

June 7, 2024

The Honorable Patty Murray
Chair
U.S. Senate Committee on Appropriations
S-128, The Capitol
Washington, DC 20510

The Honorable Susan Collins
Vice Chair
U.S. Senate Committee on Appropriations
S-146A, The Capitol
Washington, DC 20510

The Honorable Tom Cole
Chair
U.S. House Committee on Appropriations
H-307, The Capitol
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member
U.S. House Committee on Appropriations
1036 Longworth House Office Building
Washington, DC 20515

Dear Chairs Murray and Cole, and Ranking Members Collins and DeLauro:

We, the undersigned organizations that support reproductive health, rights, and justice, write to urge you to ensure that the harmful Weldon Amendment is not included in the Fiscal Year (FY) 2025 appropriations package. The Weldon Amendment is a budget rider in the Labor, Health and Human Services, Education, and Related Agencies (Labor-HHS) appropriations bill that, for far too long, has allowed personal beliefs, not patient health and the standard of care, to determine the care a patient receives.

Access to reproductive health care – including abortion – is vital to gender justice. The ability to decide whether and when to become pregnant and parent is crucial to a person’s liberty, equality, and economic security. As our country contends with the aftermath of the Supreme Court’s erroneous decision in *Dobbs v. Jackson Women’s Health Organization*, Congress must act urgently to protect the freedom of all people to control their bodies, lives, and futures.

The Weldon Amendment Prioritizes Personal Beliefs Over Patient Health

Since FY 2005, the Weldon Amendment has been attached to the discriminatory Hyde Amendment – a rider that bans the use of certain federal funds to cover abortion, with only very limited exceptions - in the annual Labor-HHS bill.¹ While the Weldon Amendment is deceptively written to prohibit “discrimination” against health care entities that refuse to provide, cover, pay for, or refer for abortion, it really allows health care providers — including hospitals and health insurance plans, as well as individual nurses and doctors — to discriminate against patients by denying them the care they need.

¹ Weldon Amendment, Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2005); <https://www.congress.gov/108/plaws/publ447/PLAW-108publ447.pdf>

By giving a green light to refusals of abortion care, the Weldon Amendment puts patients' health and lives in danger, even in states where abortion is legal. A single instance of refusing care can mean a patient never getting the care they need – or receiving it only after enduring significant delays and harm.² There are no provisions in Weldon to protect patient access to abortion services.

The Weldon Amendment is especially harmful because it misuses religion to intimidate states that seek to protect abortion care by threatening critical federal health funding. For example, in December 2020 – during a pandemic – the Trump Administration attempted to strip California of \$800 million in federal Medicaid funding annually because state law ensures residents have insurance coverage of abortion.³

Previous Administrations issued rules that relied on Weldon and other refusal of care laws to allow virtually any entity involved in health care – from doctors to schedulers to nurses to ambulance drivers - to deny patients care and even information about care.⁴ Fortunately, many harmful provisions of these policies were blocked and reversed,⁵ but efforts to expand and weaponize the Weldon Amendment continue.⁶

Eliminating the Weldon Amendment is not only critical as a matter of policy, it is also popular with voters. This was evident even before the *Dobbs* decision—a July 2021 poll in battleground congressional districts found that 6 in 10 voters oppose allowing health care providers to refuse treatment to a woman seeking an abortion because of religious or moral beliefs.⁷ More recently, in a June 2022 poll of likely 2022 voters, the majority opposed the idea that institutions, including insurance companies (66% of respondents), employers (63%), and

² REFUSALS TO PROVIDE HEALTH CARE THREATEN THE HEALTH AND LIVES OF PATIENTS NATIONWIDE, NATIONAL WOMEN'S LAW CENTER (2023), <https://nwlc.org/resource/refusals-to-provide-health-care-threaten-the-health-and-lives-of-patients-nationwide-2/> (last visited May 28, 2024).

³ *HHS to Disallow \$200M in California Medicaid Funds Due to Unlawful Abortion Insurance Mandate; Refers Vermont Medical Center to DOJ for Lawsuit Over Conscience Violations*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Dec. 16, 2020), <https://public3.pagefreeser.com/content/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2020/12/16/hhs-disallow-200m-california-medicaid-funds-due-unlawful-abortion-insurance-mandate.html>. In January 2020, the Trump Administration issued a notice of violation to the state of California. See *HHS Issues Notice of Violation to California for its Abortion Coverage Mandate*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Jan. 24, 2020),

<https://public3.pagefreeser.com/content/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2020/01/24/hhs-issues-notice-of-violation-to-california-for-its-abortion-coverage-mandate.html>. On August 13, 2021, the U.S. Department of Health and Human Services' Office for Civil Rights withdrew its 2020 determination that there had been a Weldon Amendment violation and closed the complaints at issue, finding that the complainants, Skyline Wesleyan Church and Missionary Guadalupanas, did not meet the definition of a "health care entity" under the Weldon Amendment. Letter from Robinsue Frohboese, Acting Director, Off. for C.R., to Rob Bonta, Att'y Gen., State of Cal. (Aug. 13, 2021), <https://www.hhs.gov/conscience/conscience-protections/ca-letter/index.html>.

