

# HARRIS ON ABORTION

## A Commitment to Abortion Rights and Access for All

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If elected president, Democratic nominee Kamala Harris promises to protect and expand reproductive freedom. A central tenet of her campaign is to enact federal legislation to protect the right to abortion. The American Civil Liberties Union will use every tool available to ensure that a potential Harris administration delivers on this promise by signing legislation that ensures everyone who needs abortion care can access it, no matter who they are, where they live, or how much money they have.

The Supreme Court's decision to overturn *Roe v. Wade* set off a wave of new attacks on abortion care. Those attacks led to a catastrophic public health crisis and the rapid erosion of civil liberties and reproductive freedoms. To date, 14 states have banned abortion completely and others have severely limited access to abortion care by criminalizing it after the earliest weeks of pregnancy.<sup>1</sup> Millions of people of reproductive age now live hundreds of miles from the closest abortion provider. In 2023 alone, more than 171,000 people were forced to travel outside of their home state to secure access.<sup>2</sup> Traveling to another state is simply not possible for many, and some attorneys general have even threatened to prosecute those who help pregnant people get the care they need in states that permit abortion.<sup>3</sup> As a result of state bans and other restrictions, countless people are being forced to continue their pregnancies against their will.<sup>4</sup> Some states have gone so far as to criminalize abortion care in medical emergencies where the inability to get an abortion puts the pregnant person's health, life, and future fertility in danger.<sup>5</sup>

The anti-abortion extremism unleashed by *Dobbs v. Jackson Women's Health Organization* has resulted in a forceful backlash. In the two years since *Roe*

was overturned, there has been a groundswell of public support for abortion rights and rising opposition against bans and restrictions on abortion care. Public opinion polls show public support for abortion is higher than ever, with almost two-thirds of Americans supporting abortion rights.<sup>6</sup> This backlash is readily apparent at the polls. Voters have repeatedly demonstrated their support for abortion rights at every opportunity since *Roe* fell, including in more conservative and battleground states like Kansas, Kentucky, Michigan, Ohio, Pennsylvania, Virginia, and Wisconsin.

Since *Dobbs*, the Biden-Harris administration has used nearly every executive tool available to protect and expand access to abortion and contraceptive care.<sup>7</sup> But anti-abortion politicians have had control of at least one body of Congress since *Roe* was overturned, preventing meaningful congressional action on abortion. However, enacting federal legislation to protect the right to abortion throughout the country is a crucial and desperately needed step to rectify the harms of *Dobbs* that Congress must take.

To be clear, restoring the status quo that existed before *Dobbs* isn't nearly enough. Abortion care was not accessible for far too many even before the Supreme Court overturned *Roe*. If elected, Harris must carry out her promise to restore reproductive freedom by taking bold action to ensure that everyone can get an abortion if they need one — no matter who they are, where they live, or how much money they have — by calling for and signing legislation that codifies abortion rights and invalidates state bans and restrictions, and by ending discriminatory barriers to abortion care, such as insurance coverage bans.

# OVERALL RESPONSE

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## Courts

Enacting a federal right to abortion would only be the beginning of the fight to restore access to abortion in states where it has been banned and to expand access nationwide beyond what existed before *Dobbs*. Once the federal right to abortion has been enacted, the ACLU will use this new statutory protection in litigation to challenge the barriers to abortion care that politicians have erected. We will go to court to strike down not only the state abortion bans enacted and enforced in the wake of *Dobbs*, but also the multitude of medically unnecessary restrictions that rendered abortion care available in theory, but inaccessible for far too many even prior to *Dobbs*. And we will continue our ongoing efforts — both in and outside the courtroom — to eliminate the Food and Drug Administration’s (FDA) medically unwarranted restrictions on mifepristone, a safe and effective medication used in most abortions nationwide.

## Congress

Instituting a federal right to abortion and ensuring everyone can access abortion care if they need it requires congressional action — the president cannot accomplish it alone. This is a tall order. Congress must reform the Senate filibuster and pass bold legislation that establishes a new federal right to abortion that includes everyone. The ACLU will harness tremendous public pressure to get this done. We will engage in a multi-front effort, including aggressive lobbying and grassroots mobilization, to create the urgency and momentum needed for Congress to act.

