

Memorandum

NOW Government Relations

To: National Board Members

From : Jan Erickson, Government Relations Director

Date: January 17, 2019

116h Congress Opens with Record Number of Women Members

We were thrilled to see a record 102 women (89 D, 13 R) sworn in as U.S. House of Representative members on January 3rd. They join the 25 women in the Senate (12 D, 8 R) and the four women (non-voting) representing U.S. territories and the District of Columbia. Included in the number are 43 women of color, including two American Indian women as the first such elected to Congress. Lots of press coverage has been of the colorful freshman class and of the many distinguished women who have been elected. The Winter 2019 Inauguration Issue of **Ms.**, *Women Who Know Their Place (The U.S. House)*, contains the best overview of these historic wins and profiles many of the new members.*

Lots of records were broken in the 2018 midterm elections: nine women governors, 15 Lt. Governors and 62 elected to statewide office. The **Center for American Women and Politics** (<http://www.cawp.rutgers.edu>) reports that in 2019 a record, 2,112 women will serve in state legislatures, compared to 1,879 in the previous session. There were more than twice as many Democratic women as Republican women elected. Overall, the proportion women state lawmakers serving is 28.6 percent – higher than the proportion of women in the House and Senate, 127 of 535.

The really good news is that most of the newly-elected Democratic women for the U.S. House consider themselves feminists and are raring to go with a strong progressive agenda. We can expect to see a strong push for paid sick and family medical leave, the Paycheck Fairness Act, the Pregnant Workers Fairness Act, and several women's health bills, including an effort to restore the broad requirement for insurance coverage for no co-pay contraceptives. Depending on whether the now anti-abortion rights majority on the Supreme Court hands down a **Roe v. Wade** reversal (or a severe scaling back of that right), the House Democrats may move to codify Roe in the U.S. statutes (and which would surely not be approved in the Senate). Reauthorization of the Violence Against Women Act (VAWA) is high on the House's list of priorities and would likely pass the activist-preferred version authored by **Rep. Sheila Jackson Lee** (D-Tex.).

*Check it out on newsstands or sign up for a subscription at <http://msmagazine.com/>

Speaker Nancy Pelosi (D-Calif.) once again prevailed in the leadership election, despite a challenge from a handful of centrist Democratic men. NOW endorsed Pelosi and urged our activists to lobby their members in support of Pelosi. The Speaker has made it a priority to appoint legislators of color and women to committee, sub- and special committee leadership slots as well as party leadership positions.

Some of the legislative priorities that have been mentioned by Pelosi and other top House leaders include: gun control measures, raising the minimum wage, addressing climate change, immigration policy reform, among many other critical issues. There is serious discussion of a Medicare for All bill and prescription drug price reform legislation. Undoubtedly, the House Intelligence, Judiciary, and Oversight and Reform Committees will carry on their vigorous investigations of the Trump – Russia connection, and other serious matters left unexamined by the Republicans in the last Congress.

Speaker Pelosi has been insistent in opposing **Donald Trump's** southern border wall and, at the same time, promoting legislation that Trump previously said he would sign that provides \$1.3 billion for personnel, technology and fencing repair. That legislation was approved by both the House and Senate in the last Congress, and again this term in the House, but **Senate Majority Leader Mitch McConnell (R-Ky.)** is steadfastly refusing to bring that bill to a floor vote and in the process extending the government partial shutdown now past the 26th day.

Speaker Pelosi has advised President Trump that with the government shutdown, the State of the Union (SOTU) address will have to be delayed. Alternatively, he could submit his address in writing, she indicated. (And, certainly many of us would prefer the latter.)

The Senate under conservative Republican control will continue to be an obstacle to progress. One would expect the upper body to perhaps ignore or weaken some of the legislation passed by the House – such as an increase in the minimum wage or a gun control bill. But Democrats seem intent on pushing some of the most progressive bills to point up the contrast between them and the tax-cuts-for-the-wealthy Republicans in advance of the 2020 presidential election.

