

LEGISLATIVE *Analysis*

Center for Family and Human Rights

C-Fam Note on the Women's Health Protection Act of 2021

This bill is designed to pre-empt the reversal of *Roe v. Wade*. The overall scope of this bill is domestic, but the findings section includes several paragraphs that would have a negative effect on how the obligations of the U.S. Government under international human right law are understood, specifically paragraphs 16, 17, and 18. These paragraphs elevate the opinions of UN human rights experts as the final arbiters of the obligations of the U.S. government under international human rights law.

There is no international right to abortion under international human rights law. If anything, international human rights law favors the protection of life in the womb. Article 6 of the International Covenant on Civil and Political Rights, which the U.S. government promoted since 1948 and ratified in 1991 forbids the application of the death penalty to women, precisely in recognition that the child in the womb is innocent and has a separate right to life from that of his or her mother. This was expressly recognized by the Bush administration in the ratification process of the Covenant with the Senate. Even the Clinton and Obama administrations denied the existence of a supposed international human right to abortion.

The Congress should not encourage illegal abuses of power by UN experts. When UN human rights experts say that an international right to abortion exists they are acting illegally, beyond their legitimate mandates. International human rights bodies do not have the power to modify or expand the obligations that sovereign nations undertake in treaty obligations. When they attempt to impose an obligation with regard to abortion when no such obligation was ever agreed, they are acting illegally. Members of congress should also keep in mind that the recommendations of UN experts tend toward the extravagant on many occasions, as was recognized by the U.S. State Department Commission on Unalienable Rights. UN human rights experts have, for example, claimed that the practice of male circumcision in Israel may constitute a violation of bodily autonomy, or that countries must legalize prostitution as a matter of human rights law. For this reason, the Congress should be careful in elevating the opinions of UN experts.

FURTHER RESOURCES:

For a more complete discussion of this topic, and background documentation please read C-Fam's brief to the Supreme Court in the *Dobbs v. Jackson Women's Health Organization* case, available at: https://www.supremecourt.gov/DocketPDF/19/19-1392/185123/20210728132729071_CFam%20Amicus%20Brief%20Filed.pdf.

RELEVANT PROVISIONS IN THE ACT

- (16) International human rights law recognizes that access to abortion is intrinsically linked to the rights to life, health, equality and non-discrimination, privacy, and freedom from ill-treatment.

United Nations (UN) human rights treaty monitoring bodies have found that legal abortion services, like other reproductive health care services, must be available, accessible, affordable, acceptable, and of good quality. UN human rights treaty bodies have likewise condemned medically unnecessary barriers to abortion services, including mandatory waiting periods, biased counseling requirements, and third-party authorization requirements.

- (17) Core human rights treaties ratified by the United States protect access to abortion. For example, in 2018, the UN Human Rights Committee, which oversees implementation of the ICCPR, made clear that the right to life, enshrined in Article 6 of the ICCPR, at a minimum requires governments to provide safe, legal, and effective access to abortion where a person’s life and health is at risk, or when carrying a pregnancy to term would cause substantial pain or suffering. The Committee stated that governments must not impose restrictions on abortion which subject women and girls to physical or mental pain or suffering, discriminate against them, arbitrarily interfere with their privacy, or place them at risk of undertaking unsafe abortions. Furthermore, the Committee stated that governments should remove existing barriers that deny effective access to safe and legal abortion, refrain from introducing new barriers to abortion, and prevent the stigmatization of those seeking abortion.
- (18) UN independent human rights experts have expressed particular concern about barriers to abortion services in the United States. For example, at the conclusion of his 2017 visit to the United States, the UN Special Rapporteur on extreme poverty and human rights noted concern that low-income women face legal and practical obstacles to exercising their constitutional right to access abortion services, trapping many women in cycles of poverty. Similarly, in May 2020, the UN Working Group on discrimination against women and girls, along with other human rights experts, expressed concern that some states had manipulated the COVID–19 crisis to restrict access to abortion, which the experts recognized as “the latest example illustrating a pattern of restrictions and retrogressions in access to legal abortion care across the country” and reminded U.S. authorities that abortion care constitutes essential health care that must remain available during and after the pandemic. They noted that barriers to abortion access exacerbate systemic inequalities and cause particular harm to marginalized communities, including low-income people, people of color, immigrants, people with disabilities, and LGBTQ people.



757 3rd Avenue, Suite 2119
New York, New York 10017
(212) 754-5948
info@c-fam.org
www.c-fam.org

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