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The Right to Contraception Act: Enshrining the Right to Birth Control in Federal Law

Almost 60 years ago, the U.S. Supreme Court recognized that the U.S. Constitution includes the right to birth control.¹ This right has contributed to individuals' ability to make their own decisions about when and whether to start or grow families. It has improved people's health and wellbeing and – by increasing people's control over their reproductive lives and futures – has allowed them to advance in their careers and education, contributing to our nation's economic and social wellbeing.²

But the right to birth control is now under threat. The Court's decision to unjustly overturn the federal constitutional right to abortion – and in particular Justice Thomas's explicit call to also overturn the 1965 case recognizing the constitutional right to birth control³ – opened the door for efforts to undermine this fundamental longstanding right.⁴ But even before that, access to birth control was under threat, and the constitutional right to birth control was being targeted by a range of policymakers opposed to reproductive health.⁵

The federal Right to Contraception Act is a critical part of the response to these attacks. The Right to Contraception Act would enshrine the right to birth control in federal law. That means that even if the extremist majority on the U.S. Supreme Court undermines or overturns the constitutional right to birth control, there would be a separate protection for it in federal law. The Right to Contraception Act would apply nationwide, ensuring that all Americans have the right to birth control, free from coercion.

The Right to Contraception Act would enshrine in federal law the right to access and provide contraception.

The Right to Contraception Act:

- Establishes a statutory right for people to obtain contraceptives and engage in contraception, free from coercion;
- Gives health care providers a statutory right to provide contraceptives and information, referrals, and services related to contraception;

- Makes clear that these rights cannot be infringed upon or limited by laws that single out or impede access to contraception, contraception providers or facilities, or contraception-related information;
- Prohibits the federal government or states from prohibiting or restricting the sale, provision, or use of contraception or preventing an individual from helping someone obtain or use contraception;
- Allows individuals, providers, and the U.S. Attorney General to sue states or government officials that unlawfully restrict the right to birth control.

The Right to Contraception Act is needed now, to respond to threats to birth control.

A federal constitutional right to contraception should be sufficient to protect people's right and access to birth control, but, just as with abortion, extremists are making moves to undermine – and eventually eliminate – that right. Anti-reproductive freedom politicians are even using tactics from the anti-abortion playbook. They are spreading false information and harmful narratives about birth control and limiting access to birth control for communities who already face barriers to care, with the goal of laying the groundwork for further efforts to undermine or eliminate the right to birth control and people's access to it. Project 2025 targets emergency contraception and seeks to use the federal government's powers to undermine contraceptive access.⁶ In President Trump's first week in office, he issued an Executive Order that explicitly rolled back efforts to expand access to birth control.⁷

The Right to Contraception Act itself is a telling example of the threat to birth control rights and access. When Senators tried to vote on this bill last session, anti-reproductive freedom Senators blocked the vote. When the U.S. House of Representatives voted on this bill shortly after the Supreme Court's decision to overturn *Roe v. Wade*, 195 Members of Congress voted against the bill.⁸

The Right to Contraception Act is popular and critical for certain communities.

Recent polling demonstrates that the Right to Contraception Act is incredibly popular: it is supported by eight-in-ten voters.⁹ Its support among voters is broad and bipartisan, with majority support for the Right to Contraception Act

across party, racial, and generational lines, and among men and women.¹⁰ That's in part because voters believe their access to contraception is at risk, and the threat that the Supreme Court will overturn the constitutional right to contraception is real to them. By a 28-point margin, voters say they're concerned that the U.S. Supreme Court will overturn the constitutional right to contraception.¹¹ The broad support for the Right to Contraception Act is also because this is personal for voters; more than 99% of sexually active women in the United States have used birth control at some point in their lives.¹²

But not all individuals have been able to use birth control on their own terms. The United States have a long and unfortunate history of reproductive coercion. For generations, reproductive coercion has been used as a cruel method to systematically target and hold back enslaved Africans and their descendants, indigenous communities, Latinx communities, disabled people, and low-income communities.¹³ Reproductive coercion, alongside other systemic barriers, has limited certain communities' ability to make their own decisions about birth control and sterilization, and to access it. This makes the Right to Contraception Act especially important for those communities.

