



OPINION

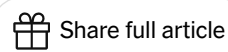
MICHELLE GOLDBERG

Trump’s Allies Say They’ll Enforce the Comstock Act. Believe Them.

June 21, 2024



The birth control activist Margaret Sanger, right, who was jailed in 1916 on charges of violating the Comstock obscenity laws. Library of Congress



By **Michelle Goldberg**
Opinion Columnist

Until the Supreme Court overturned *Roe v. Wade* in 2022, it was hard for feminists to get Americans to take the threat of losing the constitutional right to abortion seriously. Describing Hillary Clinton's inability, in 2016, to shake pro-choice voters out of their complacency, The New York Times's Lisa Lerer and Elizabeth Dias [wrote](#), "Internal campaign polling and focus groups showed that the issue did not resonate strongly with key groups of voters, because they did not believe *Roe* was truly at risk."

It is similarly difficult to get Americans to appreciate the threat that the 19th-century Comstock Act could be [resurrected](#). Named colloquially for the fanatical postal inspector Anthony Comstock, the 1873 act — which is actually a set of anti-vice laws — bans the mailing of "obscene, lewd, lascivious, indecent, filthy or vile" material, including devices and substances used "for producing abortion, or for any indecent or immoral purpose." Though never repealed, it was, until recently, considered a dead letter, made moot by Supreme Court decisions on free speech, birth control and abortion.

But with *Roe* overturned, some in Donald Trump's orbit see a chance to reanimate Comstock, using it to ban medication abortion — and maybe surgical abortion as well — without passing new federal legislation.

The 920-page [blueprint](#) for a second Trump administration created by Project 2025, a coalition of conservative organizations, calls for enforcing Comstock's criminal prohibitions against using the mail — widely understood to include common carriers like UPS and FedEx — to provide or distribute abortion pills. Some MAGA legal minds believe that Comstock could also be wielded to prevent the mail from transporting tools used in surgical abortions. "We don't need a federal ban when we have Comstock on the books," Jonathan F. Mitchell, a crusading anti-abortion lawyer who represented Trump before the Supreme Court this year, [told](#) Lerer and Dias in February.

Conservatives know this would be enormously unpopular, which is probably why, when they talk about Comstock at all, they often refer to it by its criminal code numbers rather than its common name. ("I think the pro-life groups should keep their mouths shut as much as possible until the election," said Mitchell.) Democrats, by contrast, need to be doing everything possible to make "Comstock" a household word. That's why they should champion a bill introduced by Senator Tina Smith of Minnesota on Thursday to

overhaul the Comstock Act. And it's why President Biden would be wise to act on a [petition](#) from the Foundation for Individual Rights and Expression to posthumously pardon one of Comstock's high-profile victims.

Many were shocked when the Supreme Court overturned Roe two years ago, but as Smith, the former vice president of Planned Parenthood of Minnesota, told me, they shouldn't have been, because the right made no secret of its objectives. There is something similar going on with Comstock. "Believe them when they tell us what they want to do, because they will do it if they're given half a chance," she said.

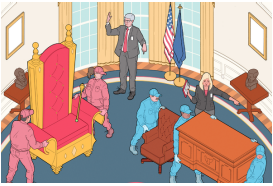
But getting people to believe them is a challenge. A substantial number of voters in swing states don't even understand the role Trump played in Roe's demise: According to a New York Times [poll](#) released last month, 17 percent of them blame Biden, since the ruling happened during his presidency. In Rolling Stone, Anat Shenker-Osorio, a senior adviser to the progressive Research Collaborative, [wrote](#) that in surveys and focus groups, disaffected Democrats and swing voters are appalled when they learn of Project 2025's agenda, including on abortion. But a mere 21 percent of them think Republicans will actually carry it out if they take back power. And they wonder, if the danger of Project 2025's policies is so acute, "why Democrats don't seem to be speaking out about them or fighting back."

A messaging bill like Smith's Stop Comstock Act cannot on its own awaken the electorate to what's in store for us if a second Trump victory sweeps his emboldened Christian nationalist allies into power. But it can be part of a campaign to communicate the election's stakes. Smith knows that her bill won't get 60 votes to overcome a filibuster; this is a Senate, after all, where all but two Republicans voted against the Right to Contraception Act this month. But, she says, her bill is "such a clear organizing tool for showing people, including people who live in states like mine, or Nevada, for example," that even if their reproductive rights are protected now by state law, a future Trump administration could "wipe that away."

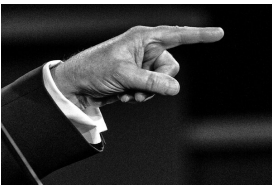
While the Stop Comstock Act may never reach Biden's desk, there's something he can do this moment to strike a public blow against the zombie law: pardon D.M. Bennett, a freethinking publisher and one of Comstock's nemeses, who in 1879 was sentenced to 13 months of hard labor for mailing an anti-marriage tract called "Cupid's Yokes." Petitioning the Biden administration, Robert Corn-Revere, chief counsel to the Foundation for Individual Rights and Expression, wrote, "By granting this pardon, the president would help right the injustice resulting from D.M. Bennett's wrongful prosecution and conviction, and at the same time send the important message that Victorian-era laws should not be revived to

undermine Americans’ individual rights.”
The message would in fact go further. It’s not just that laws from the 1800s shouldn’t be brought back to life, but that if Biden isn’t re-elected, they could be.

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Michelle Goldberg has been an Opinion columnist since 2017. She is the author of several books about politics, religion and women’s rights, and was part of a team that won a Pulitzer Prize for public service in 2018 for reporting on workplace sexual harassment.

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