



TRUMP ON ABORTION

THREATENING TO BAN ABORTION NATIONWIDE AND TAKE AWAY OUR REPRODUCTIVE FREEDOM

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OVERALL RESPONSE

A second Donald Trump presidency would present an existential threat to abortion access nationwide, imperiling the ability of anyone to get an abortion anywhere in the country under any circumstance.

In 2016, Trump promised to appoint Supreme Court justices who would overturn *Roe v. Wade*.¹ Over the course of his presidency, he followed through on this catastrophic commitment, stacking the federal judiciary with staunch abortion opponents, including three Supreme Court justices who voted in 2022 to overturn *Roe* and with it the federal right to abortion in a case called *Dobbs v. Jackson Women’s Health Organization*.²

That decision resulted in a devastating civil liberties and public health crisis. Fourteen states have banned abortion altogether, and others have rendered abortion care practically unavailable by criminalizing the provision of abortion care after the earliest weeks of pregnancy.³ Millions of people of reproductive age now live hundreds of miles from the closest abortion provider,⁴ forcing more than 171,000 people to travel outside of their home state to secure access to abortion care in 2023 alone.⁵ Attorneys general in some states have threatened to criminally prosecute those who help pregnant people get the care they need.⁶ Countless other people are being forced to continue their pregnancies against their

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- 1 Dan Mangan, *Trump: I’ll Appoint Supreme Court Justices to Overturn Roe v. Wade Abortion Case*, CNBC, Oct. 19, 2016, <https://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>.
 - 2 *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).
 - 3 *Tracking Abortion Bans Across the Country*, The New York Times, May 1, 2024, <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html>.
 - 4 Selena Simmons-Duffin and Hilary Fung, *How Florida and Arizona Supreme Court Rulings Change the Abortion Access Map*, NPR, April 11, 2024, <https://www.npr.org/sections/health-shots/2024/04/11/1243991410/how-florida-and-arizona-supreme-court-rulings-change-the-abortion-access-map>.
 - 5 *171,000 Traveled for Abortions Last Year. See Where They Went*, The New York Times, June 13, 2024, <https://www.nytimes.com/interactive/2024/06/13/us/abortion-state-laws-ban-travel.html>.
 - 6 John Fritze, *Federal Judge Blasts Threat by Alabama to Prosecute Groups Aiding Out-of-State Abortions*, CNN, May 7, 2024, <https://www.cnn.com/2024/05/07/politics/alabama-prosecute-out-of-state-abortion/index.html>; Nate Raymond, *Idaho Faces Skeptical Court in Fight Over Out-of-State Abortion Referrals*, Reuters, March 27, 2024, <https://www.reuters.com/legal/litigation/idaho-faces-skeptical-court-fight-over-out-of-state-abortion-referrals-2024-03-27/>; Mary Anne Pazanowski, *Oklahoma to Ask Court to Unblock HHS Family Planning Money*, Bloomberg Law, May 30, 2024, <https://news.bloomberglaw.com/health-law-and-business/oklahoma-to-try-to-force-hhs-to-restore-family-planning-money>.

will.⁷ States have also criminalized abortion care even in medical emergencies where the inability to get an abortion puts the pregnant person's health, life, and future fertility in danger — all with the approval of Trump-appointed Supreme Court justices.⁸

Trump is responsible for this harm. Indeed, he wears it as a badge of honor. Last year, he bragged that he was the “guy [who] ended *Roe v. Wade*.”⁹ In a recent *Time* magazine interview,¹⁰ Trump said that, under the *Dobbs* decision he orchestrated, states could monitor pregnancies and prosecute women for obtaining abortions—a disturbing callback to his 2016 assertion that “there has to be some form of punishment” for women who obtain abortions after the care is outlawed.¹¹

As difficult as it may be to fathom, a second Trump presidency would exponentially increase the damage done to reproductive rights. We know that overturning *Roe* was not the last stop for Trump and his anti-abortion allies; they want to ban abortion nationwide and will not hesitate to try to do so if Trump secures a second term. Trump and his allies would seek to impose on everyone—including those living in states that have sought to protect abortion—the pain and chaos that people living in states that have banned abortion are now experiencing.

To be sure, Trump's public position on whether Congress should pass a national abortion ban

shifts with the political winds.¹² The reason for his equivocation is obvious: In the wake of *Dobbs*, there has been a groundswell of public support for abortion rights and a backlash against bans and other political interference with access to abortion care. Public opinion polls show strong public support in the two years since *Dobbs*, with almost two-thirds of Americans supporting abortion rights.¹³ Since *Roe* was overturned, the ACLU, our affiliates and our allies have helped protect abortion access in six states through ballot measures as well as through electoral victories in Pennsylvania, Virginia, and Wisconsin, where abortion rights was a central campaign issue. As a result of this backlash, Trump has equivocated and obfuscated on whether Congress should pass a national abortion ban.

Still, his politically expedient waffling on this question is merely a ruse. According to Trump's anti-abortion strategists, Trump does not need Congress to pass a new law to shut down abortion access in every state across the country. Instead, a second Trump administration plans to use a 150-year-old law called the Comstock Act to effectively ban abortion *in every state, with no exceptions*—without any involvement from Congress.¹⁴ Due to the political toxicity of banning abortion, Trump and his allies have intentionally kept these plans close to the vest: According to Jonathan Mitchell, Trump's lawyer before the Supreme Court and the architect of Texas' abortion bounty-hunter law, S.B. 8,¹⁵ Trump will

7 Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe Is Deepening Existing Divides*, Guttmacher, Jan. 2023, <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides> (“[M]ore than 10,000 people were unable to access abortion care at a facility in just the first two months after the [Dobbs] decision.”).

