

THE ECONOMIC AND HEALTH IMPACTS OF THREATS TO REPRODUCTIVE RIGHTS

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC POLICY

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

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SECOND SESSION

ON

EXAMINING THE ECONOMIC AND HEALTH IMPACTS OF THREATS TO
REPRODUCTIVE RIGHTS

MAY 29, 2024

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THE ECONOMIC AND HEALTH IMPACTS OF THREATS TO REPRODUCTIVE RIGHTS

WEDNESDAY, MAY 29, 2024

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON ECONOMIC POLICY,
Boston, MA.

The Subcommittee met at 2:10 p.m., in room 900A, 15 Sudbury Street, Boston, Massachusetts, Hon. Elizabeth Warren, Chair of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIR ELIZABETH WARREN

Chair WARREN. This hearing will come to order.

We're holding this hearing because reproductive freedom, even here in Massachusetts, may disappear. In 2022, far right Supreme Court Justices took away the constitutional right to an abortion, completing the job that Donald Trump sent them there to do. In overturning *Roe v. Wade*, the Supreme Court abandoned almost 50 years of precedent.

In some States, the Court's decision revived abortion bans laying dormant since the 19th century. In other States, the decision triggered new abortion restrictions prewritten to go into effect the day that *Roe v. Wade* was overturned. The results have been horrifying.

A 10-year-old rape survivor was forced to leave her State to get the abortion she needed. Pregnant women have been turned away from emergency rooms and forced to wait until they are even closer to the brink of death before doctors will treat them. And nearly one in five patients have been forced to cross State lines for abortion care.

As other States race to ban or significantly restrict women's reproductive rights, Massachusetts moved in the opposite direction. Our Commonwealth stepped up to protect reproductive freedom.

In 2022, Massachusetts lawmakers passed a novel shield law to protect abortion providers in Massachusetts from out of State legal actions when they provide care to people residing in States with abortion bans. In 2023, Attorney General Campbell set up an abortion legal hotline. Also last year after a Federal court ruling in Texas that temporarily blocked the FDA's approval of mifepristone, Governor Healey issued an Executive order protecting medication abortion and initiating a process to stockpile the drug.

Our Commonwealth is working hard to protect reproductive rights. And the Biden administration is using every tool it has to defend women's freedom to make decisions about their own bodies.

But recent legal challenges are a reminder that these safeguards will not be enough to protect women from right-wing politicians who are determined to rip away their reproductive freedom no matter where they live.

First, whether a doctor is legally allowed to protect your health is on the docket. This year, the Supreme Court will decide whether Idaho's total abortion ban prohibits doctors from providing, quote, "stabilizing treatment," close quote, to patients who require an emergency abortion in violation of Federal law protecting access to emergency treatment. If the Supreme Court rules in favor of Idaho, you can bet that Republicans in Congress will try to make these restrictions the law of the land.

In another case before the Supreme Court, Republicans have asked judges to review steps the FDA took to expand access to abortion medication, mifepristone. Republicans understand that medication abortion now accounts for nearly two-thirds of abortions nationwide. And they are willing to take down the entire drug regulatory system in order to curb access to this FDA-approved medication. If the Supreme Court rolls back these policies, no one will be able to access medication abortion over telehealth or at their local pharmacy no matter where you live, in Alabama or Massachusetts or any other State in the United States.

These two challenges to abortion rights are in Trump's Supreme Court. But there are other threats as well. Republicans intend to put in place a nationwide abortion ban.

There is already a bill in the House of Representatives, the Life at Conception Act, that has the support of the majority of the Republican Caucus, including Speaker Mike Johnson. This bill would create something called fetal personhood, requiring full legal protection for any fertilized egg, outlawing abortion and IVF and possibly some contraception.

But a future Trump administration doesn't even need Congress to enact a nationwide ban. The Heritage Foundation is calling for enforcement of a 19th century law that criminalizes the mailing of anything, quote, "designed or intended for procuring an abortion." Now to be clear, many lawyers think this law is unenforceable.

But that will stop Donald Trump from intentionally misapplying the law to get the results his extremist base wants. And it will not stop radical courts from letting him do exactly that. If they succeed, these efforts won't be limited to the States where abortion is already restricted. They will be used to block abortion everywhere, including right here in Massachusetts.

I am furious that millions of women have lost fundamental rights. I am furious that their freedom to make their own decisions has been taken away by a small number of extremists. I am alarmed by what the radical Supreme Court and congressional Republicans are prepared to do to unravel under a future Trump presidency. And that is why we are holding this hearing today, to hear firsthand about the impact of these threats and to discuss what we can do to fight back.

With that, I want to pause and ask my good partner in all kinds of trouble, Senator Markey, if you would like to make some opening remarks.

OPENING STATEMENT OF SENATOR EDWARD J. MARKEY

Senator MARKEY. Thank you, Senator Warren. And thank you so much for your leadership on this issue and so many other issues. This is just such an incredibly important hearing.

And you brought the Massachusetts all-star team together, the national leaders who come from our great State, Attorney General Andrea Campbell, Carol Rose, Dr. Kathryn Fay, and Rebecca Hart Holder. Thank you all so much for appearing today.

On June 24th, 2022, the Supreme Court majority overturned *Roe v. Wade* and placed the bodily autonomy of millions in the United States in immediate jeopardy. Today, that has left us with 21 States that have restricted the right to abortion. And the Supreme Court has two more cases before it that could imperil abortion care nationwide, including here in Massachusetts.

This is due to a majority on the Supreme Court fueled by decades of advocacy by radical Republicans and right-wing extremists. We are in a multigenerational war that is rooted in the Nation's history. In 1927, the Supreme Court in *Buck v. Bell* approved forced sterilization in a decision steeped in ableism.

Federal funds were used to sterilize 100,000 to 150,000 women, half of whom were Black. This would later be called the Mississippi appendectomy. But this cruelty knew no geographic bounds. Across teaching hospitals in New York and here in Boston, this was done to poor Black and Puerto Rican women as practice for medical students here in our city.

Right-wing extremists and radical Republicans aren't just waging a battle against the constitutional right to an abortion. They're in a war against reproductive justice and American freedom. *Roe* provided an opportunity to unwind that history and provide people with true reproductive freedom and choice.

But with *Dobbs*, the Supreme Court majority allowed the roots of injustice to grow deeper in America's soul. *Dobbs* showed right-wing extremists that the playbook in their war on reproductive rights might work.

Their playbook is three steps. First, spread disinformation and hate for people who need care and the providers giving it. Second, use statehouses and local judges to translate the disinformation into laws, stripping people of their right to care and placing providers at risk. And finally, number three, leverage State and local efforts to create national bans on care.

But we won't let them win. American's health and freedom is too important. The right-wing extremist playbook opened the door for abortion bans to steadily creep into threats to in vitro fertilization and the right to contraception.

And today, threats to birth control medication that is essential for American's health care and their economic and social freedom are real and they are imminent. Across the country we are seeing dangerous misinformation about gender-affirming care translating into threats to patients and providers here in Massachusetts. And State and local laws nationwide undermining access to essential care for transgender people.

And now Members of Congress are working relentlessly to place national restrictions on this care. We will show radical Republicans that their playbook will not work. States like Massachusetts will

act as a safe haven with resources and legal protections for patients and providers.

And in Congress, we will work to expand the Supreme Court and confirm judges at every level of the Federal bench who support bodily autonomy, freedom, and justice. We will fight to protect the right to essential health care by law. And we will make radical Republicans reveal what GOP really stands for, Grossly Oppressive Politicians, trying to intervene in the decisions of citizens in our country.

Next week, the U.S. Senate will hold a vote on my bill, the Right to Contraception Act. This bill protects people's right to get birth control and providers' rights to give it. Republicans have blocked Senate passage of this bill by unanimous consent twice, in 2022 and 2023.

But now this is the first time that the bill has come up for an actual vote. And members of the Senate Republicans will be forced to go on the record on what they support, the right to contraception or the right to contravene.

Preserving Americans' health and freedom through the right to contraception should be an easy answer. Radical right-wing extremism has made it hard. The arc of the moral universe will not bend toward justice because of this Supreme Court majority and radical Republicans but in spite of them.

And while extremists are fighting to strip away Americans' freedoms, many of you in this room are righteously fighting for that freedom. You have not given up and neither will we. It is because of you that we will win this fight, and we will fight until we win.

So thank you, Senator Warren. Thank you for conducting this just historically important hearing.

Chair WARREN. Thank you, Senator Markey.

I'd like to introduce our panel today. I want to welcome our witnesses who are here. We have the Honorable Andrea Joy Campbell, Attorney General for the Commonwealth of Massachusetts, Ms. Carol Rose, executive director of the ACLU of Massachusetts, Dr. Kathryn Fay, a fellow with Physicians for Reproductive Health and physician at Brigham and Women's Hospital, and Ms. Rebecca Hart Holder, I moved around as I said that, president of Reproductive Equity Now.

What I'd like to do is have each of you speak for about 5 minutes if you could. And we'll take that as your opening testimony. And perhaps we could start with you, General Campbell.

**STATEMENT OF ANDREA JOY CAMPBELL, ATTORNEY
GENERAL, COMMONWEALTH OF MASSACHUSETTS**

Ms. CAMPBELL. Thank you, Senator Warren, for your leadership. Thank you as well, Senator Markey, for your leadership and, of course, the opportunity to testify before you.

It is no secret how dire the State of reproductive health care access currently is, not only in parts of Massachusetts but, of course, across the country. While I have the honor and I would say the privilege of serving as the Attorney General of Massachusetts which has long been, of course, a beacon in the pursuit of reproductive justice, I recognize that much work remains, not just at the State level but also locally and nationally. I look forward to work-

ing with each of you and, of course, my colleagues across the country who are on the front lines to continue this fight to ensure that people could access the health care they so desperately need. And we will not only fight. We will win.

When the Supreme Court struck down Roe in 2022, it eliminated 50 years of legal precedent that recognized the basic right to abortion. The effects of this decision were immediately felt across the country as so-called trigger bans went into effect, leaving patients suddenly without access to critical and sometimes lifesaving care.

Today, nearly half the States in the country have banned or severely restricted access to abortion care. The result has been devastating, leaving hundreds of thousands of people without access to comprehensive reproductive health care in their States and enforcing people to delay or forego abortions which all too often threatens their health, wellbeing, and financial security. It also exacerbates existing health disparities, disproportionately impacting Black and Brown people, low-income earners, indigenous people, young people, and those living in rural communities. Patients traveling across State lines for care must do so with the knowledge that they may be subject to digital surveillance or even prosecution, not only of themselves but of their friends, their families, and helpers.

Beyond these strains, the expansive scope of some of these abortion bans threatens providers across State lines. Even in Massachusetts, providers face increased risk of civil and criminal liability through bounty hunter schemes and reported travel bans. These schemes also target those who assist patients with accessing abortion care causing significant fear across the country.

To meet this latest cruel moment in our Nation's history, I along with my colleagues in State government and other Attorneys General nationally, we have stepped up to ensure people can continue to access reproductive care in our States. In 2022, in response to Dobbs, my office under now-Governor Healey, of course, worked with our State legislature to codify, enhance protections to reproductive health care broadly as well as gender-affirming care. While this legislation made many significant improvements to our reproductive health care landscape, one of the most impactful was its insurance mandate, requirement coverage for abortion and abortion-related care without cost-sharing.

This legislation also included the Nation's leading abortion care protection law, sometimes referred to as the shield law, that puts in place critical protections for people who provide access or facilitate access to abortion and gender-affirming care here in the Commonwealth. It was the first such law in the country to protect providers licensed and physically present in Massachusetts from the effects of out-of-State abortion bans, regardless of the patient's location at the time the care was provided.

Since we passed our law, six States have passed comparable protections. And these laws have helped thousands of patients access abortion care in these States, including Massachusetts. To operationalize the shield law, my office, in collaboration with the ACLU of Massachusetts are delighted to be here with Carol, Reproductive Equity Now, delighted to be here with Rebecca. The Women's Bar Association, and five incredible law firms launch an Abortion Legal Hotline to provide free, confidential legal advice and re-

sources to health care providers, helpers, and patients seeking care from Massachusetts providers.

While I'm proud of how we in Massachusetts have met this moment, challenges still exist on many fronts. Efforts are ongoing at the State and Federal level as you've described to curb reproductive freedom. Similar battles are also ensuing in courts across the country and not just about abortion care as you also remarked but also about contraceptive access, gender-affirming care, and other private health care concerns.

To confront these threats, I have formed a reproductive justice unit within my office, which focuses on advancing reproductive justice at the State and national level. In its short tenure, this unit has established itself as a trusted partner and resource among community organizations, health care providers, and advocates as well as colleagues across attorney general offices nationally. It has been extremely intersectional in its work, not merely just talking about access to abortion care, maternal health disparities, gender affirming care, and health care generally.

I'm really proud of the work of the unit thus far, including Sapna who's our executive director of that unit. Our collaboration with other AG offices also extends into other avenues. I have been asked and had the immense honor of chairing the Reproductive Rights Working Group within the Democratic Attorneys General Association which will work to develop and defend shield laws through the country, work together, of course, to share information with each other in real time, develop best practices, and work daily to protect individual access to abortion, contraception, and the full spectrum of reproductive health care.

I also continue, of course, to defend State and Federal laws protecting abortion access as you mention, of course, as high as the Supreme Court. We will continue to do our part. This decision has the potential to undermine—I should take a step back.

We've also specifically—and I want to, of course, mention one case, advocated in support of the FDA in the Food and Drug Administration v. Alliance for Hippocratic Medicine, which we all know is a right-wing effort targeting FDA's approval of mifepristone, which is a safe and effective drug that has benefited over 3 million Americans. This decision has the potential to undermine not just FDA's drug approval process in this context but, of course, with respect to almost any other drug we can think of. To ensure that pregnant people continue to access this medicine, I along with 23 other attorneys general filed an amicus brief urging the Supreme Court to reverse the 5th Circuit's decision and to uphold the FDA's decision to permit medically appropriate access to mifepristone.

Since Dobbs, we've also seen renewed efforts to provide fetuses and embryos with personhood status. This legislative session alone, at least 14 States have filed bills to provide fetuses with personhood status. These laws will have many unintended consequences, including effectively eliminating a pregnant person's right to make medical decisions for their own health, mitigating access to assisted reproductive technologies like IVF, and even restricting people's rights to contraceptives.

These types of laws are dangerous, and they're already creating confusion and fear for providers and patients alike. I'm grateful to the providers in Massachusetts. Thank you for your leadership and also for the work that we continue to do across the country.

I have to quickly remark. It was most recently in Texas with other democratic AGs. And we had the honor and privilege of listening to providers, including a mother shared her horrific story of attempting to access care.

This is truly the issue of our generation to solve. And as doom and gloom and dark as it may seem right now in Texas in terms of their rights and frankly lack of access to a legal abortion and other reproductive health care, and the fear and confusion that's being created in that State, I was really proud to listen to these providers who are on the front lines doing the work every single day, including along the border to ensure folks have access to health care. And the fact they're looking to not only Massachusetts but other democratic AGs in other States to help them provide that care.

We will do our part. I'm really delighted to be here with each and every one of you. Thank you again, Senator Markey. And thank you again, Senator Warren, for your leadership in hosting this hearing. Thank you.

Chair WARREN. Thank you, General Campbell.

Ms. Hart Holder.

**STATEMENT OF REBECCA HART HOLDER, PRESIDENT,
REPRODUCTIVE EQUITY NOW**

Ms. HART HOLDER. Thank you, Senators. Thank you for inviting me to testify today.

