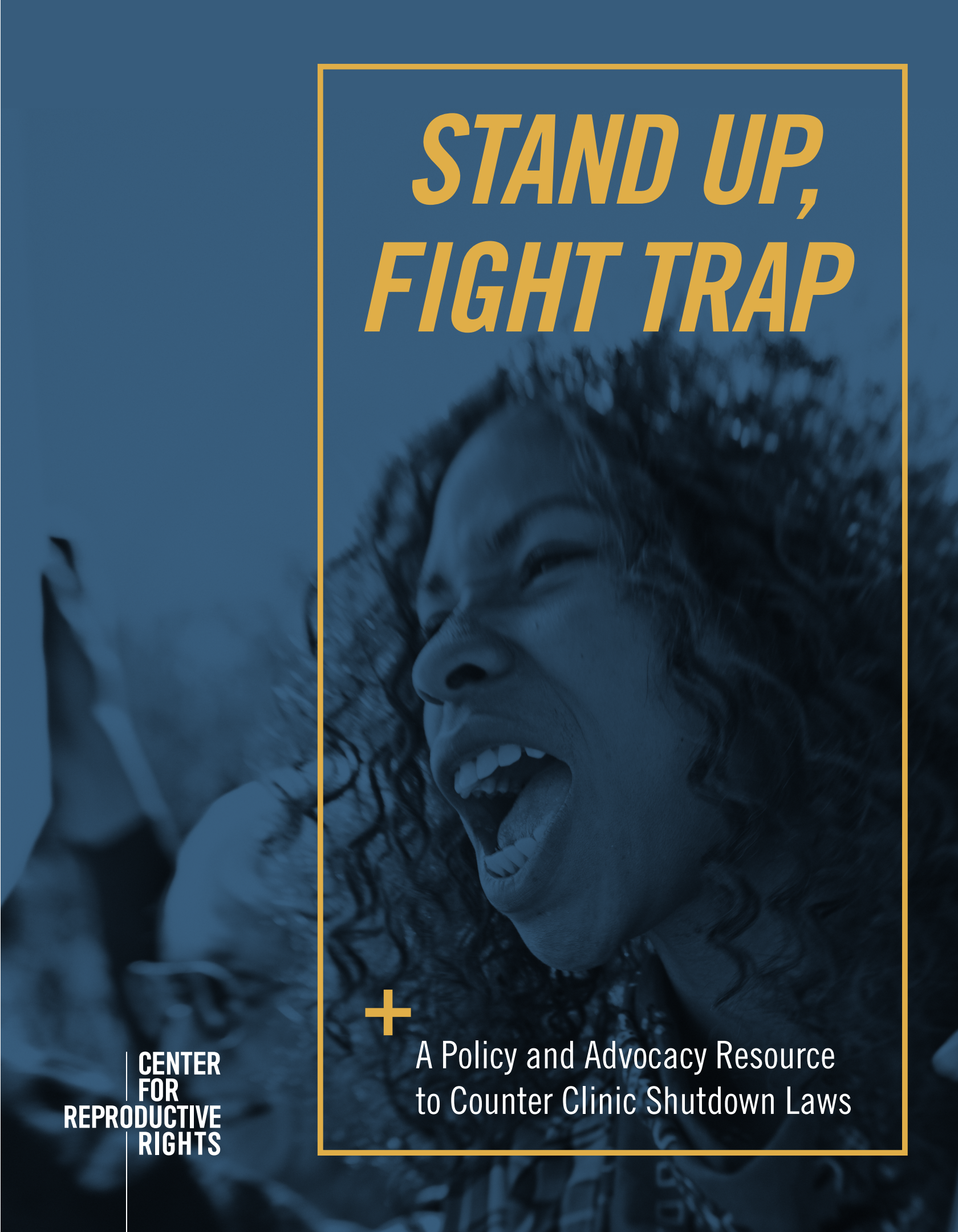

STAND UP, FIGHT TRAP

+

A Policy and Advocacy Resource to Counter Clinic Shutdown Laws

CENTER FOR REPRODUCTIVE RIGHTS

Clinics across the country are being forced to close their doors, making it even harder for a woman to get the abortion care she needs, simply because some politicians want to play politics with women's health.

We need to put a stop to politically motivated abortion restrictions and protect not just a woman's right to make her own decisions, but her ability to receive safe abortion care in her own community. Every woman deserves to be treated with dignity and respect while making her own personal health care decisions.

Despite the clear constitutional protections for reproductive rights that we all have, no matter where in the country we live, extremist politicians have introduced hundreds of measures that force doctors who provide abortion care to follow medically unnecessary requirements, which are often impossible to comply with, resulting in clinic closures.

