

Saturday, July 16, 2022

The White House
Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

To whom it may concern:

Texans need safe, accessible abortion care. Some Texans are able to travel out of state to receive care, and the Biden Administration should do everything in its power to protect these Texans and the people, providers, and funds that support them. This could include taking legal action to clarify that Texans' constitutional right to travel, and to receive travel support, cannot be infringed by state law.

However, for most Texans, traveling hundreds and even thousands of miles for an abortion is not a realistic option. Many will face financial barriers to arranging the lodging, childcare, and transportation necessary to get out-of-state. Additionally, some will face other barriers, such as immigration checkpoints, abusive partners, or mental health concerns.

In order to support these Texans who will not be able to access care out of state, we must make sure Texans can access FDA-approved abortion medication inside state lines. We must also develop strategies and programs to restore access to procedural abortions. President Joe Biden recently stated, "I will do all in my power to protect a woman's right in states where they will face the consequences of [the Supreme Court's] decision." We appreciate this commitment. The Administration's recent Executive Order, action to protect abortion access in emergency situations, and guidance to stop pharmaceutical discrimination and protect patients' data, are all important steps. Texans need the next steps from the Administration.

The following strategies are within President Biden's power to help support medication abortion care inside Texas's state lines. Here, we detail five actions that the Biden Administration can pursue now. These are legally viable strategies that we encourage the Administration to take immediately given the emergency that our community is facing, even though right-wing extremists and state officials will try to stop the Administration's efforts.

1. Declare a public health emergency protecting private providers who dispense medication abortion via telehealth.

As Nancy Nothrup of the Center for Reproductive Rights [recently described in *The Washington Post*](#), the Biden Administration should declare a public health emergency and direct Health and Human Services to allow out-of-state prescribing of abortion medication, and the delivery of

such abortion medication directly to patients in Texas. The Public Readiness and Emergency Preparedness Act allows state laws to be overridden if those laws impede people's access to federally-approved medication. This would protect private providers who wish to do the right thing and provide abortion health care to Texans in need. Furthermore, any emergency or executive order should eliminate any needless regulations that hinder the international import of abortion medication, and the Administration should explore reducing barriers, such as onerous licensing requirements, for abortion providers in states without abortion bans that are receiving an influx of patients from Texas.

2. Support mission-driven telehealth providers and abortion funds across America.

The President should convene the nation's top philanthropists, health leaders, lawyers, and communications experts to support and draw positive attention to health organizations that provide telehealth abortion care across the United States. This group should also support abortion funds and other practical support organizations that provide assistance in obtaining abortion care. Organizations that are mission-driven, protect patients' personal information, and dispense abortion medication remotely without asking in which state a patient resides (or regardless of the state where a patient resides), need our financial, legal, and communications support. Furthermore, the American people need trustworthy information about how to receive medication abortion, and they deserve to know that medication abortion is a safe and accessible option for many people. Organizations that provide this information, in addition to abortion funds and other practical support organizations across the country, need as much support as possible to avoid political prosecution and the criminal and civil liabilities that may follow. Clarification from the Administration, Health and Human Services, and the Justice Department regarding the legality of abortion fund and other practical support organizations' assistance is needed to provide them with necessary protections.

3. Establish a Federal program for providers to dispense medication abortion.

The Administration should establish a program for providers who are federal employees or contractors and who choose to volunteer their time to dispense philanthropically-funded medication abortion. With providers volunteering their time, and where medication abortion is philanthropically-funded, the Administration can avoid violating the Hyde Amendment. These providers, acting within the purview of a federal program, would be immune from prosecution and civil liability, like their patients receiving abortion medication (or procedural abortion) who are not subject to prosecution under Texas's abortion bans.

We believe federal providers would not need to be licensed in Texas to perform telemedicine from out-of-state. These providers could be further protected by the Administration's declaration of a public health emergency that explicitly suspends licensing requirements which hinder providers from addressing the ongoing health crisis in our communities. Furthermore, the federal government and thoughtful state governments could pass rules and statutes explicitly protecting

the activity of these volunteer providers. This strategy could provide abortion medication directly to many people in Texas who simply cannot afford to leave the state, and the abortion medication could be mailed to the patients in Texas.

4. Invoke the Federal Government’s supremacy over state abortion laws that conflict with FDA-approved pharmaceutical regimens and regulations.