While Congress will have to do the lion’s share of the work to enact federal abortion protections, if elected, Harris is responsible for delivering on her promise by calling for expansive protections and demanding that Congress act swiftly and boldly. Just as prior presidents have taken active roles in passing top priority pieces of legislation, we will urge Harris to set a high bar for the abortion rights legislation she’s campaigned on, and not accept a bill that does anything less than ensure everyone can access abortion care when they need it.

## Organizing

Organizing and demonstrating power through the strength of our 50 state affiliates is critical to ensuring access to reproductive health care is a reality for everyone. The ACLU has deeply invested in our greatest resource — our members, supporters, and volunteers — and will continue to educate them on the issues and bring them to the forefront of the fight for reproductive freedom.

In the wake of *Dobbs*, the ACLU created a constituent-engagement program for abortion activists that provided training on how to push back against anti-abortion lawmakers and hold them accountable. The ACLU engages these abortion activists in legislative fights for reproductive freedom, including hosting phone banks and postcard campaigns. The ACLU has helped activists volunteer with abortion ballot measure campaigns in their home states, and has engaged thousands of volunteers in signature collection and get-out-the-vote efforts.

Marking the two-year anniversary of the *Dobbs* decision, the ACLU joined with partner reproductive health, rights, and justice organizations to launch the *Abortion Access Now* campaign.<sup>8</sup> This multi-year campaign is led by a coalition of nine national organizations that, together, use our power and significant resources to enact a federal right to abortion that ensures everyone can get the care they need.<sup>9</sup> The *Abortion Access Now* campaign will execute a long-term strategy to mobilize support and enact change through federal lobbying, grassroots organizing, public education, and comprehensive communication strategies. This groundbreaking initiative aims to ensure that everyone has the right to access reproductive health care free from stigma or barriers.

# SPECIFIC OPPORTUNITIES & RESPONSES

## Enacting Federal Legislation to Ensure That Everyone Who Needs Abortion Care Can Access It, No Matter Who They Are, Where They Live, Or How Much Money They Have

Harris has promised that, if she is elected president and pro-reproductive freedom majorities are elected to Congress, she will work with Congress to enact federal protections for abortion. Harris said in one of her first campaign events after becoming the Democratic nominee, “[w]hen Congress passes a law to restore reproductive freedoms, as president of the United States I will sign it into law.”<sup>10</sup> The ACLU will use every tool available to make sure Harris and members of Congress live up to their promises and enact legislation reflecting the American public’s overwhelming support for abortion for all.

### Congress

The ACLU is engaged in a multi-stage lobbying effort to create the political momentum needed for Congress to pass bold and equitable federal protections for abortion access. With our abortion activists and partners, the ACLU will deploy grassroots campaigns to pressure Harris and members of Congress to fulfill their promises. We will leverage broad public support for abortion and prior investments in organizing, ballot measures, state legislation, and public education campaigns to mobilize constituents quickly and effectively.

The ACLU will continue to work with reproductive freedom champions in Congress to spotlight the harms of abortion bans and the need to enact federal protections. Already, through congressional hearings, floor speeches, and press conferences, the ACLU has worked with Congress to create a public record of the horrors unleashed by *Dobbs*. The ACLU is also working with and supporting members of Congress pushing an affirmative reproductive freedom agenda, including advancing bills that would codify the right to contraception and neutralize Donald Trump’s threats to misuse the Comstock Act as a backdoor national abortion ban.<sup>11</sup>

If Harris is elected and pro-reproductive freedom majorities are secured in Congress, the ACLU will begin an aggressive lobbying effort throughout the lame-duck session to urge members to be ready on day one of the new Congress to advance bold legislation to enact abortion rights and secure access. When the next

Congress gavels into session, the ACLU will launch a coordinated lobbying and grassroots mobilization campaign to demand action. We will not allow Congress to advance just any measure. Instead, we will use our political power to ensure Congress pushes ambitious and inclusive legislation.

**First, the legislation must ensure that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have.** Congress must immediately enact a new federal right to abortion to rectify the harms of *Dobbs*. Even before *Dobbs*, abortion care was not accessible for many. Anti-abortion lawmakers in states across the country passed more than 1,000 laws in the decades following *Roe* to circumvent and erode the ruling, imposing burdensome restrictions on abortion care designed to increase costs, shame patients, and shutdown health centers.<sup>12</sup> Any new legislation must go beyond the status quo that existed before *Dobbs*.

