



# Contraceptives & Emergency Contraception

Contraceptives, commonly known as birth control, are devices or drugs designed to prevent pregnancy.<sup>1</sup> Contraceptives include birth control pills, condoms, intrauterine devices, sterilization, and emergency contraception.<sup>2</sup>

## Constitutional Right to Contraceptives

In 1965, the Supreme Court ruled that the constitutional right to privacy protects a married couples' access to contraceptives.<sup>3</sup> This right was extended to unmarried individuals in 1972<sup>4</sup> and to minors in 1977.<sup>5</sup>

## Contraceptive Coverage by Private Health Insurance

“Contraceptive equity” is parity in insurance coverage between FDA-approved contraceptives and other prescription drugs and devices.<sup>6</sup>

- The majority of employer-based health insurance plans provide coverage of leading contraceptive methods, like oral contraception.<sup>7</sup> Nonetheless, there are significant gaps in coverage. Some plans do not cover the full range of contraceptives.<sup>8</sup> In some states, employers may opt out of providing contraceptive coverage on religious grounds.<sup>9</sup> Finally, contraceptive equity laws do not apply to “self-funded” insurance plans, in which employers use their own funds to pay employee health care claims.<sup>10</sup>
- Unequal prescription coverage contributes to women of reproductive age spending 68% more in out-of-pocket health care costs than men.<sup>11</sup>
- Twenty-eight states require insurance plans that cover prescription drugs to cover FDA-approved contraceptives.<sup>12</sup> Twenty of these states, however, provide employer exceptions.<sup>13</sup>
- With the passage of the **Patient Protection and Affordable Care Act**,<sup>14</sup> signed by President Obama in March 2010, any private insurance plan written after September 23, 2010,<sup>15</sup> must cover several categories of preventative services, including preventative care and screenings for women.<sup>16</sup> As of July 2011, a panel at the Institute of Medicine is developing guidelines to determine whether preventative care coverage will include contraception-related services.<sup>17</sup> Among the factors cited by reproductive health advocates in support of contraception coverage are: evidence of significant health benefits associated with planned and intended pregnancies; precedent set by other federal and state health programs; cost-effectiveness of pregnancy-prevention services.<sup>18</sup>
- In 2011, however, House Republicans introduced the Protect Life Act,<sup>19</sup> which would prevent the Affordable Care Act from pre-empting any state law having to do with “conscience rights”.<sup>20</sup> If the Protect Life Act passes, states could exempt insurance plans from contraceptive coverage requirements.<sup>21</sup> As of July 2011, there has been no vote on the Act.<sup>22</sup>

Because of litigation, legislation, and grassroots campaigns, most insurance plans with drug coverage must also cover contraceptives:

- In *Erickson v. Bartell*, Plaintiffs relied on Title VII of the Civil Rights Act<sup>23</sup> (prohibiting employment discrimination on the basis of sex) to successfully argue that exclusion of contraceptive drugs from an employer-based drug plan constituted unlawful sex discrimination.<sup>24</sup>
- Commissions or attorneys general in MI, MO, and WI have ruled that state employment sex-discrimination laws require employer-based health insurance plans to cover contraception services.<sup>25</sup>
- A student-led campaign persuaded George Washington University to change its contraceptive coverage policy.<sup>26</sup> The students argued that Title IX<sup>27</sup> (prohibiting sex discrimination in education) required full contraceptive coverage at federally-funded universities.<sup>28</sup>

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## Contraceptive Coverage by Public Health Insurance

