



**NATIONAL  
WOMEN'S  
LAW CENTER**

Justice for Her. Justice for All.

OCTOBER 2020 | FACT SHEET

## REPRODUCTIVE RIGHTS & HEALTH

# SUPREME COURT VACANCY: WHAT'S AT STAKE FOR BIRTH CONTROL

*The Administration is refusing to work on relief for Americans facing hunger, record unemployment, and evictions so that it can push through Judge Barrett's nomination in the middle of an election and a pandemic. The Senate must stop this sham nomination process and focus on the relief and care the country needs.*

Over fifty-five years ago, the U.S. Supreme Court recognized the right to birth control in *Griswold v. Connecticut*.<sup>1</sup> Since then, access to birth control has dramatically changed the lives of those who use it and their ability to participate fully in society. But access to birth control is under threat from politicians who believe their ideological views should override people's access to critical health care. Justice Ginsburg was a strong, consistent voice on the Court protecting people's right to birth control from these attacks. But Amy Coney Barrett, President Trump's nominee to replace her, holds anti-science views about methods of birth control and has been unwilling to acknowledge the benefits of birth control. Judge Barrett poses a clear danger to birth control access, and to people's health, equality, and economic security.

## Access to Birth Control Is Already in Front of the Court

The Supreme Court already has one case before it that could drastically change people's ability to access birth control, and the Court is also considering whether to take another case that poses a grave threat to birth control access.

- **One week after the election, the Court will hear oral argument in *California v. Texas*, a lawsuit brought by a group of states opposed to the Affordable Care Act.**<sup>2</sup> Their goal – which is supported by the Trump Administration – is to achieve through the courts what Congress refused to do: dismantle the entire ACA. Thanks to the ACA, nearly 61.4 million women currently have insurance coverage of birth control without out-of-pocket costs.<sup>3</sup> If President Trump and these states have their way, the entire ACA would fall, including the birth control coverage requirement. Furthermore, President Trump promised to only nominate Supreme Court justices who are committed to getting rid of the ACA. His nominee Amy Coney Barrett has criticized the Supreme Court's past decisions to uphold the ACA. There is every reason to believe – if confirmed – she would provide the fifth vote to strike down the ACA and with it, the birth control benefit.<sup>4</sup>
- ***American Medical Association v. Azar* is awaiting the Court's decision whether to review.**<sup>5</sup> This case involves a 2019 Trump administration rule that imposed devastating changes on Title X, the nation's family planning program. Among other things, the rule imposes impossible to meet restrictions on family planning centers – restrictions which have the purpose and effect of forcing them out of the Title X program and, for some, shutting them down – and undermines health centers' ability to provide quality family planning care. Already, Title X-funded clinics saw over 20% fewer patients last year as a result of the rule.

## Amy Coney Barrett Poses a Clear Threat to Birth Control Access

Amy Coney Barrett's position on birth control is dangerous for people's right and ability to access birth control. On multiple occasions, she has publicly aligned herself with extreme, anti-science beliefs and inflammatory language about birth control. And she has already made clear that she opposes the ACA's birth control coverage requirement and refuses to consider its importance to women and families.

- **In 2006, Barrett signed on to an ad, published in the *South Bend Tribune*, that she “[will] defend the right to life from fertilization to natural death.”** Barrett's definition of “life from fertilization” could have devastating implications for a range of reproductive health care, including certain birth control methods. Her view would lead to the conclusion that certain birth control methods end a pregnancy, which is patently false and against all scientific and medical evidence.<sup>6</sup>
- **In 2012, Barrett signed a letter led by the Becket Fund for Religious Liberty that decries the Affordable Care Act's requirement that insurance plans cover all FDA-approved birth control, and in particular an “accommodation” offered to entities with religious objections.** The letter refers to certain methods of birth control as “abortion-inducing drugs” and describes emergency contraception as “embryo-destroying,” both of which are false and inflammatory. Emergency contraception is critical preventive health care that people need to prevent a pregnancy after birth control failure or sexual assault.
- **The 2012 letter describes the ways in which the ACA's contraceptive coverage requirement violates certain employers' and universities' religious freedom. Barrett's viewpoint on the ACA contraceptive coverage requirement could lead her to vote against it in cases that come before her.** The Supreme Court has taken four cases related to the ACA's requirement in the last six years, and will likely return to this issue again in the coming years.<sup>7</sup> Barrett's position on this issue is extreme – she publicly denounced the Obama Administration's “accommodation” *even though* it allows employers and universities to opt out of covering birth control. It puts her at odds with the Supreme Court on the issue– the Court considered the accommodation favorably, recognizing that it respected religious beliefs while also ensuring that people in objecting plans still get birth control coverage. But Barrett thinks employers and universities should be totally exempt from contraceptive coverage, with no concern for the people actually affected. The letter Barrett signed did not include any acknowledgement of the people who would lose contraceptive coverage because of her position, or the effect on their health, wellbeing, or ability to plan for their futures.

