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FREEDOM OF CONSCIENCE FOR SMALL PHARMACIES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

WASHINGTON, DC, JULY 25, 2005

Serial No. 109–26

Printed for the use of the Committee on Small Business

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

22–612 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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FREEDOM OF CONSCIENCE FOR SMALL PHARMACIES

MONDAY, JULY 25, 2005

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
Washington, D.C.

The Committee met, pursuant to call, at 10:05 a.m., in Room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo [chair of the Committee] Presiding.

Present: Representatives Manzullo, Musgrave, King, Fortenberry, Velazquez, Grijalva, and Sanchez.

Chairman MANZULLO. Before we begin receiving testimony from the witnesses, I want to remind everyone that we would like each witness to keep all testimony to about 8 minutes. There is a box there. With green, you are okay. Yellow you have about a minute to go. Red, you are supposed to stop. We don't have the tyranny of the voting bell, so we will have plenty of time for questions and plenty of time for your testimony.

The committee will hear first from Luke Vander Bleek, constituent, a pharmacist who owns five different pharmacies in and around the congressional district that I represent. Luke has filed a lawsuit challenging Illinois Governor Rod Blagojevich's emergency ruling that requires all pharmacies to fill all contraception prescriptions without delay.

Next we will hear testimony on behalf of Illinois Governor Blagojevich. Sheila Nix plays a central advisory role in determining regulatory communications and regulatory policies of the administration. We invited the Governor to come, and it was just impossible to coordinate his schedule with ours.

We appreciate the fact that our offices went back and forth looking for days that would work, and it just simply would not work out. We wanted to have this hearing prior to the effective date of the rule, which is the middle of August. So, Ms. Nix, we appreciate your coming here on behalf of the Governor.

The committee then will hear from Mike Patton, Executive Director of the Illinois Pharmacists Association.

Our next witness is Linda Garrelts MacLean. She is a Clinical Assistant Professor of Pharmacotherapy, Washington State University's College of Pharmacy. She has been a pharmacy owner for 20 years plus. Additionally, Ms. MacLean was instrumental in helping enact a program that has been replicated in half a dozen or more other states that addresses the desires of patients while respecting their religious and moral and conscience beliefs of the pharmacists.

Finally, our last witness is Megan Kelly, wife, mother and art teacher from Geneva, Illinois, which is in the Speaker's district.

The subject before this committee today deals with the negative impact on small pharmacies that operate under the strict law that requires pharmacists to fill all prescriptions, even if doing so violates their moral and professional beliefs. I also want to discuss alternatives that will ensure that women who want a certain prescription have access to it while preserving the integrity of the pharmacist. Many individuals become physicians, nurses, pharmacists, or other healthcare workers based on a deeply held conviction of service to others.

Each of these individuals has a developed sense of conscience based on personal experience, individual ideology, religious beliefs, or cultural influences. The primary debate surrounding this issue relates to a pharmacist's moral opposition to filling prescriptions for emergency contraception, also referred to as the morning-after pill.

On April 1, 2005, Illinois Governor Rod Blagojevich issued an emergency rule that requires pharmacies in the State that sell contraceptives to fill all prescriptions for FDA-approved contraceptives without delay. That rule is currently before the Joint Committee on Administrative Rules to determine whether it should become permanent. Several pharmacists have filed lawsuits, challenging the rule, and one of those individuals is here today. The right to refuse to participate in acts that conflict with an ethical or religious conviction is accepted as an essential element of a free society.

What happens, however, when government forces a business to violate those beliefs? Many pharmacies in small communities may not have another pharmacist who can simply fill a prescription for the pharmacist with a moral objection, nor can they easily transfer the prescription to another pharmacy nearby. Under the Illinois rule and proposed Federal legislation, such pharmacy would be forced to order the product under their standard procedures for ordering other out-of-stock drugs, even if it violates their personal beliefs and professional standards.

This will not only violate the pharmacist's conscience, but may also be extremely costly for the business. Pharmacies do not stock every drug that is currently on the market for economic reasons. This rule could become very expensive for pharmacies that are forced to order the morning-after pill when they otherwise would not stock it.

So what happens if a pharmacy owner refuses to fill a prescription despite the new mandates. Many of the duty-to-fill requirements have imposed stiff penalties on pharmacies who have continued to allow pharmacists to exercise their conscience.

Pharmacies could be subject to fines or even suspension of their licenses. If a pharmacy shuts down, especially in small communities such as Morrison, Illinois, and in many of the other rural areas I represent, other businesses will also be affected. If people have to go to the next town to pick up their prescriptions, they may fill up their gas tanks or buy groceries as well. The entire community is affected if a pharmacy is forced to close down not only socially but also economically.

No one, least of all a health care provider, should be required to violate his or her conscience by participating in procedures that he or she deems harmful. The government should never force anyone to choose between his business or his beliefs.

The purpose of the hearing is to explore the impacts that extreme duty-to-fill legislation will have on small pharmacies, obviously small businesses. I am also hoping to discuss alternatives that will ensure that women have access to medicine while preserving the beliefs of the pharmacist. I look forward to the testimony of all the witnesses this morning, especially those who have traveled great distances.

[Chairman Manzullo's statement may be found in the appendix.]

I turn to my colleague, the ranking member, Ms. Velazquez, for her opening statement.

Ms. VELAZQUEZ. Good morning, thank you, Mr. Chairman. We have come together on a Monday morning to discuss an issue that has absolutely nothing to do with the jurisdiction of the House Small Business Committee, nor is it even a small business issue.

I must say that as the ranking member of this Committee, I am appalled that we would even hold a hearing on a women's right to receive contraception. As a female member of Congress, I am even more outraged. This is insensitive to not only the women that sit on this Committee, but also to the women across the country. Whether or not a small pharmacy in any State chooses to fill prescriptions for birth control is not an issue for this Committee to decide upon.

It is a women's rights issue, her right to access health care, and her right to live her life as she pleases. The Supreme Court has been strong in upholding that women have the right to access birth control. This is a basic right. The American Medical Association, one of the most respected and nonpartisan organizations, has also stated that this right of access should not be impeded and that this is critical to women's health. Clearly, pharmacies should not be using their discretion, when there is a valid prescription for any drug, and they should not be able to pick and choose between which types of contraception they will distribute.

I find it very ironic that while Republicans are so fixed on ensuring that the Federal Government does not infringe on an individual's rights, that when it comes to the rights of women, they are anything but hesitant to impose their guidelines. Whether it be on an individual's right to choose or a women's right to access health care, the bottom line is that these rights must always be protected.

What is happening today is quite clear. This Committee is being used as a tool to push the conservative, ideological agenda of one person forward. Nowhere do these protections and rights fall under the jurisdiction of the Small Business Committee. Let me tell you, to even think that an issue of this scope that impacts women across the United States and their access to contraception and health care should be handled during a Small Business Committee hearing is simply a disgrace.

What will be next for this Committee? Well, while we talk about women and contraception, why not start talking about men and their ability to access Viagra? It simply makes no sense that when there are so many pressing issues for the small business commu-

nity today, all of which desperately need the attention of Congress, this Committee chooses to spend its time focusing on a women's right issues.

Between skyrocketing health care costs, small businesses having to pay high fees to use lending programs and a venture capital program that has been shut down now for 9 months, there are clearly areas that this Committee need to address. This is also coming from a Committee that has not passed a legitimate bipartisan SBA reauthorization bill since 2001. While these initiatives are clearly not moving forward, we sit here and talk about a women's right issue.

With all that is going on in the small business community today, before we start addressing issues outside of our jurisdiction, we need to address the pressing issues we do have jurisdiction over. I am not saying that the issues we will be addressing today, a woman's right access to health care, is not of the utmost importance, it is just that I do not believe that the House Small Business Committee is the most appropriate venue for a women's rights issue to be heard.

Thank you, Mr. Chairman.

[Ranking Member Velazquez's statement may be found in the appendix.]

Chairman MANZULLO. The jurisdiction of the Small Business Committee, as stated in the rules, ″The Committee on Small Business shall study and investigate on a continuous basis the problems of all types of small businesses.″

That is how broad the oversight jurisdiction is. It is interesting that when the Democrats controlled this place in the 102nd Congress, the chairman at that time, Chairman LaFalce, held a hearing called Consumer Protection and Patient Safety Issues Involving Crisis Pregnancy Centers. I think that is sort of interesting. Perhaps that same argument could have been made.

The purpose of this hearing is directly within the jurisdiction of the Small Business Committee because there is Federal legislation that is pending. We have an absolute right to review the impact of any regulation or regulations on small businesses in the country.

The first witness is Luke Vander Bleek.

Mr. Vander Bleek, we look forward to your testimony.

STATEMENT OF LUKE VANDER BLEEK, FITZGERALD & EGGLESTON PHARMACIES

Mr. VANDER BLEEK. Thank you, Chairman Manzullo, and thank you also for the honorable members that have made their presence here this morning. Chairman Manzullo already discussed why we are here and the order by the Governor. I was interested in Congresswoman Velazquez's comments here at the opening. I reasonably tried to make my statements here relevant to the Small Business Committee.

I own, to correct what the chairman said earlier, I own five pharmacies—I actually own four pharmacies in the State of Illinois, two of which are in the Congressman's district. I have been presented with a mandate from the Governor of the State of Illinois that basically says that I have to put policies in place in my pharmacy to

procure and dispense all forms of contraceptives, regardless of our current policies, forcing me to have to change my current policies.

Currently in our pharmacies we carry all forms of contraceptives. The new class of medications that has become at issue is called the emergency contraceptives. These are products or blasts of hormones that are given after a woman has had sexual intercourse and has potentially conceived a child. My concern about this class of medications is scientific in nature at the beginning. One is that I have not been able to find any significant science that is able to convince me, as a pharmacist, that these products don't endanger a human embryo.

Life begins at conception with the meeting of two 23-chromosome gametes that forms a 46-chromosome new human being. Now, I have a concern for that new human being. As a religious person and as a morally convicted person, I cannot practice pharmacy or own pharmacies in any State whereby there is a mandate that I involve myself with products that are abortifacient in nature. Because there is no scientific evidence that convinces me in a compelling way that these products will not have the opportunity to extinguish the life of a human embryo, I will not stock and will not dispense these products. It has been a policy in my store since the product was first FDA approved.

But to make this relevant, is that there are, and I don't really have to tell this Committee this, that there is a finite number of investors that are willing to invest in small under-served markets all across the country. Two of the pharmacies that we own right now in communities are where there were no pharmacies there for a period of time. One didn't have a pharmacy for 8 years, the others did not have a pharmacy for 6 months and these two small towns that we placed pharmacies in did not have pharmacies, not for us wanting to put pharmacies in these markets. We were unopposed in every way in putting pharmacies in these markets.

I think it is very well understood the value of a community pharmacy is to the community and also to a small business marketplace. In every residential market, whether it is large or small, the pharmaceutical is an important ingredient, both from what you have said about the access of health care and also from an economic and financial model. Other complementary businesses in small markets are helped in large part by the presence of an anchor pharmacy.

When a pharmacy leaves a small community, very often so goes the hardware store, the grocery store, the shoe store and all the other things that are consumer oriented. People travel outside their hometown to find a pharmacist and to get a prescription filled. Generally, they will fill other consumer needs while they are there. What I submit to you today is that by limiting the opportunity for pharmacists to own pharmacies in the State of Illinois to only those that want to conduct their pharmacy in an amoral format limits the number of investors into these small markets all over the country.

So, you know, what is at risk for us personally as small business owners is that Joan and I are the parents of four small school-aged daughters. We have already decided that we will not continue to pursue ownership opportunities in pharmacies in Illinois and in an

environment where licensure requires us to stock and dispense abortifacient drugs, whether it is this one or others that come to the market later on.

Though it has required significant sacrifice, time and effort, Joan and I have enjoyed having the opportunity to own a small business in the State of Illinois. But even so, we are resolved that we will not invest and I will not practice in an environment in which we are legally obligated to be involved in the destruction of human life.

Now that being said, with regard to our respect for our patients and for our people that might want us to dispense Plan B or products that may come to the market in the future that are used for the destruction of human life, I am a compassionate person, and we have a compassionate staff. We do not treat people in a denigrating way regardless of their request.

Our policy is, in our pharmacy, when presented with a prescription that he have a moral objection to, is simply inform the patient in a quiet, confidential manner that we don't stock or procure the product because of company policy. If a patient inquires as to why the company policy is enforced, we will make it known that we are uncomfortable with the science of the drug and that we are concerned with what it might do to human life. If a patient wants to know more about the mechanism of action of the drug or wants our counsel, we will clearly give that in a way that we do other requests for pharmacist counsel.

That is the end of my statements. I have submitted also full testimony in writing.

[Mr. Vander Bleek's statement may be found in the appendix.]

Chairman MANZULLO. The complete statements of all the witnesses will be made as part of the record. I would remind the Members of Congress that these mics are live at all times.

Our next witness is Sheila Nix. Sheila represents the Governor of the State of Illinois. Ms. Nix, we look forward to your testimony.

STATEMENT OF SHEILA NIX, OFFICE OF GOVERNOR BLAGOJEVICH

Ms. NIX. Thank you. Thank you, Chairman Manzullo and all the other members of the—

Chairman MANZULLO. Could you pull up the mic a little closer or maybe just push it down a little bit.

Ms. NIX. Okay. Thank you, Chairman Manzullo and all the other members of the Committee on Small Business, for giving us the opportunity to testify today.

My name is Sheila Nix, and I am a senior adviser to Illinois Governor Rod Blagojevich. I am happy to be here today to talk about the Governor's decision in support of women's health care.

Just as a beginning, the Governor didn't come to this issue in isolation. He, since he has took office, has been working on expanding health care access for women, children and families in Illinois and has expanded access to health care through the KidCare and FamilyCare program, and now Illinois is able to cover 313,000 more men, women and children and working families.

He also created I-SaveRx, which is a plan to provide Illinois residents access to affordable prescription drugs in Canada and Europe. He also created the Illinois Healthy Women Initiative that

helps 120,000 women leaving Medicaid with basic health care and reproductive health care coverage. He has, also on the issue of contraceptives, required legislation that requires private insurers to cover all FDA-approved contraceptives, so that all women in Illinois now have contraceptive coverage through their private insurance plan as well.

I will talk a little bit about what led to his decision on this rule. In February, the Illinois Department of Financial and Professional Regulation received complaints from a doctor's office. The complaint was that their patients were unable to fill two prescriptions for emergency contraception at a downtown Chicago pharmacy. The complaint stated that the pharmacist said, ″I don't fill those″ and advised the caller to call back several hours later when a different pharmacist would be on duty.

When Governor Blagojevich heard about these cases and other cases in Illinois and around the country about women not being able to get their birth control pills filled, he directed the Illinois Department of Financial and Professional Regulation to make sure—to issue a rule to make sure that women would not be denied this basic health care need. The rule is meant to ensure that all Illinois pharmacies dispense birth control prescriptions without hassle, without lecture and without delay.

There is a couple aspects of the rule that in some discussions have been misunderstood. I want to take this opportunity to clarify that. First, the rule does not apply to any individual pharmacists. The rule is directed at pharmacies, a class of pharmacies in the retail business that are holding themselves out in the business of filling prescriptions, things like CVS, Walgreens, Osco, those types of entities. The rule applies to medications identified as preventing pregnancies by the Food and Drug Administration.

So we are relying on the definitions provided by the Food and Drug Administration in clarifying the rule, and it includes both monthly birth control pills and emergency contraception.

Let me make one more thing clear, because this has been another source of confusion. The rule does not apply to RU-486. As a matter of fact RU-486 cannot be dispensed by a pharmacy or pharmacist. It has to be administered by a doctor. So to be clear, the rules does not apply to RU-486, just contraceptives as defined by the Food and Drug Administration.

The rule directs pharmacies in the business of dispensing contraceptives to fill valid, lawful prescriptions for contraception without delay. If the pharmacy is not in the business of dispensing contraceptives, the pharmacy is not subject to the rule. So to be clear on that, if there is an individual pharmacy that is owned by someone like Mr. Vander Bleek who has an objection to providing contraceptives, they can choose not to provide contraceptives at all and the rule does not pertain to them.

If the prescribed medication is not in stock, the pharmacy must obtain medication through the regular process for ordering contraception. The other thing that has been clarified now that our permanent rule is going forward in lieu of the emergency rule, is that there was some concern that the term 'without delay' meant that people were allowed to cut in line, come in, walk to the front of the line and get their prescription. Clearly, that wasn't what we in-

tended. So in the permanent rule, ″without delay″ is defined to mean in the normal course of filling a prescription.

The Pharmacists Association also asked us to clarify to make sure that the pharmacist could still do their job checking drug interactions, making sure there is no allergies to that type of procedure. Again in the permanent rule, that will be clarified.

The emergency rule is currently in effect, and the permanent rule hearing is scheduled for August 16th. So it is our understanding at that time that the temporary rule will go out and the permanent rule will go into place.

The rule is important to make sure women have access to health care, and in particular, to make sure that women's decisions made with her doctor about her health care are respected. The interesting thing is that as we have gone through this and talked to many of the physicians—and I think it was mentioned that the AMA is in support of this legislation and rule—that contraceptives can be used for many things and other health conditions.

They are often prescribed for things like migraines, acne, regulation of the cycle, pain and in some cases emergency contraception has been used to stop hemorrhaging unrelated to the reproduction side of it. So we think that it is important if a woman and her doctor make a decision on what is the appropriate drug for her health, that she should be able to go to a pharmacy in the business of providing prescription drugs and get that prescription filled without delay.

Governor Blagojevich has ruled to make sure that a woman's right to get her prescription for birth control filled without delay, without hassle and without a lecture is an important part of providing necessary health care for Illinois families and Illinois communities.

Thank you very much.

[Ms. Nix's statement may be found in the appendix.]

Chairman MANZULLO. Thank you.

Our third witness is Michael Patton. Mr. Patton, we look forward to your testimony.

STATEMENT OF J. MICHAEL PATTON, ILLINOIS PHARMACISTS ASSOCIATION

Mr. PATTON. Thank you very much. Good morning and thank you to Congressman Manzullo for inviting me to speak today before this Committee on the issue of Freedom of Conscience for Small Pharmacies.

For the record I am not a pharmacist. I run the Pharmacists Association, and we represent about 2,500 pharmacists in the State of Illinois, both in the independent retail setting, the chain stores, hospitals and long-term care. So, for the record, I would like to clarify that I am not a pharmacist.

Ladies and gentlemen of the House Committee on Small Business, on April 1, Illinois Governor Rod Blagojevich invoked a rule providing all pharmacists to provide contraceptives based on valid lawful prescriptions without delay. As initially implemented, this emergency rule posed a substantial risk to patient care and created a substantial challenge for pharmacists as licensed in our State.

Since that time, the emergency ruling has been modified, and the proposed language will be reviewed by the Joint Committee on Administrative Rules on August 16th. The language is now being promulgated as follows, as I have listed in my testimony, and I won't take your time to read it there for your reference.

As rulings now are being enforced, the Illinois Pharmacists Association on behalf of its members has taken a formal position that we can accept these modifications. However, we feel it is imperative that the reference to health care personnel, as cited in the Illinois Health Right of Conscience Act, be amended to specifically include pharmacists by reference than simply by inference as health care personnel. The initial impact of this edict was harrowing for Illinois pharmacists as many of the small rural communities did not carry emergency contraceptive, often indicated as Plan B.

These pharmacies did not stock this item because of any personal or religious beliefs, but simply the principles of supply and demand. As one pharmacy told me they had two requests for it in about 5 years, so it is not a product that they inventoried. Because what we are finding is the reality in the small communities that if a women finds herself in need and determines that with the advice of her physician, that pregnancy could be imminent, then she oftentimes will seek a pharmacy in a nearby metropolitan area to preserve and protect her privacy and anonymity. So what we find is these small rural pharmacies have very little demand, not because the need isn't there, but due to privacy issues oftentimes a woman might go to another area.

