

UCLA
UCLA Women's Law Journal

Title

The Attack on Planned Parenthood: A Historical Analysis

Permalink

<https://escholarship.org/uc/item/38f952g1>

Journal

UCLA Women's Law Journal, 19(2)

Author

Primrose, Sarah

Publication Date

2012

DOI

10.5070/L3192017830

Copyright Information

Copyright 2012 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

ARTICLES

THE ATTACK ON PLANNED PARENTHOOD: A HISTORICAL ANALYSIS

Sarah Primrose*

“If you want to understand today, you have to search yesterday.”
—Pearl S. Buck¹

INTRODUCTION	166
I. THE HISTORY OF THE PLANNED PARENTHOOD	
ORGANIZATION	168
A. <i>The Traditional Role of Women: Early Views on Family Planning</i>	169
B. <i>Margaret Sanger and the Birth Control League</i>	175
C. <i>The Women’s Rights Movement of the 1960s</i> ...	184
II. THE “CONTROVERSIAL” NATURE OF PLANNED PARENTHOOD	187
A. <i>The Contraception Debate: Women’s Rights Cosliderations</i>	188
B. <i>Changing Attitudes?: The Partial Social Acceptance of Planned Parenthood</i>	191
III. THE MODERN ATTACK ON PLANNED PARENTHOOD	194
A. <i>Legislative Attempts to Defund Planned Parenthood</i>	195
B. <i>The Need for Planned Parenthood</i>	204
CONCLUSION	209

* This piece was awarded the Sarah Weddington Writing Prize for New Student Scholarship. J.D., Michigan State College of Law, 2012. The author would like to thank Professor Charles Ten Brink, Dr. Janet Primrose, Mark Primrose, and Jack McCloskey for helpful comments. The author would also like to thank her grandmothers, Lynn Primrose and Hazel Widaman, for their encouragement. The author is also very grateful for the assistance of the UCLA Women’s Law Journal.

1. PEARL S. BUCK (1892 – 1973).

INTRODUCTION

Legislators at both the federal and state levels have recently attacked the Planned Parenthood organization.² Some legislators have requested a massive audit of the organization, while others have demanded the total defunding of the organization.³ The debate has sparked a firestorm of controversy, with staunch advocates of the organization responding with strong words.⁴ Senators Richard Blumenthal, Barbara Boxer, and Patty Murray, in a letter signed by eight other Senators, wrote:

At a time in our country when women rely on Planned Parenthood more than ever for essential health care, this invasive and baseless investigation is all the more reprehensible, and is an abuse of your oversight responsibilities. We urge you to immediately cease this investigation . . . [It] amounts to no more than a witch hunt, and is a waste of resources at a time when the American people have asked that Congress come together and focus on job creation and economic growth.⁵

However, this is not the first time that the organization has been attacked.

The Planned Parenthood organization has always been subject to critique since its inception as the Birth Control League, led by Margaret Sanger.⁶ Furthermore, the legal system has played a role in limiting the organization's ability to function.⁷ However, despite placing limitations on Planned Parenthood, the court system has also served as a shield for the organization.⁸ Engrained in the Planned Parenthood debate are women's rights concerns, and reproductive rights considerations. However,

2. See, e.g., Bill Mears, Judge Temporarily Blocks Kansas' Family Planning Money Restrictions, CNN (Aug. 1, 2011), http://articles.cnn.com/2011-08-01/us/kansas.family.planning.funds_1_planned-parenthood-pap-smears-kansas-and-mid-missouri?_s=PM:US.

3. House Panel Launches Probe of Planned Parenthood, FOX NEWS (Sep. 28, 2011), <http://www.foxnews.com/politics/2011/09/28/house-panel-launches-probe-planned-parenthood/> [hereinafter House Panel].

4. Jill Lepore, Birthright: What's Next for Planned Parenthood, THE NEW YORKER, Nov. 14, 2011, at 46.

5. Julian Pecquet, Abortion rights foes shift attention to Senate, THE HILL (Oct. 19, 2011), <http://thehill.com/blogs/healthwatch/abortion/188475-abortion-rights-foes-shift-attention-to-senate>.

6. See generally MIRIAM REED, MARGARET SANGER: HER LIFE IN HER WORDS (2003) (providing a first-hand account of Sanger's battle to bring contraceptives to every woman).

7. See generally CAROLE R. McCANN, BIRTH CONTROL POLITICS IN THE UNITED STATES, 1916-1945 (1994).

8. See generally ANGELA FRANKS, MARGARET SANGER'S EUGENIC LEGACY: THE CONTROL OF FEMALE FERTILITY (2005).

these concerns have been downgraded by the organization's detractors. Planned Parenthood detractors fail to see the need for the organization in terms of providing preventative care, and other forms of necessary healthcare.⁹ Instead, critics primarily portray Planned Parenthood as an abortion provider.¹⁰ Planned Parenthood does provide abortion services, but the organization is quick to note that such services only constitute three percent of the organization's operations and are not federally funded.¹¹ The other ninety-seven percent of the organization's services are family planning, pap smears, immunizations, cancer screening, sexually transmitted disease testing, and other forms of preventative care.¹² Consequently, the organization is essential for some women who lack other sources of healthcare. Planned Parenthood clinics operate in rural areas and serve women who otherwise would be unable to see a doctor.¹³ As such, the organization does more good than detractors give it credit. Furthermore, the attacks have hostile undertones that go beyond their budget cutting and abortion rhetoric. These attacks are part of a larger attack on reproductive freedom and carry an undercurrent of disgust.

Part I of this Article explores the history of the Planned Parenthood organization.¹⁴ Familiarity with this history is essential for understanding the radical nature of the organization's creation and the criticisms that have long plagued Planned

9. House Panel, *supra* note 3. "Planned Parenthood is a trusted nonprofit health care provider that provides professional, reliable and quality health care, including birth control, lifesaving cancer screenings, annual exams and STD testing and treatment to 3 million women and men across the country," responded Cecile Richards, President of the Planned Parenthood Federation of America. *Id.* She continued, "This politically motivated investigation is a continuation of the efforts of earlier this year to undermine Planned Parenthood, and more disturbingly, women's access to the primary and preventive care they need." *Id.*

10. See Lepore, *supra* note 4, at 47. ("After the Republican Whip, Jon Kyl, of Arizona, said on the floor of the Senate that abortion constitutes "well over ninety percent of what Planned Parenthood does," Planned Parenthood reported that abortions make up less than three percent of its services, whereupon a Kyl staffer offered that what Kyl had said "was not intended to be a factual statement.").

11. Linda Flanagan & Sarah Sangree, *The Republican Plan for Planned Parenthood*, HUFFINGTON POST (Sep. 20, 2011), http://www.huffingtonpost.com/linda-flanagan/repUBLICAN-planned-parenthood-new-jersey_b_964630.html.

12. Nancy Gibbs, *The Baby and the Bathwater*, TIME (Mar. 14, 2011), <http://www.time.com/time/magazine/article/0,9171,2056716,00.html>.

13. Laura Bassett, *Planned Parenthood Plays Key Role for Some Low-Income, Rural Uninsured*, HUFFINGTON POST (Mar. 25, 2011), http://www.huffingtonpost.com/2011/03/25/planned-parenthood-low-income-rural_n_840730.html.

14. See *infra* Part I.

Parenthood. In addition, the Article provides a history of early contraceptive laws and their reception, and details founder Margaret Sanger's motivations for creating such an organization. Part II of the Article goes on to elucidate the controversial nature of the organization.¹⁵ This section explores the women's rights considerations inherent in the contraception and women's healthcare debate. Finally, Part III delves into the contemporary attack on the organization.¹⁶ The section investigates the recent legislative attacks on Planned Parenthood along with the ideology behind such assaults. The Article concludes with a detailed look at the benefits of the organization, but takes into account the criticisms of the group.

I. THE HISTORY OF THE PLANNED PARENTHOOD ORGANIZATION

Margaret Sanger created a birth control organization in 1916 that would later grow into the worldwide organization commonly known as Planned Parenthood.¹⁷ The political climate in which Sanger started the organization was not friendly to the rights of women, nor particularly concerned with women's unique health needs.¹⁸ Moreover, birth control was heavily restricted because of the Comstock laws, which made contraception illegal.¹⁹ Put into a larger perspective, the contraceptive rights movement was cultivated amongst a hostile political backdrop. The suffrage movement, and efforts to reduce infant mortality, eradicate child labor, and upgrade conditions for working women were other important causes coming to the fore for American women at this time.²⁰

15. See *infra* Part II.

16. See *infra* Part III.

17. Planned Parenthood, History and Successes, 2012, <http://www.plannedparenthood.org/about-us/who-we-are/history-and-successes.htm>.

18. Herma Hill Kay, From the Second Sex to the Joint Venture: An Overview of Women's Rights and Family Law in the United States During the Twentieth Century, 88 CALIF. L. REV. 2017, 2024 (2000).

19. Kay, *supra* note 18. Notably, "the Seneca Falls Convention of 1848 demanded the vote for women, thus energizing the nineteenth-century women's movement and setting off a seventy-two year struggle that culminated in the adoption of the Nineteenth Amendment to the United States Constitution in 1920. *Id.* at 2023-24 (citing U.S. CONST., AMEND. XIX). "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation." *Id.*

20. McCANN, *supra* note 7, at 9.

A. *The Traditional Role of Women: Early Views on Family Planning*

Contraception is not a new concept.²¹ Since ancient times, couples have attempted to utilize contraception in various forms.²² Throughout history, “women [have] tried to space the births of their children for physical, emotional, social and even economic reasons.”²³ In the 1850s it was estimated that one out of every five to six pregnancies in the United States was purposely ended.²⁴ However, “[t]he acceptability of birth control has always depended on a morality that separates sex from reproduction.”²⁵ Yet, this separation was largely considered im-

21. Judith G. Waxman, *Privacy and Reproductive Rights: Where We’ve Been and Where We’re Going*, 68 MONT. L. REV. 299, 299 (2007). “First of all, it’s important to say that men and women have attempted to control the size of their families by various methods of contraception since history has been recorded.” *Id.* For example, “[s]ome of these practices have remained so unchanged that . . . vaginal sponges sold in the 1990s were virtually identical to those used several thousand years before Christ.” LINDA GORDON, *THE MORAL PROPERTY OF WOMEN: A HISTORY OF BIRTH CONTROL POLITICS IN AMERICA*, 13 (2002).

22. See Planned Parenthood, *A History of Birth Control Methods*, (November 2006), http://www.plannedparenthood.org/files/PPFA/history_bc_methods.pdf (“Ever since the dawn of history, women and men have wanted to be able to decide when and whether to have a child. Contraceptives have been used in one form or another for thousands of years throughout human history and even prehistory. In fact, family planning has always been widely practiced, even in societies dominated by social, political, or religious codes that require people to ‘be fruitful and multiply’—from the era of Pericles in ancient Athens to that of Pope John Paul II, today.”).

23. Waxman, *supra* note 21. Waxman continued, “Women and men have always used various barrier methods—I’ll let you use your imagination go wherever it will—various herbs or chemicals, different kinds of abortions, internal or external, including many techniques that we still use today.” *Id.* See also Planned Parenthood, *A History of Birth Control Methods*, *supra* note 22 (internal citations omitted) (“Centuries ago, Chinese women drank lead and mercury to control fertility, which often resulted in sterility or death. During the Middle Ages in Europe, magicians advised women to wear the testicles of a weasel on their thighs or hang its amputated foot from around their necks. Other amulets of the time were wreaths of herbs, desiccated cat livers or shards of bones from cats (but only the pure black ones), flax lint tied in a cloth and soaked in menstrual blood, or the anus of a hare. It was also believed that a woman could avoid pregnancy by walking three times around the spot where a pregnant wolf had urinated. In more recent New Brunswick, Canada, women drank a potion of dried beaver testicles brewed in a strong alcohol solution. And, as recently as the 1990s, teens in Australia have used candy bar wrappers as condoms.”).

24. ELLEN CHESLER, *WOMAN OF VALOR: MARGARET SANGER AND THE BIRTH CONTROL MOVEMENT IN AMERICA*, 63 (1992).

25. GORDON, *supra* note 21, at 1. See generally Abigail A. Rury, Note, *He’s So Gay . . . Not That There’s Anything Wrong With That: Using a Community Standard to Homogenize the Measure of Reputational Damage in Homosexual Defamation Cases*, 17 CARDOZO J. L. & GENDER 655, 658-61 (2011) (providing a brief overview of American sexual norms).

moral in the nineteenth century, when the public birth control movement began.²⁶ Further, some view the Bible as explicitly forbidding the use of contraceptive methods.²⁷

From the inception of American society, the primary role of a woman was that of housewife and mother.²⁸ Upon marriage, the husband assumed virtually all legal rights for the couple both in reality and under the Blackstone definition.²⁹ Notably, the Blackstone view of marriage was vehemently rejected by nineteenth-century feminists.³⁰ Further, women were expected to have as many children as their bodies would allow, even if this was not healthy.³¹ “Historically, childbearing was seen as a woman’s duty, and the death and suffering that arose from that ‘duty’ were seen as ‘destiny and divine will.’”³² This was not only an effort to promote the traditional family ideal, but it also could be used to protect the American way of life.³³ For example, “in 1907, President Theodore Roosevelt succinctly expressed the

26. GORDON, *supra* note 21, at 1.

27. See Planned Parenthood, *A History of Birth Control Methods*, *supra* note 22 (“According to the Book of Genesis, the biblical character Onan incurred God’s wrath by using *coitus interruptus* instead of following local custom and impregnating his sister-in-law after the death of his brother. Instead he ‘spilled his seed on the ground.’ Ever since then, many devout Jews and Christians have considered it a sin to ejaculate without reproductive possibility, whether by withdrawal, masturbation, or other forms of sex play.”); see also KATHLEEN A. TOBIN, *THE AMERICAN RELIGIOUS DEBATE OVER BIRTH CONTROL, 1906-1937* (2001) (providing a history of religious considerations in the contraceptives debate).

28. Kay, *supra* note 18, at 2021.

29. *Id.* (citing 1 WILLIAM BLACKSTONE, *COMMENTARIES* 442). “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything; . . . and her condition during her marriage is called her coverture.” *Id.*; see also Michele Goodwin & Naomi Duke, *Capacity and Autonomy: A Thought Experiment on Minors’ Access to Assisted Reproductive Technology*, 34 *HARV. J. L. & GENDER* 503, 515-16 (2011) (discussing the Blackstone view of marriage).

30. Kay, *supra* note 18, at 2021. “Less than a century after his treatise appeared, both the 1848 Seneca Falls Declaration of Sentiments and the 1855 Marriage Protest signed by Lucy Stone and Henry B. Blackwell on their wedding day included an indictment of the very provisions that Blackstone had seen as ‘for the most part intended for [the wife’s] protection and benefit.’” *Id.* at 2021-22.

31. Planned Parenthood, *A History of Birth Control Methods*, *supra* note 22.

32. Hilary Hammell, *Is the Right to Health a Necessary Precondition for Gender Equality?*, 35 *N.Y.U. REV. L. & SOC. CHANGE* 131, 145 (2011).

