

# EXPANDING ABORTION CARE FOR U.S. SERVICEMEMBERS AND VETERANS

by  
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A capstone project submitted to Johns Hopkins University in conformity with the  
requirements for the degree of Master of Arts in Public Management

Baltimore, Maryland  
May, 2021

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## ABSTRACT

Abortion care is lifesaving medical care, with research showing that a lack of access can have negative maternal and child health outcomes, as well as long-term negative economic impacts. While abortion has been legal in the United States since the 1970s, millions of American servicemembers and veterans have limited access to care as a result of federal funding restrictions and facility bans. This memo proposes a two-part policy that would repeal all funding restrictions and authorize the use of Department of Veterans Affairs (VA) and Department of Defense (DOD) facilities for abortion care, with the goal of increasing abortion access for servicemembers and veterans. This would be measured by the number of women whose insurance covers abortion care and who are able to access abortion care within 50 miles. While the policy would be effective at accomplishing its goal, the politics of the issue will make passage difficult.

Advised by: Professor Paul Weinstein Jr.

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## MEMORANDUM

TO: U.S. Senate Majority Leader Chuck Schumer (D-NY)

FROM: Katie Greenberg

DATE: March 30, 2021

RE: Expanding Abortion Care for U.S. Servicemembers and Veterans

### ACTION FORCING EVENT

As a Democrat replacing a Republican administration, President Joseph R. Biden is expected to roll back hundreds of his predecessor's policies, including dozens of restrictive policies regarding sexual and reproductive health.<sup>1</sup> Additionally, the 116<sup>th</sup> Congress had the first pro-choice House of Representatives in history, which continues with a slim Democratic majority in the 117<sup>th</sup> Congress.<sup>2</sup>

### STATEMENT OF THE PROBLEM

Abortion is a life-saving and necessary healthcare procedure, but unfortunately current U.S. policies greatly restrict women's access to abortion care, particularly women in the military and those who previously served. This limited access can have severe negative consequences. According to recent studies, restricting access to abortions adds undue burdens on women and can worsen maternal health outcomes, including increased maternal and infant mortality, increased number of unsafe abortions, delays in prenatal care, and increased costs.<sup>3</sup> As one study states, "ample scientific evidence makes clear

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<sup>1</sup> Chloe Atkins, "Biden readies sweeping rollback of Trump-era abortion crackdown," *NBC News*, January 18, 2021, <https://www.nbcnews.com/politics/white-house/biden-readies-sweeping-rollback-trump-era-abortion-crackdown-n1254552> (accessed January 26, 2021).

<sup>2</sup> Julie Rovner, "House Democrats' Focus on Abortion Could Stymie Work With Senate," *NPR*, January 22, 2019, <https://www.npr.org/sections/health-shots/2019/01/22/687418404/house-democrats-focus-on-abortion-could-stymie-work-with-senate>.

<sup>3</sup> Anusha Ravi, "Limiting Abortion Access Contributes to Poor Maternal Health Outcomes," *Center for American Progress*, June 13, 2018,

that restricting abortion is detrimental, while supportive policies are beneficial to women.”<sup>4</sup>

From 2010 to mid-2016, more than 344 state abortion restrictions were enacted, and currently 89 percent of counties in the United States do not have a single abortion clinic.<sup>56</sup> And yet research has shown that maternal and child health outcomes are worse when there are more restrictions in place.<sup>7</sup> A 2017 study found evidence of an inverse relationship between the number of women’s health benchmarks met and the number of abortion restrictions a state has.<sup>8</sup> As Diane Green Foster, a professor in the Department of Obstetrics, Gynecology & Reproductive Sciences and director of research at Advancing New Standards in Reproductive Health (ANSIRH), said in a 2019 interview, “there are physical health consequences of being denied an abortion that last for up to five years.”<sup>9</sup> Dr. Foster and her colleagues found that, of women who sought an abortion but ultimately gave birth, 27 percent reported fair or poor health outcomes, which was higher than the 20 and 21 percent reported by women who had a first-

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[https://cdn.americanprogress.org/content/uploads/2018/06/13052244/AbortionMaternalHealth-brief1.pdf?\\_ga=2.154860094.787534326.1612735511-1128284835.1612735511](https://cdn.americanprogress.org/content/uploads/2018/06/13052244/AbortionMaternalHealth-brief1.pdf?_ga=2.154860094.787534326.1612735511-1128284835.1612735511) (accessed February 7, 2021).

<sup>4</sup> Terri-Ann Thompson and Jane Seymour, “Evaluating priorities: Measuring women’s and children’s health and well-being against abortion restrictions in the states,” Research Report, *Ibis Reproductive Health* (2017).

<sup>5</sup> Ibid.

<sup>6</sup> “Serving Those Who Serve?: Restrictions on abortion access for servicemembers, veterans, and their dependents,” Center for *Reproductive Rights*, November 18, 2019, <https://reproductiverights.org/document/serving-those-who-serve-issue-brief-restrictions-abortion-access-servicemembers-veterans> (accessed February 5, 2021).

<sup>7</sup> Ravi, “Limiting Abortion Access.”

<sup>8</sup> Thompson and Seymour, “Evaluating priorities.”

<sup>9</sup> Nina Bai, “As More States Restrict Abortions, Research Points to Negative Health Outcomes for Women, Families,” University of California San Francisco, May 22, 2019, <https://www.ucsf.edu/news/2019/05/414551/more-states-restrict-abortions-research-points-negative-health-outcomes-women>.

trimester or second-trimester abortion respectively.<sup>10</sup> Additionally, women who gave birth had higher rates of serious complications from birth than women who received abortions.<sup>11</sup>

Abortion restrictions can take a number of forms, including requiring waiting periods, mandatory ultrasounds, and parental consent. Twenty-one states require a parent to consent for a minor's abortion, and on average a patient must wait at least a week from the moment they seek an abortion appointment until they actually get the procedure.<sup>12</sup> These delays compromise women's health and safety, because the risk of death increases as the gestation length increases. For legally induced abortions before eight weeks of gestation, the maternal mortality rate is .1 per 100,000. After 20 weeks, that number increases to 8.9 deaths per 100,000.<sup>13</sup>

In the United States, women currently account for ten percent of all veterans and 17 percent of the Armed Forces.<sup>14</sup> A number of studies have found that the rate of unintended pregnancies in the Armed Forces is higher than the general American population, which, according to *Military Medicine*, is a concern because "unintended pregnancies are associated with significant economic costs, medical complications, socioeconomic challenges, greatly impacts mission readiness, and generally affect the

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<sup>10</sup> Lauren J. Ralph, Eleanor Bimla Schwartz, Daniel Grossman, and Diane Greene Foster, "Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study," *Ann Intern Med* 171, no. 4 (2019). <https://pubmed.ncbi.nlm.nih.gov/31181576/>.

<sup>11</sup> Nina Bai, "As More States Restrict Abortions, Research Points to Negative Health Outcomes for Women, Families."

<sup>12</sup> "Serving Those Who Serve?"

<sup>13</sup> Heather D. Boonstra, "Off Base: The U.S. Military's Ban on Privately Funded Abortions," *Guttmacher Policy Review* 13, no. 3 (2010).

<sup>14</sup> "Serving Those Who Serve?"

quality of life for our servicemembers.”<sup>15</sup> A 2011 Brookings report found it costs taxpayers approximately \$12 billion a year in healthcare costs for women who experience unintended pregnancies and the infants born from those pregnancies.<sup>16</sup> The Turnaway Study found that women who carried an unintended pregnancy to term were more likely to suffer serious complications, such as eclampsia, as well as suffer from increased anxiety and low self-esteem.<sup>17</sup> Additionally, unintended pregnancy can result in increased stress and delayed prenatal care for women seeking abortions, which contributes to maternal mortality rates and higher incidences of maternity-related health problems.<sup>18</sup> These women reported higher rates of headaches, asthma, high cholesterol, and joint pain.<sup>19</sup>

While the difference in maternal mortality rate between women who received an abortion and those who were denied was not statistically significant, in general the U.S. has the worst maternal mortality rate in the developed world at 17.2 deaths for every 100,000 live births.<sup>20</sup> Meanwhile, fewer than one out of every 100,000 abortions results in death.<sup>22</sup>

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<sup>15</sup> MAJ Ryan J. Heitmann, LTC Alison L. Batig, MAH Gary Levy, CPT Jonathan Novotney, CPT Calvin Grubbs III, MAJ Timonthy S. Batig, COL Joseph M. Govern, Eileen Hemman, COL Alicia Y. Christy, and LTC Micah J. Hill, “Unintended Pregnancy in the Military Health Care System: Who is Really at Risk?,” *Military Medicine* 181 (2016).

<sup>16</sup> Adam Thomas and Emily Monea, “The High Cost of Unintended Pregnancy,” *Center on Children and Families at Brookings* (2011), 2, [https://www.brookings.edu/wp-content/uploads/2016/06/07\\_unintended\\_pregnancy\\_thomas\\_monea.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/07_unintended_pregnancy_thomas_monea.pdf).

<sup>17</sup> Advancing New Standards in Reproductive Health, “The Turnaway Study,” Accessed April 17, 2021, <https://www.ansirh.org/research/ongoing/turnaway-study>.

<sup>18</sup> Ravi, “Limiting Abortion Access.”

<sup>19</sup> Jamie Ducharme, “Women Who Are Denied Abortions May Face Long-Lasting Health Problems, Study Says,” *Time*, June 10, 2019, <https://time.com/5603194/denied-abortion-physical-health/>.

<sup>20</sup> Ralph, et al, “Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services.”

