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Abortion as a Human Right in the United States:  
Exploring the Role of CEDAW Cities in Challenging the Hyde Amendment

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To my parents, who taught me that justice is always worth striving for.

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## **Abstract**

Women's sexual and reproductive rights are foundational to gender equality. Having access to abortion care is fundamental to the full realization of a woman's human rights. Anti-choice advocates consistently and successfully separate abortion from other basic health care that women need. At the same time, activists for gender equality often shy away from advocating for abortion care as part of their women's rights agenda because of the political stigma that is associated with abortion. Although abortion is legal in the United States, anti-choice groups and conservative lawmakers have been successful in restricting the right to an abortion, particularly through legislation like the Hyde Amendment, which bans federal funds from covering abortion care for low-income women insured by the Medicaid program. U.S. constitutional law has upheld restrictions on abortion care, leaving a large portion of reproductive age women without the ability to exercise their constitutional right to an abortion. In contrast, international human rights mechanisms have had an impact on liberalizing national abortion laws by requiring that governments take affirmative action to ensure that women can access safe abortion care as a fundamental human right. While the international community is advancing abortion as a human right, several cities have aligned themselves with an international human rights framework by adopting the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international women's rights treaty that the U.S. has refused to ratify at the federal level. This research aimed to discover how these cities could utilize this human rights framework to advance abortion as a human right in their communities, particularly in states that follow the federal Hyde Amendment restrictions on abortion. The research was conducted through qualitative semi-structured interviews with local activists working to pass and implement CEDAW resolutions and ordinances, people working on the Cities for CEDAW (C4C) campaign,

reproductive rights professionals, and a local abortion fund. This thesis found that framing reproductive health as a human right is a paradigm shift toward destigmatizing abortion. This thesis concludes that the local CEDAW resolutions and ordinances have the power to influence state policies involving abortion. Furthermore, local CEDAW activists can instigate a political shift by embracing and utilizing the jurisprudence, General Comments, and Concluding Observations identified by the United Nations CEDAW Committee regarding abortion as a human right. The negative human rights impact of the Hyde Amendment, although law of the land, can be challenged by activists through advocacy around passing and implementing local CEDAW ordinances and resolutions.

**Keywords:** abortion, Hyde Amendment, CEDAW, human rights, women's rights, reproductive rights, reproductive justice, constitutional law, gender

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## Definitions

**Human Rights:** Rights that are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.

**International Human Rights Law:** the body of international law designed to promote human rights on social, regional, and domestic levels.

**CEDAW:** The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it was instituted on September 3, 1981 and has been ratified by 189 states.

**TMBs:** The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties.

**CEDAW Committee:** the body of 23 independent experts from around the world that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

**C4C:** Cities for CEDAW is a grassroots campaign with the aim to protect the rights of women and girls by passing legislation establishing the principles of CEDAW in cities and towns across the United States.

**CEDAW Resolution:** A declaration by local government affirming their support for the principles of CEDAW.

**CEDAW Ordinance:** An adoption of CEDAW into local law by requiring three key components: a gender analysis of city departments and operations; an oversight body to monitor the implementation of a local CEDAW ordinance; and funding to support the implementation of the principles of CEDAW.

**Hyde Amendment:** A legislative provision barring the use of federal funds to pay for abortion except to save the life of the woman, or if the pregnancy arises from incest or rape.

**Abortion Fund:** A non-profit organization that provides financing for abortions to indigent women who cannot afford the fees.

**Reproductive Rights:** The recognition of the basic right of all individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.

**Reproductive Justice:** The complete physical, mental, spiritual, political, social, and economic well-being of women and girls, based on the full achievement and protection of women's human rights.

**Medically Necessary Abortions:** An abortion that is needed to protect a woman's health. "Medically necessary abortion" was defined by the US Supreme Court as a professional judgment made by a physician "exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the wellbeing of the patient."

**Therapeutic Abortions:** An abortion induced when pregnancy constitutes a threat to the physical or mental health of the mother

**Non-therapeutic Abortions:** An abortion not required for medical reasons.

**Abortions "on demand" or Elective Abortions:** The right of a woman to have an abortion during the first six months of a pregnancy.

### **Disclaimers**

The author understands that the Hyde Amendment has evoked similar legislation that restricts abortion for millions of women who obtain their health coverage or care from the federal government, including federal employees, military personnel and veterans, Native Americans, federal prisoners and detainees, Peace Corps volunteers and low-income residents of the District of Columbia. This thesis will focus on women insured by the Medicaid program only.

The author acknowledges that abortion care is needed by any person who has a uterus, including those who do not identify as a woman.

## Introduction

Women's sexual and reproductive rights are foundational to gender equality. Having access to abortion care is fundamental to the full realization of women's human rights. Anti-choice advocates consistently and successfully separate abortion from other basic health care that women need. At the same time, activists for gender equality often shy away from advocating for abortion care as part of their agenda to avoid the stigma that is associated with abortion. However, reproductive autonomy is the baseline for gender equality and ignoring that is perpetuating the stigma around abortion that anti-choice groups have so successfully engrained in American culture. Without reproductive freedom, women will never be equal citizens. Limits on abortion access are running rampant throughout the country and proponents for gender equality need to put this issue at the forefront of their advocacy efforts.

The 1973 United States Supreme Court ruling in *Roe v. Wade* guaranteed American women the right to access safe abortion pre-viability under the U.S. Constitution.<sup>1</sup> Since that time, anti-choice advocates have creatively come up with ways in which to limit that right, and in some cases make it impossible for women to access safe abortion services at all. One of the ways in which they have been successful in limiting abortion access is with the 1977 Hyde Amendment, which bans federal funds from paying for abortion care, except in extreme circumstances.<sup>2</sup> Because of Hyde, women insured by Medicaid, the U.S. federally-funded health insurance program, are barred from using their health insurance to cover the cost of an abortion unless they are victims of rape or incest or if their life is endangered. This means Medicaid cannot cover abortion even when a

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<sup>1</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>2</sup> "Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act," Pub. L. No. 105-78 (1997), § 509-510 (1998).

woman's health is at risk and her doctor recommends she get an abortion. The Hyde Amendment is discriminatory in that it excludes abortion care from other reproductive health care. There is no medical service that only men need that Medicaid does not cover. In sum, the Hyde Amendment is a way for conservative lawmakers to deny abortion access to a large portion of reproductive-age women.

The effects of Hyde have been detrimental to American women. The Hyde Amendment is particularly harmful to low-income women, women of color, young people and immigrants, who disproportionately rely on Medicaid for their health care coverage.<sup>3</sup> When policymakers deny a woman insurance coverage for abortion, she is either forced to carry the pregnancy to term or pay for care out of her own pocket. Either choice pushes her and her family deeper into financial hardship.<sup>4</sup> When insurance coverage provides for all pregnancy-related health care *except* abortion, it interferes with the private health decisions that are appropriately a woman's to make in consultation with her doctor and her family. In sum, poor pregnant women have been stripped of their right to choose abortion as a health care option because of their reliance on a government that will force them to give birth.

States have the option to expand their Medicaid programs and use their own funds to pay for abortion, but currently only seventeen states do so.<sup>5</sup> The constitutionality of denying abortion coverage for Medicaid recipients has been litigated twice before the Supreme Court and each time the Court ruled that although women can legally have an abortion in the U.S., the government does

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<sup>3</sup> "Hyde Amendment," Planned Parenthood Action Fund, 2018, <https://www.plannedparenthoodaction.org/issues/abortion/hyde-amendment>.

<sup>4</sup> Diana Greene Foster et al., "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States," *American Journal of Public Health* 108, no. 3 (2018): 410.

<sup>5</sup> "State Funding of Abortion Under Medicaid" (Guttmacher Institute, February 1, 2018).

not have to pay for it.<sup>6</sup> In other words, American women have the right to an abortion on paper countrywide but not in practice.

In contrast, basic human rights principles require that governments respect, protect and fulfill the rights that are guaranteed to its citizens. Indeed, countries around the world are liberalizing their national abortion laws against a backdrop of human rights advocacy and treaty obligations.<sup>7</sup> The U.S., on the other hand, has a complex history with human rights. The U.S. has refused to ratify most international human rights treaties and most Americans are not aware of international human rights law.<sup>8</sup>

Constitutional law does not affirmatively guarantee rights but instead merely guarantees non-interference in one's rights. Therefore, the Hyde Amendment could not withstand a human rights framework, which would require that the state account for the impact of the policy and not only the policy's intent. A human rights framework would ensure that every woman, regardless of her income or race, could access the same rights.

A human rights framework recognizes that abortion access is included in many fundamental human rights.<sup>9</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the international treaty on women's rights<sup>10</sup> that has been ratified by nearly all the United Nations member states except for the U.S. The CEDAW Committee, the

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<sup>6</sup> *Maier v. Roe*, 432 U.S. 464 (1977); *Harris v. McRae*, 488 U.S. 297 (1980).

<sup>7</sup> Reed Boland and Laura Katzive, "Developments in Laws on Induced Abortion: 1998-2007," *International Family Planning Perspectives* 34, no. 3 (September 2008): 117.

<sup>8</sup> Eleni Delimpaltadaki and Julie Rowe, "Communicating on Social Justice Issues within a Human Rights Framework: Messaging Recommendations for Advocates," *Race/Ethnicity: Multidisciplinary Global Contexts* 3, no. 2 (2010): 214.

<sup>9</sup> Charles G. Ngwena, "Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa," *Human Rights Quarterly* 32, no. 4 (2010): 787-88, <https://doi.org/10.1353/hrq.2010.0024>.

<sup>10</sup> UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women," A/RES/34/180 § (1979).

monitoring body for the treaty, has repeatedly made clear that it considers restrictive abortion laws incompatible with CEDAW through its General Comments, Concluding Observations and jurisprudence.<sup>11</sup> Ratification and full implementation of CEDAW in the U.S. would radically change the basic equality rights of American women, including the right to an abortion.<sup>12</sup>

The U.S. pales in comparison with many other countries that have adopted a human rights framework when it comes to gender equality. The U.S. was the only western nation among the top ten most dangerous countries for women in a 2018 survey of experts on women's issues.<sup>13</sup> The U.S. ranked forty-third on the United Nations Development Programme's Gender Inequality Index, far behind other nations with very high human development.<sup>14</sup> At fourteen per one hundred thousand live births, the U.S.' Maternal Mortality Ratio (MMR), or pregnancy-related deaths, is shocking compared to other western countries. To compare, Canada's MMR is seven per one hundred thousand live births. These figures are a result of insufficient constitutional protections for sex-based discrimination in the U.S.

CEDAW imposes an equality standard that requires all laws that disparately impact women be scrutinized to secure *de jure* and *de facto* equality for women.<sup>15</sup> Since the U.S. has refused to ratify CEDAW at the federal level, several U.S. cities, counties, and states have adopted the

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<sup>11</sup> Center for Reproductive Rights, "Bringing Rights to Bear," October 2008, 3–6, [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB\\_abortion\\_hr\\_revised\\_3.09\\_WEB.PDF](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB_abortion_hr_revised_3.09_WEB.PDF).

<sup>12</sup> Janet Benshoof, "US Ratification of CEDAW: An Opportunity to Radically Reframe the Right to Equality Accorded Women Under the US Constitution," *NYU Rev. L. & Soc. Change* 35, no. 1 (2011): 105.

<sup>13</sup> "Factbox: Which Are the World's 10 Most Dangerous Countries for Women?," *Reuters*, June 26, 2018, <https://www.reuters.com/article/us-women-dangerous-poll-factbox/factbox-which-are-the-worlds-10-most-dangerous-countries-for-women-idUSKBN1JM01Z>.

<sup>14</sup> United Nations Development Programme: Human Development Reports, "Gender Inequality Index," 2015, <http://hdr.undp.org/en/composite/GII>.

<sup>15</sup> UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women," A/RES/34/180 § (1979), Article 2.

principles of CEDAW into local law.<sup>16</sup> What does bringing international human rights principles to the local level mean for abortion rights in those contexts, especially in those localities in states that follow the Hyde Amendment restrictions? For example, Americans United for Life, an anti-choice policy organization, ranked Pennsylvania in their top ten list of states with the most restrictions on abortion access in 2017.<sup>17</sup> Pittsburgh, a progressive city within Pennsylvania, passed a CEDAW ordinance in 2016.<sup>18</sup> What impact can CEDAW have locally in a state like Pennsylvania that follows the federal Hyde Amendment restrictions among many other restrictions on abortion? Since U.S. constitutional jurisprudence is insufficient in protecting the right to an abortion and CEDAW has been an impetus to advance abortion as a human right internationally, I argue that human rights principles can and should be utilized aggressively to advance abortion access in the U.S. localities that have adopted CEDAW.

This paper initially explores the history of abortion jurisprudence in the U.S. and outlines the Hyde Amendment as a human rights violation. I then conduct a survey of international human rights mechanisms and their impact on liberalizing national abortion laws. In comparing abortion rights under U.S. constitutional law with abortion rights under CEDAW, I support my argument that a human rights framework is a more comprehensive way to advocate for abortion access than a constitutional rights framework. Finally, I explore the rise of CEDAW cities and their potential for advancing abortion as a human right in the U.S. This paper will examine these concepts through

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<sup>16</sup> The Leadership Conference Education Fund and Women's Intercultural Network, "Cities for CEDAW: Status of Local Activities," August 11, 2018, <http://citiesforcedaw.org/wp-content/uploads/2018/08/Landscape-Cities-for-CEDAW-Branded-for-Website-August-11-2018.pdf>.

<sup>17</sup> Americans United for Life, "Defending Life 2017: A State-by-State Legal Guide to Abortion, Bioethics, and the End of Life," 2017.

<sup>18</sup> The Council of the City of Pittsburgh, "An Ordinance Supplementing the Pittsburgh Code Title One: Administration, Article IX: Boards, Commissions and Authorities, to Add Chapter 177C: Gender Equity Commission to Conduct Analyses of City Departments, Employment, and Services, and to Uphold the Principles of the Convention on the Elimination of Discrimination Against Women (CEDAW)" (2016), <http://citiesforcedaw.org/wp-content/uploads/2018/01/Pittsburgh-Ordinance.pdf>.

qualitative research conducted with professionals with backgrounds in human/reproductive rights, and with local CEDAW activists in Pittsburgh, Kentucky and San Francisco.

### **Methodology**

My research question is: can human rights advance abortion access in the United States? To determine this, I first conducted a broad survey of international and regional human rights mechanisms and their effects on liberalizing national abortion laws. Through this research, I found that, compared with numerous other countries, constitutional law concerning abortion in the U.S. could not withstand international human rights obligations. Given that the U.S. has ratified very few international human rights treaties and is rarely held accountable for human rights violations at home, I began to look at localities within the U.S. that have adopted international human rights principles.

In researching literature and case law around the Hyde Amendment in the U.S., I identified this law as a human rights violation against American women. I identified U.S. constitutional law as insufficient in protecting women's abortion rights since the Hyde Amendment has been upheld by the U.S. Supreme Court on more than one occasion. I examined localities that had adopted the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty that has been the catalyst for many countries liberalizing their national abortion laws, to see if these localities are using human rights to advance abortion access in states that follow federal Hyde Amendment restrictions on abortion.

My research consisted of qualitative semi-structured interviews with local activists working to pass and implement CEDAW resolutions and ordinances, people working on the Cities for CEDAW (C4C) campaign, reproductive rights professionals, and a local abortion fund.

Initially, I made a list of five people I wanted to interview. This group consisted of two local CEDAW activists, one from a progressive state and one from a conservative state; a person working in reproductive justice in a conservative state; a person who formerly worked in reproductive rights in the U.S. as well as for the C4C campaign; and a person from an organization working to end the Hyde Amendment in the U.S. My goal in identifying this initial group was to gain varying perspectives around whether human rights can advance abortion access in the U.S. I was able to interview four of the five people from this initial group, who then referred me to others to interview. In total, I interviewed eleven people.

One challenge I came across was categorizing my interviewees. The categories I chose were: (1) local CEDAW activists; (2) human rights professionals; and (3) human/reproductive rights professionals. However, many of my respondents fell under more than one of these categories. I decided to categorize those respondents working in their respective CEDAW cities as “local CEDAW activists.” I categorized two respondents who worked professionally in academia and advocacy on human/reproductive rights application in the U.S. as “human/reproductive rights professionals.” I categorized two interviewees as “human rights professionals” because they work for organizations that are a part of the C4C campaign i.e., the NGO Commission on the Status of Women New York (NGO CSW/NY) and Columbia Law School Human Rights Institute.

I chose interviewees from across various disciplines to get well-rounded views about the question I was addressing. First, I wanted to get the perspective of the people working *in situ* to pass CEDAW in their localities. I began with the Director of the San Francisco Department on the Status of Women; whose city was the first to pass a city CEDAW ordinance. As a model for other cities, San Francisco was the pioneer of the C4C movement. I sought to determine a sense of the movement behind CEDAW and how San Francisco has utilized its ordinance to advance gender

equity in their community. I did not intend to research CEDAW cities that are in progressive states because I was looking specifically at the Hyde Amendment and California does not adhere to its restrictions on abortion access. However, Los Angeles specifically included wording on abortion into its CEDAW ordinance. I thought it would be interesting to get some understanding of why advocates thought it was important to include abortion in their ordinance, if there was any pushback for doing so, and if they have used the ordinance to advance abortion access in their community. Unfortunately, attempts to interview current and past presidents of the Los Angeles Commission on the Status of Women were unsuccessful due to time constraints and scheduling.

Next, I wanted to concentrate on a CEDAW city within a conservative state that follows the federal Hyde Amendment restrictions to obtain background on the movement to pass their ordinance, what the priorities within their ordinance were and how they planned to implement these priorities. I spoke with the Steering Committee Chair of Pittsburgh for CEDAW who provided a history on the Pittsburgh ordinance and recommended that I speak with the Executive Director of the Pittsburgh Gender Equity Commission, who is responsible for implementing the ordinance. I also spoke with an If/When/How Reproductive Justice State Fellow at New Voices Pittsburgh (NVP), an original organization coalition member in the effort to pass the Pittsburgh CEDAW ordinance. Its mission is “to build a social change movement dedicated to the health and well-being of Black women and girls through leadership development, Human Rights and Reproductive Justice.”<sup>19</sup> This interview was important not only to determine what the priorities of Pittsburgh’s CEDAW ordinance are, but also to assess the reproductive rights landscape in that community. The Fellow I interviewed was able to speak to this but had limited knowledge of the context in which Pittsburgh’s ordinance was initially passed. A request to speak to the former

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<sup>19</sup> “About NVP,” New Voices Pittsburgh, accessed August 14, 2018, <http://www.newvoicespittsburgh.org/about/>.

Fellow at NVP and original Pittsburgh for CEDAW coalition member was declined. Another interview request that was declined was of the Senior Staff Attorney at the Women's Law Project. I had hoped to interview this person because of her work representing abortion providers and their patients in Pennsylvania.

I had not initially sought to conduct research about cities that had passed resolutions and not yet ordinances, but my research in Pittsburgh led me to discover that Louisville, Kentucky had encountered anti-choice resistance while attempting to pass their CEDAW resolution in 2013. I then interviewed the Co-Chair of the Louisville CEDAW Coalition, which led me to interviewing the President of the Kentucky United Nations Association, who had successfully passed a state-wide CEDAW resolution in Kentucky. Since Kentucky is another state that follows the federal Hyde Amendment restrictions on abortion, I wanted to identify clearly what the anti-choice opposition is in the state, the reasoning behind its opposition to CEDAW, and how the local CEDAW proponents overcame this resistance.

