

# Policy Memorandum

## Addressing the Attacks on Women's Health

### *Targeted Restriction on Abortion Provider Laws*

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### Purpose

Abortion is a constitutional right made possible by the Supreme Court. Yet, the average American's accessibility to an abortion is being severely restricted. Laws are making a person's ability to receive an abortion inconsistent across the states. This indirectly impacts a person's right to choose to have a child. The federal government must now pass a bill that takes the power away from the states to impose requirements that inevitably restrict a person's right to an abortion.

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### Background

Abortion has been at the front and center of policy issues for many years. Despite being ruled as a constitutional right in 1973, to this day, much of the right to an abortion is still debated upon. *Roe v. Wade* was the famous Supreme Court case that gave a woman the constitutional right to an abortion. It was found that an abortion fell under the right to privacy interpreted from the Due Process Clause within the Fourteenth Amendment (Justia Law, n.d). Additionally, the same year, the Supreme Court case *Doe v. Bolton* similarly ruled under the Fourteenth Amendment that the state could not regulate a woman's reason for an abortion (Abboud, 2017). This case expanded a woman's ability to choose alongside *Roe v. Wade*.

Despite the legalization of abortions, there have been plenty of legal battles against restrictions. A major restriction relating to the ability to provide abortions is the Hyde Amendment instituted in 1976, only three years after *Roe v. Wade* and *Doe v. Bolton*. The Hyde Amendment blocks “federal Medicaid funding for abortions services” (*Hyde Amendment*, n.d). As a result, “Medicaid cannot cover abortion even when a patient’s health is at risk and their doctor recommends they get an abortion” (*Hyde Amendment*, n.d). The Hyde Amendment mainly targets those who are of low income who typically do not have private health insurance looking to receive an abortion. Based on this policy alone, it is evident that abortion is a constitutional right that is constantly being pushed to the edge.

Policy such as the Hyde Amendment validate other insidious policies that violate a women’s right to an abortion. TRAP laws, or targeted restriction on abortion provider laws, is one of the most powerful ways lawmakers restrict a woman’s access to an abortion. TRAP laws act as an indirect restriction on abortion where the restriction is not aimed at the woman necessarily, but instead aimed at the medical provider. TRAP laws specifically “burden providers with requirements regarding their facility, equipment and staffing that have little or no benefit to the patients” (*Targeted Regulation of Abortion Providers*, 2020). These laws vary state by state, meaning that some states do not have TRAP laws at all. Up to 23 states reportedly “have laws or policies that regulate abortion providers and go beyond what is necessary to ensure patients’ safety” (*Targeted Regulation of Abortion Providers*, 2021). TRAP laws vary by state in the degree of restriction placed on medical providers, where the restriction is applied, and how many restrictions are applied.

The foundation of TRAP laws is inherently weak, for they hold “no medical basis” (*What are TRAP Laws?*, n.d.). TRAP laws are instituted with the goal of shutting down abortion clinics through medically unnecessary requirements. Such requirements include “mandating the width of hallways, complex HVAC systems, down-to-the-inch dimensions for operating rooms, and specifications for outfitting janitor’s closets” (*What are TRAP Laws?*, n.d.). Evidently, many of the requirements TRAP laws institute have little to do with the actual medical care of the patients.

In 2016, a landmark decision was made by the Supreme Court strengthening a woman’s right to an abortion. *Whole Woman’s Health v. Hellerstedt* questions the degree to which TRAP laws place a “substantial burden” on those looking to access abortion services (*Roe v. Wade*, n.d.). The Supreme Court found “that two abortion restrictions in Texas [were] unconstitutional because they would shut down most clinics in the state and cause an ‘undue burden to access a safe, legal abortion’” (*Whole*

*Woman's Health v. Hellerstedt*, n.d.). This decision led to a snowball where other states' restrictions were considered under the same scrutiny.

