United States Senate
Committee on the Judiciary
Subcommittee on the Constitution

Hearing:
Protecting Roe: Why We Need the Women's Health Protection Act

Testimony Submitted for the Record by LGBTQ Organizations

June 16, 2021
Washington, DC

Dear Chairman Blumenthal, Ranking Member Cruz, and Members of the Subcommittee:

I. Our Fundamental Rights Are in Jeopardy

As organizations committed to the equal dignity of all persons, including the right to make our own personal decisions regarding our health and our families, we are pleased to submit this testimony in support of S. 1975, the Women's Health Protection Act. This legislation would protect abortion access from the myriad state-level bans and medically unnecessary restrictions that are currently reducing or eliminating access to care across the country.

Access to comprehensive reproductive health care is essential to people's health, well-being, and ability to participate equally in their communities. And the U.S. Supreme Court has repeatedly affirmed that abortion is a fundamental right and that undue burdens on access violate the Constitution.

Yet anti-abortion politicians continue to push increasingly extreme and harmful laws that single out abortion care for restrictions that do not apply to similar health care. These laws, often presented under the guise of being health and safety regulations, are intended to restrict or eliminate access to abortion and do nothing to protect patient well-being. Denial of abortion care can have serious long-lasting consequences on a person's health and well-being, including increasing the risk of experiencing poverty, physical health impairments, and intimate partner violence.[1]

Abortion is one of the safest medical procedures in the United States,[2] and should not be singled out and treated differently from other healthcare, particularly through restrictions that have no medical value and do nothing to benefit the health or safety of the pregnant person. The Women's Health Protection Act establishes a statutory right for health care providers to provide, and their patients to receive, abortion care without medically unnecessary restrictions, limitations, and bans that single out abortion and impede access to care. The bill would put a stop to these harmful restrictions and bans, and it would protect the right to access abortion care for all, no matter where someone happens to live.

The organizations submitting this testimony are keenly aware of how specious health and safety rationales with no real scientific basis have been used to undermine the basic rights of unpopular minorities and other powerless communities. Pseudoscientific arguments have been

[1] Foster DG, Ralph LJ, Biggs MA, Gerdts C, Roberts SCM, Glymour MA. "Socioeconomic outcomes of women who receive and women who are denied wanted abortions. American Journal of Public Health." (2018) Mar; 108(3):407-413. Advancing New Standards in Reproductive Health. "Turnaway Study: Long-term study shows that restricting abortion harms women." Bixby Center for Global Reproductive Health. Retrieved from: https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf.

[2] National Academies of Science, Engineering & Medicine, *The Safety and Quality of Abortion Care in the United States*, 1-16 (2018).

used against: racial and ethnic minorities (to support, for example, anti-miscegenation laws); women (to bolster restrictions on educational and employment opportunities); and LGBTQ people (to justify forced sterilization, involuntary institutionalization, and the denial of custody and marriage rights). The disingenuous "health and safety" claims used to advance the litany of abortion restrictions enacted by states in recent years are no different. With public opinion holding steady against banning abortion, anti-abortion forces have increasingly framed restrictions on the procedure as being in women's best interest. They ignore the medical evidence of its safety and enact requirements that do nothing to bolster that safety, while making it difficult if not impossible for providers to keep their doors open. It is time to put a stop to this charade. We need strong federal legislation to ensure that abortion providers are able to serve patients exercising their fundamental rights to bodily autonomy and personal and family decision-making.

II. Why the LGBTQ Community Supports the Women's Health Protection Act

There are many reasons that our organizations, representing millions of LGBTQ people across this country, support passage of the Women's Health Protection Act.

First, many queer-identified and transgender people can and do become pregnant, and some will need abortion care if they face an unwanted pregnancy. The Women's Health Protection Act will ensure that unwarranted restrictions do not stand in the way of that care.

Second, many abortion and family planning clinics have expanded their services to include cancer and STI screening and various wellness services, and they have become trusted providers of reproductive and other medical care to the LGBTQ community. Many queer people, and especially those who are transgender, avoid medical care based on legitimate fears of being turned away or facing discrimination and ignorance. Members of the LGBTQ community have historically struggled to access basic health care because of stigma arising from social and political beliefs about sex, gender roles, and childbearing. This stigma has led the LGBTQ population to experience significant health disparities compared to other populations.[3] In response, many clinics that provide abortion and other reproductive health services now offer affirming, judgment-free care to members of this community, providing critical medical services for those who would otherwise go without. The LGBTQ community looks to these clinics to provide contraception and abortion services, as well as wellness services, examinations, STI testing and treatment, hormone replacement therapy, and insemination services. These clinics provide these healthcare services in a safe, nurturing, and affirming environment—free from the discrimination and mistreatment often faced by LGBTQ

[3] The National Institutes of Health formally designated sexual and gender minorities as a health disparity population in 2016. See Director's Message, "Sexual and Gender Minorities Formally Designated as a Health Disparity Population for Research Purposes," Oct. 6, 2016, https://www.nimhd.nih.gov/about/directors-corner/messages/message_10-06-16.html; *see also* National Academies of Sciences, Engineering, and Medicine. 2020. Understanding the Well-Being of LGBTQI+ Populations. Washington, DC: The National Academies Press. https://doi.org/10.17226/25877.

individuals in the larger health care system. When these essential sites of care are forced to close because of the proliferation of specious health and safety regulations designed to thwart abortion access, it is not only abortion care that is lost.