8 ACLU, *ACLU Brief in Emergency Abortion Care Case Highlights Idaho Politicians' Deeply Flawed Legal Arguments*, <https://www.aclu.org/press-releases/aclu-brief-in-emergency-abortion-care-case-highlights-idaho-politicians-deeply-flawed-legal-arguments#:~:text=We%20are%20urging%20the%20Court,receive%20abortions%20in%20emergency%20circumstances>

9 Adam Shaw, *Trump Says He's 'Proud to be the Most Pro-Life President' in US History on Anniversary of Roe v. Wade Overturn*, Fox News, June 24, 2023, <https://www.foxnews.com/politics/trump-says-hes-proud-most-pro-life-president-history-anniversary-roe-v-wade-overturn>.

10 Eric Cortellessa, *How Far Trump Would Go*, *Time*, April 30, 2024, <https://time.com/6972021/donald-trump-2024-election-inter2view/>.

11 Donald Trump, “*There Has To Be Some Form Of Punishment*” For Women Who Get Abortions If They Become Illegal, CBS New York, March 30, 2016, <https://www.cbsnews.com/newyork/news/donald-trump-abortion/>.

12 Eric Cortellessa, *How Far Trump Would Go*, *Time*, April 30, 2024, <https://time.com/6972021/donald-trump-2024-election-inter2view/>.

13 Rachel Russell, *A Majority of Americans Believe Trump Would Sign a Nationwide Abortion Ban Into Law*, Navigator, May 8, 2024, <https://navigatorresearch.org/a-majority-of-americans-believe-trump-would-sign-a-nationwide-abortion-ban-into-law/>; Pew Research Center, *Broad Support for Legal Abortion Persists 2 Years After Dobbs*, May 13, 2024, <https://www.pewresearch.org/politics/2024/05/13/broad-public-support-for-legal-abortion-persists-2-years-after-dobbs/>.

14 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, *The New York Times*, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.

15 See id.

attempt to enforce the Comstock Act as a backdoor nationwide abortion ban if he returns to office—solidifying his place as the most anti-abortion president in American history.¹⁶

While misusing the Comstock Act is the most sweeping threat to abortion posed by a second Trump presidency, it is by no means the only one. For example, if he assumes the presidency again, Trump will attempt to eliminate medication abortion, which accounts for almost two-thirds of abortions nationwide,¹⁷ by ordering the Food and Drug Administration (FDA) to rescind approval of one of the drugs, mifepristone, used for such care.¹⁸ Anti-abortion activists recently brought a case seeking to take mifepristone off the shelves nationwide all the way to the Supreme Court. Indeed, a rabid anti-abortion judge appointed by President Trump initially did just what they asked, rescinding the approval of this medication used in most abortions in the U.S. today.¹⁹ Fortunately, in June, the Supreme Court turned these particular litigants away, finding that they did not have enough at stake to bring the lawsuit.²⁰ But that very narrow ruling did not touch on the merits of those plaintiffs' claims. Concerningly, the case has now been sent back to the lower courts and to the same anti-abortion Trump-appointed judge who initially ordered mifepristone off the market. That judge, Matthew Kacsmaryk, has already let three state attorneys general join the case,²¹ and they have vowed to pick up where the other litigants left off.²²

The threats to people's ability to control their bodies and their reproductive lives don't stop with attempts to outlaw abortion. For example, Trump recently admitted that he was looking at ways to restrict access to contraception.²³ While electoral realities forced him to attempt to walk back that statement, as one of the leading anti-reproductive-health members of Trump's administration recently explained, Trump's "track record is the best evidence, I think, you could have of what a second term might look like if Trump wins."²⁴ That track record includes, among other things, changing federal rules that decimated access to birth control for low-income people by forcing Planned Parenthood and other providers of high-quality family planning services out of federal programs.²⁵ If Trump has a second term, we will see these and other attacks on birth control and other family planning services continue.

Courts

As a result of Trump's impact on the makeup of the federal judiciary, and the Supreme Court's unprincipled decision to overrule *Roe v. Wade*, federal litigation to protect reproductive health care is a more daunting prospect today than it was during the first Trump administration. Nonetheless, litigation remains a vital tool in our strategy to stop Trump and his extremist allies from interfering with—and banning outright—the critical reproductive health care services to which we are entitled. Indeed, were it not for litigation brought by the

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- 16 Adam Shaw, *Trump Says He's 'Proud to be the Most Pro-Life President' in US History on Anniversary of Roe v. Wade Overturn*, Fox News, June 24, 2023, <https://www.foxnews.com/politics/trump-says-hes-proud-most-pro-life-president-history-anniversary-roe-v-wade-overturn>.
- 17 Guttmacher, *Medication Abortion Accounted for 63% of all US Abortions in 2023—An Increase from 53% in 2020*, March 19, 2024, <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.
- 18 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, The New York Times, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.
- 19 *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 668 F. Supp. 3d 507 (N.D. Tex. 2023); see also Guttmacher, *Medication Abortion Accounted for 63% of all US Abortions in 2023—An Increase from 53% in 2020*, March 19, 2024, <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.
- 20 *Food & Drug Admin. v. All. for Hippocratic Med.*, No. 23-235, 2024 WL 2964140 (U.S. June 13, 2024).
- 21 *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, No. 2:22-CV-223-Z, 2024 WL 1260639 (N.D. Tex. Jan. 12, 2024).
- 22 Jonathan Shorman, *Kansas, Missouri to keep fighting abortion drug after Supreme Court upholds access to it*, Kansas City Star, June 13, 2024, <https://www.kansascity.com/news/politics-government/article289245660.html>.
- 23 Christine Fernando, *Trump Says He Is Open to Restrictions on Contraception Before Backing Away from the Statement*, Associated Press, May 21, 2024, <https://apnews.com/article/trump-contraception-birth-control-abortion-2024-8f73bb1b3a5864b24157f15eb272a3e6>.
- 24 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, The New York Times, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.
- 25 Pam Belluck, *Trump Administration Blocks Funds for Planned Parenthood and Others Over Abortion Referrals*, The New York Times, Feb. 22, 2019, <https://www.nytimes.com/2019/02/22/health/trump-defunds-planned-parenthood.html>.