## What's at Stake

Birth control is critical to people's health and economic and social equality. It enables them to decide if and when to have children. It prevents unintended pregnancy, which can have serious negative consequences for women and their children.<sup>8</sup> Birth control is highly effective in preventing and treating a wide array of often severe medical conditions; it decreases the risk of certain cancers, manages menstrual disorders, and treats other diseases.<sup>9</sup> The ability to prevent, plan, and space pregnancies is critical to people's ability to move forward with their education and career. Studies show that birth control is directly linked to women's increased educational and professional opportunities, and increased lifetime earnings.<sup>10</sup> Access to birth control allows people to make decisions that affect a broad spectrum of issues: their health, their education and livelihoods, and the health of their families.

However, studies show that barriers to birth control can prevent access. For example, the costs associated with birth control, even when small, lead women to forgo it completely, choose less effective methods, or use it inconsistently or incorrectly.<sup>11</sup> This increases the risk of unintended pregnancy and the associated harm to people's wellbeing.<sup>12</sup> For example, the up-front cost of an IUD can be month's salary for someone working full-time at minimum wage,<sup>13</sup> and the average cost of a full year's worth of birth control pills was the equivalent of 51 hours of work.<sup>14</sup> Cost are especially burdensome for those who already face barriers to care. Before the ACA, over half of young women reported experiencing a time when they could not afford contraception consistently.<sup>15</sup> Moreover, one in three Latina and four in ten Black women of reproductive age report that they could not afford to pay more than \$10 for contraception.<sup>16</sup>

Laws or policies that add barriers to birth control access or that destroy existing legal protections, pose a significant threat to the ability of people to get birth control, and to all of the associated gains for our society. The likelihood of Amy Coney Barrett approving such laws and policies will embolden those who want to rollback birth control access, jeopardizing a longstanding constitutional right.

## CONCLUSION

Birth control is an integral part of people's lives, helping them determine if, and when, they have children; managing and preventive health conditions; and, protecting their economic security. Amy Coney Barrett has already demonstrated clear hostility to birth control and a willful disregard of those who need it. Her nomination poses a clear and grave threat to birth control access.