Groups Submit Their Legislative Agendas to Congress

This is the time when scores of organizations and coalitions who work with Congress submit their “wish lists” to lawmakers. NOW has signed on to about a half dozen agendas for the 116th Congress, including the Women’s March Agenda (<https://www.womensmarch.com/agenda/>), the Women’s Community Agenda, and soon will endorse the reproductive rights community’s Blueprint, among a handful of other agendas that reflect our core issues.

As we listed in the December 18 FYI NOW, here are some of the priorities that NOW would like to see taken up in the 116th Congress. (Not all have been –re-introduced yet, so we are listing their former bill numbers)

Equal Access to Abortion Coverage in Health Insurance (EACH Woman) Act (H.R. 771 – 115th Congress) The EACH Woman Act ensures affordable abortion coverage and care for women (in effect repealing the horrible Hyde Amendment which prevents federal funds from being use to provide abortion care). The bill would require the federal government to ensure coverage for abortion care in public health programs (Medicare, Medicaid) as well as the federal government as an employer and provider, and prohibits interference by state and local governments in providing coverage in governmental and private insurance plans.

Women’s Health Protection Act (H.R. 122/S. 510 – 115th Congress) which counters many common TRAP laws (Target Regulation of Abortion Providers) and prohibits any government from imposing them on abortion providers. The specific restrictions that various states have imposed on abortion providers are listed as prohibited.

Paycheck Fairness Act (H.R. 1869/S.819 - 115th Congress) would amend the 1963 Equal Pay Act by revising remedies for, enforcement of, and exceptions to prohibitions against sex discrimination in the payment of wages. The legislation improves remedies for victims of pay discrimination, prohibits retaliation against workers, directs collection of pay data, and authorizes grant funding for training.

FAMILY Act, Family and Medical Insurance Leave Act (H.R. 947, S. 337 – 115th Congress) seeks to provide paid family and medical leave benefits to all workers up to 12 weeks who would earn 66 percent of their monthly wages, up to a capped amount. This would be funded by small employee and employer payroll contributions of two tenths of one percent each (two cents per \$10 in wages) or about \$1.50 per week for a typical worker.

Social Security Caregiver Credit Act (H.R. 6952/S. 1255 – 115th Congress) would amend Title II of the Social Security Act to credit prospective individuals serving as caregivers of dependent relatives with deemed wages for up to five years of such service. Many workers – mainly women – leave the paid workforce to care for young children or an ailing relative which often lowers their Social Security benefits. The bill would create a credit that can be collected as a retirement benefit.

Pregnant Workers Fairness Act (H.R. 2417/S.1101 - 115th Congress) seeks to eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for pregnant workers or workers who have a medical issue due to pregnancy. This legislation strengthens the Pregnancy Discrimination Act of 1978 which did not address the need for accommodations.

Equality Act (H.R. 2282/S 1006 – 115th Congress) seeks to prohibit discrimination on the basis of sex, sexual orientation and gender identity. It amends the Civil Rights Act of 1964 to include sex, sexual orientation and gender identity among the prohibited categories of discrimination or segregation in places of public accommodation. The bill expands and alters existing definitions, prohibits programs receiving federal funds from denying benefits or discriminating against those persons, and prohibits the Religious Freedom Restoration Act of 1993 from providing a claim, defense or basis for challenging such protections, among other provisions.

Violence Against Women Act Reauthorization (H.R. 6545– 115th Congress) significantly increases funding for the Rape Prevention & Education Program to the address greatly increased demand for community prevention programs. The bill includes important new protections for Native American victims from crimes committed by non-native offenders on reservations, as well as protections for survivors living in federal public subsidized housing, plus provides better housing options for survivors who need to leave their abusers. Additionally, the H.R. 6545 supports alternatives to a criminal justice system response in accordance with the wishes of the survivor and provides for a robust enforcement of court orders – a provision that we know will save lives. On average three to four women each day are murdered by their intimate partners.

