

MEMORANDUM
National Organization for Women

To: National NOW Board Members
From: Jan Erickson, Director, NOW Government Relations
Date: September 15, 2023

REPRODUCTIVE RIGHTS

GOOD NEWS: Over the Counter, Prescription-Free Affordable Contraception Approved

This is a time for NOW activists and advocates for reproductive justice to celebrate. After 20 years of research and advocacy, we will soon have prescription-free, effective oral contraceptive available in pharmacies, online and perhaps even in vending machines on campuses. The **U.S. Food and Drug Administration (FDA)** approved of this first non-prescription daily oral contraceptive (norgestrel) for pregnancy prevention in mid-July following an **FDA Advisory Committee's** unanimous recommendation for approval. Coming at a time when access to abortion care has been greatly narrowed or banned in 15 states, improved access to contraceptives could not be timelier.

The development of an over-the-counter safe oral contraceptive widely available is seen as **transformational**. There will no longer be a need for people to see a physician, get a prescription and go to a pharmacy to obtain contraceptives.

A substantial number of persons of reproductive age experience challenges in accessing birth control. Research finds that communities that have faced barriers to care due to systemic inequities are the ones who would benefit from expanded access. These groups include Black, Indigenous, Latina/x, Asian Americans, Native Hawaiian, and Pacific Islanders, LGBTQIA+, young people, people with disabilities and folks with limited income or unable to take time off work – over-the-counter oral contraceptives (OTC OC) is the solution. Additionally, people living in rural areas without access to transportation will be able to purchase over the internet and receive by U.S. mail.

At the September 12th annual meeting of the **Free the Pill** coalition it was reported that availability of **Opill**, a low dose hormonal contraceptive (progestin) will become a reality early next year. There is no word as yet concerning cost, but surveys show that a very modest price, such as \$10 to \$20 per three-month pill pack is desired by many. What is less well-known is the extent to which insurers will cover Opill. Under the **Patient Protection and Affordable Care Act (ACA)**, private insurance must cover all contraceptive methods approved by the FDA. FDA approval is only for Opill which is manufactured by HRA Pharma, a subsidiary of Perrigo Pharmaceuticals, an American – Irish registered company, headquartered in Grand Rapids, MI.

Norgestrel, the main ingredient in Opill, is a synthetic version of the hormone progestogen (and it does not contain estrogen). The FDA advises against use with other hormonal birth control products, nor should it be used for emergency contraception. Additionally, people who have had breast cancer or a cancer that is sensitive to progestin should not use this product and that information is included in the label.

The good news comes after nearly 20 years of organizing, research, and advocacy. Led by Ibis Reproductive Health, an international organization based in Boston, the Free the Pill coalition attracted more than 200 member organizations. A steering committee composed of researchers, clinicians, and other professionals, along with key organizations like the American Society of Emergency Contraception, have expertly guided the effort. NOW has been part of the Free the Pill Coalition for many years.

It should be noted that more than 100 countries around the world offer no-prescription birth control, and many have done so for decades. Why it has taken the United States, the most technologically advanced and wealthy nation in the world, a half century to approve no prescription contraceptives is something to think about. Considering the powerful forces that seek to ban abortion care and contraceptive use, feminist activists should remain vigilant.

More information:

<https://www.fda.gov/news-events/press-announcements/fda-approves-first-nonprescription-daily-oral-contraceptive>

<https://www.kff.org/medicaid/press-release/kff-examines-challenges-in-navigating-coverage-for-opill-the-first-over-the-counter-daily-oral-contraceptive-pill-coming-to-market-next-year/>

CONSTITUTIONAL EQUALITY

Equal Rights Amendment Resolution – We Are So Close!

