



Support Family-Planning Services; Oppose Unnecessary Restrictions on the Title X Program

The latest in a long line of political attacks on the Title X family-planning program came in 2009, when anti-choice lawmakers Sen. David Vitter (R-LA) and Rep. Mike Pence (R-IN) introduced legislation (S.85/H.R.614) to make any entity that provides abortion care with its own private funds ineligible for a Title X family-planning grant.* (Such an “entity” could include a health clinic, a network of clinics, or a hospital that referred for reproductive-health services to a clinic.) While the sponsors claim that this legislation is necessary to prohibit publicly funded abortion care, the proposal’s true purpose is obvious: to dismantle the Title X network, leaving thousands of low-income women without family-planning services.¹

Current Title X law, regulations, and program policies already state that:

- No Title X dollars may pay for abortion care.² Furthermore, the Department of Health and Human Services bars other abortion-related activities in Title X projects, such as providing transportation to an abortion provider, explaining and obtaining signed consent forms for abortion care, and other related services.³
- No Title X dollars may be used in any program that “promotes or encourages” abortion as a method of family planning.⁴

* A brief history of the legislation follows: First, in 2001, then-Rep. Vitter offered but withdrew an amendment to the FY’02 Labor, Health and Human Services, and Education appropriations bill to deny Title X grants to clinics that also provide abortion care. In the FY’04 Labor, Health and Human Services, and Education appropriations bill, then-Rep. Vitter succeeded in forcing a scaled-back version of his proposal into legislative language, directing the federal government to ask Title X grantees whether they or their subgrantees provided abortion care. This task was completed, and the report finished, in November 2004. In 2007, both Sen. Vitter and Rep. Pence offered anti-family-planning amendments to the FY’08 appropriations bill. Rep. Pence’s amendment would have disqualified Planned Parenthood from participating in the Title X program, while Sen. Vitter’s would have cut off all federal health funding, including Title X grants, to clinics that provide abortion services. Fortunately, both amendments were soundly defeated. In 2009, Rep. Pence offered the same amendment to the FY’10 appropriations bill; again, it was defeated resolutely. In March 2010, the U.S. Government Accountability Office released a report requested by Rep. Pence and other anti-choice lawmakers detailing federal funds provided for fiscal years 2002 through 2009 to selected organizations for family-planning services.

- Title X funds must be kept strictly separate from any dollars used for abortion services, and grantees are required to segregate their family-planning activities from prohibited abortion-related activities.⁵

To the best of our knowledge, there have been no known violation of these restrictions – but anti-choice activists claim they’re still not enough. The Vitter/Pence proposal goes much further than current law, saying that:

- If a Title X grantee or subgrantee is providing abortion services *with other funds*, as current law allows, it must stop doing so or be cut off from the Title X program altogether.
- Every Title X grantee and subgrantee that offers abortion care with other funds *must identify itself to the federal government and Congress*.

The Vitter/Pence proposal is a deeply troubling, thinly veiled attack on women’s health care, particularly birth control.

Supporters of the Vitter/Pence legislation claim they want to stop taxpayer “subsidization” of abortion services. By their logic, every Title X dollar granted to a health-care clinic for birth-control services is fungible, and could be used to subsidize abortion care. But clinics receive billions of dollars from many different federal grants – for HIV prevention, for child immunizations, for Medicaid and Medicare. They even receive tax credits and deductions. So, why does the Vitter/Pence legislation apply only to one of these federal grants, the Title X family-planning program? The answer is as clear as it is troubling: the real target of this legislation isn’t “taxpayer subsidization” of abortion services – it is birth control and reproductive-health care.

- **Longstanding legal requirements already ensure that Title X does not fund – and has never paid for or subsidized – abortion services.** Section 1008 of the Title X law specifies: “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.”⁶ Under existing law, Title X funds may not be used to provide, promote, or encourage abortions. Current program requirements ensure that privately funded abortion activities remain separate and distinct from Title X projects through policies including, but not limited to, separate accounting practices.⁷ All Title X grantees comply with standard accounting practices that are consistent with those employed for other federal grants.⁸ While family-planning opponents claim that legislation is necessary to stop taxpayer subsidization of abortion services, in reality, such “subsidization” does not occur. Strict policies already ensure this separation, and in fact, to the best of our knowledge, no violation of this requirement has been reported in the program’s history.
- **Longstanding requirements already mandate Title X grantees to strictly separate their family-planning projects from their non-Title X abortion activities.** Title X requires grant

recipients to keep privately funded abortion activities separate and distinct from Title X project activities. Amongst other requirements, this obligates Title X grantees to maintain separate accounting practices. Title X grantees already abide by the law's separation requirements, including the standard accounting practices that are consistent with those employed for other federal grants. Furthermore, additional government provisions exist to ensure complete separation of programs, including: (1) careful review of applications to ensure that potential grantees are able comply with all requirements; (2) independent financial audits of separate accounting practices to verify complete segregation of funds; (3) annual reviews of grantees' financial status and budget; and (4) periodic program reviews and site visits by the Office of Population Affairs.⁹ Again, no known violation of the law's separation requirement has been reported in the program's history.

