The Reproductive Health, Rights, and Justice of Latinas: An Imperative for Latina Leadership

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It was an honor and privilege to be invited to participate in this discussion and to acknowledge Latinas' health and reproductive health, rights, and justice as integral to our well-being and interlinked with other issues. I have dedicated my career to being a health and reproductive rights and justice advocate because I came from a community in which one-third of my mother's generation in Puerto Rico and the U.S. was sterilized, often without informed consent. Without the ability to make and carry out the most basic decisions, we cannot protect our lives, health, and bodily integrity, and be full and equal participants in society.

What Are Reproductive Health, Rights, and Justice?

Let's be clear about what we mean by reproductive health, rights, and justice. Yes, it is about making sure that a Latina can readily access a safe, legal abortion if she decides that she is not ready to be a parent or if there is a health issue that makes this an important option or need. But it is also about making sure that the full range of a sexual and reproductive health needs are met, including comprehensive sexuality education, gynecological care, HIV/STI testing and treatment, unintended pregnancy prevention, and maternal and postpartum health care.

Reproductive health, rights, and justice include not only the right *not* to have a child, but also the right to *have* a child, to form families under our own terms, and to raise our children in healthy environments where they can thrive.[2] In sum, they are the right to dignity, resources, and respect necessary to take care of our health and bodies[3] and to freely make fundamental decisions about our lives, including pursuing educational and economic opportunities or leaving an abusive relationship. The ability to make these decisions needs to remain front and center along with other social justice issues that affect us.

Reproductive Health Needs of Latinas

All women—Latinas included—have a range of reproductive health needs. These include core health services for women that cannot be ignored and are emphatically not "extra" or "lifestyle" or "cosmetic." For example, the Centers for Disease Control and Prevention has named contraception as one of the ten great public health achievements of the 20th century.[4] The role of contraception is well-established in improving women's and children's health and well-being, reducing maternal mortality and morbidity, and advancing women's workforce participation and economic position.[5]

Latinas' reproductive health also is affected by compounding factors that impact our community, such as policy barriers to health and reproductive health services, income inequality, and immigration status. Where Latinas live—whether rural, limited in public transportation, or exposed to environmental toxins—also determines availability of services and health outcomes.

The challenges that Latinas face are reflected in numerous reproductive health disparities. Consider, for example, that the rate of HIV infection among Latina women and adolescents was three times the rate of their white counterparts in 2013.[6] Latinas also have the highest cervical cancer incidence rates and the second highest cervical cancer death rates among major racial groups.[7] While unintended pregnancy rates are falling for everyone, Latinas' unintended pregnancy rates are still disproportionately

high, especially among Latinas below the poverty line.[8] Access to and use of more effective contraception and information about pregnancy prevention are key factors to making progress.[9] However, much more work needs to be done to ensure access for Latinas to the full range of services. [10]

The Role of Medicaid and the Affordable Care Act

National and state policies greatly affect Latinas' ability to access reproductive health services, and one key factor is health insurance coverage. Under the Affordable Care Act (ACA), uninsured rates for Latinas dropped dramatically from 31 percent to 20 percent between 2013 and 2015.[11] While this is a significant improvement, Latinas' 2015 coverage rates still lag those of white women (9 percent) and African American women (14 percent).[12]

One reason for this difference is that some states with large Latino populations— namely Texas and Florida[13]—have failed to expand their Medicaid programs[14] as permitted under the ACA.[15] States expanding Medicaid (an essential source of reproductive health coverage) have had the biggest increase in insured rates.[16] In contrast, the 19 states refusing to expand Medicaid have left 6.9 million people without coverage, including 1.2 million Latinos.[17] This has a disproportionate impact on Latinas who work in low-wage jobs without employer-provided health insurance and who are not eligible for federal subsidies to buy individual insurance through the ACA exchanges.[18]

Immigration status is another barrier. As of 2014, Latinos represent 51.6 percent of the foreign-born population in the United States (27.7% from Mexico, and 23.9% from other Latin American countries).[19] Among all Latinos, almost 35 percent were foreign-born in 2014.[20] Under federal law, undocumented immigrants and legal permanent residents in the U.S. who are here for less than five years are barred from obtaining health coverage under Medicaid and other publicly-funded programs. Some states, like Texas, bar legal permanent residents from enrolling in Medicaid even after the five-year period.[21] In addition, undocumented immigrants cannot obtain individual private health insurance in the ACA marketplace, even with their own money.[22] Efforts are being made to address this coverage gap for immigrants through the introduction of the Health Equity and Access Under the Law (HEAL) for Immigrant Women and Families Act.[23]