33. Planned Parenthood, *A History of Birth Control Methods*, *supra* note 22.

feeling of the times when he said that a white Protestant woman who avoided pregnancy was ‘a criminal against the race.’”³⁴

The American Medical Association initially assisted in fueling the distaste for birth control and other associated measures.³⁵ Founded in 1847, the organization quickly began undermining practices utilized by informally educated practitioners.³⁶ Often, the practitioners employing these disputed methods were women.³⁷ Although the birth control issue has chiefly been one of politics and not technology,³⁸ the American Medical Association initially rejected abortion because of potential health dangers, and “the possibility of a woman ‘overlooking the duties imposed on her by the marriage contract.’”³⁹ This paternalistic viewpoint has continued to dominate the contraception and abortion debate to this day.

The first birth control movement began in the mid-nineteenth century.⁴⁰ Its slogan was “voluntary motherhood.”⁴¹

34. *Id.* “It was commonplace for leaders of different ethnic or religious groups to implore their followers to ‘outbreed’ people who weren’t like them.” *Id.*

35. CHESLER, *supra* note 23, at 64.

36. *Id.* See generally JANET FARRELL BRODIE, *CONTRACEPTION AND ABORTION IN NINETEENTH-CENTURY AMERICA* (1994) (detailing the medical profession’s view of contraception).

37. CHESLER, *supra* note 23, at 64. Chesler noted that the organization began a three decade long attack on abortion, “which advanced a moral argument for the protection of fetal life at all stage of development from barbaric primitive interventions and also played upon the class, race, and gender tensions developing as a consequence of the steady erosion of fertility among native white American women.” *Id.*

38. GORDON, *supra* note 20, at 2. “Effective forms of birth control were used in nearly all ancient societies; in the modern world, restrictive sexual standards forced birth control underground. The re-emergence of birth control as a respectable practice in the twentieth century was a process of changing sexual standards, largely produced by the women’s rights movement and the rejection of Victorian prudery.” *Id.* See also ANDREA TONE, *DEVICES AND DESIRES: A HISTORY OF CONTRACEPTIVES IN AMERICA* (2002) (providing a fascinating history of contraceptive methods, early devices, and individual stories of use).

39. Christopher P. Keleher, *Double Standards: The Suppression of Abortion Protesters’ Free Speech Rights*, 51 *DEPAUL L. REV.* 825, 834 (2002) (citing EVA A. RUBIN, *ABORTION, POLITICS, AND THE COURTS; ROE V. WADE AND ITS AFTERMATH* 17 (Robert H. Walker ed., Rev. ed. 1987)).

40. GORDON, *supra* note 20, at 3.

41. *Id.* at 4. “The feminists who advocated voluntary motherhood fell into three general groups: suffragists (divided among two national organizations and many local groups), moral reformers (in causes such as temperance, social purity, church auxiliaries, and women’s professional and service clubs), and members of small free-love groups.” *Id.* at 56. “Involuntary motherhood, wrote Harriot Stanton Blatch, daughter of Elizabeth Cady Stanton and a prominent suffragist in her own right, is a prostitution of the maternal instinct.” *Id.* at 68.

Feminist suffragists Elizabeth Cady Stanton and Susan B. Anthony endorsed this movement.⁴² They suggested that “husbands as well as wives should just do without sex altogether in order to control the size of their families.”⁴³ However, their platform was not necessarily practical and allegedly led to an increased use of prostitution.⁴⁴ Moreover, the movement was focused on a woman’s right to decline sex with her husband, rather than an endorsement of contraception.⁴⁵ Margaret Sanger later pointed out that not all suffragists supported birth control in any form.⁴⁶ Sanger suggested that feminist disinclination to advocate birth control was related “to their ‘inherent prejudices about sex.’”⁴⁷ She continued, “sex as such was akin to sin, shame, and only the bearing of a child sanctioned its expression.”⁴⁸ She also added that sex was “subject to the age-old, masculine atmosphere compounded of protection and dominance.”⁴⁹

During the mid-nineteenth century, women utilized birth control and abortion, but these practices were certainly not socially acceptable, at least for public discussion.⁵⁰ In addition to birth control and abortion, infanticide was a fairly regular occur-

42. Planned Parenthood, *A History of Birth Control Methods*, supra note 21.

43. *Id.*

44. See *id.* (Abstinence for birth control among married women, however, led to even greater reliance on prostitution by married men, which in turn, led to epidemics of sexually transmitted infections by the turn of the century. In response to the proliferation of prostitution and sexually transmitted infections during 1885, the Women’s Temperance Movement, which was dedicated to uplift men to women’s sexual standards, i.e., abstinence, launched a White Ribbon Campaign, in which men who vowed to be pure sported white ribbons on their lapels.”).

45. Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 *EMORY L.J.* 815, 819 (2007). “These advocates did not endorse abortion or contraception, but they were outspoken about women’s right to make decisions about sex and motherhood, and they blamed the incidence of abortion on customs that denied women reproductive autonomy in marriage; without protecting women’s freedom to make decisions about sex and motherhood, advocates of voluntary motherhood argued, marriage was little better than a ‘legalized prostitution.’” *Id.*

46. *MCCANN*, supra note 6, at 39.

47. *Id.* (internal citations omitted). “To Sanger, ‘it seemed unbelievable they could be serious in occupying themselves with what I regarded as trivialities when mothers within a stone’s throw of their meetings were dying shocking deaths.’” *Id.*

48. *Id.*

49. *Id.*

50. *GORDON*, supra note 20, at 24. See generally DONALD T. CRITCHLOW, *THE POLITICS OF ABORTION AND BIRTH CONTROL IN HISTORICAL PERSPECTIVE* (1995) (providing a history look at the politics and history of abortion in an essay format).

rence in the mid-nineteenth century.⁵¹ In fact, some scholars suspect that people used the popular drug laudanum not only as a mechanism to quiet crying children, but also to kill infants in a “painless” manner.⁵² Although people clearly utilized abortion, early statistics of such use are unavailable.⁵³ However, in 1871, the *New York Times* published an article about abortion entitled “The Evil of the Age,” which suggested that there were at least two hundred full-time abortionists in New York City alone.⁵⁴ This indicates that women were clearly having children that they were unwilling to raise, and their use of infanticide and abortion could have potentially been reduced if preventative measures were available.⁵⁵

Unfortunately for Americans seeking to control their family size, the Comstock Law had a disastrous effect on the proliferation of information relating to birth control.⁵⁶ Congress passed the Comstock Law in 1873, and made it a crime to mail “contraceptives, any information about contraceptives, or any information about how to find contraceptives.”⁵⁷ Essentially, the law banned any type of birth control or related information because of its “obscene” nature.⁵⁸ The penalty for violators was one to

51. GORDON, *supra* note 20, at 24; see also PETER C. ENGELMAN, *A HISTORY OF THE BIRTH CONTROL MOVEMENT IN AMERICA 2* (2011) (“While infanticide is usually viewed as the most extreme form of population control and is universally condemned in the modern era, perceptions about abortion have changed repeatedly over time.”).

52. GORDON, *supra* note 20, at 24. See generally Michelle Oberman, *Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today*, 92 *J. CRIM. L. & CRIMINOLOGY* 707 (2002).

53. GORDON, *supra* note 20, at 25.

54. *Id.*

55. See generally Janessa L. Bernstein, Note, *The Underground Railroad to Reproductive Freedom: Restrictive Abortion Laws and the Resulting Backlash*, 73 *BROOK. L. REV.* 1463 (2008) (detailing the horrors of illegal abortion); see also Deborah Rhode, *Politics and Pregnancy: Adolescent Mothers and Public Policy*, 1 *S. CAL. REV. L. & WOMEN'S STUD.* 99, 108 (1992) (citing ROSALIND PETCHESKY, *ABORTION AND WOMAN'S CHOICE: THE STATE, SEXUALITY, AND REPRODUCTIVE FREEDOM* 89-93(1990). (noting that Sanger and many other leaders of her time “disavowed” abortion, finding that contraceptives were a sufficient alternative).

56. Mary L. Dudziak, *Just Say No: Birth Control in the Connecticut Supreme Court Before Griswold v. Connecticut*, 75 *IOWA L. REV.* 915, 918 (1990). “In an interview in *Harper's Weekly* in 1915, Comstock would boast this in his long career he had convicted enough people of sexual misconduct to fill a sixty-car passenger train and had destroyed hundreds of obscene materials.” CHESLER, *supra* note 23, at 66.

57. Dudziak, *supra* note 56.

58. GORDON, *supra* note 20, at 12.

ten years of hard labor, potentially in combination with a fine.⁵⁹ The Comstock Law granted the United States Postal Service authority to decide what was “lewd, lascivious, indecent, or obscene.”⁶⁰ Moreover, the law explicitly defined any discussion of birth control, even in a philosophical context, as obscene.⁶¹ Anthony Comstock, the law’s namesake, served as its vehement enforcer.⁶² Reportedly, within a year of its enactment, Comstock himself “traveled over 20,000 miles searching for violators, made fifty-five arrests, secured twenty convictions, and seized over 60,000 so-called obscene rubber articles.”⁶³ The law was reinforced by a 1899 federal court ruling that determined that Congress had the power under the interstate commerce clause to prohibit the shipment of contraceptives across state lines.⁶⁴ Further, by 1885, twenty-four states had instituted their own versions of the Comstock Act, sometimes with even stricter regulations.⁶⁵

The Comstock Law was bolstered by the American Medical Association’s harsh stance against abortion.⁶⁶ Interestingly, middle class women, who were influenced by traditional ideas of sexual morality, largely favored the law.⁶⁷ In essence, “[c]hastity and sexual restraint were components of the middle class constella-

59. Dudziak, *supra* note 56 (citing 17 STAT. 598 (1873)).

60. MARGARET SANGER, *MARGARET SANGER: AN AUTOBIOGRAPHY* 78 (1938). Margaret Sanger wrote, “So powerful had [Comstock’s] society become that anything to which he objected in its name was almost automatically barred; he had turned out to be sole censor for ninety million people. During some forty years Comstock had been damming the rising tide of new thought, thereby causing much harm. . . .” *Id.*; see also ENGELMAN, *supra* note 50, at 15 (“By associating contraceptives with illicit sex and pornography, the Comstock law tainted the very idea of birth control.”).

61. GORDON, *supra* note 20, at 13.

62. César Cuauhtémoc García Hernández, *Of Inferior Stock: The Two-Pronged Repression of Radical Immigrant Birth Control Advocates at the Turn-of-the-Twentieth Century*, 20 ST. THOMAS L. REV. 513, 518 (2008); see also LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 446 (“The law gets its nickname from Anthony Comstock, a private citizen who waged an unending battle against smut and vice.”).

63. *Id.* Notably, before such obscenity statutes were passed, various tabloid newspapers, and mail-order catalogs advertised contraceptives. CHESLER, *supra* note 23, at 37. However, the social acceptability of such devices at the time is debatable.

64. Hernández, *supra* note 62 (citing *United States v. Popper*, 98 F. 423, 424 (N.D. Cal. 1899)).

65. William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2117(2002) (citing JANET FARRELL BRODIE, *CONTRACEPTION AND ABORTION IN NINETEENTH-CENTURY AMERICA* 257 (1994)).

66. Keleher, *supra* note 38, at 835.

67. Hernández, *supra* note 62, at 519.

tion of values that included work, industry, good habits, piety, and noble ideals for men and women.”⁶⁸

In this anti-birth control climate of the late nineteenth and early twentieth centuries, the lack of knowledge related to women’s healthcare proved disastrous. A 1916 study by the New York branch of Metropolitan Health and Life Insurance Company revealed that one quarter of its claims were puerperium-related.⁶⁹ Additionally, of the puerperal claims, a quarter were a consequence of admitted abortions, septicemia related to attempted abortions, or other unspecified conditions.⁷⁰ Further, a 1917 survey of immigrants in New York’s Lower East Side revealed that one third knew nothing about birth control methods other than abortion.⁷¹ This survey was augmented by a 1921 Stanford University study that calculated that one in every 1.7 to 2.3 pregnancies ended in abortion.⁷² Such studies encouraged Metropolitan Health and Life Insurance Company to back preventative care, and visiting nurses were sometimes used in order to reach city residents directly in their homes.⁷³ However, visiting nurses, as well as other healthcare providers, were restricted in their ability to discuss contraception.⁷⁴ This was not only because of the taboo nature of birth control, but also because of their lack of training on the subject.⁷⁵

B. *Margaret Sanger and the Birth Control League*

The “modern” birth control movement is largely believed to have started in 1915 with Margaret Sanger credited as the cham-

68. *Id.* “In addition, since birth control facilitated the abandonment of sex for procreation, they perceived birth control to allow sex to be used for lustful, passionate purposes.” *Id.*

69. CHESLER, *supra* note 24, at 64. See generally Christine Hallett, *The Attempt to Understand Puerperal Fever in the Eighteenth and Early Nineteenth Centuries: The Inflammation Theory*, J. MED. HIST., available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1088248/> (2005) (“Puerperal fever was a devastating disease. It affected women within the first three days after childbirth and progressed rapidly, causing acute symptoms of severe abdominal pain, fever and debility.”).

70. CHESLER, *supra* note 24, at 65.

71. *Id.* at 64.

72. GORDON, *supra* note 21, at 25.

73. CHESLER, *supra* note 24, at 65. Margaret Sanger was a visiting nurse, which encouraged her to form the organization because she saw the need for women’s healthcare, particularly in the context of contraceptives. *Id.*

74. *Id.*

75. SANGER, *supra* note 60, at 92.

pion of the movement.⁷⁶ Sanger's family history motivated her to first consider, and then advocate, birth control usage.⁷⁷ Her mother was pregnant eighteen times and bore eleven children, all before passing away in 1899 at the age of fifty.⁷⁸ Margaret grew up poor. She recalled that "Christmases were on the poverty line. If any of us needed a new winter overcoat or pair of overshoes, these constituted our presents."⁷⁹ She was the sixth of her mother's eleven surviving children.⁸⁰

Sanger also witnessed the pitfalls of a society that prohibits birth control while working as a nurse in New York's Lower East Side.⁸¹ As a nurse, Sanger often assisted immigrant families.⁸² She noted that many residents, particularly women, had an intense fear of hospitals, but welcomed nurses for home visits.⁸³

76. Waxman, *supra* note 21, at 301. "The movement that first coalesced around the term 'birth control,' coined by Margaret Sanger in 1915, was composed of people fighting for their own immediate needs, and for that reason it had an intensely personal dimension for its participants." GORDON, *supra* note 21, at 138.

77. Planned Parenthood, *History and Successes*, *supra* note 17. See generally LAURA ELDRIDGE, *IN OUR CONTROL: THE COMPLETE GUIDE TO CONTRACEPTIVE CHOICES FOR WOMEN* (2011) (detailing the history of the birth control movement beginning with Sanger and moving on to methods available today).

78. Planned Parenthood, *History and Successes*, *supra* note 17. Margaret Sanger wrote, "My mother, Anne Purcell, always had a cough, and when she braced herself against the wall the conversation, which was forever echoing from room to room, had to stop until she recovered." SANGER, *supra* note 60, at 11. Author Chesler criticized Sanger for not daring to "give credence to the notion that all those Higgins children had provided her poor mother with what little fulfillment she found in life. It was the deprivation of that life, and of her own childhood, that governed her mature thoughts and feelings." CHESLER, *supra* note 24, at 40.