These medically unnecessary restrictions – commonly referred to as targeted regulation of abortion providers, or TRAP laws – are intended to circumvent established law by imposing onerous and medically unnecessary restrictions that force clinics to close. Politicians are trying to sneak around the Constitution with the intention of making safe and legal reproductive health care that much more difficult to obtain, especially for poor and marginalized communities.

Private, personal decisions must be made based on our values, unique circumstances, and the advice of the medical professionals we trust—not the agendas of politicians who presume to know better. The American College of Obstetricians and Gynecologists and American Medical Association oppose the imposition of medically unnecessary requirements on abortion care providers.

We encourage you to use the model policies, talking points, research, and advocacy resources in this guide to work towards preventing or repealing harmful policies in your state. Please contact Julie Bero at *jbero@reprorights.org* with questions or to request technical assistance.

In this resource:

I. Model bill language to prevent or blunt the impact of TRAP laws
II. Talking points
III. Research and data
IV. TRAP Laws and the U.S. Supreme Court
V. Advocacy tools
VI. Appendix

I. Model Bills to Repeal or Blunt the Impact of TRAP Laws

Model bill text is included in the Appendix at the end of this document. Please contact Julie Bero at jbero@reprorights.org with questions or to request technical assistance.

Every woman has a right to make personal medical decisions. Comprehensive reproductive health care, including safe abortion care, is a vital component of women's overall well-being and must be protected from politically motivated laws that close high-quality clinics and threaten the health and safety of women and families. The **Abortion Regulation Non-Discrimination Act** protects women's access to essential health services against the schemes of politicians who seek to deny women their rights and the care they need. The bill provides a legislative vehicle for a state to preemptively ban harmful laws that shut down reproductive health care providers, ensuring that a woman's constitutional rights do not depend on her zip code. This bill can also be used by legislative champions to show their support for abortion rights or highlight the discriminatory nature of pending or existing TRAP legislation.

The Abortion Regulation Non-Discrimination Act would outlaw any state law or regulation that imposes requirements on a medical facility where abortions are provided that are more burdensome than those imposed on facilities that provide medically comparable procedures. The state would also not be permitted to impose any such unevenly burdensome requirements on the health care providers who perform abortions.

- Prohibited measures imposed on abortion facilities include hospital-like building requirements, burdensome staffing requirements, and medically unnecessary hospital transfer arrangements.
- Prohibited measures imposed on health care providers who perform abortions include medically unnecessary requirements related to hospital privileges or provider credentialing.

Women's health advocates know that playing politics with women's health isn't just wrong, it's dangerous. Closing clinics in our communities won't end the need for abortion—it forces women to take matters into their own hands. The **Clinic Shutdown State Responsibility Act** provides a legislative vehicle for abortion facilities that closed as a result of a TRAP law to reopen and arms legislative champions with a message that reclaims patient health and safety. In doing so, this bill holds politicians accountable to their claims that TRAP laws promote women's health and safety and exposes the true intentions of TRAP proponents, which is to shut down clinics and, ultimately, end access to abortion entirely.

The Clinic Shutdown State Responsibility Act would allow an abortion facility that closed for political reasons to reopen. Costly, burdensome state regulations across the U.S.—which do not apply to similar medical practices and do nothing to improve patient safety—have forced safe, reputable providers out of practice for no legitimate reason. This bill requires states to prove that red tape that shuts down abortion providers is truly necessary to protect women's health.

Note that the findings in the Clinic Shutdown State Responsibility Act are written in a way that can be used as a standalone "Abortion is Safe" resolution.

II. Framing the Conversation

Every woman has a constitutional right to decide for herself whether to continue or end a pregnancy—and when a woman makes that decision, she must be able to get safe, legal health care from a provider she trusts in the community where she lives. These model bills aim to protect women's rights and access to essential health services against the schemes of politicians who seek to deny women their rights and the care they need.

See the *Appendix* for detailed talking points tailored to both the Abortion Regulation Non-Discrimination Act and the Clinic Shutdown State Responsibility Act.

III. Research Confirms: TRAP Laws Harm Women

TRAP laws are medically unnecessary because abortion is very safe.[1] Abortion is an extremely safe medical procedure, with less than a quarter of one percent of abortions resulting in major complication. In fact, abortion is much safer than childbirth and poses no threat to future fertility, pregnancy, or birth outcomes. Providers adhere to a strict standard of care, founded in evidenced-based clinical policy guidelines and a dedication to the health and well-being of their patients. It is a common medical procedure, typically provided in a non-hospital clinic or physician's office.

Women are fully capable of making decisions about their reproductive lives.[2] Half of pregnancies among American women are unintended and it is not uncommon for a woman to decide to end her pregnancy: three in ten women will have an abortion by the age of 45. In a large-scale study, researchers found that 95% of women who had abortions felt it was the right decision for them both immediately after their abortion and more than 3 years later.