- Medicaid is the largest source of funding for subsidized family planning services.<sup>29</sup> One of the few federal requirements for state Medicaid programs is that they cover family planning services, like birth control prescriptions and sterilization procedures..<sup>30</sup>
- Twenty-eight states have received federal approval to extend Medicaid eligibility for family planning services to individuals who are otherwise ineligible for Medicaid.<sup>31</sup> States that extended eligibility under an older “waiver” system have seen reductions in unintended pregnancies; increased access to and use of contraceptives; increased intervals between births; delayed first births; increased access to pre-natal services; and increased savings.<sup>32</sup> The Affordable Care Act has streamlined the federal approval process and will thus likely increase the number of states with expanded Medicaid programs.<sup>33</sup>
- Every \$1 invested in publicly funded family planning services saves \$4.02 in pregnancy-related Medicaid expenditures.<sup>34</sup>
- **Title X of the Public Health Services Act** helps fund family planning programs and clinics.<sup>35</sup> In 2008, Title X-funded clinics helped prevent about 973,000 unintended pregnancies.<sup>36</sup> If funding had kept pace with medical inflation since 1980, in 2008, Title X would have received \$759 million.<sup>37</sup> Instead, Title X received \$300 million for the 2008 fiscal year,<sup>38</sup> and because of a recent Republican-backed 5.5% cut, it will only receive \$299 million for the 2011 fiscal year.<sup>39</sup>

## Coercive Uses of Contraceptives

- Judges in the criminal justice system have coerced or even ordered convicted women to use contraception. In 1988, an Indiana judge told a woman that although he could not require her to be sterilized, he would impose a lighter sentence if she did so.<sup>40</sup> She complied with his “request” and was sentenced to ten years instead of twenty.<sup>41</sup> In 1991, a California judge conditioned a woman’s probation on her use of Norplant, a long-term method of contraception.<sup>42</sup>
- Trial-level judges continue to impose procreation-limiting conditions, but because these conditions are rarely appealed, little data exists as to their prevalence.<sup>43</sup> Data collected in 2004, however, has found instances of imposed conditions in twenty-one states.<sup>44</sup>
- Project Prevention, founded in California in 1994, offers to pay money to alcohol- and drug-addicted women if they get sterilized or use long-term birth control.<sup>45</sup> As of October 2010, Project Prevention has made paid 3,647 women and 59 men in all fifty states and the District of Columbia.<sup>46</sup>

## Emergency Contraception (EC)

Emergency contraception (EC) is any method of back-up birth control that is used after sexual intercourse to prevent pregnancy.<sup>47</sup> There are two main types of EC:

- An **intrauterine device (IUD)** is a small t-shaped device that is inserted into the uterus.<sup>48</sup> It can be hormonal or non-hormonal.<sup>49</sup> It works either by preventing fertilization or by preventing the fertilized egg from attaching to the uterine wall.<sup>50</sup> If the IUD is inserted within five days of intercourse, the woman has only a .1% chance of becoming pregnant.<sup>51</sup> The IUD can also be used as a method of birth control.<sup>52</sup>
- **Emergency Contraception Pills (ECPs)** are high doses of hormones that are taken orally up to five days following intercourse.<sup>53</sup> ECPs are similar to birth control pills in that they prevent pregnancy by inhibiting ovulation.<sup>54</sup> There are three types of ECPs:
  - Some progestin-only medications, like **Plan B and Next Choice**, are designed specifically for use as ECPs.<sup>55</sup>

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- **Regular birth control pills** can be taken in higher doses.<sup>56</sup>
- A recently-approved ECP, **Ella**, inhibits the production of progesterone to prevent ovulation.<sup>57</sup>
- A woman taking ECPs in the first seventy-two hours following intercourse has a 1% risk of becoming pregnant if she takes Plan B, Next Choice, or progestin-only birth control pills;<sup>58</sup> a 2% risk if she takes birth control pills with progestin and estrogen;<sup>59</sup> and a 1.9% risk if she takes Ella.<sup>60</sup>
- Because EC is more effective the earlier it is taken, doctor recommend that women obtain EC before they need it, so that it can be on hand in case of unprotected intercourse or contraceptive failure.<sup>61</sup>
- **Emergency contraception is a type of birth control. It is not an abortion pill and will not terminate an existing pregnancy.**<sup>62</sup>

