



February 8, 2011

The Honorable Trent Franks
Chairman, Subcommittee on the Constitution
U.S. House of Representatives Committee on the Judiciary
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member, Subcommittee on the Constitution
U.S. House of Representatives Committee on the Judiciary
Washington, DC 20515

Dear Chairman Franks, Ranking Member Nadler, and Members of the Subcommittee:

On behalf of the Center for Reproductive Rights, I urge you to reject the extreme and misleadingly titled “No Taxpayer Funding for Abortion Act” (HR 3).

The Center for Reproductive Rights (“the Center”) promotes women’s equality worldwide by securing reproductive rights as constitutional and international human rights. We litigate in state and federal courts, including the U.S. Supreme Court. In addition to our U.S. work, the Center brings groundbreaking cases under international law before the United Nations and regional human rights bodies.

First and foremost, this bill is about interfering with private healthcare choices. It does so by imposing draconian tax penalties on small businesses and middle-class families; by making the harmful and discriminatory Hyde Amendment even more intractable; by encroaching on the private lives of government workers; by heightening a dangerous refusal provision that is at odds with prevailing standards of care, and out of step with international and human rights law; and by undermining important protections for women who suffer life-threatening health conditions.

This radically broad bill – essentially, an Abortion Tax – is clearly intended to prevent all women from obtaining health insurance coverage for abortion services – including insurance paid for with private dollars or provided by employers in the private marketplace. H.R. 3 creates burdensome new tax penalties that will raise taxes on millions of Americans and is designed to

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make coverage of abortion unavailable through private health insurance policies – stripping away coverage that millions of women currently have.

In particular, H.R. 3 targets small businesses and middle-class families. H.R. 3 would: ban tax credits for businesses that provide health plans that include abortion coverage, including the new Small Business Health Tax Credit (which was created to make health insurance affordable for small businesses and their employees);¹ force self-employed entrepreneurs to pay new taxes on insurance plans if the plans include coverage for abortion;² and impose a ban on abortion coverage for women who purchase health insurance with premium assistance under the Affordable Care Act,³ even though they would use their own private dollars to pay for part or most of the premiums.

H.R. 3 also punishes all women who depend on the government for healthcare or who get their insurance through federal employment. H.R. 3 would make bans on abortion coverage for women on Medicaid, federal employees, women in the military, Peace Corps volunteers and many others even more intractable. Most of these restrictions have no home in permanent law; instead, they are re-enacted each year in annual appropriations bills. H.R. 3 would make these damaging restrictions permanent.

Although the damage that would be done by H.R. 3 extends far beyond the codification and re-codification of these discriminatory policies, this effect alone would be tragic as these denials of coverage have a tremendously harmful impact on the women they target. For example, as our 2010 report documents, the Hyde Amendment has forced women to sell or pawn their possessions, forgo paying bills, get evicted for failure to pay rent, go hungry, and suffer the fear of not knowing whether they will be able to access the care they need.⁴ The struggle to raise funds forces many women to delay obtaining abortion services; others are forced to carry unwanted pregnancies to term.

These restrictions – although often most disastrous for women with the least means – know no socio-economic boundaries. Restrictions on coverage for federal employees forced one woman to pay thousands of dollars after confronting incredibly difficult circumstances. After terminating a wanted pregnancy because she learned that her fetus had no brain and no chance of survival, she discovered that her federal insurance did not cover the procedure. In the midst of her grief, she was handed a \$9,000 bill.⁵ H.R. 3 guarantees that more women will suffer similar injustices.

And in yet another egregious encroachment on individual rights, H.R. 3 could even prevent federally employed healthcare workers from doing volunteer work – on their own private time – that includes provision of abortion services. That sort of government-dictated

stranglehold on private life would not be tolerated with respect to other healthcare services. The men and women who are employed by government agencies and institutions are not conscripted into indentured servitude. As private individuals, they have private lives that must be secure from governmental overreach. Any suggestion that restrictions on the private lives of government employees somehow relates to “federal funding” strains credulity.

H.R. 3 also heightens a dangerous refusal provision that is at odds with prevailing standards of care, and out of step with international and human rights law.⁶ Despite the policy attention to refusal, those who choose to provide abortion services are routinely harassed, intimidated, and discriminated against, as extensively documented in our 2009 report.⁷ This persistent discrimination has led to a shortage of doctors. H.R. 3’s refusal provision does nothing to protect the men and women who provide abortion services. The lopsided provision violates a fundamental principle of American law by allowing discrimination based on viewpoint, and is inconsistent with the concepts of balance and fairness that undergird our legal system.

Last, adding insult to injury, H.R. 3 prevents women from accessing care and coverage in life-threatening situations. Currently, the Emergency Treatment and Active Labor Act (EMTALA) ensures that a woman who needs emergency abortion services cannot be turned away by a hospital.⁸ Shockingly, H.R. 3 can be interpreted to eliminate this reasonable and common-sense protection for patients who find themselves at state and local government hospitals. H.R. 3 could also deny protections to state and local government employees facing a life-threatening medical situation. Currently, employers that provide health insurance must ensure that policies cover abortion services in instances in which a woman’s life is endangered.⁹ H.R. 3 could remove this fundamental protection for employees of state and local governments.

Abortion is an essential part of reproductive healthcare and one of the most common medical procedures. That is why a majority of employer-based health plans today include abortion coverage.¹⁰ H.R. 3 promises to take away that coverage from millions of Americans. Stand up for American women and reject this radical attack.

Sincerely,

A handwritten signature in black ink that reads "Laura MacCleery". The signature is written in a cursive style with a long, sweeping flourish at the end.

Laura MacCleery
Director of Government Relations
Center for Reproductive Rights

¹ See I.R.C. § 45R.

² Currently, self-employed individuals can deduct the cost of healthcare premiums so as not to disadvantage them vis-à-vis those who have employer-based plans. See I.R.C. § 162(l).

³ See I.R.C. § 36B.

⁴ Center for Reproductive Rights, *Whose Choice? How the Hyde Amendment Harms Poor Women* 28-29 (2010), available at <http://reproductiverights.org/en/feature/whose-choice-how-the-hyde-amendment-harms-poor-women>.

⁵ Statement of DJ Feldman on Harmful Impact of Abortion Coverage Restrictions, Nov. 16, 2009 at <http://reproductiverights.org/en/feature/no-abortion-ban-statement-by-dj>.

⁶ International Covenant on Civil and Political Rights, Art. 18, *opened for signature* December 19, 1966, 999 U.N.T.S. 85 (entered into force March 23, 1976).

⁷ Center for Reproductive Rights, *Defending Human Rights: Abortion Providers Facing Threats, Restrictions, and Harassment* (2009), available at <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/DefendingHumanRights.pdf>.

⁸ See 42 U.S.C. §§ 1395dd(a)-(c). Stabilizing treatment is defined in EMTALA as “such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility.” 42 U.S.C. § 1395dd(e)(3)(a). An emergency medical condition is one that, absent proper treatment, places the health of the patient in serious jeopardy, or risks serious impairment to bodily functions or serious dysfunction of any bodily organ or part. See 42 U.S.C. § 1395dd(e)(1).

⁹ See 42 U.S.C. 2000e(k) (2010).

¹⁰ Guttmacher Institute, *Memo on Private Insurance Coverage of Abortion*, Jan. 19, 2011, available at <http://www.guttmacher.org/media/inthenews/2011/01/19/index.html>.