Voters want all people to have a guaranteed right to contraception. Eighty-eight percent (88%) of voters say it's important to them that all Americans have the right to make their own decision about when to use contraception and what method they use, with 72% saying it's very important to them.¹⁴ Voters also want to make sure that people can access the contraception they need. Eighty-four percent (84%) of Americans believe that everyone should have access to the birth control they need, without barriers, when they need it.¹⁵

The Right to Contraception Act is an important safeguard for protecting the right to birth control, and access to it. In this moment, when attacks on contraception are increasing, with a federal Administration that is already attacking birth control, and in the face of a hostile, extremist majority on the U.S. Supreme Court that is willing to revisit and overturn longstanding fundamental freedoms, Congress must pass the Right to Contraception Act.

- 1 Griswold v. Connecticut, 381 U.S. 479 (1965).
- 2 See, e.g., The Economic Benefits of Birth Control and Access to Family Planning, JOINT ECONOMIC COMMITTEE, U.S. CONGRESS, Feb. 2020, https://www.jec.senate.gov/public/_cache/files/bb400414-8dee-4e39-abd3-c2460fd30e7d/the-economic-benefits-of-birth-control-and-access-to-family-planning.pdf.
- 3 Dobbs v. Jackson Women’s Health Organization, 597 U.S. 215, 332 (2022) (Thomas, J., concurring).
- 4 See, e.g., Rebecca Grant, “Yes, They Are Coming For Your Birth Control,” Elle, June 23, 2023, <https://www.elle.com/culture/career-politics/a44290204/birth-control-laws-abortion-2023/>; Jill Filipovic, “How American Women Could Lose the Right to Birth Control,” Time, May 20, 2024, <https://time.com/6977434/birth-control-contraception-access-griswold-threat/>.
- 5 See Don’t Be Fooled: Birth Control Is Already at Risk, NATIONAL WOMEN’S LAW CENTER, June 17, 2022, <https://nwlc.org/resource/dont-be-fooled-birth-control-is-already-at-risk/>.
- 6 See Mandate for Leadership: The Conservative Promise, THE HERITAGE FOUNDATION, 2023, https://static.project2025.org/2025_MandateForLeadership_FULLL.pdf.
- 7 Exec. Order Enforcing the Hyde Amendment (Jan. 24, 2025); <https://www.whitehouse.gov/presidential-actions/2025/01/enforcing-the-hyde-amendment/>
- 8 168 Cong. Rec. H6940 (daily ed. July 21, 2022) (vote on H.R. 8373).
- 9 Voters Strongly Support the Right to Contraception Act, AMERICANS FOR CONTRACEPTION (Feb. 23, 2024), https://www.americansforcontraception.org/IMPACT-Analysis_Nationwide_Contraception_Memo&Poll_FEB2024.pdf.
- 10 *Id.*
- 11 *Id.*
- 12 Contraceptive Use in the United States by Demographics, GUTTMACHER INST. (May 2021), <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states>.
- 13 See Brief for the National Women’s Law Center, the National Asian Pacific American Women’s Forum, the National Latina Institute for Reproductive Justice, and SisterLove, Inc. as Amici Curiae, Oldaker v. Giles, no. 7:20-cv-00224, U.S. District Court for the Middle District of Georgia (2021), available at https://nwlc.org/wp-content/uploads/2021/03/116-1_Brief94.pdf. Reproductive coercion is not a relic of the past; the majority of states have laws in place allowing the forced sterilization of people today. See Forced Sterilization of Disabled People in the United States, National Women’s Law Center & Austic Women and Nonbinary Network, Jan. 2022, <https://nwlc.org/resource/forced-sterilization-of-disabled-people-in-the-united-states/>.
- 14 Voters Strongly Support the Right to Contraception Act, AMERICANS FOR CONTRACEPTION (Feb. 23, 2024), https://www.americansforcontraception.org/IMPACT-Analysis_Nationwide_Contraception_Memo&Poll_FEB2024.pdf.
- 15 September 2021 poll conducted by and on file with the National Women’s Law Center.