### Availability of EC

- In 2006, the Food and Drug Administration (FDA) approved the over-the-counter sale of Plan B to individuals eighteen years and older.<sup>63</sup> In *Tummino v. Torti* (2009), a federal district court ordered the FDA to make Plan B available over-the-counter to individuals seventeen and older.<sup>64</sup> Ella is only available by prescription.<sup>65</sup>
  - In *Tummino*, the court also remanded the case to the FDA for reconsideration of all age restrictions,<sup>66</sup> but as of July 2011, the FDA has not changed its policy.<sup>67</sup>
- There is no medical reason for prohibiting women under sixteen from obtaining over-the-counter EC.<sup>68</sup> EC is safe and effective for all women, and the availability of EC does not increase sexual risk-taking or decrease contraceptive use.<sup>69</sup>
- To obtain EC, the purchaser must present government-issued identification to show proof of age.<sup>70</sup> This requirement poses a particular barrier for immigrants without identification.<sup>71</sup>
  - If the individual requesting EC does not have proper identification, the pharmacy will usually require a prescription.<sup>72</sup> In nine states, however, “Pharmacy Access” programs allow pharmacists to prescribe EC regardless of age, if doing so is medically appropriate.<sup>73</sup>
- EC is available only from licensed drug wholesalers, pharmacies, and family planning clinics with licensed healthcare providers.<sup>74</sup> It is not available at convenience stores or non-pharmacy retail operations.<sup>75</sup> All major pharmacy chains carry EC.<sup>76</sup> Clinics like Planned Parenthood often use a sliding scale pricing method.<sup>77</sup>
- Because doctors rarely provide EC information, many women may not know of its availability.<sup>78</sup>
  - Princeton University and the Association of Reproductive Health Professionals have created the Emergency Contraception Website ([www.not-2-late.com](http://www.not-2-late.com)) to make information about emergency contraception more readily available.<sup>79</sup>
- Many Catholic-affiliated hospitals will not dispense emergency contraception, even in cases of sexual assault.<sup>80</sup> Since emergency contraception is most effective in the twenty-four hours following intercourse,<sup>81</sup> religious hospitals’ refusal to provide comprehensive treatment puts rape survivors at risk for unintended pregnancy, which can further traumatize them. For more information on EC and Catholic hospitals, see LSRJ’s religious hospitals fact sheet.<sup>82</sup>

### Pharmacist Contraceptive Refusals

Increasingly, pharmacists who personally object to the use of birth control pills or EC are refusing to dispense these medications.<sup>83</sup>

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- There have been reports of pharmacist refusals in at least twenty-four states.<sup>84</sup> Pharmacist refusals especially burden rural and low-income women, who may find it more difficult to travel to another pharmacy.<sup>85</sup>
- Six states (AR, AZ, GA, ID, MS, and SD) have laws or regulations that allow pharmacists to refuse to provide contraceptives, without protecting patient access through referrals or prescription transfers.<sup>86</sup> As of July 2011, however, Arizona's law has been enjoined and is not in effect.<sup>87</sup>
- As of July 2011, three states (IN, MO, and PA) have considered similar bills.<sup>88</sup> Missouri's bill even classifies EC, incorrectly, as an abortion pill.<sup>89</sup>

Laws and policies in certain states, however, protect patient access:

- Eight states (CA, IL, ME, MA, NV, NJ, WA, and WI) explicitly require pharmacists to provide contraceptives.<sup>90</sup>
- Pharmacy boards in seven states (AL, DE, NY, NC, OR, PA, and TX) have issued policy statements that prohibit pharmacists from obstructing patient access to medication.<sup>91</sup> These policies, however, still allow pharmacist refusals, and they are not legally binding.<sup>92</sup>
- In May 2010, legislators in both the House of Representatives and the Senate introduced the **Access to Birth Control Act**.<sup>93</sup> It did not come up for debate in either chamber, but will likely be reintroduced in the 112<sup>th</sup> Congress.<sup>94</sup> The Act requires pharmacists to provide any contraceptive, including over-the-counter EC, without delay.<sup>95</sup> If the prescription is not in stock, pharmacists must locate another pharmacy and refer the patient or transfer the prescription.<sup>96</sup> Pharmacists are prohibited from intimidating, threatening or harassing individuals seeking medication, and they may not misinform customers about the medication's availability or mechanism of action.<sup>97</sup>

