

## MEMORANDUM

**TO:** Interested Parties

**FROM:** National Women's Law Center

**DATE:** April 6, 2018

**RE: OPPOSITION TO HOUSE BILL 2050**

The National Women's Law Center ("Center"), based in Washington, D.C., is a nonpartisan, non-profit legal and advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities. The Center strongly opposes House Bill (H.B.) 2050, an unconstitutional abortion ban that would prohibit terminating a pregnancy based solely on a "prenatal diagnosis of, or belief that the [fetus] has, Down Syndrome."<sup>1</sup> This bill is an unconstitutional abortion ban intended to prevent women from getting abortion care, and would harm Pennsylvania women and families, especially those who already face barriers to care.

H.B. 2050 is in direct conflict with the constitutional right to abortion, as recognized in *Roe v. Wade* and other subsequent legal precedent. *Roe* held in part that states may not ban abortion prior to fetal viability.<sup>2</sup> The Supreme Court reaffirmed *Roe*'s holding in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, stating, "[b]efore viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure."<sup>3</sup> This necessarily includes a ban on abortion based on the reason for seeking abortion. A woman has the right to make "the ultimate decision to terminate her pregnancy before viability,"<sup>4</sup> without the state scrutinizing her reasons for doing so.

Indeed, federal courts have declared laws that specifically ban abortion based on a woman's reason to be unconstitutional. Most recently, in March of this year, a federal court issued a preliminary injunction blocking an Ohio law would have banned abortion on the basis of a prenatal diagnosis of, or belief that the fetus would have, Down Syndrome.<sup>5</sup> In its order, the court stated that "[the law] prevents certain women from obtaining pre-viability abortions, and [it] is therefore unconstitutional on its face."<sup>6</sup> Similarly, a federal court in Indiana permanently struck down a law that – like H.B. 2050 – banned abortion on the basis of specific reasons, including a prenatal diagnosis of, or belief that the fetus would have, Down Syndrome.<sup>7</sup> The court stated that "it is a woman's right to choose an abortion that is protected, which, of course,

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<sup>1</sup> H.B. 2050. 2018 Gen. Assemb., Reg. Sess. (Pa. 2018).

<sup>2</sup> *Roe v. Wade*, 410 U.S. 113, 153-154 (1973).

<sup>3</sup> 505 U.S. 833, 876 (1992).

<sup>4</sup> *Id.* at 879.

<sup>5</sup> *Preterm-Cleveland et al v. Himes et al.*, No. 1:18-cv-109-Document 28 (S.D. Ohio 2018).

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *See generally* 265 F. Supp. 3d 859.

leaves no room for the State to examine, let alone prohibit, the basis or bases upon which a woman makes her choice.”<sup>8</sup> Like these other laws, H.B. 2050 is an unconstitutional attempt to ban abortion.

H.B. 2050 also shows an appalling lack of concern for or understanding of the reality of people’s lives and decisions. A woman making the decision to have an abortion deserves support, and should be able to access timely, compassionate care, without judgement or shame. But rather than supporting women, H.B. 2050 takes medical care away from them, and puts barriers between them and their health care provider. Indeed, legislation like H.B. 2050 that bans abortion based on the reason for the abortion places the provider in the position of interrogator, undermining the provider patient relationship, which should be based on trust and mutual respect. Moreover, women who do not get the abortions they seek because of H.B. 2050 will be left in the most dire of circumstances and could be forced to leave the state to access their care.

All of the harms that would be imposed by H.B. 2050 will fall hardest on those, like women living in poverty and Black, Latinx, and Native people, who already face multiple barriers to care. Black and Latina women are more likely to experience unintended pregnancy, due to racial, ethnic, gender, and economic healthcare inequalities. Moreover, Black, Latina, and Native women are substantially more likely to live below the federal poverty line as compared to white women. In Pennsylvania, 25.2 percent of Black women, 29.9 percent of Latina women, and 35.8 percent of Native women live below the poverty line, as compared to 12.8 percent of women in the state overall.<sup>9</sup> These women in particular would experience severe consequences of being denied care, and forcing them to carry a pregnancy to term or travel out of state to access care could mean falling deeper into poverty.

H.B. 2050 is a blatant attempt to deny Pennsylvania women their constitutional rights and will harm Pennsylvania women and families. It should not move forward.

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<sup>8</sup> *Id.* at 867.

<sup>9</sup> NWLC calculations of U.S. Census Bureau, Current Population Survey, 2017 Annual Social and Economic Supplement, available at <https://www.census.gov/programs-surveys/cps.html>. The U.S. Census Bureau only allows survey respondents to self-identify as either male or female. Women are those who are 18+ who self-identified as female, available at <https://nwlc.org/resources/women-and-poverty-state-state/>.