

Resolution Opposing the Criminalization of People's Reproductive Lives

WHEREAS criminalization stigmatizes and marginalizes individuals and communities; people of color and those living in poverty are over-policed and surveilled by a variety of state agencies; arrests and convictions carry serious, often indelible consequences for individuals that may prevent them from obtaining work and housing; the stigma of criminalization impedes people's ability to live in equal dignity with other members of society; and

WHEREAS the right to make decisions about when and whether to become pregnant is central to people's dignity and autonomy; the Reproductive Justice framework recognizes that the ability to make decisions about whether and how to get pregnant, give birth, and parent are central to individuals' self-determination and the health of their communities; and

WHEREAS a variety of factors lead people to seek self-managed abortions;ii unnecessary restrictions on clinic-based abortion enacted by anti-choice lawmakers, the threat of clinic harassment, mistrust of the formal medical system based on histories of medical oppression such as unconsented sterilization and experimentation on communities of color, costs of clinic-based care inflated by legislatively-imposed restrictions, and geographic distance from the nearest care provider, as well as desire for a more private, autonomous experience may lead people to seek self-managed abortions;iii and

WHEREAS self-managed abortion has always been and will continue to be an option for people needing to end pregnancies; prior to the medicalization of abortion, people relied on community-based healers to address their reproductive health needs, and the practices indigenous to their cultures are preserved by these healers to this day; the history of resistance to reproductive oppression has long included self-managed abortion, from enslaved African and Afro-descended women exercising control over their fertility to women's health collectives providing safe abortions and menstrual extractions in spite of the risk of imprisonment prior to *Roe v. Wade*;iv the advent of medications like Mifepristone and misoprostol that can reliably end a pregnancy has made self-managed abortion safer than ever; self-managed abortion is in high demand, with over 200,000 Google searches originating in the U.S. for information on how to end a pregnancy over the course of a single month in 2017;v and

WHEREAS the current President of the United States of America has promised Supreme Court nominees who will overturn *Roe v. Wade* and suggested that punishing people for having abortions is permissible;vi after decades of targeted erosion by state legislatures of the constitutional jurisprudence protecting the decision to end a pregnancy, the White House has been transparent in its desire to use the Supreme Court appointment power to nullify gains in reproductive rights and consign *Roe* to the "ash heap of history";vii and

WHEREAS prosecutors in a number of states have already attempted to criminalize people for having abortions or helping loved ones do so; at common law and in the vast majority of states, where abortion is governed by the criminal law, only providers faced potential prosecution; despite the constitutional protection for the decision to end a pregnancy, 7 states retain antiquated laws criminalizing self-managed abortion, and a number of other states have laws that can and have been misused to criminally charge people;viii and

WHEREAS prosecutions for self-managed abortion disproportionately affect people marginalized in U.S. society; arrests for suspected abortions or for pregnancy losses have an outsized impact people living in poverty, immigrants, people of color, and other marginalized communities due to factors that make clinic-based reproductive healthcare inaccessible or unacceptable, disparities that cause worse pregnancy outcomes that place them under suspicion, and more interactions with police and other state agents such as social workers; and

WHEREAS everyone who ends a pregnancy should be able to do so with dignity and without fear of arrest; the arrest of loved ones, counselors, and caregivers for assisting or supporting someone who self-administers an abortion isolates the pregnant person, limits their options, and could potentially harm their health; and

WHEREAS the National Lawyers Guild supports the abolition of prisons; at its 2015 Law for the People Convention, NLG recognized the role of prisons in furthering sexism, transphobia, homophobia, and xenophobia, their failure to address societal harms, and their destruction of communities by perpetuating economic and racial inequality; NLG affirmed the calls by radical (cis and trans) Black women, current and former prisoners, and trans and queer people of color to abolish prisons; criminalizing reproductive decisions serves to strip individuals of their dignity and expand and perpetuate the prison-industrial complex; and

THEREFORE BE IT RESOLVED that the National Lawyers Guild at its 2018 Law for the People Convention opposes criminalization of any aspect of self-managed abortion, miscarriage, or stillbirth. The NLG commits to supporting efforts at the local, state, and national level to halt the criminalization of reproductive decision-making, including organizing efforts, civil rights litigation, criminal defense of people accused of crimes related to an abortion or pregnancy loss, and efforts to repeal or reform state laws that threaten individuals who end a pregnancy and remove barriers to access to self-managed care.