<sup>21</sup> Ducharme, “Women Who Are Denied Abortions May Face Long-Lasting Health Problems.”

<sup>22</sup> Ibid.

In addition to increased unintended pregnancy rates, servicewomen and veterans, as well as spouses and dependents, experience numerous roadblocks to accessing abortions. The Veterans Health Administration (VHA) is the largest integrated health system in the United States, serving approximately nine million veterans annually.<sup>23</sup> However, due to existing regulations, abortion services, including abortion-counseling, are prohibited at VHA facilities, with no exceptions.<sup>24</sup> This forces veterans to navigate the private healthcare system and pay out-of-pocket for any abortion services they receive. Additionally, certain dependents and spouses are eligible for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), which prohibits all abortions except in the case of life endangerment for the mother.<sup>25</sup>

Women in the Armed Forces, as well as spouses and dependents of Active Duty servicemembers, are covered by TRICARE. As of 2017, TRICARE covered more than 1.5 million women of reproductive age.<sup>26</sup> Unlike VHA, TRICARE covers abortion in the case of rape, incest, or life endangerment. However, except in those three circumstances, the law currently prohibits abortions from being performed at military facilities, even if it is paid for privately.<sup>27</sup> These restricts are particularly harmful for servicemembers stationed overseas, because as a recent study in *Women's Health Issues* found, “Deployed

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<sup>23</sup> “Serving Those Who Serve?”

<sup>24</sup> Megan K. Donovan, “In Real Life: Federal Restrictions on Abortion Coverage and the Women they Impact,” *Guttmacher Policy Review* 20 (2017), <https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact>.

<sup>25</sup> Donovan, “In Real Life.”

<sup>26</sup> “Serving Those Who Serve?”

<sup>27</sup> Donovan, “In Real Life.”



servicewomen have few options other than requesting leave to return to the United States or to another country where abortion care is available.”<sup>28</sup>

Because abortion care at military facilities is virtually banned, women stationed abroad have to navigate getting permission to leave the base, language barriers, and out-of-pocket expense to get an abortion, and that is only if they are stationed in countries where abortion is legal. Many servicewomen are stationed in countries where legal abortion is incredibly limited, like Afghanistan and Iraq, making it nearly impossible for them to receive care off base. This problem is only magnified for women stationed on ships at sea.<sup>29</sup> Many servicewomen seeking abortions characterized their pregnancy as something that would have negative repercussions on their careers.<sup>30</sup> These women fear stigma, and also have concerns about confidentiality within the system, in part because some military branches require servicewomen to notify their commanding officers of their pregnancy, regardless their intentions.<sup>31</sup>

For women who use TRICARE and VHA care, these restrictions result in them paying out-of-pocket for abortion services, but according to the Center for Reproductive Rights, “for many people, coverage of abortion care means the difference between getting the healthcare they need and being denied the care.”<sup>32</sup> The cost of abortions increases as the pregnancy progresses, with the ten-week median cost being \$508 and the 20-week median cost being \$1,195.<sup>33</sup> This is particularly detrimental because “a woman who seeks

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<sup>28</sup> Laura Fix, Jane W. Seymour, Daniel Grossman, Dana M. Johnson, Abigail R.A. Aiken, Rebecca Gomperts, and Kate Grindlay, “Abortion Need among U.S. Servicewomen: Evidence from an Internet Service,” *Women’s Health Issues* 30, no. 3 (2020): 165.

<sup>29</sup> “Serving Those Who Serve?”

<sup>30</sup> Fix, et al, “Abortion Need among U.S. Servicewomen.”

<sup>31</sup> Serving Those Who Serve?”

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

but is denied abortion care is more likely to fall into poverty than a woman who is able to get the care she needs.”<sup>34</sup> This was confirmed by a recent study in the *American Journal of Public Health* which found statistically significant differences in the socioeconomic statuses of women who were denied abortions verses women who received abortions.<sup>35</sup> This can have long-term implications for women, and may contribute to the fact that female veterans are more likely then male veterans to live in poverty or qualify for food stamps. Studies have also found that in addition to an increased risk of poverty, women denied abortion care also have a higher risk of physical health impairments and intimate partner violence.<sup>36</sup> Additionally, according to the Center for American Progress, “Unintended births are linked to negative physical and mental health outcomes for children compared with intended births.”<sup>37</sup>

Research is clear that limiting abortion access negatively contributes to maternal health outcomes. While abortion restrictions impact all Americans, servicewomen and veterans face additional hurdles and barriers in seeking the healthcare they need, which can lead to worse health outcomes.

## BACKGROUND/HISTORY

The term abortion has changed over time. During the early eighteenth century, the term “abortion” only referred to miscarriages that occurred during the latter part of pregnancy.<sup>38</sup> It was not until the late eighteenth century that abortion came to signify the

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<sup>34</sup> Ibid.

<sup>35</sup> Diana Greene Foster, Sarah C. M. Roberts, and Jane Mauldon, “Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States,” *American Journal of Public Health* 108, no. 13 (2018).

<sup>36</sup> Thompson and Seymour, “Evaluating priorities,” 24.

<sup>37</sup> Ravi, “Limiting Abortion Access.”

<sup>38</sup> Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley: University of California Press, 1997), 8.

act of terminating a pregnancy. In 1812, the Supreme Judicial Court of Massachusetts ruled in *Commonwealth v. Isaiah Bangs*, the first known American judicial ruling on abortion, that the legality of abortion depended on quickening.<sup>39</sup> After quickening, which is “the point at which a pregnant woman could feel the movements of the fetus (approximately the fourth month of pregnancy),” abortion was illegal.<sup>40</sup>

During the 1820s and 1830s, legislators created the first laws regulating abortion. These laws did not punish women for inducing abortions or eliminate the idea of quickening; they solely sought to regulate the sale of abortifacient, or abortion-inducing medication.<sup>41</sup> It was during the early nineteenth century that the modern conception of abortion, or the termination of a pregnancy before the fetus is viable outside the womb, first became illegal in the United States. During the 1840s and 1850s, many states passed laws making abortion illegal. Thirteen states criminalized abortion at any point of a pregnancy and three states criminalized abortion after quickening. By 1868, thirty states had passed anti-abortion laws, twenty-seven of which criminalized abortion prior to quickening.<sup>42</sup>

During the 1870s, the anti-abortion movement started to shift to the federal level. In 1873, Congress passed the Comstock Act, which banned the circulation of obscene material, including birth control and abortifacient pills, through the postal service.<sup>43</sup> This

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<sup>39</sup> Melody Rose, *Abortion: A Documentary and Reference Guide* (Wesport Connecticut: Greenwood Press, 2008), 4-5.

<sup>40</sup> Reagan, 8.

<sup>41</sup> Ibid, 10.

<sup>42</sup> Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Wheaton: Crossway Books, 1992), 102.

<sup>43</sup> Olasky, 191.

was significant because for the first time ever, the federal government regulated abortion, changing the scope of the authority of the federal government.<sup>44</sup>

For nearly a century, abortion was illegal throughout most of the country. However, in the 1970s, publicly funded abortions were provided, with some limitations, to military personnel and dependents at military facilities.<sup>45</sup> This policy was first issued in a 1970 memorandum that said abortions could be provided disregarding state laws “when medically indicated or for reasons including mental health and subject to the availability of space and facilities and the capabilities of medical staff.”<sup>46</sup> This meant that even if a medical facility was located on a base in a state in which abortion was illegal, abortion care could still be provided at the facility. The following year President Nixon directed the Department of Defense (DOD) to implement its abortion policy in coordination with the relevant state laws.<sup>47</sup> This was restrictive because at the time 33 states and the District of Columbia (D.C.) prohibited abortions with very few exceptions.<sup>48</sup>

In 1973, the United States Supreme Court issued its landmark decision in *Roe v. Wade*, concluding that the U.S. Constitution protects the right to terminate a pregnancy. The decisions in *Roe* and its companion case, *Doe v. Bolton*, ruled that “states may not categorically proscribe abortions by making their performance a crime, and that states may not make abortions unnecessarily difficult to obtain by prescribing elaborate procedural guidelines.”<sup>49</sup> In 1975, military medical personnel were directed by DOD to

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<sup>44</sup> Rose, 19.

<sup>45</sup> Boonstra, “Off Base.”

<sup>46</sup> Ibid.

<sup>47</sup> U.S. Library of Congress, Congressional Research Service, *Abortion Services and Military Medical Facilities*, by David F. Burrelli, 95-387 (2013), 4.

<sup>48</sup> Boonstra, “Off Base.”

<sup>49</sup> U.S. Library of Congress, Congressional Research Service, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro. RL33467 (2019), 1.

ignore state statutes and instead follow the guidance provided by *Roe*. From August 31, 1976 to August 31, 1977, 26,000 abortions were performed for servicemembers or dependents through the military health care system.<sup>50</sup>

There have been numerous court cases aimed at limiting or eliminating abortion access in the decades since *Roe*. Cases like *Planned Parenthood v. Danforth*, *Planned Parenthood v. Casey*, and *Stenberg v. Carhart* upheld a woman's right to have an abortion free of unreasonable burden from the state, but they also found that emergency provisions, parental consent for minors, 24 hour waiting periods, informed consent, and reporting requirements did not cause undue burden. Additionally, "these cases only address State attempts to limit *legal* access, not *economic* barriers such as lack of government funding."<sup>51</sup>

*Roe* was successful at establishing a federal abortion policy, and to this day it is widely considered the legal standard for abortion. However, it did set off a backlash of anti-abortion sentiment and resulted in an increase of state-passed anti-abortion legislation. Additionally, prior to *Roe*, there was virtually no Congressional activity around abortion,<sup>52</sup> but in the nearly 50 years since, there have been more than 1,000 legislative proposals.<sup>53</sup> While there have been a number of attempts at the federal level to make abortion illegal, in the absence of a full ban, opponents have consistently fought to restrict federal funding for abortions.

