

A Paper for the Defence of the Right to Reproductive Justice

The Democratic Party has steadfastly defended a woman's right to choose to have an abortion. However, the Bush Administration and their allies on the radical right have undermined the rights of all citizens to have access to proper reproductive healthcare by using bad science and specious labels such as "pre-born person" to elevate the rights of the fetus above those of women and men.¹ Instead of an autonomous person in control of her body, a pregnant woman is relegated to the status of "receptacle" for a fetus. "Fetal rights" have stopped critical stem cell research, resulting in unnecessary pain and death for thousands of men and women suffering from Parkinson's, diabetes, and heart disease. And confusion between contraception and abortion, again meant to protect the "pre-born person," has denied women access to emergency contraception, resulting in unwanted pregnancies, and, ironically, additional abortions. It is no longer enough to talk about abortion rights or even women's rights. It is time to recognize the human right of reproductive justice and to take all necessary steps to protect it.

- ***The Right to Accurate, Science-Based, Reproductive Health Information***

By invidiously promoting religious goals at the expense of sound health practices, the Bush Administration has funded the use of inaccurate, judgmental, and incomplete sexual education materials in our public schools. Under three separate federal programs, States receive public money for sex education curricula that promote only "abstinence-before-marriage." Other means of contraception or disease prevention can be discussed only in terms of their failure rates. A study undertaken on behalf of Representative Henry Waxman has found that eleven out of thirteen curricula studied contained distortions, false and misleading information about the risks of abortion and sexual activity, and outdated stereotypes of male and female behavior. Further, they blurred the line between religion and science, in addition to containing gross scientific errors.² Unsurprisingly, students who have been subjected to this non-education are more likely to be at risk for pregnancy and sexually transmitted diseases (STD), recklessly placing our young men and women in jeopardy.³ Furthermore, the use of these religious-based materials clearly infringes on our right to religious choice and decimates the constitutional separation of church and State.

¹ For example, the Unborn Victims of Violence Act (UVVA) defines an "unborn child" as a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.'" Under this definition, a zygote has the same legal status as an adult woman for the purposes of the law.

² United States House of Representatives, Committee on Government Reform –Minority Staff Special Investigations Division, ***The Content of Federally Funded Abstinence-Only Education Programs***, December 2004 (Prepared for Rep. Henry A. Waxman)

³ Id. at 4, note 15.

To counteract this dangerous trend, Senator Frank Lautenberg (D-NJ) and Representative Barbara Lee (D-CA) introduced the Responsible Education About Life Act (REAL). The purpose of REAL is to “provide for the reduction of adolescent pregnancy, HIV rates, and other sexually transmitted diseases” by funding Family Life Programs that are age-appropriate, medically appropriate, and based on scientifically accurate information.⁴ While stating that abstinence is the most effective form of contraception and disease prevention, REAL recognizes that our children need, and deserve, reliable and accurate information before making major life decisions.

- ***The Right to Have Access to Contraception***

Contraception can save lives. Unwanted pregnancies can pose a serious health risk to women that they shouldn't be forced to take. Further, contraception can prevent the spread of STDs among both men and women. Even more important, however, contraception allows women the right to determine the course of their own lives, rather than being enslaved by their biology. It is a basic component of reproductive health.

The right to have access to contraception has been enshrined in a long line of cases starting with *Griswold v. State of Connecticut*. However, not all women have access to contraception because of cost. As of June 2005, only 23 states required health insurance coverage for contraception.⁵ But these laws frequently have opt-out clauses for religious or moral reasons, or else they do not apply to self-insuring companies.

And of course, they afford no help at all to the millions of women without health insurance. For that, many women have to look to Title X clinics.

Title X clinics provide a broad range of health services, including family planning,⁶ to millions of women, regardless of ability to pay. These clinics have been

⁴ H.R. 768, §3 (b).

