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Don't Be Fooled: Birth Control Is Already at Risk

In the wake of a recently leaked draft Supreme Court opinion that indicated the Court is poised to overturn *Roe v. Wade* and the constitutional right to abortion,¹ there has been speculation about whether the right to birth control is also in jeopardy. There is no need to speculate: Access to birth control is already under threat and the constitutional right to birth control is already being targeted by a range of policymakers who are opposed to reproductive health care.

But because birth control is widely popular, basic health care that enables people to exercise autonomy and self-determination and is essential to people's health, lives, and futures,² those who are attacking birth control are deliberately using tactics that hide their true motives. They lie and conflate birth control with abortion—falsely conflating emergency contraceptives and intrauterine devices with abortion or listing these methods of birth control alongside abortion in legislation that restricts or bans it. They hide their attempts to go after birth control, using purposely vague or misleading language. And at the same time, some policymakers are undertaking a frontal assault on the constitutional right to birth control.

Anti-reproductive health policymakers are purposely conflating birth control and abortion

Lawmakers opposed to reproductive health are claiming that some forms of birth control cause abortions (are “abortifacients”) and should therefore be restricted. Apart from the fact that abortion care—like birth control—is necessary health care that should not be restricted, it is also a fact that birth control is not abortion. Birth control is “any method, medicine, or device used to prevent pregnancy.”³ By its very definition, birth control does not cause abortion, because it is effective prior to pregnancy.

In some cases, this tactic being used by anti-reproductive health policymakers involves making false and inflammatory statements about birth control being abortion, and in others, lawmakers are explicitly including certain methods of birth control in policy measures restricting or banning access to abortion.

Legislators conflating abortion and certain methods of birth control—in particular intrauterine devices (IUDs) and emergency contraception (EC)—are taking advantage of a lack of knowledge about these methods, and people's understanding of how birth control works.⁴ These policymakers are preying upon abortion stigma, believing that if they can convince people that birth control methods are abortion, they can successfully restrict access to birth control—or ban it altogether.

THIS IS HAPPENING RIGHT NOW, IN CONGRESS

In the past year, several members of Congress have spoken on the record falsely equating birth control and abortion. They have also introduced amendments to bills, such as those for health and military spending, that conflate birth control and abortion.

- In June 2021, when the House of Representatives considered the Equal Access to Contraception for Veterans Act, a bill that would allow veterans access to no-cost contraception, Rep. Rosendale went on record saying, “Let me be clear, drugs like Plan B and ella are not contraception, they are abortifacients.”⁵ This is patently false. He made this statement as part of his opposition to the bill, attempting to invoke harmful claims around federal programs paying for abortion care.⁶ Rep. Marjorie Taylor Greene made similar claims about Plan B working as an abortifacient.⁷ The bill ultimately passed the House, but these falsehoods were included in the debate and the record.
- In September 2021, when the House Armed Services Committee considered the National Defense Authorization Act (NDAA), Rep. Jackie Speier introduced an amendment that would provide no-cost access to birth control for military servicemembers and military families. In opposition to this amendment, some members of Congress claimed that emergency contraception caused an abortion.⁸ Other members of the committee repeatedly refuted these false statements, and the amendment passed out of committee and ultimately was included in the House-passed NDAA. However, these harmful falsities were included in the record.
- Throughout the fiscal year 2022 appropriations process, Rep. Lauren Boebert offered amendments that would restrict federal funds from being spent on “abortifacient contraceptive drugs.”⁹ While these amendments have been unsuccessful thus far, their very existence is problematic since the term is unscientific and made-up, meant to mischaracterize birth control, and prey on abortion stigma. Rep. Matt Rosendale offered a failed amendment with a similar goal of conflating birth control and abortion when he tried to add Plan B and ella, both forms of emergency contraception, to a section that bans federal funds from being spent on abortions.¹⁰

PREGNANCY 101

Ovulation: Ovulation is the time during the menstrual cycle when an egg is released from an ovary. There is a short time frame of a couple of days around ovulation that can lead to pregnancy. This depends on many factors including whether there is sperm present in the reproductive tract at the time of ovulation.¹¹

Fertilization: This is the process that occurs when an egg that has been released during ovulation meets sperm, and usually occurs in the fallopian tubes.^{12,13}

Implantation: Implantation is when a fertilized egg becomes embedded (implanted) in the lining of the uterus (endometrium). Implantation defines the beginning of pregnancy.¹⁴

THIS IS HAPPENING RIGHT NOW, IN STATE LEGISLATURES

In the last year, lawmakers in several states tried to ban access to some or all birth control.