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<sup>50</sup> U.S. Library of Congress, *Abortion Services and Military Medical Facilities*, 4.

<sup>51</sup> Marshall L. Wilde, "Air Force Women's Access to Abortion Services and the Erosion of 10 U.S.C. § 1093," *William & Mary Journal of Race, Gender, and Social Justice* 9 (2003), 356-358.

<sup>52</sup> Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?*, 2<sup>nd</sup> ed. (Chicago: University of Chicago Press, 2008), 183.

<sup>53</sup> U.S. Library of Congress, *Abortion: Judicial History and Legislative Response*, 14.

As a result of *Roe* legalizing abortion nationally, the Nixon Administration's Department of Health, Education, and Welfare began reimbursing states for Medicaid funds used to provide abortions. But in 1976, the Hyde Amendment was first introduced. While not the first federal abortion funding restriction (that would be the Helms Amendment in the 1973 Foreign Assistance Act), Hyde has become synonymous with the abortion funding restrictions. The Hyde Amendment, which was named after its initial sponsor, has been attached to appropriations bills every year since it was first introduced and bars the now-called Department of Health and Human Services (HHS) from reimbursing Medicaid funds used for abortion. In the decades since its initial passage, the language has been occasionally expanded to include exceptions in the case of rape, incest, or life of the mother, although the original language only provided an exception for the life of the mother.<sup>54</sup>

Around the same time, the Supreme Court ruled in *Maher v. Roe* that the state was not required to provide abortion services for people on Medicaid, and that while a blanket ban on abortion was unconstitutional, not providing funding was not. As Wilde puts it, "The case clarified abortion's status as a right, but not a right that the government must facilitate."<sup>55</sup> This decision was the first one to address government funding around the issue of abortion and opened the door to subsequent attacks on funding. The Court upheld its ruling in subsequent cases such as *Beal v. Doe* and *Harris v. McRae*.<sup>56</sup> However, while *Maher* dealt with the right to abortion funding when there was no

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<sup>54</sup> U.S. Library of Congress, *Abortion: Judicial History and Legislative Response*, 15-16.

<sup>55</sup> Wilde, "Air Force Women's Access to Abortion Services," 360-361.

<sup>56</sup> *Ibid*, 362-363.

necessary medical reason, *Harris* went further by finding that the government did have an interest in determining which medically necessary services it should fund.<sup>57</sup>

In 1978, Hyde-like federal funding restrictions were added to the fiscal year (FY) 1979 Department of Defense (DOD) appropriations, eventually being made permanent in the 1984 Department of Defense Authorization Act.<sup>58</sup> These restrictions barred federal funds from being used for abortion, except in the case of life endangerment.<sup>59</sup> In the decade following the Hyde-like restrictions at DOD, privately funded abortions, also known as pre-paid abortions, were still performed at military medical facilities. While 1,300 such abortions were performed in FY79, by the middle of the 1980s, overseas military hospitals performed only about 30 abortions annually.<sup>60</sup> On June 21, 1988 then-Assistant Secretary of Defense, Dr. William Mayer, issued a memorandum banning all use of military medical facilities for abortions. The memo recognized that while the practice of privately funded abortions did not technically break the law, it broke the spirit of the law and therefore should stop.<sup>61</sup> In the years following the ban on privately funded abortions at military medical facilities, there were multiple attempts in both the House and Senate to overturn the restrictions, but they all failed.<sup>62</sup>

In 1989, the Supreme Court, relying on precedence set in *Maier* and *Harris*, upheld in *Webster v. Reproductive Health Services*, “the prohibition on the use of state employees, facilities, and funds for abortions that did not involve the protection of the life of the mother.”<sup>63</sup> The 1991 ruling in *Rust v. Sullivan* reiterated that “the mere denial of

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<sup>57</sup> Ibid, 364.

<sup>58</sup> U.S. Library of Congress, *Abortion: Judicial History and Legislative Response*, 16.

<sup>59</sup> Boonstra, “Off Base.”

<sup>60</sup> Boonstra, “Off Base.”

<sup>61</sup> U.S. Library of Congress, *Abortion Services and Military Medical Facilities*, 6.

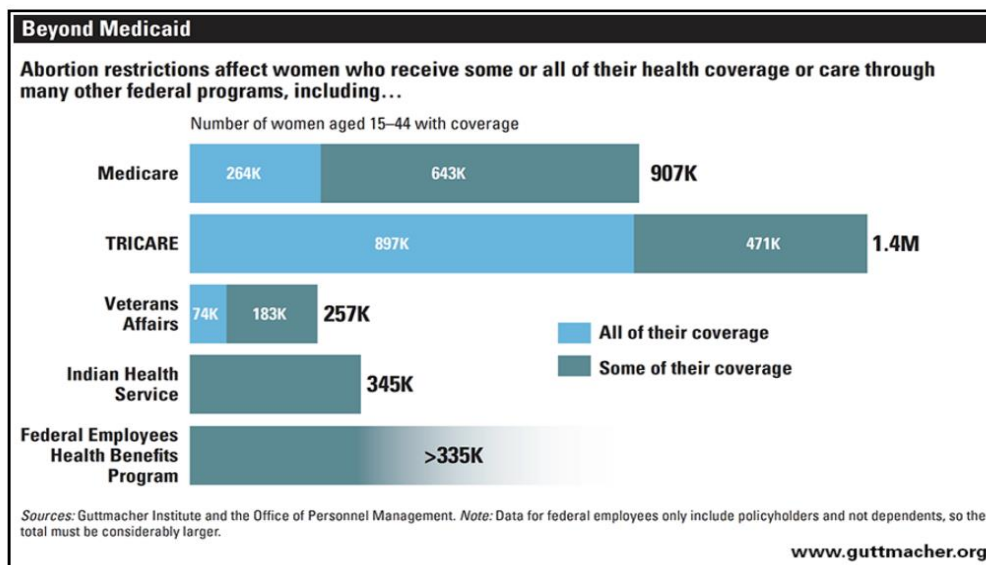
<sup>62</sup> Ibid, 6-7.

<sup>63</sup> Wilde, “Air Force Women’s Access to Abortion Services,” 365.

government funding for the exercise of a right did not constitute government action impeding the exercise of that right.”<sup>64</sup> However, *Rust* went further than previous decisions with the Court ruling the government could not only prohibit the use of public funds for abortion, but could also prohibit doctors from discussing abortion options with their patients.<sup>65</sup>

As seen by the graphic below, federal abortion restrictions, such as Hyde and similar appropriations riders, impact millions of Americans, including more than 1.6 million servicemembers, veterans, and dependents. Unlike DOD and TRICARE, there is no appropriations restrictions on abortion at VA. Instead, there is an overall ban on abortion.

**Figure 1. Beyond Medicaid – Federal Abortion Restrictions<sup>66</sup>**



<sup>64</sup> Ibid, 368.

<sup>65</sup> Ibid, 369.

<sup>66</sup> Donovan, “In Real Life.”



In 1992, the Veterans Health Care Act was signed into law (P.L. 102-585), excluding abortion care, including abortion counseling, from the Department of Veterans Affairs (VA) medical benefits package. Additionally, it made mifepristone, often referred to as medication abortion, not available to VA pharmacies.<sup>67</sup> VA's abortion ban has no exceptions, which makes it even stricter than the Hyde Amendment, which allows Medicaid to cover abortion in the case of rape, incest, or life endangerment.<sup>68</sup> The Veterans' Health Care Eligibility Reform Act of 1996 (P.L. 104-262) gave VA broad authority to determine what medical services they would provide to veterans. It said that the VA Secretary could "furnish hospital care and medical services . . . which the Secretary determines to be needed."<sup>69</sup> As a result of the 1996 law, in 1999 the VA, through agency rulemaking, established the "Medical Benefits Package" which included 15 basic care categories and nine preventative care categories. One of the basic care services included, "pregnancy and delivery services, to the extent authorized by law."<sup>70</sup>

VA has concluded that the broad authority bestowed by the 1996 law supersedes the 1992 abortion exclusions and that they have the authority to amend Title 38 themselves and have chosen not to do so. At a March 25, 2021 House Veterans Affairs Committee Hearing, when VA Secretary Denis McDonough was asked if he has plans to change VA's abortion policy he said, "Do I have any plans? No. But is it available for us to change that? Yes. And I think as your question suggests, you also believe that this is a

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<sup>67</sup> U.S. Library of Congress, Congressional Research Service, *Federal Support for Reproductive Health Services: Frequently Asked Questions*, " by Elayne J. Heisler, Evelyne P. Baumrucker, Don J. Jansen, Sarah Lister, Angela Napili, and Sidath Viranga Pangala, R44130 (2016), 5.

<sup>68</sup> Eleanor Bimla Schwarz, Florentina E. Sileanu, Xinhau Zhao, Maria K Mor, Lisa S. Callegari, and Sonya Borrero, "Induced Abortion among Women Veterans: Data from the ECUUN study," *Contraception* 91:1 (2018).

<sup>69</sup> 38 U.S.C. § 1710(a)(1) (1996).