ACLU and others in the wake of *Dobbs*, abortion would be banned in another half-dozen states,²⁶ and even more heavily restricted in others.²⁷

In particular, as we lay out below, Trump’s plan to weaponize the Victorian-era Comstock Act into a nationwide abortion ban is flatly unlawful. Decades of federal precedent establish that the Act simply does not apply to the distribution of abortion-related drugs and articles for use in otherwise lawful abortion care.²⁸ This longstanding precedent has been ratified both by Congress and the Department of Justice.²⁹ Using this settled caselaw, we will go to court to stop any effort by a Trump administration to enforce the Comstock Act to ban abortion nationwide.

We will likewise sue to block any effort by Trump to rescind FDA approval for mifepristone or otherwise attack access to medication abortion. The ACLU has a long history of going to court to protect access to medication abortion.³⁰ Our prior litigation, based on robust scientific research and leading medical authorities, contributed to the removal of unlawful and medically unnecessary restrictions on mifepristone, including a restriction that forced people to travel—sometimes hundreds of miles—simply to pick up the medication.³¹ Building on that success, we are continuing litigation to remove the remaining unnecessary restrictions on this critical medication and to ensure that the FDA’s regulation of mifepristone is based on science and not anti-abortion ideology.³²

Finally, we will use the Administrative Procedure Act to challenge Trump’s anticipated misuse of the administrative agencies to restrict other reproductive health care, including efforts to withdraw coverage for birth control under the Affordable Care Act.

Congress

Our strategy for responding to the threat Trump poses to abortion and contraception is not confined to the courtroom. Trump’s plans to impose nationwide restrictions on abortion and contraception are not only legally deficient; they are extraordinarily unpopular, with polls and election results consistently demonstrating strong public opposition to his plans to impose abortion bans and restrictions on contraception.³³ It is imperative that Congress leverage all of its available tools to push back against and publicize Trump’s efforts to strip us of our right to access reproductive health care.

The ACLU, our affiliates and our allies have been working tirelessly to remedy the harms the Trump administration caused, with the ultimate goal of enacting federal legislation that would ensure access to abortion nationwide. While federal legislative victories will be out of reach under a Trump administration, congressional action can nonetheless be an important tool to frame political fights and deter abuses. To this end, the ACLU is working alongside members of Congress on legislation to prevent the misuse of the Comstock

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- 26 See, e.g., *State Supreme Court Dismisses Ohio’s Effort to Enforce Abortion Ban*, Associated Press, Dec. 16, 2023, <https://www.theguardian.com/us-news/2023/dec/16/state-supreme-court-dismisses-ohio-abortion-ban>.
- 27 See, e.g., ACLU, *Federal Court Blocks Enforcement of Idaho Attorney General’s Prohibition on Out-of-State Abortion Referrals*, <https://www.aclu.org/press-releases/federal-court-blocks-enforcement-of-idaho-attorney-generals-prohibition-on-out-of-state-abortion-referrals>; ACLU, *Nevada Court Will Block State Ban on Medicaid Coverage for Abortion*, <https://www.aclu.org/press-releases/nevada-court-will-block-state-ban-on-medicaid-coverage-for-abortion>.
- 28 See, e.g., *United States v. One Package*, 86 F.2d 737 (2d Cir. 1936).
- 29 U.S. Department of Justice, Office of Legal Counsel, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*, 46 Op. O.L.C., at 5 (Dec. 23, 2022), <https://www.justice.gov/olc/opinion/file/1560596/d?inline>.
- 30 *Chelius v. Becerra*, No. 1:17-cv-00493-JAO-RT (D. Haw. filed Oct. 3, 2017); ACLU, *Chelius v. Becerra*, <https://www.aclu.org/cases/chelius-v-becerra#:~:text=The%20federal%20lawsuit%2C%20brought%20on,no%20medical%20basis%2C%20imposing%20particularly>; *Am. Coll. of Obstetricians & Gynecologists v. U.S. Food & Drug Admin.*, 472 F. Supp. 3d 183 (D. Md. 2020); ACLU, *American College of Obstetricians & Gynecologists v. U.S. Food and Drug Administration*, <https://www.aclu.org/cases/american-college-obstetricians-and-gynecologists-v-us-food-and-drug-administration>.
- 31 U.S. Food & Drug Admin., *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation* (2023), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>; see also *Chelius v. Becerra*, No. CV 17-00493 JAO-RT, 2023 WL 5041616 (D. Haw. Aug. 8, 2023).
- 32 *Chelius v. Becerra*, No. 1:17-cv-00493-JAO-RT (D. Haw. filed Oct. 3, 2017).
- 33 Annie Karni, *Republican Opposition to Birth Control Bill Could Alienate Votes, Poll Finds*, *The New York Times*, Feb. 26, 2024, <https://www.nytimes.com/2024/02/26/us/politics/republicans-birth-control-ivf.html>.

Act and to safeguard the right to contraception. We will work with lawmakers to sound the alarm on Trump’s threats to force a backdoor national abortion ban. We will shine a light on these threats through congressional hearings, and by getting abortion-opponents on the record about their stance on taking reproductive health care away.

States and Municipalities

Additionally, we are working with state officials to enact protections against Trump’s planned attacks on people providing, seeking, or assisting with reproductive health care. We are calling on state officials to expand their “shield laws” to prevent state employees from voluntarily assisting federal officials carrying out Trump’s assault on abortion. While state officials cannot prevent a Trump Department of Justice from misusing the Comstock Act, they can create friction by refusing to participate in improper federal enforcement efforts. To counteract Trump’s twin attacks on funding for reproductive health care and health-data privacy related to that care, states must work to ensure funding for abortion and contraception, as well as to pass state-level health care data privacy protections.