For those Latinas with health coverage, the ACA provides access to critical women's health services without co-payments, including contraceptives, sexually transmitted infection/HIV screenings and counseling, breast and cervical cancer screenings, breast-feeding supplies and supports, and screening for domestic violence.[24] Under the ACA, pregnant women or women experiencing domestic violence cannot be charged more or turned away for having a preexisting condition; and essential health benefits must be covered, including maternity care, a benefit often previously excluded.[25] However, these gains are not assured. The Congressional Budget Office predicts that the American Health Care Act (AHCA), introduced in May 2017, would cause 23 million more people to be uninsured by 2026 than if the ACA continued to be in effect. If passed, the bill would also allow states to waive protections for essential health benefits (like maternity care) and for people with preexisting conditions.[26]

The ACA's private insurance contraception benefit has also been challenged by employers claiming religious objections. The Supreme Court ruled in *Burwell v. Hobby Lobby*, a case brought under the Religious Freedom Restoration Act, that "closely held" corporations—like the 572 arts and crafts Hobby Lobby chain stores—should be afforded a similar accommodation as religious non-profit organizations

that allows employees to continue to receive this benefit directly from the insurance companies once the employer self-certifies its objection.[27] How well the accommodation is working is not known.

However, the accommodation *itself* is being challenged by religiously-affiliated employers in cases like *Zubik v. Burwell* claiming that signing a form to certify an objection substantially burdens their religious exercise. The Supreme Court remanded *Zubik* (and consolidated cases) to the lower courts to allow the Obama Administration and petitioners to develop an alternative approach that would keep the employer from having to take any affirmative steps and ensure that employees retain "full and equal health coverage, including contraceptive coverage."[28] No alternative mechanism was developed before the Trump Administration assumed office. Recently, President Trump issued an Executive Order that directs the Secretaries of Treasury, Labor and Health and Human Services (HHS) to consider issuing amended regulations to facilitate conscience-based objections to the preventive-care provision under which contraception coverage has been mandated.[29] A regulation is soon anticipated from HHS that would aim to allow employers to bar contraceptive coverage altogether.[30]

The Title X Family Planning Safety Net

While Medicaid is the largest source of public funding for family planning in the U.S., the Title X Family Planning program has filled a critical gap for over 40 years. Title X provides funding for family planning and other preventive health care services for individuals who otherwise lack access, including legal and undocumented immigrants or uninsured individuals. Sixty percent of those accessing services from Title X-funded providers consider it to be their usual source of health care, and 32 percent of the patients are Hispanic/Latino.[31] The scope of services includes "pregnancy testing; contraceptive counseling and services; pelvic exams; screening for cervical and breast cancer, high blood pressure, anemia, diabetes, and sexually transmitted diseases (STDs) and HIV/AIDS; infertility services; health education; and referrals for health and social services."[32] Yet Title X funding levels are currently less than 40 percent of what is necessary to meet the need for services.[33]

In addition, in a narrow vote where Vice President Pence broke a tie in the Senate, Congress passed and President Trump signed a resolution overturning an Obama Administration rule that prevented states from excluding Planned Parenthood from receiving Title X funds.[34] Moreover, the AHCA bill would temporarily ban Planned Parenthood from providing services to Medicaid patients,[35] and President Trump's proposed budget for Fiscal year 2018 would ban Planned Parenthood from receiving federal funding permanently.[36] The impact to access should Planned Parenthood be cut off from public funding would be enormous. In 2015, Planned Parenthood accounted for 32 percent of all contraceptive clients in family planning clinics overall and 41 percent of contraceptive clients in Title X-funded clinics.[37] It is not clear how other providers could fill the resulting gap in a timely manner and with a similar scope of quality services.[38]

Abortion Restrictions and Impact on Latinas

The ACA has certainly expanded access to women's health care, including reproductive health. But it did not address—and in fact continued—certain pre-existing abortion restrictions in Medicaid and coverage restrictions in other contexts. The constitutional right to abortion was first established by the Supreme Court in *Roe v. Wade* in 1973.[39] But in 1976, Congress first adopted the Hyde Amendment, an annual appropriations rider that prohibits the Medicaid program from covering abortions except in very narrow circumstances.[40] The first tragedy under this policy 38 years ago was Rosie Jimenez, a young Latina

mother living in McAllen, Texas. She died from complications of an illegal, unsafe abortion that she sought because she could not afford to pay the cost of a safe, legal abortion after it was denied under Medicaid.[41]

