

## **Affiliation Bans Would Devastate States' Family-Planning Systems**

Politicians in Congress and the states have attacked family-planning programs by aiming to restrict the flow of federal dollars to reproductive-health clinics if they, as part of the full menu of reproductive-health services they offer, provide abortion care or, in some cases, are simply affiliated with a provider that does offer abortion care.

In 2009, a federal effort began in earnest when Sen. David Vitter (R-LA) and Rep. Mike Pence (R-IN) introduced legislation (S.85/H.R.614) to make any organization that provides abortion care with separate funds ineligible for a Title X family-planning grant. Sen. Vitter and Rep. Pence introduced similar bills again in the 112th Congress (S.96/H.R.217).

In addition to authoring free-standing legislation, Rep. Pence had staged attacks on Planned Parenthood and Title X several times before. In recent years he has offered anti-choice proposals that would prohibit Planned Parenthood from receiving any federal funds to the FY'08 and FY'10 Labor, Health and Human Services, and Education appropriations bills. Both attempts failed. However, in 2011, with the change in congressional leadership and increased number of anti-choice lawmakers, his amendment passed when he offered it to the FY'11 continuing resolution. Thankfully, it was blocked in the Senate, but not before bringing the federal government to the brink of a shutdown.

### **Anti-Choice Lawmakers Mimic Federal Attacks**

The federal attack has been echoed across the states. Ten states have laws banning abortion providers or affiliated provider organizations from receiving public funds for other health services.

These laws take several different forms, including:

- bills that target Planned Parenthood directly, blocking some or all public funding to its health centers;
- proposals to block public funding—federal, state, or both—to any organization that with separate funds provides, counsels, or refers for abortion care;
- funding prioritization schemes intended to starve reproductive-health organizations that provide, counsel, or refer for abortion from necessary resources (one example, for instance, requires the state to create a list of organizations that may receive funds, placing Planned Parenthood last, a virtual guarantee that it will receive no dollars); and
- efforts to block public-funding contracts through non-legislative means to reproductive-health clinics that provide abortion care.

## **Affiliation Bans are Thinly Veiled Attacks on Women's Health Care**

Ensuring that couples have all the health-care information they need in order to plan their families—which would also help reduce the need for abortion—should be a goal which all Americans can agree. Unfortunately, by denying abortion providers federal or state family-planning funding, anti-choice lawmakers are working directly against this objective. Reducing access to family-planning services raises the risk of unintended pregnancies and increases the need for abortion.

- Reproductive-health clinics offer a wide array of preventive services that include: pelvic exams and cancer screenings, STD screening and treatment, and education about and access to birth control.
- Every year, women in the United States experience 3.4 million unintended pregnancies, many of which lead to hardship for women and their families, tough choices, and, for some, abortion.<sup>1</sup> The use of effective contraception reduces the number of unintended pregnancies and, thus, the need for abortion.
- Publicly funded contraceptive services significantly reduce rates of unintended pregnancy, unplanned births, and abortion among young people by 73 percent. Without these services an additional 360,000 teenagers would become pregnant each year. Of these young women, 190,000 would give birth, and 110,000 teenagers would have an abortion.<sup>2</sup>

### **Denying family-planning funding to abortion providers may force some reproductive-health clinics to limit their availability or close their doors altogether.**

- Many women enter the health-care system through a family-planning provider. In fact, six in 10 women who receive services at a publicly funded family-planning center consider it their primary source of medical care.<sup>3</sup>
- In 2001, Missouri passed legislation that prohibited clinics from receiving state family-planning funds if they provided abortion information on request.<sup>4</sup> After Missouri enacted this highly restrictive policy, 19 agencies lost—in a period of just three months—more than \$535,000 in state family-planning funds that had been designated to support services for 3,567 clients. During the same three-month period, six county-health departments lost \$34,350 in state family-planning funding earmarked to serve 229 clients. Due to the loss of state funds, clinics were forced to lay off staff and reduce clinic hours, detrimentally impacting access to care for low-income patients.<sup>5</sup>
- In 2009, Tennessee enacted a law that restructured the way family-planning funds were distributed in the state, turning authority over to county health departments. This innocuous-sounding measure has caused serious consequences for Tennessee women's