Following the very successful 100th anniversary celebration in Seneca Falls, NY on July 21 –22 of the introduction of the **Equal Rights Amendment**, we are looking forward to a potential vote on ERA legislation in the **U.S. House of Representatives**. H.J. Res. 25, sponsored by **Rep. Ayanna Pressley** (D-MA) currently has 207 co-sponsors. 218 is the magic number to get the measure approved. NOW activists are encouraged to enlist the five Dems and who have not yet signed on and persuade six Republicans to join as co-sponsors. Even though many House Republicans are very conservative, there are about a dozen moderates who could be contacted. The list includes **Reps. John Duarte – CA-13, Ken Calvert-CA-41, Tom Kean- NJ-07, Nichole Malliotakis – NY-11, Mike Lawler – NY-17, Brandon Williams – BY-22, Lori Chavez-Deremer-OR-05, Brian Fitzpatrick – PA-01, Nancy Mace – SC-01, Tony Gonzalez- TX-23, John Curtis-UT-03 and Bryan Steil – WI-01.**

When we attain that magic number for passage, we will move forward with a **Discharge Petition**, filed by Rep. Pressley, to get the legislation out of committee and to a floor vote. The Discharge Petition had 182 endorsers at the end of July (218 is the desired total).

S. J. Res. 4 is the Senate counterpart, as sponsored **by Sens. Ben Cardin** (D-MD) and **Lisa Murkowski** (R-AK). It has 20 co-sponsors but is likely supported by all 51 Democrats. Both resolutions affirm ratification of the ERA and remove the time limit.

An additional measure, **H.J. Res. 82**, sponsored by **Rep. Cori Bush** (D-MO), would affirm ratification of the ERA, by stating that it is enforceable as the **28th Amendment** to the Constitution and directing the Archivist of the United States to certify and publish the amendment without delay. H.J. Res 82 has 63 co-sponsors. **Sen. Kirsten Gillibrand** (D-NY) sponsors the Senate version, **S.J. Res. 39**, with 20 co-sponsors.

The next step in the process when the U.S. House of Representatives passes **H.J. Res. 25** is to seek a vote in the Senate where **Majority Leader Chuck Schumer** (D-NY) would use a 'privileged motion' to get the ERA to the floor for a vote. This will allow for a *simple majority* to pass the resolution. Currently, 53 senators support the ERA resolution.

In the Senate, advocates are urging Majority Leader Chuck Schumer (D-N.Y.) to use a privileged motion to get the ERA to the floor of the Senate for a vote, which would allow a simple majority to pass the resolution; currently 53 Senators support the resolution.

Passing legislation is perhaps the only way now to get the amendment officially recognized as part of the Constitution. The **Archivist of the U.S., Dr. Colleen Shogan**, has the responsibility -- acting only in a ministerial capacity -- to certify and publish the ERA since it has been ratified by the required three-fourths of the states. Dr. Shogan has the power right now to publish and certify -- and she should do that. But the issue of the handful of states who voted to rescind their earlier ratification may be a factor in her apparent hesitation. **Article V** of the **U.S. Constitution** governing the amendment process makes no provision for rescinding a ratification vote, and the question of rescission has never been before the courts. Former Archivist of the U.S., **David S. Ferriero**, has said that once a state has ratified -- that's it. Additionally, if the archivist were to certify and publish the amendment, as the related statutes specify, there would be NO opportunity for a lawsuit to alter that outcome. More info at, [Constitutional Amendment Process | National Archives](#)

Just for the record, the president and any other official of the executive branch (except the archivist) have **no** authority in taking any action to direct that the amendment become part of the U.S. Constitution. The framers envisioned that amending the Constitution should be an action taken only by democratically elected bodies, such as state legislatures and Congress.

National Petition Campaign for the ERA – The goal is to collect hundreds of thousands of signatures in support of the ERA and present these to Congress. As of early September, more than 70,000 individuals have signed the petition. Please get your chapter members, family and friends to sign the so we can get the ERA across the finish line.