Interviewing a person from the NGO CSW/NY was important to my research because the organization advocates for gender equality around the globe and works to support the United Nations Commission on the Status of Women and UN Women. In doing so, the NGO CSW/NY supports implementation of numerous international women's human rights documents, including CEDAW.<sup>20</sup> This perspective was important because numerous activists working locally to pass or implement CEDAW referenced the NGO CSW/NY's trainings and forums on CEDAW as the impetus for passing a resolution or an ordinance in their communities. The NGO CSW/NY is also part of the C4C Civil Society campaign which is a partnership of grassroots organizations that provide tools and leadership to empower local women's organizations and municipalities to

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<sup>20</sup> "About NGO CSW/NY," NGO CSW/NY, 2018, <https://www.ngocsw.org/about-ngocswny>.

effectively initiate CEDAW within their city, county or state.<sup>21</sup> Many of the local CEDAW activists I interviewed referenced being supported by the Leadership Conference on Civil and Human Rights, an organization that works to build capacity and provide educational resources to inform and mobilize individuals to take action for the C4C campaign.<sup>22</sup> However, a request to interview the Senior Adviser at the Leadership Conference was declined due to time constraints, but instead I was referred to the Director of the Human Rights in the U.S. Project at Columbia Law School Human Rights Institute.<sup>23</sup> The Human Rights Institute is part of the C4C campaign as well and develops resources to support state and local government efforts to advance gender equity using human rights.<sup>24</sup>

My two human/reproductive rights interviewees have extensive experience in advancing reproductive rights as a fundamental human right around the world. They also have authored publications on human/reproductive rights advocacy in the U.S. This dual expertise on human/reproductive rights both internationally and domestically was directly in line with my attempt to answer my research question.

I initially sought to interview someone from All Above All, a national organization working to end the Hyde Amendment, but my requests for an interview were denied due to time constraints. However, they did refer me to a local abortion fund in Philadelphia called Women's Medical Fund.<sup>25</sup> The two-pronged approach of Women's Medical Fund is to advance abortion access in the community through: (1) funding abortions for women who cannot afford one, and (2) building advocacy around abortion access through community mobilization. The Manager of

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<sup>21</sup> "About Us," Cities for CEDAW, 2017, <http://citiesforcedaw.org/about-us/>.

<sup>22</sup> "About Us."

<sup>23</sup> June Zeitlin, "Request to Interview for M.A. Thesis U.S. CEDAW Ordinances," July 16, 2018.

<sup>24</sup> "About Us," 2017.

<sup>25</sup> Ravina Daphtary, "Interview for Columbia Thesis on Hyde Amendment in Pennsylvania," July 26, 2018.

Client Services was able to provide a detailed account of how the Hyde Amendment affects women in Pennsylvania.

Interviewees in this research were selected based on their professional expertise and experiences. Their age, gender, and other identities were not important in answering the research questions. Not every interviewee was asked the same questions. Specific questions about the particularities of the local movements to pass CEDAW were asked only to the local CEDAW activists while more broad questions about familiarity with local CEDAW ordinances and the C4C movement were asked to all others. Questions about whether CEDAW guarantees abortion and reasons why the U.S. has failed to ratify CEDAW were asked to everyone except the local abortion fund. Questions about reproductive health as a human right in the U.S. and about whether CEDAW has the potential to advance abortion access in the U.S. were asked to everyone. Questions about advocacy strategies around abortion access were asked to everyone except the local CEDAW activists.

One challenge to my research is that most of the CEDAW resolutions and ordinances are new and have been passed only within the past few years. This made it difficult to measure their impact. Another challenge was that one of my interviewees wished to remain anonymous and another would not allow me to record her.\* A breakdown of my interviewees can be found in Appendix A.

### **Section I: The Right to an Abortion in the U.S.**

A woman's right to safe abortion access in the U.S. was guaranteed under the U.S. Constitution by the Supreme Court in 1973. Shortly after, Congress limited that right through passage of the Hyde Amendment which bans federal dollars from covering an abortion unless the

pregnant woman was the victim of rape or incest, or if the pregnancy endangered her life. The ban on federal funds with these narrow exceptions greatly affects low-income women who are insured by the Medicaid program, the nation's public health insurance program for low-income Americans. Medicaid is administered by the states, but in order to receive partial federal reimbursement for costs, states must abide by certain federal requirements set out in Title XIX of the Social Security Act.<sup>26</sup> Medicaid covers two in ten women of reproductive age (15-49) and nearly half (47%) of women below the Federal Poverty Level are insured by Medicaid.<sup>27</sup> Since poor women are unable to pay for an abortion, they are unable to exercise their constitutionally protected right to an abortion. Most U.S. states follow the Hyde restrictions,<sup>28</sup> meaning that thousands of low-income women, who are mostly women of color, are unable to exercise their right to an abortion. Hyde has been litigated in two cases before the Supreme Court in which the Court ruled that the Hyde Amendment was indeed constitutional.<sup>29</sup> In the U.S., a woman's right to an abortion is considered a "negative right," meaning government non-interference is considered good enough. A human rights framework is more comprehensive, meaning that States that adopt this framework commit to *respect, protect or fulfill* rights instead of merely not interfering in one's rights. Because the Hyde Amendment has been litigated in a negative-rights-fashion, a significant portion of the U.S. population is being denied a constitutional, and I will argue human, right to abortion.

### Roe v. Wade, 1973

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<sup>26</sup> Center for Reproductive Rights, "Whose Choice? How the Hyde Amendment Harms Poor Women," 2010, 18.

<sup>27</sup> Alina Salganicoff, Caroline Rosenzweig, and Laurie Sobel, "The Hyde Amendment and Coverage for Abortion Services," *The Henry J. Kaiser Family Foundation*, September 30, 2016, 2.

<sup>28</sup> "State Funding of Abortion Under Medicaid" (Guttmacher Institute, February 1, 2018), <https://www.guttmacher.org>.

<sup>29</sup> *Maier v. Roe*, 432 U.S. 464 (1977); *Harris v. McRae*, 488 U.S. 297 (1980).

The famous 1973 decision in the U.S. Supreme Court case, *Roe v. Wade*, held that a woman's right to terminate her pregnancy fell within the right to privacy protected by the Fourteenth Amendment.<sup>30</sup> Although *Roe* was a major victory for women's rights, the ruling had some significant limitations. First, the case focused mainly on the privacy right of the physician, who at the time would be punished for performing an abortion in Texas if the pregnant woman's life was not in danger. In the opinion of the Court, Justice Harry A. Blackmun wrote, "The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important state interests provide compelling justifications for intervention. Up to those points, the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician."<sup>31</sup> This reasoning, while a victory for women's rights, focused more on the rights of the pregnant woman's [then typically male] doctor. Additionally, *Roe* established a trimester framework. It gave women total autonomy over the pregnancy during the first trimester. In the second and third trimesters, the Court allowed the state to regulate abortion to protect the health of the woman or to protect the life of the fetus.<sup>32</sup> This means that the right to an abortion established in *Roe* is not absolute and allows for government interference in her right. Furthermore, by deciding that the right to an abortion falls under the right to privacy, the Court established the right to an abortion as a negative right. Privacy encompasses many rights, including liberty, personhood, autonomy and dignity or simply, the "right to be left alone."<sup>33</sup> Therefore, the ability for a woman to access an abortion without government interference is tantamount to her ability to enjoy her privacy rights. Indeed, the

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<sup>30</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>31</sup> *Roe v. Wade*, 410 U.S. at 166.

<sup>32</sup> *Roe v. Wade*, 410 U.S. at 164.

<sup>33</sup> Carol Sanger, *About Abortion: Terminating Pregnancy in Twenty-First Century America* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2017), 57.

plurality opinion in *Planned Parenthood v. Casey*, a 1992 Supreme Court case that upheld *Roe*, noted that the abortion right allows women the ability to define their “own concept of existence, of meaning, of the universe, and of the mystery of human life,” and that “[b]eliefs about these matters could not define the attributes of *personhood* were they formed under compulsion of the State.”<sup>34</sup> The decision whether or not to become a parent is fundamental to who a person is and who a person wants to be.<sup>35</sup> Therefore, accessing an abortion is intertwined with a woman’s autonomy. Because poor women are dependent on the state and are not economically autonomous, they have been deprived of their reproductive privacy rights when seeking an abortion through the Medicaid program and so too have been rendered unable to be autonomous persons.<sup>36</sup>

As I will discuss below, the Court in two federal cases has justified effectively denying poor women their right to an abortion by denying the funds to pay for the procedure. However, because a state may subsidize expenses related to childbirth but not abortion, the state is essentially coercing the woman toward one route (childbirth) and away from another (abortion). Government coercion of a woman’s medical decision was forbidden by *Roe* and is precisely what *Casey* ruled would strip a woman of her personhood. This state interference into a woman’s decision raises fundamental issues in the due process and equal protection context of the Fourteenth Amendment.<sup>37</sup> It also raises the question of whether a positive-rights, human rights framework would best suit activists who are advocating for abortion funding under Medicaid.

Beal v. Doe and Maher v. Roe, 1977

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<sup>34</sup> *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992).

<sup>35</sup> Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford, California: Stanford University Press, 2017), 197.

<sup>36</sup> Bridges, 197–98.

<sup>37</sup> Alan J. Shefler, “Indigent Women and Abortion: Limitation of the Right of Privacy in *Maher v. Roe*,” *Tulsa LJ* 13, no. 2 (1977): 287.

In the wake of *Roe*, opponents of abortion turned to the states to restrict abortion. In 1977, the Supreme Court decided two cases involving state laws prohibiting Medicaid coverage for “non-medically necessary,” abortions. *Beal v. Doe* challenged a Pennsylvania regulation requiring that three doctors certify that an abortion was medically necessary in order for a Medicaid recipient to receive coverage.<sup>38</sup> The Court held that states could exclude non-therapeutic abortions from coverage under their Medicaid programs.<sup>39</sup> The Court examined whether the lack of funding for abortion “on demand” through Medicaid violated the Due Process and Equal Protection clauses of the Fourteenth Amendment in the 1977 case of *Maher v. Roe*. The case involved two Medicaid beneficiaries, one a sixteen-year-old junior in high school and the other a single mother of three children, who challenged a Connecticut regulation that limited the state’s Medicaid coverage to “medically necessary” abortions.<sup>40</sup> Connecticut refused to subsidize the cost of an abortion unless the pregnancy threatened their physical or mental health. Instead of identifying the lack of coverage as the cause of poor women’s inability to access abortion in the state, it identified their poverty as the cause. Since their poverty was not caused by the state, Connecticut was under no obligation to remove that obstacle (poverty) from a woman’s path to abortion.<sup>41</sup> The Court used dicta from *Roe* when it reasoned that because a state may have a strong interest in protecting fetal life, the state may subsidize funding for childbirth and not abortion, hence influencing the pregnant woman’s decision. In writing for the majority, Justice Lewis F. Powell reasoned that, “[t]he State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there.”<sup>42</sup> This is

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<sup>38</sup> *Beal v. Doe*, 432 U.S. 438 (1977).

<sup>39</sup> *Beal v. Doe*, 432 U.S. 438 (1977).

<sup>40</sup> *Maher v. Roe*, 432 U.S. 464 (1977).

<sup>41</sup> Bridges, *The Poverty of Privacy Rights*, 2017, 183.

<sup>42</sup> *Maher v. Roe*, 432 U.S. at 475.

precisely where using a human rights framework would have ensured that poor women are able to access the same rights as wealthy women. A human rights framework, aiming to *respect, protect, and fulfill*, would have guaranteed that the U.S. government take steps to make sure low-income women could access an abortion, including providing the funds for the procedure for those who could not afford it. Furthermore, *Roe* stipulated that a state could not regulate abortion because of its interest in fetal life prior to viability. In this way, poor women are left out of the decision in *Roe*. Indigent women's right or non-right to an abortion is then left up to state legislatures.

### The Birth of the Hyde Amendment, 1977

The Hyde Amendment bans federal funds for abortions except in cases of rape, incest or life endangerment of the pregnant woman. Since Medicaid is a federally funded program, Hyde prohibits provider reimbursement for abortion services unless the procedure meets the government's limited exceptions. The Hyde Amendment passed by the U.S. Congress in 1977 and is reauthorized by attachment to Congress' annual spending bill. The amendment's namesake, Representative Henry Hyde (R-IL) made no secret that the amendment was a way to deny women their right to an abortion. During debate over the measure, Hyde told his colleagues, "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. Unfortunately, the only vehicle available is the...Medicaid bill."<sup>43</sup> The Hyde Amendment requires women on Medicaid to provide a justification for wanting an abortion, a requirement that wealthy women do not have to abide by. The truth of the matter is that because

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<sup>43</sup> Heather D. Boonstra, "Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters," *Guttmacher Policy Review* 19 (2016): 47.

of their indigency, poor women cannot access abortion with or without Medicaid.<sup>44</sup> Hyde formally disenfranchises them of their reproductive rights.<sup>45</sup>

### Harris v. McRae, 1980

The Supreme Court decided the constitutionality of the Hyde Amendment in the case of *Harris v. McRae* in 1980.<sup>46</sup> As in *Maher*, the Court concluded that Hyde was not an obstacle to prevent poor women's abortion access, their poverty was, and the state had no obligation to remove such obstacle.<sup>47</sup> Since Hyde does not include an exception to fund an abortion in the case that the woman's health is at risk, the Court in *McRae* essentially deemed it constitutional for a woman to be mutilated by her pregnancy.<sup>48</sup> In both *Maher* and *McRae*, the all-male Court concluded that a poor woman who desires an abortion could acquire one simply by turning to "private sources."<sup>49</sup> Therefore, only if poor women are willing to beg, borrow or steal may they attain the full realization of their constitutional right. Unlike wealthy women, the Court suggested that poor women simply not engage in sex if they do not want to carry an unwanted pregnancy to term. Senator Orin Hatch (R-UT) argued in favor of the Hyde Amendment by noting that poor women could avoid this fate if they "exercised self-restraint" and if they failed to do that, then all they had to do was "sacrifice[e] on some item or other for a month or two" so she could "afford [her] own abortion."<sup>50</sup> For the Court and the legislature, impoverished women have full agency to control their reproductive lives and if they find themselves carrying an unwanted pregnancy to term, it is

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<sup>44</sup> Bridges, *The Poverty of Privacy Rights*, 2017, 187.

<sup>45</sup> Bridges, 186.

<sup>46</sup> *Harris v. McRae*, 488 U.S. 297 (1980).

<sup>47</sup> *Harris v. McRae*, 488 U.S. 297 (1980).

<sup>48</sup> Bridges, *The Poverty of Privacy Rights*, 2017, 183.

<sup>49</sup> *Maher v. Roe*, 432 U.S. at 475; *Harris v. McRae*, 1980, 488 U.S. at 488.

<sup>50</sup> Bridges, *The Poverty of Privacy Rights*, 2017, 185.

because they chose not to pull together the private resources to pay for their abortion.<sup>51</sup> This is obviously an oversimplified, if not insensitive, narrative that ignores the many possible barriers that poor women in the U.S. face when it comes to controlling their reproductive lives. This is another example of where a human rights framework could make a difference for indigent women in the U.S. Because of their indigency and the government's limitation of abortion coverage in Medicaid, poor women's constitutional rights are meaningless. Yet, a human rights framework would compel the government to *respect* a woman's right to an abortion by trusting that women are the chief decision-makers when it comes to their health care, *protect* her right to an abortion by including the procedure as part of her basic health care package, and *fulfill* that right by removing all obstacles to accessing abortion up to and including providing the funds if needed.

### Hyde in the States

*Maier* and *McRae* did not prohibit individual states from using their own monies to fund non-therapeutic and therapeutic abortions. Thirty-two states and the District of Columbia follow the federal standard and only fund abortions in cases of rape, incest, or life endangerment, while seventeen states exceed the federal standard and cover medically necessary abortions.<sup>52</sup> Thirteen of the states that have expanded their Medicaid programs to cover medically necessary abortions have done so because their state constitutions require them to do so. Those state courts' decisions highlight several key legal and ethical problems with the Hyde Amendment. For instance, in the case of *The Women of the State of Minnesota v. Gomez*, the state Court found that it is unlawful for a poor pregnant woman to "be coerced into choosing childbirth over abortion by a legislative

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<sup>51</sup> Bridges, 185.

<sup>52</sup> "State Funding of Abortion Under Medicaid," February 1, 2018.

funding policy.”<sup>53</sup> Similarly, the Court in *State v. Planned Parenthood of Alaska* ruled that “[A] woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. Alaska’s equal protection clause does not permit governmental discrimination against either woman; both must be granted access to state health care under the same terms as any similarly situated person.”<sup>54</sup> In the case of *Right to Choose v. Byrne*, the Court in New Jersey decided that the potential life of a fetus was not a reason to deny indigent women the necessary medical care that they need.<sup>55</sup> In New Mexico, the Supreme Court held that prohibiting state funding for certain medically necessary abortions denies Medicaid-eligible women equal rights.<sup>56</sup> The Court ruled that since there were no restrictions on medical care deemed necessary by a physician in regards to male anatomy, it was unconstitutional to do so for females.<sup>57</sup> The Supreme Court of California criticized restrictions on public funding for abortion as “antithetical” to the goals of a state Medicaid program, which is to provide the poor “with access to medical services comparable to that enjoyed by more affluent persons.”<sup>58</sup> The California Court also outlined the danger of barring a poor woman from obtaining medically necessary abortion care when it stated that restrictions on Medicaid funding for abortion “subject the poor woman to significant health hazards and in some cases to death.”<sup>59</sup> As enumerated, these states have adopted more of a human rights framework than the federal government in that by denying poor women the funds to exercise their constitutionally protected right to choose to have an abortion, the government both discriminates against poor women and impermissibly coerces them to choose to continue a pregnancy.

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<sup>53</sup> *The Women of the State of Minnesota v. Gomez*, 542 N.W.2d at 31 (1995).

<sup>54</sup> *State v. Planned Parenthood of Alaska*, 28 P.3D at 913 (2001).

<sup>55</sup> *Right to Choose v. Byrne*, 91 N.J. 287 (1982).

<sup>56</sup> *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (1998).

<sup>57</sup> *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d at 856.

<sup>58</sup> *Committee to Defend Reproductive Rights v. Myers*, 625 P.2d at 781 (1981).

<sup>59</sup> *Committee to Defend Reproductive Rights v. Myers*, 625 P.2d at 799.

In seven of the thirty-two states that follow the federal Hyde Amendment restrictions, the bans have been challenged, but the Courts have refused to order nondiscriminatory funding for abortions.<sup>60</sup> One state (South Dakota) fails even to comply with the Hyde Amendment, instead providing coverage only for lifesaving abortions.<sup>61</sup> The strong contrast of coverage between states and its effects on women who rely on government health insurance are palpable. A recent study found that in 2014, 52% of abortion patients residing in states that use their own funds to pay for abortion had the procedure covered by Medicaid, compared to only 1.5% of patients who live in states adhering to Hyde restrictions.<sup>62</sup> This stark differential strongly suggests that if abortion coverage were expanded under Medicaid, the number of abortions paid for by the program would rise<sup>63</sup> and poor women's rights would have more equal pairing to that of their wealthier counterparts.