⁵ The lack of insurance coverage for contraceptives contrasts sharply with the availability of insurance for Viagra. “Within two months of its entrance into the U.S. market, more than one half of the prescriptions for Viagra received insurance coverage. Such coverage has yet to be extended to reversible contraceptive methods, prompting national organizations such as the American College of Obstetricians and Gynecologists and Planned Parenthood Federation of America to condemn the gender bias in prescription coverage.” See Planned Parenthood Federation of America, Inc., **Fact Sheet: Equity in Prescription Insurance and Contraceptive Coverage**, May, 2002, www.plannedparenthood.org.

⁶ Title X clinics are specifically prohibited from performing abortions. In addition to family planning, they provide comprehensive well-women care, including PAP smears and breast examinations, and often refer women to specialists for other health problems. For a comprehensive report on Title X

especially important in preventing teen pregnancy. According to the Alan Guttmacher Institute, without these services an additional 385,800 teenagers would become pregnant each year. Of these, 154,700 would have given birth, increasing the number of teen births by one-quarter. A total of 183,300 teenagers would have had abortions, increasing teen abortions by 58 percent.⁷

Yet Congress has never fully funded Title X clinics, and the Bush Administration has repeatedly recommended level-funding the program, and once even recommended an \$8 million decrease.⁸ According to NARAL,

If Title X funding had increased at only the rate of inflation from its FY'1980 funding level of \$162 million, it would now be funded at more than \$643 million. Title X's funding level is less than half that amount \$288 million. At a minimum, Title X needs to be funded at \$350 million to maintain the quality services. Notwithstanding, the Bush Administration requested that Title X funding remain at \$278 million for FY '05.⁹

As it turned out, Congress funded Title X at \$288 million in FY '05,¹⁰ well below what is required, and just above what Bush proposed for "abstinence" programs the same year.¹¹ Furthermore, the Bush Administration has proposed changing the federal employees' health program to remove contraception from covered expenses in an effort to deny access to contraception to even more women.¹²

Assuming that a woman has sufficient cash, health insurance, or access to a fully functioning Title X clinic, there is still no guarantee that she will still be able to fill her prescription for it. The overwhelming majority of Americans believe that pharmacists should be required to fill prescriptions for contraception, regardless of the pharmacists' moral beliefs.¹³ The radical right has encouraged pharmacists to refuse to fill prescriptions for contraception, especially emergency contraception, deliberately misleading people to believe that they are preventing abortions. "Pharmacists for Life", an anti-choice organization,¹⁴ has been urging states to pass

clinics, see NARAL, Pro-Choice America Foundation, *Title X: The Nation's Cornerstone Federal Family Planning Program*, www.ProChoiceAmerica.org.

⁷ NARAL, Pro-Choice America Foundation, *Title X Family Planning Services*, www.ProChoiceAmerica.org.

⁸ The National Women's Law Center, *Slip-Sliding Away: The Erosion of Hard-Won Gains For Women Under the Bush Administration and an Agenda for Moving Forward*, April 2004, p. 36.

⁹ *Title X: The Nation's Cornerstone Federal Family Planning Program*, at p.8.

¹⁰ *Title X Family Planning Services*, at p. 2.

¹¹ *The Content of Federally Funded Abstinence-Only Education Programs*, at p.1.

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¹³ 88% of Americans opposed pharmacies refusing to fill prescriptions. See, *ACLU REPRODUCTIVE FREEDOM PROJECT, RELIGIOUS REFUSALS AND REPRODUCTIVE RIGHTS 2* (2002), citing Leslie Laurence, *The Hidden Health Threat That Puts Every Woman At Risk*, REDBOOK, July 2000, at 20

¹⁴ According to MediaMatters.org, "Pharmacists for Life" was founded by Karen Brauer, a pharmacist who was fired by K-Mart for refusing to fill a contraception prescription. Ms. Brauer admitted on *The*

“conscience clause” laws that would enable pharmacists to refuse to fill prescriptions for contraception on moral grounds, in the erroneous belief that they are preventing abortions.¹⁵ However, according to *Scientific American*, emergency contraception, “by medical definition” blocks pregnancy, and does *not* terminate it.¹⁶ Ironically, and tragically, the logical result of such a refusal will be increased abortions.¹⁷

