

Of Faith or Reason? The Politics around Over the Counter Status of ECP  
(emergency contraception) in the US and Canada, 2000-2007

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“Why has the emergency contraception pill” (ecp, also called the “morning-after pill”) become so controversial recently in US politics, slightly less so in Canadian politics? The especially contentious aspect of ecp provision is that of over-the-counter availability (either without a prescription or with a web-based prescription), currently found in eight states.<sup>1</sup> Web-based collaborative agreements make ecp available in at least twenty-six more states. In Canada, Health Canada approved Plan B (the same as the US formulary) ecp for “Schedule II” (behind the counter), non-prescription availability in 2005. While the federal Bush Administration (s) have made the “age limit” the issue (contrary to any previous contraception question in the US, ever), that has not been the case in Canada, where Plan B is available on a Schedule II (behind the counter basis) for women of all ages. As with many health-care and generally social policy questions in the US and Canada, those concerning the provision of reproductive care (such as emergency contraception) is caught in the “overlap” of federalism jurisdictions and laws.

The arguments and strategies of the Right around ecp and reproductive rights issues in the US since Roe v. Wade was decided in 1973 have included: 1) the type of tactic first described by E.E. Schattschneider, of “expanding the scope of conflict” or “venue shopping” when they are losing at one level; for example to go to Congress shortly after Roe and get the Hyde Amendment passed, forbidding federal funds for abortions. Since the 1970s, the favored strategy of the Right has been to update the “states’ rights” strategy used by racist Southerners (and played upon by Nixon in 1968) to work to block progressive policy change at the state level, and 2) When the Republicans such as Bush have held the Presidency and/or Congress, is to use “specialized procedures” to bring in conservative policies and their adherents. These unusual procedures have included the unilateral Presidential Executive Order; the policy of “recess appointments,” non-reviewable by the Senate, to bureaucratic agencies, including Health and Human Services (HHS) and the Food and Drug Administration (FDA) within it; and 3) to divide and conquer among adult women. For example, if women’s rights get expanded by an “interventionist” Congress or state legislature, the Right’s response will be to a) either make sure that right does not become universally-available by cutting the funding for it, or b) make an oft-irrelevant distinction between “adults” who can seemingly be trusted to exercise this new right of access, whatever it may be, and “young women” (typically under eighteen) who may not. All three strategic categories have been used by the Bush Administration since 2000 on ecp and other reproductive rights questions.

In Canada, some similar strategies have been used since the Morgentaler decision of 1989 but most are unavailable in this political system. Most notably, the “social conservative” branch of the Conservative party and movement, particularly that governing federally since 2006 has also tried to raise the age of consent for sexual activity (to make the minority-majority age distinction so successful in the US) or to try to push forward the time at which a fetus is legally protected (from conception). Structurally and procedurally, Health Canada is not as open to politicization as HHS and the FDA in the US, which eliminated one of the major avenues for delay of OTC approval. However, sub-national areas still remain, as in the US, as loci for opponents to act.

Which groups of the Right have been implicated in these strategies? In the US, most of the “heavy hitters” (in terms of money and policy influence) present on Capitol Hill and in the states since the 1970s and 80s, including: the Heritage Foundation (and funders such as Olin, Scaife, and Coors Foundations), the Hudson Institute, the American Legislative Exchange Council (ALEC), Phyllis Schlafly’s Eagle Forum, Beverly LaHaye’s “Concerned Women” for America, James Dobson’s Focus on the Family; Family Research Council, and the “Independent Women’s Forum,” begun in 1991 by luminaries such as Lynne Cheney (wife of the current Vice-President) as the “Women for Clarence Thomas.” A Board member of the IWF is Bush adviser Larry Kudlow.<sup>2</sup> James Dobson, founder of Focus on the Family, has since become head of the Arlington Group, “a coalition of the nation’s most conservative religious leaders that acts as the unified voice of the religious right in DC.”<sup>3</sup> In both the US and Canada, many board members overlap different organizations.