79. SANGER, *supra* note 60, at 13.

80. *Id.* "Our dolls were babies—living, wriggling bodies to bathe and dress instead of lifeless faces that never cried or slept." *Id.* Sanger also noted that all of her mother's children were ten pounds or more at birth. *Id.* at 29.

81. Planned Parenthood, *History and Successes*, *supra* note 17. "Sanger witness[ed] the sickness, misery, and death that result[ed] from unwanted pregnancy and illegal abortion." *Id.* Even as a small child, Sanger saw the economic problems that large families could face. SANGER, *supra* note 60, at 29. One evening a woman came to her home in hysteria after her husband had drunkenly thrown their baby out in the snow. *Id.* Her parents calmed the woman down and her father made sure that the woman was safe to return to her "multitude of other children." *Id.*

82. Planned Parenthood, *History and Successes*, *supra* note 17.

83. SANGER, *supra* note 60, at 86. "During these years in New York trained nurses were in great demand. Few people wanted to enter hospitals; they were afraid they might be 'practice' upon, and they consented to go only in desperate emergencies. Sentiment was especially vehement in the matter of having babies. A woman's own bedroom, no matter how inconveniently arranged, was the usual place for her lying-in. I was not sufficiently free from domestic duties to be a general nurse, but I could ordinarily manage obstetrical cases because I was notified far enough ahead to plan my schedule." *Id.* See also JEAN H. BAKER, MARGARET

Additionally, many women requested advice for preventing additional births.⁸⁴ After witnessing a destitute patient die from complications related to a self-induced abortion, Sanger stated that she “was resolved to seek out the root of evil, to do something to change the destiny of mothers whose miseries were vast as the sky.”⁸⁵

In 1913, Sanger traveled to Europe, along with her family, in order to research birth control methods.⁸⁶ While in France, she learned about special formulas passed down in families for contraception use.⁸⁷ She also met with druggists, midwives, and doctors.⁸⁸ Sanger noted that “[a]ll individual Frenchwomen considered this knowledge their individual right, and, if it failed, abortion, which was still common.”⁸⁹

It was during this period of 1910–1920 when the term “birth control” was coined,⁹⁰ marking a shift from the mid-nineteenth

SANGER: A LIFE OF PASSION (2011) (providing information regarding Sanger’s nursing career and the impact on her work).

84. SANGER, *supra* note 60, at 87. Sanger said, “I tried to explain the only two methods I had ever heard of among the middle classes, both of which were invariably brushed aside was unacceptable. They were of no certain avail to the wife because they placed the burden of responsibility solely upon the husband—a burden which he seldom assumed. What she was seeking was self-protection she could herself use, and there was none.” *Id.* Sanger added, “Each time I returned to this district, which was becoming a recurrent nightmare, I used to hear that Mrs. Cohen ‘had been carried to a hospital, but had never come back, or that Mrs. Kelly ‘had sent the children to a neighbor and had put her head into the gas oven.’ Day after day such tales were poured into my ears—a baby born dead, great relief—the death of an older child, sorrow but again relief of a sort—the story told a thousand times of death from abortion and children going into institutions. I shuddered with horror as I listened to the details and studied the reasons back of them—destitution linked with excessive childbearing.” *Id.*

85. *Id.* at 92.

86. *Id.* at 104. Margaret had three children—Stuart, Grant, and Peggy. *Id.* Notably, one biographer wrote that this trip actually took place in 1914, and also pointed out other misconceptions in Margaret Sanger’s allegedly ghostwritten autobiography. CHESLER, *supra* note 24, at 16-17, 105. See also Waxman, *supra* note 21, at 301 (discussing her trip to Europe). Sanger wrote that her husband “suggested that I go to France and see for myself the conditions resulting from generations of family limitation in that country.” SANGER, *supra* note 60, at 96.

87. *Id.* at 104. “Some of the contraceptive formulas that had been handed down were almost as good as those of today. Although they had to make simple things, mothers prided themselves on their special recipes for suppositories as much as on those for pot au feu or wine.” *Id.*

88. GORDON, *supra* note 21, at 144.

89. SANGER, *supra* note 60, at 104.

90. GORDON, *supra* note 21, at 4.

century terminology of “voluntary motherhood.”⁹¹ It also marked a change in the composition of the movement’s leaders.⁹² Many of the leaders were influenced by both feminism and socialism.⁹³ Sanger believed that “the foundation of the Feminist or Woman’s Movement should be how to release [a woman from] her sexual bondage of childbearing and place it on the plane of a voluntary and conscious undertaking [so that she may] be approximately equal to man.”⁹⁴ She continued, “[u]pon this foundation only can she strive for equal rights.”⁹⁵

In addition, Sanger noted the class injustice that resulted from a restriction on birth control information.⁹⁶ Not only did lower income women lack preventative health care options, but they also could not afford abortions and were more likely to engage in riskier at-home procedures.⁹⁷ Scholar Carole McCann writes:

Confronted with death from illegal abortions, Sanger suddenly recognized that it was unconscionable for women to be forced to choose between avoiding sex altogether or risking their lives simply because the government prohibited them from having simple, safe, and effective contraceptives. She took issue with the ‘doctors, nurses and social workers who were brought face to face with this overwhelming truth of women’s needs’ but who ignored it. In the wake of her experiences as a visiting nurse, it was incredible to Sanger that well-meaning

91. *Id.* at 3-4. See also MADELINE GRAY, *MARGARET SANGER: A BIOGRAPHY OF A CHAMPION OF BIRTH CONTROL* (1979) (providing another portrait of Sanger and her influences).

92. GORDON, *supra* note 20, at 4. See also BAKER, *supra* note 83, at 75-101 (describing Sanger’s ascent into a leadership position).

93. GORDON, *supra* note 20, at 4. “[R]eproductive rights advocates were often dissenters in other dimensions as well—trade unionists, socialists, feminists, for example. As a result, the modern birth control movement has at various times included campaigns for women’s rights, economic justice, freedom of the press, and the extension of democracy.” *Id.* at 7. Importantly, “[d]espite its great influence in the birth control movement, the Socialist party never formally endorsed birth control.” *Id.* at 140. Notably, “Sanger’s supporters were critical of her explicitness and her tactics. From both Socialists and suffragists she received advice to abandon birth control, or at least tone down her tactics. This criticism referred both to illegal direct-action tactics and to sexual politics. That criticism within the circle from which Sanger had most expected to get support spoke of the limits of rebellion and blasphemy to which even the radicals held.” MCCANN, *supra* note 7, at 38.

94. MCCANN, *supra* note 7, at 39.

95. *Id.*

96. GORDON, *supra* note 21, at 155.

97. See Planned Parenthood, *Margaret Sanger—20th Century Hero*, (August 2009), http://www.plannedparenthood.org/files/PPFA/Margaret_Sanger_Hero_1009.pdf. (noting that abortions could be upwards of five dollars).

reformers should refuse to recognize the underlying cause of women's ill-health and of their families' collapse.⁹⁸

As such, Margaret Sanger made it her personal mission to assist women desiring contraceptives.

In fact, Margaret Sanger was prosecuted for her column, "What Every Girl Should Know," which appeared in a Socialist monthly newspaper.⁹⁹ In the column, Sanger discussed sexual and reproductive health, and provided information on how a woman's body develops.¹⁰⁰ Discussing her prosecution, Margaret Sanger noted that "[t]he words gonorrhea and syphilis had occurred in that article and Anthony Comstock, head of the New York Society for the Suppression of Vice, did not like them."¹⁰¹ Comstock banned the column in 1913, prompting *The Call*, the newspaper in which it was published, to write in the column's regular space "What Every Girl Should Know—Nothing; by order of the U.S. Post Office."¹⁰²

In 1914, Sanger began her own newspaper, entitled "The Woman Rebel."¹⁰³ In her newspaper she openly discussed contraceptives.¹⁰⁴ However, the post office refused to deliver multiple issues.¹⁰⁵ Consequently, she was arrested in 1914 for mailing obscenity under the Comstock definition, and faced a forty-five year jail sentence.¹⁰⁶ Rather than prepare her defense, Sanger wrote a book on birth control entitled "Family Limitation."¹⁰⁷ The book eventually went on to sell ten million copies, proving that people had a genuine desire, and need, to learn about contraceptives.¹⁰⁸ Sanger feared that she would be made an example

98. McCANN, *supra* note 7, at 9-10.

99. Dudziak, *supra* note 56, at 919; Waxman, *supra* note 21, at 301 (citing MARGARET SANGER, *WHAT EVERY GIRL SHOULD KNOW* (United Sales Co. 1920)).

100. Planned Parenthood, Margaret Sanger—20th Century Hero, *supra* note 97.

101. SANGER, *supra* note 60, at 77.

102. CHESLER, *supra* note 24, at 66. "In one of the finer ironies produced by the rapid changes in attitudes of those years, the same article was reprinted—without credit to the author—by the government and distributed among U.S. troops during World War I." GORDON, *supra* note 21, at 143 (citing PETER FRYER, *THE BIRTH CONTROLLERS* 202 (1965)).

103. Planned Parenthood, Margaret Sanger—20th Century Hero, *supra* note 96. See also ENGELMAN, *supra* note 50, at 23 (suggesting that Sanger utilized the "Woman Rebel" as a ploy to attract supporters by implying that the birth control movement was bigger than it really was).

104. Lepore, *supra* note 3, at 48.

105. *Id.*

106. Planned Parenthood, Margaret Sanger—20th Century Hero, *supra* note 96.

107. *Id.*

108. *Id.* "They may not have had \$5.00 for a dangerous abortion, but they were able to scrape together 25 cents. With just a quarter, they could get a copy of family

of, so she fled the country for England.¹⁰⁹ While Sanger was abroad, Anthony Comstock personally prosecuted Sanger's husband for distributing a copy of her book to an undercover agent.¹¹⁰ He served thirty days in jail for his crime.¹¹¹ However, shortly thereafter Comstock died. This prompted Sanger to return to the United States, and the charges against her related to her newspaper were dropped.¹¹²

Yet, Sanger came back from Europe with different advocacy priorities.¹¹³ In Holland, she had encountered contraceptive clinics, which had a profound effect upon her.¹¹⁴ Sanger noted, "No longer could I look upon birth control knowledge as primarily a free speech fight. I realized now that it involved much more than talk, more than books or pamphlets."¹¹⁵

In 1916, Sanger opened the first contraceptive clinic in the United States.¹¹⁶ The clinic dispensed contraceptives to immigrant women in a tenement storefront in Brooklyn.¹¹⁷ The clinic only remained open for ten days before being shut down through the use of an undercover sting operation.¹¹⁸ However, the short-lived clinic was extremely popular, with 464 women on file after only nine days.¹¹⁹ Sanger, her sister Ethel Burne, and receptionist Fannie Mindell were able to assist 488 women with dia-

limitation and the information they needed to help them avoid unintended pregnancy." *Id.*

109. *Id.* See generally DAVID M. KENNEDY, *BIRTH CONTROL IN AMERICA: THE CAREER OF MARGARET SANGER* (1970) (providing similar information regarding Sanger's career and accomplishments in the realm of contraception).

110. Planned Parenthood, *Margaret Sanger—20th Century Hero*, supra note 96. Bill Sanger was Margaret's first husband. CHESLER, supra note 23, at 48. He was a staunch Socialist and in general seemed supportive of Margaret's endeavors. *Id.* at 89. Interestingly, at the time that Bill was arrested, their marriage was on the rocks. *Id.* at 109. Bill was angry at Margaret for writing him at his studio, which he thought led to his entrapment by Comstock. *Id.* See also GENE BURNS, *THE MORAL VETO: FRAMING CONTRACEPTION, ABORTION, AND CULTURAL PLURALISM IN THE UNITED STATES* 43 (2005) (noting that Bill's refusal to pay a fine rather than serve thirty days in jail helped rally support for Margaret's cause).

111. Planned Parenthood, *Margaret Sanger—20th Century Hero*, supra note 96.

112. *Id.* See also Lepore, supra note 3, at 48 (noting that Sanger's five year old daughter had just died, thus prosecutors feared that charging a "grieving mother" would be frowned upon in public perception).

113. McCANN, supra note 6, at 59.

114. *Id.*

115. *Id.* (quoting MARGARET SANGER, *MY FIGHT FOR BIRTH CONTROL* 143(1933)).

116. *Id.* at 24.

117. CHESLER, supra note 23, at 11.

118. Planned Parenthood, *Margaret Sanger—20th Century Hero*, supra note 96.

119. GORDON, supra note 20, at 157.

phragms, also known as pessaries, in those ten days.¹²⁰ In fact, Sanger was arrested for informing a woman about spring-loaded diaphragms.¹²¹ She spent a month in jail for her crime, along with Burne and Mindell.¹²² Importantly, their arrest, trial, and subsequent imprisonment drew significant attention to the contraception debate.¹²³

In 1918, the New York Court of Appeals upheld the prosecution of Sanger and her co-conspirators, reading into the statute a narrow exception which allowed doctors to prescribe contraceptives to married persons to prevent disease.¹²⁴ The court's interesting interpretation of the law primarily served to protect doctors.¹²⁵ Furthermore, in 1915, only 3.6 percent of doctors were female.¹²⁶ In 1920, the number rose to 5 percent, but dropped to 4.4 percent in 1930.¹²⁷ Hence, the law served to protect doctors, who were nearly all men, while nurses like Margaret Sanger, who had the most contact with women in dire need of contraceptive information, could still be prosecuted. Further adding to this gendered application of contraception laws, doctors could "prescribe" condoms to protect men from venereal dis-

120. McCANN, *supra* note 6, at 24. See also VICKI COX, *MARGARET SANGER: REBEL FOR WOMEN'S RIGHTS 2* (2004) (detailing Sanger's arrest and the public attention it garnered).

121. Planned Parenthood, *A History of Birth Control Methods*, *supra* note 21. "During a trip to Holland in 1915, she learned about the use of snugly fitting spring-loaded diaphragms that were developed in Germany during the 1880s." *Id.*

122. *Id.* "Her month in jail only strengthened her resolve to teach women how to use diaphragms—she even taught diaphragm use to the women she was in jail [with]." *Id.*

123. McCANN, *supra* note 6, at 24.

124. Dudziak, *supra* note 56, at 919. (citing *People v. Sanger*, 118 N.E. 637, 638 (N.Y. 1918)). "New York law prohibited the sale of contraceptives, but the law allowed doctors to prescribe articles for the cure and prevention of disease. The court broadly construed the word disease to include any illness, so that doctors could prescribe contraceptives to prevent diseases associated with pregnancy and childbirth." *Id.* See also Alana Chazan, *Good Vibrations: Liberating Sexuality from the Commercial Regulation of Sexual Devices*, 18 *TEX. J. WOMEN & L.* 263, 274 (2009) ("Sanger believed that legal challenges to birth control legislation would provide relief faster than lobbying for legislative change, and in 1916, she opened a birth control clinic in Brooklyn, New York, seeking to test a law stating that no one could give information to prevent contraception to anyone for any reason. Sanger succeeded in creating the first legal victory for the birth control movement when the New York Court of Appeals broadened the interpretation of the statute to permit the medical community to distribute birth control.")

