



**NARAL**  
Pro-Choice America

## **Defunding Laws Would Devastate States' Family-Planning Systems**

For decades, anti-choice politicians have been frustrated by their inability to shutter abortion clinics completely and make abortion illegal outright. Consequently, they have resorted to more and more creative ways to make abortion services as inaccessible as possible. One such tactic is to pass laws that disqualify health centers that offer abortion services from seeing patients in government health-care programs, such as Title X, Medicaid, and other state public-health programs. These laws are sometimes called “defunding laws.”

The first ones appeared in states in the 1990s. The federal effort began in earnest a decade later, when Sen. David Vitter (R-LA) and former Rep. Mike Pence (R-IN) introduced legislation (S.85/H.R.614 in the 111<sup>th</sup> Congress) to make any organization that provides abortion care with separate funds ineligible for a Title X family-planning grant. Pence introduced similar amendments to appropriations bills in subsequent years, and even led the fight against Planned Parenthood funding in the FY'11 budget that brought the federal government to the brink of a shutdown.

The most recent attacks were triggered in 2015, after a group calling itself the Center for Medical Progress released a series of videos claiming that Planned Parenthood illegally sold fetal tissue for a profit. In response, anti-choice lawmakers introduced another flurry of bills to defund Planned Parenthood, held a series of circus-like hearings, and forced multiple floor votes on the issue.<sup>1</sup> House anti-choice leaders also created a special committee purportedly to “investigate” fetal-tissue donation and abortion. Over the course of several months, the anti-choice-dominated panel has held hearings and issued reports filled with half-truths and innuendos, all intended to defame women, abortion providers, and individuals involved in fetal-tissue research.

In the meantime, states have continued this line of attack. As of mid-year 2016, 17 states have defunding laws on the books that ban abortion providers from receiving public funds to provide other health services. While some anti-choice state legislation targets Planned Parenthood specifically by name, other proposals target abortion providers more generally, while still others devise clever funding-prioritization schemes to that financially punish reproductive-health organizations that provide, counsel, or refer for abortion.

Defunding laws make it harder for clinics to keep their doors open and block patients from seeing the doctor of their choice. In doing so, these laws pose a serious threat to women's health.

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

The federal attacks have been echoed across the states. Seventeen states have laws effectively 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; others target all abortion providers;
- bills that are broader in scope and block public funding to any organization that counsels, or refers for abortion care; others are limited to clinics that offer abortion care;
- many early bills were limited to family-planning funds or other general funds for women's health, but efforts are expanding now to target discrete funding streams for any remaining programs (such as funds for breast and cervical cancer screening);
- more recently, states are attempting to enact 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
- ongoing illegal attempts to disqualify abortion providers or Planned Parenthood specifically from participating in Medicaid.

## **Defunding Laws Destroy Access to Family Planning**

Although on their face these laws restrict funds available to abortion providers, the collateral damage of such efforts is access to family-planning services. Time and time again, states' family-planning networks have been devastated by policies that cut these clinics off from providing services through health-care programs.

- In 2011, Kansas enacted a law that effectively barred abortion providers from providing services in the Title X program by prioritizing funding for public-health departments and hospitals over private clinics. At the time of the law's enactment, three family-planning clinics participated in Title X. Three years later, two of the three clinics had closed. The remaining clinic sees far fewer patients and can no longer afford to provide no-cost contraception.<sup>2</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>3</sup> when the county awarded the grant to a provider that does not offer or even refer for abortion services.<sup>4</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>5</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>6</sup>

- In 2001, Missouri passed legislation that prohibited clinics from receiving state family-planning funds if they provided abortion information on request.<sup>7</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>8</sup>

### **Defunding Efforts Are at Odds with Federal Law**

#### Medicaid

One particular brand of defunding efforts – those that disqualify abortion providers from participating in Medicaid – is in direct violation of federal law. Federal Medicaid rules require that the program offer patients free choice of qualified health-care providers; the only way for states to exclude providers from Medicaid is to establish that they are not qualified. For instance, states are allowed to bar providers who commit fraud or certain criminal acts. States cannot, however, exclude qualified providers solely based on the range of medical services they provide, such as abortion care. This critical provision ensures that Medicaid recipients have access to any qualified provider who is willing to see them and prohibits politicians dictating which providers women can see based on the politician's ideology.