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<sup>1</sup> OXFORD DICTIONARIES, <http://oxforddictionaries.com/definition/contraceptive?region=us> (last visited July 7, 2011).

<sup>2</sup> *Birth Control Methods*, WOMENSHEALTH.GOV, <http://www.womenshealth.gov/faq/birth-control-methods.cfm#a> (last updated Mar. 6, 2009).

<sup>3</sup> *Griswold v. Connecticut*, 381 U.S. 479, 515-16 (1965).

<sup>4</sup> *Eisenstadt v. Baird*, 405 U.S. 438, 443 (1972).

<sup>5</sup> *Carey v. Population Servs. Int'l*, 431 U.S. 678, 700 (1977).

<sup>6</sup> *CLUW for Contraceptive Equity Now*, COAL. OF LABOR UNION WOMEN, <http://www.cluw.org/contraceptive.html> (last updated Dec. 26, 2010).

<sup>7</sup> *Quality of Healthcare Access for Women Study*, ASSOC. OF REPROD. HEALTH SPECIALISTS, <http://www.arhp.org/publications-and-resources/studies-and-surveys/healthcare-access-survey> (last visited July 7, 2011).

<sup>8</sup> Newer or advanced methods of contraception are less likely to be available in employer-based insurance plans. *Id.*

<sup>9</sup> *Contraceptive Equity Laws in Your State: Know Your Rights—Use Your Rights, A Consumer Guide*, NAT'L WOMEN'S LAW CTR., <http://www.nwlc.org/resource/contraceptive-equity-laws-your-state-know-your-rights-use-your-rights-consumer-guide-o> (last updated Nov. 10, 2010).

<sup>10</sup> *Id.*

<sup>11</sup> *Walker's Attack on Contraceptive Equity*, NARAL PRO-CHOICE WISCONSIN, <http://www.prochoicewisconsin.org/issues/factsheets/201103251.shtml> (last updated Mar. 25, 2011).

<sup>12</sup> GUTTMACHER INSTITUTE, STATE POLICIES IN BRIEF: INSURANCE COVERAGE OF CONTRACEPTIVES 1 (2011), available at [http://www.guttmacher.org/statecenter/spibs/spib\\_ICC.pdf](http://www.guttmacher.org/statecenter/spibs/spib_ICC.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> Patient Protection and Affordable Care Act, 111 P.L. 148, 124 Stat. 119 (2010) (to be codified as amended in scattered sections of I.R.C. and 42 U.S.C.).

<sup>15</sup> 111 P.L. 148 § 1004(a).

<sup>16</sup> § 2713(a)(4). For a fuller discussion of contraception coverage under the Affordable Care Act, see Adam Sonfield, *Contraception: An Integral Component of Preventative Care for Women*, 13 GUTTMACHER POLICY REVIEW, Spring 2010, at 1,1, available at <http://www.guttmacher.org/pubs/gpr/13/2/gpr130202.html>.

