PRINCIPLE 5: 

Ensure Judges and Executive Officials Advance Sexual and Reproductive Health, Rights, and Justice.

The President’s appointment power has a significant impact on sexual and reproductive health, rights, and justice. Article III federal judicial nominees and specific executive positions have the ability to shape, protect, and advance our reproductive well-being, and the ability to do the opposite. Federal courts and executive agencies each play a crucial role in interpreting and giving meaning to fundamental legal protections and civil rights, including the inherent rights to equality under the law and to make personal decisions—such as whether to have an abortion or use contraception.

Executive agencies and federal courts play a crucial role in interpreting and giving meaning to our fundamental legal protections and civil rights. As a result, executive and judicial nominees will shape our legal rights and ability to access them far into the future. It is critical that nominees are fair-minded and understand the intent of the law and its real impact on individuals’ liberty, equity, and dignity. In addition, nominees should understand and work to decrease the disproportionate impact of harmful policies and laws on individuals with low incomes, people of color, LGBTQ+ individuals, young people, immigrants, people with disabilities, Indigenous people, and other marginalized people.87

Finally, implementation of efforts to integrate, elevate, and prioritize sexual and reproductive health and rights across foreign policy and global health, development, and humanitarian programs cannot occur without leadership from political appointees and training and clear mandates for career staff. The President must nominate political appointees who will champion SRHR in foreign policy and educate and train the diplomatic corps to advance sexual and reproductive health and rights through bilateral outreach to governments, multilateral institutions, and direct engagement with U.S. and local civil society.

87 The ACLU, as a matter of policy, does not regularly endorse or oppose candidates for elective or appointive office.
The President should prioritize putting forth and the Senate should expeditiously confirm judicial and executive nominees with a demonstrated commitment to justice, civil rights, equal rights, individual liberties, and the fundamental constitutional rights of equal protection, dignity, and privacy, including the right to abortion and contraception.

- The President should only put forward and the Senate should only confirm executive nominees who have a demonstrated positive record on reproductive health, rights, and justice. Federal agencies are charged with implementing and enforcing crucial legal protections, such as race and sex anti-discrimination laws; protections for access to comprehensive reproductive health care, including abortion access for all who need it, including for immigrants and those who are undocumented; prevention and prosecution of anti-abortion violence; insurance coverage of reproductive health services, including contraception with no copay; and the Health Care Rights Law (section 1557 of the ACA), which ensures non-discrimination in health care. They also lead in the advancement of sexual and reproductive health and rights access globally. Consequently, executive nominees should have a demonstrated positive record on and express a commitment to promoting the sexual and reproductive health and rights of all individuals in the United States and around the world.

- Senators should thoroughly question both executive and judicial nominees regarding their qualifications and commitment to reproductive health, rights, and justice. It is critical, particularly for nominees who do not have a record on reproductive health, rights, and justice, or have a record hostile to these fundamental rights, that senators ask during nominees’ hearings and in questions for the record strong questions to clarify nominees independence, fair-mindedness, lack of bias, and ability to uphold our constitutional rights, including the right to have an abortion.

- The President should only consider and the Senate should only confirm judicial nominees who either have a positive record on reproductive health, rights and justice or, in the context of the confirmation process, affirmatively declare that the Constitution protects individual liberty and the right of all people to make personal decisions about their bodies and personal relationships, including the right to use contraception, have an abortion, and marry whom they choose. Federal courts are charged with upholding our fundamental legal rights and rule on cases impacting reproductive freedom, racial justice, LGBTQ+ rights, immigrant rights, and myriad other intersectional issues that impact all individuals in the United States. Consequently, judicial nominees to the Supreme Court and the lower courts should demonstrate a commitment to justice, civil rights, equal rights, individual liberties, and the fundamental constitutional rights of equal protection, dignity, and privacy, including the right to have an abortion.
The President should prioritize putting forth and the Senate should expeditiously confirm highly-qualified individuals to the federal bench who would improve the diversity of the judiciary to better reflect the composition of the country and the legal system and refine decision-making, by considering identities, backgrounds, and professional experiences.

- The President should nominate and the Senate should confirm individuals who are fair and independent, demonstrate strong legal skills and the qualities necessary in a judge, and have a robust understanding of the complexities of constitutional law. It is critical that only fair and independent judicial nominees with a demonstrated commitment to fundamental legal rights be appointed to the federal courts, including the Supreme Court and the lower courts. Judicial nominees should be highly-qualified to serve as a member of the federal judiciary. The President should nominate individuals who meet the necessary requirements of honesty, integrity, character, temperament, empathy, and intellect. Because reproductive rights litigation is typically fact-dependent, judges must understand the burdens that restrictive laws place on individuals trying to access abortion or other reproductive health care services. Judicial nominees must respect existing legal protections, abide by established precedents, and safeguard the constitutional right to privacy.