Now these pharmacies are being challenged as to how to respond to the new ruling of the Governor. Most still do not carry the product, but have established a relationship for a personal referral with a nearby chain store, who will now typically stock this product due to the new mandate and the corporate requirement for compliance. The ruling provides for the ability of the pharmacist with the patient's permission to transfer the prescription to a local pharmacy of the patient's choice or return the prescription to the patient.

Unfortunately, what we are now finding is that some individuals are testing select pharmacies to discern the willingness of the pharmacy to fill their prescription. A case in point is a woman who would drive over 100 miles to a very small rural pharmacy to get her prescription filled when she had passed multiple metropolitan areas.

This initiative has been utilized now at several pharmacies that happen to be owned by Illinois legislators. This has caused concern and fear for rural pharmacies that they may also be targeted in its plot to force pharmacies into compliance, thereby creating the need for many pharmacies to now inventory this product in the event they might be tested.

This situation has caused many pharmacists to examine their own profession and dedication. They feel they no longer have the right to determine their own fate in the dilemma of dispensing. Should they or shouldn't they dispense?

Pharmacists are now beginning to question their rights under the new mandate. Irrespective of their personal beliefs, many pharmacists are now facing a reality. If it is oral contraceptives today, what might the prescription be that will be mandated tomorrow?

Pharmacists are health care professionals as defined in Illinois statute and expected to be treated as the professionals that they are trained to be. The commitment of the pharmacist is to preserve and protect the health and safety of their patients.

This can quite easily be met by allowing pharmacists to do as they always have. If a medicine is not in stock, they may offer to order it for the patient or in the event of a time-sensitive prescription like Plan B, they make a referral to a fellow local professional. This ruling has created limited economic hardship on many small pharmacists, but the threat of a noncompliance complaint for legitimately not having this product in stock has created a much greater burden on all pharmacists.

As a result, some pharmacists are questioning the viability of maintaining their practice in the State of Illinois. Some with whom I have spoken are contemplating relocating to other nearby States that will allow them to practice without fear of legal intervention. This consideration will undoubtedly have significant impact on the availability, affordability and access to quality health care in many remote rural areas, rendering those patients in greatest need to drive greater distance to have their prescriptions filled.

Only time will tell the true cost implication of these decisions. Pharmacists by nature are quite diligent in their efforts to comply. But the outside influence of certain individuals testing selected pharmacists has created new fear that is greater than any inventory item. These pharmacists fear their license may be in jeopardy if they fail to comply with a mandate such as that, irrespective of their personal beliefs. The cost of compliance has become an emotional as well as an economic burden.

Some are entertaining the option of carrying no oral contraceptives so as not to be subject to the rule, and therein further eliminating the ability to have health care for women in need. Also, the chairman has referenced a number of other economic issues that could become subject to this. The Illinois Pharmacists Association has also urged the Governor to give further consideration to recognize the Right of Conscience for Pharmacists. But for those choosing to be so trained, we suggest allowing properly trained pharmacists to dispense Plan B without a prescription under the formal protocols of a licensed physician.

This is now being done in at least six other States. This would allow pharmacists to be properly trained to counsel and dispense and pharmacies to be willing to dispense emergency contraception without a prescription. This, we feel, addresses the availability of emergency contraception and also provides the potential for savings as well.

Thank you, ladies and gentlemen, for the privilege and opportunity to be with you here today. I will be happy to try to address any questions you might have.

[Mr. Patton's statement may be found in the appendix.]

Chairman MANZULLO. Thank you very much. Our next witness is Linda MacLean, testifying on behalf of the American Pharmacists Association. We look forward to your testimony.

STATEMENT OF LINDA GARRELTS MacLEAN, WASHINGTON STATE UNIVERSITY

Ms. MACLEAN. Thank you. Well, good morning, Mr. Chairman, and members of the Committee. Thank you for the opportunity to appear before you today and present the views of the American Pharmacists Association, and I will be referring to that organization as APhA throughout the rest of my testimony.

I am Linda Garrelts MacLean, a pharmacist and an active member of APhA. I have been in practice about 27 years and am the former co-owner of two community pharmacies in Spokane and Deer Park, Washington.

APhA is the national pharmacist association that is the largest in the United States. APhA members practice in virtually every area of pharmacy. APhA appreciates the committee's investigating the impact duty-to-fill proposals will have on small pharmacies. I will be summarizing my written statement, which was submitted to the Committee.

Recent activity has magnified the conscience clause issue and does not reflect reality. The vast majority of pharmacists dispense the vast majority of prescriptions. Regardless, pharmacists want to retain the ability to opt out of providing services to which they object. New drugs can be introduced into the market. A pharmacist should not be expected now to sign off on all future products.

Conscious clauses are a standard way to address the situation and often applied broadly to physicians, nurses as well as pharmacists. In 1998, APhA adopted a two-part policy which supports the ability of a pharmacist to opt out of dispensing a prescription for personal reasons and also supports the establishment of systems so that the patient's access to health care is not disrupted. The policy supports stepping away but not stepping in the way.

There are several types of systems that could be put in place to ensure patients receive access to their care. To begin, a pharmacist should carefully consider where to practice. A pharmacist who objects to physician-assisted suicide would choose a practice outside the State of Oregon or outside a practice that participates. A pharmacist with personal objections to dispensing hormonal contraceptives would avoid practicing in a Title X clinic.

Other systems include staffing the pharmacy so that another pharmacist in the same pharmacy can dispense the prescription and referring or transferring the prescription to another pharmacy, something that the Illinois executive order did not allow. An active communication plan also can help. When prescribers and patients know which pharmacies carry certain drugs, patients can be directed to those pharmacies.

For example, in rural Washington State, potential patients are directed to pharmacists who participate in Washington's emergency contraceptive care program. And, in areas where no pharmacist will dispense a medication, it may be the prescriber who chooses to dispense the product. These systems should be established proactively.

Before a pharmacist is presented with a prescription—and it should be seamless, the pharmacist-patient interaction should mirror what occurs with any prescription. If the prescription cannot be dispensed, then the patient must be aware of available options.

Pharmacists should not use their position of power to berate patients to their personal beliefs or to obstruct patient access to therapy, such as refusing to return a patient's prescription.

To balance the negative reports, I would like to describe the efforts of pharmacists to increase access to emergency contraception. Pharmacists in seven States have legal authority to describe and dispense emergency contraceptives under collaborative agreements with prescribers. Legislation to establish similar programs were introduced this year in nine different States. Where pharmacists have this authority, patients may go directly to a participating pharmacist to receive their prescription for emergency contraceptives, expediting access to care when time is of the essence.

While serving as president for the Washington State Pharmacists Association, I was instrumental in helping enact emergency contraceptive authority in Washington, the first State to do so.

Since then, hundreds of pharmacists have been trained and thousands of emergency contraception interventions have been done by local pharmacists. Duty-to-fill requirements can impact the clinical role of the pharmacist by conflicting with the pharmacist's legal responsibilities to assess the clinical safety and appropriateness of every prescription.

If pharmacists were forced to act as robots, and dispense all lawfully prescribed prescriptions, then patients would be at risk for receiving dangerous but lawful prescriptions.

For example, a prescription calling for an overdose for an antibiotic to which the patient is allergic is lawful, or a prescription calling for an overdose that might be 10-fold what it should be is lawful but likely fatal to the patient.

The clinical role of the pharmacist was overlooked in Illinois Governor Blagojevich's April 1st duty-to-fill order. After pharmacies expressed concerns, the Governor clarified that the order was not intended to ″interfere in any way with a pharmacist's responsibility to conduct prospective drug utilization review.″ Illinois patients are fortunate that the Governor was willing to clarify his order, but other patients might not be as fortunate.

Duty-to-fill proposals affect small business by dictating how the business must accommodate its staff, in this case the pharmacist. For example, some proposals would require a pharmacy to order a product if it is not in stock, a decision that should be left up to the pharmacy. Some pharmacies may be willing to order a drug, but depending on the patient's needs, the timing and the drug cost, special ordering of the drug may not be a viable option. The real-world solution to these situations is that patients are referred to other pharmacies or alternative arrangements are made.

Potential unintended consequences of duty-to-fill proposals include a pharmacy choosing not to stock a certain product, a pharmacy rescinding its conscious clause protections or forcing pharmacists to participate in current opt-in programs. It is important to keep this issue in perspective.

While any instance of a pharmacist obstructing access to medications must be addressed, such situations are rare. Of the nearly 3.3 billion prescriptions dispensed each year in the outpatient setting, proponents document few examples of refusals, leaving us to ques-

tion the need for new laws, when better implementation and well implemented systems may be the answer.

One individual's rights should not outweigh another's. Our policy balances the needs of the patient and the individual needs and duties of the pharmacist. Implemented well, patients receive care and pharmacists are not—will not be forced to ignore their personal beliefs.

Thank you for the opportunity to share the perspective of pharmacists on this issue.

[Ms. MacLean's statement may be found in the appendix.]

Chairman MANZULLO. Thank you. Let me ask all of you this question. Have any of you testified before a Congressional Committee before? All right. You are doing very well.

Our last witness is Megan Kelly of Geneva, Illinois. We look forward to your testimony.

STATEMENT OF MEGAN KELLY

Ms. KELLY. Thank you.

Chairman MANZULLO. Take a sip of water, sit back and relax and tell us your own story in your own words.

Ms. KELLY. Thank you, good morning, I want to thank the Committee for inviting me today on the issue of pharmacist refusal. I appreciate your time and willingness to listen to my story. My name is Megan Kelly. I live in Geneva, Illinois. I am married, I am a mother and a high school art teacher.

Recently, in trying to make a responsible decision about my health and family planning, I was humiliated and discriminated against by a pharmacist who refused to fill my prescriptions for birth control pills and emergency contraception based on her own personal views. This pharmacist put my health in danger by refusing to fill my prescription and imposing a delay in my ability to access my legally prescribed medication.

On Sunday of 4th of July weekend I went to get my birth control prescription filled and found out I had no more refills left. When my usual pharmacist tried to contact my doctor, she was told that I had to make my annual appointment before I could get the prescription filled.

My doctor was also out of town due to the fact that it was 4th of July. After not being able to use my birth control pills for 3 days, my doctor recommended that I use the emergency contraception pill as a precautionary measure. That is why I tried to get both the birth control and the emergency contraceptive pill script filled.

My doctor's office called my prescription into a local Jewel-Osco pharmacy in St. Charles, which is a town over but close to my home, and was told my medication was available. When I went to pick up my medication the pharmacist on duty said she would not fill my prescription because of her personal beliefs and that I would have to get my prescription filled elsewhere.

I was shocked. I asked for the store manager who said he could not force his pharmacist to fill my prescription, and he was also not a pharmacist so he could not fill it. But they were willing to transfer it to another location.

He also told me that there was a store memo that was put out that did say that it was okay for their company, for their pharmacists, to refuse their patient's prescriptions.

I called the pharmacy district manager for Albertson's, Inc., who operates Jewel-Osco. She did confirm that this policy was true.

After a bit of research, once I got home from this experience, I since learned that what I supported at the time was true that Jewel-Osco pharmacy in St. Charles was in violation of an emergency rule that Illinois Governor Blagojevich signed on April 1st, which was talked about, and the Joint Committee on Executive Rules is expected to meet to talk about whether to make the rule permanent in August.

As a patient, I consult with my doctor about the best course of treatment. In writing my prescription my doctor is doing her job and acting in my best interest. I do not expect a pharmacist to breach that relationship I have with my doctor and endanger my health. When pharmacists refuse to dispense medicine, they are not doing their job. Their job is to dispense medication, not moral judgment. A pharmacist's personal views do not belong in my health care.

As a consumer, I have a right to walk into any pharmacy in America and expect to have my prescription filled without unnecessary delays or discrimination. It is completely unacceptable for this store to refer customers to another provider at a different location. As in this case, as in my case, this practice can result in humiliation and based on the nature of the medication poses a health risk when the prescription is not filled in a timely manner. Birth control pills must be taken every day at the same time to be effective and the effectiveness of emergency contraception diminishes dramatically as time goes on.

It is the responsibility of pharmacies to ensure that all individuals' needs are met and that no one becomes a target of discrimination. The Jewel-Osco pharmacy in St. Charles currently employs a pharmacist who is jeopardizing women's health by refusing to fill legal physician-prescribed family planning medication.

The bottom line is this, if a woman and her doctor have already discussed the need for contraception, she should be able to walk into any pharmacy in America and expect to have her prescription filled without unnecessary delays or discrimination. Women should never be denied basic health care services by pharmacists who choose to impose their own beliefs on others.

My story is not unique. It has happened to others, not only in Illinois but all across the Nation. I would like to thank you again for listening to my story.

[Ms. Kelly's statement may be found in the appendix.]

Chairman MANZULLO. Thank you very much. We are going to set the 5-minute clock for members asking questions.

Ms. Nix, I have a question with regard to the rule that you set forth on page 6 of your testimony. I have read through that. Then I read your summary on page 7, the second bullet point. Do you see that?

Mr. PATTON. To whom are you speaking?

Chairman MANZULLO. Ms. Nix, I am sorry. Do you see that?

Ms. NIX. Yes.

Chairman MANZULLO. That says pharmacies that stock contraceptive medications must fill valid, lawful prescriptions for all contraception without delay. Where do you see that language in the proposed regulation?

Ms. NIX. The first sentence says, ″Upon receipt of a valid lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive or suitable alternative permitted by the prescriber to the patient or the patient's agency without delay.″

Chairman MANZULLO. That doesn't answer the question.

Ms. NIX. I am sorry, what is your question?

Chairman MANZULLO. The question is that the comment that you said that pharmacies that stock contraceptive medications—

Ms. NIX. Right.

Chairman MANZULLO. —implied that if pharmacies do not stock—

Ms. NIX. That is correct.

Chairman MANZULLO. —emergency contraceptives, they are exempt from the rule. But that is not in the language of it.

Ms. NIX. Let me see if I can find it where it says that you stock it—if you are out of it, you have to order in the normal course.

Chairman MANZULLO. All right.

Ms. NIX. If your normal course is not to carry it, then you don't have to carry it.

Chairman MANZULLO. That is pretty loose.

Ms. NIX. I think we have discussed that with the Pharmacists Association. There is a general understanding that it hasn't been a problem, but if we need to tighten that up—

Chairman MANZULLO. I am just saying there is a lot of confusion as to whether or not a pharmacist, a pharmacist does not believe in contraception at all, and does not stock it.

Ms. NIX. Yes, that would not be a problem with our rule. If we would need to clarify something on our website about that we could do it.

Chairman MANZULLO. What about the Catholic health care organizations?

Ms. NIX. Yes, they had contacted us as well and asked for some clarifications in the rule, which were provided. The other thing is that their pharmacies are within their hospital or association and are not the class of pharmacy that this rule applies to.

Chairman MANZULLO. So you discriminate among pharmacies based upon—

Ms. NIX. The rule applies to pharmacies that are in the retail business of providing prescriptions. So that in the normal course of what they even advertise, you know, transfer your prescription here, it is those types of pharmacies that advertise themselves and the business and would like to fill people's prescriptions. If it is within a hospital system or others, the rule does not apply. We are dealing with the retail pharmacies that pharmacies deal with on a daily basis.

Chairman MANZULLO. Pharmacies and hospitals fill prescriptions—Ms. MacLean, could you clarify that for us?

Ms. MACLEAN. Some institutional pharmacies do have outpatient pharmaceuticals now. That did not used to be the case but you are absolutely correct.

Chairman MANZULLO. So if you are under the umbrella of a Catholic hospital and you are a pharmacist, you don't worry about it. But if you have the same religious and spiritual beliefs as pharmacist Vander Bleek, then you are under the prescription of this law?

Ms. NIX. If you are a retail pharmacy you are covered.

Chairman MANZULLO. You didn't use the word retail.

Ms. NIX. That is what it refers to. Under the technical reading of the licensing it is retail pharmacies.

Chairman MANZULLO. So pharmacies and hospitals that are not considered to be retail, that is correct?

Ms. NIX. That is correct. They are considered to be a different license.

Chairman MANZULLO. Then where does that say within this language that it refers only to—is it a division 1 pharmacy that is considered to be retail?

Ms. NIX. Yes.

Ms. MACLEAN. But there are some hospitals who do fill for outpatient use.

Ms. NIX. In Illinois? In Illinois you are talking about?

Ms. MACLEAN. I can't tell you Illinois.

Ms. NIX. Yes. I think our pharmacy expert is here if we need to clarify it.

Chairman MANZULLO. You can ask him if he knows.

If you could give your name and position for the record and give the answer, we would appreciate that. Spell your last name. Go ahead.

Mr. HUGHES. Thanks. My name is Pat Hughes, H-u-g-h-e-s. I am the General Counsel of the Illinois Department of Financial and Professional Relations, which regulates, among other things, the practice of pharmacy, the profession of pharmacy.

In answer to your question about the classes of pharmacy, I think that sort of the tail end there hit the nail on the head. Division 1 pharmacy is the division that is referred to in the rule. That is a classic retail pharmacy that you might encounter. It is possible to put that pharmacy, you know, almost anywhere, but any retail pharmacy that is division 1 would fall under the rule. Any other pharmacy, a traditional hospital pharmacy, that was not a division 1 pharmacy, the rule would not cover too, whether that is part of a Catholic hospital system or any other kind of hospital system.

Chairman MANZULLO. What if that hospital also does retail?

Mr. HUGHES. Occasionally a division 1 license could be on a hospital premise.

Chairman MANZULLO. Did that occur in Illinois?

Mr. HUGHES. On a handful occasions. That rule would apply to any division 1 hospital—excuse me, any division 1 pharmacy regardless of where it is.

Chairman MANZULLO. Thank you very much.

Ms. Velazquez.

Ms. VELAZQUEZ. Ms. Nix, I would like to know how the Governor's emergency order will impact a pharmacist's ability to run and operate their business. How would you respond to some pharmacist's assertion that they will be unable to run their business if

they personally object to emergency contraception? Does it provide for remedies to a pharmacist owner who objects?

Ms. NIX. Yes. If a pharmacist/pharmacy owner objects to contraceptives, then they do not have to stock contraceptives.

Ms. VELAZQUEZ. Some have expressed concern that the Governor's order could lead to pharmacies dispensing drugs that actually hurt women because of the requirements on the order. How does the order require that the safety of the patient is paramount?

Ms. NIX. The rule clarifies—the permanent rule will make clear, and the temporary rule has also, that the pharmacist is to do their normal course of business, check drug interactions, do counseling, whatever is in the normal course. That is paramount. In the patient—there was an example mentioned earlier about a higher dose of antibiotics. Clearly that is not what is intended here. The permanent rule makes it very clear that pharmacists should do their normal course of business in patient safety before prescription.

Ms. VELAZQUEZ. Ms. MacLean, in your testimony you talk about how your organization wants to protect a pharmacist's right to refuse filling prescriptions in a significant number of situations. Doesn't the ability of pharmacists to deny filling a prescription preserve the responsibilities of the prescribing physician?

Ms. MACLEAN. Well, we actually have two systems in place in Washington. When a pharmacist steps away from a prescription, for example, for a Plan B medication, that pharmacist can call a neighboring pharmacy and transfer it over the phone. We can find out what their hours are, we can find out if they have it in stock. We can find out if they take the insurance company that the person is presenting with. So that is one situation where we can actually ensure that a women gets a medication that she wants by transferring the prescription.

The second situation in Washington is that some pharmacists have prescriptive authority protocols in place. For example, I have one. I could write the prescription and dispense it, if it is appropriate for that one.

Ms. VELAZQUEZ. But my question is, in the sense that how, if pharmacists by taking such action of denying filling a prescription, injects herself or himself between the patient and the doctors?