Organizing and Electoral

In 2022, the ACLU led, and won, all five ballot measures involving abortion rights. With our partners, we spearheaded the ballot measure in Michigan—the first-ever proactive reproductive freedom constitutional amendment—ultimately investing over \$7.5 million total and delivering a decisive 57-43 vote in favor of enshrining the right to reproductive freedom in the state’s constitution.³⁴

Building on these victories, in 2023, we invested deeply in an affirmative reproductive freedom

measure, Issue 1, in Ohio.³⁵ The campaign faced a variety of obstacles, including a cynical ploy by anti-abortion Ohio legislators to raise the voting threshold for passing citizen-initiated constitutional amendments from 50 to 60 percent. However, more than 3 million Ohioans soundly defeated that measure in August, demonstrating their support for abortion rights. By November, campaign participants had knocked on thousands of doors and called thousands of voters to educate them about what was at stake. Ultimately, Issue 1 passed by over 57 percent—a resounding victory, particularly in a so-called “red” state.³⁶ Our voter education pushes also made a real impact: In 2022, our mobilization had a “coattail” effect in a number of states. Many people who went to the polls to vote for abortion ballot measures also voted for abortion-protective state representatives. For example, in Michigan, these efforts helped to flip both chambers to pro-abortion rights majorities.

In 2023, the ACLU also invested more than \$1 million in voter education around Virginia’s General Assembly elections. The General Assembly members who campaigned on abortion rights won sweeping victories, which will keep the Governor’s attempted 15-week abortion ban at bay.³⁷ The ACLU was also one of the top spenders in Pennsylvania’s state Supreme Court race, spending over \$1.8 million to educate voters about the two candidates’ positions on abortion.³⁸

The ACLU and its affiliates are actively engaged in 2024 ballot initiative efforts to enshrine abortion rights in state constitutions in states like Florida, Colorado, and Montana. Voters have made it abundantly clear that they overwhelmingly support the right to abortion and are prepared to use their voices and their votes at every opportunity to defend access to this essential health care. We will

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- 34 Alice Miranda Olstein, *Michigan abortion-rights battle rakes in cash ahead of referendum*, POLITICO, Oct. 31, 2022, <https://www.politico.com/news/2022/10/31/michigan-abortion-cash-referendum-00064253>; Kate Wells, *Proposal 3 passes, enshrines abortion rights in Michigan Constitution*, Michigan Public, Nov. 9, 2022, <https://www.michiganpublic.org/politics-government/2022-11-09/proposal-3-passes-enshrines-abortions-rights-in-michigan-constitution>.
- 35 Ali Swenson, *Abortion rights supporters far outpace opponents, out-of-state money flowing to Ohio*, PBS, Oct. 27, 2023, <https://www.pbs.org/newshour/politics/abortion-rights-supporters-far-outpace-opponents-out-of-state-money-flowing-to-ohio>.
- 36 Holly Honderich, *Ohio Issue 1: Voters approve adding abortion rights to state constitution*, BBC, Nov. 8, 2023, <https://www.bbc.com/news/world-us-canada-67352011>.
- 37 ACLU, *ACLU Statement on Reproductive Freedom Victories in the 2023 Elections*, Nov. 7, 2023, <https://www.aclu.org/press-releases/aclu-statement-on-reproductive-freedom-victories-in-the-2023-elections>.
- 38 Marc Levy, *Attack ads and millions of dollars flow into race for Pennsylvania Supreme Court seat*, WHYY, Oct. 7, 2023, <https://whyy.org/articles/attack-ads-millions-dollars-pennsylvania-supreme-court-seat-race-elections-2023/>.

continue to fight right alongside them and use every tool available to resist the ongoing attacks on our rights by Trump and his allies.

SPECIFIC THREATS & POSSIBLE RESPONSES

Comstock

Trump’s allies have made clear that if Trump is re-elected, he will attempt to misuse the Comstock Act to create a backdoor ban on all abortions nationwide without any need for congressional action.³⁹ The Comstock Act is an 1873 anti-obscenity statute that regulates the use of the mails and common carriers concerning sending and receiving anything that is “indecent, filthy, or vile” or “intended for producing abortion ...”⁴⁰ Its namesake, Anthony Comstock, was an infamous Victorian-era anti-vice crusader who, as the Supreme Court explained, “believed that anything remotely touching upon sex was ... obscene.”⁴¹ Comstock lobbied Congress to enact legislation that would allow the Postal Service to seize lewd or indecent items, and he became the law’s specially appointed enforcer.⁴² He took credit for arresting thousands and driving at least 15 people to suicide through his anti-vice crusades.⁴³ As his biography—aptly titled “The Man Who Hated Women”—explains, Comstock’s name has become synonymous with “prudishness, control, censoriousness, and repression of thought.”⁴⁴

Even though this law has long been understood not to apply to the lawful provision of health care, Trump’s anti-abortion strategists have stated that the Department of Justice in a second Trump administration would seek to enforce the Comstock Act to effectively ban abortion in every state in the country. As Jonathan Mitchell told *The New York Times*, “[w]e don’t need [Congress to pass] a federal ban when we have Comstock on the books.”⁴⁵ The plan to enforce the Comstock Act to stop abortions nationwide is echoed by Project 2025’s “Mandate for Leadership,”⁴⁶ a blueprint of “actions to be taken in the first 180 days of the new Administration.”⁴⁷ According to the anti-abortion extremists drawing up plans for Trump’s administration, the Comstock Act can be operationalized as a national abortion ban because the medication and equipment used in abortion care has to be transported to healthcare providers via mail and common carrier.⁴⁸ If it were a federal crime to send and receive the medications and supplies needed to perform abortions, then health care providers would be unable to provide abortion services. Moreover, because the Comstock Act contains no exceptions whatsoever, it could also prevent people from getting care in medical emergencies where the inability to obtain abortion care would endanger the pregnant person’s health or life.⁴⁹

The ACLU’s response to this existential threat to abortion will be multi-pronged. *First*, we will go to court to fight any effort by a Trump administration to weaponize this antiquated law to ban abortion. Both the historical context and decades of federal precedent contravene the argument that the

39 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 562, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

40 18 U.S.C. § 1461; see also 18 U.S.C. § 1462.