State laws, together with discriminatory federal bans on abortion coverage, have long pushed abortion care out of reach for those with the fewest resources and the greatest barriers to health care. For nearly 50 years, the Hyde Amendment — a rider attached to annual federal funding bills that prevents Medicaid, Medicare, Indian Health Service, and Children’s Health Insurance Program from covering nearly all abortion care — and related abortion coverage bans have restricted abortion access for low-income people, people of color, immigrants, people with disabilities, and young people. Enacting abortion rights on paper without ending these harmful coverage bans will only perpetuate reproductive health inequality.

Harris has committed to ending the abortion coverage restrictions<sup>13</sup> and, if elected, we will urge her to carry out this commitment by aggressively demanding that Congress pass legislation that meaningfully protects abortion rights and access, and leaves no one behind.

**Second, the Senate must reform the filibuster to enact federal protections for abortion rights.** Abuse of the filibuster currently gives the minority party an effective veto and, contrary to constitutional design or historical precedent, requires a supermajority to get legislation passed in the Senate. Without filibuster reform, anti-abortion lawmakers in the Senate will defy the Senate majority and the voters who elected them by effectively blocking abortion protections — just as they have blocked other protections for reproductive rights for years.<sup>14</sup> The ACLU will engage in a coordinated Senate-lobbying campaign, ramping up in the lame-duck session, to demand filibuster reform.

**Third, Congress must act swiftly.** We are in an escalating health crisis and there is no time to wait. Millions of people of reproductive age are living in states that have banned or severely restricted abortion. Countless people are being forced to continue pregnancies against their will, sometimes at great risk to their health and lives.<sup>15</sup> If elected, Harris must demand that Congress pass a bill enacting federal protections for abortion and send it to her to sign within the first 100 days of her presidency. The ACLU plans to deploy multiple tactics to demand urgent action from Congress, including lobbying key lawmakers and mobilizing the full force of our members and supporters in actions on Capitol Hill, and in states across the country.

**Fourth, the threat of misusing the Comstock Act as a national abortion ban must be eliminated.** Legislation to protect abortion rights and ensure access to care must also repeal the Comstock Act. The Comstock Act is an 1873 anti-obscenity law that regulates the use of the mail and common carriers concerning sending and receiving anything that is “indecent, filthy, or vile” or “intended for producing abortion.” Trump’s advisors are threatening to misapply this zombie law, claiming incorrectly that the Comstock Act is a dormant national abortion ban already on the books just waiting to be enforced by a Trump Department of Justice. To ensure that no future anti-abortion president can weaponize this antiquated law, it must be repealed. The ACLU worked with Congress this session to introduce the Stop Comstock Act,<sup>16</sup> and we will demand that future legislation codifying abortion rights also repeals the Comstock Act.

## Courts

Using a statutory federal right to abortion, we will go to court to strike down not only the abortion bans that states have enforced after *Dobbs*, but also the constellation of restrictions that continue to limit access to care even in states that have not banned abortion outright.

Following the Supreme Court’s unprincipled decision to overturn *Roe v. Wade*, 14 states banned abortion altogether and another seven enacted pre-viability bans at different points in pregnancy — bans that would have been patently unconstitutional under *Roe*.<sup>17</sup> This criminalization of basic, necessary reproductive health care has taken an incalculable toll on peoples’ lives. Hundreds of thousands of people have been forced to travel out of state to access abortion care, while others have been denied the ability to get the care that they need altogether.<sup>18</sup> Once a federal right to abortion is enacted, we will bring new litigation to challenge these harmful bans.

We will continue to challenge the continuous efforts by politicians to erect medically unnecessary — and for some patients, insurmountable — barriers to care

like abortion coverage bans, bans on the use of telemedicine for abortion care, and mandatory delay laws that require patients to make multiple trips to an abortion provider.<sup>19</sup> The ACLU has defeated many of these harmful and unnecessary barriers to abortion care in the past, and we will continue to challenge them as they arise.

## Eliminating Medically Unjustified and Harmful Restrictions on Medication Abortion

The ACLU will continue our multi-faceted advocacy efforts — including litigation, organizing, and coalition-building — to eliminate medically unnecessary restrictions on mifepristone, a safe and effective medication used in nearly two-thirds of U.S. abortions<sup>20</sup> and for miscarriage care.<sup>21</sup> Since approving mifepristone in 2000, the FDA has subjected this essential medication to a set of burdensome restrictions beyond the normal layers of protections that apply to virtually every other prescription drug. The nation’s leading medical associations — including the American Medical Association and the American College of Obstetricians and Gynecologists — support lifting these outdated restrictions, which are collectively known as a Risk Evaluation and Mitigation Strategy (REMS).<sup>22</sup> As these medical associations have explained, “the [mifepristone] REMS requirements do nothing to enhance the safety of an already safe drug; instead, they impose administrative burdens, exacerbate health inequities, and lead to delays in care.”<sup>23</sup> In particular, the REMS imposes significant burdens on low-income patients, people of color, and people living in rural areas.

