



ISSUE ADVISORY: Trump and the 115th Congress –A Daunting Picture for Women’s Rights, Part One

By Jan Erickson, NOW Government Relations Director
December 9, 2016

Republicans Plan Repeal of Progressive Gains

With Donald Trump’s assumption to the White House and majority GOP control of the Senate and House, Republicans plan to move full speed ahead with their radical agenda of repealing scores of Obama initiatives, enacting their long-desired agenda of drastically cutting funding for social safety net programs, repealing the Affordable Care Act (ACA) (which would also eliminate the contraceptive insurance coverage mandate), converting Social Security and Medicare to private investment accounts and voucher approaches and enacting substantial tax cuts for upper income earners, weakening public schools through a massive voucher program and most alarming, narrowing women’s access to reproductive health care – among many other regressive and harmful actions. It is, indeed, an alarming prospect.

Erasing Progressive Gains – President-elect Trump’s initial picks for cabinet members offers a strong indication that an extreme conservative agenda will be pursued. For the moment, Trump appears to be ready to let his cabinet members proceed with their right-wing agendas. And, from clearly everything we are hearing, the newly-emboldened Republican majority in Congress intends to erase most, if not all, of a progressive, inclusive set of programs and policies that Democrats – and some moderate Republicans – have put in place over the last 80 years. The next two years will see women’s rights advocates and progressives engaged in what will be the fight of their lives to preserve critically important programs that preserve the middle class, aid low-income families and strengthen our economy.

Reportedly, the first actions of the 115th Congress will be for the Senate to ram through the ACA repeal and to defund Planned Parenthood. These actions will be undertaken through the reconciliation process where there is only a limited opportunity for amendments, and measures can be passed by a simple majority vote of 51 senators. There are now 52 Republican senators.

Choose Our Battles Carefully - It is a very daunting picture that we face – but one that feminist activists and allies must work to oppose with all our strength. We can improve our chances of success if we choose our battles carefully. One of the main objectives for NOW activists is to maintain communications with members of their Congressional delegation; calling and writing your two senators and representative – regardless of their party or known views on a given topic – is critically important. Plus, Democrats are going to need lots of reminding what the

party stands for and that more than 157 million women and girls are counting on them to safeguard our rights.

What Happens with the Filibuster? - At the opening of the 115th Congress in January, a major concern focuses on what will happen with the filibuster, a procedural action which by a prior vote allows or does not allow the Senate to proceed to vote on the legislation, itself. The filibuster, a tool that theoretically is supposed to protect a minority view, was deployed (some might say “abused”) by Republicans when Democrats were in control to kill most of the Democrats’ bills. The Senate could drop the 60-vote requirement entirely (not likely) or reduce it to a 52 threshold and needing only Republican votes.). Depending on what the Senate does at that time could result in quick confirmation of a Supreme Court nominee who opposes abortion rights. Like previous Republican nominees for the Supreme Court, the nominee may obfuscate about whether he/she) would uphold “settled law” as is *Roe v. Wade*. In which case, a number of Democratic senators could vote for the nominee, giving him/her the benefit of a doubt and assuring confirmation.

Unless several Republicans and the two Independents agree with all 46 Democrats, it will be impossible to prevent a super conservative, anti-reproductive rights, anti-equality nominee from being confirmed. A lot depends upon what the Senate decides with regard to the number of votes required to confirm a Supreme Court nominee; the rules were changed in 2013 to allow only a simple majority (51) to approve other federal judges.

Trump Able to Re-Shape Federal Judiciary –The Senate’s Republican leadership will surely want to retain the simple majority vote requirement as they will then be able to confirm judges without having to rely on any Democratic votes. Predictably, a slew of conservative federal judicial nominees will be speedily approved. Currently, there are 117 federal vacancies and at least 59 nominees pending confirmation, including 13 vacancies and seven nominees for the powerful U.S. Courts of Appeal.

