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# DEFESSED

The Trump/Pence  
administration's  
assault on sexual  
and reproductive  
health and rights



POPULATION  
INSTITUTE

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# INTRODUCTION

Obsession overrides judgment, defies reason, and, if left unchecked, becomes a juggernaut that crushes everything in its path. The Trump/Pence administration's assault on sexual and reproductive health and rights has become an obsession. A reckless and utterly destructive obsession, one that defies Congress and public opinion, rejects established judicial precedents, tramples on constitutional rights and protections, and exhibits an absolute disregard for the health and welfare of millions. In its unrelenting zeal, the Trump/Pence administration has left no stone unturned and no avenue unexplored. While it has suffered many defeats and temporary setbacks, it has enjoyed its share of successes. These victories have restricted access to reproductive health services and information and jeopardized the reproductive health and rights of women, people of color, LGBTQ+ individuals, and the poor.

The Trump/Pence assault on sexual and reproductive health and rights has been so broad, so sweeping, and so unrelenting, that it is difficult for even well-informed advocates to stay on top of the latest developments, let alone fully understand their implications. Reproductive health advocates, however, need to understand just how much is at stake; it's not just the fate of *Roe v. Wade*, as crucial as that is.

In the end, if the Trump/Pence administration and its allies are successful, they will turn the clock back 50 years on reproductive health and rights. They want to return us to a time when abortion was safe and legal in only a handful of states and access to contraception was far more limited than it is today. They insist that sex education in the schools should exclude any discussion of contraceptive methods or safe sex. They are determined for the rights and needs of the LGBTQ+ community to go unacknowledged and unaddressed. They are intent on denying reproductive health care to the poor and making a woman's reproductive health depend, to no small degree, on where she lives.

None of this is inevitable. The battle over sexual and reproductive health and rights is far from over, but effective advocacy begins with informed advocates. In that spirit, the Population Institute encourages advocates of reproductive rights to read this report and, above all else, stay actively engaged. The stakes are high.

## LIST OF ABBREVIATIONS

ACA	Affordable Care Act
AHCA	American Health Care Act
AOUM	Abstinence-Only-Until-Marriage
CBO	Congressional Budget Office
CDC	Centers for Disease Control and Prevention
C-FAM	Center for Family & Human Rights
CMS	The Centers for Medicare and Medicaid Services
CPCs	Crisis Pregnancy Centers
CSE	Comprehensive Sexuality Education
CSW	Commission on the Status of Women
FGM/C	Female Genital Mutilation or Cutting
FOA	Funding Opportunity Announcement
FRC	Family Research Council
FY	Fiscal Year
GGR	Global Gag Rule
HHS	U.S. Department of Health and Human Services
ICPD	International Conference on Population and Development
LPR	Legal Permanent Residency
NGOs	Nongovernmental Organizations
OAHP	Office of Adolescent Health
OCR	Office of Civil Rights
ORR	Office of Refugee Resettlement
SCOTUS	The Supreme Court of the United States
STIs	Sexually Transmitted Infections
TPP	Teen Pregnancy Prevention
TRAP laws	Targeted Restrictions on Abortion Providers
U.N.	United Nations
UNFPA	United Nations Population Fund
USAID	The U.S. Agency for International Development
USG	U.S. Government
WHO	The World Health Organization
WWH	Whole Woman's Health



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# CHAPTER 1: THE GLOBAL GAG RULE

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The global gag rule is a destructive and counterproductive policy pushed by anti-abortion advocates that jeopardizes access to health care for millions in the developing world. Evidence shows that denying access to abortion services and information does not decrease the rate of terminations; rather, it endangers the lives of women and girls in low- and middle-income countries, especially those living in rural communities where access to health services is limited.

# The Global Gag Rule

The Mexico City Policy, more commonly referred to as the global gag rule (GGR), was first unveiled by the Reagan administration at the 2nd International Conference on Population and Development in Mexico City in 1984. The GGR is a harmful policy that prohibits foreign nongovernmental organizations (NGOs) receiving U.S. government (USG) global family planning assistance from performing or promoting legal abortion services as “a method of family planning,” even if the activities are implemented with the NGO's private, non-USG funds.<sup>1</sup> The restrictive policy forces many foreign NGOs to forego USG funding if they wish to advocate for, or refer patients to, abortion services. Proponents of the GGR claim that restricting abortion as a method of family planning will reduce the number of abortions worldwide; however, research has shown that the policy has led to increases in abortions in sub-Saharan African and Latin American countries, as the GGR severely limits individuals’ access to modern contraception and family planning methods.<sup>2,3</sup> In practice, the GGR simply makes health services less accessible, especially in marginalized and underserved communities. This dangerous policy has been rescinded by successive Democratic administrations and reinstated by subsequent Republican administrations since it was first unveiled in 1984. Throughout the past 35 years, it has been in effect a total of 20 years.<sup>4</sup> The Trump/Pence administration has vastly expanded the application of the GGR during its time in office, further endangering the lives and health of people in developing nations.

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## Activities Restricted Under the GGR

- Performing abortion as a method of family planning
- Providing counseling, information, or referrals for abortion services as a method of family planning
- Conducting public information campaigns about abortion services as a method of family planning
- Advocating for the liberalization of abortion laws or lobbying for the continued legality of abortion

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## Exemptions to the GGR under Reagan’s Rule

- Comprehensive abortion services in cases of life endangerment, rape, or incest;
- Post abortion care for injuries or illnesses caused by legal or illegal abortions;
- Humanitarian assistance;
- Food for Peace programs;
- Funding for health research; and
- American Schools and Hospitals Abroad program



### DEFINITION: Abortion as a Method of Family Planning

*“Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).”*

Restoration of the Mexico City Policy: Memorandum for the Administrator of the United States Agency for International Development, 2001



## Expansion of the Mexico City Policy

The GGR, as it was originally designed, targets foreign NGOs that receive family planning assistance from the USG.<sup>5,6</sup> Three days into his presidency, on January 23, 2017, President Trump not only reimposed the policy, but he vastly expanded its reach through a presidential memorandum, renaming the policy “Protecting Life in Global Health Assistance.” The Trump/Pence administration’s expansion of the GGR is more restrictive than any previous version of the policy. Formerly, the policy only applied to USG funding of international family planning assistance. It now extends, with very limited exceptions, to all USG global health assistance.<sup>7</sup> In terms of dollars, the new rule applies to 15 times more funding than the earlier version.<sup>8</sup> As a condition of funding, the expanded rule requires any foreign NGO receiving USG assistance for global health-related activities to certify that the organization does not provide, counsel, or issue referrals for abortion services. This means that, should a division of a foreign NGO apply for USG assistance for malaria prevention, but another division within that organization—using private, non-USG funds—provides abortion services or refers patients to abortion services, the organization would no longer be eligible to receive USG funding for malaria prevention. This policy interferes with a broad swath of health-care projects funded by NGOs, private donors, and other donor nations. Moreover, the harmful effects of the GGR can extend well beyond a single administration as it applies in many cases to multi-year funding.

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### USG Global Health Assistance under the Expansion

The Trump/Pence administration’s expanded policy applies to **\$9 billion** in global health funding and requires that foreign NGOs agree to accept and comply with its terms as a condition for receiving assistance to address the following public health challenges:

- **Family planning and reproductive health;**
- **HIV/AIDS, including the President’s Emergency Plan for AIDS Relief;**
- **Tuberculosis;**
- **Malaria, including the President’s Malaria Initiative;**
- **Pandemic influenza, emerging threats, and global health security;**
- **Neglected tropical diseases and other infectious diseases;**
- **Noncommunicable diseases;**
- **Health system strengthening;**
- **Maternal and child health;**
- **Nutrition; and**
- **Household and community-level water, sanitation, hygiene activities.**

All of these sectors are now affected by the expanded GGR and have been forced to choose between USG funding and providing comprehensive health services.

# GGR is Dangerous Policy

As the U.S. is the largest bilateral provider of health-care assistance to developing nations, the Trump/Pence administration's policy terminates, disrupts, or limits the provision of health-care services to millions of underserved people.<sup>9</sup> While comprehensive abortion care, post abortion care, and contraceptive services are the most obviously affected programs, other health services, such as maternal care; HIV and AIDS testing and treatment; infant and childhood vaccines; screenings for cervical, breast, and prostate cancer; and support for individuals surviving gender-based violence are also gravely impacted.<sup>10</sup> Moreover, by prohibiting abortion referrals, the rule limits the freedom of speech of individuals working for foreign NGOs.<sup>11</sup> The new rule also jeopardizes the integration of health-care services. The Obama administration, in an effort to increase the impact and cost effectiveness of health-care programs in developing countries, worked vigorously to integrate the provision of health-care services.<sup>12</sup> The success that the Obama administration achieved in providing a more coordinated response to health-care challenges is, in far too many cases, now being restricted or dismantled altogether in order to satisfy an ideological, anti-abortion agenda that will result in more abortions, not fewer. Evidence-based health-care approaches suffer as a result, and so do the beneficiaries of those programs.

## Groups Affected by the Expanded GGR

**Women:** Women, especially poor women living in rural areas, suffer greatly under the GGR. Due to the disruption in reproductive health services, women and girls are now experiencing higher rates of unwanted pregnancies, maternal mortality, and unsafe abortions.<sup>13</sup>

**Individuals living with HIV and AIDS:** The Trump/Pence administration is undoing years of progress in integrating sexual and reproductive health services with HIV services and general health care overall. The expanded GGR dramatically affects the quality and availability of HIV services, including testing and treatment, as nearly 50 percent of the global HIV and AIDS funding comes from the U.S.

**LGBTQ+ Community:** LGBTQ+ individuals, often marginalized within their communities, are losing access to crucial health services and trusted providers. When foreign NGOs reject the restrictions imposed by the GGR and lose USG funding, they can be pressed to reduce the scale of their programs and close clinics currently serving the LGBTQ+ community.<sup>14</sup>

**Other Marginalized Groups:** When integrated health-care services are disrupted or terminated as a result of the GGR, it can have a profound impact on marginalized groups, including: indigenous communities, migrant families, sex workers, rural populations, poor communities, religious minorities, and adolescents and youths. The GGR not only limits reproductive health services, but it can also curb access to maternal health, nutrition, and gender-based violence services.

*"When the United States starts to sneeze under the force of the pneumonia of a factual, illegal, and a scientific policy, everybody starts to catch the same cold."*

Kate Gilmore, United Nations Deputy High Commissioner for Human Rights





### **Another Barrier to Reproductive Health Care: The Helms Amendment**

First enacted in 1973, the Helms Amendment states that “no foreign assistance funds may be used to pay for the performance of abortion as a method of family planning.” Separate from the GGR, but also affecting the health and well-being of girls and women, the Helms Amendment contributes to the deaths of nearly 47,000 women around the world each year from unsafe abortions.<sup>21</sup> Poor women are disproportionately affected by this policy, as they often lack resources to obtain a safe abortion. The Helms Amendment, like the GGR, denies the internationally recognized rights of women.

## **The Global Health Impact of the GGR**

While it is too early to assess the full effects of the current policy, evidence has demonstrated that the expanded GGR has proven to be harmful to the health and well-being of women, young people, and marginalized communities. Specifically, the policy creates funding gaps that cause fragmentation of health services; an environment of distrust of providers among those in need of reproductive health services; confusion among organizations about what services can be provided; and even setbacks in human rights.<sup>15</sup>

Studies on the effects of the GGR under other administrations have found evidence suggesting that the policy is associated with an increase in abortion rates in sub-Saharan Africa.<sup>16</sup> A report published in *The Lancet* found that when the Mexico City Policy was in effect from 2001–2008, abortion rates rose by 4.8 abortions per 10,000 women among women in countries highly exposed to the policy.<sup>17</sup> A reduction of 3.15 percent in use of modern contraception has been reported among women in countries exposed to the GGR, and an increase in pregnancies of 3.2 percent during the time of the enacted policy.<sup>18</sup> It is estimated that around 7 million women are admitted to the hospital every year in low-income countries as a result of an unsafe abortion. The World Health Organization (WHO) reports that almost every abortion death and disability could be prevented through sexuality education; use of effective contraception; provision of safe, legal abortion services; and timely care for complications.<sup>19</sup> As there are 214 million women of reproductive age in developing countries who want to avoid pregnancy but are not using a method of modern contraception,<sup>20</sup> concerns regarding a potential rise in the number of unsafe abortions are well-founded.

Trump/Pence administration policies, driven by ideology rather than evidence, have demonstrated a consistent and callous disregard for the well-being of women, children, and families in developing countries. They have blocked comprehensive sexuality education, reduced support for modern methods of contraception, and denied access to safe and legal abortion services, but the collateral damage associated with the new and expanded GGR extends well beyond sexual and reproductive health.

## THE ADMINISTRATION'S WRECKING CREW: Bethany Kozma

The U.S. Agency for International Development (USAID) is the world's largest bilateral provider of international assistance. USAID is tasked with reducing poverty, improving health outcomes, empowering people, and strengthening democratic institutions in the developing world. Bethany Kozma, senior advisor for the Office of Gender Equality and Women's Empowerment at USAID, is promoting another agenda, however. At the 2018 U.N. Commission on the Status of Women, the world's largest meeting on the rights and equality of women, Kozma told attendees, behind closed doors, that the "U.S. is a pro-life nation" despite the fact that both the law and public opinion in the U.S. support access to legal and safe abortion.<sup>22</sup> She also called for the deletion of any mention of the phrase "modern contraceptives" and to replace it with "family planning" in the meeting outcome document in order to push abstinence-only sexual education policies. Kozma is seeking to prevent U.S. diplomats from using other phrases such as "sexual and reproductive health" and "comprehensive sexuality education" in USAID's official communications.<sup>23</sup> She is also diligently working to roll back progressive protections for the LGBTQ+ community, having openly campaigned against transgender students' right to use bathrooms that match their gender identity. She also describes transgendered children as "gender confused."<sup>24</sup> Kozma's appointment to one of the most important public official roles for global gender equality is an integral part of the Trump/Pence administration's campaign to suppress the rights of women, girls, and LGBTQ+ identifying individuals worldwide.

## ATTACKS ON FUNDING

The Trump/Pence administration let known its disdain for international reproductive health services when it released its budget for fiscal year (FY) 2018. In it, the Trump/Pence administration built upon its anti-women's health stance by eliminating funding to international family planning and reproductive health programs altogether. Congress ignored the dangerous request and enacted a budget of \$607.5 million to go toward international family planning services. However, in the FY 2019 presidential budget proposal, the Trump/Pence administration fought, once again, for drastically cutting funding for international family planning by requesting only \$302 million, less than half of the previous year's budget. For FY 2020, the administration requested an amount of \$237 million for international family planning and reproductive health programs. While this amount is better than the zero dollars it requested in the FY 2018 budget, it is significantly less, 61 percent less to be exact, than the amount Congress appropriated as a part of the FY 2019 omnibus spending package. It is even a 28 percent cut from the administration's proposed FY 2019 budget.<sup>25</sup> In the president's FY 2021 Budget Request, it was proposed that a 22 percent cut be made to the international affairs budget and a 34 percent cut to global health programs, severely impacting the beneficiaries of these services.<sup>26</sup> Year after year, Congress has disregarded the White House's request to devastate international family planning services and has enacted a flat funding of \$607.5 million each year since President Trump took office.



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# CHAPTER 2: UNDERMINING THE UNITED NATIONS

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In addition to the harm inflicted by the GGR, the Trump/Pence administration is working on several levels to undermine the support that the United Nations (U.N.) has given to reproductive health and rights. In its bid to satisfy anti-abortion advocates, the Trump/Pence administration has blocked Congressionally authorized funding for the United Nations Population Fund (UNFPA), and sought to roll back the U.N.'s long-standing commitment to sexual and reproductive health and rights. While the Trump/Pence administration has been critical of several U.N. programs, its sharpest attacks have been reserved for U.N. programs and resolutions that protect the reproductive health and rights of women.<sup>27</sup>



## Suspension of Support for UNFPA

Since its inception in 1969, the UNFPA has been the leading multilateral organization addressing sexual and reproductive health needs worldwide. UNFPA works with governments and partners to promote universal access to sexual and reproductive health services, including, but not limited to, contraception and family planning services and information.<sup>28</sup> Thanks to its leadership and programs, maternal mortality rates in developing countries have declined sharply, as have rates of unintended pregnancies and the incidence of unsafe abortions.<sup>29</sup> UNFPA is entirely supported by contributions from donor nations, intergovernmental organizations, foundations, and individuals.<sup>30</sup> In 2016, the U.S., one of the leading donor governments of UNFPA, contributed over \$60 million to UNFPA's core and noncore activities.<sup>31</sup> However, on April 3, 2017, the Trump/Pence administration issued a letter to the Senate Foreign Relations Committee announcing that it would discontinue funding for UNFPA by invoking the Kemp-Kasten Amendment.<sup>32</sup>

Without producing any evidence to support its assertion, the Trump/Pence administration claimed that UNFPA “supports, or participates in the management of, a program of coercive abortion or involuntary sterilization” in China. As other Republican administrations have done since 1985, the Trump/Pence administration used this language in order to invoke the Kemp-Kasten Amendment and, thereby, block Congressionally authorized support for UNFPA. The administration's claim, however, was unsubstantiated and without merit. In responding to the administration's action, UNFPA stated, as it has on prior occasions, that the claims were erroneous and that the work supported by UNFPA in China was, in fact, a “force for good” and fully consistent with human rights.<sup>33</sup>

The Trump/Pence administration's false claim may please anti-abortion advocates in this country, but it does a disservice to all those who work for UNFPA and to the millions who have benefited from its programs. UNFPA supports reproductive health care for women and youth in more than 150 countries, which host more than 80 percent of the world's population.<sup>34</sup> Women and youths in these countries rely heavily upon UNFPA for birth control, lifesaving maternal care, and support for safe deliveries.<sup>35</sup> Without

### UNFPA'S ACCOMPLISHMENTS WITH U.S. SUPPORT

With support from the U.S. in 2016, UNFPA was able to:<sup>66</sup>

- Save **2,340** women from dying during pregnancy and childbirth;
- Prevent **947,000** unintended pregnancies;
- Ensure **1,251** fistula surgeries;
- Prevent **295,000** unsafe abortions

*“UNFPA, the United Nations Population Fund, regrets the decision by the United States to deny any future funding for its life-saving work the world over. This decision is based on the erroneous claim that UNFPA “supports, or participates in the management of, a programme of coercive abortion or involuntary sterilization” in China. UNFPA refutes this claim, as all of its work promotes the human rights of individuals and couples to make their own decisions, free of coercion or discrimination. Indeed, United Nations Member States have long described UNFPA's work in China as a force for good.”*

Statement by UNFPA on U.S. Decision to Withhold Funding

*“Recognizing the importance of providing timely assistance to survivors of sexual violence, urges United Nations entities and donors to provide non-discriminatory and comprehensive health services, including sexual and reproductive health, psychosocial, legal, and livelihood support and other multi-sectoral services for survivors of sexual violence, taking into account the specific needs of persons with disabilities.”*

The paragraph in U.N. Resolution 2467 that the U.S. called upon for complete deletion.