In Canada, one of the arriviste lobby groups helping to advise “social” conservative members of the governing party on anti-choice strategy has been Focus on the Family, which set up shop in Ottawa right around the time of the 2006 federal election. The “usual suspects” of anti-choice Canadian women’s groups include REAL Women and Campaign Life Coalition. Other groups which are currently being probed for activity in this area include: Promise Keepers Canada, Canadian Family Action Coalition, Life Chain, Institute for Canadian Values, and Concerned Christians Canada. At the level of pharmacies, the Pharmacists for Life have been major actors in both countries.

### History of ECP Trials in the US

Ecp in various formulations has been compounded and tested since at least the 1970s worldwide. The early studies were done using the “Yuzpe” method, named for the doctor who originated it. This type of formulation included both synthetic estrogen and progestin. The newer formulation is comprised simply of the synthetic progestin, known as levonorgestrel (2 high-strength dosages of .75 mg each, or 1.5 mg total). One reason for switching from the older combination formulation, present in many birth-control pill formulations is that it contained side effects and was also contraindicated for women who smoke, suffer blood clot and heart disease risk in the same manner as the regular birth control pills with those ingredients. An early study of the current levonorgestrel-only formulation was done in Latin America in 1973.<sup>4</sup> Even in the early 1990s, it was largely unknown whether the morning-after pill in the levonorgestrel formulation caused an abortion by causing the expulsion of a fertilized egg implanted in a woman’s uterus. Trials soon showed that this was not the case, and that the levonorgestrel formulation only acted to prevent pregnancy, either by suppressing ovulation or by preventing implantation of a fertilized ovum. More recent refinements to the studies show that there is an optimal time in a woman’s cycle to use ecp to prevent pregnancy. The best time for a woman to take it is early in her cycle, before she has ovulated, which “suggests that the pill works mainly by suppressing or delaying ovulation.” Taking ecp later in the cycle, close to or after ovulation appears to be less effective. This study suggested that up to 60% of pregnancies (and hence potential abortions) could be prevented by making ecp universally available.<sup>5</sup>

Barr Laboratories first sought and gained FDA approval with prescription in 1999. Interestingly, in Summer 2000, while the presidential election was being fought, the FDA also approved RU-486 by prescription. A few years later, “as expected, a resounding majority of scientific reviewers voted in favor of over the counter status for (the levonorgestrel formulation) ecp in the winter of 2003.”<sup>6</sup> Through various fights at the federal level, ecp Plan B (.075 mg levonorgestrel) was finally given over-the-counter (OTC approval) in July 2006, but only for women 18 years of age and older; proof of age is required to access “OTC” status ecp while a prescription is required for younger women. Even though Plan B was given prescription-based approval by the FDA in 1999, and given OTC approval by scientific reviews in 2003, it was not made available over the counter until 2006, and then only for women 18 and older. Herein resides our political story.

### National-level politics on Plan B in the US

Much of this analysis concerns the FDA since it is the agency charged with approving new drugs and devices in the US. It is located within the federal Department of Health and Human Services (HHS).

The Executive Order is an interesting piece of “presidential interpretation” of the “executive power” obliquely mentioned in Article II and interpreted by the Supreme Court over time. While the specific power of Executive Order is nowhere mentioned in the Constitution, George Washington first used it in 1789 and was upheld by the Supreme Court. Succeeding Presidents can overturn previous Executive Orders if they wish, or continue them in place. It is important to understand that the Executive Order is a tool of unilateral policymaking by the President to put something into effect likely not sanctioned by Congress.