<sup>70</sup> "Medical Benefits Package," *Code of Federal Regulations*, title 38 (1999): 582-584, <https://www.govinfo.gov/content/pkg/CFR-2001-title38-vol1/pdf/CFR-2001-title38-vol1-sec17-38.pdf>.

regulatory matter. If we do choose to change it, changing it would require public rulemaking and public comment.”<sup>71</sup>

In 1993, the Clinton Administration issued a memorandum instructing DOD to reverse its abortion policy and go back to the pre-1988 practice of allowing pre-paid abortions at military medical facilities.<sup>72</sup> However, two years later the FY 1996 Defense Authorization Act permanently banned pre-paid abortions to be performed at military facilities.<sup>73</sup> Section 1093 of Title 10 of the U.S. Code now reads:<sup>74</sup>

**(a) RESTRICTION ON USE OF FUNDS.—**

Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

**(b) RESTRICTION ON USE OF FACILITIES.—**

No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

In addition to the ban on abortions at military facilities, TRICARE does not reimburse for abortion counseling, referral, or follow-up for non-covered abortions, which means servicemembers and their dependents would need to cover these services out of pocket.<sup>75</sup>

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<sup>71</sup> U.S. Congress, House, Committee on Veterans’ Affairs, *Restoring Faith By Building Trust: VA’s First 100 Days*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., 2021, <https://veterans.house.gov/events/hearings/restoring-faith-by-building-trust-vas-first-100-days>.

<sup>72</sup> Boonstra, “Off Base.”

<sup>73</sup> U.S. Library of Congress, *Abortion Services and Military Medical Facilities*, 14.

<sup>74</sup> 10 U.S.C. § 1093 (1996).

<sup>75</sup> U.S. Library of Congress, *Federal Support for Reproductive Health Services*, 3.

In the two and half decades since the military facilities ban was made permanent, there have been dozens of attempts to repeal the ban from both the House and Senate, mostly through Defense Appropriations amendments.<sup>76</sup>

While the problem of worse maternal health outcomes as a result of lack of abortion access has not changed over time, the scope of the problem has changed. In the nearly half century since *Roe v. Wade* legalized abortion, the number of women serving in the military has continued to increase, as have the number of abortion restrictions. Currently women make up 17 percent of active-duty troops, 19 percent of National Guard and Reservists, and are the fastest-growing demographic of veterans.<sup>77</sup> As a result, the lack of abortion access for servicemembers and veterans now impacts a greater number of people.

## POLICY PROPOSAL

The goal of this proposal is to increase abortion access for servicemembers and veterans, which would be measured by the number of people whose insurance covers abortion care and who are able to access abortion care within 50 miles. In order to accomplish this, a two-part policy would first repeal all funding restrictions and second would authorize the use of VA and DOD facilities for abortion care.

### Policy Authorizing Tool

This policy change would require a legislative solution. While there has been similar legislation introduced in the past, there has not been one comprehensive piece of legislation that would remove both of these barriers for servicewomen and veterans. This

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<sup>76</sup> U.S. Library of Congress, *Abortion Services and Military Medical Facilities*, 15-19.

<sup>77</sup> Abbie Bennett, "Capitol Hill lawmakers, advocates question women veterans' reproductive care at VA," *Connecting Vets*, <https://www.radio.com/connectingvets/articles/women-veterans-face-unequal-reproductive-healthcare-at-va> (accessed March 21, 2021).

proposal would amend Section 1093 of Title 10 of the U.S. Code and Title 38 of the U.S. Code.

### Policy Implementation Tool

Congresswoman Barbara Lee (D-CA) has been a long-time champion of repealing federal restrictions on abortion funding. On March 26, 2021, Congresswoman Lee reintroduced the Equal Access to Abortion Coverage in Health Insurance (EACH) Act, which would require abortion care coverage through public health insurance programs, including TRICARE and VA.<sup>78</sup> Senator Tammy Duckworth (D-IL) introduced the Senate companion bill.<sup>79</sup> It is unclear how much this provision would cost. Jon Shimabukuro from the Congressional Research Service said he was unaware of the Congressional Budget Office (CBO) or any other organizations ever estimating the cost of repealing abortion funding restrictions.<sup>80</sup>

While the repeal of Hyde-like provisions could be done simply by not adding the riders during the appropriations process, this would be a temporary fix since they could be added back during a subsequent appropriations cycle. Passing legislation to permanently ban any funding restrictions is the best way to guarantee long-term federal funding for abortions. This provision would be implemented immediately by any agency that oversees a federal health insurance program, including VA, DOD, the Department of Health and Human Services (HHS), and the Centers for Medicare and Medicaid Services (CMS).

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<sup>78</sup> U.S. Congress, House, *Equal Access to Abortion Coverage in Health Insurance (EACH) Act of 2021*, H.R. 2234, 117<sup>th</sup> Cong. 1<sup>st</sup> sess., introduced in House March 26, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2234?s=1&r=3>.

<sup>79</sup> U.S. Congress, Senate, *Equal Access to Abortion Coverage in Health Insurance (EACH) Act of 2021*, S. 1021, 117<sup>th</sup> Cong. 1<sup>st</sup> sess., introduced in Senate March 25, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/1021?s=2&r=1>.

<sup>80</sup> Jon Shimabukuro, Legislative Attorney, Congressional Research Service, March 10, 2021.

The second provision would instruct VA and DOD to allow abortion care to be provided at their facilities. As previously mentioned, VA currently has the authority to do this via agency rulemaking but has chosen not to.<sup>8182</sup> Unlike VA, the 1996 law barring the use of DOD facilities to perform abortions needs to be repealed by an act of Congress. While there have been numerous attempts to repeal the DOD facilities ban through National Defense Authorization Act (NDAA) amendments, there is no standalone legislation on this issue.<sup>83</sup> This provision would have minimal costs since the facilities already exist and are staffed and all procedures would be covered by insurance or paid for out of pocket. This provision would require the Secretary of Veterans Affairs and the Defense Secretary to establish regulations to carry out abortion care within 100 days of the legislation's enactment.

## POLICY ANALYSIS

This policy proposal would accomplish the intended goal of increasing abortion access for active duty servicemembers and veterans, however the proposal does have pros and cons.

### Pros

- Effectiveness

This proposal is effective because it would ensure abortion care coverage for more than 1.5 million women of reproductive age covered under TRICARE (including 215,000

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<sup>81</sup> "Serving Those Who Serve?"

<sup>82</sup> 38 C.F.R. §17.38; and Department of Veterans Affairs, Veterans Health Administration, Health Care Services for Women Veterans, VHA Directive 1330.01(4), January 8, 2021.

<sup>83</sup> U.S. Library of Congress, *Abortion Services and Military Medical Facilities*, 15.

servicemembers) and two million veterans.<sup>848586</sup> Additionally, by allowing abortion care to be provided at DOD and VA facilities, the distance (in miles) that servicemembers and veterans need to travel is greatly reduced. For active duty servicemembers, they would be able to get care on base, all but eliminating the distance needed to travel. For people stationed abroad, this proposal would ensure access to care where it previously did not exist. Another positive impact it has is that servicemembers will no longer need to get (or get denied) permission from their supervisors to leave base in order to receive their care.<sup>87</sup>

Additionally, research has found an inverse association between abortion restrictions and meeting women's health benchmarks and access to reproductive care correlates with lower infant mortality and other positive health outcomes for children.<sup>8889</sup> By increasing access to abortion care, this proposal would be effective in reducing negative health outcomes.

Finally, by passing a law requiring VA to provide abortion care instead of waiting for the VA Secretary to change the regulation, this proposal would be effective in ensuring this care is more permanent, since it would need to be overturned by new legislation rather than a new VA Secretary.

- Efficiency

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<sup>84</sup> Serving Those Who Serve?"

<sup>85</sup> U.S. Department of Defense, *2018 Demographics: Profile of the Military Community*, 6, <https://download.militaryonesource.mil/12038/MOS/Reports/2018-demographics-report.pdf>.

<sup>86</sup> U.S. Department of Labor, "2019 Gender and Veteran Demographics," 2020, <https://www.dol.gov/agencies/vets/women/veterans/women/veterans-demographics#:~:text=DOL%20Veterans%20Employment%20%26%20Training%20Service,only%201.5%25%20are%20veterans.%E2%80%9D>.

<sup>87</sup> Fix, et al, "Abortion Need among U.S. Servicewomen."

<sup>88</sup> Thompson and Seymour, "Evaluating priorities," 16.

<sup>89</sup> Thompson and Seymour, "Evaluating priorities," 24.

By having two provisions – one eliminating funding bans and a second allowing abortion to be performed at DOD and VA facilities – the proposal removes the two biggest barriers to access for servicemembers and veterans, which makes it an efficient way of accomplishing the goal of increasing access.<sup>90</sup> It is also efficient because there would be no wasted cost. There is no big upfront cost or investment that the government will not be able to recoup. Like any medical care, it would only be paid for if used. Therefore, despite increasing access to care for more than a million Americans, it is done in a way that results in an efficient allocation of resources.

- Equity

This proposal would finally allow servicemembers and veterans to have similar access to abortion care as their civilian counterparts. It allows all Americans parity in terms of access to care and grants current and former servicemembers the care they could have received had they not gone into the service.<sup>91</sup>

- Liberty

This proposal ensures that servicemembers and veterans are able to utilize their right to privacy, which is the principal the Supreme Court used to legalize abortion. This proposal does not expand abortion rights, it instead removes barriers to access for care. Additionally, it expands servicemembers and veterans' basic right to healthcare by increasing coverage.<sup>92</sup>

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<sup>90</sup> Serving Those Who Serve?"

<sup>91</sup> Boonstra, "Off Base."

