

# United States Senate

WASHINGTON, DC 20510

Secretary Michael O. Leavitt  
The U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

July 23, 2008

Dear Mr. Secretary:

It has come to our attention that a draft regulation is being prepared by the Department of Health and Human Services that would have the effect of encouraging health-care institutions and individuals to refuse to provide birth control to patients who need it. We are writing today to urge you to abandon plans to promulgate such a rule. Though the proposed rule purports to enforce two existing pieces of legislation known as the Church and Weldon amendments, in fact, it goes much further. The draft regulation could deny access to critical family planning for women across the country.

In particular, the regulation, if it is published as it presently exists in its draft form, will define abortion as "any of the various procedures ... that result in the termination of the life of a human being in utero between conception and natural birth, *whether before or after implantation.*" (Emphasis added.) In other words, the draft regulation would define birth control as abortion and therefore allow individuals and health-care corporations to refuse to provide family planning.

By medical definition, a pregnancy does not begin until a fertilized egg implants in a woman's uterine wall. Most modern forms of birth control work, among other ways, by blocking a fertilized egg from doing so. Calling a fertilized egg "before implantation" a "human being in utero" is factually and biologically incorrect. Confusing the definitions of contraception and abortion could have profound implications, leading to disarray in law, regulations, and policy.

Here are but a few examples:

First, the regulation would allow health-care institutions – HMOs, health plans, and hospitals, for instance - to claim "conscientious objection" to birth control in addition to abortion, and to refuse to prescribe contraception and make referrals for birth control.

Second, the regulation directly undermines many important state laws. It could threaten rape survivors' access to emergency contraception in hospital emergency rooms, and might even prevent women from learning that this option exists. Fourteen states currently have laws guaranteeing that access. Similarly, six states have laws ensuring that pharmacists will fill women's birth control prescriptions. This draft regulation could directly undermine those laws. Finally, 27 states have laws guaranteeing contraceptive equity in health-insurance plans; this draft regulation could place those guarantees in jeopardy.

Third, the regulation appears to stand in open conflict with at least two federal programs that require contraceptive services to be provided to clients upon request: Medicaid and Title X. The Medicaid program includes birth control as a mandated benefit for patients. The sole purpose of the Title X program is to provide family planning and other related reproductive-health services. This regulation could throw both programs into chaos by telling both individual program staff and health-care institutions that they may refuse to provide family planning after all.

The fact is, most Americans – regardless of their position on reproductive choice -- agree that increasing access to birth control prevents unintended pregnancies – and results in fewer abortions. As a matter of public policy, it is utterly irresponsible for the federal government to hinder women's access to contraceptive services.

We urge you not to pursue this course of action as it would seriously undermine the access of millions of American women to affordable and effective reproductive-health care.

Sincerely,



Patty Murray  
United States Senator



Hillary Rodham Clinton  
United States Senator



Barbara Boxer  
United States Senator



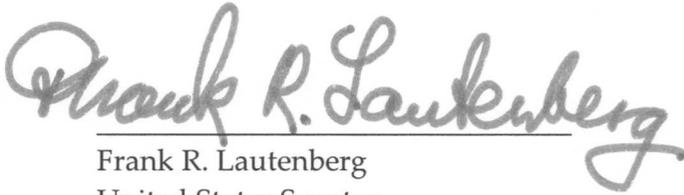
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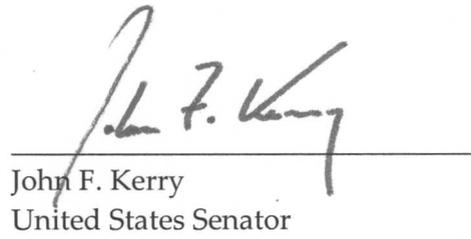


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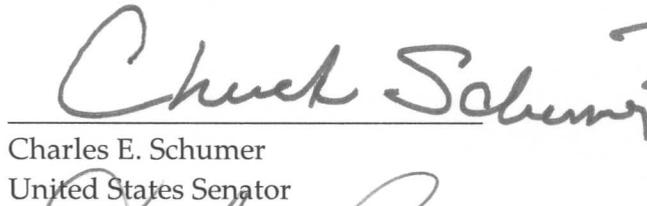
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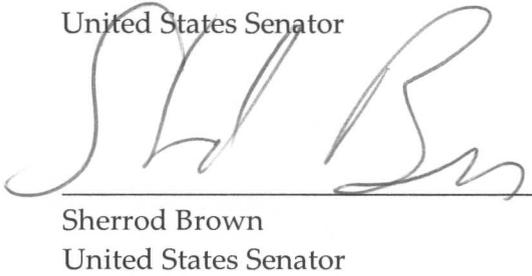
  
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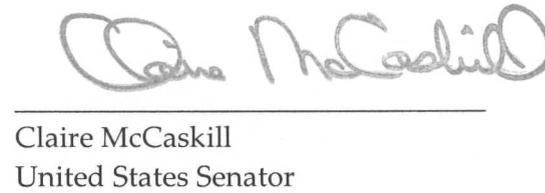
  
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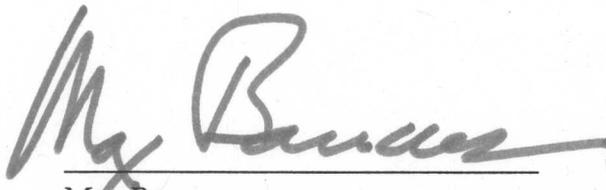
  
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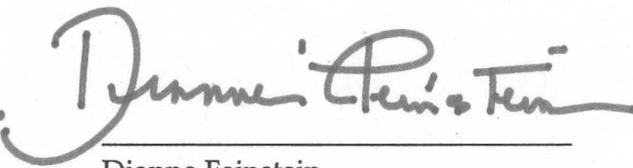
  
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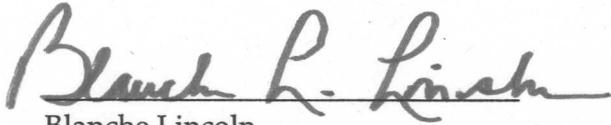
  
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United States Senator



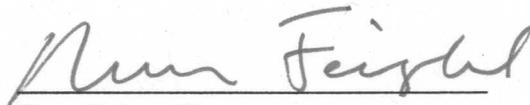
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