Ms. MACLEAN. I look at pharmacists. It is one of the things that we actually train our students in pharmacy school about, is that the pharmacist acts on the patient's behalf, as a patient advocate.

I can give you an example. I had a person come into the pharmacy not too long ago, that she was able to pay for the emergency contraceptive, that we would be able to administer for her, administer and dispense. We were unable to bill the type of insurance that she had, and so I picked up the phone, I called Planned Parenthood, and I said I think this is a candidate for you, can you help me out?

So I acted as the patient's advocate. I was able to find out if they took her insurance, what the hours were, and I got instructions on how to get her there. So the pharmacist can be a facilitator.

Ms. VELAZQUEZ. Let me phrase my question in a different way. I just want a yes or no answer. Would you agree there must be a balance when it comes to ensuring access for women to meet their reproductive needs and addressing the concerns of pharmacists?

Ms. MACLEAN. I believe in balance.

Ms. VELAZQUEZ. Ms. Kelly, I want to talk to you, and first I want to thank you for coming here and sharing your story. I know that this is not an easy experience for anyone. Before you went to the pharmacy, did you work with your doctor to determine the appropriate family planning medicine necessary in your situation, and how did it make you feel when the pharmacist told you it will not dispense these drugs because it was against his moral beliefs?

Ms. KELLY. Yes, I did talk to my doctor, and she was the one that recommended this. I have been with this doctor for a while, and she knows my family plan that my husband and I have kind of developed for us.

When I went into the pharmacy, I was shocked. I just had never heard of this really happening to anyone. I didn't think it was legal, but I didn't know about the Blagojevich's emergency ruling. But I figured it had to be illegal. So I was very shocked and embarrassed.

Chairman MANZULLO. Congresswoman Musgrave.

Mrs. MUSGRAVE. Thank you, Mr. Chairman, for holding this hearing today.

My district has four large cities and then a lot of small towns. And the retail pharmacists in those small towns make an incredible contribution to the community, especially communities where there are a number of elderly folks that live.

I so much appreciate what you said, Mr. Vander Bleek, about an anchor pharmacy and what it does for Main Street in small towns. And there will be a clothing store there and a grocery store still there, because people get their prescriptions filled and then they shop. It means a great deal.

I guess I was taken aback by your testimony, Ms. Kelly. As the mother of four children, I wanted doctors to be available on holiday weekends, but they weren't. I wanted to be able to fill a prescription, even after it had run out, but, doggone it, they wouldn't do it anyway. So I faced inconveniences to me, living a very busy life. Before I even got into politics, I thought my life was busy.

Sometimes I had to drive across town to get a prescription filled. I had to drive several miles. But I still did it, and it seems unseemly to me to compare a matter of inconvenience to a matter of conscience. I am taken aback that inconveniences in a person's life would weigh in such as a matter of deeply held beliefs. I think about those pharmacists in my communities and I think about what they do for the population there, and I am very respectful of their deeply held beliefs.

I, for one, want to go on record saying this is a most appropriate matter for the Small Business Committee to take up. It affects the communities. It affects the livelihood. And I will tell you, what are we going to do next? Are we going to mandate that doctors forego their vacations, because I want them here on a holiday weekend? Are we going to say you have to extend your hours in your pharmacy because I need something at 10 o'clock at night? Are we going to say, you have to be there on Sundays? Let's get real.

The American consumer has a great deal of opportunity to buy what they need, to get what they want, but sometimes, they may have to wait 20 minutes longer to start their dinner party, and

they may have to drive across town. But I think, in America, we expect our small business owners, such as pharmacists, to be able to exercise their moral beliefs.

Thank you, Mr. Chairman.

Chairman MANZULLO. Congressman Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman.

I ask unanimous consent to enter my entire statement into the record.

Chairman MANZULLO. All the statements of the witnesses and the members will be admitted into the record in their entirety, without objection.

Mr. GRIJALVA. Thank you very much.

It seems to me, at least according to the title given to the hearing, that we have been called to discuss freedom of conscience for small pharmacies. I do believe it is a misleading title. If we are honest and to the point, we are not actually talking about freedom of choice for small business pharmacies here, the underlying issue, in my mind, what is at stake is the freedom of choice period. We are here to talk about just one more way that the government can aid in tearing down a woman's right to access to methods of birth control.

Quite frankly, and I want to associate myself with the ranking member's statement at the beginning, we are offended that under our jurisdiction, such programs at the 7(a) loan, the Micro loan, the 8(a) loan program and countless other SBA programs are being sidelined while we take this little foray into reproductive rights issues.

A woman who chooses birth control as her contraceptive method is doing two things, in my mind: She is, number one, exercising her basic right to chose how to govern her own body, and, number two, by taking control of her reproductive health, she is acting to govern her own body in a very responsible manner.

This woman and her doctor have made the decision that a prescription for birth control is in her best interests. Given that, I will say that a third party does not have the right to override the decision made by a woman and her physician, which is where this hearing comes into play.

Simply put, our Small Business Committee is doing a disservice to women's rights by even holding this hearing. Moreover, it is going to cause more problems to small businesses in terms of litigation and as we look at all these other issues associated with this discussion.

I have just a couple of questions, Mr. Chairman.

Let me begin with Mr. Vander Bleek.

It is your view, if I understand your testimony from the written as well your verbal comments, it is your view that pharmacies do not have an ethical obligation to protect women's health by providing medically necessary prescriptions. Do you think pharmacists should have the right to refuse any prescription they disagree with morally? For instance, what about drugs for people living with HIV or AIDS, Viagra, drugs derived from embryonic stem cell research? Couldn't the list of drugs objectionable to some pharmacists potentially grow quite long, and should there be any limits?

Mr. VANDER BLEEK. In response to that, I think it is interesting that some people might want to confuse my position and say I am discriminating against a class of people or a particular medical condition of people. I am objecting to a medication and what that medication does.

I have regard for the third person in the relationship. There is me. There is the expectant mother that comes in. And there is the live child that I have to recognize has the possibility of existing, and that my involvement in dispensing this prescription is involvement in the extinguishing of that life.

With regard to embryonic stem cell research, I oppose that, too.

With regard to treating other people's ailments, I have never had any issue with treating people for AIDS, for infertility, for treating people for incontinence or any other type of condition.

Mr. GRIJALVA. Let me follow up with a hypothetical. As you are aware, the Christian Science religion teaches diseases should be treated through prayer, and worshippers have been known to refuse medical treatment and drugs.

If I understand the premise, and correct me if I am wrong, correctly, the logical conclusion would be that a Christian Science pharmacist ought also to be allowed to deny all manners of drugs to patients based on his or her personal belief that medicine is not the appropriate way to treat a disease?

Would you agree, and, if you don't agree, what is the difference?

Mr. VANDER BLEEK. I would agree with that, but I also would submit that Christian Science pharmacist would have a very limited practice.

Mr. GRIJALVA. I said hypothetical.

Mr. VANDER BLEEK. Right. Right. This is interesting, if I can respond further to you, Congressman. Pharmacy is a very competitive marketplace. The pharmaciesthat compete directly against me use major media to advertise to my customers every evening. You can hardly watch 2 hours of network television in my community without being confronted with three or four advertisements by pharmacies who want your business. There is not even a necessity for me to refer business anywhere, because everyone knows who all the other competitors are.

In the case of where we have been confronted with a prescription for Plan B and we respectfully have returned the prescription, the patient has no problem at all finding another pharmacy. In fact, they could probably give me directions to the other pharmacies. So we are not denying access to anything.

With respect to the contention that somehow I am inserting myself in a patient-physician relationship, nothing could be further from the truth. Indeed, what I am requesting here, government to stop trying to pull me into that relationship. I stand here. They have their relationship. I don't want to be involved in products that might endanger human life, and I request that I can still own a pharmacy, a small business in the State of Illinois and be excerpted from that requirement that I need to be pulled into that particular relationship.

Chairman MANZULLO. Congressman King.

Mr. KING. Thank you, Mr. Chairman.

I direct my first question to Mr. Vander Bleek. Mr. Vander Bleek, in your testimony, you define the process of the beginning of life. Could you define again for this committee your position on when life begins?

Mr. VANDER BLEEK. My position is a scientific position of when life begins: Two 23-chromosome gametes,one from a male, one from a female human being, meet and form a 46-chromosome human being. It is at that point where that is a new and unique individual, not half mom, half dad, but part of each, and a new independent human being. That embryo, if it does not perish, will never become anything else. It will never become another animal life form. It will not become a baseball bat or a banana. It will become a human being.

So I have moral concern for all human beings at every stage of life, and I reject that in my practice of pharmacy, which has been one that preserves human life, the sanctity of human life, and one that has regard for people's health care, should become one that also involves extermination of same.

Mr. KING. Mr. Vander Bleek, would you describe the length of time that that takes? Could that be described within an instant?

Mr. VANDER BLEEK. Within an instant.

Mr. KING. Ms. Nix, would you describe an instant that your position would be of when life begins?

Ms. NIX. My official position? I can't do that on behalf of the Governor. I am sorry.

Mr. KING. So you can't take a position on behalf of the Governor as to when life begins?

Ms. NIX. Correct. I don't know what his personal opinion is on that.

Mr. KING. Therefore, the Governor has a position aside from that, I would think then.

Mr. Patton?

Mr. PATTON. Not being a medical person—and I think this is really the crux of the debate here, is, when does life begin? Is it the implantation of the egg in the womb, or is it the fertilization of the egg by the sperm? I think that is the basis which really draws a lot of the debate, is the uncertainty of when life begins. I think it is an individually held belief.

Mr. KING. Not a scientific fact. It is an individually held belief?

Mr. PATTON. I believe so, yes.

Mr. KING. Then would you disagree with Mr. Vander Bleek?

Mr. PATTON. I wouldn't disagree with him, no. I wouldn't disagree with him.

Ms. VELAZQUEZ. Would the gentleman yield?

Mr. KING. No, thanks, I have only a few minutes.

But the science that we have heard here does come from Mr. Vander Bleek. So I am going to then ask if Ms. MacLean could offer some science to put some insight into this?

Ms. MACLEAN. Mr. King, I don't believe I can speak on behalf of APHA on that.

Mr. KING. Thank you, and I am not going to ask you, Ms. Kelly, because I don't think that you have represented yourself as being a professional in this field.

So I do think that is the crux of this matter. And there are two central points here. One of them is, when does life begin, and science has continually been reestablishing a religious belief that the Catholic Church has held forever, and that is Mr. Vander Bleek's position, for the reason that Catholic scientists have examined this as thoroughly and more thoroughly than I suspect Mr. Vander Bleek has.

So I think it is a clear scientific fact that life has to begin at some instant, and this is the only instant that can be described, and so if we are going to err on the side of life, we must not take the life after the point of conception.

So the next question then is, if it is a religious position, as maybe was implied by Mr. Patton, then do we have religious freedom in this country, or don't we?

So I will focus the next question then to Ms. Nix, and that is, I have here a copy of the conscience clause in the Illinois statute, and I don't have it thoroughly covered here or the substance of it necessarily, but I would ask you to speak to it. Under conscience, part of the definition is a sincere set of moral convictions arising from belief in and relation to God.

So how does your Governor's office reconcile the conscience clause with religious held beliefs and the scientific facts of when life begins, especially because I think there has been a reference made to the drugs that might be used for suicide?

Ms. NIX. The rule, as the Governor has put it in place, does not apply to an individual pharmacist. It applies to a pharmacy. So the pharmacy that is in the business of providing prescription drugs just needs to make sure that the prescription gets filled without delay or returned, if the patient would prefer that. The pharmacy then will have to figure out—

Mr. KING. Excuse me. So if the pharmacy takes the position they are going to provide contraceptives but not Plan B morning after pills, then they will be compelled though by that order, regardless of whether it is a pharmacy position or a pharmacist position?

Ms. NIX. Right. Because we are relying on the Food and Drug Administration's definition of contraceptive.

Mr. KING. So you would exempt it then somehow by a Governor's rule, the conscience clause in the statute?

Ms. NIX. No, the Food and Drug Administration says that contraceptives prevent pregnancy, so the class of prescriptions that are in the rule are contraceptives that prevent pregnancy. So, the situation is the pharmacy who is selling prescription drugs needs to make sure that it gets covered. They can have somebody else come in. They can have a different pharmacist on call. There are a lot of different things they can do.

In an individual case where there is a belief that because Plan B is basically the same thing as monthly pills, just in a different dose, that if the belief of that individual pharmacist-pharmacy owner is that contraceptives are problematic for them, then we don't require that.

Mr. KING. Thank you. I see I am out of time. I would reiterate though it has been described as emergency contraception, but it is an early abortion. Thank you.

Chairman MANZULLO. Congresswoman Sanchez.

Ms. SANCHEZ. I find it highly amusing that we are debating when life begins in the Small Business Committee. I would submit that that is probably a discussion left better for other committees.

Ms. MacLean, I want to jump right into the questions here because I have many, and I am shocked and appalled at some of the statements that have been made by some of the members here and some of the testimony today.

But can you tell me the position of the AMA and the FDA with respect to Plan B? Do they consider that an abortion pill?

Ms. MACLEAN. I can't speak on behalf of the other organizations.

Ms. SANCHEZ. Okay. You don't know the answer.

Ms. Nix.

Ms. NIX. No, the FDA and the AMA do not. Contraceptives prevent pregnancy, and, like I mentioned, RU-486 is not a contraceptive, and it is not part of this rule. RU-486 can only be administered by a doctor.

Ms. SANCHEZ. Thank you, Ms. Nix.

Mr. Vander Bleek, I am sure you are aware that the chemicals contained in monthly birth control prevent fertilization. Are you also aware that the chemicals in emergency contraception, also known as Plan B, also prevent fertilization, and do you realize that if you are selling monthly contraceptives, that you are already selling emergency contraceptives, that the only difference is the packaging and the dosage?

Are you aware of that? A yes or no will suffice.

Mr. VANDER BLEEK. Well, you had several questions there. To which do you want me to answer?

Ms. SANCHEZ. Are you aware that the chemicals—

Mr. VANDER BLEEK. I am aware that the chemicals are the same.

Ms. SANCHEZ. Are the same. And do you realize what the difference is in the dosage on the packaging?

Mr. VANDER BLEEK. I am aware of that, and also the intent of when it is to be taken in the directions.

Ms. SANCHEZ. The right to obtain birth control without being—

Chairman MANZULLO. The witness will be allowed to complete his answer.

Ms. SANCHEZ. I asked specifically for a yes or no answer. I have very limited time to ask questions. I would like the right to ask them without interference.

Chairman MANZULLO. Proceed. But if you cut him off again, I am going to give him time to answer.

Ms. SANCHEZ. The right to obtain birth control without interference has been upheld by the Supreme Court. Additionally, polls show that eight in ten Americans say pharmacists who personally oppose birth control for religious reasons should not refuse to sell oral contraceptives.

The America Medical Association has also taken the position that pharmacists should not be allowed to use discretion in determining what drugs they will dispense if there is a valid and legal prescription.

My question to you, which is again a yes or no question, do you think the Supreme Court, a majority of Americans and the AMA are wrong?

Mr. VANDER BLEEK. I do.

Ms. SANCHEZ. Mr. Vander Bleek, it is estimated that 95 percent of American women use some form of birth control at some point in their lives. Now, I am sure that your community has a large percentage of women who use some form of monthly birth control. Basically, there is a captive market for prescription birth control that would provide your business with a steady monthly flow of income. Do you sell contraceptive birth control?

Mr. VANDER BLEEK. I do.

Ms. SANCHEZ. Do you sell condoms in your pharmacy?

Mr. VANDER BLEEK. I do.

Ms. SANCHEZ. Mr. Vander Bleek, you realize that if you don't want to dispense emergency contraceptive in the form of Plan B, which contains the exact chemical compound as monthly birth control, the Governor's order gives you the option to stop selling birth control altogether?

Mr. VANDER BLEEK. I don't read that in the statute there, but—

Ms. SANCHEZ. Perhaps Ms. Nix could enlighten us?

Ms. NIX. Yes, that is the case.

Mr. VANDER BLEEK. It is not in the statute, though, Ms. Nix. It is in your summary, but it is not in the statute.

Ms. SANCHEZ. Would you support the rule if it specifically said that?

Mr. VANDER BLEEK. No, I don't support the rule at all.

Ms. SANCHEZ. So even though it is the same chemical compound, and if you morally were opposed to dispensing emergency contraceptive and it gave you the option and said if you are morally opposed to contraceptive in that form, you could opt out of having to provide it, if you simply agree to stop providing contraceptive in pill form, you would still not support the rule?

Mr. VANDER BLEEK. There is a product that is used to help reline the stomach in cases of stomach ulcers that also causes a spontaneous abortion. It is the same chemical. Do I dispense it to cause a spontaneous abortion? No, I don't. Do I dispense the same chemical to help someone's stomach? Yes, I do.

Ms. SANCHEZ. The question is, would you support the rule and your answer was—yes or no again?

Mr. VANDER BLEEK. I would support the rescinding of the rule.

Ms. SANCHEZ. Thank you.

Ms. Kelly, I want to talk to you a little bit about emergency contraceptives, and I am very sorry for the experience you have had. With respect to the fact that having to travel around to find somebody who would fill your prescription, I have heard one member on this panel describe that as a ″minor inconvenience.″

Where emergency contraception is concerned, isn't there is a window of opportunity in which it is effective and a window of opportunity in which it is not?

Ms. KELLY. Yes, 72 hours.

Ms. SANCHEZ. So having to drive perhaps in a rural community to other cities to find somebody who could perhaps fill that prescription, it could actually foreclose that window of opportunity for it to be effective, is that not correct?

Ms. KELLY. Yes.

Ms. SANCHEZ. That is a decision that your doctor discussed with you?

Ms. KELLY. Yes.

Ms. SANCHEZ. I have no other questions. I see my time has expired.

Chairman MANZULLO. Congressman Fortenberry.

Mr. FORTENBERRY. Well, let me first thank you, Mr. Chairman, for holding this important hearing. I don't think discussion of an issue, no matter how delicate, is inappropriate, even in a forum such as this, which is primarily involving small business, but clearly, we have a small business impact here.

Mr. Vander Bleek, I would submit to you that your definition of life is one that is found in embryology textbooks in medical schools, so I appreciate what you have said today.

I think again, in dealing with a sensitive issue such as this, it is important to pull back and look at the principle at stake. We have heard the word ″discrimination″ thrown about quite frequently here on the panel. Were you being discriminated against by the Governor and the State of Illinois?

Mr. VANDER BLEEK. I absolutely believe I am.

Mr. FORTENBERRY. Let's apply the principle further. Could then the Governor in the State of Illinois impose its will on a doctor, for instance, who might object to certain prescriptions because of sound medical reasoning?

Mr. VANDER BLEEK. I don't know why that couldn't be done if this can be done.

Mr. FORTENBERRY. I think, again, that is one of the reasons to look at the issue carefully, in the context not only of small business but the larger issue of how it affects other medical providers. Thank you for coming today.

Chairman MANZULLO. I have a question to Ms. Nix, and that is, you say the regulation is aimed only at pharmacies and not pharmacists. But what do you do when it is one and the same, when there is only one pharmacist in the pharmacy? Clearly, it is the intent that relates to that pharmacist. What do you do in a case like that? Why don't you exempt them?

Ms. NIX. The same rules would apply.

Chairman MANZULLO. I don't think you understand my question. You took pains to explain that this regulation is aimed at the retail establishment.

Ms. NIX. Right.

Chairman MANZULLO. And not the individual pharmacist.

Ms. NIX. Right. Because in many cases—

Chairman MANZULLO. Let me finish my question. But in Mr. Vander Bleek's case, and lots of pharmacies, especially small town pharmacies across rural Illinois, the pharmacy equals the pharmacist. What do you do in a case like that?