### The Harms of Hyde

The effects of Hyde have been detrimental to low-income American women. Despite the news that unintended pregnancy and abortion rates have fallen in the general population, abortions

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<sup>60</sup> "PUBLIC FUNDING FOR ABORTION," ACLU, 2018, <https://www.aclu.org/other/public-funding-abortion>. See *Renee B. v. Florida Agency for Health Care Admin.*, 790 So. 2d 1036 (Fla. 2001); *Planned Parenthood v. Kurtz*, No. CVOC0103909D (Idaho Dist. Ct. June 12, 2002); *Doe v. Childers*, No. 94CI02183 (Ky. Cir. Ct. Aug. 3, 1995), appeal dismissed, No. 95-SC-783-TG (Ky. Aug. 21, 1996); *Doe v. Dep't of Soc. Servs.*, 487 N.W.2d 166 (Mich. 1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 491 S.E.2d 535 (N.C. 1997); *Fischer v. Dep't of Pub. Welfare*, 502 A.2d 114 (Pa. 1985); *Bell v. Low-Income Women of Texas, Inc.*, 95 S.W.3d 253, (Tex. 2002). In Indiana, a Court rejected the claim that the state was required to cover abortions on the same terms as other pregnancy-related care, but did require that the state cover abortions for Medicaid-eligible women "whose pregnancies create serious risk of substantial and irreversible impairment of a major bodily function." *Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d 247, 260 (Ind. 2003). See *A Choice for Women, Inc. v. Florida Agency for Health Care Admin.*, No. 02-3079 (Fl. Cir. Ct. Apr. 4, 2002), appeal denied, No.3D0-3039, 2004 Fla. App. LEXIS 5493 (Apr. 21, 2004)

<sup>61</sup> "State Funding of Abortion Under Medicaid," February 1, 2018.

<sup>62</sup> Jenna Jerman, Rachel K. Jones, and Tsuyoshi Onda, "Characteristics of US Abortion Patients in 2014 and Changes since 2008" (New York: Guttmacher Institute, 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

<sup>63</sup> Salganicoff, Rosenzweig, and Sobel, "The Hyde Amendment and Coverage for Abortion Services," 5.

are becoming increasingly concentrated among poor women.<sup>64</sup> Indeed, in 2014, 75% of abortions were among low-income patients.<sup>65</sup> Young adults and teens who are less likely to have a steady source of income make up the majority of abortion patients at 72%.<sup>66</sup> For a woman who is already struggling financially, the cost of an abortion is an atypical expense she is unlikely to afford. The University of California, San Francisco Turnaway Study, a five-year longitudinal study of roughly 1,000 women seeking abortion care at thirty facilities across the U.S., found that for more than half of women who received an abortion, their out-of-pocket costs were equivalent to more than one-third of their monthly personal income.<sup>67</sup> For those women who could not give up such a large portion of their income, approximately one-fourth of women gave birth when Medicaid funding was unavailable.<sup>68</sup> The study found that the most common reason for not wanting to carry the pregnancy to term was not having enough money to support another child.<sup>69</sup> Women who were refused abortions were nearly four times as likely to live below the federal poverty line four years later than women who had abortions.<sup>70</sup> For five years after seeking an abortion, women who were refused were more likely than those who had an abortion to report not having enough money to cover basic living expenses.<sup>71</sup> Women who gave birth suffered from more serious health

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<sup>64</sup> Salganicoff, Rosenzweig, and Sobel, 3.

<sup>65</sup> Salganicoff, Rosenzweig, and Sobel, 3.

<sup>66</sup> Salganicoff, Rosenzweig, and Sobel, 3.

<sup>67</sup> Sarah CM Roberts et al., “Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States,” *Women’s Health Issues* 24, no. 2 (2014): e214.

<sup>68</sup> Stanley K. Henshaw et al., “Restrictions on Medicaid Funding for Abortions: A Literature Review” (Guttmacher Institute, 2009), 28.

<sup>69</sup> Foster et al., “Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States,” 407.

<sup>70</sup> Foster et al., 410.

<sup>71</sup> Foster et al., 412.

complications than the women who aborted.<sup>72</sup> For women denied abortions, public-assistance programs failed to make up for the cost of a new baby and to pull households out of poverty.<sup>73</sup>

Being denied an abortion did not just affect women's economic and physical health, but also their mental health and social well-being. The study found that the women who were turned away were more than twice as likely to be a victim of domestic violence as those who were able to abort. The researchers found that a year after being denied an abortion, 7% reported an incident of domestic violence in the last six months, compared to 3% of the women who received an abortion.<sup>74</sup> This conclusion was due to the fact that getting an abortion allowed women to get out of abusive relationships more easily while carrying an unwanted pregnancy to term helped abusive men stay in women's lives.<sup>75</sup>

Legal theorist, Khiara M. Bridges, defines *procreative liberty* as: "the ability to decide whether to have a child without being subject to the government's power to compel the individual to act in alignment with the government's desires."<sup>76</sup> Because the state has chosen to fund childbirth and not abortion, the government is interfering in a woman's personal choice of whether to become a mother. Therefore, Bridges argues, the pregnant woman "is not 'at liberty' to do any one thing when the state has worked to ensure that she does that very thing."<sup>77</sup> When poor women are denied procreative liberty, "they are denied the ability to be fully autonomous, self-creating

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<sup>72</sup> Amanda Hess, "XXfactor: What Women Really Think," Slate, *What Happens to Women Who Are Denied Abortions?* (blog), November 14, 2012, [http://www.slate.com/blogs/xx\\_factor/2012/11/14/the\\_turnaway\\_study\\_what\\_happens\\_to\\_women\\_who\\_are\\_denied\\_abortions.html](http://www.slate.com/blogs/xx_factor/2012/11/14/the_turnaway_study_what_happens_to_women_who_are_denied_abortions.html).

<sup>73</sup> Foster et al., "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States," 412.

<sup>74</sup> Hess, "XXfactor: What Women Really Think."

<sup>75</sup> Hess.

<sup>76</sup> Bridges, *The Poverty of Privacy Rights*, 2017, 179.

<sup>77</sup> Bridges, 180.

directors of their lives.”<sup>78</sup> Bridges makes the point that “poor women only enjoy procreative liberty when a state matches its economic support of motherhood with economic support of therapeutic and non-therapeutic abortion.”<sup>79</sup> Poor pregnant women have been stripped of their right to choose because of their reliance on a government that will force them to give birth.

The Hyde Amendment disproportionately impacts women of color. More than half (52%) of the women who are subject to the Hyde Amendment restrictions on abortion are women of color, and almost one-fifth (18%) are Black.<sup>80</sup> Additionally, Black women account for 27.6 percent of all U.S. abortions, although they make up just 14.9 percent of the U.S. female population.<sup>81</sup> A racial and economic divide is emerging: on one side are white and wealthy women, for whom abortion is rarer and more accessible, and on the other side are women of color and low-income women, who are more likely to need an abortion and less likely to be able to afford or access one.<sup>82</sup> Because of its disproportionate impact on women of color, the Hyde Amendment is a form of racial discrimination. In looking at whether a policy is discriminatory, a human rights framework requires that the state look at the *impact* of a policy, not only the *intent* of a policy. A U.S. constitutional framework only looks at whether a policy has a discriminatory *intent*. Since the Hyde Amendment is not explicitly discriminatory, it is no wonder it has been upheld in U.S. Court while similar policies have been deemed a human rights violation in the context of international human rights law. Interestingly, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) is one of the few human rights treaties that the U.S. has ratified. According

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<sup>78</sup> Bridges, 181.

<sup>79</sup> Bridges, 192.

<sup>80</sup> In Our Own Voice: National Black Women’s Reproductive Justice Agenda, “OUR BODIES, OUR LIVES, OUR VOICES: The State of Black Women & Reproductive Justice,” 2017, 23.

<sup>81</sup> In Our Own Voice: National Black Women’s Reproductive Justice Agenda, 22.

<sup>82</sup> In Our Own Voice: National Black Women’s Reproductive Justice Agenda, 24.

to the U.S. Constitution, ratified treaties are to become the law of the land.<sup>83</sup> Treaty ratification also confers an international legal obligation on the U.S. to respect, protect, and fulfill the rights contained in the treaty. The CERD defines racial discrimination as any discriminatory *effect* of a law or policy without regard to the purposes behind it.<sup>84</sup> Unfortunately, the U.S. has refused to implement the treaty despite its legal obligation to do so.

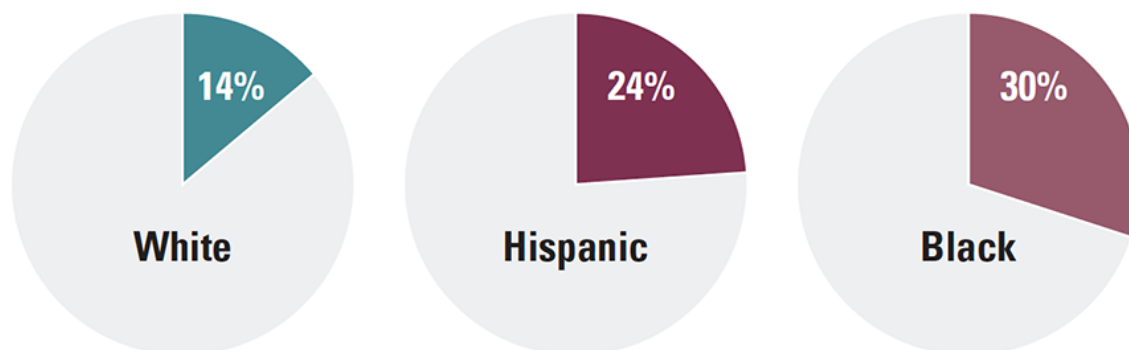
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<sup>83</sup> U.S. Constitution, “Article VI” (1791).

<sup>84</sup> UN General Assembly, “International Convention on the Elimination of All Forms of Racial Discrimination,” CERD/C/USA/CO/3 § (2008), Article 2. “*Racial discrimination is any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*”

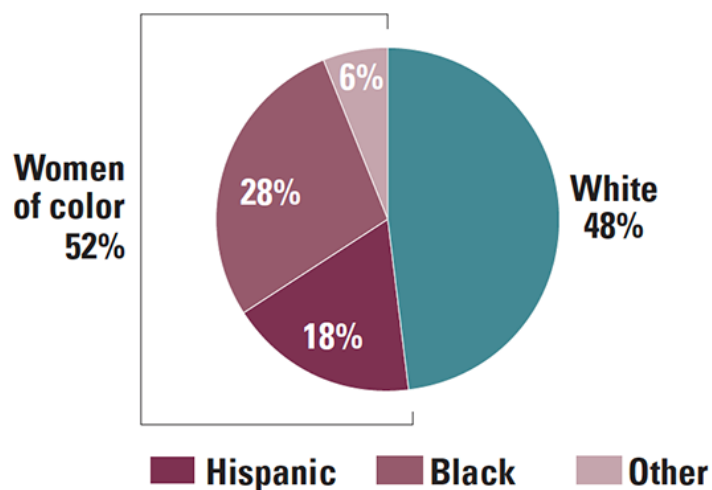
## Who Is Hurt By Hyde?

Because of social and economic inequality, women of color are disproportionately likely to be insured by Medicaid.



**60%** of reproductive-aged women on Medicaid live in states that do not cover abortions with state dollars.

Just over half of the seven million women subject to the Hyde Amendment are women of color.



*Note:* All data are for women aged 15–44 enrolled in Medicaid, 2014. *Source:* Guttmacher Institute.

*A Closer Look: Pennsylvania, a Hyde Amendment State*

The focus of this thesis is mainly on women who reside in conservative states that follow the Hyde Amendment restrictions on abortion funding. Like the harms Hyde has on American women nationally, for low-income women in Pennsylvania, the Amendment is causing pregnant women who are enrolled in the state's Medicaid program to decide between paying for an abortion and surviving. According to a local abortion fund, many women are surprised to discover that their health insurance will not cover the cost of an abortion through the state's Medicaid program: "Most of the people we talk to here are already living in deep poverty so they're bringing in less than 50% the federal poverty guidelines. If a woman is already living in poverty when she makes that discovery, it can change what options she has available when she is making a pregnancy decision."<sup>85</sup> Most women who seek an abortion in Pennsylvania are already parenting at least one child so in order to come up with the money for an abortion, they are making decisions about whether or not they can put food on the table that week for their children.<sup>86</sup> If they have a job they are reporting to, they are deciding whether they can put gas in the car to make it to work; whether they can continue to pay for daycare to keep going to work; or even whether they can keep the lights on if they pay for an abortion.<sup>87</sup> For low-income women in Pennsylvania, the Hyde Amendment is exactly what is standing in their way of making decisions about survival.

In-line with the national Hyde Amendment guidelines, Pennsylvania will fund an abortion for its state Medicaid patients only if the pregnancy was the result of rape or incest or if the woman's life is endangered. However, for women who fall under these categories, obtaining an

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<sup>85</sup> Marah Lange, Interview with Philadelphia Abortion Fund, Telephone Interview, August 2, 2018.

<sup>86</sup> Lange.

<sup>87</sup> Lange.

abortion is still difficult. As outlined in a Pennsylvania code entitled *Payment for necessary abortions*: “payment [for an abortion that is the result of rape or incest or because the woman’s life is in danger] will be made only if a licensed physician submits a signed ‘Physician Certification for An Abortion’ form.”<sup>88</sup> This form requires that a physician certify that either the abortion was necessary in order to avert the woman’s death or that the patient is a victim of rape or incest.<sup>89</sup> If the pregnant woman alleges that she was a victim of rape or incest and did not report the crime to law enforcement, the physician must indicate that, based on his/her medical judgment, the patient was “physically or psychologically unable to report the crime.”<sup>90</sup> In addition, the patient also needs to submit a form stating that she is a victim of rape or incest and whether or not she reported the crime to law enforcement and if she did report the crime, to whom she reported it to.<sup>91</sup> According to a local abortion fund, the language of these forms is often misinterpreted by physicians who still insist that their patient needs to file a report in order for the abortion to be performed: “In the health care field, not everybody is on the same page on what that paperwork requires... We hear folks encounter doctors who would rather see [a police report] or they seem a little distrusting sometimes about what a patient is saying they experienced.”<sup>92</sup> Pennsylvania, along with many other states that follow similar procedures on payment for a Medicaid patient’s abortion, does not trust women to be the primary decision makers when it comes to their own health care. Instead, the state makes the decision for women by separating what the state considers to be a “necessary” abortion: a life-threatening pregnancy or a pregnancy that is the result of a crime; and an “unnecessary” abortion: an abortion that is needed because the fetus will not survive, because her health at risk, because she

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<sup>88</sup> “Payment Conditions for Necessary Abortions,” 55 Pa. § 1141.57 (1980).

<sup>89</sup> Pennsylvania Department of Public Welfare, Office of Medical Assistance Programs, “Physician Certification for an Abortion (MA3),”

<sup>90</sup> Pennsylvania Department of Public Welfare, Office of Medical Assistance Programs.

<sup>91</sup> Pennsylvania Department of Public Welfare, Office of Medical Assistance Programs, “Recipient Statement Form (MA368),”

<sup>92</sup> Lange, Interview with Philadelphia Abortion Fund.

cannot afford (another) child, because she is in an abusive relationship, because she wants to continue her education, because she is not ready to be a mother, and a myriad of other reasons that are deeply personal in a woman's life. The state has simply formed two categories of "good" abortions that it will fund if one overcomes certain barriers, and "bad" abortions that are off-limits.

Forms, signatures and police reports still do not satisfy the burden of proof that a woman in Pennsylvania needs to meet to obtain what the state considers to be a necessary abortion. She also encounters barriers from her Medicaid-managed care plan. Sometimes a woman will find she is eligible to get an abortion covered by her health plan, but first the insurance company will require an ultrasound to be completed and sent to them.<sup>93</sup> This mandatory ultrasound, often considered by pro-choice advocates to be state-sanctioned rape,<sup>94</sup> must first be verified by the insurance company before the woman can schedule her appointment to have the abortion.<sup>95</sup> This can cause delays of a week or more which, especially for women carrying a pregnancy that is the result of an assault, can exacerbate the emotions she is struggling with and can have damaging effects on her mental health: "We hear from a lot of folks who would rather scrounge up the money to pay out of pocket so it can be over with sooner."<sup>96</sup> The aforementioned requirements of forms, signatures, police reports, ultrasounds, etc. is not only proof that as a nation, we do not trust women to make their own decisions about their own bodies, but we especially do not trust poor women. Indigent women in Pennsylvania and around the U.S. are forced to surrender their privacy rights and submit to the

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<sup>93</sup> Lange.

<sup>94</sup> See Terry O'Neill, "Mandatory Ultrasound Laws Violate Women's Rights and Bodies," *Huffington Post* (blog), February 27, 2012, [https://www.huffingtonpost.com/terry-oneill/mandatory-ultrasound-laws\\_b\\_1300219.html](https://www.huffingtonpost.com/terry-oneill/mandatory-ultrasound-laws_b_1300219.html); See Ewen MacAskill, "Doonesbury Strip on Texas Abortion Law Dropped by Some US Newspapers," *The Guardian*, March 11, 2012, sec. World news, <http://www.theguardian.com/world/2012/mar/11/doonesbury-strip-texas-abortion-law>. Doonesbury cartoon depicts a nurse about to give a pregnant woman who is seeking an abortion an unwanted ultrasound: "The male Republicans...require that all abortion seekers be examined with a 10-inch shaming wand. By the authority invested in me by the GOP base, I thee rape."

<sup>95</sup> Lange, Interview with Philadelphia Abortion Fund.

<sup>96</sup> Lange.

state and their insurance company information that wealthy women do not have to disclose in obtaining the same care. Not only are low-income women, compared to wealthy women, rendered unequal in their pursuit of the same care, but low-income men are under no such obligation to provide information or prove they need any care that is specific to men's health.

The Hyde Amendment restrictions in Pennsylvania were challenged under the non-discrimination and equality clauses of the state constitution. The Pennsylvania Supreme Court denied discrimination claims, reasoning that limiting public funding for abortion is not sex discrimination. Instead, the state was according one class of women benefits over another. The opinion of the court reads in part:

...the Commonwealth here has not otherwise penalized appellants for exercising their right to choose but has merely decided not to fund that choice in favor of an alternative social policy.... we cannot accept appellants' rather simplistic argument that because only a woman can have an abortion then the statute necessarily utilizes "sex as a basis for distinction,"... To the contrary, the basis for the distinction here is not sex but abortion, and the statute does not accord varying benefits to men and women because of their sex, but accords varying benefits to one class of women, as distinct from another, based on a voluntary choice made by the women.<sup>97</sup>

The Court admits here that low-income women have differing rights than wealthy women in Pennsylvania. In this way, Bridges' argument rings true: the state has hence ensured that American low-income women and women of color are stripped of becoming fully autonomous, self-creating directors of their lives in the same way that American low-income men, wealthy men and wealthy women get to be.<sup>98</sup> The Court went on to defend why the Hyde restrictions were not sex discrimination: "The mere fact that only women are affected by this statute does not necessarily mean that women are being discriminated against based on sex. In this world there are certain

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<sup>97</sup> Fischer v. Department of Pub. Welfare, 509 Pa. at 312, 313 (1985).

<sup>98</sup> Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford, California: Stanford University Press, 2017), 181.

immutable facts of life which no amount of legislation may change. Consequently, there are certain laws which necessarily will only affect one sex.”<sup>99</sup> The Court’s reasoning here is also an example of how a constitutional framework, unlike a human rights framework, only looks at whether the *intent* of a policy is discriminatory. A human rights framework recognizes that if the *impact* of a policy only affects one sex, then the policy is discriminatory. The disparity would not be disregarded as a mere fact of life.

## **Section II: The Impact of Human Rights on National Abortion Laws**

The worldwide trend toward liberalization of abortion laws is due to recognition of the impact of abortion restrictions on women's human rights.<sup>100</sup> Although most human rights mechanisms do not explicitly guarantee a right to abortion, treaty monitoring bodies (TMBs) have interpreted that the right to access safe abortion services falls under several fundamental rights such as: the right to life; freedom from cruel, inhuman, and degrading treatment; liberty and security of the person; privacy; human dignity; health; and equality and non-discrimination.<sup>101</sup> I argue that this is a much more comprehensive way to view how abortion is intertwined in women’s human rights, in contrast to the U.S. Supreme Court negative-right to non-interference on privacy.

### **Programme of Action of the International Conference on Population and Development and Platform for Action of the Beijing Declaration**

In 1994, one hundred and seventy-nine countries including the U.S. came together to adopt the Programme of Action (PoA) of the International Conference on Population and Development

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<sup>99</sup> *Fischer v. Department of Pub. Welfare*, 509 Pa. at 314.

