LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

STATEMENT OF KRISTEN CLARKE

PRESIDENT AND EXECUTIVE DIRECTOR

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

U.S. HOUSE COMMITTEE ON ENERGY & COMMERCE

SUBCOMMITTEE ON HEALTH

HEARING ON

"PROTECTING WOMEN'S ACCESS TO REPRODUCTIVE HEALTH CARE"

FEBRUARY 12, 2020

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INTRODUCTION

Chairwoman Eshoo, Ranking Member Burgess and Members of the Committee:

On behalf of the Lawyers' Committee for Civil Rights Under Law, I welcome the opportunity to submit testimony for the record in support of the Women's Health Protection Act ("WHPA" or H.R. 2975). This comprehensive legislation is needed to ensure that women are free to exercise their constitutional right to abortion free from restrictions serving no purpose or benefit other than to frustrate these efforts. WHPA addresses states' laws that require: (1) abortion providers to delay the provision of services; (2) that women seeking an abortion to make one or more medically unnecessary visits to an abortion clinic or any entity that does not provide abortion services; (3) clinics to maintain hospital-like standards or providers to have hospital privileges; (4) limitations on an abortion provider's ability to provide telemedicine; and (5) providers to issue medically inaccurate information or conduct medically unnecessary procedures prior to or after providing abortion care.

Extreme limits on access to abortion are not just a reproductive rights issue, but a matter that squarely threatens to undermine racial justice, and that necessitates federal legislation. As discussed further below, WHPA is necessary to address the specific harms to Black women that arise from anti-abortion legislation. While these harms are multi-faceted and complex, WHPA will accomplish the following: (1) prevent states from establishing two-tiered systems of abortion access for Black women and white women; (2) encourage states to direct legislative resources towards other health matters more directly impacting Black women and children; and (3) ensure Black women are able to pursue educational and economic opportunities without limits. Because racial injustice is easily perpetuated by a lack of access to reproductive care, including abortion care, the Lawyers' Committee has a strong interest in ensuring Black women can exercise their constitutional right to abortion to the same degree as other racial groups.

For the reasons more fully presented below, we urge this Committee to pass the Women's Health Protective Act.

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WHPA PREVENTS STATES FROM CREATING TWO-TIERED SYSTEMS OF ABORTION ACCESS

In general, WHPA addresses unnecessary state practices that make abortion more expensive and onerous to obtain, especially for Black women and other women of color, who are disproportionately low-income. Many states have enacted laws that, in effect, require women to drive far beyond their local communities (sometimes hundreds of miles) or spend two days at a clinic to receive abortion care. WHPA seeks to proscribe such laws, which effectually create a two-tiered system, in which low-income people of color cannot access abortion services, while wealthier, primarily white people are able to exercise their constitutional rights.

The abortion restrictions WHPA prohibits—particularly laws that require women to travel great distances or that create substantial additional costs—have particularly stringent impacts upon Black women for several reasons. First, travel for low-income women present a number of logistical hurdles, such as the costs of transportation, lost wages, and childcare expenses. In fact, Black women are *half* as likely to travel between 25 and 50 miles one-way for abortion care, and laws that have the effect of requiring women to travel for abortion care can move abortion care out of reach for a substantial portion of that population.[1] By contrast, "White patients, college-educated, and U.S.-born patients were more likely to travel farther for an abortion, which may reflect that these groups have more material, informational, and social resources to be able to travel."[2]

Second, low-income women must make hard decisions in order to afford an intra-state or inter-state trip to an abortion clinic.[3] Low-income women gather funds for emergency expenses in three primary ways: (1) sacrifice in other areas, usually not paying rent or utilities, or by reducing their food budget and going hungry; (2) using payday loans or other predatory lending practices; or (3) asking for money from a boyfriend or partner, even if they are no long together or if the partner is abusive.[4] The first strategy can jeopardize many women's housing situations, since low-income

[1] Fuentes, Liza, and Jenna Jerman. "Distance Traveled to Obtain Clinical Abortion Care in the United States and Reasons for Clinic Choice." *Journal of Women's Health*, 2019, p.5.
[2] *Id*.
[3] Dr. Sheila Katz Expert Report submitted in *June Medical Services LLC, et al v. Kathy Kliebert, et. al*, in the United States District Court for the Middle District of Louisiana, 3:14-cv-00525-JWD-RLB, Doc. 165-152 at 21.
[4] *Id*. at 21-22. The district court endorsed Dr. Katz's testimony on this point in its findings of fact. See Pet. App. 263a ("Women who cannot afford to pay the costs associated with travel, childcare, and time off from

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women already struggle to keep up with rent payments, and one late payment can lead to eviction in many states.[5] The second strategy results in high interest rates and fees that compound the expense of travel.[6] The third strategy is the most dangerous, as many women end up in cycles of abuse when they are financially dependent upon abusive partners.[7] But, many women ultimately cannot afford these additional costs, even when employing the strategies above.