Several Democratic lawmakers have introduced the Access to Legal Pharmaceuticals Act.¹⁸ This law would enable individual pharmacists to refuse to fill prescriptions, but require the pharmacy in which they work to fill the prescription within the same timeframe in which it would normally be filled. Further,

Pharmacists cannot prevent or deter an individual from filling a legal prescription for drugs or devices. Refusing to return or transfer a prescription is prohibited under the Access to Legal Pharmaceuticals Act. The pharmacist cannot harass, humiliate, or intentionally breach the confidentiality of the individual attempting to fill the prescription for birth control.¹⁹

It is questionable whether this law would be enforceable in small rural communities that might have only one pharmacist, but at least the federal law would enshrine a right of access to legal pharmaceuticals. Of course, the simple solution to the moral dilemma before the objecting pharmacist is to make emergency contraception available over the counter to all women.²⁰ This has been the

O'Reilly Factor that she had lied to the patient, saying that the drugs were not available. See <http://mediamatters.org/items/200503300002>.

¹⁵ See <http://www.pfli.org/main.php?pfli=conscienceclausefaq>. Presumably, this same line of thinking could lead to the refusal to fill prescriptions for pain relief if the pharmacist believes suffering to be good for the soul, or the withholding of anti-retroviral medication if the pharmacist agrees with Jerry Falwell that HIV is God's judgment against gays.

¹⁶ *Scientific American.com*, October 2005, editorial at <http://www.sciam.com/article.cfm?chanID=sa006&colID=2&articleID=000D528C-A545-1330-A54583414B7F0000>.

¹⁷ An analysis conducted by The Alan Guttmacher Institute estimates that 51,000 abortions were prevented by EC use in 2000, and that increased use of EC accounted for up to 43% of the total decline in abortion rates between 1994 and 2000. See, R Jones, J Darroch and S Henshaw, “Contraceptive Use Among U.S. Women Having Abortions in 2000-2001,” *Perspectives on Sexual and Reproductive Health*, November/December 2002. For a list of emergency contraceptive brands and dosages, see New York City Department of Health and Mental Hygiene, ***Emergency Contraception Brand/Dosage Chart***, <http://www.nyc.gov/html/doh/html/ms/ec-options.shtml>.

¹⁸ See website for Representative Diane Maloney, <http://www.house.gov/maloney/press/109th/20050414ALPHA.htm>.

¹⁹ *Id.*

²⁰ “Emergency contraceptive pills (ECPs), the most commonly used method of EC, are ordinary birth control pills that reduce a woman's chance of becoming pregnant by up to 89 percent when taken within days of unprotected sex. Because ECPs are safe, effective, and easily self-administered, they are suitable for over-the-counter (i.e. non-prescription) availability.” NARAL Pro-Choice America Foundation, ***Emergency Contraception (EC) is Key to Reducing the Teen Pregnancy Rate***.

recommendation of the FDA's medical advisory board since December 2003. However, on 26 August 2005, the FDA again postponed approval of the plan, saying instead, for purely political and non-scientific reasons, that it needs to investigate further whether emergency contraception should be non-prescription for women over 16, and remain prescription-only for those 16 and under.²¹

Obviously, the Bush Administration has declared war on the right to have access to contraception. It is equally obvious that Democrats must fight just as hard to keep contraception accessible to all women.

- ***The Right to a Safe Abortion***

It is not easy to have an abortion.²² Each abortion is the result of a painful decision-making process between a woman and her physician. There are probably as many reasons to have an abortion as there are women who have had abortions. Sometimes it is to preserve the health or life of the mother. Sometimes it is because the child is the result of rape or incest. Sometimes it is the result of a sad but wise recognition that a woman is not ready to have a child, or cannot hope to support one because of her economic situation. Whatever the reason, the Supreme Court has enshrined a woman's right to an abortion. However, ever since *Roe v. Wade*, the radical right has been whittling away at that right, with sometimes deadly results.