Ms. NIX. Well, that is why there is a provision that says if that pharmacy-pharmacist has a moral objection with contraceptives, they don't have to carry it.

Chairman MANZULLO. See, the problem here is this: The problem is that it is Mr. Vander Bleek's right of conscience that he is invoking. It is a subjective intent. Arguments as to whether or not it is the same chemical or when life begins are interesting, but they are academic. Isn't that essentially what a right of conscience is, is

what goes on inside your own mind, regardless of whether or not there is academic or social verification?

Ms. NIX. Yes.

Chairman MANZULLO. Well, that is him. He may be the only pharmacist in the State of Illinois that believes that by issuing this it is an abortifacient, but yet it is his conscience.

Ms. NIX. I know. But it is not an abortifacient. That is a definition of the Food and Drug Administration.

Chairman MANZULLO. But when you read the Health Care Right of Conscience Act, let me read to you again what ″conscience″ means. It says ″″Conscience means a sincerely held set of moral convictions arriving from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faith.″

That is a subjective standard. Wouldn't you agree?

Ms. NIX. Yes.

Chairman MANZULLO. So you disagree with his decision as to when life begins—

Ms. NIX. No, I don't disagree with his position. I just said I am not taking a position on behalf of the Governor.

Chairman MANZULLO. I understand. The Governor disagrees when life begins. But it is the pharmacist's conscience that has to be protected, isn't that correct?

Ms. NIX. The pharmacy, if you are a pharmacy in the business of providing prescription drugs, our rule applies to you and says you need to figure out a way to get it. If you would like to have another pharmacist come in and do it, that is fine.

Chairman MANZULLO. What if it is a doctor in a small town, and someone goes to that doctor for an abortion? The conscience act applies, doesn't it?

Ms. NIX. Right. That is correct.

Chairman MANZULLO. Should it be any different for a pharmacist who believes that abortion is wrong?

Ms. NIX. See, the pharmacist isn't allowed to prescribe an abortificant, only contraceptives, and that is what the rule applies to.

Chairman MANZULLO. That means you have made the decision.

Ms. NIX. I haven't made a decision. I am just relying on the Food and Drug Administration's classification of contraceptives.

Chairman MANZULLO. I understand that. The issue here is what goes on in his mind as a sincerely held belief, such as a conscientious objector. There are people that objected to us going into World War II when we were invaded. The issue wasn't whether or not their objection was well-founded in fact or theology, but it is what was entertained within their own mind, and that is protection of the individual's conscience. I think that is what he is trying to say. Wouldn't you agree, Mr. Vander Bleek?

Mr. VANDER BLEEK. I would.

Chairman MANZULLO. I am out of time here. We can do a second round.

Ms. Velazquez?

Ms. VELAZQUEZ. Mr. Vander Bleek, you say that you disagree with the decision of the Supreme Court that upheld the right to ob-

tain birth control without interference. But the problem that I have is, or maybe you can help me understand, why is it that it is hard for some people to understand that you should make money off of one type of birth control for women and yet refuse to sell another, particularly in light of the fact that the American Medical Association says that there is no distinction?

Mr. VANDER BLEEK. Well, I think it is important to know that regular birth control is very different than emergency contraceptive, as I was not able to enter into Ms. Sanchez's discussion. But regular birth control pills are taken daily as directed by the manufacturer to be taken to stimulate gonadotropin hormone blocking and to stop ovulation and to stop fertilization and the creation of a new human being. Emergency contraceptive has only one FDA indication, to be taken after unprotected sex or contraceptive failure.

My question and the unanswered scientific question is, what happens to the potential of a live human embryo when the woman is doing these large blasts of hormones? Now, could it work as a contraceptive? Sure. But could it also work as abortifacient? Who knows? It hasn't been studied, and it has no concern to those who are studying the product. It has concern to me.

So with regard to how much money I might make on contraceptives, I will submit that I make precious little, if any. But in the case of the two products being grouped together for the politics of promoting abortion and stuffing it down the throats of the pharmacy owner, I object to that, too.

Also at issue here, that hasn't been mentioned, I don't want to take too much of your time, Ms. Velazquez, but the idea of pregnancy and the definition of a contraceptive and that pregnancy doesn't begin until a live human embryo embeds into the woman's uterus is preposterous in thinking that is the only time when that embryo has any value to the rest of us.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. Congresswoman Musgrave.

Mrs. MUSGRAVE. Thank you, Mr. Chairman.

I noted in your testimony, Mr. Patton, where you spoke of women driving long distances from urban areas to go to a rather remote pharmacy to try to obtain Plan B prescriptions.

Can you envision a way, with this kind of rule coming down, and Federal legislation pending, that pharmacists, if you will, will be targeted because they had a moral objection to filling these prescriptions?

Mr. PATTON. Absolutely. It is happening already.

Mrs. MUSGRAVE. I would like Mr. Vander Bleek to respond to that also, please.

Mr. VANDER BLEEK. Well, I kind of didn't understand the question the way Mr. Patton did. Could you mention it again?

Mrs. MUSGRAVE. Certainly. I would be happy to.

In his testimony, he alluded to the fact that women who wanted to have a Plan B, if you will, prescription filled, would be in an urban area, but yet drive out to a remote pharmacy, if you will, to get the prescription filled or to ask that it be filled.

I was just wondering if you thought individuals, as yourself for instance, could be targeted in this kind of a situation?

Mr. VANDER BLEEK. Well, I believe that there might be individuals that would want to target me, but I would also like to submit that people that know me and know my family in the communities that we serve don't really have any interest in pushing this issue.

We dealt with 15,000 different individual patients in our pharmacies last year. The product has been on the market for 2 years. We only had two requests for the product. Both were handled confidentially and the patients had absolutely no complaint with our service. So I don't think there is a big demand or, either, a big issue on it, other than the Governor's order.

Mrs. MUSGRAVE. When you have a rule or if you have Federal legislation pending now, it could become a big issue to you.

Mr. VANDER BLEEK. It is a big issue right now in the State of Illinois alone, absolutely.

Mrs. MUSGRAVE. Exactly.

In regard to pharmacists humiliating a person that comes in, could you respond to that, please?

Mr. VANDER BLEEK. I don't support that at all. In fact, if I really were to investigate the concerns that the other witness had here and if I really found that the pharmacist had intent to humiliate and was trying to humiliate the patient, I would discharge them from my staff. I don't think that is appropriate in any case in a pharmacy.

Mrs. MUSGRAVE. How important is privacy?

Mr. VANDER BLEEK. Well, we are federally regulated and mandated to keep the patient's health information completely private, and we comply with all those laws and regulations, in addition to more that we have in our own policies.

Mrs. MUSGRAVE. Thank you, Mr. Vander Bleek.

Thank you, Mr. Chairman.

Chairman MANZULLO. Mr. Grijalva.

Mr. GRIJALVA. Thank you.

Mr. Patton, if I may ask you a couple of questions. In your testimony, you claim that a number of pharmacists in Illinois are rethinking their practice and some are considering moving out of the State. Do you know of any pharmacist that has either moved out of Illinois or plans to do so within the next year because of the Governor's order that we are talking about today?

Mr. PATTON. No, I don't have any specifics. But part of it will also be predicated upon the final ruling that will be promulgated before JCAR. This is information that has been provided to me; and as a matter of fact, even Mr. Vander Bleek I believe on CNN News referenced the fact that that might be an alternative he has to face.

One of the other pharmacists, actually two of the pharmacists, have another lawsuit against the Governor. They are down in the Metro East area of St. Louis. She said she feels that is her only alternative to be able to continue practicing her profession, is to move out of State.

Mr. GRIJALVA. Let me follow up on that. Perhaps one of the reasons that pharmacists are not actually moving out—is it because the order provides for some reasonable alternatives for pharmacists who may object to dispensing emergency contraceptives?

There are alternatives that we discussed here today. Is that a mitigating factor to this exodus that you are predicting?

Mr. PATTON. I don't believe it is at this point because, again, as Ms. Nix has said, the rule as it is being promulgated requires the pharmacy to comply with the law which—therein the pharmacy, whoever it may be, is going to be dependent upon the pharmacist to be compliant with that. If the pharmacist chooses not to, then they are going to be caught between a rock and a hard place, between jeopardizing the potential for the pharmacy to be in noncompliance with the rule.

That is part of the problem, the fact that the pharmacist who has the personal beliefs are going to ultimately be held accountable for the actions and therein possibly the discipline for the pharmacy.

Mr. GRIJALVA. If I may, Ms. Nix, how does that accommodate those alternatives, how does that accommodate that pharmacist?

Ms. NIX. Our intent in having the rule apply to the pharmacy is, in many instances there is more than one pharmacist on staff. So if in the course of business the pharmacy has figured out that they have one pharmacist that is uncomfortable with some prescription filling, they can make sure that there is someone on call to come in and do it. They can also ask—if the patient prefers, they can just get their prescription back and go somewhere else.

What we want to make clear is, in many of these instances, these prescriptions can be for all kinds of things. At the JCAR hearing there was a case of a doctor prescribing emergency contraceptives to stop extremely heavy hemorrhaging. A woman, basically her life was at risk, and she was able to get the prescription in that case.

We have focused a lot today on the birth control aspect of it, but a lot of these contraceptive drugs are used for other things, and in some cases an emergency contraceptive is used for other things, and those decisions are known between the woman and her doctor. We just want to make sure when she goes to a pharmacy, she is able to get her prescription filled.

Mr. GRIJALVA. One last question, if I may, Mr. Patton, following up on the last point. Do you believe that a woman whose doctor prescribed birth control for medical reasons, other than to prevent pregnancy, for example, an ovarian cyst, should they also be denied medical care that their physician determined they need?

Mr. PATTON. No, they should not be denied medical care, by all means.

Mr. GRIJALVA. Or the prescription to be dispensed?

Mr. PATTON. I understand. I was going to finish.

But, you know, you can't usurp the right and moral conscience of the pharmacist at the same time. There again I believe it would be a personal belief.

Mr. GRIJALVA. The premise we are talking about is pregnancy—for a second, let's say that—and the reason for the prescription is not to prevent pregnancy, but to deal with a very critical and perhaps emergency health situation. You would still agree that that denial is okay?

Mr. PATTON. As an association, there have been several references to the position of the AMA, and as of June of this year, the AMA supports the right of conscience for pharmacists to be able to step away from dispensing the medication. So it seems to me there

has been some premise that the AMA supports the issuance of the contraceptives, but they too respect the right of conscience, and it specifically states that in their resolution.

Mr. GRIJALVA. Based on your answer, that would extend to vaccines that were developed where the development was aided by the use of, let's say, fetal tissue?

Mr. PATTON. I don't have a position on that, sir.

Chairman MANZULLO. Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I wanted to make a little announcement to the committee. As I walked out of my office I saw a little sign on my press secretary's desk that says ″former embryo.″ we do have an interest in the lives of embryos, and in fact we have had at least 81 ″snowflake babies″ that have been frozen for up to 9 years that are now walking and talking and laughing and loving. And I have held three of them in my arms, and they are real, and I support the comments made by Mr. Vander Bleek with regard to that.

But I turn to the testimony of Megan Kelly. Ms. Kelly, just a couple of issues. And I wanted to be gentle with you, because I know that you are in a territory you are probably not very comfortable with today.

But I see that in your testimony you said a pharmacist's personal views do not belong in my health care. I think by now we have established that they are religious views on the part of the pharmacist as opposed to personal views. Would you concede that point?

Ms. KELLY. No.

Mr. KING. Okay, then I won't debate that with you. I think that is clear, at least to me and most of this panel, that certainly Mr. Vander Bleek has some strongly held religious beliefs; and I think it fits well within the conscience clause of the Illinois code.

But I turn to another point, and I quote from your written testimony. ″as a consumer, I have a right to walk into any pharmacy in America and expect to have my prescription filled without unnecessary delays or discrimination.″

I would argue, at the time of that incident, it was not a right, but maybe a perception; there was that kind of a right as a consumer. That is one of the things about being a business person in business, that you have a right to run your business. There are rights that go with that, and if we impose government mandates on business of all kinds, whether it is this pharmacy issue here today, or whether it is—whether a carpenter can use a power nail gun as opposed to a hammer, any time we impose regulations, we are taking rights away from the entrepreneurs in this country. When we do that, we diminish the numbers of them, their profitability and their motivation for being part of this economy, with small business creating 80 percent of the new jobs in America.

So I am very, very sensitive to new regulations being put upon people that are in business; and this right to walk into a pharmacy, I think, at that time was an erroneous assumption. But I would point out—and I think is implied here, if not clearly said—that an individual who was serving you, if they had used the kind of demeanor that is insisted upon by Mr. Vander Bleek, this would not have been an issue. Is that correct?

Ms. KELLY. No, she was very polite.

Mr. KING. Really. So it was the point that she didn't deliver the Plan B for you upon request?

Ms. KELLY. Correct. And my birth control.

Mr. KING. And you said, ″I was shocked. I figured it had to be illegal.″

Ms. KELLY. Yes.

Mr. KING. I am astonished by that. But I am not going to belabor the point.

I will say this then: You can take this same philosophy and you can extrapolate this on point after point after point. Anyone who can establish the political power and the leverage to move forward with this kind of philosophy and set aside a conscience protection, however it might have been contrived within the law and the rule, then you could also set aside, not just religious freedom, but many other beliefs as well.

You could require bookstores to carry pornography; you could require all retail establishments in Illinois to carry Lotto cards and any other kind of gambling equipment there is; you could require anyone who sold soft drinks to also sell alcohol; you could require the pharmacist to sell euthanasia /suicide drugs; you could require doctors to perform abortions, all under this same philosophy.

So I see this progression of society, and I back myself up to being a young man who believed that we had freedoms that were in this institution, they were guaranteed to us and our birthright as Americans and an inherited right of people who attain citizenship here through legal means, to be protected in that, protected in our property rights, in our rights to conscience, in our rights to freedom of speech and assembly and religion and press; and this is a diminishment of those rights. And to hold the pharmacies responsible and require them to provide something that goes beyond their conscience, whether it is a pharmacy or a pharmacist, I think is a distinction without a difference.

So I would go back to the conscience protection that is there and pose the question, Ms. Nix, does this set aside Illinois' conscience protection clause?

Ms. NIX. I need to preface this by saying I am not an expert on the Illinois Health Care Conscience Act. It does not clearly cover pharmacists or pharmacies and there has been some attempt, I think, as Mike has mentioned, to have that covered. That is not the case right now.

Mr. KING. Excuse me. Do you then take exception with any of this progression in the diminishment of rights that I have used with regard to bookstore pornography, Lotto cards, alcohol, suicide or doctors performing abortions? Where would your governor draw the line?

Ms. NIX. Well, pharmacies are in the business of providing prescription drugs. I would say that a retail store that sells soft drinks is not in the business of providing alcohol, so there is a difference. Class 1 retail pharmacies put themselves out there, they advertise that they fill prescriptions; and we are just saying if you advertise you fill prescriptions, you should fill the prescription.

Mr. KING. Thank you.

Thank you, Mr. Chairman.

Chairman MANZULLO. Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Ms. Kelly, let's assume a hypothetical for a moment and let's assume that the emergency contraceptive that you were prescribed legally by your doctor was to prevent hemorrhaging. How do you think it would have put your health at risk if you would have had these delays in terms of trying to seek out a pharmacy that would provide that medication for you?

Ms. KELLY. It would have greatly put my health at risk.

Ms. SANCHEZ. Ms. MacLean, in certain situations it is appropriate to place restrictions on businesses if there is a clear public policy purpose, including efforts by the FDA to ensure, for example, that pharmacies don't sell unsafe drugs, or requiring that businesses comply with the Americans with Disabilities Act or even requiring farmers to avoid using certain pesticides.

If the State of Illinois has determined that this is an important health issue, isn't it acceptable that they require pharmacies to dispense these drugs, and if the pharmacist chooses not to, the State does offer them alternatives?

Ms. MACLEAN. I am not as familiar with your particular law, but it does look to me like they do provide alternatives.

I talked about systems. That is what APJ believes. I mean, our policy supports it, a two-item policy, and we do believe in systems.

Ms. SANCHEZ. You stated in your earlier testimony that you believe in balance.

Ms. MACLEAN. I do believe in balance.

Ms. SANCHEZ. Would you agree that some of the proposed changes being made to the Blagojevich order would accommodate some of these concerns that you discussed in your testimony? I am talking specifically about including accommodations that allow the pharmacist to have time to stock the drug or seeking another pharmacist to fill the order.

Does it appear to you that there are at least some alternatives and some balance that is being maintained, or trying to be maintained?

Ms. MACLEAN. I don't believe the pharmacy needs one more restriction or one more regulation. I think the business needs to be able to do what it does best, and that is care for patients.

Yes, we have talked a lot about drugs, we have talked a lot about prescriptions, but truly what a pharmacist does is care for patients; and if a pharmacist must step away because of a conscience clause, that pharmacist still has the obligation to ensure that a woman gets what she needs.

What I can tell you is, that is what I see day in and day out. Whether it is because we don't have this particular expensive drug on the shelf, if it is emergent, and that patient needs a drug, I can call five pharmacies and transfer the prescription. I can ensure I have taken care of that patient.

If it is not emergent, you mentioned a 72-hour window, recent research shows that we can actually dispense emergency contraception for up to 120 hours. If it is not emergent, we can decide on what the best route is.

But truly, pharmacists take care of patients.

Ms. SANCHEZ. So if I am understanding your testimony correctly, you are saying that the regulation, even though it provides alter-

natives for pharmacies, that you are opposed to it because it is a regulation, despite the fact that there may be significant public policy interest towards making sure that women have access to getting their legally written prescriptions filled.

Ms. MACLEAN. See, I don't believe that. Right now, women are being taken care of. The public policy supports that pharmacists are taking care of patients and providing access, which is one of the reasons that pharmacists all over the United States are really trying to look to the legislative arena for the support to be able to expand Pharmacy Practice Acts all throughout the United States, to be able to operate with a corroborative practice agreement.

Ms. SANCHEZ. I am not sure that I have gotten an answer to that question, but I would like to move on to Ms. Nix.

Ms. Nix, do you believe that the proposed changes to the order offer pharmacies alternatives and offer them ways to accommodate women who walk in with legally written prescriptions, so that they receive the medicines that they and their doctors have decided are necessary for their health and well-being?

Ms. NIX. Yes, we believe that is the case.

I think earlier someone mentioned about having to keep certain things in stock and things like that, that the rule does not require that. It just says if you don't have something in stock, you get it in the normal course of reordering. So I think it tries to strike the right balance between making sure that a woman's health care needs are met and the pharmacy's practice of dispensing the drugs.

Ms. SANCHEZ. Thank you very much. I yield back.

Chairman MANZULLO. Ms. Nix, does the physician have a legal obligation to prescribe Plan B? Can you force a physician—

Ms. NIX. No, I believe you cannot.

Chairman MANZULLO. Why should it be any different than a pharmacist being forced to dispense it?

Ms. NIX. The physician and woman decide what is best in her health care. So if the physician decides Plan B is not the way to go because of the woman's health, then—

Chairman MANZULLO. What if he decides Plan B is not the way to go because of a conscience clause?

Ms. NIX. I know that there are some physicians in Illinois that don't prescribe oral contraceptives at all because that is their belief, and that if the pharmacist had that belief, they don't have to carry contraceptives either.

Chairman MANZULLO. Let me be very specific. We are only talking about Plan B here.

Ms. NIX. See, the problem is that we are not pharmacology experts. We are relying on the Food and Drug Administration for that.

Chairman MANZULLO. That is the problem. That is the problem, is there is a rule being made here where there is a lack of knowledge here—

Ms. NIX. We are relying on the Food and Drug Administration.

