Abortion Federation reported a sharp escalation in threats to abortion providers as a result of the undercover videos that were intended to smear Planned Parenthood, noting that death threats against abortion providers increased from 1 in 2014 to 94 in 2015; incidents of vandalism increased over the same period from 12 to 67.[34] A tragic shooting on November 27, 2015, at a Planned Parenthood clinic in Colorado Springs, Colorado showed that this intense political hostility can have deadly conclusions.

The Planned Parenthood smear campaign also hurt important medical research, putting

[The Panel] has caused affirmative harm—not just attacking women's access to health centers and reproductive services but undermining potentially life-saving medical research. Studies and clinical trials on diseases and conditions that impact millions of Americans have been delayed or halted. Some doctors have been put at risk because their names have been released…It is time for this dangerous and reckless witch hunt to end.

Rep. Jan Schakowsky (D-IL), Ranking Member,
Select Investigative Panel of the House Committee on Energy & Commerce [35]

lives at risk. Doctors who conduct life-saving research were compared to Nazi war criminals by some members of the Panel, and the politics surrounding this ultimately caused delays in conducting medical research. As one doctor noted, "this kind of delay . . . results in the additional deaths of people who could have been rescued."[36]

Using Religion to Discriminate Against Women Exercising Their Reproductive Rights

Conservative politicians introduced a flurry of bills that would allow the use of religion to discriminate against women exercising their reproductive rights. For example, the Health Care Conscience Rights Act (H.R. 940/S. 1919), would permit a business or its health insurance company to refuse to cover any health service to which it has a moral or religious objection. Although designed to prevent women from accessing abortion services and contraception, the bill is even broader, and could have been invoked to prevent the coverage of other health services to which some religious faiths object, such as blood transfusions or sterilization procedures.

Another bill, the Conscience Protection Act of 2016 (S. 304 as amended in the House), would codify and expand the annual Weldon Amendment appropriations rider and would threaten federal agencies and state and local governments with the loss of funding unless they permit health-care entities to refuse to cover or refer for abortions. Significantly, while the Weldon Amendment prohibits "discrimination" on the basis that a health care entity does not "provide, pay for, provide coverage of, or refer for abortions," the Conscience Protection Act would go even further and also prohibit the federal government, and state and local governments, from requiring a health care provider to "facilitate or make arrangements" for abortion or "otherwise participate in abortion." This broad and ambiguous language could be understood as not only allowing a hospital to avoid performing a medically necessary emergency abortion, but also permitting it to withhold critical information about a patient's condition, or a safe transfer to a willing hospital.[37] The Conscience Protection Act passed the House in July 2016 by a vote of 245 to 182.[38]

While purporting to be concerned about individual rights of conscience, conservative lawmakers attacked a local Washington, D.C., bill, the Reproductive Health Non-Discrimination Act, which prohibits employers from discriminating against workers or their spouses or dependents based on their use of contraception or other reproductive health services. The House passed a resolution disapproving of the bill 228 to 192, the first time in 35 years a chamber of Congress voted down a District law.[39] The House resolution did not get a Senate vote, and in the end the provision became law in the District.[40]

From *Hobby Lobby* to *Zubik*: Using Claims of Religious Discrimination to Attack Access to Contraception

The Affordable Care Act's contraceptive-coverage benefit has been under near-constant attack from conservative big-business interests that seek to impose business owners' religious views

on their employees, blocking them from accessing contraception, violating the employees' rights, and undermining the benefit's effectiveness in reducing unintended pregnancies.

The Obama administration has continually tried to address the concerns of these businesses, first by exempting houses of worship from the contraceptive-coverage benefit, and then by promulgating an "accommodation" permitting religiously affiliated non-profits, such as hospitals and universities, to object, allowing their insurance providers to extend the contraceptive coverage directly to employees. Under the "accommodation," the objecting employer need only complete a one-page form stating that it objects to contraception.

In *Burwell v. Hobby Lobby*, the Supreme Court, applying the Religious Freedom Restoration Act, held that the "accommodation" had to be made available to closely held for-profit corporations as well, despite the fact that these businesses are set up to maximize revenue rather than inculcate religious teachings.

The employers in *Zubik v. Burwell* went a step further. Unlike the corporations in *Hobby Lobby* who sought to be included within the ambit of the "accommodation," the *Zubik* employers sought to upend the "accommodation" entirely, claiming that the very act of expressing their objection to contraception, by filling out the one-page form, constitutes too heavy a burden on their religious exercise. They objected to their employees having access to contraception, even if offered separately and directly by a health insurance company. The *Zubik* case thus threatened to eliminate female employees' access to affordable contraception entirely.

In the end, the Supreme Court deadlocked 4-4 in May 2016 and failed to issue a substantive decision in the case, instead remanding the case and encouraging the employers and government to find an amicable solution. While the Court avoided throwing out the "accommodation" entirely, its failure to issue a decision on the merits has the effect of delaying the final resolution of the case, as Senator Richard Blumenthal (D-CT) noted:

> This ruling is a disservice to the countless women whose legal rights will be left in limbo. The Supreme Court missed an opportunity to make clear that no woman's boss should be permitted to impose personal healthcare decisions on her and her family.[41]

In the wake of the Supreme Court's disappointing decision in *Zubik v. Burwell*, members of the 114th Congress recognized the need to safeguard women's access to birth control from third parties, such as employers, who would discriminate against women by blocking its coverage. On May 18, 2016 (two days after the *Zubik* decision was released) Representative Joseph Kennedy III (D-MA) introduced the Do No Harm Act (H.R. 5272), which would clarify that the Religious Freedom Restoration Act should not be interpreted in such a way that a religious exemption imposes a meaningful harm on a third party. It would also amend the Religious Freedom Restoration Act and make it inapplicable in a variety of circumstances, including with respect to laws relating to health care.

In light of the Supreme Court's rulings in *Hobby Lobby* and *Zubik*, the Do No Harm Act is a critical step in rectifying the unintended consequences of the Religious Freedom Restoration Act, which has allowed religious-liberty claims to strip ordinary Americans of essential government benefits and undermine their health and well-being.[42]

LOOKING AHEAD TO THE 115TH CONGRESS

With a new administration hostile to women's health coming to power and a House and Senate with emboldened anti-choice majorities, the 115th Congress promises to be marked by even more attempts to diminish access to reproductive health care, severely restrict reproductive rights, target programs and services that support the most vulnerable populations, and disregard the well-being of women and families. Based on promises from the campaign trail and the policies that anti-choice lawmakers and advocates have prioritized in recent years, we anticipate the following in 2017-2018:

- Nominations of people for Supreme Court justice, lower court judges, and cabinet-level positions who are hostile to women's constitutional rights, civil rights, equal rights, and access to justice, many of which will lead to contentious confirmation fights in the Senate.
- Focus on defunding Planned Parenthood and Title X family planning services that provide critical reproductive health care, including contraception, cancer screenings, testing and treatment for sexually transmitted infections, and more to millions of Americans.
- Efforts to repeal the Affordable Care Act (ACA) and the no-copay contraceptive-coverage benefit. Any measures to dismantle the ACA could have a profound impact on women's health. The ACA was groundbreaking in its coverage of essential benefits and preventive services, including no-copay contraception, maternity care, well-woman visits, and much more. All of those are at risk in any repeal efforts.
- Efforts to expand and make permanent restrictions on abortion coverage in public programs like Medicaid and Medicare and in the private insurance marketplace. Such efforts will target those who already face significant barriers to high-quality care, such as low-income women, women of color, immigrants, and young people.
- Attempts to pass an unconstitutional nationwide ban on abortion at 20 weeks. While this measure—which interferes with the provider-patient relationship and cruelly disregards women's personal circumstances—has previously failed to advance in the Senate, we anticipate this bill will come up again in the 115th Congress.
- Globally, we expect President Trump to reinstate the Mexico City Policy, and we anticipate conservative members of Congress will move to cut critical investments in bilateral and multilateral programs that promote voluntary family planning, to the detriment of women and families worldwide.