<sup>92</sup> Center for Reproductive Rights, "EACH Act Would Remove Major Economic Barriers to Abortion Access in the U.S.," (Media Release, 25 March, 2021), <https://reproductiverights.org/each-act-would-remove-major-economic-barriers-to-abortion-access-in-the-u-s/>.

- Administrative capacity

The systems are already in place to make this change – no new agency or department would need to be created.<sup>93</sup> While the relevant agencies would need to establish regulations and guidelines for implementation, it does not fall outside the scope of the work they are already doing and should not result in any long-term expansion of administrative work.

- Technological capacity

Like administrative capacity, no new technology would be needed to implement this proposal. All that would be needed is a new code for health records.<sup>95</sup>

- Legality

While allowing federal abortion funding would expand abortion care by way of expanding access, it in no way changes the legality of abortion in the United States. *Roe v. Wade* legalized abortion in the United States, and even though the courts have found that funding bans are also legal, removing those bans does not impact the existing federal abortion policy.<sup>96</sup>

- Other

An additional positive outcome of this proposal is that it would save the military money. It is incredibly expensive to train soldiers, with some estimating that it cost more

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<sup>93</sup> U.S. Department of Veterans Affairs, “About VA Health Benefits,” Accessed April 19, 2021, <https://www.va.gov/health-care/about-va-health-benefits/>.

<sup>94</sup> Tricare, “Eligibility,” Accessed April 19, 2021, <https://www.tricare.mil/Plans/Eligibility>.

<sup>95</sup> Husky Health Connecticut, “Claims with Abortion Procedure Codes,” Accessed April 19, 2021, [https://www.huskyhealthct.org/providers/provider\\_postings/Claims\\_with\\_Abortion\\_Procedure\\_Codes.pdf](https://www.huskyhealthct.org/providers/provider_postings/Claims_with_Abortion_Procedure_Codes.pdf).

<sup>96</sup> U.S. Library of Congress, *Abortion: Judicial History and Legislative Response*.



than \$50,000 per enlistee. Pregnancy also accounts for a large part of the attrition from the military and losing personnel while deployed has a direct impact on mission readiness.<sup>97</sup> This proposal will make sure that the military is not losing servicemembers who do not want to have a child, just because they cannot access appropriate care. By doing so, the military will be able to keep good soldiers and ensure that mission readiness is not compromised.

### Cons

- Effectiveness

As previously stated, research has shown that limited abortion access correlates with worse maternal health outcomes.<sup>98</sup> It can therefore be extrapolated that increased abortion access should result in better maternal health outcomes. However, one potential con of this proposal is that it may not result in an increased number of positive health outcomes. This proposal in no way advocates for increased abortion use, but low utilization of any abortion services, including abortion counseling, could have minimal impact on overall health outcomes.

- Efficiency

While this proposal is the most efficient way to accomplish the overall goal, the implementation of the proposal is not efficient. As you know better than anyone, at its best, passing a bill into law is cumbersome, and at its worst it is impossible. Either way, passing a bill into law is incredibly time consuming.<sup>99</sup> Passing this bill in parts or doing

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<sup>97</sup> Boonstra, “Off Base.”

<sup>98</sup> Ravi, “Limiting Abortion Access.”

<sup>99</sup> David Hawkings, “The 5 M’s for Describing Why Congress is Broken,” *Roll Call*, July 26, 2018, <https://www.rollcall.com/2018/07/26/the-5-ms-for-describing-why-congress-is-broken/>.

some of it through executive action would be a lot more efficient in terms of how quickly you could get this done.

- Cost

The largest problem with this proposal (outside the political piece which will be discussed in the next section) is the cost. As previously stated, it is not clear how much the proposal will cost because the Congressional Budget Office (CBO) has never run a cost-analysis. However, by removing all bans to federal funding of abortion, it will likely increase discretionary and mandatory appropriations. However, in 2017, CBO estimated that despite short-term savings, a proposal that would defund Planned Parenthood would have long-term costs because women losing services, like birth control access, might have children and end up on Medicaid.<sup>100</sup> Planned Parenthood cannot currently use federal funds to provide abortions, so abortion care was not part of the CBO score. That being said, there could be similar findings if CBO scored this proposal – with the federal government having increased costs in the short-term but long-term savings as a result of decreased Medicaid and Supplemental Nutrition Assistance Program (SNAP) use.

- Other

Additional cons include that this proposal does not remove the stigma pregnant women in the military face. Some branches of the military require that servicemembers disclose their pregnancy to their commanding officers, regardless of whether they plan to keep the pregnancy.<sup>101</sup> Research has found that many women in the military fear the

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<sup>100</sup> Julie Rovner, “Planned Parenthood Funding Could Thwart GOP Efforts on Health Bill,” *Kaiser Health News*, May 12, 2017, <https://khn.org/news/planned-parenthood-funding-could-thwart-gop-efforts-on-health-bill/> (accessed March 21, 2021).

<sup>101</sup> “Serving Those Who Serve?”

stigma that their pregnancy has, with many believing that it could kill their career.<sup>102</sup> This proposal will not have any direct impact on this culture, which may impact servicemembers seeking care, even if they have access.

### POLITICAL ANALYSIS

This issue is 100 percent a political one. Federal abortion funding restrictions have become a stand-in for the larger abortion debate, which is an incredibly partisan issue. When the Hyde Amendment first passed in the 1970s, it was largely supported by members from both parties, including Democratic President Jimmy Carter.<sup>103</sup> However, in the last 50 years, the Democratic party has become the party of abortion rights, and while there used to be pro-choice Republicans and pro-life Democrats, over time they have become increasingly rare.<sup>104</sup> As an *Atlantic* article puts it, “While American public opinion has remained mixed on this issue, largely favoring legalized abortion with limitations, the two parties now represent the extremes of the debate.”<sup>105</sup> The graph below shows the change in support for pro-life positions among Democrats and Republicans from 1993 to 2018.

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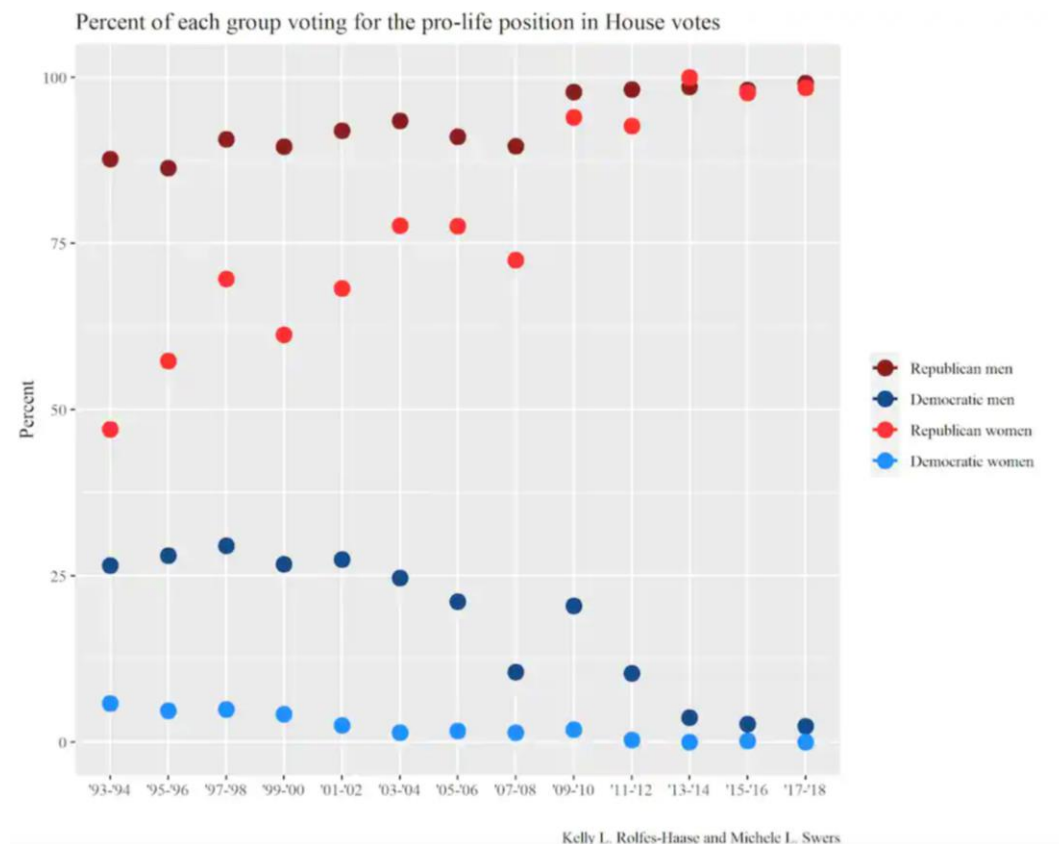
<sup>102</sup> Fix, et al, “Abortion Need among U.S. Servicewomen.”

<sup>103</sup> Emma Green, “Why Democrats Ditched the Hyde Amendment,” *The Atlantic*, June 14, 2019, <https://www.theatlantic.com/politics/archive/2019/06/democrats-hyde-amendment-history/591646/>.

<sup>104</sup> Mark Pattison, “Peterson’s Loss Shrinks Number of Pro-Life Democrats in House,” *Catholic News Service*, November 6, 2020, <https://www.ncronline.org/news/politics/petersons-loss-shrinks-number-pro-life-democrats-house>.

<sup>105</sup> Green, “Why Democrats Ditched the Hyde Amendment.”

