

TO: Interested Parties
FROM: Beth Lynk, Associate Director of Federal Communications
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DATE: Thursday, July 26, 2018
RE: Kavanaugh's Nomination Puts Women's Health Care in the Crosshairs

Bottom line: Just like Trump promised, appointing Brett Kavanaugh to the Supreme Court could dismantle health care access for tens of millions of women by dismantling the ACA and gutting health care protections.

It's no secret that the Trump-Pence administration has been trying to do away with the protections included in the Affordable Care Act (ACA). They've already [implemented a rule](#) eliminating the guarantee that your health insurance through your employer will cover birth control. They've made it easier for health insurers to avoid covering [essential health benefits](#) like maternity and newborn care, mental health care, and emergency services. Nowhere were these efforts clearer than in Trump's proposed budget, which included [massive cuts](#) to Medicaid expansion, which is a crucial part of the ACA and provides health care to women who would otherwise not be able to afford it.

How does this factor into the Supreme Court nomination? Right now, Republican governors in 20 states are asking a federal court to strike down the ACA. This case, *Texas v. USA*, could be considered by the Supreme Court next year, and if Kavanaugh is confirmed, he could decide whether to uphold health care protections, such as those for people with pre-existing conditions, or deliver the death knell to the ACA.

Three things to know:

1. **Striking down the ACA would be devastating for women's health.** Remember, before the ACA, being a woman was considered a pre-existing condition. Health plans would routinely classify common medical events like pregnancy and chronic illnesses like breast and cervical cancer as pre-existing conditions, and then use that to charge women outrageous costs or outright deny women coverage. Black and Latina women are more likely to have certain chronic conditions, so returning to this discriminatory pricing exacerbates barriers that already prevent these communities from accessing care. Additionally, before the ACA, simply being a woman could be framed as a pre-existing condition and [exploited by insurance companies for profit](#). If the ACA were invalidated, over 62 **million women** could lose access to no-copay preventive services, including birth control, STI screenings, and life-saving preventive services such as breast cancer screenings, HIV screenings, and Pap tests. With Kavanaugh's vote, the Supreme Court could do away with health care protections in the ACA and millions of women

could lose their reproductive health care if they are not able to enroll in Medicaid or if their state has not expanded coverage.

2. **Kavanaugh meets Trump's litmus test — he would overturn the ACA.** In 2011, Kavanaugh dissented from the D.C. Circuit's decision to uphold the individual mandate and strongly questioned whether Congress even had the authority to enact the ACA. In another dissent from the D.C. Circuit's 2015 ruling on the ACA's birth control benefit, Kavanaugh wrote that he believed employers had the right to deny their employees health insurance coverage for birth control. As a Supreme Court justice, Kavanaugh could restrict access to birth control and access to health care overall for millions of women of color and women with low incomes — not just through their employers, but, for many, through their only source of health care.
3. **Brett Kavanaugh's nomination threatens health and financial security for communities that already face systemic barriers to care.** Women of color in particular will be harmed by threats to Medicaid since, due to the intersections of race, poverty, and gender in our country, women of color are more likely to have low incomes and Medicaid coverage. For example, [30 percent](#) of Black women and 24 percent of Hispanic women ages 15-44 are enrolled in Medicaid, compared to only 14 percent of White women. Medicaid is the [largest payer of reproductive health care](#), paying for nearly half of all births in the United States and [75 percent of family planning services](#).

Bottom line: Brett Kavanaugh has a history of discrediting the ACA and access to birth control, and he cannot be trusted as a Supreme Court justice to uphold access to health care for tens of millions of women across the country. The Senate must reject his nomination.