

## Protect D.C. Residents' Rights; Repeal the Ban on Local Abortion Funding

### *Timeline*

- Beginning in 1980,<sup>1</sup> a law went into effect prohibiting the use of federal funds for abortion services for low-income women, with exceptions for cases of life endangerment, rape, and incest.<sup>1</sup>
- From 1988 to 1993, Congress also prohibited the District of Columbia from using its own locally raised revenues to provide abortion services to its residents.<sup>2</sup>
- In 1993 and 1994, Congress voted to lift the restriction on the use of locally raised revenues and allow the District to decide how to spend its own locally raised monies, as all 50 states do.<sup>3</sup>
- In 1995, an anti-choice congressional majority reinstated the ban on the use of locally raised revenues in the District.<sup>4</sup>
- In 2009, prompted by President Obama, Congress again lifted the ban on the District's use of its own privately raised funds to provide abortion care to its low-income residents.<sup>5</sup> At that time, anti-choice members of Congress vowed to fight to reinstate the ban.
- During negotiations over the 2011 budget, anti-choice forces prevailed in reimposing the ban.<sup>6</sup>

### *Why Fight the Ban?*

- Barring the District from using its own locally raised revenues for abortion services usurps the prerogatives of the local D.C. government and tramples the rights of District residents. According to the Kaiser Family Foundation, 64,500 nonelderly Medicaid-enrolled women whose access is affected by the ban resided in the city in 2009.<sup>7</sup> No other jurisdiction or state is told how to use its locally raised revenue. In fact, 17 states currently choose to provide local funds for abortion services.<sup>8</sup>
- The ban violates the spirit of the 1980 Supreme Court decision *Harris v. McRae* which upheld the right of Congress to restrict the use of **federal** funds to provide abortion care to low-income women, but clearly asserted that **state** funds used to provide abortion services for low-income women is a state, not federal, decision. "A participating state is free, if it so chooses, to include in its Medicaid plan those medically necessary abortions for which federal

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<sup>1</sup> Congress enacted the Hyde amendment, which restricts federal funding for abortion, in 1976, but the policy was litigated and did not go into effect until 1980.

reimbursement is unavailable."<sup>9</sup>

- The Hyde amendment restricting federal funds is in effect in all 50 states, as well as the District and is unaffected by the city's use of its own funds to provide abortion care for low-income women. It would not be affected if the ban on locally raised revenues were lifted.
- Opponents sometimes argue that the District should be banned from deciding to use its local funds for abortion services because, they claim, the city has a high abortion rate.<sup>10</sup> This claim is misleading. In general, abortion rates are higher in cities than states, because cities have a higher concentration of abortion providers. In fact, the District's 2005 abortion rate (54.2 per 1,000 women of reproductive age) is actually lower than abortion rates in other nearby cities, such as Baltimore and New York City (86.2 and 56.7 per 1,000 women of reproductive age, respectively).<sup>11</sup> Additionally, the city's statistics do not accurately reflect abortion services obtained by D.C. residents because the numbers include women from other jurisdictions who travel to the city to seek care. Moreover, the lawmakers who say they support a ban because they want to reduce the number of abortions are the same lawmakers who oppose family planning and sex education, which help women prevent unintended pregnancy in the first place.
- The D.C. ban disproportionately affects communities of color. In the District 81 percent of non-elderly Medicaid recipients are black, and 13 percent are Hispanic.<sup>12</sup> Additionally, 53 percent of residents receiving assistance are women.<sup>13</sup> Therefore, of the Washingtonians whose access to abortion care is restricted by the local-funds ban, the vast majority — 94 percent — are women of color.
- The prohibition on the District of Columbia's ability to use its own revenues for abortion services endangers the health and lives of low-income women.
  - Lack of public funding for abortion services creates an additional financial burden for already-impooverished families, forcing women to choose between paying out-of-pocket for an abortion and paying for other necessities for their families. A 2000 report released by the Guttmacher Institute documents that low-income women continue to face intolerable burdens in accessing reproductive-health care. The report cites earlier Guttmacher Institute studies revealing that poor women often are forced to use money that would have been spent for rent, utility bills, food and clothing for themselves and their families in order to pay for abortion services. In fact, almost 60 percent of Medicaid-eligible women reported that paying for an abortion presented serious burdens, compared with 26 percent of women not eligible for Medicaid.<sup>14</sup>
  - As former executive director of Planned Parenthood of Metropolitan Washington Rosann Wismann once told a congressional panel, many of the women who come into the clinic have, "struggled with problems in their lives relating to jobs, education, marriage, drugs or crime which resulted in a grim existence -- not only for themselves but for the children that they have already borne. They knew they could not provide the financial or emotional