The ACLU has brought litigation under both Democratic and Republican administrations challenging the mifepristone REMS on behalf of leading medical authorities.<sup>24</sup> For example, during the height of the COVID-19 pandemic, we went all the way to the Supreme Court to fight the Trump administration’s insistence that people seeking mifepristone must appear in-person at a health center — subjecting themselves and their families to the risk of a deadly virus — for the sole purpose of picking up a pill that could otherwise be safely obtained at home.<sup>25</sup> Ultimately, the FDA, under the Biden-Harris administration, reviewed the evidence and determined that forcing patients to travel to a health center — in some cases hundreds of miles away — just to be handed a pill is medically unnecessary, as the ACLU advocated.<sup>26</sup> But the FDA has maintained its other REMS restrictions on mifepristone, including requirements that prescribers and pharmacies maintain special certifications and that patients review and sign a special counseling form.

These unnecessary restrictions significantly impede patients' access to mifepristone. Among other things, the REMS requirements: create administrative hurdles that delay, or altogether derail, clinicians' ability to integrate mifepristone into their practices; that deter some qualified health care providers from becoming mifepristone prescribers for fear of anti-abortion violence and harassment if their certification forms were ever exposed; that dissuade some pharmacies from dispensing mifepristone because of the burdens of certification; that undermine the informed consent process by mandating counseling that is at best duplicative, but often inaccurate, confusing, and distressing; and that jeopardize mifepristone patients' privacy by requiring them to sign and take with them a form stating, "I have decided to... end my pregnancy."

As the ACLU is arguing in court, by choosing to maintain the mifepristone REMS, the FDA ignored the medical community's consensus that these restrictions burden access with no corresponding safety benefit. Indeed, data shows that when Canada eliminated its REMS-like restrictions on mifepristone, access improved with no reduction in safety.<sup>27</sup> The ACLU will continue to use every tool in our toolbox, including our ongoing litigation, to ensure that the FDA's regulation of mifepristone is grounded in the strongest scientific evidence, adheres to the strict limitations that Congress has imposed on the agency's authority, and does not needlessly limit patients' access to a safe medication used in most U.S. abortions and for early miscarriage care.

## Protect Access to Abortion and Contraception for Immigrants

### Ensuring Access to Emergency Contraception at the Border

To protect immigrants' bodily autonomy and reproductive health, a potential Harris administration must make emergency contraception available to immigrants detained at the border. Immigrants who arrive at ports of entry to seek asylum or cross the U.S.-Mexico border and are detained by U.S. Customs and Border Patrol (CBP) are reliant on CBP to provide necessary health care, including reproductive care. Access to emergency contraception at the earliest moment of detention is especially critical. Women and girls coming to the U.S. face horrifically high rates of sexual violence on both sides of the U.S.-Mexico border.<sup>28</sup> Over the last year, many immigrants have been detained in CBP border facilities well beyond the agency's 72-hour detention period — and in some cases upwards of 30 days — further delaying access to critical medical care. Without timely access to emergency contraception, immigrants in CBP detention may endure

further trauma by being forced to become pregnant against their will. Timely access to emergency contraception is especially important given CBP's appalling record of holding pregnant immigrants in its custody.<sup>29</sup> The ACLU will continue to urge Harris and her administration to ensure that immigrants have timely access to, and information about, emergency contraception in CBP detention facilities.

### Removing Barriers for Undocumented Immigrants to Access Abortion Care

People living in states with bans or restrictions on abortion are forced to travel out of state to seek care. Last year, more than 171,000 people traveled out of state for abortion care.<sup>30</sup> Traveling to receive care can be extremely difficult. For many, the nearest clinic is hundreds of miles away. Many patients face significant barriers, including multi-day travel expenses, child-care challenges, lost income, and potential loss of employment. On top of these barriers, undocumented people face an additional financial costs due to the patchwork of state laws on insurance coverage for immigrants,<sup>31</sup> as well as an additional terrifying obstacle to accessing abortion care: federal immigration checkpoints and the risk of arrest, detention, and deportation.

