



A public education and mobilization campaign

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## **SPECIAL ADVISORY**

### **What you need to know about the Comstock Act**

*GOP launches another assault on reproductive rights using antiquated laws*

Most of us have never heard of the Comstock Act. That’s not surprising, because it dates from 1873 and was named after an anti-abortion crusader, Anthony Comstock, who argued for prosecuting anyone who helped others get an abortion. That included anyone who provided abortion medication. The Comstock Act was never officially taken off the books; it was superseded by *Roe v. Wade*, which guaranteed the right to abortion.

What IS surprising is that Project 2025 and the radical right wing are now **reviving the Comstock Act**: they want to use it as a tool to ban the distribution of mifepristone, the drug used for medical abortions. With *Roe v. Wade* overturned, the radical right says that the Comstock Act is now valid again. It’s the law of the land, they claim.

They used that argument in a recent Supreme Court case where opponents of abortion tried to sue the Food and Drug Administration to ban mifepristone’s distribution by mail.<sup>1</sup> Before a 2021 FDA ruling, patients in some states were required to pick up the drug in person. During oral arguments, Justices Clarence Thomas and Samuel Alito appeared to agree that Comstock could be used to ban abortion pills.<sup>2</sup>

#### **Meanwhile, Project 2025 calls for a campaign against abortion drugs:**

*“Federal law prohibits mailing [e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion.’ Following the Supreme Court’s decision in Dobbs, **there is now no federal prohibition on the enforcement of this statute.** The Department of Justice in the next conservative Administration should therefore announce its intent to enforce federal law against providers and distributors of such pills.” (pg. 562)*

#### **That’s not all.**

The old Comstock laws also restricted distribution of pornography and other “indecent or immoral” items – by 1873 standards.<sup>3</sup> Meanwhile, Project 2025 states pornography is a crime, and equates transgender identity with porn. It also calls for criminalizing anyone promoting

The logo for GenDemocracy, featuring the word "Gen" in red and "Democracy" in blue, set against a black rectangular background.

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pornography, which, here could mean anyone promoting LGBTQIA+ content, like a librarian stocking gay-themed books. All of it spells a possible slippery slope in which conservatives could potentially seek to apply the old Comstock laws more widely.

While no one has specified banning sex toys or Viagra, Project 2025’s criminalization of abortion, pornography, and LGBTQIA+ identity and its conservative opposition to sexual education make its position amply clear. They will seek to eradicate or outlaw what they can.

**What’s the bottom line?**

**Unless Congress overturns the Comstock Act, America could be thrown back into the 19<sup>th</sup> century.**

**CALL YOUR SENATORS AND REPRESENTATIVES NOW:**

**Urge them to overturn Comstock now, before it’s too late!**

**And sign a petition. Here are two for you to take action:**

<https://www.change.org/p/petition-to-repeal-the-comstock-act-of-1873>

<https://actionnetwork.org/forms/sign-the-petition-congress-must-repeal-the-comstock-act?nowrapper=true&referrer=&source=>

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<sup>1</sup> *FDA v. Alliance for Hippocratic Medicine*. [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2023/23-235\\_p8k0.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-235_p8k0.pdf)

<sup>2</sup> <https://www.washingtonpost.com/opinions/2024/04/02/comstock-act-abortion-trump-alito-thomas/>

<sup>3</sup> Lock, Comstock and Barrel: In effort to strip abortion pill approval, Republican lawmakers brush off 150-year-old anti-vice law, *Courthouse News Service*, April 3, 2024.