<sup>100</sup> Boland and Katzive, “Developments in Laws on Induced Abortion: 1998-2007,” 110.

<sup>101</sup> Charles G. Ngwena, “Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa,” *Human Rights Quarterly* 32, no. 4 (2010): 787–88, <https://doi.org/10.1353/hrq.2010.0024>.

(ICPD). The PoA was the first international consensus document in which countries recognized that reproductive rights are human rights that are already enshrined in domestic and international law.<sup>102</sup> Members of the U.S. black women's caucus attended the ICPD and were inspired by the way international human rights concepts addressed the concerns they were struggling with at home.<sup>103</sup> Upon returning home, reproductive justice organizations embraced a human rights framework for their work, as SisterSong, a leading reproductive justice organization explained: "[h]uman rights provides more possibilities for our struggles than the privacy concepts the pro-choice movement claims only using the U.S. Constitution."<sup>104</sup> Indeed, the Supreme Court has only reinforced the concept of reproductive freedom as a negative right, while international human rights law and decisions from high Courts in other countries have advanced the concept that privacy and autonomy rights include affirmative government obligations.<sup>105</sup>

### The European Convention on Human Rights

Through a series of cases, the European Court of Human Rights (ECtHR) has recognized that the denial of legal abortion services can amount to violations of the right to be free from inhuman and degrading treatment and the right to respect for private life.<sup>106</sup> One example of such a case is *Tysiac v. Poland*. Under Polish law, an abortion can be carried out only if the pregnancy endangers the woman's life or health and a medical specialist certifies that one of these criteria has been met.<sup>107</sup> Even though the applicant in the case of *Tysiac* was disabled and was given certification by her General Practitioner for an abortion, she was denied the procedure. She carried

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<sup>102</sup> Katherine Mayall and Johanna B. Fine, "Abortion Worldwide: 20 Years of Reform," *Center for Reproductive Rights*, 2014, 8.

<sup>103</sup> Cynthia Soohoo, "Hyde-Care for All: The Expansion of Abortion-Funding Restrictions under Health Care Reform," *CUNY L. Rev.* 15, no. 2 (2012): 401.

<sup>104</sup> Soohoo, 401.

<sup>105</sup> Soohoo, 394.

<sup>106</sup> Mayall and Fine, "Abortion Worldwide," 13.

<sup>107</sup> Ngwena, "Inscribing Abortion as a Human Right," 802.

the pregnancy to term, and her disability worsened.<sup>108</sup> The ECtHR ruled that Poland had violated the right to privacy of a pregnant woman under the European Convention on Human Rights (ECHR) by failing to provide her with effective procedures for appealing her physician's refusal to perform an abortion.<sup>109</sup> In this case, the ECtHR required any domestic abortion laws to confer tangible rather than illusory rights on women.<sup>110</sup> Poland's abortion law is one of the harshest in the world, yet it could still be considered more liberal than the U.S. Hyde Amendment in that it at least allows exceptions to preserve the woman's health.

### Treaty Monitoring Bodies' Observations and Recommendations Regarding Abortion

International treaty monitoring bodies have urged countries to ensure women's access to safe abortion services in connection with States' obligations to guarantee comprehensive reproductive health services.<sup>111</sup> Notably, the Committee on the Rights of the Child has urged States to "decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services"<sup>112</sup> and "ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal."<sup>113</sup> The Committee on Economic, Social and Cultural Rights has established that the right to health includes legal abortion services which are available, accessible, acceptable and of good quality.<sup>114</sup> Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee has directed states to "ensure that sexual

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<sup>108</sup> Ngwena, 803.

<sup>109</sup> Reed Boland and Laura Katzive, "Developments in Laws on Induced Abortion: 1998-2007," *International Family Planning Perspectives* 34, no. 3 (September 2008): 116.

<sup>110</sup> Ngwena, "Inscribing Abortion as a Human Right," 802.

<sup>111</sup> Johanna B. Fine, Katherine Mayall, and Lilian Sepúlveda, "The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally," *Health and Human Rights* 19, no. 1 (June 2017): 71.

<sup>112</sup> Committee on the Rights of the Child, "General Comment No. 20, Implementation of the Rights of the Child during Adolescence" (UN Doc. CRC/C/GC/20, 2016), para. 60.

<sup>113</sup> Committee on the Rights of the Child, "General Comment No. 15, Right of the Child to the Enjoyment of the Highest Attainable Standard of Health" (UN Doc. CRC/GC/2013/15, 2013), para. 70.

<sup>114</sup> Committee on Economic, Social and Cultural Rights, "General Comment 14 on the Right to the Highest Attainable Standard of Health" (UN Doc. E/C.12/2000/4, 2000), paras. 8, 12.

and reproductive health care includes access to ... safe abortion services,” without qualification as to the legality of abortion and has framed abortion as an aspect of women’s autonomy.<sup>115</sup> The CEDAW Committee has further stated that the illegality of abortion constitutes discrimination, specifically that “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women”<sup>116</sup> and has called for States to “remove punitive measures for women who undergo abortion.”<sup>117</sup> These examples demonstrate that international human rights law has been interpreted to allow for an abortion as an affirmative human right, even if the treaty itself does not explicitly mention abortion.

### The Right to an Abortion Under the U.S. Constitution vs. International Human Rights:

#### A Case Study in Nepal

Prior to 2002, Nepal had a complete ban on abortion. In 2002, the Nepalese Government amended its laws to permit abortion without restriction during the first twelve weeks of pregnancy.<sup>118</sup> Public awareness of the country's high rates of maternal mortality, as well as the fact that women were being imprisoned for having illegal abortions created pressure on the parliament to liberalize the law as part of comprehensive legislation aimed at ending discrimination against women.<sup>119</sup> However, in the same way the Hyde Amendment limits women’s right to choose in the U.S., many Nepalese women still, in practice, lacked access to abortion.<sup>120</sup> In 2009, in the case of *Lakshmi Dhikta v. Nepal*, The Supreme Court of Nepal ordered the Nepalese government to secure

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<sup>115</sup> Committee on the Elimination of Discrimination Against Women, “Concluding Observations on Peru” (UN Doc. CEDAW/C/PER/CO/7-8, 2014), para. 52(c).

<sup>116</sup> Committee on the Elimination of Discrimination Against Women, “CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)” (A/54/38/Rev.1, chap. I, 1999), para. 11.

<sup>117</sup> Committee on the Elimination of Discrimination Against Women, “Concluding Observations on Peru,” para. 36.

<sup>118</sup> Kelsey Zorzi, “The Impact of the United Nations on National Abortion Laws,” *Catholic University Law Review* 65 (2015): 419.

<sup>119</sup> Boland and Katzive, “Developments in Laws on Induced Abortion,” 114.

<sup>120</sup> Zorzi, “The Impact of the United Nations on National Abortion Laws,” 419.

women's access to safe and affordable abortion services and cover the cost of abortions for those unable to pay.<sup>121</sup> The Court grounded its decision in a number of human rights, including the rights to equality, liberty, health, and self-determination.<sup>122</sup> Since the liberalization of Nepal's abortion laws, complications from unsafe abortion in Nepal have declined.<sup>123</sup> A direct comparison can be made between the U.S. jurisprudence surrounding the Hyde Amendment and the human rights framework that required the Nepalese government pay for abortions for those who could not afford the procedure. The U.S. Constitution merely requires government non-interference in a private matter while a human rights framework recognizes that restricting access to abortion is discrimination and required Nepal to take affirmative steps to ensure that all women can exercise their right.

#### United Nations Special Rapporteurs on Abortion as a Human Right

Various UN Special Rapporteurs have commented on abortion as a fundamental human right.<sup>124</sup> Most notably, The Special Rapporteur on Extreme Poverty recently visited the U.S. and recognized in his report that: "Low-income women who would like to exercise their constitutional, privacy-derived right to access abortion services face legal and practical obstacles... This lack of

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<sup>121</sup> Mayall and Fine, "Abortion Worldwide," 21.

<sup>122</sup> Mayall and Fine, 21.

<sup>123</sup> Louise Finer and Johanna B. Fine, "Abortion Law around the World: Progress and Pushback," *American Journal of Public Health* 103, no. 4 (2013): e3.

<sup>124</sup> See: Anand Grover, "Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health," August 3, 2011. The Special Rapporteur on the right to health has characterized the criminalization of abortion as incompatible with the right to the highest attainable standard of health.; See also: Gabriela Knaul, "Interim Report of the Special Rapporteur on the Independence of Judges and Lawyers," 2011. The Special Rapporteur on the independence of judges and lawyers has underscored the human rights implications of laws criminalizing abortion, finding that such laws discriminate against women.; See also: Rashida Manjoo, *UN Special Rapporteur on Violence against Women, Its Causes and Consequences: A Human Rights Based Approach to Maternal Mortality and Morbidity*, 2011. The Special Rapporteur on violence against women has considered the link between prohibition of abortion and violence against women and has urged States to liberalize their abortion laws.; See also: Juan E. Méndez, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," February 1, 2013. The Special Rapporteur on torture or other cruel, inhuman or degrading treatment or punishment has called upon States to guarantee women have access to legal abortion services and post-abortion care.

access to abortion services traps many women in cycles of poverty.”<sup>125</sup> The Special Rapporteur recommended that the U.S. needs to recognize health as a human right.<sup>126</sup> This and other reports by UN Special Rapporteurs coincide with recommendations made by TMBs, proving that there is international consensus that abortion rights are human rights that require affirmative government fulfillment.

### Discussion

The expansion of the use of human rights principles to include a woman’s right to abortion has been the impetus for many countries to liberalize their national abortion laws.<sup>127</sup> The international community has taken steps to ensure abortion rights for women through interpretation of treaty law, soft law and constitutional law. Not expressly mentioning abortion in the law has been a useful tactic to encourage countries to ratify treaties and commit to programs of action, from which they can later be held accountable for their strict national abortion laws through TMBs’ observations, recommendations and judicial decisions. For instance, organizations like the Global Justice Center are putting forth arguments that abortion access for women raped in conflict is a fundamental human right guaranteed under the Geneva Convention.<sup>128</sup> The historical trend is moving toward liberalizing abortion so that women can realize the full enjoyment of their fundamental human rights.

### Section III: The United States and Human Rights

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<sup>125</sup> Philip Alston, “Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America,” May 4, 2018, para. 56, [https://digitallibrary.un.org/record/1629536/files/A\\_HRC\\_38\\_33\\_Add-1-EN.pdf](https://digitallibrary.un.org/record/1629536/files/A_HRC_38_33_Add-1-EN.pdf).

<sup>126</sup> Alston, para. 78.

<sup>127</sup> Boland and Katzive, “Developments in Laws on Induced Abortion,” 117.

<sup>128</sup> “Abortion Access in Conflict,” Global Justice Center: Human Rights Through Rule of Law, 2015, <http://globaljusticecenter.net/our-work/our-issues/abortion-access-in-conflict>.

The United States has a complex relationship with human rights. Michael Ignatieff says that the U.S. suffers from “exceptionalism” in the sense that America has displayed exceptional leadership in promoting international human rights and at the same time, it has also resisted complying with human rights standards at home or abroad.<sup>129</sup> Indeed, the U.S. has refused to sign and ratify many of the international human rights treaties. Most recently, 46% of the American public voted for the most extreme kind of American exceptionalism when it elected Donald Trump, who touts the superiority of his version of American values over international standards.<sup>130</sup> Trump has exemplified this by seeking to ban immigrants from Muslim countries, pulling out of the Paris Climate Accord, and by drafting an executive order placing a moratorium on ratifying new international treaties,<sup>131</sup> to name a few examples. However, recent public opinion research by the Opportunity Agenda found that Americans strongly support the ideals of human rights across a range of issues and policies, from health care to due process to freedom from discrimination.<sup>132</sup> Despite the resonance of human rights values with the public, however, the study found that Americans are unfamiliar with the international human rights system, skeptical about international bodies, and hesitant about the implications of enforcing some rights aggressively.<sup>133</sup>

### The U.S., CEDAW, and Reproductive Rights

#### *Equality under CEDAW vs. U.S. Constitutional Law*

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<sup>129</sup> Michael Ignatieff, *American Exceptionalism and Human Rights* (Princeton University Press, 2005), chap. 1.

<sup>130</sup> Mark P. Lagon, “Reflections on Global Justice and American Exceptionalism: The United States as a Model for the World?,” *World Affairs* 180, no. 1 (2017): 58.

<sup>131</sup> “Read the Trump Administration’s Draft of the Executive Order on Treaties,” *Washington Post*, n.d., <http://apps.washingtonpost.com/g/documents/world/read-the-trump-administrations-draft-of-the-executive-order-on-treaties/2307/>.

<sup>132</sup> Eleni Delimpaltadaki and Julie Rowe, “Communicating on Social Justice Issues within a Human Rights Framework: Messaging Recommendations for Advocates,” *Race/Ethnicity: Multidisciplinary Global Contexts* 3, no. 2 (2010): 214.

<sup>133</sup> Delimpaltadaki and Rowe, 214.

The U.S. is one of two states signing but not ratifying the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW). Adopted by the United Nations General Assembly in 1979, CEDAW requires state parties to address discriminatory practices and achieve substantive gender equality in both the public and the private sphere.<sup>134</sup> President Jimmy Carter signed CEDAW in 1980, symbolizing that the U.S. commits to the principles of the treaty, but the Senate has yet to ratify. The founder and former president of the Center for Reproductive Rights, Janet Benshoof, argues that ratifying CEDAW in the United States would radically change the basic equality rights of American women, including the right to an abortion.<sup>135</sup> The U.S. Supreme Court divides laws that discriminate against women into three levels of scrutiny. Laws regulating abortion are given the lowest level of scrutiny. Restrictions on abortion are only struck down as unconstitutional when then they are found to impose an "undue burden" on women's ability to access abortions.<sup>136</sup> In contrast, CEDAW requires that laws impacting women, including abortion laws, be scrutinized as to where they perpetuate outmoded stereotypes about women's roles.<sup>137</sup> The omission of this type of scrutiny by the U.S. Supreme Court has allowed various anti-abortion justices to indulge in deprecatory stereotypes about women who seek abortions, and to use these false stereotypes as the basis for upholding restrictive state abortion laws.<sup>138</sup> Benshoof argues that:

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<sup>134</sup> Malliga Och, "The Local Diffusion of International Human Rights Norms—Understanding the Cities for CEDAW Campaign," *International Feminist Journal of Politics*, 2018, 2, <https://doi.org/10.1080/14616742.2018.1447312>.

<sup>135</sup> Benshoof, "US Ratification of CEDAW," 105.

<sup>136</sup> See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992). This case established a new standard to determine the validity of laws restricting abortions. The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."

<sup>137</sup> Benshoof, "US Ratification of CEDAW," 123.

<sup>138</sup> See *Gonzales v. Carhart*, 550 U.S. at 159-160 (2007). "Respect for human life finds an ultimate expression in the bond of love the mother has for her child. The Act recognizes this reality as well. Whether to have an abortion requires a difficult and painful moral decision. . . . While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained."

full implementation of CEDAW in the United States would mean replacing the current tripartite scheme of women's rights with a single international strict scrutiny standard. This would require both disparate impact and gender stereotyping analyses. Most controversially, CEDAW would require a wholesale shift in abortion jurisprudence by requiring that abortion laws be reviewed under an equality, rather than a privacy, analysis.<sup>139</sup>

Therefore, women's rights under U.S. constitutional law stand in stark contrast to equality for women under CEDAW. CEDAW defines discrimination broadly as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>140</sup>

Unlike U.S. constitutional law, CEDAW does not only considers whether the *intent* of a law is discriminatory but whether the *effect* of that law is discriminatory. Therefore, CEDAW guarantees that women enjoy both *de jure* and *de facto* equality. Importantly, CEDAW protects women's reproductive rights as part of protecting women's equality. For instance, Article 12 of CEDAW states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy...granting free services where necessary...<sup>141</sup>

The Hyde Amendment could not withstand the conditions of Article 12. Affirmative language that requires States *take all appropriate measures to ensure* access to health care services, including *all* services related to pregnancy is without question something the Hyde Amendment prevents the

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<sup>139</sup> Benshoof, "US Ratification of CEDAW," 124.

<sup>140</sup> UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women," A/RES/34/180 § (1979), Article 2.

<sup>141</sup> UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women," A/RES/34/180 (1979), Article 12.

U.S. from fulfilling. The UN CEDAW Committee, the treaty monitoring body that is tasked with interpreting and enforcing CEDAW, has made clear that "[i]t is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account."<sup>142</sup> Additionally, the CEDAW Committee has found that CEDAW requires that states parties refrain from "obstructing action taken by women in pursuit of their health goals."<sup>143</sup> The Hyde Amendment is purely an obstruction to a health care service that only women need. The several reasons outlined above prove that U.S. ratification and full implementation of CEDAW would mean laws such as the Hyde Amendment could not exist.

### *Is Abortion Preventing the U.S. from Ratifying CEDAW?*

Conservatives have spouted many specious reasons for not ratifying CEDAW at the federal level. They argue that CEDAW abridges parental rights; threatens single-sex education; mandates combat military service for women; prohibits the celebration of Mother's Day and other such canards.<sup>144</sup> When CEDAW was brought before the Senate Foreign Relations Committee in 2008, the committee heard testimony against ratification for the reason that CEDAW would demand legal abortion.<sup>145</sup> I sought to find out from my interviewees if they thought abortion was the main reason for U.S. non-ratification. Some responses I received admitted that abortion is used as an

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<sup>142</sup> CEDAW Committee, "General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures," 2004, para. 8.

<sup>143</sup> CEDAW Committee, "General Recommendation No. 24: Article 12 of the Convention (Women and Health)," in *A/54/38/Rev.1, Chap. I*, 1999, para. 14.

<sup>144</sup> Ellen Chesler, *Where Human Rights Begin: Health, Sexuality, and Women in the New Millennium*, ed. Wendy Chavkin and Ellen Chesler (Rutgers University Press, 2005), 14.

<sup>145</sup> Statement of Janice Crousse, PH.D., Senior Fellow, Beverly LaHate Institute, Concerned Women for America, "U.N. Security Council Resolution 1325: Recognizing Women's Vital Roles in Achieving Peace and Security," Pub. L. No. 110-185, § Subcommittee on International Organizations, Human Rights, and Oversight of the Committee on Foreign Affairs, 43 (2008), 43.

argument to mobilize a conservative base to oppose CEDAW, but it was not a main reason the U.S. had not ratified. As one human/reproductive rights professional put it:

I do think the rhetoric around abortion has been used by CEDAW opponents to urge the U.S. to not ratify CEDAW but I think there's a whole constellation of reasons. Abortion may be one of them, and there are ways in which CEDAW proponents and advocates for CEDAW have attempted to neutralize that impact, but there are many reasons why CEDAW has not been ratified.<sup>146</sup>

A local CEDAW activist in Pittsburgh agreed that anti-CEDAW folks might be concerned that CEDAW ratification could lead to more liberal abortion laws, but that they would actually be mistaken: “[CEDAW] leaves it open to abortion, but there is nothing in the UN convention that could hold [the government] to that.”<sup>147</sup> Another human/reproductive rights professional agreed and spoke to the fact that U.S. ratification of CEDAW would, in fact, require the government provide funding for abortion for low-income women, but like most human rights treaties, there really is no enforcement mechanism for that.<sup>148</sup> The majority of my interviewees answered similarly that abortion is used as a rallying cry for conservatives to mobilize against CEDAW ratification but at the same time this mobilization was unfounded either because CEDAW is not enforceable or because the treaty is broader than only reproductive rights.

