



REPRODUCTIVE RIGHTS & HEALTH

JUDGE KAVANAUGH'S NOMINATION THREATENS BIRTH CONTROL ACCESS

On July 9, 2018, President Trump nominated Judge Brett Kavanaugh to fill Justice Kennedy's seat on the United States Supreme Court. Judge Kavanaugh currently sits on the U.S. Court of Appeals for the D.C. Circuit, where he has demonstrated hostility to reproductive rights and employment rights and a willingness to restrict students' rights in schools. The confirmation of Judge Kavanaugh would shift the balance of the Court against our core civil and constitutional rights.

Access to birth control is on the line with President Trump's nomination of Judge Kavanaugh to the United States Supreme Court.

Kavanaugh's Anti-Birth Control Record

In a 2015 case, Kavanaugh would have allowed an employer's religious beliefs to override an employee's right to birth control coverage.¹ His dissent not only went against the decision of his own court, but also against decisions of 7 other circuit courts of appeals.²

Attempts to Undermine Birth Control Access Could Bring a Case to the Supreme Court Soon

The threat to birth control access is not just hypothetical. Cases about whether women lose access to birth control – because of the Trump Administration's policies, their employers' religious beliefs, or other restrictions – are currently working their way through the courts. Such cases include:

- Challenges to the Trump Administration's rules allowing virtually any employer or university to deny birth control coverage to their employees and students. These rules are currently blocked by two federal courts, but the Trump Administration is appealing those decisions.
- Challenges to state attempts to bar health care providers like Planned Parenthood from participating in Medicaid because they also provide abortions or are associated with abortion providers. Cases on this matter out of Kansas and Louisiana have been appealed to the Supreme Court already.
- Challenges to the Trump Administration's efforts to restructure the nation's Title X family planning program away from evidence-based family planning.

If Kavanaugh is confirmed, he may be willing to rubber stamp these and other extreme policies that will take women back to a time when it was difficult to access and afford birth control.

Birth Control Access is Critical for Women's Health and Economic Security

Ninety-nine percent of sexually active women have used birth control at some point in their lives. Birth control is basic health care² that promotes women's health and also helps women manage medical conditions. Access to birth control enables women to prevent pregnancy and improves women's ability to plan and space their pregnancies. Birth control is linked to greater educational and professional opportunities and increased lifetime earnings.

Judge Kavanaugh's nomination is a threat to birth control access, and a threat to women's health, economic security, self-determination, and dignity.



- 1 Kavanaugh argued that the accommodation to the birth control benefit violates the Religious Freedom Restoration Act (RFRA). The accommodation allows certain religiously-affiliated non-profit organizations to opt out of providing birth control coverage to their employees directly while allowing their employees to still receive the coverage they need. Judge Kavanaugh argued that merely requiring objecting employers to fill out a form to opt out of the benefit imposed a substantial burden.
- 2 *Geneva Coll., et al. v. U.S. Sec’y Dep’t of Health and Human Servs.*, 778 F.3d 422 (3d Cir. 2015); *Univ. of Notre Dame v. Burwell, et al.*, 786 F.3d 606 (7th Cir. 2015); *Wheaton Coll. v. Burwell, et al.*, 791 F.3d 792 (7th Cir. 2015); *Little Sisters of the Poor Home for the Aged, et al. v. Burwell et al.*, 794 F.3d 1151 (10th Cir. 2015); *East Tex. Baptist Univ. v. Burwell, et al.*, 793 F.3d 449 (5th Cir. 2015); *Catholic Health Care System, et al. v. Burwell, et al.*, 796 F.3d 207 (2d Cir. 2015); *Michigan Catholic Conference and Catholic Family Services, et al. v. Burwell et al.*, 807 F.3d 738 (6th Cir. 2015); *Grace Schools, et al., and Diocese of Fort Wayne-South Bend, Inc., et al. v. Burwell, et al.*, 801 F.3d 788 (7th Cir. 2015); *Eternal World Television Network v. U.S. Dep’t of Health and Human Servs.*, No. 14-12696, 14-12890, 14-13239, 2016 WL 659222 (11th Cir. Feb. 18, 2016). But see *Sharpe Holdings, Inc. v. U.S. Dep’t of Health and Human Servs.*, 801 F.3d 927 (8th Cir. 2015); *Dordt Coll., et al. v. Burwell*, 801 F.3d 946 (8th Cir. 2015).

