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TRAP LAWS

Protecting Women or Harming Them?

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IN 2005, 21 STATES CONSIDERED A TRAP (Targeted Regulation of Abortion Providers) bill that would grant authority to the state's department of health to impose facility and personnel restrictions on abortion clinics. Currently, at least 34 states have some type of TRAP law that places specific requirements regarding health facility licensing, ambulatory surgical centers, or hospitalization.¹ These requirements go far beyond the recommendations of national health organizations for abortion care and impose costly burdens on clinics in matters such as personnel qualifications, building/structural requirements, and procedures. Activists opposed to abortion allege that the procedure necessitates special regulation because they regard it as an unsafe and unregulated procedure. For example, president of Colorado Pro-Life Alliance, who stated in supporting stringent regulation of abortion clinics that "Our primary goal is to protect

women and their health, and protect them from being victimized by the profit-driven abortion industry."² In 2000, 13 states adopted at least four major abortion restrictions and by 2013, 14 more states fell into this category.³

Are the TRAP laws adopted by more than half the states of the US legitimately concerned with women's safety and protection? While anti-abortion activists claim that TRAP laws are necessary to protect women's health and safety, the empirical evidence actually shows that these measures have nothing to do with protecting women and everything to do with partisan political control of state government.

From state-mandated ultra sounds to waiting periods to mandatory parental consent for minors, there have been many efforts throughout history to prevent women from obtaining abortion. The origins of modern TRAP laws can be traced back to the 1992 Supreme Court

decision in *Planned Parenthood v. Casey*, permitting states to regulate abortion providers as long as they didn't place an "undue burden" on a woman's ability to obtain an abortion.⁴ This undue burden standard weakened the legal protection for women initially established in the 1973 *Roe v. Wade* decision, resulting in a proliferation of state-mandated health regulation of abortion providers. Additionally, funding support for abortion quickly waned amidst the abortion movement. Just three years after *Roe v. Wade* passed, Congress ratified the Hyde Amendment, prohibiting the use of federal Medicaid funds to pay for abortions, unless a woman's life would be endangered or in cases of rape or incest.⁵ In other words, health regulations can only be enforced if they help the state's interest in promoting the health of abortion patients *and* aren't intended to unduly burden a woman's ability to have an abortion.⁶ However, TRAP laws

impose requirements that reduce access to safe procedures, significantly raise the price of abortions, and/or decrease the availability of abortion providers. Any of these consequences can result in burdening the woman's choice to receive an abortion, harming rather than promoting patient health.

The claimed "rationale" behind these TRAP laws is to single out abortion clinics because they are considered dangerous to the safety and wellbeing of women. However, abortion is one of the safest and most commonly performed procedures with less than 0.3% of abortion complications requiring hospitalization.⁷ In fact, the risk of death from childbirth is in reality about fourteen times higher than that of abortion.⁸

Abortion in America is so safe because the National Abortion Federation (NAF) has published and annually updated its Clinical Policy Guidelines since 1996.⁹ These standards provide a basis for ongoing quality assurance and cover a variety of topics, including infection prevention, treatment of complications, and use of antibiotics, sedation, and analgesia. NAF standards also require that functioning equipment and medication be available onsite

to handle emergencies, with strict protocols for medical emergencies and emergency transport. More importantly, all members of the organization must adhere to these guidelines in order to both receive and maintain membership. Abortion is already highly regulated. TRAP laws are unnecessary and segregate abortion providers from the rest of medical practice, relegating them to a level below health care. Women need safe, reliable places for this procedure and these restrictions result in inaccessible abortion services. There are many ways in which TRAP laws inhibit or discourage women from receiving a safe abortion.

First, TRAP laws frequently impose administrative burdens by requiring practices to adhere to regulations and procedures that are medically unnecessary. TRAP laws exist in different forms but the most burdensome are those that impose requirements on the physical plant, such as the width of hallways, height of ceilings, and the dimensions of counseling rooms. One notable example is in Texas, mandating that "licensed facilities must establish and maintain a written 'quality assurance program,' run by a quality assurance committee of at least four staff members, who must meet at least quarterly. 25 Tex. Admin

Code § 139.8(a).¹⁰ This is a clear example of a medically unnecessary requirement imposed by the state to make it administratively more difficult and costly to maintain a license to perform abortions.

