

Contraception Is Not Abortion: The Strategic Campaign of Antiabortion Groups to Persuade the Public Otherwise

By Joerg Dreweke

Among the many storylines coming out of the November 2014 midterm elections are two centered on birth control. American voters decisively rejected ballot measures in two states that sought to define human personhood—with all its attendant legal rights—as starting at fertilization.¹ This “personhood” agenda seeks not just to ban abortion, but some common Food and Drug Administration (FDA)-approved contraceptive methods as well, because personhood proponents assert that these methods work by preventing implantation of a fertilized egg. At the same time, conservative candidates did well at the ballot box, in part, by keeping mum about or obfuscating their positions that would undermine access to birth control—for instance, by removing insurance coverage for contraceptive services.

The underlying lesson—that the “personhood” movement’s perceived frontal assault on birth control is a political nonstarter—has apparently not been lost on prominent U.S. antiabortion groups like Americans United for Life (AUL), Susan B. Anthony List (SBA List), the Heritage Foundation and the U.S. Conference of Catholic Bishops (USCCB). These mainstays of the U.S. antiabortion movement have sought to keep their distance, at least publicly, from fights over personhood amendments, even as they work in myriad ways to undermine access to contraception.

Yet, these same mainstream antiabortion groups have not shied away from asserting in other contexts that certain methods of contraception are actually methods of abortion. They have in effect selectively embraced the core “personhood” ar-

gument—that U.S. policy should in some circumstances recognize pregnancy as beginning at fertilization—as a way to undermine access to birth control. That strategy reached a new high water mark when it featured centrally in *Burwell v. Hobby Lobby*, the high-profile 2014 U.S. Supreme Court case that granted certain for-profit employers an exemption from the Affordable Care Act’s (ACA’s) contraceptive coverage guarantee. During this debate, leading organizations dedicated to banning abortion unequivocally endorsed the view—in legal briefs, press statements and elsewhere—that emergency contraceptives and IUDs constitute abortion.

The contrast between these two policy debates highlights something critically important but often overlooked about much of the antiabortion movement. Birth control is very much in the movement’s crosshairs, and antiabortion advocates are working to stigmatize contraception by blurring the lines between contraception and abortion. Yet, the movement is doing this in a strategic and deceptive way. Rather than applying the claim that some contraceptive methods in effect cause abortion consistently to all aspects of their advocacy, antiabortion groups ignore and often contradict their positions when it might hurt them politically. Taking the antiabortion movement at face value by consistently treating some forms of contraception as abortifacients—including under federal and state law—would expose how radical their agenda truly is and would have far-reaching implications for women who obtain contraceptive services and providers who offer them.

The Science

The campaign to conflate contraception with abortion is based on the assertion that certain methods of contraception actually end—rather than prevent—pregnancy. That assertion, however, contradicts what science says about how pregnancies are established and how contraceptives work. These facts are laid out in detail in an amicus brief submitted to the Supreme Court in October 2013 by numerous medical associations, led by Physicians for Reproductive Health and the American College of Obstetricians and Gynecologists.² A contraceptive method, by definition, prevents pregnancy by interfering with ovulation, fertilization or implantation. Abortion ends an established pregnancy, after implantation. This scientific definition of pregnancy—which reflects the fact that most fertilized eggs naturally fail to implant in the uterus—is also the legal definition, and has long been accepted by federal agencies (during administrations both supportive of and opposed to abortion rights), and by U.S. and international medical associations.

The amicus brief describes the most up-to-date evidence about how hormonal and copper IUDs and the emergency contraceptives Plan B and ella work, and documents that none have been shown to disrupt an existing pregnancy—meaning that none can accurately be called an abortifacient. Rather, both Plan B and ella work primarily by preventing ovulation; they can work for up to five days after sex, because sperm can survive in a woman’s body for that long. Both the hormonal and copper IUDs work primarily by preventing sperm from reaching and fertilizing an egg. Of all these methods, only the copper IUD, when used as an emergency contraceptive, appears capable of preventing implantation of a fertilized egg. However, even then it would not be considered an abortion under standard medical and legal definitions.