TRAP laws impose onerous regulations on abortion providers unnecessary to patient health and safety.[3] These measures are advanced by politicians, not doctors. In fact, the American Medical Association and the American College of Obstetricians and Gynecologists (ACOG) have opposed such measures. In a court brief, these leading medical associations argued that the Texas TRAP law now under scrutiny by the U.S. Supreme Court "jeopardizes women's health by restricting access to abortion providers." ACOG also has stated that abortion is "an integral component of women's health care" and that states must cease and repeal legislation—including TRAP laws—that interferes in the patient-provider relationship and the practice of medicine.

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[1] R.B. Gold & E. Nash, TRAP Laws Gain Political Traction While Abortion Clinics — and the Women They Serve – Pay the Price, Guttmacher Institute (2013), *available at* http://www.guttmacher.org/pubs/gpr/16/2/gpr160207.pdf; Carol Hogue et al, "Answering Questions about Long-Term Outcomes," in M. Paul et al, Management of unintended and abnormal pregnancy: Comprehensive abortion care. Chichester, England: Blackwell Publishing Ltd. (2009); E.G. Raymond & D.A. Grimes, The comparative safety of legal induced abortion and childbirth in the United States, *Obstetrics & Gynecology* 119, no. 2, Part 1 (2012).

[2] Advancing New Standards in Reproductive Health, Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study (2015); Guttmacher Institute, Induced Abortion in the United States (2014) *available at* http://www.guttmacher.org/pubs/fb_induced_abortion.html#1.

[3] Amicus Brief for the American College of Obstetricians and Gynecologists and the American Medical Association, Whole Woman's Health v. Lakey, 769 F.3d 285 (2014) *available* at http://www.reproductiverights.org/document/whole-womans-health-v-lakey-amicus-brief-of-american-college-of-obstetricians-and-gynecolog; American College of Obstetricians and Gynecologists, Committee Opinion Number 613: Increasing Access to Abortion (Dec. 2014) *available at* http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Increasing-Access-to-Abortion.

Clinic closures force a woman to travel outside of her community for reproductive health care.[4] Costly, burdensome TRAP regulations—which apply to no similar medical practices and do nothing to improve patient safety—have the potential to run safe, reputable providers out of practice. When clinics shut their doors, a woman must often travel long distances to reach the nearest abortion provider or delay care as she arranges transportation, time off from work, or child care. As ACOG noted in a Committee Opinion on Increasing Access to Abortion, abortion has become so marginalized that it is often the only health care service a woman cannot receive within the trusted health care system where she lives.

Women who already face barriers to accessing health care are hardest hit by TRAP laws.[5] Rural and low-income women are often those most affected by clinic closures due to the increased time and cost associated with long distance travel for abortion care. As clinics close, others often become more crowded, increasing the length of time that patients must wait for an appointment. After the enactment of a series of TRAP laws in Texas, wait times for abortion care increased substantially in Dallas, Fort Worth, and Austin, with some women facing delays of up to 20 days to receive a consultation appointment.

We know that when clinics close, women take matters into their own hands.[6] Time and again, studies by U.S. and international experts have shown that restrictions on abortion do not reduce its frequency—instead women are pushed to rely on unsafe methods when they cannot receive legal care where they live. A woman may try to end her pregnancy on her own without medical assistance, known as self-induced abortion. For example, Texas' extreme clinic shutdown laws drastically limit a woman's access to abortion care and have the potential to increase the self-induced abortion rates for women who already face barriers to receiving high quality care. New research estimates that more than 100,000 Texas women have ever attempted to end a pregnancy on their own and that self-induction may be more prevalent in Texas than in other states.

TRAP laws exacerbate an existing crisis in the number of abortion providers.[7] As of 2011, approximately 89% of all counties in the United States lacked a known provider, forcing women to travel a significant distance to access abortion care. In seven states, only one known abortion provider remains. The provider shortage has much to do with a policy environment that is hostile to sustaining a medical practice, in addition to ongoing harassment and violence by extremists against clinics and their staff and a widespread decline in abortion training at medical schools. For example, the *Texas Policy Evaluation Project* reported that as of September 2014, over 1.3 million women of reproductive age in Texas lived in a county more than a hundred miles from the nearest abortion provider.