HHS was headed by former Wisconsin Governor “Tommy” Thompson in the first Bush administration, picked likely for his success in reordering the “welfare” system in his native Wisconsin. During the first administration, despite the overwhelming approval of the FDA panel for OTC status, Steven Galston, acting director of the FDA’s

Center for Drug Evaluation and Research, rejected their advice in May 2004, calling over-the-counter status ‘not approvable.’”<sup>7</sup> His official statement, to the effect that girls 17 and under should not have over the counter access, was based on the notion that young women under 18 should consult with a doctor.<sup>8</sup> Barr Labs was encouraged to submit a revised proposal, which it did in July 2004, proposing prescription-only access for women under sixteen and over-the-counter status for those over sixteen. The decision-making deadline of January 2005 came and went. In August, FDA Commissioner Lester Crawford “agreed (in 2005) that science supported over-the-counter access for women eighteen years of age and over,” but asked for more time to consider the request for prescription status for women under 16. This precipitated the departure of Dr. Susan Wood, Assistant Commissioner of Women’s Health at the FDA.

While FDA Commissioner Lester Crawford’s Senate confirmation had been held up until August 2005 in an effort led by Senators Hillary Clinton (D-NY) and Patty Murray (D-WA), they allowed it to go through upon his assurance that over-the-counter status was imminent. Lester Crawford resigned two months after Dr. Wood, in October 2005, as did Frank Davidoff, who had been on the FDA’s Nonprescription Drugs Advisory Committee. Davidoff’s resignation statement concluded his wish to leave an organization “that is capable of making such an important decision so flagrantly on the basis of political influence.”<sup>9</sup> A lawsuit was filed by the Center for Reproductive Rights to force the FDA to make its decision on ecp OTC status.<sup>10</sup> In testimony, Dr. Crawford later said that the OTC status of Plan B was being held up while the FDA and HHS tried to fathom a way to make a distinction between “majority age” women (18 and older) and “minority age” ones (under eighteen). One year later, Andrew von Eschenbach was in Dr. Crawford’s hot seat and again Senators Murray and Clinton threatened not to confirm him. Twice was the charm and the FDA announced the hastily cobbled-together policy (which would seem ripe for constitutional challenge due to its uniqueness in the contraceptive universe) in August 2006.

Other pieces of the HHS puzzle are equally interesting. In the second Bush Administration since 2005, the head of HHS, Michael Leavitt, is a Mormon, former three-time Governor of Utah. Given that the Mormon faith does not specify a clearly pro-contraception position, it is quite likely that a conflict of interests exists between this individual, the head of the Department who signs off on all FDA decisions and the pursuit of US women’s rights to reproductive choice. This is all the more disturbing given that the HHS Secretary’s website states that, “he leads the Nation’s efforts to protect the health of all Americans and to provide essential human services to those in need;” it is also noted that HHS controls one of the largest slices of the federal budget pie (HHS website, [www.hhs.gov/secretary](http://www.hhs.gov/secretary), accessed 11/8/07). Another point to note is that the HHS priorities are listed on the department’s website (presumably formulated by Secretary Leavitt) and not one of the ten is gender-related. Similarly, of his nine “Principles,” none are gender-related and the last one is to “value life,” consistent with the Mormon faith.<sup>11</sup>

#### Playing Politics with the Age of Consent for Treatment

This is another favored strategy of the “New” Right, to divide the provision of reproductive treatment into “responsible” and “irresponsible” women. In some ways, the difference is irrelevant, since their overall definition is that sex outside of marriage is irresponsible for adults, and that “minors” under eighteen must be controlled by parents. The problem with the recent OTC decision on ecp in 2006, differentiating between practices for those over and under eighteen, is that it is way out of date with other US legal frameworks on reproductive/sexual health matters.

In the US, sexual consent laws, as part of family law, belong to state jurisdiction. While the ages vary, most of them are between 16 and 18, and interestingly, all of the

states that recently had age-consent requirements for gay and lesbian sexual intercourse have repealed them ([www.avert.org](http://www.avert.org), accessed 11/6/07). Interesting also is that in HHS Secretary Leavitt's home state of Utah, parts of the state have a sexual consent age of 16, well below that of the ecp regime he approved.