access to family-planning services. By 2011, 94 of the 95 counties had defunded their local Planned Parenthood providers and by October of that year, Shelby County became the last county in Tennessee to defund its local Planned Parenthood<sup>6</sup> when the county awarded the grant to a provider that does not offer or even refer for abortion services.<sup>7</sup> Planned Parenthood had a family-planning grant from Shelby County for 35 years. By 2012, the Christ Community Health Services organization had only had 51 Title X visits per month, compared to Planned Parenthood's 841 visits.<sup>8</sup> While Planned Parenthood of Greater Memphis ultimately received a grant directly from the federal government, it replaced only about half of the funding it had previously received.<sup>9</sup>

- Planned Parenthood of Kansas and Mid-Missouri estimates that it serves more than 5,000 patients using federal Title X funds. If blocked from receiving any family-planning funds in Kansas, which the state attempted to do in 2011,<sup>10</sup> the group's clinics would lose from one-third to one-half of their budgets and be forced, at the very least, to charge patients higher co-pays.
- In 2011, Texas' anti-choice Gov. Rick Perry (R) signed into law H.B. 2786, a bill that blocked public funds from going to any organization or affiliated organization that provides, refers, or even counsels for abortion. The ban was blocked from going into effect, but only briefly, as the decision was quickly overturned.<sup>11</sup>
- In 2011, Indiana's anti-choice Gov. Mitch Daniels (R) signed into law H.B. 1210, a bill that, among other things, blocked public funds from going to any organization that provides—or refers for—abortion services with private, non-state dollars. Pro-choice litigants attempted to block the funding ban from going into effect until court proceedings on the matter reached a conclusion, but the presiding judge refused to grant a temporary restraining order. As a result, 9,300 women were left without access to any medical care and Planned Parenthood had to struggle to find other temporary resources to cover the cost of care for these women.
- In 2011 and again in 2012, the North Carolina legislature included an affiliation ban in its annual budget bill. Both times the bill was vetoed by pro-choice Gov. Bev Perdue (D), but both times anti-choice legislators overrode the veto. The 2011 bill denied funds to Planned Parenthood and any affiliated organization. Pro-choice litigants filed suit and the law was enjoined. In 2012, the bill blocked funds for family-planning services and pregnancy prevention from going to an organization other than the local health department—with Planned Parenthood being the only provider affected. This loss in funding would cause providers to shut their doors, even those that do not offer abortion care. However, in a positive turn of events, within weeks of the veto override some family-planning providers received funding directly from the federal government.<sup>12</sup>
- In May 2012, yet another anti-choice governor signed an affiliation ban into law. Arizona Gov. Jan Brewer (R) enacted H.B. 2800, which blocked all state funding from

going to any organization or individual that, in addition to family-planning services, also provides abortion care. In October 2012, the law was enjoined from going into effect, with the judge rejecting the state's claim that it can cut off funding simply based on a provider's scope of work. In August 2013, the Ninth Circuit Court of Appeals upheld the lower court's decision.<sup>13</sup> Arizona Attorney General Tom Horne asked the U.S. Supreme Court to review the decision. This law could affect 3,000 low-income Arizona women who rely on Planned Parenthood for their preventive care.<sup>14</sup>