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[4] American College of Obstetricians and Gynecologists (2014).
[5] Texas Policy Evaluation Project, Abortion Wait Times in Texas: The Shrinking Capacity of Facilities and the Potential Impact of Closing Non-ASC Clinics (2015); H. Boonstra & E. Nash, A Surge of State Abortion Restrictions Puts Providers—and the Women They Serve—in the Crosshairs, Guttmacher Institute (2014) *available at* http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html.
[6] M. Berer, National Laws and Unsafe Abortion: The Parameters of Change, Reprod Health Matters; 12, no. 24 (2004):1-8; D. Grossman et al, Knowledge, Opinion and Experience Related to Abortion Self-Induction in Texas, Texas Policy Evaluation Project (2015).
[7] Guttmacher Institute, Abortion Incidence and Service Availability In the United States, 2011 (2014), *available at* http://www.guttmacher.org/pubs/journals/46e0414.html; Texas Policy Evaluation Project, Rapidly Changing Access to Abortion in Texas (2014) *available at* http://www.utexas.edu/cola/txpep/_files/pdf/Rapidly-Changing-Access-to-Abortion-in-TX-18Jul2014.jpg.

IV. Advocacy Tools

Sample Letter to the Editor

Some suggested sample language is included here, but be sure to individualize your submission with state-specific context, local flavor, or a personal story. Your letter will be more newsworthy if it is in response to current events in your state or nationally, or to a recent article about reproductive health or rights.

Typically, shorter pieces (250-300 words) are more likely to be published. Refer to the website of your local newspaper for submission guidelines.

If your piece is not published, connect it to a different issue or current event in your community and re-submit. If you wish to tie the letter to the pending U.S. Supreme Court case, see the talking points in the *Appendix*.

Sample Letter:

Every woman has a constitutional right to decide for herself whether to continue or end a pregnancy—and when a woman makes that decision, she must be able to get safe, legal health care from a provider she trusts in the community where she lives. But in our state, lawmakers are pushing bad laws that are designed to deny women their rights and to restrict access to essential reproductive health care services.

State legislators must stand up for our rights and health by passing the [bill name], a law that would protect access to abortion against politically motivated schemes to deny women their rights and the care they need.

[*The Abortion Regulation Non-Discrimination Act:* Across the U.S., states are enacting laws that target abortion providers with sham regulations aimed at shutting down clinics. This bill shows a commitment to truly advancing women's health by blocking laws that threaten to close high-quality clinics.]

[OR]

[*Clinic Shutdown State Responsibility Act:* No safe, quality reproductive health clinic should be forced to close for political reasons that have nothing to do with patient health. This bill forces the state to back up claims that a clinic's closure is necessary to protect women's health and if it can't, the facility would remain open.]

[Include a personal reflection on the situation in your state and why passing the Abortion Regulation Non-Discrimination Act and/or Clinic Shutdown State Responsibility Act is important to you.]

It is essential that our legislature pass the [bill name] to ensure that each woman can make decisions based on her personal values and receive care from the community medical professionals she trusts.

Harness the Power of Personal Stories

Storytelling is a powerful means of putting real women's voices to the harmful consequences of TRAP laws. Advocates and activists have shared their abortion stories in person, in print, online, and directly with state legislators as a way to transform conversations around protecting constitutional rights into emotionally resonant human connections. Importantly, these personal narratives help to reveal the full scope of TRAP laws and the onerous burdens they place on women's access to reproductive health care.

Whether telling an abortion story to friends, family, and colleagues or preparing to share it with a state legislator, some questions to consider include: how has access—or lack of access—to reproductive health care influenced your life and your ability to plan your future? How have restrictions on abortion personally affected you or someone close to you? How do you think this new law would have changed your experience? What message would you like to send to the politicians who are trying to circumvent your constitutional rights by forcing clinics to close?

Sample Social Media Tweets & Posts

Use social media tools like Twitter and Facebook to raise awareness about your bill and urge supporters to take action. Create a hashtag, such as #FightTRAP: you can make it specific to your community by adding a state abbreviation, for example #FightTRAPTX.

Some sample Tweets may include:

- Each woman must be able to access constitutionally protected, quality abortion care where she lives. #FightTRAP
- Unnecessary regulations that target abortion providers are intended to shut down clinics—not protect women's health. #FightTRAP
- Ensure the safety of people seeking an abortion by providing safe, legal care—not by shutting down high-quality clinics. #FightTRAP
- Politicians, not doctors, believe in clinic shutdown laws. They're pushing a dishonest and harmful anti-abortion agenda. #FightTRAP
- When politicians interfere with personal health care decisions, they jeopardize our families, our futures and our lives. #FightTRAP

Explain how bad state laws would be remedied by the introduction of your bill. For example:

- The Abortion Regulation Non-Discrimination Act advances women's health by blocking laws that threaten to close clinics.
- This clinic stays open! Protect high-quality abortion providers from politically motivated attacks on reproductive health care.
- The Clinic Shutdown State Responsibility Act stops scheming politicians in their tracks to protect access to abortion care.
- No clinic should be closed for political reasons that have nothing to do with patient safety. Women's health should come first.