- <sup>17</sup> *The Affordable Care Act and Reproductive Health: What's at Stake*, NAT'L WOMEN'S LAW CTR., <http://www.nwlc.org/resource/affordable-care-act-and-reproductive-health-what%E2%80%99s-stake> (last updated Mar. 3, 2011).
- <sup>18</sup> George Dreweke, *Contraception Should be Among Women's Preventative Health Services that are Covered Without Cost Sharing*, GUTTMACHER INST. MEDIA CTR. (June 3, 2010), <http://www.guttmacher.org/media/nr/2010/06/03/index.html>.
- <sup>19</sup> Protect Life Act, H.R. 358, 112<sup>th</sup> Cong. (2011).
- <sup>20</sup> H.R. 358 § 2(c)(5)(C). For an explanation of how language in this section applies to contraceptive coverage, see Sarah Sterling, *H.R. 358 is Part of House Republican Leadership War on Contraception*, RH REALITY CHECK (Feb. 16, 2011, 10:26 AM), <http://www.rhrealitycheck.org/blog/2011/02/16/part-house-republican-leadership-contraception>.
- <sup>21</sup> Sterling, *supra* note 20.
- <sup>22</sup> To track the progress of this bill, visit *H.R. 358: Protect Life Act*, GOVTRACKS.US, <http://www.govtrack.us/congress/bill.xpd?bill=h112-358> (last visited July 5, 2011).
- <sup>23</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. (1964).
- <sup>24</sup> *Erickson v. Bartell*, 141 F. Supp. 2d 1266, 1276-77 (W.D. Wash. 2001).
- <sup>25</sup> NAT'L WOMEN'S LAW CTR., *Contraceptive Equity Laws*, *supra* note 9.
- <sup>26</sup> Tricia Parker, *GW Health Plan to Cover Birth Control*, GW HATCHET, Sept. 3, 2002, available at <http://media.www.gwhatchet.com/media/storage/paper332/news/2002/09/03/News/Gw.Health.Plan.To.Cover.Birth.Control-265566.shtml>.
- <sup>27</sup> Title IX of the Civil Rights Restoration Act of 1987, 20 U.S.C.S. § 1681 (1988).
- <sup>28</sup> Parker, *supra* note 26.
- <sup>29</sup> NAT'L CAMPAIGN TO PREVENT TEEN AND UNPLANNED PREGNANCY, POLICY BRIEF: STRENGTHENING MEDICAID FAMILY PLANNING 1 (Jan. 2009), available at [http://www.thenationalcampaign.org/resources/pdf/Briefly\\_PolicyBrief\\_Medicaid\\_FamPlan.pdf](http://www.thenationalcampaign.org/resources/pdf/Briefly_PolicyBrief_Medicaid_FamPlan.pdf).
- <sup>30</sup> HENRY K. KAISER FAMILY FOUND. & GUTTMACHER INST., WOMEN'S ISSUE BRIEF, AN UPDATE ON WOMEN'S HEALTH POLICY, MEDICAID'S ROLE IN FAMILY PLANNING 2 (Oct. 2007), available at [http://www.guttmacher.org/pubs/IB\\_medicaidFP.pdf](http://www.guttmacher.org/pubs/IB_medicaidFP.pdf).
- <sup>31</sup> GUTTMACHER INST., STATE POLICIES IN BRIEF: MEDICAID FAMILY PLANNING ELIGIBILITY EXPANSIONS 1 (June 1, 2011), available at [http://www.guttmacher.org/statecenter/spibs/spib\\_SMFPE.pdf](http://www.guttmacher.org/statecenter/spibs/spib_SMFPE.pdf).
- <sup>32</sup> ADAM SONENFIELD ET AL., GUTTMACHER INST., ESTIMATING THE IMPACT OF EXPANDING MEDICAID ELIGIBILITY FOR FAMILY PLANNING SERVICES: 2011 UPDATE 1, 4-5 (Jan 2011), available at <http://www.guttmacher.org/pubs/Medicaid-Family-Planning-2011.pdf>.