Chairman MANZULLO. Let me finish.

There is a lack of knowledge going on. The FDA is about as clear as mud. No one understands what that organization is doing. I am being very frank with you.

The issue here is this: Under Illinois law, under the Health Care Right of Conscience Act, can a physician be forced to prescribe Plan B?

Ms. NIX. No.

Chairman MANZULLO. Because of the doctor's conscientious belief; is that correct?

Ms. NIX. That is correct.

Chairman MANZULLO. You would apply a different standard to pharmacists who would be forced to dispense it; isn't that correct?

Ms. NIX. No, because we are not forcing—the rule applies to a pharmacy.

Chairman MANZULLO. Let's talk about that.

Mr. Patton, in the State of Illinois, how many pharmacies have one pharmacist?

Mr. PATTON. I can't speak specifically, but the vast majority of the small, independent pharmacies, aside from the chain stores, they will oftentimes have one pharmacist.

Chairman MANZULLO. How many chain stores are there in Morrison, Illinois?

Mr. PATTON. I can't speak to that.

Chairman MANZULLO. Mr. Vander Bleek, how many pharmacies in Morrison, Illinois?

Mr. VANDER BLEEK. There is one pharmacy in Morrison, Illinois.

Chairman MANZULLO. Would you, Ms. Nix, entertain the thought that you would exempt these sole proprietors? I mean, they can't rely on anybody else within their own store.

Ms. NIX. If they have a moral conscience objection to contraceptives, that is fine.

Chairman MANZULLO. No, I am talking about Plan B.

Ms. NIX. But the problem is that FDA categorizes Plan B as—

Chairman MANZULLO. No, I am talking about what is in his mind.

Ms. NIX. Plan B is monthly pills, just in a different dosage.

Chairman MANZULLO. You have made the decision to determine the conscience, whether or not the moral conscience of every pharmacist in the State of Illinois should agree with your statement, because you are saying that he cannot invoke the conscience clause of the Health Care Right of Conscience Act in order to keep from dispensing that particular drug.

Ms. NIX. Pharmacists are not specifically included in that act.

Chairman MANZULLO. I would take note of that, Mr. Patton, and I would take note of the record that pharmacists are not included in the Right of Conscience Act.

Ms. NIX. They have offered amendments.

Chairman MANZULLO. I would suggest you better do more than that because what you are going to see is, you are going to see the collapse of small-town pharmacies. This is a Small Business Committee.

Mr. PATTON. That is part of the reason I am here, sir.

Chairman MANZULLO. That is one of the reasons we are here.

With all due respect, I don't think you understand that pharmacists equal pharmacies in most pharmacies in the State of Illinois in the rural areas. There is just one person there working in

one store, who doesn't have associates, who is not part of a bigger drugstore.

You are not protecting that individual's right of conscience, because you have determined that he cannot invoke the right of conscience based upon a moral belief that this may or may not be an abortifacient, and the jury is out as to whether or not it is.

It is his mind, and it is important, and I think that a pharmacist should have the same right not to dispense as a doctor should have not to prescribe. It is an individual decision based upon a subjective intent within the mind of that individual.

Ms. Kelly, you are doing a great job over there. All of you witnesses are doing a great job. Let me have some dialogue here.

Ms. Nix, Ms. Kelly was referred to another pharmacy that was across town. That is St. Charles; is that correct, Ms. Kelly?

Ms. KELLY. Yes.

Chairman MANZULLO. And how big is St. Charles, about 30,000 people?

Ms. KELLY. Yes.

Chairman MANZULLO. Then how far was it from the pharmacy where you were denied this prescription to the secondary pharmacy?

Ms. KELLY. Actually, I went to the Jewel-Osco to start out with, and that was in St. Charles, and I ended up going to a Walgreen's that was in Geneva, probably like 20 minutes.

Chairman MANZULLO. Okay. So it was 20 minutes apart.

So the situation that Ms. Kelly gave would be how the regulation would operate; is that correct, Ms. Nix?

Ms. NIX. In that situation, the Osco should have made sure that there was someone on staff that would have filled the prescription and could have offered Ms. Kelly the option: We will bring in another pharmacist, they will be in in 10 minutes; or would you prefer to take your prescription and go elsewhere?

Chairman MANZULLO. You would bring a pharmacist in from another store?

Ms. NIX. Or another person on the staff.

Chairman MANZULLO. Referring her to another nearby location would not satisfy the requirements of the statute?

Ms. NIX. If the patient would like that, that would be acceptable. That has to be the patient's choice though.

Chairman MANZULLO. What this would say is, there has to be a pharmacist available to come to the store in order to make the prescription filled, as opposed to asking the customer to go to another store that is nearby.

Ms. NIX. They could ask that patient which she preferred.

Chairman MANZULLO. Where do you see that in the statute?

Ms. NIX. It says, at the request of the patient, the prescription can be returned at the request of the patient.

Chairman MANZULLO. So she could have insisted that they bring somebody in?

Ms. NIX. Well, right now her complaint is being investigated by the Department of Financial Regulation, so we can't go into all the details.

Chairman MANZULLO. In Mr. Vander Bleek's case, if somebody came to you and said they wanted that prescription, is there anybody you could call in, Mr. Vander Bleek?

Mr. VANDER BLEEK. In all my pharmacies, all the pharmacists are conscientious objectors. We have an ongoing effort to attempt to get pharmacists to come out into our rural areas to work in our pharmacies. It is an ongoing recruiting effort.

We know what Walgreen's pharmacists in the city of Chicago are earning in their last contract because it has been published. They have been out on strike. I would like to tell you that our compensation that we are offering young pharmacists is competitive and, indeed, most of the times trumps what Walgreen's is paying their people; and we still can't get people to come out to the rural area to practice pharmacy.

Chairman MANZULLO. So no one would be available to cover?

Mr. VANDER BLEEK. No one is available, and it is not practical. It is not practical for business to try to procure these pharmacists. Would I not possibly be violating these people's civil rights by saying to them, You can only be on my staff if you would dispense Plan B and you don't have a religious problem with abortifacients? Would I not get myself in some trouble with that as well?

See, that is the whole thing. How do I procure these pharmacists? How do I make this business run? How do I keep giving access to people in the State of Illinois? And if I want to follow the rule of the State of Illinois and rid my pharmacies of all contraceptives so that I can be exempted from this rule, what does that do to the access to other contraceptives of people out in the rural area where I practice?

All of this talk about having to go somewhere for Plan B, what about having to go to somewhere for your regular monthly contraceptive prescription because now my four pharmacies don't carry them?

Chairman MANZULLO. Ms. Velazquez.

Ms. VELAZQUEZ. Thank you.

Mr. Vander Bleek, would you oppose a requirement that you notify potential customers in advance, perhaps by a sign on your front door, or at the pharmacy counter, that the store would not fill a prescription so that individuals can decide whether to patronize the store or not?

Mr. VANDER BLEEK. Generally, I oppose—

Ms. VELAZQUEZ. Yes or no.

Mr. VANDER BLEEK. Generally, I oppose requirements on my business and would rather do that in a way that we might—

Ms. VELAZQUEZ. Thank you. So you would support that type of provision?

Mr. VANDER BLEEK. Yes, but not a requirement. I might do it for patient—you know, for their own use.

Ms. VELAZQUEZ. Do you have a sign in your pharmacies?

Mr. VANDER BLEEK. No. We are not allowed not to stock the product right now. So—

Ms. VELAZQUEZ. Thank you.

Ms. Nix, would you please clarify that they cannot put a sign in their door to say that they will not sell?

Ms. NIX. Pat, is that right?

Mr. HUGHES. There is no—there is no regulation of their communication to the patients in that regard. There are some minimum things that the pharmacy must advertise regarding hours and things of that nature. But that kind of extra communication to the patient would be in the discretion of the business.

Ms. VELAZQUEZ. And if they choose to do it, can they do it?

Mr. HUGHES. Under Illinois law, nothing would prevent them. Yes.

Ms. VELAZQUEZ. Nothing would prevent.

Ms. Nix, under the order, if a pharmacy does not sell contraceptives, can they be forced to sell plan B?

Ms. NIX. No.

Ms. VELAZQUEZ. They are not?

Ms. NIX. No, if they don't sell contraceptives, they don't.

Ms. VELAZQUEZ. Ms. MacLean, I understand that you object to the Illinois order because you believe that a voluntary structure could better meet the needs of patients without compromising the objections of pharmacists.

However, what would you propose if pharmacists in certain parts of the State all choose not to participate? What options will that leave a patient?

Ms. MACLEAN. Well, I think that entails having a system that is proactive in place already, and so the pharmacists need to talk with the primary care providers, whether it is a physician or a nurse practitioner or a PAC to have some kind of a plan or system in place.

Could I just clarify one thing? I can speak to how much small business would be impacted if, in fact, we all had to have on-call pharmacists.

Ms. VELAZQUEZ. But how that proactive plan will handle this equation if all—a large part of pharmacists opt out?

Ms. MACLEAN. Because, for example, my friend in Republic, Washington, would have a system in place whereby the nurse practitioner knows that she is not carrying Plan B, and so that would be dispensed out of her office, for example.

Ms. VELAZQUEZ. Ms. Kelly, we have heard from opponents that, under the Governor's order, if the pharmacy chooses to comply by not offering any contraceptive, any contraception, they claim that it will have the unintended consequence of limiting women's options, causing them to drive 50 miles or more.

As a consumer, do you think this is a valid reason for voiding the order?

Ms. KELLY. No, not if people have to travel so far to get the prescription, because more likely than not, they are not going to bother using the prescription. Then where are they?

Ms. VELAZQUEZ. Okay.

Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you. I am going to ask that this transcript be typed up as soon as possible and sent to every legislator in the State of Illinois, to the Governor's office to demonstrate, if anything, that this piece of legislation or proposal is not clear, that there are standards here that perhaps are not being met for the purpose of trying to maintain these pharmacies in small towns.

I represent nine counties, and in six of those counties, the counties are losing population. People are leaving, the pharmacies are closing, along with other retail businesses. The last thing that we need is to—especially in these very conservative and rural areas in America, in Illinois, place upon the pharmacist yet another reason to close the shop. We all know what it is like when the local pharmacy closes down. It is one of the most difficult things in the world.

Let me commend each of the witnesses. None of you has ever testified before Congress before. Your answers are clear, crisp, when you didn't know, you said you didn't know. When you wanted to answer with one word, you did that. You were very generous with your time.

Ms. Kelly, Ms. MacLean, Mr. Patton, Ms. Nix, Mr. Vander Bleek, thank you for coming to Washington.

This hearing is adjourned.

[Whereupon, at 12:03 p.m., the committee was adjourned.]

House Small Business Committee
"Freedom of Conscience for Small Pharmacies"
July 25th, 2005
10:00 am

Opening Statement
Chairman Donald A. Manzullo

Good morning. It is my pleasure to welcome everyone to today's Small Business Committee hearing on the impact that "duty-to-fill" laws have on small pharmacies.

The subject before this Committee today deals with the negative impact on small pharmacies that operate under the strict law that requires pharmacists to fill all prescriptions – even if doing so violates their moral and professional beliefs. I also want to discuss alternatives that will ensure that women who want a certain prescription have access to it, while preserving the integrity of the pharmacist.

Many individuals become physicians, nurses, pharmacists, or other healthcare workers based on a deeply-held conviction of service to others.
Each of these individuals has a developed sense of conscience based on personal experience, individual ideology, religious beliefs, or cultural influences.

The primary debate surrounding this issue relates to a pharmacist's moral opposition to filling prescriptions for emergency contraception, also known as the "morning-after-pill." On April 1, 2005, Illinois Governor Rod Blagojevich issued an emergency rule that requires pharmacies in the state that sell contraceptives to fill all prescriptions for FDA-

approved contraceptives "without delay." That rule is currently before the Joint Committee on Administrative Rules to determine whether it should become permanent. Several pharmacists have filed lawsuits challenging the rule, and one of those individuals is here today.

The right to refuse to participate in acts that conflict with an ethical or religious conviction is accepted as an essential element of a free society. But what happens when the government forces a business to violate those beliefs?

Many pharmacies in small communities may not have another pharmacist who can simply fill the prescription for the pharmacist with a moral objection. Nor can they easily transfer the prescription to another pharmacy nearby. Under the Illinois rule and proposed federal legislation, such pharmacy would be forced to order the product under their standard procedures for ordering other out-of-stock drugs, even if it violates their personal beliefs or professional standards.

This will not only violate the pharmacist's conscience, but may also be extremely costly for the business. Pharmacies do not stock every drug that is currently on the market for economic reasons. This rule could become very expensive for pharmacies that are forced to order the morning-after pill when they otherwise would not have.

So what happens if a pharmacy owner refuses to fill a prescription despite these new mandates? Many of the "duty-to-fill" requirements impose stiff penalties on pharmacies who continue to allow their pharmacists to exercise their conscience.

Pharmacies could be subject to fines or even suspension of their licenses. If a pharmacy shuts down, especially in a small community, such as Morrison, IL, and in many of the other rural areas I represent, other businesses will also be affected. If people have to go to the next town to pick up their prescriptions, they may fill up their gas tanks or buy groceries, as well. The entire community is affected if a pharmacy is forced to close its doors.

No one, least of all a health care provider, should be required to violate his or her conscience by participating in procedures that he or she deems harmful. The government should never force anyone to choose between his business or beliefs.

The purpose of this hearing is to explore the impacts that extreme "duty to fill" legislation will have on small pharmacies. I also hope to discuss alternatives that will ensure that women have access to medicine while preserving the beliefs of the pharmacist.

I look forward to the testimony of all of the witnesses this morning, and I turn to my colleague, the Ranking Member for her opening statement.

News from the
Committee on Small Business
Nydia M. Velázquez, Ranking Democratic Member

For Immediate Release
July 25, 2005

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While Failing to Address Small Business Needs, Committee Delves into Women's Right Issue

Committee reviews women's right to access birth control

WASHINGTON – As small businesses continue to face a myriad of challenges, from skyrocketing healthcare costs, regulatory burdens and increased fees in accessing capital, the House Small Business Committee held a hearing today on an issue which has no relevance to the small business community – a woman's right to access contraception.

"With all of the challenges that are facing small businesses today, before we start addressing issues outside of our jurisdiction, we need to take up the pressing issues we do have jurisdiction over," Congresswoman Velázquez said. "This is coming from a committee that has not passed a SBA reauthorization bill since 2001. While these initiatives are clearly not moving forward, and entrepreneurs continue to face a laundry list of barriers, we sit here and talk about a women's right issue."

The matter arose in the committee due to a number of reported cases where women who had valid prescriptions for contraception experienced difficulty in obtaining their birth control – and were sometimes denied their right to access the prescriptions altogether. This led to the Illinois Governor's emergency order to ensure access to health care – in particular, birth control. The order did provide for flexibility in filling the prescriptions, such as transferring the prescription to another pharmacy or not selling birth control at all. Despite this balanced approach, an Illinois pharmacist filed against the order, due to moral objections, which led to today's hearing.

"What is happening today is quite clear," Congresswoman Velázquez said. "This committee is being used as a tool to push a conservative ideological, moralistic agenda forward – not a small business agenda. To even think an issue of this scope, that impacts women across the United States and their access to contraception, should be handled during a small business hearing is simply a disgrace."

This issued has already been determined by the Supreme Court in the past, which upholds that a woman's right to access birth control is protected under the constitution. The American Medical Association (AMA) voiced their support that this right should not be impeded because it is critical to women's health.

"This is insensitive to not only the women that sit on this committee, but also to women across the country," Congresswoman Velázquez said. "Whether or not a woman can access birth control – is not an issue for this committee to decide upon. It is clearly a women's right issue – her right to access health care, and her right to live her life as she pleases. Why doesn't this committee put their time into improving the environment for women entrepreneurs, and not taking away their constitutional rights."

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July 25th, 2005

United States House of Representatives Small Business Committee

The Testimony of Luke Vander Bleek, R.Ph., owner of Fitzgerald Pharmacies and Eggleston Pharmacies respectively located in Whiteside and Dekalb Counties, Illinois.

Thank you Chairman Manzullo for the invitation to testify to the honorable members of this committee. I would also like to thank you, the members, in advance for the courtesy of your presence in receiving my testimony this morning.

On April 1, 2005, Governor Blagojevich, issued an emergency executive rule in the State of Illinois requiring community pharmacies licensed in Illinois, pursuant to a valid legal prescription, to procure and dispense all forms of contraceptives without delay. This order includes the requirement that pharmacies that offer birth control therapy for sale, to also offer emergency contraceptives for sale in the same manner.

I object that any private business should be required by government to offer for sale any particular product or service. Additionally, I have strong professional and moral objections to this executive requirement being placed on my business.

Professionally, as a pharmacist, I find the published scientific data concerning the actual mechanism of action of emergency contraceptives to be lacking. Therefore, I regard the use of these products by women who are potentially hosting a live human embryo to be unsafe. I find no published evidence for me to conclude that this therapy does not jeopardize a live human embryo.

Morally, I regard my involvement in therapies intended to terminate human life to be wrong. Additionally, I believe the Illinois Rights of Conscience Act grants me protection to operate my business as I have in the past

My Governor's order creates an environment in Illinois whereby a person holding deep moral convictions concerning the unborn cannot own and operate a licensed pharmacy.

This environment creates an issue for small business, especially small business in small rural underserved markets.

Many small communities are served by only one pharmacy, which is independently owned and operated. Other small communities are without and would benefit from the convenience and access of a pharmacy.

In an environment where government requires business to be conducted in an amoral manner, the opportunity for moral business owners diminishes, as does the access to services and the economic activity these entrepreneurs may provide.

Currently the governor's rule is temporary with plans to become permanent. It is my position that I will not own and operate pharmacies in Illinois in the event that this temporary emergency rule becomes permanent.

I do not have to tell this committee of the existence of only a finite number of investors that are able and willing to invest in underserved markets. What I am here to point out is that the business of pharmacy is not different in this way.

In 1997, following 5 years of active management, my wife, Joan, and I became the owners of Fitzgerald Pharmacy in the small town of Morrison, Illinois, population 4200. We work, live, and

raise our family this beautiful Midwest town. At the time of our purchase, there existed two successful independently owned pharmacies in Morrison. In 2000, we purchased the other to grow our business and facilitate the retirement of the owner.

In 1998, Joan and I purchased a pharmacy from the Eggleston family, a retiring couple, in Sycamore, Illinois, population 9,500. This pharmacy business had been actively marketed for sale for nearly 3 years. As I now know, we were the only seriously interested buyers of this 38-year-old practice. Absent our interest the doors would have been closed forever.

In 2001, we opened a pharmacy in Prophetstown, Illinois. This town of 1,800 residents had been without a pharmacy for nearly 6 months. The previous pharmacy operator, finding no one to succeed him, liquidated his business. Joan and I made our final decision to invest and locate a pharmacy in Prophetstown in large part to the very active solicitation by the town's residents and its mayor.

In 2004, Joan, a young partner, and I opened a pharmacy in Genoa, Illinois. This town of 4,200 residents had been without a pharmacy for more than 8 years. Again, our decision to expand into Genoa was due in large part to local government making its case as to the unmet need for pharmacy services.

In every residential market, large and small, pharmacies are a vital part of the community. In small markets, pharmacies serve as anchor businesses creating opportunities for complimentary businesses. Indeed, when a resident of a small community must leave town to access a pharmacist and have a prescription filled, the resident also purchases goods and services from other vendors in the neighboring community satisfying many consumer needs. This causes the businesses located in the resident's community to suffer and eventually close. This deepens the demise of Main Street all across the country.

Pharmacists are the most accessible health care practitioners. It is commonplace for citizens to seek and receive free counsel from these primary care community pharmacists in all 50 states. Pharmacists, like other professionals, carry with them their professional judgment. Science, education, law, ethics, and morality act as a guide. Patients benefit from their guidance.