- The President should nominate and the Senate should confirm individuals who have diverse identities, including but not limited to race, national origin, sex, gender identity and expression, pregnancy and family status, sexual orientation, past or current immigration status, disability status, and religion and belief system. A nominee’s background—both professional and personal—informs their work. When the courts are reflective of the diverse population of the nation, individuals may have more confidence that the courts understand the real-world implications of rulings and thereby better understand the court or agency’s decision. Diversity on the bench, and the consequent understanding nominees have of the disparate impact on intersectional identities, enriches the court’s understanding of how best to realize the intended purpose and effect of the constitution and laws that the courts are charged with applying, improving the quality of justice for all.

Diversity enhances legal decision making. People are shaped by their identities, backgrounds, and experiences. And when judges are met with litigants or issues affecting the most marginalized, unheard, and unrepresented among us, it is important that they understand the views of those people or communities in order to render a fair decision. Such representational diversity is critical to maintain or improve the public’s trust in our government. We should expect our president to care about the diverse composition of both the federal bench and executive agencies. As of April 2018, of the 1,643 judges sitting in the federal bench, only 396 (24.1%) identify as women, 168 (10.2%) as Black or African American, 113 (6.9%) as Hispanic/Latinx, 35 (2.1%) as Asian American Pacific Islander (AAPI), 2 (0.1%) as American Indian or Alaskan Native (AIAN), 12 (0.7%) as lesbian, gay, bisexual, transgender, or queer (LGBTQ), 7 (0.4%) persons with disabilities.88 By comparison, the United States population is

approximately 51% female, 13.4% Black or African American, 18% Hispanic/Latino, 6% AAPI, 1.3% AIAN, 4.5% LGBTQ, 8.7% persons with disabilities. In order for the judiciary to fulfill its duty to enforce equal justice under the law, the bench must reflect the demographic makeup of the nation. However, it is critical that the President appoint candidates who are not only diverse but also have the legal skills and experience necessary to serve as judges and are committed to reproductive health, rights and justice and centering the most marginalized. Anything less would amount to tokenization and defeat the purpose of diversifying the voices of justice on the federal bench.

• **The President’s judicial nominees should also have diverse backgrounds and experiences, including but not limited to class, educational background, and professional experience.** The federal judiciary is currently lacking in judges with experience working for public interest organizations, such as civil rights attorneys, legal aid attorneys, public defenders or indigent criminal defense attorneys, and those representing individual clients—like employees, consumers, or personal injury plaintiffs—in private practice. This is important for reproductive rights because, like any of us, judges are the product of their background and experiences, including their professional lives before taking the bench. As a judge renders decisions through the course of a trial or proceeding, their determination is necessarily influenced by the nature of their work as a lawyer up to that point. Therefore, when judges have varied professional backgrounds, they are better equipped to understand the experiences of each litigant before them, and to render more informed, thorough decisions. Judges who have experience representing clients with low incomes are well-positioned to help the courts understand the disparate burdens that laws often place on people who are living with low incomes or otherwise marginalized and to ensure that the lived realities of such individuals are not lost in the calculus.

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**For all executive-branch positions, the President should nominate and the Senate should confirm individuals who are experts in their field, committed to the core mission of the agency, possess a positive record on reproductive health, rights, and justice, and who will contribute to the diversity of the executive branch.**

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• **The President should nominate and the Senate should confirm executive nominees who are experts in the field of the agency, office, or program they will lead, and who possess a demonstrated track record of leadership in that field.** Federal agencies directly oversee implementation and enforcement of many laws and legal protections related to reproductive health care. From no-copay contraception to safe access to clinic entrances to protection from discrimination, the ability of people living in the U.S. and communities served by U.S. foreign aid programs to freely access the care they need is dependent on federal agencies and the appointees who run them. These nominees should possess knowledge of and commitment to the work of the agencies and programs that they are

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charged with leading, and experience in managing multi-layered networks of experts with respect and integrity. These appointees must respect, the legitimacy of Supreme Court precedents that affirm the constitutional right to privacy. These appointees must also respect the international commitments to sexual and reproductive health and rights outlined in international human rights agreements, including the ICPD Programme of Action, which is the foundational UN agreement defining sexual health and reproductive rights, and the Sustainable Development Goals, which includes specific targets on achieving universal access to sexual and reproductive health care by 2030. Nominees should be committed to scientific integrity, and to ensuring that evidence-based findings will not be suppressed, distorted, or manipulated to advance a political agenda. Where relevant, they should display a commitment to promoting the health and rights of individuals in the United States and around the world. Additionally, for international posts, especially Ambassadors, nominees should have experience living and working in the regions and/or country posts to which they are appointed and preferably speak the national language.