Only 17 states use their state funds to provide poor women access to abortion services in their Medicaid programs.[42] In other states, poor women must pay for this service out of their own pocket, sometimes foregoing rent or food to do so. Since 1976, the Hyde Amendment has been expanded to apply to other federal programs, including Indian Health Services, Medicare, Children's Health Insurance Program, the Peace Corps, the health coverage program for military personnel, the Federal Employees Health Benefits Program, and federal prisons.[43]

Within private insurance, states have the authority to determine abortion coverage, causing wide variance across states. Well before the ACA, some states adopted insurance coverage restrictions on abortion. As of now, ten states restrict private insurance coverage of abortion; six of these allow coverage only to save the woman's life.[44] While nine of the ten states allow for health insurers to offer separate riders,[45] the Kaiser Family Foundation found no data on whether these riders are practically available or accessible, since they require a woman to plan for an abortion when purchasing insurance. In six states with no restrictions, there are no health plans that offer coverage that includes abortion.[46] Only California affirmatively requires that individual and group plans include coverage for abortion.[47]

In addition to restrictions on public and private insurance coverage, states have been adopting measures to impede women's access since *Roe v. Wade*.[48] In 1992, the Supreme Court in *Planned Parenthood v. Casey*, held that states could regulate abortion at any time during a pregnancy as long as the regulation does not impose an "undue burden" on women's constitutional right to access abortion.[49] This decision left open for the lower courts to determine what types of restrictions would amount to an undue burden. Between 2010 and 2016, states adopted 338 restrictions, and 50 new restrictions were adopted in 18 states in 2016 alone.[50] Twenty-two states have six or more major restrictions and more than half have adopted at least four.[51] The goal of these restrictions is to misinform, shame, and delay care, as well as shut down qualified health providers with onerous and medically unnecessary regulations.

The impact of these restrictions, especially where cumulative, and the lack of insurance coverage together is to make abortion services inaccessible and unaffordable, especially for women who are immigrant or living in rural areas, and for the women who need assistance accessing abortion the most – the 75 percent of abortion patients in the United States who are poor or low income, with 49 percent living below the poverty line.[52]

What's Wrong with Texas

This was precisely the case in Texas, a state in which Latinos comprise almost 40 percent of the population and have a median income of $22,000.[53] Texas cut the family planning budget by two thirds in 2011 and then, as part of a nationwide attack on Planned Parenthood and independent abortion providers, restricted what entities could be eligible to receive family planning funds.[54] Between 2011 and 2013, 40 percent of Texas family planning clinics were forced to close and 31 percent of the rest had to reduce their service hours.[55] Compounding the harm, family planning clinics are often the only source of health care for underserved communities, including uninsured and undocumented women, providing

a range of preventive care services in addition to family planning. Although funding was restored in 2013 and later expanded, the safety net of providers has not yet fully recovered.[56]

Already in a health access crisis, Texas then passed some of the most extreme abortion restrictions in the country in 2013 under the guise of "protecting women's health." This had the further effect of closing about half of the clinics providing abortion in the state at a time when the unintended pregnancy rates were spiking due to the lack of access to contraception.[57] The clinic in McAllen, Texas was forced to close and reopen several times over a three-year period.[58] When closed, the next closest clinic was a four-hour drive to San Antonio on a road with multiple border checkpoints, at times leaving the predominantly Latino, immigrant community in the region with no access to health care.[59] While a few of the other clinics have or are in the process of reopening due to a successful legal challenge (see below), there are no clinics available in about a third of the state, between San Antonio and El Paso.[60]

A Supreme Court Victory

In June 2016, two of the main Texas restrictions, which mandated clinics providing abortion services to become ambulatory surgical centers (i.e. mini hospitals) and required physicians to obtain admitting privileges at local hospitals, were struck down by the Supreme Court in a case brought by the Center for Reproductive Rights,[61] *Whole Woman's Health v. Hellerstedt*.[62] In its decision, the Court clarified the undue burden test as requiring courts to examine whether a law that burdens abortion access furthers a valid state interest; and even if a valid state interest is advanced, whether the benefits outweigh the burdens placed on women. Courts are also required to conduct fact-finding and examine the evidence to determine credibility.[63]

