

Issue: Birth control bans

Next on the Docket? Birth Control Bans

Making birth control widely available is an obvious strategy for decreasing the number of abortions. That is, unless you are a Republican. In fact, the opposite is occurring: some Republicans are trying to limit access to birth control. Unsurprisingly, this is not happening in blue states. In Virginia, the Democratic-controlled Senate currently provides a backstop against this kind of legislation.

However, should Republicans in Virginia take control of both legislative bodies after the 2023 elections, Virginians should not be surprised to find that they also face limits on access to some types of birth control. This paper takes a look at what is happening in some Republican-controlled states regarding birth control.

At the Federal Level

The *Dobbs* decision, which overturned the right to an abortion, may not be the last right to disappear. In Clarence Thomas's concurring opinion to *Dobbs*, he wrote that the logic used in *Dobbs* could be used to overturn other rights, such as access to birth control and same-sex marriage.¹ In response to this, the US Congress attempted to codify the right to birth control in summer of 2022. The legislation passed in the House, with the support of eight Republicans. However, it died in the Senate after Senator Joni Ernst used a procedural move to prevent a vote from being taken.^{2, 3}

Without a federal law ensuring the right to birth control, Republicans in Republican-controlled states are introducing legislation that would ban access to some forms of birth control. They are generally using two approaches: erroneously defining the moment of fertilization as the event that establishes pregnancy and declaring a fetus to be a person.

Medically Accepted Definition of Pregnancy

According to physicians, scientists and legal experts, pregnancy is established at implantation, which is when a fertilized egg implants into the uterine wall. "Drugs and devices that act before implantation prevent, rather than terminate, pregnancy."⁴

Some Republicans ignore the experts. By erroneously decreeing that the *moment of fertilization* is the event that establishes a pregnancy, they seek to ban some forms of birth control, specifically IUDs and emergency contraception, also known as the morning-after pill. These legislators incorrectly classify them as abortifacients. (*Fertilization* and *conception* are considered to be synonymous terms.)

How do IUDs work? The explanations below are from the National Women's Law Center.

IUDs are devices that can be inserted into the uterus to prevent pregnancy. In some cases they can also be inserted after sexual intercourse to prevent pregnancy.

- Copper IUDs: The copper IUD can be used as a form of emergency contraception if placed within five days of sexual intercourse. Copper IUDs affect the motility of sperm and prevent fertilization.
- Hormonal IUDs: Hormonal IUDs release hormones that prevent pregnancy by preventing ovulation and fertilization.

<https://nwlc.org/resource/dont-be-fooled-birth-control-is-already-at-risk/>

Emergency contraception works primarily by preventing or delaying ovulation.⁵ Neither emergency contraception nor IUDs block implantation.

Implantation and Pregnancy Factoids

- It is estimated that about 15% of all fertilized eggs never begin to implant.
- Of fertilized eggs that do start to implant, only half successfully implant.⁶
- Between 10 and 20% of pregnancies end in miscarriage before the 20th week.⁷

State Legislation that has Already Led to Lack of Access to Birth Control for Some Women

Republican-led states seem determined to outdo each other in interfering in private reproductive decisions of women. Thus, it is illustrative to examine the kinds of legislation being introduced in these states, as Virginians could be subjected to similar extreme laws should both chambers of the Virginia legislature be controlled by Republicans after the 2023 elections.

Missouri: The Missouri Senate voted in 2021 on an amendment to a funding bill which would have barred Medicaid funding for emergency contraception and IUDs. The language of the amendment erroneously referred to these two forms of birth control as abortifacients. Although the amendment passed, it was later removed from a larger must-pass funding bill.⁸ Sen. Denny Hoskins was referring to birth control when he stated that “There are some that I think are okay and some that I don’t believe in especially the morning after pill and things that come after conception. So I think anything’s on the table.”⁹

