



## Supreme Court of the United States Argument – Women’s Right to Contraception Under the Affordable Care Act

**“Women need contraception for their health because contraception is medicine, pure and simple. President Trump broke the law to undermine women’s health, and I’m standing up to protect and ensure access to contraceptive care.”**

**-Josh Shapiro, Attorney General**

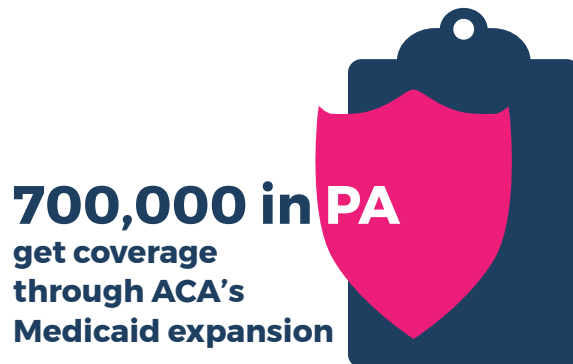
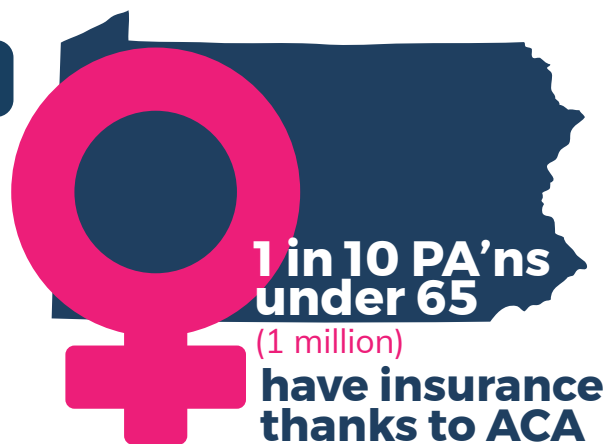
On May 6th, the Pennsylvania Attorney General’s Office will argue in front of the Supreme Court of the United States to ensure that women continue to have the right to access contraception as guaranteed by the Patient Protection and Affordable Care Act (ACA). Pennsylvania Attorney General Josh Shapiro has been at the forefront of protecting women’s right to full and equal health care — standing up against Trump Administration efforts that would allow a woman’s employer to eliminate her access to contraception.

For the past three years, as our office has fought this battle in front of two federal benches, we have preserved the ability of women to make their own reproductive health choices and protected the coverage of 55 million Americans. The Pennsylvania Attorney General’s office now takes its fight to the Supreme Court to defend the ACA’s contraceptive care guarantee.

This will be the first time in history the public will be able to hear arguments live as they are argued by phone on May 6th.

### Timeline On Contraception Guarantee

- 2010:** Affordable Care Act (ACA) adopted. Women’s Health Amendment guarantees women access to necessary preventive health care without cost-sharing.
- 2011:** Contraception is preventive health care. HRSA adopts “Women’s Preventive Services Guidelines” and includes all FDA-approved contraceptive services and counseling. As a result, women are guaranteed coverage for contraception services and counseling without cost-sharing.
- 2013–2015:** Federal government regulations create the “accommodation,” which allows certain employers (not-for-profits and closely held corporations) with religious objections to contraception to exclude contraception from employee health care plans. Instead, third parties provide contraceptive coverage directly to the employer’s female employees.



## Timeline On Contraception Guarantee Continued

**2017:** U.S. Departments of Health and Human Services, Labor, and Treasury issue new “interim final” rules that create broad new exemptions allowing employers and schools to deny women contraceptive coverage based on employer’s or school’s personal beliefs. The rules are immediately effective and issued without prior notice or public comment.

- Religious rule: allows anyone—including large publicly traded corporations and universities—with a religious objection to contraception to exclude it from employees’ or students’ insurance.
- Moral rule: allows many employers—including closely-held corporations and large universities—with a moral objection to contraception to exclude it from employees/students’ insurance.

**2017:** Pennsylvania successfully challenges the 2017 rules for violating the Administrative Procedure Act (APA) and the ACA. The 2017 rules are blocked nationwide.

**2018:** The agencies issue “final” versions of the same exemptions. The 2018 rules are virtually identical to 2017 rules.

**2019:** Pennsylvania, now joined by New Jersey, successfully challenge the 2018 rules for violating the APA and ACA. The 2018 rules are also blocked nationwide.

**2019:** The U.S. Court of Appeals for the Third Circuit unanimously affirms the injunction, finding that the agencies had no authority to create the 2017 or 2018 rules.

### Contraceptive Mandate

- Average out-of-pocket for birth control without insurance: **\$1,000 / year**
- Before preventative care covered by ACA: **1 in 3 women** struggled to afford birth control
  - Today: **less than 4%**
- **2.5 million PA women + families** have benefited from contraceptive mandate

## Our Work to Protect Contraception Guarantee

- The 2017 and 2018 rules violated the federal rulemaking process (Administrative Procedure Act, APA):
  - 2017 rules issued without prior notice and public comment as required by APA, and agencies lacked good cause or statutory authority to bypass this requirement.
  - 2018 rules not preceded by notice of proposed rulemaking. Agencies failed to show they had otherwise conducted a meaningful public comment process.
- The 2017 and 2018 rules exceeded congressional authority:
  - The Women’s Health Amendment to the ACA only gives HRSA authority to determine *what* preventive services for women must be covered. It did not give the agencies authority to determine *who* must provide the coverage.
  - Religious Freedom Restoration Act does not require agencies to issue the religious rule because the accommodation does not violate RFRA. In addition, the agencies lack authority to go beyond what RFRA requires.
- The district court was correct to grant nationwide relief.



Pennsylvania Attorney General Josh Shapiro



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