- The President should put forward and the Senate should confirm executive nominees who have diverse identities, including but not limited to race, national origin, sex, gender identity and expression, pregnancy and family status, sexual orientation, past or current immigration status, and religion and belief system. A nominee’s background—both professional and personal—informs their work. Increased diversity in executive agencies enriches the ability to understand all angles of a problem and the real-life impact of regulations. It is important that executive agencies and their leaders reflect the composition of the country and refine decision-making by considering identities, backgrounds, and professional experiences. Diversity enhances decision-making at executive agencies. People are shaped by their background and experiences. And when executive appointees interact with people or issues affecting the most marginalized, unheard, and unrepresented among us, it is important that they understand the views of those people or communities in order to render a fair outcome. Such representational diversity is critical to maintain or improve the public’s trust in our government. Under the Trump administration, more than twice as many men have been appointed than women, and male appointees outnumber women in every single agency.91 In addition, 83% of Trump’s initial cabinet and cabinet-level appointees were white.92 These disparities should be promptly corrected by the next administration.


The President should prioritize putting forth and the Senate should expeditiously confirm executive nominees for specific cabinet-level and sub-cabinet level positions.

The Secretary of HHS leads the important work of implementing programs and initiatives that directly impact the health and well-being of individuals in our country. In particular, HHS provides critical care and services for individuals and communities that have historically and continue to experience the disproportionate impact of our nation’s directly and indirectly harmful policies. Overseeing several departments, offices, and agencies, HHS manages the operation of critical public health programs that ensure access to care such as the Title X Family Planning Program and Medicaid, and implements far-reaching policy on a range of issues related to Medicaid, NIH, private insurance benefits, and contraceptive drugs and devices. Strong leadership from the Secretary of HHS is necessary to ensure meaningful access to quality sexual and reproductive health care, especially for women, individuals with low incomes, people of color, LGBTQ+ individuals, young people, immigrants, people with disabilities, indigenous people, and other marginalized people. It is imperative that the nominee have a steadfast commitment to improving abortion access, creating policy solutions that address long-standing health care inequities in sexual and reproductive health care, and taking meaningful action to implement and enforce policies that shield patients and health care providers from discrimination.

As the nation’s chief law enforcement official, the Attorney General is responsible for enforcing federal laws, including laws with a significant impact on reproductive and civil rights such as Title VII, Title IX, the Freedom of Access to Clinic Entrances Act, the Violence Against Women Act, the Affordable Care Act, and the Fair Housing Act, as well as core constitutional protections. The Attorney General also oversees the DOJ’s Executive Office for Immigration Review (EOIR)—an entity in which immigration judges conduct removal proceedings and adjudicate asylum claims for immigrants, among other responsibilities. The Attorney General nominee must be willing to provide federal leadership in all of these areas and specifically to strongly and publicly condemn violence against reproductive health care providers, patients, and staff; leverage the power of the DOJ to prevent and combat this violence; and prioritize the investigation and prosecution of illegal anti-abortion activity. The actions of the Attorney General have a serious impact on the legal rights and very futures of all individuals across this country, in particular women, low-income individuals, people of color, LGBTQ+ individuals, young people, immigrants, indigenous people, and other marginalized people. The Attorney General, as the head of the U.S. Department of Justice, has the responsibility to enforce federal criminal and civil rights statutes that protect reproductive health providers, patients, and staff. The Attorney General should not only vigorously enforce the law, but also publicly champion the need to combat anti-abortion violence and intimidation, which has resulted in murders, attempted murders, bombings, arsons, clinic invasions, butyric acid attacks, physical attacks or batteries, burglaries, and other criminal acts. Public statements from both the President and the Attorney General that condemn these acts would signal a deep commitment to protecting reproductive rights, civil rights, and the rule of law.