Fortunately, those who advocate for sexual and reproductive health, rights, and justice in the United States and around the world are stronger than ever and ready to work hard to protect and defend these rights. In fact, as 2016 came to a close, 90 organizations signed on to a joint statement, committing to resist every attempt to roll back our basic human right to quality health care and the chance to live safe, healthy lives with the freedom to determine our own path—including if, when, and how to create a family.[43]

U.S. Senator Tammy Baldwin (D-WI)

APPENDIX 1: BILL FACT SHEETS

This appendix contains individual fact sheets about key bills highlighted in the report. These fact sheets include additional information about the goals and legislative history of the bills, as well as the primary messages used to support or oppose them. The bills appear in the order in which they were discussed in the text.

H.R.448/S.217

WOMEN'S HEALTH PROTECTION ACT

- The bill invalidates laws that single out abortion care and abortion providers for unnecessary, politically motivated restrictions that do not advance women's health and safety and are not imposed on other types of medical practice. Examples of laws and regulations that would be made unlawful include:
  - Requirements for medically unnecessary tests and procedures (*e.g.* mandatory ultrasounds, requirements that women seeking abortion care make two trips to the provider);
  - Requirements that doctors adhere to outdated and less effective medical regimens (*e.g.* restrictions on medication abortion);
  - TRAP laws ("Targeted Regulation of Abortion Providers") – onerous and medically unnecessary requirements on facilities and providers intended to shut down clinics; and
  - Laws banning abortion before viability, such as at 20 weeks or when a fetal heart beat can be detected.
- This bill protects women's health and constitutional rights by ensuring that safe and legal abortion services will continue to be available.
- It prohibits states from imposing restrictions like the clinic shutdown laws struck down by the Supreme Court in June 2016 in *Whole Woman's Health v. Hellerstedt*.

SENATE SPONSOR: Sen. Richard Blumenthal (D-CT) **TOTAL COSPONSORS:** 36
HOUSE SPONSOR: Rep. Judy Chu (D-CA) **TOTAL COSPONSORS:** 147

PRECURSOR LEGISLATION

Nearly identical bills, H.R. 3471/S. 1696, were introduced in the 113th Congress.

KEY MOMENTS

01/21/2015: Reintroduced in House and Senate.

12/11/2015: The UN Working Group on the issue of discrimination against women in law and in practice encouraged the adoption of the Women's Health Protection Act in its statement at the conclusion of its 10-day visit to the United States in December 2015.[1]

05/12/2016: Act for Women, a national campaign to support the bill, organized over 140 health care providers, advocates, and leaders from 28 states to come to Washington, D.C., to promote the Women's Health Protection Act and to hear from the bill's sponsors at Advocacy Day events.

MESSAGES

The Women's Health Protection Act is a crucial step toward protecting access to safe, legal, essential reproductive health care and the constitutional rights of every woman in the U.S.—no matter where she lives. It puts a woman's health, safety, and rights before politics.

While the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt* is monumental in protecting access to abortion, it is also critical that Congress enact policies like the Women's Health Protection Act that advance reproductive health and rights.

Sen. Richard Blumenthal, Rep. Judy Chu, and fellow champions of the Act emphasized that the Women's Health Protection Act is key to protecting access to safe, legal abortion. This is critically important at a time when legislative attacks have meant that a woman's ability to make her own personal decisions about her reproductive health care differs widely from state to state.

- *The protections in this measure are more necessary now than ever before in our history because an avalanche of restrictive, reprehensible state laws is drastically reducing fundamental health care rights. The Women's Health Protection Act seeks to strip away the deceptive pretext of safeguarding women's health when the goal of such state laws is actually to sabotage fundamental constitutional rights, and increasingly they are achieving that goal.* **Sen. Richard Blumenthal** (D-CT) (press release statement, 01/21/2015).

- *A woman's rights should not change according to her zip code. Yet that is the reality today when it comes to her right to choose. I am proud to reintroduce the Women's Health Protection Act, which would put an end to the actions taken by states to deny women access to safe and legal abortions. Our laws should put women's health and safety first – not politics.* **Rep. Judy Chu** (D-CA) (press release statement, 01/21/2015).

- *In Congress and in several States, politicians are interfering in complicated private medical decisions that should be left to a woman, her family, and her doctor. That is why I am proud to cointroduce the Women's Health Protection Act, a bill making it unlawful for states to pass restrictive legislation that will endanger women's health and safety. Women's reproductive rights must be respected.* **Rep. Marcia Fudge** (D-OH) (House floor, 01/21/2015).

- *In my home state of Wisconsin and in states across the country, politicians have been standing firmly between women and their doctors by enacting a record number of laws restricting their reproductive health choices in an attempt to appease the extreme wing of their party. It is past time to stand up to these radical assaults on women's rights, which is why I am proud to reintroduce the Women's Health Protection Act. Every woman, regardless of where she lives, deserves the freedom to make her own, personal decisions about her healthcare, her family, and her body.* **Sen. Tammy Baldwin** (D-WI) (press release statement, 01/21/2015).

H.R. 2972

EQUAL ACCESS TO ABORTION COVERAGE IN HEALTH INSURANCE (EACH WOMAN) ACT OF 2015

- The bill ensures that people who get their health care or health coverage through the federal government will have access to, or coverage for, abortion services. It requires the federal government to ensure that abortion care is covered alongside other medical services in its public health insurance programs, such as Medicaid, and health services, such as the Indian Health Service. It also requires the government to offer abortion coverage in the insurance plans it offers federal employees.
- The bill prohibits the federal government from restricting the coverage of abortion in state or private insurance plans, and it prohibits state and local governments from restricting the coverage of abortion in private insurance plans.

HOUSE SPONSOR: Rep. Barbara Lee (D-CA) **TOTAL COSPONSORS:** 129

KEY MOMENTS

07/08/2015: Introduced in House.

9/23/2016: Hearing on the bill in the House Judiciary Subcommittee on the Constitution and Civil Justice.

MESSAGES

Pro-choice legislators called for the enactment of the EACH Woman Act to ensure that all women, regardless of income, have access to the full range of reproductive health options, including abortion.

- *A woman's access to abortion should never depend on her zip code, her employer, or her income. Whether you agree with women having abortions, that is not the issue. The issue is we should not discriminate against women who are denied the full range of comprehensive health services.* **Rep. Barbara Lee** (D-CA) (House floor, 09/27/2016).[2]
- *For 40 years, the Hyde Amendment has interfered with a woman's health decisions, simply because she's poor. Research shows that restricting Medicaid coverage of abortion, as the Hyde Amendment requires, forces one in four poor women seeking abortion to carry an unwanted pregnancy to term. Women have the right to determine when and if they have children. That is a right protected under the Constitution, for all women, not just those who can afford private health insurance.* **Rep. Mike Quigley** (D-IL) (House floor, 09/27/2016).[3]

➔ *In effect, a woman on Medicaid who faces this tough decision may be forced to forgo groceries, her utility bills, or her rent just to pay for the procedure. Even worse, she could be driven to a dangerous, back-alley abortion or seek an unlicensed practitioner. And if she cannot find the funds for the procedure and goes on to give birth, she is at greater risk of sliding deeper into poverty.* **Rep. Judy Chu** (D-CA) (House floor, 09/28/2016).[4]

H.R.7/S.582

NO TAXPAYER FUNDING FOR ABORTION AND ABORTION INSURANCE FULL DISCLOSURE ACT OF 2015

- The bill would permanently ban abortion coverage for millions of people, including federal employees, those enrolled in Medicaid, military servicewomen, Peace Corps volunteers, and many others who receive health care and insurance coverage through the federal government. For those populations, very limited abortion coverage would remain only in cases where the pregnancy endangers the life of a pregnant woman or results from rape or incest.
- It would also ban health facilities, including those on military bases, from offering abortion services, and prohibit abortion coverage from being offered in multi-state health insurance plans created under the Affordable Care Act.The bill compels insurers offering plans in the health insurance marketplaces under the Affordable Care Act (ACA) to mislead purchasers by falsely stating that plans that cover abortion come with an "abortion surcharge" (in reality, coverage is provided for under the existing premium).
- Requires insurers offering these plans to disclose and "prominently display" in marketing materials if a plan covers abortion, despite the fact that the ACA already requires disclosure of abortion coverage.