Limiting the number of pharmacy owners to only those willing to operate in an amoral environment, clearly puts pressure on underserved markets in the U.S.

Joan and I, the parents of four school age daughters, have already decided that we will not continue to pursue ownership in pharmacies in Illinois in an environment where pharmacy licensure requires us to stock and dispense products we believe to be harmful to human life. I have spent my entire profession in pharmacy committed to easing suffering, curing and diagnosing disease, and improving the quality of human life. Though it has required significant sacrifice of time and effort, Joan and I have also enjoyed the opportunity to own and operate a small business in Illinois. Even so, we have resolved that we will not invest, and I will not practice in an environment, which we are legally obligated to be involved in the destruction of human life.

Respectfully Submitted,

Luke D. Vander Bleek, R.Ph.
President
Fitzgerald and Eggleston Pharmacies

Emergency Rule for Filling Prescriptions
Illinois Governor's Office Testimony
July 25, 2005

Governor Blagojevich is a leader in fighting for and removing the barriers to accessible, affordable health care. In particular, women's health is a top priority. The Governor's commitment to health care is based on his belief that health care is a right and is vital to successful families and communities in Illinois.

The Governor has supported many different health programs aimed at women, including programs that address breast and cervical cancer, cardiovascular disease, and osteoporosis. Governor Blagojevich has also improved women's access to contraceptives by signing legislation to require private insurance to cover birth control and launching a public awareness campaign about the coverage in 2005. The Governor's decision to champion a woman's right to get her prescription for birth control filled without delay, without hassle and without a lecture is based on the knowledge that birth control is a fundamental health care issue for women. Birth control pills can be used to treat a variety of health problems. Pharmacies in the business of filling contraceptives should respect the decisions a woman has made with her doctor. The U.S. Food and Drug Administration (FDA) identifies both birth control pills and emergency contraceptives as preventing pregnancy, and the American Medical Association, American Medical Women's Association, and the American Nurses Association all agree that patient's valid prescription, based on a decision made between a woman and her doctor, should be filled without hassle and without delay.

Background on Governor Blagojevich's health care initiatives

The Governor has improved the lives of Illinoisans in several important ways, including providing health care to people who need it, ensuring people have access to affordable prescription drugs, and actively addressing health care access and availability for women.

Providing health care to people who need it

- Governor Blagojevich has provided 313,000 more men, women, and children with health care through Illinois' KidCare and FamilyCare programs. The Kaiser Foundation has ranked Illinois the best state in the nation for providing health care to people who need it.
- The Governor has taken steps to reduce the nursing shortage in Illinois by eliminating the nurses' registration backlog and giving new grants for training.

Ensuring access to affordable prescription drugs

- The Governor signed legislation that ensures that seniors do not suffer gaps in coverage because of the problems with the federal Medicare prescription drug benefit. Illinois' response to the federal program is the most generous and comprehensive of any state in the nation.
- Governor Blagojevich has also started I-SaveRx to provide people with access to more affordable prescription drugs from Canada and Europe.

Supporting important women's health care initiatives

- The Governor created the Illinois Healthy Women Initiative. This has helped provide up to 120,000 women leaving Medicaid with basic health care and reproductive education as well as comprehensive reproductive health care coverage (annual physicals, pap smears, mammograms, contraceptives, and treatment for sexually transmitted diseases).
- The Governor has supported several programs that help women battle cancer. For example, the Stand Against Cancer Initiative encourages early detection of breast and cervical cancer. It has resulted in 7,500 screenings and targets the hardest to reach minority women in Illinois. In addition, the Illinois Breast Cancer and Cervical Cancer Program provided nearly 19,000 women with free screenings in fiscal year 2004 and offers free mammograms, breast exams, pap tests, and pelvic exams to low-income women between 35-64 years old with no health insurance.
- The Governor has also addressed major health care concerns of women, cardiovascular disease and osteoporosis, by providing funding to local health departments and community-based agencies.
- Lastly, Governor Blagojevich has taken a leadership role in supporting women's right to birth control. He has supported and signed legislation that required private insurance providers cover all FDA-approved contraceptive services and prescriptions. The Governor has also supported the Family Planning Program, which provides a range of medical services and education to more than 175,000

low-income women and adolescents of reproductive age. His emergency rule ensuring that women have the right to get birth control prescriptions filled is another step in making sure women's health care needs are taken seriously.

Women's Right to Get Prescriptions Filled

A woman's access to health care should never be denied or delayed. Yet, in the state of Illinois and around this nation, pharmacies are interfering with the decision women and their doctors make to obtain contraception.[1] In the last few months, several Illinois women have been subjected to this kind of refusal to fill a contraceptive prescription.

Complaints prompt rule

In February of this year, the Illinois Department of Financial and Professional Regulation (IDFPR) received two complaints from a doctor's office.[2] In each complaint, it is alleged that a pharmacist employed by a Chicago-area pharmacy had refused to fill two prescriptions for emergency contraception that the doctor's office had called in earlier that day. The complainant further alleged that, in response to the call from the doctor's office, the pharmacist stated, "I don't fill those." The pharmacist then advised the caller to call back several hours later when a different pharmacist would be on duty. This could present a problem because the effectiveness of the medication is dependent on when it is taken.

[1] For example, a Wisconsin administrative law judge recommended discipline over a refusal to fill a prescription for contraceptives, based on conscientious religious objection to contraception and refusal to transfer the prescription to another pharmacy. See In the Matter of Disciplinary Proceedings Against Neil T. Noesen, RPh.

[2] IDFPR regulates the profession of pharmacy for the state of Illinois.

After investigation of these allegations, the Department filed a formal complaint against the pharmacy. The Department alleged that this pharmacy had failed to provide pharmaceutical care and had engaged in unprofessional conduct. The complaint remains pending within the agency. No action has been taken against the individual pharmacist.

Responding to these cases, Governor Blagojevich directed the Illinois Department of Financial and Professional Regulation ("IDFPR" or "Department") to promulgate a rule to ensure that women of this state are not denied access to basic health care. The rule is designed to ensure that all Illinois pharmacies dispense prescriptions for contraceptive medication without hassle, without lecture and without delay.

Since that time, the Governor's Office and the IDFPR have taken additional complaints from other women who have presented prescriptions for emergency contraception to Illinois pharmacists who have refused to fill those prescriptions. For example, a pharmacist employed by a pharmacy in St. Charles, Illinois recently refused to fill a prescription for emergency contraception for a 29-year-old, married mother of one child. The woman had run out of her birth control pills over the weekend. She was filling the emergency contraception prescription out an abundance of caution.[3]

Emergency and Permanent Rule

The Governor's rule clarified a retail pharmacy's duty to dispense contraceptive medication without delay. The rule does not apply to individual pharmacists; it applies to

[3] See, Pierce, Gala, "Geneva woman claims she couldn't get birth control prescription filled," Daily Herald, July 9, 2005.

pharmacies. This rule was not intended to – nor does it – pertain to health care right of conscious legislation or encroach on an individual pharmacist exercising his or her beliefs. Instead, the rule applies to pharmacies, and it directs pharmacies in the business of dispensing contraceptive medication to fill valid, lawful prescriptions for contraception without delay.

The language of the emergency rule was amended as the Department responded to concerns raised by Illinois pharmacist associations and Catholic health care organizations. On June 2, 2005, the Department held a public hearing to collect comments on the rule. In response to comments received, the Department further examined the rule and amended it. The full text of the final proposed rule is as follows:

Section 1330.91
j) Duty of Division I Pharmacy to Dispense Contraceptives

1) Upon receipt of a valid, lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient's agent without delay, consistent with the normal timeframe for filling any other prescription. If the contraceptive, or a suitable alternative, is not in stock, the pharmacy must obtain the contraceptive under the pharmacy's standard procedures for ordering contraceptive drugs not in stock, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. However, if the patient prefers, the prescription must be transferred to a local pharmacy of the patient's choice under the pharmacy's standard procedures for transferring prescriptions for contraceptive drugs, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. Under any circumstances an unfilled prescription for contraceptive drugs must be returned to the patient if the patient so directs.

2) For the purposes of this subsection (j), the term "contraceptive" shall refer to all FDA-approved drugs or devices that prevent pregnancy.

3) Nothing in this subsection (j) shall interfere with a pharmacist's screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), drug-food interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, or clinical abuse or misuse, pursuant to 225 ILCS 85/3(q).

Some important points from the rule bear emphasizing:

- Women should have access to basic health care. A small number of pharmacists in the state of Illinois have expressed religious objections to filling certain contraceptive prescriptions. This rule takes a balanced approach to these two important interests.
- Pharmacies that stock contraceptive medications must fill valid, lawful prescriptions for all contraception without delay. However, if a pharmacy is not in the business of selling contraceptive prescriptions, it is not subject to the requirements of this rule.
- If a pharmacy sells contraceptives, but an individual pharmacist makes a conscientious objection, a pharmacy can make alternate arrangements to fill the prescription. The state leaves it up to the pharmacy to adopt an appropriate protocol.
- A pharmacy may fill a prescription for contraception with a suitable alternative in consultation with the customer's physician.
- If the prescribed contraceptive medication (or a suitable alternative) is not in stock, the pharmacy must obtain the medication through its regular procedures for

ordering contraception. For chain pharmacies with numerous locations, the medication might be obtained from another store.

- Alternatively, if the pharmacy does not have the contraception in stock, the pharmacy must return the prescription to the patient or transfer the prescription, as the patient directs and as pharmacy practices allow. For Catholic-affiliated pharmacies, there is no pharmacy protocol for transferring contraceptive prescriptions because Catholic-affiliated pharmacies do not stock contraceptives or fill such prescriptions. Therefore, this language allows a Catholic-affiliated pharmacy to "opt out" of transferring the prescription.
- The rule does not interfere with a pharmacist's professional obligation to engage in drug therapy review and screening. For example, where a pharmacist sees that the customer is taking another medication that is contra-indicated for this prescription, the pharmacist is still expected to call the doctor and confirm that this prescription is appropriate and should be filled. This is part of the definition of the "practice of pharmacy" in the state of Illinois. See 225 ILCS 85/3 (d).

At the Governor's direction, the Department filed this rule originally as an emergency rule. Emergency rules have the force and effect of law the moment they are filed, and they are effective for 150 days if not suspended. The Department also filed a proposed permanent rule. A hearing will be held on this rule on August 16, 2005. Unless the rule is objected to by the Joint Committee on Administrative Rules (JCAR), the proposed permanent rule will become effective before the emergency rule expires at the end of August.

Impact of the Rule

The emergency and permanent rules filed by the Department address a major concern regarding women's access to health care – that a woman's decision made with her doctor about her health must be respected. After consulting with their doctors, women make decisions about their health care. For example, after talking to her doctor, a woman may choose to take cholesterol-lowering medication, if she and her doctor together decide she cannot control her condition through diet and exercise. In the same way, prescriptions for contraceptive medications are written after the same kind of personal, confidential medical analysis and discussion between the patient and her doctor.

Contraceptives may be prescribed in a monthly or emergency form. The reason for the medication and the most appropriate form of the medication are matters between the doctor and patient. For example, contraceptives are prescribed to treat a number of conditions, above and beyond preventing pregnancy. Women may choose to take contraceptives to lower the risk of fibroadenomas or dysmenorrhea; to address the symptoms of endometriosis and Polycystic Ovary Syndrome; and to treat acne.

The rule applies to only contraceptives and not to RU-486. It does apply to all forms of pregnancy prevention, as identified by the FDA. This includes emergency contraceptives, which the FDA found to act in the same way as monthly birth control pills. The National Institutes of Health, the FDA, and the American College of

Obstetricians and Gynecologists, state that emergency contraception will not terminate a pregnancy.[4]

Further, even emergency contraceptives may be prescribed to address various health issues. For example, at a public hearing, Dr. Lauren Streicher, MD, testified as follows:

> A patient I currently treat bleeds so heavily during menstruation that she has required blood transfusions on two separate occasions. She is scheduled for surgery to correct the problem, but last week she had an unexpected episode of extremely heavy bleeding. Her husband called me, terrified, and described the blood pouring out of his wife. They live in a small town in Southern Illinois – two hours away from the nearest hospital. I instructed him to go to the nearest pharmacy and pick up a prescription of birth control pills to be taken at a higher dose to temporarily decrease the bleeding while they drove to the hospital. Time was obviously of the essence.
>
> The husband told me he was worried that their local pharmacy would not fill the prescription because their pharmacist was known to disapprove of birth control pills. Fortunately, a different pharmacist was on duty, and he received the medication for his wife.[5]

If a pharmacist had attempted to interfere with filling this prescription, the results could have been deadly for this woman. The pharmacist would have interfered with the woman receiving medication she needed – as determined by a physician who had been treating her condition. The rule ensures that women have the access they deserve to health care and their relationship with their doctor is respected.

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[4] Peres, Judy, and Manier, Jeremy, " 'Morning-after pill' not abortion, scientists say," Chicago Tribune, June 20, 2005, Page 1.

[5] Dr. Streicher is an obstretician-gynecologist on staff at Northwestern Memorial Hospital in Chicago and a Clinical Assistant Professor at Northwestern's Feinberg School of Medicine. She writes a weekly column on women's health issues that appears in the Chicago Sun-Times.

No one should interfere with a woman's right to have access to medications, including contraceptives, which her doctor has prescribed. It is a step backwards from the goal of ensuring all people in Illinois, especially women, have access to the health care they need. Access to birth control is a fundamental health care issue for women. Ensuring that women have the right to their birth control without delay, without hassle, and without a lecture is an important aspect of Governor Blagojevich's commitment to health care. Along with this effort, the Governor will continue to tackle other important issues in women's health, such as addressing cardiovascular diseases and osteoporosis as well as cancer screenings. He has made efforts to ensure families, children, and Illinois citizens have the access to health care and prescription drugs that they need. Governor Blagojevich's decision to ensure women can obtain their contraceptive prescriptions is a critical component in building strong families and communities in Illinois.

Good Morning and thank you to Committee Chair Congressman Manzullo for inviting me to speak today before this committee on the issue of Freedom of Conscience for Small Pharmacies.

Ladies and Gentleman of the House Committee on Small Business!

On April 1st Illinois' Governor Rod Blagojevich invoked an emergency rule requiring all Illinois licensed pharmacies to provide contraceptives based on a valid, lawful prescription without delay. As initially implemented, this emergency rule posed a substantial risk to patient care and created a substantial challenge for pharmacists licensed in our State.

Since that time, the emergency ruling has been modified and proposed language will be reviewed by our Joint Committee on Administrative Rules on August 16th. The language as now being promulgated is as follows:

" Duty of Division I Pharmacy to Dispense Contraceptives

1) Upon receipt of a valid, law~~ful prescr~~iption for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient's agent without delay, consistent with the normal timeframe for filling any other prescription. If the contraceptive, or a suitable alternative, is not in stock, the pharmacy must obtain the contraceptive under the pharmacy's standard procedures for ordering contraceptive drugs not in stock, including the procedures of any entity that is affiliated with, owns, or franchises the pharmacy. However, if the patient prefers, the prescription must either be transferred to a local pharmacy of the patient's choice or returned to the patient, as the patient directs.

2) For the purposes of this subsection (j), the term "contraceptive" shall refer to all FDA approved drugs or devices that prevent pregnancy.

3) Nothing in this subsection (j) shall interfere with a pharmacist's screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), drug-food interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions or clinical abuse or misuse, pursuant to 225 ILCS 85/3 (q)."

As the ruling is now being enforced, the Illinois Pharmacists Association has taken a formal position that we can accept and support these modifications. However, we feel it is imperative that the reference to "health care personnel" as cited in the Illinois Health Right of Conscience Act must be amended to specifically include pharmacists by reference rather than just by inference as "health care personnel".

The initial impact of this edict was harrowing for Illinois pharmacists as many of the small, rural communities did not carry emergency contraceptive indication referred to as Plan B. These pharmacies did not stock this item because of any personal or religious beliefs but rather the simple principles of supply and demand. If there is no demand there is no reason to

inventory this product. The reality of many of these small pharmacies in these remote communities is that if a woman has unprotected sex and determines with the advice of her physician that pregnancy could be eminent, then she will seek out a pharmacy in a nearby metropolitan area to preserve and protect her privacy and anonymity.

Now these pharmacies are being challenged as to how to respond to the new ruling of the Governor. Most still do not carry this product, but have established a relationship for a personal referral with a nearby "chain store" who now will typically stock this product due to the new mandate and the corporate requirement for compliance. The ruling provides for the ability for the pharmacist, with the patient's permission, to transfer the prescription to a local pharmacy of the patient's choice or return the prescription to the patient.

Unfortunately, what we are now finding is that some individuals are now testing select pharmacies to discern the willingness of the pharmacy to fill their prescription. A case in point is a woman who would drive over 100 miles to a very small rural pharmacy to get her prescription filled when she had passed multiple metropolitan areas. This initiative has been utilized now at several pharmacies that happen to be owned by Illinois legislators. This has caused concern and fear of many rural pharmacies that they may also be targeted in this "plot" to coerce pharmacies into compliance; thereby creating the need for many pharmacies to now "inventory" this product in the event they might be "tested"!

This situation has caused many pharmacists to examine their own profession and dedication. They feel they no longer have the right to determine their own fate in the dilemma of dispensing. Should they or shouldn't they dispense? Pharmacists are now beginning to question their rights under this new mandate. Irrespective of their own personal beliefs, many pharmacists are now facing the reality if it is oral contraceptives today, what might the prescription be that will be mandated tomorrow?

Pharmacists are health care professionals, as defined in Illinois statute, and expect to be treated as the professionals that they are trained to be. The commitment of the pharmacist is to serve and protect the health and safety of their patients. This can quite easily be met by allowing pharmacists to do as they always have; if a medicine is not in stock, they may offer to order it for the patient or in the event of a time sensitive prescription like "Plan B", they may make a referral to a local fellow professional.

This ruling has created limited economic hardship on many small pharmacists, but the threat of a noncompliance complaint for legitimately not having this product in stock has created a much greater burden on all pharmacists. As a result, some pharmacists are questioning the viability of maintaining their practice in the State of Illinois. Some with whom I have spoken, are contemplating relocating into other nearby States that will allow them to practice without fear of intervention. This consideration, will undoubtedly have significant impact on the availability, affordability and access to quality healthcare in many remote rural areas, rendering those patients in greatest need to drive greater distances to have their prescriptions filled. Only time will tell the true cost implications of these decisions. Pharmacists by nature are quite diligent in their efforts to comply, but the outside influences of certain "activists groups" testing selected pharmacists has created a noose of fear that is greater than any inventory item.

These pharmacists fear their license may be in jeopardy if they fail to comply with a mandate such as this irrespective of their personal beliefs. The cost of compliance has become an emotional, as well as an economic burden.

The Illinois Pharmacists Association has also urged the Governor to give further consideration, to recognize the right of conscience for pharmacists, but for those choosing to be trained to do so; we suggest allowing properly trained pharmacists to dispense "Plan B" without a prescription under the formal protocols of a licensed physician. This is now being done in at least 6 other states. This would allow pharmacists to be properly trained to counsel and dispense, and pharmacies to publicly advocate their willingness to dispense emergency contraception without a prescription. This we feel addresses the availability of emergency contraception, and also provides the potential for savings as well.

Thank you ladies and gentlemen for the privilege and opportunity to be with you today, and I will be happy to try and address any questions that you might have.