As a global leader, the United States is uniquely situated to leverage its diplomatic power to promote human rights, freedom and dignity around the world, and in particular, to help ensure that all nations respect, protect, and uphold sexual and reproductive health and rights. In order to accomplish this task, the U.S. must have a visionary and effective Secretary of State. The next Secretary of State must be a champion for ensuring that US foreign policy works to promote the equity and human rights of people everywhere. This includes asserting leadership in the global community and leveraging diplomatic capacity to urge all countries and
global leaders to respect, protect, and fulfill the sexual and reproductive health and rights of their people.

The Secretary of Labor serves a critical role overseeing the work of DOL to ensure opportunities in the workplace. Among other crucial protections, DOL enforces: the federal guarantee that workers can take job-protected family and medical leave; wage and hour protections that protect workers from exploitation and abuse and help lift millions of people out of poverty; equal employment opportunity protections that help safeguard against discrimination; and, in conjunction with the Treasury and HHS, key provisions of the Affordable Care Act, including the birth control benefit. It also houses the Women’s Bureau, whose mission is to improve the status and working conditions for wage-earning women. The Secretary of Labor must be someone who will vigorously protect and promote the interests of working people, and especially workers in low-wage occupations and in dangerous industries, women workers, immigrant workers, workers of color, and LGBTQ+ workers.

The Secretary of Education is responsible for leading ED’s implementation and enforcement of federal laws that protect all students from discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity) and disability and those laws that provide for educational opportunity from early childhood through graduate school. Among other crucial issues, the ED specifically enforces Title IX, which prevents discrimination on the basis sex by requiring fair treatment for pregnant and parenting students and requiring schools to address sexual harassment, including sexual assault. The nominee to lead this department must recognize the importance of equal educational opportunity, commit to high-quality public education that enables every student to live up to their potential, and ensure that no student is denied access to education, because of LGBTQ+ status, family income, race, ethnicity, home language, gender, religion, disability or immigration status.

The Secretary of Homeland Security heads DHS, which is the third largest department in the United States government. Among other duties, the Secretary of Homeland Security leads DHS in border security efforts and the administration and enforcement of the country’s immigration laws. DHS also houses U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). Given the increased reports of human rights violations in ICE detention centers and at the border—particularly reports of sexual violence and denial of access to health care, including abortion care and menstrual hygiene products—it is imperative that the nominee be committed to ensuring humane treatment of all immigrants in DHS’s purview. The nominee must support community based alternatives to detention. Additionally, the nominee should condemn sexual violence in detention centers and at the border and, if immigrants are to be detained, be committed to providing them with the health care services and resources they need and deserve.

The U.S. Ambassador to the United Nations is a critical role that must be occupied by an individual who will promote sexual and reproductive health and rights worldwide. The U.S. Ambassador to the UN plays a key role in defining and representing U.S. interests on the global stage and advising the president on key foreign policy decisions. This position has significant influence over the rights, health, and lives of people around the world. The Ambassador plays a central role in negotiating, implementing, and promoting global agreements such as the Sustainable Development Goals, ICPD Programme of Action, Beijing Platform for Action, and other foundational human rights agreements. The U.S. Ambassador to the UN must play a leadership role in fulfilling these global commitments and in seeking new international commitments to advancing SRHR. We need a U.S. Ambassador to the UN who will promote global development and champion the human rights of all people.

The Administrator of the EPA oversees the EPA’s work in enforcing and implementing environmental policies, including the Clean Air and Water Acts. The EPA’s mission is to protect human health and the environment, yet too many communities, particularly communities with low incomes and communities of color, do not live in safe and healthy environments free from toxins. This directly impacts people’s ability to make decisions about if, when, and how to parent, and often results in devastating health implications for individuals, their families, and their communities. It is imperative that this nominee respects scientific integrity, commits to implementing evidence-based environmental policies, condemns environmental racism, and is willing to resist and speak out against political intimidation and interference.
Using less than one percent of the federal budget, USAID, led by the Administrator of USAID, works in more than 100 countries to promote human rights, global health, gender equality and women’s empowerment, economic growth, education, and environmental sustainability. USAID’s work is particularly vital for promoting the health and rights of women and girls – from child marriage (1 in 9 girls are married before age 15\(^93\)) to gender-based violence (experienced by 1 in 3 women worldwide\(^94\)) to family planning (214 million women in developing countries have an unmet need for modern contraception\(^95\)). USAID’s global health programs have been severely undercut by policies like the expanded global gag rule, and the next Administrator must not only work to reverse the harm of this policy, but also commit programmatic resources and political leadership to advancing sexual and reproductive health and rights through U.S. global health, development, and humanitarian programs.