Senate Majority Leader Mitch McConnell (R-Ky.), who outrageously held off a confirmation vote on President Obama’s Supreme Court nominee, Merrick Garland, has been slow-walking the confirmation process for other federal judicial nominees. Whether many – or any—of the Obama administration nominees will get a vote is a question. Most likely, Republicans and President Trump will want to make sure that the nominees satisfy a super-conservative litmus test. Having a much more conservative federal judiciary could mean a reversal of women’s rights advances and certainly very few new gains.

Overturing *Roe v. Wade* - At the top of the Republican agenda is securing the all-important ninth seat on the Supreme Court to assure that future rulings would come down on the side of corporate interests against women’s rights, consumer protections, civil rights and other

progressive measures. Of primary interest to the National Organization for Women – and all women who value reproductive justice – is what will happen with a Court that could be 5-4 in favor of scaling back *Roe v. Wade* protections. Or overturning *Roe* completely.

A Direct Challenge to Roe? - Abortion rights opponents have long planned and hoped for an all-out challenge to *Roe* that would be accepted for review by justices. It is a safe bet that some case will wend its way through the lower courts to overturn or significantly narrow *Roe*. One glimmer of hope is that Justice Anthony Kennedy may vote against a *Roe* repeal or narrowing; Kennedy did vote against the extreme and unnecessary clinic regulations (TRAP) in the *Whole Women's Health v. Hellerstedt* case. But all current abortion rights-supporting justices would have to hang on for at least another four years – a challenge for three justices (Kennedy, Ginsburg and Breyer) who are approaching or are over 80 years of age.

What Republican leaders are saying if *Roe* does fall, that the regulation of abortion will simply be left up to the states. With 24 states (covering close to half the country's population at 147 million) now under full control of Republican lawmakers and governors, it is not hard to imagine what will happen with abortion rights in those states. Those same states have been leaders in passing many of the nearly 900 anti-reproductive rights bills that been adopted among all states over the last two decades.

Possible Initiatives on Major Programs, Policies Affecting Women

Reproductive Rights: Donald Trump opposes abortion (with several exceptions: to preserve a woman's life, rape or incest) and, when pressed, said that women should be punished if they have an abortion. Though he later walked back somewhat from this statement, we should still take him seriously on the matter. And because most Republicans in Congress oppose abortion rights, there is likely to be legislation introduced that narrows access, perhaps through a ban reducing weeks of gestation to 20 or less or a full-out ban on abortion at any stage. Legislation will pass easily in the 241-member Republican-controlled House and but likely encounter some debate in the Senate. A very bad bill could easily pass the Senate though, unless a filibuster is threatened where 60 votes would be needed. A fetal personhood bill could also be adopted, giving a fetus at any stage the legal rights of born person. It could be that the legislation would propose to punish the woman who has an abortion (or even miscarries) or the health care provider would be penalized (some bills have spelled out a criminal penalty, with possible imprisonment and/or a stiff fine). Since Trump has expressed support for punishing women who have abortions, this might be something in which he personally becomes involved.

OR, as Trump once supported abortion rights – at least as far back as 1989 when he co-chaired a dinner at his Plaza Hotel in Manhattan to honor Robin Chandler, a former president of the National Abortion Rights Action League – he could always change his position – again.

To note, punishing women who miscarry has become a fact in several states where it has been alleged that they committed feticide and in some cases were charged, convicted and sent to prison. One state notable for this odious policy is Indiana where Vice President-elect Mike Pence is governor and is one of the most extreme opponents of women's reproductive rights and LGBTQIA rights.

A Permanent Hyde? - We can also expect that an effort to adopt as permanent law the Hyde Amendment, which prohibits the use of federal funds to provide abortions, foregoing the need every year to attach this harmful amendment to some fiscal measure. Thousands of poor women who receive their reproductive health care through the Medicaid program have been unfairly denied abortion care, unless state or private funds have been made available.

