

NATIONWIDE CAMPAIGN TO ROLL BACK WOMEN'S ACCESS TO CONTRACEPTIVES

During a hearing before the House Committee on Oversight and Government Reform on February 16, 2012, Chairman Darrell Issa refused to allow third-year Georgetown law student Sandra Fluke to testify about the critical importance of contraceptives to millions of women across the country. Claiming that the hearing would address only issues relating to religious freedom, Chairman Issa stated that Ms. Fluke is “a college student who appears to have become energized over this issue,” that she is not “appropriate or qualified” to testify, and that she does “not have the appropriate credentials” to appear before the Committee.

Recent efforts to use religious and moral grounds to deny women coverage of birth control are not isolated incidents, but rather part of a nationwide campaign being conducted at both the state and federal levels to outlaw many forms of commonly used contraceptives. These efforts include legislation and ballot initiatives in various states, as well as legislation proposed in the U.S. House of Representatives and U.S. Senate that are intended to outlaw the pill, emergency contraceptives, and intrauterine devices (IUDs).

State Proposals to Outlaw Contraceptives

- **Legislation has been introduced in at least 11 states to make many forms of commonly used birth control illegal.** These legislative efforts broadly define “personhood” as beginning at the moment of conception or fertilization.¹ There are also ongoing efforts in eight states to define personhood via ballot initiatives.² These vaguely worded, sweeping bills and initiatives would extend the protections of state law to a fertilized egg even before implantation.
- **These initiatives are intended to outlaw commonly used forms of contraception that interfere with implantation and certain in-vitro fertilization techniques.** Proponents of such initiatives have stated that they would outlaw commonly used forms of contraceptives that affect implantation of the egg,³ emergency contraceptives,⁴ IUDs,⁵ and certain in-vitro fertilization techniques.⁶
- **A state judge in Nevada required proponents of a ballot initiative to provide this explicit description of exactly what the initiative would outlaw:**

The initiative would protect a prenatal person regardless of whether or not the prenatal person would live, grow, or develop in the womb or survive birth; prevent all abortions even in the case of rape, incest, or serious threats to the women's health or life, or when a woman is suffering from a miscarriage, or as an emergency treatment for an ectopic pregnancy. The initiative will impact some rights Nevada women currently have to utilize some forms of birth control, including the “pill;” and to access certain fertility treatments such as in vitro fertilization. The initiative will affect embryonic stem cell research, which offers potential for treating diseases such as diabetes, Parkinson's disease, heart disease, and others.⁷

- **Medical and legal experts have raised concerns that these initiatives could have far-reaching implications for women’s health.** For example, these initiatives could make it illegal for doctors to treat pregnant women for cancer if the treatments could endanger the fetus.⁸
- **State legislators across the country have introduced bills to deny contraception coverage to more women in several states.** Bills to create exemptions to existing state contraception mandates or to broaden existing exemptions have been introduced in states including Arizona,⁹ Indiana,¹⁰ Missouri,¹¹ New Hampshire,¹² New Jersey,¹³ and Pennsylvania.¹⁴

Federal Proposals to Outlaw or Deny Coverage of Contraceptives

- **Federal “Morality” Legislation:**

- On March 17, 2011, Representative Jeff Fortenberry (R-NE) introduced H.R. 1179, the Respect for Rights of Conscience Act of 2011. This legislation, which now has 209 co-sponsors in the House of Representatives, would allow any employer, including for-profit private sector companies, to deny insurance coverage for contraceptives if doing so is contrary to their religious beliefs or “moral convictions.”¹⁵ This would include the pill, condoms, IUDs, and any other contraceptives viewed as morally objectionable by the company.
- On August 2, 2011, Senator Roy Blunt (R-MO) introduced the Senate version of this legislation, S. 1467,¹⁶ which now has 37 co-sponsors. He also filed it as an amendment to the federal highway reauthorization bill.¹⁷
- In addition to allowing companies to deny insurance coverage for contraceptives, this “morality” legislation would allow companies to deny coverage for a host of other essential healthcare services. Based on undefined “moral convictions,” a company could refuse to cover:
 - prenatal testing and care, such as routine sonograms or amniocentesis;
 - HIV/AIDS screenings;
 - Type-2 Diabetes screenings;
 - mental health treatment for depression; or
 - screenings for infections that cause cervical cancer.