The weight of the evidence clearly shows that emergency contraceptives and IUDs are not abortifacients. And yet, the science, when marshaled in bad faith and combined with anticontraception activists’ redefining pregnancy as beginning with fertilization, provides them with ambiguity

to exploit. The antiabortion movement has a long history of strategically using outdated information and outright junk science to restrict access to reproductive health care, from the supposed mental health impact of abortion to discredited assertions that abortion causes breast cancer.^{3,4}

The medical groups’ amicus brief illustrates this approach by highlighting the anticontraception movement’s reliance on outdated FDA product labels to implicate Plan B. While the label states that Plan B “may inhibit implantation (by altering the endometrium),” the brief notes that this “label has not been updated since the product was originally approved in 1999 and it does not reflect the most current research.” Rather, “later studies have led to the conclusion that [Plan B] does not cause changes to the endometrium (uterine lining) that would hamper implantation.” However, updating FDA-approved labels is a time-consuming and expensive process for both the agency and the relevant drug company, so it is not uncommon that such labels do not keep pace with the underlying science.⁵

More so, the FDA labeling for some popular forms of birth control pills contains similar statements. For instance, while the labels for the combined oral contraceptive pills Yaz and Yasmin say that they work primarily by suppressing ovulation, they also state that “other possible mechanisms may include...endometrial changes that reduce the likelihood of implantation.”^{6,7} However, mainstream antiabortion groups, in contrast to the “personhood” movement, appear to have long concluded that a frontal assault on the pill—the most popular reversible form of contraception, with more than 10 million current users⁸—would be a sure political loser. That is why their attacks have focused on less commonly used methods, like IUDs and emergency contraceptives.

Having It Both Ways

Conflating contraception with abortion as a means to chip away at contraceptive access is not a new approach, but the debate over the ACA’s contraceptive coverage guarantee has given it a new prominence. That this guarantee, even though it explicitly extends only to FDA-approved

contraceptive methods, requires private insurance plans to cover abortion is gospel among virtually every influential antiabortion group (see box).⁹⁻¹⁷ AUL states that the policy is a “back door abortion mandate”¹² that requires employers to cover “life-ending drugs that have been deceptively labeled as contraception.”¹⁸ SBA List also refers to the guarantee as an “Abortion Drug Mandate,”⁹ while the Heritage Foundation says it requires “coverage of abortion-inducing drugs and devices.”¹⁶

Court briefs filed by various antiabortion groups in support of Hobby Lobby’s refusal to cover certain contraceptives assert that the case is about the company’s right to refuse on religious grounds to facilitate abortion. A brief signed by SBA List says the ACA policy “directly intrudes on the choice not to participate in abortion.”¹⁰ The brief from USCCB contains numerous references

to objecting companies being forced to cover “abortion-inducing drugs and devices.”¹³

Echoing the Hobby Lobby complaint, antiabortion groups have zeroed in on emergency contraceptives and IUDs as causing abortions. SBA List has routinely referred to emergency contraceptives as “abortion drugs” and describes the copper IUD as causing “early abortion.”¹¹ The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) says that Plan B can lead to “embryo death” by preventing implantation and that “IUDs work by either killing the embryo or by preventing the embryo from implanting.”¹⁵ And AUL asserts that IUDs and Plan B “can kill an embryo by blocking its ability to implant in the uterus.”¹²

Many of these groups also assert—contrary to the best available evidence—that the emergency

CONTRACEPTION IN THE CROSSHAIRS

Prominent organizations committed to banning abortion say that certain Food and Drug Administration–approved contraceptive methods constitute abortion.

Susan B. Anthony List

SBA List refers to the contraceptive coverage guarantee as an “Abortion Drug Mandate”⁹ and has argued that the policy “directly intrudes on the choice not to participate in abortion.”¹⁰ The group also asserts that “all emergency contraceptives can cause early abortions,”¹¹ including the copper IUD, Plan B and ella.

Americans United for Life

“Some drugs classified as ‘contraceptives’ by the FDA, such as Intrauterine Devices (IUDs) and Plan B... can kill an embryo by blocking its ability to implant in the uterus....ella can kill an embryo even after implantation has occurred. Thus, if HHS decides to include ‘contraception’ as ‘preventive care,’ all insurance plans will be required to provide coverage of these abortion-inducing drugs.”¹²

U.S. Conference of Catholic Bishops

The Supreme Court brief from USCCB contains numerous references to objecting companies being forced to cover “abortion-inducing drugs and devices.”¹³ The group also asserts that methods “that are referred to as ‘contraceptive’ are, in reality, sometimes also abortifacient.”¹⁴

American Association of Pro-Life Obstetricians and Gynecologists

“Ella...works to kill embryos....Plan B can also act at times to prevent the embryo from implanting in the lining of the uterus, resulting in embryo death. IUDs work by either killing the embryo or by preventing the embryo from implanting.”¹⁵