**Figure 2. Members of Congress Abortion Positions Over Time<sup>106</sup>**



## Pros

- The Democratic party is the pro-choice party

As stated above, the Democratic party has become the party of abortion rights. In 2016, the Democratic National Committee's (DNC) platform included repealing the Hyde Amendment for the first time. It stated, "We will continue to oppose — and seek to overturn — federal and state laws and policies that impede a woman's access to abortion, including by repealing the Hyde Amendment ... we support the repeal of harmful

<sup>106</sup> Michele L. Swers and Kelly L. Rolfes-Haase, "The Hyde Amendment Blocks Federal Funding of Abortion. Will House Democrats Repeal It?," *The Washington Post*, February 23, 2021, <https://www.washingtonpost.com/politics/2021/02/23/hyde-amendment-blocks-federal-funding-abortion-will-house-democrats-repeal-it/>.

restrictions that obstruct women’s access to health care information and services, including the ‘global gag rule’ and the Helms Amendment that bars U.S. assistance to provide safe, legal abortion throughout the developing world.”<sup>107</sup> This is the position of the party as a whole and this policy proposal would be in line with the party’s platform.

- Public opinion

Public support for abortion is as high as it has been in the last two decades, with 61 percent of Americans believing abortion should be legal in all or most cases. However, there is a divide between Democrats and Republicans, with 62 percent of Republicans believing abortion should be *illegal* in all or most cases versus 82 percent of Democrats saying abortion should be *legal* in all or most cases.<sup>108</sup> The graph below shows the division of public support over time. The American public also support the repeal of the Hyde Amendment, with 62% of voters “in favor of Medicaid coverage of abortion care.”<sup>109</sup>

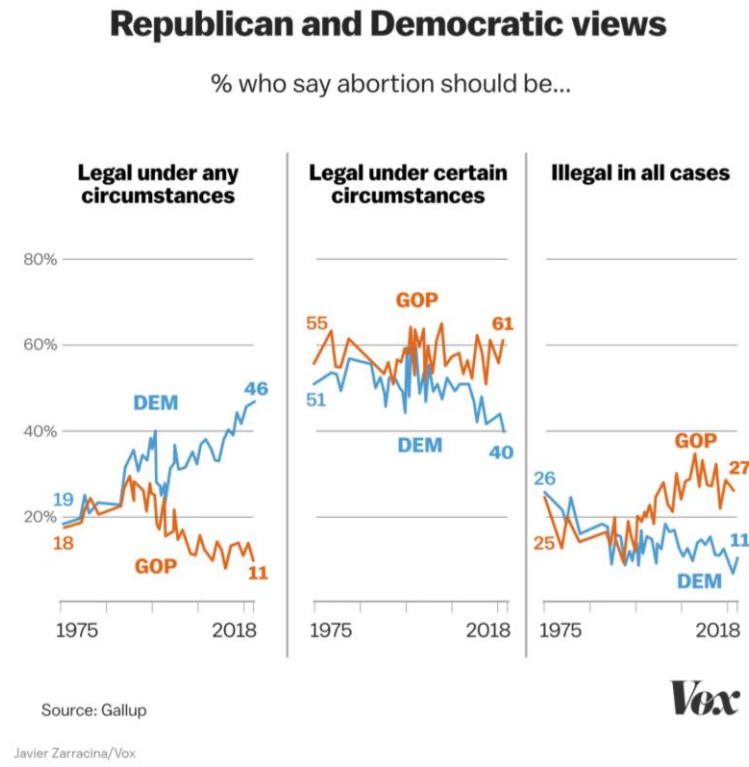
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<sup>107</sup> David Weigel, “Democrats Release Draft of Platform, With Shifts to Left on Death Penalty, Abortion, Taxes,” *The Washington Post*, July 1, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/07/01/democrats-release-draft-of-platform-with-shifts-to-left-on-death-penalty-abortion-taxes/>.

<sup>108</sup> Pew Research Center, “Public Opinion on Abortion,” August 19, 2019, <https://www.pewforum.org/fact-sheet/public-opinion-on-abortion/>.

<sup>109</sup> All\* Above All, “U.S. Congress Introduces the EACH Act to Guarantee Abortion Coverage,” (Media Release, 25 March, 2021), <https://allaboveall.org/updates/u-s-congress-introduces-the-each-act-to-guarantee-abortion-coverage/>.

**Figure 3. Americans' Abortion Position by Political Party**<sup>110</sup>



In 2018, 47 percent of Democrats said that abortion was a critical issue to them, up from 36 percent in 2015. Black and Hispanic Americans were more likely than white Americans to say that abortion was a critical issue. Meanwhile, 40 percent of Republicans claimed abortion was a critical issue, down from 43 percent in 2015.<sup>111</sup> This increase in Democratic urgency may have been in part due to Donald Trump's presidency and the nominations and subsequent confirmations of multiple pro-life Supreme Court Justices. As a Democrat in a reliably Democratic state, taking an active pro-choice stand will not have any negative political implications for you.

<sup>110</sup> Anna North, "How Abortion Became a Partisan Issue in America," *Vox*, April 10, 2019, <https://www.vox.com/2019/4/10/18295513/abortion-2020-roe-joe-biden-democrats-republicans>.

<sup>111</sup> Alex Vandermaas-Peeler, Daniel Cox, Maxine Najle, PhD, Molly Fisch-Friedman, Rob Griffin, PhD, and Robert P. Jones, PhD, "Partisanship Trumps Gender: Sexual Harassment, Woman Candidates, Access to Contraception, and Key Issues in 2018 Midterms," *PRRI*, October 3, 2018, <https://www.prri.org/research/abortion-reproductive-health-midterms-trump-kavanaugh/>.

- Stakeholder support

In July 2019, more than 90 organizations released the Blueprint for Sexual and Reproductive Health, Rights, and Justice, which outlined a reproductive policy agenda for the next administration (which is now the Biden Administration).<sup>112</sup> The third point in the Blueprint is passing a clean budget, including ending the Hyde Amendment and similar appropriations provisions. Additionally, more than 130 organizations endorsed the EACH Act upon its reintroduction this year.<sup>113</sup>

The EACH Act is endorsed by: All\* Above All, ACCESS Reproductive Justice, Advocates for Youth, American Civil Liberties Union (ACLU), American College of Obstetricians and Gynecologists (ACOG), American Jewish World Service, American Medical Student Association, Black Women's Health Imperative, Carafem, Catholics for Choice, Center for American Progress, Center for Reproductive Rights, CHANGE (Center for Health & Gender Equity), Cobalt, Colorado Organization for Latina Opportunity & Reproductive Rights (COLOR), Forward Together Action, Global Justice Center, Grandmothers for Reproductive Rights (GRR!), Guttmacher Institute, Ibis Reproductive Health, If/When/How: Lawyering for Reproductive Justice, In Our Own Voice: National Black Women's Reproductive Justice Agenda, IPAS, Make It Work Nevada, Medical Students for Choice, NARAL Pro-Choice America, National Abortion Federation, National Asian Pacific American Women's Forum (NAPAWF), National Council of Jewish Women, National Family Planning & Reproductive Health

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<sup>112</sup> First priorities: Executive and agency actions. (2019). Blueprint for Sexual and Reproductive Health, Rights, and Justice, 1-6. <http://reproblueprint.org/wp-content/uploads/2020/09/First-Priorities-Executive-Agency-Actions-Incoming-Administration-Blueprint.pdf>.

<sup>113</sup> All\* Above All, “U.S. Congress Introduces the EACH Act to Guarantee Abortion Coverage.”

Association, National Health Law Program, National Latina Institute for Reproductive Justice, National Network of Abortion Funds, National Organization for Women (NOW), Nurses for Sexual and Reproductive Health, National Partnership for Women & Families, National Women's Law Center, National Women's Health Network, New Orleans Abortion Fund, NM Religious Coalition for Reproductive Choice, PAI, Physicians for Reproductive Health, Planned Parenthood Federation of America, Population Institute, Power to Decide, Preterm, SIECUS: Sex Ed for Social Change, Silver State Voices, SisterReach, SisterSong: National Women of Color Reproductive Justice Collective, Society for Maternal-Fetal Medicine, Texas Equal Access Fund, The Women's Centers: Atlanta Women's Center, Cherry Hill Women's Center, Delaware County Women's Center, Hartford GYN Center, Philadelphia Women's Center, The Womxn Project, UltraViolet, Union for Reform Judaism, URGE: Unite for Reproductive & Gender Equity, We Testify, Women of Reform Judaism.<sup>114</sup>

- House and Senate Leadership support

House Committee on Appropriations Chairwoman Rosa DeLauro (D-CT) has already committed to not putting abortion funding restrictions in the base-text of FY 2022 appropriations legislation. Speaker Pelosi has signaled that she is supportive of this.<sup>115</sup> While there was a push to do this in 2020, the Democrats did not have enough support to remove Hyde-like provisions, with Pro-Choice Caucus Co-Chair Diana DeGette (D-CO) saying that they had more than 200 Democrats onboard, but that they were short of the

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<sup>114</sup> U.S. Congresswoman Ayanna Pressley, “Reps. Pressley, Lee, DeGette, Schakowsky and Sens. Duckworth, Murray, Hirono Re-Introduce EACH Act to Repeal the Harmful and Discriminatory Hyde Amendment,” (Media Release, 25 March, 2021), <https://pressley.house.gov/media/press-releases/rep-pressley-lee-degette-schakowsky-and-sens-duckworth-murray-hirono-re>.

<sup>115</sup> Michele L. Swers and Kelly L. Rolfes-Haase, “The Hyde Amendment Blocks Federal Funding of Abortion.”