Idaho: In May of 2022, Idaho Republicans were considering holding hearings about banning emergency contraceptives.¹⁰ Although that went nowhere, legislators were again considering such a ban in 2023.¹¹ Back in 2021, Idaho passed the “No Public Funds for Abortion Act,” which also prevents public university employees from providing emergency contraception to students, and even from informing students where they could find it.¹² Also, the University of Idaho can no longer provide birth control.¹³

Louisiana: Legislators have “defined” pregnancy to be the moment of fertilization (SB 342, 2022).¹⁴

Mississippi: Republican governor Tate Reeves refused to say whether the state would consider bans of some forms of birth control.¹⁵ The governor and Speaker of the House also deflected questions about whether they consider IUDs and emergency contraception to be birth control.¹⁶ This is a common tactic among Republicans who support unpopular restriction on women’s rights—they avoid the topic until they pass restrictive legislation, just as Governor Youngkin refused to discuss his views on abortion during his campaign.

North Dakota: A resolution to affirm the right to birth control, introduced by a Democrat, failed to pass in 2023.¹⁷

Fetal personhood: One reason Republicans legislate that personhood begins at fertilization is to completely outlaw all abortions. But another consequence could be outlawing IUDs and emergency contraception.¹⁸

Republicans in the following states either have introduced or are considering legislation that would establish fetal personhood: Alabama,¹⁹ Arizona,^{20, 21} Georgia,²² Louisiana,^{23, 24} Missouri,²⁵ Montana,²⁶ and Ohio.²⁷ Courts have blocked laws in some states, such as Arizona.²⁸

Pharmacies

In six states, pharmacists with moral objections against birth control are permitted to *not* fill prescriptions. Both Walgreens and CVS have policies that permit pharmacists to opt out of filling birth control prescriptions.²⁹

Conclusion

The choice for voters is clear. Those who don't want their rights stripped away through government interference in very personal decisions must vote for Democrats.

“Contraception” versus “Birth Control” ?

The term birth control is more commonly used in casual conversation. Avoiding the word “contraception” is recommended when speaking to voters.

Appendix 1: Ramifications of Fetal Personhood Laws Unrelated to Birth Control.

Georgia's fetal personhood law grants astonishing rights to fetuses. For example, fetuses at about six weeks could be claimed as dependents on tax returns of the parents-to-be. The father is required to provide “child support” for the medical expenses of the mother. The fetuses could be counted in some censuses.³⁰

If politicians decree that personhood begins at fertilization, in vitro fertilization would likely be limited, if not outright banned. That is because during the IVF process, some embryos may be frozen or discarded.

Appendix 2: Some Republicans do not Understand Reproduction

Buzzfeed has a collection of statements from Republicans demonstrating mind-boggling ignorance about reproduction and anatomy. Some of these statements—taken verbatim from BuzzFeed—are listed below.

The 2022 BuzzFeed web page also includes offensive statements about rape, which are not included here (and hence the missing numbers below.) Video clips of some of the remarks are available at the BuzzFeed site: <https://www.buzzfeed.com/hannahmarder/republican-lawmakers-comments-abortion>.

1. Karianne Lisonbee, one of Utah's members of the House of Representatives, suggested last month that women can control their intake of semen during sex.
2. Alabama senator, Clyde Chambliss, sponsored a bill in 2019 that more or less banned all abortions, even in cases of rape and incest. However, in defending the bill he said that not to worry, women could still get abortions — until they know they're pregnant.
3. He also said, "I'm not trained medically, so I don't know all the proper medical terminology and timelines ... but from what I've read, what I've been told, there's some period of time before you can know that a woman is pregnant. ... It takes some time for all those chromosomes and all that."
4. When asked about the fact that medical professionals cannot tell a miscarriage apart from someone who's taken an abortion pill, Chambliss said, "the burden of proof would be on the prosecution," which suggests he believes women who have miscarriages should be investigated and potentially go to trial to prove it was actually a miscarriage.
5. Oh, and he suggested that life begins when an egg and sperm (along with their chromosomes) combine to create a zygote, but that fertilized eggs at IVF clinics don't apply because "it's not in a woman. She's not pregnant." Which goes to show you this was never about life, it's about women's bodies.
6. Finally, when questioned about his knowledge of pregnancy, he said, "Senator, I don't know if I'm smart enough to be pregnant, so I appreciate the wisdom of our heavenly father."
7. Former Ohio state representative John Becker sponsored a 2019 bill that banned most private insurance coverage of abortion. But not to worry — in the case of ectopic pregnancy, where the egg implants in the fallopian tube rather than in the uterus, making the pregnancy not viable and dangerous (even fatal) for the mother — his bill included provisions for a procedure to move the egg into the uterus. However...that procedure does not exist.