HOUSE SPONSOR: Rep. Christopher Smith (R-NJ)
SENATE SPONSOR: Sen. Robert Wicker (R-MS)

TOTAL COSPONSORS: 29
TOTAL COSPONSORS: 43

PRECURSOR LEGISLATION

After being introduced for the first time in the 111th Congress as the "No Taxpayer Funding for Abortion Act" (H.R. 5939), the bill first passed in the House in the 112th Congress (H.R. 3). In the 113th Congress, the bill gained a Senate companion and incorporated the Abortion Insurance Full Disclosure Act (H.R. 3279/ S. 1848). As a bigger package, the bill (H.R. 7/ S. 949) again passed the House 227-188 in the 113th Congress but died in the Senate.

KEY MOMENTS

01/21/2015: Introduced in House as the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015.

01/22/2015: **Passed House 242-179**.

02/26/2015: Introduced in Senate as the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015.

MESSAGES

Abortion-coverage restrictions disproportionately affect low-income women and other vulnerable populations. No woman should ever be denied critical reproductive health services, including safe and legal abortion, because her health insurance refuses to cover her care. Yet for decades, politicians have allowed discriminatory policies to block low-income women from the full range of reproductive health care coverage they need and deserve.

Pro-choice legislators recognized that, when it comes to the most important decisions in life, such as whether and when to become a parent, it is vital that a woman is able to consider all of the options available to her, however little money she makes or however she is insured. They called out their colleagues for politicizing private health care decisions.

- *These choices are personal. They are not public. A woman's actions regarding her own reproductive health should include anyone she deems appropriate, not politicians in Washington or state capitals scoring political points off her health care.* **Rep. Louise Slaughter** (D-NY) (House floor, 01/22/2015).
- *The House should vote for bigger paychecks and better infrastructure instead of attacking women's access to health care.* **Rep. Lois Frankel** (D-FL) (House floor, 01/22/2015).

H.R.36/S.1553

PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

- The bill bans pre-viability abortions at or after 20 weeks in violation of the Constitution and Supreme Court precedent.[5]
- It does not include an exception to preserve a woman's health, and the exception to save a woman's life is narrow and does not include life-threatening psychological or emotional conditions.
- The legislation creates cruel and unnecessary barriers for rape survivors. Child rape survivors must have had their rape reported to authorities; adult rape survivors are required to document and receive medical treatment or counseling related to the assault, whether or not they want to, at least 48 hours before the abortion.

HOUSE SPONSOR: Rep. Trent Franks (R-AZ) **TOTAL COSPONSORS:** 186
SENATE SPONSOR: Sen. Lindsey Graham (R-SC) **TOTAL COSPONSORS:** 45

PRECURSOR LEGISLATION

Legislation banning abortion at 20 weeks was first introduced in the 112th Congress. The bill (H.R. 3803) applied only to the District of Columbia and failed to pass in 2012 under suspension of the rules (two-thirds majority needed). The bill was introduced as a nationwide ban in the House in the 113th Congress, where it passed 228-196. The bill was introduced in the Senate for the first time in 2015.

KEY MOMENTS

01/06/2015: Introduced in House.

05/13/2015: **Passed House (242-184).**

06/09/2015: Introduced in Senate.

09/22/2015: Failed Senate cloture vote.

03/15/2016: Hearing held before the Senate Judiciary Committee.

MESSAGES

Rep. Trent Franks and other anti-choice bill supporters relied on scientifically false claims that the bill would prevent fetal pain, while using sensational statements about the illegal practices of Kermit Gosnell to demonize safe and law-abiding abortion providers.[6]

In contrast, other Members of Congress defended women's constitutionally protected right to abortion and highlighted how this bill would put their health at risk.

- *[Bill supporters] have repeatedly demonstrated a disregard for women's health care, and this bill is just one more example of their continuing attack on women's rights. It is a step backward for women's health and, quite simply, a distraction from the important work that we should be undertaking. I urge my colleagues to oppose it.* **Rep. Dina Titus** (D-NV) (House floor, 01/21/2015).
- *The legislation we are debating today is an unconscionable attack that ignores medical safety and puts women's health at risk. It creates unnecessary burdens to care for sexual assault survivors, who are already facing extraordinarily difficult circumstances, and it injects ideology into the doctor-patient relationship. It puts politicians, rather than women, in charge of their medical care.* **Rep. Suzan DelBene** (D-WA) (House floor, 05/13/2015).
- *Under this bill, Mr. President, a doctor who performed such an abortion after 20 weeks to prevent grievous physical injury to the pregnant woman would be subject to criminal penalties of up to five years in prison. Do we really want to make a criminal out of a physician who is trying to prevent a woman with preeclampsia from suffering damage to her kidneys or liver or having a stroke or seizures?* **Sen. Susan Collins** (R-ME) (Senate floor, 09/22/2015).

H.R.4924/S.48

PRENATAL NONDISCRIMINATION ACT (PRENDA) OF 2015 AND 2016

- These bills criminalize an abortion based on a woman's reason for seeking it. The Senate version criminalizes abortions based on the sex of the fetus; the House version criminalizes abortions based on the sex or race of the fetus. The bills also impose criminal penalties on those who enter the United States or cross state lines seeking such an abortion.
- The penalties include a potential fine and up to five years in prison. The bills would allow the woman, her partner, or her parent (if she is a minor) to sue a provider for performing the abortion.
- The bills are unconstitutional because they ban pre-viability abortions. They also force doctors and other health care providers to second-guess their patients' motives for obtaining an abortion.

HOUSE SPONSOR: Rep. Trent Franks (R-AZ)
SENATE SPONSOR: Sen. David Vitter (R-LA)

TOTAL COSPONSORS: 96
TOTAL COSPONSORS: 13

PRECURSOR LEGISLATION

A version of this bill has been introduced in each Congress since the 110th; it was first titled the Susan B. Anthony Prenatal Nondiscrimination Act of 2008 and the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2009 (with no accompanying Senate versions), before being renamed simply the Prenatal Nondiscrimination Act in both House and Senate versions introduced in subsequent sessions. Each time, the House version has banned sex-selective and race-selective abortions, and the Senate version has banned sex-selective abortions only. In 2012, the House failed to pass H.R. 3541 under suspension of the rules (two-thirds majority needed).

KEY MOMENTS

01/07/2015: Introduced in Senate.

04/13/2016: Introduced in House.

04/14/2016: House Judiciary Subcommittee on the Constitution and Civil Justice held a hearing on the bill.

MESSAGES

Women already face burdensome restrictions on access to abortion, and women of color are particularly affected by a lack of access to comprehensive reproductive healthcare.

Reason-based abortion bans violate the doctor-patient relationship and do nothing to improve women's health. These policies use offensive stereotypes as a pretext for interfering with access to safe and legal abortion care, and do nothing to combat real sex- or race-based discrimination.

Pro-choice champions spoke out against their anti-choice colleagues' claims that the bill would prevent discrimination and highlighted the harmful impact it would have on the doctor-patient relationship.

- *This bill claims to fight discrimination against women and people of color, but it actually creates barriers to women's health and promotes racial profiling. It suggests that minority women, like me, can't make decisions about our own bodies and families.* **Rep. Judy Chu** (D-CA) (statement for the record, 04/16/2016).
- *As if directly violating a woman's constitutional rights was not enough, the bill also poisons a woman's relationship with her doctor and threatens her ability to access neutral, supportive prenatal care. The bill turns medical personnel into thought police – having to examine women's motives for choosing to have an abortion while trying to limit their own civil and criminal liability. Any clinic employee who suspects that a woman's motives in accessing abortion could violate this law would have a legal obligation, under penalty of prison, to report that suspicion to law enforcement.* **Rep. Jerrold Nadler** (D-NY) (press release statement, 04/16/2016).
- *PreNDA is dangerous, invasive, not grounded in reality and an affront to all minority women, especially Latinas and immigrant women, who already face disproportionate barriers to access health care and health education.* **Rep. Loretta Sanchez** (D-CA) (interview, 04/14/16).[7]
- *PreNDA threatens women's health and perpetuates the racist myth that Asian American Pacific Islander (AAPI) families do not value girls. Even though it is cloaked in the language of civil and women's rights, this bill is antithetical to gender and racial equality. Rather than protect baby girls, this bill will endanger women's health and restrict women's rights… They say they want to protect baby girls, but we know better. ... PreNDA is a wolf in sheep's clothing. Rather than lifting the status of women, it is nothing more than a cynical, deceptive attempt to ban abortion.* **Miriam Yeung**, Executive Director of the National Asian Pacific Women's Forum (statement, 04/14/16).[8]

H.R.3163/S.1532

AFFORDABILITY IS ACCESS ACT OF 2015

- The bill adds over-the-counter (OTC) oral contraceptives to the list of preventive services that private insurance plans must offer to women without cost-sharing (*i.e.*, with no copay), thus ensuring that oral contraceptives remain affordable for those who are insured even if the contraceptives are not purchased with a prescription.
- The bill would protect consumers from interference by retailers who object to selling OTC birth control.