It's been almost 2 years since Donald Trump's Supreme Court overturned Roe v. Wade and unleashed a public health, racial justice, and gender equity crisis in our country. And I'm going to talk a little bit about the impact here in Massachusetts. We have felt a growing tidal wave in our Commonwealth.

We know that providers have already seen patients from Alabama, Arkansas, Florida, North Carolina, South Carolina, Tennessee, Mississippi, Texas, Wisconsin, Louisiana, Georgia, and the surrounding New England States. And we know anecdotally from colleagues in New Hampshire that they are seeing some patients from Massachusetts because of increased waiting times here. But I do want to remind us all that providers in Massachusetts began seeing patients from out of State well before the Dobbs decision was leaked.

When the Supreme Court failed to enjoin Texas law SB8 in 2021, almost immediately our providers started seeing patients from the southwest. And that's why we joined with our partners at Planned Parenthood and the ACLU of Massachusetts before the Dobbs decision was even leaked to put forward the Beyond Roe agenda for Massachusetts which is a 21-point plan to make clear that we have to go beyond Roe v. Wade to ensure equitable access to reproductive health care for all the people in our State. As Attorney General Campbell said, weeks after Roe fell, the Massachusetts legislature acted boldly to pass a reproductive health care package that included several of our key recommendations in the Beyond Roe

agenda, including Best in the Nation shield law protections for abortion providers and patients and offering a shield for providers offering care via telehealth regardless of the patient's location.

To help providers make sense of how they're protected under the shield law, we partnered with the Massachusetts Attorney General's office, the ACLU of Massachusetts, and five private law firms to launch the abortion legal hotline. It's a free and confidential resource for patients and providers to learn more about their rights to provide or obtain abortion care. And I just want to give you a little insight into the kinds of calls we're getting.

So far, we've gotten over 120 calls to the hotline. And we've helped providers understand how they can provide telehealth abortion care to patients in banned States. We found counsel for people negatively impacted by anti-abortion centers or crisis pregnancy centers. We've helped providers establish long-term relationships with pro bono legal counsel. And we've aided patients seeking abortion care in our State.

But even as people come to Massachusetts for care, people in our State are still being turned away because there's a big difference between the legal right to abortion and a person's ability to actually access that care. Researchers estimated that in the first 4 months post-Dobbs at Planned Parenthood in Massachusetts, there was a 37 percent increase in patients traveling from out of State. That's a number we only expect to grow as we get more data.

That means our clinics are contending with more patients, more appointments. Our funds are paying for more care, and our health system is facing more and more strain. And we know that access deserts exist in our State, particularly in western Massachusetts and southeastern Massachusetts and particularly as applied to in-clinic care.

And as the Attorney General said, we know it disproportionately impacts low-income people, BIPOC communities, LGBTQ people, and people in rural communities. And I want to be clear that travel and transportation barriers persist. And it really highlights the fact that the reproductive justice crisis is also a transit justice crisis and an economic justice crisis.

Restrictions on abortion care throughout pregnancy also continue to send patients out of our State for care. All the while severe maternal morbidity has nearly doubled in Massachusetts from 2011 to 2020 with Black mothers experiencing the worst rates of complications. Abortion access is intrinsically connected to maternal health, and we cannot address these crises in a silo, especially when more than 30 anti-abortion centers throughout Massachusetts continue to spew medical disinformation and dissuade patients from accessing abortion care and put public health at serious risk.

And as anti-abortion extremists become more creative with their attacks by the day, reproductive equity advocates are called to constantly wear new hats. For example, thanks to our work with the ACLU, we are becoming digital privacy experts. But we have to do more to protect abortion providers and patient location data and personal information before it is weaponized by hostile actors in other States. So we have to pass the Location Shield Act here in Massachusetts. And we have to pass Senator Warren's Health and Location Data Protection Act in Congress.

In a post-Roe world, Massachusetts has a critical role to play with strong legislative and executive partners and an unwavering congressional delegation. We've been able to go on offense to protect and expand access to care. We have to work together to ensure that as many patients are able to access care as possible by sharing strategies, policy ideas, and playbooks across State lines in red, blue, and purple States.

Post-Dobbs, Massachusetts and New England can and must lead the way for reproductive equity. And I just want to be clear that you never see a sign that says, ban abortion, in the 21 States that have banned abortion post-Roe. The goal is to ban abortion in all 50 States, and we have to be extremely clear-eyed about this.

But it will not end in abortion. As Senator Markey said, it includes contraception. It includes IVF. And if Donald Trump is elected President this November, they will enforce a national abortion ban.

So our work continues to ensure the full spectrum of reproductive health care for all people. And I'm delighted to be here today with my partners and friends. And thank you for the opportunity to testify, Senators.

Chair WARREN. Thank you very much. Appreciate, Ms. Hart Holder.

Dr. Kathryn Fay.

STATEMENT OF KATHRYN FAY, FELLOW, PHYSICIANS FOR REPRODUCTIVE HEALTH, AND PHYSICIAN, THE BRIGHAM AND WOMEN'S HOSPITAL

Ms. FAY. Thank you. Good afternoon, Senator Warren and Senator Markey. Thank you for holding today's hearing on abortion and for the opportunity to speak to you about access to this critical care.

My name is Dr. Kathryn Fay. I use she/her pronouns. I'm a board certified, fellowship trained obstetrician, gynecologist specializing in family planning.

I provide full spectrum sexual and reproductive health care, including abortion. And like many in medicine, I've completed my training in other States, in my case, Illinois and Utah. Now as a resident of Massachusetts, I bring a firsthand account of the ways that State policy supports or obstructs quality health care.

I'm here today as a fellow with the Physicians for Reproductive Health, a network of physicians from across the country working to improve access to comprehensive sexual and reproductive health and as a physician at the Brigham and Women's Hospital. In Massachusetts, I'm able to provide care based on what patients and I decide together as safest and healthiest for their lives using my clinical training and following best medical practices without political interference. Massachusetts has been and continues to be a leader for access to reproductive health care.

And we've heard today about legislation, both before and after Dobbs has been enacted. And I highlight this because it's in contrast to my experience working in Utah which prior to Dobbs employed numerous tactics to hinder and stigmatize those seeking abortion care policies which have grown only more extreme in the

interim. I'm grateful to live and practice medicine in a State that's supports the broad scope of sexual and reproductive health care.

In the past few months, I've cared for people who needed life-saving abortion to be in treatment for a new cancer diagnosis and people who needed an abortion in the setting of a life-threatening hemorrhage. I've cared for people who sought abortions in the setting of fetal anomalies, abusive partners, housing instability, sexual assault, contraceptive failure. The indications are endless and all of them valid.

However, the Supreme Court's decision in *Dobbs* has wreaked havoc on the lives of people across our country who are seeking care for similar reasons. As States continue to restrict abortion access, patients are having to travel farther and farther distances, putting their health and lives at risk. I have cared for people who traveled long distances to Massachusetts with ruptured membranes, a diagnosis for which standard medical care is immediate intervention with an abortion because of the threat of sepsis and hemorrhage.

Overall, there is an estimated 4,500 more abortions provided in the Massachusetts formal health care system in 2023 compared to 2020. Last year, 1 in 15 people who received abortions in Massachusetts were from out of State. For these patients who have the resources to travel, at the very least, they're being forced to leave their support systems and communities. I think about all the people who are unable to make the expensive, complex, risk-laden journey to essential care.

People have been forced to remain pregnant since *Dobbs*, and there are strong data to show the enduring harms of being denied a wanted abortion. Everyone deserves access to care in their community in a manner that is best for them with people they trust. The ripple effects of abortion bans will continue to impact other aspects of essential care such as miscarriage care.

Further, medical trainees and clinicians are reconsidering their choice of institutions because of hostile State laws, a finding that extend beyond the specializing in obstetrics and gynecology. The quality of care in these States will be jeopardized for generations to come through, for example, the creation of maternity care deserts evidenced in Idaho which has already experienced closure of labor and delivery units from short staffing.

Additional changes to the abortion landscape will happen this summer when the Supreme Court is said to issue decisions on two landmark cases. The court's decision and *FDA v. AHM* will impact access to mifepristone, not only affecting pregnant people's access to abortion care but also early pregnancy loss and stillbirth management. Additionally, the Supreme Court is considering whether EMTALA preempts State abortion bans.

People should have access to abortion care without barriers or delay, of course including in emergency circumstances. Likewise, clinicians should be able to practice without performing the calculus of what State law permits and instead focus on applying their medical training to provide the necessary care that is right for the patient. Abortion restrictions only serve to burden and endanger patients and clinicians. They do not make abortion any safer.

These restrictions represent a national movement that threatens care. If not just for the general moral good, I am here today advocating for the status of care in Massachusetts. Since Roe, there has been steady chipping away of sexual and reproductive rights that has jeopardized reproductive justice and health for all.

Dobbs was a clear and devastating loss. But it does not represent an end point. I worry about the loss of mifepristone, a Federal abortion ban, and threats to contraception and assisted reproductive technology, all hazards that will transcend State lines.

Abortion without stipulation is lifesaving, necessary, compassionate, essential health care. Thank you for having me here today. I look forward to your questions.

Chair WARREN. Thank you, Dr. Fay.

And Ms. Rose.

STATEMENT OF CAROL ROSE, EXECUTIVE DIRECTOR, ACLU OF MASSACHUSETTS

Ms. ROSE. Thank you, Senators, for your leadership and for holding this incredibly important hearing and for inviting me to testify. Since the Supreme Court overturned Roe v. Wade, as we've heard, Massachusetts elected leaders at every level of Government have taken bold and timely steps to protect access to reproductive health care in our Commonwealth. Just a month after the Dobbs decision, State lawmakers passed the shield law that we talked about to offer legal protections to abortion providers, patients, and helpers in our State that also cover gender-affirming care.

And as you've heard, Attorney General Campbell worked with a number of us in groups to help launch the abortion legal hotline to help people understand their rights. And then in response to the Texas lower court decision and the challenge mifepristone access nationwide, Governor Maura Healey acted to ensure that providers can continue to dispense medication abortion in Massachusetts. And now the legislature we hope will be passing the Location Shield Act through the legislature to protect the privacy of people seeking health care here in Massachusetts.

But while Massachusetts lawmakers including you have been shoring up protections for reproductive justice in our State, we are not safe. Aggressive anti-abortion efforts at the Federal level threaten the rights of all people, including the people of Massachusetts. Efforts to ban abortion nationwide directly threaten core Massachusetts values.

It threatens the policies that have been carefully considered and enacted by our States elected leaders. And most importantly, it threatens the fundamental access to reproductive health care and bodily integrity for the people of our Commonwealth. Among the tactics that are being pushed by extremists in Congress right now are efforts to impose a 15-week abortion ban.

And if enacted, this ban would make all abortions in every State, including Massachusetts, illegal after 15 weeks with only limited exceptions and would subject providers to criminal penalties for failure to comply. We need only look to the States where these bans have already been imposed since Roe's overturn to witness the chaos and the suffering that ensues from such a ban. Hundreds of

clinics have been forced to close, leaving millions of people without access to reproductive health care.

Patients have been denied, critically needed emergency abortion care, endangering their lives and their health. And the harms of forced pregnancies, of course, as others have said, fall disproportionately on people from communities of color, people with low incomes, immigrants, young people, LGBTQ people, and people with disabilities. It's simply cruel and unfair to expect survivors of sexual assault or incest or someone in the middle of a medical emergency to beg for permission to access the medical care that they need.

Extremists also are pushing radical Federal legislation to give legal rights to embryos and fetuses. Now the tactic isn't new. Anti-abortion politicians have long been building these personhood language into their draconian State laws.

But now as you know, extremists in Congress are trying to impose this radical idea on every State by pushing the so-called Life at Conception Act with the intent to make all abortions illegal nationwide, including here in Massachusetts. As is often true of policies that ban or restrict abortions, these so-called personhood laws also threaten other forms of reproductive health here, including access to contraception, infertility treatments, miscarriage and still-birth care, purporting to make embryos and fertilized eggs "people", quote-unquote, under law cause chaos and confusion that would disrupt access to many kinds of essential health care in the Commonwealth and nationwide. The strategy to ban abortion in all 50 States doesn't end with proposed Federal legislation.

These extremist politicians also want to misuse a 150-year-old law known as the Comstock Act to circumvent Congress and to engineer a backdoor national abortion ban. The Comstock Act was passed in 1873. That was 50 years before women even had the right to vote.

This is a Victorian anti-vice measure that was anti-sex in any form. And it was adopted to, quote, "prevent the males from being used to corrupt public morals," end quote. Now despite this, some people are now trying to use the Comstock Act as a backdoor access to try to achieve bans on mailing of any kind of mifepristone or other drugs that would be used for abortion care.

But this view of the Comstock Act is simply wrong as a matter of law. The U.S. Department of Justice, Congress, the U.S. Postal Service, in every appeals court that has considered the issue up till now agree the Comstock Act does not prohibit the mailing or the delivery or the receipt by mail of mifepristone or misoprostol where the sender does not intend that the recipient of the drug used them lawfully. And there are many uses, including abortion care for which these medicines can be used.

There are many ways in which recipients in every State are using these drugs without violating State law. And the mere mailing of drugs to a particular jurisdiction is legally an insufficient basis for concluding that the center intends them to be used unlawfully. Massachusetts leaders have time and again upheld the will of the voters by taking bold actions to protect the bodily integrity of our people.

We applaud their and your tireless efforts to ensure a future where every person in every State can access reproductive health care that they need when they need it. Thank you. And I'll look forward to hearing your questions.

Chair WARREN. Thank you, Ms. Rose. I want to start with our response to losing *Roe v. Wade*, our response here in Massachusetts. But to do that, I want to call out two of our State representatives who are here right now, Vanna Howard and Marjorie Decker.

If you both just stand up so everyone gets a chance to see you. These are women who help protect abortion at the State level here in Massachusetts and expand that protection. And we are very grateful to you for that.

So 2 years ago in an instant, *Roe v. Wade* disappeared. Republican politicians had schemed for decades to try to force their unpopular agenda on the rest of America. They decided that Government, not the person who is pregnant but Government should make a private health care decision and deny women the right to control their own bodies and their own futures.

After the decision, dozens of Republican State legislatures raced to ban or restrict access to abortions. Several States made it illegal to give, receive, or help another person get vital reproductive care. But Massachusetts stood up to protect reproductive freedom.

The State led by two of the women who are here today passed a groundbreaking shield law to protect health care providers from unjust investigations and legal actions by anti-abortion States and advocates. And that was just the start. I'm so glad that Attorney General Campbell is with us today to talk about Massachusetts' leadership on reproductive rights.

So let's start with the shield law that Massachusetts adopted in 2022. Attorney General Campbell, how does the shield law protect reproductive freedom?

Ms. CAMPBELL. Thank you, Senator Warren. I too want to that the leadership and, of course, those in the legislature for their leadership in quickly passing this and again making our State leadership historic, right? We always tend to be the first. And in this case, that wasn't any different. And since, other States have followed.

And what we saw, of course, in the wake of the *Dobbs* decision and as abortion and gender-affirming care ban started going into effect across the country, as my office and team members, of course, heard from providers who were here seeking to help about the need for affirmative protections from potential cross border effects of these bans. And so the law is a good one and one that other States are looking to model. And I'll just share a few points that I think are worth highlighting about the shield law that are impactful.

This law, it protects licensed providers who provide care in Massachusetts by a few different things. One is prohibiting in-State provider licensing bodies from imposing consequences for violating another State's abortion ban. It bars adverse impacts to medical malpractice insurance premiums based on actual or perceived liability for violations of another State's abortion ban which is really important.

