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Senate Committee on the Judiciary
"The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive"
February 11, 2020

Dear Chairman Sasse and Ranking Member Feinstein,

Thank you, members of the Senate Committee on the Judiciary, for inviting me to testify. I am President and CEO of the National Women's Law Center, which is dedicated to the advancement and protection of women's legal rights and opportunities. The legislation introduced by Senator Sasse, S. 130 and S. 311,[i] is an attempt to restrict women's freedom to make important decisions about if and when to start a family. The National Women's Law Center strongly opposes this legislation.

The National Women's Law Center fights for gender justice – in the courts, in public policy, and in our society – working across the issues that are central to the lives of women and girls, including child care and early learning, education, reproductive rights and health, income security, workplace justice, including addressing sexual harassment or assault.

Access to reproductive health care – including abortion – is vital to gender justice. The ability to make decisions about whether to have an abortion, and the ability to access abortion, is a key part of a person's liberty, equality, and economic security. As the U.S. Supreme Court affirmed in its 1992 *Planned Parenthood of Southeastern Pennsylvania v. Casey* decision: "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[ii]

Yet despite this truth – or because of it – lawmakers continue to pass restrictions on women's ability to make this fundamental decision. Since 2010, state lawmakers have passed more than 400 abortion restrictions, intended to make *Roe v. Wade* irrelevant and ignoring the Supreme Court's clear statements that reproductive decisions are foundational liberties protected by the Fourteenth Amendment.[iii] These restrictions range from measures that judge and shame women seeking abortion to laws that shut down abortion clinics to – most recently – all-out bans on abortion. Last year, lawmakers in seven states – Alabama, Georgia, Kentucky, Louisiana, Mississippi, Ohio, and Missouri – passed laws that would prohibit abortion care before most people even know they are pregnant.[iv] Courts are blocking these unconstitutional laws, but that is precisely the point. The legislators passing these restrictions have made their goal crystal

clear: they want to propel a case to the U.S. Supreme Court that presents the Court with an opportunity to overturn *Roe v. Wade*.[v] They believe that with President Trump's new Supreme Court picks, this goal will be realized. Some do not even want to wait for one of these extreme abortion bans to reach the Court. In January, over two hundred Members of Congress filed an *amicus* brief in the pending Supreme Court case *June Medical Services, L.L.C v. Gee*,[vi] asking the Court to revisit and overturn *Roe*,[vii] even though that question is not squarely presented.

It is important to recognize that this unprecedented assault on abortion rights is happening at a moment when there is a broader movement for gender justice in this country. Women are marching in the streets to demand equality. The nation is about to celebrate the 100th Anniversary of the 19th Amendment, when some women first gained the right to vote. The 38th state just ratified the Equal Rights Amendment. State and local legislators – including the District of Columbia – are moving forward with legislation that protects and expands people's right to make their own decisions about whether, when, and how to start families. This broader movement will transform the relationship between gender and power in this country. It is not surprising, then, that some legislators feel threatened and are using their power to stop this progress. They are using abortion restrictions to control the lives and futures of women, denying them basic equality. And they are hiding this motive behind false and misleading rhetoric about abortion care later in pregnancy.

It's important to consider S. 130 and S. 311 in this broader context. This legislation intentionally uses false and misleading information in order to restrict women's decisions about pregnancy. It would deny families the ability to decide for themselves how they would like to spend the last moments with their dying child. Instead, the legislation could require the baby to be taken out of parents' arms in the last hours and days of life and given futile medical treatment that goes against a decision they made. Currently, these decisions are being made considering the family's specific circumstances, their faith, and the best judgment of the trained medical providers in the room. The legislation would instead take that decision away and tie the hands of health care professionals providing compassionate care.

The legislation suffers from being both overly prescriptive and overly vague, making it nearly impossible for providers to know what type of care would be acceptable. Given that the penalties are incredibly harsh – including five years in prison – this legislation has been drafted to intimidate providers and force them to stop providing care to patients later in pregnancy.[viii] If this bill were to become law, providers might feel constrained from providing life-saving care to their pregnant patients for fear that it would run afoul of the provisions. In emergency situations, health care providers would be turning to their general counsel rather than caring for their pregnant patient, wondering if the patient needs to get sicker before they take action.

