



## Testimony of the National Abortion Federation on HR 3 and HR 358: Unprecedented Attacks on Women's Access to Abortion Care

On March 16, 2011, the House Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a hearing on the tax policy implications of HR 3 and HR 358. Both anti-choice bills interfere with a woman's ability to make private decisions about her reproductive destiny and should be opposed.

### HR 3 Will Have a Profoundly Negative Impact on the Ability of Women to Access and Pay for Abortion Care

Despite its name, HR 3, the "No Taxpayer Funding for Abortion Act," goes far beyond codifying the current ban on federal funding for abortion care. It would permanently deny abortion coverage to vulnerable women who depend on the federal government for their health care. Even though abortion has been legal in this country for more than 35 years, restrictions on public funding make it unavailable to many women. These include low-income women eligible for Medicaid, federal employees insured by the Federal Employees Health Benefits program, women in the military, and Native American women who rely on the Indian Health Service for health care. This is an unjust restriction. Women should have access to abortion care regardless of the fact that they depend on the federal government for their health care.

The Ways and Means Committee's jurisdiction is over the tax provisions in HR 3. The bill would drastically alter the insurance landscape by banning health care related tax deductions for insurance plans which cover abortion care. This could result in small businesses dropping abortion coverage from their existing health insurance plans, thus denying women access to benefits in their current policy. It could also result in raising taxes on millions of Americans and on small businesses.

During an exchange between Representative Mike Thompson (D-CA) and Thomas Barthold, the Chief of Staff of the Joint Committee on Taxation, the unduly burdensome requirements HR 3 would place on women were made clear. Mr. Barthold testified that if audited by the IRS, a survivor of rape or incest would have to prove to the IRS that she became pregnant as a result of rape or incest and that, if she decided to terminate the pregnancy, she properly took a deduction for abortion care.

Current law prohibits using federal funds for abortion care unless the pregnancy is a result of rape or incest or in certain circumstances that endanger the life of the pregnant woman. In addition to these existing prohibitions on abortion care, Representative Smith's bill is so extreme that the original language attempted to narrow the definitions of rape and incest. After weeks of public outcry, Representative Smith finally removed this offensive language from HR 3. HR 3 also interferes with the District of Columbia's ability to determine for itself how to use locally raised funds. The bill prohibits the use of local revenue for abortion care as part of the Medicaid services provided by the District.

## HR 358 Will Unduly Burden Women's Access to Abortion Care

HR 358 would resurrect the Stupak-Pitts amendment from the health care reform debate in an effort to try to prevent women from using their own private money to choose a health care plan in the new state health care exchanges that meets their reproductive health care needs. The state health care exchanges are likely to become the industry standard for the private health insurance market. This means that not only will women who use the exchanges be denied access to comprehensive reproductive health care coverage but the millions of women who purchase private health insurance outside of the exchanges are also at risk of losing their ability to buy coverage for abortion care.

HR 358, the "Protect Life Act," would actually put the lives of women at risk. This bill would let public hospitals refuse to provide emergency abortion care even when necessary to save a woman's life. Emergency Medical Treatment and Active Labor Act (EMTALA) creates a legal safety net guaranteeing that anyone in need of emergency health care, including those unable to pay for health care, cannot be denied such care at public hospitals. HR 358 would strip EMTALA of its power to ensure that women who are in emergency situations receive life-saving abortion care at public hospitals, with disastrous consequences for poor women in emergency situations.

## The Consequences of HR 3 and HR 358 on the Lives of Real Women

HR 3 and HR 358 could have devastating consequences for the more than one million women who choose abortion each year—women like Dana Weinstein and Mary Vargas who stood with Democratic Members of the House of Representatives in February to oppose both HR 3 and HR 358. Dana and Mary explained how these two bills would have impacted their ability to make the decisions that were best for their families.

Dana found out during a very wanted pregnancy that her baby was missing a main part of its brain, and that the surface of the brain was malformed and severely underdeveloped, a condition called polymicrogyria. Her baby would likely not survive birth. Dana and her husband did not want to bring a child into the world that would only be here in a vegetative state, if at all.

Dana was unable to obtain the abortion care she needed in her home state of Maryland, so she had to travel across the country to Colorado to one of a small number of specialized providers and pay \$17, 500 out-of-pocket for her care. She then had to enlist the help of legal counsel and spent more than a year appealing before her insurance company finally agreed to cover the total cost of her abortion care. However, it was a significant financial burden for her family to shoulder, especially at such a devastatingly emotional time.

