

REPRODUCTIVE RIGHTS

FEDERAL POLICY AGENDA

Advancing What's Right for Women *and* the Nation

CENTER
FOR
REPRODUCTIVE
RIGHTS

THE CENTER'S MISSION

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to protect, respect and fulfill.

THE CENTER'S VISION

Reproductive freedom lies at the heart of the promise of human dignity, self-determination and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world. We envision a world in which all women are free to decide whether and when to have children; where all women have access to the best reproductive healthcare available; where all women can exercise their choices without coercion. More simply put, we envision a world where all women participate with full dignity as equal members of society.

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Introduction

Around the world there is a growing recognition that reproductive rights are fundamental human rights that all governments are legally and morally obligated to protect, respect and fulfill. The values that underscore reproductive rights – human dignity, self-determination, equality and non-discrimination – are embodied in the United States Constitution, one of the world’s earliest human rights documents, as well as the Universal Declaration of Human Rights.

Reproductive rights encompass two key ideals – *the right to reproductive health care and the right to reproductive self-determination*. These principles extend far beyond a woman’s right to choose and obtain an abortion. They cut to the core of a woman’s fundamental well-being and place in the world. Gender inequality and discrimination harm girls’ and women’s health directly and indirectly, and neglect of their reproductive health needs prevents them from participating fully and equally in society. Without access to quality reproductive health care – including contraception, pre-natal care, and abortion – women are at needless risk of unwanted pregnancy, sexually transmissible infections (STIs), and even death or injury from pregnancy and childbirth.

Women should be free to decide whether and when to have children, exercise their choices without coercion, and be able to obtain the best reproductive health care available, regardless of their personal circumstances. Full citizenship for women can only be realized when women participate with dignity as equal members of society with the autonomy to determine the course of their own lives. This is a fundamental truth for women in the United States and around the globe.

In the United States, nearly 45 million people do not have health insurance. Of those, 56% are not eligible for Medicaid or other government health programs.¹ As a result, millions of women in this country do not have access to affordable reproductive health care and therefore go without crucial services. Any reform of the U.S. healthcare system must include access to comprehensive reproductive health care. This includes not only making reproductive health care available and accessible to all who need it, but also removing restrictions in federal healthcare programs that restrict access to comprehensive care.

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The United States has been a world leader with a long and proud history of championing equality and human rights. However, we now face a tipping point in the struggle to recognize and protect reproductive rights. Decades of hard-won progress that improved women's reproductive health care and autonomy have been eroded. These losses are as alarming as they are widespread: state and federal court decisions have undermined the protections established by *Roe v. Wade*; funding for basic reproductive health care is inadequate to serve those in need; and maternal mortality rates among women of color remain shamefully high. Moreover, restrictions that the United States places on foreign assistance aimed at improving reproductive health worldwide, based on opposition to abortion and support for ineffective abstinence programs, hamper progress and place this country out of step with other major donors.

These injustices demand a bold agenda for change, ensuring that women's reproductive rights are understood and protected by law- and policy-makers. We can no longer rely on the courts to protect reproductive rights or to meet internationally recognized standards regarding access to reproductive health care. It is time for Congress and the President to demonstrate their commitment to women's health and self-determination, and to acknowledge this nation's obligations to respect reproductive rights as human rights.

II.

Goals

The ambitious agenda that follows sets out concrete and attainable policy goals that will improve women's health and lives.

1.

Promote Unbiased Information About Reproductive & Sexual Health

Key Facts

The United States teen birth rate is the highest in the developed world—about four times the European Union average.²

More than four out of ten teenage girls become pregnant at least once before they reach the age of 20—nearly one million a year.³

A recent study conducted by the United States Department of Health and Human Services found that abstinence education programs do not delay the onset of sexual activity.⁴

In spite of numerous studies showing that abstinence-only programs are ineffective,⁵ federal government funding for abstinence education has increased steadily for the last decade.⁶

Legislation That Should Be Passed

The federal government should support comprehensive sexuality education by:

Enacting the Responsible Education About Life Act, which would provide adolescents with comprehensive and medically accurate information about contraception as a means to prevent pregnancy and to reduce the risk of contracting sexually transmitted diseases.

Enacting the Teen Pregnancy Prevention, Responsibility, and Opportunity Act, which would authorize grants to local agencies to carry out projects that provide factually and medically accurate and complete information on preventing teen pregnancies.