Similarly in North Carolina, architectural requirements that have nothing to do with the abortion procedure itself are required for abortion procedures and recovery rooms. According to 10 N.C. Admin Code. 3E.0206, each room "shall have a minimum of six air changes per hour, and 'all air supplied to procedure rooms shall be delivered at or near the ceiling' and must pass through 'a minimum of one filter bed with a minimum filter efficiency of 80 percent.'"¹¹ Not only are these requirements costly, difficult to measure, and unnecessary, but they have nothing to do with protecting women. No other similar medical procedure are expected to abide by these air filter requirements, indicating that this is an administrative effort to restrict abortion providers, thereby hindering women from receiving safe abortions.

Second, TRAP laws are written in a vague language, which makes adherence to them difficult to interpret or measure. For instance, Texas issued an ambiguous provision requiring that all licensed facilities

“must ensure that all patients are cared for in a manner that ‘enhances [the patient’s] self-esteem and self-worth,’ 25 Texas Admin. Code § 139.51. This is very difficult to interpret because it is impossible to truly evaluate a person’s self-esteem and self-worth. Also, self-esteem and self-worth have nothing to do with a woman’s safety and protection. Raising the administrative cost of providing abortions discourages women to delay or even forego abortions that they would otherwise pursue. These obstacles disproportionately affect the most vulnerable women: those unable to afford the increased costs, travel longer distances, or otherwise overcome government sanctioned barriers to legal health services.¹²

Third, TRAP laws deter physicians from becoming or remaining abortion providers, interfering with their ability to “exercise their medical judgment in the best interests of their patients.”¹³ Whether its subjecting physicians to criminal and civil penalties or intruding into their practice of medicine, these TRAP laws permit a level of harassment towards abortion providers that no other medical professional experiences. For example, Missouri requires that physicians performing abortions must: “have staff privileges at a hospital within fifteen (15) minutes travel

time from the facility or the facility shall show proof there is a working arrangement between the facility and a hospital within fifteen (15) minutes travel time from the facility granting the admittance of patients for emergency treatment whenever necessary.”¹⁹ CSR 30-30.060(1)(c)(4) (Missouri).¹⁴

According to a recent policy review, requiring links to hospitals doesn’t contribute to long-standing patient safeguards, but instead grants hospitals veto power over whether an abortion provider can exist.¹⁵ The medically unnecessary requirements placed on abortion providers actually harms women as the laws inhibit their physicians from doing their job to the best of their ability. Especially with a provider shortage already prevalent in the United States, this type of legislation discourages health care providers from offering abortion care due to the unnecessary limits imposed on them.¹⁶

Warrantless search provisions under TRAP laws are in effect in twelve states, authorizing state health departments to conduct unannounced inspections on abortion facilities. Although some provisions protect patient privacy and confidentiality, other regulations don’t. For example, a South Carolina regulation allows health inspectors

access to private patient medical records and permits them to make copies of those records and remove the copies from the office. According to 24 S.C. Code Ann. Regs. 61-12 § 102(F) (2), “department inspectors shall have access to all properties and areas, objects, records, and reports, and shall have the authority to make photocopies of these documents required in the course of inspections or investigations.”¹⁷

Women who obtain abortions in these states run the risk of having their private medical information distributed to third parties. This lack of privacy could dissuade them from obtaining an abortion or reveal past abortions to their physicians, which impose repercussions on her health and safety.

While TRAP laws may seem well-intentioned and harmless at first glance, they severely threaten the process of receiving an abortion safely for women. TRAP laws single out abortion providers in order to further the agenda of anti-choice activists seeking to inhibit abortion procedures. Most of these provisions are pushed by conservative political leaders, demonstrating the partisan agenda behind these medical regulations. In fact, a recent report using historical analysis found that the ideologically anti-abortion

Republican institutional control of a state's legislative branches is positively associated with a state enacting a TRAP law.¹⁸ Conversely, Democratic institutional control is negatively associated with a state enacting a TRAP law. These empirical results from 1974 to 2008 demonstrate that partisan political party control is the most important factor affecting the enactment of a TRAP law. Additionally, this report concluded that state legislators do not “mirror the abortion attitudes of the median voter [and thus] state policymakers are not responsive to the public's preferences about abortion policy.”¹⁹ Given the numerous methods that activists have pursued over the years, we can see that TRAP laws are merely a new breed of obstacles disguised to discourage women from obtaining an abortion.