Low-income women of color also face other intangible challenges that may prevent them from traveling great distances for abortion care. First, this group are often "time poor." Women who are time poor may find that they, quite literally, have no time for activities other than working and providing child care. Thus, even if a woman can obtain funds for abortion services, she literally may not have time to travel. Second, because they lack discretionary funds for travel, many low-income women may have never traveled outside of their home metropolitan area, and may live the vast majority of their day-to-day live in a single neighborhood. Therefore, even if they are able to line up the money required to take the trip, the psychological hurdles of a trip to an unfamiliar city where they may not know anyone, may delay or ultimately prevent many low-income women from traveling to seek abortion services. If services are not available within their own town or within a reasonable distance, these services might as well not exist.[8]

Aside from significant financial and psychological barriers, the nature of the jobs most often held by Black women leaves this group particularly vulnerable to the effects of laws that render abortion costly and far from home. Nearly one-third of employed Black women work in service occupations.[9] Workers in these jobs are beholden to rigid schedules and unpredictable shift allocations. As a practical matter, service industry jobs are generally inflexible relative to professional jobs. Whereas women in professional jobs can usually request time off with short notice, this is often not possible for women who must work rigid shifts or request time off days or

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work may have to make sacrifices in other areas like food or rent expenses, rely on predatory lenders, or borrow money from family members or abusive partners or ex-partners, sacrificing their financial and personal security.").

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 20

[9] "Black Women's Labor Market History Reveals Deep-Seated Race and Gender Discrimination." *Economic Policy Institute*, www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination/.

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weeks in advance. As scholars have noted, "work hour schedules are not uncommonly posted no more than a week in advance for employees, sometimes even less, for work the following week. A common consequence is that such practices limit employees' opportunity to balance work, social, and family responsibilities."[10] Moreover, service industry jobs often do not offer paid time off, so missing work often means missed wages.[11] These missed wages compound upon the already high cost of travel, as well as the cost of abortion itself. Thus, Black women who are already financially stressed and time poor must somehow coordinate two-day trips amidst daunting uncertainty.

Many of the laws WHPA proscribes render abortion access nearly non-existent for low-income women, who are disproportionately Black and other women of color. Indeed, WHPA prohibits states from creating an inequitable and unjust two-tiered system, in which Black women and other women of color are prohibited from attaining abortion care, while white women are free to exercise their constitutional rights.

WHPA MAY ENCOURAGE STATES TO FOCUS LEGISLATIVE EFFORTS ON LEGITIMATE HEALTH CRISES

Although states claim that various abortion restrictions and laws are designed to promote the health of women, the overall health of Black women and children in these states calls this claim seriously into question.[12] Black women also face particularized barriers to access, and disparities in outcomes, in the realm of healthcare broadly and reproductive rights more specifically that amplify their obstacles to exercising abortion rights. Black women are more likely to lack adequate access to contraceptives and other reproductive services compared to women of other races with

[10] Golden, Lonnie. "Irregular Work Scheduling and Its Consequences." *Economic Policy Institute*, www.epi.org/publication/irregular-work-scheduling-and-its-consequences/.
[11] *June Med. Servs. v. Kliebert*, 250 F. Supp. 3d 27, 82–83 (M.D. La. 2017).
[12] "Evaluating Priorities: Measuring Women's and Children's Health and Well-Being against Abortion Restrictions in the States- Volume II." *Center for Reproductive Rights*, August 1, 2017, reproductiverights.org/EvaluatingPriorities.

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similar incomes.[13] Additionally, pervasive racism infects all levels of the healthcare system and is particularly pernicious in reproductive and maternal health.[14]

Nationwide, Black women suffer from dramatically worse outcomes in, among other areas, maternal health—a grim reality that holds true for Black women across the income and educational spectrum.[15] While abortion is very safe in America,[16] pregnancy and childbirth—particularly for Black women—is not. Black women are more than four to five times more likely to experience pregnancy-related death than white women.[17] Notably, this disparity holds true for Black women at higher income and education levels: a Black woman holding a Ph.D. and earning a high income still faces a higher risk for pre-term birth and infant and maternal mortality than a high school educated white woman.[18]

Instead of focusing on these bona fide crises, state legislatures continue to pour energy into enacting a slate of restrictive abortion laws in response to non-existent health concerns relating to

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[13] *See* Christine Dehlendorf *et al*., *Disparities in Abortion Rates*, 103 AM. J. PUBLIC HEALTH 1772, 1774 (2013).