- <sup>33</sup> *Id.* at 5-6.
- <sup>34</sup> *Family Planning Facts*, NAT'L FAMILY PLANNING AND REPROD. HEALTH ASS'N, [http://www.nfprha.org/main/family\\_planning.cfm?Category=Main&Section=Main](http://www.nfprha.org/main/family_planning.cfm?Category=Main&Section=Main) (last updated July 1, 2011).
- <sup>35</sup> Title X of the Public Health Services Act, 42 U.S.C. § 300 (1970).
- <sup>36</sup> *The Title X Family Planning Program: Providing Critical Reproductive Health Care to Millions of Women*, NAT'L WOMEN'S LAW CTR., <http://www.nwlc.org/resource/title-x-family-planning-program-providing-critical-reproductive-health-care-millions-women> (last updated Apr. 6, 2011).
- <sup>37</sup> NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES, TITLE X (TEN) FAMILY PLANNING PROGRAM, ADDRESSING THE CRITICAL NEED FOR SUBSIDIZED REPRODUCTIVE HEALTH SERVICES 4 (Sept 2008), available at [http://www.nationalpartnership.org/site/DocServer/Health\\_Repro\\_Title\\_X\\_Backgrounder\\_080901.pdf?docID=4021](http://www.nationalpartnership.org/site/DocServer/Health_Repro_Title_X_Backgrounder_080901.pdf?docID=4021).
- <sup>38</sup> *Id.*
- <sup>39</sup> Susan A. Cohen, *The Numbers Tell the Story: The Reach and Impact of Title X*, 14 GUTTMACHER INST. POLICY REVIEW, Spring 2011, at 20, 20, available at <http://www.guttmacher.org/pubs/gpr/14/2/gpr140220.pdf>.
- <sup>40</sup> Rachel Roth, *No New Babies? Gender Inequality and Reproductive Control in the Criminal Justice and Prison Systems*, 12 Am. U.J. Gender Soc. Pol'y & L. 391, 407 (2004). The judge said, "She has no need for any more children. I can't order this, but she could consider sterilization. It would be a mitigating circumstance." *Id.*
- <sup>41</sup> Assoc. Press, *Woman Who Was Sterilized for Lighter Sentence Says She's Angry*, N.Y. TIMES, Sept. 25, 1988, available at <http://www.nytimes.com/1988/09/25/us/plan-to-sterilize-woman-is-debated.html>.
- <sup>42</sup> *People v. Johnson*, No. F015316, 1992 WL 685375 (Cal. Ct. App. 1992).
- <sup>43</sup> Joanna Nairn, *Is There a Right to Have Children? Substantive Due Process and Probation Conditions that Restrict Reproductive Rights*, 6 STAN. J.C.R. & C.L., 2010, at 1, 9.
- <sup>44</sup> Roth, *supra* note 40, at 406.
- <sup>45</sup> *Objectives*, PROJECT PREVENTION, <http://projectprevention.org> (last visited July 1, 2011). In 2009, women received \$300 if they were sterilized. For an intrauterine device, women received \$75 at insertion, \$100 at the six-month check-up, and \$125 at the end of the year and for every year after that. Sandy Banks, *A Tough Approach to Drug-using Mothers*, L.A. TIMES, Oct. 17, 2009, available at <http://articles.latimes.com/2009/oct/17/local/me-banks17>.