125. See *People v. Sanger*, 118 N.E. 637 (N.Y. 1918).

126. ELLEN SINGER MORE, *RESTORING THE BALANCE: WOMEN PHYSICIANS AND THE PROFESSION OF MEDICINE, 1850-1995* 98 (2001).

127. *Id.*

eases when they had extramarital sexual intercourse, but men theoretically could not get condoms to prevent pregnancy with their wives.¹²⁸

That arrest was not the last for Sanger, nor was it her last controversial court case.¹²⁹ In 1932, the U.S. Customs office confiscated a package of diaphragms sent from a Japanese physician to Sanger.¹³⁰ Sanger again tested the law by requesting that a second package be mailed to an associate.¹³¹ In 1936, following Sanger's arrest for mailing birth control products, the Second Circuit Court of Appeals ordered a relaxation of the Comstock laws at the federal level.¹³² In his opinion for the court, Judge Augustus Hand relied on data regarding the damages of unplanned pregnancy to find that birth control was no longer "obscene."¹³³ He ordered that the package could be delivered.¹³⁴

The Great Depression and World War II marked a shift in social acceptance of contraceptives. During the Great Depression, when there was a movement towards smaller families, a Gallop Poll revealed that three out of four people supported legalizing contraception.¹³⁵ By 1937, the American Medical Association formally recognized birth control as a fundamental part of medical care.¹³⁶ In addition, a 1938 *Ladies Home Journal* survey reported that seventy-nine percent of women supported the use

128. Planned Parenthood, A History of Birth Control Methods, supra note 21. This was not the only example of moral hypocrisy at the time, for example, voluntary contraception use was restricted, whereas forced sterilization was seen as acceptable. See generally *Buck v. Bell*, 274 U.S. 200 (1927) (allowing for the forced sterilization of a "promiscuous" and "feeble-minded" woman).

129. Planned Parenthood, History and Successes, supra note 16.

130. Planned Parenthood, A History of Birth Control Methods, supra note 21.

131. *Id.*

132. Planned Parenthood, History and Successes, supra note 16.

133. *Id.*

134. Planned Parenthood, A History of Birth Control Methods, supra note 21. Despite this victory, Planned Parenthood was still attacked in other ways. For example, in 1934 a bill was passed that introduced a prohibition on lobbying for tax-exempt charities in response to the American Birth Control League's recent efforts. William H. Byrnes IV, *The Private Foundation's Topsy Turvy Road in the American Political Process*, 4 *HOUS. BUS. & TAX L. J.* 496, 541 (2004); see also Oliver A. Houck, *On the Limits of Charity: Lobbying, Litigation, and Electoral Politics By Charitable Organizations Under the Internal Revenue Code*, 69 *BROOK. L. REV.* 1, 12-15 (2003) (providing a similar history and also exploring Judge Hand's views regarding the organization).

135. Lepore, supra note 3, at 50.

136. Planned Parenthood, History and Successes, supra note 16.

of birth control.¹³⁷ By the start of the Second World War, thirty-six states had medically-supervised birth control clinics, supported at least partially by public funds.¹³⁸ An additional ten states permitted private clinics to function because of statutory loopholes allowing contraceptives by prescription.¹³⁹ Further, during World War II, the Army distributed condoms to soldiers.¹⁴⁰ Toward the end of the war, in 1944, there were at least eight hundred birth control clinics in the United States.¹⁴¹

In the meantime, in 1942, the American Birth Control League changed its name to Planned Parenthood, marking a change in the philosophical approach within the organization.¹⁴² Rather than characterizing birth control as a way to “liberate women,” as it had in the 1910s and 1920s, the organization moved towards a focus on family “planning.”¹⁴³ Essentially, “the movement evolved away from the radicalism of its second stage into a liberal reform movement.”¹⁴⁴ Margaret Sanger staunchly opposed this change in name and ideology.¹⁴⁵ Interestingly, the shift in ideological rhetoric occurred at a time when women had just proven themselves capable of maintaining the home front during World War II, and the American sexual revolution was

137. Dudziak, *supra* note 56, at 919 (citing H.F. Pringle, What Do The Women of America Think About Birth Control? *LADIES HOME J.*, March 1938, at 14). See also JOHANNA SCHOEN, *CHOICE & COERCION: BIRTH CONTROL, STERILIZATION, AND ABORTION IN PUBLIC HEALTH AND WELFARE* (2005) (providing a history of birth control, sterilization, and abortion focused on North Carolina).

138. Eskridge, *supra* note 65, at 2121. See generally CATHY MORAN HAJO, *BIRTH CONTROL ON MAIN STREET: ORGANIZING CLINICS IN THE UNITED STATES, 1916-1939* (2010) (discussing the history of individual clinics).

139. Eskridge, *supra* note 65, at 2121.

140. Waxman, *supra* note 21, at 302.

141. Dudziak, *supra* note 56, at 919 (citing Abraham Stone & Harriet F. Pilpel, *The Social and Legal Status of Contraception*, 22 *N.C. L. REV.* 212, 215 (1944)).

142. Dudziak, *supra* note 56, at 919.

143. *Id.* “Rather, they argued that birth control would bring scientific rationality to the traditional family. It would allow families to use scientific expertise to bring order to the otherwise uncontrollable process of childbearing.” *Id.* However, a biographer noted that Sanger’s intent “was nothing less than to construct an international network of clinics where women would receive a full range of preventive health care services. To this end, she had no choice but to mobilize men of influence in business, government, labor, the emerging professions and academic sciences, but her most active recruits always remained women, many of them veterans of the American and British suffrage movements, or daughters of former volunteers, who had learned to do political battle.” CHESLER, *supra* note 24, at 14.

144. GORDON, *supra* note 21, at 4.

145. Lepore, *supra* note 4, at 50.

beginning.¹⁴⁶ Nonetheless, this philosophical shift likely made the organization seem more socially acceptable and less gender-focused on its face.

C. *The Women's Rights Movement of the 1960s*

The late 1960s marked what some scholars termed a "revival of feminism."¹⁴⁷ This decade brought in a new wave of contraception ideology focused on "reproductive rights."¹⁴⁸ In 1960, the Federal Drug Administration approved the first birth control pill for contraceptive use.¹⁴⁹ Appropriately, Margaret Sanger had a role in developing the contraceptive pill.¹⁵⁰ She helped recruit the necessary funding that allowed for both preliminary research and the first clinical trials of what is now known as "the pill."¹⁵¹ With the introduction of "the pill," women were offered an easy, relatively safe, and effective means of personally controlling their reproductive systems for the first time.¹⁵² Yet, in

146. See Eskridge, *supra* note 65, at 2125 ("Women who had proved themselves fully equal to men during the war were often unwilling to re-assume their subordinate status after the war."). It is also interesting that the organization made the transition at a time when the sexual revolution in America, according to some scholars, was just starting. See Harold P. Southerland, "Love for Sale" — Sex and the Second American Revolution, 15 *DUKE J. GENDER L. & POL'Y* 49, 64 (2008).

147. GORDON, *supra* note 21, at 4.

148. *Id.*

149. Kay, *supra* note 18, at 2048. The 1960s were a time period of great political change. *Id.* Professor Kay wrote, "The first President of the United States to be born in the twentieth century, John Fitzgerald Kennedy, was elected that November. He kindled a mood of optimism and energy in the country, particularly among young people. In 1961 he established the Presidential Commission on Women, and named Eleanor Roosevelt its chair." *Id.*

150. *PLANNED PARENTHOOD, A HISTORY OF BIRTH CONTROL METHODS*, *supra* note 22, at 1; see also ENGELMAN, *supra* note 51, at 4 ("Wild Mexican yams supplied the steroid hormone that was synthesized to create that 'magic pill' Sanger had long envisioned, the first effective oral contraceptive that revolutionized birth control and helped usher in the sexual revolution in the 1960s.").

151. *PLANNED PARENTHOOD, A HISTORY OF BIRTH CONTROL METHODS*, *supra* note 22, at 9. Katharine Dexter McCormick, heir to the International Harvester fortune and one of the first female graduates of the Massachusetts Institute of Technology, largely funded the research. *Id.* "In 1953 Sanger took McCormick to visit the Worcester Foundation for Experimental Biology in Massachusetts, where research scientists Gregory Pincus and Min Chueh Chang were conducting experiments Sanger considered promising — at her behest, they were trying to produce an oral contraceptive based on synthetic progesterone." *Id.* McCormick donated \$2 million to the research. *Id.*

152. Southerland, *supra* note 146, at 66-67. "With Enovid, women for the first time were offered a simple, safe, and highly effective means of controlling their reproductive function, freeing them to choose whether to have children and when, and thus to have sex without fear of pregnancy." *Id.* See also Rachel V. Rose, Cutting

the early 1960s, twenty-eight states still barred married couples from utilizing contraception.¹⁵³ Nonetheless, by 1965, one in four married women under the age of forty-five had utilized the pill and, by 1967, the number of users worldwide had risen to almost thirteen million.¹⁵⁴

Notably, although the pill became popular, and legal restrictions on contraceptive use had begun to loosen, abortion still remained illegal. For example, in 1960, Mary Steichen Calderone, the medical director for Planned Parenthood, “estimated the annual incidence of illegal abortion in the United States at 200,000 to 1.2 million and argued that a profession committed to fighting disease had an obligation to concern itself with ‘this disease of society, illegal abortion.’”¹⁵⁵ While a wealthy woman could obtain an abortion by having a psychiatrist “vouch for [her] likely suicide unless the unintended pregnancy was terminated[,]”¹⁵⁶ poorer women were more likely to be forced to have a child, or obtain a potentially unsafe abortion.¹⁵⁷ Unfortunately, decades after Margaret Sanger started the Birth Control League, impoverished women still faced a similar predicament. Despite the illegality of abortion, the pill offered a significant form of pregnancy prevention if users were able to obtain it.

In 1963, Betty Friedan published “The Feminine Mystique,” “a book credited with helping to reawaken the twentieth-century women’s movement.”¹⁵⁸ Professor Cynthia Lee Starnes noted that the book “sparked a revolution against Betty Crocker, the full-time homemaker, who according to 1950s rhetoric, represented women’s sole opportunity for happiness.”¹⁵⁹ Accordingly,

Funds for Oral Contraceptives: Violation of Equal Protection Rights and the Disparate Impact on Women’s Healthcare, 5 *MOD. AM. 23*, 23 (2009) (detailing the history of the birth control pill).

153. Waxman, *supra* note 21, at 302.

154. *PLANNED PARENTHOOD, MARGARET SANGER — 20TH CENTURY HERO*, *supra* note 96, at 10.

155. Linda Greenhouse & Reva B. Siegel, Before (and After) *Roe v. Wade*: New Questions About Backlash, 120 *YALE L.J.* 2028, 2036 (2011) (citing Mary Steichen Calderone, *Illegal Abortion as a Public Health Problem*, 50 *AM. J. PUB. HEALTH* 948, 951 (1960)).

156. Greenhouse & Siegel, *supra* note 154, at 2036.

157. *Id.*

158. Kay, *supra* note 18, at 2049.

159. Cynthia Lee Starnes, Mothers, Myths, and the Law of Divorce: One More Feminist Case for Partnership, 13 *WM. & MARY J. WOMEN & L.* 203, 210-11 n. 37 (2006).

the invention of the pill provided a way for women to garner control of their lives and professional ambitions.¹⁶⁰

In 1966, the National Organization for Women (NOW) was founded.¹⁶¹ The organization was established in order to advocate “for better opportunities for women outside the home and to challenge then-prevailing images of men and women.”¹⁶² The original members included older and established members such as Betty Friedan, as well as younger college students.¹⁶³ Initially, professional equality was the organization’s primary focus.¹⁶⁴ However, in 1967, Betty Friedan, the President of NOW suggested that the organization should support reproductive freedom rights, such as abortion.¹⁶⁵ However, some members were not in favor of such advocacy because it could make the organization seem “too radical,” and reduce membership.¹⁶⁶ Finally, at the 1967 NOW National Conference, the organization compromised by drafting a resolution that simply called for the repeal of criminal prohibitions on abortion.¹⁶⁷ Betty Friedan noted “that there is no freedom, no equality, no full human dignity and personhood possible for women until we assert and demand the control over our own bodies, over our own reproductive process.”¹⁶⁸

NOW eventually partnered with Planned Parenthood and the two groups instituted a new campaign for reproductive rights.¹⁶⁹ In 1970, NOW held a strike for equality that commemorated the fiftieth anniversary of the Nineteenth Amendment’s ratification.¹⁷⁰ Strikers contended “that the Nineteenth Amendment’s promise of equal citizenship could not be realized unless

160. See generally *SISTERHOOD IS POWERFUL: AN ANTHOLOGY OF WRITINGS FROM THE WOMEN’S LIBERATION MOVEMENT* (Robin Morgan ed., 1970).

161. Kay, *supra* note 18, at 2049-50. In the same year, Margaret Sanger passed away. *PLANNED PARENTHOOD, MARGARET SANGER — 20TH CENTURY HERO*, *supra* note 96, at 10.

162. Mary Ziegler, *The Framing of a Right to Choose: Roe v. Wade and the Changing Debate on Abortion Law*, 27 *LAW & HIST. REV.* 281, 317 (2009).

163. *Id.* at 317-18. See generally MAREN LOCKWOOD CARDEN, *THE NEW FEMINIST MOVEMENT* 103-18 (1974) (providing information on the formation of the NOW organization).

164. Ziegler, *supra* note 162, at 318.

165. *Id.* See generally MARYANN BARAKSO, *GOVERNING NOW: GRASSROOTS ACTIVISM IN THE NATIONAL ORGANIZATION FOR WOMEN* (2004) (providing a history of the NOW organization).

166. Ziegler, *supra* note 162, at 318.

167. *Id.*

168. Greenhouse & Siegel, *supra* note 155, at 2043.

169. Ziegler, *supra* note 162, at 322.

170. Siegel, *supra* note 45, at 826. See generally Steven T. Calabresi & Julia T. Rickert, *Originalism and Sex Discrimination*, 90 *TEX. L. REV.* 1 (2011) (discussing

women were given control of the conditions in which they conceived, bore, and raised children.”¹⁷¹ Resultantly, the association between women’s equality efforts and the Planned Parenthood movement has become inextricable.

II. THE “CONTROVERSIAL” NATURE OF PLANNED PARENTHOOD

Planned Parenthood has long been controversial because of its association with sex, contraception, and abortion.¹⁷² Professor Harold P. Southerland writes, “[t]he subject [of sex] is a delicate one. Unlike the French, for example, Americans aren’t exactly comfortable talking about it. There is a prudish streak in Americans still, a leftover, perhaps, from our Puritan heritage, or from nineteenth-century Victorian morality”¹⁷³ Consequently, the government has long attempted to regulate sex. Moreover, although some scholars suggest that sex regulation is waning,¹⁷⁴ the recent attack on Planned Parenthood and contraception in general is indicative of a potential resurgence of regulation.