Implementation

The National Office will support the implementation by: drafting a press release regarding the resolution, share resources on this topic created by NLG with members and the public, link the resolution to the NLG website, email the resolution to members, circulate the resolution on social media, send the resolution to relevant press, promote and highlight committee work on this issue, provide logistical support for a webinar on this topic, highlight work around decriminalizing reproductive decisions and experiences in Guild Notes and NLG Review, and adopt reproductive justice (the liberation, self-determination, and dignity of people's reproductive lives) as a foundation principle of the NLG. Members are encouraged to engage in intersectional movement building with communities and organizations most affected by criminalization laws and participate in efforts to shape policy and law through defending people criminalized for their reproductive decisions, testifying on behalf of policy proposals that would support reproductive freedom, and submitting amicus briefs in cases regarding criminalization of reproductive decisions or experiences.

The proponent of this resolution has contacted the Anti-Sexism, Anti-Racism, and Mass Incarceration Committees and disseminated this Resolution to all Committees through the National Office. The proponent has contacted the National Office and the N.O. has agreed to the implementation of this resolution.

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i Reproductive Justice is an organizing framework conceived of and developed by women of color, and refers to the complete physical, mental, spiritual, political, economic, and social well-being of all people, which will be achieved when everyone has the economic, social, and political power and resources to make healthy decisions about their bodies, sexuality, and reproduction for themselves, their families, and their communities in all areas of their lives. Forward Together (formerly Asian Communities for Reproductive Justice), *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice* (2005), available at <http://bit.ly/2n3wgUI>. It is the human right to maintain personal bodily autonomy, have children, not have children, and parent the children they have in safe and sustainable communities. SisterSong Women of Color Reproductive Justice Collective, *What is Reproductive Justice?*, <http://bit.ly/2LMhOQ3>.

ii Used here, self-managed abortion refers to person ending their own pregnancy. They may use abortifacient pharmaceutical pills, herbal or traditional remedies, or other methods, and may do so alone or with the support of a trusted family member, friend, or community healer. This is distinct from medication abortion received from a clinic and taken at home, or telemedicine abortion in which a person remotely consults with a physician or other reproductive health care provider, in that self-managed abortion does not necessarily involve the industrialized medical system.

iii A. Aiken, K. Broussard, D.M. Johnson & E. Padron, *Motivations and Experiences of People Seeking Medication Abortion Online in the United States*, 50 *Perspectives on Reproductive and Sexual Health* (July 11, 2018).

iv R. Grossman, *Before Roe v. Wade, the Jane Collective Served Chicago Women*, Chicago Tribune, Jan. 20, 2017, <https://trib.in/2uKiHhc>. Such collectives continue to exist in the present day, serving people in places both where abortion is heavily restricted and where it is more easily available. See L. Presser, “Whatever’s Your Darkest Question, You Can Ask Me.” *A Secret Network of Women is Working Outside the Law and the Medical Establishment to Provide Safe, Cheap Home Abortions*, California Sunday Magazine, Mar. 28, 2018, <http://bit.ly/2OuYZ1v>.

v J. Jerman, T. Onda, R.K. Jones, *What are People Looking for When They Google “Self-Abortion”*, 97 *Contraception* 510 (June 2018).

vi M. Glegenheimer & M. Haberman, *Donald Trump, Abortion Foe, Eyes ‘Punishment’ for Women, Then Recants*, N.Y. Times, Mar. 30, 2016, <http://nyti.ms/2qQ5qTO>.

vii S. Mehta, *Roe vs. Wade Will be Overturned if Donald Trump Wins, Mike Pence Says*, L.A. Times, Jul. 28, 2016, <http://lat.ms/2ptHMI2>.

viii SIA Legal Team, *Roe’s Unfinished Promise: Decriminalizing Abortion Once and For All* (2017) available at <http://bit.ly/RoesUnfinishedPromise>. Even in states where no criminal law exists, people have been arrested, investigated, or interrogated related to actual or alleged self-managed abortion.