218 necessary.<sup>116</sup> During that FY2021 appropriations process, DeLauro, then only Chair of the House Labor, Health and Human Services, Education, and Related Agencies Subcommittee, said, “Although this year’s bill includes it, let me be clear, we will fight to remove the Hyde amendment to ensure that women of color and all women have access to the reproductive health they deserve.”<sup>117</sup>

Additionally, Senator Patty Murray (D-WA), the Senate Assistant Democratic Leader and the Chair of the Senate Labor, Health and Human Services, Education, and Related Agencies Subcommittee is supportive of repealing abortion funding restrictions. She is both a lead sponsor of the EACH Act and said, via her spokesperson, that she has “been glad to see growing momentum to repeal Hyde and will continue working alongside many others to build support for getting this done.”<sup>118119</sup>

- The White House

Both President Joe Biden and Vice President Kamala Harris are supporters of repealing abortion funding restrictions. In 2019 President Biden reversed his previous positions and stated that he was opposed to the Hyde Amendment.<sup>120</sup> The President, who is a devout Catholic and has taken a “middle of the road” approach to abortion

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<sup>116</sup> Jennifer Haberkorn, “House Democrats Will Try to Repeal Long-Standing Ban on Federal Money for Abortions,” *The Los Angeles Times*, August 28, 2020, <https://www.latimes.com/politics/story/2020-08-28/democrats-seek-to-restore-government-funding-of-abortion>.

<sup>117</sup> Ibid.

<sup>118</sup> U.S. Congresswoman Ayanna Pressley, “Reps. Pressley, Lee, DeGette, Schakowsky and Sens. Duckworth, Murray, Hirono Re-Introduce EACH Act to Repeal the Harmful and Discriminatory Hyde Amendment.”

<sup>119</sup> Haberkorn, “House Democrats Will Try to Repeal Long-Standing Ban on Federal Money for Abortions.”

<sup>120</sup> Katie Glueck, “Joe Biden Denounces Hyde Amendment, Reversing His Position,” *The New York Times*, June 6, 2019, <https://www.nytimes.com/2019/06/06/us/politics/joe-biden-hyde-amendment.html>.

throughout the course of his career, has evolved on the issue, saying in a 2019 email, “I refuse to impose my religious beliefs on other people.”<sup>121</sup>

Meanwhile, Vice President Harris has been a long-time supporter of repealing Hyde, having previously been an original cosponsor of the EACH Woman Act when it was first introduced in the Senate in 2019.<sup>122</sup> Additionally, while running for President in 2019, Kamala Harris said, “Are we gonna go back to the days of back-alley abortions? Women died before we had *Roe v. Wade* in place. On this issue, I’m kind of done.”<sup>123</sup>

President Biden is also very supportive of women in the military and women veterans. In March, during a Women’s History Month speech honoring women veterans he said, “Every single Veteran deserves world-class health care.”<sup>124</sup> He also gave a speech honoring women in the military, during which he talked about allowing women to serve in combat and “actively working to change policies in the military to make it easier and safer for more women not just to join the military, but to stay in the military and to thrive.”<sup>125</sup> While neither of these remarks addressed abortion care, they do show the President’s commitment to ensuring that women who are currently or have previously served in military are supported and get the care they have earned. This policy proposal would align with the President and Vice President’s positions on abortion and also

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<sup>121</sup> Bill Barrow and Elana Schor, “Biden: Congress Should Protection Abortion Rights, if Necessary,” *AP*, May 22, 2019, <https://apnews.com/article/37bcf15a80a54014bd37fa4298d5d5c1>.

<sup>122</sup> All\* Above All, “U.S. Congress Introduces the EACH Act to Guarantee Abortion Coverage.”

<sup>123</sup> Emma Green, “2020 Candidates Are Going All In on Abortion Rights,” *The Atlantic*, June 3, 2019, <https://www.theatlantic.com/politics/archive/2019/06/2020-democrats-abortion/590701/>.

<sup>124</sup> Joe Biden, “Remarks of President Joe Biden Honoring Women Veterans,” (speech, Washington, DC, March 22, 2021), U.S. Department of Veterans Affairs, <https://blogs.va.gov/VAntage/86378/remarks-president-joe-biden-video-honoring-women-veterans/>.

<sup>125</sup> Joe Biden, “Remarks by President Biden on International Women’s Day,” (speech, Washington, DC, March 8, 2021), The White House, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/08/remarks-by-president-biden-on-international-womens-day/>.

support President Biden’s initiatives to assist and champion women in the military and women veterans.

### Cons

- Strong Republican opposition

Congressional Republicans are consistently opposed to anything related to abortion, including a repeal of abortion funding restrictions. At the start of the 117<sup>th</sup> Congress, a group of 200 House Republicans sent a letter to Congressional leaders saying that they would not support any appropriations bill that did not have the Hyde Amendment in it.<sup>126</sup> A month later, 48 Republican Senators sent a letter to you, opposing any attempts to overturn funding restrictions. The letter was signed by all the Senate Republicans except Senators Susan Collins (R-ME) and Lisa Murkowski (R-AK).<sup>127</sup>

Additionally, the Republican-sponsored No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act would permanently ban any federal funds from being used for abortion, as well as prohibiting qualified health plans from including abortion coverage. This would permanently codify and expand existing abortion funding restrictions. This bill is led by Senator Wicker (R-MS) and Congressman Christopher

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<sup>126</sup> Juliegrace Brufke, “House Republicans Vow Not to Support Spending Bills that Repeal Hyde Amendment,” *The Hill*, January 26, 2021, <https://thehill.com/homenews/house/535863-house-republicans-vow-not-to-support-spending-bills-that-repeal-hyde-amendment>.

<sup>127</sup> Tom Strobe, “GOP Senators Promise to Oppose Attacks on Pro-Life Measures,” *KentuckyToday*, February 9, 2021, <https://kentuckytoday.com/stories/gop-senators-promise-to-oppose-attacks-on-pro-life-measures,30514>.

Smith (R-NJ) and has 47 Senate Republican cosponsors and 142 House Republican cosponsors.<sup>128129</sup>

A *Washington Post* report found, “that some Republican women were especially responsive to proposals that framed reproductive issues in terms of women’s autonomy. These women defected from their party’s stance on votes related to contraception, international family planning, and allowing women in the military to use their own money to pay for abortions at overseas bases.”<sup>130</sup> While this is rarely the case in the House anymore, this is sometimes true in the Senate with moderate Republicans Collins and Murkowski. Senators Collins and Murkowski have long been the Senate swing votes on abortion issues, with Planned Parenthood’s 2021 Congressional scorecard giving them a 70 percent and 64 percent respectively.<sup>131</sup>

Senator Collins claims to be pro-choice, saying in 2002, “The Republican Party should be as synonymous with protecting a woman’s right to choose as the Democratic Party is with expanded government or raising taxes. Unfortunately, however, the right of women to make choices about their reproductive health, the pro-choice position, is neither reflected in the party platform nor the public’s perception of the GOP.”<sup>132</sup>

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<sup>128</sup> U.S. Congress, House, *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2021*, HR 18, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., introduced in House February 5, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/18>.

<sup>129</sup> U.S. Congress, Senate, *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2021*, S 92, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., introduced in House January 28, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/92>.

<sup>130</sup> Swers and Rolfes-Haase, “The Hyde Amendment Blocks Federal Funding of Abortion.”

<sup>131</sup> Planned Parenthood Action Fund, “2021 Congressional Scorecard,” Accessed on April 11, 2021, <https://www.plannedparenthoodaction.org/congressional-scorecard#AK/>.

<sup>132</sup> Addy Baird, “This is How Collins and Murkowski Marketed Themselves as Champions of Choice,” *ThinkProgress*, June 29, 2018, <https://archive.thinkprogress.org/collins-murkowski-abortion-history-cbfc70d977ac/>.

However, Collins does support the Hyde Amendment, saying, “I’ve always felt that was a good policy on what is for America such a difficult issue.”<sup>133</sup>

Both Collins and Murkowski voted against the No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act in 2019 and as previously mentioned they are the only Senate Republicans who are not cosponsors of the recently reintroduced bill.<sup>134</sup><sup>135</sup> Additionally, they are both lead sponsors of the Global Health, Empowerment, and Rights (HER) Act, which would permanently repeal the global gag rule.<sup>136</sup> While this bill would not allow federal funds to be used for abortion care, it would make it illegal to bar funds from being sent to international organization who use non-U.S. funds for abortion care. While in general Senate Republicans will be opposed to this policy proposal on principal, because of their inconsistent voting record on abortion, it is unclear how Senators Collins and Murkowski would vote on this proposal.

- Public opinion

As previously discussed, the majority of Americans support abortion rights and nearly half of Democrats say abortion is a critical issue for them. However, people were also more likely to say the issue of abortion was critical to them if they believed abortion should be illegal. A PRRI report found, “Over half (52%) of those that say abortion

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<sup>133</sup> Evan Popp, “Collins ‘Truly Grateful’ for Endorsement from Notorious Anti-LGBTQ Group,” *Maine Beacon*, October 21, 2020, <https://mainebeacon.com/collins-truly-grateful-for-endorsement-from-notorious-anti-lgbtq-group/>.

<sup>134</sup> Tom Strobe, “GOP Senators Promise to oppose Attacks on Pro-Life Measures,” *Biblical Recorder*, February 11, 2021, <https://www.brnow.org/news/gop-senators-promise-to-oppose-attacks-on-pro-life-measures/>.