In states like Texas, with both a large population of undocumented residents and one of the nation's most restrictive abortion bans, immigration checkpoints exacerbate the mounting health crisis. The only state that directly borders Texas where abortion is legal is New Mexico.<sup>32</sup> But traveling to New Mexico for care poses special dangers for undocumented immigrants: Travel from southwest Texas into New Mexico means passing through at least one federal immigration checkpoint — and often multiple — along an increasingly militarized border where travelers can expect to be stopped and questioned about their citizenship and reasons for travel.

There are approximately 17 permanent checkpoints run by CBP along Texas' southern border, stationed on the major — and sometimes only — roads in Texas within 100 miles of the U.S.-Mexico border. U.S. Border Patrol also operate roving patrols and temporary checkpoints<sup>33</sup> within this 100-mile "border zone," and has deployed a range of technologies, including surveillance towers and drones, to further monitor and collect data on people's movements in the zone.<sup>34</sup> A person driving themselves or a loved one from Laredo, Texas to a clinic in Las Cruces, New Mexico, for example, would likely have to drive through six CBP checkpoints in Texas alone. They can only reduce the number of inspections, but never avoid them all together, if they add several hours to their drive. Finally, most people driving out of southwest Texas will also have to drive through Operation Lone Star counties, where state troopers are attempting to enforce federal

immigration law by subjecting suspected noncitizens to proxy arrests for offenses like trespassing. This has led to an increase in racial profiling of citizens and noncitizens in these border communities, and adds yet another layer of fear for noncitizens and their families traveling through Texas to get medical care.<sup>35</sup>

In an escalating reproductive health crisis, these checkpoints present a real and daily danger, isolating some people from services and making it impossible to travel safely to get health care. To fulfill her commitment to protect reproductive freedom, Harris, if elected, must end the use of internal checkpoints and issue guidance to stop CBP and Immigration and Customs Enforcement (ICE) from patrolling at sensitive locations, including hospitals and abortion and family care health centers.

To further protect immigrants' reproductive freedom, under a Harris presidency the Department of Homeland Security should establish a firewall to protect information about immigrants seeking reproductive health care, including abortion and contraception, from being shared with hostile state agencies. This firewall should be far-reaching, encompassing information learned at immigration checkpoints as well as information about immigrants in the government's care and custody. Information about a pregnant person's request for abortion care should only be shared with health care providers for the purposes of procuring medical assistance and treatment; it should never be shared with state agencies that may use this information for purposes of prosecution.

## Continuing Progress and Ensuring Robust Enforcement of Reproductive Health Actions Taken by the Biden-Harris Administration

The Biden-Harris administration took several important steps to protect and expand access to abortion, birth control, and reproductive freedom. If Harris is elected, the ACLU will urge her administration to continue and improve upon these actions.

### Fulfill Commitment to End Hyde Amendment and Other Discriminatory Abortion Coverage Bans

For decades, the Hyde Amendment and related abortion coverage bans have pushed abortion care out of reach for low-income people, particularly impacting people of color. The Hyde Amendment's restrictions on Medicaid coverage for abortion forces one in four women seeking an abortion to carry an unwanted pregnancy to term.<sup>36</sup> This harrowing reality was intended by Congressman Henry Hyde, who was the architect behind the

amendment and who, when he first introduced it in 1976, said, "I certainly would like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle-class woman, or a poor woman. Unfortunately, the only vehicle available is the...Medicaid bill."<sup>37</sup>

As a candidate for president in 2020, Harris committed to ending the Hyde Amendment, promising to introduce a clean presidential budget with no policy riders containing abortion coverage restrictions, and to work with Congress to keep coverage bans out of final appropriation bills.<sup>38</sup> The Biden-Harris administration made progress toward ending these discriminatory bans by removing the Hyde Amendment and other abortion coverage restrictions from the presidential budget.<sup>39</sup> If she's elected, the ACLU will urge Harris to build on that progress and fulfill her campaign commitments.

