

Physicians for Reproductive Health
Testimony for the Record
Hearing on Texas's Unconstitutional Abortion Ban and the Role of the Shadow Docket
Senate Committee on the Judiciary
September 29, 2021

Physicians for Reproductive Health (PRH) is a physician-led organization that mobilizes and organizes medical providers to advance sexual and reproductive health, rights, and justice. Our network includes physicians of all specialties from across the country committed to ensuring access to equitable, comprehensive health care, that will always include abortion care. We believe this work is necessary for all people to live freely with dignity, safety, and security.

We write to express our gratitude for this hearing on the Supreme Court's shadow docket, the harms of laws like Texas's S.B. 8, and the need to protect and expand abortion rights and access. We also wish to outline for the Committee the importance of protections around abortion access for our communities and the danger to patients when abortion care is pushed out of reach. Whether our patients are ready to build or create their family, already parenting, or have decided not to continue a pregnancy, all of them share something in common – they are making thoughtful, decisions about their health and well-being. Each of them deserves access to high quality health care that includes abortion care, regardless of who they are, their income levels, and regardless of where they live.

Equal access to abortion care is essential for the health, well-being, security, and dignity of all people. Abortion is a right, protected by the U.S. Constitution and repeatedly affirmed by the Supreme Court – most recently in 2020 – that the Constitution's guarantees of privacy and liberty protect a person's right to end a pregnancy. Yet, despite nearly fifty years of Supreme Court precedent, the Court is poised to hear *Dobbs v. Jackson Women's Health Organization*, a case directly challenging *Roe v. Wade's* protections. Notably, over 200 members of Congress, including members of the Senate Judiciary Committee, filed amicus briefs urging the Court to take this opportunity and overturn *Roe*. And the Court recently declined to intervene in a case challenging a particularly cruel abortion ban in Texas, known as S.B. 8. This law bans abortion care after six weeks of pregnancy and entices private citizens to sue abortion providers and any individual who helps someone get the care they need by offering \$10,000, minimum, should they win their case in court. As a result, *Roe* is effectively nullified in the second most populous state in the country. These harmful attacks on abortion rights are not limited to Texas. According to the Guttmacher Institute this year has already been the most devastating state legislative session with more abortion restrictions being enacted than in any prior year since *Roe*.¹ Already, lawmakers have pre-filed a S.B. 8 copycat in Florida and more states are expected to follow.

Today, in much of the country, abortion care is out of reach for too many members of our communities. Lack of insurance coverage for this essential care, a shortage of abortion providers, and hundreds of medically unjustified state restrictions have compounded the problem and made abortion nearly impossible to obtain. These obstacles fall most heavily on groups already experiencing significant barriers to essential health care due to discrimination, lack of insurance, and lack of financial resources.

As providers, we see firsthand the harm restrictions on abortion care cause our patients. Denial of abortion care can have serious long-lasting consequences on a person's health and well-being. For

¹ Guttmacher, *State Policy Trends at Midyear 2021*, <https://www.guttmacher.org/article/2021/07/state-policy-trends-midyear-2021-already-worst-legislative-year-ever-us-abortion>.

example, women who have been denied an abortion are more likely to experience high blood pressure and other serious medical conditions during the end of pregnancy, more likely to remain in relationships where interpersonal violence is present; and more likely to experience poverty.²

The American College of Obstetricians and Gynecologists (ACOG), along with other medical societies, identifies abortion as an essential health care service that requires timely access to care. ACOG also recommends the repeal of legislation that imposes barriers to access and interferes with the patient-provider relationship, including abortion bans, mandatory waiting periods, biased counseling, medically unnecessary ultrasounds, and unjustified facility and staffing requirements.³ Twenty-four medical organizations including the American Medical Association, the American Association of Pediatrics, the American Academy of Family Physicians, and the American College of Nurse-Midwives recently joined ACOG in filing an amicus brief urging the Supreme Court to strike down Mississippi's ban on abortion after 15 weeks of pregnancy.⁴

Abortion is health care and it should not be singled out for exclusion or have additional administrative or financial burdens placed upon it. Abortion is extremely safe and arbitrary barriers on abortion care do not make it any safer. In 2018, the National Academies of Sciences, Engineering and Medicine (NASSEM) published a comprehensive study affirming the safety record of abortion and pointed out that the biggest threat to patient safety is the litany of medically unnecessary regulations that raise costs and delay procedures, ultimately putting patients' health at risk.⁵

Restrictions on abortion care have far reaching consequences. Abortion restrictions both deepen existing inequities and threaten health outcomes for pregnant people and people giving birth. We know that while most people will have healthy pregnancies, some will experience illness or conditions where pregnancy can cause serious problems. When abortion is difficult or impossible to access, complicated health conditions can worsen and even result in death. In order to address our nation's ongoing maternal health crisis, a named priority for Members of this Committee, abortion care must be accessible. The communities that are facing the most barriers to accessing abortion care are the same communities that are unable to access high quality, community grounded, culturally responsive prenatal and maternity care.

The current situation in Texas is indefensible. Due to the inadequate health exception in S.B. 8, providers are put in an impossible position: risk a lawsuit, wait for a patient's health to worsen so they can provide abortion care, or ask their patient to travel out of state, hours away from home, to obtain needed care. This is not how medicine should be practiced. Not in Texas, not in the United States, not anywhere. In

² The Harms of Denying a Woman a Wanted Abortion. Advancing New Standards in Reproductive Health. University of California at San Francisco, *available at* https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

³ American College of Obstetricians and Gynecologists Committee Opinion 815, "Increasing Access to Abortion." December 2020, *available at* <https://www.acog.org/clinical/clinicalguidance/committeepinion/articles/2020/12/increasing-access-to-abortion>.

⁴ Brief of American College of Obstetricians and Gynecologists et al as *amicus curiae* in *Dobbs v. Jackson Women's Health Services* (2021) *available at* <https://www.acog.org/-/media/project/acog/acogorg/files/advocacy/amicus-briefs/2021/20210920-dobbs-v-jwho-amicus-brief.pdf?la=en&hash=717DFDD07A03B93A04490E66835BB8C5>.

⁵ National Academies of Sciences, Engineering, and Medicine. The safety and quality of abortion care in the United States. Washington DC; National Academies Press; 2018, <https://www.nap.edu/catalog/24950/thesafety-and-quality-of-abortion-care-in-the-united-states>.

urgent, complex medical situations, providers must be able to take care of their patients – not worry about malicious, unconstitutional lawsuits.

It is undeniable that the United States has a two-tiered system for reproductive health care and it is only getting worse. Our nation is only beginning to emerge from an ongoing pandemic that has disproportionately harmed communities of color and we continue to reckon with systemic racial injustice at the hands of the State. Measures that restrict and criminalize abortion are just another form of the reproductive oppression that people of color have been subject to for centuries. It is critical we place this moment, laws like S.B. 8, and the imminent threat to reproductive health care within this larger context. As we work to address inequities and injustice at all levels, we must understand that for Black people, Indigenous people, communities of color, immigrants, young people, people with low incomes, and LGBTQ+ people, losing the fragile protections provided by *Roe v. Wade* would be devastating.

On September 24, 2021, the House of Representatives voted to pass the Women’s Health Protect Act to help put an end to arbitrary and medically unnecessary barriers on abortion care. We urge Members of this Committee to support this bill and push for its passage, as well as others that would increase access to health care rather than limit it including the EACH Act, HEAL Act, the Pregnant Workers Fairness Act, and maternal health care provisions included in the Build Back Better package. Our patients and our communities cannot wait.