The FDA Commissioner oversees the work of the FDA, which is responsible for, among other things, approving contraceptive and medication abortion options – or, conversely, stalling them, as previous appointees have done. Filling this position with a principled leader who respects scientific integrity and evidence-based medicine, and resists and speaks out against political intimidation and interference, is essential to advancing the reproductive health for all individuals in this country.

The Director of NIH is responsible for the vast majority of the United States’ health research, both done at NIH and through grants to researchers across the country. An essential component of NIH’s research includes reproductive health, as well as research into factors that impact a person’s health, such as sex assigned at birth, gender identity, sexual orientation, race, culture, environment, and socioeconomic status. In particular, the Office of Research on Women’s Health and the National Institute of Child Health and Human Development (NICHD) drive much of the important NIH research that can improve sexual and reproductive health, including: contraceptive research and development; research and development of multipurpose prevention technologies (MPTs), which are products that simultaneously protect against unintended pregnancy, HIV, or other STIs; improving pregnancy and childbirth outcomes; preconception and postpartum health; maternal mortality and morbidity; infertility; STIs and related diseases, including HIV/AIDS; and more. It is vital that the Director of NIH understand and value both the importance of sexual and reproductive health research and the necessity of NIH’s intersectional approach to research.

The Administrator of CMS oversees one of the largest federal agencies that administers vital health care programs to over 100 million Americans. CMS works with the states to administer the Medicaid program. Medicaid pays for half of the births in the United States and is the largest payer of family planning care. Medicaid provides coverage to 1 in 5 women of reproductive age. The majority of Medicaid enrollees are women. About one-third of women in poverty use Medicaid to get the health care they need. LGBTQ+ people, and particularly transgender people, queer and trans people of color, and queer and trans people with disabilities are more likely than the overall U.S. population to use Medicaid. LGBTQ people are over 1.5 times more likely to use Medicaid than non-LGBTQ people.\(^96\) LGBTQ people of color reported receiving Medicaid benefits at a rate of 24% compared to 18.8% of white LGBTQ people. LGBTQ with disabilities reported receiving Medicaid benefits at a rate of 44.4%, as compared to 11.8% of non-disabled LGBTQ people. Transgender people reported receiving Medicaid benefits at a rate of 21.4%, compared to 13.4% of cisgender people.

The Administrator is a key influencer on whether state Medicaid programs include and expand coverage for family planning services for people with no or low incomes who would not otherwise have coverage. The Administrator of CMS must be an individual dedicated

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to truly furthering HHS’ mission and to protecting and expanding women’s access to reproductive health care.

The Assistant Secretary for Health leads development of HHS-wide public health policy recommendations and oversees 11 public health offices – including the Office of Population Affairs (OPA), the Office on Women’s Health, the Office on Minority Health, and the Office of Adolescent Health, among other important public health offices. OPA administers the Title X program and provides advice to the Secretary of HHS on a wide range of reproductive health services. Filling this position with a principled leader who respects evidence-based decision-making and resists and speaks out against political intimidation and interference is essential to advancing the reproductive health of all individuals in this country.

The Department of Justice Civil Rights Division is led by the Assistant Attorney General for Civil Rights (AAG). The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex (including sexual orientation and gender identity), disability, religion, familial status and national origin. In addition, the Special Litigation Section within the Civil Rights Division is responsible for protecting the civil rights of people to have safe access to reproductive health care clinics, as the enforcer of the Freedom of Access to Clinic Entrances Act (FACE). Having an AAG who is committed to protecting and enforcing civil rights and ensuring safe and unfettered access to reproductive health care clinics is essential to preserving access to reproductive health care.

Positions that do not require Senate confirmation are also critical to reproductive health, rights, and justice, and care should be taken to select qualified, knowledgeable appointees for those positions. Within Health and Human Services, these positions include, but are not limited to, Director of the Office of Civil Rights, Assistant Secretary for Public Affairs, Deputy Assistant Secretary for Population Affairs, and Counselor for Human Services Policy. Positions within the State Department and U.S. Agency for International Development include Deputy Assistant Secretary for the Bureau of Population, Refugees and Migration and Deputy Assistant Secretary for Democracy, Human Rights, and Labor, and policy advisors appointed to support these bureaus, as well as policy advisors appointed to the U.S. Mission to the UN focused on economic and social affairs and the State Department’s Office of Global Women’s Issues.