Some respondents reasoned that U.S. non-ratification may not be particularly about abortion, but about U.S. refusal to address women's inequality. As one human rights professional put it: “[Not ratifying CEDAW] is an excuse to not put in place strong measures that would help women.”<sup>149</sup> A Pittsburgh CEDAW activist agreed: “The U.S. has an issue with admitting we have gender discrimination and sexism. We have a problem because it is so engrained in our culture. I

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<sup>146</sup> Anonymous, Interview with Human/reproductive rights Professional, Telephone Interview, July 27, 2018.

<sup>147</sup> Marcia Bandes, Telephone, July 6, 2018. Ms. Bandes is the Steering Committee Chair of Pittsburgh for CEDAW.

<sup>148</sup> Cynthia Soohoo, Interview with Human/reproductive rights Professional, Telephone Interview, July 3, 2018.

<sup>149</sup> Soon-Young Yoon, Interview with Human Rights Professional, Telephone Interview, July 19, 2018.

don't think it has to do with abortion necessarily. It has to do with women and admitting that we have a problem and we don't want to have to do any work on it."<sup>150</sup> Another major reason cited by my interviewees for the government's refusal to ratify CEDAW in the U.S. is the idea that international treaties challenge national sovereignty. A Pittsburgh CEDAW activist explained:

What I see as one of the biggest challenges to gender equity in the U.S. is how many people are ignorant about how much inequality there is. The American Dream narrative that so defines our national culture really leads people to assume that all it is is a matter of hard work that allows people to succeed. People routinely underestimate just how many barriers are put in place based on inequalities of gender and race... It's a combination of American exceptionalism taken to heart and then suspicion of international collaboration as potentially threatening to national autonomy.<sup>151</sup>

Abortion is not the only, or maybe not even the main, reason for non-ratification of CEDAW at the federal level. However, it is part and parcel of women's equality overall. Opponents have understood that CEDAW's aspirations surpass the current requirements of federal constitutional law on gender equality. Gender inequality is an issue that the U.S. does not want to address, either by providing affirmative access to abortion services or otherwise. CEDAW implementation would require the U.S. government to investigate where it is in default on women's equality rights and in so doing, confront the effective of the Hyde Amendment.

#### **Section IV: American Cities and Human Rights**

Finnegan et al. suggests that successful engagement of the human rights frame in the U.S. context will require not only a change at the political level, but also a cultural change involving the address of long-held beliefs and traditions.<sup>152</sup> This presents a unique opportunity for local

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<sup>150</sup> Mica Lee Williams, Interview with Pittsburgh CEDAW Activist and Reproductive Justice Fellow, Telephone Interview, July 11, 2018.

<sup>151</sup> anupama jain, Interview with Pittsburgh Gender Equity Commission Executive Director, Telephone Interview, July 24, 2018.

<sup>152</sup> Amy C. Finnegan, Adam P. Saltsman, and Shelley K. White, "Negotiating Politics and Culture: The Utility of Human Rights for Activist Organizing in the United States," *Journal of Human Rights Practice* 2, no. 3 (2010): 330.

government to start to make a cultural change in their communities by adopting international human rights standards. Shortly after the 2016 presidential election, political scientist Benjamin Barber opined that "cities are going to become the most important, constructive alternative to a Trump agenda" particularly because cities represent the majority of Americans who voted against a Trump presidency.<sup>153</sup> Indeed, within days of President Trump's announcement that the U.S. was pulling out of the Paris Climate Accord, hundreds of local leaders proclaimed that they would continue to abide by the international agreement despite federal U.S. withdrawal.<sup>154</sup> Former New York mayor Michael Bloomberg, who serves as the U.N. Special Envoy for Cities and Climate Change, announced that he would work with the United Nations to develop a new reporting mechanism to allow subnational governments to report on their climate progress.<sup>155</sup> Because of this local effort, it will still be possible to make significant progress toward achieving the emissions reductions targets set out in the Paris Accord.<sup>156</sup>

In the same vein, U.S. refusal to commit to international human rights standards on women's rights has prompted localities to adopt the principles of CEDAW into their local law. San Francisco was the first city to adopt a CEDAW ordinance in 1998 and the San Francisco Department on the Status of Women (SFDSW) was tasked with informally reporting on the city's progress to the U.N Commission on the Status of Women (CSW).<sup>157</sup> The SFDSW also led the way

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<sup>153</sup> Max de Haldevang, "Cities Will Be a Powerful Antidote to Donald Trump," *Quartz*, November 15, 2016, <https://qz.com/837383/cities-will-be-a-powerful-antidote-to-donald-trump-social-scientist-benjamin-barber-on-the-emergence-of-a-new-urban-radicalism/>.

<sup>154</sup> Maureen Groppe, "Mayors Pledge to Take the Lead on Fighting Climate Change," *USA TODAY*, June 2, 2017, <https://www.usatoday.com/story/news/politics/2017/06/02/mayors-pledge-take-lead-fighting-climate-change/102435920/>.

<sup>155</sup> Hiroko Tabuchi and Henry Fountain, "Bucking Trump, These Cities, States and Companies Commit to Paris Accord," *New York Times*, June 1, 2017, <https://www.nytimes.com/2017/06/01/climate/american-cities-climate-standards.html>.

<sup>156</sup> Martha F. Davis, "Design Challenges for Human Rights Cities," *Colum. Hum. Rts. L. Rev.* 49 (2017): 50.

<sup>157</sup> CITY & CTY. OF S.F., DEP'T ON THE STATUS OF WOMEN, U.N. COMM'N ON THE STATUS OF WOMEN, "BEIJING DECLARATION AND PLATFORM FOR ACTION, 20TH ANNIVERSARY REVIEW:

in initiating the Cities for CEDAW (C4C) campaign, urging other local governments to adopt CEDAW as their municipal law.<sup>158</sup> The campaign was launched at a meeting of the CSW in 2013 by the NGO Committee on the Status of Women New York (NGO CSW/NY), an organization that supports the work of the CSW and UN Women. The C4C campaign is a grassroots effort that provides tools and leadership to empower local women's, civil and human rights organizations and municipalities to effectively initiate CEDAW within their city, county, town, or state.<sup>159</sup> As of August 2018, nine cities and counties adopted CEDAW ordinances, thirty-one cities and counties have put forth CEDAW resolutions and thirty-one cities and counties are exploring resolutions or ordinances.<sup>160</sup>

### Breakdown of a CEDAW Ordinance

A CEDAW ordinance draws on the spirit of CEDAW by calling upon cities to implement the two main principles of CEDAW across their programs, policies, laws, and agencies: combating sex-based discrimination and achieving substantive gender equity. A model CEDAW ordinance put forth by the C4C campaign consists of three elements: (1) gender analysis of city operations and laws; (2) establishment of a CEDAW oversight body; and (3) financial underwriting of CEDAW initiatives.<sup>161</sup> A gender analysis is a comprehensive analysis of the city's administrative structure, operations, programs, and budgets to identify barriers to substantive gender quality and

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SAN FRANCISCO REGIONAL INPUT," 2014,

<http://sfgov.org/dosw/sites/default/files/Beijing%20SF%20Regional%20Review.pdf>.

<sup>158</sup> "About Us," Cities for CEDAW, accessed October 4, 2017, <http://citiesforcedaw.org/about-us/>.

<sup>159</sup> "Background," Cities for CEDAW, 2017, <http://citiesforcedaw.org/background/>.

<sup>160</sup> The Leadership Conference Education Fund and Women's Intercultural Network, "Cities for CEDAW: Status of Local Activities," August 11, 2018, <http://citiesforcedaw.org/wp-content/uploads/2018/08/Landscape-Cities-for-CEDAW-Branded-for-Website-August-11-2018.pdf>. See Appendix B for chart outlining all jurisdictions that have adopted or are considering adopting CEDAW ordinances and resolutions.

<sup>161</sup> "IMPLEMENTING CEDAW AS A LOCAL ORDINANCE," Cities for CEDAW, January 2018, <http://citiesforcedaw.org/wp-content/uploads/2018/01/Fact-Sheet-on-Implementing-CEDAW-as-a-Local-Ordinance.Updated-1.2018.pdf>.

discriminatory practices.<sup>162</sup> The oversight body, such as a woman's commission, is set up to monitor the progress towards gender equality.<sup>163</sup> This part of the ordinance resembles the international CEDAW framework where the UN CEDAW committee is tasked with monitoring the progress towards CEDAW implementation across all state parties. (The UN CEDAW committee, consisting of twenty-three international experts on women's rights, reviews and comments on national reports and issues recommendations on how to address discriminatory practices or how to achieve substantive gender equality in the respective countries.)<sup>164</sup> Unique to the CEDAW ordinance is its requirement of a financial commitment to fund programs at the rate of \$0.10 to \$0.25 per female resident.<sup>165</sup> The CEDAW ordinance does not copy the international treaty word for word, but instead mirrors certain international standards, most notably the oversight and reporting mechanisms.<sup>166</sup>

## CEDAW CITIES

San Francisco was the pioneer of C4C. Their 1998 ordinance came out of a large delegation of San Francisco women who joined the U.S. delegation to the Fourth World Conference on Women that put together the Beijing Platform for Action. To make the lofty goals of the Platform a reality in their city, this group of women hit upon the strategy of creating a local ordinance reflecting the principles of CEDAW.<sup>167</sup> The ordinance highlights three substantive areas of

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<sup>162</sup> Och, "The Local Diffusion of International Human Rights Norms—Understanding the Cities for CEDAW Campaign," 9.

<sup>163</sup> Och, 9.

<sup>164</sup> Och, 9.

<sup>165</sup> Cities for CEDAW, January 2018, <http://citiesforcedaw.org/wp-content/uploads/2018/01/Fact-Sheet-on-Implementing-CEDAW-as-a-Local-Ordinance.Updated-1.2018.pdf>. See Appendix C for a model CEDAW ordinance template. "IMPLEMENTING CEDAW AS A LOCAL ORDINANCE,"

<sup>166</sup> Och, "The Local Diffusion of International Human Rights Norms—Understanding the Cities for CEDAW Campaign," 9.

<sup>167</sup> Emily Murase, Telephone Interview, July 3, 2018. Ms. Murase is the Director of the Department on the Status of Women, San Francisco.

concern: 1) employment and economic opportunity, 2) violence against women and girls, and 3) health care. The economic opportunity section addresses gender discrimination in hiring, promotion, pay, and benefits, the need for better child care options and family-friendly work policies, and women's lack of access to loans, banks, and financial services.<sup>168</sup> The violence against women and girls section aims to "prevent and redress" sexual and intimate-partner violence using the criminal justice system, non-discriminatory social services for survivors and perpetrators, and training for City employees. It also highlights sexual harassment at work, school, and on public transportation, and notes the special vulnerability of sex-workers, the importance of adequate lighting in public spaces, and the need to change harmful attitudes about gender roles.<sup>169</sup> Finally, the health care section focuses on eliminating discrimination in health care access, including family planning, and ensuring adequate pre-natal, delivery, and post-natal care and nutrition.<sup>170</sup>

San Francisco's law designates the pre-existing Commission on the Status of Women as the implementing and monitoring agency for the City and County. It also creates an 11-member CEDAW Task Force that reports to and advises the Mayor, the Board of Supervisors, and the Commission on CEDAW implementation.<sup>171</sup> This Task Force consists of five local officials, or their designees, and six community members appointed by the Commission for two-year terms based on their expertise in human rights, development, and the ordinance's substantive areas.<sup>172</sup>

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<sup>168</sup> SAN FRANCISCO, CAL., MUN. CODE SEC. 12K.3(a)(1)-(3). <http://sfgov.org/dosw/cedaw-ordinance> [hereinafter San Francisco Ordinance].

<sup>169</sup> San Francisco Ordinance at SEC. 12K.3(b)(1)-(5).

<sup>170</sup> San Francisco Ordinance at SEC. 12K.3(c)(1)-(2). This section also recognizes that some women face compound barriers to healthcare access due to "race, ethnicity, culture, language, and sexual orientation."

<sup>171</sup> San Francisco Ordinance at SEC. 12K.5(a)-(c).

<sup>172</sup> See San Francisco Ordinance at SEC. 12K.5(d). The Task Force's official members are drawn from the Human Rights Commission, Mayor's Office, Department of Human Resources, Board of Supervisors, and the Commission. Its community members include two representatives working in international human rights, as well as experts in the areas of economic development, health care issues, violence against women, and City unions.

The Commission and Task Force are directed to join forces and develop guidelines for "gender analysis" of City departments, programs, and policies. Such gender analysis "shall" include: 1) collection of disaggregated data, 2) evaluation of gender equity in the entity's budget allocations, service delivery, and employment practices, and 3) the entity's integration of CEDAW principles and human rights. Upon completion of the analysis, each entity must submit an Action Plan identifying specific recommendations for correcting any deficiencies and better integrating human rights into its operations.<sup>173</sup> The Task Force is responsible for selecting which City entities should undergo gender analysis, and for developing timelines for analysis and Action Plan completion. The Commission is responsible for providing training and technical assistance to City entities as they undergo the analysis process, and for monitoring Action Plan implementation.<sup>174</sup>

Pittsburgh passed an ordinance implementing CEDAW in December of 2016.<sup>175</sup> Though it generally follows San Francisco's model, it also updates that model in some important ways. For example, the ordinance begins by noting the connection between racial discrimination, as articulated in the CERD, and gender discrimination, and pledges to "conduct intersectional gender analyses."<sup>176</sup> Pittsburgh's law highlights four substantive issues: 1) economic development, 2) violence against women and girls, 3) education, and 4) delivery of city services. The section on economic development echoes San Francisco's with minor additions, including attention to reasonable accommodation for pregnant and nursing mothers and access to safe and affordable housing and transportation.<sup>177</sup> Similarly, the section on violence against women duplicates San

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<sup>173</sup> San Francisco Ordinance at SEC. 12K.4(b).

<sup>174</sup> San Francisco Ordinance at SEC. 12K.4(b)(1)-(5).

<sup>175</sup> PITTSBURGH, PEN., MUN. CODE SEC. 177C (2016), <http://citiesforcedaw.org/wp-content/uploads/2018/01/Pittsburgh-Ordinance.pdf> [hereinafter Pittsburgh Ordinance].

<sup>176</sup> Pittsburgh Ordinance at Sec. 177C.03- Local Principles of CEDAW.

<sup>177</sup> Pittsburgh Ordinance at Sec. 177C.03(1). Compare San Francisco Ordinance at San Francisco Ordinance at SEC. 12K.3(a).

Francisco's, but removes the discussion on sexual harassment and the unique vulnerability of sex-workers.<sup>178</sup> Pittsburgh's ordinance boasts a detailed education section, which touches on early-childhood education, public K-12 education, after-school programs, and internships; it is also the only law to include delivery of city services as a substantive issue.<sup>179</sup>

Pittsburgh creates a new 13-member Gender Equity Commission (GEC) to conduct and implement intersectional gender analyses and follow-up action plans. Unlike San Francisco, all of Pittsburgh's Commission members are appointed by the Mayor with the City Council's approval. Only four Commission members are drawn from local government,<sup>180</sup> while six are selected from the community for their substantive expertise,<sup>181</sup> and one is drawn from each the Pittsburgh for CEDAW Campaign and the broader nonprofit community.<sup>182</sup> By giving the community representatives and advocates a supermajority on the Commission, the City improves its accountability to community stakeholders and provides a potential platform for a diverse set of voices.

The Commission's duties are enumerated in detail in Section 177C.06. While these echo the gender analysis + action plan model put forward by a majority of the CEDAW ordinances, there are several notable additions. A unique duty to "seek outside sources of funding to supplement Gender Equity Commission activities" is included.<sup>183</sup> In addition, Pittsburgh designed the Commission's process with transparency and community input in mind: monthly meetings

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<sup>178</sup> Pittsburgh Ordinance at Sec. 177C.03(2). Compare San Francisco Ordinance at San Francisco Ordinance at SEC. 12K.3(b).

<sup>179</sup> Pittsburgh Ordinance at Sec. 177C.03(3)-(4).

<sup>180</sup> Pittsburgh Ordinance at Sec. 177C.06(b)(1). "The Mayor's Office, City Council, and Department of Personnel and Civil Service each have a representative on the Commission. In addition, one City employee knowledgeable about the budget shall also be appointed."

<sup>181</sup> Pittsburgh Ordinance at Sec. 177C.06(b)(1)(h). The community members should include members "active in minority communities."

<sup>182</sup> Pittsburgh Ordinance at Sec. 177C.06(b)(1)(c) and (d).

<sup>183</sup> Pittsburgh Ordinance at Sec. 177C.06(a)(10).

must be advertised and open to public comment on all matters up for deliberation; interested persons must have a means of requesting and receiving timely notice of all regular and special meetings (including a summary of matters under consideration); and a summary of actions taken on each meeting must be made publicly available within seven days.<sup>184</sup> Finally, Pittsburgh makes its CEDAW ordinance genuinely enforceable by granting the Pittsburgh Commission on Human Relations jurisdiction over "any issue of gender discrimination that is not resolved internally."<sup>185</sup> Both San Francisco and Pittsburgh stated that they were able to pass their respective ordinances by building a coalition of local organizations and through the support and sponsorship from a female City Council Member and an overall progressive City Council.<sup>186</sup>

A CEDAW resolution is a broad commitment by a locality to eliminate discrimination against women and is usually the first step before working to pass an ordinance. The Louisville CEDAW resolution was born out of the NGO/CSW NY in 2013 and similarly to San Francisco and Pittsburgh, a local coalition was formed, and support garnered from a female City Council Member. Three years later in 2016, Kentucky became the first state to pass a state-wide CEDAW resolution. Both resolutions mirror the template provided by C4C stating that their city supports the C4C initiative, is committed to eliminating discrimination against women, and recognizes that a resolution is the first step to passing a future ordinance that would call for a gender analysis. Louisville's CEDAW coalition prioritized bringing a gender lens to local government offices and services and at the state-level, Kentucky CEDAW groups focused on eliminating trafficking in

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<sup>184</sup> Pittsburgh Ordinance at Sec. 177C.06(c).

<sup>185</sup> Pittsburgh Ordinance at Sec. 177C.05(3).

<sup>186</sup> Murase, Interview with San Francisco CEDAW Activist; Bandes, Interview with Pittsburgh CEDAW Activist.

women.<sup>187</sup> These priorities are not specified in the resolutions themselves but were used in garnering support for and building advocacy around passing the resolutions.

### *The Impact of CEDAW Cities*

While the San Francisco CEDAW ordinance has had measurable impact in the areas of women's safety, violence against women, and gender equity in the workplace, the other CEDAW ordinances, including Pittsburgh's, are too young to have had any substantial impact yet. Most of the ordinances are either collecting data or analyzing that data. When asked about where the CEDAW ordinances have had the most impact, my respondents mostly pointed to: (1) effects on changing public perception on women's issues; (2) educating the public on the principles of CEDAW; and (3) raising awareness around women's rights. Pittsburgh's GEC is currently soliciting proposals for a gender analysis. anupama jain, Executive Director of Pittsburgh's GEC said they will be waiting for the results of the gender analysis to determine what their priorities will be going forward. In the meantime, they have been using information gathered from community forums sponsored by Pittsburgh for CEDAW, as well as local reports about Pittsburgh women.<sup>188</sup> For instance, the Women and Girls Foundation recently released a report about the link between single-female-headed households and poverty. The report found that single mothers and their children make up 77% of households living in poverty in Pittsburgh.<sup>189</sup> In a survey for the report, women cited childcare as their biggest barrier to economic security.<sup>190</sup> Undoubtedly, the Hyde Amendment is one more barrier for women struggling to get out of poverty in Pittsburgh.

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<sup>187</sup> Mary Sue Barnett, Interview with Louisville CEDAW Activist, Telephone Interview, July 12, 2018; Teena Halbig, Interview with Kentucky CEDAW Activist, Telephone Interview, July 31, 2018.

