



# Congress Needs to Enact A Reproductive Justice New Deal

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The promise of *Roe v. Wade* in many ways seems a dream deferred or more elusive in the wake of Justice Ruth Bader Ginsburg's passing. In 1973, in a 7-2 decision, the Supreme Court decriminalized abortion, making it legal to terminate a pregnancy. According to the Court, the right to terminate a pregnancy, "whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action. . . [or] in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The opinion, written by Justice Blackmun, a Nixon appointee, spoke to the realities of women's lives.

Justice Blackmun wrote, "[t]he detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent." The Court found, "[s]pecific and direct harm medically diagnosable even in early pregnancy may be involved." As the Court acknowledged, forcing women to continue unwanted pregnancies could "force upon the woman a distressful life and future," including "[p]sychological harm." The Court acknowledged that both mental and physical health could be taxed by childcare, and opined, "bringing a child into a family already unable, psychologically and otherwise, to care for it," could be devastating. That was nearly fifty years ago.

Today, with Justice Ruth Bader Ginsburg off the Court, the fragility of abortion rights is glaringly apparent. What may be less visible, however, are the devastating risks to reproductive health, privacy, and autonomy apart from abortion and how

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those risks are magnified for vulnerable communities of color and LGBTQ people. This is why we need a Reproductive Justice New Deal or Bill of Rights.

Today, a pregnant person is fourteen times more likely to die by continuing the pregnancy versus having an abortion. The United States leads the developed world in maternal mortality, ranking well below peer nations as well as those with greater economic vulnerabilities. The devastating scale of this hits close to home: Texas and Louisiana rank as the deadliest places in the developed world to give birth.

Nationally, Black women are nearly four times as likely as their white counterparts to experience death related to pregnancy. The data is even more severe at the local levels where the rates magnify, resulting in gross disparities. For example, in some southern states, Black women risk death during pregnancy at rates ten times that of white counterparts. Sadly, among many of the former confederate states, Black women's reproductive safety and health remain vulnerable.

Even while women in the United States experience deadly tolls in pregnancy and childbirth, myriad laws make it more difficult for a pregnant person to terminate a pregnancy in the U.S. These laws include mandated waiting periods, forced vaginal ultrasounds, restricting coverage in private insurance plans, state mandated counseling and transfer agreements, unnecessary and arbitrary facility requirements, and bans on telemedicine—to name a few. Several states, including Alabama, Kentucky, Louisiana, Mississippi, Missouri, and Ohio enacted laws to ban abortion even in cases of rape and incest, providing no exceptions. Those laws have yet to go into effect due to court injunctions.

However, it is not only the threat to abortion rights and staggering rates of maternal mortality that should concern policymakers. Rollbacks to sex education in schools are commonplace along with “abstinence only” content in place of rigorous, science-based curricular on human biology. The results are not surprising: the U.S. leads the developed world in teen sexually transmitted infections. These infections, if untreated, can later result in aggravated health harms, including cervical cancer.

Contraceptive access suffers vulnerability too, through pharmacists claiming a religious freedom to avoid filling prescriptions for birth control, including for couples, and the Trump administration issuing a rule to “protect” the “conscience rights” of all Americans. The Trump rules extend “conscience protections to Americans who have a religious or moral objection to paying for health insurance that covers contraceptive. . . services.” These agency rules have largely gone unnoticed in popular media, but they are no less relevant than concerns related to abortions. This is especially so considering the Supreme Court's 2014 ruling in *Burwell v. Hobby Lobby*. In that case, the Court's all-male, conservative majority ruled that the Religious Freedom Restoration Act of 1993 (RFRA) allowed for-profit companies to deny contraceptive coverage to female employees who would otherwise be entitled to such coverage if the religious objection did not exist.

Finally, recent allegations of forced sterilizations in immigrant detention centers are also worrying and speak to the need for legal intervention and protections. Sadly, this is nothing new; Black women experienced reproductive horrors during chattel slavery, and in many cases their reproductive rights barely improved during Jim Crow, when eugenics policies resulted in coercive state sterilizations—so much so that in Mississippi forced sterilization against Black women became known as the “Mississippi Appendectomy.”

For the victims—poor white women, Indigenous women, Latinas, and Black women—this was state sponsored terrorism. Even in the 1970s, states continued to carry out these practices. In 1974, Alabama sterilized sisters Mary Alice and Minnie Relf when aged fourteen and twelve, respectively. Years later, a lawsuit filed by the Southern Poverty Law Center on behalf of the Relf sisters revealed that federally funded programs sterilized 100,000 to 150,000 people each year. Clearly, some of those sterilizations may have been voluntary, but the majority were likely facilitated through coercive means.

In Puerto Rico, it is estimated that one-third of its female population was sterilized. So common it was called, “la operación” (the operation). It’s unknown how many American women in total suffered this fate—or continue to as *Buck v. Bell* was never overturned. That coercive sterilizations might take place in U.S. custody reeks of bygone eugenics policies sanctioned by the Supreme Court in *Buck v. Bell* nearly 100 years ago.

For all these reasons and more, it is time for a Reproductive Justice New Deal. A law is needed that does more than codify *Roe v. Wade*, as the Women’s Health Protection Act (WHPA) aims to do. That, too, is not enough. During the Trump administration basic public health and safety for girls, women, and LGBTQ populations came under attack. Instead, we need a cultural shift in politics. First, policy is needed that protects a full range of reproductive health services, including contraception, prenatal healthcare, post-natal care, and abortion. Second, reproductive rights are human rights and should be regarded as such not only by the Biden-Harris administration, but also every administration that follows. Finally, the efforts to advance reproductive health, rights, and justice must be understood as the continued fight for equality, inclusion, and belonging in our democracy.