#### The Canadian Federal Approval Structure

Within Health Canada, the Therapeutic Products Directorate implements the Food and Drugs Act, which is the framework within which drugs are approved in Canada.<sup>12</sup> The federal level is where a drug is determined to be prescription "Schedule F" or non-prescription. Schedule F drugs require a prescription by an authorized practitioner, the definition of which is put forth at the provincial level.<sup>13</sup> Also, each province determines the conditions for selling non-prescription drugs in consultation with recommendations put forth by the National Drug Scheduling Advisory Committee (NDSAC), a body formed in 1995. Prescription drugs are classified at the Provincial levels as Schedule I, while Schedules II, III and Unscheduled categories for non-prescription formularies range from behind the counter with a pharmacist "counseling" requirement (which can vary widely), OTC with no counseling required or Unscheduled drugs which can be sold outside pharmacies (at any retail outlet) by a non-pharmacist.<sup>14</sup>

Between the 1999-2005 period, provinces passed amendments to their Drug Schedules Regulations to allow for collaboratively-based prescribing by pharmacists for ECP only. ECP trials, using Plan B (same formulary as the US but formulated in Canada by Palladin Labs) were conducted on this basis in BC, Saskatchewan and Ontario between 2000 and 2003. The main changes to the existing regulatory structure through the amendments were to allow pharmacists the right to independently and specifically prescribe ecp (usually Plan B although a combination progestin-estrogen regime remains) after pharmacist training in this area.<sup>15</sup>

While medical authorities, the Pharmacists' college and women's groups had been in conversation with BC authorities since 1999 to push for Plan B availability without prescription, a sudden decision was made by Premier Ujjal Dosanjh in October 2000 to allow such status. As in the US at the federal level to block Plan B, this change allowing Plan B availability without prescription in BC was done by a "special" political procedure, where the "regulatory amendment was passed by the Lieutenant Governor through an Order in Council commencing December 1, 2001." The reason given by most analyses was an upcoming provincial election. The BC legislature approved the amendment on April 2, 2001.<sup>16</sup> While it first appeared that Health Canada was due to approve a sweeping national framework similar to that used in BC in Summer of 2004, this was delayed until 2005.

As with the states in the US, the provinces have been the major focus for right-wing groups seeking to undo women's rights gained so painfully at the national level. Some examples will be documented with regards to Plan B. They usually have to do with a newer tactic used by the Right (particularly as Plan B has gained acceptance), that of getting "Pharmacists for Life" to refuse to either fill prescriptions (as in the US) or to provide OTC (US framework for women 18 and over) or dispense "behind the counter" ecp with counseling (Canadian situation for all women). The pharmacy level is the next one down from the work of anti-choice groups in both countries which have gotten hospitals to pass "conscience clauses" allowing doctors and nurses to refuse to participate in abortion procedures if they wish. On the other hand, most conscience clauses also specify that the facility must provide another health-care professional to either refer the woman to a practicing facility or to provide the service. Slowly, provinces and states have passed legislation requiring the same for pharmacists. As with abortion, however, gaps remain between laws and practice and often women who are traumatized

in this manner do not wish to follow a complaint procedure which can be public and lengthy.

### State-Based Politics on ECP in the US

The first state to act proactively against pharmacist refusal to fill prescriptions was Illinois, where Governor Rod Blagojevich filed an emergency rule on April 1, 2005 to require pharmacies that “stock and dispense contraceptives to fill birth control prescriptions without delay.”<sup>17</sup> This included ecp, which is a birth control formulary. On April 18, 2005, he filed a rule to make the emergency provision permanent, which gained the necessary approval by the Legislature’s Joint Committee on Administrative Rules on August 16, 2005.<sup>18</sup> The permanent rule also clarified a question in the previous standard, relating to whether any delay in filling a prescription was permissible. The new rule stated that pharmacists were required to fill all prescriptions “without delay,” meaning that “pharmacies should treat contraceptive prescription holders the same as other clients waiting for any other prescription.”<sup>19</sup> By that point, pharmacist refusals to fill ecp and other contraceptive prescriptions had been reported in numerous states other than Illinois, and at “major drugstore chains, such as Walgreens, Osco, K-Mart, CVS, and Eckerd, as well as independently-owned drug stores.”<sup>20</sup> In November 2005, using both the new law and likely the General Accountability Office’s blistering report on the Plan B saga at the FDA, Illinois suspended four Walgreen’s pharmacists for refusing to dispense ecp. Shortly thereafter, seven pharmacists filed a federal lawsuit, claiming that their freedom of conscience, which viewed ecp as an abortifacient, had been infringed. The lawsuit went nowhere. In addition to the new state law, the positive results from the Illinois case were that Wal-Mart began stocking ecp there (the first state in which it did so), and CVS Corporation in May 2005 adopted the policy that its pharmacists must fill all lawful birth control medication prescriptions.<sup>21</sup>