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- <sup>46</sup> *Statistics*, PROJECT PREVENTION, <http://projectprevention.org/statistics> (last updated Oct. 17, 2010).
- <sup>47</sup> *Emergency Contraception (Emergency Birth Control)*, WOMEN'SHEALTH.GOV, <http://www.womenshealth.gov/faq/emergency-contraception.cfm> (last updated May 15, 2009).
- <sup>48</sup> *Id.*
- <sup>49</sup> *IUD*, PLANNED PARENTHOOD, <http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm> (last visited July 1, 2011).
- <sup>50</sup> WOMEN'SHEALTH.GOV, *Emergency Contraception*, *supra* note 47.
- <sup>51</sup> *Id.*
- <sup>52</sup> *Id.*
- <sup>53</sup> *Id.*
- <sup>54</sup> *Id.* It is possible that ECPs work to prevent the fertilized egg from attaching to the wall of the uterus, but the latest research suggests otherwise. *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> *Id.*
- <sup>57</sup> News Release, U.S. Food & Drug Admin, FDA approves ella™ tablets for prescription emergency contraception (Aug. 13, 2010), available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm224228.htm>.
- <sup>58</sup> PLAN B STEP ONE, HIGHLIGHTS OF PRESCRIBING INFORMATION, U.S. FOOD & DRUG ADMIN 6 (2009), available at [http://www.accessdata.fda.gov/drugsatfda\\_docs/label/2009/021998lbl.pdf](http://www.accessdata.fda.gov/drugsatfda_docs/label/2009/021998lbl.pdf).
- <sup>59</sup> WOMEN'SHEALTH.GOV, *Emergency Contraception*, *supra* note 47. Although the website does not provide a timeframe for the effectiveness of regular birth control pills, it notes that ECPs work best when taken correctly. It further notes that taking regular birth control pills correctly requires taking them within the first seventy-two hours following intercourse.
- <sup>60</sup> ELLA, HIGHLIGHTS OF PRESCRIBING INFORMATION, U.S. FOOD & DRUG ADMIN. 7 (2010), available at [http://www.accessdata.fda.gov/drugsatfda\\_docs/label/2010/022474s000lbl.pdf](http://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s000lbl.pdf).
- <sup>61</sup> *Answers to Frequently Asked Questions About...How to Get Emergency Contraception*, THE EMERGENCY CONTRACEPTION WEBSITE, <http://ec.princeton.edu/questions/what-fda-says.html> (last updated June 27, 2011).
- <sup>62</sup> *Id.*
- <sup>63</sup> WOMEN'SHEALTH.GOV, *Emergency Contraception*, *supra* note 47.
- <sup>64</sup> News Release, U.S. Food & Drug Admin, FDA Approves Over-the-Counter Access for Plan B for Women 18 and Older; Prescription Remains Required for Those 17 and Under (Aug. 24, 2006) available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108717.htm>.
- <sup>65</sup> *Tummino v. Torti*, 603 F.Supp. 2d 519, 550 (E.D. N.Y. 2009).
- <sup>66</sup> *Answers to Frequently Asked Questions About...Types of Emergency Contraception*, THE EMERGENCY CONTRACEPTION WEBSITE, <http://ec.princeton.edu/questions/ella-vs-levo.html> (last updated June 27, 2011).
- <sup>67</sup> *Tummino*, 603 F.Supp.2d at 524.
- <sup>68</sup> *See* THE EMERGENCY CONTRACEPTION WEBSITE, *Answers to Frequently Asked Questions About...Types of Emergency Contraception*, *supra* note 65 (noting the age restriction is still seventeen years old).
- <sup>69</sup> *See* JAMES TRUSSELL & ELIZABETH G. RAYMOND EG, OFFICE OF POPULATION RESEARCH, PRINCETON UNIV., EMERGENCY CONTRACEPTION: A LAST CHANCE TO PREVENT UNINTENDED PREGNANCY 12-13 (June 2011), available at <http://ec.princeton.edu/questions/ec-review.pdf> (noting that there was no medical reason for the pre-2006 age limits, and arguing it is safe for women sixteen and younger to have access to over-the-counter EC.)
- <sup>70</sup> *Id.* at 10-11.
- <sup>71</sup> *Answers to Frequently Asked Questions About...Emergency Contraception Over the Counter*, THE EMERGENCY CONTRACEPTION WEBSITE, <http://ec.princeton.edu/questions/QA-OTC-access.html> (last updated June 27, 2011).
- <sup>72</sup> Angela Hooton, *FDA Allows Emergency Contraception to Be Sold Without a Prescription*, CTR. FOR AM. PROGRESS (Aug. 28, 2006), [http://www.americanprogress.org/issues/2006/08/planB\\_column.html](http://www.americanprogress.org/issues/2006/08/planB_column.html).
- <sup>73</sup> THE EMERGENCY CONTRACEPTION WEBSITE, *Answers to Frequently Asked Questions About...Emergency Contraception Over the Counter*, *supra* note 70.
- <sup>74</sup> *Get Emergency Contraception NOW, State Pharmacy Access*, THE EMERGENCY CONTRACEPTION WEBSITE, <http://ec.princeton.edu/questions/state-pharmacy-access-list.html> (last updated June 27, 2011). These states are: AL, CA, HA, ME, MA, NH, NM, VT, WA. *Id.*
- <sup>75</sup> THE EMERGENCY CONTRACEPTION WEBSITE, *Answers to Frequently Asked Questions About...How to Get Emergency Contraception*, *supra* note 61.
- <sup>76</sup> *Id.*
- <sup>77</sup> *Search for an Emergency Contraception Provider in the United States*, THE EMERGENCY CONTRACEPTION WEBSITE, <http://ec.princeton.edu/providers> (last updated June 27, 2011).
- <sup>78</sup> *Morning After Pill (Emergency Contraception)*, PLANNED PARENTHOOD, <http://www.plannedparenthood.org/health-topics/emergency-contraception-morning-after-pill-4363.asp> (last visited July 5, 2011).