J. Michael Patton
Executive Director
Illinois Pharmacists Association

Testimony
of the

American Pharmacists Association

Freedom of Conscience for Small Pharmacies

Submitted to the House Small Business Committee

July 25, 2005

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Testimony of the American Pharmacists Association

Linda Garrelts MacLean, RPh, CDE

Before the Small Business Committee
United States House of Representatives

Hearing on
Freedom of Conscience for Small Pharmacies

July 25, 2005

Good morning. Thank you for the opportunity to appear before you today and present the views of the American Pharmacists Association (APhA). I am Linda Garrelts MacLean, a pharmacist and active member of APhA. I have been in practice for 27 years and am the former co-owner of two community pharmacies in Spokane and Deer Park, Washington. Founded in 1852 as the American Pharmaceutical Association, APhA is the first-established and largest national pharmacist organization in the United States, representing more than 53,000 practicing pharmacists, pharmaceutical scientists, student pharmacists and pharmacy technicians. APhA members practice in virtually every area of pharmacy practice, including independent and chain community pharmacy, hospital pharmacy, nuclear pharmacy, long term care pharmacy, home health care and hospice.

Let me first commend the Committee for holding today's hearing to address the effects that the Governor of Illinois' emergency order requiring pharmacies to provide contraceptives based on a valid, legal prescription 'without delay' will have on small pharmacies. We greatly appreciate the opportunity to provide the pharmacist's perspective on this important topic. As you can see from the chart provided as Attachment A, pharmacists are the most accessible health care providers on the health care team. Pharmacists fulfill a vital role in rural communities and other communities suffering from a shortage of health care providers. This role must be taken into account when considering proposals that may affect pharmacists in rural areas. For some of these patients, the pharmacist may be the only access point into our health care system.

Recent activity at the state and federal level on the issue of pharmacist conscience clauses has had and will have a direct impact on the ability of pharmacists and pharmacies to provide care to their patients. This activity has also magnified the issue to a degree which does not accurately reflect the scope of the issue. The vast majority of pharmacists dispense the vast majority of

prescriptions. Regardless, pharmacists want to retain the ability to opt out of providing services to which they personally object. My testimony will focus on the actual professional side, the provision of pharmacist services. Pharmacist services are a business. Intruding on how and what I choose to provide my patients is an intrusion into how I run my small business. To that end, I appreciate the Committee recognizing the business aspect of a health care issue.

My comments today will discuss the pharmacist conscience clause, pharmacists' activities to increase appropriate access to emergency contraceptives, the impact of 'duty to fill' legislation has on the pharmacist's clinical role, the scope of the problem, and potential next steps. Whether expanding the pharmacist's role in improving medication use, working to successfully implement the Medicare prescription drug benefit, seeking adequate reimbursement in the Medicaid program, or enacting laws to allow pharmacists to immunize patients, pharmacists are stepping up to the plate to help ensure patients have access to medications and know how to make the best use of those medications.

Pharmacist Conscience Clause

The ability of health professionals to opt out of providing services they find personally objectionable is an important component of our health care system. The pharmacy profession officially addressed this situation in 1998 through the APhA's policy-making process, our House of Delegates. Stimulated in part by the legalization of physician assisted suicide in Oregon, the policy applies to any situation where a pharmacist objects to dispensing a medication for personal (religious or moral) reasons. APhA's policy states:

> APhA recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure [the] patient's access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal.

APhA's policy supports the ability of a pharmacist to opt out of dispensing a prescription or providing a service for personal reasons and also supports the establishment of systems so that the patient's access to appropriate health care is not disrupted. In sum, our policy supports a pharmacist 'stepping away' from participating but not 'stepping in the way' of the patient accessing the therapy.

Pharmacists, like physicians and nurses, should not be forced to participate in procedures to which they have moral objections. However, recognizing pharmacists' unique role in the health care system, there should also be systems in place to make sure that the patient's health care needs are served. It is possible to address the rights of patients and the ability of pharmacists to step away from an activity to which they object. Real world experience has proven this to be true. And it does **not** require a confrontation with the patient.

Types of Systems

Because APhA's policy supports the establishment of systems to ensure patients receive access to their care, it is worthwhile to take a moment to discuss these various types of systems. The first of several potential systems begins when a pharmacist chooses where to practice. A pharmacist who objects to physician assisted suicide would choose a practice outside the State of Oregon, or outside a practice that participates. A pharmacist with personal objections to dispensing hormonal contraceptives would avoid practicing in a Title X clinic. Even when a pharmacist makes a thoughtful decision about where to practice, the pharmacist may be faced with a prescription to which they have moral or religious objections. Common systems that are used to balance a pharmacist's moral or religious objections and a patient's needs include staffing the pharmacy so that another pharmacist in the same pharmacy can dispense the prescription, and referring a new prescription or transferring a refill prescription to a different pharmacy.

An active communication plan can also help navigate these situations. When prescribers and patients are directed proactively to pharmacies that carry certain drugs, such as emergency contraceptives, patients can be directed to those pharmacies. The Association of Reproductive Health Professionals operates a national hotline (1-888-not-2-late) that allows patients to find a listing of providers who provide emergency contraception services. The same group, in collaboration with Princeton University's Office of Population Research, also operates a website (http://not-2-late.com) that can help patients identify a provider of emergency contraceptives in their area. This concept can be applied more informally at the local level by proactive communications between pharmacists and prescribers.

Enacting pharmacist prescriptive authority for emergency contraceptives is another system that I will discuss in greater length. Where these programs are in place, patients are directed to the pharmacists who prescribe and dispense emergency contraceptives and away from those who do not. For example, in rural Washington State, potential patients are directed to pharmacists who

participate in the emergency contraceptive care program, streamlining the process for the patient. Finally, in areas where no pharmacist will dispense a medication it may be the prescriber who chooses to dispense the product. What each of these systems has in common is better communication between pharmacists and prescribers — a concept with broader benefits than navigating these rare situations.

An important underlying concept of our proposed systems is that they are established proactively — before a pharmacist is presented with a prescription to which they object. The system should be seamless, with a pharmacist – patient interaction that is very similar to the interaction that occurs with any other prescription. Similar to the situation where a medication is simply out of stock on any given day, if the pharmacist is unable to dispense the prescription, then the patient must be made aware of the options available to them to fulfill his or her medication needs. The pharmacist should not use their position of power to berate the patient, to share their own personal beliefs, or obstruct patient access to therapy—such as refusing to return a patient's legally valid, clinically appropriate prescription. In most states this activity is prohibited by law. When alternative systems are established proactively, the patient is unaware of the pharmacist's actions and both the patient's right to care and the pharmacist's need to step away from certain activity are accommodated.

Ongoing Activities; Opportunities for the Future

As professionals, pharmacists continually strive to provide the best patient care possible, including continuous review of practices and taking steps to improve medication use and advance patient care. Unfortunately, the press has highlighted a few negative situations rather than focusing on the more broad reality of a significant number of pharmacists working to increase access to therapy such as emergency contraception.

Because of the short timeframe involved in effective use of emergency contraceptives, the opportunities for pharmacist involvement in expanding patient access are many. APhA supports the voluntary involvement of pharmacists, in collaboration with other health care providers, in emergency contraceptive care programs that include patient evaluation, patient education, and direct provision of emergency contraceptive medications.[1]

[1] APhA policy adopted in 2000. *(JAPhA NS40(5)Suppl.1:S8. September/October, 2000) (JAPhA NS43(5) Suppl. 1:S58. September/October 2003)*

Pharmacists in Alaska, California, Hawaii, Maine, New Hampshire, New Mexico and Washington have legal authority to prescribe and dispense emergency contraceptives under collaborative agreements with doctors and other prescribers. Legislation to establish similar programs was introduced this year in Illinois, Kentucky, Maryland, Massachusetts, New Jersey, New York (it is waiting for the Governor's signature), Oregon, Texas, and Vermont.

In the states where pharmacists have this authority, patients do not need to go to their physician first — something that could be difficult to accomplish in the short time period of effectiveness. Instead, patients may go directly to a participating pharmacist to receive their prescription for emergency contraceptives. Participating pharmacists receive training and work in collaboration with physicians and other prescribers through a pre-established protocol detailing the situations where emergency contraception should be used. Patients are first interviewed and counseled by the pharmacist. If the pharmacist agrees that the patient meets the clinical criteria for the medication, then the pharmacist will write the prescription and dispense the medication. Patients who need additional clinical care are referred to their physician.

While serving as President and President-elect for the Washington State Pharmacist's Association, I was instrumental in helping enact emergency contraceptive prescriptive authority in my home State of Washington, which was the first state to enact this type of law. Pharmacists began providing emergency contraception services in 1997. Since then, hundreds of pharmacists and student pharmacists have been trained annually. Approximately 1,200 emergency contraception interventions are done quarterly by pharmacists in local, Washington chain pharmacies in forty-three locations. Clearly the system is working well in Washington.

The states that have more recently adopted pharmacist emergency contraception prescriptive authority laws appear to have strong support from their pharmacists as well. Two to three times more pharmacists than expected have attended emergency contraception prescriptive authority training programs. These numbers and the experience of Washington State reflect the growing movement in pharmacy to make better use of pharmacists' clinical expertise while also helping to improve access to medications, including emergency contraceptives. It is a reality that negates the perception the media has created of pharmacists as obstructionists.

Pharmacists' Clinical Role

Another consequence of 'duty to fill' legislation is its impact on the clinical role of pharmacists. ('Duty to fill' legislation would require *pharmacies* or *pharmacists* to dispense 'legal' prescriptions. When poorly crafted, such a requirement conflicts with the pharmacist's legal responsibility to assess the clinical safety and appropriateness of the prescription.) Much of the media coverage and the discussion around some of the legislative proposals portray pharmacists as simply robots—transforming individuals from thinking health care professionals into automatons forbidden from having personal beliefs, and from exercising their considerable professional judgment gained during years of education and practice. Serving our patients and helping them make the best use of their medication is our priority.

If the pharmacist's role were merely to dispense lawfully prescribed medicines, that robot or automaton would fit the bill. But pharmacists are professionals whose role on the health care team is to collaborate with physicians and patients to help medications do what they should—and nothing they shouldn't. The profession exists to help patients access medications that will help them, and that means going beyond a 'lawful' prescription.

- A prescription calling for a 10-fold overdose is 'lawful', but likely fatal to the patient.
- A prescription calling for the antibiotic amoxicillin for a patient allergic to penicillin is 'lawful', but again, potentially fatal to the patient.
- A prescription calling for an oral contraceptive for a patient with a history of thromboembolic disease is 'lawful', but may result in patient harm.

'Duty to fill' legislation can cause problems for pharmacists and our patients. Under Illinois Governor Blagojevich's original April 1st order, for example, pharmacies that sell contraceptives are required to fill valid, legal prescriptions for these medications without delay. As written, the rule did not appear to permit pharmacists to protect patients from medications contraindicated because of allergy or drug-related interactions or to correct potential dosing errors. Nor did the rule permit pharmacists to transfer prescriptions if they had any objections to filling the prescriptions. According to the Governor, he was prompted to issue the order by reports to state health authorities that two women were unable to have prescriptions filled for emergency contraceptives at a chain pharmacy in Chicago.

Pharmacy's reaction to Governor Blagojevich highlighted the reality that the emergency order, as originally written, would conflict with provisions in the Illinois Pharmacy Practice Act that

require pharmacists to conduct prospective drug utilization review. The profession stated, "The requirement to dispense a valid, lawful prescription 'without delay' could require a pharmacist to dispense a valid, lawful-but clinically inappropriate-medication 'without delay.'"[2]

In response, on April 11th, the Illinois Department of Financial and Professional Regulation published an open letter to Illinois pharmacists in which it clarified that the April 1st emergency rule was not intended to "interfere in any way with a pharmacist's responsibility to conduct prospective drug utilization review." Governor Blagojevich and the Department have pursued a permanent rule through the regulatory process to replace the emergency amendment. Patients in Illinois will be well served if the Illinois Pharmacist Association's efforts to include pharmacist prescriptive authority for emergency contraception is successful as it is one of the mechanisms to expand access.

As stated previously, pharmacists are professionals whose role on the health care team is to collaborate with physicians and patients to help medications do what they should – and nothing they shouldn't. To take away their clinical judgment is a draconian step backwards in an era when we are seeking to reduce the number of medication-related errors.

Impact on the Business of Pharmacy

'Duty to fill' legislation can also affect the business side of pharmacy. As noted previously, it is a reality that health care is a business, and pharmacy practice a component of that business. 'Duty to fill' legislation affects business—and specifically small businesses—by dictating how a business must accommodate its staff, in this situation, its pharmacists.[3] For example, some proposals have defined the type of system a pharmacy must implement in order to assure patients may access necessary medications, such as requiring a pharmacy to order a product if the medication is not in stock. With more than 10,000 medications on the market today, it is

[2] April 5, 2005 letter to the Honorable Rod R. Blagojevich, Governor, State of Illinois, from the American Pharmacists Association, the Illinois Pharmacists Association and the American Society of Health-System Pharmacists. Accessed at http://www.aphanet.org/AM/Template.cfm?Section=Federal_Government_Affairs &CONTENTID=3201&TEMPLATE=/CM/ContentDisplay.cfm

[3] Some of the 'duty to fill' proposals have attempted to accommodate the individual pharmacist's ability to opt-out of objectionable activity by placing the requirement on the 'pharmacy'—the business—rather than the individual, the pharmacist. But for a small business like an independent pharmacy operated by a single pharmacist, the distinction between the two is minimal. Even in larger operations, a 'pharmacy' does not exist without a 'pharmacist', and rigid requirements regarding dispensing certain products compromise the individual pharmacist's activities.

impossible for a typical pharmacy to carry all medications—and unnecessary as well. Decisions about which drugs to stock are based on the patient population served, the health plans in which the pharmacy participates, and the prescribing patterns of the physicians and other prescribers in the community. Medications that are widely used in some geographic areas may be used only infrequently in others. In some cases, a pharmacy may be willing to order a drug that is typically not available at the practice. But depending on the patient's needs, how quickly the pharmacy can receive the drug, and how much more the drug may cost the pharmacy (special orders may cost the pharmacy more — and the pharmacy may not receive any payment to cover those additional costs), special-ordering the drug may not be a viable option. In these situations, patients would typically be referred to other pharmacy practices or alternative arrangements would be made.

In trying to address an issue that to some may be a legitimate access issue and to others may be an issue of convenience, 'duty to fill' proposals would compel health care providers and businesses to provide certain services. Decisions about what services to provide and by whom should be left up to individual health care providers. Decisions about which systems to implement and how to implement them should be left up to pharmacy managers and pharmacists. Patients will choose the pharmacy and pharmacists who best serve their needs, and market forces will dictate what services the pharmacies provide.

Is Legislation Necessary?

As with any policy discussion, it is critical to examine the situation in context and to carefully review the potential impact — positive and negative — of a legislative or regulatory proposal. With most, if not all, 'duty to fill' proposals, both health care and small businesses are negatively impacted.

The first challenge with such proposals is that they use a broad approach to a statistically minor problem. While any instance of a pharmacist obstructing access to medications must be addressed, such situations are very rare. Nearly 3.3 billion prescriptions are dispensed each year in the outpatient setting[4], averaging about 9 million prescriptions per day. Proponents of 'duty to fill' laws document approximately twelve examples of refusals to fill since 1996. One must

[4] 2004 data for retail pharmacy prescriptions (including mail-service), prepared by National Association of Chain Drug Stores' Economic Department using data from IMS Health. Accessed at http://www.nacds.org/user-assets/PDF_files/2004results.PDF

question the need for new laws or regulations to address a handful of situations that may have been avoided through better communication and alternative systems.

Additionally, APhA strongly objects to creating federal oversight of the practice of pharmacy. The practice of pharmacy, both the profession and the business, are regulated at the state level, just as all other health care providers. We would oppose federal legislation to regulate the practice of pharmacy at the federal level. Health care should be regulated at the local level to reflect local needs. State Boards of Pharmacy should remain the leader in regulating the practice, not state or federal legislators who may not understand or appreciate a proposal's impact on local patient care, local health care, or local pharmacies and physician offices.

It is not unusual for a good policy to have unintended consequences. Some of the proposals that would create a 'duty to fill' could result in a pharmacy choosing not to stock a certain product to avoid the situation of forcing their pharmacists to dispense. Other pharmacies could decide to rescind the conscience clause protections they had had in place, and which were working well, because they do not believe that they can allow pharmacists to 'step away' and still meet the law's requirements. And a seemingly simple law, depending on how it is written, could compel pharmacists to participate in current 'opt-in' programs such as Oregon's physician assisted suicide program.

Next Steps

One individual's rights should not outweigh another's. Our policy balances the needs of the patient and the individual needs of the pharmacist, as well as the pharmacist's professional responsibility. Implemented well, patients will receive care and pharmacists will not be forced to ignore their personal moral beliefs. With planning, there are no winners or losers – both persons are accommodated. Rather than designating a profession as robots or automatons that ascribe to one set of beliefs, a different approach is available. And it works. It takes more time, and proactive implementation, but then, many of the best solutions do.

As a portion of the recently adopted American Medical Association (AMA) pharmacist conscience clause resolution indicates, pharmacists and physicians agree. Patients should receive their medications without harassment and interference, but pharmacists should not be compelled to participate in activity they find objectionable. The resolution directs the AMA to have a dialogue with APhA on this issue. We welcome a dialogue that will ensure this continued

recognition of the need to serve patients and recognize the individual beliefs of pharmacists and physicians. Just like physicians, pharmacists abide by a Code of Ethics for the delivery of health care. Just as physicians are not required to provide all medical services, pharmacists should not be required to provide all pharmacy services.

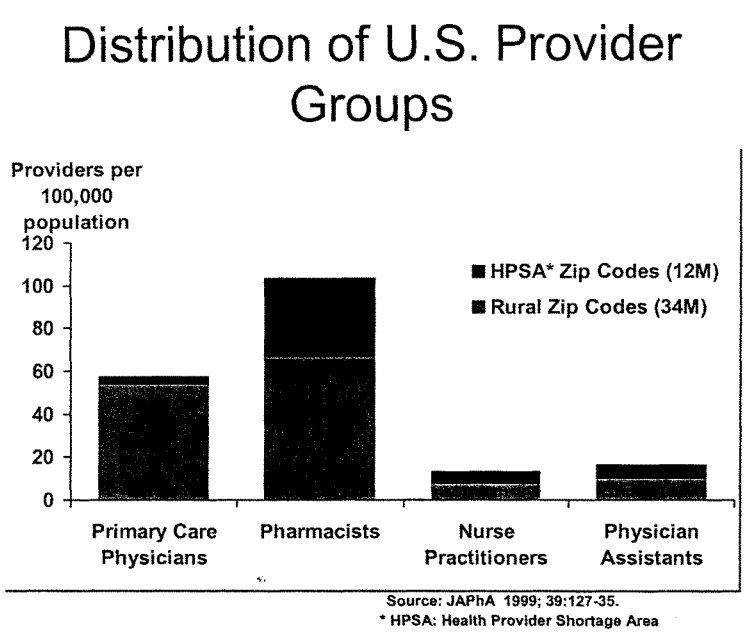
Physicians and pharmacists collaborate every day to improve medication use and advance patient care—including navigating issues of conscience. We look forward to working with the AMA on this issue, much as our individual members are working together with physicians today and everyday in your districts. It is a great opportunity for the profession to lead the efforts to address an issue facing health care professionals and patients.

Additionally, APhA will continue to help state pharmacy associations enact legislation that would provide pharmacists the legal authority to increase access to emergency contraception. These programs support the clinical role of pharmacists in counseling and educating patients and also increase the awareness among consumers and prescribers about these drug products. Lack of patient and prescriber awareness is a significant barrier to care.

Thank you for the opportunity to provide pharmacists' perspective on this important issue. APhA offers our assistance to the Committee as you continue your valuable work on this important issue and would welcome the opportunity to facilitate communications with state pharmacy associations so that Members of Congress can better assess the situation in their districts.

