

United States Senate

WASHINGTON, DC 20510

July 13, 2022

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Mr. President and Mr. Secretary:

In the wake of the Supreme Court's devastating decision in *Dobbs v. Jackson Women's Health Organization*, we write to urge you to immediately declare national and public health emergencies over Americans' access to reproductive care.

Millions of American women have been endangered by the Supreme Court's reckless decision to overturn *Roe v. Wade* and eliminate the constitutional right to an abortion. Within days of the release of the Court's opinion, nine states moved to ban abortion with virtually no exceptions, and over a dozen more states could enact additional abortion bans and restrictions in the coming weeks.¹ Doctors have already been forced to withhold lifesaving care from women facing miscarriages, infection, and sepsis in light of draconian civil and criminal penalties imposed by extremist governors and state legislatures.² In the midst of a maternal mortality crisis that disproportionately kills Black and Brown women, research suggests that a nationwide abortion ban—championed by former Vice President Mike Pence, House Minority Leader Kevin McCarthy, and numerous other anti-abortion officeholders in the aftermath of *Dobbs*³—would increase pregnancy-related deaths by 21 percent;⁴ in Mississippi, a Black woman is already 118 times more likely to die by carrying a pregnancy to term than by having an abortion.⁵ Mental

¹ New York Times, "Tracking the States Where Abortion Is Now Banned," July 7, 2022, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>; Guttmacher Institute, "Interactive Map: US Abortion Policies and Access After Roe," July 7, 2022, <https://states.guttmacher.org/policies>.

² New Yorker, "We're Not Going Back to the Time Before Roe. We're Going Somewhere Worse," Jia Tolentino, June 24, 2022, <https://www.newyorker.com/magazine/2022/07/04/we-are-not-going-back-to-the-time-before-roe-we-are-going-somewhere-worse>.

³ CNN, "White House warns of Republican efforts to 'strip women of their rights' following Roe ruling," Betsy Klein, June 27, 2022, <https://www.cnn.com/2022/06/27/politics/abortion-white-house-house-republicans/index.html>.

⁴ Demography, "The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant," Amanda Jean Stevenson, December 1, 2021, <https://read.dukeupress.edu/demography/article/58/6/2019/265968/The-Pregnancy-Related-Mortality-Impact-of-a-Total>.

⁵ New York Times, "No, Justice Alito, Reproductive Justice Is in the Constitution," Michele Goodwin, June 26, 2022, <https://www.nytimes.com/2022/06/26/opinion/justice-alito-reproductive-justice-constitution-abortion.html>.

health outcomes and economic disparities for people forced to carry unwanted pregnancies will become even worse.⁶

Simply put, this is an emergency. The Biden-Harris Administration has already taken important steps to defend abortion rights in response to escalating rightwing attacks, including through commitments to expand patient access to medication abortion, protect the right to travel to obtain abortion services, and defend the privacy of patients seeking reproductive care.⁷ But you have the power to do more to address this crisis.

As President of the United States and Secretary of Health and Human Services (HHS), you have the authority to declare a national emergency and public health emergency over these attacks on Americans' reproductive rights. The *National Emergencies Act*⁸ and the *Stafford Act*⁹ confer wide powers for the President to declare a national emergency. The *Public Health Services Act*¹⁰ and the *Public Readiness and Emergency Preparedness Act*¹¹ authorize the Secretary to declare a public health emergency. These authorities have been used by the Biden-Harris Administration—and other presidential administrations—to address public health crises ranging from the COVID-19 pandemic to the opioid epidemic.¹²

Critically, declaring an emergency over the state of reproductive rights in the United States could unlock powerful flexibilities and resources for federal, state, and local governments

⁶ NPR, “A landmark study tracks the lasting effect of having an abortion — or being denied one,” Megan Burbank and Emily Kwong, May 15, 2022, <https://www.npr.org/sections/health-shots/2022/05/15/1098347992/a-landmark-study-tracks-the-lasting-effect-of-having-an-abortion-or-being-denied>.