A very similar episode to the Illinois one occurred in Massachusetts within a few months of Governor Blagojevich’s statutes of April 1 and 18. In July 2005, Governor Mitt Romney rushed back from his New Hampshire vacation to “veto” legislation which had been passed by an already veto-proof majority, and was subsequently overridden by the Massachusetts Legislature 2 months later. This incident undoubtedly made great political theater for those watching his preparations for a 2008 run for the Republican presidential nomination, although it contradicted his public statements when running for Governor in 2002 that he favored emergency contraception. The Massachusetts law requires hospital emergency rooms to offer ecp to rape victims and to make it available in pharmacies without a prescription.

Two related issues soon manifested themselves, in response to lobbying by Massachusetts Citizens for Life, the Catholic Action League of Massachusetts and some members of the Catholic Archdiocese. The Boston-based hospital chain, Caritas Christi, owned by the Catholic Archdiocese, is the second-largest health-care provider in New England.<sup>22</sup> The idea of whether Catholic hospitals could be exempted from the new state legislative requirement was raised and initially Governor Romney, mindful of the Republican appeal to Catholics and his upcoming 2008 Presidential bid, thought he had found a way to exempt them, based on a 1975 Massachusetts law. When this did not work, he attempted to get an “escape clause” into the law, which would allow Catholic emergency rooms to provide information about ecp but to not actually provide the pills. He may have been taking a page from another Republican Governor and potential 2008 contender, Bill Owens of CO, who in April 2005 vetoed a bill requiring all hospitals in the state simply to inform women who have been raped about ecp.<sup>23</sup> In Massachusetts, the

Governor's lawyers and the Massachusetts Department of Health ruled that in effect, the law was the law and there were no such exemptions to be afforded to the Catholic hospitals in Mass.<sup>24</sup> The Catholic Conference of Bishops in the US has had a longstanding policy that ecp may be used if it does not cause an already-fertilized and implanted egg to abort. Since they formulated that policy, research has shown that ecp has no effect if a woman is already pregnant.<sup>25</sup> However some Catholic-run hospitals have refused to offer ecp in their emergency rooms, incorrectly claiming that ecp causes a "medical," or "chemical" abortion.

A second type of challenge, based on the new Massachusetts law, was mounted by Planned Parenthood and NARAL of Massachusetts and Jane Doe, Inc., a state-based organization which works with women who have been physically and sexually assaulted. This case became the second line of attack to force Wal-Mart to expand ecp provision beyond the state of Illinois. Wal-Mart has been an interesting case study in this regard because while it was founded on and practices socially-conservative beliefs, it is also the world's largest retailer (and pharmacy). Three plaintiffs, having been recruited by Planned Parenthood and NARAL, worked with a noted Massachusetts consumer protection attorney, Samuel Perkins. He filed the suit under the Consumer Protection Act, having won a settlement of \$3.8 million against Home Depot in 2002 for a consumer protection suit about pricing violations. Such were his clout, the strength of the Illinois precedent and the new Massachusetts law that, after filing the suit against Wal-Mart on February 1, 2006 for having been denied ecp, the women and their attorney saw a quick ruling by the Massachusetts Board of Pharmacy on February 14. At that time, the Board ruled that Wal-Mart was required under the Massachusetts law to stock ecp.<sup>26</sup> This marked the first time that Massachusetts had required a pharmacy to carry a particular drug.