41 *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 70 n.19 (1983) (quotation marks and citation omitted).

42 Sen. Tina Smith, *I Hope to Repeal an Arcane Law That Could Be Misused to Ban Abortion Nationwide*, *The New York Times*, April 2, 2024, <https://www.nytimes.com/2024/04/02/opinion/comstock-act-abortion-repeal.html>.

43 Ronald D. Gray, *Balancing Community Standards Against Constitutional Freedoms of Speech and Press: Pope v. Illinois*, 41 Sw. L.J. 1023, 1028 n.41 (1987).

44 Amy Sohn, *The Man Who Hated Women: Sex, Censorship, and Civil Liberties in the Gilded Age* 10 (2021).

45 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, *The New York Times*, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.

46 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 562, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

47 Project 2025 Presidential Transition Project, *180 Day Playbook*, <https://www.project2025.org/playbook/>.

48 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, *The New York Times*, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.

49 See 18 U.S.C. §§ 1461–62.

Comstock Act functions as a nationwide ban on sending and receiving medication and supplies used for otherwise lawful abortion care. To the contrary, beginning in the early 20th century, federal appellate courts reached a consensus that the Comstock Act only addresses sending and receiving materials to be used for *otherwise unlawful* abortion and contraception.⁵⁰ The courts' uniform conclusion was that the Act does not apply to drugs and articles sent and received for lawful abortion care.⁵¹ And as the Department of Justice recently explained, "[o]n several occasions, Congress reenacted and amended the Comstock Act against the backdrop of the judicial precedent in a manner that ratified the federal courts' narrowing construction."⁵² In short, the argument by Trump's allies that the Comstock Act can be enforced to ban abortion nationwide flies in the face of the settled determination by courts, Congress, and the Justice Department that the law does not apply to lawful abortion care.

Second, the ACLU is sounding the alarm on the threat of this backdoor national abortion ban and demonstrating overwhelming public opposition to such a threat. Key to Trump's and his advisors' plan to use the Comstock Act is keeping Americans in the dark, given the public's strong opposition to abortion bans. Jonathan Mitchell, Trump's lawyer before the Supreme Court, told *The New York Times*, "I hope [Trump] doesn't know about the existence of Comstock, because I just don't want him to shoot off his mouth... I think the pro-life groups should keep their mouths shut as much as possible until the election."⁵³ The ACLU is working with elected officials and stakeholders at every level to shine a

light on this strategy and ensure that people in every state, including states that have sought to protect abortion access, understand the dire threat posed to reproductive freedom nationwide. We are also working alongside members of Congress to elevate the threat of Comstock in congressional hearings, getting Trump's allies on the record about their stance on misusing Comstock as a backdoor national abortion ban, and supporting the introduction of legislation in Congress to repeal the Comstock Act to prevent it from being misused.

Third, the ACLU will support patients, healthcare providers, and anyone else who faces prosecution related to abortion care under a new administration, including a Trump DOJ federal prosecution under the Comstock Act. In addition to developing practice resources and litigation tools to arm public defenders and criminal defense attorneys in addressing the potential threat of abortion-related federal prosecutions, the ACLU's Abortion Criminal Defense Initiative⁵⁴ is expanding its criminal defense network, which currently includes attorneys in 26 hostile states, to amplify federal defense power. Together with our nationwide network of criminal defense attorneys, we will work to ensure a robust, zealous defense of anyone facing the threat of criminal prosecution or investigation related to abortion care. In addition to defending against criminal prosecutions, we will leverage our deep litigation expertise to hold government officials accountable when they abuse their power to criminalize pregnant people and those who support them, as we are doing in our representation of Lizelle Gonzalez, who was wrongfully jailed by Texas

50 The Comstock Act originally applied to contraception as well as abortion, and the federal appellate decisions applying the unlawful-use principle did so in cases addressing both abortion and contraception. Congress removed the Comstock Act's contraception provisions in 1971. See Pub. L. No. 91-662, 84 Stat. 1973 (1971).

51 See *Consumers Union of U.S., Inc. v. Walker*, 145 F.2d 33, 35 (D.C. Cir. 1944); *United States v. Nicholas*, 97 F.2d 510, 512 (2d Cir. 1938); *United States v. One Package*, 86 F.2d 737, 739 (2d Cir. 1936); *Davis v. United States*, 62 F.2d 473, 474-75 (6th Cir. 1933); *Youngs Rubber Corp. v. C.I. Lee & Co.*, 45 F.2d 103, 108 (2d Cir. 1930); *Bours v. United States*, 229 F. 960, 964 (7th Cir. 1915); see also *Poe v. Ullman*, 367 U.S. 497, 546 n.12 (1961) ("[B]y judicial interpretation . . . the absolute prohibitions of the [Comstock] law were qualified to exclude professional medical use.") (Harlan, J., dissenting); *United States v. Gentile*, 211 F. Supp. 383, 385 n.5 (D. Md. 1962) ("It seems clear under the authorities that in order to make out an offense under this paragraph the Government should be required to allege and prove that contraceptive devices are shipped and received with intent that they be used for *illegal* contraception or abortion or for indecent or immoral purposes." (emphasis added)).

52 U.S. Department of Justice, Office of Legal Counsel, Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions, 46 Op. O.L.C., at 5 (Dec. 23, 2022), <https://www.justice.gov/olc/opinion/file/1560596/dl?inline>; see also *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 536-37 (2015) ("If a word or phrase has been ... given a uniform interpretation by inferior courts ..., a later version of that act perpetuating the wording is presumed to carry forward that interpretation." (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012))).

53 Lisa Lerer and Elizabeth Dias, *Trump Allies Plan New Sweeping Abortion Restrictions*, *The New York Times*, Feb. 17, 2024, <https://www.nytimes.com/2024/02/17/us/politics/trump-allies-abortion-restrictions.html>.