- **The breadth of the Vitter/Pence proposal could dismantle entire networks of well-respected health-care providers.** The legislation would render any “organizational entity or individual” that provides abortion care with non-Title X funds, along with its subgrantees, ineligible for Title X funds. *This angle of attack would be particularly devastating to the Title X program because 4,400 clinics nationwide receive funding through just 88 grantees (as of calendar year 2008).¹⁰ If even one site in a large network provides abortion care, the whole network is ruled ineligible.* For example:
 - If a grantee operates 10 separate family-planning clinics throughout a state and only one offers abortion services, then the entire network of 10 clinics would be ineligible for Title X funds.
 - A hospital that provides reproductive-health care but not abortion services could be affiliated with - and subgrant some of its funds to - a nearby clinic (not another hospital). If that clinic provides abortion care (with non-Title X funds), both the clinic and the hospital would be ineligible for a Title X grant. It would make no difference if those were the only family-planning providers serving the community – as is often the case.
 - Title X clinics are often the only source of reproductive-health care in rural areas. If a rural Title X clinic were to lose its eligibility, low-income women in the community would be left entirely without family-planning services. Eliminating a community's only source of birth control seems to conflict significantly with the goal of trying to reduce the need for abortion.
- **Similar state legislation that, like the Vitter/Pence measure, imposes severe restrictions on receipt of family-planning funds has proven to jeopardize the availability of essential health services.** In 2001, Missouri passed legislation that on its face prohibited clinics from receiving state family-planning funds if they provided abortion information on request.¹¹ After Missouri enacted this highly restrictive policy, 19 agencies lost – in a period of just three months – a total of more than \$535,000 in state family-planning funds that had been

designated to support services for 3,567 clients. During the same three-month period, six county-health departments lost access to \$34,350 in state family-planning funding earmarked to serve 229 clients. Due to the loss of state funds, clinics were forced to lay off staff and reduce clinic hours, detrimentally impacting access to care for low-income patients.¹²

- **If it becomes law, the Vitter/Pence proposal will create a “black list” of abortion providers.** The Vitter/Pence legislation requires every Title X grantee to tell the federal government – and Congress – whether it provides abortion services. This is an alarming suggestion. Sadly, violent anti-choice attacks on women’s health clinics are still commonplace¹³ – and such reporting requirements could compromise doctors’ and patients’ safety, security, and confidentiality. At best, this is a waste of taxpayer funds and paperwork, and it harasses courageous doctors who provide medical care under very trying conditions; at worst, it could turn women, physicians, and other clinic personnel into targets for anti-choice extremists.
- **The Vitter/Pence proposal is part of a longstanding effort by anti-choice advocates to restrict birth control in every way possible.**
 - Former President George W. Bush imposed the global gag rule in January 2001¹⁴ and it remained in effect during his eight years as president. The global gag rule forced international family-planning organizations to forego desperately needed U.S. family-planning funds if they wished to use their own private funds to provide abortion care, offer abortion counseling or referrals, or take a public pro-choice position. (In the case of international family planning, as with the domestic Title X program, federal law already prohibits funding of abortion care with taxpayer dollars.¹⁵) Even after President Obama rescinded the policy in 2009,¹⁶ Sen. Mel Martinez (R-FL) proposed an amendment to the State Children’s Health Insurance Program bill to reinstate the global gag rule.¹⁷ Thankfully, the amendment failed by a wide margin.¹⁸
 - Former President Bush’s FY’02 budget plan proposed canceling contraceptive coverage for federal employees.¹⁹
 - Former President Bush cancelled the U.S. contribution to the United Nations Population Fund (UNFPA) seven years in a row.²⁰ The UNFPA is the largest multilateral program dedicated to providing reproductive-health care – including contraception – to the world’s poorest women.
 - For more than three years, former President Bush’s FDA heeded the calls from family-planning opponents and blocked women’s access to over-the-counter emergency contraception, despite overwhelming recommendations from its own advisory committees and professional staff to allow such access.²¹

- Anti-choice lawmakers are seeking to give broad license to health-care providers to refuse to provide health services, including birth control. In 2008, former President Bush imposed a regulation granting wide-sweeping refusal rights to individuals and health-care corporations.²²
- Women across the country are being refused their birth control by rogue pharmacists who in some cases even lecture or humiliate their customers in public.²³ What's worse is that anti-choice lawmakers defend these actions – and some states are even considering legislation to protect such outrageous behavior.²⁴

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Notes

¹ Guttmacher Institute (GI), *Facts on Publicly Funded Contraceptive Services in the United States* (2008) at http://www.guttmacher.org/pubs/fb_contraceptive_serv.html (last visited Oct. 20, 2010); Lisa Kaeser et al., GI, *Title X at 25: Balancing National Family Planning Needs with State Flexibility*, at 7 (1996).