The fact that these circumstances could be harnessed to override a strong candidate for the 2008 Presidential nomination (and sitting Governor), the region's second-largest health-care chain and the world's largest retailer points to the power of political will when it is positively channeled. Another example of state courage in taking on Wal-Mart which followed the Massachusetts example by a day or two was found in Connecticut. On February 17, three days after the Massachusetts Board of Health announced its decision requiring Wal-Mart to make ecp available without a prescription as per state law, Connecticut Comptroller Nancy Wyman asked Wal-Mart to stock ecp there in its 20 pharmacies.<sup>27</sup> However, she did not have the Massachusetts type of law requiring ecp to be over the counter in all pharmacies on which to base her claim. However, on March 2, Connecticut Attorney General Richard Blumenthal added fuel to the fire when he stated that he would work to ensure that the state insurance plan, covering 180,000 public employees and retirees, would no longer cover Wal-Mart prescriptions unless the Connecticut pharmacies also made ecp available. Two days later, on March 4, 2006, Wal-Mart caved in, stating that all pharmacies in all states would stock ecp.<sup>28</sup> However, it will be within the framework already established in which 23 states allow some form of collaborative agreement (web-based prescriptions) but 27 do not. Wal-Mart continues to hold to the line that it will allow pharmacists who are "conscientious objectors" to ecp provision to refuse to provide it (while having someone else on staff who will actually hand the pills over the counter). This position is upheld by the American Pharmacists' Association, which states that there may be pharmacists who need to be released from providing this based on "conscience" but that "there should also be a system in place to assure patient access to the therapy."<sup>29</sup>

Another example of political flip-flopping akin to that of Governor Romney is that of NY Governor George Pataki, another potential Republican nominee for 2008. Pataki had a ten-year record in New York as being not only pro-choice but also working for expanded access and increased public funding for abortions and contraceptives in New York.<sup>30</sup> During the time when New York state was apparently his only political constituency, he took many brave stances on reproductive rights, often making him a nationwide minority, particularly for Republicans. These stances included signing legislation in 1995 that provided Medicaid funds for abortions for women of any age, and became the first governor to approve Medicaid coverage for RU-486 in 2001. In 2003, Governor Pataki signed the NY law to require emergency rooms to dispense ecp for all women who had been raped.<sup>31</sup>

However, within two weeks of visiting Iowa (in July 2005) to “test the presidential waters,” Pataki announced that he would veto the ecp bill which had recently passed, requiring ecp to be available in pharmacies.<sup>32</sup> Even more interestingly, he claimed his objection was due to that of not having any provision in the bill about minors, mirroring the nonsensical claim of the FDA. In most instances (27 states), except where provided either over-the-counter or through the web-based protocol, ecp is only provided by prescription to minors and adults alike, if indeed minors can access it at all. Minors cannot access ecp anywhere without a prescription. Pataki’s claim seems especially nonsensical given that he previously went out on a limb to make abortion services and RU-486 which is an abortion drug, unlike Plan B, available to all via Medicaid funds. In New York, the NARAL state chapter ran an advertising blitz, urging Pataki not only to “eye the Oval office” but the “principles of New Yorkers as well.”<sup>33</sup> It would appear that potential 2008 Republican candidates have been sent a message from the RNC via the Administration that no-one will be helped who has not taken “the pledge” against ecp, innocuous and effective as it is. More recently, Governor Owens of CO vetoed a second ecp access bill passed by the Legislature, which would have enabled over-the-counter access in the state. He voiced the same disingenuous and morally empty statements as offered by Governor Pataki and FDA Commissioners, that “this would make it available to all, including minors.”<sup>34</sup>