HOUSE SPONSOR: Rep. Tammy Duckworth (D-IL)
SENATE SPONSOR: Sen. Patty Murray (D-WA)

TOTAL COSPONSORS: 89
TOTAL COSPONSORS: 33

KEY MOMENTS

06/09/2015: Introduced in the Senate.

07/22/2015: Introduced in the House.

MESSAGES

Over-the-counter birth control has the potential to expand access to contraception to those who otherwise have difficulty accessing a health care provider or prescription medication. But to reach that potential, OTC contraception must remain affordable and not have any unnecessary restrictions. Recognizing the value of the Affordable Care Act's no-copay-contraception coverage benefit, Senate champions emphasized that the benefit must extend to over-the-counter contraception. At the same time, the bill respects the authority of the FDA to approve drugs for over-the-counter sales and does not inject politically motivated age restrictions to hamper access to OTC contraception.

- *I believe strongly that women should be able to get the comprehensive health care they need, when they need it—without being charged extra, without asking permission, and without politicians interfering. Making approved birth control pills available over-the-counter is another important step forward in terms of women's access to health care. But anyone will tell you that if something is too expensive, it doesn't matter how easy it is to get. It might as well be on the moon.* **Sen. Patty Murray** (D-WA) (press release, 06/09/2015).[9]
- *It should be simple for women to access safe and affordable contraception. This bill builds on the Affordable Care Act's no-cost contraceptive-coverage benefit by extending insurance coverage to any over-the-counter birth control approved by the FDA. Women . . . should be able to access quality, affordable health care without worrying about the burdens of extra charges or fees. We are proud to support this critical legislation, as it will provide women . . . with the essential ability to choose contraceptive methods that are safe, affordable, and easily accessible.* **Sen. Richard Blumenthal** (D-CT) and **Sen. Patty Murray** (D-WA) (press release, 06/10/2015).[10]

H.R.5138/S.1438

OVER-THE-COUNTER CONTRACEPTIVES ACT OF 2016
ALLOWING GREATER ACCESS TO SAFE AND EFFECTIVE CONTRACEPTION ACT

- These identical bills, which differ only in their titles, are intended to facilitate FDA approval for over-the-counter (OTC) status for an oral contraceptive. They authorize priority FDA review for such an application and waive the drug manufacturer's filing fee.
- The bills impose a medically unnecessary 18-and-over age requirement for an approved OTC birth-control pill. In contrast, emergency contraception is already available without a prescription and without any age restriction.

SENATE SPONSOR: Sen. Kelly Ayotte (R-NH) **TOTAL COSPONSORS:** 8
HOUSE SPONSOR: Rep. Mia Love (R-UT) **TOTAL COSPONSORS:** 6

KEY MOMENTS

05/21/2015: Introduced in Senate.

04/29/2016: Introduced in House.

MESSAGES

While these bills do take steps toward bringing an oral contraception over the counter, meaningful access also depends on the method's affordability, not just its over-the-counter status. The bill is silent on the question of insurance coverage and, specifically, whether or not the Affordable Care Act's no-cost-contraception coverage benefit should be extended to over-the-counter birth control. This is a necessary step in ensuring that the people who want it are able to access an OTC oral contraception.

The FDA's drug-approval process should be science-based and apolitical; Congress should not interfere and impose age restrictions that are not medically justified.

- *This . . . approach of access without affordability is like offering somebody a single shoe. You really need the pair! And we need progress on women's health—not just smoke and mirrors.* **Sen. Patty Murray** (D-WA) (press release, 06/09/2015).[11]
- *[The] FDA's review and approval process should be driven by the evidence, and not by interventions by Congress or the administration . . . We have to ensure that women's health products are treated as routinely as other drugs. Special privileges such as fast-track status and fee waivers set up a structure founded on an assertion that reproductive health products are different and require interventions—such as age requirements—when they're not necessary. They don't need beneficial treatment any more than they need to have special limitations.* **Susan Wood, former FDA Assistant Commissioner for Women's Health** (interview, 11/05/15).[12]

APPENDIX 2:

REPRODUCTIVE RIGHTS-RELATED BILLS AND RESOLUTIONS

This appendix includes four charts summarizing key House and Senate bills and resolutions relating to reproductive rights. The list is not intended to be exhaustive; many more bills, such as those concerning health, wages, and LGBTQ rights, affect access to reproductive health care for people across the country. The primary criterion for inclusion was whether the bill or resolution would have a direct impact on access to abortion, contraception, or information related to either one.

The first two charts outline bills and resolutions that would advance reproductive rights and freedom; the latter two charts outline bills and resolutions that would restrict them.

House Bills that Advance Reproductive Rights

Short Title	Description	Total Cosponsor Count	Final Status
H.R. 448: Women's Health Protection Act	Ensures that abortion services will continue to be available by invalidating laws that single out abortion care for requirements and restrictions that are medically unnecessary, do not promote women's health or safety, and limit access to abortion services.	**146**	Died in committee
H.Res. 47: Supporting women's reproductive health care decisions.	Resolves to ensure women have comprehensive, affordable insurance coverage for and access to reproductive health care services, including abortion, without interference by employers or government entities.	**1**	Died in committee
H.R. 742: Access to Contraception for Women Servicemembers and Dependents Act of 2015	Requires TRICARE to provide access to prescription contraception at no cost to all covered individuals, including dependents and non-active-duty members of the military. Requires that military members have access to comprehensive family planning counseling and education and access to emergency contraception for survivors of sexual assault.	**80**	Died in committee
H.R 1974: Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act	Restores access to Medicaid and the Children's Health Insurance Program (CHIP) for all lawfully present immigrants who are otherwise eligible by reversing discriminatory restrictions placed on immigrants' access to health care coverage. Enables lawfully present young people (DREAMers) granted temporary relief to participate fully in Medicaid, CHIP, and the Affordable Care Act.	**48**	Died in committee
H.R. 2355: Women's Preventive Health Awareness Campaign	Provides for a national public outreach and education campaign about the importance of women's preventive health care; amends the Public Health Service Act to require all necessary preventive services be covered with no copay. Requires HHS Secretary to submit a report to Congress within a year of passage containing recommendations for billing codes most appropriate for such services.	**21**	Died in committee
H.R. 2654: Pregnant Workers Fairness Act	Requires reasonable workplace accommodations for workers and prohibits other forms of discrimination against workers with known limitations related to pregnancy, childbirth, or related medical conditions; prohibits employer from taking adverse action against an employee who requests or is using such accomodations. Waives 11th Amendment immunity as it pertains to violations of the Act.	**149**	Died in committee
H.R. 2740: Global Democracy Promotion Act	Allows foreign nongovernmental organizations (NGOs) to provide abortion-related services, counseling, and referrals that are legal in their countries without making them ineligible for U.S. foreign assistance.	**134**	Died in committee

HR 2866: Healthy Maternity and Obstetric Medicine (Healthy MOM) Act	Requires insurance providers to offer a special enrollment period for pregnant women and requires coverage for maternity care for all covered individuals.	**101**	Died in committee
HR 2972: Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act	Requires insurance coverage of abortion for all covered individuals under plans offered or administered by the federal government; prohibits the federal government from restricting insurance coverage of abortion care in state, local, or private health insurance plans.	**127**	Died in committee
HR 3163: Affordability is Access Act	Requires no copay coverage for over-the-counter oral contraceptives with or without a prescription.	**89**	Died in committee
HR 3378: Stop Deceptive Advertising for Women's Services Act	Directs the Federal Trade Commission to create rules prohibiting organizations that do not provide abortion services from advertising such that consumers believe that they do provide abortion services.	**25**	Died in committee
H.R. 3652: 21st Century Women's Health Act	Establishes mechanisms to improve maternal health outcomes, expand family planning and women's health services, and promote public education of preventive health care; requires state Medicaid programs to offer free preventive care, including contraception; expands access to and information about emergency contraception, in particular for survivors of sexual assault; establishes Office of the Ombudsperson on Women's Health in HHS.	**22**	Died in committee
H. Res. 558: Condemning violence that targets healthcare for women.	Affirms that all women have the right to access reproductive health care without fear of violence, intimidation, or harassment and denounces attacks on clinics, providers, and patients accessing reproductive health care services.	**170**	Died in committee
H.R. 5475: Health Equity and Accountability Act	Establishes research and requirements related to health disparities impacting racial and ethnic minorities, including Native American communities; lays out comprehensive plan to improve access to and administration of culturally and linguistically appropriate health care for individuals limited in English proficiency; provides funds for improving rural health; promotes maternal health, particularly regarding gestational diabetes and birth defects; requires pharmacies to dispense FDA-approved contraception; requires access to emergency contraception for sexual assault survivors; provides grants for comprehensive sex ed; instructs the Surgeon General to promote emergency contraception through a public campaign.	**21**	Died in committee
H.R. 5746: Birth Control Privacy Act	Prohibits wellness programs from sharing information regarding an employee's contraceptive use of prescriptions or related details with their employer.	**58**	Died in committee