54 ACLU, *Abortion Criminal Defense Initiative*, <https://www.aclu.org/campaigns-initiatives/abortion-criminal-defense-initiative>.

officials for having an abortion.⁵⁵

Fourth, we will work with state legislatures and governors to pass state laws that would prevent state employees from voluntarily assisting federal agents in unwarranted Comstock enforcement actions and would arm state employees to challenge such actions. While many states have already enacted “shield laws” aimed at minimizing legal risks for abortion providers, patients, and helpers, most of these provisions are designed to act as buffers against proceedings initiated by other states, not by a hostile federal administration. By working to pass expanded shield-law protections, we will attempt to stop a future Trump administration from forcing state officials to cooperate in its effort to weaponize the Comstock Act.

Direct Threats to Medication Abortion

In addition to the threat of Comstock enforcement, a second Trump administration could decimate abortion care in every state in the country by responding to calls from Trump’s allies to withdraw the FDA’s approval of mifepristone,⁵⁶ a safe and effective medication used in most abortions and

miscarriage⁵⁷ care in the U.S. today⁵⁸ Revoking FDA approval would mean that mifepristone could no longer be legally provided anywhere in the U.S., including in states with affirmative protections for abortion access. Even if a Trump administration allowed mifepristone to remain on the market, it would almost certainly reinstate medically unnecessary restrictions that prevent mifepristone from being mailed to patients,⁵⁹ forcing them to travel, often hundreds of miles, to an abortion provider for the sole purpose of picking up their medication and depriving many patients of abortion access altogether.⁶⁰

The FDA approved Mifepristone in 2000⁶¹ and it has since been used in the U.S. by six million people to end their pregnancies safely and effectively, or for miscarriage care.⁶² Today, mifepristone is used in almost two-thirds of abortions in this country.⁶³

For that reason, and because it can be safely mailed to people seeking abortion care, Trump’s supporters consider mifepristone to be the “single greatest threat” to their vision of a nation without abortion care.⁶⁴ That’s why anti-abortion politicians in Congress have repeatedly attempted

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- 55 ACLU, Garza Martinez, ACLU, and ACLU of Texas Fight to Hold Government Accountable for Unlawful Prosecution of South Texas’ Lizelle Gonzalez, <https://www.aclu.org/press-releases/garza-martinez-aclu-and-aclu-of-texas-fight-to-hold-government-accountable-for-unlawful-prosecution-of-south-texas-lizelle-gonzalez>.
- 56 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 458, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.
- 57 Nicole Karlis, “Devastating”: Restricting abortion drug access would inflict unnecessary suffering for miscarriages, Feb. 1, 2024, <https://www.salon.com/2024/02/01/devastating-restricting-abortion-access-would-inflict-unnecessary-suffering-for-miscarriages/>; Schreiber C, Creinin M, Atrio J, Sonalkar S, Ratcliffe S, Barnhart K. Mifepristone Pretreatment for the Medical Management of Early Pregnancy Loss. 2018; 10.1056/NEJMoa1715726. <https://www.nejm.org/doi/full/10.1056/NEJMoa1715726>; American College of Obstetricians & Gynecologists, Practice Bulletin No. 200: Early Pregnancy Loss (Nov. 2018), <https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2018/11/early-pregnancy-loss>.
- 58 Guttmacher, *Medication Abortion Accounted for 63% of all US Abortions in 2023—An Increase from 53% in 2020*, March 19, 2024, <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.
- 59 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 458, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.
- 60 Caitlin Myers, *Forecasts for a post-Roe America: The effects of increased travel distance on abortions and births* (Sept. 13, 2023), <https://onlinelibrary.wiley.com/doi/full/10.1002/pam.22524>.
- 61 U.S. Food & Drug Admin., *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, Sept. 1, 2023, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.
- 62 U.S. Food & Drug Admin., *Mifepristone U.S. Post-Marketing Adverse Events Summary Through 12/31/2022* (2022), <https://www.fda.gov/media/164331/download>.
- 63 Guttmacher, *Medication Abortion Accounted for 63% of all US Abortions in 2023—An Increase from 53% in 2020*, March 19, 2024, <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020>.
- 64 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 457, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

to ban mifepristone.⁶⁵ Trump’s allies have no intention of waiting for Congress; they are calling on a second Trump administration to revoke the drug’s FDA approval and pull it from the market in every state in the country.⁶⁶ At a minimum, they want a Trump FDA to severely limit access to the medication by reinstating outdated restrictions that would prevent mailing it and require people to pick up their medication in person at a medical facility⁶⁷—restrictions that scientists at the FDA and leading medical organizations have determined are medically unnecessary and result in harmful interference with the public’s ability to access this critical medication.⁶⁸ Trump’s allies have not been shy in trumpeting their plans for his administration to unilaterally impose such restrictions.⁶⁹

The ACLU has sued under multiple administrations—Democratic and Republican—to protect the public’s access to medication abortion.⁷⁰ For example, during the height of the COVID-19 pandemic, we went all the way to the U.S. Supreme Court to fight the Trump administration’s insistence that people seeking mifepristone must appear in-person at a clinic—subjecting themselves and their families to the risk of a deadly virus—for the sole purpose of picking up a pill that could be safely used at home.⁷¹

Ultimately, the FDA, under the Biden administration, reviewed the evidence and determined that requiring people to pick up their pills in person was medically unnecessary, as we had advocated.⁷²

We are not finished. We are pressing forward with litigation to remove all medically unnecessary restrictions on mifepristone that are impeding the public’s access to this critical medication.⁷³ And, if Trump is re-elected and attempts to remove mifepristone from the market, or otherwise further restrict access contrary to scientific evidence that overwhelmingly demonstrates the drug’s safety and efficacy, we will see him in court. We will use the Administrative Procedure Act, 5 U.S.C. § 706, to force the FDA to act within congressionally mandated parameters designed to protect the American public and foster access to safe and effective, life- and health-saving medication.