#### Anti-Plan B Activity in the Provinces

Since Plan B was given “behind the counter” non-prescription status for women of all ages by the Health Canada policy of 2005, some pharmacists (usually affiliated with the group Pharmacists for Life) have either claimed that their pharmacy does not stock Plan B or refuse to dispense ecp or refer clients to other providers. This provides an exhaustive situation, as in the US, where typically women’s groups have to “test” the policy (but to actually be a person in need of ecp) and then go through the Pharmacy Regulatory Board of the state or province for action. Another “nuisance” maneuver found in the provinces of Manitoba and New Brunswick (which also do not have very good abortion providing regimes) has been that pharmacists have decided to implement a lengthy personal questionnaire for women trying to access ecp. The questionnaire was initially directed by the Canadian Pharmacists’ Association in 2005 but not required by any other body.<sup>35</sup>

The policy of collecting this information was vigorously contested by the Canadian Medical Association and others. Probably a big difference in its early demise was the existence of Privacy Commissioners at provincial and federal levels, who all agreed the pharmacists’ policy was excessive. However, a large scandal then erupted when the Canadian Medical Association Journal “edited” an article in December 2005 to excise the pharmacists’ interference part of the story. The Editor in Chief, James Hoey and Senior Deputy Editor Anne Marie Todkill were fired over disagreeing with the “edits” made by the parent Canadian Medical Association Media, and then in February 2006



seven other staff members of the CMAJ signed an editorial to “disagree with and protest” the December 2005 editorial firings.<sup>36</sup>

### Conclusion

While the development of Plan B and other ecp regimes and their availability in pharmacies (consistently without a prescription in Canada, with a prescription for those under 18 in the US) seem to be positive developments in favor of women’s control over their reproductive lives, there are clearly also warning signals to consider. The main warning signal is that women’s health care has become not only a subnational policy concern since the landmark abortion decisions in each country (largely due to successful lobbying of legislatures and hospitals), it is now also a sub-sub-national policy, one that is even harder to keep on top of. In this respect, it may be said that there is evidence that the anti-choice side continues to have the upper hand in the reproductive rights war. Only a change in federal government control in both countries and concomitant political will can change the present system of inconsistent and arbitrary provision.

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<sup>1</sup> The states are: Washington State, Alaska, California, Hawaii, New Mexico, New Hampshire, Maine and Massachusetts.

<sup>2</sup> Sources include: [www.legalmomentum.org](http://www.legalmomentum.org), Sexuality and Family Rights Program, accessed 11/5/07, and People for the American Way, [www.pfaw.org](http://www.pfaw.org), “Right Wing Watch: Organizations,” accessed 11/6/07.

<sup>3</sup> [www.Legalmomentum.org](http://www.Legalmomentum.org), accessed 11/5/07.

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<sup>4</sup> Charlotte Ellertson, Beverly Winikoff, Elizabeth Armstrong, Sharon Camp and Pramilla Senanayake, "Expanding Access to Emergency Contraception in Developing Countries," Studies in Family Planning, 26, 5 (September-October 1995), 252-253.

<sup>5</sup> "Second Chance Denied: Emergency Contraception in Catholic Hospital Emergency Rooms," Ibis Reproductive Health/Catholics for a Free Choice, accessed March 2006 at [www.ibisreproductivehealth.org](http://www.ibisreproductivehealth.org).

<sup>6</sup> Michele Kort, "Denial by Delay," Ms. (Winter 2006); pp. xvi, 1, 12.

<sup>7</sup> Michele Kort, "Denial by Delay," Ms. (Winter 2006): xvi, 1, p. 12.

<sup>8</sup> Kort, 13.

<sup>9</sup> *Ibid.*, 12-13.

<sup>10</sup> Steve Mitchell, "Analysis: OTC Plan B Lowers Health Costs," UPI, June 20, 2006.