- **Federal “Personhood” Legislation:**

- **The Life at Conception Act:** In 2011, Rep. Duncan Hunter (R-CA) introduced H.R. 374 to extend the rights in the Equal Protection Clause of the 14th Amendment to “the moment of fertilization ... or other moment at which an individual member of the human species comes into being.”¹⁸ This legislation, which now has 111 co-sponsors in the House of Representatives, is similar to the language of state ballot initiatives to outlaw many forms of commonly used

contraceptives. On January 25, 2011, Senator Roger Wicker (R-MS) introduced the Senate companion, S. 91.¹⁹

- **The Sanctity of Human Life Act:** In addition, Rep. Paul Broun (R-GA) introduced H.R. 212, which provides that “the life of each human being begins with fertilization, cloning, or its functional equivalent.”²⁰ This legislation now has 63 co-sponsors in the House of Representatives.

NOTES

¹ Alabama S.B. 5 (online at <http://alisondb.legislature.state.al.us/acas/ACTIONViewFrameMac.asp?TYPE=Instrument&INST=SB5&DOCPATH=searchableinstruments/2012RS/Printfiles/&PHYDOCPATH=//alisondb/acas/searchableinstruments/2012RS/PrintFiles/&DOCNAMES=SB5-int.pdf>); Georgia H.R. 1072 (online at www.legis.ga.gov/legislation/en-US/Display/20112012/HR/1072); Iowa H.F. 153 (online at <http://coolice.legis.state.ia.us/CoolICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=HF153>); Kansas H.B. 2579 (online at www.kslegislature.org/li/b2011_12/measure/documents/hb2579_00_0000.pdf); Kansas H.C.R. 5029 (online at www.kslegislature.org/li/b2011_12/measure/documents/hcr5029_00_0000.pdf); Mississippi S.C.R. 555 (online at <http://billstatus.ls.state.ms.us/documents/2012/pdf/SC/SC0555IN.pdf>); North Dakota H.B. 1450 (online at www.legis.nd.gov/assembly/62-2011/documents/11-0665-01000.pdf); Oklahoma S.B. 1433 (online at www.oklegislature.gov/BillInfo.aspx?Bill=SB1433); South Carolina H. 3945 (online at www.scstatehouse.gov/sess119_2011-2012/bills/3945.htm); Virginia H.B. 1 (online at <http://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+HB1>); Washington H.B. 1656 (online at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Bills/1656.pdf>); Wisconsin A.J.R 77 (online at <http://docs.legis.wisconsin.gov/2011/related/proposals/ajr77.pdf>).

² Letter from Dustin McDaniel, Arkansas Attorney General to Preston Dunn Jr., Founder/President of Personhood Arkansas (Jan. 25, 2012) (online at <http://ag.arkansas.gov/opinions/docs/2012-002.html>); Letter from Walter B. Hoye II to Dawn McFarland, Initiative Coordinator, Office of Attorney General of California (Sept. 26, 2011) (online at [http://ag.ca.gov/cms_attachments/initiatives/pdfs/i984_11-0041_\(human_rights\).pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i984_11-0041_(human_rights).pdf)); Colorado Ballot Initiative (online at [www.leg.state.co.us/LCS/Initiative%20Referendum/1112InitRefr.nsf/dac421ef79ad243487256def0067c1de/54da0a3b93ec71c58725794f00730cbe/\\$FILE/2011-2012%20%2346.pdf](http://www.leg.state.co.us/LCS/Initiative%20Referendum/1112InitRefr.nsf/dac421ef79ad243487256def0067c1de/54da0a3b93ec71c58725794f00730cbe/$FILE/2011-2012%20%2346.pdf)); Florida Personhood Amendment Petition Form (online at <http://election.dos.state.fl.us/initiatives/fulltext/pdf/50722-1.pdf>); Montana Constitutional Initiative No. 108 (online at <http://sos.mt.gov/Elections/Archives/2010s/2012/Initiatives/CI-108.asp>); State of Nevada Initiative Petition (online at <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=2069>); Ohio Personhood Amendment Initiative Petition (online at www.personhoodohio.com/ph/docs/Ohio%20Personhood%20Amendment%20Petition.pdf); Oregon Proposed Initiative Petition #22 (online at <http://oregonvotes.org/irr/2012/022text.pdf>).