Total Number of Bills: 15

Senate Bills that Advance Reproductive Rights

Short Title	Description	Total Cosponsor Count	Final Status
S. 217: Women's Health Protection Act	Ensures that abortion services will continue to be available by invalidating laws that single out abortion care for requirements and restrictions that are medically unnecessary, do not promote women's health or safety, and limit access to abortion services.	**35**	Died in committee
S.Res. 37: Supporting women's reproductive health care decisions.	Resolves to ensure women have comprehensive, affordable insurance coverage for and access to reproductive health care services, including abortion, without interference by employers or government entities.	**33**	Died in committee
S. 358: Access to Contraception for Women Servicemembers and Dependents Act of 2015	Requires TRICARE to provide access to prescription contraception at no cost to all covered individuals, including dependents and non-active-duty members of the military. Requires that military members have access to comprehensive family planning counseling and education and that survivors of sexual assault have access to emergency contraception.	**28**	Died in committee
S. 674: 21st Century Women's Health Act	Establishes mechanisms to improve maternal health outcomes, expand family planning and women's health services, and promote public education of preventive health care; requires state Medicaid programs to offer free preventive care, including contraception; expands access to and information about emergency contraception, in particular for survivors of sexual assault; establishes Office of the Ombudsperson on Women's Health in HHS.	**5**	Died in committee
S. 677: Global Democracy Promotion Act	Allows foreign nongovernmental organizations (NGOs) to provide abortion-related services, counseling, and referrals that are legal in their countries without making them ineligible for U.S. foreign assistance.	**25**	Died in committee
S. Res. 193: A resolution celebrating the 50th anniversary of the historic Griswold v. Connecticut decision of the Supreme Court of the United States and expressing the sense of the Senate that the case was an important step forward in helping ensure that all people of the United States are able to use contraceptives to plan pregnancies and have healthier babies.	Recognizes 50th anniversary of the landmark Griswold v. Connecticut decision and encourages robust investment in publicly funded family planning services as essential to ensuring all women have affordable access to contraceptives and other reproductive health services.	**27**	Died in committee

S. 1512: Pregnant Workers Fairness Act	Requires reasonable workplace accommodations for workers and prohibits other forms of discrimination against workers with known limitations related to pregnancy, childbirth, or related medical conditions; prohibits employer from taking adverse action against an employee who requests or is using such accomodations. Waives the 11th Amendment as it pertains to violations committed under this Act.	**31**	Died in committee
S. 1532: Affordability is Access Act	Requires insurance coverage of over-the-counter oral contraceptives for daily use with or without a prescription.	**33**	Died in committee
S. 2220: Healthy Maternity and Obstetric Medicine (Healthy MOM) Act	Requires insurance providers offer a special enrollment period for pregnant women and requires coverage for maternity care for all covered individuals.	**25**	Died in committee
S. Res. 327: Condemning violence that targets healthcare for women.	Affirms that all women have the right to access reproductive health care without fear of violence, intimidation, or harassment; denounces attacks on clinics, providers, and patients accessing reproductive health care services.	**38**	Died in committee
S. 2960: Access to Birth Control Act	Requires pharmacies that typically stock FDA-approved contraceptives to make those medications available without delay or harassment; requires pharmacies to assist customers in immediately accessing the medication at a nearby pharmacy if the medication is currently out of stock. Pharmacists may not refuse to assist customers solely on the basis of the Religious Freedom Restoration Act of 1993.	**19**	Died in committee
S. Res. 530: Supporting the termination of the Select Investigative Panel of the Committee on Energy and Commerce of the House of Representatives established pursuant to House Resolution 461, and for other purposes.	Disbands the Select Investigative Panel of the House Committee on Energy and Commerce and redirects any unspent funds to efforts to combat the Zika virus.	**27**	Died in committee
S.Res. 590: A resolution commemorating 100 years of health care services provided by Planned Parenthood.	Expresses support for Planned Parenthood and recognizes its valuable role as a safety net provider that reaches medically underserved people; declares that Planned Parenthood should not be defunded, attacked, or discriminated against for being a women's health care provider.	**24**	Died in committee
S. 3360: Youth Access to Sexual Health Services Act of 2016	Authorizes HHS to award grants to support the access of marginalized youth to sexual health services, including sexual health education and contraception.	**8**	Died in committee

Total Number of Bills: 14

House Bills that Restrict Reproductive Rights

Topic	Bill Name & Number	Summary	Total Cosponsor Count	Final Status
ABORTION BANS	**H.R. 36:** Pain-Capable Unborn Child Protection Act	Bans abortions after 20 weeks post-fertilization; excludes cases of physical life endangerment, rape for which the woman sought counseling or medical treatment 48 hours before the abortion, or incest of a minor that is reported to police or child protective services. Physicians found in violation would face fines and/or up to 5 years in prison.	**186**	Passed House 242-184 (Vote No. 223) ; failed a cloture vote in the Senate (Vote No. 268)
	H.R. 4924: Prenatal Nondiscrimination Act (PreNDA)	Bans performing, coercing, getting money for, or transporting someone across state lines for an abortion on the basis of sex or race of the fetus; imposes criminal penalties of up to 5 years on the provider, allowing for additional civil causes of action from the woman, the man involved in the pregnancy, the woman's parents (if a minor), and/or the Attorney General. Clinics risk loss of federal funds. Mandates reporting by medical and mental health professionals. Does not mandate that providers ask about the reason for the abortion.	**96**	Died in committee
	H.R. 816: Life at Conception Act	Legally defines life as beginning at the moment of conception; does not require that women be prosecuted for the death of their fetus.	**146**	Died in committee
	H.R. 3515: Dismemberment Abortion Ban Act	Bans "dismemberment" abortions; women upon whom the abortion is performed cannot be prosecuted. The woman or the parent of a minor who obtained the abortion may take civil action against the provider.	**25**	Died in committee
HYDE	**H.R. 2:** Medicare Access and CHIP Reauthorization Act of 2015	Sustainable Growth Rate fix; includes Hyde language related to Federally Qualified Health Centers.	**13**	Signed into law April 16, 2015
	H.R. 610: To amend title XIX of the Social Security Act to audit States to determine if such States used Medicaid funds in violation of the Hyde Amendment and other Federal prohibitions on funding for abortions, and for other purposes.	Requires the federal government to audit states' Medicaid payments every year to determine if federal funds were used for abortions and if there were any violations of the Hyde Amendment.	**15**	Died in committee
	H.R. 7: No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015	Permanently adopts the Hyde Amendment and all other abortion riders, including the DC ban on abortion coverage. Prohibits subsidies for ACA plans that cover abortion and requires misleading information on abortion coverage in ACA plans.	**29**	Passed House 242-179 (Vote No. 45)