It creates a new cause of action under our civil rights statute to counteract any out-of-State abusive litigation concerning the provision of abortion care. It also does other things that are equally important. It prohibits law enforcement from cooperating in out-of-State investigations concerning those who may be providing abortion care or gender-affirming care.

And I'm going to continue, and I think we all have, lifting up gender-affirming care which is also sadly under threat in this country. It also prevents our State courts from enforcing provisions like subpoenas or other legal processes associated with abortion or gender-affirming care and investigations or litigations. It bars extradition in criminal cases which we know is important as we see more States looking to criminalize folks in this context.

But it bars extradition in criminal cases involving protected reproductive health care, including abortion and gender-affirming care. And all of these protections apply not just to providers but those who we deem to be helpers regardless of the patient's location at the time the care was provided which is really important, meaning that providers are protected when they interact with a patient located in a State that has an existing abortion ban. And hence why that hotline is also really important—

Chair WARREN. We're going to come to that.

Ms. CAMPBELL. —for folks to be able to call that too. And I know there's supposed to be time constraints which I am not looking at any of those.

Chair WARREN. That's OK.

Ms. CAMPBELL. I see this thing, and I guess I should. But those are just some of these examples.

Chair WARREN. So basically what Massachusetts did is the legislature said, let's figure out every way we can to protect those involved in providing abortion care or gender affirming care and make sure that no matter what happens in another State that we will still protect anyone providing that care from here in Massachusetts and anyone. We will protect their license. We will protect them under insurance policies. We will protect them from attacks from other States and other State governments. Fair enough?

And the benefit of this is Massachusetts went first. New York, Vermont, Colorado, Washington State, then followed past similar laws. And because of shield laws like ours, over 40,000 people living in anti-choice States have been able to access abortion with the help of providers who are practicing in other States.

Now Massachusetts did not stop there. And this is where I want to give special thanks to our Attorney General. In 2023, Attorney General Campbell and leaders from our legal community launched a hotline.

You mentioned it during your testimony. And the idea was to give patients and providers free confidential legal advice about abortion access. Can you just dig in a little deeper on that and explain how the hotline is helpful to those who call in?

Ms. CAMPBELL. Absolutely. One, I want to just say the number because I think we should say it.

Chair WARREN. Good.

Ms. CAMPBELL. It's 833-309-6301 which is really important. And it's available not just to folks, of course, who are in Massachusetts

but folks who are outside of Massachusetts. And I invite my other panelists to also chime in.

But it's free. It's confidential. So it allows folks in a landscape that is changing every single day. It seems like every moment to get up-to-date information as to what their rights are here in Massachusetts, what's available to them, and possibly also what is happening in the State they may be calling from or somewhere else.

And the purpose of that was to allow folks to get real information in real time. But I would also say for folks who might be in some dire circumstances medically to be able to call a hotline or someone else to get information to help them in real time access to critical care they may need, whether it's in the context of abortion care, gender-affirming care, or something else within the spectrum of care that is critically important.

Chair WARREN. OK. So let me follow up with that. Ms. Hart Holder, you lead Reproductive Equity Now. This is the organization that actually runs the hotline. And you're telling a story in your testimony a little bit about who comes to Massachusetts for help.

Can you talk just a little bit more about who's calling in to the hotline and what it is that they're telling you? You're on the front line. You see this every day.

Ms. HART HOLDER. Yeah, thank you, Senator Warren. So I want to start by kind of saying confusion is the point here. And that is what we are hearing on the hotline overwhelmingly from patients, whether they're in Massachusetts or whether they're looking to access care in Massachusetts, whether that's via telehealth or they are from Massachusetts originally but they live in Texas. Or their best friend lives here and is going to get them on an airplane to help them out.

It's just tremendous confusion about what is legal and what is not legal. So a lot of the calls that we get are just simply is it legal to get an abortion in Massachusetts? Where can I find care? I want to make sure I'm not going to an anti-abortion center or a crisis pregnancy center.

And that has been, I think, a tremendous theme that we have heard over and over. I also want to note that we get a lot of calls from within New England because we are small States. Our borders are porous.

Maybe you live on the border and it is easier for you to go grocery shopping in Connecticut than it is in Massachusetts. And it might be easier to access care in Connecticut than it is in Massachusetts just because of where you live geographically. So one of the things that we can do is help point you to the closest provider.

The other thing that is incredibly important is that as patients travel from States with hostile legislatures, our hotline has really served as a clearinghouse for providers to understand what their risk is. And I really think it's so important and I can't say strongly enough how important it is to have some of the best lawyers in Massachusetts through the private bar and the leaders at the ACLU of Massachusetts as backstops for our providers. To know that they are there and they are offering that pro bono legal counsel is incredibly important.

A lot of the calls that we've gotten are about risk mitigation. If I want to send—if I want to be a provider that is sending medica-

tion out of State to patients in banned States, how do I mitigate my risk? That's an incredibly important role that the hotline has provided.

And I do want to say every single month the number of pills that are mailed—abortion pills that are mailed across State lines—increases. And anecdotally from conversations that I'm having with providers who are operating thanks to the protection of the shield law, we are providing a significant proportion of that medication. So this hotline and our providers who have stepped up and who are so incredibly brave are making a real impact in the lives of people in banned States.

Chair WARREN. So thank you very much. I'm always proud to be from Massachusetts but never more so than when I talk to people who are on the front lines in this fight. Thank you. Let's go to Senator Markey for some questions.

Senator MARKEY. Beautiful.

Chair WARREN. And then I'll come back for some more.

Senator MARKEY. Thank you. There are some people who would argue that State protections for abortion are enough. Each State should be able to make up their own mind, each State legislature.

And the Massachusetts legislature was the national leader in response to Dobbs. Massachusetts passed the ROE Act last year to protect patients in several of those workers, to providers who now work in this area with us here today. We thank you for your work to provide a hotline to support people's right to an abortion.

And in the days after Dobbs, people in the Commonwealth locked arms to fend off attacks on the right to abortion. And for that, I think we're very proud. But that unfortunately does not make us immune to the national threats with which we face. So Attorney General Campbell, when U.S. District Judge Matthew Kacsmaryk appointed by President Donald Trump decided that the Food and Drug Administration didn't appropriately approve safe evidence-based medication, abortion drugs, what kind of threat did that unleash on the right to abortion across our whole country?

Ms. CAMPBELL. Thank you, Senator Markey. And we can't stress enough. I think Rebecca spoke to this a little bit. Access to a medication abortion is the top issue that people are talking about because it is effective. It is safe. And it is the tool that is easiest to provide care in the context of what we're seeing across the country, including in Texas where I just was and, of course, heard stories of folks who needed this care and how they could access care outside of Texas and make it easy is challenging.

And so this is a tool that's safe and effective and allows for greater accessibility. I just want to also stress decades of research—not just summaries, but decades of research have established this as being safe and effective, safer than many commonly used prescribed drugs. It has been used by millions of Americans and accounts for 63 percent of abortions in the United States which I think are figures that are often lost sometimes in the conversation or with average folks.

And so these anti-science, right-wing attacks not just to push a national ban but to attack these essential medications. We're seeing, of course, as a part of the larger effort to dismantle a system that we know is working and to provide critical health care. What

we're doing—and I'll stress obviously all of us working in partnership at every level of Government but particularly AGs in this moment in time and democratic AGs across this country.

And I have to look at my colleagues because we will not be effective in this fight if we don't work across State lines. And we're seeing that as being extremely important. But as we do this work, we've done a few things. We worked extensively together to fight back against legal attacks on medication abortion.

For example, we joined an amicus brief in the Alliance case as I mentioned that argues in support of the FDA and Danco pharmaceuticals, which manufactures, of course, mifepristone. We're working hard to implement the shield law which I think is equally important to this conversation, particularly as folks look to criminalize just the mailing process of medications. So our shield laws are going to become even more important in helping other States draft those and pass those will be important.

And then one last piece I want to mention is telehealth abortions which I think was hinted at by so many folks on the panel but now account for nearly one in five abortions in the U.S. And nearly 8,000 per month are provided as a result of laws like ours. And so these tools are effective and will work.

So in the face of right-wing extremists including right-wing judges who are politicizing our courts at every level, we're going to continue to step up and work in partnership. And those are just some examples—

Senator MARKEY. Thank you so much.

Ms. CAMPBELL. —of how we do it.

Senator MARKEY. And Ms. Hart Holder, Republicans have introduced a bill to ban abortion nationally at 15 weeks. If Donald Trump is President and they control the House and the Senate, what impact would that have on patients here in Massachusetts?

Ms. HART HOLDER. A ban is a ban is a ban. A 15-week ban will impact the ability of patients to access care post-15 weeks here in Massachusetts. But it's not just that.

It means that it will impact people who are coming here, make our wait times longer, make it more difficult for folks who travel here and for people who live here to access care. And I just want to really say how incredibly outrageous it is that Mr. Trump and other Republicans think that this is some kind of a compromise. There is not compromising on our bodies.

There is no compromising on our deeply personal decisions about if, when, and how to become a parent. So I also want to be really clear that it is a farce to think that is the end of what they will do. There are no anti-abortion forces who just simply want a 15-week ban.

They want to fully ban abortion care with no exceptions. And we have to be very clear-eyed that that is just an opening salvo. That is a test to see if they can do it because they will go farther and the risk is dire in a Trump administration.

Senator MARKEY. Thank you. And if I may, Ms. Rose, Idaho has enacted a law that prohibited school-based clinics from abortion-related activities, including dispensing emergency contraception. Emergency contraception like Plan B is not abortion. So how are

we seeing these overbroad abortion bans translating into threats to other reproductive care?

Ms. ROSE. That's right, Senator. They are trying to—they're not stopping at abortion. This isn't even about abortion. This is about control over people's bodies.

It's about the Government having the right to what kind of care you're going to achieve. If they are able to do this, Plan B is not abortion medicine. It's a contraceptive medicine.

And they are trying to go after contraception. They're trying to go after all aspects of our bodily autonomy and our bodily integrity. And that's why I'm so glad that you are pushing this Right to Contraception Act that's going to be voted on I think next week because it's important that we see the broader picture, whether it's maternal child health care, access to abortion and gender-affirming care, access to contraception, IVF.

All of these things are interrelated. And they won't stop at just, say, a 15-week abortion ban. They're going to try to do whatever they can to try to permit people in the Government to determine our fate and our futures.

Senator MARKEY. Thank you.

Chair WARREN. Thank you, Senator Markey. And thank you, Ms. Rose, for that. So I think the point that all of you are driving toward is that no one is stopping with just overturning Roe. No one is stopping with just—there are 21 States that have restricted abortion, that this is a juggernaut that's moving and that it is urgent for us to fight back.

So I want to talk about one of the pieces that the right-wing extremists have advanced. And that is the so-called Life at Conception Act. This is backed by a majority of Republicans in the House of Representatives. They are cosponsors, a majority of them, on this bill, including Speaker of the House Mike Johnson. So Ms. Rose, what would the Life at Conception Act mean for a woman seeking an abortion right here in Massachusetts if Life at Conception became law?

Ms. ROSE. Well, if Life at Conception becomes law, then a whole lot of other things are going to become illegal. That includes contraception, IVF, not just abortion care.

Chair WARREN. But what does that do to abortion care? If you do the Life at Conception, can you do abortion care here—

Ms. ROSE. No.

Chair WARREN. —in Massachusetts? No.

Ms. ROSE. Right. Not at all.

Chair WARREN. It's over at that point.

Ms. ROSE. Then it's over.

Chair WARREN. Yeah.

Ms. ROSE. And I think it's really important to recognize that the implications aren't only on all of us and our bodily integrity but also on people who need medical care for other reasons. And I'll defer to the doctor on this. But in addition to banning types of birth control and IVF treatment, it would ban research that relies on stem cells.

It could impact therapies for disabilities for people seeking cures for various diseases. It could deny access to cancer or other treatments if a patient is pregnant. And it would just impact thousands

of laws in so many different ways that we can imagine from interrogating criminalizing people for their actions while they're pregnant, to creating health and legal nightmares for anything when property and inheritance rights are granted.

And who can file a lawsuit? So it's this notion that life begins at the moment of fertilization. It's really dramatic and huge and sweeping and would create tremendous chaos, even more than we have right now since Roe was overturned.

Chair WARREN. OK. So we currently have a bill pending in the House of Representatives signed on to by a majority of Republicans already, including the Speaker of the House, that would not just ban abortion here in Massachusetts as well as every other State in the Nation but also have these additional impacts throughout our health care system. Dr. Fay, could you just say a word to explain to everyone why this Life at Conception bill if it were turned into law could make some forms of contraception illegal?

Ms. FAY. Sure. Different forms of contraception have different mechanisms of action. And if life were to begin at conception, it would depend on the definition that someone is using as their own personal philosophical beliefs of when fertilization and what significance that has to folks. And that may interfere with what forms of contraception are acceptable depending on what point its contraceptive effect is implicated.

Chair WARREN. So not to put a too fine a point on this. But for example, as I understand it, an IUD, an egg may be fertilized. It simply never implants. And under a Life at Conception law, would IUDs potentially be banned across the country?

Ms. FAY. That would definitely be a concern. IUDs function to incompletely suppress ovulation but also can have a post-fertilization effect in which case we would worry that one of these essential tools that we have as clinicians and supporting people's contraceptive goals would be eliminated.

Chair WARREN. OK. And why would a Life at Conception law interfere with a couple's ability, for example, to use IVF in order to have a baby that they very much want?

Ms. FAY. Yeah, there would be scenarios that don't make medical sense where personhood or life is attributed to, for example, stored embryos that people are using as part of their family building goals.

Chair WARREN. So what I'm understanding here is that we have this bill pending in the House of Representatives right now that would ban—effectively ban abortions, some forms of contraception, IVF, not just in States that signed on but in all States. So Attorney General Campbell, but we have protected abortion. Would that be enough to protect us from a Life at Conception law?

Ms. CAMPBELL. No.

Chair WARREN. Why not?

Ms. CAMPBELL. Well, one, certain laws trump our laws. So it doesn't really matter at some level what we do within the State. And obviously, that's not finite in every context.

But I think you raise a point that everyone should be mindful of as we talk about access to reproductive health care and the full spectrum of care. It isn't just abortion care. It's contraception. It's birth control.

If you are pregnant and you go to a screening, for example, and you get information that is not what you want to hear about your pregnancy and you may choose in consultation with your provider to make a decision about continuing with your pregnancy. In some States, you're not allowed to proceed as you and your family or you or the mother and the husband or partner may want to proceed. So everyone should care about this issue because you never know, particularly in the future for mothers or those who choose to at some point become pregnant what your reproductive journey will be.

And so all of these threats, whether at State level, national level, all interfere with a very personal decision and will ultimately become a very personal process for you and your family. And we're seeing the barriers just continue to stack up. And even for progressive States like Massachusetts, we are also in trouble if some of these national measures proceed.

Chair WARREN. I think you put it very powerfully. I want to hold in my heart everyone who needs reproductive care, whether it's IVF that they're looking for, contraception, if they're looking for abortion care at any point as you put it in the reproductive care journey. And I am very grateful to our legislature in Massachusetts.

I'm grateful to our Attorney General. But if our Federal Government steps out and passes a law like this Life at Conception law, all of our work goes away. And that means we need to be ringing not just a few alarm bells. We need to ring every alarm bell possible. Thank you. I appreciate it, Attorney General. Senator Markey, back to you.

Senator MARKEY. Thank you. Attorney General Campbell, Texas received permission from the Trump administration to exclude emergency contraception from Medicaid funded family planning programs. Why is it important to protect and guarantee access to contraception, especially when we see limits to coverage for our contraception disproportionately impact access for low-income women and women of color in our country? We know those discriminatory practices continue to exist in our country. So why is it important to keep that access open?