After undergoing years of fertility treatments, Mary was pregnant with a son, already named David, when she found out at 22 weeks of pregnancy that due to the atrophy of his lungs and kidneys—a condition known as Potter's Syndrome—there was virtually no chance of his survival beyond a few hours, if indeed he survived until birth. Her husband was a federal employee so their insurance would not cover her abortion care.

Mary and her husband were faced with the choice of terminating the pregnancy if they could afford the out-of-pocket expenses, or waiting and allowing their son to suffer without comfort—to feel his bones being crushed and broken in the absence of amniotic fluid, until he died in utero, or at delivery, suffocating to death in the absence of developed lungs. As Mary describes, they chose to terminate the pregnancy “because choosing mercy was the only thing we could do for our unborn son.”

HR 3 and HR 358 are unprecedented attempts to restrict women’s access to abortion care. These bills would prevent millions of American women from obtaining insurance coverage for abortion care even if they pay with their own funds. It is imperative that we defeat this extreme attack on women, and ensure that women like Dana and Mary can access the abortion care they need.

### Statement of Dana Weinstein

Good afternoon. My name is Dana Weinstein. In July 2009, I was happily pregnant and excitingly, anxiously expecting the arrival of our second child. For nearly 8 months, I had been loving my baby in utero and explaining to our then 2.5 year old son that he was going to become a big brother. Never, EVER did I imagine I would need to have an abortion...and certainly not one so late in my pregnancy.

At my 28 week sonogram the ventricles in our baby’s brain measured a little elevated and my perinatologist arranged for further testing. Two weeks later, I had an MRI performed to see what was going on inside my baby’s head. It was then that we learned the shocking, horrific, and devastating news. Our baby was missing a main piece of its brain...the part that connects the right and left hemispheres literally wasn’t there. It never developed. This is known as agenesis of the corpus callosum. Even worse, the surface of the brain was malformed and severely underdeveloped, a condition called polymicrogyria. Additionally, where brain mass and tissue should have grown and been plentiful, only large pockets of empty space and gaping holes existed. Despite all the prenatal care and testing I had

throughout the pregnancy, this was not detected until I was seven and a half months along. And no amount of surgery, medicine or physical therapy could reverse, improve, or fix this horrendous diagnosis.

We learned that because of the severe brain anomalies, our baby would have had on-going seizures 70% of the time. And that was best case scenario. Our daughter would lack the physical coordination to suck, swallow, feed, walk, talk or know her environment—if she survived birth at all. The sonogram already showed the baby was not swallowing. And in hindsight, I believe her constant, non-stop movements—movements that I so lovingly joked about throughout the pregnancy as being payback for having a calm, easy-going first child—were the result of spasms caused by the brain abnormalities.

If we had carried our baby to term, we would have needed a resuscitation order in place prior to giving birth as she was incapable of living without significant medical assistance.

We did not want our daughter to exist solely because of machines. We did not want to bring a child into this world that would only be here in a vegetated state, if at all. For our baby, for our son, and for our family, my husband and I made the heartbreaking decision to terminate the pregnancy. We did what I believe was the most loving, humane act a parent could do—put an end to our baby's suffering.

Because I was late in my pregnancy, I had to travel to Colorado to one of a handful of facilities in the U.S. that provides later abortion care. It was awful to go through the hell of ending my very much wanted and loved pregnancy and to have to do it across the country, so far from my home and loved ones.

My upfront medical expenses were \$17,500, which does not include an additional \$3,000 in travel costs to obtain care. Since I had to go to an out of network provider, the maximum my insurance would cover was just \$1,200. With the help of legal counsel and more than a year of appealing, my insurance company finally agreed to cover the total cost of my abortion care. The financial stress caused my family unnecessary anxiety during an already heartbreaking, devastating, and frightening time.

To be forced to carry a pregnancy to term because of a lack of financial resources or insurance coverage is beyond cruel, especially in situations like mine. The week I had to endure between learning the devastating diagnosis and when I could begin the termination process was agonizing. Each constant movement of my baby—movement that for months had brought me such joy and reassurance—was like a dagger to my heart. Looking down at my full pregnant belly knowing how sick my daughter was, and knowing that she would not live was horrendous. To force women to endure this for weeks or even months and give birth because of a lack of medical coverage is outrageous.