Heritage Foundation

Heritage says the ACA coverage guarantee requires “coverage of abortion-inducing drugs and devices.”¹⁶ The group has also asserted that hormonal IUDs, copper IUDs, Plan B and ella are “abortion-inducing drugs that can terminate life.”¹⁷

Sources: references 9–17.

contraceptive ella has a postimplantation effect. For instance, AUL claims that “ella can kill an embryo even after implantation has occurred,”¹² a position that is echoed by USCCB and AAPLOG, among others.¹⁹

Despite their forceful and sustained assertions while debating the ACA’s contraceptive coverage guarantee that emergency contraceptives and IUDs constitute abortion, groups like AUL, SBA List and USCCB simply pretend in other contexts that they hold no such views. For instance, when discussing abortion incidence statistics, they accept without question the mainstream definition of abortion as ending an established (that is, postimplantation) pregnancy. A good example is a February 2014 article by USCCB’s Richard Doerflinger discussing the decline in U.S. abortion rates. Doerflinger consistently refers to IUDs and emergency contraception as “contraceptives” or “contraception,”²⁰ never mentioning these methods’ supposed abortifacient qualities and accepting without question (and contrary to the Bishops’ own position) the mainstream definition of abortion as the termination of an established pregnancy.

The same goes for these groups’ efforts to enact antiabortion legislation. Despite their significant legislative and lobbying clout, they have not made the case that emergency contraceptives and IUDs should be treated as causing abortion for purposes such as legislating waiting periods, onerous clinic facilities requirements, parental consent requirements or mandates that only physicians may provide the service.

This tactic is deceptive and disingenuous on multiple levels: The claim that some contraceptives cause abortion is based both on a nonscientific definition of pregnancy and on outdated information including FDA labels that have not kept pace with newer research. At the same time, this definition and outdated science are applied inconsistently to some methods, but not others—most notably omitting various forms of birth control pills. Lastly, these supposedly “abortion-inducing drugs and devices” are entirely exempted from the rest of these groups’ extensive antiabortion agenda. This wildly inconsistent and cynical ap-

proach seems grounded in political expediency and can only serve one purpose: to obscure these groups’ full antiabortion and anticontraception agenda.

Far-Reaching Implications

Under current federal and state laws and regulations, for the most part, it is clear that abortion and contraception are separate from each other. And for their part, the influential antiabortion groups that have been conflating some contraceptives with abortion have been mostly silent on whether existing abortion laws should apply to these contraceptives.

One notable exception is from an October 2014 comment letter to the U.S. Department of Health and Human Services regarding implementation of the ACA contraceptive coverage guarantee, in which the USCCB asserts that specific federal and state abortion restrictions concerning insurance coverage of abortion should apply to the emergency contraceptive ella.²¹ To argue, as the USCCB unequivocally does, that an FDA-approved method of contraception should be treated as an abortifacient under federal and state abortion law is truly radical. It is also somewhat surprising because the USCCB is one of the few major antiabortion organizations that unequivocally opposes contraception outright (other than periodic abstinence within marriage), obviating the need to hide behind making a case that certain birth control methods are really forms of abortion.

If a particular federal or state abortion restriction should apply to this method of contraception, then there is no reason why the gamut of federal and state abortion restrictions should not apply to it as well—or, for that matter, why all abortion policies should not apply to any method that antiabortion groups consider to cause abortion. The USCCB seems well aware of the implications of its views, expressing them only in obscure comment letters, but omitting them in more high-profile settings.

There are hundreds of policies in effect that regulate and restrict access to abortion care across the United States, both at the federal and, espe-

cially, the state level. Treating some contraceptives as abortifacients and applying the full range of existing abortion restrictions to them would have a dramatic impact. In many cases, the outcome would border on the ridiculous—demonstrating just how out of touch the campaign to define certain contraceptives as causing abortion really is.

Implications for Women

If the myriad hardships and indignities to which U.S. women who obtain abortions are often subjected were applied to IUD and emergency contraceptive users, the effect would border on the bizarre. A woman seeking to purchase emergency contraceptives in Mississippi, for example, would need to make an initial trip to the provider to first undergo mandatory in-person counseling, as well as a mandatory ultrasound exam. She would then have to wait a minimum of 24 hours before making the second trip to obtain the emergency contraceptives. If she were insured through Medicaid, her insurance would be prohibited from covering the cost of the method. If she were a legal minor, she would need the consent of both parents.

