

October 2, 2017

Dear Members of the House of Representatives:

We write to you as organizations strongly opposed to H.R. 36, an unconstitutional and dangerous abortion ban that puts individuals' health and rights at risk. After repeated failed attempts to strip health care, including coverage of abortion, from millions of people, politicians opposed to abortion are turning to H.R. 36 as the next attempt to make it difficult—if not impossible—for individuals to access their constitutionally protected right. The bill is expected on the House floor tomorrow and, if enacted, would impose a nationwide ban on abortions at an arbitrary cutoff point with only two inadequate and extremely narrow exceptions. There are many reasons why someone may need an abortion and—as with any medical care—there is no “one-size-fits-all” solution. Because each situation is different, we should not deny a person the ability to make a decision in consultation with those they trust the most. The very purpose of this federal abortion ban is to deny women this dignity and right.

This bill is unconstitutional. It is a direct challenge to *Roe v. Wade*, which held that states may not ban abortion prior to fetal viability and that post-viability bans must include adequate protections for both a woman's life and health. H.R. 36 clearly violates these established constitutional standards by banning pre-viability abortions outright,<sup>1</sup> including an inadequate life exception, and failing entirely to include a health exception.

This nationwide abortion ban interferes with and obstructs the provider-patient relationship, by criminalizing the delivery of critically-needed and constitutionally protected care, imprisoning health care providers for up to five years just for providing abortions to patients. The bill also mandates an “informed consent” form that conflicts with established medical practice and recognized processes for ensuring true informed consent. The American Congress of Obstetricians and Gynecologists, the nation's leading association of medical experts on women's health, has come out in strong opposition to abortion bans of this kind, citing the serious threat these laws pose to women's health and because such bans are not based on sound science. A patient's health, not politics, should drive important medical decisions. Patients do not look to politicians for advice on mammograms, cervical cancer screenings, or maternal health needs, and abortion is no different. This deeply personal decision should always be made by the patient in consultation with those they trust, not politicians.

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<sup>1</sup> Similar bans have been struck down each time they have been challenged. *See, e.g., Paul A. Isaacson, M.D. et al. v. Tom Horne, Attorney General of Arizona, et al.* 716 F.3d 1213 (9th Cir. 2013) (Arizona law); *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013) (Idaho law) *aff'd by McCormack v. Herzog*, 788 F. 3d 1017 (9<sup>th</sup> Cir. 2015) (Idaho law). The U.S. Supreme Court refused to hear an appeal of the Arizona case, leaving in effect the ruling from the appellate court striking down the law as unconstitutional. In striking down an Arizona twenty-week ban, the United States Court of Appeals for the Ninth Circuit noted: “Since *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court case law concerning the constitutional protection accorded women with respect to the decision whether to undergo an abortion has been unalterably clear. . . a woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable. A prohibition on the exercise of that right is *per se* unconstitutional.” *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013).

The federal abortion ban shows an appalling lack of concern or understanding of the reality of people's lives. For example, H.R. 36 will particularly harm people already facing multiple barriers to care, particularly Black, Latinx, and Native people. Black and Latina women are more likely to experience unintended pregnancy, due to racial, ethnic, gender, and economic healthcare inequalities. Moreover, Black, Latina, and Native women are overrepresented in low-wage jobs and are substantially more likely to live below the federal poverty line as compared to white women.<sup>2</sup> For those working in low-wage jobs and struggling to make ends meet, delays associated with scheduling and saving up the funds to cover the direct and indirect costs of an abortion—such as child care, time off work, transportation expenses, and hotel costs—can push their procedure later in pregnancy. H.R. 36's arbitrary cutoff can leave many of these people unable to access the care they need.

The extremely narrow exceptions in this bill also illustrate the sponsors' appalling lack of compassion for—or trust in—the individuals who would be affected by this ban. For example, the bill imposes strict requirements on sexual assault survivors seeking abortion care after a rape. The bill forces adult rape survivors either to report the crime or to seek medical care or counseling at least 48 hours prior to getting an abortion. To comply with this requirement, a rape survivor would need at least two appointments with two different providers in order to get an abortion. Depending on the availability of medical care in the area where the survivor lives, it may be difficult or even impossible to comply.

The bill also contains reporting requirement for rape survivors who are minors and for incest survivors. This places an unfair burden on minors who need time-sensitive and safe care, not additional reporting and documentation requirements that can become barriers in accessing the care they need. Moreover, the bill also requires that rape and incest survivors provide documentation that they met the medical or counseling care or reporting requirements before they can get an abortion.

The federal abortion ban is a blatant attempt to deny women their constitutional rights and threaten the health of people in the United States. The House of Representatives has passed this bill before as a demonstration of their commitment to denying women abortion. This year, rather than engaging in more political theater at the expense of people's health, the House should reject H.R. 36 and instead focus on efforts to expand access to comprehensive health care.

Sincerely,

American Association of University Women (AAUW)  
American Civil Liberties Union  
Association of Reproductive Health Professionals  
Black Women's Health Imperative  
Catholics for Choice

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<sup>2</sup> NWLC calculations of U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement, available at <https://www.census.gov/programs-surveys/cps.html>. The U.S. Census Bureau only allows survey respondents to self-identify as either male or female. Women are those who are 18+ who self-identified as female.

Center for Reproductive Rights  
Constitutional Accountability Center  
Feminist Majority  
Hadassah, The Women's Zionist Organization of America, Inc.  
Ibis Reproductive Health  
In Our Own Voice: National Black Women's Reproductive Justice Agenda  
Jewish Women International  
NARAL Pro-Choice America  
National Abortion Federation  
National Asian Pacific American Women's Forum (NAPAWF)  
National Center for Lesbian Rights  
National Council of Jewish Women  
National Family Planning & Reproductive Health Association  
National Health Law Program  
National Institute for Reproductive Health  
National Latina Institute for Reproductive Health  
National LGBTQ Task Force Action Fund  
National Network of Abortion Funds  
National Organization for Women  
National Partnership for Women & Families  
National Women's Health Network  
National Women's Law Center  
People For the American Way  
Physicians for Reproductive Health  
Population Connection Action Fund  
Population Institute  
Secular Coalition for America  
Sexuality Information and Education Council of the United States  
Union for Reform Judaism  
URGE: Unite for Reproductive & Gender Equity  
Voices for Progress