However, the presidential budget continues to include other harmful abortion restrictions, including the Weldon Amendment, an appropriations rider that has been attached to federal funding bills since 2005. The Weldon Amendment purports to prevent discrimination by recipients of federal money against health care providers and entities that refuse to provide, pay for, or refer for abortion care. However, in practice, it has been weaponized to penalize states that protect abortion access and ensure equal treatment for those seeking abortion care. For example, in 2020, the Trump administration announced that it was using the Weldon Amendment to improperly block hundreds of millions of dollars of critical federal funding to California simply because state law required health plans to include abortion coverage.<sup>40</sup>

Unfortunately, removing Hyde from the presidential budget has amounted to a mostly symbolic measure, given that Congress continues to send must-pass appropriations bills to the president's desk for signing with both Hyde and Weldon Amendments attached. To ensure everyone can access abortion care regardless of their income or source of insurance, Harris must continue to introduce clean budgets without the Hyde Amendment, remove the Weldon Amendment from her presidential budget, and carry out her commitment to work with Congress to keep such restrictions out of final appropriation bills. The ACLU will continue to lobby Congress, alongside our coalition partners, to remove the Hyde and Weldon Amendments from congressional appropriations bills and we will strenuously resist any new coverage riders or expansions of existing coverage bans.

### Continuing Progress Toward Expanding Access to Birth Control

Title X is a federally-funded family planning program that helps low-income people obtain critical health-care services for free or at a reduced cost. For more

than 50 years, Title X has provided affordable birth control and lifesaving preventive care, such as sexually transmitted infections testing and cancer screening, to millions of Americans.<sup>41</sup> Even though the Title X program was created under a Republican administration, and received bipartisan support in Congress for decades, the program has come under attack from anti-abortion extremists in recent years. The Trump administration imposed disastrous restrictions on the Title X program, decimating access to birth control for low-income people by forcing Planned Parenthood and other providers of high-quality family planning services out of the program.<sup>42</sup> Anti-abortion lawmakers in Congress have even proposed defunding the Title X program entirely.<sup>43</sup>

The Biden-Harris administration has made progress toward helping the Title X network recover from these attacks. Soon after taking office, the administration reversed the Trump administration's harmful Title X restrictions.<sup>44</sup> The administration also proposed increases in Title X funding in its presidential budgets. However, Congress has continued to level-fund the program, preventing the Title X network from keeping up with growing demand. To expand access to birth control and reproductive health care, the Title X funding shortfall must be addressed. With millions of Americans currently living in states that have banned or severely restricted access to abortion care, the ability to access family planning and reproductive health services is more important than ever. If Harris is elected, the ACLU will work with her administration to continue the progress made by the Biden-Harris administration to expand access to birth control and will urge Congress to rectify the funding shortfall and make needed investments in the Title X program.

### Continuing to Defend Access to Emergency Abortion Care

For nearly four decades, the Emergency Medical Treatment and Labor Act (EMTALA) has guaranteed that anyone experiencing an emergency medical condition can get the care they need — including abortion care — regardless of where they live.<sup>45</sup> Since EMTALA was signed into law by President Ronald Reagan, every administration — Democrat and Republican — has recognized that EMTALA requires emergency abortion care. However, anti-abortion politicians have put people's health and lives at risk by threatening to put doctors in jail simply for providing emergency abortion care to pregnant patients experiencing complications. These extreme politicians went all the way to the Supreme Court just to strip pregnant people of their longstanding right under federal law to emergency care.<sup>46</sup> While the Supreme Court recently dismissed one such case as improvidently granted, another challenge is still pending certiorari before the court.<sup>47</sup> And several justices have already

indicated a willingness to eliminate EMTALA's protections for people seeking emergency abortion care.<sup>48</sup>

The Biden-Harris administration has defended EMTALA against these extreme attacks in court, and has taken important steps to ensure access to emergency care, including issuing guidance affirming that EMTALA preempts state laws restricting access to abortion care in emergency situations<sup>49</sup> and developing new tools for reporting violations of EMTALA.<sup>50</sup> If elected president, Harris and her administration should continue to robustly defend pregnant peoples' right to the bare minimum of emergency abortion care and ensure all hospitals satisfy their obligations under EMTALA.<sup>51</sup> Over the past 25 years, the ACLU has been involved in multiple challenges, including filing a friend-of-the-court brief in the most recent case before the Supreme Court seeking to vindicate the right to emergency abortion care guaranteed by EMTALA.<sup>52</sup> The ACLU will continue to work in the courts and with coalition partners to defend the critical right to emergency abortion care, including urging Congress to swiftly respond to a Supreme Court decision that eliminates these protections.