² 42 U.S.C.A. § 300a-6.

³ Provision of Abortion-Related Services in Family Planning Services Projects, 65 Fed. Reg. 128,41281 (July 3, 2000).

⁴ 42 U.S.C.A. § 300a-6.

⁵ 65 Fed. Reg. 128. 41281.

⁶ 42 U.S.C.A. § 300a-6

⁷ 65 Fed. Reg. 128. 41281; For example see Washington State's *Family Planning and Reproductive Health On-Site Monitor Tool for Title X Agencies* at <http://www.doh.wa.gov/cfh/fprh/2-Monitoring/MT-Financial.pdf> (last visited Nov. Oct. 20, 2010).

⁸ Office of Management and Budget (OMB) *Circular A-133 Compliance Supplement* (Mar. 2008) at http://www.whitehouse.gov/omb/circulars_a133_compliance_08_08toc/ (last visited Oct. 20, 2010); 65 Fed. Reg. 128. 41281.

⁹ CRS Report for Congress, *Title X (Public Health Service Act) Family Planning Program* (August 2008) at <http://www.policyarchive.org/handle/10207/bitstreams/19469.pdf>.

¹⁰ Office of Population Affairs. *Family Planning*, at <http://www.hhs.gov/opa/familyplanning/index.html> (last visited Oct. 20, 2010).

¹¹ H.B. 10, 91st Gen. Assem., 1st Reg. Sess. (Mo. 2001).

¹² NARAL Pro-Choice America Foundation, *The Proposed Vitter Amendment is Unconstitutional: The Existence of Missouri Law Does Not Remedy the Constitutional Flaws* (Oct. 5, 2001) (internal document).

¹³ National Abortion Federation (NAF), *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada* (Dec. 2009) at

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- http://www.prochoice.org/pubs_research/publications/downloads/about_abortion/stats_table2009.pdf; see also NARAL Pro-Choice America Foundation, *Anti-Choice Clinic Violence and Intimidation* (Jan. 1, 2010).
- ¹⁴ Ann Blackman, *Bush Acts on Abortion “Gag Rule,”* TIME, Jan 22, 2001 at <http://www.time.com/time/nation/article/0,8599,96275,00.html> (last visited Oct. 21, 2010).
- ¹⁵ 22 U.S.C. §2151b-f1
- ¹⁶ White House, *Memorandum for the Secretary of State and for the Administrator of the Agency for International Development: Mexico City Policy and Assistance for Voluntary Population Planning*(January 23, 2009) at http://www.whitehouse.gov/the_press_office/MexicoCityPolicy-VoluntaryPopulationPlanning/ (last visited Oct. 20, 2010).
- ¹⁷ [S.AMDT.65](#) to [H.R. 2](#), 111th Cong. (2009).
- ¹⁸ S. AMDT.65 to H.R.2, 111th Cong., Roll Call Vote, No. 19 (2009).
- ¹⁹ OMB. *Appendix, Budget of the United States Fiscal Year 2002*, 11 at <http://www.gpoaccess.gov/usbudget/fy02/pdf/ggp.pdf> (last visited Oct. 21, 2010).
- ²⁰ NARAL Pro-Choice America Foundation, *United Nations Population Fund* (Jan. 1, 2010).
- ²¹ Reproductive Health Technologies Project (RHTP), *FDA Review of OTC Application for Plan B[®]: Milestones* (undated); Gina Kolata, *A Contraceptive Clears a Hurdle to Wider Access*, N.Y. TIMES, Dec. 17, 2003; Letter from Dr. Steven Galson, Acting Director, Center for Drug Evaluation and Research, U.S. Food and Drug Administration, to Dr. Joseph A. Carrado, Senior Director, Regulatory Affairs, Barr Research, Inc. (May 6, 2004); Press release, American College of Obstetricians and Gynecologists (ACOG), *Statement of The American College of Obstetricians and Gynecologists on the Failure of the FDA to Approve OTC Status for Plan B[®]*, May 7, 2004; Press release, American Public Health Association (APHA), *American Public Health Association Renews Call for Improving Access to Emergency Contraception*, May 11, 2004.
- ²² See generally NARAL Pro-Choice America Foundation, *The Bush Administration Moves to Block Women’s Access to Contraception and Other Reproductive-Health Services* (Jan. 1, 2010) at <http://www.prochoiceamerica.org/media/fact-sheets/abortion-refusal-clauses-federal-refusal-rule.pdf>.
- ²³ See generally NARAL Pro-Choice America Foundation, *Guarantee Women’s Access to Birth Control* (Jan. 1, 2010) at <http://www.prochoiceamerica.org/media/fact-sheets/birth-control-pharmacy-access.pdf>.
- ²⁴ See generally NARAL Pro-Choice America Foundation, “Refusal to Provide Medical Services,” *Who Decides? The Status of Women’s Reproductive Rights in the United States* (20th ed. 2011), at www.WhoDecides.org.