<sup>11</sup> The HHS priorities, listed on its website, [www.hhs.gov](http://www.hhs.gov) as of 11/9/07, include: "Every American Insured, Insurance for Children in Need, Value-Driven Health Care, Information Technology, Personalized Health Care, Health Diplomacy, Prevention, Louisiana Health Care System, Pandemic Preparedness, and Emergency Response." Secretary Leavitt's nine Principles are listed as: "National standards, neighborhood solutions, Collaboration, not polarization, Solutions transcend political boundaries, Markets before mandates, Protect privacy, Science for facts, process for priorities, Reward results, not programs, Change a heart, change a nation, and Value life."

<sup>12</sup> Judith A. Soon et al., "Provision of Emergency Contraception by Pharmacists," CPJ/RPC, July/August 2004, Vol. 137, No. 6, p. 26.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, pp. 25-26.

<sup>15</sup> *Ibid.*, pp. 25-27.

<sup>16</sup> *Ibid.*, 27.

<sup>17</sup> Press Release, Office of the Governor, State of Illinois, "Governor Blagojevich Moves to Make Emergency Contraceptives Rule Permanent," April 18, 2005; accessed via web, [www.illinois.gov](http://www.illinois.gov), June 29, 2006.

<sup>18</sup> National Women's Law Center, Washington, D.C., "Statement of Rachel Laser, NWLC Senior Counsel: NWLC Applauds Governor Blagojevich for Protecting Women's Access to Basic Health Care," April 1, 2005, accessed via web, [www.nwlc.org](http://www.nwlc.org), June 29, 2006.

<sup>19</sup> Press Release, "Governor Blagojevich," *op cit.*

<sup>20</sup> Statement of Rachel Laser, NWLC, *op cit.*

<sup>21</sup> Donna Goodison, "Holy Wars," Boston Herald, December 8, 2005; accessed from Lexis-Nexis May 22, 2006.

<sup>22</sup> Steve LeBlanc, AP, "Confusion over New Emergency Contraception Law Deepens," Associated Press State & Local Wire, December 9, 2005; accessed from Lexis-Nexis May 22, 2006.

<sup>23</sup> Mark P. Couch, "Owens Vetoes Pill Bill," Denver Post, April 6, 2005.

<sup>24</sup> LeBlanc, and Kathleen A. Shaw, "Hospital Clarifies Rape Pill Policy," Worcester Telegram and Gazette, February 3, 2006; Kimberly Atkins, "Romney Flip Nixes Hospital Exception on Post-Rape Drug," Boston Herald, December 9, 2005, accessed through Lexis-Nexis, May 22, 2006.

<sup>25</sup> Marcus Kabel, "Wal-Mart, in Reversal, to Stock Emergency Contraception Pill," Associated Press State & Local Wire, March 4, 2006, accessed through Lexis-Nexis, May 22, 2006.

<sup>26</sup> Julie Jette, "State Board Leans on Wal-Mart," The Patriot Ledger, February 15, 2006, accessed through Lexis-Nexis, May 22, 2006.

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<sup>27</sup> Associated Press, State and Local Wire, "Comptroller wants Wal-Marts to Stock Emergency Contraception," February 17, 2006, accessed through Lexis-Nexis May 22, 2006.

<sup>28</sup> Kabel, "Wal-Mart, In Reversal, to Stock Emergency Contraception Pill," March 4, 2006, accessed through Lexis-Nexis, May 22, 2006.

<sup>29</sup> Goodison, *op cit*.

<sup>30</sup> Brian McGuire, "Abortion-Rights Activists Vow to Make Pataki's Expected White House Bid an Uphill Battle," The New York Sun, August 2, 2005; accessed via Lexis-Nexis, May 22, 2006.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid*.

<sup>33</sup> *Ibid*.

<sup>34</sup> Mark P. Couch, "Owens Sinks Morning-After Pill," Denver Post, April 14, 2006.

<sup>35</sup> Sharon Kirkey, "Pharmacists' Guidelines Raise Privacy Issues," Vancouver Sun, December 3, 2005 (accessed online).

<sup>36</sup> Kirkey, *Ibid*; "Medical Journal's Staffers Protest Firings," Canadian Press, February 27, 2006, accessed on line.