ACA REPEAL	**H.R. 543:** Health Care Choice Act of 2015	Repeals the health insurance and health coverage expansion requirements of the ACA; provides that the law of the health insurer's primary state applies to coverage offered in all states.	**18**	Died in committee
	H.R. 370: To repeal the Patient Protection and Affordable Care Act and health care-related provisions in the Health Care and Education Reconciliation Act of 2010.	Repeals the ACA.	**2**	Died in committee
	H.R. 2653: American Health Care Reform Act	Repeals the ACA and institutes changes regarding tax deductions for health insurance, health savings accounts, and high risk insurance pools; requires that individual health insurance coverage be governed by that state's laws; requires HHS to create clinical practice guidelines and independent medical review panels to review health care lawsuits in which the defendant alleges adherence those guidelines; establishes federal jurisdiction over all health care lawsuits.	**99**	Died in committee
	H.R. 132: ObamaCare Repeal Act	Repeals the ACA.	**68**	Died in committee
	H.R. 596: To repeal the Patient Protection and Affordable Care Act and health care-related provisions in the Health Care and Education Reconciliation Act of 2010, and for other purposes.	Repeals the ACA; directs Congressional committees to draft replacement proposals that meet certain criteria, including that the replacement not allow federal funds to be used for abortions and that health care providers be permitted to refuse to provide reproductive health services.	**112**	Passed House 239-186 (Vote No. 58)
	H.R. 138: Access to Insurance for All Americans Act	Repeals the ACA and requires OPM to administer a health insurance program for non-federal employees that replicates the Federal Employees Health Benefits (FEHB) program to the greatest extent possible, forcing any participating individuals to be subject to the Hyde language contained in the FEHB program.	**0**	Died in committee
	H.R. 2300: Empowering Patients First Act	Repeals the ACA and institutes changes regarding tax deductions for health insurance, health savings accounts, and high risk insurance pools; bans coverage of abortion in subsidized health coverage; amends the Small Business Health Fairness Act to, among other changes, allow insurers to deny coverage for pre-existing conditions.	**84**	Died in committee
RELIGIOUS REFUSALS	**H.R. 940:** Health Care Conscience Rights Act	Amends the ACA to allow individuals, sponsors, and insurers to not purchase, sponsor, provide, or cover any health care items, services, or plans to which they object on moral or religious grounds. Maintains nondiscrimination provisions of ACA.	**160**	Died in committee

	H.R. 4828: Conscience Protection Act	Codifies the Weldon Amendment; allows for rules that treat abortion clinics different from other medical facilities.	**104**	Died in committee
PROVIDER FUNDING	**H.R. 217:** Title X Abortion Provider Prohibition Act	Bans Title X funds for clinics that provide abortions other than in cases of life endangerment, rape, or incest; excludes hospitals and cases of life endangerment due to mental health.	**167**	Died in committee
	H.R. 489: Taxpayer Conscience Protection Act	Requires states to report on payments made to providers for abortion care each fiscal year, including details on the number of abortions performed and the amount a given provider receives in a fiscal year.	**7**	Died in committee
	HR 3197: Protecting Life and Taxpayer s Act of 2015	Bans federal funding to agencies that perform abortions other than cases of life endangerment, rape, or incest; excludes hospitals and cases of life endangerment due to mental health.	**76**	Died in committee
	H.R. 3495: Women's Health and Public Safety Act	Permits states to not fund health care providers who are involved in the performance of abortions other than in cases of physical life endangerment, rape, or incest.	**25**	Passed the House 236-193 (Vote No. 523)
	H Res 399: A resolution expressing the sense of the House of Representatives that the House should consider legislation to protect traditional marriage and prevent taxpayer funding of abortion.	Resolution calling for immediate committee consideration of HR 3134 and HR 3197, regarding denying federal funding to Planned Parenthood and providers who perform abortions, respectively.	**0**	Died in committee
PLANNED PARENTHOOD	**H.R. 3762:** Restoring Americans' Healthcare Freedom Reconciliation Act of 2015	Repeals substantial portions of ACA, including denying funding for subsidies that help low-income people obtain health insurance, making the employer and individual mandates unenforceable, and phasing out Medicaid expansion; revokes Medicaid funding from Planned Parenthood and redirects it to community health centers for one year.	**0**	Passed House 240-181 (Vote No. 6) and Senate 52-47 (Vote No. 329); failed to override presidential veto
	H.R. 3134: Defund Planned Parenthood Act of 2015	Prohibits federal funding to Planned Parenthood unless it stops performing abortions; excludes cases of physical life endangerment, rape, or incest.	**179**	Passed House 241-187 (Vote No. 505)
	HR 3245: Government Refusal of Abortion in Contracting and Enterprise Act	Prohibits the federal government from entering into a contract with a company that donates to Planned Parenthood or an affiliate.	**18**	Died in committee
	H.R. 3301: To prohibit Federal funding of Planned Parenthood Federation of America.	Bans federal funding to Planned Parenthood; redirects funds to other women's health services.	**1**	Died in committee
	H.R. 3443: Women's Health Accountability Act	No Title X funds may be made available to Planned Parenthood; the GAO must submit to Congress a report detailing all medical items and services offered by Planned Parenthood.	**6**	Died in committee

	H. Con. Res. 79: Defund Planned Parenthood Act of 2015	Prohibition of federal funding to Planned Parenthood attached to continuing resolution.	**0**	Passed House 241-185 (Vote No. 527)
EMBRYONIC AND FETAL TISSUE DISPOSAL	**H. Res. 461:** Establishing a Select Investigative Panel of the Committee on Energy and Commerce	Establishes a select panel to investigate fetal tissue procurement practices; federal funding for abortion providers; 2nd and 3rd trimester abortion practices; and medical care for children born alive during an abortion.	**0**	Passed House 242-184 (Vote No. 538)
	H.R 3729: Safe Responsible Ethical Scientific Endeavors Assuring Research for Compassionate Healthcare Act (Safe RESEARCH Act)	Amends Public Health Service Act to require that all fetal tissue used for research only be obtained from stillbirths.	**7**	Died in committee
	H.R. 3171: To amend the Public Health Service Act to prohibit certain research on the transplantation of human fetal tissue obtained pursuant to an abortion	Amends Public Health Service Act to require that all fetal tissue used for research only be obtained from stillbirths.	**4**	Died in committee
	H.R. 3215: End Trafficking of the Terminated Unborn Act of 2015	Amends Public Health Service Act to require that all fetal tissue used for research only be obtained from stillbirths or miscarriages; prohibits soliciting or receiving donations of fetal tissue procured during an abortion.	**16**	Died in committee
	HR 4536: Protecting the Dignity of Unborn Children Act of 2016	Criminalizes reckless disposal of fetal remains in a landfills or navigable waters.	**11**	Died in committee
SEX EDUCATION	**H.R. 5:** Student Success Act	Requires sex ed to promote abstinence and bans schools from distributing contraception; bans school-based health centers from referring students for abortions.	**11**	Passed House 218-213 (Vote No. 423)
	H.R. 463: Protecting Life in Funding Education Act (PRO-LIFE Act)	Prohibits federal funding for state and local education agencies with school-based health centers unless such centers certify that they will not provide abortions, materials referencing abortion, or referrals for abortion services to students.	**33**	Died in committee
	H.R. 453: Healthy Relationships Act	Appropriates $110 million from the Prevention and Public Health Fund of the ACA for the HHS Secretary to provide grants for abstinence-until-marriage sex education. Specificies that curricula should not overstate the effectiveness of contraception.	**26**	Died in committee
ABORTION RESTRICTIONS ON MINORS	**H.R. 803:** Child Interstate Abortion Notification Act	Imposes criminal penalties on anyone other than a parent taking a minor across state lines to obtain an abortion without first meeting the parental notification or consent (or judicial bypass) required by the minor's home state, as well as penalties on the physician performing the abortion. Excludes abortions resulting from incest or that are physically life threatening. For abortions performed due to the latter, physicians may notify parents after the procedure, and must include the reason why the minor's life was endangered.	**65**	Died in committee