### Continuing Progress Toward Protecting Reproductive Health Privacy

Protecting reproductive health care data and guarding against criminalization of abortion care is more important than ever. In the wake of *Dobbs*, prosecutors have increasingly used state abortion bans and other criminal laws — sometimes impermissibly — to investigate, arrest, and prosecute patients, providers, and helpers. Even if people can travel out of state to access abortion care, they may still face threats of investigation and prosecution from their home states. Earlier this year, the Biden-Harris administration finalized federal regulations to strengthen protections for reproductive health data privacy under the Health Insurance Portability and Accountability Act (HIPAA) and prevent disclosure of medical records if they are sought to penalize people for providing or obtaining lawful reproductive health care.<sup>53</sup> The new regulation, called the Final Rule, prohibits the disclosure of protected health information to law enforcement or other entities investigating or imposing liability on someone for merely seeking or providing lawful reproductive health care.

If elected, Harris and her administration must robustly enforce the Final Rule to ensure it meets its goal of protecting patient privacy and supporting access to health care, including abortion care. Health care providers and their business partners who handle protected health information must understand their obligations under the rule to adequately shield protected reproductive health data from improper disclosure. The ACLU will lobby the administration to conduct comprehensive education and

outreach campaigns to inform people covered by the rule of their obligations and of the prohibitions on sharing reproductive health data. We will also lobby the administration to monitor for Final Rule violations and engage in meaningful and robust enforcement of the penalties for violations.

### Continuing Progress Toward Ensuring Abortion Access for Unaccompanied Immigrant Minors in Government Custody

In 2017, the Trump administration adopted a policy of preventing unaccompanied immigrant minors in government custody from accessing abortion care. Unaccompanied immigrant minors come to the United States on their own, often fleeing abuse and torture in their home country, with the hope of being reunited with family members in the United States. One of these young people, Jane Doe,<sup>54</sup> came to the United States after being abused by her parents. She was apprehended by the federal government and was placed in a shelter funded by the Office of Refugee Resettlement (ORR). At the shelter, she discovered she was pregnant, and requested an abortion. But under the Trump administration's policy preventing unaccompanied minors from obtaining an abortion, she was prohibited from leaving the shelter for any abortion-related appointments. On behalf of Jane Doe and similar young women, the ACLU brought a class action lawsuit against the Trump administration.<sup>55</sup> We successfully obtained court orders for each young person who requests an abortion to be granted access to that care, and eventually the court certified our class action and blocked the policy for everyone in ORR custody.

After we were successful on appeal, the Trump administration settled the case by adopting a policy to ensure abortion access for those in ORR custody.<sup>56</sup> After President Biden was elected, we urged policy changes at two junctures: 1) After Senate Bill 8 took effect in Texas and effectively banned abortion as early as five to six weeks into gestation; and 2) When *Roe* was overturned. We encouraged the ORR to adopt policies that would ensure that pregnant unaccompanied minors were not initially placed in states with abortion bans and, if they were placed in such states, that upon request the ORR would transfer them to a state where abortion was legal. The ORR adopted such a policy after receiving our feedback.<sup>57</sup>

The ACLU has been monitoring how the policy is working in practice. For example, when we first filed the case in 2017, the ACLU established a hotline number to learn about obstacles that unaccompanied immigrant minors were facing when trying to access abortion care. We still receive calls from people working with unaccompanied immigrant minors who have questions about how the policy works, or who inform if they may be encountering barriers. If there are any issues, we raise them with the ORR and press for an expeditious resolution. Furthermore, we have filed a Freedom of Information Act (FOIA) request with the ORR to obtain documents to learn more about how the policy works in practice. If Harris is elected, we will continue to monitor the ORR's implementation of the policy under her administration to ensure that unaccompanied immigrant minors are obtaining timely abortion care under the terms of our court settlement.

## CONCLUSION

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The Supreme Court's decision to overturn *Roe v. Wade* set off a wave of new attacks on abortion care, sanctioning states across the country to ban abortion, which led to an escalating public health crisis. But support for abortion rights has never been greater. Harris championed reproductive freedom as vice president and today, acting as the Democratic nominee, her campaign has promised to enact federal protections for abortion.

If Harris is elected, the ACLU will use every tool available to ensure she enacts a federal right to abortion so that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have.

# ENDNOTES

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- 2 Guttmacher Inst., *Monthly Abortion Provision Study*, (last visited July 19, 2024) <https://guttacherinstitute.github.io/provision-dashboard/#interstate-travel>.
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