Sadly, there are real-life examples that illustrate the dangers when politicians – not health care providers and patients – determine care.[ix]

It is critical to bring the focus back to the people at the center of these decisions – those who are making the best decisions for their circumstances but who are delayed, blocked, shamed, or judged by politicians who impose restrictions and barriers. In the case of S. 130 and S. 311, the legislation politicizes the traumatic stories shared by those who had to terminate their pregnancies because of a health issue or a fetal diagnosis.[x] I have read the stories of women who have needed the care the bill aims to restrict. I have read about their pain, their decision-making process, their appreciation of their health care providers, and I have read how upset they are that their stories are being used as a political football in an effort to restrict abortion care.

Indeed, like with the legislation the Committee is considering today, the broader efforts to restrict abortion ignore and marginalize the people who are most affected. It is important that the Committee have a clear understanding of the hurdles faced by those seeking abortion. Existing restrictions targeting abortion providers have led to longer waiting times for appointments and increased travel to clinics, which often result in increased associated costs – such as long-distance travel, a hotel stay in a different city, additional child care costs, and more time off work.[xi] These costs compound with other restrictions intended to make abortion unaffordable and, therefore, inaccessible. For example, people seeking abortion often must pay out of pocket for the abortion care itself, since anti-abortion legislators prohibit insurance plans from covering abortion.[xii]

Women seeking abortion care disproportionately live in poverty. In 2014, nearly half of abortion patients were women with family incomes below the federal poverty level; women whose families earned less than 200% of the federal poverty level made up an additional quarter of abortion patients.[xiii] Flexibility to travel to multiple clinic visits is also a luxury unavailable to low-wage workers, who are disproportionately women and especially women of color.[xiv] Women are also more likely than men to hold part-time positions without sick leave and flexible schedules, and women of color are disproportionately likely to do so.[xv] Extended travel and multiple clinic visits also require considerable advanced planning. However, low-wage workers frequently receive their work schedules just one week or less in advance, and their schedules often change at the last minute.[xvi] Moreover, many employees lack paid sick leave or any form of leave—and low-wage jobs in particular lack these benefits.[xvii] Consequently, if a low-wage worker who needs an abortion is unable to align her work schedule with an over-burdened clinic's schedule, she may lose income, and even her job, in order to obtain an abortion.

In addition to travel costs, hotel expenses, and lost wages, many women seeking an abortion will also incur child care costs, as most women having an abortion are already mothers.[xviii] A 2013 study found that 40% of women surveyed sought abortions because they were not prepared to

support a child financially, while nearly 30% cited their need to focus on parenting existing children.[xix] In fact, according to the Federal Reserve, approximately 40% of adults in the U.S. would struggle to cover an unexpected expense of $400.[xx] Not surprisingly, one study found that one-third of women getting an abortion had to delay or forgo paying bills, food, and even rent.[xxi] One-half relied on financial assistance from others, but such assistance is never assured. Women needing abortions are already more likely to have low incomes, be mothers, and be single.[xxii] Many women, particularly low-income women, already have abortions later than they would prefer because they need time to raise money for the procedure and related travel.[xxiii]

This data demonstrate that certain individuals in this country bear the brunt of restrictions on decisions around abortion and pregnancy care. This includes low income women, who cannot afford to make multiple trips to a provider, drive across the state, and pay out of pocket for abortion care. It includes women of color who already face tremendous inequality in health care, including maternal health, which is particularly true for Black and indigenous women.[xxiv] It includes those who live in rural areas, given the lack of providers and clinics in such areas, and LGBTQ individuals, who already face barriers to reproductive health care.[xxv] It includes those facing intimate partner violence.[xxvi] In short, it is those who often have the least representation in the very governmental entities that are seeking to control their lives and futures.

As president of an organization that fights for gender justice in our schools, at work, in health care, and in improving income security for women and their families, it is clear how all of these fights are connected. The same misogyny that drives these restrictions on abortion care drives much of the opposition we see in our other efforts to advance gender justice. Gender justice is impossible as long as the right to abortion and ability to access abortion care is eroded.