Enacting the Truth in Contraception Act, which would require that information about contraception “provided through any federally funded sex education, family life education, abstinence education, comprehensive health education, or character education program shall be medically accurate.”

Legislation That Should Be Repealed or Rejected

The federal government should support comprehensive sexuality education by:

Stopping continued funding of abstinence-only-until-marriage

programs: the Community-Based Abstinence Education (CBAE) program, Title V (the state formula grant program), and the Adolescent Family Life Act (AFLA).

2.

Improve Access to Contraception

Key Facts

Half of the 6 million pregnancies in the United States each year are unintended and four in ten of these are terminated by abortion.⁷

An average woman who wants two children will spend five years pregnant or trying to get pregnant and roughly 30 years trying to prevent pregnancy.⁸

Had Title X funding kept pace with inflation since 1980, it would now be funded at more than \$725 million instead of the FY 2007 level of \$283 million. Taking inflation into account, funding for Title X in constant dollars is 61% lower today than it was in 1980.⁹

Every dollar spent to increase funding for Title X would save \$3.80 in pregnancy-related and newborn care cost to Medicaid.¹⁰

Legislation That Should Be Passed

The federal government should expand access to family planning services by:

Increasing funding for Title X, the federally funded public health program for family planning services, to ensure that services are available for all in need.

Expanding Medicaid coverage for family planning, through the Unintended Pregnancy Reduction Act, and ensuring that family planning benefits remain a mandatory benefit under Medicaid.

Enacting the Equity in Prescription Insurance and Contraceptive Coverage Act, which would require health plans to cover FDA-approved prescription contraceptives and related services to the same extent that they cover prescription drugs and other outpatient medical services.

Ensuring access to emergency contraception for sexual assault victims by enacting the Compassionate Assistance for Rape Emergencies Act, which requires that EC be provided to sexual assault victims seeking treatment in federally funded hospitals; and by ensuring access for women in the military and military dependents through enactment of the Compassionate Care for Servicewomen Act, which would require that emergency contraception be available at all military health care treatment facilities.

Ensuring access to prescription contraceptives by enacting the Access to Birth Control Act, which would prohibit pharmacies from refusing to carry or provide contraceptives.

Legislation That Should Be Rejected

The federal government should improve access to family planning services by:

Amending the Deficit Reduction Act by repealing: documentation requirements for Medicaid enrollment, provisions that allow states to exclude family planning from the package of benefits, and provisions that allow states to charge women on Medicaid for family planning services.

3.

Secure Women's Right to Choose and Obtain Abortion

Key Facts

Approximately one in three women in the United States will have an abortion during the course of her life.¹¹

Twenty-five states and the federal government deny funding for *medically necessary* abortions for poor women, except to save a woman's life and in cases of rape and incest.¹²

The United States Supreme Court has undermined the strong constitutional protection afforded to abortion under *Roe v. Wade*¹³ and in 2007 ignored thirty years of precedent to uphold a federal criminal abortion law even though it does not contain an exception to protect women's health.¹⁴

Actions That Should Be Taken

Appoint judges to the federal judiciary, including Justices of the United States Supreme Court, who support strong constitutional protection for reproductive rights, including abortion.

Ensure that the following appointees, who are in a position to significantly affect reproductive rights and health policy, support legal protection for reproductive rights and access to a full range of reproductive health care, including contraception and abortion:

the Attorney General, the Solicitor General, the Surgeon General, the Commissioner of the Food and Drug Administration, the Secretary of the Department of Labor, the Secretary of Health and Human Services and the Deputy Assistant Secretary for Population Affairs.

Legislation That Should Be Passed

The federal government should act affirmatively to protect and expand access to abortion for all women by:

Enacting the Freedom of Choice Act, which would prevent states or the federal government from interfering with a woman's right to choose to bear a child; terminate her pregnancy prior to viability; or terminate her pregnancy after viability when the termination is necessary to protect her life or health.

Legislation That Should Be Rejected or Repealed

The federal government should repeal barriers to access to abortion by:

Repealing the "Hyde Amendment" and other funding restrictions that prohibit federal funding of abortion except in cases of rape, incest, or life endangerment, and restoring federal funding for medically necessary abortions.

Repealing the "Partial-Birth Abortion Ban Act" that prohibits physicians from using abortion procedures that may be the safest and most appropriate.

Repealing the "Weldon Amendment," which prohibits federal funding for health services unless the recipient agrees not to discriminate against health care professionals or agencies that do not "provide, pay for, provide coverage for, or refer for abortions."