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<sup>78</sup> TRUSSELL, *supra* note 68, at 13.

<sup>79</sup> *Id.* at 9-10.

<sup>80</sup> LOIS UTTLEY & RONNIE PAWELKO, MERGERWATCH PROJECT, NO STRINGS ATTACHED: PUBLIC FUNDING OF RELIGIOUSLY-SPONSORED HOSPITALS IN THE U.S. 4, 27-28 (2002), available at [http://www.mergerwatch.org/storage/pdf-files/bp\\_no\\_strings.pdf](http://www.mergerwatch.org/storage/pdf-files/bp_no_strings.pdf).

<sup>81</sup> *Emergency Contraception*, FEMINIST WOMEN'S HEALTH CTR., <http://www.fwhc.org/birth-control/ecinfo.htm> (last updated June 8, 2011).

<sup>82</sup> LAW STUDENTS FOR REPROD. JUSTICE, RELIGIOUS HOSPITALS, MERGERS, AND REFUSAL CLAUSES (2011), available at <http://lsrj.org/resources/#factsheets>.

<sup>83</sup> *Pharmacy Refusal 101*, NAT'L WOMEN'S LAW CTR., <http://www.nwlc.org/resource/pharmacy-refusals-101> (last updated May 10, 2011).

<sup>84</sup> *Id.*

<sup>85</sup> *What's at Stake—Pharmacy Refusals 101: What You Should Know (Video Transcript)*, NAT'L WOMEN'S LAW CTR. (Mar. 16, 2009),

<http://www.nwlc.org/resource/whats-stake-pharmacy-refusals-101-what-you-should-know-video-transcript>.

<sup>86</sup> NAT'L WOMEN'S LAW CTR., *Pharmacy Refusal 101*, *supra* note 83.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> H.R. 5309, 111<sup>th</sup> Cong. (2010). To track the progress of the bill, see *H.R. 5309: Access to Birth Control Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h111-5309> (last visited July 6, 2011) (noting last action on May 13, 2010: referral to Committee on Energy and Commerce). To track the progress of the comparable Senate bill, S.3357, 111<sup>th</sup> Cong. (2010), see *S.3357: Access to Birth Control Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=s111-3357> (last visited July 5, 2011) (noting last action on May 13, 2010: read twice and referred to the Committee on Health, Education, Labor, and Pensions).

<sup>94</sup> See GOVTRACK.US, *H.R. 5309* (noting bills are often reintroduced if they do not come up for debate in a session).

<sup>95</sup> H.R. 5309 § 3 (amending Part B of title 2 of the Public Services, 42 U.S.C. 238 et. seq (2010), by adding § 249(a)(1)).

<sup>96</sup> § 249(a)(2)

<sup>97</sup> § 249(a)(3)