America's contribution, the health and lives of many women and youths could be greatly compromised. Inconsistent support from the U.S. jeopardizes reproductive health care for millions, including women in refugee camps and humanitarian crisis situations who depend upon UNFPA for access to contraception, prenatal care, maternal care, safe delivery kits, and treatment of injuries caused by gender-based violence. While the UNFPA continues its important work in all these areas, the level of service potentially suffers when funds are withdrawn. Suspension of U.S. support also undercuts UNFPA's implementation of the International Conference on Population and Development (ICPD) Programme of Action, which has done so much to solicit and engage international support for the goal of providing universal access to reproductive health services. Despite the loss of U.S. support, a major financial setback, UNFPA continues its vital leadership role. The real sufferers are the millions of women who, because of the lost funding, have nowhere else to turn.<sup>36</sup>

## Attacks on Sexual and Reproductive Health and Rights at the U.N.

Not satisfied with the cutoff of funding for UNFPA, the Trump/Pence administration's U.S. delegation to the U.N. has been exceptionally vocal in attacking the U.N.'s long-standing support for sexual and reproductive rights, comprehensive sexuality education, and marriage equality. At numerous U.N. conferences and proceedings, U.S. representatives have sought to dilute or undermine international support for women's and LGBTQ+ rights. Most significantly, U.S. representatives have sought to delete from U.N. resolutions and documents any references to sexual or reproductive health, on the basis that such language implies support for abortions.<sup>37</sup> Additionally, the Trump/Pence administration has given a prominent platform at the U.N. to organizations that are vocal opponents of LGBTQ+ rights and are attempting to prohibit LGBTQ+ individuals from creating families.<sup>38</sup>

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### Commission on Population and Development

The Trump/Pence administration's representative to the Commission on Population and Development, Ambassador Cherith Norman Chalet, has sought to roll back the commission's long-standing support for sexual and reproductive health and reproductive rights. The Commission on Population and Development's primary role is to monitor, review, and assess the implementation of ICPD's Programme of Action at the national, regional, and international levels, and to advise the Economic and Social Council on its progress.<sup>39</sup> In each of the past two annual sessions, the U.S. delegation has repeatedly objected to language and documents containing references to sexual and reproductive health or rights, even though sexual and reproductive health is a core part of the ICPD's Programme of Action. Ambassador Chalet has repeatedly argued that the language amounts to an endorsement of abortion as a method of family

planning.<sup>40</sup> The U.S. representative declared in a statement delivered to the Commission that the U.S. “does not recognize abortion as a method of family planning, nor does it support provision, promotion, or referral for abortion in its global health assistance.”<sup>41</sup> Due to the lack of consensus from the U.S., it was not possible to advance ICPD’s Programme of Action and it failed to adopt a final outcome document at the end of its 51st session in 2018.<sup>42</sup> The following year, in 2019, Chalet again expressed the U.S.’s repressive stance on reproductive health, but agreed to an adoption by consensus of a political declaration highlighting the important role of population-related measures in achieving the 2030 Agenda for Sustainable Development.<sup>43</sup>

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### **Commission on the Status of Women**

The Trump/Pence administration’s attempts to erase sexual and reproductive health from U.N. documents have not been limited to the Commission on Population and Development. President Trump’s U.N. delegation has consistently aligned itself with a handful of nations opposed to sexual and reproductive health and rights, including, most notably, Saudi Arabia, Bahrain, Iraq, Malaysia, and the Holy See (the Vatican). The U.S. has vigorously objected to consensus documents drafted at major U.N. conferences, including the annual session for the Commission on the Status of Women (CSW). Established in 1946, the CSW is a global intergovernmental body dedicated to the promotion of gender equality and the empowerment of women.<sup>44</sup> The Trump/Pence U.S. delegation has repeatedly sought to push its anti-reproductive health agenda during CSW deliberations. The Trump/Pence administration chose two individuals associated with two fanatically anti-choice and anti-LGBTQ+ organizations to represent the U.S. at the 61st session of the CSW.<sup>45</sup> Lisa Correnti, the executive vice president at the Center for Family & Human Rights (C-FAM)—an organization designated as a hate group by the Southern Poverty Law Center—and Grace Melton, associate for social issues at The Heritage Foundation, joined the U.S. delegation as public delegates to push the administration’s regressive agenda.<sup>46</sup> Correnti and Melton, both outspoken anti-reproductive health and rights activists, joined a delegation led by the then-U.S. Permanent Representative to the U.N., Ambassador Nikki Haley, who stated that supporting a woman’s right to choose is “not real feminism.”<sup>47</sup> Despite the U.S. delegation’s push for their regressive agenda, the CSW adopted conclusions reaffirming its commitment to sexual and reproductive health and reproductive rights.<sup>48</sup>



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### United Nations Security Council

In April 2019, the U.S. threatened to veto an important U.N. Security Council resolution on targeting rape as a weapon of war if references to “sexual and reproductive health” were not changed or completely eliminated. Key Trump/Pence administration officials insisted that using such language “normalizes sexual activity and condones abortion.”<sup>49</sup> Many delegates from Member States saw this as a blatant disrespect for survivors of sexual violence and a move to undermine the dignity of women.<sup>50</sup> The watered down version of the draft, without reference to sexual and reproductive health services, passed with 13 nations in favor and two nations, Russia and China, abstaining from a vote. By flexing its veto power, the Trump/Pence administration was able to chip away at the sexual and reproductive health and rights of one of the world’s most vulnerable groups: survivors of sexual violence.

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### The Third Committee of the U.N. General Assembly

The Third Committee, one of six main committees of the U.N. General Assembly, handles matters related to social, cultural, and humanitarian affairs, including human rights and the advancement of women.<sup>51</sup> The Trump/Pence administration’s effort to delete references to “sexual and reproductive health” has even extended to Third Committee resolutions on eliminating female genital mutilation and ending obstetric fistula.<sup>52,53</sup> Once again, U.S. delegates insisted on deleting all such references. The U.S. also disassociated itself from a resolution opposing violence against women,<sup>54</sup> insisting that a paragraph promoting victims’ access to sexual and reproductive health services was “inconsistent with the theme” of sexual harassment.<sup>55,56</sup> In October 2018, U.S. delegates to the Third Committee insisted that the word “gender” should be replaced with “women” in General Assembly declarations pertaining to sexual violence.<sup>57</sup> The word change is more than just semantics, as it effectively deletes protections for transgender and nonbinary individuals subjected to violence based on their gender identity. The Trump/Pence administration officials say that replacing “gender” with “women and girls” make the resolutions “clearer, more specific, more accurate, and stronger in the efforts to empower women and girls.”<sup>58</sup> Critics say the replacement of gender is ignoring vulnerable populations and is a direct attack on the LGBTQ+ community.

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### **U.N. Committee on the Elimination of Racial Discrimination**

The U.N. Committee on the Elimination of Racial Discrimination is the body that oversees the implementation of the *International Convention on the Elimination of All Forms of Racial Discrimination*. The Trump/Pence administration decided in 2019 against nominating a member to serve on the U.N. Committee on the Elimination of Racial Discrimination. While it was thought by State Department officials that Gay McDougall, an Obama-era nominee and current U.S. member of the committee, would be nominated a second time to serve as the U.S. Member to the Committee, the Trump/Pence administration decided against appointing anyone to the position at all.<sup>59</sup> The Committee has a history of issuing recommendations to address the inequity in health-care coverage and disparities in sexual and reproductive health that exist in the U.S. and elsewhere in the world due to racial discrimination against women of color and immigrants.<sup>60</sup>

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### **U.N. Human Rights Council**

The U.N. Human Rights Council is an intergovernmental body responsible for the promotion and protection of all human rights worldwide, including sexual and reproductive health rights.<sup>61</sup> Under the Trump/Pence administration, the U.S. has withdrawn from the U.N. Human Rights Council. The U.S. is one of only four nations that do not participate in the Council's meetings and deliberations.<sup>62</sup> On June 19, 2018, former U.S. Ambassador to the U.N. Nikki Haley announced that the U.S. would be withdrawing from the U.N. Human Rights Council, citing that the Council is “motivated by political bias, not by human rights.”<sup>63</sup>

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### **25th Observance of the International Day of Families**

In May 2019, five organizations designated hate groups by the Southern Poverty Law Center hosted an event titled “It Takes a Family” at the 25th Observance of the International Day of Families at the U.N. The five organizations sought to push their definition of a traditional family, one that can only be composed of a cisgender heterosexual man and a cisgender heterosexual woman and their biological children.<sup>64</sup> The anti-LGBTQ+ and anti-abortion talking points have long been used at the U.N. to marginalize LGBTQ+ people and limit access to sexual and reproductive health and reproductive rights.<sup>65</sup>

## MORE HARMFUL U.S. LEGISLATION FOR REPRODUCTIVE HEALTH: THE KEMP-KASTEN AMENDMENT

First enacted by Congress in 1985, the Kemp-Kasten Amendment states that the provision of U.S. foreign aid may not be made available to “any organization or program which, as determined by the president of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.” Kemp-Kasten was specifically created to restrict funding to UNFPA after concerns developed regarding the agency’s work in China during the implementation of the Chinese government’s population control policies. **It is important to note that evaluations by the USG and other non-partial institutions have found no evidence that UNFPA engaged or engages in coercive abortion or involuntary sterilization in China.** Rather, this disproven claim is used as a political tactic to defund UNFPA’s work in sexual and reproductive health. The Kemp-Kasten Amendment, which has only been applied to UNFPA and only by Republican administrations, has been used to withhold funds in 18 of the past 35 fiscal years.<sup>67</sup>

## ATTACKS ON FUNDING

For four consecutive years, the U.S. has completely withheld funding to UNFPA without evidence to justify the serious claims made against its work by the Trump/Pence administration. Because President Trump invoked the Kemp-Kasten amendment in March 2017, Congress is unauthorized to distribute any federal funding to the U.N. agency. However, each year, Congress requires that the \$32.5 million that is withheld from UNFPA be reallocated to USAID’s family planning, maternal and reproductive health activities.<sup>68</sup> This devastating cut to UNFPA has had major impacts on the lives of women, girls, and LGBTQ+ individuals around the world as access to family planning services and programs has been severely diminished.







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# CHAPTER 3:

# THE FIGHT FOR TITLE X

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Foreign health-care providers are not the only ones adversely affected by a gag rule. The Trump/Pence administration's new domestic gag rule denies funding to Planned Parenthood and other Title X-funded family planning clinics that counsel patients about their abortion options or refer them to abortion providers. The new rule, which is significantly more restrictive than the original gag rule formulated by the Reagan administration, is having a devastating impact upon many low-income women who rely upon the reproductive health care provided by their local Title X clinic. While defenders of Title X succeeded in getting an injunction from three lower federal courts to block the new rule from going into effect while it proceeded through the courts, the Ninth Circuit Court of Appeals ruled in favor of the administration, clearing the way for the implementation of the new regulations. The legal fight may not be over, but many family planning providers, including Planned Parenthood, have been forced to reject Title X funding and several states have exited the program.



## Title X

Signed into law by President Richard Nixon and enacted in 1970, the Population Research and Voluntary Family Planning Programs Amendment of the Public Health Service Act, commonly referred to as Title X, supports the provision of family planning and reproductive health services to low-income households. It was established in response to evidence that demonstrated that inequitable access to contraceptives and family planning services increased poverty and reliance on public assistance.<sup>69</sup> Furthermore, research identified how unintended pregnancies, particularly among teenagers, reduced a woman's ability to complete her education and participate in the workforce.<sup>70</sup> In fulfillment of President Nixon's promise that "no American woman should be denied access to family planning assistance because of her economic condition,"<sup>71</sup> programs funded by Title X provide basic reproductive health-care services to low-income households. By statute, Title X funds cannot be used for abortion care, support of abortion advocacy, or the facilitation of abortion services (i.e., making appointments). For nearly two decades now, Title X-funded clinics have been required, by regulation, to provide nondirective options counseling for pregnant clients, including information on prenatal care, parenting, adoption, and/or pregnancy termination. Today, approximately 90 Title X-funded public health departments, community health centers, family planning organizations, and other private nonprofit agencies have established nearly 4,000 service sites to provide care for more than 4 million clients each year.<sup>72</sup> Around 42 percent of all Title X patients are uninsured and the program affords these individuals with the same access to high-quality family planning and sexual health services as privately insured people.<sup>73</sup> Title X service providers are meeting the health needs of women and men, particularly the poor, the uninsured, the young, people of color, and LGBTQ+ individuals.

### WHO DOES TITLE X SERVE?

In 2017, **4 million** family planning clients were seen through 6.6 million family planning encounters.<sup>74</sup>

- **90%** were qualified for subsidized or no-charge services
- **80%** of the clients were female
- **67%** had family incomes at or below the poverty level
- **65%** were under the age of 30
- **33%** self-identify as Hispanic or Latino
- **22%** self-identify as Black

### SERVICES FUNDED BY TITLE X

The more than **4 million** individuals who access essential reproductive health-care services funded by Title X are able to receive the following care at no or minimal cost:

- Wellness and pelvic exams
- Lifesaving cancer screenings
- Birth control
- Contraception education
- Testing and treatment for sexually transmitted infections
- HIV testing and counseling

## THE “DOMESTIC GAG RULE” AS ORIGINALLY DRAFTED BY REAGAN

The Title X rule, often referred to by opponents as the “domestic gag rule,” was first promulgated in 1988 by President Ronald Reagan’s administration. It is a coercive measure that prohibits health-care providers that receive Title X family planning funding from giving information on and referral for abortion services, even if the information is requested by the client.<sup>75</sup> The rule demands that Title X-funded sites must separate the finances, staff, and location of a clinic with any abortion provider. Furthermore, the rule mandates that providers must present all pregnant patients with information on prenatal care and social services, even should the patient not want to continue the pregnancy.<sup>76</sup>

## The New Title X Rule

On March 4, 2019, the U.S. Department of Health and Human Services (HHS) published a final rule in the Federal Register revising the regulations governing the Title X program.<sup>77</sup> On July 11, 2019, after a legal battle, the Ninth Circuit Court of Appeals suspended three injunctions blocking the new rule from taking effect. Then, on February 24, 2020, in a 7-4 decision, the Court voted to uphold the Trump/Pence administration’s gag rule on Title X. The new rule is far more restrictive than the domestic gag rule as it was originally introduced by President Reagan.

### Reshaping Network Providers

The New Title X rule seriously undermines the standard of care Title X grantees are able to provide for their clients. Doctors and nurses are prohibited from offering patients unbiased, factual abortion counseling. Under the new rule, pregnant patients seeking abortion counseling are effectively denied professional advice. These new changes affect millions of individuals who have come to trust and rely upon the care and counseling they have received at their Title X clinics. According to the National Family Planning & Reproductive Health Association, 6 out of 10 women seeking contraceptive care at a Title X-funded health center report that the center was their only source of care in 2017.<sup>78</sup> The new rule will rip apart this vital safety net. Supporters of the new rule have argued that the funding will go to other, often religious, organizations that can meet the reproductive health-care needs. Evidence shows, however, that many clients will forgo care altogether if they are unable to see their provider of choice.<sup>79</sup> Furthermore, the level of care suffers when high-quality, skilled providers are replaced with unlicensed, lay volunteers who are more interested in promoting a religious ideology than addressing the reproductive health-care needs of their patients.

### TRUMP/PENCE ADMINISTRATION’S CHANGES TO TITLE X

- Eliminates pregnancy options counseling as a requirement in the nation’s family planning program
- Requires all pregnant patients to receive prenatal care referrals, regardless of their wishes
- Imposes physical and financial separation requirements between recipients and abortion providers
- Permits, but no longer requires, nondirective counseling
- Undermines confidentiality and trust as the HHS has open access to minor clients’ records
- Encourages family involvement for all clients, not just minors
- Grants HHS unchecked discretion to disqualify Title X grant applicants
- Gives HHS unclear, expanded oversight powers
- Cuts previously awarded funding cycles

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### **Dissolving the Trust between Providers and Clients**

Title X clients expect their providers to offer neutral, factual, and unbiased information regarding their health. The trust once gained by Title X providers may be lost as participating doctors and nurses are barred from providing requested information regarding abortion services. Title X patients seeking unbiased professional counseling will be effectively denied the information or may be forced to find it elsewhere. In some communities, Title X providers may be pressed to close their doors. This not only impacts individuals seeking an abortion referral, it also affects individuals who use Title X-funded sites for contraception, hormone replacement therapies for gender transitioning, sexually transmitted infections (STI)/HIV testing services, reproductive cancer screenings, and wellness checks. The underlying intent of the new Title X rule may be to deny access to sexual and reproductive health services and replace them with abstinence-only and “natural family planning methods,” but the harmful impact in practice is far broader than that.