Thank you.

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[i] Born-Alive Abortion Survivors Protection Act, S. 130, 116th Cong. (2020); Born-Alive Abortion Survivors Protection Act, S. 311, 116th Cong. (2020).

[ii] *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 835 (1992).

[iii] CTR. FOR REPRODUCTIVE RIGHTS & IBIS REPRODUCTIVE HEALTH, EVALUATING PRIORITIES: MEASURING WOMEN AND CHILDREN'S HEALTH AND WELL-BEING AGAINST ABORTION RESTRICTIONS IN THE STATES 4 (vol. II 2017), available at https://reproductiverights.org/sites/default/files/documents/USPA-Ibis-Evaluating-Priorities-v2.pdf.

[iv] GUTTMACHER INST., STATE POLICY TRENDS AT MID-YEAR 2019: STATES RACE TO BAN OR PROTECT ABORTION (2019), available at https://www.guttmacher.org/article/2019/07/state-policy-trends-mid-year-2019-states-race-ban-or-protect-abortion.

[v] Alabama State Representative Terri Collins, the sponsor of Alabama's recent abortion ban, made this clear: "[t]his bill is about challenging *Roe v. Wade*. Emily Wax-Thibodeaux, *Alabama Senate Passes Nation's Most Restrictive Abortion Ban, Which Makes No Exceptions for Victims of Rape and Incest*, WASH. POST (May 14, 2019), https://www.washingtonpost.com/national/alabama-senate-passes-nations-most-restrictive-abortion-law-which-makes-no-exceptions-for-victims-of-rape-and-incest/2019/05/14/e3022376-7665-11e9-b3f5-5673edf2d127_story.html?utm_term=.1fd441c61bc9. Alabama State Senator Clyde Chambliss, a supporter of the bill, also stated that the bill "is

a direct plan to challenge *Roe v. Wade* in the Supreme Court." Daniel Trotta, *Alabama Senate Bans Nearly All Abortions, Including Rape Cases*, REUTERS (May 14, 2019), https://www.reuters.com/article/us-usa-abortion-alabama/alabama-senate-bans-nearly-all-abortions-including-rape-cases-idUSKCN1SK13E.

[vi] *June Medical Services, L.L.C, v. Gee*, 913 F.3d 573 (5th Cir.), *granting stay*, 139 S. Ct. 663 (2019), *and cert. granted*, No. 18-1323, 2019 WL 4889929, at *1.

[vii] Brief Amici Curiae of 207 Members of Congress in Support of Respondent and Cross-Petitioner at 29, *June Med. Servs.*, 139 S. Ct. 663 (No. 18-1323).

[viii] *See* S. 311, 116th Cong. § 1532 (b)(1) (2020) (providing that [w]hoever violates [the bill's requirements for health care practitioners] shall be fined under this title, imprisoned for not more than 5 years, or both).

[ix] *See, e.g.,* Shari Inniss-Grant, *Abortion Can Save A Woman's Life – And Restrictions Can End It*, NAT'L WOMEN'S LAW CTR., (Nov. 16, 2012), https://nwlc.org/blog/abortion-can-save-woman%E2%80%99s-life-%E2%80%93-and-restrictions-can-end-it/.

[x] Natalia Megas, *The agony of ending a wanted late-term pregnancy: three women speak out*, THE GUARDIAN, (Apr. 18, 2017, 6:00 pm), https://www.theguardian.com/society/2017/apr/18/late-term-abortion-experience-donald-trump.

[xi] *See, e.g.,* Brief of Amici Curiae National Women's Law Center and 47 Additional Organizations Committed to Equality and Economic Opportunity for Women in Support of Petitioners at 19, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/RRH_Whole-Womens-Health-Amicus-Brief_1.4.16.pdf; Brief of Amici Curiae Nat'l Women's Law Ctr. et al. in Support of June Med. Servs., L.L.C., *June Med. Servs.*, 139 S. Ct. 663 (No. 18-1323), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/12/NWLC-June-Medical-Services-LLC-v.-Gee-Amicus-Brief-FILED.pdf.