Becker told *The Cincinnati Enquirer* that he'd never researched whether or not this was a viable medical procedure before including it in the bill. "I heard about it over the years," he said. "I never questioned it or gave it a lot of thought." He now knows that the procedure does not exist.
8. The bill also banned coverage for "drugs or devices used to prevent the implantation of a fertilized ovum," which could affect IUDs and birth control. When confronted with this, Becker said "that's clearly not my area of expertise" and suggested drug manufacturers could "reformulate" birth control so that it would be allowed under the bill.
10. Former Texas representative, Jodie Laubenberg, in sponsoring a bill banning abortion after 20 weeks, said there was no need to have exceptions for rape because "In the emergency room, they have what's called rape kits where a woman can get cleaned out."
11. Former Texas state representative, Dan Flynn, thinks you have to cut into a woman's body — presumably, their stomach? — for an abortion.
13. Idaho representative Vito Barbieri seems to think the vagina is connected to the stomach and the anus. In an argument regarding a bill that banned doctors from prescribing abortion pills through telemedicine, Barbieri asked if women could receive a remote gynecological exam by swallowing a

miniature camera (as can be done with colonoscopies). He actually had to be told that if you swallowed something, it would not end up in your vagina.

14. Former Georgia senator P.K. Martin said brainwaves and pain response prove fetuses are separate people (for the record, pain response doesn't develop until the third trimester, if fetuses can feel pain at all). He also called arguments for women's rights "compelling" but "incomplete and result in injustice and the oppression of the weakest people."

18. Another example is the current Republican congressional nominee, Yesli Vega, who just won the primary. She said in leaked recordings this year that in her work as a police officer, she's only seen one case where a woman who was raped got pregnant. When someone asked her if she'd heard the (false) claim that women who are raped are less likely to get pregnant, she said she wouldn't be surprised. "It's not something that's happening organically, right? It's forcing it," she said, though she acknowledged, "I haven't, haven't, you know, seen any studies."

21. Former Texas congressman, Ron Paul, said of rape, "If it's an honest rape, that individual should go immediately to the emergency room, I would give them a shot of estrogen." Just so you know, a shot of estrogen after rape would not prevent pregnancy. It's also unclear what Paul meant by "honest rape."

23. Former Illinois Representative Joe Walsh said you don't need to add exceptions in anti-abortion laws for pregnancies that are dangerous to the mother, because "With modern technology and science, you can't find one instance" where an abortion was necessary to save a woman's life.

¹ <https://www.nytimes.com/2022/06/24/us/clarence-thomas-roe-griswold-lawrence-obergefell.html>

² <https://www.help.senate.gov/chair/newsroom/press/republican-senator-blocks-bill-to-codify-americans-right-to-contraception->

³ <https://missouriindependent.com/2022/07/27/bill-guaranteeing-right-to-birth-control-blocked-in-u-s-senate-by-republican/>

⁴ <https://www.gutmacher.org/gpr/2005/05/implications-defining-when-woman-pregnant#:~:text=However%2C%20on%20the%20separate%20but,wall%20of%20a%20woman's%20uterus>

⁵ <https://www.womenshealth.gov/a-z-topics/emergency-contraception#:~:text=Research%20shows%20that%20emergency%20contraception,if%20ovulation%20has%20already%20happened.>