Ms. CAMPBELL. Well, first of all, I think we've all stressed this. Thank you for your leadership and, of course, the vote that is coming up next week with respect to your legislation. I think we all have been attempting to frame—and I want to move away even from talking points, right, why it's important for folks to look at the full spectrum of care.

You don't know what you may need at any given particular time until you go in and consult a medical professional. And in that personal conversation and engagement, you and your doctor choose to make a decision about your reproductive health journey or any other health journey for that matter. And so access to these medications and many of these, of course, we know from decades of research and personal stories to be safe, to be effective is essential as we look at the full spectrum of care.

And it is sadly in some States that we're seeing not only barriers to access in this are outright banned from usage, we're also seeing crisis pregnancy centers or other entities being cropped up. And in

Texas since we're speaking of Texas, these entities funded by the State itself that is providing confusion and misinformation to folks as they're seeking care along the spectrum. And we know sadly whether it's women or people of color or Black women or Brown women or poor folks who have disproportionately over the course of centuries been blocked access to this critical care.

This is a fight that we should all pay attention to. That's one piece. And whether it's happening within a particular State or the national level, when we choose to make these decisions with our doctors, no one—no third party whether it's the Government or some individual somewhere—should stand in the way of us being able to do what we need for our own health.

Senator MARKEY. Great. Thank you. And Ms. Holder, when former President Donald Trump was asked whether he supports restrictions on a person's right to contraception, he said, we're looking at that. We're looking at that. So do you think we should be worried if Donald Trump is President again and he's thinking about whether or not access to contraception is something that should be legal across the country? Is this something that should be at the top of the list of issues for people all across the country?

Ms. HART HOLDER. Yes. As the great Maya Angelou says, when someone shows you who they are, you should believe them. Donald Trump is showing us exactly who he is by essentially refusing to answer that question and sort of giving us a hat tip to the fact that they're looking at it. If you look at Project 2025 which is a 900-page The Heritage Foundation playbook about what the first year of a Trump administration would look like, they are very clear that they are trying to conflate abortion with contraception.

They are not the same thing. They know that contraception is extraordinarily popular nationwide. They know that if they try to ban contraception, they will lose in the court of public opinion.

So they're trying to make us think that putting an IUD in is abortion or using emergency contraception is abortion. That is not backed up by science or data or any real doctor that any of us have ever spoken to. So it's really important that again when we think about—as Senator Warren said to me earlier, when we think about the States as laboratories of democracy which certainly Massachusetts is, Louisiana is just as much a laboratory for anti-abortion laws that are going to be a template for the rest of the Nation and eventually a Federal law. We have to be really clear-eyed that Donald Trump wants to come after contraception.

Senator MARKEY. Right. And the correct answer is Donald Trump. No, there should be no restrictions on the access to contraception in our country. And I think he's going to be taught that lesson this year. I think it's coming his way.

And just one final question on this round if I may. Abortion is part of a broader array of reproductive care. And all reproductive care is essential to people's health. Millions of people across the country rely upon reproductive care like birth control for their social and economic freedom and to treat health conditions like polycystic ovarian syndrome or endometriosis or to prevent cancer. Dr. Fay, please describe why access to contraception is absolutely essential to your patients.

Ms. FAY. Sure. Thank you. So contraception is one of our primary tools in helping people decide if and when they want to have a family. But also, as you said, the majority of contraceptive users have used contraception for its non-contraceptive benefit.

So to help with things like painful or heavy menses or to treat pre-cancerous conditions. And so loss of access to contraception would, of course, affect both of those purposes for use. And further, if there is restriction in terms of what options there are for contraception, I have folks coming to me with a variety of indications or comorbidities or preferences that would already narrow the scope of options available to them. And so I need the entire suite of contraceptive methods available to help find the best fit for my patients and do right by them.

Senator MARKEY. Thank you. Thank you, Senator Warren.

Chair WARREN. Thank you. So it's pretty clear that Republicans are openly marching toward a nationwide abortion ban. And despite what Donald Trump says about abortion can be decided State by State, his Republican cronies in Congress have already introduced legislation to ban abortions at 15 weeks.

And Trump has refused to say that he would veto such a ban. So I just want to talk for a minute because I really want to talk about the pieces of legislation that's already out there for us to see. They're not just a dream. They're not just someone's imaginary concerns. These are things that people are already signing on to and vetting and trying to move forward. So Dr. Fay, could you just say a little bit more about what a 15-week nationwide abortion ban would mean for patients right here in Massachusetts?

Ms. FAY. Sure. The number 15 weeks doesn't correlate to anything clinically significant. It doesn't have a medical meaning. And there are people who come to me with innumerable reasons for needing abortion care after 15 weeks which they would be denied.

And there's excellent data to show what happens when people are denied a wanted abortion, including enduring financial hardship, increased risk of physical violence in a setting of intimate partner violence, and health consequences. In fact, we know that places with the most restrictive abortion policies are also the places with the worst figures around maternal morbidity and mortality. So surely such a ban would contribute or exacerbate what we already recognize is a national health crisis.

Chair WARREN. So in other words, if we had a 15-week nationwide abortion ban, maternal mortality rates would likely increase?

Ms. FAY. There is a very short line that I think would be drawn between those two events.

Chair WARREN. So this would—a 15-week abortion—nationwide abortion ban would force women to carry pregnancies to term even if it had serious consequences to their health. Now many supporters say, oh, but there are exceptions. We read this all the time.

There are exceptions in the case of the necessary save a life of a pregnant woman or in the case of rape or incest. Dr. Fay, you're out there on the front lines practicing OB/GYN. What does it mean to have exceptions? Is that good enough? Does that provide meaningful access for people in trouble?

Ms. FAY. No, abortion bans do not work. Such legislation is not compatible with medical practice. No list of exceptions would ever

be sufficient to substitute the nuance that's needed to practice good medical care.

Chair WARREN. OK. So you're telling me it's hard to figure out where the lines are. What's the consequence when it's hard to figure out where the lines are? Ms. Hart Holder?

Ms. HART HOLDER. The consequence is that providers are afraid to offer care. And in some States where there are criminal penalties, they're afraid to provide care because they can go to jail. So that means that people don't get that care.

We're seeing this in Texas. We're seeing it in Tennessee. There are very brave women coming forward saying that for whatever reason, they needed abortion care either later in pregnancy or because they fell under some kind of an exception in a State that has an outright ban. And they simply could not get that care because the exceptions were so opaque that providers couldn't actually operate them. What it tells us is exceptions just don't work.

Chair WARREN. And Dr. Fay, you're shaking your head. I take it you agree with that?

Ms. FAY. Definitely. I think such exceptions work in effect to just cause moral distress for clinicians in watching to wait if someone might become sick enough. But really the lack of clarity and the ask of interpreting something with such subjectivity is paralyzing. And people are putting and pitting their risk of criminalization or professional good standing against their good medical sense and obligation and duty to patients.

Chair WARREN. Right. So instead of a doctor and a patient in an examining room, it's a doctor, patient, a legislator, and a lawyer—

Ms. FAY. Yes.

Chair WARREN. —in order to make what is supposed to be a health care decision—

Ms. FAY. Yes.

Chair WARREN. —that should belong to the person whose health is most affected. We've talked about—Yes, please. Go ahead—

Ms. CAMPBELL. I just want to quickly—

Chair WARREN. —Attorney General Campbell.

Ms. CAMPBELL. I think all of us are putting ourselves in spaces to hear real stories from real folks who are navigating this, whether it's providers in real fear of going to jail and having to decide if you provide that critical care or not and then hearing from patients. And most recently, a group of Democratic AGs heard from a patient who sadly got a diagnosis during her pregnancy and this was her second pregnancy after 20 weeks and wanted to make the decision with her husband that they did not want to carry that baby to term. And this is in Texas and sadly couldn't get any care in Texas so had fortunately the resources to go elsewhere to get that care.

But what she so remarkably spoke of was her privilege as a white woman who had access to these resources and another mother who was a mother of color who did not. And sadly, that mother could not go to another State for care. She couldn't afford it, including the childcare for her current child.

And so she had to carry her baby to term knowing that the—I think she knew it would be a girl, the girl that she would birth ultimately would die. And sure enough, within a short period of time after carrying the baby to term, unable to get the care she so desperately needed, carried the baby to term, gave birth I believe at her home only to hold that child and to watch that child die in her arms. That's the state of affairs right now in this country, the United States of America.

And as one AG remarked, anywhere else, this would be a human rights violation. So that's the magnitude of what we're all hearing and dealing with. And it's very traumatic for each of us as we do this work.

But I just thought it was so important as we talk about the fear of providers and what folks on the front lines are seeing and feeling. There's nothing like hearing these stories in real time from actual folks who have experienced this and had the courage to come forward to share their testimony on the very points that you're trying to make that we're all in trouble when we say, oh, there's just some exceptions. No, they don't work. They're not effective. They're not impactful because they are not flexible to deal with what a patient and a provider are dealing with in that moment in time.

Chair WARREN. Right. And the point you make which is so powerful, those with the fewest resources——

Ms. CAMPBELL. That's right.

Chair WARREN. ——will be hit the hardest. Those who have the most resources may be able to navigate through. But those——

Ms. CAMPBELL. Exacerbating existing disparities.

Chair WARREN. ——who can't get out of State, those who can't get help, those who don't have lawyers——

Ms. CAMPBELL. That's right.

Chair WARREN. ——standing beside them and lots to back them up are the ones who will suffer most from this. We have talked about two pending bills that Republicans are already pushing forward. I want to mention one last thing and it's the last question I'll have today and that is even if the Republicans can't take the House and the Senate in order to pass something through Congress, if Donald Trump were in the White House, what could be the consequences for reproductive care?

And Ms. Rose, you talked about The Heritage Foundation and how it is pushing the idea that it might be possible to use an old law from the 1800s, the Comstock Act, in order to restrict abortion nationwide. You've spoken to that. So I want to ask Ms. Hart Holder, you are now on the front lines trying to make sure that there is access to abortion here in Massachusetts. If Donald Trump were in the White House and he follows the advice of The Heritage Foundation and satisfies his extremist base, what would be the consequence here in Massachusetts?

Ms. HART HOLDER. Yeah, if he attempts to resurrect the Comstock Act, which as Carol pointed out is a zombie law from 1873 that should frankly stay dead and it is shameful that the Republicans are trying to resurrect it. And it really goes to show you that they will use any means necessary to ban abortion. If he does that, there are kind of three sets of major consequences.

One, it will impact our ability to mail medication abortion across State lines. So those 8,000 pills a month that are getting to people in banned States, that ends. It will impact the ability of pharmaceutical companies to mail medication abortion into States like Massachusetts that have codified the right to choose.

Chair WARREN. So let me just make sure I'm following you here. First, we can't help others.

Ms. HART HOLDER. Right.

Chair WARREN. But second, we can't even help ourselves—

Ms. HART HOLDER. We can't help ourselves.

Chair WARREN. —because our pharmacies won't be able to get the mifepristone—

Ms. HART HOLDER. Exactly.

Chair WARREN. —or whatever other drug is necessary.

Ms. HART HOLDER. Exactly, because obviously—and I'm talking to a former law professor here. But the Federal Government regulates intrastate commerce. And therefore, we will have a big problem with the U.S. mail and getting mifepristone and misoprostol.

The other thing is that the Comstock Act would outlaw the tools and devices that help in abortion care. So that could also impact a clinic's ability to procure the medical instruments that they need to offer in-clinic aspiration or surgical abortion care. So the impact on States like ours would be profound. The Comstock Act simply must be repealed. It is a relic of a different time that was wrong then and it's wrong today.

Chair WARREN. And we can't have a President of the United States who's willing to use it.

Ms. HART HOLDER. That's right.

Chair WARREN. Thank you. Senator Markey.

Chair WARREN. Thank you. And we know that The Heritage Foundation 2025 report is going to be his working document. He doesn't want to waste time the way he did in 2021. This time, he's going to be ready to go.

And they've already developed all the policies that he's going to start to implement. So there won't be this first year training wheels on this Trump administration. He's absolutely going to start on January 21st to look at every regulation, every rule, every agency and just begin to try to roll back personal protections, roll back civil rights.

And again, as you said, Ms. Holder, Maya Angelou said, believe someone when they tell you who they are. Well, The Heritage Foundation is who he is and we should believe it. That's going to be what we're fighting, and we're going to have to be doing it on all fronts. And Ms. Hart Holder, in your written testimony, you state that the right to reproductive care is not real unless every individual is able to safely access that care with autonomy and dignity. How can that apply to gender-affirming care?

Ms. HART HOLDER. Thank you. Thank you for that. Great question.

Senator MARKEY. Can you just move in the microphone a little?

Ms. HART HOLDER. Reproductive equity not only calls us to fight for reproductive health care access for everyone but also demands that we fight to protect bodily autonomy and the right to self-determination. And that includes medically necessary gender-affirming

care. It's about eliminating all the ways that all people, including LGBTQ people, are denied access to health care, to their rights, and to their dignity.

And I just want to be really clear that if you look at a Venn diagram of the anti-abortion movement and the anti-LGBTQ movement, it is a circle. It is not a mistake that right after Dobbs, the Texas legislature went after trans kids. It is the same people. They are fighting the same fight. And it is simply about controlling what we do with our bodies.

So we have to be inclusive and expansive in what our reproductive equity calls us to fight for. I also think it's important to note that the fall of *Roe v. Wade* not just threatens access to abortion and access to contraception. But the right to privacy underpins the right to marriage.

It is a necessary precursor to eliminate *Roe* in order to get to attacking LGBTQ families. So I think we just absolutely have to see this as all part of one anti-democratic fight that is coming after our ability to decide what to do with our bodies and who we love.

Senator MARKEY. Yeah, you are just so right. So this is a playbook that they have. And they're kind of experimenting with it in Texas and some other States. But it's only so they can go nationwide. They're not going to stop until what they're doing at the statewide level successfully is implemented across the whole country.

And they're using children and teenagers as experiments and as part of all of their efforts. Trying to stoke fears, build momentum so that they can ultimately pose real threats to patients, to families across the country. And they're starting in Republican-oriented city councils and State legislatures all across the country. But ultimately their goal is to go national. So Attorney General Campbell, how have you seen threats to gender-affirming care play out here in Massachusetts as an example of how our own State is not immune to these threats?

Ms. CAMPBELL. Thank you, Senator Markey, for the question. And also, I appreciate you and Senator Warren and this panelist and others who are always intersectional in talking about reproductive health care but also threats to gender-affirming care right now. I feel like every day it seems I along with other AGs across the country are filing some brief in support of not just access to gender-affirming care and speaking to from the lens of our providers the experts of why this care is critically important for LGBTQ+ folks as well as youth and trans youth.

But as we see the increase in attacks not just on gender-affirming care but the community as a whole, and we all look forward to Pride Month soon in celebrating these communities. I want to just highlight a couple of points that I think are important. Many of these attacks, of course, include banning or severely restricting access to gender-affirming care.

We know that gender-affirming care is medically necessary. It is safe health care that is backed like all the other things we've been talking about today, decades of research and supported by every major medical association in this country representing over 1.3 million U.S. doctors. Yet the onslaught of attacks on gender-affirming care threatens the ability for transgender and non-binary folks,

particularly young people as I mentioned, to be their authentic selves.

This is about freedom. This is about civil rights. And we want to make it clear in Massachusetts and I think we've done a great job with our health care providers but also within our schools and local municipalities to ensure that people have the legal right to receive gender-affirming care.