support needed to care for another child. They were trying to make a very personal and responsible decision for themselves and their families."<sup>15</sup>

- The D.C. abortion ban denies basic care to women in dire circumstances. The following stories document the experiences of D.C. Medicaid enrollees who turned to the D.C. Abortion Fund (DCAF), a nonprofit group that assists low-income women with the cost of their abortion care, because local Medicaid funding was banned.<sup>16</sup>
  - A 21-year-old mother living in a homeless shelter with her one-year-old daughter learned that she was pregnant and was working desperately to raise several hundred dollars to cover the cost of her abortion even though she did not have enough money to pay for housing.
  - A 15-year-old high-school student and her mother called while struggling to come up with the more than \$750 necessary to afford her abortion care. The entire family had lost its home and was living in a friend's basement, while the young woman was working at McDonald's after school to help make ends meet.
  - A 38-year-old survivor of domestic violence learned she was pregnant while the man involved was incarcerated, and she faced a cost of nearly \$500 to access abortion services.
- Lack of public funding for abortion services also causes women to delay the abortion in order to raise the necessary funds – a delay that can exacerbate both the costs and the health risks of the procedure.
  - The delay caused by economic hardship can result in additional costs. The Guttmacher study demonstrated that Medicaid-eligible women who must delay care due to financial difficulties are forced to wait on average two to three weeks longer to have an abortion than other women. Ironically, the cost of an abortion increases more rapidly the longer the delay.
  - The delay caused by public funding restrictions also can result in increased health risks because, although abortion remains an extremely safe procedure, the risk of complications increases the later in gestation an abortion occurs.
- Recent events further demonstrate the devastating and immediate effect that this discriminatory policy has on women in the nation's capital.

Friday, April 9, 2011: As the federal government neared shutdown, anti-choice politicians forced the inclusion of the D.C. abortion ban in the final FY'11 budget deal.

Wednesday, April 13, 2011: In order to comply with the impending restriction, D.C. Medicaid officials announced that coverage for abortion services would be dropped from the city's health programs.

Thursday, April 14, 2011: At least 28 D.C. Medicaid enrollees were scheduled to receive abortion care at a local clinic that day. These women, who depended on the Medicaid program to help meet their health needs, suddenly were left on their own to scramble for funds.<sup>17</sup> As reported by DCAF, one of these women was a 23-year-old homeless mother who was caring for her four-year-old child and sought counseling through a community center. Her social worker had arranged for the woman's procedure to be covered through Medicaid, but funding was eliminated just two days before her appointment, leaving her without the safety net that her health coverage was intended to provide.<sup>18</sup>

The anti-choice lawmakers who demanded reinstatement of the D.C. abortion ban were not elected to represent District of Columbia residents or to serve their needs, but through the budget process they had ultimate power over these women's health-care options. Since that time, every member of the D.C. Council has spoken out against Congress' actions.<sup>19</sup> Congress should respect the rights of D.C. citizens to determine how their local tax dollars are spent and allow the District's government to decide how best to assist low-income residents in meeting their reproductive-health needs.