I am appalled that Congress is taking up this issue again. I can't help but ask...what about circumstances like mine? How can families facing such a terrible prognosis be omitted

from abortion coverage? We exist and as painful as it is to talk about, we need to be heard and we need to be considered.

To say I am angered by those who are trying to prevent abortion coverage in the health care system is an understatement. I applaud our leaders and members of the Judiciary Committee here today who are taking the brave step in fighting against those trying to prevent women like me from being allowed to have the option to terminate my pregnancy and to have insurance coverage.

I am speaking today for all the women who are too fearful or made to feel ashamed, to put a face on abortion. I'm speaking today on behalf of my daughter, who I know is in a much better place. And, I'm speaking today for all of the women, who like me just a year and a half ago, never imagined they would need the help of an abortion.

Thank you.

### Statement of Mary Vargas

Good morning. My name is Mary Vargas. I am a lawyer and a mother, and like most Americans I would lay down my life for my children. Like many women I never thought I would choose to end a pregnancy, but that was before David. As I make plans to visit the grave of my son on the anniversary of his death next week, I know that the choice a woman makes is not always what she would have anticipated before an abstract tragic reality became her own story.

As a lawyer, I represent people who are seeking dignity and equality. I represent both individuals with disabilities who experience discrimination and women who are denied insurance coverage for abortion care—because both in the end are about dignity and fundamental human rights. Because of my experiences, both personal and professional, I believe in a woman's right to choose.

When I was 22 weeks pregnant with my very much wanted second son whom we had already named David, he was diagnosed with a fatal form of Potters' Syndrome. His kidneys had stopped working and atrophied. As a result, his lungs could not develop. We prayed that we could hold him, regardless of disability, but our options were unspeakable.

We could terminate the pregnancy, if we could find doctors and nurses willing to provide care, and if we could pay for it out of pocket, since my husband's insurance was restricted from covering abortion care. Or we could wait. We could allow our son to suffer without comfort, to feel his bones being crushed and broken in the absence of amniotic fluid, until he died in utero, or at delivery, suffocating to death in the absence of developed lungs. Two specialists confirmed that he had no chance at life.

We struggled with the moral questions, the ethical questions, the religious questions, the practical questions, and how to explain to our living child that his brother would not be coming home. We questioned the meaning and value of mercy.

We “chose” to end the pregnancy – not for us, but because choosing mercy was the only thing we could do for our unborn son. I would have liked to have held him. Yet, I know our decision was the right one for our child. I know because of this experience that many times the choice to terminate a pregnancy is made *because* a woman value’s life: because she or her unborn child, or both is dying, or because they are suffering towards no purpose.

It wasn’t a choice I would wish on my worst enemy, but I’m grateful the choice was mine. As a lawyer, I carry in my heart the words of a client who described what it felt like to lose her child. Late in her pregnancy, despite the best prenatal care, she faced a devastating medical diagnosis that her baby was missing a main part of its brain and would likely not survive or only survive in a vegetative state. She considered her unborn child’s suffering, and made the difficult decision to end her pregnancy. She described feeling as if she would literally go insane with grief at the loss. In this devastating time, she discovered that her ability to make the choice to terminate her pregnancy—a choice which she and her husband and her faith leader believed moral and right—was restricted by her state government and her insurance carrier.

Not only did she have to go through the hell of ending her very much wanted and loved pregnancy, but she had to do it across the country far from her home and loved ones because care was not available in her state. And she had to obtain legal counsel, and spend more than a year appealing to her insurance company before they would finally agree to cover the more than \$17,000 she had to pay out of pocket for the abortion care she needed.

In the end, what I know to be true both as a professional and as a mother, is that the decision to terminate a pregnancy is a decision that can never be understood at a distance. It is because of these real life experiences with abortion, that I am appalled by the legislative efforts that deny the complexity of abortion, and the freedoms at stake. Neither the Smith Bill nor the Pitts Bill is a simple codification of existing restrictions on abortion (of which there are, already, many). This legislation is a deliberately crafted framework designed to remove abortion as an option for women, regardless of their circumstances. These bills would put women’s lives and health at risk, and prevent women like me from exercising their own faith and morality. This cannot be who we are as Americans.

Thank you.

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*The National Abortion Federation (NAF) is the professional association of abortion providers in North America. Our mission is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women. Our members include clinics, doctors' offices, and hospitals, who together care for more than half the women who choose abortion each year in the United States, Canada, and Mexico City. For more information, visit our website at [www.prochoice.org](http://www.prochoice.org).*