<sup>188</sup> jain, Interview with Pittsburgh Gender Equity Commission Executive Director.

<sup>189</sup> Women and Girls Foundation, "Femisphere: Women Thrive Here," 2016, 2, file:///C:/Users/User/OneDrive/Thesis%20research/Femisphere-Phase-One-Presentation-September-2016-combined-3.pdf.

<sup>190</sup> Women and Girls Foundation, 15.

Having control over their reproductive health is extrinsically linked to women's economic security. As national statistics show,<sup>191</sup> the Hyde Amendment in Pennsylvania would push a woman living in Pittsburgh who is already living in poverty and struggling to obtain childcare even deeper into poverty and for a longer period. I argue that since poverty has already been identified as a disparity for women living in Pittsburgh, and the Hyde Amendment perpetuates that poverty, the local CEDAW ordinance should be used to challenge the Hyde Amendment in the state of Pennsylvania through the ordinance's commitment to economic development.

### **Section V: Local CEDAW Ordinances and Their Potential for Advancing Abortion as a Human Right in the U.S.**

#### **Local CEDAW Ordinances Can and Should be Utilized to Change State Policies around Abortion Access**

I argue that gender equality cannot be achieved without the right to bodily autonomy. I hence set out to examine whether the advocates who worked to adopt CEDAW in their localities had put abortion access at the forefront of their priorities. Except for Los Angeles, whose ordinance encourages providers to include abortion as part of a basic reproductive health care package,<sup>192</sup> local CEDAW ordinances and resolutions do not explicitly include wording about advancing abortion access. However, some ordinances include health care as a priority within the ordinance. For instance, San Francisco's ordinance aims to eliminate discrimination in health care and ensure

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<sup>191</sup> Foster et al., "Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States," 410, 412.

<sup>192</sup> See Los Angeles, California, "Ordinance No. 17573" (2003), sec. e (5), [http://citiesforcedaw.org/wp-content/uploads/2017/01/00-0398-S2\\_ORD\\_175735\\_02-08-2004.pdf](http://citiesforcedaw.org/wp-content/uploads/2017/01/00-0398-S2_ORD_175735_02-08-2004.pdf). "City of Los Angeles shall encourage providers to adopt a basic health care package for reproductive aged women that includes: a pre-conceptual health care visit, prenatal care including genetic screening and prenatal care for the partner, legal/licensed contraceptive care, pregnancy care, ultrasound, comprehensive risk assessment and risk-appropriate care, abortion, delivery, post-partum care (48-72 hours; 2-day visit) including treatment of post-partum depression, cancer screening (pap smear, mammogram), and sexually transmitted disease (STD/HIV) screening."

access to family planning.<sup>193</sup> Even though reproductive health care is a priority in San Francisco's ordinance, and abortion is explicitly included in Los Angeles' ordinance, neither city has concentrated on health care in its work implementing their respective ordinances.<sup>194</sup> Initially, it could be deduced that San Francisco and Los Angeles have chosen not to concentrate on reproductive health care in their efforts to eliminate gender equality because they are located in a progressive state that protects abortion access. However, California recently lost an important Supreme Court case that will allow anti-choice organizations to pose as health centers and counsel women against abortion.<sup>195</sup> Additionally, although California's public insurance program, Medi-Cal, provides coverage for medically necessary abortions, women encounter problems enrolling in the program and finding a provider who participates in Medi-Cal, thereby causing delays in obtaining abortion care.<sup>196</sup> Even in a progressive state, cities like San Francisco and Los Angeles have an opportunity to lead the charge in ensuring that abortion access is protected as part of their commitments outlined in their respective CEDAW ordinances.

Given that abortion is normally regulated at the state level, I sought to find out if the CEDAW ordinances and resolutions could influence state policies. As previously stated, except for San Francisco's ordinance which has been in place the longest and able to achieve measurable

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<sup>193</sup> San Francisco Ordinance at sec. c (1). "It shall be the goal of the City to take all appropriate measures to eliminate discrimination against women and girls in the field of health care in order to ensure, on a basis of equity, information about and access to adequate health care facilities and services, according to the needs of all communities, regardless of race, ethnicity, culture, language, and sexual orientation, including information, counseling and services in family planning" "

<sup>194</sup> See City and County of San Francisco, "Department on the Status of Women," GEP - Health, Safety and Freedom from Violence Indicators, 2009, <https://sfgov.org/dosw/gep-health-safety-and-freedom-violence-indicators>; City and County of San Francisco, "Department on the Status of Women," accessed August 14, 2018, <https://sfgov.org/dosw/>; See City and County of San Francisco and Department on the Status of Women, "Human Rights in Action: San Francisco's Local Implementation of The United Nations' Women's Treaty (CEDAW)," 2010, [https://sfgov.org/dosw/sites/default/files/Documents/dosw/Reports/CEDAW\\_report\\_101810.pdf](https://sfgov.org/dosw/sites/default/files/Documents/dosw/Reports/CEDAW_report_101810.pdf); City of Los Angeles and Mount Saint Mary's University, "The Report on the Status of Women and Girls in the City of Los Angeles," 2015, <https://www.lamayor.org/report-status-women-girls-los-angeles>.

<sup>195</sup> National Institute of Family and Life Advocates v. Becerra, US 585 \_\_\_\_ (2018).

<sup>196</sup> Center for Reproductive Rights, "Whose Choice? How the Hyde Amendment Harms Poor Women."

change in certain focus areas, the biggest impact of the C4C campaign and resulting ordinances and resolutions has been that of changing public perception of women's issues and educating the public about women's rights and human rights mechanisms. I found that this impact could influence policy changes at the state level in two possible ways. The cities that have adopted CEDAW may influence higher government to adopt resolutions and ordinances. For instance, the C4C campaign has resulted in two states, Kentucky and California, that have adopted state-wide CEDAW resolutions and Miami-Dade County, that has adopted a county-wide ordinance. Second, the local ordinances can have an indirect influence as a political movement. As one human/reproductive rights professional said:

Localities are, in many instances, able to be more progressive than the states. A locality cannot necessarily require a state to take action and affect laws. It could have influence in showing local support for more progressive policies which may have an influence on state lawmakers, but in terms of a direct way of forcing state action, I don't think a local ordinance can have that impact.<sup>197</sup>

As my interviewee points out, although local CEDAW ordinances and resolutions cannot legally force policy change at the state level, they act instead as a way of mobilizing the public around women's issues and raising awareness of the human rights of women. Including abortion access as part of this mobilization and awareness-raising around women's rights could indirectly influence state lawmakers to consider progressive policy changes around abortion regulation in the state.

Advancing abortion access in Pennsylvania is crucial yet difficult. Pennsylvania is a very anti-choice state<sup>198</sup> that was the site of a landmark Supreme Court ruling that upheld certain

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<sup>197</sup> Anonymous, Interview with Human/reproductive rights Professional.

<sup>198</sup> See Guttmacher Institute, "State Facts About Abortion: Pennsylvania," May 2018, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-pennsylvania>; Women's Law Project, "10 Facts about Abortion in Pennsylvania at #Roe43," January 22, 2016, <https://womenslawproject.wordpress.com/2016/01/22/10-facts-about-abortion-in-pennsylvania-at-roe43/>.

barriers to abortion access.<sup>199</sup> Yet, unlike San Francisco and Los Angeles, Pittsburgh did not include a health care component in their CEDAW ordinance. The reason I was given by a Pittsburgh CEDAW activist for excluding health care as a priority in their ordinance is because health care is handled at the county level and not by the city.<sup>200</sup> Although health care may not be explicitly mentioned in Pittsburgh's CEDAW ordinance, another Pittsburgh CEDAW activist acknowledged that gender discrimination is often linked to lack of access to health care: "Although health care, which includes abortion care, is not covered in Pittsburgh's ordinance, it is still tangential to the principles of CEDAW."<sup>201</sup> In that sense, much like how the international CEDAW has been interpreted to include access to abortion as a fundamental human right, health care, including abortion care, could be interpreted to fall under the Pittsburgh ordinance's key principles. In fact, I argue that economic development, violence against women, and education-the key principles of Pittsburgh's CEDAW ordinance- cannot be achieved without addressing the lack of access to safe abortion services in Pennsylvania. When asked if the Pittsburgh GEC would be working to influence state policies, the Executive Director of the GEC said that the Commission might explore that idea:

The Commission would love to have an impact on state policies so one of the things we've been doing and will continue to do is to build as many partnerships as we can by encouraging other groups that are not the city of Pittsburgh to join us or borrow from some of the things we're doing. In that way, we are acting as a role model. I think ideally, we will have an impact on lots of different groups including at the state level. Over time, if the Commissioners decide one of their priorities is partnering with the state, I don't believe that's impossible.<sup>202</sup>

My interviewee shows us another way in which the local CEDAW ordinances can impact state policies. If the GEC were to interpret the ordinance's key principles to include abortion access and

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<sup>199</sup> *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992).

<sup>200</sup> Bandes, Interview with Pittsburgh CEDAW Activist.

<sup>201</sup> Williams, Interview with Pittsburgh CEDAW Activist and Reproductive Justice Fellow.

<sup>202</sup> Jain, Interview with Pittsburgh Gender Equity Commission Executive Director.

prioritize it in implementing the ordinance, the Pittsburgh ordinance could influence state policies around abortion.

Challenging the Hyde Amendment in a conservative state like Pennsylvania is challenging. The skepticism my interviewees have about including abortion in the implementation of the Pittsburgh ordinance is likely because by doing so, CEDAW advocates are inviting strong anti-choice opposition to their gender equality agenda. There is likely fear that including abortion in advocacy around CEDAW will thwart any effort to better the lives of women in Pittsburgh. My optimism, though, lies in the tools that the international CEDAW Committee provides in its jurisprudence, Concluding Observations and General Recommendations regarding abortion. As one human rights professional stated, “CEDAW covers way beyond the things we immediately think of when we think of abortion rights. Economic rights turn out to be really important when it comes to discrimination for abortion rights. CEDAW looks at whether you even have the money to pay a co-pay for a health service. Does one even have the money to pay the transport to get to a health clinic?”<sup>203</sup> This intersectional outlook on abortion rights could be helpful for Pittsburgh pro-choice advocates in utilizing their local CEDAW ordinance to challenge state policies like the Hyde Amendment.

#### Local Activists Should Embrace the Fact that CEDAW is Not ‘Abortion-Neutral’

In Louisville, the link between CEDAW and advancing abortion as a human right internationally was made immediately. However, the link was not made by progressives attempting to pass the local CEDAW resolution but instead by conservative lawmakers and anti-choice groups in the city. Kentucky Right to Life members unexpectedly showed up at the Metro Council hearing where Council members were to vote on the CEDAW resolution. They also sent

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<sup>203</sup> Yoon, Interview with Human Rights Professional.

every member of the Council a threatening letter stating that a vote for the CEDAW resolution was a vote for “sweeping pro-abortion legislation.”<sup>204</sup> The problem the anti-choice activists had with the resolution was that the word “CEDAW” appeared in the document and CEDAW is associated with abortion internationally. The Louisville CEDAW resolution, like the UN treaty, does not include wording on abortion. Instead it essentially follows the C4C template. The resolution states that the Metro Government is “committed to eliminating all forms of violence against women and girls, to promoting the health and safety of women and girls, and to affording them equal academic, economic and business opportunities.”<sup>205</sup> Even though the Louisville resolution does not state anything regarding abortion nor did advocates include abortion in their advocacy around passing the resolution, Right to Life members and conservative Council members cited the UN CEDAW Committee’s numerous statements on abortion as a human right as the reason that they could not support the resolution. Some highlights of the two-hour long debate are as follows:

Councilmember Kevin Kramer quoted the UN CEDAW Committee’s General Recommendations on abortion and said that it does not matter that the word “abortion” is not in the treaty since the CEDAW Committee and the CEDAW are inseparable.<sup>206</sup> Therefore, by having the word “CEDAW” in the local Louisville CEDAW resolution, he reasons that the resolution was in support of the treaty and therefore in support of abortion. Councilmember Robert Engel concurred,

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<sup>204</sup> “Louisville Metro Council Meeting” (2014),

[http://louisville.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=3875](http://louisville.granicus.com/MediaPlayer.php?view_id=2&clip_id=3875).

<sup>205</sup> Louisville Metro Council, “A RESOLUTION SUPPORTING CITIES FOR THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) INITIATIVE BY THE LOUISVILLE METRO COUNCIL AND SUPPORT OF INDIVIDUAL CITIES PASSING RESOLUTIONS AND ORDINANCES TO IMPLENIENT THE PRINCIPLES OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AT THE LOCAL LEVEL (As Amended),” Pub. L. No. 121 (2014).

<sup>206</sup> Louisville Metro Council Meeting.

stating that Right to Life groups have repeatedly opposed CEDAW and that the resolution could mean that Louisville would have to provide public funding for abortion.<sup>207</sup> Christianity's views against abortion were brought up numerous times. Councilmember Stuart Benson stated: "The Pope is the most influential figure in the world and he was against [CEDAW]. Why? Because he thinks life is precious. The name 'CEDAW' is the problem with this resolution."<sup>208</sup> Councilmember Kramer went on to claim that he had looked into why the U.S. had not ratified CEDAW at the federal level and concluded that it was because the Holy See had voted against it. He then presented a document from the Conference of Bishops stating that CEDAW promotes abortion.<sup>209</sup> The debate raged on, with opponents of CEDAW demanding that the word "CEDAW" be taken out of the resolution because of its connection with abortion while Council members who were proponents of the resolution insisted that abortion is "one little issue" on a spectrum of issues that affect women. They argued that keeping the word "CEDAW" is important because it shows solidarity with other CEDAW cities who are working to end discrimination against women.<sup>210</sup> Conservative Council members rebutted, saying that solidarity is the problem. Councilmember Stuart Benson pointed out that "the so-called experts on the CEDAW Committee are from countries like Qatar and Uganda," and countries like Pakistan had ratified CEDAW, countries that in his eyes have terrible human rights abuses against women for religious reasons. Benson and other conservative Council members did not want to stand in solidarity with "those places."<sup>211</sup> Perhaps they did not realize the hypocrisy of advocating against a CEDAW resolution that would benefit women in their community because of their own religious beliefs on abortion.

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<sup>207</sup> Louisville Metro Council Meeting.

<sup>208</sup> Louisville Metro Council Meeting.

<sup>209</sup> Louisville Metro Council Meeting.

<sup>210</sup> Louisville Metro Council Meeting.

<sup>211</sup> Louisville Metro Council Meeting.

Louisville's CEDAW resolution ended up passing after a compromise to add in a disclaimer stating that the resolution "does not support or oppose any treaty."<sup>212</sup>

What is most interesting about what happened at the Louisville Metro Council meeting is that the proponents of CEDAW did not advocate for abortion access as one of their priorities in passing the resolution, yet the Right to Life groups and the conservative council members dwelled on CEDAW's connection with abortion internationally as their main reason for not supporting it. In an interview, the leader of Louisville for CEDAW pointed out that, although reproductive rights groups like Planned Parenthood were part of their coalition, they were not explicit about reproductive issues in mobilizing support around the resolution: "[The opposition] is just the hostility around women's human rights or feminism that is already there. You can take up a number of women's issues and still be shot down by pro-life rhetoric."<sup>213</sup> Indeed, Kentucky is hostile to reproductive rights. The state follows the federal Hyde Amendment standard and imposes several other restrictions on abortion access.<sup>214</sup> On one hand, it is not surprising then that the link between abortion and CEDAW was made by conservative lawmakers and anti-choice advocates. What is worth examining is that Louisville CEDAW proponents did not or chose not to explicitly link their CEDAW resolution to advancing abortion access when it is clearly a serious issue in the state. Louisville for CEDAW is not alone in choosing not to link CEDAW with abortion as a human right. In fact, proponents of CEDAW around the country, including my interviewee who worked

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<sup>212</sup> Louisville Metro Council, A RESOLUTION SUPPORTING CITIES FOR THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) INITIATIVE BY THE LOUISVILLE METRO COUNCIL AND SUPPORT OF INDIVIDUAL CITIES PASSING RESOLUTIONS AND ORDINANCES TO IMPLENIENT THE PRINCIPLES OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AT THE LOCAL LEVEL (As Amended).

<sup>213</sup> Barnett, Interview with Louisville CEDAW Activist.

<sup>214</sup> Guttmacher Institute, "State Facts About Abortion: Kentucky," May 2018, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-kentucky>.

to pass CEDAW at the state level in Kentucky, have themselves advanced the argument that CEDAW is “abortion neutral.”<sup>215</sup> While CEDAW does not explicitly refer to abortion, it also does not explicitly refer to most violations of women’s rights. Yet the absence of these terms does not make CEDAW ‘neutral’ as to their legality.<sup>216</sup> The CEDAW Committee has repeatedly made clear that it considers restrictive abortion laws incompatible with CEDAW.<sup>217</sup> Shying away from the CEDAW-abortion connection may be a strategy to thwart anti-choice opposition and get women’s rights legislation passed, but it is also perpetuating the misguided idea that abortion is not fundamental to women’s equality.

Advocacy efforts to pass a local CEDAW resolution or ordinance must consider both the positive and negative aspects to connecting the local CEDAW resolutions and ordinances to the UN CEDAW’s impact on abortion laws internationally. Leaving out any wording on abortion in a CEDAW ordinance in the way the UN treaty does may be beneficial in thwarting anti-choice opposition and avoiding any stigma associated with reproductive rights. Advocates can then interpret the ordinance later to include abortion access, similarly to what has occurred in the interpretation of the treaty internationally. However, not associating abortion with women’s equality, especially in abortion-hostile states like Kentucky and Pennsylvania, is in a sense, giving in to anti-choice rhetoric that abortion is a separate issue from women’s human rights. On the other hand, explicitly including abortion as a frontal issue in advocacy around the local ordinance may be inviting opposition from anti-choice groups and the ordinance may not get passed at all.

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<sup>215</sup> See for example Amnesty International, “A Fact Sheet on CEDAW: Treaty for the Rights of Women,” August 25, 2005, [https://www.amnestyusa.org/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf). “: CEDAW does not address the matter of abortion and, according to the U.S. State Department, is “abortion neutral.” Many countries in which abortion is illegal— such as Ireland, Burkina Faso, and Rwanda— have ratified the Convention.”; Teena Halbig, Interview with Kentucky CEDAW Activist, Telephone Interview, July 31, 2018 “CEDAW is abortion-neutral. I don’t really see it as an abortion issue with CEDAW. I see it to change women's rights. I wouldn't see it as advancing abortion rights.”

<sup>216</sup> Benshoof, “US Ratification of CEDAW,” 27.

<sup>217</sup> Center for Reproductive Rights, “Bringing Rights to Bear,” 3–6.

However, as evidenced in Louisville, anti-choice groups made the CEDAW-abortion connection even without any wording about abortion in the resolution. Therefore, there is a chance, as we saw in Louisville, that anti-choice opposition will oppose the ordinance whether abortion is explicitly included in the ordinance or not because of the association the UN treaty has with abortion internationally.

Notably, the CEDAW resolution in Louisville was still able to surpass anti-choice opposition that proponents of CEDAW had not prepared to go up against. Therefore, perhaps including wording on abortion in a resolution or ordinance could be useful in guaranteeing that the document influences advancing local abortion access, especially if anti-choice groups are going to oppose it either way. Indeed, in looking at passing a future CEDAW ordinance in Louisville, Louisville for CEDAW advocates are exploring this concept:

[Anti-choice groups] tried to be an obstacle before but the fact that so much groundwork had been done by so many diverse groups of girls, women and some men is in itself a formula for resistance. [Going forward], we need to formalize this and the more that we do that, the more that we can handle the opposition. Not to be naïve about their power and the money they have behind it, but I do believe in our power too; the power of the resistance.<sup>218</sup>

Another positive aspect of embracing the CEDAW-abortion connection is getting to use the tools that the UN CEDAW Committee have provided through their General Comments, Concluding Observations, and jurisprudence regarding abortion. Indeed, all my interviewees working both directly on local CEDAW resolutions and ordinances and those working broadly on the C4C campaign have all recognized the influence that the international use of CEDAW has on local CEDAW advocacy. Soon-Young Yoon from the NGO CSW/NY said that drawing from international CEDAW jurisprudence, judgments and interpretation is the “whole point” of passing a local CEDAW ordinance.<sup>219</sup> JoAnn Kamuf Ward from the Human Rights Institute said they have

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<sup>218</sup> Barnett, Interview with Louisville CEDAW Activist.