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<sup>1</sup> Karen J. Lewis, Jon O. Shimabukuro, and Dana Ely, *Congressional Research Service* Updated September 20, 2002, at [http://www.policyalmanac.org/culture/archive/crs\\_abortion\\_107th.shtml](http://www.policyalmanac.org/culture/archive/crs_abortion_107th.shtml) (last visited Oct. 25, 2011).

<sup>2</sup> Dornan Amdt.286 (1987); H.R. 2713, 100th Cong. (1987), at <http://www.thomas.gov/cgi-bin/bdquery/z?d100:HR02713:@@L&sum2=m&> (last visited Oct. 25, 2011).

<sup>3</sup> Pub. L. No. 103-127, 107 Stat 1336 (1993); Pub. L. No. 103-334, 108 Stat 2576 (1994).

<sup>4</sup> Pub. L. No. 104-69, 109 Stat 767 (1995).

<sup>5</sup> Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat 3034 (2009).

<sup>6</sup> P.L. 112-10, 112th Cong. (2011).

<sup>7</sup> Kaiser Family Foundation (KFF), *District of Columbia: Distribution of the Nonelderly with Medicaid by Gender, states (2008-2009), U.S. (2009)*, at <http://www.statehealthfacts.org/profileind.jsp?cat=3&sub=42&rgn=10> (last visited Oct. 25, 2011).

<sup>8</sup> NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (21st ed. 2012), at [www.WhoDecides.org](http://www.WhoDecides.org).

<sup>9</sup> *McRae v. Harris*, 448 U.S. 297 (1980).

<sup>10</sup> Steven Ertelt, *Senate Panel Also Agrees to Obama's Plan to Fund Abortions in Nation's Capital*, at <http://www.lifenews.com/2009/07/13/nat-5209/> (last visited Oct. 25, 2012).

<sup>11</sup> Guttmacher Institute, *State Facts About Abortion: The District of Columbia* (2008), at [http://www.guttmacher.org/pubs/sfaa/pdf/district\\_of\\_columbia.pdf](http://www.guttmacher.org/pubs/sfaa/pdf/district_of_columbia.pdf) (last visited Oct. 29, 2011); Email

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from Susan Cohen, Director of Government Relations, the Guttmacher Institute, to Stacie Weeks, Policy Representative, NARAL Pro-Choice America (July 14, 2009) (on unpublished data reflecting abortion rates in Baltimore and New York City).

<sup>12</sup> KFF, *District of Columbia: Distribution of the Nonelderly with Medicaid by Race/Ethnicity, states (2008-2009), U.S. (2009)*, at <http://www.statehealthfacts.org/profileind.jsp?cat=3&sub=42&rgn=10> (last visited Oct. 25, 2011).

<sup>13</sup> KFF, *District of Columbia: Distribution of the Nonelderly with Medicaid by Gender, states (2008-2009), U.S. (2009)*, at <http://www.statehealthfacts.org/profileind.jsp?cat=3&sub=42&rgn=10> (last visited Oct. 25, 2011).

<sup>14</sup> Heather Boonstra & Adam Sonfield, *Rights Without Access: Revisiting Public Funding of Abortion for Poor Women*, GUTTMACHER REP. ON PUB. POL'Y, April 2000.

<sup>15</sup> *Testimony of Ms. Rosann Wisman, Executive Director of Planned Parenthood of Washington, DC before Hon. James H. Scheuer*, 101st Cong. (1989).

<sup>16</sup> Unpublished data from the DC Abortion Fund (July 2011).

<sup>17</sup> Aaron Morrissey, *D.C. Abortion Funding Ban Begins To Rear Its Ugly Head* (Apr. 14, 2011) at [http://dcist.com/2011/04/abortion\\_funding\\_cut.php](http://dcist.com/2011/04/abortion_funding_cut.php) (last visited Oct. 25, 2011).

<sup>18</sup> Unpublished data from the DC Abortion Fund (July 2011).

<sup>19</sup> Letter from Council of District of Columbia to Rep. Nancy Pelosi, Minority Leader, U.S. House of Representatives (May 3, 2011).