EMPOWER Act (H.R. 6406 – 115th Congress) - The EMPOWER Act addresses workplace harassment, generally. This comprehensive, bipartisan and bicameral legislation will address workplace harassment by increasing transparency and accountability. It will reduce the barriers that prevent survivors from speaking out and seeking justice, helping to make workplaces safer and more equitable for all employees and across all industries. Specifically, the EMPOWER Act:

- Prohibits non-disparagement and non-disclosure clauses that cover workplace harassment as a condition of employment, promotion, compensation, benefits, or change in employment status or contractual relationship;
- Establishes a confidential tip-line for the EEOC to receive reports about harassment and target employers that continue to allow for systemic harassment at the workplace. This would supplement the EEOC's current formal complaint process. The information would be shared with state-based Fair Employment Practice Agencies, who could also bring civil enforcement actions against employers;
- Requires that public companies disclose the number of settlements, judgments, and aggregate settlement amounts in connection with workplace harassment (as a material disclosure) in their annual SEC filings; and disclose the existence of repeat settlements with respect to a particular individual;
- Prohibits companies from receiving tax deductions for expenses and attorneys' fees paid in connection with litigation related to workplace harassment; prohibits tax deductions for amounts paid pursuant to judgments related to workplace

harassment; protects plaintiffs' awards and settlements received in connection with workplace harassment as nontaxable income; and ensures that plaintiffs who receive frontpay or backpay as a result of harassment and discrimination are not taxed unjustly.

- Requires development and dissemination of workplace training programs to educate at all levels about what constitutes prohibited workplace harassment and how to prevent this behavior; educates employees about their rights with respect to workplace harassment, including how to report it; and trains bystanders on how to intervene and report; develops a public service advertisement campaign to provide further education on this issue.

Comments Opposing the Undermining of Title IX Campus Safety Protections – Due January 28

NOW will be submitting formal comments to the Department of Education by January 28th, objecting to various provisions of the proposed changes under **Title IX's sexual harassment/assault guidance** for all schools that receive federal funding. The discussion below outlines our concerns and those of many of our allies in pushing back against this harmful proposal. (This was also included in the December 18 FYI NOW.)

The Department of Education's reworked Title IX sexual assault policies are designed to give more power to the accused in an effort to promote due process, they claim, and to "save money". **DoED Secretary Betsy DeVos** and the Trump administration have labeled Title IX campus sexual assault guidelines adopted under the Obama administration as "ineffective and harmful for victims and accused alike." The proposed Title IX changes, which are incorporated in proposed regulations, would allow for more due process of the accused and allow schools to choose between Obama era "**preponderance of evidence**" or "**clear and convincing**" standards. Evidence that is considered "**clear and convincing**" is held to a higher standard of evidence that will make it harder for some victims to come forward with their claims. The problem with using the clear and convincing standard is that this is a standard meant for criminal cases – and not appropriate for civil rights cases. Title IX is a civil rights law.

The most devastating aspect of the proposed changes is the determination that **colleges are no longer legally required to investigate off-campus attacks involving students**. This now potentially eliminates off-campus housing, off-campus fraternity houses, bars, restaurants, and study abroad venues. With **eighty-seven percent of college students living off-campus** and the fact that many community college students live off-campus, this clause will affect the vast majority students across the country – leaving thousands of survivors with little recourse, except to go to the police.

Another major change detailed is a redefinition that determines which complaints are to be investigated. The proposed change stipulates that students must report to **“an official who has the authority to institute corrective measures”**. If the student reports to someone who falls outside of this title, the school will have no legal obligation to investigate the complaint. This is a pivotal change from Obama era standards and would **exclude people like resident advisors and peer sexual-assault advocates who play a crucial role in reporting claims and protecting students**. The proposed Title IX guidance would also **allow schools to conduct cross-examinations** between the accuser’s counsel or representative and the accused. This, deemed “inappropriate” by the Obama administration, goes against the principles of trauma-informed investigations that advocates have been calling for by allowing the potential attacker the ability to confront their victims. **The experience can be intimidating, re-traumatizing, and abusive for victims to endure and will mostly likely lead to more accusers dropping their cases out of fear.**

While due process and the protection of everyone’s rights is important, **the changed Title IX would make it harder for victims to come forward, receive trauma-informed investigations, and make a large number of claims ineligible for investigations entirely**. These rollbacks are dangerous to victims and will leave many vulnerable.

NOW will provide a template for our chapter leaders and board members to send in their comments by the January 28 deadline.