We will also fight in the court of public opinion. If Trump attempts to block access to this medication or ban people from receiving it by mail, we will mobilize public support to block his attempts. The latest polls are clear: The American public supports access to medication abortion by overwhelming margins and expects to be able to receive this medication by mail as they do with other safe

65 Tessa Stuart, *Republican Lawmakers Want to Ban Mifepristone. Most People Hate That Idea*, March 30, 2024, <https://www.rollingstone.com/politics/politics-news/mifepristone-gop-1234996769/>; <https://www.yahoo.com/news/house-republicans-proudly-declare-embryo-160929876.html>; KFF Health News, *House Republicans Introduce Bill to Ban Abortion Meds*, Alice Miranda Ollstein, *House Republicans introduce national ban on abortion pills*, PoliticoPro, Sept. 28, 2023, <https://subscriber.politicopro.com/article/2023/09/house-republicans-introduce-national-ban-on-abortion-pills-00118886>.

66 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 458, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

67 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 458, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

68 Pam Belluck, F.D.A. Will Permanently Allow Abortion Pills by Mail, Dec. 16, 2021, <https://www.nytimes.com/2021/12/16/health/abortion-pills-fda.html>.

69 Nathaniel Weixel, *Supreme Court Abortion Pill Decision Ties Issue to Trump-Biden Race*, The Hill, June 20, 2024, <https://thehill.com/policy/healthcare/4729412-abortion-pill-supreme-court-decision/>.

70 *Chelius v. Becerra*, No. 1:17-cv-00493-JAO-RT (D. Haw. filed Oct. 3, 2017); ACLU, *Chelius v. Becerra*, <https://www.aclu.org/cases/chelius-v-becerra#:~:text=The%20federal%20lawsuit%2C%20brought%20on,no%20medical%20basis%2C%20imposing%20particularly>; *Am. Coll. of Obstetricians & Gynecologists v. U.S. Food & Drug Admin.*, 472 F. Supp. 3d 183 (D. Md. 2020); ACLU, *American College of Obstetricians & Gynecologists v. U.S. Food and Drug Administration*, <https://www.aclu.org/cases/american-college-obstetricians-and-gynecologists-v-us-food-and-drug-administration>.

71 ACLU, *American College of Obstetricians & Gynecologists v. U.S. Food and Drug Administration*, <https://www.aclu.org/cases/american-college-obstetricians-and-gynecologists-v-us-food-and-drug-administration>.

72 U.S. Food & Drug Admin., *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, Sept. 1, 2023 2023, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

73 *Chelius v. Becerra*, No. 1:17-cv-00493-JAO-RT (D. Haw filed Oct. 3, 2017).

drugs.⁷⁴ We will also work with our allies to mobilize the broader medical community, patient groups, the drug industry, and other stakeholders with a vested interest in defending the scientific integrity of the drug approval processes.

Threats to Birth Control

While threats to abortion care received the most public attention during Trump’s presidency, the Trump administration also decimated access to birth control and family planning services for people living on low incomes. And Trump’s allies in Congress have repeatedly threatened access to contraception, proposing legislation that would defund the nation’s family planning program (Title X),⁷⁵ attempting to repeal the ACA⁷⁶ and opposing legislation that would codify the right to contraception.⁷⁷

In addition, if Trump is re-elected, we can expect that he would attempt to take away people’s right to insurance coverage for contraception guaranteed by the ACA. The ACA requires health insurance companies to provide coverage for essential, preventive health care for women, including the “full range of contraception,” without a co-pay. According to the federal government, in 2020, “58 million women benefited from the ACA’s preventive services and birth control coverage, which has saved billions of dollars in out-of-pocket spending on contraception since the ACA was passed.”⁷⁸

Since its passage, the ACA’s birth control benefit has been under attack, notably from employers who objected, on religious grounds, to providing insurance plans that employees could use to cover the cost of the birth control method that was right for them.⁷⁹ But if Trump assumes office again, we are likely to see a full-frontal attack on birth control coverage. Indeed, Project 2025 explicitly calls for certain methods of contraception to be eliminated from the coverage requirements. In light of Trump’s recent comments on attacking birth control, there is every reason to think that a new Trump administration would go much further and allow employers and insurance plans to deny people coverage for all forms of contraception. If it does, the ACLU will be ready to sue under the Administrative Procedure Act, alleging, among other things, that such action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁸⁰

Outside of the courtroom, we will fight back against attacks on contraception by mobilizing our supporters and raising the political cost of enacting these extreme and widely unpopular policies. Birth control is extremely popular; 91 percent of Americans support it.⁸¹ The ACLU will use our political power to demonstrate just how far out of step the Trump administration is with the American people. We will also use our organizing power to mobilize activists in support of protecting the right to contraception, and against any action

74 PEW Research Center, *Broad Support for Legal Abortion Persists 2 Years After Dobbs*, May 13, 2024, <https://www.pewresearch.org/politics/2024/05/13/broad-public-support-for-legal-abortion-persists-2-years-after-dobbs/> (“By more than 2 to 1, Americans say medication abortion should be legal”); PRRI, *Abortion Views in All 50 States: Findings from PRRI’s 2023 American Values Atlas*, May 2, 2024, <https://www.prrri.org/research/abortion-views-in-all-50-states-findings-from-prris-2023-american-values-atlas/> (Over two-thirds of Americans oppose laws that make it illegal to use or receive through the mail FDA-approved drugs for medication abortion.)

75 Politico, *A House GOP-drafted Spending Bill Would Eliminate Family Planning Funds for Low-income Individuals, Drawing Ire From Democrats and Outside Groups*, July 13, 2023, <https://www.politico.com/minutes/congress/07-13-2023/contraception-funding-cut/>.

76 Erica Werner, Alan Fram, *Joyful House Republicans Vote to Repeal Reviled ‘Obamacare’*, AP News, May 4, 2017, <https://apnews.com/article/e712bb2224e24449b3b94d345f67b840>.