Defining some contraceptives as abortifacients could even put women who use these methods in legal jeopardy. For instance, women who self-administer Plan B would potentially run afoul of state laws that prohibit self-inducing an abortion or practicing medicine without a license.

Implications for Providers

Pharmacists, clinicians and others who sell emergency contraceptives, insert IUDs or otherwise make available birth control methods that antiabortion groups consider to cause abortion would be affected in numerous ways. The most far-reaching impact would stem from the targeted regulation of abortion providers (TRAP). If these policies applied, a physician in Missouri inserting an IUD would be required to do so in an ambulatory surgical center and would also need hospital admitting privileges.

Numerous other abortion laws would come into play as well, including reporting requirements in effect in 46 states.²² If emergency contraceptives

and IUDs were “abortion-inducing drugs and devices,” it is unclear how these supposed abortions should or could be counted and, for that matter, how many “abortions” by this definition would actually be induced in the United States each year. Two of the most extreme openly anti-contraception groups, the American Life League and Pharmacists for Life, have asserted that the “real” number of U.S. abortions—including those supposedly caused by contraceptives—is four to five times higher than what is currently counted.²³

Implications Going Forward

The anticontraception movement’s efforts in the past several years have focused on rolling back the ACA’s provision that most private health plans must cover contraceptive services, counseling and methods without out-of-pocket costs. This campaign scored a significant victory with the Supreme Court’s *Hobby Lobby* decision, an outgrowth of dozens of court cases pursuing exemptions from the ACA guarantee for for-profit and nonprofit organizations that have religious or moral objections to some or all contraceptives.²⁴ The movement also supports repealing the entire ACA and has aggressively pursued that agenda legislatively, electorally and through the courts.

An emerging, although still fringe, frontier in the campaign to curtail contraceptive access appears to be the attempted restriction of public insurance coverage (under Medicaid and other federal or state programs) and other public funding for some contraceptive methods by claiming they cause abortion. Attacks on funding for contraception, such as funding for the Title X national family planning program, are by no means new, but they have typically taken an indirect approach—for example, by complaining that providing public funding to family planning centers “frees up” centers’ private funding to be used for abortion care. In 2014, however, Colorado gubernatorial candidate Bob Beauprez (R) stated his opposition to any public funding for IUDs on the grounds that the “IUD is an abortifacient.”²⁵ And in Kansas, a county rejected a \$6,000 grant for contraceptives from the state health department after one commissioner “likened intrauterine devices to murder.”²⁶

The Real Agenda

The assertion that women who use emergency contraceptives and IUDs (or even birth control pills and other hormonal methods) are in effect obtaining abortions is radical and far-reaching. It is not supported by the science, nor by mainstream medical groups. And it is completely out of step with Americans' attitudes toward contraception and the actions of tens of millions of U.S. women and couples who use birth control to prevent pregnancy, not end it.

The influential organizations behind this anticontraception agenda have compartmentalized the debate, which allows them to pick and choose when contraception should be viewed as abortion and when it should not. They are essentially able to pursue a "personhood" argument in areas where doing so is politically feasible, but at the same time feign moderation by keeping the full-fledged, politically toxic "personhood" agenda at arm's length. This deception is part of a deliberate, long-term strategy to limit women's access not only to safe and legal abortion, but to common methods of contraception as well.

Reproductive health and rights advocates, the media and the public at large need to recognize that the full underlying agenda against reproductive rights is far-reaching, even if sometimes somewhat veiled. In that light, current battles over the ACA's contraceptive coverage guarantee reflect a fundamental public policy chasm that pits those wanting to restrict women's health care choices against those who want to protect and expand them.²⁷ Antiabortion groups are trying to coerce women's reproductive decision making by restricting access not only to abortion services, but by undermining private insurance coverage of contraceptives, defunding publicly supported family planning services and opposing comprehensive sex education, among other tactics. This approach stands in stark contrast to that supported by reproductive rights advocates, who have long pushed for policies grounded in voluntarism and informed consent that support all of a woman's pregnancy decisions.

When organizations whose core mission is to ban abortion say that some contraceptives are abor-

tion, then their obvious intent is to eventually ban these methods. They are not neutral on the issue of contraception, despite their protestations to the contrary. Contraception is not abortion, however. If those who believe and insist otherwise have the courage to own up to their beliefs publicly and consistently, then the full breadth of their anti-reproductive health and rights agenda will be plain for all to see. www.guttmacher.org

This article was made possible by a grant from the Educational Foundation of America. The conclusions and opinions expressed in this article, however, are those of the author and the Guttmacher Institute.

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