Go here to add your name, [Equal Rights Amendment Petition Sign4ERA](#)

100th Anniversary of the Equal Rights Amendment's Introduction

The ERA Centennial Convention held on July 21 and 22 in Seneca Falls, was sponsored by **Equal Rights Action, Columbia Law School's**, <https://gender-sexuality.law.columbia.edu/content/era-project> **ERA Project** and <https://www.generationratify.org/>**Generation Ratify**, a youth-led organization supporting the ERA and gender equality. The convention attracted participants from states across the U.S. and the goal of engaging young feminists in ERA advocacy was boosted by their strong presence.

The celebratory crowd of hundreds of young –and older-- feminists gathered in the historic town of Seneca Falls, NY in late July to commemorate the history of the **National Woman's Party** convention held there. **Alice Paul** and **Crystal Eastman** announced their proposed sex equality amendment to the U.S. Constitution. Their intention for the amendment was to assure that the hard-won **19th Amendment** for women's suffrage would be safeguarded. Gatherings at this recent convention were held in the First Presbyterian of Seneca Falls, the same church that hosted the original event 100 years ago.

Virginia NOW arranged for a wonderfully decorated **Vote Equality Bus** to travel from the D.C. area to Seneca Falls. Speakers there included members of Congress who have led the effort to pass legislation recognizing the ERA as the 28th Amendment. Long-time campaigner for the ERA, **Ellie Smeal** of the **Feminist Majority** outlined the campaign to finally incorporate the ERA in the Constitution. She was joined by former congresswoman, **Carolyn Maloney**, who has fought long and hard to get the ERA over the finish line. Maloney is currently **New York NOW** president. **Nevada State Senator Pat Spearman** who was instrumental in Nevada's ratification of the ERA a few years ago also spoke. **NOW President Christian F. Nunes** gave a well-received talk on the importance of understanding the intersectional potential of the ERA.

Special guests included New York **Gov. Kathy Hochul** and NY Attorney General **Letitia James** along with director of Columbia Law School's ERA Project **Ting Ting Cheng**, and Generation Ratify executive director **Rosie Couture**.

You can read more about the Seneca Falls convention and see photos, by clicking on this link to MS. Magazine's coverage, [ERA Centennial Convention in Seneca Falls: Intergenerational, Diverse and Determined - Ms. Magazine \(msmagazine.com\)](#)

Additionally, two summer interns from NOW were fortunate to attend; Bell Pastore and Brigid Rawdon were there. Brigid, a NOW Government Relations intern, wrote this article about the convention, which is linked from the NOW homepage,

[Renewing our Commitment to the ERA on its 100th Anniversary - National Organization for Women \(now.org\)](https://www.now.org/2020/07/20/renewing-our-commitment-to-the-era-on-its-100th-anniversary/)

FINAL WORDS: Why after 100 years are we still trying to pass an amendment to the U.S. Constitution? It is now more important than ever! With the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, the justices obliterated women's best protection against sex-based discrimination. The conservative majority inserted a provision which stated that the 14th Amendment Equal Protection Clause does not apply to sex discrimination. Numerous gains made by the modern women's movement over the last 50-plus years to edge us closer to equal treatment were made based on the 14th Amendment's Equal Protection and Due Process clauses. We no longer have that protection; states are free to pass discriminatory laws. The Supreme Court is no help and has shown itself to be ready to decide cases in ways that will cause —and is currently causing serious harm -- to women.

ECONOMIC EQUITY

More Attempts by Republicans to Cut Important Programs

By the time you are reading this memorandum, we may know whether the threatened shutdown of the federal government has become a reality. As is often the case when there is a divided Congress, the most conservative Republican members threaten to shut down the government if they don't get their way in dramatically cutting back on federal spending. Just to note: the previous two Republican-caused shutdowns have cost taxpayers an estimated \$35 billion and affected not only federal employees, but employees many state and local programs that rely on federal funds and the millions of persons who benefit from those programs.