Although this requirement is clearly spelled out in federal law, states continue to try to disqualify abortion providers from participating in Medicaid. Thankfully, these efforts have been successfully litigated and the courts have blocked their implementation.

- In 2011, Indiana's anti-choice governor, 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. In response to Indiana's new law, the Obama administration sent the state a strongly worded letter and released a memo stating that "Medicaid programs may not exclude qualified health care providers—whether an individual provider, a physician group, an outpatient clinic, or a hospital—from providing services under the program because they separately provide abortion services..."<sup>9</sup> 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 2012, a court of appeals panel affirmed the lower court's injunction, but sent the case back down for further review. In 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. Before the law was enjoined, 9,300 women were left without access to any medical care and Planned Parenthood struggled to find other temporary resources to cover the cost of care for these women.<sup>1</sup>

- In 2011, Texas' anti-choice governor, Rick Perry (R), signed into law S.B.7a, a bill that blocked Medicaid family-planning funds from going to any organization or affiliated organization that provides, refers, or even counsels for abortion. Similar to Indiana, Texas received a strongly worded letter from the Centers for Medicare and Medicaid Services 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 decided to fund the program entirely with state dollars, despite having lost nearly 90 percent of the program's budget.<sup>10</sup> Two years after the program lost federal funding, enrollment dropped by 20,000 – a decrease of nine percent. Contraceptive claims also declined by more than half, meaning that the women enrolled in the program received far fewer services.<sup>11</sup>
- In 2012, yet another anti-choice governor signed a defunding bill 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. The law was enjoined from going into effect by the district court, with the judge rejecting the state's claim that it can cut off funding simply based on a provider's scope of work and the Ninth Circuit Court of Appeals upheld the lower court's decision.<sup>12</sup> Arizona Attorney General Tom Horne asked the U.S. Supreme Court to review the decision, which the court declined. If allowed to go into effect, this law would have affected 3,000 low-income Arizona women who rely on Planned Parenthood for their preventive care.<sup>13</sup>
- In 2015 and 2016, Arkansas, Alabama, Louisiana, Texas, Florida, Kansas, and Mississippi tried to disqualify Planned Parenthood from participating in their state Medicaid programs.<sup>14</sup> As described above, this violates the federal requirement to provide free choice of qualified providers in states' Medicaid programs. Planned Parenthood filed suit in all seven states and as of June 2016, courts had granted injunctive relief in three cases – Arkansas, Alabama, and Louisiana – and the remainder have motions for injunctions pending before the courts.<sup>15</sup>

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<sup>1</sup> After the law was enjoined, anti-choice politicians continued their attacks against family-planning clinics in the form of budget cuts, signed into law by anti-choice Gov. Pence. These funding cuts ultimately forced clinics to close their doors and later contributed to an HIV outbreak in the state, as communities were left without HIV-testing centers.

## Title X

Courts have similarly ruled against states when they have tried to bar abortion providers from participating in the Title X family-planning program, including in cases brought in North Carolina, Kansas, Texas, and Montana.<sup>16</sup> Nonetheless, even though courts have consistently found that such action is against the law, further steps to clarify and strengthen protections for abortion providers participating in Title X are merited given the unprecedented number of defunding attacks in recent years.

## **Conclusion**

Ensuring that couples have access to all health-care services that help them plan their families—which would also help reduce the need for abortion—should be a goal upon which all Americans can agree. Unfortunately, by disqualifying abortion providers from participating in public health-care programs, anti-choice lawmakers are working directly against this objective. These policies harm women and families, and sacrifice the availability of critical health-care services for the specious goal of eliminating access to abortion.

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<sup>1</sup> NARAL Pro-Choice America, *2015 Congressional Record on Choice* (2015), at <http://www.prochoiceamerica.org/assets/download-files/2015-congressional-record.pdf> (last visited Aug. 8, 2016).