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### **Reducing Access to High-Quality Care**

The new rule forces providers who offer abortion services using non-Title X funds to make an impossible decision: provide high quality, comprehensive care to all their clients and lose funding, or provide substandard care to Title X patients and retain funding. It is important to note that, should a provider chose the latter course, it is not an indication that they approve the new rule; they are simply trying to preserve services for clients who may not have another alternative. Those morally, ethically, or physically unable to alter their services will be forced out of the program. This affects approximately 900 Title X sites, leaving thousands of individuals without access to comprehensive reproductive health care.<sup>80</sup> Even if a Title X clinic remains open, patients in many instances will be receiving restricted care.<sup>81</sup>

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### **Denying Women Economic Security**

The consequences that stem from the expanded domestic gag rule are vast. In addition to jeopardizing patient health, it also threatens the financial well-being of patients. An estimated 40 percent of women who sought an abortion from 2008–2010 cited financial instability as the predominant reason for choosing to terminate a pregnancy.<sup>82</sup> Studies have shown that women who are denied an abortion are more likely to struggle financially and more likely to receive public assistance than women who received an abortion.<sup>83</sup> Those claiming to be “pro-life,” however, are often opposed to public assistance programs.<sup>84</sup>

## **MORE HARMFUL U.S. LEGISLATION FOR REPRODUCTIVE HEALTH: THE HYDE AMENDMENT**

The Hyde Amendment imposes unfair restrictions on access to abortion for those dependent upon Medicaid. Since 1976, the Hyde Amendment has penalized low-income individuals seeking abortion services by blocking federal Medicaid funding for the procedure. The three narrow exceptions of rape, incest, and the endangerment of a patient's life were subsequently added to the amendment. The Hyde Amendment significantly affects people with low incomes, people of color, young people, LGBTQ+, and immigrants as a disproportionate number of these individuals rely upon Medicaid for their health coverage. Upholding the Hyde Amendment is a matter of racial and economic injustice. Medicaid is a joint federal and state program, so while the amendment blocks federal Medicaid funds for abortion services, states are able to cover abortions with their share of the funding; however, 36 states and the District of Columbia elect not to. The Guttmacher Institute estimates that 25 percent of women who would have otherwise sought a Medicaid-funded abortion in 2009 were unable to do so because of abortion restrictions.<sup>85</sup> Everyone, regardless of where they live or how much money they make, should be able to make informed choices on their reproductive health care without interference from policymakers.

## **CRISIS PREGNANCY CENTERS**

Crisis Pregnancy Centers (CPCs) go by many names, including: “pregnancy resource centers,” “pregnancy care centers,” “pregnancy support centers,” or simply “pregnancy centers.” Regardless of the name, the goal is the same: to intercept individuals who are considering abortion and persuade them that adoption or parenting are the only options.<sup>86</sup> CPCs are faith-based, anti-abortion counseling centers that use deceptive forms of advertising about the services they provide in order to be the first point of contact for people facing an unplanned pregnancy.<sup>87</sup> Concealing their religious affiliation or their anti-choice agenda, CPCs—such as Birthright International, Care Net, and the National Institute of Family and Life Advocates—disguise themselves as full-service reproductive health-care providers.<sup>88</sup> There are an estimated 3,000 network-affiliated CPCs in the U.S., compared to a total of 800 clinics that offer abortion services.<sup>89</sup> Very different from abortion clinics, CPCs lack regulatory oversight as they are not medical institutions. Unskilled lay volunteers falsely present themselves as clinical staff by wearing white coats and seeing their clients in exam rooms. What is more, CPCs provide pregnant individuals with inaccurate or misleading information regarding their options. Under the pretense that they provide comprehensive reproductive health care, including abortion services, CPCs use delaying tactics, biased counseling, and medically inaccurate information to coerce patients into continuing their pregnancies.<sup>90</sup> Intentionally providing misleading information prevents patients from making an informed and timely decision about their personal health. In states that impose arbitrary time restrictions on abortions, some inaccurately referred to as “heartbeat” laws, the tactics employed by CPCs can effectively deny patients the right to terminate a pregnancy. CPCs may have a right to exist, but they should not be eligible for Title X funding.

## What is at Stake?

Title X clinics have been providing patient-centered, voluntary, confidential, and affordable reproductive health care for half a century. Tens of millions of low-income households have been served, but the Trump/Pence administration is changing all that. The domestic gag rule is not just an attack on reproductive health care, it is an assault on the economically vulnerable. Many low-income households are losing access to health-care providers they trust, and many of them will not have affordable alternatives. Other patients will be denied access to the nondirective counseling they need and desire. The Trump/Pence administration and its allies may be winning the battle over Title X, but it's the nation that is losing.

### THE SUPREME COURT WEIGHS IN: *RUST V. SULLIVAN*

For almost the past 30 years, the case of *Rust v. Sullivan* has been cited by anti-choice advocates as U.S. Supreme Court support for Title X gag restrictions. In 1991, the Supreme Court ruled in a 5–4 decision that the limitations issued by HHS on the ability of Title X–funded recipients to engage in abortion-related activities do not violate the First and Fifth Amendment rights of clients and health providers.<sup>93</sup> The Court stated that the intent of Congress was ambiguous with regard to abortion counseling in the enactment of Title X, and that it would then defer to the expertise of the administrative agency, HHS. The Court ultimately ruled that the government may favor childbirth over abortion and allocate funds accordingly. After this decision, Congress voted to repeal the prohibitions on counseling and referral services, but lacked the necessary votes to override President George H.W. Bush's veto.<sup>94</sup> Because of the lengthy hold-up in federal courts, the Reagan-era domestic gag rule was never fully implemented, as it was in effect for only a month. The Clinton administration issued an executive order to suspend the restriction and issued new rules permitting Title X providers to make abortion referrals and allow sites that provide abortions to still participate in the Title X program, if financial separation between Title X funds and funds used for abortion could be demonstrated. The Trump/Pence administration has cited the *Rust v. Sullivan* decision as support for the legality of its new regulation, and a three-judge panel of the Ninth Circuit Court of Appeals agreed in June of 2019, rejecting the statutory and constitutional objections raised by 23 states, several family planning organizations, and the American Medical Association. Opponents of the new rule requested a rehearing by the full Ninth Circuit to implement a stay while the rehearing process moves forward, but in a 7–4 vote, the Ninth U.S. Circuit Court let stand its June decision. In September, the en banc panel of the Ninth Circuit heard oral arguments in the Washington, Oregon, and California cases. On February 24, 2020, the Court voted 7–4 to uphold the Trump/Pence administration's unethical and dangerous gag rule on Title X.<sup>95</sup>

### THE IMPORTANCE OF NONDIRECTIVE COUNSELING

Nondirective counseling in reproductive health gives patients comprehensive and unbiased information on their pregnancy options and enables them to make informed decisions. Denying counseling and referrals to Title X patients jeopardizes their health and well-being.

***The new Title X rule permits, but no longer requires, nondirective pregnancy***

***counseling.*** As such, it allows Title X grantees to provide patients incomplete and inaccurate medical information.<sup>91</sup> The American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Academy of Family Physicians endorse nondirective counseling and have expressed concerns regarding the new rule.<sup>92</sup>



## ATTACKS ON FUNDING

While the Trump/Pence administration has not tried to eliminate or cut funding to the Title X program, the program remains severely underfunded. The funding allocated for the Title X program has been flat-funded every year at \$286.5 million, substantially less than the \$400 million that experts recommended for the program.<sup>96</sup> In addition, the changes made to the program by the administration have inhibited providers from carrying out the original goal of the program. In the FY 2018 budget, for the first time in history, an administration singled out an individual health-care provider within the overview of its budget. The Trump/Pence administration called to prohibit Planned Parenthood from participating in the program, which, if enacted, would have created major health implications on millions throughout the nation.<sup>97</sup> More so, the administration also called for a complete ban of Planned Parenthood's participation in any federal health programs. Not so surprisingly, the proposed FY 2019, FY 2020, and FY 2021 budgets stated that the administration also "prohibits certain abortion providers from receiving federal funds" for family planning services from HHS, comprising those entities (including Planned Parenthood) that receive funding under the Title X program and Medicaid.<sup>98</sup> Instead, the Trump/Pence administration has made way for religiously affiliated organizations that focus on abstinence and natural family planning as methods of birth control. Through these presidential proposals, the administration has attempted to increase poor health outcomes for low-income families, communities of color, and LGBTQ+ individuals.



## **“DEFUNDING” PLANNED PARENTHOOD**

There is no line item in the federal budget allocating resources to Planned Parenthood. The organization receives federal funds through the Title X competitive grant program and through Medicaid reimbursements, just like other health-care providers. Neither Congress nor the Trump/Pence administration has the grounds to arbitrarily exclude a provider. Instead, political opponents have sought to “defund” Planned Parenthood by changing laws or regulations in a way that would either disqualify Planned Parenthood from receiving funds or force the organization to withdraw as a provider.

The forced withdrawal of Planned Parenthood from Title X may be a political victory for anti-abortion advocates, but it is defeat for the health and well-being of Title X patients. The campaign to “defund” Planned Parenthood began in earnest in 2007 when then-Congressman Mike Pence introduced an amendment to an appropriations bill that sought to restrict Title X funding in much the same way as the new Trump/Pence domestic gag rule does. While the Pence amendment was offered and approved by the House of Representatives on several occasions during Congressman Pence’s time in the House, the Senate has always blocked or rejected those efforts.

The Trump/Pence administration’s domestic gag rule has succeeded where Congressman Pence’s legislative efforts failed. Ignoring Congressional will and intent, the administration has forced the withdrawal of Planned Parenthood from Title X. But the detrimental impact of the domestic gag is not limited to Planned Parenthood, as several other providers have also been forced to withdraw. Additionally, several participating states have elected to withdraw from the program rather than abide by the new restrictions. As a result, there are now large holes in the reproductive health safety net provided by Title X clinics and providers. Over 60 percent of Planned Parenthood patients rely on federal programs to afford reproductive health services.<sup>99</sup> Without federal support, clinics will close and the people who depend on them for services are losing trusted providers and, often, access to care itself.

Despite the claims of anti-abortion advocates, other health centers do not have the capacity to absorb patients from Planned Parenthood and other providers that have been forced to withdraw as a result of the new regulations. Planned Parenthood sees nearly 40 percent of Title X patients and over half of the safety net family planning patients in 68 percent of counties in which they operate.<sup>100</sup> Many of the clinics that have been forced to withdraw as Title X providers are the only accessible clinic for many patients.

In September of 2019, HHS announced it was awarding an additional \$33.6 million to existing grantees. In making the announcement, HHS said the awards would “prioritize unserved and underserved jurisdictions and low-income individuals” and would help to fill the “service gaps left by the grantees that chose to leave the Title X program.” A report by the Kaiser Family Foundation found, however, that of the grantees receiving supplemental funding, 83 percent either did not experience any changes to their states’ programs or they lost less than one-fifth of their network of clinics.

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# **CHAPTER 4: CENSORING GOVERNMENT REPORT AND INFORMATION**

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In addition to the new Title X rule, the Trump/Pence administration has ordered federal departments and agencies to refrain from using certain words or phrases relating to reproductive health, and deleted whole pages of website information on the sexual and reproductive health of the LGBTQ+ community. The administration is also working, both domestically and internationally, to restrict and redefine internationally accepted human rights. Among the rights expected to be impacted are sexual and reproductive health rights and LGBTQ+ rights.



# The Elimination of Topics and Vocabulary at HHS

## Resources for LGBTQ+

In fall of 2017, the Trump/Pence administration deleted important LGBTQ+ language and health information from WomensHealth.gov, a popular and trusted resource operated by HHS's Office on Women's Health.<sup>101</sup> HHS claimed that the pages and links were temporarily taken down as a part of a routine update, but recent research conducted by the Sunlight Foundation reveals that no updates have been posted.<sup>102</sup> While the website boasts information on over 100 issues regarding various health-care topics, including population-specific subject matters, noticeably missing is any mention of LGBTQ+ health information.<sup>103</sup> Additionally, a well-referenced lesbian and bisexual health fact sheet was removed from its web address and "placed on an island" within the website's archives without any links directing readers to the information.<sup>104</sup> Furthermore, the office's social media has not mentioned LGBTQ+ health issues since November 2016.<sup>105</sup> HHS also archived a webpage that displayed important information for LGBTQ+ people and their families on federal services available for individuals wanting to adopt, families of LGBTQ+ youth, or victims of human trafficking.<sup>106,107</sup> The Trump/Pence administration continues to reinforce the elimination of LGBTQ+ information by changing federal policy on how data are collected by the government. HHS and other agencies are eliminating questions about sexual orientation and gender identity in official surveys.<sup>108</sup>

In March 2020, HHS removed the images of condoms from the HIV/AIDS awareness materials. Calling the images "unapproved," HHS stripped the images of condoms that once were included in a 2017 women's health fact sheet posted by the Department on National Women and Girls HIV/AIDS Awareness Day to spread the message on how to reduce HIV transmission among women and girls.<sup>109</sup> These actions by the Trump/Pence administration are part of a deliberate and systematic effort to ignore the needs and rights women and individuals belonging to the LGBTQ+ community.

## Seven Forbidden Words

In December 2017, news reports revealed that officials at the Centers for Disease Control and Prevention (CDC) were being told not to use certain words and phrases. In a budget meeting with senior officials, policy analysts at CDC were reportedly given substitute language to be used. Instead of using "evidence-based" or "science-based," it was reported that analysts were told to say that "CDC bases its recommendations on science in consideration with community standards and wishes."<sup>110</sup> Several days later, the CDC's director, Dr. Robert Redfield, assured the public that the CDC would not be banning any words or phrases.<sup>111</sup> The 'suggested' language changes were apparently a budgeting tactic designed to prevent Congress and the White House Office of



## THE FORBIDDEN WORDS

Vulnerable  
Entitlement  
Diversity  
Transgender  
Fetus  
Evidence-based  
Science-based

***“The reason we stopped using the term in the reports was that some advocates had begun to claim that [...] the term ‘reproductive rights’ did include the right to abortion. And so rather than using a term that now has two completely divergent meanings to it, we decided to go back and use the U.S. statutory standard that we report on coercive population practices such as forced and coerced abortion and involuntary sterilization.”***

Michael Kozak, Bureau of Democracy, Human Rights, and Labor Affairs at the Department of State

Management and Budget from reflexively cutting funding for CDC programs. CDC officials were concerned that the ‘forbidden’ words would be a red flag that would trigger opposition from religious conservatives within the administration.<sup>112</sup> This episode highlights the chilling effect that the Trump/Pence administration’s ideological war on science funding, reproductive health rights, and the LGBTQ+ community is having on government agencies.<sup>113</sup> Individuals at HHS, the agency that oversees the CDC, essentially confirmed as much.<sup>114</sup>

## HHS Changing the Rules

### Direct Aim at Abortion Access

In December 2019, HHS published a final rule in the Federal Register on the Patient Protection and Affordable Care Act (ACA); Exchange Program Integrity, referred to as the “abortion segregation” rule by critics. The burdensome rule stands to harm at least 3 million people who have health insurance coverage through ACA.<sup>115</sup> The rule requires insurance companies that participate in the ACA Marketplace for individual coverage to provide separate billing for abortion services.<sup>116</sup> Opponents of HHS’ changes worry that insurance companies may drop coverage of abortion altogether to forgo the administrative complications created by this rule. These changes won’t only be burdensome to the insurance companies, but also to the people who may lose coverage if they fail to follow the new requirements. This rule will force individuals to submit a separate payment for abortion services.<sup>117</sup> Many insurance groups, including America’s Health Insurance Plans, oppose the arduous rule.<sup>118</sup>

### THE ADMINISTRATION’S WRECKING CREW: ALEX AZAR

Since he was confirmed as the Secretary of Health and Human Services in January 2018, Alex Azar has been an outspoken opponent of many reproductive health-care programs he is tasked with leading. Throughout his time at HHS, Secretary Azar has worked to restrict Medicaid by approving work restrictions, make abortion coverage less accessible by proposing a rule to impose a burdensome system to bill for abortion coverage under ACA insurance plans, and weaken the birth control mandate by proposing rules allowing bosses to control birth control access for their employees.<sup>119</sup> Secretary Azar has been praised by anti-abortion groups for publicly stating that “there is no international human right to abortion,” and even headlined the Family Research Council’s Pro Life Con in January 2020 prior to the March for Life in Washington, D.C..<sup>120,121</sup> He has championed several rules that endanger the reproductive health of low-income individuals, people of color, members of the LGBTQ+ community, and women, including the new Title X rule that forced Planned Parenthood and other providers to discontinue participating in the program.


# Regressive Changes at the State Department

## Annual Human Rights Reports

The Annual Country Reports on Human Rights Practices, also known as the Annual Human Rights Report, is an annual report published by the U.S. Department of State (State Department). It is an essential resource relied upon by Congress, federal agencies, foreign governments, academics, journalists, civil society organizations, and human rights defenders around the world.<sup>122</sup>

The Foreign Assistance Act of 1961 mandates a “complete and full report regarding the status of internationally recognized human rights” for countries that are either members of the U.N. or receive U.S. foreign assistance.<sup>123</sup> Reproductive rights are internationally recognized, but they were omitted from the 2017 report published in April 2018. Human rights supporters were rightfully outraged.<sup>124</sup> Responding to public criticism of the omission, State Department senior official Michael Kozak stated that some advocates and organizations interpret the term “reproductive rights” as “abortion rights,” and therefore, the administration decided to remove the term from the annual reports.<sup>125</sup> The 2018 annual report, published in March 2019, also omitted any reference to reproductive rights. Instead, the report indicated “[t]here were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods.”<sup>126</sup> For estimates on reproductive health, such as maternal mortality and contraceptive prevalence, the State Department’s report simply referred readers to the WHO’s website.<sup>127</sup> The same language can be found in the 2019 annual report..

Notably, the State Department also scaled back the traditional reporting on child marriage and gender-based violence. Child marriage has been included in the annual reports as a violation of human rights since 2012 and was codified as a reporting requirement in the reauthorization of the Violence against Women Act in 2013.<sup>128</sup> A reported 12 million girls each year are subjected to the practice of child marriage, a human rights abuse that often leads to the violation of basic rights such as education, health, and a life free from violence and exploitation.<sup>129</sup> In response to widespread criticism, State Department officials asserted that the new report had been merely “streamlined” for clarity. Remarkably, however, the issues that were removed completely or significantly condensed related only to the rights of women, girls, and LGBTQ+ individuals.<sup>130</sup> Consistent with its right-wing ideology, but contrary to the requirements of the Foreign Assistance Act of 1961, the Trump/Pence administration adamantly refuses to provide a “complete and full report” on these internationally recognized rights.



