

# The Time is Now, The Place is Congress: Pass the Women's Health Protection Act



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With the Supreme Court's refusal to block the egregious and unconstitutional Texas vigilante law, America is currently facing the very real possibility that the ability to safely access abortion services may be a thing of the past. But the future of women's reproductive freedom does not lie solely within the hands of the Supreme Court. Congress has the authority, and now the prime opportunity, to enshrine in federal law what has long been established as a constitutional right. By passing the *Women's Health Protection Act of 2021*, Congress can finally take bold, conclusive action that will protect that right for this generation and those to come.

## The Right to Choose is Under Attack

Not since 1973, the year of the pivotal *Roe v. Wade* decision, have there been such deliberate assaults on abortion rights. Thus far in 2021, 561 abortion restrictions were introduced across 47 states. And

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they're getting traction. 92 have already been enacted by state legislatures historically hostile towards abortion rights. Oklahoma and Arkansas top the list of the most extreme laws outside of Texas, with both states enacting near-total bans on all abortions, except in the event of a medical emergency. Three other states in addition to Texas have instituted "heartbeat" bans, which prohibit abortion any time after a fetal heartbeat is detected, usually around six weeks of pregnancy (often before a person knows they are pregnant). All these state restrictions are brazen violations of settled federal case law allowing abortion procedures up to the point where a fetus can survive outside the womb, typically around 24 weeks.

It's no mystery why so many states have chosen this year to enact such blatantly unconstitutional abortion restrictions. The Supreme Court is the most conservative it has been in a generation, with a Republican-appointed supermajority of 6-3. The high court is already set to hear oral arguments on Mississippi's 15-week ban on December 1<sup>st</sup>. A decision in that case overturning *Roe* would have an immediate effect on abortion regulations nationwide, as many states have already included clauses foreseeing the opinion in their current restrictions. Louisiana, for example, has an identical ban on its books to the one being challenged in the case, but legislators have included language triggering it to come into effect only if the Supreme Court upholds Mississippi's ban.

## **The Right to Choose Can Be Protected by Congress**

But policymakers can act now to forestall this series of events. First introduced in 2013, the *Woman's Health Protection Act* (WHPA) would protect an individual's ability to make the choice of whether to end their pregnancy and safeguard a health care provider's ability to offer abortion services previously protected by *Roe*. Even before these blatantly unconstitutional bans were passed, states have implemented a hodgepodge of regulations that restrict or virtually eliminate access to safe abortion procedures. This has created a mixed bag of regulations from state to state that have created confusion and inconsistency. Invoking the powers of the Commerce Clause, the WHPA would eliminate these burdensome state laws that are neither grounded in scientific fact or medical necessity and establish uniformity in access to abortion services across the country.

The WHPA reaffirms the *Roe* standard by eliminating all prohibitions on abortion prior to viability, as well as after viability if continuing the pregnancy would pose a health risk to the patient. That means, if passed, a health care provider would be able to lawfully perform any abortion procedure up until 24 weeks of pregnancy, regardless of the state in which they practice.

The bill also invalidates any requirement that health care providers must perform specific tests or procedures, offer medically inaccurate information, or wait an arbitrary number of days or visits before performing an abortion. Currently, 18 states require individuals seeking an abortion to receive counseling on a range of unrelated and erroneous medical topics, and 25 states require a waiting period of at least 24 hours before receiving the procedure, forcing at least two visits to the clinic (which in many parts of the country could be a long drive away). Policies of this nature have

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consistently been proven to serve no true medical or safety purpose and are only intended to drive up the cost and burden of providing abortion services.

A health care provider's ability to prescribe medications as necessary and provide telehealth services is also protected by the bill. Currently, 19 states prohibit the use of telehealth services to provide a medical abortion, requiring patients to physically go into an office when there is no logical reason to do so. The ability to obtain abortion services via telemedicine would have a tremendous impact on rural and economically disadvantaged communities, where the nearest health care facility may be miles away. Ironically, many of these remote areas are located in the same states where abortion restrictions are most stringent. Additionally, the bill prohibits limitations regarding the facilities where abortions are performed, including those regulating physical location, staffing, medical equipment, and hospital admitting privileges—all of which have been used by hostile states to limit access to services.

Furthermore, The WHPA also empowers the Attorney General to protect access through petitioning for injunctive relief against any government official acting in violation of the law. The bill also offers a private right of action to any individual or entity, including health care providers, who have been aggrieved by a violation of the law to bring suit in federal court to protect their own rights.

The ability to obtain to safe and accessible abortion services is pivotal to a women's ability to make decisions regarding her life and her future. The WHPA ultimately guarantees women that no matter what state they live in, they will have full autonomy over their reproductive health according to the standards laid out in *Roe*. No more driving hundreds of miles across state lines to the closest facility that will perform a procedure. No more seeking unsafe medications from nonmedical sources because there is no other option. No more enduring invasive and uncomfortable protocols that are excessive and medically baseless. The Act protects pregnant individuals, their families, and their doctors from the burden of overcoming overwhelming and often humiliating obstacles to obtaining the care they need.

## **The Right to Choose is Popular Amongst Americans**

The WHPA is fundamentally in line with the values of the vast majority of Americans. Nearly 70 percent of voters nationwide believe that a woman's constitutional right to make decisions with her family and her doctor should be protected. Voters simply do not want to turn the clock back to the pre-*Roe* days. Additionally, 61 percent support federal legislation to protect that right. Of those in favor of protecting reproductive freedom, the strongest support is drawn from voters of color (Black, Hispanic, and AAPI) and voters under the age of 30.

Even among religious Americans, this right is seen as sacrosanct. A whopping 68 percent of Catholics believe *Roe* should not be overturned, and 64 percent of Black Protestants approve of abortion in all or most cases. While anti-abortion activists and hostile state legislators may attest

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## Conclusion

The WHPA critically enshrines the protections provided by *Roe* and subsequent landmark decisions, securing the right nationwide for women to make decisions regarding their own health and family. We can no longer rely on the Supreme Court alone to uphold this principal, so now Congress must take the matter into their own hands and protect what has been the law of the land for nearly 50 years. We cannot go back to the days where a patchwork of state laws stymied constitutional rights that the vast majority of Americans support.

### TOPICS

<b>ABORTION/CONTRACEPTION</b> 79
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