There may be efforts to further limit access to medication abortion (mifepristone, formerly known as RU486) to patients; some states have already limited access to medication abortion through various regulatory measures. With the highly likely repeal of the Affordable Care Act, the wonderful mandate for insurance coverage of no-cost sharing contraceptives may disappear. This one feature of the ACA has benefitted many millions of women by making contraceptives more affordable.

Important Health Benefits May Disappear - With the appointment (and likely confirmation) of arch-abortion opponent, Rep. Tom Price (R-Oh.), to head the Department of Health and Human Services (HHS), the future of HHS programs that support reproductive justice look bleak. Accordingly, programs managed or overseen by HHS, including the many provisions enacted by the ACA may go away. One of those provisions, hailed as a critically important gain, is the Women's Preventive Services requirement. Under that, all new health plans must cover a range of services without cost-sharing, including breastfeeding supplies and services, screening and counseling for domestic violence, screening for gestational diabetes, DNA testing for HPV, counseling for sexually-transmitted infections, contraceptive services and counseling, mammograms, cervical cancer screening, prenatal screenings and tests, blood pressure screening, depression screening and other important services. The ACA has brought down by more than one-third the uninsurance rate among women of reproductive age.

This is not to forget to mention that more than 20 million persons have gained insurance coverage under the Affordable Care Act and will be harmed if ACA is repealed and no comparable, subsidized insurance program replaces the ACA. Many who follow the issue closely believe that a Republican plan cannot provide the same extent of coverage at more affordable rates than insurance plans under the ACA currently provide. The real issue is whether Republicans will have a viable replacement ready so there is no gap in insurance coverage. Returning to the days before the Affordable Care Act could result in the 45,000 annual deaths that were recorded among the 48 million uninsured and under-insured persons.

The Not-So-Secret Weapon - Now that Republicans have secured the presidency and have control of both the House and Senate, they are primed to go after the so-called entitlement (a more accurate term is “earned benefit”) programs. At the beginning of the 115th Congress in January Republican lawmakers will be utilizing an arcane process called “reconciliation” to ram through many of their “reforms” that otherwise wouldn’t be approved by the regular legislative process. Reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation. Reconciliation is not subject to the filibuster and the scope of amendments is limited which means that controversial budget and tax measure can be pushed through. As Republican and industry opposition mounted, the Affordable Care Act was adopted by this process in 2010.

Reportedly, plans are to repeal the Affordable Care Act and defund Planned Parenthood under the reconciliation process early in 2017. Voucherizing Medicare and block-granting Medicaid may come later. Although this is very bad news, NOW and allies will fight these efforts as best we can, and we need all the help we can get from our grassroots.

Social Security in the Crosshairs – Candidate Donald Trump famously said that he would not support any changes to Social Security and Medicare, but GOP leaders have long itched to privatize both of these social insurance programs that benefit nearly all citizens through retirement, disability and survivor programs. Fifty-nine million persons collected Social Security Old-Age and Survivor benefits (as of July, 2015); 10.8 million received benefits under the Disability Insurance program. About 7,000 baby boomers are retiring each day. A sizeable percentage of retirees, their spouses and children, along with persons with disability rely on their Social Security check for all or nearly all of their income. Benefits are guaranteed and indexed to inflation.

Trump is going to have to make a strong stand to protect Social Security because Wall Street and conservative tanks that have been promoting privatization for years are poised for action. NOW and allies helped defeat George W. Bush’s efforts to covert Social Security to a full or partial system of private stock market accounts, and we’re ready to do that again. The 2007-2009 experience of the near total meltdown of the U.S. financial sector should have taught these folks that converting Social Security to private investment accounts is a very bad idea – but apparently they don’t learn very well.

Medicare Made More Expensive - Republicans have made clear their intention to convert Medicare to a voucher program where beneficiaries are given a specific amount to pay (or as the Republicans call it, Premium Support) for private insurance coverage. Analysis indicates that medical care for 55 million (and growing) Medicare beneficiaries would become significantly more costly than it is with the current traditional Medicare program. (Note: a proportion of Medicare beneficiaries belong to Medicare Advantage, a partially privatized program where

some have estimated that costs are about 15 percent higher compared to traditional Medicare.)