*“As human rights claims have proliferated, some claims have come into tension with one another provoking questions and clashes about which rights are entitled to gain respect.”*

Michael Pompeo, Secretary of State

***“The Commission will provide fresh thinking about human rights discourse where such discourse has departed from our nation’s founding principles of natural law and natural rights.”***

A Notice by the State  
Department on  
May 30, 2019

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### **Commission on Unalienable Rights**

In May 2019, the Trump/Pence administration announced plans to launch a new commission to examine international human rights and “natural law.” Seemingly forgetting that there is an already established Bureau of Democracy, Human Rights, and Labor Affairs within the State Department that monitors and champions human rights, Secretary of State Michael Pompeo claimed the goal of the new Commission on Unalienable Rights is to ground discussions of human rights in “America’s founding principles.” The purpose of the Commission is to provide Secretary Pompeo with “fresh thinking” when reviewing the role of human rights in American foreign policy.<sup>131</sup> Secretary Pompeo stated that the focus of the panel will be on “principles” over “policy,” and it will facilitate “one of the most profound reexaminations of the unalienable rights in the world since the 1948 Universal Declaration.”<sup>132</sup> The Secretary wrote in a published op-ed in the *Wall Street Journal* that the members of the commission will address questions regarding human rights: “What are our fundamental freedoms? Why do we have them? Who or what grants these rights? How do we know if a claim of human rights is true? What happens when the rights conflict? Should certain categories of rights be inextricably ‘linked’ to other rights?”<sup>133</sup>

The Trump/Pence administration has stacked the new panel with religious conservatives who take a narrow view of human rights and reject any internationally recognized rights that conflict with their religious views. Human rights advocates justly fear that the notion of “natural rights” will be interpreted to mean “God-given” rights as defined by religious conservatives. It appears that Secretary Pompeo is determined to limit the scope of human rights and ‘reorient’ international institutions, such as the UN, accordingly. In creating this council, the Trump/Pence administration is blatantly rejecting the global human rights framework already in place and seeking to undermine the rights of women, people of color, and the LGBTQ+ community. Supporters of the discriminatory commission include radical right-wing groups, such as the Family Research Council, that claim to be “pro-life and pro-marriage,” and have clearly demonstrated their hostility to the rights of women and LGBTQ+ individuals.<sup>134</sup> Members of the House Foreign Affairs Committee have criticized the commission and its charter and have vowed to block funding for this religious and ideologically driven exercise.<sup>135</sup> Conflating religious beliefs with public policy jeopardizes the internationally recognized human rights of millions of people around the world.

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### **Other Restrictions Within the State Department**

The Trump/Pence administration’s assault on reproductive rights also extends to the diplomatic corps. In October 2018, political appointees at the State Department drafted a proposal to prohibit U.S. diplomats from using phrases such as “sexual and reproductive health” and “comprehensive sexuality education.”<sup>136</sup> While this proposal was never finalized, it is yet another reflection of the hostility that the Trump/Pence administration has for reproductive health and rights.



## THE ADMINISTRATION'S WRECKING CREW: MARY ANN GLENDON


Mary Ann Glendon was appointed by Secretary Pompeo to head the Commission on Unalienable Rights. A Harvard law professor and former ambassador to the Vatican under George W. Bush, Glendon is a notorious social conservative who has taken a strong stance against reproductive rights. In 1995, Glendon opposed recognizing abortion as an international human right at the U.N. Women's Conference in Beijing. Throughout her career, Glendon has supported attempts to block access to abortion, restrict same-sex marriage, and degrade the rights of transgender people. The University of Notre Dame presented Glendon with the *Evangelium Vitae*, an award considered to be the most prestigious anti-abortion prize in the U.S.<sup>137</sup> The International Women's Health Coalition said "[Glendon] has a long history of critiquing international human rights standards that recognize women's and girls' rights to autonomy and self-determination over all areas of their lives, especially when these rights come into conflict with their traditional roles within families."<sup>138</sup> At the helm of the Commission on Unalienable Rights, Glendon will seek, as she has previously, to deny the very existence of reproductive rights.



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# CHAPTER 5: UPENDING COMPREHENSIVE SEXUALITY EDUCATION

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A silhouette of a pregnant woman is centered in the background of the page. She is shown in profile, facing right, with her hair tied up. The silhouette is dark and blends into the orange background.

Teenage pregnancy has declined in the U.S. over the past two decades, but gains still leave the nation behind other industrialized countries. Comprehensive, evidence-based grant programs, including the Teen Pregnancy Prevention (TPP) program, have been extremely effective in addressing the problem. The Trump/Pence administration is now seeking to dismantle the TPP program and abandon evidence-based comprehensive sexuality education projects in favor of ineffective and harmful abstinence-only-until-marriage (AOUM) programs.

# The Teen Pregnancy Prevention Program

The TPP program is a federal, evidence-based program that provides funding to organizations working to prevent teen pregnancy across the U.S. The two-tiered program, established in 2010 with a Congressional mandate, is implemented by the Office of Population Affairs at HHS. Three quarters of the TPP program funding is dispersed to Tier 1 grants to replicate effective programs in new communities. Remaining funds distributed to Tier 2 grantees are used to develop, replicate, and evaluate innovative strategies to address teen pregnancy. Projects must be medically accurate, age-appropriate, and inclusive of LGBTQ+ youth. They must also create and sustain links to youth-friendly health services.<sup>139</sup> Beyond inclusivity and accuracy, the TPP program does not set any content requirements. Congress appropriated \$110 million at the program's inception but reduced annual funding the following year to \$100 million.

In its first two grant cycles, the TPP program had a wide-ranging impact. Since 2010, TPP program grantees have served over 1.25 million young people across 40 states and Washington, D.C., reaching populations most at risk for teen pregnancy.<sup>140</sup> Teen pregnancy and birth rates have hit new lows every year since the start of the TPP program, and the rate of decrease has accelerated.<sup>141</sup> In 2017, 18.1 births occurred in every 1,000 females between 15 and 19, reflecting a 45 percent decrease since 2010 when the rate of births was 34.2 births for every 1,000 teen females.<sup>142</sup>

Beyond direct program implementation, the TPP program also conducts an evidence review, a resource that provides a regularly updated database of effective prevention curricula. The initial review surveyed teen pregnancy-prevention literature since 1990 to identify interventions positively impacting one of five target areas: sexual activity, number of sexual partners, use of contraceptives, rates of sexually transmitted infections and HIV, or rates of pregnancy.<sup>143</sup> To qualify, studies must utilize randomized control trials or quasi-experimental study designs, and findings are updated periodically with reviews conducted by Mathematica Policy Research.<sup>144</sup> The database is available for educators and organizations working in the health education field, and TPP grantees are required to select a curriculum from the database to replicate.<sup>145</sup>

Due to its success, the TPP program is highly regarded by policymakers and the public. In 2017, the Bipartisan Commission on Evidence-Based Policymaking hailed the program as the gold-standard for evidence-based policy.<sup>146</sup> Public opinion surveys indicate that 85 percent of adults favor maintaining funding for the TPP program and its complementary program, the Personal Responsibility Education Program (PREP).<sup>147</sup>

## THE PERSONAL RESPONSIBILITY EDUCATION PROGRAM

Teen pregnancy rates are high across the U.S., but some populations are more likely to be affected than others. The teen birth rate for Native Americans in 2017 was 32.9 per 1,000, far exceeding the national rate of 18.8.<sup>148</sup> Youths in foster care are twice as likely as their peers to get pregnant.<sup>149</sup> In rural counties, teen birth rates are decreasing, but the rate of decrease is significantly slower than in urban counties despite having higher rates.<sup>150</sup> To address these disparities, Congress created PREP in conjunction with the TPP program to fund programs targeting high-risk populations: foster youth, youth experiencing homelessness, victims of human trafficking, parenting youth, and those in communities with documented heightened rates of teen pregnancy. The \$75 million program implements similar evidence-based requirements as the TPP program, and over 95 percent of grant recipients adopt one of the programs in the evidence review.<sup>151</sup> PREP guidelines impose an additional requirement that projects include content on “adult preparation subjects,” such as healthy relationships, communication, and financial literacy.<sup>152</sup> While the majority of funding goes to state formula grants, PREP also administers grants for tribal organizations. PREP adds to the evidence base through a competitive grant to organizations developing innovative approaches to teen pregnancy prevention. PREP was fully funded in FY 2019, and the House Energy and Commerce Committee has advanced a bipartisan bill that would extend PREP through FY 2023.<sup>153</sup>

## The Trump/Pence Administration’s Attacks on the TPP Program

### Attempts to Cut Funding for Evidence-Based Programs

The Trump/Pence administration has continuously targeted the TPP program. The first attempt to eliminate the program came mid-grant cycle in 2017.<sup>154</sup> Shortly after abstinence-only advocate Valerie Huber joined the Office of the Assistant Secretary of Health, the office notified 84 grantees that their funding would end in June 2018, two years prematurely.<sup>155</sup> The decision was made despite objections from career staff who argued a premature termination of multi-year projects jeopardized the usefulness of data collected.<sup>156</sup> Fortunately, several federal courts intervened to reinstate funds for the duration of the grant cycle through June 2020.<sup>157</sup> Undeterred by the courts, the Trump/Pence administration has pushed for the elimination of the TPP program in each of its proposed budgets, but Congress has repeatedly defeated all such attempts.<sup>158</sup> The administration similarly attacked PREP, marking its funding as discretionary in FY2019. In doing so, the opportunity to cut the program in future budgets was created. Once again, however, Congress rejected administration attempts to cut the program.



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## Dismantling the Evidence-Based Approach of TPP

When funding cuts failed, the Trump/Pence administration sought to override the intended purpose of the program and utilize the TPP program funding to promote an AOUM agenda. After a federal court ruled against the termination of TPP grants, Office of Adolescent Health (OAH) released a new two-year funding opportunity announcement (FOA) that radically changed the nature of the grant program in April 2018.<sup>169</sup> Instead of replicating an evidence-based model, grantees were instructed to include elements from either a “Sexual Risk Avoidance” or “Sexual Risk Reduction” curricula cited in the FOA, neither of which is included in the evidence review.<sup>160</sup> Both curricula reflect AOUM practices that either lack evidence of effectiveness or have been proven to be detrimental to some youth populations. Additionally, the FOA discarded a requirement that projects provide referrals to youth-friendly health services and also modified the definition of “age-appropriate” to match the definition promoted by abstinence-only advocates, which emphasizes social maturity and removes references to cognitive ability.<sup>161</sup> Federal judges in New York and Oregon nullified the FOA on the grounds that Congress intended to create an evidence-based program.<sup>162</sup> The decisions in *Planned Parenthood of NYC v. HHS* and *Multnomah County v. Azar* marked the seventh time courts have overruled the changes proposed by HHS. Subsequently, HHS released a list of the awards that would have been issued under the vacated FOA.<sup>163</sup> Some organizations on the list had qualified for grants under previous TPP program guidelines, but others were AOUM programs that lack evidence of effectiveness.

In February 2019, HHS created a new competition for Tier 1 grants without making changes to the approach struck down by the courts.<sup>164</sup> Three of the organizations awarded \$493,000 each are notorious leaders in the abstinence-only and anti-abortion movements.<sup>165</sup> The Obria Group, the Women’s Care Center of Erie County, and Bethany Christian Services run crisis pregnancy centers that promote unproven and unethical notions about contraception and abortion.

The Trump/Pence administration persists in making TPP grants without rationale or documentation. In November 2017, the department announced a new research partnership with the MITRE Corporation, a not-for-profit organization operating federally funded research and development centers, to “identify, test, and replicate meaningful ways to improve programs that are representative of the health needs of today’s youth population concerning teen pregnancy.”<sup>166</sup> The program would be paid for, in part, with TPP program funds; however, OAH did not, and has still not, indicated how much TPP program funding was allocated for this partnership.<sup>167</sup> The month after the 2018 FOA was nullified, OAH awarded MITRE an additional \$21.5 million for a teen pregnancy prevention study.<sup>168</sup> The details of the project, including specific tasks and timelines, have not been shared. Furthermore, no explanation was given as to why a contract for work similar in scope to the TPP program was awarded without a competitive application process.<sup>169</sup>





## NEW NAME, SAME POLICY

The Trump/Pence administration has embraced the push by Valerie Huber and other AOUM advocates to rebrand their failed abstinence-only approach as “sexual risk avoidance.”<sup>182</sup> The new term appears to embrace the public health theory of risk reduction, but the switch is in name only. Like its predecessor, the abstinence-only approach is based on ideology, not evidence or science.<sup>183</sup>

In letters to Secretary Azar, Democratic leaders from both the House and Senate inquired about HHS’s distribution of TPP program funds and raised concerns over how the MITRE Corporation made sub-grants with federal funds.<sup>170</sup> Following HHS’s press release on unfunded grantees and the announcement of an additional award to MITRE, the corporation awarded \$300,000 to one of the AOUM organizations on HHS’s list, Be Strong International, Inc.<sup>171</sup> In its open application for the teen pregnancy prevention study, MITRE does not include a requirement that applicants replicate a model from the evidence review, despite the use of TPP funding.<sup>172</sup>

## Moving Backward on Sexuality Education

The Trump/Pence administration continues to reject evidence-based sex education in favor of failed methods. Since 1981, the United States has spent over \$2.2 billion funding unproven AOUM approaches.<sup>173</sup> Two competitive grants funding abstinence-only prevention programs were eliminated in 2010, in part due to government reports highlighting their inaccuracy.<sup>174</sup> Formula grants through the Title V AOUM Program expired in 2009, with only half of eligible states participating.<sup>175</sup> Proponents of abstinence-only programs, however, successfully revived Title V during the negotiations on the Affordable Care Act in 2010, securing \$50 million in funding.<sup>176</sup> They also succeeded in getting a \$5 million competitive grant program created through the Consolidated Appropriations Act in 2012.<sup>177</sup> In 2015, abstinence-only advocates rebranded this grant program as the Sexual Risk Avoidance Education Program.

The Trump/Pence administration has relentlessly and successfully pushed abstinence-only approaches at the expense of evidence-based comprehensive sexuality programming. Funding for the Sexual Risk Avoidance Education program increased to \$35 million in FY 2019.<sup>178</sup> The Title V formula grant program is now referred to as the Sexual Avoidance Program.<sup>179</sup> When states drop their participation in Title V, community- and faith-based organizations apply for the leftover funds. The changes, which came through the Consolidated Appropriations Act in 2018, included a revision of the statutory definition of abstinence education. HHS promotes AOUM as a poverty prevention intervention,<sup>180</sup> and the agency’s regulations explicitly state that AOUM “does not include demonstrations, simulations, or distribution of contraceptive devices.”<sup>181</sup> Title V has been funded at \$75 million annually since FY2 016, meaning that the United States wasted a total of \$110 million on AOUM programs in FY 2019.

## Federal Funds Matter

The money spent by the federal government represents a small fraction of the amount spent nationally on sex education programs. While most sex education programs are implemented at the local level, the grants provided by the federal government have played a major role in the development of the curricula used by schools. The federal government's emphasis on the abstinence-only approach adopted prior to 2010 reduced the number of students receiving evidence-based comprehensive sexuality education. Between 1995 and 2013, the share of students instructed on abstinence-only without information about contraceptive options increased more than threefold, from 8 percent to 28 percent of female students and from 9 percent to 35 percent of males.<sup>184</sup>

### THE ADMINISTRATION'S WRECKING CREW: Valerie Huber

Abstinence-only advocates, including those who have questioned the objectivity of the evidence review, now oversee federal TPP programs. Valerie Huber, former CEO of the National Abstinence Education Association (now called Ascend), joined the Office of the Assistant Secretary of Health in June 2017 as a policy advisor. Shortly afterwards, the attacks on evidence-based programming began. Before her appointment to HHS, Huber spent two decades in the nonprofit world seeking to prevent adolescents from receiving comprehensive sexuality education. She also directed Ohio's Abstinence Education Program. Ascend, the organization she led for over a decade, has endorsed curricula that include sexist tropes and problematic metaphors about sex to promote abstinence. These include using adhesive tape as a metaphor for sex: as students stick and remove the tape, the tape begins to pick up dirt and baggage, and loses its adhesive quality, drawing an offensive similarity to individuals who chose to engage in sexual activities before marriage.<sup>185</sup> Huber's attitude toward evidence-based approaches, and health and rights generally, makes her an inappropriate and dangerous leader on the subject of teen pregnancy prevention. She has claimed that Mathematica reviews, including the TPP program evidence review, was not a "level playing field" and that "health and rights mean different things to different people."<sup>186</sup> In January 2019, Huber moved from the Office of the Assistant Secretary of Health to the Office of Global Affairs at HHS, where she attacks international programs utilizing or promoting evidence-based, comprehensive sexual education.

## ATTACKS ON FUNDING

For four years in a row, the Trump/Pence administration has proposed eliminating all \$101 million reserved for the evidence-based and bipartisan supported TPP program.<sup>195</sup> Instead, the administration has attempted to redirect the funding toward abstinence-only educational programs. The abstinence-education program would provide formula grants to states in order to support programs that teach abstinence as the only pregnancy prevention method to teens.<sup>196</sup> Year after year, Congress has rejected the administration's request to eliminate the program and ensured that the TPP program retain its full funding.

## A Failed Policy: Abstinence-Only-Until-Marriage

The AOUM curricula instruct students to refrain from sexual activity until marriage and advise them that refraining from nonmarital sexual activity improves their future prospects. AOUM curricula, therefore, prohibit the “demonstrations, simulations, or distribution” of contraception options.<sup>187</sup> But Congressionally mandated reviews of government-funded abstinence-only programs have concluded they had no significant beneficial impact on participants' sexual activity or rates of unprotected sex.<sup>188</sup> The broader literature on abstinence-only curricula have consistently shown no positive long-term behavioral impact on behavior or health outcomes.