In applying the standard to the Texas restrictions, the Court found that they did absolutely nothing to protect, and in fact endangered, women's health and constituted an undue burden on women's ability to exercise their constitutional right to abortion. It is notable that the National Latina Institute for Reproductive Health filed an amicus brief in support of the Center's challenge detailing the access challenges and hardships experienced by Latinas in the state.[64]

Whole Woman's Health v. Hellerstedt provides a powerful tool to challenge and begin dismantling the hundreds of restrictions across the states and to call into question sham rationales that undermine women's constitutional rights.[65] In addition to bringing litigation, the Center is also working with partners and allies to advocate for the federal Women's Health Protection Act of 2017[66] and its state counterpart, the Whole Woman's Health Act,[67] to codify the *Whole Woman's Health* standard and ensure access to abortion by invalidating unnecessary, restrictive laws.

Latina Leadership in the Reproductive Health, Rights and Justice Movement

Latinas (and other women of color, for that matter) have a long history advocating for these rights. Women throughout Latin America have played a key role as leaders within the global women's movement to advocate for reproductive rights as human rights within the global development and human rights agenda. Responding to problems and shortcomings created by the predominant "population control"-oriented policies, feminists and activists in Latin American and Caribbean countries pushed for a shift to a human rights lens in creating policies.[68] These women recognized that top-down policies focusing on population control could not adequately address the needs of women and families in their home countries, and in fact perpetuated additional abuses and hardships.[69] By shifting the

framework to human rights, issues such as violence against women, gender equality, and poverty reduction were linked to the fight for sexual and reproductive health and rights.[70]

In the United States and Puerto Rico, Latinas have been at the forefront of advocating for the full range of reproductive rights and justice, from combatting sterilization abuse to ensuring safe access to contraception and abortion and addressing sexually transmitted infections. In the 1960s and 1970s, Latinas' activism around reproductive rights issues was very much embedded in their advocacy around labor organizing, welfare rights, education, and childcare.[71]

Increasingly, we now have Latinas in more visible leadership roles. Within the Center for Reproductive Rights,[72] for example, Latinas hold prominent positions, including the roles of the two most senior program leads, Senior Vice President of U.S. Programs and Vice President of the Global Legal Program, as well as Special Counsel for our Lawyers Network.

There are also Latina-led partner organizations working at the state and national policy and grassroots levels, like National Latina Institute for Reproductive Health (working nationally and in Texas, Florida, Virginia, and New York),[73] California Latinas for Reproductive Justice,[74] Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR),[75] and Young Women United (New Mexico).[76] Other organizations are led by Latinas, such as All* Above All,[77] which is demanding Medicaid coverage of abortion and advocating for the passage of the Equal Access to Abortion Coverage in Health Insurance (EACH) Woman Act in Congress;[78] and the National Network of Abortion Funds,[79] which provides women seeking abortion with financial and logistical support to access quality services. These groups are working at the intersections of reproductive justice, immigrant rights, criminal justice, LGBT rights, and other issues, as well as building constituencies and leadership within our communities. With young people's leadership, Latina-led reproductive justice groups are also demanding that our young people, including those who are pregnant and parenting, be treated with respect, have access to services, and are supported so that they and their families can thrive.[80]

Finally, these issues are increasingly being embraced as part of broader agendas that affect our communities. For example, the National Hispanic Leadership Agenda,[81] a nonpartisan association of 40 leading national and regional Hispanic civil rights and public policy organizations,[82] included reproductive health as part of its 2016 Hispanic Public Policy Agenda.[83] Specifically, the NHLA states that it "believes policies should not politically interfere with a Latina's ability to make or exercise these deeply personal decisions related to reproductive health, dignity, and autonomy."[84]

The Reality of Reproductive Health, Rights and Justice in the Latino Community

Despite the often-resounding silence within our communities around reproductive health, rights, and justice issues, we also need to dispel preconceived notions about how Latinos think about and access reproductive rights. First, Latinas need and use services like everyone else; 91 percent of Latinas who are sexually active and do not want to become pregnant have used some form of contraception.[85] Among all sexually active Catholic women, 89 percent currently use a contraceptive method.[86] Latinas also represent 25 percent of all abortion patients in the U.S.[87]