<sup>219</sup> Yoon, Interview with Human Rights Professional.

been infusing the General Comments and interpretations of CEDAW into the local C4C advocacy.<sup>220</sup> Local CEDAW advocates in Pittsburgh, Louisville and at the state level in Kentucky said they informally leverage human rights connections locally and embraced the C4C campaign slogan: “Make the Global Local.”<sup>221</sup> In sum, there is no dispute that abortion is highly stigmatized in the U.S. and the anti-choice movement is powerful and well-funded, but there is always going to be opposition to any kind of social justice advancement. Louisville for CEDAW successfully passed their CEDAW resolution despite being unprepared for such opposition. It would be interesting to see what they could do for abortion access in Louisville by strategizing ahead of time and even perhaps explicitly including the right to an abortion in their future ordinance.

#### Reproductive Health as a Human Right in the U.S.

Given that Americans generally support human rights, but are skeptical of international human rights mechanisms, can using the framework that reproductive health is a human right be useful in advocating for abortion access in the U.S.? The interviewees to whom I asked this question unanimously agreed that a human rights framework is beneficial in advancing reproductive health access. Two themes emerged from their responses. Firstly, the human rights framework brings forth reproductive health as a right one can claim from their government. A human/reproductive rights professional stated that:

The human rights framework requires participation from communities in claiming their rights and requires governments to engage communities in protecting and upholding rights, therefore requiring transparency. A human rights framework is an opportunity to bring communities together. It brings a tremendous amount to the conversation around reproductive health/rights in the U.S.<sup>222</sup>

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<sup>220</sup> JoAnn Kamuf Ward, Interview with Human Rights Professional, Telephone Interview, July 25, 2018.

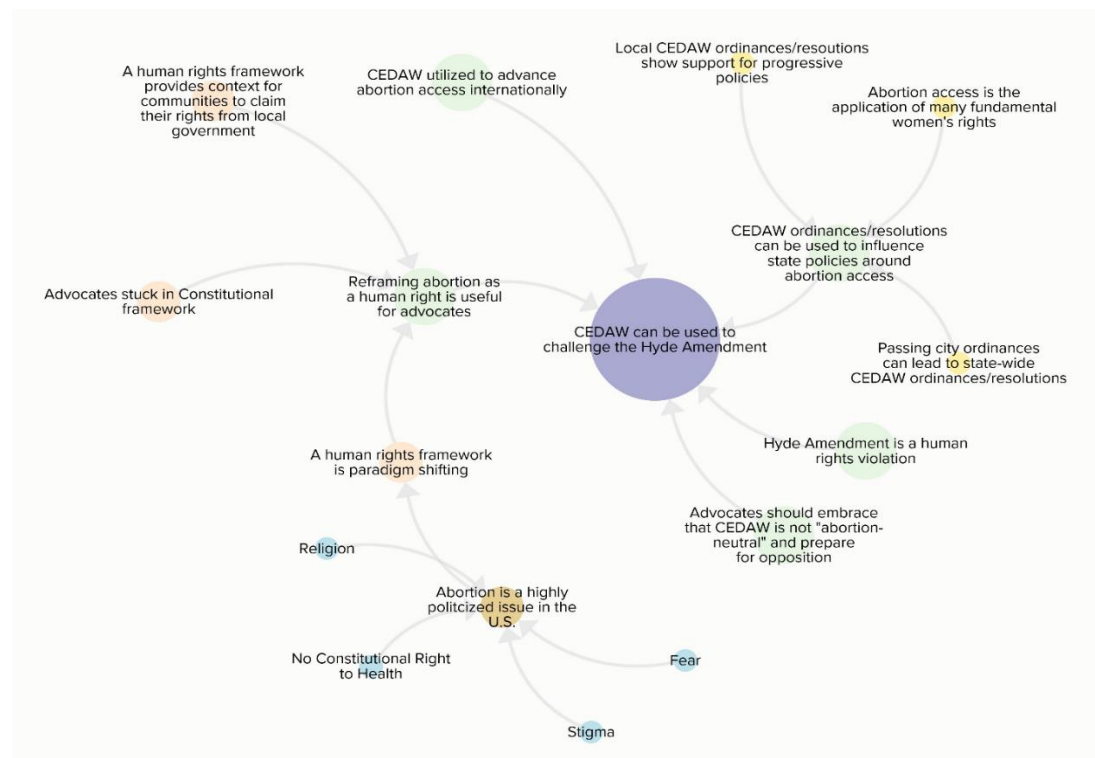
<sup>221</sup> Bandes, Interview with Pittsburgh CEDAW Activist; Jain, Interview with Pittsburgh Gender Equity Commission Executive Director; Barnett, Interview with Louisville CEDAW Activist; Halbig, Interview with Kentucky CEDAW Activist.

<sup>222</sup> Anonymous, Interview with Human/reproductive rights Professional.

By explicitly including abortion access as part of their women's rights agenda, CEDAW cities can play a role in encouraging their local governments to recognize that safe abortion care is important in their communities. Secondly, because the right to health is not guaranteed by the U.S. Constitution, framing health as a human right, including reproductive health, can be paradigm shifting. Communicating that abortion is health care is important in destigmatizing abortion in the U.S.<sup>223</sup> In the wake of the Affordable Care Act, there is a broad coalition of groups talking about health care as a human right,<sup>224</sup> and it is important not to separate reproductive health care from other kinds of health care.

### The Potential for Utilizing Local CEDAW Ordinances to Advance Abortion Access

Below is a map of how and why local CEDAW resolutions and ordinances can help advance abortion access in the U.S.:



<sup>223</sup> Lange, Interview with Philadelphia Abortion Fund.

<sup>224</sup> Soohoo, Interview with Human/reproductive rights Professional.

If the human rights framework is useful in advancing abortion access in the U.S. and CEDAW is a human rights treaty that has helped advance abortion as a human right internationally, what role do the local CEDAW ordinances have in promoting abortion access in their communities? My respondents, who unanimously agreed that abortion as a fundamental human right was a useful framework in the U.S., were hesitant to make the connection between the local CEDAW ordinances and advancing abortion access. The local CEDAW activists who I spoke with in San Francisco, Louisville, Pittsburgh and at the state level in Kentucky all said that abortion access was not a primary area they are working on. The biggest reason for this that I received from activists in Pittsburgh was that abortion access was not a dominant topic because legislation around abortion happens at the state and county level. If the right to abortion were overturned at the federal level, it would be up to the state to guarantee the right to abortion. If Pennsylvania then decided that they would not legalize abortion, Pittsburgh could not override that decision. However, as discussed previously, CEDAW resolutions and ordinances can indirectly affect state policies. Therefore, the CEDAW ordinance could potentially help build advocacy around abortion access now, instead of leaving the fate of Pennsylvania women in the hands of the state in case *Roe* is overturned. Indeed, activists agreed that the power of CEDAW is that it is not a single-issue treaty. By adopting the CEDAW principles into a local ordinance, communities get to determine what the reach and focus of their local ordinance will be.<sup>225</sup> In fact, Pittsburgh's GEC told me that on one hand, they are skeptical that they would be able to affect change around abortion access in the community but at the same time it is something that they are concerned with. She said: "People's ability to have autonomy and free-will over their own bodies is going to have to be a part of our conversation, but at the moment, what we are trying to do is challenge the institutionalization of

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<sup>225</sup> Murase, Interview with San Francisco CEDAW Activist.

gender inequality...which includes women being decision-makers at all levels, including of their own bodies.”<sup>226</sup> Passing a CEDAW ordinance may not legally require county or state laws to change, but instead advocates can use the ordinance to build advocacy around supporting pro-choice policies. In a state like Pennsylvania that follows the Hyde Amendment and has numerous other laws restricting access to abortion, this collective advocacy around abortion as a human right will be fundamental in promoting women’s equality in the state.

The respondents working as human rights professionals and human/reproductive rights professionals overall agreed that as part of a broad commitment to uphold the principles of CEDAW, localities are committing to women’s reproductive health/rights. As one human/reproductive rights professional put it: “Certainly, I think [localities that have passed a CEDAW ordinance] are seeking to incorporate the principles of CEDAW which include respect for and promotion of reproductive rights, including abortion...”<sup>227</sup> A human rights professional explained how abortion rights within the UN treaty translate to the CEDAW cities:

On the issue of abortion, the emphasis in CEDAW is really on a woman’s right to choose and on prevention and that means access to reproductive technology and services. Their emphasis is also on non-discrimination, so these also must be affordable, available, and women must be well-informed of these rights. In that light, I would say yes, [by passing a local CEDAW ordinance], you have definitely committed yourself to women’s sexual and reproductive health/rights.<sup>228</sup>

Access to reproductive health services, including abortion, is imperative to achieving gender equality. Therefore, even a broad commitment to eliminating gender discrimination must include eliminating barriers to reproductive health services for *all* women, regardless of their income.

#### *Pittsburgh’s CEDAW Ordinance and Pennsylvania’s Hyde Amendment*

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<sup>226</sup> Jain, Interview with Pittsburgh Gender Equity Commission Executive Director.

<sup>227</sup> Anonymous, Interview with Human/reproductive rights Professional.

<sup>228</sup> Yoon, Interview with Human Rights Professional.

The local CEDAW ordinance that was passed in Pittsburgh could be a crucial step in challenging the Hyde Amendment in Pennsylvania. Although health care is not a key principle of the ordinance, advocates could still make the link between abortion access and the support for racial and gender equity that is outlined in the ordinance. Therefore, even though the ordinance does not contain a health care provision, the strong intersectionality aspect of the ordinance could be used to bolster the claim that the Pennsylvania abortion restrictions are a denial of equal rights for women. A human/reproductive rights professional offered:

Pittsburgh residents could try to claim rights at the local level. There are ways in which localities can be more rights-protecting on reproductive rights and so local advocates could explore different ways in which they can use the CEDAW ordinance to really ensure that their local government is more protective of reproductive rights, including abortion access.<sup>229</sup>

Given that the Hyde Amendment disproportionately affects women of color, the commitment to economic development that is laid out in the Pittsburgh CEDAW ordinance must include reproductive justice issues such as abortion funding in order to achieve its goal of intersectional gender equity.

The advocacy around abortion rights in Pittsburgh could have the potential to affect women living outside of the city. Several interviewees pointed out that the local CEDAW ordinances could be used to support other laws that call upon challenging abortion restrictions. When asked if Pittsburgh's CEDAW ordinance could be used to challenge the Hyde Amendment restrictions on abortion in Pennsylvania, a human rights professional told me: "It's probably a really important starting point. What we hope will happen with the CEDAW ordinance movement is that more people will realize that it's applicable to many different things and you can put it together with other kinds of ordinances and laws that you could call upon to challenge restrictions on

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<sup>229</sup> Anonymous, Interview with Human/reproductive rights Professional.

abortion.”<sup>230</sup> It is easier for a progressive city such as Pittsburgh to pass a progressive ordinance such as CEDAW, but it could also be used to help the women living in the swath of conservative counties in Pennsylvania. A local abortion fund noted that the situation for rural women who need an abortion in Pennsylvania is dire: “There are so many people that live in rural Pennsylvania who don’t have access to abortion because they live in a county where it is impossible to open a clinic and they have to figure out a way to travel all the way to one of our cities to come get care.”<sup>231</sup> The argument could be made that women’s rights legislation passed in Pittsburgh affects more than just the residents of Pittsburgh. In a state like Pennsylvania, where rural women are dependent on the cities for abortion care, utilizing Pittsburgh’s CEDAW ordinance to advance abortion access could be essential to changing the landscape around abortion access in the state.

#### The Hesitation to Advance Abortion as a Human Right in the U.S.

As we see the international community advance abortion as a human right, there seems to be hesitation in the U.S. to do the same, even in CEDAW cities. My respondents did not all agree that there was hesitation, but between them listed several possible reasons for the difficulty advocates experience in advancing abortion as a human right in the U.S. The most common responses I received from local CEDAW activists pointed to religion and stigma. A local abortion fund stated: “There is huge abortion stigma in almost every way you interact with American culture. I think you can easily point to discomfort we have with bodily autonomy and people having sex. Religion is immediately part of it.”<sup>232</sup> Professor and scholar of law, Carol Sanger, examined why abortion was such an untouchable subject in her book *About Abortion*. She reasons that abortion is long entrenched in secrecy because it involves women’s sexual bodies.<sup>233</sup>

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<sup>230</sup> Yoon, Interview with Human Rights Professional.

<sup>231</sup> Lange, Interview with Philadelphia Abortion Fund.

<sup>232</sup> Lange.

<sup>233</sup> Sanger, *About Abortion: Terminating Pregnancy in Twenty-First Century America*, 215.

Furthermore, unlike other traditional taboos that are accidental or just bad luck, such as cancer, miscarriage or homosexuality, abortion is intentional. It is not just an intentional decision, but a decision aimed at ending fetal life and therefore for some, it is likened to deliberate killing.<sup>234</sup> A Louisville CEDAW activist said that in her community, the stigma around women's sexuality and women's decision-making has been exploited successfully by religious organizations.<sup>235</sup> A Pittsburgh CEDAW activist also concurred: "America does not see it as a health issue or a human rights issue. They see it as an issue of religious responsibility."<sup>236</sup> Another popular reason I received from local CEDAW activists for hesitation in advancing abortion as a human right was fear. A local abortion fund told me:

There's the fear of violence involved in abortion: doctors have been murdered, clinic staff have been murdered, patients receive harassment from people organizing against abortion access. It's really obvious why most people aren't sharing their abortion stories. Even though one in four people are having an abortion, nobody is talking about it with each other. So, despite it being an obvious connection that abortion is health care and abortion should be a human right to a lot of us, there's not a lot of people talking about it that way because of fear.<sup>237</sup>

A Louisville CEDAW activist pointed out how deeply rooted that fear is in our psyches: "Women are at risk in so many ways and many feminist women will stop short on abortion because we are conditioned to fear the stigma."<sup>238</sup> Indeed, abortion is a common medical procedure and a much-exercised right.<sup>239</sup> Normalizing abortion as an acceptable option to an unwanted pregnancy, Sanger reasons, would "pry abortion loose from the confines of secrecy" and would "align ordinary discourse with experience."<sup>240</sup> When women's rights activists stop short of including a common

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<sup>234</sup> Sanger, 215.

<sup>235</sup> Barnett, Interview with Louisville CEDAW Activist.

<sup>236</sup> Williams, Interview with Pittsburgh CEDAW Activist and Reproductive Justice Fellow.

<sup>237</sup> Lange, Interview with Philadelphia Abortion Fund.

<sup>238</sup> Barnett, Interview with Louisville CEDAW Activist.

<sup>239</sup> Sanger, *About Abortion: Terminating Pregnancy in Twenty-First Century America*, 215.

<sup>240</sup> Sanger, 216.

medical procedure that women need as a crucial part of their human rights agenda, it perpetuates this fear associated with talking about abortion as the health care that it is.

The fact that the U.S. does not consider health care a human right contributes to the failure to advance abortion as a human right in the U.S. A human rights professional said, “We need to put in place protections for health as a human right and then talk about women’s rights within that.”<sup>241</sup> Furthermore, because health is not a constitutional right in the U.S., but abortion is, advocates tend to get stuck in a constitutional framework rather than a human rights framework. Instead of talking about the right to abortion on its own, as advocates do in a constitutional framework, a human rights framework includes abortion in a number of fundamental human rights. As a human/reproductive rights professional pointed out:

A number of human rights that we all agree on require that women have access to abortion so it's not really a human right to abortion; it's a human right to bodily autonomy. It's a human right to liberty. It's a human right to health care and to make your own health care decisions. Those are the rights and abortion is just the application of those rights.<sup>242</sup>

Therefore, reframing abortion as a human right may help combat the stigma and fear that is associated with abortion. This, in turn, can help normalize abortion as merely the health care that women need. The more abortion is normalized, the more women will feel comfortable talking about their abortion experiences. Sanger writes that the willingness of women and others to talk about abortion will over time make a huge difference to its legislative fate.<sup>243</sup> As can be learned from other social movements such as the movement for Marriage Equality, the more openly

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<sup>241</sup> Yoon, Interview with Human Rights Professional.

<sup>242</sup> Soohoo, Interview with Human/reproductive rights Professional.

<sup>243</sup> Sanger, *About Abortion: Terminating Pregnancy in Twenty-First Century America*, 216.

women can talk about their experiences without the fear of backlash, the less power religious groups have in exploiting the health care choices that women make.

### Discussion

The C4C movement can have an impact on abortion access in the U.S. by helping build advocacy around abortion as a fundamental human right that is inherently linked to women's rights outlined in the UN treaty. The CEDAW ordinances can also be used to support other pro-choice policies at the municipal, county or state level. If CEDAW proponents prepare for the anti-choice opposition and embrace the connection between the UN treaty and abortion access, local CEDAW advocates may be successful in changing the conversation in their communities about abortion as a fundamental human right. Although abortion is a highly politicized issue in the U.S., reframing abortion as a human right can help to combat the stigma and fear associated with abortion, which can result in more women openly talking about their abortions as the health care that it is. Sharing stories of abortion as a common medical procedure and not just discussing it from a policy perspective, will shift the current narrative that abortion is linked to shame and secrecy.<sup>244</sup> Normalizing abortion can then result in more positive legislation. Framing abortion as part of women's rights in the Pittsburgh CEDAW ordinance can benefit more than just the residents of Pittsburgh but can influence many of the conservative counties in the state. Pennsylvania, a purple state that follows the Hyde Amendment restrictions and has a strong anti-abortion presence, reflects the country in a lot of ways.<sup>245</sup> Success in advancing abortion access in Pennsylvania could cause a ripple effect in states across the country.

### Section VI: The Future of the C4C Movement

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<sup>244</sup> Sanger, 216.

<sup>245</sup> Williams, Interview with Pittsburgh CEDAW Activist and Reproductive Justice Fellow.

### **and Its Potential for Advancing Abortion Access**

To date, we see (except for San Francisco) the CEDAW ordinances going into the Gender Analysis phase of implementation or strategizing on how to use the results of their city's Gender Analysis. The CEDAW ordinances are gaining momentum, refining over time and building best practices.<sup>246</sup> When asked about the future of the C4C movement, both of my human rights professionals working on the C4C campaign stated that they hoped for full implementation of CEDAW at the local level. Soon Young-Yoon from the NGO CSW/NY stated, "I would love to see [full implementation of CEDAW at the local level] across all different articles of CEDAW that deal with economic rights, social rights, political rights; all of those things that ultimately affect our sexual and reproductive health/rights."<sup>247</sup> JoAnn Kamuf Ward from the Human Rights Institute would like to see advocates think more about what CEDAW implementation means:

CEDAW implementation currently is synonymous with the Gender Analysis and the Gender Equity Action Plan. It would be amazing if advocates are also thinking about how to measure progress in particular policy areas so thinking about what the biggest challenges facing women are and how do we use the ordinance to think about particular policy areas where we want to have an impact.<sup>248</sup>

Even without federal ratification of CEDAW, this kind of urban push to eliminate gender equality is norm-shifting. A Louisville CEDAW activist said, "If a human rights framework takes hold of your consciousness, that's something that you can't unlearn. It's a power that is remarkable. It could be what it takes to break through some of the fierceness on the federal level against CEDAW."<sup>249</sup> Most of my interviewees viewed the C4C movement as a way in which to shift social norms in the U.S. toward women's rights and human rights in general. A human/reproductive rights professional told me:

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<sup>246</sup> Anonymous, Interview with Human/reproductive rights Professional.