Abstinence-only education at the expense of evidence-based, comprehensive sexuality education is not only ineffective, but also potentially harmful to the health and livelihoods of students. AOUM programming can have a damaging impact on sexual assault victims and LGBTQ+ students. Programs that portray nonmarital sexual activity as shameful can prompt sexual assault victims to have feelings of worthlessness or guilt.<sup>189</sup> AOUM programming does not address the needs and concerns of the LGBTQ+ community. As LGBTQ+ youth are at higher risks than their peers for bullying, STIs, and sexual violence, it is important that sexuality education address their specific needs.<sup>190</sup> Analysis and research indicates that AOUM can contribute to the ostracism of survivors of sexual assault and LGBTQ+ adolescents.<sup>191</sup>

## The Better Alternative: Comprehensive Sexuality Education

Evidence-based Comprehensive Sexuality Education (CSE) seeks to impart knowledge, skills, attitudes, and values on young people in order to equip them with the resources needed to make healthy and informed decisions regarding their sexual activity. Viewing sexual health holistically, CSE includes information about human development, relationships, personal skills, and sexual health. While encouraging abstinence, CSE presents adolescents with all of their sexual health options, as research shows that most teenagers, notwithstanding pledges of abstinence, begin engaging in sexual activity at the age of 17 or earlier. CSE recognizes the importance of educating these students.<sup>192</sup> Contrary to the loud and baseless claims from AOUM advocates that CSE encourages sexual activity, thorough discussion of contraception has not been shown to increase sexual engagement among youth.<sup>193</sup> Unlike AOUM, CSE is shown to have positive long-term impacts on both health and behavioral outcomes. Furthermore, the focus on relationships and open discussions about these topics have demonstrated that women who receive CSE before college experience decreased rates of sexual assault.<sup>194</sup>







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# CHAPTER 6: RELIGIOUS AND MORAL REFUSALS

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The Trump/Pence administration is prioritizing religious beliefs over patient care and well-being. When patients are denied services, their health—and even their lives—could be endangered. Patients depend upon their health-care providers to make medical decisions for them based on their professional expertise and training, not based upon their religious beliefs or their moral judgments.

# Conscience and Religious Freedom

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## Conscience Clauses and Religious Refusals

Religious or moral exemptions, often referred to as conscience clauses or religious refusals, permit health-care providers to refuse to perform or assist with certain health-care services based on religious or moral grounds. Professional medical standards allow providers to refuse services that violate their religious or moral beliefs, but only when the refusal does not interfere with a patient's right to care.<sup>197</sup> The American College of Obstetricians and Gynecologists recommends that “any conscientious refusal that conflicts with a patient's well-being should be accommodated only if the primary duty to the patient can be fulfilled.”<sup>198</sup> There are over 20 federal statutory provisions related to conscience and religious freedom that give health-care providers the ability to refuse services to an individual based on personal objections.

While the right to religious freedom is a cornerstone of the U.S. Constitution, socially conservative politicians are weaponizing “religious liberty” by carving out exemptions that ignore a patient's right to care. In response to the landmark *Roe v. Wade* ruling, conservatives encouraged the expansion and adoption of conscience clauses. In 1973, Congress passed 42 U.S.C. § 300a-7, collectively known as the Church Amendments, which protect the conscience rights of individuals and entities that object to performing abortion or sterilization services contrary to their religious beliefs or moral convictions.<sup>199</sup> Since then, several more acts and amendments have been passed to protect what conservatives construe as “religious liberty.”

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## Detrimental to the Health of Many

Statutes permitting health-care providers to refuse care to individuals seeking reproductive health services are jeopardizing the health of people, particularly the poor and people of color. The health of the LGBTQ+ community is also threatened by these statutes. Under the banner of “religious liberty,” providers are able to deny clients counseling, information, or referrals to abortion, sterilization, contraception, and in vitro fertilization services. Emergency care services are treated slightly differently, but alarmingly are not immune to religious refusals. Many state laws prohibit refusals in emergency settings, but some states allow a provider to refuse to perform a life-saving abortion if another willing provider is available.<sup>200</sup> While the most commonly discussed religious exemption is the right to refuse to provide abortion services, religious or moral refusals can take any of the following forms:

- Refusing to prescribe or fill birth control prescriptions
- Refusing to prescribe or fill hormone therapy prescriptions for transgender individuals
- Refusing to care for sexual health, including STI and HIV testing or treatment
- Refusing to provide services for LGBTQ+ people
- Refusing to care for children of LGBTQ+ parents
- Refusing to give emergency reproductive care

There are serious consequences directly correlated with religious or moral refusals, including an increase of unintended and unwanted pregnancies, the spread of STIs and HIV, poor health outcomes for LGBTQ+ individuals, and in some serious cases, severe injury or death.<sup>201</sup>

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### **Influence of the Religiously Affiliated Health Systems**

Many health-care organizations extend the religious refusal exception to include all providers working within the organization, even if a physician, nurse, or other provider are willing to offer the services. These types of institutions are typically faith-based hospitals or health centers. Religiously affiliated health systems are the fastest growing hospital systems in the U.S. and provide services for health insurance users that receive federal financial assistance such as Medicaid.<sup>202</sup> While patients can seek care at another hospital or health center willing to offer reproductive health services, faith-based health institutions are often the only local provider, particularly in rural areas and low-income communities, leaving patients without other options for care.<sup>203</sup> When faith-based institutions in these areas exercise their religious liberty, “health care deserts” can result and disproportionately affect people of color, people with low incomes, and members of the LGBTQ+ community.

It is not always evident which health systems are faith-based and which are not. Religiously owned health-care facilities often merge with another health system or sell a facility to nonsectarian operators and demand that going forward, the merged or newly acquired facility continue to abide by the religious restrictions. Those directives are often in direct conflict with medical standards and guidelines, as they are based on ideologies, not on health outcomes, scientific research, medical trials, or best practices.<sup>204</sup>

## **Affordable Care Act Protections**

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### **Women’s Preventive Health Services**

Prior to the Obama-era policies, many women had to pay out-of-pocket for basic preventive health-care services. The cost of contraception accounted for up to 44 percent of women’s out-of-pocket health expenses.<sup>205</sup> Under the ACA, insurance plans that are acquired through an employer, state market/exchange, or individual purchases are required to cover the expenses for preventive services for women without any cost-sharing expenditures to the individual. These services include cervical and breast cancer screenings, STI and HIV testing and counseling, diabetes screening, osteoporosis screening, well-women visits, and domestic and interpersonal violence screening and counseling. Also included in these services is prescription and fulfillment of birth control, often referred to as the birth control benefit. ACA regulations define birth control as preventive health-care, and coverage includes all Food and Drug Administration–approved contraceptive methods, sterilization procedures, and patient education and counseling.<sup>206</sup>



Under the ACA, religious employers, such as churches and other houses of worship, are exempt from covering contraceptive methods and counseling; this means that if an individual works for an exempt religious employer and needs contraceptive services, they may be forced to pay out-of-pocket for those expenses. Qualified religiously affiliated organizations, such as nonprofit religious hospitals or institutions of higher education with religious objections to contraceptive coverage, do not have to contract, arrange, pay, or refer for that coverage. However, HHS regulations enacted during the Obama administration then require that the insurer or a third party administrator reimburse the patient for those services without a copayment, coinsurance, or deductible.<sup>207</sup> This benefit ensures that over 62 million women in the U.S. have access to birth control.<sup>208</sup> While the birth control benefit has been a big win for reproductive health and rights, the Trump/Pence administration has attempted to dismantle the rule and turn the clock back on women's access to reproductive health care.

## Stretching the Religious Statutes

### The Exception that Swallows the Rule

In October 2017, the Trump/Pence administration sought to restrict the birth control benefit by promulgating interim HHS rules substantially widening the religious exemption. Two separate rules were issued: one exempting nonprofit organizations, for-profit companies, and any other nongovernmental employer from providing contraception coverage because of religious objections; and the second rule granting exemptions to any other employer, other than publicly traded for-profits, based on "moral" objections.<sup>210</sup> The drafters of the interim rules even went as far as to reject the notion that there is a connection between coverage for birth control and reducing unintended pregnancy.<sup>211</sup>

Several states and advocacy groups brought lawsuits to challenge the legality of the rules, and in December of 2017, two federal courts blocked them.<sup>212</sup> One federal court in Pennsylvania explained that the exemptions were so broad, they are the "proverbial exception that swallows the rule."<sup>213</sup> Ignoring those rulings, the administration introduced two final rules in November of 2018 that were virtually identical to the interim rules block by federal courts. These rules would allow any nongovernmental university or employer claiming a religious objection to opt out of providing insurance coverage for birth control to students and employees, while the moral exemption would allow any nongovernmental university or employer, except publicly traded corporations, claiming a moral objection to opt out of providing birth control coverage.

Once again, several states and advocacy groups challenged the rules in federal court on the grounds that they violate the ACA, discriminate against women, and infringe

### THE SUPREME COURT WEIGHS IN: *BURWELL V. HOBBY LOBBY STORES*

Certain owners of for-profit companies have made it their business to control their employees' access to birth control. In 2014, the U.S. Supreme Court devastatingly agreed with Hobby Lobby, a national arts and crafts chain owned and operated by the Green family, that corporations with religiously held principles had the right to refuse to provide birth control coverage for their employees. The Court ruled against birth control access in a 5–4 decision, setting a new precedent that allowed for "the commercial, profit-making world" to deny people access to basic health-care. Justice Ginsburg noted in her dissent that this ruling opened the door to the denial of other kinds of health-care based on their bosses' beliefs.<sup>209</sup>



upon the constitutional separation of church and state.<sup>214</sup> In July 2019, a federal appeals court affirmed a lower court ruling blocking the final rules issued by the Trump/Pence administration.<sup>215</sup> The administration, however, has appealed, and the matter will ultimately be decided by the U.S. Supreme Court in 2020.<sup>216</sup>

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### **Broadening of the Conscience and Religious Freedom Regulations**

In May 2017, President Trump issued an executive order promoting religious freedoms “to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America.”<sup>217</sup> In January 2018, the Trump/Pence administration unveiled a package of proposed regulations reinterpreting more than 20 “conscience and religious freedom” provisions in federal law.<sup>218</sup> The new regulations, called the Protecting Statutory Conscience Rights in Health Care (conscience rule), were finalized in May 2019.

The proposed conscience rule would allow health-care providers and others to refuse to provide services, information, and referrals if they have religious or moral objections.<sup>219</sup> The rule would extend the right of refusal to those “assisting in the performance” of the service or those participating “in any program or activity with an articulable connection” to the service or the procedure. The rule, by way of examples, extend the right of refusal to those providing counseling, referral, training, or making other arrangements. The rule would also define the “workforce” to include volunteers, trainees, contractors, other persons under the control of the health-care provider.<sup>220</sup> The rule is potentially broad enough, for example, to allow a receptionist to refuse to schedule abortion services. The proposed HHS regulations would even extend to emergency care.<sup>221</sup> These rule changes would be especially detrimental to patients with limited access to health-care services, including people of color, people with low incomes, and members of the LGBTQ+ community. In May 2019, Congressional opponents on the House Appropriations Committee voted to deny funding for the implementation of the new rule.<sup>222</sup>

The rule has been challenged in two suits filed in federal courts, one by the New York State Attorney General joined by 22 other states, and the other by the California Attorney General, on the basis that the rules impede access to basic and emergency health care as well as discriminating against women, the LGBTQ+ community, and other patient populations.<sup>223</sup> In June 2019, the government agreed to delay the implementation of the rule that was set to take effect in July and instead, aimed for a new implementation date of November 22, 2019.<sup>224</sup> However, in early November, three federal judges threw out the new regulation in three separate cases, one citing that HHS had acted “arbitrarily and capriciously” by imposing the rule.<sup>225,226,227</sup> The administration is expected to appeal the decision.

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### Executive Order 13831

Under an executive order issued by the Obama administration, an “alternative provider” referral requirement was mandated for cases in which the beneficiary objected to the religious affiliation of their assigned provider. In May 2018, President Trump signed an executive order titled *Establishment of a White House Faith and Opportunity Initiative* to further protect the religious liberty for civil groups providing federally subsidized social services.<sup>228</sup> The new order eliminates the previous requirement for an alternative provider in order to appease anti-abortion religious providers who did not want to make referrals for prenatal services to providers that also offer abortions.<sup>229</sup> Opponents of the order say that it is an invitation for faith-based groups to apply for public funding and discriminate against LGBTQ+ individuals and those in need of reproductive health services.<sup>230</sup>

In January 2020, HHS proposed a new rule entitled *Ensuring Equal Treatment of Faith-Based Organizations* that implements President Trump’s executive order from May 2018. The goal of the HHS rule is to remove regulatory burdens on religious organizations while ensuring that religious and nonreligious organizations are treated equally in HHS-supported programs.<sup>231</sup>

USAID also proposed a similar rule on the same day as HHS entitled *Equal Participation of Faith-Based Organizations in USAID’s Programs and Activities: Implementation of Executive Order 13831*. The purpose of the new rule under USAID is to provide clarity regarding the rights and obligations of faith-based organizations that are participating in USAID’s programs. The new rule states that faith-based organizations that receive financial assistance from the agency shall retain autonomy, religious character, and independence. Faith-based and community organizations are eligible to participate in USAID programs on the same basis as another other organization without regard to their religious affiliation, and religious entities cannot be excluded from competition for USAID funding.<sup>232</sup>

## THE ADMINISTRATION'S WRECKING CREW: ROGER SEVERINO

As the Director of the Office of Civil Rights (OCR) under the Trump/Pence administration, Roger Severino has assumed a leading role in promoting the administration's "religious liberty" agenda. Previously he served as the director of the religious liberty program at the Heritage Foundation, an ultraconservative think tank. As OCR director, Severino was instrumental in the creation of the Conscience and Religious Freedom Division and will play a prominent role in the enforcement of the administration's proposed conscience rule. Women's groups and the LGBTQ+ community opposed his appointment.<sup>233</sup> He has reportedly argued for the right to deny health care to women who have previously had an abortion.<sup>234</sup> He is also a staunch opponent of LGBTQ+ rights and protections, including same-sex marriage. He once authored an article titled "Or for Poorer? How Same-Sex Marriage Threatens Religious Liberty."<sup>235</sup> Under Severino's leadership, it's anticipated that the OCR will spend more time and resources on advancing the administration's religious liberty agenda and less on civil rights, as he frequently and fondly refers to religious freedom as "the first freedom."

## CONSCIENCE AND RELIGIOUS FREEDOM DIVISION

In January 2018, the HHS OCR announced that it was creating a Conscience and Religious Freedom Division to "protect the fundamental and unalienable rights of conscience and religious freedom."<sup>236</sup> As part of OCR, the new division has broad enforcement authority. In addition to OCR's existing authority to receive and investigate specific complaints regarding religious freedoms, the new division is able to require public notices, gain access to private records, conduct compliance reviews, initiate investigations without specific complaints, force compliance by withholding or suspending federal funding, and refer cases to the Department of Justice.<sup>237</sup>





*Silent* NO MORE  
AWARENESS  
CAMPAIGN



# I Regret My Abortion

SilentNoMoreAwareness.org

Register  
Your  
Regret



# I Regret My Abortion

Awareness.org

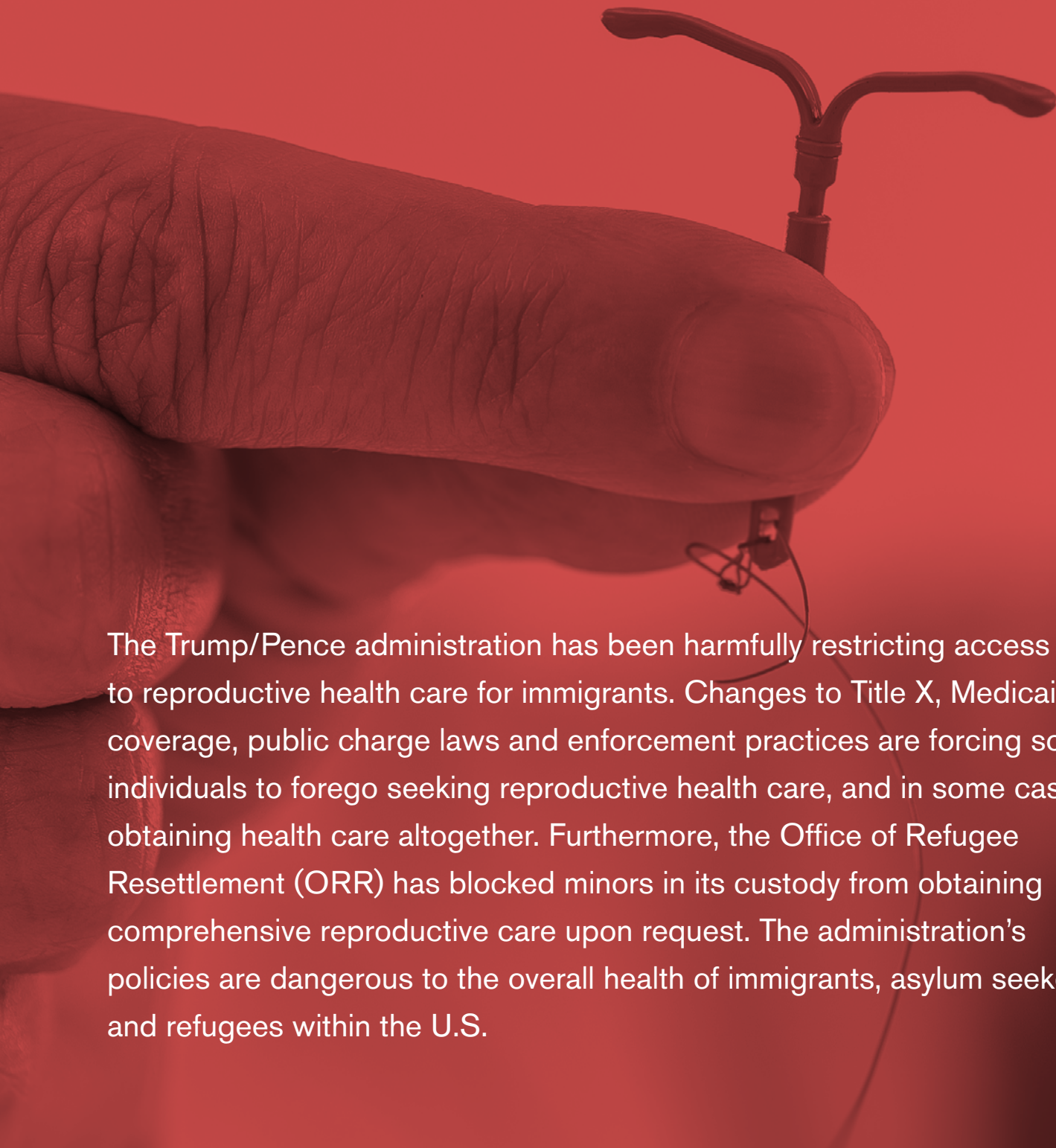
Register  
Your  
Regret



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# CHAPTER 7: MIGRANTS' REPRODUCTIVE HEALTH

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A close-up photograph of a hand holding a black intrauterine device (IUD). The IUD has a T-shaped frame with two curved arms. The hand is positioned to show the device clearly. The background is a solid, vibrant red color.