³ *Medical Nuances Drove 'No' Vote in Mississippi*, New York Times (Nov. 14, 2011) (online at www.nytimes.com/2011/11/15/health/policy/no-vote-in-mississippi-hinged-on-issues-beyond-abortion.html?_r=1&ref=health).

⁴ *Id.*

⁵ *Personhood USA Spokesperson Admits Mississippi Amendment Would Affect Birth Control*, Florida Independent (Nov. 1, 2011) (online at <http://floridaindependent.com/54890/personhood-usa-mississippi-birth-control>).

⁶ Yes on 26, *Real Answers to the Scare-Tactics Being Spread by the Pro-Abortion Minority About the Personhood Amendment* (online at <http://yeson26.net/media/1999/yeson26-faq.pdf>); *Personhood USA Spokesperson Admits Mississippi Amendment Would Affect Birth Control*, Florida Independent (Nov. 1, 2011) (online at <http://floridaindependent.com/54890/personhood-usa-mississippi-birth-control>); *Ballot Initiative: Personhood*, Desoto Times Tribune (Oct. 15, 2011) (online at www.desototimes.com/articles/2011/10/15/news/doc4e98d2716791c954933716.txt).

⁷ *Chen v. Nevada Pro-life Coalition PAC*, Case No. 11-OC-00328-1B, Slip Op. (Nev. 1st Judicial Dist. Court Dec. 19, 2011) (online at www.aclu.org/files/assets/prolife_decision.pdf).

⁸ *Medical Nuances Drove 'No' Vote in Mississippi*, New York Times (Nov. 14, 2011) (online at www.nytimes.com/2011/11/15/health/policy/no-vote-in-mississippi-hinged-on-issues-beyond-abortion.html?_r=1&ref=health).

⁹ Arizona H.B. 2625 (online at www.azleg.gov/legtext/50leg/2r/summary/h.hb2625_02-16-12_caucuscow.doc.htm); Arizona Catholic Conference, *Arizona Catholic Conference Legislative Update* (Feb. 17, 2012) (online at <http://old.diocesephoenix.org/acc/documents/LegUpdate2-17-12.pdf>) (“HB 2625 takes the current narrow religious exemption in Arizona’s contraceptive mandate and broadens it to include all employers and insurers who have a religious objection to providing contraceptives and abortifacients in their health plans.”).

¹⁰ Indiana H.B. 1014 (online at www.in.gov/legislative/bills/2012/PDF/IN/IN1014.1.pdf).

¹¹ Missouri H.B. 1730 (online at www.house.mo.gov/billtracking/bills121/billpdf/intro/HB1730I.PDF).

¹² New Hampshire H.B. 1653 (online at www.gencourt.state.nh.us/legislation/2012/HB1653.html); *Extreme Legislators Seek to Restrict Reproductive Healthcare in NH*, NARAL Pro-Choice New Hampshire (Jan. 24, 2012) (online at <http://www.prochoicenewhampshire.org/news/press/201201241.shtml>) (The bill allows “a broad range of individuals and institutions—including hospitals, hospital employees, health-care providers, employers, and insurers—to refuse to provide, pay, counsel or even refer for medical treatment.”).

¹³ New Jersey H.B. 2156 (online at www.njleg.state.nj.us/2012/Bills/A2500/2156_I1.PDF).

¹⁴ Pennsylvania H.B. 383 (online at www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=0383&pn=0347).

¹⁵ H.R. 1179.

¹⁶ S. 1467.

¹⁷ S. 1813 (online at blunt.senate.gov/public/_cache/files/12ca4c96-d98c-4b37-920a-cdb15edb24d4/S.%201813%20Amendment.pdf).

¹⁸ H.R. 374.

¹⁹ S. 91.

²⁰ H.R. 212.