- In 2021, Idaho passed a law banning public funding for abortion.¹⁵ The bill included a ban on access to EC, in a section titled “Abortion-Related Activities Prohibited in School-Based Health Clinics.” Specifically, this law prohibits health clinics at public schools, including higher education institutions, from counseling or referring for abortion services or dispensing emergency contraception. This is a stark departure from routine care, as 73% of college health centers report providing access to Plan B emergency contraception,¹⁶ which is an important option for students who may experience birth control failure, sexual assault, or unprotected sex.
- Arizona has had a law in effect for many years that prohibits discrimination against health care entities that do not assist in “causing the death of any individual” including “assisted suicide, euthanasia, or mercy killing.”²¹ In 2021, legislation was introduced that

THE PROBLEMATIC PLAN B LABEL

During the Food and Drug Administration's (FDA) approval of over-the-counter sales of Plan B emergency contraception (levonorgestrel) in 2006, there was a problematic conflation of birth control and abortion, and its impact is still felt today. A minority of the advisory committee was concerned that Plan B may work by preventing implantation, which they considered akin to abortion, despite no evidence to support this mechanism of action.¹⁷ In a compromise, the FDA took the extremely unusual step of including this possible mechanism of action on the drug's final label. Under "Mechanism of Action," the label for Plan B emergency contraception reads "it may inhibit implantation (by altering the endometrium)."¹⁸ This is problematic because it hypothesizes a mechanism of action that has not been proven to exist.¹⁹ Studies in the intervening years have confirmed Plan B's mechanism of action, which is preventing ovulation and fertilization.²⁰ Even without any evidence to support the hypothesized mechanism of action, the original labeling remains, and the hypothesized mechanism of action is referenced by anti-reproductive health advocates making false claims that emergency contraception is abortion.

would have amended this law to include "means of abortion" and "emergency contraception" in the list of actions causing the death of an individual.²² By listing emergency contraception alongside abortion, the legislators sought to falsely equate them, in stigma and outcome. Ultimately this law passed in the state Senate but failed in the House.

- Texas has banned coverage of abortion services and emergency contraceptives from state funded family planning programming for over a decade.²³ When Texas applied to the federal government in 2017 for a waiver for its Medicaid program to operate its Healthy Texas Women program, which includes the state funded family planning services, it carried forward this ban. This means emergency contraception is not a covered benefit under its family planning program, denying it as an option to those who are enrolled. Texas estimates that over 750,000 women are eligible for services under its Healthy Texas Women program which shows the magnitude the effect of this birth control restriction has on patients in Texas.²⁴
- In 2021, a Missouri state senator successfully amended a state Medicaid funding bill to ban funding for "any drug or device approved by the federal Food and Drug

Administration that may cause the destruction of, or prevent the implantation of, an unborn child."²⁵ Because of harmful and misleading language on the labels for some methods of EC, this amendment could have been interpreted to deny coverage of those birth control methods. The legislator said he was trying to prevent Missouri from paying for abortions and argued that some methods of birth control may cause abortions.²⁶ An alternative amendment was also considered, and rejected, that would explicitly bar Medicaid coverage of emergency contraceptive pills and IUDs "when used to induce an abortion,"²⁷ despite the fact that EC and IUDs can only be used to prevent pregnancy. Ultimately, after state advocates and other legislators highlighted the harm of these amendments, the Missouri legislator dropped the amendment before the bill passed. Had either amendment been included in the final legislation, it could have been used to prevent Medicaid participants from accessing birth control.

Anti-reproductive health policymakers are purposely hiding birth control restrictions

Some policymakers are trying to incorrectly re-define pregnancy in law in an effort to ban abortion and birth

control. A significant number of states have attempted this through definitions of “human being” and “person.” Several have specifically incorporated definitions that human life and/or pregnancy begins when a sperm fertilizes an egg, despite the fact that the medical definition of when pregnancy begins is after implantation. This unscientific definition of human life and pregnancy would not only outlaw abortion, but also could criminalize birth control and other health care, such as in vitro fertilization.

THIS HAS BEEN HAPPENING AND IS HAPPENING RIGHT NOW, IN STATES

- A failed Mississippi ballot initiative in 2011 sought to amend the state’s constitution to define life as beginning at the moment of fertilization.²⁸ Voters rejected this measure 58%-42%, but this did not stop groups from attempting to introduce similar measures in years going forward.²⁹
- In Texas, SB8, which is now law, bans abortion as early as six weeks of pregnancy and defines “pregnancy” in a way that includes “begins with fertilization.”³⁰ SB8 effectively bans nearly all abortions in the state—and is designed to intimidate and harm those seeking abortion or those helping people access this basic health care. While SB8 has received much public attention, its definition of pregnancy has not received much focus yet and could be very problematic. SB8 could be utilized against any contraceptive that the state claims, accurately or not, interferes with implantation.
- In the wake of the leaked Supreme Court draft opinion, Louisiana legislators attempted to advance a bill to ban abortion. It would have redefined “person” in the state code to include “a human being from the moment of fertilization” and “unborn child” to mean “an individual human being from fertilization.”³¹ Had these definitions become law, it could have threatened access to emergency contraception.