Our law protects and ensures safe access to that care. And we also want to support and lift up those community-based organizations that are providing this care and respective communities as far as Western Mass. It's also ensuring gender-affirming health care is accessible and affordable by prohibiting insurers from excluding it from their coverage which also is equally important and something we have been working hard at. And last, I will stress it's lifesaving care.

And we've heard that through some really incredible personal testimonies. And whether you are a Massachusetts resident wanting to come here living elsewhere, we've also shared that in our advocacy. And we know that young people in particular live in different settings.

Some are within State custody. Some are incarcerated. We fight to provide access to health care, including gender-affirming care. We want to make sure we're doing it in all settings so that folks receive the care they so desperately deserve. So thank you.

Senator MARKEY. Thank you. And I want to give you, Ms. Rose, the final word on this subject in terms of the need to ensure that gender-affirming care is protected nationally to take what we're fighting for here in Massachusetts and make sure that those are protections that people all across the country have.

Ms. ROSE. Absolutely. And I think to your point, all of these issues are intersectional. So when we're talking about abortion care, when we're talking about gender-affirming care, we're talking about contraception. We're also talking about racial justice. We're also talking about marriage equality and LGBTQ equality.

We're talking about women's rights. We're talking about socioeconomic justice. So all of these things are of a piece. And they're all under attack by the far-right in this country right now.

And they're using abortion as an attempt to get at all of these other issues as well. And we must keep our eye on the larger ball of what's happening here because these aren't separated. And we have seen already here in Massachusetts with things like book bans.

I mean, I think the American Library Association said that we rank fourth in the country for efforts of book bans. I think we are seeing efforts to ban—because we have so many school districts, I think. We have efforts to ban drag shows and these kinds of things.

So these are all of a piece. And I think for the ACLU as a multi-issue organization, we're always looking at those intersections. And the sad thing we're seeing right now is increasingly they're becoming a circle as Rebecca said.

And I think it's tremendously important as both a matter of health care but also as a matter of law and as a matter of national politics that we do sound the alarm, that we let people know that all of these things are under attack. And when one of our rights

are under threat, all of our rights are under threat. So I'm so grateful to the two of you for helping us here in Massachusetts to both lift up what our local lawmakers have done but also to help us all to sound the alarm that the work isn't done and we have to think nationally, act nationally, as well as thinking and acting locally. Thank you.

Senator MARKEY. Thank you.

Chair WARREN. You good?

Senator MARKEY. I'm good. Thank you.

Chair WARREN. All right. So I just want to say again thank you to our four witnesses for being here. We will make a record of this. I appreciate your coming here to testify, but I appreciate even more the work you are doing every day to protect people here in Massachusetts but to protect people around the country.

The threats are real. I am grateful to all of you who came today and for everyone who is focused on this issue and understands the immediate threat posed by all of the different ways in which extremist legislators and extremist jurors are hoping to impose an agenda on the rest of America that it does not want. It is our responsibility to fight back, and that starts by getting information out about what is happening and making a very visible commitment that we will not go away.

We will continue to raise this issue over and over. So thank you all very much for being here. This hearing is adjourned.

[Whereupon, at 3:42 p.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF ANDREA JOY CAMPBELL

ATTORNEY GENERAL, COMMONWEALTH OF MASSACHUSETTS

MAY 29, 2024

Thank you, Senator Warren, for your leadership. Thank you as well, Senator Markey, for your leadership and, of course, the opportunity to testify before you.

It is no secret how dire the state of reproductive health care access currently is, not only in parts of Massachusetts but, of course, across the country. While I have the honor and I would say the privilege of serving as the Attorney General of Massachusetts which has long been, of course, a beacon in the pursuit of reproductive justice, I recognize that much work remains, not just at the State level but also locally and nationally. I look forward to working with each of you and, of course, my colleagues across the country who are on the front lines to continue this fight to ensure that people could access the health care they so desperately need. And we will not only fight. We will win.

When the Supreme Court struck down Roe in 2022, it eliminated 50 years of legal precedent that recognized the basic right to abortion. The effects of this decision were immediately felt across the country as so-called trigger bans went into effect, leaving patients suddenly without access to critical and sometimes lifesaving care.

Today, nearly half the States in the country have banned or severely restricted access to abortion care. The result has been devastating, leaving hundreds of thousands of people without access to comprehensive reproductive health care in their States and enforcing people to delay or forego abortions which all too often threatens their health, wellbeing, and financial security. It also exacerbates existing health disparities, disproportionately impacting Black and Brown people, low-income earners, indigenous people, young people, and those living in rural communities. Patients traveling across State lines for care must do so with the knowledge that they may be subject to digital surveillance or even prosecution, not only of themselves but of their friends, their families, and helpers.

Beyond these strains, the expansive scope of some of these abortion bans threatens providers across State lines. Even in Massachusetts, providers face increased risk of civil and criminal liability through bounty hunter schemes and reported travel bans. These schemes also target those who assist patients with accessing abortion care causing significant fear across the country.

To meet this latest cruel moment in our Nation's history, I along with my colleagues in State government and other Attorneys General nationally, we have stepped up to ensure people can continue to access reproductive care in our States. In 2022, in response to Dobbs, my office under now-Governor Healey, of course, worked with our State legislature to codify, enhance protections to reproductive health care broadly as well as gender-affirming care. While this legislation made many significant improvements to our reproductive health care landscape, one of the most impactful was its insurance mandate, requirement coverage for abortion and abortion-related care without cost-sharing.

This legislation also included the Nation's leading abortion care protection law, sometimes referred to as the shield law, that puts in place critical protections for people who provide access or facilitate access to abortion and gender-affirming care here in the Commonwealth. It was the first such law in the country to protect providers licensed and physically present in Massachusetts from the effects of out-of-State abortion bans, regardless of the patient's location at the time the care was provided.

Since we passed our law, six States have passed comparable protections. And these laws have helped thousands of patients access abortion care in these States, including Massachusetts. To operationalize the shield law, my office, in collaboration with the ACLU of Massachusetts are delighted to be here with Carol, Reproductive Equity Now, delighted to be here with Rebecca. The Women's Bar Association, and five incredible law firms launch an Abortion Legal Hotline to provide free, confidential legal advice and resources to health care providers, helpers, and patients seeking care from Massachusetts providers.

While I'm proud of how we in Massachusetts have met this moment, challenges still exist on many fronts. Efforts are ongoing at the State and Federal level as you've described to curb reproductive freedom. Similar battles are also ensuing in courts across the country and not just about abortion care as you also remarked but also about contraceptive access, gender-affirming care, and other private health care concerns.

To confront these threats, I have formed a reproductive justice unit within my office, which focuses on advancing reproductive justice at the State and national level. In its short tenure, this unit has established itself as a trusted partner and resource

among community organizations, health care providers, and advocates as well as colleagues across attorney general offices nationally. It has been extremely intersectional in its work, not merely just talking about access to abortion care, maternal health disparities, gender affirming care, and health care generally.

I'm really proud of the work of the unit thus far, including Sapna who's our executive director of that unit. Our collaboration with other AG offices also extends into other avenues. I have been asked and had the immense honor of chairing the Reproductive Rights Working Group within the Democratic Attorneys General Association which will work to develop and defend shield laws through the country, work together, of course, to share information with each other in real time, develop best practices, and work daily to protect individual access to abortion, contraception, and the full spectrum of reproductive health care.

I also continue, of course, to defend State and Federal laws protecting abortion access as you mention, of course, as high as the Supreme Court. We will continue to do our part. This decision has the potential to undermine—I should take a step back.

We've also specifically—and I want to, of course, mention one case, advocated in support of the FDA in the Food and Drug Administration v. Alliance for Hippocratic Medicine, which we all know is a right-wing effort targeting FDA's approval of mifepristone, which is a safe and effective drug that has benefited over 3 million Americans. This decision has the potential to undermine not just FDA's drug approval process in this context but, of course, with respect to almost any other drug we can think of. To ensure that pregnant people continue to access this medicine, I along with 23 other attorneys general filed an amicus brief urging the Supreme Court to reverse the 5th Circuit's decision and to uphold the FDA's decision to permit medically appropriate access to mifepristone.

Since Dobbs, we've also seen renewed efforts to provide fetuses and embryos with personhood status. This legislative session alone, at least 14 States have filed bills to provide fetuses with personhood status. These laws will have many unintended consequences, including effectively eliminating a pregnant person's right to make medical decisions for their own health, mitigating access to assisted reproductive technologies like IVF, and even restricting people's rights to contraceptives.

These types of laws are dangerous, and they're already creating confusion and fear for providers and patients alike. I'm grateful to the providers in Massachusetts. Thank you for your leadership and also for the work that we continue to do across the country.

I have to quickly remark. It was most recently in Texas with other democratic AGs. And we had the honor and privilege of listening to providers, including a mother shared her horrific story of attempting to access care.

This is truly the issue of our generation to solve. And as doom and gloom and dark as it may seem right now in Texas in terms of their rights and frankly lack of access to a legal abortion and other reproductive health care, and the fear and confusion that's being created in that State, I was really proud to listen to these providers who are on the front lines doing the work every single day, including along the border to ensure folks have access to health care. And the fact they're looking to not only Massachusetts but other democratic AGs in other States to help them provide that care.

We will do our part. I'm really delighted to be here with each and every one of you. Thank you again, Senator Markey. And thank you again, Senator Warren, for your leadership in hosting this hearing.

PREPARED STATEMENT OF REBECCA HART HOLDER

PRESIDENT, REPRODUCTIVE EQUITY NOW

MAY 29, 2024

Senators Warren and Markey, my name is Rebecca Hart Holder and I am the president of Reproductive Equity Now. As a State and regional organization, Reproductive Equity Now works in Massachusetts and across New England to make equitable access to the full spectrum of reproductive health care a reality for all people regardless of their gender, age, race, ethnicity, zip code, income, immigration status, disability, or sexual orientation. Advancing reproductive health, rights and justice by working to eliminate barriers to abortion care is central to our mission.

Thank you for the opportunity to submit written testimony regarding the economic and health impacts of threats to reproductive rights, and specifically, the state of abortion access in Massachusetts and nationwide. In this testimony, I will discuss (I) Massachusetts' abortion access landscape and the bold State leadership

that allowed us to prepare for Roe’s fall and react with a bold post-Dobbs response, (II) barriers to care remaining in Massachusetts, and (III) how ongoing threats to abortion and the full spectrum of reproductive health care nationwide position Massachusetts to act as a regional and national leader to protect and expand access to abortion care.

Massachusetts Acted Boldly in the Wake of Dobbs To Protect Providers, Helpers, and Patients

In the last 2 years since Donald Trump’s Supreme Court overturned the constitutional right to abortion, 21 States have banned or severely restricted access to care across our country.¹ One in three women of reproductive age currently live in a State without abortion access, and patients are traveling farther than ever before for care—if they can afford to travel at all.² While Roe stood, approximately 18,000 people lived in counties that were more than 300 miles away from the nearest abortion provider, but today, that number has increased to 16 million.³

Here in Massachusetts, we have no doubt felt the tidal wave of patients coming to our Commonwealth to access abortion. We know that providers have already seen patients from Alabama, Arkansas, Florida, North Carolina, South Carolina, Tennessee, Mississippi, Texas, Wisconsin, Louisiana, Georgia, the surrounding New England States, and more, and this cascading impact of bans reverberating in Massachusetts began long before the Dobbs decision.⁴ When the Supreme Court upheld Texas’ outrageous SB8 abortion ban in 2021, Massachusetts providers began to see patients traveling from the Southwest immediately.⁵

Even before the Dobbs case had made its way to the U.S. Supreme Court, Massachusetts took action to codify the right to abortion into State law. With the passage of the ROE Act, Massachusetts also saw the importance of expanding access to abortion, not just protecting its legality.⁶ The ROE Act also repealed parental consent requirements for 16 and 17 year olds, expanding access to abortion care for young people who cannot afford the delay or difficulty of having to go through judicial bypass.⁷ The law also expanded the scope of practice for advanced practice clinicians, including nurse practitioners, certified nurse midwives, and physician assistants, to provide abortion care.⁸

This landmark legislation laid the groundwork for our response to the Dobbs decision—we understood what was to come when the Supreme Court ultimately ruled to eliminate reproductive health care access across our country. We joined with partners at Planned Parenthood Advocacy Fund of Massachusetts and the ACLU of Massachusetts before the Dobbs decision was even released—or leaked—to put forward the Beyond Roe Agenda for Massachusetts—a 21-point plan predicated on the idea that Massachusetts has both an obligation and an opportunity to go “beyond Roe v. Wade” and ensure equitable access to reproductive health care for all people in our State.⁹ Our recommendations ranged from ways to continue expanding access to reproductive health care in the Commonwealth, such as investing in the grassroots work of abortion funds and eliminating cost sharing for reproductive health care; to supporting providers, helpers, and patients and protecting them from the harmful reach of hostile States seeking to prosecute and criminalize care beyond their State borders; and finally, to deploying research and education efforts to ensure the Commonwealth understands the size and scope of the crisis we continue to face, in order to deploy the resources needed.

Mere weeks after the Supreme Court issued its decision in Dobbs v. Jackson Women’s Health Organization in June 2022, the Massachusetts Legislature acted boldly to pass a reproductive health care package that included several of our rec-

¹“Tracking the States Where Abortion Is Now Banned”, *N.Y. Times* (last updated May 1, 2024 4:40 p.m.), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

²Geoff Mulvihill, et al., “A Year After Fall of Roe v. Wade, 25 Million Women Live in States With Abortion Bans or Restrictions”, PBS: Newshour (June 22, 2023, 8:07 p.m.), <https://www.pbs.org/newshour/politics/a-year-after-fall-of-roe-v-wade-25-million-women-live-in-states-with-abortion-bans-or-restrictions>.

³Clare Trainor, et al., “One Year Without Roe v. Wade: How Access to Abortion Has Changed”, *Rueters* (June 21, 2023), <https://www.reuters.com/graphics/USA-ABORTION/DISTANCE/zgpbowdqv/>.

⁴Martha Bebinger, “How the Dobbs Abortion Decision Is Playing Out in Massachusetts, One Year Later”, WBUR (June 23, 2023), <https://www.wbur.org/news/2023/06/23/abortion-supreme-court-one-year-massachusetts>.

⁵Id.

⁶An Act Providing for Access to Reproductive Health Care Services, 2020 Mass. Acts ch. 263.

⁷Id.

⁸Id.

⁹“Massachusetts Beyond Roe: An Agenda for Abortion Access and Reproductive Equity”, Beyond Roe Coalition, <https://massbeyondroe.com/> (last visited May 28, 2024).

ommendations, including best-in-the-Nation shield protections for abortion providers and patients, mandated insurance coverage without cost-sharing for abortion and abortion-related care, expanded access to medication abortion for public college and university students, a statewide standing order to ensure access to no-cost emergency contraception without a prescription, expanded access for care later in pregnancy to prevent patients from having to travel out of State, and an expanded confidential address program to protect the personal addresses of abortion providers.¹⁰ This shield law also specifically protected Massachusetts providers who offer care via telehealth, by ensuring that providers' licenses are protected from medical malpractice insurance rate hikes, from out-of-State hostile litigation related to reproductive health care and gender-affirming care that is legal in Massachusetts, and from professional or disciplinary repercussions from a professional board of registration, all regardless of the patient's location, whether in Massachusetts or elsewhere.¹¹ This unique protection has now been modeled in shield legislation passed in California, Colorado, Maine, New York, Washington, and Vermont.¹² The legislature has also invested nearly \$20 million for reproductive health care access, security, and infrastructure, including grants to abortion funds and providers, which has helped us expand access to care and support patients traveling from afar to afford their care.