	H.R. 1695: Parental Notification and Intervention Act of 2015	Requires parental notification in all states and mandates a 96 hour waiting period post-notification for any minor obtaining an abortion other than in cases of medical emergency or judicial bypass (the latter allowed only in cases of clear parental abuse). Parents may intervene in federal court to enjoin the abortion.	**11**	Died in committee
MISCELLANEOUS	**H.R. 492:** Ultrasound Informed Consent Act	Except for in cases of physical life endangerment, requires physicians to perform an ultrasound prior to abortion and narrate the procedure for the patient, who may decline to view the images; allows for civil damages against abortion provider.	**11**	Died in committee
	H. Res. 510: Supporting the designation of the week beginning November 8, 2015, as "National Pregnancy Center Week" to recognize the vital role that pregnancy care and resource centers play in saving lives and serving women and men faced with difficult pregnancy decisions.	Supporting the work of pregnancy centers, many of which use delay tactics to stall women from obtaining an abortion and provide false information about contraception and abortion.	**26**	Died in committee
	HR 3504: Born-Alive Abortion Survivors Protection Act	Amends the Born Alive Infants Protection Act of 2002 to impose criminal penalties on providers who do not comply with vague additional requirements.	**98**	Passed the House 248-177 (Vote No. 506)
	HR 3494: Protecting Infants Born Alive Act	Permits states to deny funding to providers who do not comply with the Born Alive Infants Protection Act of 2002; similarly revokes federal funds for and prohibits participation in federal health care programs by such providers.	**0**	Died in committee
	H.J. Res. 43: Disapproving the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014.	Disapproval resolution for the District of Columbia's Reproductive Health Nondiscrimination Act, which would prohibit employers from discriminating against employees for their reproductive health decisions.	**48**	Passed House 228-192 (Vote No. 194); the Act became law in D.C. following Congress' failure to pass a joint disapproval resolution during the review period.
	H.R. 2761: Sanctity of Life Act of 2015	Amends the federal judicial code to remove Supreme Court and district court jurisdiction to review cases arising from any origin related to protecting the life of a fetus or prohibiting or regulating the performance or funding of an abortion.	**2**	Died in committee
	H.R. 5138: Over-The-Counter Contraceptives Act	Requires the FDA to prioritize review of applications for over-the-counter contraceptive drugs for adults. Repeals provisions of the ACA to instead favor health savings accounts and health flexible spending accounts.	**6**	Died in committee

Total Number of Bills: 44

Senate Bills that Restrict Reproductive Rights

Topic	Bill Name & Number	Summary	Final Cosponsor Count	Final Status
ABORTION BANS	**S. 48:** Prenatal Nondiscrimination Act (PreNDA)	Bans performing, coercing, getting money for, or transporting someone across state lines for an abortion on the basis of sex of the fetus; imposes criminal penalties of up to 5 years on the provider, allowing for additional civil causes of action from the woman, the man involved in the pregnancy, the woman's parents (if a minor), and/or the Attorney General. Clinics risk loss of federal funds. Mandates reporting by medical and mental health professionals. Does not mandate that providers ask about the reason for the abortion.	**13**	Died in committee
	S. 1553: Pain-Capable Unborn Child Protection Act	Bans abortions after 20 weeks post-fertilization; excludes cases of physical life endangerment, rape for which the woman sought counseling or medical treatment 48 hours before the abortion, or incest of a minor that is reported to police or child protective services. Physicians found in violation would face fines and/or up to 5 years in prison.	**45**	Died in committee; the companion House bill, HR 36, passed the House but failed a cloture vote in the Senate (Vote No. 268)
	S. 3306: Dismemberment Abortion Ban Act of 2016	Criminalizes performing "dismemberment" abortions by up to two years of prison; patient who obtained the abortion (or parents of the patient if a minor) cannot be prosecuted and may take civil action against the provider.	**1**	Died in committee
	S. 2464: Life at Conception Act	Legally defines life as beginning at the moment of conception; does not prohibit in vitro fertilization or birth control and does not require women be prosecuted for the death of their fetus.	**11**	Reported out of committee Jan. 26, 2016
HYDE	**S. 178:** Justice for Victims of Trafficking Act	The original version of this anti-trafficking bill would have expanded abortion funding restrictions by applying Hyde language to a new fund for survivors - established by the bill - using fines levied against traffickers. The final language of the bill scaled back the expansion by instead having survivors access health services via Community Health Centers, which are already subject to the restrictions of the Hyde Amendment.	**34**	Signed by President on May 29, 2015
	S. 219: Hyde Amendment Codification Act	Permanently adopts the Hyde Amendment and all other abortion riders, effectively banning federal funding for coverage of abortion. Prohibits subsidies for ACA plans that cover abortion. Excludes abortions performed in cases of rape, incest, or physical life endangerment.	**0**	Died in committee

	S. 582: No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015	Permanent adoption of the Hyde Amendment and all other abortion coverage restrictions, including ones that apply to DC. Prohibits subsidies for ACA plans that cover abortion. Disallows credit and cost-sharing measures in plans that cover abortion and requires misleading information on abortion coverage in ACA plans.	**43**	Died in committee
ACA REPEAL	**S. 647:** Health Care Choices Act of 2015	Repeals health insurance and health coverage expansion requirements of the ACA; amends the Public Health Service Act to require that state insurance laws apply to individual coverage in each state.	**5**	Died in committee
	S. 336: Obamacare Repeal Act	Repeals the ACA.	**51**	Died in committee
	S. 77: Patient Choice Restoration Act	Repeals the ACA.	**0**	Died in committee
RELIGIOUS REFUSALS	**S. 1919:** Health Care Conscience Rights Act	Amends the ACA to allow individuals, sponsors, and insurers to not purchase, sponsor, provide, or cover any health care items, services, or plans to which they object on moral or religious grounds. Maintains nondiscrimination provisions of ACA.	**25**	Died in committee
	S. 50: Abortion Non-Discrimination Act	Extends refusal clause in the Public Health Act to non-physician medical training programs, hospitals, HMOs, ACOs, and health insurance plans. Bars the government from not funding programs on the basis that they do not pay for abortions.	**5**	Died in committee
	S. 304: Conscience Protection Act	Codifies the Weldon Amendment; allows for rules that treat abortion clinics different from other medical facilities.	**17**	House replaced title & text of an unrelated bill previously passed by the Senate; new House version passed 245-182 (Vote No. 443)
PROVIDER FUNDING	**S. 51:** Title X Abortion Provider Prohibition Act	Bans Title X funds for clinics that provide abortions other than in cases of life endangerment, rape, or incest. Does not apply to hospitals. Excludes life endangerment due to mental health.	**10**	Died in committee
	S. 2159: Women's Health and Public Safety Act	Allows states to exclude from their state Medicaid program any provider who performs abortions other than in the cases of life endangerment, rape, or incest; excludes life endangerment due to mental health.	**2**	Died in committee
PLANNED PARENTHOOD	**S. 1836:** Defund Planned Parenthood Act of 2015	Institutes a one year ban on federal funding to Planned Parenthood unless it stops performing abortions; allows exceptions for abortions in cases of life endangerment, rape, or incest. Excludes life endangerment due to mental health.	**4**	Died in committee
	S. 1861: A bill to prohibit Federal funding of Planned Parenthood Federation of America.	Prohibits federal funds from going to Planned Parenthood.	**4**	Reported out of committee July 26, 2015

PLANNED PARENTHOOD	**S. 1881:** A bill to prohibit Federal funding of Planned Parenthood Federation of America	Prohibits federal funds from going to Planned Parenthood; requires those funds to remain available for other spending in support of women's health.	**45**	Failed cloture vote in Senate 53-46 (Vote No. 262)
	S. 1877: A bill to require the Attorney General to appoint a special prosecutor to investigate Planned Parenthood, and other purposes.	Requires appointment of special prosecutor to investigate Planned Parenthood and all entities receiving federal funds who perform or fund abortion services as to their compliance with federal laws regarding abortion and to prosecute any violations. Revokes all unobligated federal funding of Planned Parenthood and such entities to pay for that investigation.	**3**	Died in committee
	S. 1917: To prohibit the provision of Federal funds to an entity that receives compensation for facilitating the donation of fetal tissue derived from an abortion.	Bans funding to any Planned Parenthood entity that receives compensation for facilitating the donation of fetal tissue; requires the Attorney General to investigate Planned Parenthood and report to Congress on whether any illegal activity related to fetal tissue donation occurred.	**2**	Died in committee
TARGETED REGULATION OF ABORTION PROVIDERS	**S. 78:** Pregnant Women Health and Safety Act	Requires providers of abortion to have admitting privileges at a hospital no more than one hour away and for all clinics that receive federal funds and perform at least 25 first-trimester abortions to meet ambulatory surgical center requirements (excluding those relating to a certificate of public need). States may waive the application of certain structural requirements.	**0**	Died in committee
	S. 220: The Health Care Provider and Hospital Conscience Protection Act	Bars withholding of accreditation, licensure, authorizations, loans, grants, aids, assistance, benefits, or privileges on the basis that an health care worker or entity does not provide, pay for, or assist in abortions. Applies to all federal agencies and all state/local agencies that receive federal funds.	**0**	Died in committee
ABORTION RESTRICTIONS ON MINORS	**S. 201:** Child Custody Protection Act	Provides for up to one year in prison and civil liability for someone who transports a minor across state lines to obtain an abortion other than in cases of physical life endangerment or incest, with the intention of avoiding parental consent or notification laws that exist in the minor's state of residence. Neither minors nor their parents may be prosecuted; the latter may take civil action to obtain relief unless the parent committed an act of incest with the minor who obtained the abortion.	**8**	Died in committee