Anti-reproductive health policymakers are challenging the constitutional right to birth control

The constitutional right to contraception recognized by the Supreme Court in 1965, in *Griswold v. Connecticut*,³² is under attack from policymakers.

- Sen. Marsha Blackburn described the decision in *Griswold* as “constitutionally unsound”³³ in a video she made opposing the nomination of Supreme Court

Justice Ketanji Brown Jackson.

- Candidates running for office in Arizona and Michigan have said *Griswold* was wrongly decided.³⁴

These efforts are fueled further by the leaked draft opinion in the *Dobbs v. Jackson Women’s Health Organization* case. The draft opinion attacks the right to privacy, which is not only the basis for abortion rights, but also for the right to contraception and many other rights. The rationale of the leaked draft puts many of the most fundamental rights our society is built around—including the right to access contraception—in jeopardy. While the draft opinion claims that it will “only” allow states to ban abortion, it provides a clear blueprint for undermining or overturning the right to access contraception.

The blatant desire to undermine and, eventually, overturn the constitutional right to access contraception is particularly concerning because *Griswold* is one of the key protections against the legislative attacks on birth control that have already been attempted at the state and federal level described above.

This matters now more than ever.

The volume and tenor of attacks on birth control and abortion are louder and more aggressive than ever and will only escalate if the Supreme Court overturns the constitutional right to abortion or allows increasing restrictions on the right. At its core, the opposition to abortion and birth control is very similar: a desire to limit people’s self-determination, ability to exercise autonomy over their own bodies, and decision making.

Access to birth control does not solve the problems created when abortion access is curtailed. Access to birth control can, however, help some people prevent pregnancy and avoid the increasing hurdles in their way to access abortion care they need. In this moment, it is critical to ensure access to all reproductive health care—everyone deserves the freedom to decide when or whether they want to grow a family.

COMMONLY TARGETED BIRTH CONTROL METHODS

Emergency Contraceptive Pills

Emergency contraception (EC) generally refers to pills that can be taken after sexual intercourse to prevent pregnancy. Nearly 1 in 500 surveyed women who use birth control report having used emergency contraception.^{35,36} The efficacy of emergency contraception decreases the more time passes between unprotected sex and when it is taken.

- **Levonorgestrel:** This is the active pharmaceutical ingredient in one form of emergency contraception (marketed under the brand name Plan B as well as several generic versions). It prevents pregnancy by preventing ovulation and preventing fertilization. There are no studies that show it prevents implantation, although at one time that was a hypothesized mechanism of action. It is effective up to 72 hours after sexual intercourse. Levonorgestrel is available over the counter (without a prescription) to people of all ages.³⁷
- **Ulipristal:** This is the active pharmaceutical ingredient in another pill form of emergency contraception marketed under the name ella. Ulipristal also works by preventing ovulation and fertilization. It is effective up to five days after sexual intercourse and has a higher rate of efficacy in people who weigh over 85 kg compared to levonorgestrel. ella requires a prescription.

Intrauterine Devices (IUD)

IUDs are devices that can be inserted into the uterus to prevent pregnancy. In some cases they can also be inserted after sexual intercourse to prevent pregnancy.³⁸ Approximately 13% of people who use contraception use an IUD, and those who use an IUD report very high rates of satisfaction.^{39,40}

- **Copper IUDs:** The copper IUD can be used as a form of emergency contraception if placed within five days of sexual intercourse.⁴¹ Copper IUDs affect the motility of sperm and prevent fertilization. IUDs require a provider to place them. Copper IUDs are effective for ten years after they are placed.
- **Hormonal IUDs:** Hormonal IUDs release hormones that prevent pregnancy by preventing ovulation and fertilization. They are more popular for contraception than copper IUDs because they can also ease symptoms of heavy periods.