Since 1993, seven clinic workers—including three doctors, two clinic employees, a clinic escort, and a security guard—have been murdered in the United States.²³ Abortion providers are subjected to bombings and arsons, shootings, anthrax threats, and other acts of violence and vandalism.²⁴ Although the Freedom of Access to Clinic Entrances Act (FACE), passed in 1994, has resulted in decreases in offenses against clinics, particularly blockades, there are still persistent trends of crimes against abortion clinics.²⁵ Law officials at state and federal levels must take seriously their responsibility to enforce FACE and other related laws.

But assuming that it is safe to go to an abortion clinic, there is no guarantee that there will be a doctor available to perform an abortion. According to the most recent survey by the Alan Guttmacher Institute, 87% of counties in the United States

²¹ See FDA Statement, <http://www.fda.gov/bbs/topics/news/2005/NEW01223.html>.

²² "There is a misconception that women take the decision to terminate a pregnancy lightly. Women's primary reasons for making this difficult decision are based on a lack of resources in light of their current responsibilities. Typically, more than one reason drives the decision, and these reasons are frequently interrelated." Statement by Lawrence B. Finer, Associate Director for Domestic Research, The Alan Guttmacher Institute, 6 September 2005, "Why Do Women Have Abortions?" <http://www.guttmacher.org/media/nr/2005/09/06/index.html>.

²³ See, NARAL Pro-Choice America, *Clinic Violence and Intimidation*, www.ProChoiceAmerica.org.

²⁴ Id.

²⁵ See, National Abortion Foundation, *About Abortion: Clinic Violence*, http://www.prochoice.org/about_abortion/myths/index.html.

have no identified abortion provider; in rural areas, that figure rises to 97%.²⁶ Of course, threats of violence is a powerful deterrent to practitioners; others include is the lack of training in first trimester abortions for new doctors.²⁷

Of course, without insurance, it is difficult to finance an abortion. But more than two-thirds of women must pay for their abortions themselves.²⁸ Medicaid funds cannot be used to pay for abortions, and only 13% of procedures are covered by private insurance at the time of the abortion.²⁹ Four states “restrict insurance coverage of abortion in private insurance plans to cases in which the woman’s life would be endangered if the pregnancy were carried to term. Additional abortion coverage is permitted only through purchase of an additional rider and payment of an additional premium.”³⁰ Eleven states restrict abortion coverage in plans for public employees.³¹

In addition to these barriers, 29 states require that women receive counseling before an abortion may be performed.³² Six states also require that specific “information” must be given, including misinformation on a purported “link” between abortion and breast cancer.³³ Twenty-three states also require waiting periods.³⁴

These barriers to abortion chip away at the rights enunciated in *Roe v. Wade*. More important, they are contrary to mainstream medical opinion. The American Medical Association, the American College of Obstetricians and Gynecologists, and the American Medical Women’s Association have all opposed these artificial barriers to safe and legal abortion.³⁵ These respected medical bodies recognize that limiting access to abortions places women’s health and lives at risk.

Two cases before the Supreme Court will have a critical impact on the right to abortion. The first, *Ayotte v. Planned Parenthood of New England*, will determine the constitutionality of a state abortion law that contains no exception allowing an

²⁶ See, National Abortion Foundation, *Access to Abortion*, http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/access_abortion.pdf.

²⁷ “A survey in 1998 revealed that first trimester abortion techniques are a routine part of training in only 46% of America’s ob/gyn residency programs. About 34% offer this training only as an elective, and 7% provide no opportunity at all for young doctors to learn to do safe abortions.” *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Guttmacher Institute, *State Policies in Brief: Restricting Insurance Coverage of Abortion*, October 1, 2005, http://www.guttmacher.org/statecenter/spibs/spib_RICA.pdf.

³¹ *Id.*

³² Guttmacher Institute, *State Policies in Brief: Mandatory Counseling and Waiting Periods for Abortion*, October 11, 2005.