Connect your state laws to the U.S. Supreme Court case, using the hashtag #StopTheSham. Don't hesitate to include the bill numbers of TRAP laws from your state.

- From the [state] capitol to SCOTUS, laws that intrude on our dignity, liberty, and decision-making are blatantly unconstitutional. #StopTheSham
- Like Texas HB2, [state] [bill number] imposes unnecessary red tape on abortion providers. What it doesn't do: improve care. #StopTheSham

Connect to National Conversations

TRAP laws demand a response at all levels of government. Connect your state work to national and federal campaigns.

TRAP Laws and the U.S. Supreme Court

In 2016, the nation's highest court will hear *Whole Woman's Health v. Cole*, a case that will determine whether Texas can shut down nearly all abortion care providers in the state, placing countless women at risk of serious harm.

To stay up to date on this crucial legal challenge to protect abortion access and to join the national conversation about the case, visit **http://protectabortionaccess.org**.

For decades, the Supreme Court has affirmed that the U.S. Constitution protects every woman's right to make her own personal decision about her pregnancy. But Texas politicians have passed a TRAP law that buries women's health clinics under requirements so onerous they would drive more than 75% of clinics out of business. These requirements will harm women's health, not improve it.

Should politicians in Texas succeed in their underhanded efforts, clinic shutdown laws would leave only 10 providers in the entire state of Texas, forcing women to travel hundreds of miles or turn to drastic or illegal options. And the decision in *Whole Woman's Health v. Cole* will extend far beyond Texas' borders.

Many states have enacted Texas-style clinic shutdown laws that require abortion providers to have local hospital admitting privileges or require first-trimester abortion clinics to meet hospital-like building standards. While federal and state courts alike have blocked these requirements in several states, in others they remain in effect, threatening continued access to safe, legal abortion care.

Timeline: *Whole Woman's Health v. Cole*

- The Texas Legislature passed HB2 in 2013, a sweeping measure that imposes numerous restrictions on access to abortion, including TRAP measures requiring that abortion providers obtain admitting privileges at local hospitals and that every health care facility offering abortion services meet the same building specifications as ambulatory surgical centers—essentially becoming mini-hospitals.
- In 2014, the Center for Reproductive Rights filed a lawsuit on behalf of Whole Woman's Health and several other Texas health care providers to block these two

provisions. While a federal district court permanently blocked the measures as unconstitutional, that ruling was largely overturned by the U.S. Court of Appeals for the Fifth Circuit in June 2015. Immediately following, the U.S. Supreme Court stepped in to halt the Fifth Circuit's ruling and ensure many of the state's clinics could remain open.

- On November 13, 2015, the U.S. Supreme Court agreed to review the case and arguments will be heard in 2016. This case illustrates the devastating impact of TRAP laws: if these measures are not struck down, a mere 10 clinics will remain open in the entire state of Texas for 5.4 million women of reproductive age. It is essential that the Court reject politicians' schemes to take away constitutional rights and deprive women of their dignity.

Act for Women (www.actforwomen.org) is a national campaign that unites organizations and individuals in support of the **Women's Health Protection Act**—federal legislation designed to enforce and protect the right of every woman to decide for herself whether to continue or end a pregnancy, regardless of where she lives.

ACT! FOR WOMEN
Safe. Legal. Where we live.

By keeping politicians out of our personal health care decisions, the bill would ensure that abortion services continue to be available and that abortion providers are not singled out for medically unwarranted restrictions that harm women by choking off access to safe, legal, high-quality abortion care. The Women's Health Protection Act would prohibit state and federal politicians from imposing a range of dangerous anti-choice provisions, such as those that:

- single out the provision of abortion services for restrictions that are more burdensome than those imposed on medically comparable procedures;
- do not significantly advance women's health or the safety of abortion services; and
- make abortion services more difficult to access.

Consider raising awareness about the introduction of your bill to prevent or repeal TRAP measures while helping to educate the public and build momentum for landmark piece of federal legislation.

- Have your organization join the campaign at **www.ActforWomen.org**
- Connect the harms of TRAP laws in your state to the need for our federal lawmakers to take action. For example, feature reproductive health, rights, and justice experts on a panel that explains the effects of TRAP laws in your state, activates your base to take action on your repeal bill, and educates the public about the Women's Health Protection Act as a national solution to this dangerous policy trend.
- Encourage your supporters to #ActForWomen on social media and explain how the Women's Health Protection Act would help to push back on TRAP laws in your state and increase access to reproductive health care.
- Take it a step further by asking your federal lawmakers to become champions of the Women's Health Protection Act at in-district town halls or lobby visits, a letter writing party, or via email and social media. To discuss advocacy strategies, contact Julie Bero at **jbero@reprorights.org**.

