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January 19, 2022

Florida House Professions & Public Health Subcommittee
214 House Office Building
402 South Monroe Street
Tallahassee, FL 32399

RE: OPPOSE H.B. 5 – 15-Week Abortion Ban

Dear Chairperson Robinson,

The National Women's Law Center (NWLC), 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 Law Center is submitting comments in opposition to House Bill 5.¹ We urge the Committee to stop this harmful and unconstitutional bill.

At the Law Center, we use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society, and to break down the barriers that harm all of us – especially those who face multiple forms of discrimination. We know that access to reproductive health care – including abortion – is vital to gender equity. And access to abortion is a key part of one's liberty, equality, and economic security. Everyone, no matter where they live or their financial means, has the right to access abortion when they need it, without government interference and with dignity and respect. As such, we strongly oppose attempts to put abortion care out of reach for many Floridians, like House Bill 5.

I. House Bill 5 is unconstitutional and extreme.

For over forty-eight years, the U.S. Supreme Court has made it clear that the U.S. Constitution protects an individual's right to decide whether to have an abortion.² Additionally, Florida's highest court has recognized the right to abortion under the Florida Constitution.³ But despite that clear constitutional standard, Florida now attempts to ban abortion.

House Bill 5 is a deliberate effort to overturn established constitutional precedent, beginning with *Roe v. Wade*.⁴ In *Roe*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment protects a woman's right to decide to have an abortion, and that the State cannot ban abortion prior to viability; and after viability, the State cannot ban abortion when it is necessary to preserve the life or

¹ Fla. H.B. 5, Reg. Sess. 2022.

² See, e.g., *Roe v. Wade*, 410 U.S. 113, 153 (1973); see also *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 72–73 (1976); *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 432–33 (1983); *Hodgson v. Minnesota*, 497 U.S. 417, 434 (1990); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878 (1992); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2318 (2016).

³ *In re T.W.*, 551 So. 2d 1243 (1989) (holding that a woman's decision to access abortion is protected under the Florida Constitution); *Gainesville Woman Care, LLC v. State*, 210 So.3d 1243 (2017).

⁴ *Roe v. Wade*, 410 U.S. 113, 166 (1973).

health of the woman.⁵ The Supreme Court has repeatedly affirmed the central holding in *Roe v. Wade*. In *Planned Parenthood v. Casey*, the Court adopted an undue burden test to determine whether a law creates a substantial obstacle to accessing abortion, but still made clear that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.”⁶ This has been repeatedly reaffirmed by the Supreme Court, including as recently as 2020, in *June Medical Services v. Russo*.⁷ As of this writing, all 16 states that have attempted to enforce a previability ban, like H.B. 5, have been stopped by court order.⁸

II. House Bill 5 creates an arbitrary cutoff point to restrict access to abortion that will harm Floridians.

H.B. 5 shows an appalling lack of concern for or understanding of the reality of people’s lives and decisions. Pregnant people should be able to get the care they need throughout a pregnancy, and in consultation with those they trust, such as a medical professional, without political interference. But instead, H.B. 5 would take medical care away from them by creating an arbitrary cutoff point for accessing abortion.

It is not always possible for a pregnant person to have an abortion as soon as they decide. Many who seek abortion care later discover their pregnancies later, and others find out new information in their pregnancy that they could not have known earlier.⁹ Young women, low-income women, rural women, and Black women are more likely to need abortion care later in pregnancy, due to existing structural racism and inequity in healthcare access.¹⁰ These same communities have worse outcomes for COVID-related health issues, higher rates of maternal and infant death, and are more likely to be investigated, prosecuted and punished for their pregnancy outcomes.¹¹ For these women, other intersecting barriers, like bans on abortion coverage, not being able to afford the procedure, or a lack of abortion providers nearby may further delay their ability to access abortion care.

If House Bill 5 becomes law, some pregnant people seeking abortion care would have to travel out of state to reach an abortion provider that can provide care throughout pregnancy. The resulting travel and associated costs would make it difficult, and for many, impossible, to obtain an abortion. Someone

⁵ *Id.* at 163-165.

⁶ *Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992).

⁷ 140 S. Ct. 2103, 2135 (2020).

⁸ GUTTMACHER INST., *State Bans on Abortion Throughout Pregnancy* (Jan. 1, 2022), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>.

⁹ Foster, D.G. and Kimport, K. (2013), *Who Seeks Abortions at or After 20 Weeks?*. PERSPECT SEX REPRO H, 45: 210-218.

¹⁰ *Id.*; Jones RK, Jerman J (2017) *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*. PLoS ONE 12(1): e0169969.