### **Affiliation bans that deny reproductive-health clinics' funding are at odds with federal law.**

- In June 2011, in response to Indiana's new law denying public family-planning funding to providers that also offer abortion services, the Obama administration issued a strong letter through the Centers for Medicaid and Medicare Services (CMS), notifying Indiana that its recently enacted law was illegal. The letter states that "Medicaid programs may not exclude qualified health care providers from providing services that are funded under the program because of a provider's scope of practice. Such a restriction would have a particular effect on beneficiaries' ability to access family planning providers."<sup>15</sup> In addition, CMS issued a memo reminding all states that they cannot bar providers from Medicaid because they separately provide abortion care. Planned Parenthood scored a victory when a federal judge decided in the organization's favor, issuing a preliminary injunction to block Indiana from enforcing the new law. In October 2012, a court of appeals panel affirmed the lower court's injunction, but sent the case back down for further review. In July 2013, the district court issued a permanent injunction blocking the state from enforcing the ban after the U.S. Supreme Court refused to hear Indiana's appeal.
- In September 2011, the federal government decided to award family-planning contracts in New Hampshire directly, bypassing the state. This was in response to a June vote by the state government (in the form of the New Hampshire Executive Council) against funding its contract with Planned Parenthood of Northern New England, impacting Granite State women's access to an array of reproductive-health and preventive care. This bold step by the federal government will ensure women in New Hampshire continue to receive the reproductive-health care they need.
- In early 2012, after Texas enacted its affiliation ban and anti-choice Gov. Rick Perry (R) slashed family-planning funding by two-thirds,<sup>16</sup> its ban on Planned Parenthood's participation in the state Women's Health Program resulted in additional problems for Texas women's access to family planning, with 146 clinics seeing funding cuts.<sup>17</sup> Similar to Indiana, Texas received a strongly worded letter from CMS notifying the state that it is illegal to exclude a qualified health-care provider from Medicaid simply because of the provider's scope of practice. Texas refused to agree, which forced the federal government to stop funding the Texas Women's Health Program altogether. Gov. Perry vowed to fund the program entirely with state dollars, although the now wholly state-

funded program reaches nearly 30 percent fewer women.<sup>18</sup> More than 100,000 women relied on the program and sadly, 35 of the 76 state family-planning organizations lost their funding entirely.<sup>19</sup>

The state has since filed suit against the U.S. Department of Health and Human Services, claiming it is within the state's purview to determine what organizations are eligible for funding.<sup>20</sup> Planned Parenthood also filed suit against the state and in October 2012, a judge temporarily ordered Texas to include Planned Parenthood in the program—as long as it's collecting federal funds—which the federal government will likely continue to do.

### Conclusion

It is essential that the full range of reproductive-health services is available to women who need it. By denying reproductive-health providers access to necessary funding solely because they provide abortion care is a terrible and unnecessary detriment to women's health.

January 1, 2015

#### Notes:

- 
- <sup>1</sup> Guttmacher Institute (GI), Unintended Pregnancy in the United States (Dec 2013) at <http://www.guttmacher.org/pubs/FB-Unintended-Pregnancy-US.html> (last visited Oct. 8, 2014).
  - <sup>2</sup> Jennifer J. Frost et al., GI, Contraceptive Needs and Services, 2010 (July 2013) at <http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf> (last visited Oct. 8, 2014).
  - <sup>3</sup> Rachel Benson Gold et al., GUTTMACHER INSTITUTE, *Next Steps for America's Family Planning Program: Leveraging the Potential of Medicaid and Title X in an Evolving Health Care System* at 4 (2009) at <http://www.guttmacher.org/pubs/NextSteps.pdf> (last visited Sept. 1, 2013).
  - <sup>4</sup> H.B.10, 91st Gen. Assemb., 1st Reg. Sess. (Mo. 2001).
  - <sup>5</sup> NARAL Pro-Choice America Foundation, *The Proposed Vitter Amendment is Unconstitutional: The Existence of Missouri Law Does Not Remedy the Constitutional Flaws* (Oct. 5, 2001) (internal document).
  - <sup>6</sup> John Jalsevac, *Planned Parenthood Completely Defunded in Tennessee*, LIFE SITE NEWS, Nov. 1, 2011, <http://www.lifesitenews.com/news/planned-parenthood-completely-defunded-in-tennessee/> (last visited Oct. 8, 2014).
  - <sup>7</sup> Hannah Sayle, *Unplanned Parenthood*, MEMPHIS FLYER, <http://www.memphisflyer.com/memphis/unplanned-parenthood/Content?oid=3251961> (last visited Oct. 8, 2014).
  - <sup>8</sup> Kate Sheppard, *A Tennessee Case Study in Defunding Planned Parenthood*, MOTHER JONES, <http://www.motherjones.com/mojo/2012/09/tennessee-case-study-defunding-planned-parenthood> (last visited Oct. 8, 2014).