The Trump/Pence administration has been harmfully restricting access to reproductive health care for immigrants. Changes to Title X, Medicaid coverage, public charge laws and enforcement practices are forcing some individuals to forego seeking reproductive health care, and in some cases, obtaining health care altogether. Furthermore, the Office of Refugee Resettlement (ORR) has blocked minors in its custody from obtaining comprehensive reproductive care upon request. The administration's policies are dangerous to the overall health of immigrants, asylum seekers, and refugees within the U.S.



# Title X Changes

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## The Impact on Immigrant Reproductive Health

The closure of many Title X-funded family planning clinics—resulting from the new regulatory restrictions imposed by the Trump/Pence administration—will inhibit immigrant access to family planning and reproductive health services.

In many states and communities, a Title X clinic is one of the few places—and, in some cases, the only place—an uninsured, recent immigrant can access reproductive health care.<sup>238</sup> Under the 1996 welfare reform law, documented immigrants who entered the country after August 22, 1996, are excluded from Medicaid for their first five years of legal permanent residency (LPR), unless the state elects to cover them.<sup>239</sup> Undocumented immigrants are only covered by federal Medicaid for emergencies. Recent immigrants or those who lack documentation, however, can use Title X clinics, as the clinics do not require verification of their immigration status.<sup>240</sup> As a result, many immigrants rely upon Title X clinics for contraception and prevention and treatment of STIs. This is particularly important for Latinas, as half of pregnancies among this demographic are reported as unintended, and almost half of those unintended pregnancies end in abortion.<sup>241</sup> Latinas are also infected with HIV at 5 times the rate of white women and deal with much higher rates of chlamydia, gonorrhea, and syphilis.<sup>242</sup>

# Medicaid Coverage

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## The Impact of the Proposed Change in the Public Charge Law

In addition to the changes being made to Title X, immigrant access to reproductive health care may also be adversely affected by proposed changes in immigration law. Under current law, due to the 1996 welfare reform law, many immigrants are not eligible for Medicaid benefits.

Immigrants who are currently eligible for Medicaid benefits, however, could be potentially affected by changes in what's known as the “public charge” rule. Under prior law, applications for LPR status could be denied if an immigrant is “likely to become primarily dependent on the government for subsistence” in the future, or a public charge.<sup>243</sup> Since 1999, only cash-based income assistance has been considered in making this determination, but the Trump/Pence administration has sought to include Medicaid and other noncash benefits in determining LPR eligibility, making it especially disadvantageous for immigrants with disabilities.

The Trump/Pence administration formally announced an expansion of the public charge definition on September 22, 2018. The new rule broadens the definition of “public charge” from someone “likely to become primarily dependent on the government

*"I knew immediately what was best for me then, as I do now—that I'm not ready to be a parent. ...Through all this, I have never changed my mind. No one should be shamed for making the right decision for themselves."*

-Jane Doe

for subsistence" to someone likely "to receive one or more public benefits."<sup>244</sup> The programs that qualify as a public benefit expanded to include nonemergency Medicaid. Reproductive rights advocates are worried that young immigrant mothers who currently qualify at the state level for Medicaid benefits will forego access to those benefits for fear that it will jeopardize a future or pending application for LPR status.<sup>245</sup> The rule was blocked from going into effect by federal judges in New York and California who ordered preliminary injunctions in October 2019. In January 2020, the Second U.S. Circuit Court of Appeals in Manhattan denied the Trump/Pence administration's attempt to lift the injunction barring the new "public charge" rule.<sup>246</sup>

## Justice for Jane

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### Discriminating Policies

The Trump/Pence administration is preventing minors in the custody of the ORR from having access to abortion services. In March 2017, ORR announced a reinterpretation of a Bush-era policy that gave the agency heightened involvement in decisions regarding an immigrant's health.<sup>247</sup> ORR Director Scott Lloyd, an anti-abortion extremist, has used this rule as a pretext for limiting abortion access. Officially, his regulations required migrant shelters to get Director Lloyd's direct written approval to take "any steps that facilitate future abortion procedures" including "scheduling appointments, transportation, or other arrangements."<sup>248</sup> During a deposition, however, Director Lloyd could not describe a scenario in which he would give approval for an abortion.<sup>249</sup>

Director Lloyd has construed the regulation to mean that he has the authority to personally monitor the reproductive health of minors and dissuade them from terminating their pregnancies. To ensure that no minor obtained an abortion under his tenure, Director Lloyd directed staff to maintain a spreadsheet tracking the pregnant girls in ORR's custody and to send him weekly updates.<sup>250</sup> The spreadsheet contained the teen's names and identification numbers, when the pregnancy was reported, whether the pregnancy was a result of rape, and whether the minor requested to terminate the pregnancy. The information on the spreadsheet provided Director Lloyd with information he could use to delay any termination requests until they became impermissible under state laws. Director Lloyd's personal investment extended so far that he flew from Washington, D.C., to San Antonio on ORR's budget to personally



discourage a minor from seeking an abortion.<sup>251</sup> On multiple occasions, Director Lloyd instructed ORR to inform the parents of minors about their pregnancies despite the danger of retaliation posed to the girls or other family members.<sup>252</sup>

Further practices at ORR have actively interfered with the delivery of reproductive health care. Instead of taking minors who requested an abortion to facilities that provide nondirective counseling, the administration's policies instructed staff to take the minors to CPCs that are designed to persuade women to continue their pregnancies. At the CPCs, staff prayed over the girls and gave them medically unnecessary sonograms, regardless of their wishes.<sup>253</sup> The degree to which the administration interferes with an individual's reproductive health choice has been abhorrent. For example, ORR staff attempted to obstruct the medical abortion of a 17-year-old from El Salvador. The girl began the abortion regimen, taking the first of two pills; however, the next day, she was unnecessarily taken to the emergency room for an ultrasound while ORR inquired whether the abortion could be reversed.<sup>254</sup> Eventually, the young woman was given the second pill and allowed to maintain her bodily autonomy.

These policies were first brought to public attention through the case of Jane Doe, a 17-year-old migrant, who discovered she was pregnant during ORR intake and was denied access to an abortion. Jane Doe, a pseudonym used to protect the identity of the minor, had been granted judicial permission to bypass parental consent to obtain an abortion. She raised funds to cover the procedure and arranged transportation with a sponsor, but upon departure for her appointment, ORR refused to let her leave the shelter. With the help of the American Civil Liberties Union, Doe filed a request for a temporary restraining order against the federal government. After a legal battle, the D.C. Circuit of Appeals upheld the restraining order which allowed Jane Doe to get her abortion.<sup>255</sup> Three other "Janes" who were refused abortions have sued HHS: Jane Poe, Jane Moe, and Jane Roe. Between March 2017 and December 2017, at least seven teens in federal custody have sought abortions, but were personally refused by anti-choice crusader Director Lloyd.<sup>256</sup>

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## JANE DOE'S STORY

Jane Doe, a 17-year-old girl fleeing physical abuse in her home country, arrived unaccompanied in the U.S. on September 11, 2017. After learning that she was 11 weeks pregnant, Jane made the decision to get an abortion. She succeeded in getting court approval, as required by Texas law, for having an abortion procedure without parental consent. With help from her sponsor, Doe lined up funding and transportation for her appointment.<sup>257</sup> Director Lloyd, however, imposed barriers beyond Texas's excessive burdens. Not only did ORR bar her from leaving the shelter for her appointment, but they sent Jane Doe to a CPC. There, it was insisted that she get an unwanted and unnecessary sonogram performed by nonmedical staff.<sup>258</sup> Director Lloyd, using ORR funds, flew from Washington, D.C., to San Antonio, Texas, to personally shame Doe for trying to exercise her constitutional right.

In early October, Doe sued ORR with the help of the ACLU and asked the court to stop the government from interfering on her right to access abortion services. The district court rejected the Trump/Pence administration's argument that the government was not interfering with Jane Doe's right to obtain an abortion because it presented her with the opportunity to voluntarily leave the United States and seek the procedure in her home country under the undue burden precedent. Therefore, the court issued Doe a temporary restraining order against the government. The administration appealed the decision to the U.S. Court of Appeals, where a three-judge panel, including at that time Justice Kavanaugh, put a hold on the ruling in order to allow ORR to find Doe a suitable sponsor. This decision upheld the Trump/Pence administration's strategy of prolonging litigation until Jane Doe's pregnancy reached the 20-week mark, at which point she would no longer be able to get an abortion under Texas's 20-week ban. Luckily, on October 24, 2017, the full D.C. Circuit overruled the panel, and Doe got her abortion the following day.<sup>259</sup> It took her five weeks, however, to obtain her abortion, necessitating a change in the procedure that was ultimately used. Doe, who wants to be a doctor, said she never doubted her decision, despite the obstacles she faced.

## Where Does the Policy Stand?

The Supreme Court declined to hear HHS's appeal of Jane Doe's case because the issue had become moot, as Jane Doe was able to obtain her abortion, but litigation continued via a class action lawsuit. Plaintiffs in *Garza v. Hargan* sought to strike down the policy altogether. The administration argued that the regulations were not a ban on abortion because the minors in custody had the opportunity to voluntarily return to their home country for the procedure, despite abortion's being illegal in most Central American countries. The D.C. Court of Appeals disagreed, and finally invalidated ORR's policies related to abortion in June 2019.<sup>260</sup>

### THE ADMINISTRATION'S WRECKING CREW: Scott Lloyd

Scott Lloyd's background never qualified him to run ORR. He had no experience working in resettlement services or with refugee communities. His resume did, however, make him the ideal candidate for a job in an administration that puts a high priority on its anti-abortion policies. Lloyd spent his legal career with an organization determined to restrict access to reproductive health care. He was a coauthor of the original conscience rule under the Bush administration that permitted medical professionals to opt out of providing services, including abortion.<sup>262</sup> He boasted on his resume that he was an "architect" of abortion restrictions, and his writing demonstrates the extreme nature of his views.<sup>263</sup> In published essays, Lloyd claims that "contraceptives are the cause of abortion" and argues that women acquiring federally subsidized family planning should be required to pledge not to get an abortion should their contraception fail.<sup>264</sup> In congressional testimony Lloyd suggested that migrants do not have constitutional rights, including abortion rights. Additionally, Lloyd cited his concern that one young woman, pregnant as a result of a rape, would be further traumatized by having an abortion—a view that has no standing in the medical field.<sup>265</sup> During his time as director, he composed a novel full of anti-abortion rhetoric, which he published one month after being removed from ORR.<sup>266</sup> Lloyd was transferred from ORR to HHS's office for faith-based initiatives in December 2018. He left the administration in May of 2019.


## A RACIST POLICY

The Trump/Pence administration issued a new rule to stop so-called "birth tourism," or what it claims are visits to the U.S. designed to obtain citizenship for their children. The new rule gives visa officers within the Department of State more power to block pregnant women from visiting the U.S. This rule will cover visas issued to those visiting the U.S. for pleasure, medical treatment, or to see family or friends. Essentially, the Trump/Pence administration has turned visa officers into reproductive policemen and women.<sup>261</sup>

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# CHAPTER 8: IGNORING GENDER-BASED VIOLENCE

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A woman with glasses is holding a large, hand-drawn protest sign. The sign has the text "INSPIRING MINDS ENABLING RAPISTS" written on it in a bold, hand-drawn font. The background of the image is a dark red overlay with a faint, repeating pattern of the same protest sign and the woman's face.

Gender-based violence, in all its forms, poses a significant threat to sexual and reproductive health and rights, but the Trump/Pence administration has taken a narrow view of gender-based violence. It is chipping away at the legal protections afforded to victims of sexual assault under Title IX, and has steadfastly ignored the needs and rights of the LGBTQ+ community. In federal court, the Trump/Pence administration's Department of Justice has even refused to defend a 1996 law, passed by Congress, that seeks to ban female genital mutilation and cutting in the U.S.



# Title IX

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## The “Dear Colleague” Letter

Title IX of the Education Amendments of 1972 protects people in educational programs or activities that receive federal fund assistance from discrimination based on sex. The Title IX statute reads: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Supreme Court decisions and guidance from the Department of Education have safeguarded the broad scope to include instances of sexual harassment and sexual violence within its meaning. Therefore, schools and educational institutions are legally required to take immediate and effective steps to remedy hostile educational environments. Failure to do so is a violation of Title IX and puts the academic institution at risk of losing its federal funding.<sup>267</sup>

In a 2011 memo, commonly referred to as the “Dear Colleague” letter, the Obama administration urged schools and academic institutions to thoroughly investigate reports of student-on-student sexual violence.<sup>268</sup> The letter from the Department of Education’s OCR advised that school grievance procedures should adopt a “preponderance of the evidence” standard (i.e., it is more likely than not that sexual harassment or violence occurred), rather than a “clear and convincing” standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred).

The letter also advised schools to provide an appeals process, and, if they did, schools should give both parties—the accused and the alleged victim—the right of appeal. OCR further advised that investigations should be conducted in a reasonably prompt 60-day timeframe.<sup>269</sup> In 2016, the Department of Education issued guidance in interpreting “sex discrimination” to include claims based on gender identity.<sup>270</sup> Sexual assault survivors, women’s rights groups, and LGBTQ+ activists praised the new standards and requirements.

The Trump/Pence administration is actively working to dismantle the Obama-era protections. In February 2017, the Trump/Pence administration rescinded the 2016 gender identity and sex discrimination guidance, allowing discrimination to occur in an academic setting against trans and gender nonconforming individuals.<sup>271</sup> In a September 2017 speech, Secretary of Education Betsy DeVos stated that the

department would revamp the Obama-era Title IX guidance on sexual assault cases.<sup>272</sup> In May 2020, it did just that. The Obama administration defined sexual harassment as “unwelcome conduct of a sexual nature,” including unwanted sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature.<sup>273</sup> The Trump/Pence administration’s new directive redefines sexual harassment as “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity.” The weaker standard allows schools to ignore many sexual harassment claims. The new rule also weakens the due process protections for victims. For example, it permits the cross-examination of victims.<sup>274</sup>

The new rule substantially weakens the Obama-era protections, allowing schools to ignore the growing problem of sexual assaults on school campuses. Decades of research have shown that around one-quarter of all women experience some form of sexual assault by the time they graduate college.<sup>275</sup> The Rape, Abuse, & Incest National Network reports that nearly 70 percent of victims do not report their assault.<sup>276</sup> The Trump/Pence administration is allowing schools to sweep this problem under the Title IX rug.

## Female Genital Mutilation or Cutting

Female genital mutilation or cutting (FGM/C), a ritual that involves partial or total removal of external female genitalia or other injury to the female genital organs for nonmedical reasons, has been condemned by the World Health Organization as a “grave violation of the human rights of girls and women.”<sup>277</sup> In 1996, Congress outlawed FGM/C in the U.S.; yet according to the CDC, half a million females under the age of 18 years in the U.S. have undergone or are at risk of undergoing FGM/C.<sup>278</sup>

Women’s rights activists have been working diligently to end this practice, not only in the U.S., but also throughout the world; however, the Trump/Pence administration has walked away from the problem. In early 2019, the Trump/Pence administration’s Department of Justice observed International Day of Zero Tolerance for FGM/C by noting that the 1996 law makes FGM/C a federal crime punishable by imprisonment or removal from the country.<sup>279</sup> Two months later, however, in April of 2019, the Justice Department announced that it would not appeal a lower federal court decision, which dismissed a FGM/C prosecution on the basis that the 1996 law passed by Congress was unconstitutional.<sup>280</sup>

While insisting that the act of FGM/C is a “heinous practice” that “should be universally condemned,” the Department of Justice under the Trump/Pence administration refuses to prosecute the practice. Women’s rights activists, including former U.S. Secretary of State Hillary Clinton, have criticized the administration for its failure to defend the 1996 law in the courts.<sup>281</sup> Legal scholars have also criticized this move, noting that the Department of Justice often wishes that laws could have been written more clearly, but that it is extremely rare that one is written so poorly that it is found to be completely indefensible.<sup>282</sup>

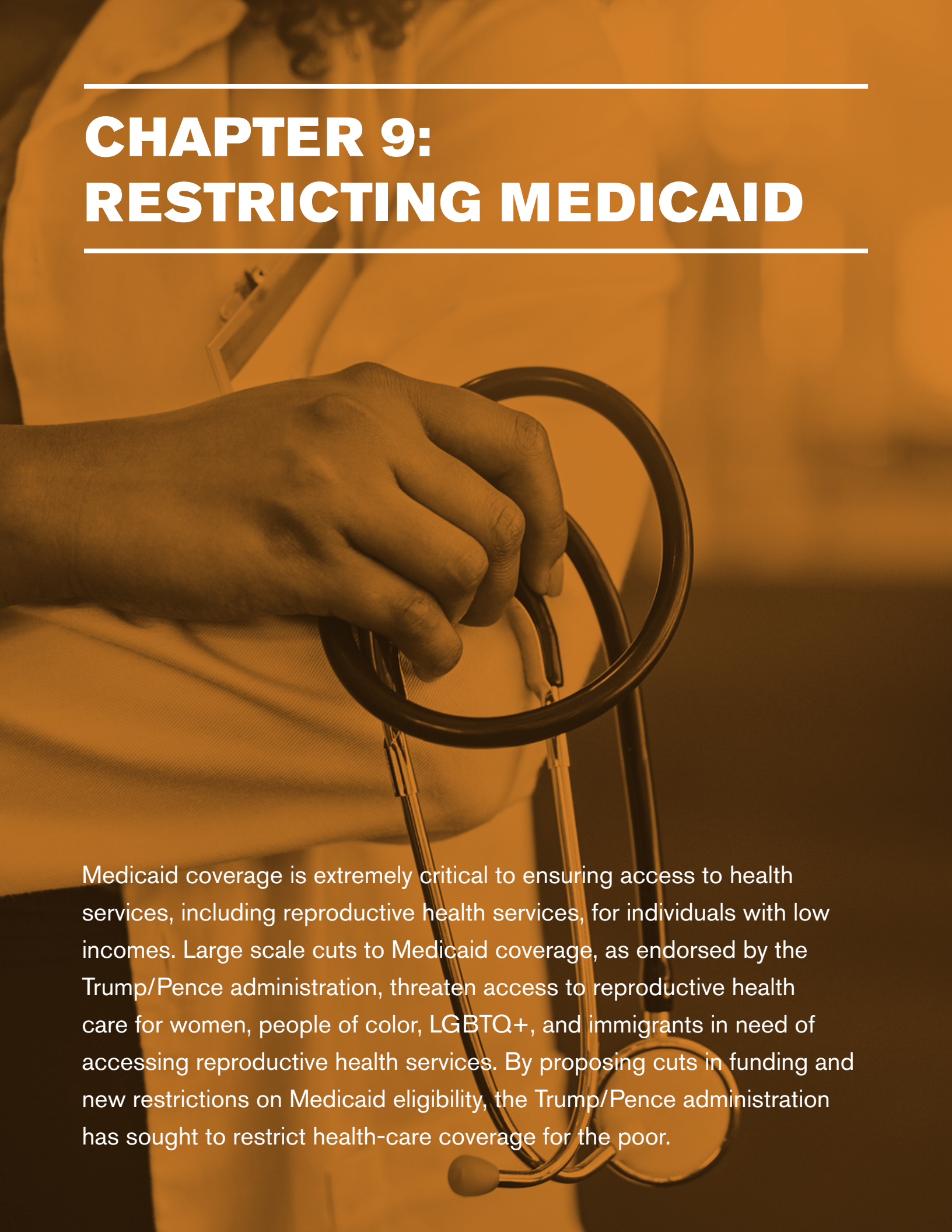
### THE ADMINISTRATION’S WRECKING CREW: Betsy DeVos

