

February XX, 2023

The Honorable Joe Biden  
President of the United States

Dear President Biden:

We, the undersigned organizations who support reproductive health, rights, and justice, write to urge you to ensure that the harmful Weldon Amendment is not included in your Fiscal Year (FY) 2024 budget. The Weldon Amendment is a poison pill budget rider that for far too long has misused religion to intimidate states that seek to protect abortion care by threatening critical federal health funding. The Weldon Amendment also emboldens health care entities to deny patients abortion care and coverage, prioritizing health care providers' beliefs over patient care. At this moment, following the devastating *Dobbs v. Jackson Women's Health Organization* decision, it has never been more urgent to strike Weldon from the annual budget and ensure the most basic protections for people who need abortion care.

Since FY 2005, Weldon has been attached to the Hyde Amendment<sup>1</sup> in the annual Labor, Health and Human Services, Education, and Related Agencies bill. It is deceptively written to prohibit "discrimination" against health care entities – anyone from hospitals, health insurance plans, individual nurses and doctors – that refuse to provide, cover, pay for, or refer for abortion. The Weldon Amendment is pernicious because it has been used to threaten policymakers with the loss of critical federal health dollars for advancing policies that protect and expand abortion care and coverage at the federal, state, and local levels. 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.<sup>2</sup>

The Weldon Amendment also allows health care providers to leave patients without the care they need. There are no provisions in the Weldon Amendment to protect patient access to abortion services, which is harmful and also causes confusion about the application of other

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<sup>1</sup> P.L. 117-328 § 506.

<sup>2</sup> U.S. DEP'T OF HEALTH AND HUMAN SERVS., 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 (Dec. 16, 2020), <https://www.hhs.gov/about/news/2020/12/16/hhsdisallow-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 U.S. Dep't Of Health and Human Servs., HHS IssueS notice Of violation to Callfornia for its abortion coverage mandate (Jan. 24, 2020), <https://www.hhs.gov/about/news/2020/01/24/hhs-issues-notice-of-violation-to-california-for-its-abortion-coveragemandate.html>.

federal laws that protect patient access to care.<sup>3</sup> By its own terms, then, the Weldon Amendment poses tremendous injury to patients. And it also has been used by hostile administrations to expand refusals of care, harming even more individuals who need care. Both the George W. Bush Administration and the Trump Administration issued rules that relied on Weldon and other refusal of care laws to allow virtually any entity involved in health care to deny patients care and even information.<sup>4</sup> Fortunately, the most harmful provisions of these policies were blocked and reversed, including during the Obama Administration, by federal courts, and now by your administration with the current Notice of Proposed Rulemaking (“Safeguarding the Rights of Conscience as Protected by Federal Statutes”)<sup>5</sup> – but the Weldon Amendment must be eliminated entirely to ensure similar policies are not enacted in the future.

The harm of the Weldon Amendment is more dire now, as states rush to ban abortion, leaving millions of people across the country without abortion access and forcing them to travel out of state to seek care. More than ever, states that want to protect their residents and those coming to their state must be allowed to enact policies that expand abortion access. The Weldon Amendment hampers these efforts. At the same time, the impact of refusals of care has only worsened following the *Dobbs* decision, as reports of patients being turned away for essential medical care and urgent medical interventions continue to arise. Eliminating Weldon will help remove any confusion or purposeful obfuscation about the application of other federal laws and empower states where abortion is still legal to protect and expand access to care.

Eliminating the Weldon Amendment is not only critical as a matter of policy, it is also popular with voters. We saw that even before the *Dobbs* decision: a July 2021 poll in battleground congressional districts found that 6 in 10 oppose allowing health care providers to refuse treatment to a woman seeking an abortion because of religious or moral beliefs.<sup>6</sup> More recently, in a June 2022 poll of likely 2022 voters, the majority opposed the idea that institutions, including insurance companies (66 percent of respondents), employers (63 percent), and hospitals (59 percent), should be able to refuse abortion care based on personal or religious

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<sup>3</sup> Other federal laws, such as EMTALA and Section 1557 of the ACA still apply. Yet, Weldon’s lack of patient protections has caused confusion and emboldens health care entities to refuse care despite the requirements of these and other federal laws.

<sup>4</sup> Meaning 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 (January 20, 2009) (codified at 45 C.F.R. § 88) and 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).

<sup>5</sup> Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws 76 Fed. Reg. 9,968 (March 25, 2011) (codified at 45 C.F.R. § 88); *New York v. U.S. Dep’t of Health & Human Servs.*, 414 F. Supp. 3d 475 (S.D.N.Y. 2019); and 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).

<sup>6</sup> Polling conducted by Hart Research Associates & Vision Strategy and Insights (July 22, 2021), available at the National Women’s Law Center.

beliefs. Nearly two-thirds recognized that refusal of care laws put patients' health and lives in danger.<sup>7</sup>

This recognition that eliminating the Weldon Amendment is not only crucial for patients and states, but also what voters want, is what has led to movement in Congress. In FY 2022 and 2023, both the House and Senate made historic progress by removing Weldon and Hyde from their Labor, Health and Human Services, and Education appropriations bills, demonstrating their commitment to protect abortion rights and reflect the will of the public. You have pledged a whole of government response to the crisis created by the *Dobbs* decision; eliminating the Weldon Amendment – and other anti-abortion riders – is an important piece of that response. If your Administration is truly committed to ensuring that people have access to abortion – and therefore have the freedom to control their own bodies, lives, and futures – Weldon must be eliminated.

Sincerely,

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<sup>7</sup> Polling conducted by GQR between June 22-30, 2022, available at the National Women's Law Center.