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7670474/#:~:text=Of%20those%20fertilised%20eggs%2C%20around,about%20half%20will%20implant%20successfully.>

⁷ <https://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/symptoms-causes/syc-20354298>

⁸ <https://missouriindependent.com/2021/03/24/abortion-amendment-puts-bill-to-finance-missouri-medicaid-program-in-limbo/>

⁹ <https://missouriindependent.com/2022/05/20/anythings-on-the-table-missouri-legislature-may-revisit-contraceptive-limits-post-roe/>

¹⁰ <https://www.boisestatepublicradio.org/news/2022-05-11/abortion-idaho-ban-contrception>

¹¹ <https://www.plannedparenthood.org/planned-parenthood-great-northwest-hawaii-alaska-indiana-kentucky/press/planned-parenthood-response-to-university-of-idahos-ban-on-birth-control#:~:text=Earlier%20this%20year%2C%20Idaho%20lawmakers,Idaho%20to%20access%20birth%20contr>

¹² <https://www.pbs.org/newshour/education/idaho-universities-disallow-abortion-contraception-referrals-for-students>

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- ¹³ <https://www.plannedparenthood.org/planned-parenthood-great-northwest-hawaii-alaska-indiana-kentucky/press/planned-parenthood-response-to-university-of-idahos-ban-on-birth-control>
- ¹⁴ https://www.nola.com/news/healthcare_hospitals/abortion-is-now-banned-in-louisiana-here-s-what-you-need-to-know/article_ba416134-e8e7-11ec-b6e2-8f8cd0d27442.html
- ¹⁵ <https://www.cnn.com/2022/05/08/politics/mississippi-abortion-contraception-roe-wade-cnntv/index.html>
- ¹⁶ <https://mississippitoday.org/2022/05/12/reeves-gunn-contraceptives/>
- ¹⁷ <https://www.keloland.com/keloland-com-original/resolution-to-affirm-access-to-contraception-in-sd-fails/>
- ¹⁸ <https://apnews.com/article/bills-montana-810bee54e0b6b6fd5795414a00e10c9e>
- ¹⁹ <https://www.theguardian.com/us-news/2023/mar/10/republican-wave-state-bills-homicide-charges>
- ²⁰ <https://time.com/6191886/fetal-personhood-laws-roe-abortion/>
- ²¹ <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html#:~:text=Legislatures%20in%20five%20Republican%2Dcontrolled,personhood%20laws%20to%20ban%20abortion>
- ²² <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html#:~:text=Legislatures%20in%20five%20Republican%2Dcontrolled,personhood%20laws%20to%20ban%20abortion>
- ²³ <https://www.wvno.org/2022-05-05/louisiana-bill-would-allow-murder-charges-for-abortions-opponents-call-it-barbaric>
- ²⁴ <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html#:~:text=Legislatures%20in%20five%20Republican%2Dcontrolled,personhood%20laws%20to%20ban%20abortion>
- ²⁵ [https://revisor.mo.gov/main/OneSection.aspx?section=1.205#:~:text=\(1\)%20The%20life%20of%20each,being%20of%20their%20unborn%20child](https://revisor.mo.gov/main/OneSection.aspx?section=1.205#:~:text=(1)%20The%20life%20of%20each,being%20of%20their%20unborn%20child)
- ²⁶ <https://apnews.com/article/bills-montana-810bee54e0b6b6fd5795414a00e10c9e>
- ²⁷ <https://www.cleveland.com/news/2022/07/new-ohio-personhood-bill-would-declare-all-individuals-are-human-from-moment-of-conception.html>
- ²⁸ <https://www.nbcnews.com/news/us-news/federal-judge-blocks-arizonas-personhood-abortion-law-gives-legal-righ-rcna37818>
- ²⁹ <https://www.usatoday.com/story/money/retail/2022/07/27/pharmacist-wont-fill-birth-control-because-faith/10154078002/>
- ³⁰ <https://www.washingtonpost.com/nation/2022/08/03/georgia-fetus-tax-dependent-abortion/>