<sup>247</sup> Yoon, Interview with Human Rights Professional.

<sup>248</sup> Kamuf Ward, Interview with Human Rights Professional.

<sup>249</sup> Barnett, Interview with Louisville CEDAW Activist.

Local organizing, where people are saying that the values in these human rights documents are our values and we believe in it so much that we are going to pass a [a human rights ordinance] at the local level, is one of the more effective ways of using human rights. It blunts criticisms that human rights are being imposed upon us or that they are not consistent with American values.<sup>250</sup>

CEDAW cities have achieved very important successes despite the difficulties they have faced. I argue that if the localities adopting CEDAW prioritize abortion access as a serious issue affecting women in their communities, it could be groundbreaking for sexual and reproductive rights around the country. The U.S. is almost 80% urban by population and therefore the C4C campaign could have a ripple effect in improving abortion access around the country. The more cities that adopt the CEDAW principles, the more women know this human rights framework exists and therefore the more social norms about sexual and reproductive rights can be shifted. One interviewee commented on the vast reach of the C4C campaign: “I do believe earnestly that if we do it in the cities, you’ve pretty much shifted the U.S. and if you do it in the U.S., which is the biggest economy in the world and has the biggest political clout, than you actually will shift the world.”<sup>251</sup> In the era of Trump, women’s rights activists cannot afford to play it safe and concede to the fear and stigma perpetuated by conservatives and religious groups. A conservative Supreme Court could mean the situation surrounding abortion access in the U.S. is dire. Utilizing the power of a human rights mechanism like a local CEDAW ordinance to challenge restrictions on abortion access like the Hyde Amendment in Pennsylvania and Kentucky could become the model for other localities to pass similar legislation across the country. I encourage cities like Louisville, that are putting together the groundwork for a future CEDAW ordinance, and Pittsburgh, whose ordinance intersects with abortion access, to consider the harm that the Hyde Amendment is having on poor

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<sup>250</sup> Soohoo, Interview with Human/reproductive rights Professional.

<sup>251</sup> Yoon, Interview with Human Rights Professional.

women in their respective cities to put advancing abortion access at the forefront of their CEDAW advocacy and implementation.

### **Conclusion**

Restrictions on abortion access like the Hyde Amendment make it systematically impossible for a large portion of reproductive-age women to exercise their Constitutional right to safe abortion care. Federal ratification and full implementation of CEDAW could revolutionize women's equality in the U.S. Unfortunately, in our current political climate (2018), ratification of CEDAW is highly unlikely to happen at the federal level. However, at the local level, advocates are embracing the power of CEDAW. They have CEDAW's single equality standard and the CEDAW Committee's jurisprudence, General Comments and Concluding Observations to guide them in fighting for abortion rights in the name of women's equality. The power of CEDAW is crucial in a climate where anti-choice groups do not hesitate to call women who have abortions and the physicians who provide them "murderers," and conservative lawmakers and the Supreme Court continually chip away at women's constitutional right to an abortion. Women's equality proponents cannot give in to the stigma and shy away from putting access to abortion for *all* women at the forefront of their advocacy efforts. The ability to decide whether and when to become a mother is foundational to full enjoyment of fundamental human rights. As the international community advances abortion as a human right, the U.S. cannot afford to be the exception and local activists should be leading the charge.

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**Appendix A**  
**Interviewees**

Human Rights Professionals:

1. Soon-Young Yoon, Past Chair, Ex-Officio, former Vice-Chair of the NGO Committee on the Status of Women, NY who supports implementation of CEDAW
2. JoAnn Kamuf Ward, Director of the Human Rights in the U.S. Project at Columbia Law School Human Rights Institute, part of the Cities for CEDAW campaign

Human/reproductive rights Professionals:

3. Cynthia Soohoo, former Director of the U.S. Legal Program at the Center for Reproductive Rights, former Director of the Bringing Human Rights Home Project at Columbia Law School Human Rights Institute, and currently Co-Director of the Human Rights and Gender Justice Clinic at CUNY Law School
4. Anonymous, extensive knowledge of the application of international human rights domestically and professional experience advancing reproductive rights as human rights

Local CEDAW Activists

5. \*Marcia Bandes, Steering Committee Chair of Pittsburgh for CEDAW
6. Mica Lee Williams, Pittsburgh for CEDAW Steering Committee Member and If/When/How Reproductive Justice State Fellow at New Voices Pittsburgh
7. anupama jain, Executive Director of the Pittsburgh Gender Equity Commission, the committee tasked with implementing the city's local CEDAW ordinance
8. Emily Murase, Director of the San Francisco Department on the Status of Women who works to implement the city's CEDAW ordinance

9. Mary Sue Barnett, Co-Chair of the Louisville CEDAW Coalition
10. Teena Halbig, President of the Kentucky United Nations Association who led the effort to get a CEDAW resolution passed through the Kentucky House of Representatives

Local Abortion Fund:

11. Marah Lange, Manager of Client Services at Women's Medical Fund, an abortion fund in Philadelphia, PA

## Appendix B

### Cities for CEDAW: Status of Local Activities



#### Cities Exploring Possible CEDAW Ordinance or Resolution<sup>4</sup>

City/County/State	State
Boston	Massachusetts
Bozeman	Montana
Buffalo	New York
Burbank	California
Denver	Colorado
Erie	Colorado
Fairfax	Virginia
Golden	Colorado
Houston	Texas
Juneau	Alaska
Longmont	Colorado
Monrovia	California
New York	New York
Orange County	California
Palo Alto	California
Philadelphia	Pennsylvania
Phoenix	Arizona
Portland	Oregon
Radford	Virginia
Raleigh	North Carolina
Richmond	California
Robbinsdale	Minnesota
San Diego	California
Tacoma	Washington
Tempe	Arizona
Toledo	Ohio
Tolleson	Arizona
Tulare County	California
Washington, D.C.	District of Columbia
Westminster	Colorado
Ypsilanti	Michigan

<sup>1</sup> For further information on Cities for CEDAW, please visit [citiesforcedaw.org](http://citiesforcedaw.org)

<sup>2</sup> These cities have adopted a resolution affirming support for the principles of CEDAW, or have one pending.

<sup>3</sup> Note: this was passed by the Kentucky House of Representatives. There is no similar resolution in the State Senate.

<sup>4</sup> These include cities that have begun organizing Cities for CEDAW activity (e.g., forming coalitions of civil society organizations; meeting with city council members), but have not yet formally introduced a resolution or ordinance.

## Appendix C

### LOCAL IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The City of [CITY NAME] hereby finds and declares as follows:

(a) The Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), an international human rights treaty, provides a universal definition of discrimination against women and brings attention to a whole range of issues concerning women's human rights. Countries that ratify **CEDAW** are mandated to condemn all forms of discrimination against women and girls and to ensure equality for women and girls in the civil, political, economic, social and cultural arenas. The United Nations General Assembly adopted **CEDAW** in 1979 and President Carter signed the treaty on behalf of the United States in 1980, but the United States Senate has not yet ratified **CEDAW**.

(b) Since 1995, state and local jurisdictions have stepped up and passed resolutions in support of **CEDAW**. Some have implemented ordinances establishing **CEDAW** principles as law. In 2014, municipalities across the nation began signing onto the Cities for CEDAW Initiative, pledging to step up where the federal government has failed and implement the principles of CEDAW at the local level.

(c) Indeed, there is a continued need for the City of [CITY NAME] to protect the human rights of women and girls by addressing discrimination, including violence, against them and to implement, locally, the principles of **CEDAW**. Adherence to the principles of **CEDAW** on the local level will especially promote equal access to and equity in health care, employment, economic development and educational opportunities for women and girls and will also address the continuing and critical problems of violence against women and girls. There is a need to analyze the operations of City departments, policies and programs to identify discrimination in, but not limited to, employment practices, budget allocation and the provision of direct and indirect services and, if identified, to remedy that discrimination. In addition, there is a need to work toward implementing the principles of **CEDAW** in the private sector.

(d) There is a need to strengthen effective national and local mechanisms, institutions and procedures and to provide adequate resources, commitment and authority to: (1) advise on the impact of all government policies on women and girls; (2) monitor the situation of women comprehensively in recognition of the interconnectedness of discrimination based on gender, race and other social criteria; and (3) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination. The [OVERSIGHT BODY NAME] shall be designated as the implementing and monitoring agency of **CEDAW** in the City of [CITY NAME].

#### DEFINITIONS.

As used in this Article, the following words and phrases shall have the meanings indicated herein:

- (a) "City" shall mean the City of [CITY NAME].
- (b) [DEFINE NAME OF OVERSIGHT BODY].

(c) "Disaggregated data" shall mean information collected and analyzed by enumerated categories in order to identify the disparities existing between women and men. These categories shall include, to the extent permitted by law, sex, race, immigration status, parental status, language, sexual orientation, disability, age and other attributes.

(d) "Discrimination against women" shall include, but not be limited to, any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty by family, community or government.

(e) "Gender" shall mean the way society constructs the difference between women and men, focusing on their different roles, responsibilities, opportunities and needs, rather than their biological differences.

(f) "Gender analysis" shall mean an examination of the cultural, economic, social, civil, legal and political relations between women and men within a certain entity, recognizing that women and men have different social roles, responsibilities, opportunities and needs and that these differences, which permeate our society, affect how decisions and policy are made.

(g) "Gender equity" shall mean the redress of discriminatory practices and establishment of conditions enabling women to achieve full equality with men, recognizing that needs of women and men may differ, resulting in fair and equitable outcomes for both.

(h) "Human rights" shall mean the rights every individual possesses that are intended to improve the conditions in society that protect each person's dignity and well-being and the humanity of all people.

(i) "Racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

## **LOCAL PRINCIPLES OF CEDAW.**

It shall be the goal of the City to implement the principles underlying **CEDAW** by addressing discrimination against women and girls in areas including economic development, violence against women and girls and health care. In implementing **CEDAW**, the City recognizes the connection between racial discrimination, as articulated in the International Convention on the Elimination of All Forms of Racial Discrimination, and discrimination against women. The City shall ensure that the City does not discriminate against women in areas including employment practices, allocation of funding and delivery of direct and indirect services. The City shall conduct gender analyses, to determine what, if any, City practices and policies should change to implement the principles of **CEDAW**.

### **(a) Economic Development.**

(1) The City shall take all appropriate measures to eliminate discrimination against women and girls in the City of [CITY NAME] in employment and other economic opportunities, including, but not limited to, ensuring:

(A) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment and the right to receive access to and vocational training for nontraditional jobs;

(B) The right to promotion, job security and all benefits and conditions of service, regardless of parental status, particularly encouraging the appointment of women to decision making posts, City revenue generating and managing commissions and departments, and judicial positions;

(C) The right to equal remuneration, including benefits and to equal pay in respect to work of equal value;

(D) The right to the protection of health and safety in working conditions, including supporting efforts not to purchase sweatshop goods, regular inspection of work premises, and protection from violent acts at the workplace.

(2) The City shall encourage and, where possible, fund the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities, paid family leave, family-friendly policies and work-life balance.

(3) The City shall encourage the use of public education and all other available means to urge financial institutions to facilitate women's access to bank accounts, loans, mortgages, and other forms of financial services.

**(b) Violence Against Women and Girls.**

(1) The City shall take and diligently pursue all appropriate measures to prevent and redress sexual and domestic violence against women and girls, including, but not limited to:

(A) Police enforcement of criminal penalties and civil remedies, when appropriate;

(B) Providing appropriate protective and support services for survivors, including counseling and rehabilitation programs;

(C) Providing gender-sensitive training of City employees regarding violence against women and girls, where appropriate; and

(D) Providing rehabilitation programs for perpetrators of violence against women or girls, where appropriate.

The City shall not discriminate on the basis of race, ethnicity, culture, language or sexual orientation, when providing the above supportive services.

(2) It shall be the goal of the City to take all necessary measures to protect women and girls from sexual harassment in their places of employment, school, public transportation, and any other places where they may be subject to harassment. Such protection shall include streamlined and rapid investigation of complaints.

(3) Prostitutes are especially vulnerable to violence because their legal status tends to marginalize them. It shall be the policy of [CITY NAME] that the Police Department diligently investigate violent attacks against prostitutes and take efforts to establish the level of coercion involved in the prostitution, in particular where there is evidence of trafficking in women and girls.

It shall be the goal of the City to develop and fund projects to help prostitutes who have been subject to violence and to prevent such acts.

(4) The City shall ensure that all public works projects include measures, such as adequate lighting, to protect the safety of women and girls.

(5) It shall be the goal of the City to fund public information and education programs to change traditional attitudes concerning the roles and status of women and men.

**(c) Health Care.**

(1) It shall be the goal of the City to take all appropriate measures to eliminate discrimination against women and girls in the field of health care in order to ensure, on a basis of equity, information about and access to adequate health care facilities and services, according to the needs of all communities, regardless of race, ethnicity, culture, language, and sexual orientation, including information, counseling and services in family planning.

(2) It shall be the goal of the City to ensure that women and girls receive appropriate services in connection with prenatal care, delivery, and the post-natal period, granting free services where possible, as well as adequate nutrition during pregnancy and lactation.

(d) In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**IMPLEMENTATION OF THE PRINCIPLES OF CEDAW IN [CITY NAME].**

(a) **Citywide integration of human rights principles.** The City shall work towards integrating gender equity and human rights principles into all of its operations, including policy, program and budgetary decision-making. [OVERSIGHT BODY NAME] shall train selected departments in human rights with a gender perspective.

(b) **Gender Analysis and Action Plan.** As a tool for determining whether the City is implementing the local principles of CEDAW and/or discriminating against women and girls, selected City departments, programs, policies, and private entities to the extent permitted by law, shall undergo a gender analysis and develop an Action Plan. The gender analysis shall be conducted according to guidelines developed by the [OVERSIGHT BODY NAME]. The gender analysis shall include: (i) the collection of disaggregated data; (ii) an evaluation of gender equity in the entity's operations, including its budget allocations, delivery of direct and indirect services and employment practices and (iii) the entity's integration of human rights principles and the local principles of CEDAW. Upon completion of the gender analysis, the entity shall develop an Action Plan that contains specific recommendations on how it will correct any identified deficiencies and integrate human rights principles and the local principles of CEDAW into its operations.

(1) The [OVERSIGHT BODY NAME] shall identify the City departments, programs, policies, and entities, to undergo the gender analysis and shall develop timelines for completion of the analyses and Action Plans.

(2) The [OVERSIGHT BODY NAME] shall train the selected department, entity, policy or program staff to conduct its gender analysis and shall provide technical assistance to the entity throughout the gender analysis process and development of the Action Plan.

(3) Each department or entity undergoing a gender analysis shall designate a management and/or executive level employee to serve as a liaison to the [OVERSIGHT BODY NAME] and to coordinate the completion of the gender analysis.

(4) Each department or entity undergoing a gender analysis shall provide a report on its gender analysis and its Action Plan to [OVERSIGHT BODY NAME], which shall review, analyze and comment on the report and forward it to the Board of Supervisors and the Mayor.

(5) [OVERSIGHT BODY NAME] shall monitor the implementation of each department or entity's Action Plan.

(c) **Five-year Citywide Action Plan.** Provided sufficient funds are available, [OVERSIGHT BODY NAME] shall develop a five-year Citywide Action Plan. The Citywide Action Plan shall address how to integrate human rights principles into the City's operations, how to further implement the local principles of CEDAW, any and all deficiencies found in the gender analyses and the measures recommended to correct those deficiencies. [OVERSIGHT BODY NAME] shall present the Action Plan to the Mayor. [OVERSIGHT BODY NAME] shall monitor the implementation of the Citywide Action Plan.

#### **CEDAW [OVERSIGHT BODY NAME].**

(a) **Establishment.** A [OVERSIGHT BODY NAME] is hereby established. [OVERSIGHT BODY NAME] shall report to the Mayor. [OVERSIGHT BODY NAME] shall consist of [#] members.

(b) **Purpose.** [OVERSIGHT BODY NAME] is established to advise the Mayor about the local implementation of CEDAW.

(c) **Powers and Duties.** [OVERSIGHT BODY NAME] shall have all powers and duties necessary to carry out the local implementation of CEDAW.

#### **(d) Membership and Organization.**

(1) The members of [OVERSIGHT BODY NAME] shall be as follows:

(A) The President of the [HUMAN RIGHTS COMMISSION OR SIMILAR BODY] or her or his designee;

(B) A staff member from the Mayor's Office knowledgeable about the City's budget, to be designated by the Mayor;

(C) The head of the Department of Human Resources or her or his designee;

(D) Six members from the community to be appointed by [OVERSIGHT BODY NAME], as follows:

(i) Two representatives shall work in the field of international human rights and be knowledgeable about CEDAW,

(ii) One representative shall be knowledgeable about economic development, including employment issues,

(iii) One representative shall be knowledgeable about health care issues,

(iv) One representative shall be knowledgeable about violence against women, and

(v) One representative shall be knowledgeable about City unions and experienced in women's issues.

(2) [OVERSIGHT BODY NAME] shall convene by [DATE].

(3) All appointed members of [OVERSIGHT BODY NAME] shall serve at the pleasure of their appointing authorities. The term of each community member of [OVERSIGHT BODY NAME] shall be for [#] years.

(e) **Alternate members.** An alternate may be designated for each member. The term of office of the alternate shall be the same as that of the regular member. When the regular member is not present at the meeting of [OVERSIGHT BODY NAME], the alternate may act as the regular member and shall have all the rights, privileges, and responsibilities of the regular member.

(f) **Attendance requirement.** In the event that any community member and her or his alternate miss three regularly scheduled meetings of [OVERSIGHT BODY NAME] without the prior notice to [OVERSIGHT BODY NAME], the President or her or his designee shall certify in writing to the Mayor that the member and alternate have missed three meetings. On the date of such certification, the member and alternate shall be deemed to have resigned from [OVERSIGHT BODY NAME]. The President or her or his designee shall then request the appointment of a new member and alternate.

## SUMMARY OF CEDAW.

Article 1: Defines discrimination against women as any "distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedom in the political, economic, social, cultural, civil, or any other field."

Article 2. Mandates concrete steps, implementing laws, policies and practices to eliminate discrimination against women and embody the principle of equality.

Article 3. Requires action in all fields political, economic, social, and cultural to advance the human rights of women.

Article 4. Permits affirmative action measures to accelerate equality and eliminate discrimination.

Article 5. Recognizes the role of culture and tradition, and calls for the elimination of sex role stereotyping.

Article 6. Requires suppression of traffic in women and exploitation of prostitutes.

Article 7. Mandates ending discrimination against women in political and public life.

Article 8. Requires action to allow women to represent their governments internationally on an equal basis with men.

Article 9. Mandates that women will have equal rights with men to acquire, change or retain their nationality and that of their children.

Article 10. Obligates equal access to all fields of education and the elimination of stereotyped concepts of the roles of men and women.

Article 11. Mandates the end of discrimination in the field of employment and recognizes the right to work as a human right.

Article 12. Requires steps to eliminate discrimination from the field of health care, including access to family planning. If necessary, these services must be free of charge.

Article 13. Requires that women be ensured equal access to family benefits, bank loans, credit, sports and cultural life.

Article 14. Focuses on the particular problems faced by rural women.

Article 15. Guarantees equality before the law and equal access to administer property.

Article 16. Requires steps to ensure equality in marriage and family relations.

Article 17. Calls for the establishment of a committee to evaluate the progress of the implementation of **CEDAW**.

Articles 18. Sets forth elements of the operation of the treaty.