[xii] *State Funding of Abortion Under Medicaid*, GUTTMACHER INST. (Feb. 1, 2020), https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid; *Regulating Insurance Coverage of Abortion*, GUTTMACHER INST. (Feb. 1, 2020), https://www.guttmacher.org/state-policy/explore/regulating-insurance-coverage-abortion.

[xiii] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States*, 2008–2014, 107 AM. J. PUB. HEALTH 1904, 1906 (2017).

[xiv] Although women constitute half the workforce, they hold nearly three in five low-wage jobs. Nearly half of these low-wage jobs are held by women of color. JASMINE TUCKER & KAYLA PATRICK, NAT'L WOMEN'S LAW CTR., WOMEN IN LOW-WAGE JOBS MAY NOT BE WHO YOU EXPECT 1 (Aug. 2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/08/Women-in-Low-Wage-Jobs-May-Not-Be-Who-You-Expect.pdf.

[xv] ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NAT'L WOMEN'S LAW CTR., PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN 1 (Sept. 2015), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/part-time_workers_fact_sheet_8.21.1513.pdf.

[xvi] Daniel Schneider & Kristen Harknett, *It's About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, SHIFT 1–2 (Oct. 2019), https://shift.berkeley.edu/files/2019/10/Its-About-Time-How-Work-Schedule-Instability-Matters-for-Workers-Families-and-Racial-Inequality.pdf (finding two-thirds of workers in retail and food service receive less than two weeks' notice of their schedules, and half of those get less than a week's notice).

[xvii] INST. FOR WOMEN'S POL'Y RES., 44 MILLION U.S. WORKERS LACKED PAID SICK DAYS IN 2010, at 1 (Jan. 2011), http://www.iwpr.org/publications/pubs/44-million-u.s.-workers-lacked-paid-sick-days-in-2010-77-percent-of-food-service-workers-lacked-access.

[xviii] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. Pub. Health 1904, 1906 (2017).

[xix] M Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, BMC WOMEN'S HEALTH, July 2013, at 6.

[xx] BD. GOVERNORS FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018, at 21 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

[xxi] Rachel K. Jones et al., *At What Cost? Payment for Abortion Care by U.S. Women*, 23 WOMEN'S HEALTH ISSUES e173, e176 (2013).

[xxii] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 AM. J. PUB. HEALTH 1904, 1906 (2017).

[xxiii] Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 CONTRACEPTION 334, 335, 341 (2006).

[xxiv] Nat'l P'ship for Women & Families, Black Women's Maternal Health (2018), available at http://www.nationalpartnership.org/our-work/resources/health-care/maternity/black-womens-maternal-health-issue-brief.pdf; Roni Caryn Rabin, *Huge Racial Disparities Found in Deaths Linked to Pregnancy*, NEW YORK TIMES (May 7, 2019), https://www.nytimes.com/2019/05/07/health/pregnancy-deaths-.html.

[xxv] AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION: HEALTH DISPARITIES IN RURAL WOMEN (2014), https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co586.pdf?dmc=1&ts=20191112T0114132450; BIXBY CTR. FOR GLOB. REPRODUCTIVE HEALTH, *LGBTQ Patients Face Discrimination and Erasure When Seeking Reproductive Health Care*, https://bixbycenter.ucsf.edu/news/lgbtq-patients-face-discrimination-and-erasure-when-seeking-reproductive-health-care (last visited on Nov. 11, 2019).

[xxvi] Women in abusive relationships who sought and obtained abortion care experienced a decrease in physical violence from the man involved in the pregnancy; women who sought but were denied care were not so fortunate. Women denied an abortion remain tethered to the abuser and at risk for continued violence, even if they end the romantic relationship. Pregnant women in abusive relationships are also at risk of being killed by their abusers. Sarah CM Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MED., Sept. 2014, at 5; *see also id.* (women denied abortion were more likely to have sustained contact with the man involved in pregnancy); Deborah Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 IND. L.J. 667, 672 (2006).