⁷ U.S. Department of Justice, “Attorney General Merrick B. Garland Statement on Supreme Court Ruling in *Dobbs v. Jackson Women’s Health Organization*,” press release, June 24, 2022, <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-supreme-court-ruling-dobbs-v-jackson-women-s>; U.S. Department of Health & Human Services, “Remarks by Secretary Xavier Becerra at the Press Conference in Response to President Biden’s Directive following Overturning of *Roe v. Wade*,” June 28, 2022, <https://www.hhs.gov/about/news/2022/06/28/remarks-by-secretary-xavier-becerra-at-the-press-conference-in-response-to-president-bidens-directive-following-overturning-of-roe-v-wade.html>; White House, “FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services,” press release, July 8, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services>.

⁸ 50 U.S.C. § 1621 (“With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency.”).

⁹ 42 U.S.C. § 5191 (“Based upon such Governor’s request, the President may declare that an emergency exists.”).

¹⁰ 42 U.S.C. § 247d (“If the Secretary determines, after consultation with such public health officials as may be necessary, that . . . a public health emergency . . . exists, the Secretary may take such action as may be appropriate to respond to the public health emergency.”).

¹¹ 42 U.S.C. § 247d-6d (“[I]f the Secretary makes a determination that a disease or other health condition or other threat to health constitutes a public health emergency, or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency, the Secretary may make a declaration.”).

¹² Congressional Research Service, “Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act,” Jennifer K. Elsea, Jay B. Sykes, Joanna R. Lampe, Kevin M. Lewis, and Bryan L. Adkins, July 14, 2020, pp. 1-2, <https://crsreports.congress.gov/product/pdf/R/R46379>; U.S. Department of Health & Human Services, “Public Health Emergency Declarations,” <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>.

to safeguard and improve access to health care across the country.¹³ Specifically, this measure could:

- **Allow doctors licensed in one state to provide reproductive care in other states.** Using waivers of Section 1135 of the *Social Security Act*, the federal government could waive licensing requirements under Medicaid, Medicare, and the Children’s Health Insurance Program as long as doctors have equivalent licensing in other states.¹⁴
- **Enable state Medicaid programs to more easily accept out-of-state patients seeking reproductive care.** Disaster-Relief State Plan Amendments could enable states to expand the pool of people covered by their Medicaid programs, including out-of-state residents who leave their home states for medical reasons.¹⁵
- **Facilitate reproductive care for people who need emergency assistance.** In support of Secretary Becerra’s directive to ensure care under the *Emergency Medical Treatment and Labor Act*, Section 1135 waivers could facilitate the transfer of patients who need emergency lifesaving care—including abortions—for conditions such as pregnancy loss.¹⁶
- **Permit the deployment of federal, state, and local medical personnel.** During a public health emergency, the HHS Secretary has the authority to deploy the National Disaster Medical System, the Volunteer Medical Reserve Corps, and Commissioned Corps Officers, as well as reassign federally-funded state and local public health officials to address the emergency.¹⁷
- **Protect patient access to medication abortion.** Under the *Public Readiness and Emergency Preparedness Act*, the HHS Secretary can protect those involved in the administration or use of “covered countermeasures”—a term which could encompass medication abortion—from certain state restrictions, claims, and lawsuits,¹⁸ as the Department did during the COVID-19 pandemic.¹⁹

¹³ Importantly, the Hyde Amendment would not prevent the Biden-Harris Administration from implementing these proposals. While the Hyde Amendment does prohibit the federal government from funding some abortions, states can still offer abortion services through Medicaid using their own funds, and the federal government can still fund abortions in cases of rape, incest, and the endangerment of the life of the mother. Kaiser Family Foundation, “The Hyde Amendment and Coverage for Abortion Services,” Alina Salganicoff, Laurie Sobel, and Amrutha Ramaswamy, March 5, 2021, <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services>. And nothing in the Hyde Amendment prohibits the exercise of regulatory flexibilities to promote abortion access or the use of federal funds for services that are ancillary to the abortion itself such as providing information or conducting research about abortions. See U.S. Department of Justice, Office of Legal Counsel, “Peace Corps Employment Policies for Pregnant Volunteers,” November 20, 1981, p. 357, https://www.justice.gov/sites/default/files/olc/opinions/1981/11/31/op-olc-v005-p0350_0.pdf.