[14] Prather C, Fuller TR, Jeffries WL 4th, et al. Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity. *Health Equity*. 2018;2(1):249–259. Published 2018 Sep 24. doi:10.1089/heq.2017.0045

[15] Jamila Taylor, Cristina Novoa, Katie Hamm, and Shilpa Phadke, "Eliminating Racial Disparities in Maternal and Infant Mortality: A Comprehensive Policy Blueprint," Center for American Progress, May 2, 2019, https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality/; Colen CG, Ramey DM, Cooksey EC, Williams DR. Racial disparities in health among nonpoor African Americans and Hispanics: The role of acute and chronic discrimination. Soc Sci Med. 2018;199:167–180. doi:10.1016/j.socscimed.2017.04.051.

[16] "Groundbreaking Research Proves That Abortion Is an Extremely Safe Procedure." *Groundbreaking Research Proves That Abortion Is an Extremely Safe Procedure | Bixby Center for Global Reproductive Health*, The Regents of the University of California, bixbycenter.ucsf.edu/news/groundbreaking-research-proves-abortion-extremely-safe-procedure.

[17] "Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 6 Sept. 2019, www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html..

[18] Colen CG, Ramey DM, Cooksey EC, Williams DR. "Racial disparities in health among nonpoor African Americans and Hispanics: The role of acute and chronic discrimination." Soc Sci Med. 2018;199:167–180. doi:10.1016/j.socscimed.2017.04.051; Rochaun Meadows-Fernandez, "Even as Black Americans Get Richer, Their Health Outcomes Remain Poor," Standard Poor, Jan. 23, 2018, https://psmag.com/social-justice/even-as-black-americans-get-richer-their-health-outcomes-remain-poor

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abortion. To be sure, legal abortion is safer than wisdom tooth extraction and almost never results in serious complications. If passed, WHPA may encourage states interested in the health of women and children to focus on issues that will actually benefit women and children. Issues such as affordable child care, access to broad reproductive services, family leave, maternal mortality, and infant mortality are dire and require robust legislative action at the state level. In contrast, addressing non-existent harms relating to abortion care continues to deflect from actual issues pertaining to the health of women, babies, and children in our communities.

WHPA MAY BETTER ALLOW BLACK WOMEN AND OTHER WOMEN OF COLOR TO EXERCISE THEIR CIVIL RIGHTS

The right to reproductive care, including abortion care, is inextricably intertwined with the ability of women to attain upward mobility through better educational and economic outcomes. Studies show that Black women experience large educational and employment gains as a result of access to reproductive health services, including abortion care. For example, the effects of access to abortion care were stronger for Black women, increasing labor force participation by 6.9 percentage points, compared with 2 percentage points among all women.[19] Such care is especially essential for young people to determine their futures: More than half of all U.S. abortion patients in 2014 were in their 20s: Patients aged 20–24 obtained 34% of all abortions, and patients aged 25–29 obtained 27%. [20] Historically, abortion access reduces teen fertility, particularly for Black women who have lower levels of access to contraception, allowing Black women greater opportunity to pursue further education.[21] And, abortion legalization in the 1970s increased Black women's rates of high school graduation and college attendance. While high school education is nearly universal, lack of access to abortion would likely continue to impact college completion, especially for Black women, who have lower completion rates, compared with other groups of women.[22]

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[19] Holtzman, Tessa, et al. "The Economic Effects of Abortion Access: A Review of the Evidence." *Institute for Women's Policy Research*, 1 June 2019, iwpr.org/publications/economic-effects-abortion-access-report/.

[20] "Induced Abortion in the United States." *Guttmacher Institute*, 4 Feb. 2020, www.guttmacher.org/fact-sheet/induced-abortion-united-states.

[21] *Economic Effects*, supra.

[22] *Id*.

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Yet, reproductive restrictions fall more harshly on Black women. Without access to abortion care, Black women may find themselves unable to attain the basic tenants of civil rights stemming from educational and economic opportunities, such as adequate healthcare, housing, and employment. WHPA provides redress to these issues, ensuring that Black women have access to abortion services and, by extension, greater educational and economic opportunities.

CONCLUSION

The Constitutional right to abortion is meaningless if states are free to employ strategies that all but guarantee that clinics cannot operate or that women cannot access clinics. WHPA recognizes the importance of codifying this very important right, which ensures not only that women enjoy reproductive autonomy, but the educational and economic benefits flowing from those rights. Given that barriers to abortion exist nationwide, this makes the need for WHPA—a federal solution to improve access to abortion services—all the more important. As women, and in particular Black women, continue to face a range of structural barriers to equality, it is more important than ever to address the barriers that undermine these pursuits.