The provision of medication abortion via telehealth combined with shield law protections is crucial for keeping access to abortion across the Nation. Patients are increasingly opting for medication abortion. Massachusetts Department of Public Health data from 2022 indicates that medication abortion accounts for more than 50 percent of abortions in Massachusetts and newly released national data indicates that in the U.S. health care system, the use of medication abortion has risen from 53 percent in 2020 to 63 percent in 2023.¹³ While Massachusetts data for 2023 has not yet been published, newly released data from the last few months of 2023 indicate that nearly 1 in 5 abortions across the Nation (or roughly 17,000 per month) are medication abortions accessed via telehealth.¹⁴ New data indicates that in addition to traveling to Massachusetts for care, many patients are also being given care under the Massachusetts Shield Law without ever traveling to the Commonwealth. Telehealth medication abortions by providers utilizing shield law protections, such as those enshrined in Massachusetts law, averaged 8,000 per month from October to December 2023, comprising nearly half of all telehealth abortions.¹⁵ Massachusetts providers are utilizing these groundbreaking shield law protections to ensure patients can receive abortion care, regardless of their location.¹⁶

Our work to protect patients, providers, and all those involved in abortion access in Massachusetts has not stopped at passing legislation. Immediately after the passage of the shield law, Reproductive Equity Now began to field questions from providers about its impact, their risks, and how to protect themselves and their families. Their confusion and concern made it clear that we needed to stand up a resource to connect them with pro bono services. Reproductive Equity Now partnered with the Massachusetts Attorney General's Office, the ACLU of Massachusetts, and five private law firms across the State—Foley Hoag, Goodwin Procter, Goulston & Storrs, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, and Ropes & Gray—to launch

¹⁰ An Act Expanding Protections for Reproductive and Gender Affirming Care, 2022 Mass. Acts ch. 127.

¹¹ Id. §§1, 4, 20, 23, 32–39. Specifically, the Massachusetts Shield Law amends M.G.L. ch.13 §105 to add new protections for genetic counselors; amends M.G.L. ch.112 to add a new section to insulate physicians; amends M.G.L. ch.112 §9H to protect physician assistants; amends M.G.L. ch.112 §32 to insulate pharmacists; amends M.G.L. ch.112 §77 to insulate nurses; amends M.G.L. ch.112 §128 to protect psychologists; amends M.G.L. ch.112 §137 to insulate social workers. See 2022 Mass. Acts ch. 127 §§5, 10–11, 14–17.

¹² In addition to Massachusetts, California, Colorado, Maine, New York, Washington, and Vermont have enacted telehealth shield laws. See 2023 Cal. Stat. ch. 260; 2023 Colo. Sess. Laws ch. 68; 2024 Me. Laws ch. 648 ; 2023 N.Y. Laws ch. 138; 2023 Wash. Laws 193; 2023 Vt. Acts & Resolves 14 & 2023 Vt. Acts & Resolves 15.

¹³ Massachusetts Department of Public Health, "Abortion Tables (2022)", <https://drive.google.com/file/d/1Onw0uKtPAn1gjh98N33TOpY3TCWdia6I/view?usp=sharing> ; See also, "Monthly Abortion Provision Study", Guttmacher Institute, <https://www.guttmacher.org/monthly-abortion-provision-study> (last visited May 1, 2024).

¹⁴ "WeCount Report: April 2022 to December 2023", Society of Family Planning (May 14, 2024), <https://societyfp.org/wp-content/uploads/2024/05/WeCount-report-6-May-2024-Dec-2023-data-Final.pdf>.

¹⁵ Id.

¹⁶ Based on conversations between Reproductive Equity Now with providers offering telehealth abortion care through the Massachusetts Shield Law conducted on April 22, 2024, telehealth abortion providers operating under the Massachusetts Shield Law estimate conservatively that 3,500 medication abortions are provided each month by Massachusetts clinicians, primarily to patients located in States with severe abortion restrictions or bans.

the Abortion Legal Hotline—a free and confidential resource for patients and providers to learn more about their rights to provide or obtain care. This hotline now offers live translation services, and to date, we have trained over 150 lawyers who stand ready to provide legal analysis and support to callers. Since the hotline was launched last year, its website has been viewed over 4,300 times and it has helped over 120 callers, many of which were providers, enabling them to continue to serve countless patients across the Commonwealth and beyond.

Barriers to Care Remain in Massachusetts

Even as people come to Massachusetts for care, patients in our State are still being turned away. And that is because there is a big difference between the legal right to reproductive health care and a person's ability to actually access that care. Patients continue to travel to Massachusetts to seek abortion care, and preliminary data suggests the number of patients traveling to Massachusetts is increasing. In 2022, the year Roe fell, there was a 16 percent increase in the number of out-of-State patients receiving abortion care in Massachusetts, with 792 out-of-State patients documented in 2021 compared to 920 out-of-State patients in 2022, accounting for just over 5 percent of all abortions in Massachusetts in 2022.¹⁷ State data does not capture where out-of-State patients are traveling from. Similarly, a study by researchers at Brigham and Women's Hospital, the Harvard T.H. Chan School of Public Health, and the ASPIRE Center for Sexual and Reproductive Health at Planned Parenthood League of Massachusetts estimated that in the first 4 months post-Dobbs, our State saw a 37 percent increase in patients from out of State—a number we expect to only grow.¹⁸ Researchers reported the increase was driven largely by people outside of New England, with a notable number of patients traveling from Texas.¹⁹ This data indicates that Massachusetts' health care system is facing new strain under the influx of patients, as our clinics are contending with more patients and appointments than ever before, Massachusetts abortion funds are seeking to fund exponentially more care. This demands continued bold investment to support our patients in Massachusetts.

Access deserts, or areas where in-person abortion clinics are more than 50 miles away, still exist throughout Massachusetts—particularly for in-clinic abortion care in Western and Southeastern Massachusetts. Travel and transportation barriers to abortion appointments persist, highlighting that the reproductive justice crisis is also a transit and economic justice crisis. And restrictions on abortion throughout pregnancy continue to send patients out of State for care. Low-income, communities of color, LGBTQ people, and young people continue to face the steepest barriers to abortion.

Meanwhile, the Commonwealth is facing a critical juncture with regard to addressing a worsening maternal mortality and morbidity crisis. Severe maternal morbidity nearly doubled in Massachusetts from 2011 to 2020, with Black mothers experiencing the worst rates of complications.²⁰ Additionally, with just one free-standing birth center located in Western Massachusetts compared to 400 across the country, out-of-hospital birthing options are few and far between, eliminating a real “choice” in birth setting.²¹ And while the State may be a national leader with regard to securing abortion access, Massachusetts ranks 32nd in the Nation with regard to our integration of midwifery care into our health care system,²² despite research proving that the midwifery model of care can improve birthing experiences, lower cesarean rates, lower rates of premature birth and infant mortality, increase

¹⁷ Massachusetts Department of Public Health, “Abortion Tables (2022)”, <https://drive.google.com/file/d/1Onw0uKtPAn1gjh98N33TOpY3TCWdia6I/view?usp=sharing>.

¹⁸ Brianna Keefe-Oates, et al., “Use of Abortion Services in Massachusetts After the Dobbs Decision Among In-State vs. Out-of-State Residents”, *Jama Open Access* (Sept. 6, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2808962>.

¹⁹ Jessica Bartlett, “Number of Out-of-State Travelers Seeking Abortions at Mass. Planned Parenthood Grew 37% After Dobbs”, *The Boston Globe* (Sept. 6, 2023, 6:55 p.m.), <https://www.bostonglobe.com/2023/09/06/metro/number-out-of-state-travelers-seeking-abortions-mass-grew-by-37-percent-after-dobbs/>.

²⁰ Massachusetts Department of Public Health, “Data Brief an Assessment of Severe Maternal Morbidity in Massachusetts: 2011–2020” (July 2023), <https://www.mass.gov/doc/an-assessment-of-severe-maternal-morbidity-in-massachusetts-2011-2020/download>.

²¹ Shira Schoenberg, “Hoping To Deliver at a Massachusetts Birth Center? Good Luck”, *Public Commonwealth Magazine* (Nov. 20, 2022), <https://commonwealthmagazine.org/health-care/hoping-to-deliver-at-a-massachusetts-birth-center-good-luck/>.

²² Massachusetts Health Policy Commission, “Certified Nurse Midwives and Maternity Care in Massachusetts Report Findings” (Oct. 6, 2021) <https://www.mass.gov/doc/certified-nurse-midwives-and-maternity-care-in-massachusetts-1062021/download>.

breastfeeding rates, and more.²³ Licensing Certified Professional Midwives under a Massachusetts Board of Midwifery is a critical way to unlock a key midwife workforce specifically trained in out-of-hospital births, improve access to tangible choice of birth settings, and expand maternity care providers. Even in hospital settings, hospitals with a higher proportion of midwife-attended births in Massachusetts were more likely to see shorter inpatient stays, lower cesarean and episiotomy rates, and lower spending on maternity services.²⁴

The right to reproductive health care, including care for pregnancy, delivery, abortion, and miscarriage care, is not a real right unless every individual is able to safely access that care with autonomy and dignity. That right must include the right to choose where and how to give birth. Just as we affirm a pregnant person's choice about whether and when to carry a pregnancy to term, we must also affirm their choice of maternity care provider and birth setting.

Abortion access is intrinsically connected to maternal health, and we cannot address these crises in a silo. Especially when more than 30 anti-abortion centers, or so-called "crisis pregnancy centers" throughout Massachusetts continue to spew medical disinformation, dissuading patients from accessing abortion and putting public health at serious risk.²⁵ These facilities, which outnumber legitimate abortion providers in the State by more than double,²⁶ purport to be full-spectrum reproductive health clinics, but actually exist to dissuade people from accessing abortion, often using deceptive practices. In Massachusetts, one of these centers, Clearway Clinic in Worcester, is currently facing a lawsuit for misdiagnosing a patient's ectopic pregnancy, forcing her to later undergo emergency life-saving surgery that resulted in the loss of a fallopian tube.²⁷

As anti-abortion extremists become more creative with their attacks by the day, reproductive health care advocates must also wear new hats, including as digital privacy experts. The State and Federal Government can and must do more to protect abortion providers and patients' location data and personal information before it is weaponized by hostile actors in other States. Efforts to criminalize abortion care are ever-evolving, and prosecutors and bounty hunters alike are well aware of the opportunity to use digital information to bolster their evidence. Already, we have seen data brokers use location information to create heat maps of where people visiting Planned Parenthood clinics came from, how long they stayed at the clinic, and where they went afterwards.²⁸ While our statute prohibits Massachusetts law enforcement agencies from engaging in hostile out-of-State investigations,²⁹ it does not prohibit law enforcement or prosecutors in other banned States from purchasing location data, which will allow them within minutes to identify every single phone—and therefore every single patient—that may have traveled across State borders to seek abortion care. As the cellphone location market remains unregulated, the widespread availability of granular cellphone location information enables anyone with a credit card—even an anti-abortion extremist thousands of miles away—to track people seeking abortion care in the Commonwealth. This exposes people seeking care from gravely serious threats to their personal safety and puts health care providers at risk of personal harm. We must pass the Location Shield Act in Massachusetts and Senator Warren's Health and Location Data Protection Act in Congress to secure digital privacy before location information is weaponized to criminalize care provided in Massachusetts.

²³ Kathleen Sebelius and Tommy Thompson, "If We Want To Save Black Mothers and Babies, Our Approach to Birthing Care Must Change", *Time Magazine* (Apr. 13, 2023, 7:00 A.M.), <https://time.com/6270915/black-mothers-childbirth-care-midwife/>.

²⁴ Massachusetts Health Policy Commission, *supra* n. 22.

²⁵ Frequently, AACs are religiously affiliated and do not provide abortion or contraception or make referrals for abortion or contraceptive care, though some do provide pregnancy tests, STI testing, and ultrasounds. See Melissa N. Montoya, et al., "The Problems With Crisis Pregnancy Centers: Reviewing the Literature and Identifying New Directions for Future Research", *Int'l Journal of Women's Health* (June 8, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9189146/>.

²⁶ "Reproductive Equity Now", New England Abortion Care Guide, <https://reproequitynow.org/abortioncareguide> (last visited May, 28, 2023).

²⁷ Praveena Somasundaram, "Clinic Missed Ectopic Pregnancy Signs, Endangered Woman's Life, Suit Says", *Washington Post* (July 3, 2023, 3:33 a.m.), <https://www.washingtonpost.com/nation/2023/07/03/crisis-pregnancy-center-lawsuit-massachusetts/>.

²⁸ Joseph Cox, "Data Broker Is Selling Location Data of People Who Visit Abortion Clinics", *Vice* (May 3, 2022, 12:46 p.m.), <https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood>.

²⁹ 2022 Mass. Acts ch. 127 §20.

Amidst National Threats, Massachusetts Is Poised To Play a Leading Role in Protecting Abortion Access

Anti-abortion extremists' end goal is not to ban abortion in 21 States; they want to ban abortion nationwide. Donald Trump, the leading Republican candidate for President, has bragged about his role in overturning *Roe v. Wade*,³⁰ said that pregnant people should be punished for accessing abortion care,³¹ and hinted that he will sign a national abortion ban if elected president this November.³² Just last week, Trump suggested that he would be open to restricting access to contraception nationwide.³³ And after the Alabama Supreme Court ruled this April that frozen embryos are "extrauterine children," effectively ending in vitro fertilization in the State, it's clear that the anti-abortion movement will use fetal personhood statutes to attempt to ban not only abortion nationwide, but assisted reproduction, too.³⁴

In a post-Roe world, Massachusetts has a critical role to play in protecting against these attacks and advancing reproductive equity. With strong legislative and executive partners, and an unwavering congressional delegation, our State has the ability to go on offense to protect and expand access to care. Advocates, elected officials, and leaders in Massachusetts must work with partners in red, purple, and blue States to ensure as many people are able to access the reproductive health care they want and need in this ever-changing abortion landscape. Our movement is strongest when we share strategies, policy ideas, and playbooks across State lines, and Massachusetts—and the New England region at large—can lead the way for reproductive equity.

PREPARED STATEMENT OF KATHRYN FAY

FELLOW, PHYSICIANS FOR REPRODUCTIVE HEALTH, AND PHYSICIAN, THE BRIGHAM AND WOMEN'S HOSPITAL

MAY 29, 2024

Good afternoon, Senator Warren and Senator Markey. Thank you for holding today's field hearing on abortion and for the opportunity to speak with you today about access to critical care. My name is Dr. Kathryn Fay and I use she/her pronouns. I am a board-certified, fellowship trained, obstetrician and gynecologist specializing in family planning. I provide full spectrum sexual and reproductive health care, including abortion. As is typical of many in medicine, I completed my training in other States, in my case Illinois and Utah. Now, as a resident of Massachusetts, I bring a firsthand account of the ways State policy supports or obstructs quality health care. I am here today as a fellow with Physicians for Reproductive Health, a network of physicians from across the country working to improve access to comprehensive sexual and reproductive health care, and as a physician at The Brigham and Women's hospital.

In Massachusetts I am able to provide care based on what patients and I decide together is safest and healthiest for their lives using my clinical training and following best medical practices without political interference. Massachusetts has been and continues to be a leader for access to reproductive health care. Prior to the Supreme Court's decision in *Dobbs*, which overturned the constitutional right to abortion, the Commonwealth of Massachusetts enacted laws establishing a statutory right to abortion. Since the *Dobbs* decision, Massachusetts has enacted additional legislation to further protect and increase access to reproductive health care. These new laws make abortion care more affordable by allowing State Medicaid funds to cover abortion and requiring private health insurance plans to provide coverage for abortion and abortion-related care without cost-sharing and protects providers like me from investigations by other States for simply providing safe, essential, nec-

³⁰ "Trump Says He's Proud of Role in Overturning *Roe v. Wade*", CBS News (Apr. 8, 2024), <https://www.cbsnews.com/video/trump-says-hes-proud-of-role-in-overturning-roe-v-wade/>.