Third, the movements for reproductive freedom and LGBTQ equality share deeply linked interests and concerns. We are all seeking control over our own bodies – the freedom to decide whether to become or remain pregnant, whether and with whom to have intimate relationships, and whether to seek medical care to help our bodies align with our gender identities. We seek the freedom to form our families on our own terms – to partner with and marry whom we love, to have children or not, and to live as our true selves as determined by us, not by someone else. The Women's Health Protection Act will ensure that health care providers are able to continue helping their patients receive the medically necessary care that they need to further their health, dignity and well-being.

Fourth, abortion restrictions are a form of sex discrimination, a persistent scourge that harms all women, including LBTQ women, as well as non-binary people and GBTQ men. Discrimination based on sex often occurs because of a desire to retain rigid and outdated gender roles that dictate how one should behave, who someone should love, and one's role in the family, economy and society. It is one of the animating forces behind restrictions on abortion – those who would remove from women[4] the ability to determine whether to continue a pregnancy believe that bearing a child should be that woman's primary, or even only, priority. This attempt to force conformity with outmoded gender roles is, among other things, a form of sex discrimination. As the Supreme Court recognized last year in *Bostock v. Clayton County*, our understanding of sex discrimination continues to evolve; it is now settled law that discrimination based on sex includes discrimination based on sexual orientation and gender identity. Restrictions on abortion should also be viewed through a lens of sex discrimination. The LGBTQ community is invested in ensuring that no forms of sex discrimination – including those that seek to deprive pregnant people of their agency – become or remain enshrined in our laws.

Finally, our community has a deep interest in exposing the false premise upon which these politically-motivated abortion restrictions are based. As noted above, appeals to public health and safety have often been invoked by policymakers seeking to limit the rights and freedoms of disfavored groups. In the early twentieth century, laws based on pseudoscience authorized the sterilization, forced commitment, deportation and criminal prosecution of LGBTQ people, as well as bans on their public employment. Even after homosexuality was formally de-pathologized in the early 1970s, states continued to cite dubious science in denying marriage equality and parenting rights to LGBTQ people. Today, we are witnessing cruel attempts by state legislators to bar medical professionals from providing care to transgender youth, despite the overwhelming consensus of the medical profession that such care is medically necessary.

[4] While not all people with the capacity for pregnancy are women, the vast majority do identify as women and for purposes of addressing sex discrimination it is necessary to recognize the fact that abortion restrictions target women in part out of a desire to force them into childbearing roles, traditionally seen as the purview of women.

The policymakers pushing restriction after restriction on abortion care similarly ignore the evidence of the safety of abortion and the informed opinion of the medical profession when they enact sham "health and safety" measures that they claim protect patients but in fact do the opposite by reducing access.

This unending stream of legislative proposals introduced by extremist lawmakers – from abortion restrictions to barring transgender youth from receiving essential health care – distorts science and coopts medicine in pursuit of an ideological agenda that denies to individuals the ability to live as their true selves and make their own decisions regarding childbearing and family formation. As they have done in the past, these policymakers wrap themselves in the language of pseudoscience to disguise animus as concern for health and safety. The Women's Health Protection Act would put an end to this harmful charade once and for all.

III. Congress Must Act

Our constitutional rights and ability to access comprehensive health care should not depend on our zip codes. Now is the time for Congress to step in and pass the Women's Health Protection Act.

We commend this committee for holding a hearing on this critical piece of legislation.

Sincerely,

National Center for Lesbian Rights
Bay Area Lawyers for Individual Freedom
Equality California
Equality Federation
Family Equality
GLBTQ Legal Advocates & Defenders
GLMA: Health Professionals Advancing LGBTQ Equality
Human Rights Campaign
Lambda Legal
Mazzoni Center
Minority Veterans of America
Modern Military Association of America
Movement Advancement Project
National Center for Transgender Equality
National Council of Jewish Women
National Equality Action Team (NEAT)

National LGBTQ Task Force Action Fund
Queer and Trans Abortion Storytellers of We Testify
SIECUS: Sex Ed for Social Change
Silver State Equality-Nevada
Tampa Bay Access Force
Transgender Legal Defense and Education Fund
Whitman-Walker Institute
Woodhull Freedom Foundation