³³ *Id.*

³⁴ *Id.*

³⁵ NARAL Pro-Choice America, *Leading Medical Groups Oppose Obstacles to Abortion*.

abortion when a woman's health is at risk. It will also determine whether a woman must sustain actual harm to her health before raising the issue before a court. It will also hear *Scheidler v. National Organization for Women*, and will determine whether abortion clinics can sue anti-abortion protesters under federal anti-racketeering laws (RICO). If the Court rules against abortion rights in either of these cases, Democrats must be ready to take whatever legislative action is necessary to reverse their holdings.

Furthermore, the Bush Administration has escalated its war against abortion even beyond national borders. Ronald Reagan instituted the Global Gag Rule, officially known as the Mexico City Policy, in 1984. Under the policy, the United States refused to fund international family planning-related agencies if they provided abortion services (even including directing the women to another agency) in cases not involving rape, incest, or danger to the life of the mother, or lobbying for the legalization of abortion in their country. This outrageous intrusion in other nations' sovereignty was continued by the first President Bush, overturned by President Clinton, and re-instated by George W. Bush on his first day in office. The lack of funding, as well as loss of technical assistance and US-donated contraceptives, including condoms, has directly contributed to the millions of unsafe abortions performed around the world, the spread of HIV and other STDs, and the birth of millions of unwanted children.³⁶

It is time for Democrats to take a stand to strip away these barriers. It is not enough to espouse a belief in a right; it is necessary to defend it. Democratic legislators at federal and state level should be encouraged to pass laws that strengthen the rights embedded in *Roe v. Wade*. Insurance companies should be required to cover abortion, just as they cover all other aspects of women's reproductive health. Doctors and other reproductive health workers need to be safe in their clinics and their homes. Unnecessary waiting limits and requirements for misleading information need to be abolished. Only when these things are accomplished can there be a real right to abortion.

- ***The Right to a Healthy Childhood***

A right to reproductive health includes the right to a healthy childbirth experience. This means that all women, regardless of ability to pay, should have access to excellent health care before, during, and after their pregnancy. Furthermore, their children should have the right to adequate medical care, nutrition, education, and housing. This isn't merely altruism; for the sake of our nation, we need a healthy, educated citizenry. However, the Bush Administration, in order to finance its tax cuts, has slashed the very programs that promote these

³⁶ See, Resist, *World Choking on the Gag Rule*, September/October 2005 Newsletter, <http://www.resistinc.org/newsletter/issues/2005/09/index.html>.

rights. And after Katrina, the situation will only get worse, as Congressional Republicans use hurricane disaster funding as an excuse to further cripple basic social programs.³⁷ Democrats must be firm in their resolve to defend the rights of our most vulnerable citizens.

Recommendations for Action by the Democratic Party

- ***Support the passage of REAL***
- ***Fight for full funding of Title X clinics***
- ***Remove legislative barriers to insurance for contraception and abortions***
- ***Support passage of the Access to Legal Pharmaceuticals Act***
- ***Urge the FDA to permit over-the-counter sales of emergency contraception to all women***
- ***Support the repeal of waiting periods and counseling requirements for abortions***
- ***Demand vigorous enforcement of FACE***
- ***Repeal the current definition of “unborn child” in the UVVA***
- ***Fight for funding for basic social programs that ensure the health, education, nutrition, and housing of mothers and children***
- ***Fight the ban on fetal stem cell research***
- ***Monitor Ayotte and Scheidler, and demand legislative remedies if the Supreme Court further restricts abortion rights***
- ***Fight to repeal the global gag rule.***

³⁷ “Prodded by self-proclaimed budget hawks, the House speaker, Dennis Hastert, suddenly wants to up the ante in Congress’s budget plan – to \$50 billion from \$35 billion—for five years of cuts in basic programs. Billions for food stamps, Medicaid [,] and welfare reform would be lopped off.” International Herald Tribune, ***Budget Cowardice***, Editorial, October 14, 2005.