<sup>135</sup> U.S. Congress, Senate, *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2021*,

<sup>136</sup> U.S. Senator Lisa Murkowski, “Murkowski Joins Bipartisan, Bicameral Push to Permanently Repeal the Global Gag Rule,” (Media Release, 30 January, 2021), <https://www.murkowski.senate.gov/press/release/murkowski-joins-bipartisan-bicameral-push-to-permanently-repeal-the-global-gag-rule>.

should be illegal in all or most cases say it is a critical issue, compared to only 35% of those who say abortion should be legal in all most cases. This gap is even wider among those who say abortion should be illegal in *all cases* or legal in *all cases*. Nearly two-thirds (64%) of those who say abortion should be illegal in all cases view abortion as a critical issue, compared to only around four in ten (41%) of those who say abortion should be legal in all cases.”<sup>137</sup> So while the majority of Americans believe abortion should be legal in at least some cases, the people who are opposed to abortion are more likely to care about the issue.

- Stakeholder opposition

While there are not nearly as many pro-life/anti-abortion groups as there are pro-choice groups, the stakeholders that do exist have a very large presence, particularly the March for Life. Every year since 1974 thousands of people from around the country come to Washington D.C. for the annual March for Life and in 2020, President Trump became the first sitting president to speak at the march.<sup>138</sup>

The February letter sent to you by 48 Republican Senators was endorsed by 13 anti-abortion groups, including the Southern Baptist Ethics & Religious Liberty Commission (ERLC), Americans United for Life, Family Research Council, March for Life, National Right to Life Committee (NRLC), Students for Life of America, Susan B. Anthony List and U.S. Conference of Catholic Bishops.<sup>139</sup> While this list is not insubstantial, it does

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<sup>137</sup> Vandermaas-Peeler, et al., “Partisanship Trumps Gender.”

<sup>138</sup> March for Life., “About the March for Life,” Accessed March 20, 2021, <https://marchforlife.org/about-the-march-for-life/>.

<sup>139</sup> Strode, “GOP Senators Promise to Oppose Attacks on Pro-Life Measures.”

not come close to the previously mentioned list of groups that have endorsed the EACH Act.

- Not all Congressional Democrats support repealing Hyde

Despite wide-spread Democratic support for abortion access and funding throughout the country, not all Congressional Democrats agree with the DNC's platform on abortion. This is especially problematic in an evenly split Senate. As various news articles have stated, "Democrats are not ready to fully take on the Hyde Amendment, at least not in Congress" and "If the House is able to act, it would put Senate Democrats in a difficult position."<sup>140</sup><sup>141</sup> Specifically, Senator Joe Manchin (D-WV) is not supportive of repealing abortion funding bans.<sup>142</sup> In December 2020 he said, "As a lifelong Catholic, I have always been pro-life ... If this legislation is brought before the Senate, I will vote against repealing the Hyde Amendment."<sup>143</sup>

But while Senator Manchin has often supported pro-life proposals, he is not always consistent. During the 116<sup>th</sup> Congress NRLC gave him a 100 percent pro-life rating, however he got a 42 percent in the 115<sup>th</sup> Congress and a 75 percent in the 114<sup>th</sup> Congress. On standalone abortion bills, he usually votes on the pro-life side, but he has taken different positions when voting on large packages, including the Affordable Care Act.<sup>144</sup>

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<sup>140</sup> Green, "Why Democrats Ditched the Hyde Amendment."

<sup>141</sup> Haberkorn, "House Democrats Will Try to Repeal Long-Standing Ban on Federal Money for Abortions."

<sup>142</sup> John McCormack, "Democratic Senator Says Proposed Democratic Platform on Abortion is 'Crazy'," *The Washington Examiner*, July 6, 2016, <https://www.washingtonexaminer.com/weekly-standard/democratic-senator-says-proposed-democratic-platform-on-abortion-is-crazy>.

<sup>143</sup> Jonathan Liedl, "Will Sen. Manchin's Focus on Moderation Come at the Expense of His Catholic Principles?," *National Catholic Register*, January 20, 2021, <https://www.ncregister.com/news/will-sen-manchin-s-focus-on-moderation-come-at-the-expense-of-his-catholic-principles>.

<sup>144</sup> Catholic News Agency, "As Senate Dynamic Shifts, Pro-Lifers Examine Manchin's Record," *Angelus*, January 26, 2021, <https://angelusnews.com/news/nation/as-senate-dynamic-shifts-pro-lifers-examine-manchins-record/>.

So while it is unlikely that Senator Manchin would support this policy proposal, it is unclear how he would vote on an appropriations bill that just did not include the Hyde Amendment or similar provisions. In this case he technically would not be voting to repeal the Hyde Amendment since it was never included to begin with. There is a difference in voting against an amendment to take out the Hyde Amendment and voting against an amendment to put the Hyde Amendment in.

Senator Manchin is not the only Senate Democrat that may be a problem. Bob Casey (D-PA) voted for the Republican-led No Taxpayer Funding for Abortion Act in 2019.<sup>145</sup> Senator Casey has called himself pro-life and has previously been supportive of the Hyde Amendment, however he also received a 70 percent on Planned Parenthood's annual scorecard. In 2019 he said, "I've had trouble with both sides [of the abortion debate]. Over time, I've voted for restrictions...I think in order to reduce the number of abortions and to have a consensus in the country, you've got to be working on these issues that provide a real choice. Right now, there are a lot of women who face a crisis pregnancy, and especially because of economics, choose abortion because they don't think they have another choice."<sup>146</sup>

- The White House

While President Biden and Vice President Harris have expressed their support for abortion rights and abortion funding ban repeals, it is unlikely that any push would be led

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<sup>145</sup> Alice Miranda Ollstein, "Senate Measure Banning Abortion Funds Defeated," *Politico*, January 17, 2019, <https://www.politico.com/story/2019/01/17/senate-measure-banning-abortion-funds-defeated-1091974>.

<sup>146</sup> Laura Olson, "'Pro-Life Democrat' Bob Casey Opens Up on Abortion. Surprisingly, his Plan to End Them Doesn't Involve the Courts," *The Morning Call*, May 24, 2019, <https://www.mcall.com/news/pennsylvania/capitol-ideas/mc-nws-pa-bob-casey-abortion-supreme-court-20190524-lvsaoxewz5e6hpafv4stithmey-story.html>.



by the White House. So far, advocates have been disappointed by the Biden Administration's action in the abortion space. In January, President Biden followed in the footsteps of previous Democratic administrations in repealing the Global Gag Rule, which bans U.S. funding to go to international aid organizations that use non-U.S. funds for any type of abortion care or counseling. This policy was first adopted in 1984 by President Reagan and it has been repealed by every Democratic administration and reinstated by every Republican administration since. While advocates were appreciative of the repeal, they expected more, with the Guttmacher Institute saying, "We are glad that the Biden-Harris administration is addressing the global gag rule ... But let's be clear, repealing the global gag rule is the bare minimum this administration can do to address the harm caused by the previous administration's coercive and spiteful approach to foreign policy."<sup>147</sup> Additionally, the statement the White House released on the anniversary of *Roe v. Wade* vowed to codify the landmark ruling, but nowhere in the statement did it say the word "abortion."<sup>148</sup> So while the White House will likely not stand in the way of, and most likely even support, any Congressional attempts to repeal abortion funding bans, any action taken will have to be led by Congress and not the White House.

## RECOMMENDATIONS

I am recommending that you lead the introduction of the proposed policy and become a champion of abortion rights for servicemembers and veterans. This is a good

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<sup>147</sup> Michael Safi, Liz Ford, and Jessica Glenza, "Joe Biden Axes 'Global Gag Rule' But Health Groups Call on Him to Go Further," *The Guardian*, January 28, 2021, <https://www.theguardian.com/global-development/2021/jan/28/joe-biden-global-gag-rule-health-groups>.

<sup>148</sup> Joe Biden and Kamala Harris, "Statement from President Biden and Vice President Harris on the 48<sup>th</sup> Anniversary of *Roe v. Wade*," (statement, Washington, DC, 22 January, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/22/statement-from-president-biden-and-vice-president-harris-on-the-48th-anniversary-of-roe-v-wade/>.

policy but will be politically challenging. As discussed in the Political Analysis, it will be difficult to get this proposal through an evenly split Senate, especially given it is unclear how multiple Democrats (Senators Manchin and Casey) and Republicans (Senators Collins and Murkowski) would vote.

For too long women who have served this country have been forgotten or ignored. They are serving a country and a system that was not designed for them. For the last fifty years choices about their reproductive health have been made by politicians. These current and former servicemembers need a champion in Congress and you can be that champion. As a Senator from New York, taking this position will not have a negative impact on your ability to be reelected and may help the remaining pro-life Democrats move left on the issue of abortion. I urge you to introduce a policy to prohibit federal abortion funding restrictions and legalize the use of DOD and VA facilities for abortion care.

## CURRICULUM VITAE

Katie Greenberg is a Legislative Assistant in the office of Congresswoman Julia Brownley (D-CA-26). Her legislative portfolio includes veterans' affairs; healthcare; trade; small business; financial services; homeland security; arts and humanities; science, space, and technology; and postal issues. In her role she manages the legislative process for more than 10 active bills including liaising with committee staff and constituents to craft language; building bipartisan, bicameral and stakeholder support; developing letters; preparing memos; and providing briefings, legislative strategy, and direct staffing support for the Congresswoman.

She previously worked in a variety of capacities for Congressman Paul D. Tonko (D-NY-20), managing his veteran and trade portfolios; maintaining a streamlined constituent correspondence system; and hiring, training, and managing 36 interns. Prior to coming to Capitol Hill she served as a field organizer for Kathleen Rice for Congress and as a research assistant for J Strategies.

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