1. 381 U.S. 479 (1965) (striking down a state statute banning the distribution of birth control to married people), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (finding that the Constitutional right to privacy includes the right of any person - married or single - to be free from unwarranted governmental intrusion into "whether to bear or beget a child." *Id.* at 453.)
2. *California v. Texas*, No. 19-840, (5th Cir. filed Jan 3, 2020). The case has been consolidated with *Texas v. California*, No. 19-1019, (5th Cir. filed Feb. 14, 2020).
3. NAT'L WOMEN'S LAW CENTER, NEW DATA ESTIMATES 61.4 MILLION WOMEN HAVE COVERAGE OF BIRTH CONTROL WITHOUT OUT-OF-POCKET COSTS (Dec. 2019), <https://nwlcciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/12/preventativeservices2019.pdf>.
4. NAT'L WOMEN'S LAW CENTER, SUPREME COURT VACANCY: WHAT'S AT STAKE FOR HEALTH CARE (Oct. 2020), <https://nwlcc.org/resources/supreme-court-vacancy-whats-at-stake-for-health-care/>.
5. Petition for Writ of Certiorari, *Am. Med. Ass'n v. Azar*, No. 20-429 (9th Cir. filed Oct. 1, 2020), <https://searchf.ama-assn.org/case/documentDownload?uri=%2Funnstructured%2Fbinary%2Fcasebriefs%2Fama-v-azar-us-sup-ct-certiorari.pdf>.
6. Scientific and medical experts define pregnancy as beginning when a fertilized egg implants in a uterine wall, not at fertilization of an egg. Am. College of Obstetricians & Gynecologists (ACOG), reVITALize: Gynecology Data Definitions (last visited Oct. 13, 2020), <https://www.acog.org/practice-management/health-it-and-clinical-informatics/revitalize-gynecology-data-definitions> (12 professional medical associations defining pregnancy as beginning at implantation).
7. The most recent case about the Trump Administration's rules was decided in July of this year, and was sent back to lower courts. It could soon return to the Court. The letter shows that she has prejudged the case, and raises a potential conflict of interest for Barrett. The Becket Fund represents a party in a case against the ACA's birth control coverage requirement.
8. INST. OF MED., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS, at 103-104 (July 19, 2011).
9. *Id.* at 107.
10. See, e.g., Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 *CONTRACEPTION* 465, 467 (2013); ADAM SONFIELD ET AL., GUTTMACHER INST., *THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN'S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN* (2013), <http://www.guttmacher.org/pubs/socialeconomic-benefits.pdf>; Heinrich H. Hock, *The Pill and the College Attainment of American Women and Men* 19 (Fla. St. Univ., Working Paper 2007); Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 *J. Pol. Econ.* 730, 749 (2002).
11. See, e.g., GUTTMACHER INST., *A REAL-TIME LOOK AT THE IMPACT OF THE RECESSION ON WOMEN'S FAMILY PLANNING AND PREGNANCY DECISIONS* 5 (Sept. 2009), <http://www.guttmacher.org/pubs/RecessionFP.pdf> (finding that to save money, women forewent contraception, skipped birth control pills, delayed filling prescriptions, went off the pill for at least a month, or purchased fewer birth control packs at once).
12. See, e.g., Rachel Benson Gold, *The Need for and Cost of Mandating Private Insurance Coverage for Contraception*, 1 *GUTTMACHER REP. ON PUB. POL'Y* 5, 6 (1998); see also W. Canestaro et al., *Implications of Employer Coverage of Contraception: Cost-Effectiveness Analysis of Contraception Coverage Under an Employer Mandate*, 95 *CONTRACEPTION* 77, 83, 85 (2017) (finding that denying contraceptive coverage resulted in 33 more pregnancies per 1000 women).
13. *Id.* at 35; see also Adam Sonfield, *Contraceptive Coverage at the U.S. Supreme Court: Countering the Rhetoric with Evidence*, 17 *GUTTMACHER POL'Y REV.*, no. 1, Winter 2014, at 5, <http://www.guttmacher.org/pubs/gpr/17/1/gpr170102.pdf>.
14. Brief of the National Women's Law Center and 68 Other Organizations as Amici Curiae Supporting Respondents at 16, *Zubik v. Burwell*, 136 S.Ct. 1557 (May 16, 2016).
15. Zenen Jaimes et al., *Generation Progress & Advocates for Youth, Protecting Birth Control Coverage for Young People* 1 (2015), <https://bit.ly/2UJjQXg>.
16. NAT'L LATINA INST. REPRODUCTIVE HEALTH, *LATINA/O VOTERS' VIEWS AND EXPERIENCES AROUND REPRODUCTIVE HEALTH* 8 (Oct. 4, 2018), <https://bit.ly/2ROYPBn>; PERRYUNDEM, *RESULTS FROM A NATIONAL SURVEY OF BLACK ADULTS: THE LIVES AND VOICES OF BLACK AMERICA ON THE INTERSECTIONS OF POLITICS, RACE, AND PUBLIC POLICY* 34 (Sept. 25, 2017), <https://bit.ly/2w7cvUE>.