Catharine MacKinnon keenly notes that “sexuality is the linchpin of gender inequality.”¹⁷⁵ Yet, traditional sexual “norms” play into the contraceptive debate underlying the attack on Planned Parenthood. Those that do not conform to the traditional ideals can be deemed “deviant.”¹⁷⁶ Further, as the author

the intersection between the Nineteenth Amendment and the need for gender equality).

171. Siegel, *supra* note 45, at 826.

172. See generally BAKER, *supra* note 83, at 4 (noting that Coretta Scott King drew analogies between the civil rights movement and Sanger’s efforts to provide the option of contraceptives to all Americans).

173. Southerland, *supra* note 146, at 49. Interestingly, France was the country where Margaret Sanger traveled to in order garner information about contraceptives. SANGER, *supra* note 60, at 96, 99-100. See generally Maggie Ilene Kaminer, *How Broad is the Fundamental Right to Privacy and Personal Autonomy? — On What Grounds Should the Ban on the Sale of Sexually Stimulating Devices Be Considered Unconstitutional*, 9 AM. U. J. GENDER SOC. POL’Y & L. 395 (2001) (discussing traditional views of sexuality and the Supreme Court’s treatment of privacy rights).

174. Laura A. Rosenbury & Jennifer E. Rothman, *Sex In and Out of Intimacy*, 59 EMORY L.J. 809, 809 (2010).

175. Sandi Farrell, *Reconsidering the Gender-Equality Perspective for Understanding LGBT Rights*, 13 LAW & SEXUALITY 605, 639 (2004) (quoting Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, reprinted in THE SIGNS READER: WOMEN, GENDER, AND SCHOLARSHIP 227, 245 (Elizabeth Abel & Emily K. Abel eds., 1983)).

176. See Rosenbury & Rothman, *supra* note 174, at 813 (“The vision of acceptable sexual activity furthered by the current construction of sex is primarily modeled

Martha Nussbaum argues, "human dignity is frequently violated on grounds of sex or sexuality."¹⁷⁷ It is essential to recognize that autonomy, women's rights, and *human rights* are foundational elements of the debate.

A. *The Contraception Debate: Women's Rights Considerations*

The contraception debate naturally raises women's rights considerations because of the unequal effect that pregnancy has on women, in both a legal and physiological context.¹⁷⁸ Professor Shari Motro writes, "[a] fundamental gender imbalance hovers in the background of nonprocreative heterosexual sex: Women get pregnant, men do not. Women's alternatives—celibacy, chemically-induced sterility, or other, less effective contraceptive methods with abortion as a last resort—do not correct the imbalance."¹⁷⁹ However, a world without contraceptives and reproductive health care would only serve to propagate the imbalance.¹⁸⁰ Further, the imbalance is exacerbated by traditional sexual double standards, under which it is deemed more socially acceptable for a man to engage in premarital sex than a woman.¹⁸¹

on heterosexual, monogamous couples, thus channeling sex into a domesticated and gendered form. Individuals who do not adhere to this vision are stigmatized as being hypersexual, asexual, criminal, or otherwise deviant." (footnote omitted)).

177. MARTHA C. NUSSBAUM, *SEX & SOCIAL JUSTICE* 5 (1999); see also MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 14 (2004) ("Disgust, I shall argue, is very different from anger, in that its thought-content is typically unreasonable, embodying magical ideas of contamination, and impossible aspirations to purity, immorality, and nonanimality, that are just not in line with human life as we know it.").

178. See generally Edith L. Pacillo, *Expanding the Feminist Imagination: An Analysis of Reproductive Rights*, 6 AM. U. J. GENDER & LAW 113 (1997) (describing the unequal effects of pregnancy).

179. Shari Motro, *The Price of Pleasure*, 104 NW. U. L. REV. 917, 921 (2010); see also Hammell, *supra* note 32, at 141-46 (detailing the pregnancy process and the effect on women).

180. See Motro, *supra* note 179, at 921, 923-25 (detailing the toll pregnancy takes on a woman's body, however, contending that choice does not alleviate the imbalance).

181. Siegel, *supra* note 45, at 817; see generally Rosenbury & Rothman, *supra* note 174, at 841 ("Societal and legal discourses about sexual intimacy therefore often affect men and women in different ways. Although public sex is discouraged for both men and women, men are often entitled to express their interest in and pursuit of sexual pleasure in ways women are not. The proliferation of strip clubs, and their glorification in popular culture, is just one illustration of this differing entitlement; the prevalence of erectile dysfunction drug advertisements is another. Ratings systems in Hollywood also have their own double standard — limiting male nudity to a much greater extent than female nudity, providing heterosexual men

Professor Reva V. Seigel finds that “the sex equality approach to reproductive rights views control over the timing of motherhood as crucial to the status and welfare of women, individually and as a class.”¹⁸² Reproductive freedom affects a woman’s sexual and health freedom, relationship choices, educational and professional pursuits, economic freedom, and her ability to provide for her family.¹⁸³ Essentially, reproductive freedom affects almost every aspect of a woman’s life. As such, contraceptives are inextricably tied to the women’s rights movement because they allow women to pursue their ambitions.¹⁸⁴ “In giving women control over their reproductive function, the pill made possible the second-wave feminist movement—the demand for an end to gender discrimination and for access to life activities on equal footing with men,” writes Professor Southerland.¹⁸⁵ Furthermore, following the invention of the pill, women were able to enter the workforce on their own terms and with greater control of their lives.¹⁸⁶ In addition, a recent study found that the rise of women seeking law, medical, and business administration degrees in the past few decades was a direct result of the legalization and availability of contraceptives.¹⁸⁷

with more opportunities to view the naked objects of their desire than are provided to heterosexual women and gay men.” (footnotes omitted)).

182. Siegel, *supra* note 45, at 818.

183. *Id.* at 819.

184. See June Carbone, *Unpacking Inequality and Class: Family, Gender and the Reconstruction of Class Barriers*, 45 *NEW ENG. L. REV.* 527, 544-45 (2010).

185. Southerland, *supra* note 146, at 66-67.

186. See Martha J. Bailey, *More Power to the Pill: The Impact of Contraceptive Freedom on Women’s Life Cycle Labor Supply*, 121 *Q.J. ECON.* 289, 317 (2006); see also Naomi Cahn & Anne T. Goldstein, *Roe and Its Global Impact*, 6 *U. PA. J. CONST. L.* 695, 699 (2003) (“Indeed, the right to an abortion and the availability of contraceptives have been linked in the United States to women’s increased ability to make career and marriage choices and to improve their status in the household. The rights to an abortion and to use contraceptives have been identified with two different phenomena: first, and most obviously, they impact fertility because they allow women to have fewer children in a generally reliable manner; second, they have a bargaining effect, allowing women more autonomy within marriage, so they can invest in their careers.” (footnotes omitted)).

187. See Carbone, *supra* note 184, at 544-45 (“Between 1950 and 1970, the ratio of women to all students in professional schools stayed flat, with no more than 10% in medicine, 4% in law, 1% in dentistry, and 3% in business administration. By 1980, however, the numbers had jumped to 30% in medicine, 36% in law, 19% in dentistry, and 28% in business administration. In a careful empirical study that tracked the increase in the marriage ages of college graduates, Goldin and Katz found that the critical factor was contraception — states as diverse as Georgia and California that first lowered the age of majority showed the earliest movements toward postponed marriage. The availability of abortion reinforced the effect, but with a smaller overall impact.” (citing Claudia Goldin & Lawrence F. Katz, *The Power of the Pill:*

Additionally, the use of contraceptives can have a positive effect on women's health, aside from their use as a contraceptive.¹⁸⁸ For example, the FDA has recognized the potential benefit of oral contraceptives in decreasing the occurrences of ovarian cancer, endometrial cancer, pelvic inflammatory disease, ovarian cysts, acne, premenstrual dysmorphic disorder, and benign breast disease.¹⁸⁹ Thus, contraceptive pills not only provide a way of regulating one's maternal future, but also of maintaining one's health and preserving fertility.¹⁹⁰ However, in order for women to see positive results from the use of contraceptive pills, they must have access to them.

Women are unequally affected by sex due to nature, but the inequality is also exacerbated by law. Laws regarding contraception, abortion, and maternal conduct during pregnancy all affect women more than men because women bear the brunt of reproductive burdens.¹⁹¹ As such, by restricting access to contracep-

Oral Contraceptives and Women's Career and Marriage Decisions, 110 J. POL. ECON. 730, 730-31, 749, 754-55 (2002)).

188. See generally Beth A. Burkstrand-Reid, *The Invisible Woman: Availability and Culpability in Reproductive Health Jurisprudence*, 81 U. COLO. L. REV. 97, 98 (2010) ("If health is the first of all liberties, then, for women, reproductive health is liberty's foundation. Specifically, the ability to control one's fertility is a health issue: medical and surgical technologies that promote, prevent, or terminate pregnancy pose risks to women's health, as do pregnancy and childbirth." (footnotes omitted)); see also Hammell, *supra* note 32, at 177-78 (detailing the unequal effect of sexually transmitted diseases on women as a reason for the need for healthcare for women).

189. Rose, *supra* note 152, at 23; see also JON ZONDERMAN & LAUREL SHADER, *BIRTH CONTROL PILLS* (2006) (detailing the benefits and popularity of the birth control pill).

190. See Lance Gable, *Reproductive Health as a Human Right*, 60 CASE W. RES. L. REV. 957, 958-59 (2010) ("The concepts of reproduction and health have an intimate and deeply rooted connection. Reproductive decisions and the process of reproduction have direct impacts on health, particularly the health of women. Reproductive health broadly encompasses health conditions and social conditions that affect reproductive functioning, whether a woman seeks to reproduce or to avoid reproduction. Successful reproduction requires a basic level of health in the sense that healthy reproductive and developmental functions are necessary in order to bring a pregnancy to term. Factors determining if and when a woman will decide to reproduce raise fundamental issues of autonomy, privacy, and agency related to that woman's health choices, as well as that woman's ability to exercise those choices." (footnotes omitted)).

191. See Yakaré-Oulé Jansen, *The Right to Freely Have Sex? Beyond Biology: Reproductive Rights and Sexual Self-Determination*, 40 AKRON L. REV. 311, 314 (2007); see also Donald P. Judges, *Taking Care Seriously: Relational Feminism, Sexual Difference, and Abortion*, 73 N.C. L. REV. 1323, 1343-44 (1995) (As Judith Jarvis Thompson noted in 1971, "[I]n no state in this country is any man compelled by law to be even a Minimally Decent Samaritan to any person By contrast, in most states . . . women are compelled by law to not merely be Minimally Decent

tives such as the pill, women are primarily affected because the pill is a mechanism that provides women with control over reproduction.¹⁹² Such restrictions have major implications in the life path of individual women.¹⁹³

B. *Changing Attitudes?: The Partial Social Acceptance of Planned Parenthood*

In 1965, the Supreme Court decided *Griswold v. Connecticut*, which recognized a married couple's right to make contraception decisions.¹⁹⁴ At the time of the decision, Connecticut still made contraception usage in effect illegal.¹⁹⁵ In an effort strikingly similar to Margaret Sanger's first clinic in New York, Estelle Griswold, the Executive Director of the Planned Parenthood League of Connecticut, along with Dr. C. Lee Buxton, opened a Planned Parenthood clinic in the state to test the law.¹⁹⁶ Within ten days, police arrested them for violating the state contraceptive ban.¹⁹⁷ Griswold and Buxton's actions not only changed the law, but brought national attention to their cause.¹⁹⁸ The Supreme Court declared the statute unconstitutional,¹⁹⁹ finding that a married couple's ability to seek contra-

Samaritans, but Good Samaritans to unborn persons inside them." (quoting Judith Jarvis Thomson, *A Defense of Abortion*, 1 *PHIL. & PUB. AFF.* 47, 63 (1971))).

192. Cf. Jansen, *supra* note 191, at 322-23 ("The right to freedom in reproductive decision-making is based upon broader principles of bodily autonomy and the right to physical integrity. Reference to these concepts is usually made in the context of a right to privacy or the right to liberty and security of the person." (footnote omitted)).

193. See Siegel, *supra* note 45, at 819 ("Control over whether and when to give birth is also of crucial dignitary importance to women. Vesting women with control over whether and when to give birth breaks with the customary assumption what women exist to care for others. It recognizes women as self-governing agents who are competent to make decisions for themselves and their families and have the prerogative to determine when and how they will devote themselves to caring for others.").

194. 381 U.S. 479 (1965); see also Chazan, *supra* note 124, at 275-78 (detailing the "Sexual Freedom" cases).

195. FRIEDMAN, *supra* note 62, at 570.

196. Catherine G. Roraback, *Griswold v. Connecticut: A Brief Case History*, 16 *OHIO N.U. L. REV.* 395, 395-401 (1989) (providing a history of how the key players in the *Griswold* case came together); see also Waxman, *supra* note 21, at 303-04.

197. Dudziak, *supra* note 56, at 936-37.

198. Rose, *supra* note 152, at 26.

199. *Griswold*, 381 U.S. at 485-86; see also Waxman, *supra* note 21, at 303-04. "As far as the Connecticut court was concerned, however, the defendants' constitutional rights had not been violated, there was nothing unreasonable about the ban on contraceptives, and if birth control advocates wished to change the law, the proper forum was the legislature." Dudziak, *supra* note 56, at 938.

ception fell under the umbrella of the fundamental right to privacy. Essentially, the decision was meant to keep the government out of a couple's bedroom.²⁰⁰

During the mid-1960s, President Lyndon B. Johnson advocated for federal legislation supporting contraceptives for the poor.²⁰¹ This effort continued into the Nixon administration with the advent of Title X of the Public Health Services Act, which authorized grants to establish voluntary family planning projects.²⁰² Title X was actually passed during Nixon's Republican administration in 1970.²⁰³ Title X allocated approximately \$180 million in funds between 1971 and 1973.²⁰⁴ Notably, the sole method of birth control not included in the funding package was surgical abortion because it was not considered a preventative service.²⁰⁵

However, by the early 1970s, American attitudes regarding abortion were changing.²⁰⁶ In 1972, a Gallup poll revealed that "sixty-four percent of Americans . . . agreed 'with the statement that "the decision to have an abortion should be made solely by a woman and her physician"' — with a 'greater proportion of Republicans [sixty-eight percent] . . . than Democrats [fifty-nine percent] holding the belief that abortion should be a decision between a woman and her physician.'"²⁰⁷ Notably, abortion is generally considered a far more polarizing issue than that of birth control.²⁰⁸ As such, the polling could suggest a change in how Americans viewed contraception and reproductive rights.²⁰⁹

200. See Barbara Stark, *The Women's Convention, Reproductive Rights, and the Reproduction of Gender*, 18 *DUKE J. GENDER L. & POL'Y* 261, 264 (2011) ("As a practical matter, this reflected and perpetuated women's subordination within the marriage, since the husband was the decision maker in the traditional couple.").

