

United States Senate

July 28, 2022

Dear Secretary McDonough,

Last month's disastrous Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* overturned the nearly fifty-year precedent established by *Roe v. Wade* and removed constitutional protection for abortion access from millions of individuals in this country, including an ever-growing number of veterans and dependents who are able to become pregnant. This decision makes it even more critical that veterans receive access to the reproductive care to which they are entitled. Thus, the Department of Veterans Affairs (VA) must urgently begin rulemaking to allow veterans and eligible dependents to receive abortions and all abortion-related services.

Current regulations of the VA prohibit the Veterans Health Administration (VHA) from providing abortions and abortion counseling as part of the medical benefits package.¹ Additionally, CHAMPVA, the VA's insurance program for certain dependents and survivors of veterans, does not cover abortion services, unless the life of the mother is endangered.²

We contend that the VA has the statutory authority and discretion to provide abortions and abortion-related services and resources. The VA's authority to provide care to veterans is established in the *Veterans Health Care Eligibility Reform Act of 1996*. That statute provides that the VA Secretary "shall furnish hospital care and medical services which the Secretary determines to be needed" to certain veterans.³ Importantly, the VA has used its authority under the *Veterans Health Care Eligibility Reform Act of 1996* to provide reproductive care such as pregnancy care and infertility services, even though such care was initially excluded from the health care packages allowed under the *Veterans Health Care Act of 1992*.⁴

Moreover, we agree with your testimony to the House Veterans' Affairs Committee stating that the VA has the power to offer abortion services and abortion counseling "as a regulatory matter."⁵ As you explained last week, "[i]t is a long-held view of the VA general counsel that [the Department is] not statutorily prohibited from providing abortion counseling or abortion services."⁶

¹ 38 C.F.R. § 17.38(c)(1).

² Sidath Viranga Panangala, Cong. Research Servs., RS22483, Health Care for Dependents and Survivors of Veterans 8 (2021), <https://crsreports.congress.gov/product/pdf/RS/RS22483>.

³ 38 U.S.C. § 1710.

⁴ Enrollment—Provision of Hospital and Outpatient Care to Veterans, 64 Fed. Reg. 54207 (Oct. 6, 1999), <https://www.govinfo.gov/content/pkg/FR-1999-10-06/pdf/99-25871.pdf>.

⁵ House Comm. on Veterans Affs., *Department of Veterans Affairs Oversight: Abortion Services*, C-SPAN (Mar. 25, 2021), <https://www.c-span.org/video/?c5023557/user-clip-abortion-services>.

⁶ Military.com, "VA Considers Providing Abortions as It Monitors States' Responses to Supreme Court Ruling," Patricia Kime, July 21, 2022, <https://www.military.com/daily-news/2022/07/21/va-considers-providing-abortions-it-monitors-states-responses-supreme-court-ruling.html>. Notably, the Hyde Amendment does not apply to the VA. Edward C. Liu and Wen W. Shen, Cong. Research Servs., IF12167, *The Hyde Amendment: An Overview* (2022),

Finally, the VA has the authority to “provide medical care” to the dependents and survivors of veterans through CHAMPVA “in the same or similar manner” to dependents and survivors of service members.⁷

In FY 2020, approximately 550,000 women veterans used VA health care, and over 400,000 dependents and survivors accessed care through the CHAMPVA program.⁸ The VA must do everything in its power to provide critical reproductive care to veterans and their dependents across the country.

We call on you to take swift and decisive action to ensure all of our veterans and CHAMPVA beneficiaries can access abortions and all abortion-related services.

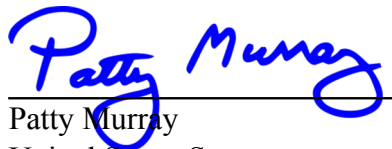
Sincerely,



Mazie K. Hirono
United States Senator



Elizabeth Warren
United States Senator



Patty Murray
United States Senator



Kirsten Gillibrand
United States Senator



Jacky Rosen
United States Senator



Michael F. Bennet
United States Senator

<https://www.crs.gov/reports/pdf/IF12167>.

⁷ 38 U.S.C. § 1781.

⁸ U.S. Department of Veterans Affairs, Congressionally Mandated Report: Report on Locations Where Women Veterans are Using Health Care from Department of Veterans Affairs, February 2022, p.5; Sidath Viranga Panangala, Cong. Research Servs., RS22483, Health Care for Dependents and Survivors of Veterans 14 (2021), <https://crsreports.congress.gov/product/pdf/RS/RS22483>.



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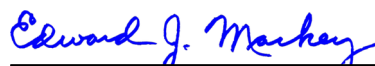
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Amy Klobuchar
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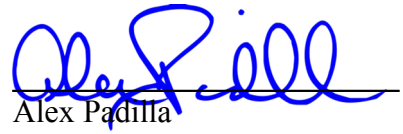
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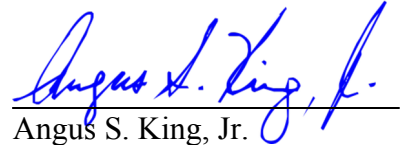
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Tina Smith
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