V. Appendix

Model Bills

These bills were developed as a collaborative effort between the Center for Reproductive Rights, the American Civil Liberties Union, the National Abortion Federation, the National Institute for Reproductive Health, the National Partnership for Women and Families, and Planned Parenthood Federation of America.

Abortion Regulation Non-Discrimination Act

Section 1. Findings

WHEREAS, abortion care is one of the safest medical procedures in the United States; and

WHEREAS, comprehensive reproductive health care, including safe abortion care, is a vital component of a woman's overall health; and

WHEREAS, like other medical procedures, the safety of abortion care is furthered by evidence-based practices developed and supported by medical professionals; and

WHEREAS, any regulation of medical care should be regulated in a way that increases, rather than decreases, access, and allows for affordable, high quality care in the least complex facility that is medically appropriate; and

WHEREAS, laws and regulations that place obstacles in the paths of women seeking safe abortion care take away a woman’s constitutionally protected capacity to make personal medical decisions and threaten the health and safety of women and families;

It is therefore the intent of the Legislature to prevent the passage of laws in this State that would jeopardize women’s health by singling out abortion facilities or personnel for requirements more burdensome than those imposed on facilities that provide medically comparable procedures.

Additional, optional findings:

WHEREAS, reproductive freedom, including access to safe abortion care, is vital to a woman's safety, well-being, and ability to participate equally in society; and

WHEREAS, on January 22, 1973, the United States Supreme Court ruled in Roe v. Wade that the United States Constitution safeguards a woman’s ability to make her own decisions about when or whether to have children, and ensures that abortion care remains a safe and legal procedure; and

WHEREAS, the majority of Americans continue to support access to safe, legal abortion;

Section 2. Definitions

(1) “Personnel” means an individual providing health care services at an abortion facility, regardless of whether the individual is a contract or full-time employee.

(2) “Medically comparable procedures” means procedures with similar needs regarding the facility setting and personnel. Those needs are based on the procedure’s risks, complexity, and duration, including the level and duration of anesthesia or sedation to be used, and the degree of sterile precautions indicated by the nature of the procedure.

(3) “State” means the state of [insert state name] and includes a branch, department, agency, instrumentality, or individual acting under color of law of the state or a subdivision of the State.

(4) “Department” means [insert appropriate state agency for enforcement].

Note: depending on your state’s laws, the term “abortion” may need to be defined, or an existing definition may need to be referenced in this bill.

Section 3. Operative language

(1) The State may not, by law or regulation, impose on a medical facility where abortions are provided or performed requirements that are more burdensome than those imposed on facilities that provide medically comparable procedures, including but not limited to requirements related to the facility’s physical plant or construction or renovations thereof; requirements related to the facility’s equipment, staffing, infection control and sanitation, or medical waste disposal; or the hospital transfer arrangements of such facilities.

(2) The State may not, by law or regulation, impose on the personnel of a medical facility where abortions are provided or performed requirements that are more burdensome than that imposed on the personnel of facilities that provide medically comparable procedures, including but not limited to requirements related to the credentials, hospital privileges, or other arrangements with hospitals of such personnel.

Section 4. Repealer

This section is only needed if the bill is meant to have a retroactive effect, i.e. repeal existing TRAP laws.

The legislature hereby repeals [insert sections of state law that violate Section 3].

Section 5. Effective date

Insert typical effective date for the state.

Clinic Shutdown State Responsibility Act

Section 1. Findings

(1) The Legislature hereby finds and declares the following:

(A) Approximately one in three women will have an abortion in her lifetime, and will need access to safe, legal facilities to obtain abortion care; and

(B) Women often rely on same these facilities for other preventive care and reproductive health services, including cancer screenings, family planning, pap smears, gynecological and other well-woman health care services, and STI treatment and counseling; and

(C) In 2011, 89% of U.S. counties lacked an abortion facility. Laws that impose medically unnecessary and costly requirements on these facilities force additional facilities to close, further reducing women's access to services; and

(D) In 2015, four states had only one abortion provider, and at least ten states had three or fewer abortion providers; and

(E) [State]'s laws have had a detrimental effect on access to reproductive health care including abortion in this state; and

(F) Clinic closures can force women to travel long distances to reach the nearest clinic, or force women to delay care as they arrange transportation, time off from work, and save additional money for travel or lodging costs; and [Add state specific information if you have information about how far a woman would have to travel if a clinic closed.]