201. Rose, *supra* note 152, at 25.

202. *Id.*

203. Flanagan & Sangree, *supra* note 11. Millicent Fenwick, a Republican Representative and ardent supporter of Planned Parenthood and Title X, stated "You can't close your mind to evidence." *Id.*

204. Rose, *supra* note 152, at 25.

205. *Id.*

206. See generally TOM DAVIS, *SACRED WORK: PLANNED PARENTHOOD AND ITS CLERGY ALLIANCES* (2005) (noting the support in the religious community for Sanger's work and for women's reproductive rights).

207. Greenhouse & Siegel, *supra* note 155, at 2031 (citing George Gallup, *Abortion Seen Up to Woman, Doctor*, *WASH. POST*, Aug. 25, 1972, at A2) (emphasis omitted).

208. Or at least it was. See *infra* Part III.

209. See Greenhouse & Siegel, *supra* note 154, at 2079-86 (describing the transformation of the Republican party platform to anti-abortion). See generally LESLIE LAURENCE & BETH WEINHOUSE, *OUTRAGEOUS PRACTICES: HOW GENDER BIAS*

In 1973, the Supreme Court issued another controversial decision, *Roe v. Wade*, which provided women with the right to choose abortion.²¹⁰ Pro-choice advocates made policy-based arguments regarding the problems associated with illegal abortion, along with rights-based contentions.²¹¹ Although the Court utilized a right to privacy framework, there was a lucid undercurrent of gender equality reasoning present in the decision.²¹² Essentially, “Roe established that the fundamental right underlying a woman’s choice to terminate pregnancy is her due process right to choose her own reproductive options without interference from the state.”²¹³ In the later related case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court noted that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”²¹⁴

While *Roe v. Wade* marked a substantial victory for pro-choice advocates, it also served to electrify the anti-abortion, also known as pro-life or anti-choice, opposition.²¹⁵ Critics of the decision amped up fundraising efforts, held rallies, utilized media

THREATENS WOMEN’S HEALTH (Rutgers Univ. Press 1997) (1994) (discussing gender bias in women’s health and media response).

210. *Roe v. Wade*, 410 U.S. 113 (1973). In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the “Court began its plurality opinion . . . by redefining the right recognized in *Roe* as a right to liberty, a right to autonomy with respect to intimate decisions, such as reproductive choice.” Elizabeth M. Schneider, *The Synergy of Equality and Privacy in Women’s Rights*, 2002 U. CHI. LEGAL F. 137, 148 (2002) (citing *Planned Parenthood v. Casey*, 505 U.S. 833, 844 (1992)); see also FRIEDMAN, *supra* note 62, at 570 (“The Supreme Court also, and very dramatically, decriminalized abortion in the famous case of *Roe v. Wade* (1973). Politically, this was — and remains — a bombshell.” (footnote omitted)).

211. Ziegler, *supra* note 162, at 282 (citing Mary S. Calderone, *Illegal Abortion as a Public Health Problem*, 50 AM. J. PUB. HEALTH 948, 948-54 (July 1960); *ABORTION: LEGAL AND ILLEGAL; A DIALOGUE BETWEEN ATTORNEYS AND PSYCHIATRISTS* (Jerome M. Kummer ed.)).

212. See Schneider, *supra* note 210, at 138-40 (“Much of the feminist debate that developed after *Roe* about the problematic nature of the decisional framework, that privacy was individualistic as a negative right — the right “to be let alone” — versus equality, often did not distinguish between the Supreme Court’s choice of privacy as *Roe*’s decisional framework, and the equality arguments that had been advanced by feminist advocates. Arguably, aspects of these early equality perspectives have been integrated into later reproductive rights rulings.” (footnote omitted)); see also MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT* 25 (2001) (discussing generally the privacy right cases of *Griswold* and *Roe*).

213. Eileen L. McDonagh, *My Body, My Consent: Securing the Constitutional Right to Abortion Funding*, 62 ALB. L. REV. 1057, 1064 (1999).

214. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 835 (1992).

215. *Roe v. Wade*, 410 U.S. 113 (1973).

outlets, and lobbied.²¹⁶ The Catholic Church spent \$4 million in one year following the decision advocating against the decision.²¹⁷ Justice Ruth Bader Ginsburg reflected that the decision "invited no dialogue with legislators. Instead, it seemed entirely to remove the ball from the legislator's court Around that extraordinary decision, a well-organized and vocal right to life rallied."²¹⁸ In 1976, the anti-abortion camp achieved a significant victory with the Hyde Amendment, which outlawed the use of federal funds for abortion.²¹⁹ The Hyde Amendment continues to have an effect on Planned Parenthood to this day.²²⁰

III. THE MODERN ATTACK ON PLANNED PARENTHOOD

In 1983, Professor John Robertson wrote, "[w]omen in the United States began their long struggle for reproductive freedom with the birth control movement of the mid-nineteenth century. The United States Supreme Court's contraception and abortion cases marked a victorious end to one phase of that struggle."²²¹ He added, "[b]y making a woman's decision not to conceive or bear a child a constitutional right, these cases removed most legal barriers to sex without reproduction and thus gave women control over a major part of their biological destiny."²²² Unfortunately, that perceived victory by some is currently being threatened by multiple attacks on an organization that provides

216. Keleher, *supra* note 39, at 838 (citing PHILIP F. LAWLER, OPERATION RESCUE: A CHALLENGE TO THE NATION'S CONSCIENCE 17 (1992)).

217. Keleher, *supra* note 39, at 838 (citing CATHERINE WHITNEY, WHOSE LIFE?: A BALANCED, COMPREHENSIVE VIEW OF ABORTION FROM ITS HISTORICAL CONTENT TO THE CURRENT DEBATE 44 (1991)).

218. Keleher, *supra* note 39, at 838 (citing RUTH BADER GINSBURG, Speaking in a Judicial Voice, 67 N.Y.U. L. REV. 1185, 1205 (1992)).

219. WHITNEY, *supra* note 217, at 78-82. In 1980 the Supreme Court upheld the constitutionality of the Hyde Amendment. *Harris v. McRae*, 448 U.S. 297, 322 (1980); see also Judges, *supra* note 191, at 1434-41 (providing an overview of the abortion funding cases).

220. See generally Carole I. Chervin, Note, The Title X Family Planning Gag Rule: Can the Government Buy Up Constitutional Rights?, 41 STAN. L. REV. 401 (1989) (providing information on the Hyde Amendment, the gag rule, and other regulations existent in 1989, some which continue to affect organizations like Planned Parenthood to this day).

221. John A. Robertson, Procreative Liberty and the Control of Conception, Pregnancy, and Childbirth, 69 VA. L. REV. 405, 405 (1983) (citing *Bellotti v. Baird*, 443 U.S. 622 (1979); *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Roe v. Wade*, 410 U.S. 113 (1973); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965)) (footnote omitted).

222. *Id.*

the means for women to control their “biological destiny.”²²³ Further, such attacks may just be the beginning of an attempt to chip away at women’s reproductive rights and autonomy.

A. *Legislative Attempts to Defund Planned Parenthood*

In early 2011, a bill was introduced in the House of Representatives that would entirely defund Planned Parenthood and wholly cut Title X.²²⁴ *Time Magazine* wrote, “[f]or pro-life forces, the opportunity was irresistible: for the first time since abortion became legal, more Americans call themselves pro-life than pro-choice, including 29 governors (up from 21 before last fall’s midterms). Activists call this the best climate in years for passing pro-life laws.”²²⁵ The movement initially began as a cost-cutting effort, but the anti-choice motivations of supporters quickly became clear.²²⁶ *The New York Times* wrote, “[u]nable to overturn *Roe v. Wade*, anti-abortion campaigners have worked in recent years within Congress and state legislatures, many of which have become increasingly conservative, to make gaining access to the procedure as difficult as possible.”²²⁷ The Pence Amendment, which would have entirely defunded

223. See *id.*

224. Gibbs, *supra* note 12.

225. *Id.*; see also Bernstein, *supra* note 55, at 1473 (“Abortion opponents, dismayed by the Court’s unwillingness to overrule *Roe*, have adopted an incrementalist strategy, whereby instead of ‘trying to make abortion illegal’ they are ‘trying to make it impossible.’”).

226. See Gibbs, *supra* note 11 (“Maybe abortion opponents should be applauded for standing on principle at great potential cost. But why do it under the guise of cost cutting? Independents who have trended toward the pro-life position may draw the line at efforts that put women’s lives at risk. Deficit hawks may be annoyed by measures that are likely to cost more money in the end. And voters who want to see government get something done may wonder about the wisdom of spending days and nights debating amendments that will die in the Senate or on the President’s desk.”); see also Cecile Richards, *The Crazy in Congress*, HUFFINGTON POST, Oct. 14, 2011, http://www.huffingtonpost.com/cecile-richards/the-craziness-in-congress_b_1010645.html. (“Republican leaders in Congress just don’t get it. At a time when Americans want government focused on jobs and helping families weather the toughest economy in recent memory, they have submitted a budget that guts the nation’s birth control funding and eliminates access to cancer screenings for millions of women. They have launched a baseless investigation against Planned Parenthood, a nonprofit provider of health care to three million women, men, and teens each year. And just last night, they pushed and passed a dangerous bill that undermines women’s access to care, including eliminating protections for women seeking care in emergency situations.”).

227. Thanh Tan, *Planned Parenthood Struggles After State Budget Cuts*, N.Y. TIMES, Oct. 16, 2011, at A29.

Planned Parenthood, passed in the House 240 to 185, but was shot down in the Senate in a vote of 56 to 44.²²⁸

The "family values" campaign has gained momentum in recent years with its attack not only on abortion, but also contraception in general.²²⁹ Until fairly recently, the pro-life and pro-choice camps agreed on the benefit of preventing unwanted pregnancies through the use of contraceptives.²³⁰ However, even contraceptives, which clearly prevent the need for abortion, seem to be the subject of recent controversy.²³¹ William Smith, Vice President for public policy for the Sexuality Information and Education Council of the United States stated, "[t]he linking of abortion and contraception is indicative of a larger agenda, which is putting sex back into the box, as something that happens only within marriage."²³² Edward R. Martin Jr., a lawyer for the public-interest law firm Americans United for Life, clarifying the pro-life position on contraception, stated:

We see contraception and abortion as part of a mind-set that's worrisome in terms of respecting life. If you're trying to build a culture of life, then you have to start from the very beginning of life, from conception, and you have to include how we think and act with regard to sexuality and contraception.²³³

Essentially, there has been a shift regarding issues of sex from "education and contraception" to that of "abstinence and chastity."²³⁴ This shift appears to be a return to Victorian ideals of morality, without a clear recognition of the realities of contemporary American society.²³⁵

228. Lepore, *supra* note 4, at 46.

229. Southerland, *supra* note 146, at 91-92.

230. *Id.*

231. Russell Shorto, *Contra-Contraception*, N.Y. TIMES MAG. May 7, 2006 available at <http://www.nytimes.com/2006/05/07/magazine/07contraception.html?page-wanted=all>. "'We see a direct connection between the practice of contraception and the practice of abortion,' sa[id] Judie Brown, president of the American Life League, an organization that has battled abortion for 27 years but that, like others, now has a larger mission. 'The mind-set that invites a couple to use contraception is an antichild mind-set,' she told [the New York Times]. 'So when a baby is conceived accidentally, the couple already have [sic] this negative attitude toward the child. Therefore seeking an abortion is a natural outcome. We oppose all forms of contraception.'").

232. *Id.*

233. *Id.*

234. Southerland, *supra* note 146, at 92.

235. See Shorto, *supra* note 231 ("Senator Olympia Snowe of Maine, an abortion rights Republican who has sponsored legislation that would require insurance companies to cover contraception, has seen a major change. 'Two decades or more ago, I don't think there was much of a divide on contraception and family planning,'

In September 2011, the Republican-led House Energy and Commerce Committee commenced an investigation of Planned Parenthood.²³⁶ The committee has requested numerous documents including audits, abortion-funding records, and reports on the organization's policy regarding sexual abuse.²³⁷ Representative Cliff Stearns indicated that the committee was examining the organization's "institutional practices and policies."²³⁸ Admittedly, the organization receives over \$363 million in taxpayer funding each year, thus some fiscal exploration and accountability seems reasonable.²³⁹ However, Planned Parenthood President Cecile Richards contends that the inquiry was "not about fiscal responsibility."²⁴⁰ Richards suggests that this is an effort to shift focus from the economy, noting "when those guys can't figure out what to do about jobs, and they can't, their first target is women."²⁴¹

The House Energy and Finance Committee noted concern regarding Planned Parenthood's abortion practices.²⁴² Further, allegations of over-billing on the part of Planned Parenthood have been made.²⁴³ Representative Cliff Stearns stated, "[a]lthough Planned Parenthood is barred from using federal funds to perform abortions, these funds are fungible and allow the group to use funds from other sources ostensibly for abortions."²⁴⁴ Contrary to Representative Stearns' statement, how-

she safid]. 'It was one area both sides could agree on as a way to reduce unwanted pregnancies. Now it becomes embroiled in philosophical disputes.'").

236. House Panel, *supra* note 3.

237. *Id.*

238. *Id.*

239. Charmaine Yoest & Anna Franzanello, Can Planned Parenthood Justify \$1 Million a Day?, FOX NEWS, Oct. 7, 2011, <http://www.foxnews.com/opinion/2011/10/07/can-planned-parenthood-justify-one-million-dollars-day/>. See also Gibbs, *supra* note 12 (noting the organization's \$1.1 billion annual budget and the fact that more than a third comes from a combination of funding from federal, state and local governments).

240. Yoest & Franzanello, *supra* note 239.

241. Lepore, *supra* note 4, at 46.

242. House Panel, *supra* note 3.

243. Yoest & Franzanello, *supra* note 239. Yoest and Franzanello contend that "a California audit of Planned Parenthood of San Diego and Riverside Counties in 2004 revealed that one Planned Parenthood affiliate . . . overbilled the Medicaid program by over 5 million dollars." *Id.*

244. House Panel, *supra* note 3. Representative Stearns continued, "Since the Planned Parenthood Foundation of America receives about \$1 million a day in taxpayer funds, I sent a letter to the group's president requesting documents and information as we look at the organization's use of federal dollars and its compliance with various laws." *Id.* Charmaine Yoest, President and CEO of Americans United for Life, stated, "The American taxpayer does not want to be in the business of

ever, Planned Parenthood cannot use federal funds to subsidize abortions.²⁴⁵ Regardless, opponents contend that funding an organization that provides abortions in any way, is effectively underwriting the procedure.²⁴⁶ “This is not about Planned Parenthood’s right to be in the abortion business,” argued Indiana Republican Mike Pence, who sponsored the bill that would defund the organization in early 2011.²⁴⁷ He added, “[s]adly, abortion on demand is legal in America. This is about who pays for it.”²⁴⁸

Representative Stearns also cited to what he characterized as Planned Parenthood’s “extensive record of violating state sexual assault and child abuse reporting laws, and of encouraging young girls to lie about their ages to circumvent state reporting laws.”²⁴⁹ This remark was in reference to the undercover sting operations utilized by the anti-abortion organization, Live Action.²⁵⁰ As part of the sting, a man posed as a pimp seeking to obtain health services for his underage prostitutes while utilizing a hidden video camera.²⁵¹ Lila Rose, the leader of Live Action, announced, “Planned Parenthood aids and abets the sexual abuse and prostitution of minors.”²⁵² However, one employee provided advice on how to navigate reporting restrictions, but has since been fired.²⁵³ Furthermore, all of the targeted clinics

abortion, and this investigation is an important first step toward ending public funding of the nation’s largest abortion provider.” Laurie Kellman, GOP to Planned Parenthood: Hand Over Records, YAHOO NEWS, (Sep. 27, 2011), <http://news.yahoo.com/gop-planned-parenthood-hand-over-records-214350203.html>.