At the moment, many of the House appropriations measures slash 30 and 40 percent in non-defense program budgets affecting hundreds of important programs, many undermining the social safety net. The reduced funding violates amounts previously agreed to by both parties in the **Fiscal Responsibility Act of 2023** adopted in June. That measure contained numerous reductions in spending negotiated to facilitate a bipartisan agreement in suspending the \$31.4 trillion debt limit through January 1, 2025.

The proposed cuts would make dramatic reductions in funding for climate change, clean energy, essential nutrition services, law enforcement, consumer safety, education, and healthcare. Many of the Republican proposed cuts affect our most important social safety net programs such as, WIC – resulting in turning away hundreds of thousands of young children and postpartum adults from this supplemental nutrition program. Only DOD and border security funds were not cut.

For more information, see this analysis by the White House which details those proposed Republican cuts, <https://www.whitehouse.gov/omb/briefing-room/2023/05/23/state-fact-sheets-house-republicans-appropriations-bills-would-have-devastating-impacts-across-america/>

Some appropriations bills contain ideological measures relating to abortion that must be eliminated. The **White House** recently threatened to veto the \$826.4 billion defense spending bill which contained riders opposing the DOD policy to reimburse service members who have to travel in order to access abortion care. Senate appropriators are not likely to agree to many of Republican cuts and have proceeded with their own appropriations measures with the hope of final passage by the end of the federal fiscal year on September 30th. If agreement is not reached by that date, it is possible that a short-term Continuing Resolution (CR) will be adopted to keep the government functioning.

(Note: Sen. Tom Tuberville (R-AL) is still preventing the Senate from confirming promotions for hundreds of military servicemembers until the DOD revokes its policy of paying for travel of servicemembers and dependents who have to travel to another state to obtain abortion care.)

Childcare Cliff Approached – Legislation Introduced

As pandemic funding ends, a huge cliff appears for childcare programs amounting to a loss of \$16 billion that could result in 70,000 programs closing, affecting approximately 3.2 million children, according to a Century Foundation report, [Child Care Cliff: 3.2 Million Children Likely to Lose Spots with End of Federal Funds \(tcf.org\)](https://www.centuryfoundation.org/child-care-cliff-3.2-million-children-likely-to-lose-spots-with-end-of-federal-funds-tcf.org) Additionally, an estimated 230,000 childcare workers could lose their jobs.

Advocates have been sounding the alarm for months leading up to this point, noting the chaos that loss of critical funding for so many programs would cause for families and the economy. Millions of women – who usually are the ones that provide daily care – would have to quit jobs that are often critically important to families’ economic security.

In May, Treasury Secretary Janet Yellen said, “Childcare is a textbook example of a broken market. The free market works well in many different sectors, but childcare is not one of them. It does not work for the caregivers. It does not work for the parents.”

Many – perhaps even most -- parents cannot afford to pay high monthly fees to support good quality childcare and pay childcare workers and teachers what they deserve. Most industrialized nations understand that and provide a significant share of the needed support. **President Biden’s Build Back Better** proposal would have authorized funding for a build-out over 10 years a universal and affordable network of childcare and early learning programs. But West Virginia’s **Sen. Joe Manchin III** scuttled it.

We are facing a huge crisis that demands a big solution.

Childcare Stabilization Act Proposed

In response to the childcare funding problem, **Sen. Patty Murray** (D-WA), chair of the Senate Appropriations Committee and **Sen. Bernie Sanders** (I-VT), chair of the Senate Health, Education, Labor, and Pensions (HELP) Committee, along with 33 fellow Senators, and 78 colleagues in the House of Representatives, introduced this week the **Child Care Stabilization Act** to extend vital federal child care stabilization funding – which is set to expire at the end of this month – and ensure that child care providers can keep their doors open and continue serving children and families in every part of the country.