(G) Women who face these obstacles to accessing abortion care are more likely to seek out less safe alternatives to legal abortion; and

(H) Women have a constitutional right to access abortion services, and laws that pose an undue burden on the exercise of that right are unconstitutional; and

(I) A law or regulation that has the purpose or effect of imposing a substantial obstacle on a woman seeking an abortion creates an unconstitutional undue burden on her right to abortion; and

(J) In evaluating whether a law imposes an undue burden, federal courts have held that regulations of abortion facilities that purport to protect women's health must be justified by legitimate medical evidence. For instance, the U.S. Court of Appeals for the Seventh Circuit held that "[t]he feebler the medical grounds [justifying an abortion restriction], the likelier the burden, even if slight, to be 'undue.'"

(2) It is therefore the intent of the Legislature to block the enforcement of laws that would jeopardize women's health by forcing clinics to close without evidence that such a law is necessary to prevent a bona fide threat to patient safety.

Section 2. Definitions

(1) "Proximate cause" means a cause that produces a result in a natural and probable sequence and without which the injury would not have occurred.

(2) “Bona fide threat to patient safety” means a condition or set of conditions in an abortion facility that has caused or is likely to cause serious injury, harm, impairment, or death to a patient or patients.

(3) “Abortion facility” means a medical office or other facility in which abortions are provided or performed.

(4) “State” means the state of [insert state name] and includes a branch, department, agency, instrumentality, or individual acting under color of law of the state or a subdivision of the State.

(5) “Department” means [insert name of relevant state agency].

Section 3. Procedures required for abortion facility closures

(1) **General rule**. The State shall not enforce a law(s) or regulation(s) of this State that was the proximate cause of the closure of an abortion facility or facilities and which the Department fails to prove by clear and convincing evidence was necessary to prevent a bona fide threat to patient safety.

(2) **Presumption of improper legislative purpose or effect**.

> (A) The closure of an abortion facility or facilities in this State within two years prior to or after the effective date of this Act creates a presumption that a state law or regulation had the improper legislative purpose or effect to close the abortion facility or facilities.
>
> (B) Such closure triggers an investigation by the State Attorney General within 180 days of the effective date of this Act pursuant to subsection (2).
>
> (C) If the state Attorney General fails to commence such an investigation within 180 days, an abortion facility that closed within two years prior to the effective date of this Act may petition the Attorney General to commence an investigation. The Attorney General shall commence an investigation upon 30 days of receipt of such petition.
>
> (D) An abortion facility may waive an investigation required by this section.

(3) **Investigation requirements**. In conducting an investigation required by subsection (2), the Attorney General shall determine whether a state law(s) or regulation(s) was the proximate cause of the closure of an abortion facility or facilities. If such a determination is made, the Attorney General shall require the Department to prove by clear and convincing evidence that such state law(s) or regulation(s) was necessary to prevent a bona fide threat to patient safety. In determining whether the Department has met its burden, the Attorney General shall consider, but not be limited to, the following factors:

> (A) The purported need for the law(s) or regulation(s);
>
> (B) The actual need for the law(s) or regulation(s) based on patient safety;
>
> (C) Alternative means by which the purported or actual need could be met;
>
> (D) The safety record of the abortion facility or facilities throughout the state;
>
> (E) The documented benefits of the law(s) or regulation(s)’ requirements for patient safety as it applies to the provision of abortion;

(F) Evidence from medical institutions, organizations, or experts that address the necessity of this type of law or regulation for the safety of patients who obtain an abortion or evidence of opposition to this type of law by such institutions, organizations or experts;

(G) Evidence of threats to patient safety at abortion facilities throughout the state prior to enactment;

(H) Legislative history documenting the abortion facility's projected inability to comply;

(I) Legislative history indicating animus toward abortion or improper purpose, including but not limited to prior bills introduced by the law's sponsors, statements made during committee hearings or floor debates, and statements made to the media;

(J) Evidence of similar laws or regulations closing abortion facilities in other states; and

(K) The community need for the abortion facility, including service to underserved patients or communities.

(4) **Written findings**. The Attorney General shall issue a written report that includes:

(A) Whether a state law(s) or regulation(s) was the proximate cause of the closure of an abortion facility or facilities pursuant to subsection (3);

(B) The Department's response related to each of the factors considered in the assessment of the Department's burden;

(C) The Attorney General's analysis and conclusions as to whether the Department met its burden to prove by clear and convincing evidence that a state law(s) or regulation(s) was necessary to prevent a bona fide threat to patient safety pursuant to subsection (3).

Section 4. Enforcement

If an investigation conducted pursuant to Section 3 concludes that a state law(s) or regulations(s) was the proximate cause of the closure of an abortion facility or facilities and that the Department failed to prove by clear and convincing evidence that the law(s) or regulations(s) was necessary to prevent a bona fide threat to patient safety, the Attorney General [and/or relevant prosecutorial entity] shall not enforce such law or regulation against any abortion facility in the State.