APhA Statement to the House Small Business Committee
July 25, 2005

Attachment A



Testimony of

Megan Kelly
Geneva, Illinois

Submitted to the
House Small Business Committee

July 25, 2005

Good Morning. I want to thank the Committee for inviting me today to offer testimony today on the issue of pharmacist's refusal. I appreciate your time and willingness to listen to my story.

My name is Megan Kelly. I live in Geneva, Illinois. I'm 29 years old, married, a mother, and a high school art teacher.

Recently, in trying to make a responsible decision about my health and family planning, I was humiliated and discriminated against by a pharmacist who refused to fill my prescriptions for birth control pills and emergency contraception based on her own personal views. This pharmacist put my health in danger by refusing to fill my prescription and imposing a delay in my ability to access my legally prescribed medication.

On Sunday of 4th of July weekend I went to get my BC prescription filled and found out I had no more refills left. When my usual pharmacist tried to contact my doctor she was told that I had to make my annual appointment before I could get my prescription filled. My doctor was also out of town due to the fact that it was 4th of July. After not being able to use my birth control pills for 3 days my doctor recommended that I use the EC pill as a precautionary measure. That is why I tried to get both the birth control pill and the EC pill prescription filled.

My doctor's office called in my prescriptions to a local Jewel-Osco pharmacy in St. Charles and was told my medication was available. When I went to pick up my medication, the pharmacist on duty said she would not fill my prescriptions because of her beliefs, and that I would have to get my prescriptions filled elsewhere. I was shocked. I asked for the store manager, who said he could not force his pharmacists to fill my prescriptions if they are willing to transfer the

prescriptions to another location. I called the pharmacy district manager for Albertson's Inc., who operates Jewel-Osco, and he confirmed this company policy.

As a patient, I consult with my doctor about the best course of treatment. In writing a prescription, my doctor is doing his job and acting in my best interest. I do not expect a pharmacist to breach the relationship I have with my doctor and endanger my health. When pharmacists refuse to dispense medicine, they are not doing their job. Their job is to dispense medication, not moral judgment. A pharmacist's personal views do not belong in my healthcare.

As a consumer, I have a right to walk in to any pharmacy in America and expect to have my prescription filled without unnecessary delays or discrimination. It is completely unacceptable for this store to refer customers to another provider at a different location. As in my case, this practice can result in humiliation and - based on the nature of the medication - poses a health risk when the prescription is not filled in a timely manner. Birth control pills must be taken every day at the same time to be effective, and the effectiveness of emergency contraception diminishes dramatically as time goes on.

I have since learned that what I suspected at the time is true: the Jewel-Osco pharmacy in St. Charles is in violation of an emergency rule that Illinois Governor Blagojevich signed on April 1, which states that pharmacies in Illinois that sell contraceptives must accept and fill prescriptions for contraceptives without delay. The Joint Committee on Administrative Rules is expected to make a decision about whether to make the rule permanent in August.

It is the responsibility of pharmacies to ensure that all individuals' needs are met, and that no one becomes a target of discrimination. The Jewel-Osco pharmacy in St. Charles currently employs a

pharmacist who is jeopardizing women's health by refusing to fill legal, physician-prescribed family planning medication.

The bottom line is this: if a woman and her doctor have already discussed the need for contraception, she should be able to walk in to any pharmacy in America and expect to have her prescription filled without unnecessary delays or discrimination. Women should never be denied basic health care services by pharmacists who choose to impose their own beliefs on others.

"Prevention First"

Testimony Presented by

Nancy Keenan
President
NARAL Pro-Choice America

U.S. House of Representatives
Committee on Small Business

July 25, 2005

Chairman Manzullo and members of the committee: I thank you for the opportunity to submit this testimony for the record.

While Americans may disagree on the question of legal abortion, we believe all reasonable people can and should agree that women, families, and society would be better off if we could reduce the number of unintended pregnancies and therefore the *need* for abortion. Every year, women in the United States experience almost three million unintended pregnancies, many of which lead to hardship for women and their families, tough choices, and, for many, abortion.[1] The use of reliable contraception is a tested and proven means to reduce the number of unintended pregnancies and abortion. In fact, the development and widespread use of birth control has had such profound societal benefits that the Centers for Disease Control and Prevention has named it one of "ten great public-health achievements in the 20th century."[2]

Unfortunately, this advance is under political attack. Recently, there have been numerous reported incidents nationwide of pharmacists refusing to fill women's legally prescribed birth-control prescriptions for reasons of "conscience," without regard to their clients' health, or indeed, *their* consciences. Making matters worse, some pharmacists even go so far as to lecture women, humiliate them in public, or refuse to hand back the prescription after they refuse to fill it. For example:

- Minnesota, 2005: Adriane Gilbert called a Snyders pharmacy in Richfield to check the status of a prescription order for a birth-control patch. She had been a Snyders customer for about two years. The pharmacist on duty told her he opposed birth control and refused to help her. The pharmacist also refused to transfer the prescription. Subsequently, Gilbert called the pharmacy back and someone else apologized for the incident and told her that the pharmacist she had spoken with was still in training.[3]

- Illinois, 2005: In February 2005, two Chicago women reported that a pharmacy had turned them away when they sought to fill prescriptions for emergency contraception, also known as the morning-after pill. Subsequently, on April 1, 2005, the Illinois Department of Financial and Professional Regulation filed a formal complaint against the pharmacy and explained that the pharmacy could face discipline ranging from a fine to revocation of its license.[4]

- Wisconsin, 2005: A mother of six walked into a Walgreens pharmacy to fill a prescription for emergency contraception. The pharmacist refused and proceeded to berate the woman in a crowded waiting area. The pharmacist called the mother a murderer and said "I will not help you kill this baby. I will not have blood on my hands." Subsequently, the woman became pregnant and decided to terminate the pregnancy.[5]

- New Hampshire, 2004: Suzanne Richards, a 21-year-old single mother, went to a drive-through pharmacy to fill a prescription for emergency contraception. The pharmacist, Todd Sklencar, told Richards he was morally opposed to prescribing the pill and refused to transfer her prescription to another pharmacy. By the time a pharmacist willing to fill the prescription contacted Richards, the optimal time frame for taking the pills had passed.[6]

- Massachusetts, 2004: A University of Massachusetts sophomore attempted to refill her prescription for oral contraceptives online. However, when she arrived at the local CVS pharmacy to pick up the prescription, the pharmacist told her that he had deleted her request from the computer because he did not want to fill it. Fortunately, another pharmacist in the store filled the prescription.[7]

- Texas, 2004: At an Eckerd pharmacy in Denton, a rape victim attempted to fill a prescription for emergency contraception in an effort to guard against an unintended and unwanted pregnancy. Gene Herr, along with two other pharmacists, denied the woman access to the pills, citing moral and religious convictions.[8]

- Ohio, 1996: At a Cincinnati Kmart, pharmacist Karen Brauer refused to fill a woman's prescription for birth-control pills. Brauer claimed that she was following her conscience when she denied the 32-year-old woman her request for the pills. Brauer justified her actions by explaining, "This is the Fifth Commandment . . . I want to opt out of the willful decision to kill."[9] Brauer was fired and subsequently became the president of the group "Pharmacists for Life;" she now actively campaigns for other pharmacists to join her in turning women with birth-control prescriptions away from the pharmacy counter.

These incidents represent just a sampling of those occurring nationwide. Most women who face this discrimination are understandably reluctant to go public and have therefore never had their stories told. Some observers have estimated that each reported incident may represent hundreds or even thousands of others. Blocking women's access to birth control at the pharmacy counter is simply unacceptable. It is not just an inconvenience; it is insulting, imposes unnecessary health risks, and in some cases, makes it impossible for women to obtain the care they need in time. A woman should be able to walk into a pharmacy with a birth-control prescription and walk out with the medication – without intimidation, without delay, without a run-around. When a woman and her doctor have made the decision that a prescription for birth control is in her best interest, a third party has no right to override that decision without a valid, medical reason.

For the 98 percent of women of childbearing age (15-44) who have had sex, birth control is basic, essential health care.[10] In the United States, 62 million women are of childbearing age; 43 million, or seven in ten, are sexually active and do not want to become pregnant but could if they (or their partners) do not use contraception. Nearly 12 million women – or approximately one-third of women using contraception – choose birth-control pills as their contraceptive method.[11] Pharmacies have a duty to dispense and have an ethical obligation not to endanger their patients' health by withholding basic health care.

Recognizing that women need and deserve access to their prescriptions without delay, both the American Pharmaceutical Association and the American Medical Association have adopted policies regarding pharmacist refusals:

- The American Pharmaceutical Association: if a pharmacist refuses to fill a prescription, there should be established "systems to ensure patient access to legally prescribed therapy."[12]

- The American Medical Association: if a pharmacist or pharmacy has objections to filling a prescription, they should provide the patient with an "immediate referral to an appropriate alternative dispensing pharmacy without interference." An AMA board member recently stated "The AMA strongly believes patients have to have access to their medications. It's the obligation on behalf of the pharmacist . . . to tell them where to go."[13]

In addition, a recent survey found that almost 80 percent of physicians surveyed thought that state laws should ensure pharmacists fill prescriptions as long as the drugs are legal and valid.[14]

Similarly, the American public strongly supports women's access to birth control. In fact, opposition to pharmacists' interference is strong across the ideological spectrum. In a recent national survey, even 74 percent of respondents who identified themselves as "pro-life" opposed giving pharmacists the right to turn women away from the pharmacy counter. A *New York Times*/CBS poll conducted in November 2004 revealed similar findings, showing that eight in 10 Americans say pharmacists who personally oppose birth control for religious reasons should <u>not</u> refuse to sell oral contraceptives to women.[15]

The positions of the American Pharmaceutical Association, American Medical Association, and doctors nationwide – as well as the American public – are not surprising given the considerable amount of research and anecdotal evidence that demonstrates that inadequate access to contraception carries substantial health risks for women. Without timely access to birth control, women are more likely to experience an

unintended pregnancy. Unintended pregnancy can have serious health consequences for both woman and child. For example:

- Women facing unintended pregnancies are less likely to identify health risks associated with pregnancy prior to conception, and, therefore, often do not take full advantage of the health options available to manage such conditions safely during pregnancy.[16]

- Women facing unintended pregnancies are more likely to delay prenatal care.[17] Studies have repeatedly shown that early and regular prenatal care is beneficial to both a woman and her pregnancy. Prenatal care allows health providers to prevent, detect, and treat problems early in a woman's pregnancy before they become serious for either the woman or baby.[18]

- Children of unplanned pregnancies are at greater risk of low birth weight, dying before reaching their first birthday, of being abused, and of receiving insufficient resources in order to ensure healthy development.[19]

Thus, timely access to contraception reduces unintended pregnancy and thereby benefits both women and children. Too often, public officials ignore this fact and treat women's access to birth control as a political issue instead of as a matter of public health. But, prevention of unintended pregnancy, and policies that promote prevention, can and should be the common ground between the pro-choice and anti-choice movements.

In conclusion, as advocates and policymakers, we should do what we can to guarantee women's access to their legally prescribed medications. The average American woman will spend five years pregnant or trying to get pregnant, and nearly three decades trying to avoid pregnancy.[20] Without timely access to contraception, the average woman would have between 12 and 15 pregnancies, possibly endangering her health and the health of her children.[21] Her body and the very course of her life would be governed almost solely by reproduction. Thus, when a woman chooses birth control as her method of avoiding pregnancy, she is acting responsibly and taking control of her reproductive health. She – like any individual seeking medical care - should be treated with respect and dignity.

Notes

[1] The Kaiser Family Foundation (KFF), *Abortion in the U.S.* (Oct. 2002).

[2] Centers for Disease Control and Prevention, *Ten Great Public Health Achievements in the 20th Century 1900-1999*, 48 MMWR 241-243 (1999).

[3] Rene Sanchez, *New Arena for Birth-Control Battle*, STAR TRIB., May 3, 2005.

[4] Governor Rod Blagojevich also filed an emergency rule – effective for 150 days – to protect women's access to prescription contraceptives. In part, it provides: "Upon receipt of a valid, lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient's agent without delay." Emergency Rule, Illinois Department of Financial and Professional Regulation, Section 1330.91 Division I Pharmacies (2005); Press Release, The Honorable Rod. R. Blagojevich, Office of the Governor, *Gov. Blagojevich Takes Emergency Action to Protect Women's Access to Contraceptives, Files Emergency Rule to Prevent Pharmacies from Turning Women Away* (Apr. 1, 2005); Monica Davey, *Illinois Pharmacies Ordered to Provide Birth Control*, N.Y. TIMES, Apr. 2, 2005; Kari Lydersen, *Ill. Pharmacies Required to Fill Prescriptions for Birth Control*, WASH. POST, Apr. 2, 2005, at A02.

[5] *Pharmacist Refuses to Fill Prescriptions for Moral Reasons: Walgreens Allows Pharmacists to Not Dispense Drugs They Object to*, THE MILWAUKEECHANNEL.COM (May 5, 2005).

[6] *Laconia Woman Denied Morning After Pill By Pharmacist*, ASSOC. PRESS, Sept. 26, 2004.

[7] Amy Grzybinski, *University Drive Pharmacist Denies a Student Birth Control*, THE MASSACHUSETTS DAILY COLLEGIAN (Dec. 13, 2004).

[8] *Contraception; Pharmacist's Refusal to Fill Emergency Contraception Script Raises Questions*, WOMEN'S HEALTH WKLY., Mar. 18, 2004.

[9] Dennis M. Mahoney, *Prescription for Dispute*, THE COLUMBUS DISPATCH, Dec. 14, 2001.

[10] The Alan Guttmacher Institute, *Contraceptive Use* (2005).

[11] The Alan Guttmacher Institute, *Facts in Brief: Contraceptive Use* (Feb. 2005).

[12] Policy adopted by the APhA House of Delegates in 1998. A spokesman for the APhA said: "A pharmacist is like any doctor, nurse or other health-care professional who has a right to have a conscience. . . . But we also support the establishment of systems by the pharmacy so that [the] patient can access their legally prescribed medication." *Pharmacists' Right to Refuse Challenged*, THE DALLAS MORNING NEWS, Apr. 1, 2004.

[13] Bruce Japsen, *Rx-filling mandate backed by AMA; Contraceptive Denial Prompts Resolution*, CHI. TRIB., June 21, 2005.

[14] *Survey Finds Docs Back 'Morning After' Pill*, REUTERS HEALTH, July 7, 2005.

[15] CBS News & N.Y. Times, Poll: Pharmacists and Birth Control (Nov. 23, 2004).

[16] THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 82 (Sarah S. Brown & Leon Eisenberg eds., 1995).

[17] THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 81 (Sarah S. Brown & Leon Eisenberg eds., 1995).

[18] The National Women's Health Information Center, *Frequently Asked Questions about Prenatal Care* (Nov. 2002), *at* http://www.4woman.gov/faq/prenatal.pdf (last visited July 20, 2005); March of Dimes, *Prenatal Care, at* http://www.marchofdimes.com/pnhec/159_513.asp (last visited July 20, 2005).

[19] THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 81 (Sarah S. Brown & Leon Eisenberg eds., 1995).

[20] Rachel Benson Gold, *The Need for the Cost of Mandating Private Insurance Coverage of Contraception*, ALAN GUTTMACHER REP. ON PUB. POL'Y, Aug. 1998, at 5. *See also* Abigail Trafford, *Viagra and the Other Sex Pill*, WASH. POST, May 19, 1998, at Z6.

[21] Abigail Trafford, *Viagra and the Other Sex Pill*, WASH. POST, May 19, 1998, at Z6.

Testimony of Kim A. Gandy, President,
National Organization for Women

Submitted to the House Committee on Small Business

Hearing on Freedom of Conscience for Small Pharmacies

July 25, 2005

My name is Kim Gandy and I am the President of the National Organization for Women.

NOW is the oldest and largest feminist activist organization in the United States, advocating for women's equal rights, health, economic and social well-being. The testimony I submit today is underwritten solely by our more than 500,000 members and contributing supporters across the country. Thank you for the opportunity to voice our concerns today.

As this committee hears testimony from pharmacists who want to refuse legal pharmaceuticals to their customers, it is important to recognize the potentially devastating implications those actions would have on consumer rights and on the healthcare needs of millions of women.

Let's be honest and recognize that pharmacist refusals are an organized effort to limit women's access to certain prescription medications – primarily contraceptives – and they are not based in any desire to contribute to women's health and wellbeing.

44-year-old Kathleen Pulz and her husband panicked when their condom broke. The parents of four children, they had already decided that they didn't want a fifth child, but the pharmacy down the street refused to fill Kathleen's prescription for emergency contraception. And even worse, according to the Washington Post, they refused to return the prescription to her so that she could fill it at another pharmacy. And the samples are many.

Stories of pharmacists blocking women's access to legal pharmaceuticals are increasing in frequency, and reports have surfaced in states across the nation, including California, Georgia, Louisiana, Illinois, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Carolina, Ohio, Texas, Washington state and Wisconsin. Rape victims have been denied emergency contraception. Married and single women have been given moralistic lectures for using birth control. Some women have been sent to other pharmacies, while others have had pharmacists refuse to return their prescription – and some women have even been lectured in front of other customers on the morality of their choices.

The issue before you today offers a choice between protecting women's access to basic health care and permitting pharmacists acting as small business owners to impose their personal beliefs on their customers. Pharmacists' personal beliefs are just that, personal. They must never compromise a customer's health needs and while we respect self-determination and free speech, these values should never in any way endanger a patient's health or compromise another individual's safety.

Ninety five percent of women in this country will have used contraception at some point in their lives. Without it, the average woman would face 12 to 15 pregnancies during her lifetime. Only a woman, with the support of her spouse or partner, her family – and if she chooses, her medical and religious counselors – should determine the timing and spacing of her childbearing. Women can only prevent unintended, unwanted and involuntary pregnancies if they have full access to contraception.

In addition, the assumption that birth control is only used for family planning denies women's reliance on contraceptives for other health benefits, including regulating menstrual cycles and treating endometriosis. They should not have to explain this to pharmacists in order to pass a "morality" test.

For some women, their community pharmacy is the only pharmacy. Why should a customer be forced to travel and spend additional time and money (which she may not have) obtaining what is rightfully and legally theirs? Pharmacist refusals are particularly burdensome to rural and low-income women, who may be unable to find or travel to another pharmacy to have their prescriptions filled without considerable hardship.

Prescription contraceptives also require timely access for optimum effectiveness. Emergency contraception (EC), for example, must be taken within 72 hours of sexual intercourse to prevent a pregnancy, and the sooner it is taken the more effective it is. Trying to obtain EC within this time frame can be stressful for any woman, but particularly for a woman who has just survived being raped. Adding more obstacles while the clock is ticking is simply outrageous.

Nationwide polls show a majority of people are opposed to pharmacist refusals, **proving conscience clauses to be out-of-the-mainstream**. A 2004 CBS/New York Times showed 80% of Americans believe pharmacists should not refuse a woman's access to contraceptives. Another survey found that 74% of respondents supported laws requiring pharmacists to fill birth control prescriptions. This included support by 70% of Catholic respondents, 68% of Protestants, 87% of liberals, and 59% of conservatives. A poll of physicians also yielded overwhelming support for pharmacy compliance in dispensing birth control. **Seventy eight percent of those polled believed pharmacists should fill all legal prescriptions.**

With a majority supporting contraceptive access and keeping in mind the fact that a majority of women will use birth control during their reproductive years, it is arbitrary and discriminatory for pharmacists to refuse to dispense legally-prescribed birth control, holding extraordinary power over less-mobile customers and delaying or preventing women from meeting their most basic health needs, including pregnancy prevention and treatment of various medical conditions.

Our national commitment to women's health and reproductive rights must ensure that all women have confidence and trust in access to their healthcare, that they can purchase their prescriptions without judgment, without lectures, and without delays or other interferences, period.

Thank You.

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