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## Evidence

Research has overwhelmingly reported that abortions “as practiced” are safe (Berg, 2016). According to a study published in the journal *Obstetrics and Gynecology*, “women experience serious complications less than one percent of the time” (Berg, 2016). The majority of the time, any complications after an abortion are both minor or unrelated to the abortion all together (Berg, 2016). According to the ACLU, colonoscopies reportedly see a higher rate of complication in comparison to abortions (*TRAP Laws*, n.d.). This corroborates the finding that up to 99 percent of abortions are performed safely (Staff, 2014). Abortions in America have showed that they are a safe procedure for women across the nation when able to be performed without any unnecessary blocks or restrictions.

As discussed previously, TRAP laws work against a woman's right to an abortion. TRAP laws “put women's health in jeopardy by shutting down clinics making it more difficult for women to access safe and legal abortion care” (*TRAP Laws*, n.d.). By restricting access to resources necessary for an abortion, TRAP laws have the capability to force women to have a child which violates their right to choose or forces women to look outside of regulated medicine. By shutting down facilities that provide abortions, women's health is being pushed back to the times before *Roe v. Wade* was ruled.

An increase in illegal abortions is an inevitability if TRAP laws are not addressed by lawmakers. In 1972, the year prior to the ruling of *Roe v. Wade*, an estimated 130,000 illegal abortions were performed (*Abortion Before and After Legalization*, 2018). One year after *Roe v. Wade*, illegal abortions dropped significantly which dramatically improved women's health across the nation. Illegal abortions are reportedly “one of the leading causes of maternal mortality (13%)” (Haddad and Nour, 2009). Additionally, illegal abortions have an exceptionally high rate of later long term health conditions and complications (Haddad and Nour, 2009). By instituting TRAP laws, states are leading women back into a dangerous and desperate place where women are forced to gamble with their health and safety to have an abortion.

In Texas, prior to TRAP laws being instituted, there were over 40 clinics open throughout the state (Carbonell et al., 2018). Once TRAP laws were introduced into law, the number of abortion clinics in the state decreased to just under half. TRAP laws are shutting down abortion providers across the nation at a horrifying rate making access increasingly more difficult for women. This forces women into a dangerous place with fewer options that are all detrimental to the mother. Not only do TRAP laws decrease women's health across the nation but also substantially restricts a woman's right to choose which has been guaranteed to them by the Supreme Court.

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## Proposal

TRAP laws are a pressing issue in women's health and safety. The right to an abortion is being infringed upon by different states across America which is disproportionately impacting women across the nation. The federal government must institute a federal mandate including the specifications an abortion clinic must adhere to in order to ensure the safety and security of the women using the service. Outlining these specific regulations will strike down the need, or even the ability, for state lawmakers to institute TRAP laws. This proposal will be particularly impactful for states who enacted TRAP laws in a similar fashion to Texas. Ultimately, the proposal will even out the expectations nationwide. These regulations should define what is necessary for a clinic to perform a safe abortion procedure explicitly and not allow any room for interpretation. The following requirements introduce where the standardization of regulations for abortion clinics will focus on:

- Standard operating room regulations, including lighting, ventilation, and procedural equipment
- Standard sterilization equipment and regulatory inspections
- Fixed equipment in working condition
- Specific procedure rooms, consultation rooms, and waiting room
- Emergency equipment including emergency exits and stretchers

Based on this proposal, all abortion clinics will be held to the same standard. Any ambiguous regulations enacted by TRAP laws such as the size of maintenance closets will no longer have the ability to shut clinics down. Additionally, this proposal recommends a review of the Hyde Amendment in order to increase equal access to abortion services to those who do not have private health insurance.

When looking at the weak spots in accessing abortion services, this proposal directly addresss a massive barrier that makes it harder for women to access an abortion. By instituting these standardized regulations for clinics, TRAP laws become futile and ultimately impossible to put into law, for this policy will cover what TRAP laws look to change. The closing of clinics throughout the states, such as Texas, will cease which will promote the health and safety of women in the U.S. This proposal protects a women's right to an abortion across the country by setting the same bar for all abortion clinics and eliminating the threat of arbitrary requirements. Ultimately, this will make women's health and her ability in the pursuit of happiness exponentially better.

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