Known best for her support for school choice, school voucher programs, and charter schools, U.S. Department of Education Secretary Betsy DeVos has also aided in undermining the rights of women and the LGBTQ+ community. As the daughter of the founder of the Family Research Council (FRC), a right-wing religious group virulently opposed to LGBTQ+ rights and protections and designated as a hate group by the Southern Poverty Law Center, DeVos has used her role as Secretary to advance FRC’s agenda. She once stated that the aims for educational reform are to “advance God’s Kingdom.”<sup>283</sup> One of her first actions, taken once barely confirmed by the Senate, was to retract protections that allow transgender students to use restrooms that correspond with their gender identity. She also eagerly weakened protections against sexual harassment and violence. In regard to Title IX, DeVos said, “Any perceived offense can become a full-blown Title IX investigation. But if everything is harassment, then nothing is.”<sup>284</sup> Her approach to sexual harassment subverts the experience many face on college campuses and discourages victims from reporting the crime. The National Women’s Law Center believes DeVos’s move to rescind protections for survivors of sexual assault is a way to send the message that students no longer have the government standing behind them. “This misguided approach signals a green light to sweep sexual assault further under the rug ... It will discourage schools from taking steps to comply with the law—just at the moment when they are finally working to get it right.”<sup>285</sup> DeVos is not only calculated in the destruction of educational reform, she is trying her best to match President Trump in blaming the survivor and protecting the accused.

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# CHAPTER 9: RESTRICTING MEDICAID

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The background of the entire page is a warm, orange-toned photograph. It shows a close-up of a person's hand holding a stethoscope. The person is wearing a white lab coat, and their face is partially visible in the upper left, though out of focus. The stethoscope is held in the person's right hand, with the chest piece resting against their chest. The overall mood is professional and medical.

Medicaid coverage is extremely critical to ensuring access to health services, including reproductive health services, for individuals with low incomes. Large scale cuts to Medicaid coverage, as endorsed by the Trump/Pence administration, threaten access to reproductive health care for women, people of color, LGBTQ+, and immigrants in need of accessing reproductive health services. By proposing cuts in funding and new restrictions on Medicaid eligibility, the Trump/Pence administration has sought to restrict health-care coverage for the poor.



# Medicaid

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## Reproductive Health Coverage

Medicaid, the nation's public health insurance program for people with low incomes, provides health coverage to more than 75 million people. The Medicaid program has expansive support as almost 75 percent of Americans have a favorable opinion of the program.<sup>286</sup> The majority of individuals enrolled in the program lack access to other affordable health insurance and rely upon Medicaid to cover a broad array of health services while limiting out-of-pocket costs. The Centers for Medicare and Medicaid Services (CMS) under HHS is responsible for implementing Medicaid to ensure that nearly 20 percent of Americans are covered by the program.<sup>287</sup> As Medicaid finances nearly a fifth of all personal health-care spending in the U.S., the program's effect on financing of hospitals, community health centers, physicians, nursing homes, and other health-care sector jobs is significant.<sup>288</sup>

Women make up two-thirds of the adult Medicaid population, and of the adult women on Medicaid, 67 percent are of reproductive age (19–49 years),<sup>289</sup> making Medicaid a critical source of reproductive health-care coverage. Over 30 percent of African American women and 27 percent of Hispanic women depend on Medicaid for health-care coverage.<sup>290</sup> The program offers coverage for important primary, preventive, specialty, and long-term care services for women's health. Medicaid covers necessary reproductive health services, including family planning services and supplies, without cost-sharing for all program enrollees. Federal law requires state Medicaid programs to offer family planning services that include 18 FDA-approved contraceptive methods, counseling on STIs and HIV, and screening for breast and cervical cancers.<sup>291</sup> The program accounts for 75 percent of all publicly funded family planning services and is critical to preserving access to reproductive health care for women of color, LGBTQ+ people, and people with disabilities.<sup>292</sup>

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## Federal-State Partnership

Though standards are regulated by the federal government, Medicaid is a federal-state partnership. Medicaid programs are administered by the states. Subject to federal guidelines and regulations, states determine eligibility, covered services, health-care delivery models, and methods for paying physicians and hospitals.<sup>293</sup> With regards to family planning services, states are reimbursed by the federal government at an enhanced rate of 90 percent, compared to a rate of 50–75 percent for most other services.<sup>294</sup> As the Hyde Amendment bars the federal government from covering abortion services except in instances when the pregnancy threatens the life of the woman, or is the result of rape or incest, the federal government is only able to reimburse states for a small portion of abortion-related expenses. States, however, can

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## ANOTHER BARRIER TO REPRODUCTIVE HEALTH CARE: *THE HYDE AMENDMENT*

First enacted in 1976, the Hyde Amendment is a legislative provision that prohibits the use of federal dollars to pay for abortion services. Since 1994, there have been three narrow exceptions: when continuing the pregnancy will endanger the patient's life, or in instances of rape or incest. This means that individuals covered by Medicaid are unable to obtain abortion coverage, even if their health is at risk or their doctors recommend it.<sup>297</sup> This policy penalizes low-income people seeking abortion services, forcing individuals to pay for safe, legal care.

use their own funds to pay for most or all abortions provided for a Medicaid enrollee.<sup>295</sup> Currently, only 16 states opt to cover abortion procedures with their share of Medicaid funding.<sup>296</sup> States are also able to obtain a Section 1115 Social Security Act waiver to implement an approach that differs from what is required by federal standards, but the Secretary of HHS must determine that the adjustments advance the goals and objectives of the program. For example, during the Obama era, several states wanted to require people to work in order to get Medicaid benefits, but the Obama administration rejected those requests.

## The Trump/Pence Administration's Changes to Medicaid

### Block Grants

Although candidate Donald Trump promised that there would not be any cuts to Medicaid during his presidency,<sup>298</sup> his fiscal 2021 proposal calls for a \$1.5 trillion reduction to the program over the next 10 years.<sup>299</sup> Furthermore, the budget calls for \$1.2 trillion to be allocated toward the new Market-Based Health Care Grant Program, the Medicaid block grant, and the per capita cap program set to begin in 2021.<sup>300</sup> Rather than reimbursing states for all eligible expenses, a federal "block grant" would give each state a fixed amount for Medicaid that would be determined in advance by a formula. Under this approach, states would have greater flexibility in determining how funds are spent; however, if actual spending exceeds the amount provided in the federal block grant, states would have to cover the excess or, alternatively, reduce expenditures by limiting Medicaid eligibility or benefits. The Trump/Pence administration wants to use the block grant approach to limit (i.e., cut) the amount that the federal government spends on Medicaid.<sup>301</sup> Medicaid block grants could limit access to reproductive health care for nearly 13 million women, as 1 in 5 women of reproductive age, particularly women of color, rely on Medicaid coverage for health care.<sup>302,303</sup> In January 2020, the CMS issued guidance encouraging states to apply for waivers to block grant Medicaid funding at the state level and radically restructure the Medicaid program.<sup>304</sup>

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## Texas's Medicaid Waiver

In January 2020, on the same day that marked the 47th anniversary of the Supreme Court's *Roe v. Wade* decision, Texas's Medicaid waiver was approved by the Trump/Pence administration.<sup>305</sup> The waiver allows for the state of Texas to receive millions in Medicaid funding while discriminating among family planning providers. Medicaid rules require that patients in the federal program be able to access care from any qualified and willing provider. The waiver now bars women covered by Medicaid from choosing Planned Parenthood or other providers that the states believe are affiliated with abortion services.<sup>306</sup> The approval of this waiver opens the doors for other states to follow suit to replicate or expand upon Texas's waiver. Because the now-excluded family planning clinics were the only providers in many communities in Texas, the waiver jeopardizes the preventive health-care needs of millions of low-income individuals. Reproductive health and rights advocates have strongly denounced this waiver and has called upon CMS to reverse its decision.<sup>307</sup>

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## Work Requirements

Work requirements for Medicaid beneficiaries can limit access to reproductive health care for low-income people, especially women of color. Although most women on Medicaid work outside the home, almost 20 percent of women take care of the home/family, and 13 percent are ill or disabled. Only 2 percent of women on Medicaid cannot find work.<sup>308</sup> For those who are disabled, ill, taking care of a family, or unable to find work, adding a work requirement would mean these women would lose Medicaid coverage. In January 2018, HHS approved a proposed Kentucky waiver that added a work requirement to its Medicaid program. Under the proposed waiver, Medicaid beneficiaries would have to work an average of 20 hours of work a week or engage in another qualifying activity such as volunteering. The state estimated that around 95,000 individuals would lose coverage if the waiver went into effect.<sup>309</sup> Medicaid enrollees in Kentucky challenged the approval of the Section 1115 waiver in federal court, and the court overturned the waiver. Kentucky then submitted an updated waiver request that retained the work requirement. Around the same time, Arkansas also implemented a work requirement, causing more than 12,000 people to lose Medicaid coverage.<sup>310</sup> However, in March 2019, a federal judge blocked the Medicaid waivers in both Kentucky and Arkansas, striking down the work requirements. Two days later, undeterred by the court's ruling, the Trump/Pence administration approved similar work requirements in Utah.<sup>311</sup> Other states with approved work requirements include: Indiana, New Hampshire, Wisconsin, Michigan, Maine, Arizona, Ohio, and South Carolina. States with pending applications include: Alabama, Idaho, Mississippi, Montana, Oklahoma, South Dakota, Tennessee, Virginia, Nebraska, and Georgia.<sup>312</sup> Furthermore, in the president's FY2021 Budget Request, President Trump proposed imposing nationwide work requirements for public assistance programs, including Medicaid.<sup>313</sup>



## Planned Parenthood and the “Skinny Repeal”

The Trump/Pence administration and its allies have sought repeatedly to prevent Medicaid from reimbursing Planned Parenthood for the services it provides under Medicaid. In the spring of 2017, they sought to turn their proposed repeal of the ACA into a vehicle for defunding Planned Parenthood. The proposed bill sought to deny funding to organizations that provide abortion care as a part of their reproductive health-care services. The four criteria blocking Medicaid reimbursements to “prohibited entities” included:

- **A nonprofit organization described in section 501(c)(3) of the Internal Revenue Code;**
- **An essential community provider that is primarily engaged in providing family planning and reproductive health services and related medical care;**
- **An abortion care provider; or**
- **An entity that had expenditures under the Medicaid program that exceeded \$350 million in fiscal year 2014.<sup>314</sup>**

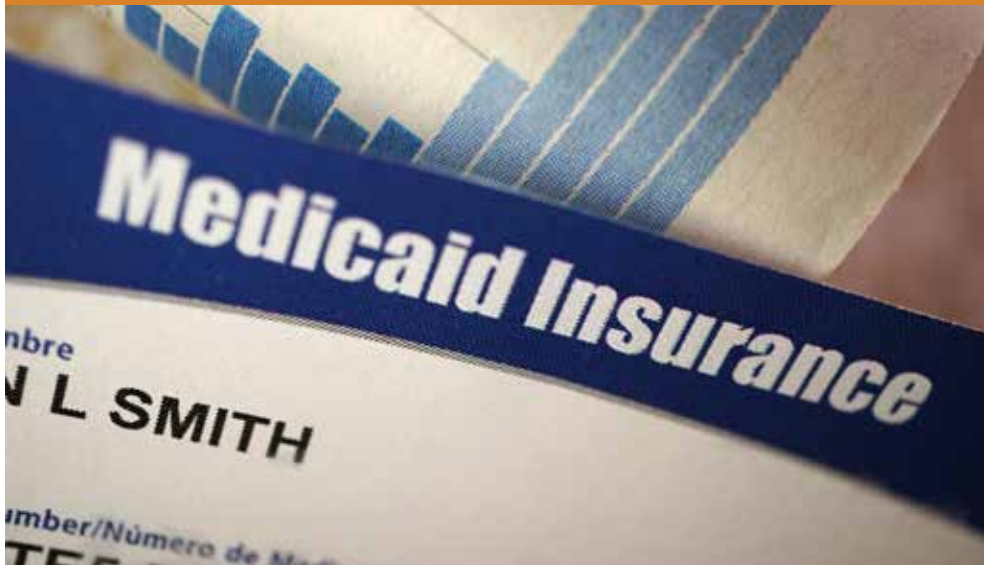
The nonpartisan Congressional Budget Office (CBO) determined that the criteria were specifically designed to target Planned Parenthood, as it was the only organization to meet all four criteria.<sup>315</sup> Anticipating that finding, the House of Representatives passed the American Health Care Act (AHCA) bill without waiting for the CBO's report. Subsequently in the Senate, the Senate Majority Leader Mitch McConnell introduced comparable legislation, the Health Care Freedom Act, more commonly referred to as the “Skinny Repeal.”<sup>316</sup> The Senate's bill slightly modified the definition of “prohibited entities.”<sup>317</sup> Analyzing the revised language, CBO determined that at least two organizations would be affected: Planned Parenthood, the organization bearing the brunt of it, and the Women's Health Specialists of California.<sup>318</sup>

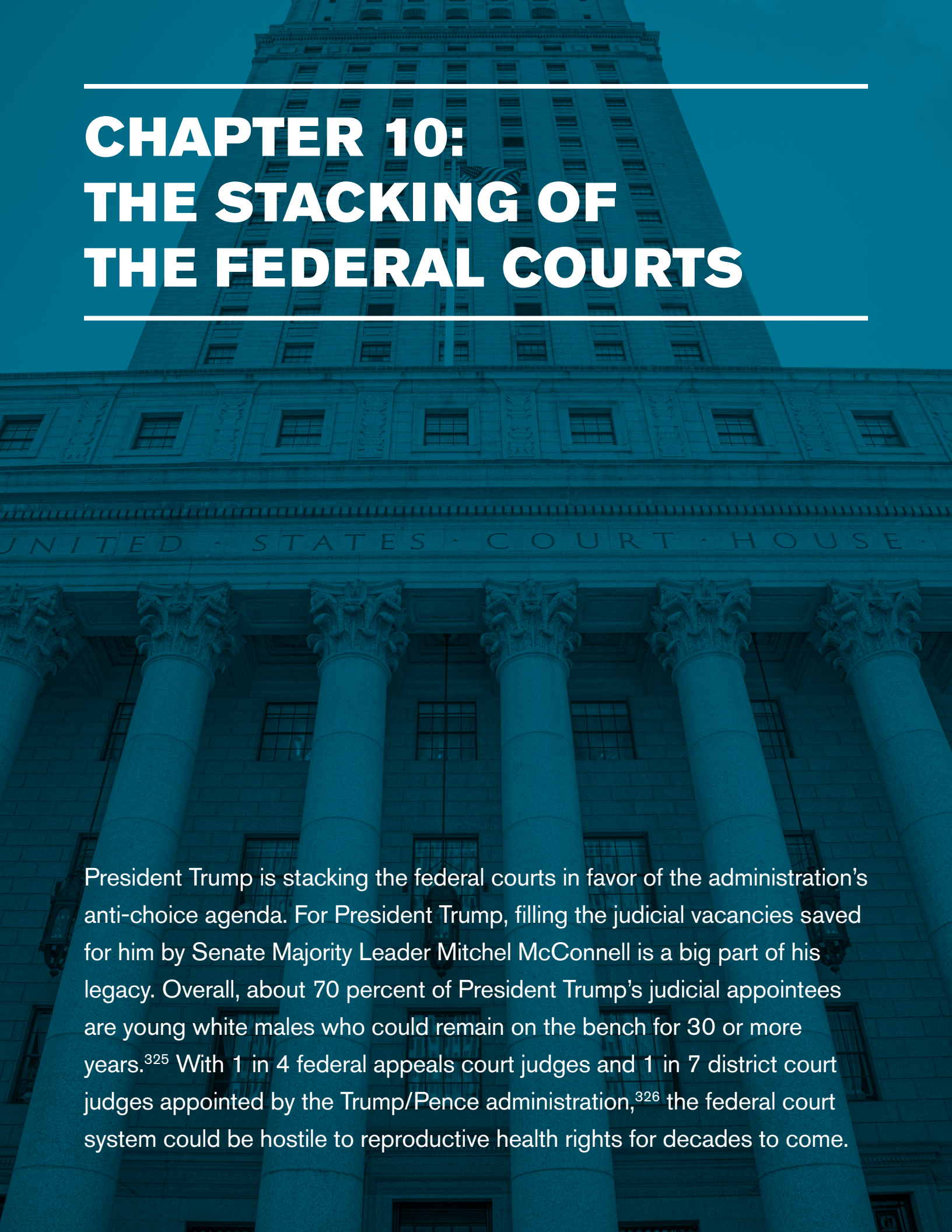
Supporters of women's reproductive health rallied against the Senate bill,<sup>319</sup> noting that defunding Planned Parenthood in this manner would prevent many Medicaid beneficiaries, especially in rural areas, from accessing potentially life-saving cancer screenings, sexually transmitted infection testing, and contraceptive services. More than half (56 percent) of Planned Parenthood affiliates operate in rural and medically underserved areas.<sup>320</sup> CBO reported that about 15 percent of people in areas without health-care clinics that serve low-income populations would lose access to reproductive health-care services.<sup>321</sup> If the bill were to pass in the Senate, lawmakers from both the House and Senate would convene to discuss and decide upon the difference between the Skinny Repeal and the AHCA. It was also suggested that should the bill pass in the Senate, the House would simply take up the Skinny Repeal measure to present to President Trump, an active cheerleader for cuts to Planned Parenthood.<sup>322</sup> In violation of the Byrd rule, a provision that requires 60 votes to advance the legislation of a budget-reconciliation maneuver, the conservatives in the Senate pushed forward. In July 2017, through a dramatic 49–51 vote, supporters of Planned Parenthood were able to breathe a sigh of relief amid the defeat of the Skinny Repeal in the Senate.