³¹ Pema Levy, "Trump Says States Could Prosecute Women for Abortions Under His Watch", *Mother Jones* (Apr. 30, 2024), <https://www.motherjones.com/politics/2024/04/donald-trump-abortion-prosecutions/>.

³² Michelle L. Price, "Trump Suggests He'd Support a National Ban on Abortions Around 15 Weeks of Pregnancy" (May 20, 2024, 8:06 a.m.), AP News, <https://apnews.com/article/trump-abortion-ban-15-weeks-91a9e0ce87d11df0fa761f327bd0566>.

³³ "Trump Says He's 'Looking at' Restricting Birth Control Access", *MSNBC: All In* (May 23, 2024), <https://www.msnbc.com/all-in/watch/trump-says-he-s-looking-at-restricting-birth-control-access-211503685938>.

³⁴ Alander Rocha, "Alabama Supreme Court Ruling Could End IVF Treatments in State", *Alabama Reflector* (Feb. 19, 2024, 2:43 p.m.), <https://alabamareflector.com/2024/02/19/alabama-supreme-court-ruling-could-end-ivf-treatments-in-state/>.

essary medical care. I list these legislative changes because they are in contrast to my experience working in Utah, which, prior to Dobbs, employed numerous tactics to hinder or punish those seeking abortion care, policies which have only grown more extreme in the interim.

I am grateful to live and practice medicine in a State that supports the broad scope of sexual and reproductive health care, including contraceptive care. In the past few months, I have cared for people who needed life-saving abortion care to begin treatment for a new cancer diagnosis and people who needed an abortion in the setting of life-threatening hemorrhage. I have cared for people who sought abortions in the setting of fetal anomalies, abusive partners, housing instability, sexual assault, contraceptive failure; the indications are endless and all of them are valid. However, we cannot ignore that the Supreme Court's decision in Dobbs has wreaked havoc on the lives of people across our country seeking care for similar reasons, and on the clinicians who are doing their best to care for their communities. There is no safe State as long as threats to sexual and reproductive health care continues.

As States continue to ban abortion, patients are having to travel farther and farther distances away from their homes and their communities putting their health and lives at risk. I have cared for people who traveled to Massachusetts with pre-viable ruptured membranes, a diagnosis for which standard medical care is immediate intervention because of the threat of maternal sepsis and hemorrhage. Overall, there were an estimated 4,500 more abortions provided in Massachusetts formal health care system in 2023 than in 2020, last year 1 in 15 people who received abortions in Massachusetts were from out of State.^{1 2} I am consistently seeing patients from across the country. I am grateful to be able to care for the people who make it to me, but I can't help but think about all of the people who are unable to make the expensive, complex, risk-laden journey to essential care and have been forced to remain pregnant. I know people have been forced to remain pregnant since Dobbs, and there are excellent data to show the enduring harms of being denied a wanted abortion. The Turnaway Study shows us that when a woman is denied an abortion it creates economic hardships and insecurity that lasts for years, the financial wellbeing and development of existing children is negatively impacted, and the pregnant person is more likely to endure ongoing intimate partner violence.³ For the patients who have the resources to travel, at the very least, they are being forced to leave their support systems and communities. This is unacceptable. Everyone deserves to access care in their own community, in a manner that is best for them, with people they trust.

As more States continue to ban or severely restrict access to abortion the ripple effects will continue to impact other types of essential health care harming the overall health and wellbeing of people across the country. For example, other types of care we have already seen impacted include: contraceptive care because of intentionally vague language being misconstrued to limit access to emergency contraception and intrauterine devices or IUDs; miscarriage care as the treatments used to help manage a miscarriage are the same used to provide an abortion; ectopic pregnancy care as health care institutions and providers are worried about being held criminally responsible for providing the emergency care patients need.

It is only nearly 2 years since the Dobbs decision and threats from the courts continue. The Supreme Court is set to issue decisions this summer in what will be two landmark cases impacting abortion care. The Court's decision in *FDA v. AHM* will impact access to mifepristone, one of two FDA approved medications used in medication abortion care. The FDA first approved mifepristone in 2000 and today medication abortion accounts for 63 percent of all U.S. abortions.⁴ Mifepristone is a safe and effective medication that I rely on using for patient care every day. Restrictions on mifepristone will not only have devastating impacts on pregnant people's access to abortion care but also early pregnancy loss and stillbirth management, among the other evidence-based uses of mifepristone. Additionally, the Supreme Court is considering whether EMTALA preempts Idaho's abortion ban in situations in which abortion is required to stabilize an emergency medical condition that would other-

¹ Guttmacher, Monthly Abortion Provision Study, <https://www.guttmacher.org/monthly-abortion-provision-study>.

² Kaiser Family Foundation, Massachusetts Abortion Data, <https://www.kff.org/interactive/womens-health/profiles/massachusetts/abortion-statistics/>.

³ "The Harms of Denying a Woman a Wanted Abortion. Findings From the Turnaway Study", Advancing New Standards in Reproductive Health (ANSIRH) University of California San Francisco, <https://www.ansirh.org/sites/default/files/publications/files/the-harms-of-denying-a-woman-a-wanted-abortion-4-16-2020.pdf>

⁴ Jones, R.K., Friedrich-Karnik A., "Medication Abortion Accounted for 63% of All U.S. Abortions in 2023—An Increase from 53% in 2020", Guttmacher, <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.

wise threaten serious harm to the pregnant person's health. People should have access to abortion care without barriers or delay, including in emergency circumstances. Likewise, clinicians should be able to practice without performing the calculus of what State law permits or what actions might threaten their medical license, and instead focus on applying their medical training to provide the necessary care that is right for patients. There are countless stories of my colleagues in other States being forced to navigate impossible situations that put patient safety and State legislation at odds.⁵

Abortion restrictions only serve to burden and endanger patients and clinicians, not make abortion any safer. These restrictions represent a national movement that threatens health care. If not just for the general moral good, I am here today advocating for the status of care in Massachusetts. Since Roe, steady chipping away of sexual and reproductive health rights has jeopardized justice for all. Dobbs was a clear and devastating loss, but it does not represent an end point. I worry about the loss of mifepristone, a Federal abortion ban, and threats to contraception and assisted reproductive technology, hazards that will transcend State lines. Abortion, without stipulation, is life-saving, necessary, compassionate, essential health care.

Thank you for having me here today. I look forward to your questions.

PREPARED STATEMENT OF CAROL ROSE

EXECUTIVE DIRECTOR, ACLU OF MASSACHUSETTS

MAY 29, 2024

Chair Warren, Ranking Member Kennedy, and Members of the Committee, thank you for holding this hearing and inviting me to testify. My name is Carol V. Rose, and I am the Executive Director of the American Civil Liberties Union of Massachusetts.

In post-Dobbs America, authoritarian politicians and civil litigators in search of private bounties¹ seek to control—and plainly deny—reproductive health care and personal bodily autonomy by expanding and misusing criminal and civil laws.² At the same time, the U.S. Supreme Court is considering two cases brought by extremists seeking to restrict or even eliminate access to medication abortion and to abortion care during medical emergencies. Massachusetts lawmakers are working to shore up protections for reproductive freedom in our State, but aggressive anti-abortion advocacy at the Federal level nonetheless threatens the rights of all residents of the Commonwealth.

Just 1 month after the Supreme Court overturned Roe v. Wade, Massachusetts lawmakers passed a “shield law” to offer legal protections to abortion providers, patients, and helpers in our State.³ An Act Expanding Protections for Reproductive and Gender-Affirming Care takes steps to protect providers’ professional licenses and malpractice insurance, while also prohibiting extradition to other States for those who provide lawful care in Massachusetts and ensuring our State courts do not become a venue for hostile-State claims.⁴ To help people understand their rights under the new State law, Massachusetts Attorney General Andrea Campbell—together with the ACLU of Massachusetts, Reproductive Equity Now, Women’s Bar Foundation, and several law firms—launched the Abortion Legal Hotline in January 2023.⁵ This is a free and confidential resource that connects Massachusetts-based

⁵Grossman D., Joffe Carole, Kaller S., et al., “Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision”, Advancing New Standards in Reproductive Health (ANSIRH) University of California San Francisco, <https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf>.

¹Erin Coulehan, “Abortion ‘Bounty’ Laws in States Like Texas and Oklahoma: How They Work”, *Teen Vogue* (July 7, 2022), <https://www.teenvogue.com/story/abortion-bounty-laws>.

²Interactive Map: U.S. Abortion Policies and Access After Roe, Guttmacher Institute (May 15, 2024), https://states.guttmacher.org/policies/-gl=1*1osd3uo*-ga*MTEzNDI1MTE2Ni4xNjgwMTAzNjY5*-ga-PYBTC04SP5*MTY4NjkyNzg4OC41NS4xLjE2ODY5Mjc4OTEuMC4wLjA.

³Alison Kuznitz, “Massachusetts Abortion Protections Bill, Shielding Providers and Patients, Signed Into Law by Gov. Charlie Baker”, *MassLive* (July 29, 2022), <https://www.masslive.com/politics/2022/07/massachusetts-abortionprotections-bill-shielding-providers-and-patients-signed-into-law-by-gov-charlie-baker.html>.

⁴An Act Expanding Protections for Reproductive and Gender-Affirming Care, Chapter 127 of the Acts of 2022 (July 29, 2022), <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter127>.

⁵Abby Patkin, “With New Mass. Hotline, Free Abortion Legal Advice Is Just a Call Away”, *Boston.com* (January 30, 2023), <https://www.boston.com/news/health/2023/01/30/massachusetts-abortion-legal-hotline-launch-reproductiverights-access/>.

health care providers, helpers, and patients obtaining care in the State with legal advice and resources about access to abortion and other forms of reproductive health care.

Two months later, in response to a Federal court ruling out of Texas in a case challenging mifepristone access nationwide, Massachusetts Governor Healey announced several steps to protect access to medication abortion in the Commonwealth. She directed the University of Massachusetts and health care providers to purchase and stockpile approximately 15,000 doses of mifepristone. Governor Healey also issued an Executive order confirming that the 2022 shield law applies to medication abortion, including mifepristone,⁶ and the Department of Public Health and Board of Registration in Medicine quickly issued implementing guidance.⁷ Collectively, these actions help to ensure that providers can continue to prescribe and dispense mifepristone in Massachusetts.

Since the Supreme Court overturned *Roe*, Massachusetts lawmakers at every level of Government have taken bold, timely steps to protect access to reproductive health care in our Commonwealth. However, anti-abortion judges and politicians have made clear that they do not intend to stop at ending Federal constitutional protections for abortion care. Their goal is to eliminate access to abortion and other forms of reproductive health care in all 50 States, including in the Commonwealth. This anti-democratic cadre remains intent on banning abortion and other essential health care nationwide, threatening core Massachusetts values, as well as State laws and policies that have been carefully considered and adopted by our State's elected leaders, and—most importantly—fundamental access to reproductive health care and bodily integrity for the people of the Commonwealth.

We are alarmed by authoritarian politicians in Congress who are pushing Federal policies to restrict the reproductive freedoms we have fought so hard to protect here in the Commonwealth. Anti-abortion politicians at the Federal level have not been covert about their plans to ban abortion nationwide. A national abortion ban would pose a direct and dire threat to reproductive freedom in Massachusetts, and anti-abortion politicians in Congress have deployed a variety of tactics in service of their campaign to ban abortion nationwide.

One key tactic proposed by anti-abortion extremists in Congress is a proposed national 15-week abortion ban. If enacted, a nationwide abortion ban like the one proposed in Congress⁸ would make all abortions in every State, including Massachusetts, illegal after 15 weeks with only limited exceptions. This extreme bill goes even further by subjecting doctors and health care providers to criminal penalties for failure to comply with the ban.

It is important to highlight the harms of an enacted national abortion ban on the people of Massachusetts. In the nearly 2 years since *Roe* was overturned, abortion bans in dozens of States across the country have created chaos and suffering for patients and providers. In States with abortion bans, clinics providing essential health care have been forced to close, leaving millions of people without access to abortion care as well as other reproductive health care.⁹ Patients have been denied critically needed emergency abortion care, creating serious risks to their health and against their doctors' medical judgment.¹⁰ Under a national ban, people in Massachusetts would be forced to carry pregnancies against their will, and doctors and health care

⁶Executive Order 609, "Protecting Access to Medication Abortion Services in the Commonwealth", (April 10, 2023), <https://www.mass.gov/doc/protecting-access-to-medicated-abortion/download>.

⁷Board of Registration in Medicine, "Guidance Implementing Executive Order 609 Regarding Reproductive Health Medications", (April 10, 2023), <https://www.mass.gov/news/guidance-implementing-executive-order-609-regarding-reproductive-health-medications>.

⁸Graham Introduces Legislation to Protect Unborn Children, Bring U.S. Abortion Policy in Line with Other Developed Nations, U.S. Senator Lindsey Graham (September 13, 2022), <https://www.lgraham.senate.gov/public/index.cfm/2022/9/graham-introduces-legislation-to-protect-unborn-children-bring-u-s-abortion-policy-in-line-with-other-developed-nations>.

⁹See Marielle Kirstein, et al., "100 Days Post-Roe: At Least 66 Clinics Across 15 U.S. States Have Stopped Offering Abortion Care", Guttmacher Inst. (October 6, 2022), <https://www.guttmacher.org/2022/10/100-days-postroe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care>.

¹⁰See, e.g., NWLC Files EMTALA and Sex Discrimination Complaints on Behalf of Mylissa Farmer, Nat'l Women's L. Ctr. (November 8, 2022), <https://nwlc.org/resource/nwlc-files-emptala-and-sex-discrimination-complaints-on-behalf-of-mylissa-farmer/>; Caroline Kitchener, "Two Friends Were Denied Care After Florida Banned Abortion. One Almost Died", *Wash. Post* (April 10, 2023, 6:00 a.m.), <https://www.washingtonpost.com/politics/2023/04/10/pprom-florida-abortion-ban/>; Sam Karlin, "Louisiana Woman Who Was Denied an Abortion for a Fetus Without a Skull Gets Procedure in New York", *The Advocate* (September 14, 2022), <https://www.theadvocate.com/baton-rouge/news/louisiana-woman-who-was-denied-an-abortion-for-a-fetus-without-a-skull-gets-procedure/article-b23b2b48-3458-11ed-bd50-27875e9118ec.html>.

providers would have to choose between providing essential health care and potentially facing criminal charges and even jail time. Forcing someone to carry a pregnancy against their will has life-altering consequences, from enduring the health risks of continuing a pregnancy and childbirth, to making it harder to escape poverty, achieve education or career goals, and making it more difficult to leave an abusive partner. These consequences fall disproportionately on communities of color, people living on low incomes, undocumented immigrants, young people, LGBTQ people, and people with disabilities. These harms, especially the serious health risks of being forced to give birth, fall hardest on Black women, who are already three times more likely than White women to die during childbirth or shortly after.¹¹

And while the current proposed bill for a national abortion ban includes very narrow exceptions for rape or incest, or for the life and health of the pregnant person, we've seen already in States with abortion bans how little these exceptions do to ensure that people can get essential health care. We've heard heartbreaking stories of women who were denied medically necessary abortion care and faced life-threatening consequences, despite their State bans having narrow life and health exceptions.¹² It is cruel and unfair to expect survivors of sexual assault or incest, or someone in the middle of a medical emergency, to plead for permission to access the care they need and their doctors authorize. Everyone should be able to get the abortion and reproductive health care they need, when they need it.