FOOTNOTES

- 1 Josh Gerstein & Alexander Ward, [Supreme Court has voted to overturn abortion rights, draft opinion shows](https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473), Politico (May 2, 2022, 8:32 PM), <https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473>.
- 2 Adam Sonfield et al., The Guttmacher Inst., *The Social and Economic Impacts of Women's Ability to Determine Whether or When to Have Children* (2013), available at <https://www.guttmacher.org/report/social-and-economic-benefits-womens-ability-determine-whether-and-when-have-children>.
- 3 U.S. Dep't of Health & Human Servs, Office of Women's Health (Nov. 15 20210), <https://www.womenshealth.gov/a-z-topics/birth-control-methods>.
- 4 For example, in a poll conducted by the National Women's Law Center, 25% of respondents reported not being familiar with emergency contraception, and 10% were not familiar with IUDs. By comparison, only 2% of respondents said they were not familiar with birth control pills.
- 5 167 Cong. Rec. H3095 (daily ed. Jun. 24, 2021) (statement of Rep. Rosendale).
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- 8 Full Committee Markup of H.R. 4350, 117th Cong. (2021) (<https://armedservices.house.gov/2021/9/full-committee-markup>).
- 9 Labor, Health and Human Services, Education, Agriculture, Rural Development, Energy and Water Development, Financial Services and General Government, Interior, Environment, Military Construction, Veterans Affairs, Transportation, and Housing and Urban Development Appropriations Act, 2022 (H.R. 4502), Division F Amend. 35, available at https://amendments-rules.house.gov/amendments/BOEBER_111_xml%20TR210721142959013.pdf.
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- 11 Centers for Disease Control and Prevention, Female Reproductive System – Reproductive Health (April 20, 2017), <https://www.cdc.gov/niosh/topics/repro/female-reproductive-system.html>.
- 12 *Id.*
- 13 “Conception” is not a medically accurate term. As the American College of Obstetricians and Gynecologists states, “Conception is a lay term that has no scientific validity and is not generally used in the medical literature because of its variable definition and connotation.” Am. College of Obstetricians and Gynecologists, *reVITALize: Gynecology Data Definitions* (2018), available at <https://www.acog.org/practice-management/health-it-and-clinical-informatics/revitalize-gynecology-data-definitions>.
- 14 Implantation is defined as the beginning of pregnancy by a dozen medical professional associations who have endorsed the ACOG definition. Am. College of Obstetricians and Gynecologists, *reVITALize: Gynecology Data Definitions* (2018), available at <https://www.acog.org/practice-management/health-it-and-clinical-informatics/revitalize-gynecology-data-definitions>. The federal government also defines pregnancy as beginning at implantation. Protection of Human Subjects, Additional Protections for Pregnant Women, Human Fetuses, and Neonates Involved in Research, 42 CFR 46.202 (2021).
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- 17 Christopher ChoGlueck, [The FDA Ought to Change Plan B's Label](https://www.guttmacher.org/fact-sheet/contraceptive-method-use-united-states), Contraception (2021).
- 18 Plan B One-Step (levonorgestrel) [package insert]. U.S. Food and Drug Administration website. https://www.accessdata.fda.gov/drugsatfda_docs/label/2009/021998lbl.pdf. Revised Jul. 2009. Accessed May 11, 2022.
- 19 Christopher ChoGlueck, [The FDA Ought to Change Plan B's Label](https://www.guttmacher.org/fact-sheet/contraceptive-method-use-united-states), Contraception (2021). The FDA has experience with products that have an unclear mechanism of action, such as acetaminophen which is a commonly available drug. The label for acetaminophen reads “The precise mechanism of the analgesic and antipyretic properties of acetaminophen is not established but is thought to primarily involve central actions.” Fresenius Kabi. Acetaminophen Injection (acetaminophen) [package insert]. U.S. Food and Drug Administration website. https://www.accessdata.fda.gov/drugsatfda_docs/label/2015/204767s000lbl.pdf. Revised Oct. 2015. Accessed May 11, 2022. The Plan B label contains no caveat about the uncertainty of the mechanism at the time of approval and provides a specific hypothetical mechanism while the acetaminophen label contains a caveat and provides only a very general sense of how the medication might work. The Plan B label experience, a product with a much lower risk of toxicity than acetaminophen, underscores the heightened scrutiny and politics surrounding reproductive health care.
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- 22 <2021> Ariz. Sess. Laws S.B. 1362.
- 23 1 Tex. Admin. Code §382.113 (2016).
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- 25 https://www.senate.mo.gov/21info/BTS_Web/ShowAmendment.aspx?id=3422
- 26 Rudi Keller, [Abortion Amendment Puts Bill to Finance Missouri Medicaid Program in Limbo](https://www.msnbc.com/rachel-maddow-show/maddowblog/blackburn-denounces-supreme-court-contraception-ruling-1965-rcna20862), Missouri Independent (March 24, 2021), <https://missouriindependent.com/2021/03/24/abortion-amendment-puts-bill-to-finance-missouri-medicaid-program-in-limbo/>.
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- 31 H.B. 813, 2022 Leg., Reg. Sess. (La. 2022).
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