In delving into the Latino communities' views on abortion, it is necessary to go beyond the threshold question of whether abortion should remain legal—a question on which if asked alone, Latinos are evenly split.[88] There is much more nuance. Among Latino *voters*, views are largely supportive.[89] 67

percent of voters do "NOT want to see *Roe v. Wade* overturned" and 82 percent "agree[] with women making their own decisions on the issue without political interference."[90] Large majorities "want care to be respectful of a woman's decision (83 percent), non-judgmental (79 percent), supportive (77 percent) and without pressure (75 percent)."[91] Nearly 90 percent "say that they would offer support to a loved one who had an abortion" and 54 percent say they could envision a situation in which abortion could be the right choice for themselves or their partner."[92] When Latino voters hear about the trend of imposing restrictions on abortion access, "two-thirds (65 percent) say the trend is going in the wrong direction."[93]

We are also increasingly seeing the range of reproductive health, rights, and justice issues being reflected in our popular media, which helps to destigmatize the issue. A prime example is the Hulu series *East Los High*,[94] which is among Hulu's top ten shows overall and the top show for its Latino audience.[95] *East Los High* has an all-Latino cast and its characters experience and make decisions about these issues—seeking and using contraception, preventing and dealing with HIV, deciding to obtain an abortion, and deciding to raise a child as a young mom. The show has a transmedia website that provides information, helps locate services, and links audience members with social justice groups benefiting the Latino community, including reproductive rights and justice organizations.[96]

A Call to Action: Protect, Respect, and Fulfill Latinas' Reproductive Rights and Justice

It is vital that the leadership and advocacy on these issues come from within our own communities and reflect our experiences. An important starting point is to have more open, honest, and non-judgmental dialogues within our own families and communities. We need to tell each other our stories—*and listen*—without judgement. We need to break the silence and stigma about these issues.[97]

We need culturally- and age-appropriate, evidence-based, and comprehensive sexuality education for our children and young people (and adults, for that matter). This education should be happening in our families and in our schools. If your family was anything like mine, we need some good tools to help us with this. Some resources can be found here under the Parents tab: http://eastloshigh.com/take-action/. It is important that we are vigilant with our school boards to make sure that our children are receiving good education. Credible researchers have proven abstinence-only education a failure time and again.[98] While it might make us feel more comfortable and morally superior, it endangers our young women *and* men and we should not stand for it.

As Latinos/as we need to be civically engaged and vocal in support of services that are important to the health and well-being of our families and communities and the rights that Latinas need and deserve to be full and equal participants in society. This should be a non-partisan issue and policy makers of all stripes should be held accountable. We all need to communicate with our policy makers and let them know that we are watching and care about the policies they adopt.

As a growing demographic in the U.S., we need to use our market power to demand the services and health coverage that we need—contraception, abortion, preventive health screens, maternity care, and more. As business leaders, we can also take the initiative to ensure inclusion of these benefits in our employee health plans and tout this leadership within the business community, with employees and consumers. In deciding where to do business and with whom, we can pressure states that take restrictive positions and support those that support our communities' health and well-being.

If you work in a law firm, you can work with us as *pro bono* partners to defend access to the full range of reproductive health care for women and young people. As members of HNBA and its local affiliates, you can advocate for policies that support Latinas' access to quality health care, including reproductive health care.

As our community grows in influence and resources, we can form donor circles to support this work. Many of us donate to charities in support of our communities, but we need to take the next step and let our money support legal and policy advocacy, civic engagement, and leadership development. Only then can we build the power to change law, policy, and structures to become more responsive and accountable to our growing community.

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[9] *Id.* at 851; Eileen Patten & Gretchen Livingston, *Why is The Teen Birth Rate Falling?*, PEW RES. CTR. (Apr. 29, 2016), http://www.pewresearch.org/fact-tank/2016/04/29/why-is-the-teen-birth-rate-falling/.

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[12] *Id.*

[13] *Demographic Profile of Hispanics in Texas, 2014*, PEW RES. CTR., http://www.pewhispanic.org/states/state/tx/ (last visited June 7, 2017); *Demographic Profile of Hispanics in Florida, 2014*, PEW RES. CTR., http://www.pewhispanic.org/states/state/fl/ (last visited June 7, 2017). For complete state-by-state profiles, see *Demographic and Economic Profiles of Hispanics by State and County, 2014*, PEW RES. CTR., http://www.pewhispanic.org/states/ (last visited June 7, 2017).

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