77 Mary Claire Jalonick, *Republicans Block Bill to Protect Contraception Access as Democrats Make Election-year Push*, AP News, June 5, 2024, <https://apnews.com/article/contraception-senate-abortion-biden-trump-reproductive-rights-3f9e8546624a3acf8e64d1138fcb84b1>.

78 U.S. Dep’t of Health & Hum. Servs., HHS, DOL, and Treasury *Issue Guidance Regarding Birth Control Coverage* (July 28, 2022), <https://www.hhs.gov/about/news/2022/07/28/hhs-dol-treasury-issue-guidance-regarding-birth-control-coverage.html#:~:text=According%20to%20a%20report%20released,since%20the%20ACA%20was%20passed.>

79 See, e.g., *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014).

80 5 U.S.C. § 706(2)(A).

81 *Abortion and Contraception: A Guide for Advocates*, Navigator Research (June 11, 2024), <https://navigatorresearch.org/wp-content/uploads/2024/06/Navigator-Update-06.11.2024.pdf...I096&emdi=6c3dd348-d727-ef11-86d2-6045bdd9e096&ceid=1403529>.

taken to restrict access to birth control. Additionally, we will advocate for states to allocate additional resources for access to reproductive health services, like California's Reproductive Health Equity Fund, to help mitigate the harm caused by a federal government attack on access.

Together, we will use our political power on Capitol Hill to urge members of Congress to prioritize and advance critical legislation like the Right to Contraception Act, which would codify and safeguard the right to contraception as recognized in *Griswold v. Connecticut*, a U.S. Supreme Court case brought by the ACLU in 1965 establishing that right.⁸²

Other Regulatory Threats

In addition to launching direct attacks on abortion and contraception, a second Trump administration would abuse its regulatory power to target reproductive health care in numerous other ways.

- A Trump administration would rescind the Department of Health and Human Services' June 2022 rule implementing HIPAA, the Health Insurance Portability and Accountability Act, which provides important protections against the disclosure of private health information related to reproductive health care to hostile officials or individuals trying to penalize people for seeking, providing, or assisting with reproductive health care.⁸³ Trump's anti-abortion allies object to the protections that this rule affords because they want to encourage and facilitate investigations into people's reproductive health care.⁸⁴

- A Trump administration would also rescind the Equal Employment Opportunity Commission's (EEOC) April 2024 rule interpreting the Pregnant Workers Fairness Act to provide protections for workers requiring time off to travel to access abortion care.⁸⁵ In the wake of *Dobbs*, the number of people who must travel across state lines for abortion care has doubled to nearly one in five, and the EEOC's rule entitles them to reasonable accommodations from employers as they do so.⁸⁶ States hostile to abortion have already challenged these rules and the ACLU has submitted friend of the court briefs in support of the rule.⁸⁷ A second Trump administration would attempt to take these protections off the books.

- A Trump administration would likewise seek to block federal family planning money from going to Planned Parenthood and other organizations that refer for abortion services. Trump's anti-abortion strategists have also drawn up plans to bar abortion providers from receiving federal Medicaid and other funds despite the fact that, even now, none of the federal dollars can be used to provide abortion care.⁸⁸ Doing so will deprive people of access to cancer screening, contraception, and other vital health care.

The ACLU will use every tool available to oppose these and other regulatory attacks on access to reproductive health care. While the prospects for any legal challenge under the Administrative Procedure Act would largely depend on the process by which a Trump administration tries to rescind and replace these regulations and the exact terms

82 381 U.S. 479 (1965).

83 See HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32976-01 (Apr. 26, 2024).

84 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 497, https://static.project2025.org/2025_MandateForLeadership_FULLL.pdf.

85 29 C.F.R. §§ 1636.1-1626.8 (2024).

86 Kimya Forouzan et al., *The High Toll of US Abortion Bans: Nearly One in Five Patients Now Traveling Out of State for Abortion Care*, Guttmacher Inst. (Dec. 2023), <https://perma.cc/FE6X-GYRF>.

87 ACLU, ACLU & NWLC Submit Brief in Support of Landmark Pregnant Workers Fairness Act, <https://www.aclu.org/press-releases/aclu-nwlc-submit-brief-in-support-of-landmark-pregnant-workers-fairness-act>; ACLU, *Civil Rights Groups Submit Brief in Support of Landmark Pregnant Workers Fairness Act*, <https://www.aclu.org/press-releases/civil-rights-groups-submit-brief-in-support-of-landmark-pregnant-workers-fairness-act>.

88 Project 2025 Presidential Transition Project, *Mandate for Leadership: The Conservative Promise* 471, https://static.project2025.org/2025_MandateForLeadership_FULLL.pdf.

of the new rule, the ACLU would closely monitor the administration's actions for abuses and explore a challenge to any regulatory assault on reproductive health care access. In the meantime, we are working with pro-reproductive freedom states to adopt state-level privacy protections for personal health information and data, and to ensure adequate state funding for reproductive health care services that is insulated from attacks by a hostile Trump administration to the greatest extent possible.

CONCLUSION

The Supreme Court's decision overturning *Roe v. Wade* sparked a public outcry and made abortion rights a central issue in American life. The public overwhelmingly supports abortion access and has consistently and repeatedly demonstrated that support at every opportunity.

Because of the public's outrage over losing our reproductive rights, Trump has attempted to downplay his plans to further decimate access to ban abortion and other critical reproductive health care. Yet his unguarded statements, his allies' public playbook, and most importantly his prior actions—including nominating Justices to the Supreme Court for the purpose of overturning *Roe*—make his intentions clear. We continue to see Trump's allies in the state governments and in Congress threaten reproductive health—from threatening people's ability to use IVF to start a family, to the refusal to support people's ability to get contraception — and prove just how far out of step they are with the American people.

The ACLU will continue our work to ensure that Americans know the truth and to thwart Trump's attempts to pull the wool over the public's eyes. Should Trump regain the presidency, we will be there every step of the way to expose his efforts, galvanize efforts to stop him, and fight him in court whenever possible.

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