The senators' press release reported that the companion legislation was introduced in the House by **House Democratic Whip Katherine Clark** (D-MA), **Rep. Rosa DeLauro** (D-CT), Ranking Member of the House Appropriations Committee, **Rep. Bobby Scott** (D-VA), Ranking Member of the House Committee on Education and the Workforce, and Reps. **Suzanne Bonamici** (D-OR), **Mikie Sherrill** (D-NJ), **Sara Jacobs** (D-CA), **Jimmy Gomez** (D-CA.), and **Jamaal Bowman**, Ed.D. (D-NY)

The Child Care Stabilization Act would prevent a potential crisis when funding expires at the end of the month by providing \$16 billion in mandatory funding each year for the next five years to continue the successful childcare grant program. This investment would ensure that childcare providers continue to receive a reliable source of funding to help them deliver high-quality and affordable childcare for working families across the country.

New Census Data Finds Increase Child Poverty

A shocking increase in child poverty was reported this week when the 2022 Census data was released. When there is more time to review the findings, we will report back. In the meantime, here is an analysis by the Center of Budget and Policy Priorities.

[Analyzing the Census Bureau's 2022 Poverty, Income, and Health Insurance Data | Center on Budget and Policy Priorities \(cbpp.org\)](https://www.cbpp.org/analyzing-the-census-bureau-s-2022-poverty-income-and-health-insurance-data)

VOTING RIGHTS

Voting Rights Again Under Serious Threat by Republican Bill

Republicans in the U.S. House of Representatives are promoting legislation that would reverse many of the improvements that have been made in recent years to increase voter registration

and expand voter participation through early voting, mail-in ballots, drop-boxes, same day registration and voting and other methods. Most of these advances will be limited or repealed through restrictions imposed on states by the legislation. **H.R. 4563**, the so-called **American Confidence in Elections Act (ACE) of 2023**, a massive and complex piece of legislation that should confuse most everyone, has gone through several hearings and is expected to come to a floor vote in the near future.

Targets Voters Helped by Expanded Access -The bill's main objectives are to make it harder to vote for people of color, low-income and rural residents, persons with disabilities, the elderly and persons with family care-giving responsibilities to get to the polls. The bill, sponsored by **Rep. Bryan Steil** (R-WI) and 119 co-sponsors, requires additional personal identification from prospective voters that is both unnecessary and often difficult for lower income, rural, elderly persons and individuals with disabilities to easily provide. An example: requirement to show your birth certificate when registering to vote. Numerous other restrictions are included in the legislation, including one that would prohibit the use of **ranked choice voting**. A number of states and localities are considering adopting ranked choice voting.

Feeding the Big Lie - The false assumption conveyed by the ACE Act is that the 2020 presidential election was riddled with fraud, when in fact more than 60 lawsuits alleging fraud were dismissed or found to lack evidence. It should be noted that a substantial portion of Republican elected officials still believe that the 2020 presidential election was stolen -- or they know better and are just touting the party line. H.R. 4563 feeds this false narrative. A third of Americans and 69 percent of Republican and Republican-leaning persons believe that the election was fraudulent, according to a recent CNN poll. GOP leaders do little to counter this mistaken view. [Our democracy remains under threat due to Republicans' continued efforts to mislead the public.](#)

Wave of State Voter Suppression Bills – Parallel to voter suppression efforts by Republicans at the federal level is a wave of similar restrictive legislation being felt in many states. The Brennan Center for Justice notes that the “U.S. has a long and ugly history of voter suppression and over the last 20 years has come back with a vengeance.” Since the 2020 election, states have been passing far more restrictive than expansive laws. During the state legislative 2023 term, 322 restrictive bills were introduced in 45 states. As of May 29th, 11 states had adopted 13 restrictive laws, but 45 bills were still moving through ten states. These new laws constitute a serious threat to our democracy.

More information:

[Voting Laws Roundup: June 2023 | Brennan Center for Justice](#)

From Bad to Worse – Why the ACE Act is the most anti-democratic bill of the Last 20 years, Lawyers Committee for Civil Rights under Law, YouTube recording of briefing, [What You Need to Know about the ACE Act \(livestream archive\) - YouTube](#)