Not content with a national abortion ban at 15 weeks, extremists in Congress are also pushing radical Federal legislation that would give legal rights to embryos and fetuses. These efforts are just the latest in a long history of anti-abortion extremists attempting to strip people of their reproductive rights by expanding legal rights for embryos and fetuses. For decades, anti-abortion politicians have incorporated this so-called "personhood" language into State laws.¹³ Extremists in Congress have expanded the reach of this threat to States with protections for abortion and other forms of reproductive health by pushing Federal legislation, including the Life at Conception Act.¹⁴ This extreme piece of Federal legislation would extend rights to embryos and fetuses with the intent to make all abortion illegal nationwide, including in Massachusetts where such care is protected.

But that is not all. As is often true of policies that ban or restrict abortion care, so-called "personhood" laws also threaten to impact the ability to access other forms of reproductive health care, including contraception, infertility treatment, and miscarriage care. Purporting that embryos and fertilized eggs are "people" under the law would cause chaos and confusion that would disrupt access to many kinds of essential health care in the Commonwealth and nationwide.

The strategy to ban abortion in all 50 States doesn't end with Federal legislation. Extremist politicians and their supporters have even threatened to attempt a backdoor national abortion ban, circumventing Congress, by misusing a 150-year-old law known as the Comstock Act.

The Comstock Act, named after "a prominent anti-vice crusader who believed that anything remotely touching upon sex was . . . obscene,"¹⁵ was passed in 1873—less than a decade after the end of the Civil War and nearly 50 years before the ratification of the 19th Amendment. The Comstock Act restricts using the mail and common carriers to send and receive certain "obscene" items. Anti-abortion extremists claim that it is a national abortion ban already on the books, just waiting to be enforced by a radical anti-abortion President. This view of the Comstock Act is wrong. For decades, the Department of Justice and every court of appeals to consider the issue have held that the Comstock Act only applies in the context of unlawful abortions. The only court to ever conclude differently is the district court in Alliance for

¹¹ See Priya Krishnakumar and Daniel Wolfe, "How Outlawing Abortion Could Worsen America's Maternal Mortality Crisis", CNN (June 24, 2022), <https://www.cnn.com/2022/05/10/us/maternal-mortality-roe-wade-abortionaccess/index.html>.

¹² See, e.g., *Cox v. Texas*, Center for Reproductive Rights (December 12, 2023), <https://reproductiverights.org/case/cox-v-texas/>; *Zurawski v. State of Texas*, Center for Reproductive Rights (March 6, 2023), <https://reproductiverights.org/case/zurawski-v-texas-abortion-emergency-exceptions/>; *Medical Emergency Exceptions to State Abortion Bans: Idaho, Tennessee, and Oklahoma*, Center for Reproductive Rights (September 12, 2023), <https://reproductiverights.org/case/emergency-exceptions-abortion-bans-idaho-tennessee-oklahoma/>.

¹³ See Megan Messerly, "Scratching Their Heads: State Lawmakers Take a Closer Look at Personhood Laws in Wake of Alabama Ruling", Politico (February 29, 2024), <https://www.politico.com/news/2024/02/29/states-fetus-personhood-alabama-ivf-00143973#>.

¹⁴ H.R.431—118th Congress (2023–2024): Life at Conception Act, (January 20, 2023), <https://www.congress.gov/bills/118/congress-house-bill/431>.

¹⁵ *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 70 n.19 (1983).

Hippocratic Medicine v. FDA, the anti-abortion plaintiffs' hand-selected jurist—chosen for the purpose of obtaining rulings that advance their radical agenda.

Threatening to misuse the Comstock Act is thus another effort by anti-abortion extremists to manipulate the law in service of their goal of banning abortion in all 50 States. If anti-abortion extremists get their way, the Comstock Act could be misused to ban the shipping of any medicines and medical supplies used for abortion, contraception, IVF, and miscarriage care, threatening access to reproductive health care nationwide—even in Massachusetts and other States where reproductive rights are protected.

By pushing policies to override State protections for abortion and other reproductive health care, authoritarian forces clearly seek to ban access to contraception and abortion care nationwide. Massachusetts elected leaders have, time and again, upheld the will of the voters by taking bold action to protect the bodily integrity of our people, including access to abortion care, contraception, miscarriage care, and IVF. We applaud tireless efforts by Massachusetts elected officials to defend and preserve the right to body integrity free from Government interference, and to ensure a future where every person in every State can access the reproductive health care they need.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD



WRITTEN STATEMENT FOR THE RECORD BEFORE THE U.S. SENATE
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
SUBCOMMITTEE ON ECONOMIC POLICY

**“THE ECONOMIC AND HEALTH IMPACTS OF THREATS TO REPRODUCTIVE
RIGHTS”**

May 29, 2024

John Arensmeyer

Founder & CEO, Small Business Majority

Dear Chair Warren, Ranking Member Kennedy and members of the Subcommittee on Economic Policy:

As a leading representative of America’s 33 million small businesses, Small Business Majority is pleased to provide written testimony to the U.S. Senate Subcommittee on Economic Policy regarding the hearing on the economic and health impacts of threats to reproductive rights.

Small Business Majority is a national small business organization that empowers America’s diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enables us to educate stakeholders about key issues impacting America’s entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities.

Examining the intersection of reproductive rights and women’s entrepreneurship

Women’s reproductive freedom has been under attack for decades, with the Supreme Court’s decision to overturn *Roe v. Wade* nearly two years ago creating a cascade of restrictions and threats to reproductive healthcare. This infringement not only impacts a woman’s right to choose, but also hinders the financial stability of women entrepreneurs nationwide. For women entrepreneurs, regardless of their race, ethnicity, or party affiliation, the freedom to decide if and when to have children is extremely important to their ability to pursue economic opportunity through starting or growing their own businesses.

Women-owned small businesses continue to be the driving force of the post-pandemic economy, and the current small business boom has demonstrated that women filed new business licenses at astonishing rates.¹ From 2019 to 2023, the growth rate of women-owned small businesses far outpaced the growth of those owned by men by 94%.² Out of the nation’s 33 million small businesses, women-owned businesses represent more than 12 million businesses, which includes over 40% (11.2 million) of the nation’s non-

¹ “Statement from President Joe Biden on record-setting small business applications.” The White House. January 11, 2024. <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/11/statement-from-president-joe-biden-on-record-setting-small-business-applications-2/>.

² “New business applications reach record 16 million under Biden-Harris Administration.” U.S. Small Business Administration. January 11, 2024. <https://www.sba.gov/article/2024/01/11/new-business-applications-reach-record-16-million-under-biden-harris-administration>.

employer firms and around 22% (1.3 million) of the nation's employer firms, who employ more than 10 million employees.³⁻⁴

Given the fact that women own nearly 40% of the nation's small businesses and represent the fastest growing demographic of entrepreneurs, it is essential that we protect reproductive rights to ensure women entrepreneurs and their employees can continue to thrive and operate in safe environments that offer access to quality and convenient reproductive healthcare. Simply put, reproductive freedom and protections are good for business and restricting those freedoms also restricts economic growth.

Our research shows that protecting and promoting the reproductive rights of families and women is paramount to fostering a thriving economy (Data from Small Business Majority polling)

While women's entrepreneurship rates continue to skyrocket, women entrepreneurs are growing increasingly concerned about their reproductive freedoms and how efforts to restrict those freedoms will come to harm not only their business, but their employees' wellbeing.

In a recent Small Business Majority survey of more than 500 women small business owners nationwide, an overwhelming majority (92%) of respondents believe it is important for women to have the freedom to choose when to have children.⁵ This statement holds true across party lines, with 99% of Democrats, 96% of Independents and 84% of Republicans also believing this is important. Financial security and the ability to plan one's future is an absolute necessity for small business success, and women entrepreneurs see a clear link between reproductive health access and economic freedom.

While having children can be a driving reason as to why women pursue entrepreneurship, nearly two-thirds of women small business owners (64%) say their ability to decide if and when to have children has allowed them to advance in their careers and start their own businesses. Nearly 6 in 10 women small business owners (57%) believe that restrictions on abortion access will force women to choose between their careers or their reproductive freedom, with only 29% who think restrictions will have no impact on a woman's career and business.

Furthermore, access to quality benefits such as healthcare, childcare, and abortion care play an important role in women entrepreneurs' ability to attain financial security. More than half of women small business owners polled found every benefit listed just as important, with health insurance coverage (93%) garnering the most support. In addition, childcare (89%), birth control (77%) and paid family leave (83%) are also very important to most women entrepreneurs, while a majority (57%) view abortion care as an important benefit to attaining financial security.

Lastly, following the June 2022 Supreme Court ruling overturning *Roe v. Wade*, 78% of women entrepreneurs surveyed expressed concerns over state efforts to restrict not only abortion, but access to contraceptives. In states where reproductive rights are being threatened or restricted, about 10% more business owners said their revenues were declining, rather than improving. Additionally, those surveyed agree that it is important for their employees to have access to reproductive healthcare (71% agree/52% strongly agree), while roughly a quarter say that the Court ruling has had a negative impact on them, their families and their employees.⁶ As noted previously, these restrictions impact not only the business owner, but also women employees who may have to take unpaid time off work to travel across state lines to access the reproductive services they need. The evidence following the reversal of *Roe v. Wade* is clear:

³ "Census Bureau releases nonemployer business data by demographic characteristics of owners." U.S. Census Bureau. February 8, 2024. <https://www.census.gov/newsroom/press-releases/2024/nonemployer-business-data.html>.

⁴ "Census Bureau releases new data on minority-owned, veteran-owned and women-owned businesses." U.S. Census Bureau. October 26, 2023. <https://www.census.gov/newsroom/press-releases/2023/annual-business-survey-employer-business-characteristics.html>.

⁵ "Women entrepreneurs see access to reproductive health as essential to their economic security." Small Business Majority. June 14, 2023. <https://smallbusinessmajority.org/our-research/women-entrepreneurs-say-reproductive-health-essential-to-economic-security>.

⁶ Ibid.

Disenfranchising women of their right to autonomy over personal reproductive care decisions is accompanied by far-reaching negative economic implications.

Women entrepreneurs support policies and national efforts to expand and protect reproductive freedoms

Reproductive restrictions are already impacting where people are willing to live and work. For small businesses operating in states with restrictions in place, many challenges exist for women employees and employers alike. That is why policies and national efforts to expand and protect reproductive freedoms are essential to not only the health of women nationwide, but the health of our national and state economies. Policies to expand access to reproductive healthcare at the federal and state level are welcomed by a large majority of women entrepreneurs, giving them a sense of security in their community and the ability to provide a safe working environment for their employees.

Our research has found that while women entrepreneurs value several reproductive healthcare policies, ensuring and expanding access to birth control is the most popular issue among women small business owners. What's more, surveyed women entrepreneurs strongly favored having the right to receive abortion care under federal law (72% support) and ensuring and expanding access to abortion care (70% support). The expansion of reproductive healthcare policies is an issue that is supported across party lines, with Democrats strongly supporting each policy issue and 86% of Republicans surveyed supporting expanded access to birth control. Additionally, more than 50% of Republican women surveyed support the right to receive abortion care under federal law and expanded access to abortion care.⁷

Small business owners support expanding reproductive rights and view reproductive healthcare as critical to economic health and one's ability to start and grow a business

To underscore access to reproductive healthcare as a critical foundation to a strong economy, we submit various quotes (below) from business owners in our network to the record that focus on Main Street support for reproductive freedom.

Lakila Bowden, iSee Technologies, Inc., Atlanta, Georgia: "In Georgia, legislators are actively enacting legislation to restrict access to various forms of reproductive healthcare, therefore changing the landscape of what women and entrepreneurs like me can do when it comes to their own bodies.

As a small business owner, having access to reproductive healthcare is what allowed me to be successful in business—and if I had been denied this critical benefit, it would have forever changed my ability to grow and expand my business. Indeed, a new Small Business Majority survey revealed that women entrepreneurs across party lines say that the freedom to decide if and when to have children is extremely important."

Shirley Modlin, 3D Design and Manufacturing LLC, Powhatan, Virginia: "Adversity in accessing reproductive healthcare will discourage women from pursuing skilled trades and make it more difficult for them to become entrepreneurs. Any restrictions to reproductive healthcare will have a negative impact on women small business owners and her employees. Virginia must continue to protect a woman's right to make her own decisions, ensuring that women entrepreneurs can continue to be job creators and changemakers in their communities."

Laura Starkey, Heartwood Preserve Conservation Cemetery, Trinity, Florida: "Young women employees and entrepreneurs in my community have shared the choices they've had to make between career advancement and managing an unplanned pregnancy. These choices are often not easy, but in a state like Florida, where legislation to roll back access to reproductive health has been enacted, future job creators are handcuffed to antiquated family planning policies that make the choice for them and restrict their economic growth. This is even more evident in research finding where reproductive rights are

⁷ Ibid.

threatened or restricted; about 10% more women business owners say their revenues are declining than improving.

To ensure small businesses in our state can grow and thrive, we need to advance policies that would codify access to all reproductive health services (including abortion). Research has shown that we must support a healthy small business ecosystem to promote wealth creation. This would include allowing women entrepreneurs to make their own reproductive health decisions and build an entrepreneurial ecosystem that provides a safe pathway for future and current women small business owners.”

Cheyenne Smith, BLK HIVE Media, Salt Lake City, Utah: “Access to comprehensive reproductive health care is crucial for women’s entrepreneurial success as it allows them to control their fertility and better plan their personal and professional lives. It directly influences their ability to commit to a business venture without unplanned interruptions, thus enhancing economic productivity and growth.

It is also crucial to mention that there is an urgent need for conversation around safe and affordable childcare. This is just as important as reproductive health care in empowering women’s entrepreneurship, since accessibility to cost-effective childcare can significantly enhance a woman’s ability to balance business and familial responsibilities. The same argument holds true for the employees of small business owners who also need access to reproductive health care and childcare to succeed. Gender inequity in the business world remains a persistent problem, and it is furthered by a lack of access to these resources.”

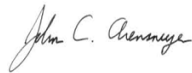
Congress must protect reproductive freedom to promote a thriving economy

Women entrepreneurs and women-owned small businesses are key contributors to the national economy, employing more than 10 million employees nationwide and generating \$2.7 trillion annually.⁸ However, restrictive policies that have followed the Supreme Court’s overturning of *Roe v. Wade* have threatened women entrepreneurs’ financial stability nationwide. Our research points to not only the importance of a woman’s right to choose if and when to have children in terms of their career goals, but the expansive support for policies to expand access to reproductive healthcare services including the right to abortion care and access to birth control under federal law.

To ensure the financial stability and economic wellbeing of the millions of women entrepreneurs that keep our economy thriving, we urge Congress to protect reproductive rights at the federal level and implement common-sense policies that will expand and strengthen access to reproductive healthcare for millions of women employers and employees nationwide. It is essential that Congress act to protect the reproductive rights of women as they continue to pursue entrepreneurship and start new businesses, which contribute to the overall health and resilience of our economy.

We appreciate the Subcommittee for holding this important hearing and shedding light on the economic harms of restricting reproductive freedom. For any questions or additional information, please contact our Government Affairs Director, Alexis D’Amato, at adamato@smallbusinessmajority.org.

Sincerely,



John Arensmeyer
Founder & CEO
Small Business Majority

⁸ “The economic impact of women-owned businesses.” *Forbes*, October 30, 2023.
<https://www.forbes.com/sites/rhetbuttle/2023/10/30/the-economic-impact-of-women-owned-businesses/?sh=15d6ef6c7def>.