

2024 ELECTION EXPLAINER

How a National Abortion Ban is at Stake in this Election

While the [vast majority](#) of Americans oppose a nationwide ban on abortion, until the last few months, the Republican Party platform had consistently contained a national abortion ban for 40 years, and former President Trump [supported a national abortion ban](#) as part of his campaign. Recognizing the unpopularity of such a ban, former President Trump has recently [attempted to backpedal](#) on his prior support for Congress enacting a federal law banning abortion everywhere (while still [refusing to state](#) in the recent presidential debate that he would veto a national ban if elected). [Project 2025](#)—a presidential transition project led by former Trump Administration officials—still unambiguously supports a congressionally-enacted national ban.¹ This has led to widespread news coverage of whether a new Trump Administration would urge Congress to pass a national abortion ban.

Yet, the discussion of whether former President Trump supports a *congressionally-enacted* national abortion ban dangerously obscures the many ways a new administration could try to restrict abortion nationwide without any need for congressional action. Here's how transition documents, the party platform, and policy statements demonstrate that a new Trump Administration intends to take actions that would ban or severely restrict abortion access in every state:

¹ The Heritage Foundation, [Mandate for Leadership: The Conservative Promise, Project 2025 Presidential Transition Project](#) ("Project 2025"), at page 6 (stating, "the next conservative President should work with Congress to enact the most robust protections for the unborn that Congress will support"). Former President Trump has recently attempted to distance himself from Project 2025, but [CNN reported](#) that at least 140 people who worked in the Trump Administration worked on Project 2025, including six former Cabinet secretaries and a former deputy chief of staff.

THE COMSTOCK ACT



BACKGROUND

The Comstock Act was enacted in 1873 to curb “obscenity,” including by restricting the mailing of products and information that encourage non-procreative sex, are “indecent, filthy or vile,” or are “intended for producing abortion.”² The Comstock Act’s ban has always exempted healthcare, however, and the U.S. Postal Service, Congress, and courts have long understood that the [Comstock Act does not apply](#) to the mailing of materials or information for lawful abortion care. Nonetheless, anti-abortion advocates have recently attempted to revive and transform this antiquated 150-year-old law into an unambiguous, no-exceptions nationwide ban on abortion.



WHAT TRUMP AND ALLIES HAVE SAID

Project 2025 promises a Department of Justice (DOJ) that would “enforce the criminal prohibitions in 18 U.S. Code §§ 1461 and 1462 [the Comstock Act]³ against providers and distributors of abortion pills that use the mail.”⁴ Additionally, Vice Presidential nominee J.D. Vance joined other Republican leaders in signing a [January 2023 letter](#) demanding that the DOJ use the Comstock Act to shut down telemedicine abortion practices and prosecute individuals mailing abortion medication.

When asked in late August if he would enforce the Comstock Act, former President Trump [responded](#), “we will be discussing specifics of it, but generally speaking no,” declining to provide a definite answer, including as to the “specific” circumstances in which it may be enforced.



WHAT THAT MEANS

If Project 2025 and J.D. Vance’s clear positions are advanced, a Trump Administration could attempt to use the Comstock Act to effectively create a nationwide abortion ban without requiring any new congressional action. Although Project 2025 and the letter signed by J.D. Vance focus on the mailing of abortion medication, their theory of the Comstock Act could also apply more broadly to all medication and equipment used in abortion care, which is transported by mail and common carrier. Jonathan Mitchell, who represented Trump before the Supreme Court, [said](#): “We don’t need a federal ban when we have Comstock on the books.”

² 18 U.S.C. §§ 1461, 1462 (1996).

³ Referring to the Comstock Act by its code section rather than its name may be an attempt to conceal a publicly unpopular strategy. Jonathan Mitchell, who represented Trump before the Supreme Court, [stated](#): “I hope [Trump] doesn’t know about the existence of Comstock, because I just don’t want him to shoot off his mouth... I think the pro-life groups should keep their mouths shut as much as possible until the election.”

⁴ [Project 2025](#), at page 562 (capitalizations omitted).

REVOKING FDA APPROVAL OF OR SEVERELY RESTRICTING ACCESS TO MIFEPRISTONE



BACKGROUND

- Mifepristone is an extremely safe and effective medication used in medication abortion, which accounts for [nearly two-thirds of abortions](#) in the United States. The Food and Drug Administration (FDA) approved mifepristone in 2000, and in 2021 lifted prior medically unnecessary restrictions on mifepristone, including restrictions on its administration through telehealth.



WHAT TRUMP AND ALLIES HAVE SAID

- Project 2025 urges the FDA to “revisit and withdraw its initial approval” of mifepristone, and as “an interim step,” immediately institute an in-person dispensing requirement to eliminate telemedicine abortion.⁵



WHAT THAT MEANS

- Revoking FDA approval of mifepristone would mean that the medication could no longer be legally provided anywhere in the United States, including in states with laws protecting abortion access. Imposing medically unnecessary restrictions on mifepristone that prevent it from being administered through telemedicine would also deprive many patients of abortion access, particularly [younger patients and those in rural and underserved areas](#). [Data shows](#) that in the first quarter of 2024, at least 20% of abortions nationwide occurred via telehealth, and, on average, approximately 9,200 people per month in states with abortion bans or severe restrictions accessed medication abortion via telehealth.

⁵ [Project 2025](#), at pages 458-59. When asked recently, given that “there are other things the federal government could do, not just a ban,” whether he would “direct [the] FDA . . . to revoke access to mifepristone,” former President Trump [responded](#), “Sure, you can do things that will supplement. Absolutely. And those things are pretty open, and humane, but you have to be able to have a vote, and all I want to do is give everybody a vote, and the votes are taking place right now as we speak.”

ADVANCING “FETAL PERSONHOOD” IN THE LAW



BACKGROUND

“Fetal personhood” is a legal theory that posits that life begins at conception and that advocates extending to embryos and fetuses the same legal rights as people. Anti-abortion advocates have advanced this concept to not only grant full constitutional rights to embryos and fetuses but also argue that the rights of embryos and fetuses override the rights of people.



WHAT TRUMP AND ALLIES HAVE SAID

Project 2025 provides that “[the Department of Health and Human Services] should return to being known as the Department of Life by explicitly rejecting the notion that abortion is health care and by restoring its mission statement under the Strategic Plan and elsewhere to include furthering the health and well-being of all Americans ‘from conception to natural death.’”⁶ Additionally, the Republican party platform states: “We believe that the 14th Amendment to the Constitution of the United States guarantees that no person can be denied Life or Liberty without Due Process, and that the States are, therefore, free to pass Laws protecting those Rights.”⁷



WHAT THAT MEANS

Project 2025’s description of life beginning at conception is an unequivocal endorsement of “fetal personhood.” The Republican Party platform echoes this endorsement of fetal personhood in more coded language; its reference to the 14th Amendment was [understood by many](#) to signal support for the concept of “fetal personhood,” as anti-abortion advocates have argued that the 14th Amendment’s guarantees of due process and equal protection for “any person” define personhood as beginning at conception. Anti-abortion advocates have argued, under this theory, that states could be required to ban abortion to provide embryos and fetuses equal protection under the law because states prohibit homicide of people after birth. If accepted by the federal courts, this theory could effectively create a national abortion ban.

⁶ Project 2025, at page 489.

⁷ Republican National Committee 2024 Platform, at page 20.