

Center for American Progress



# Separate and Unequal

The Hyde Amendment and Women of Color

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# Introduction and summary

*The Hyde Amendment was “designed to deprive poor and minority women of the constitutional right to choose abortion.” — Justice Thurgood Marshall<sup>1</sup>*

Abortion policy in this country does not treat all women equally. Even before *Roe v. Wade* was decided in 1973, affluent women were usually able to access abortion safely through a network of private doctors or by traveling to other states or countries where it was legal, while poor women risked their health, fertility, and often their lives to end a pregnancy.<sup>2</sup> Unfortunately, because of a policy known as the Hyde Amendment, similar disparities and injustices still exist today—nearly 40 years after the Supreme Court declared that *all* women have a constitutional right to abortion.

The Hyde Amendment prohibits Medicaid, the joint federal-state health care program for the poor and indigent, from covering abortion care in almost all circumstances. Most people think of abortion as a “woman’s issue,” which of course it is. But the Hyde Amendment intentionally discriminates against poor women, who are disproportionately women of color. In this way, the Hyde Amendment is a policy that not only violates reproductive rights and principles of gender equity but one that undermines racial and economic justice as well.

Former U.S. Rep. Henry Hyde (R-IL), the law’s sponsor, admitted during debate of his proposal that he was targeting poor women because they were the only ones vulnerable enough for him to reach. “I certainly would like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle-class woman, or a poor woman,” he said. “Unfortunately, the only vehicle available is the ... Medicaid bill.”

The Supreme Court—shortsightedly, callously, and inconsistently—upheld this policy of discrimination against poor women, observing:

*Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in*

*deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.*<sup>3</sup>

We do not subject other fundamental constitutional freedoms—voting, free speech, freedom to worship, the right to a fair trial, the right to counsel—to poll taxes or income requirements. But a woman’s ability to act on her constitutionally protected decision to have an abortion is subject to the whims of a fickle legislature and what is (or is not) in her pocketbook.

And because of the overlap among class, race, and ethnicity in our country, the Hyde Amendment is especially harmful to women of color. According to the most recent Census data, 25.8 percent of African Americans and 25.3 percent of Hispanics are poor, compared to 12.3 percent of whites and 12.5 percent of Asians.<sup>4</sup> These differences hold true for women of reproductive age (15 to 44 years old) living in poverty as well. While 28.5 percent are African American, 27.2 percent are Hispanic, and 27.0 percent are Native American, 15.8 percent are white and 13.3 percent are Asian.<sup>5</sup>

The upshot: Women of color are more likely to rely on government health programs and therefore more likely to be directly affected by abortion funding restrictions such as the Hyde Amendment.

The Hyde Amendment was the original restriction on federal funding for abortion, but it has since spread to numerous other government-run or government-managed health programs, including Medicare, the military’s TRICARE program, the Federal Employees Health Benefits Program, federal prisons, Indian Health Service, the Peace Corps, and the Children’s Health Insurance Program.<sup>6</sup> (see pages 7 to 9) Most of these programs only allow abortions in cases where the pregnancy physically endangers the life of the woman or results from rape or incest. Some laws are even more restrictive, for example, protecting only women whose lives are endangered by a pregnancy. Not one includes an overall exception to protect the health of the pregnant woman.

Similar restrictions were also attached to the Patient Protection and Affordable Care Act, or ACA, the new health insurance reform law that passed earlier this year. Under the ACA, women who receive subsidies from the federal government to help them purchase private health insurance through state-based insurance exchanges will have to pay two premiums for their health insurance—one to pay for the cost of the plan related to covering abortion, regardless of whether it is ever utilized, and one to cover all the other costs of their health plan.

The ostensible reason for all these restrictions is that citizens who object to abortion should not have to have their taxes pay for abortion. But, as Rep. Hyde himself admitted, his larger goal was not to protect taxpayer's money. Rather, it was to make abortion as inaccessible and unpopular as possible, with the ultimate objective of banning abortion altogether.

With attacks on abortion funding, abortion opponents have patiently pursued an incremental approach to eroding abortion rights and access that affects wider swaths of women each time. But they started doing so with the most vulnerable and marginalized groups of women in our society. It is on their bodies that abortion funding policy has been forged, and they are the ones who pay the harshest prices.

It is poor women and women of color who have to scrape together money for an abortion—foregoing rent or utilities, pawning dear items, taking food out of their children's mouths, or sometimes worse.<sup>7</sup> It is they who consider suicide or self-harm in moments of desperation. It is they who risk inducing an abortion on their own. It is they who continue a pregnancy against their will and better judgment because they cannot find the money or get to a clinic in time. And it is they who are continually ignored by policymakers but who must live with the consequences of political fights in Washington over which they have little control.

The Hyde Amendment and its progeny are a travesty. And the implications for communities of color are far reaching. Women who lack the ability to plan the timing and spacing of their children are limited in pursuing their educational and economic goals, providing the kind of home they want for their children, and sustaining the relationships they desire—in short, in determining the course of their own lives.

As long as these unjust provisions remain a part of our laws, the rights of women in this country will continue to be treated according to two different standards—whether you can afford to pay for your rights or not. That is not equality.

The Hyde Amendment and related abortion funding restrictions should be repealed, but that is unlikely in the near term. A more conservative Congress and the new health reform law, which further restricts the use of federal funds for abortion care, are clear setbacks for women on the margins of society who face policies that simultaneously discourage them from having children *and* from having abortions—leaving them with no choices whatsoever.

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But there are steps to be taken. As we begin to implement health reform and evaluate what does and does not work in our health care delivery system, we should examine the consequences of abortion funding bans on the physical, emotional, and financial well-being of women and their families. And we should be vigilant in seeking opportunities to improve access to quality, timely, and affordable abortion care.

Repealing the Hyde Amendment and related restrictions will not, by itself, ensure full equality for women of color and low-income women. But doing so is a necessary precondition. We must heed Dr. Martin Luther King Jr.'s admonition that injustice anywhere is a threat to justice everywhere. Ending abortion funding restrictions will improve the lives of all women, but none more so than the women who have shouldered much more than their fair share of injustice.

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