Many states, including Texas, have enacted laws that conflict with the FDA-approved regimen for medication abortion. These laws force providers to delay and deny their patients safe, FDA-approved care, and take away some patients' preferred health care options. The FDA’s approval of a medication as safe and effective applies nationwide and no state can prohibit its use no matter the motivation.

5. Protect third parties within and outside the state of Texas from threat of civil and criminal actions where self-sourcing of abortion medications are used.

We are already aware of actions being taken to sue or threaten suit against providers and abortion funds within the boundaries of Texas in such instances. We are also aware that Texas patients have been denied care in states where abortion is legal because of the threat that civil or criminal actions originating in Texas would be filed against those out of state providers. We implore the administration, working with the Justice Department, to clarify that Texas has no authority to sue providers in other states for the provision of abortion services, whether medical or procedural, where abortion remains legal in those states.

We know no strategy can fully substitute for a constitutional amendment or Congressional action codifying abortion rights into federal law. We know how critical the upcoming elections will be for codifying these rights. But between now and the codification of the legal right to abortion care, we must do everything we can to take care of our communities who have lost freedom over their own bodies and health care decisions.

Sincerely,

ACLU of Texas

The AFIYA Center

Avow

Deeds Not Words

Fund Texas Choice

Jane’s Due Process

Lilith Fund for Reproductive Equity

Planned Parenthood Advocates of Texas

Progress Texas

Texas Freedom Network

Whole Woman's Health
Whole Woman's Health Alliance

U.S. Rep. Al Green, Texas Congressional District 9
U.S. Rep. Veronica Escobar, Texas Congressional District 16
U.S. Rep. Sheila Jackson Lee, Texas Congressional District 18
U.S. Rep. Joaquin Castro, Texas Congressional District 20
U.S. Rep. Sylvia Garcia, Texas Congressional District 29
U.S. Rep. Marc Veasey, Texas Congressional District 33
U.S. Rep. Lloyd Doggett, Texas Congressional District 35, 37
Michelle Vallejo, Democratic nominee for Texas Congressional District 15
Hon. Jasmine Crockett, Democratic nominee for Texas Congressional District 30
Hon. Greg Casar, Democratic nominee for Texas Congressional District 35

Gilberto Hinojosa, Party Chair of the Texas Democratic Party

Texas Sen. Carol Alvarado, Houston (SD-06)
Texas Sen. Beverly Powell, Burleson (SD-10)
Texas Sen. Sarah Eckhardt, Austin (SD-14)
Texas Sen. John Whitmire, Houston (SD-15)
Texas Sen. Nathan Johnson, Dallas (SD-16)
Texas Sen. Roland Gutierrez, San Antonio (SD-19)
Texas Sen. Judith Zaffirini, Laredo (SD-21)
Texas Sen. José Menéndez, San Antonio (SD-26)
Texas Sen. César Blanco, El Paso (SD-29)
Hon. Wendy Davis, former State Senator; Founder, Deeds Not Words & Defend The Frontline

Texas Rep. Alex Dominguez, Brownsville (HD-37)
Texas Rep. Erin Zwiener, Driftwood (HD-45)
Texas Rep. Vikki Goodwin, Austin (HD-47)
Texas Rep. Donna Howard, Austin (HD-48)
Texas Rep. Gina Hinojosa, Austin (HD-49)
Texas Rep. Celia Israel, Austin (HD-50)
Texas Rep. James Talarico, Round Rock (HD-52)
Texas Rep. Mary González, Clint (HD-75)
Texas Rep. Claudia Ordaz Perez, El Paso (HD-76)
Texas Rep. Lina Ortega, El Paso (HD-77)
Texas Rep. Chris Turner, Grand Prairie (HD-101)
Texas Rep. Rafael Anchía, Dallas (HD-103)
Texas Rep. Julie Johnson, Farmers Branch (HD-115)

Texas Rep. Diego Bernal, San Antonio (HD-123)
Texas Rep. Jon Rosenthal, Houston (HD-135)
Texas Rep. John Bucy III, Austin (HD-136)
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Texas Rep. Jarvis Johnson, Houston (HD-139)
Texas Rep. Senfronia Thompson, Houston (HD-141)
Texas Rep. Ana Hernandez, Houston (HD-143)
Texas Rep. Shawn Thierry, Houston (HD-146)
Lulu Flores, Democratic nominee for Texas House District 51