- 
- <sup>9</sup> Caroline May, *Administration Ignores State Wishes, Sends \$395K to Tenn. Planned Parenthood*, THE DAILY CALLER July 5, 2012, <http://dailycaller.com/2012/07/05/administration-sends-395k-to-tenn-planned-parenthood/> (last visited Oct. 8, 2014).
- <sup>10</sup> *Planned Parenthood of Kansas and Mid-Missouri v. Robert Moser, MD*, 799 F.Supp.2d 1218 (D. Kan. 2011).
- <sup>11</sup> *U.S. Appeals Court Allows Texas to Exclude Planned Parenthood*, REUTERS, May 1, 2012, <http://www.reuters.com/article/2012/05/01/usa-abortion-texas-idUSL1E8G15F820120501> (last visited Oct. 8, 2014).
- <sup>12</sup> *Grant Saves N.C. Family Planning Clinics*, UPI, [http://www.upi.com/Top\\_News/US/2012/07/25/Grant-saves-NC-family-planning-clinics/UPI-72291343239259/](http://www.upi.com/Top_News/US/2012/07/25/Grant-saves-NC-family-planning-clinics/UPI-72291343239259/) (last visited Oct. 8, 2014).
- <sup>13</sup> Maura Dolan, *9th Circuit rejects Arizona law banning care by abortion providers*, L.A. TIMES, Aug. 22, 2013, available at <http://articles.latimes.com/2013/aug/22/nation/la-na-nn-arizona-abortion-20130822> (last visited Oct. 8, 2014).
- <sup>14</sup> *Planned Parenthood Arizona v. Betlach*, ---F.Supp.2d---, (D. Ariz. 2012)
- <sup>15</sup> Letter to Patricia Casanova, Director of Indiana Office of Medicaid Policy and Planning from Department of Health and Human Services Centers for Medicare and Medicaid Services, June 1, 2011 at [http://www.in.gov/aca/files/CMS\\_re\\_HIP\\_sp\\_amend\\_Oct2011.pdf](http://www.in.gov/aca/files/CMS_re_HIP_sp_amend_Oct2011.pdf) (last visited Oct. 8, 2014).
- <sup>16</sup> K. White, D. Grossman, *Cutting Family Planning in Texas*, N ENGL J MED 367;13 (2012).
- <sup>17</sup> Jessica Pieklo. *Texas GOP Strives to Make the State Contraceptive-Free*, CARE 2, <http://www.care2.com/causes/texas-gop-strive-to-make-the-state-contraceptive-free.html> (last visited Oct. 8, 2014).
- <sup>18</sup> Jordan Smith, *Fewer Women Served Under Texas Women's Health Program*, AUSTIN CHRON., July 31, 2013, available at <http://www.austinchronicle.com/blogs/news/2013-07-31/number-of-women-served-under-texas-womens-health-program-drops/print/> (last visited Oct. 8, 2014).
- <sup>19</sup> Corrie MacLaggan, *Appeals Court Rules Texas Can Cut Off Planned Parenthood Funding*, REUTERS, <http://www.reuters.com/article/2012/08/22/us-abortion-plannedparenthood-texas-idUSBRE87K19420120822> (last visited Oct. 8, 2014).
- <sup>20</sup> *State of Texas v. U.S. Department of Health and Human Services*, ---F.Supp.2d---, (D. Tex. 2012).