245. Mears, *supra* note 2.

246. Gibbs, *supra* note 12.

247. *Id.*

248. *Id.*

249. House Panel, *supra* note 3. *See, e.g.*, Peter Finocchiaro, Glenn Beck Accuses Planned Parenthood of Assisting in Sex Trafficking, SALON, (Feb. 19, 2011), http://www.salon.com/2011/02/19/glenn_beck_planned_parenthood_episode/; Mike McManus, Sex Trafficking in America, VIRTUE ONLINE, (Mar. 16, 2011), <http://www.virtueonline.org/portal/modules/news/article.php?storyid=14118>.

250. House Panel, *supra* note 3.

251. Gail Collins, The Siege of Planned Parenthood, N.Y. TIMES, Feb. 4, 2011, <http://www.nytimes.com/2011/02/05/opinion/05collins.html>. . . “Planned Parenthood aids and abets the sexual abuse and prostitution of minors,” announced Lila Rose, the beautiful anti-abortion activist who led the project.” *Id.* *See also* Sarah Primrose, Killing the Messenger: The Intersection Between Sex Trafficking, Planned Parenthood & the Marginalization of Youth Victims, 22 U. FLA. J. L. & PUB. POL’Y 299, 317-22 (2011).

252. Collins, *supra* note 251.

253. *Id.*; *see also* Erik Eckholm, Planned Parenthood Financing is Caught in Budget Feud, N.Y. TIMES, Feb. 17, 2011, <http://www.nytimes.com/2011/02/18/us/politics/18parenthood.html> (“Planned Parenthood’s role as a major abortion pro-

reported the incidences, a detail that is often ignored in recent propaganda.²⁵⁴ Lastly, all of the videotapes were heavily edited and, therefore, not reliable²⁵⁵ The Live Action videotapes were seemingly meant to drum up disgust for the organization, rather than provide real facts and genuine criticism.

Representative Stearn's request did not go unnoticed by other House members.²⁵⁶ Several Democrats insinuated that the probe was part of a "Republican vendetta" against Planned Parenthood.²⁵⁷ Moreover, Representatives Waxman and DeGette called the request by the House Committee "extraordinarily broad and burdensome," adding that they were "aware of no predicate that would justify this sweeping and invasive request."²⁵⁸ They continued, "[w]e are committed to strong congressional oversight," however, "we are opposed to investigations that appear to be designed to harass and shut down an organization simply because Republicans disagree with the work that it does."²⁵⁹

The request for additional documentation from Planned Parenthood is not the only Congressional effort meant to deter the organization. A new bill forbids federal spending for the government's primary family planning program, Title X of the Public Health Services Act.²⁶⁰ The Act was instituted four de-

vider has long provoked fierce opposition, but this month its opponents broadened their attacks, seeking to discredit the organization by linking it to the sexual exploitation of minors. A group called Live Action, which has repeatedly taken aim at Planned Parenthood and receives support from conservative foundations, released undercover videotapes in which clinic employees are seen answering questions from a man posing as a sex trafficker. Planned Parenthood says the tapes are misleading, that an errant staff member was fired and that its affiliates reported the encounters to law enforcement.").

254. Collins, *supra* note 251. See also Steven Wagner, Planned Parenthood: A Culture of Sexploitation, *THE WASHINGTON TIMES*, Mar. 2, 2011, <http://www.washingtontimes.com/news/2011/mar/2/planned-parenthood-a-culture-of-sexploitation/> ("Is the pimp sent away by indignant health care providers—or better, are the police called to investigate these evident cases of felony sexual abuse of a minor? Tragically, no: In each instance, clinic staff members readily describe how they can help facilitate the continued exploitation of his victims.").

255. See Live Action, Exposing Planned Parenthood's Cover-Up of Child Sex Trafficking, <http://www.liveaction.org/traffick> (last visited Apr. 10, 2012) (videos available online).

256. House Panel, *supra* note 3.

257. *Id.*

258. *Id.*

259. *Id.*

260. Robert Pear, Fight for Social Programs Looms Anew in the House, *N.Y. TIMES*, Oct. 3, 2011, http://www.nytimes.com/2011/10/04/us/politics/house-sets-up-battle-on-labor-education-and-health-funding.html?_r=1&pagewanted=print.

acades ago and offers services to over five million people.²⁶¹ Under the proposal, no funding “may be made available for any purpose” for Planned Parenthood until it attests that it will no longer provide abortion services.²⁶² The majority of Planned Parenthood’s centers are supported by Title X grants meant to assist low-income women.²⁶³ Thus, eradication of funding could seriously hinder the organization’s mission. Importantly, abortion remains a legalized service in the United States. However, such legislators have taken aim at all organizations that provide the service.²⁶⁴ Essentially, the legislators seek to take away the option in practice, since eradicating abortion in law has been met with limited success.

In addition to attacks at the federal level, some states have also made attempts to defund Planned Parenthood.²⁶⁵ Recently, Kansas tried to institute elevated eligibility restrictions for low income women seeking reproductive services.²⁶⁶ The bill would have blocked federal Medicaid funding to Planned Parenthood.²⁶⁷ Two federal judges issued injunctions which prevented the new laws being instituted.²⁶⁸ However, this is only temporary until there is an outcome regarding litigation.²⁶⁹ Yet, similar legislation was passed in Ohio, and is currently being debated in six additional states.²⁷⁰ Moreover, federal judges provisionally blocked laws relating to abortion restrictions in South Dakota and Texas, which could have an effect on Planned Parenthood.²⁷¹

261. *Id.*

262. *Id.* “The clinics provide a wide range of health services and perform more than 300,000 abortions a year.” *Id.*

263. Flanagan & Sangree, *supra* note 11.

264. *See generally* Kimberly Moss, Note, “Do No Harm—Unless She Wants an Abortion or Birth Control:” The Conscience Movement’s Impact on Women’s Health, 19 TEX. J. WOMEN & L. 173 (2010) (detailing the need for legal and available women’s healthcare services).

265. *See* Mears, *supra* note 2.

266. *Id.* Planned Parenthood indicated that if the legislation passed, it would need to close some clinics and elevate fees. *Id.*

267. *Id.*

268. A.G. Sulzberger, Courts Put the Brakes on Agenda of G.O.P., N.Y. TIMES, Sep. 6, 2011, <http://www.nytimes.com/2011/09/06/us/06legal.html>

269. *Id.* “We’re pleased that today’s decision allows us to honor that commitment [to providing healthcare to these who could not otherwise afford it], at least while the lawsuit proceeds,” said Peter Brownlie, President and CEP of Planned Parenthood of Kansas and Mid-Missouri. Mears, *supra* note 2.

270. Mears, *supra* note 2.

271. Sulzberger, *supra* note 269. “‘We are testing the waters,’ said State Representative Marva Beck, a freshman legislator in Texas who was part of the Republican wave that gave the party its first supermajority. ‘We passed legislation saying,

In a footnote to the Texas decision, Judge Sam Sparks made clear the political tensions at play; he stated, “[i]t is ironic that many of the same people who zealously defend the state’s righteous duty to become intimately involved in a woman’s decision to get an abortion are also positively scandalized at the government’s gross overreaching in the area of health care.”²⁷² Federal judges issued injunctions relating to the eradication of funding for Planned Parenthood in Indiana and North Carolina as well.²⁷³

Additionally, New Jersey slashed all \$7.45 million of state support for “family planning health centers.”²⁷⁴ Governor Christie has since vetoed multiple bi-partisan attempts to reinstate funding to health centers like Planned Parenthood with “found” money excised from other parts of the budget.²⁷⁵ At a rally against Planned Parenthood, New Jersey State Senator Michael Doherty said, “[n]obody has any problem trying to have no affiliation with nefarious organizations such as the Nazis or apartheid regimes, but somehow, we’re asked to use our tax dollars to support these type[s] of organizations.”²⁷⁶

Recently, Texas instituted a “tiered priority system” that places Planned Parenthood last in line to receive federal Title X funding, which could drastically limit services.²⁷⁷ Additionally, the state instituted a rule that “formally bans Planned Parenthood clinics and other ‘affiliates of abortion providers’” from obtaining funds from the joint state-federal Women’s Health Program (WHP), a program which is meant to assist low-income women with preventative health services.²⁷⁸ In response, the Obama administration indicated that the federal government

‘We have the right to do this,’ and federal judges are saying, ‘Whoa, wait a minute while we look at this.’” *Id.* “‘I think at some level they don’t care about the judicial response,’ said Sanford V. Levinson, a law professor at the University of Texas. ‘If it’s upheld, that’s great for them. If it’s struck, it adds to the critique of the so-called imperial judiciary.’” *Id.*

272. *Id.*

273. *Id.* “The court actions around the country have brought a measure of relief to Democrats who are hoping some of those cases will result in the courts’ overturning laws that they were unable to stop.” *Id.*

274. Flanagan & Sangree, *supra* note 11.

275. *Id.*

276. *Id.*

277. Amanda Peterson Beadle, *Texas Rally Against Defunding of Planned Parenthood, Which Would Leave 130,000 Without Health Care*, THINK PROGRESS, (Mar. 7, 2012, 4:00 PM), <http://thinkprogress.org/health/2012/03/07/439979/texas-rally-against-defunding-planned-parenthood/?mobile=nc>.

278. *Id.*

would stop providing funds if Planned Parenthood is excluded.²⁷⁹ “Medicaid law is clear—patients, not state government officials, are able to choose the health-care providers that are best for them and their families,” said Cindy Mann, an official at the Centers for Medicare and Medicaid Services.²⁸⁰ Such attacks are not the first, and will certainly not be the last.

Planned Parenthood has also garnered criticism for Margaret Sanger’s association with the eugenics movement.²⁸¹ Former presidential candidate Herman Cain suggested that abortion clinics target African-American neighborhoods as part of a black “genocide” effort.²⁸² Planned Parenthood responded by calling his statements false and citing studies that indicate that less than nine percent of abortion clinics are located in predominately African-American neighborhoods.²⁸³ Veronica Byrd, director of African-American media for the Planned Parenthood Action

279. Louise Radnofsky, *Texas Medicaid Funds Cut Over Planned Parenthood*, WALL ST. JOURNAL, Mar. 16, 2012, at A5.

280. *Id.* “Texas Republican Gov. Rick Perry said in response to the letter that the state would use its own funds to continue the women’s health-care program and accused the Obama administration of placing its support for abortion rights ahead of women’s health.” *Id.*

281. See Lori Robertson, *Fact Check: Cain’s False Attack on Planned Parenthood*, USA TODAY, (Nov. 1, 2011, 7:55 PM), <http://www.usatoday.com/news/politics/story/2011-11-01/herman-cain-fact-check-planned-parenthood/51033294/1> [hereinafter *Fact Check*] (“While she is heralded for her work in making birth control available, and legal, she was also tied to the eugenics movement, which believed the human species could be improved by controlling who reproduced and who didn’t. One essay from Sanger shows she believed birth control advocates and eugenisists were working toward a similar goal — ‘to assist the race toward the elimination of the unfit.’ But she disagreed with some of the eugenisists’ methods. She goes on to talk about the financial benefits of birth control, saying that it ‘will make a better race,’ because a family can better care for a smaller number of children.”); see also Ana Romero-Bosch, *Lessons in Legal History—Eugenics & Genetics*, 11 MICH. ST. U. J. MED. & L. 89, 103-05 (2007) (discussing Margaret Sanger’s association with the eugenics movement).

282. Planned Parenthood Rejects Cain Claim Abortion Clinics Are Aimed at Black ‘Genocide,’ FOX NEWS, (Oct. 30, 2011), <http://www.foxnews.com/politics/2011/10/30/planned-parenthood-rejects-cain-claim-abortion-clinics-are-aimed-at-black/> [hereinafter *Black “Genocide”*].

283. *Id.* “The Guttmacher Institute said that according to 2008 figures, the most recent data available, 63 percent of abortion clinics—defined as providers of 400 or more abortions annually—are located in predominantly white neighborhoods while 12 percent are located in neighborhoods where one-half or more of the residents are Hispanic. Only 9 percent are located in predominantly black neighborhoods while 15 percent are located in mixed racial and communities.” *Id.*; see also Steven Gray, Cain’s Planned Parenthood “Genocide” Remark, TIME, (Oct. 31, 2011), <http://swampland.time.com/2011/10/31/cains-planned-parenthood-genocide-remark/> (noting the falsity of Cain’s remarks and retailing recruiting efforts to turn African Americans into pro-life advocates).

Fund stated, “[i]t is simply unacceptable for those who oppose legal abortion to use inflammatory and divisive language based on race to push an ideological agenda.”²⁸⁴

Former Pennsylvania Senator and current presidential candidate Rick Santorum also made calls to defund the organization, which suggests that the attack is only beginning.²⁸⁵ Furthermore, virtually all of the Republican presidential nominees have signed the Pro-Life Leadership pledge, which has a primary goal of defunding Planned Parenthood.²⁸⁶ Interestingly, the Republican Party had more pro-choice members than the Democrats until the 1980s, with the shift in party ideology occurring only in past few decades.²⁸⁷

284. *Black “Genocide,” supra* note 282. *See also* Robertson, *Fact Check*, *supra* note 281 (“Veronica Byrd, director of African American media at Planned Parenthood, issued a statement saying: ‘Planned Parenthood has a long history of condemning racism and opposes discrimination in all forms. Margaret Sanger worked for social and racial justice at a time when segregation was the law of the land. She was invited by African American leaders to help provide health care to women in the African American community and her work was praised by Dr. Martin Luther King, Jr. For all her positive work, Margaret Sanger made statements some 80 years ago that were wrong then and are wrong now. Those statements have no bearing on the high quality health care Planned Parenthood provides today.’”); *see also* Vanessa Cullins, *Why Birth Control With No Co-Pay Will Help African-American Women*, HUFFINGTON POST, Aug. 4, 2011, available at http://www.huffingtonpost.com/vanessa-cullins/why-free-birth-control-wi_1_b_916702.html (noting Planned Parenthood helps African American women. A recent survey of African American women ages eighteen to thirty-four, indicated that fifty-one percent had difficulty purchasing and utilizing birth control because of the cost. As such, African American women are three times more likely than white women to have an unintended pregnancy, and African American women have elevated rates of abortion, in comparison to white women).