Abortion is a safe procedure, with rigorously developed standards that all providers must follow. However, the ideological partisan agenda has interfered with this medical procedure in an attempt to shut down abortion clinics with TRAP laws. By imposing administrative burdens, subjecting physicians to unnecessary requirements, and violating women's rights to privacy, these laws aren't protecting women but are rather another politically driven method to

inhibit women from safely receiving abortions.



Michelle Razavi recently graduated Magna Cum Laude with a bachelor of arts in Political Science and a minor in Spanish.

She graduated with College Honors as well as Phi Beta Kappa. Raised in a multilingual household by a single mother, she developed her passion for international affairs and female empowerment at an early age. She studied abroad in Madrid, Spain, where she took all of her upper-division courses in Spanish and met the U.S. Ambassador to Spain. She also interned over the summer with Hyundai Capital in Seoul, South Korea. Michelle will be moving to San Francisco in the summer to work full-time for the online ticketing company, Eventbrite. She received the CSW Elizabeth Blackwell, M.D., Award in 2013.

NOTES

1. Brown, Lisa M., Esq. “The TRAP: Targeted Regulation of Abortion Providers.” *Abortion Facts. National Abortion Federation, 2007.* <http://www.prochoice.org/about_abortion/facts/trap_laws.html>.
2. Baer, Susan. “Abortion Conflict Sees New Strategy.” *The Baltimore Sun*, 19 Mar. 2001. <http://articles.baltimoresun.com/2001-03-19/news/0103190208_1_abortion-supreme-regulations/2>.
3. Gold, Rachel B., and Elizabeth Nash. “Troubling trend: more states hostile to abortion rights as middle ground shrinks.” *Guttmacher Policy Review*, 2012, 15(1):14–19.
4. Jorns, Amalia W. “Challenging Warrantless Inspections of Abortion Providers: A New Constitutional Strategy.” *Columbia Law Review* 105.5 (2005): 1565.
5. “Induced Abortion in the United States.” Fact Sheet. Guttmacher Institute, Feb. 2014. <http://www.guttmacher.org/pubs/fb_induced_abortion.html>.
6. *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 877 (1992) (joint opinion)
7. “Induced Abortion in the United States.” Fact Sheet. Feb. 2014. <[\[www.guttmacher.org/pubs/fb_induced_abortion.html\]\(http://www.guttmacher.org/pubs/fb_induced_abortion.html\)>.](http://

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8. Gold, Rachel B., and Elizabeth Nash. “TRAP Laws Gain Political Traction While Abortion Clinics—and the Women They Serve—Pay the Price.” *Guttmacher Policy Review* 16.2 (2013): 7-12.
9. *Ibid.*, 8.
10. Targeted Regulation of Abortion Providers: Avoiding the “TRAP” Issue brief. Center for Reproductive Rights, Aug. 2003. <<http://reproductiverights.org/en/document/targeted-regulation-of-abortion-providers-avoiding-the-trap>>.
11. *Ibid.* 4.
12. Johnsen, Dawn. ““TRAP”ing Roe in Indiana and a Common-Ground Alternative.” *The Yale Law Journal* 118.7 (2009): 1356-393.
13. Targeted Regulation of Abortion Providers: Avoiding the “TRAP” Issue brief. Center for Reproductive Rights, Aug. 2003. Web. 23 Feb. 2014. <<http://reproductiverights.org/en/document/targeted-regulation-of-abortion-providers-avoiding-the-trap>>.
14. *Ibid.*, 3.
15. Gold, Rachel B., and Elizabeth Nash. “TRAP Laws Gain Political Traction While Abortion Clinics—and the Women They Serve—Pay the Price.” *Guttmacher Policy Review* 16.2 (2013): 9-10.
16. Finer, Lawrence B., and Stanley K. Henshaw. “Abortion Incidence and Services in the United States in 2000.” *Perspectives on Sexual and Reproductive Health* 35.01 (2003): 006-15.
17. Jorns, Amalia W. “Challenging Warrantless Inspections of Abortion Providers: A New Constitutional Strategy.” *Columbia Law Review* 105.5 (2005): 1570-71.
18. Medoff, Marshall H., and Christopher Dennis. “TRAP Abortion Laws and Partisan Political Party Control of State Government.” *American Journal of Economics and Sociology* 70.4 (2011): 951-73.
19. *Ibid.* 969