¹¹ See The COVID Tracking Project, *Florida: All Race & Ethnicity Data* (March 2021), <https://covidtracking.com/data/state/florida/race-ethnicity>, MARCH OF DIMES PERISTATS, *Infant mortality rates by race/ethnicity: Florida, 2016-2018 Average*, <https://www.marchofdimes.org/peristats/ViewSubtopic.aspx?reg=12&top=6&stop=92&lev=1&slev=4&obj=1>, Leticia Hernandez & Angela Thompson, FLA. DEP’T OF HEALTH, DIVISION OF COMMUNITY HEALTH PROMOTION, FLORIDA’S PREGNANCY-ASSOCIATED MORTALITY REVIEW 2018 UPDATE (May 2020), 3-4, [http://www.floridahealth.gov/statistics-and-data/PAMR/ documents/pamr-2018-update.pdf](http://www.floridahealth.gov/statistics-and-data/PAMR/documents/pamr-2018-update.pdf), see generally Michelle Goodwin, *How the Criminalization of Pregnancy Robs Women of Reproductive Autonomy*, HASTINGS CT’R REPORT Nov-Dec. 2017, <https://onlinelibrary.wiley.com/doi/epdf/10.1002/hast.791>.

who is working to make ends meet may be delayed in finding the money to get abortion care. In addition to the direct costs, travel drives up the indirect costs of getting an abortion, as do other related expenses, such as childcare, time off work, gas or other transportation expenses, and hotel costs.¹² When someone has made the decision to have an abortion, they should be able to get one as soon as they decide, without facing restrictions that force them to delay care, get on a plane to another state to receive the medical care they need, or force them to carry a pregnancy against their will. Politicians should not stand in the way of a person's ability to make important medical decisions. For many people struggling to make ends meet, especially during this pandemic, H.B. 5 would make it impossible to get the care they need.

III. Abortion care is necessary for gender equity, and H.B. 5 would decimate access to that care.

Forcing a person to carry a pregnancy to term can have long-term negative consequences with respect to their economic security, workforce participation, and educational opportunities. A study comparing people who terminated a pregnancy to those who wanted but were unable to obtain an abortion found that one year later people denied an abortion were less likely to be employed in a full-time job, and even four years after being denied, those that were denied were still more likely to be living below the federal poverty line.¹³ There was an increased likelihood that families didn't have enough money to pay for basic family necessities like food, housing and transportation if pregnant people were denied an abortion. Women unable to terminate unwanted pregnancies were more likely to stay in contact with violent partners, putting them and their children at greater risk than if they had received the abortion.¹⁴ Women forced to carry a pregnancy to term may also face diminished earnings, interference with their career advancement, disruption of their education, and fewer resources for children they already have.¹⁵

In conclusion, it is clear that House Bill 5 is unconstitutional and would harm pregnant people by creating an arbitrary cutoff point to restrict abortion. The decision about whether, when, or how to become a parent is one of the most important life decisions we make. It is disingenuous for legislators to claim to care about improving birthing outcomes for Floridians in H.B. 5 while at the same time taking away their bodily autonomy in deciding when and how to become parents. When people can make decisions throughout a pregnancy that are best for their lives, families thrive and we build communities where each of us can participate with dignity. The Law Center urges the Committee on Health Policy not to advance House Bill 5, which violates people's basic humanity, their rights, and their freedom.

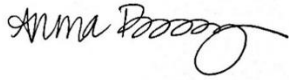
¹² See Brief of Amici Curiae Nat'l Women's Law Ctr. et al. in Support of Petitioners at 16-18, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), <https://nwlc.org/resources/45623-2/>.

¹³ Women denied an abortion had almost four times greater odds of a household income below the federal poverty level and three times greater odds of being unemployed. *Turnaway Study*, BIXBY CENT. FOR GLOBAL REPROD. HEALTH, <https://www.ansirh.org/research/turnaway-study>; Diana Greene Foster, *Presentation at the American Public Health Association Annual Meeting & Expo: Socioeconomic Consequences of Abortion Compared to Unwanted Birth* (Oct. 30, 2012), <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>; Diane Green Foster, et. al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanting Abortions in the United States*, AM. PUB. HEALTH ASS'N. (March 2018), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304247>.

¹⁴ See *id.*

¹⁵ See Brief of Amici Curiae Nat'l Women's Law Ctr., *supra* note **Error! Bookmark not defined.**, at 36-37.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna Rodriguez", with a decorative flourish at the end.

Anna Rodriguez
Legal Fellow for Reproductive Rights and Health
National Women's Law Center