⁴ The reach of these proposed rules could have meant a rape survivor could be denied emergency birth control, a transgender person could be denied gender-affirming care, or a pregnant person could be denied information and counseling on their pregnancy options. See *Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law*, 73 Fed. Reg. 78,071 (December 19, 2008) (codified at 45 C.F.R. § 88); *Protecting Statutory Conscience Rights in Health Care*; *Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019) (codified at 45 C.F.R. § 88).

⁵ *Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws*, 76 Fed. Reg. 9,968 (February 23, 2011) (codified at 45 C.F.R. § 88); *New York v. U.S. Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475 (S.D.N.Y. 2019); *Safeguarding the Rights of Conscience as Protected by Federal Statutes*, 88 Fed. Reg. 820 (January 5, 2023) (to be codified at 45 C.F.R. § 88).

⁶ The FY 24 House-introduced Labor-HHS bill included language attempting to create a private right of action that would allow virtually anyone to bring a case in federal court for an "actual or threatened violation" of the Weldon Amendment. FY 2024 Appropriations Bill for U.S.

Departments of Labor, Health and Human Services, & Education, H.R. 5894 § 245A, 118th Cong.; <https://docs.house.gov/meetings/AP/AP07/20230714/116252/BILLS-118--AP--LaborHHS-FY24LHSSubcommitteeMark.pdf>.

⁷ Hart Research Associates & Vision Strategy and Insights, *Polling of 801 registered voters in battleground congressional districts from July 7-12, 2021*, on file with the National Women's Law Center.

hospitals (59%), should be able to refuse abortion care based on personal or religious beliefs. Nearly two-thirds recognized that refusal of care laws put patients' health and lives in danger.⁸

The need to eliminate the harmful Weldon Amendment is critical in this moment, as states ban abortion and refusals of care worsen, with increasing reports of patients being turned away for essential medical care and urgent medical interventions.^{9 10} Fortunately, both the House and Senate in FY 2022 and 2023 made historic progress by removing the harmful Weldon and Hyde Amendments from their Labor-HHS bills. Congress must demonstrate its commitment to serve the will of the people by removing the Weldon Amendment permanently from its FY 2025 appropriations bills.

Sincerely,

Advocates for Youth

American Association of University Women

American Atheists

American Federation of State County and Municipal Employees

American Humanist Association

American Society for Reproductive Medicine

Association of Maternal & Child Health Programs

Autistic Self Advocacy Network

Bend the Arc: Jewish Action

Center for Biological Diversity

Center for Reproductive Rights

Empowering Pacific Islander Communities

Friends of the Earth Action

⁸ GQR, Mixed mode survey among one thousand registered voters nationally from June 22-30, 2022 including Black, Latino, and AAPI over samples of 100 respondents each, on file with the National Women's Law Center.

⁹ Refusals to provide abortion care are increasing following *Dobbs*, and although they are not always due to personal or religious beliefs, recent instances demonstrate the serious harm that can result from a refusal of care. For example, Mylissa Farmer was a Missouri resident who was denied emergency abortion care by multiple hospitals in Kansas, Missouri, and Illinois after her water broke at 18 weeks of pregnancy. Despite the severe threats to Ms. Farmer's health and life and the fact that the pregnancy was not viable, the hospitals refused to provide the emergency care she needed. Ms. Farmer was forced to seek care elsewhere, and although she did receive the care she needed from an abortion clinic, Ms. Farmer suffered immense physical, mental, emotional, and financial harm. See Administrative Complaint, *Mylissa Farmer v. Freedman Health* (Nov. 8, 2022); <https://nwl.org/wp-content/uploads/2022/11/2022.11.08-Mylissa-Farmer-EMTALA-complaint.pdf>.

¹⁰ Nearly one in five abortion patients traveled out of state to obtain care in the first six months of 2023, compared with one in ten patients during a similar period in 2020. *New Data Show That Interstate Travel for Abortion Care in the United States Has Doubled Since 2020*, GUTTMACHER INST. (Dec. 7, 2023), <https://www.guttmacher.org/news-release/2023/new-data-show-interstate-travel-abortion-care-united-states-has-doubled-2020>.

Guttmacher Institute
Hadassah, The Women's Zionist Organization of America
Healthy Teen Network
Ibis Reproductive Health
Impact Fund
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Indivisible
International Center for Research on Women
League of Women Voters of the United States
MomsRising
National Abortion Federation
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Health Law Program
National Latina Institute for Reproductive Justice
National Organization for Women
National Partnership for Women & Families
National Women's Health Network
National Women's Law Center
Nurses for Sexual & Reproductive Health
Physicians for Reproductive Health
Planned Parenthood Federation of America
Positive Women's Network-USA
Power to Decide
Public Justice Center
Religious Coalition for Reproductive Choice

Reproaction

Reproductive Freedom for All (formerly NARAL Pro-Choice America)

Reproductive Health Access Project

Service Employees International Union (SEIU)

SIECUS: Sex Ed for Social Change

State Innovation Exchange (SIX) Action