Data show that 97 cents of every traditional Medicare dollar goes to care, while only 80 cents of every dollar goes to medical care in the private insurance market. The other disadvantage is that the a voucher is a fixed amount of money and since health care costs increase every year, beneficiaries would have to pay more and more out-of-pocket. Inevitably, the question arises: What happens when there is a catastrophic health event – will that individual and his/her family be responsible for paying what could be hundreds of thousands of dollars for hospital stays, doctors' fees, tests, medicine, rehabilitation or long term care? Republicans apparently do not have an answer for that question.

Sen. Charles "Chuck" Schumer (D- N.Y.), who is reported to be in line for Senator Minority Leader, recently told *Bloomberg* that Democrats would stand against Republican efforts to privatize Medicare. He said, "Medicare has been one of the most successful government program ever created – it's been a success story for decades. The Republicans' ideological and visceral hatred of government could deny millions of senior citizens across the country the care they need and deserve. To our Republican colleagues considering this path, Democrats say: make our day. Your effort will fail, and this attack on our seniors will not stand."

Medicaid Block Grants for Low-Income Women, Families - House Speaker Paul Ryan (R-Wis.) has made it his special mission to convert Medicaid to a block-granted program as a way to cut back on government spending. This, many experts recognize will place a larger financial burden on low-income families and individuals. Ryan and the conservative think tanks have been proselytizing for years block-granting Medicaid. This is an old Republican trick as it was used by President Richard Nixon to block grant President Lyndon Johnson's Great Society programs, reducing federal funding each year until many of the programs ceased to exist.

Medicaid is the largest health care program covering 73 million persons which is jointly financed by both the state and federal governments. The program provides health insurance for low-income children and adults, financing for the safety net, and is the largest payer for long-term care services in the community and nursing homes for seniors and people with disabilities. Women constitute a majority of Medicaid beneficiaries.

President-elect Trump supports a repeal and replacement of the Affordable Care Act and a replacement Medicaid block grant program. Under the Republican plan, states could choose between a block grant and a per capita financing cap. Neither, in our opinion, is desirable. There is little doubt that block grant funding from the federal government would shrink over time – that's their goal—and it is highly likely that the per capita financing cap would be set lower over time. Obviously, this would place more of a financing burden on states and many

simply do not have the resources. These states are at the same time states with the highest populations of low-income individuals and families.

Equal Pay Further into Future – Though some Republicans have said that they support “equal pay,” there is less than a slim chance that any measure advancing pay equity for women will get a hearing in the 115th Congress. Worse, Republicans will be repealing a series of Executive Orders and regulations that required fair pay and safer workplaces by federal contractors and guaranteed overtime pay for employees who were disadvantaged by the George W. Bush administration re-definition of who is a “manager.”

Minimum Wage Increase Not Enough – And the same dim prospect with regard to a minimum wage increase, even though at one time Donald Trump said in June that he would support an increase to a \$10 federal minimum wage. In August, Trump said on NBC’s Meet the Press that he would keep the minimum wage “pretty much where it is now.”

The current federal wage is \$7.25 an hour which keeps many workers at or below the poverty level, including the two-thirds of minimum wage workers who are women. What is needed in most parts of the country is a \$15 minimum wage and some cities – notably Seattle, New York City, Los Angeles, and Washington, D.C. – have adopted the \$15 minimum. Advocates in other cities are continuing to press for a \$15 minimum.

But it is doubtful that a Republican-controlled Congress will approve an increase in the minimum wage – even to the inadequate \$10 level. They have fought every effort over many years to raise federal minimum wage.

Part Two Coming - Part Two of this Issue Advisory will discuss President-elect Donald Trump’s (questionable and unqualified) cabinet picks, additional issues of concern to women’s rights advocates, including a look at the possible defunding of Planned Parenthood programs which serve millions of low and moderate income women and men.