### **THE ADMINISTRATION'S WRECKING CREW: Seema Verma**

As administrator of CMS, Seema Verma plays a crucial role in determining whether 130 million Americans are able to obtain Medicaid-funded services. Throughout her career, she has sought to restrict Medicaid coverage. She has been a strong advocate for establishing work requirements and raising Medicaid premiums. She first gained a national reputation by advising Indiana governors, including Mike Pence, on how to restrict the state's Medicaid coverage. She applauded President Trump when he signed a measure that would allow states to withhold Medicaid family planning funds from Planned Parenthood and other abortion providers. She said, "I think the president's signature today is an important step, and it shows that the president is keeping his campaign promises."<sup>323</sup> As administrator of CMS, Verma sent a letter to governors encouraging their states to facilitate a "reasonable, enforceable premium or contribution requirements" for beneficiaries, as well as establishing Medicaid work requirements.<sup>324</sup>





# CHAPTER 10: THE STACKING OF THE FEDERAL COURTS

President Trump is stacking the federal courts in favor of the administration's anti-choice agenda. For President Trump, filling the judicial vacancies saved for him by Senate Majority Leader Mitchel McConnell is a big part of his legacy. Overall, about 70 percent of President Trump's judicial appointees are young white males who could remain on the bench for 30 or more years.<sup>325</sup> With 1 in 4 federal appeals court judges and 1 in 7 district court judges appointed by the Trump/Pence administration,<sup>326</sup> the federal court system could be hostile to reproductive health rights for decades to come.



## Federal Courts

The federal court system has three levels: the Supreme Court of the U.S. (SCOTUS), the U.S. circuit courts of Appeals, and the U.S. district courts. All levels of the federal courts hear cases involving the constitutionality of laws and regulations.<sup>327</sup> Federal judges, appointed by the president and confirmed by the Senate, exercise a significant amount of authority in the cases over which they preside. When President Trump entered office, he boasted that there were more than 100 federal judge positions that had not yet been filled. President Trump gleefully opined, “I don’t know why Obama left that. It was like a big, beautiful present to all of us. Why the hell did he leave that? Maybe he got complacent.”<sup>328</sup> The real reason, of course, was the Senate’s refusal in the 114th Congress to confirm many of President Obama’s nominations to the federal judiciary. Senate Majority Leader Mitchel McConnell worked to slow down and then halt all further confirmations for federal judgeships. Most notably, Majority Leader McConnell categorically refused to hold a confirmation hearing for Judge Merrick Garland, President Obama’s nominee for Supreme Court Justice.<sup>329</sup> Majority Leader McConnell now insists that there’s nothing “more important for America than confirming judges as rapidly” as possible,<sup>330</sup> and the Senate set a record in 2017 for confirming the most federal appeals judges in a president’s first year in office.<sup>331</sup> Of the Trump/Pence administration’s appointees to the federal courts, 78 percent have been white men, the vast majority of whom are demonstrably anti-choice.

## The Supreme Court

**Total seats on the Supreme Court: 9**

**Vacancies when President Trump entered office: 1**

**Vacancies filled by President Trump to date of publication: 2**

**Unfilled vacancies to date of publication: 0**

SCOTUS is the highest court in the U.S. and has jurisdiction over cases that involve interpretation of the constitution or federal law. This jurisdiction can either be original, meaning that the case is tried before SCOTUS, or appellate, meaning that SCOTUS can hear cases on appeal from the lower federal courts.<sup>332</sup> During his campaign, then-candidate Donald Trump pledged to nominate only justices to the Supreme Court who would vow to overturn the landmark decision in *Roe v. Wade*, the case establishing that women have a constitutional right to an abortion.<sup>333</sup> In the beginning of February 2017, merely weeks after entering office, President Trump nominated Judge Neil Gorsuch for the open Associate Justice seat on SCOTUS. Judge Gorsuch, at 49 years of age, was the youngest nominee to SCOTUS in 25 years. With good health he may serve on the Court for decades to come. Long applauded by anti-choice advocates and religious conservatives, Judge Gorsuch has not disappointed his supporters. While serving on the Denver-based U.S. Court of Appeals for the Tenth Circuit, he ruled (*Hobby Lobby Stores, Inc. v. Sebelius*) in favor of prohibiting HHS from requiring “closely held,



*“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”*

Article III, Section I of the Constitution of the United States of America

for-profit secular corporations” to provide contraceptive coverage in their employer-sponsored health insurance plans.<sup>334</sup> In April 2017, Justice Gorsuch was confirmed by the Senate to become the 113th Justice of the Supreme Court. Now seated on the Supreme Court, Justice Gorsuch has adhered to his conservative ideology. In *NIFLA v. Becerra*, Justice Gorsuch joined with the other conservatives on the Court in ruling in favor of a “crisis pregnancy center.” The center claimed the California disclosure law that compelled licensed clinics to provide information to patients about free and low-cost publicly funded family planning services, including contraception and abortion services, were unconstitutional. Justice Gorsuch and the other conservatives agreed and in a 5–4 vote, struck down the law as unconstitutionally compelled speech.<sup>335</sup>

In July 2018, Judge Brett Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit was nominated by President Trump to succeed retiring Justice Kennedy. Pro-choice advocates and anti-choice supporters alike saw President Trump’s nomination of Judge Kavanaugh as a threat to abortion rights and even the standing of *Roe v. Wade*. During his confirmation hearing before the Senate, Judge Kavanaugh stated that the decision from *Roe v. Wade* was “an important precedent of the Supreme Court that has been reaffirmed many times,”<sup>336</sup> but he refused to say how he would ultimately rule. Kavanaugh’s confirmation was delayed when Dr. Christine Blasey Ford accused him of sexual assault, but after giving her an opportunity to testify, the Senate Judiciary Committee voted to advance Judge Kavanaugh’s confirmation to the Senate floor for a vote. In October 2018, the Senate voted 51–49 to confirm Judge Kavanaugh as the 114th Justice of the Supreme Court.<sup>337</sup> Shortly after joining the Court, Justice Kavanaugh wrote an explosive dissent to the Court’s emergency order of *June Medical Services, LLC v. Russo*, a case involving the constitutionality of a Louisiana law that required doctors who perform abortions to have admission privileges at a state-authorized hospital within 30 miles of the clinic.<sup>338</sup> Arguing that the case involved “factual uncertainties,” Justice Kavanaugh wrote in his dissent that the stay should be denied in order for the law to be implemented, at which time it could be determined if the law imposes an undue burden on a woman’s access to abortion.<sup>339</sup> Justice Kavanaugh’s written dissent in his first dealings on the topic of abortion while on SCOTUS is a clear indication of his intent to overturn *Roe v. Wade*. SCOTUS heard oral arguments in *June Medical Services, LLC v. Russo* in March 2020 and Justices Gorsuch and Kavanaugh’s anti-abortion bias will be on full display come the Court’s decision.

With Justices Gorsuch and Kavanaugh joining the bench for the remainder of their careers, SCOTUS now has a 5–4 conservative majority, and therefore, their appointment to the Court should be perceived as a threat to abortion rights in the U.S. While the shift may not lead to an immediate overturning of *Roe*, it is widely anticipated that the federal courts will limit the constitutional right to abortion.<sup>340</sup> At the very least,



the new makeup of SCOTUS will encourage anti-abortion advocates at the state level to push for abortion restrictions that challenge the guidelines established by *Roe*. It already has. In May 2019, Georgia Governor Brian Kemp signed a bill, known as “The Heartbeat Bill” to ban abortions when a fetal heartbeat is detected, typically after six weeks of pregnancy. Ohio, Missouri, Kentucky, and Mississippi were among other states in 2019 that passed laws banning abortion after a heartbeat is detected. Alabama lawmakers passed the most far-reaching anti-abortion bill that would permit abortions only if the mother's life is at risk or if the fetus cannot survive, but not in cases of rape or incest.<sup>341</sup> The laws were all blocked by preliminary injunctions issued by federal judges. These attempts by state legislators to implement laws banning abortion after six weeks stand to reshape the constitutional principles governing abortion rights stemming from the decision made in *Roe*. It's important to note that the Court does not need to overturn *Roe* to end people's ability to access abortion services. Targeted restrictions on abortion providers (TRAP laws) at the state level are forcing clinics to close, making it so people are no longer able to exercise their right to access abortion services.

### TRAP LAWS: UNDERMINING *ROE V. WADE*

Targeted restrictions on abortion providers (TRAP) are laws that impose medically unnecessary requirements upon abortion providers and women's health centers. TRAP laws take several forms, including:

- requirements that a clinic have an ambulatory surgical center;
- requirements that abortion doctors have admitting privileges at a local hospital;
- requirements that a clinic be located within 30 miles or 15 minutes of a hospital; and
- requirements for collection and reporting of data on patients.<sup>342</sup>

These medically unnecessary requirements can force abortion providers to shut down and make it nearly impossible for people to access abortion services. The American Medical Association and American Congress of Obstetricians and Gynecologists oppose TRAP laws, as they reduce access to safe abortion services. Ultimately, these TRAP laws could make *Roe* meaningless at the state level.



## THE SUPREME COURT WEIGHS IN: WHOLE WOMAN'S HEALTH V. HELLERSTEDT

In 2013, the Texas Legislature passed a bill requiring that physicians performing an abortion must have admitting privileges to a hospital within 30 miles of their clinic, and requiring all clinics to comply with standards for ambulatory surgical centers. A case was brought before the federal district court by Whole Woman's Health (WWH), and the court granted an injunction against the enforcement of the two contested provisions. Texas appealed to the 5th Circuit Court of Appeals and the court partially lifted the injunctions, because WWH failed to show that the provisions placed a "substantial burden" on women seeking an abortion. The case was then brought before the Supreme Court and, in a 5–3 decision, the Court held that the provisions imposed an undue burden on women seeking a legal abortion.<sup>343</sup> Justice Ruth Bader Ginsburg wrote in her concurrence that modern abortions are extremely safe compared to other medical procedures, and any law creating a substantial obstacle in the path of women seeking an abortion in the name of safety would not pass judicial review.<sup>344</sup> The facts in Whole Women's Health closely parallel those arising from a more recent case in the 5th Circuit, *June Medical Services, LLC v. Russo*. This time, however, the 5th Circuit upheld a Louisiana law nearly identical to the Texas restriction. The case was heard in March of 2020 and a decision is to be expected in June 2020. Will the new conservative majority on the Supreme Court uphold the precedent established by Whole Women's Health? Or overturn it?

## U.S. Circuit Courts of Appeals

**Total seats on the appellate courts: 179**

**Vacancies when President Trump entered office: 47**

**Vacancies filled by President Trump to date of publication: 51**

**Unfilled vacancies to date of publication: 1**

There are 13 U.S. courts of appeals that are organized into 12 regional circuits plus the federal circuit court. The federal appeals courts hear challenges to district court decisions from district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. Appeals are generally heard by a panel of three judges, who determine whether federal law was applied correctly by the trial court.<sup>345</sup> Thanks to Senator Mitch McConnell's stonewalling, when President Trump took office, nearly 50 appellate vacancies were available to be filled, and the Trump/Pence administration, with the active support of the Senate Majority Leader, has moved with unprecedented speed to fill them.

The Trump/Pence administration is leaving its mark on the federal judiciary, particularly in the Sixth and Ninth Circuit Courts of Appeals, where it has managed to appoint several judges to the bench. In March 2019, the full Sixth Circuit Court of Appeals refused to uphold an injunction of an Ohio anti-abortion law that was aimed at barring Planned Parenthood from receiving state funding.<sup>346</sup> In lifting the injunction, the full court of appeals reversed an earlier ruling by a three-judge panel of the Sixth Circuit upholding the injunction.<sup>347</sup> While the Sixth Circuit Court of Appeals is traditionally a more conservative court, President Trump succeeded in making it even more conservative by appointing six judges.<sup>348</sup>

While the Ninth Circuit is traditionally a more liberal court, President Trump has successfully appointed seven judges to its bench, making the circuit more conservative on matters relating to reproductive health and rights. In July 2019, the reconstituted Ninth Circuit removed the stay that blocked the Trump/Pence administration's "domestic gag rule" from going into effect. By a 7–4 vote, the court upheld implementation of the new rule (which requires Title X–funded family planning providers, including Planned Parenthood, to maintain "clear financial and physical separation" from centers that perform abortions) while the merits of the case made their way through the court. Then, again in a 7–4 decision, the Court voted to uphold the Trump/Pence administration's gag rule on Title X in February 2020. The new rule also prohibits doctors from discussing abortion options with patients.<sup>349</sup>

## U.S. District Courts

**Total seats on the district courts: 673**

**Vacancies when President Trump entered office: 88**

**Vacancies filled by President Trump to date of publication: 138**

**Unfilled vacancies to date of publication: 72**

President Trump and Majority Leader McConnell have succeeded in filling nearly all the vacancies in the U.S. Courts of Appeals. Attention has therefore shifted toward the federal district courts. There are 94 U.S. district courts that hear both civil and criminal cases. District court judges are tasked with reviewing petitions, hearing motions, and holding trials. They have the authority to issue injunctions against state and federal laws that violate constitutional protections. In April 2019, three separate preliminary injunctions blocking the Trump/Pence administration's so-called "domestic gag rule" were issued by U.S. district court judges.<sup>350</sup> In the legal tug-of-war over reproductive health and rights, the Trump/Pence administration appointees are already pulling their weight in the federal appellate courts; they may soon be doing so at the district court level, as well.



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## The Conservative Anti-Choice Strategy

After the U.S. Supreme Court recognized the constitutional right to abortion in *Roe v. Wade* in 1973, anti-choice lawyers working for the Department of Justice under the Reagan administration concluded, in a now famous memorandum,<sup>351</sup> that *Roe* was unlikely to be overturned without changing the ideological makeup of the federal judiciary and gradually chipping away at the abortion protections spelled out in that landmark decision. Despite numerous setbacks in the courts in the past four decades, that strategy is still very much alive. And now—with the appointments of Justices Gorsuch and Kavanaugh to the Supreme Court and the growing number of Trump/Pence nominees being appointed to the lower federal courts—it is on the verge of success. The overturning of *Roe* may not be on the immediate horizon, but it may not be far away. In the meantime, states will continue enacting new abortion restrictions in an effort to chip away, and ultimately, overturn abortion rights.

### THE ADMINISTRATION'S WRECKING CREW: Amy Coney Barrett

One of the few women President Trump has appointed to a federal judgeship, Amy Coney Barrett is dedicated to advancing the anti-choice agenda. Barrett, a socially conservative Catholic, was confirmed to the 7th Circuit Court of Appeals in November 2017. During her confirmation hearing, Barrett stated that she would “never impose [her] personal convictions upon the law”; however, her prior actions led Senator Feinstein to admonish her saying, “the dogma lives loudly within you. That’s of concern.”<sup>352</sup> In an article she coauthored in the *Marquette Law Review*, Barrett criticized Justice William Brennan’s promise to not be governed by his faith, but rather by “the Constitution and the laws of the United States.” She determined that his declaration was not the “proper response for a Catholic judge to take with respect to abortion or the death penalty.”<sup>353</sup> Several women’s rights groups vehemently opposed Barrett’s nomination, as she had previously condemned *Roe v. Wade* as an “erroneous decision.” Previously, she had also signed a statement claiming the ACA’s birth control benefit was “an assault on religious liberty.”<sup>354</sup> LGBTQ+ rights advocates have warned that Barrett’s religious views on marriage could come into conflict with the constitutional right to marriage equality. Nicknamed the “handmaid” by critics, Barrett has been mentioned as a possible Trump/Pence appointee to SCOTUS if there is another vacancy on the Court. President Trump reportedly told his inner circle, “I’m saving her for Ginsburg.”<sup>355</sup>



## CONCLUSION

Over the past half century, advances in sexual and reproductive health and rights have transformed the lives of people in the U.S. and around the world. During the past decade, however, the laws and programs in the U.S. that made many of those advances possible have come under escalating assault from religious conservatives and anti-choice advocates.

At the beginning of the decade, those attacks were largely focused at the state level, but with the swearing in of President Donald Trump and Vice President Mike Pence in January of 2017, the battle has shifted to the federal level. Over the past three years, the assaults on sexual and reproductive rights have intensified dramatically. Reproductive rights activists fear, and rightly so, that the appointments of Neil Gorsuch and Brett Kavanaugh to the U.S. Supreme Court and the stacking of the lower federal courts with almost 200 Trump appointees will result in the erosion of abortion rights and could even lead to the overturning of *Roe v. Wade*.

The battles over sexual and reproductive health and rights extend, however, far beyond the federal judiciary. The Trump administration and its allies are using every means at their disposal to roll back support for, and access to, reproductive health services and information, including contraception and comprehensive sexuality education. They are also working, both domestically and internationally, to dismantle LGBTQ+ protections and federal programs addressing their needs. These attacks are unconscionable and unprecedented, and many are either illegal or constitutionally flawed. Regardless of their legal standing, they diminish sexual and reproductive rights and jeopardize the health and well-being of millions. The stakes are high. Advocates for reproductive health and rights, now more than ever, need to keep informed and stay engaged.







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