Rejecting the Child Custody Protection Act and the Child Interstate Abortion Notification Act; the Unborn Child Pain Awareness Act; and the RU-486 Patient Health and Safety Act and the RU-486 Suspension and Review Act.

Denying funding to organizations that provide women with false or biased information about the risks associated with birth control and abortion, or that deceive women about the nature of services they offer.

4.

Improve Access to Health Care for Pregnant Women

Key Facts

The United States has one of the highest rates of maternal mortality among Western developed nations and ranks 30th in the world in its maternal mortality rate.¹⁵

African-American women are nearly four times more likely to die in childbirth than white women,¹⁶ and these disparities have remained unchanged over the past five decades.¹⁷

The percentage of infants born with low birth weight has risen 16 percent since 1990; low birth weight contributes substantially to both infant mortality and to childhood physical impairment.¹⁸

The 1996 federal welfare overhaul bars Medicaid enrollment for both undocumented immigrants and resident immigrants who have resided in the United States for less than five years, thus leaving an entire population of women with virtually no prenatal care.¹⁹

Legislation That Should Be Enacted

The federal government should ensure safe motherhood by:

Enacting the Safe Motherhood Act for Research and Treatment, which seeks to ensure a safe pregnancy for all women in the United States, reduce the rate of maternal morbidity and mortality, and eliminate racial and ethnic disparities in maternal health outcomes.

Extending SCHIP eligibility for immigrant pregnant women to ensure that they have access to prenatal care.

Legislation That Should Be Repealed or Rejected

The federal government should remove barriers to pregnancy care by:

Removing restrictions on Medicaid eligibility imposed by the Personal Responsibility and Work Opportunity Reconciliation Act.

5.

Support Reproductive Rights & Health in Foreign Assistance Programs

Key Facts

In Afghanistan, there are approximately 1,900 maternal deaths for every 100,000 live births; in the United Kingdom, there are approximately 13 maternal deaths for every 100,000 live births. Put differently, a woman in Afghanistan has a 1 in 6 chance of dying from pregnancy-related complications during the course of her life; a woman in the United Kingdom faces a 1 in 3,800 chance.²⁰

There are 450 maternal deaths per 100,000 live births in developing countries, compared to nine in developed regions; worldwide, an estimated eight women per hour die of complications from unsafe abortions.²¹

More than one in seven married women aged 15-49 in developing countries have an unmet need for contraception.²²

The United Nations has recognized that family planning is “essential to women’s empowerment” and “central to efforts to reduce poverty, promote economic growth, raise female productivity, lower fertility, and improve child survival and maternal health.”²³

Legislation That Should Be Passed

The federal government should provide funding for reproductive health care without restrictions that undermine the provision of services or advocacy for health care reform by:

Enacting the Global Democracy Promotion Act, which prohibits the application of certain restrictive eligibility requirements to foreign non-governmental organizations, and in particular, repeals the “global gag rule,” which requires that nongovernmental organizations receiving federal funds agree to neither perform nor actively promote abortion as a method of family planning.

Enacting the Protection Against Transmission of HIV for Women and Youth Act, which would require the President to submit a comprehensive global HIV prevention strategy that seeks to reduce the factors that lead to gender disparities in the rate of HIV infection.

Meeting its funding commitments by enacting the Women's Health and Dignity Act, which would provide financial and other support to the United Nations Population Fund to carry out activities to save women's lives, limit the incidence of abortion and maternal mortality associated with unsafe abortion, and promote universal access to safe and reliable family planning; and by meeting funding commitments made at the 1994 International Conference on Population and Development, the 1995 Beijing Conference, and other international and regional meetings.

Legislation That Should Be Repealed or Rejected

Congress should remove restrictions on funding for reproductive health care by:

Amending PEPFAR the President's Emergency Plan for AIDS Relief (the Global AIDS Program) to remove the abstinence-only-until-marriage reporting requirement and restrictions on organizations' ability to work with commercial sex workers.

Removing the requirement that United States-based and foreign organizations receiving assistance from anti-HIV/AIDS funding programs adopt policies that explicitly oppose all forms of prostitution.

6.