¹⁴ 42 U.S.C. § 1320b-5(b)(2).

¹⁵ Medicaid, “Medicaid Disaster Relief for the COVID-19 National Emergency State Plan Amendment Instructions,” <https://www.medicaid.gov/state-resource-center/downloads/medicaid-disaster-relief-spa-instructions.pdf>.

¹⁶ 42 U.S.C. § 1320b-5(b)(3).

¹⁷ U.S. Government Accountability Office, “Opioid Crisis: Status of Public Health Emergency Authorities,” September 26, 2018, pp. 15-16, <https://www.gao.gov/assets/gao-18-685r.pdf>.

¹⁸ 42 U.S.C. § 247d-6d.

¹⁹ U.S. Department of Health & Human Services, Federal Register Notice, “Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19,” March 17, 2020, <https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures>.

- **Expedite research, information-gathering, and demonstration projects on reproductive care.** Public health emergency authority could enable HHS to more quickly gather information about the reproductive care crisis in the country (e.g., through surveys and research) and deploy Medicaid demonstration projects to respond (e.g., by enabling states to finance the travel of low-income women in anti-abortion states to access reproductive care).²⁰


While it is impossible to immediately undo the damage inflicted by the Supreme Court’s repeal of *Roe v. Wade*, the Biden-Harris Administration must use every tool within its power to fight back. We urge you to declare national and public health emergencies over Americans’ access to reproductive care. Your leadership during this unprecedented crisis for women is more important than ever.

Thank you for your attention to this important matter.

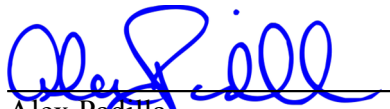
Sincerely,



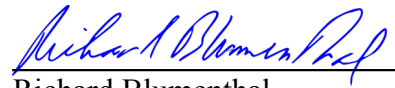
Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator



Alex Padilla
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator

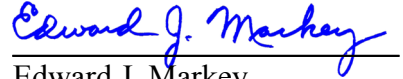


Bernard Sanders
United States Senator

²⁰ U.S. Government Accountability Office, “Opioid Crisis: Status of Public Health Emergency Authorities,” September 26, 2018, pp. 14-16, <https://www.gao.gov/assets/gao-18-685r.pdf>.



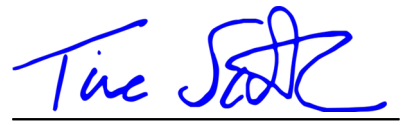
Kirsten Gillibrand
United States Senator



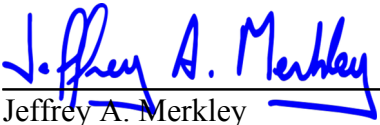
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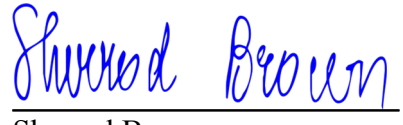
Chris Van Hollen
United States Senator



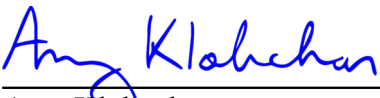
Tina Smith
United States Senator



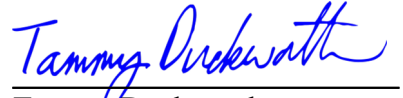
Jeffrey A. Merkley
United States Senator



Sherrod Brown
United States Senator



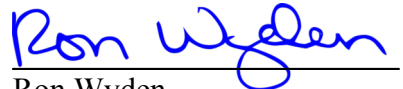
Amy Klobuchar
United States Senator



Tammy Duckworth
United States Senator



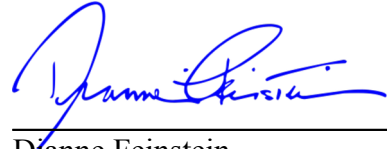
Sheldon Whitehouse
United States Senator



Ron Wyden
United States Senator



Tammy Baldwin
United States Senator



Dianne Feinstein
United States Senator