Section 5. Effective date

Insert typical effective date for state.

***

Note: This bill can also be used as an amendment strategy to a pending TRAP bill. Suggested language below.

The closure of an abortion facility or facilities in this State on or after the effective date of this Act triggers an investigation by the State Attorney General within 180 days of such closure pursuant to subsection (2). [insert rest of bill]

Talking Points: Abortion Regulation Non-Discrimination Act

- Every woman has a constitutional right to decide for herself whether to continue or end a pregnancy—and when a woman makes that decision, she must be able to get safe, legal health care from a provider she trusts in the community where she lives.
- This bill would protect women's rights and access to essential health services against the schemes of politicians who seek to deny women their rights and the care they need.
- The Abortion Regulation Non-Discrimination Act [*repeals and*] prohibits [State] from enacting laws that impose on abortion providers oppressive requirements that grossly exceed what is necessary to ensure high standards of patient safety and care and apply to no similar medical professionals.
    - The Abortion Regulation Non-Discrimination Act [*eliminates and*] puts a stop to sham laws in [State] like those aimed at shutting down clinics and denying women access to safe and legal abortion care.
    - These types of laws have nothing to do with patient safety or quality of care and everything to do with making safe, legal abortion inaccessible.
    - The way to ensure the safety of a woman seeking an abortion is to ensure her access to high-quality, safe, legal care—not to shut down the health care providers who offer it. With this bill, [State] is stopping the sham.
- Across the U.S., states are enacting laws that target abortion providers with sham regulations aimed first and foremost at shutting down clinics. With this bill, legislators in [State] are showing their commitment to truly advancing women's health and blocking laws that threaten women's health by closing high-quality clinics.
    - These measures are advanced by politicians, not doctors.
    - These measures have been opposed by the American Medical Association and the American College of OB-GYNs.
    - These costly, burdensome regulations—which apply to no similar medical practices and do nothing to improve patient safety—could force safe, reputable providers out of practice in [State].
    - With this bill, [State] will ensure that quality abortion care providers aren't forced to close their doors because of politically motivated attacks that harm, rather than advance, women's health.
- Abortion is extremely safe. Measures designed to make abortion less accessible will not make it safer.
    - Legal abortion is one of the safest medical procedures in the U.S.
    - Providers already adhere to rigorous standards designed to ensure the utmost patient safety and quality of care.

- Less than a quarter of one percent of women receiving abortion care experience complications requiring further care in a hospital.

- In November, the U.S. Supreme Court took an important step toward restoring the constitutional rights of millions of women when it agreed to review a Texas law designed to shut down clinics that provide safe, legal abortion services under the guise of protecting women's health.
    - We expect the Supreme Court to put a stop to the growing tide of politically motivated sham laws and protect the fundamental rights it has recognized for decades.
    - Until then, this Act is necessary to ensure that [State] respects a woman's fundamental right to safely and legally end a pregnancy, no matter where she lives.

Talking Points: Clinic Shutdown State Responsibility Act

- Every woman has a constitutional right to decide for herself whether to continue or end a pregnancy—and when a woman makes that decision, she must be able to get safe, legal health care from a provider she trusts in the community where she lives.
- This bill would protect women's rights and access to essential health services against the schemes of politicians who seek to deny women their rights and the care they need.
- The Clinic Shutdown State Responsibility Act would allow an abortion facility that closed for political reasons to reopen.
    - No safe, quality reproductive health clinic should be forced to close for political reasons that have nothing to do with patient health.
    - The Act forces the state to back up its claim that a clinic's closure is necessary to protect women's health.
- Costly, burdensome regulations in states across the U.S.—which apply to no similar medical practices and do nothing to improve patient safety—have forced safe, reputable providers out of practice for no legitimate reason—and could do so here. With this Act, [State] would have to prove that red tape that shuts down abortion providers is truly necessary to protect women's health.
- We must hold politicians accountable to their claims that clinic shutdown laws promote women's health and safety.
    - One federal court after another across the U.S. has held that if lawmakers say a law is aimed at protecting women's health, they have to provide legitimate medical evidence to prove it.
    - This bill would hold [State]'s lawmakers to that common-sense standard.
- In November, the U.S. Supreme Court took an important step toward restoring the constitutional rights of millions of women when it agreed to review a Texas law

designed to shut down clinics that provide safe, legal abortion services under the guise of protecting women's health.

- We expect the Supreme Court to put a stop to the growing tide of politically-motivated sham laws and protect the fundamental rights it has recognized for decades.
- Until then, this Act is necessary to ensure that [State] respects a woman's fundamental right to safely and legally end a pregnancy, no matter where she lives.