Promote Recognition & Protection for Reproductive Rights as Human Rights at the United Nations

Key Facts

The United States and seven others (Iran, Qatar, Nauru, Palau, Tonga, Somalia, and Sudan) are the only countries yet to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁴

The United States and Somalia are the only countries that have not ratified the Convention on the Rights of the Child (CRC).²⁵

At the UN, the current Administration has undermined efforts to strengthen recognition of and protection for reproductive rights and health by promoting anti-abortion provisions, refusing to fund the United Nations Population Fund (UNFPA), and opposing even the use of the terms "reproductive rights" and "reproductive health services."²⁶

Legislation That Should Be Enacted

The federal government should support the human rights of women and children by:

Ratifying, without reservations, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Ratifying, without reservations, the United Nations Convention on the Rights of the Child (CRC), which recognizes adolescents’ right to reproductive health and their “evolving capacities” to make decisions in matters affecting their lives, as well as that adolescents who are sexually active and seek information and services to protect themselves from unwanted pregnancy and STIs should have access to a full range of reproductive health care services.

Actions That Should Be Taken

The United States should take a leadership role in promoting reproductive rights as human rights by:

Nominating representatives who are committed to protecting reproductive rights to the UN committees that are responsible for monitoring compliance with the treaties that the United States has ratified, including the committees associated with the Convention Against Torture (CAT) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Promoting reproductive health access worldwide, rather than undermining access to reproductive health care and abortion, at international and United Nations conferences, by making certain that United States delegates are committed to protecting reproductive rights as human rights and prioritize science over religion.

Endnotes:

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- ⁶ No More Money, SIECUS, Spending for Abstinence-Only-Until-Marriage Programs (1982-2008), <http://www.nonew-money.org/historyChart.html> (last visited Nov. 28, 2007).
- ⁷ Guttmacher Inst., Get “In the Know”: Questions About Pregnancy, Contraception and Abortion, <http://www.guttmacher.org/in-the-know/pregnancy.html> (last visited Nov. 27, 2007).
- ⁸ Heather D. Boonstra, et al., Guttmacher Inst., *Abortion in Women’s Lives* 7 (2006), <http://www.guttmacher.org/pubs/2006/05/04/AiWL.pdf>.
- ⁹ National Family Planning & Reproductive Health Association, History of Title X, www.nfprha.org/main/about_us.cfm?Category=Title_X&Section=Main (last visited Nov. 28, 2007) (citing Rachel Benson Gold, Guttmacher Inst., Title X: *Three Decades of Accomplishment* 4 GUTTMACHER REP’T PUB. POL’Y 5-8 (2001), <http://www.guttmacher.org/pubs/tgr/04/1/gr040105.pdf>).
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- ¹¹ Heather D. Boonstra, et al., Guttmacher Inst., *Abortion in women’s Lives* 20 (2006), <http://www.guttmacher.org/pubs/2006/05/04/AiWL.pdf>.
- ¹² Guttmacher Inst., *State Policies in Brief: State Funding of Abortion Under Medicaid* 2-3 (2007), http://www.guttmacher.org/statecenter/spibs/spib_SFAM.pdf.
- ¹³ See *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S.833 (1992) (replacing the strict scrutiny standard of review for restrictions on pre-viability abortions with the undue burden test).
- ¹⁴ *Gonzales v. Carhart*, 127 S.Ct. 1610 (2007) (rejecting a facial challenge to the so-called “2003 Partial-Birth Abortion Ban Act”).
- ¹⁵ Myra Tucker, et al., *The Black-White Disparity in Pregnancy-Related Mortality from 5 Conditions: Differences in Prevalence and Case-Fatality Rates*, 97 AM. J. PUB. HEALTH 247-51, 248 (2007), (CITING WORLD HEALTH ORGANIZATION, MATERNAL MORTALITY IN 2000 (2004), http://www.who.int/reproductive-health/publications/maternal_mortality_2000/index.html).
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²⁵ Office of the United Nations High Commissioner for Human Rights, Convention on the Rights of the Child, <http://www.ohchr.org/english/bodies/ratification/11.htm> (last visited Nov. 28, 2007).

²⁶ For example, at the Beijing + 10 conference in 2005, the United States delegation focused on an anti-abortion amendment, rather than working to address women's health needs; in 2005, during regional reviews for the International Conference on Population and Development (ICPD), the United States was the only country out of 38 to oppose a declaration to ensure greater access to reproductive health services and protection of reproductive rights; and during a 2004 meeting of the United Nations Commission on Human Rights, the United States tried to weaken a resolution on the right to health by trying to delete the word "services" from the phrase "health care services," on the basis that it was a code word for "abortion." See International Women's Health Coalition, *Bush's Other War*, <http://www.iwhc.org/resources/bushsotherwar/intl.cfm#icpd> (last visited Nov. 28, 2007).



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