<sup>2</sup> Roxana Hegeman, *Kansas lost federal funds stripped from Planned Parenthood*, ASSOCIATED PRESS Aug. 21, 2015, at <http://www.washingtontimes.com/news/2015/aug/21/kansas-lost-federal-funds-stripped-from-planned-pa/?page=all> (last visited Dec. 15, 2015).

<sup>3</sup> John Jalsevac, *Planned Parenthood Completely Defunded in Tennessee*, LIFE SITE NEWS, Nov. 1, 2011, at <http://www.lifesitenews.com/news/planned-parenthood-completely-defunded-in-tennessee/> (last visited Aug. 26, 2015).

<sup>4</sup> Hannah Sayle, *Unplanned Parenthood*, MEMPHIS FLYER, at <http://www.memphisflyer.com/memphis/unplanned-parenthood/Content?oid=3251961> (last visited Aug. 26, 2015).

<sup>5</sup> Kate Sheppard, *A Tennessee Case Study in Defunding Planned Parenthood*, MOTHER JONES, at <http://www.motherjones.com/mojo/2012/09/tennessee-case-study-defunding-planned-parenthood> (last visited Aug. 26, 2015).

<sup>6</sup> Caroline May, *Administration Ignores State Wishes, Sends \$395K to Tenn. Planned Parenthood*, THE DAILY CALLER July 5, 2012, at <http://dailycaller.com/2012/07/05/administration-sends-395k-to-tenn-planned-parenthood/> (last visited Aug. 26, 2015).

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<sup>7</sup> H.B.10, 91st Gen. Assemb., 1st Reg. Sess. (Mo. 2001).

<sup>8</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>9</sup> Department of Health and Human Services, Centers for Medicare & Medicaid Services, *CMCS Informational Bulletin* (June 1, 2011) at <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf> (last visited Aug. 26, 2015)

<sup>10</sup> Kinsey Hasstedt, *The State of Sexual and Reproductive Health and Rights in the State of Texas: A Cautionary Tale*, *Guttmacher Policy Review*, Spring 17 n.2 (2014).

<sup>11</sup> Texas Health and Human Services Commission, *Texas Women's Health Program: Savings and Performance Reporting*, January, 2015, at <http://www.hhsc.state.tx.us/reports/2015/tx-womens-health-program-rider-44-report.pdf> (last visited Dec. 16, 2015).

<sup>12</sup> Maura Dolan, *9th Circuit rejects Arizona law banning care by abortion providers*, *L.A. TIMES*, Aug. 22, 2013, at <http://articles.latimes.com/2013/aug/22/nation/la-na-nn-arizona-abortion-20130822> (last visited Aug. 26, 2015).

<sup>13</sup> *Planned Parenthood Arizona v. Betlach*, ---F.Supp.2d---, (D. Ariz. 2012).

<sup>14</sup> Caitlin Owens, *States Can't End Medicaid Funding of Planned Parenthood*, *NATIONAL JOURNAL* Aug. 17, 2015, <http://www.nationaljournal.com/health-care/states-can-t-end-medicaid-funding-of-planned-parenthood-20150817> (last visited Aug. 26, 2015).

<sup>15</sup> Maria L. La Ganga, *Planned Parenthood Sues Texas Over Medicaid Funding*, *Los Angeles Times*, Nov. 23, 2015, at <http://www.latimes.com/nation/la-na-planned-parenthood-texas-20151123-story.html> (last visited Dec. 15, 2015).

<sup>16</sup> *Planned Parenthood of Cent. North Carolina v. Cansler*, 877 F. Supp. 2d 310 (M.D.N.C. 2012); *Planned Parenthood of Kansas and Mid-Missouri v. Brownback*, 799 F. Supp. 2d 1218 (D. Kan. 2011), *rev'd on other grounds*, *Planned Parenthood of Kansas and Mid-Missouri v. Moser*, 747 F.3d 814 (10th Cir. 2014); *Planned Parenthood of Houston and Southeast Tex. v. Sanchez*, 403 F.3d 324 (5th Cir. 2005); *Planned Parenthood of Billings, Inc. v. Montana*, 648 F. Supp. 47 (D. Mont. 1986).