	S. 404: Child Interstate Abortion Notification Act	Imposes criminal penalties on anyone other than a parent taking a minor across state lines to obtain an abortion without first meeting the parental notification or consent (or judicial bypass) required by the minor's home state or at minimum giving notification 24 hours before the procedure, as well as penalties on the physician performing the abortion. Excludes abortions resulting from incest or that are physically life threatening. For abortions performed due to the latter, physicians may notify parents after the procedure, and must include the reason why the minor's life was endangered.	**23**	Died in committee
MISCELLANEOUS	**S. J. Res. 10:** Disapproving the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014.	Disapproval resolution for DC Reproductive Health Nondiscrimination Act, which prohibits employers from discriminating against employees for their reproductive health decisions.	**2**	Died in committee; the Act became law in D.C. following Congress' failure to pass a joint disapproval resolution during the review period.
	S. 923: Healthy Relationships Act	Appropriates $110 million from the Prevention and Public Health Fund of the ACA for the HHS Secretary to provide grants for abstinence-until-marriage sex ed. Specificies that curricula should not overstate the effectiveness of contraception.	**6**	Died in committee
	S. 2066: Born-Alive Abortion Survivors Protection Act	Amends the Born Alive Infants Protection Act of 2002 to impose criminal penalties on providers who do not comply with vague additional requirements.	**38**	Died in committee
	S. 1438: Allowing Greater Access to Safe and Effective Contraception Act	Requires the FDA to prioritize review of applications for over-the-counter contraceptive drugs for adults. Repeals provisions of the ACA to instead favor health savings accounts and health flexible spending accounts.	**8**	Died in committee

Total Number of Bills: 27

APPENDIX 3:

SUMMARY OF FEDERAL ABORTION COVERAGE RESTRICTIONS

Affected Population	Type of Coverage Restriction	Description	Where the Measure Resides	Current Status
District of Columbia residents	Appropriations rider	Unlike the 50 states, the District of Columbia is prohibited from using its locally raised funds to provide abortion coverage in cases beyond life endangerment, rape, and incest to its Medicaid and Medicare recipients.	Financial Services and General Government Appropriations Bill	Retained in FY17 Appropriation
Federal employees and their dependents	Appropriations rider	Federal employees and their dependents who are covered under the Federal Employee Health Benefits program (FEHB) may not receive abortion coverage unless the pregnancy endangers their lives or is the result of rape or incest.	Financial Services and General Government Appropriations Bill	Retained in FY17 appropriation
Federal inmates	Appropriations rider	Federal inmates may not receive abortion coverage unless the pregnancy endangers their life or is the result of rape or incest.	Commerce, Justice, and Science Appropriations Bills	Retained in FY17 appropriation
Foreign assistance recipients	Appropriations rider and statute	U.S. foreign aid dollars may not be used to perform abortions as a method of family planning. This is known as the Helms Amendment.	State, Foreign Operations, and Related Programs Appropriations Bill	Retained in FY17 appropriation; Foreign Assistance Act of 1961 (as amended), section 104(f)(1)
Foreign non-governmental organizations that receive U.S. foreign assistance for global health	Presidential memorandum	A foreign non-governmental organization may not use any funds (includng non-U.S. assistance funds) to perform or actively promote abortion as a method of family planning. This is known as the Mexico City Policy or Global Gag Rule.	Presidential memorandum of January 23, 2017	In effect since January 23, 2017
Immigration and Customs Enforcement (ICE) detainees	Policy	ICE detainees may not receive abortion coverage unless the pregnancy is physically life-threatening or the pregnancy is the result of rape or incest. ICE currently follows this policy as a parallel to the Hyde Amendment (which affects programs funded through the Department of Health and Human Services).	Department of Homeland Security's Performance-Based National Detention Standards (2011, modified 2013)	In effect

Indian Health Service participants	Statute	Individuals who participate in the Indian Health Service may only receive coverage for abortion to the extent permitted by the Hyde Amendment. Currently, that means abortion care is covered where a pregnancy is physically life-endangering or is the result of rape or incest.	25 U.S. Code § 1676	In effect
Medicaid & Medicare enrollees	Appropriations rider	Medicaid and Medicare enrollees may not receive abortion coverage unless the pregnancy is physically life-threatening or is the result of rape or incest. This rider is known as the Hyde Amendment.	Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill	Retained in FY17 appropriation
Military service members and their dependents, including survivors and former spouses.	Statute	TRICARE, the military health program, provides no coverage for abortion unless the servicemember's (or the dependent's) life is endangered or the pregnancy is the result of rape or incest. In addition, military health facilities will not provide an abortion except in the above circumstances; service members may not use their own funds to pay for the procedure in other circumstances.	10 U.S. Code § 1093	In effect
Peace Corps Volunteers and Trainees	Appropriations rider	Peace Corps Volunteers may not receive abortion coverage in any case unless their life is endangered or the pregnancy is the result of rape or incest. Their coverage is tied to the coverage received by federal employees as part of the Financial Services and General Government Appropriations process.	State, Foreign Operations, and Related Programs Appropriations Bill	Retained in FY17 appropriation
People using Title X facilities	Statute	Title X funds may not be used in programs where abortion is a method of family planning.	42 U.S. Code § 300a-6	In effect


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ENDNOTES

[1] Although this report uses female pronouns as well as the term, "woman," we recognize that all people, including those who do not identify as women, need access to the full range of reproductive health care.

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[6] *Whole Woman's Health v. Hellerstedt*, 579 U.S. ___ (2016).

[7] *Id.*, slip op. at 2.

[8] *Id.*, slip op. at 36.

[9] *Id.*, slip op. at 30.

[10] Brief of *Amici Curiae* 163 Members of Congress in Support of Whole Woman's Health, et al. at 10, *Whole Woman's Health v. Cole* [later *Whole Woman's Health v. Hellerstedt*], 579 U.S. ___, (2016), *available at* https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/163%20Members%20of%20Congress%20Stroock.pdf.

[11] Brief of *Amici Curiae* 163 Members of Congress in Support of Whole Woman's Health, et al. at 10, *Whole Woman's Health v. Cole* [later *Whole Woman's Health v. Hellerstedt*], 579 U.S. ___, (2016), *available at* https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/163%20Members%20of%20Congress%20Stroock.pdf.

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[15] Reproductive Health Technologies Project, *Two Sides of the Same Coin: Integrating Economic and Reproductive Justice* 12 (Aug. 2015) (citing Diana Greene et al. "Socioeconomic consequences of receiving an abortion compared to carrying an unwanted pregnancy to term," presentation, American Public Health Association annual meeting, San Francisco, CA, October 30, 2012), *available at* http://www.rhtp.org/abortion/documents/TwoSidesSameCoinReport.pdf.

[16] *See* H. Comm. On Rules, 114th Cong., No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015 (H.R. 7), *available at* https://rules.house.gov/bill/114/hr-7.

[17] *Planned Parenthood v. Casey*, 505 U.S. 833, 871 (1992).

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[22] Rep. Franks has a history of proposing regressive bills, like H.R. 36. In 2012, Rep. Franks introduced H.R. 3803, which would have similarly banned abortion after 20 weeks in the District of Columbia, but it failed to pass the House [District of Columbia Pain-Capable Unborn Child Protection Act, H.R. 3803, 112th Cong. (2012)]. In 2013, Rep. Franks introduced H.R. 1797 to ban abortion at 20 weeks or more in all 50 states. H.R. 1797 contained similar language to H.R. 36 and was passed by the House (228-196) on June 19, 2013 [Legislative Tracker: *Pain-Capable Unborn Child Protection Act (HR 1797),* Rewire (Sept. 23, 2013), *available at* https://

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Appendix 1

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