285. *See* William Petroski, *Santorum: Boot Liberal Judges, Defund Planned Parenthood*, (Nov. 4, 2011), DES MOINES REGISTER, available at <http://caucuses.desmoinesregister.com/2011/11/04/santorum-boot-liberal-federal-judges-defund-planned-parenthood/> (“Santorum’s plan includes: Calling on Congress to abolish the 9th U.S. Circuit Court of Appeals, based in San Francisco, which covers the largest geographic area of any appeals court and is considered the most liberal. He called the 9th Circuit the “poster child for rogue courts” and proposed replacing it with two or three smaller circuits with new judges who would have to undergo Senate confirmation. Vetoing any bill or budget that funds abortion or that funds any organization that performs abortions, including Planned Parenthood. Calling on Congress to reinstitute “Don’t ask, Don’t tell,” the recently repealed law that prohibited gay military members from serving openly. Advocating for a Personhood Amendment to the Constitution with the goal of banning abortions.”).

286. Lepore, *supra* note 4, at 47. “Abortion wasn’t a partisan issue until the Republicans made it one.” *Id.*

287. *Id.* at 53.

B. *The Need for Planned Parenthood*

More than five million people worldwide are provided with health care education through Planned Parenthood.²⁸⁸ Planned Parenthood conducts its operations through almost eight hundred health centers, and has a presence in all fifty states.²⁸⁹ Planned Parenthood clinics provide pap smears, contraceptives, breast exams, and annual exams, which help prevent cervical cancer.²⁹⁰ Put into a national context, Planned Parenthood assists 800,000 women with life-saving breast exams, more than four million Americans with testing and treatment for sexually transmitted diseases, and 2.5 million people with contraception.²⁹¹ There is no single other organization that comes close to having such a widespread impact on women's health at the patient level. As such, the organization is valuable and funding should continue, at least at its current level.

Margaret Sanger's concerns regarding access to contraception among the poor and people of color are still evident today. As one author complained, "[t]he use of the term 'pro-choice' overstates the degree of choice that many women possess when making reproductive health decisions, because the term ignores the limitations to choice caused by financial constraints for women living in poverty."²⁹² Fortunately, Planned Parenthood helps alleviate the financial barrier to contraception by providing health care at little or no cost to patients.²⁹³ Three quarters of the Planned Parenthood's health care center clients have incomes at or 150 percent of the federal poverty line.²⁹⁴ For example, in New Jersey, the average Planned Parenthood patient is a

288. Planned Parenthood, *Planned Parenthood by the Numbers*, Planned Parenthood, *Planned Parenthood by the Numbers*, (October 2011), http://www.plannedparenthood.org/files/PPFA/PP_by_the_Numbers.pdf (last visited Apr. 5, 2012).

289. *Id.*

290. Mears, *supra* note 2.

291. Rebecca Traister, This is what "Pro-Life" means?, *SALON*, (Feb. 18, 2011, 2:53:03 PM), http://www.salon.com/2011/02/18/traister_speier_abortion/.

292. Brandi Leigh Jones, *Whose Choice? Exploring the Need for Greater Class-Consciousness Within the Reproductive Rights Movement*, 32 *HAMLIN J. PUB. L. & POL'Y* 1, 5 (2010).

293. See Elizabeth Crowley, *Rally Raises Support for Planned Parenthood*, *THE DAILY CAMPUS* (Mar. 3, 2011, 9:03 PM), <http://www.dailycampus.com/news/rally-raises-support-for-planned-parenthood-1.2044862> (discussing Planned Parenthood's sliding payment scale based on the patient's income). See generally Breena M. Roos, Note, *The Quest for Equality: Comprehensive Insurance Coverage of Prescription Contraceptives*, 82 *B.U. L. REV.* 1289 (2002) (detailing the inequality in healthcare costs for women).

294. Planned Parenthood, *Planned Parenthood by the Numbers*, *supra* note 288.

low-income employed woman between the age of twenty and twenty-four, is ineligible for Medicaid, and lacks health insurance.²⁹⁵ Furthermore, “[seventy-three] percent of Planned Parenthood clinics are located in rural or underserved locations.”²⁹⁶

Upper and middle class women also require contraception services; however, they have better access to such services than their lower income counterparts. For example, the “typical” woman desires two children.²⁹⁷ “This means that she will spend ‘about five years pregnant, postpartum or trying to become pregnant, and three decades—more than three-quarters of her reproductive life—trying to avoid pregnancy.’”²⁹⁸ Although Planned Parenthood primarily serves women in lower income brackets, even high income earning women have something to lose if the organization is shut down, as efforts against contraception and abortion in general could strengthen. Consequently, attacks on a woman’s reproductive rights and health care have an effect on sexual equality.²⁹⁹

Furthermore, eighty-three percent of Planned Parenthood’s patients receive services meant to prevent unintended pregnancy.³⁰⁰ “About half of all pregnancies in the United States each year—more than three million—are unintended. By age 45, more than half of all American women will have experienced an unintended pregnancy, and about one-third will have had an abortion.”³⁰¹ Abortion rates are even higher amongst those in lower income brackets, often due to the cost of birth control. “Forty-two percent of women obtaining abortions in 2008 reported family incomes that qualified them as poor, and an addi-

295. Flanagan & Sangree, *supra* note 11; Siegel, *supra* note 45, at 825. “Protecting abortion as an equality right would give poor women access to safe abortions, and free all women from the indignities of asking ‘the man’ for permission not to bear a child.”

296. Robertson, Fact Check, *supra* note 281.

297. Motro, *supra* note 179, at 922 (citing Facts on Publicly Funded Contraceptive Services in the United States, GUTTMACHER INST., available at http://www.guttmacher.org/pubs/fb_contraceptive_serv.pdf, (last visited Dec. 4, 2010)).

298. *Id.*

299. See generally Sylvia A. Law, Rethinking Sex and the Constitution, 132 U. PA. L. REV. 955, 963 (1984) (contending that the abortion debate should be viewed in a sexual equality framework).

300. Planned Parenthood, Planned Parenthood by the Numbers, *supra* note 288.

301. Motro, *supra* note 179, at fn. 17 (citing Facts on Publicly Funded Contraceptive Services in the United States, GUTTMACHER INST., available at http://www.guttmacher.org/pubs/fb_contraceptive_serv.pdf, (last visited Dec. 4, 2010)).

tional [twenty-seven percent] were low income.”³⁰² Moreover, three quarters of American women who have an abortion do so because they cannot afford the costs of raising a child.³⁰³ Unintended pregnancy is costly. It is estimated that unintended pregnancy cost nearly \$5 billion in 2002 alone.³⁰⁴ In the same year, contraceptive use was estimated to save \$19.3 billion.³⁰⁵ Statistical estimates reveal that Planned Parenthood averts 612,000 unintended pregnancies each year, and prevents 291,000 abortions each year.³⁰⁶ Consequently, every dollar spent on family-planning services saves \$4 in the future for Medicaid expenses.³⁰⁷

Regardless of one’s political or philosophical views, contraception plainly prevents abortion. In a New York Times piece, Nicholas D. Kristof stated:

That’s one of the paradoxes in the abortion debate: The White House frequently backs precisely the policies that cause America to have one of the highest abortion rates in the West. Compared with other countries, the U.S. lags in sex education and in availability of contraception—financing for contraception under the Title X program has declined 59 percent in constant dollars since 1980—so we have higher unintended pregnancy rates and abortion rates.³⁰⁸

Without access to affordable birth control, women would be more likely to seek abortions, as they have since before Margaret Sanger’s time. Further, illegal abortions are naturally more

302. Rachel K. Jones et al., Characteristics of U.S. Abortion Patients, 2008, GUTTMACHER INST., 8 (May 2010), available at <http://www.guttmacher.org/pubs/US-Abortion-Patients.pdf>.

303. Jones, *supra* note 292, at 8 (citing Facts on Induced Abortions in the United States, GUTTMACHER INST., http://www.guttmacher.org/pubs/fb_induced_abortion.html (last visited Dec. 4, 2010)).

304. Madison Park, Birth Control Should Be Fully Covered Under Health Plans, Report Says, CNN, July 19, 2011, <http://www.cnn.com/2011/HEALTH/07/19/birth.control.iom/index.html>.

305. *Id.*

306. Planned Parenthood, Planned Parenthood by the Numbers, *supra* note 288. See also Center for Reproductive Rights, The Bush Global Gag Rule: A Violation of International Human Rights (2000), http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_bp_bushggr_violation.pdf. Preventing abortion is a laudable goal. The Center for Reproductive Rights Reported that “[o]f the 40 to 60 million abortions that take place annually, at least 20 million are performed under unsafe, illegal conditions and up to 50% of these women require follow-up gynecological care.” *Id.* at 5. Further, “[m]illions suffer permanent physical injuries, and at least 78,000 women die. Most of these deaths are preventable, and occur in countries where access to abortion is highly restricted or illegal altogether.” *Id.*

307. Flanagan & Sangree, *supra* note 11.

308. Nicholas D. Kristof, Beyond Chastity Belts, N.Y. TIMES, May 2, 2006, at A25.

likely to be dangerous and life-threatening to a woman's health.³⁰⁹

A recent report by the Institute of Medicine, an independent nonprofit organization, indicates that birth control, reproductive health services, and related education should be accessible "so that women can better avoid unwanted pregnancies and space their pregnancies to promote optimal birth outcomes."³¹⁰ The report advised that birth control, sterilization, and sex education should be covered by health insurance plans without any additional co-pay from the patient.³¹¹ A 2001 survey found that half of all American pregnancies were unintended.³¹² Further, "women who have unintended pregnancies are more likely to have little or no prenatal care, and engage in risky behaviors such as smoking, drinking or experience domestic violence."³¹³ Moreover, birth control is useful for spacing out births.³¹⁴ As such, the American Congress of Obstetricians and Gynecologists, the American Academy of Family Physicians, along with the American Public Health Association, have each recommended the use of contraceptive services as part of women's preventative care.³¹⁵ This view also appears to be supported by most Americans. According to Planned Parenthood, seventy-one percent of American voters, including seventy-two percent of Republican women, support health care plans that encompass birth control without a co-pay.³¹⁶

The restriction of contraceptive information can result in negative consequences as evidenced by the after effects of the Comstock Law.³¹⁷ Planned Parenthood has long contended that

309. See generally LAURA R. WOLIVER, *THE POLITICAL GEOGRAPHIES OF PREGNANCY* 90-92 (2002) (discussing illegal abortion).

310. Park, *supra* note 304.

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. Planned Parenthood, Tea Party Republicans' Latest Attack on Women's Health and Birth Control, (Nov. 2, 2011), <http://www.plannedparenthood.org/about-us/newsroom/press-releases/tea-party-republicans-latest-attack-womens-health-birth-control-38222.htm>

317. See generally Nicole Phillis, When Sixteen Ain't So Sweet: Rethinking the Regulation of Adolescent Sexuality, 17 *MICH. J. GENDER & L.* 271, 296 (2011) (detailing the ineffectiveness of abstinence-only education); see generally Edi C. M. Kinney, Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS, 21 *BERKELEY J. GENDER L. & JUST.* 158, 163 (2006) ("Critics of the

the global gag rule does not work.³¹⁸ The gag rule “prohibited foreign family planning agencies from receiving U.S. funding if they provide, counsel, refer, or lobby for abortion services, even with their own funding.”³¹⁹ This rule was first instituted during the Reagan administration, but President Obama recently rescinded the rule.³²⁰ Further, the organization claims that restricting health care actually backfires.³²¹ A new study published by the World Health Organization showed that abortion rates in Africa increased while the global gag rule was in effect.³²² Latanya Mapp Frett, Vice President for the Global, Planned Parenthood Federation of America, said, “Restricting access to providers of comprehensive reproductive health services does not reduce the need for abortion. ‘It drives poor women to risk death and injury by seeking unsafe abortion care from unskilled providers.’”³²³

Many anti-abortion advocates suggest that, rather than utilizing Planned Parenthood clinics, women can still utilize crisis pregnancy centers.³²⁴ Although this may provide a potential alternative for pregnant women, such centers generally do not provide contraceptive services or other preventative health care services. Moreover, some women also report dissatisfaction with pseudo-Planned Parenthood alternative “counseling” clinics.³²⁵

extended global gag orders argue that socially conservative policies in foreign aid and programming undermine the development of a robust civil society, impede the democratic process, and operate to limit the participation of women and other marginalized groups in society.”).

318. Planned Parenthood, *Planned Parenthood Sobered but not Surprised by New Study on Devastating Impact of Global Gag Rule*, Sep. 29, 2011, <http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-sobered-but-not-surprised-new-study-devastating-impact-global-gag-rule-38014.htm> [hereinafter *Planned Parenthood Sobered but not Surprised*]. “Short periods between pregnancies have been associated with an increased risk of higher mortality for children under age 5, low birth weight, preterm births, stillbirths, miscarriages, and maternal death.” Park, *supra* note 304.

319. Planned Parenthood, *Planned Parenthood Sobered but not Surprised*, *supra* note 318.

320. *Id.*

321. *Id.*

322. *Id.* “Authors Eran Bendavid, Patrick Avila, and Grant Miller, all of Stanford University, reviewed demographic and health surveys of 20 African nations and found abortion rates increased in countries most affected by the U.S. foreign aid policy. The researchers compared women’s likelihood of having had abortions for years when the global gag rule was in place and compared those odds to years when the policy had been lifted.” *Id.*

323. *Id.*

324. Tan, *supra* note 227.

325. Katie Stack, *When I Needed Help, I Got Propaganda*, N.Y. TIMES, Oct. 6, 2011, at A35.

Such centers “portray themselves as nonpartisan health and counseling clinics, but in fact they oppose abortion, and sometimes even family planning, and push a political agenda on vulnerable women.”³²⁶ Further, a Congressional inquiry revealed that eighty-seven percent of “crisis pregnancy centers” provide deceptive or disingenuous medical information.³²⁷ Despite the study, the government has given more than \$9.3 million in grants to these centers.³²⁸

CONCLUSION

Perhaps some things never change. The Planned Parenthood organization remains controversial, and the recent attacks on Planned Parenthood bear a striking resemblance to previous attacks on the organization, dating back to its founding in the early twentieth century. Dr. Joseph B. Stanford, who was appointed by President Bush in 2002 to the Federal Drug Administration’s Reproductive Health Drugs Advisory Committee, wrote:

Sexual union in marriage ought to be a complete giving of each spouse to the other, and when fertility (or potential fertility) is deliberately excluded from that giving I am convinced that something valuable is lost. A husband will sometimes begin to see his wife as an object of sexual pleasure who should always be available for gratification.³²⁹

Dr. Stanford wrote that essay in 1999, but the words sound remarkably similar to the 1919 rhetoric used to support the Comstock law.³³⁰ Interestingly, what has changed is the political composition of attackers. The Republican Party developed Title X, a provision that is now being vigorously attacked by the party’s next generation.³³¹

Perhaps it is not surprising now that the anti-Planned Parenthood faction has gained so much speed given the ostensible return to traditional moral ideology amongst some Ameri-

326. *Id.*

327. *Id.*

328. *Id.* Moreover, despite the studies, South Dakota recently passed legislation that would have forced women seeking abortions to acquire counseling at such centers, which are actually run by anti-abortion activists, rather than necessarily trained medical professionals. Targeting Women, N.Y. TIMES, Aug. 30, 2011, at A22. However, a federal judge blocked the provision, along with a 72-hour waiting period for abortion services, noting the unconstitutionality of the law. *Id.*

329. Shorto, *supra* note 231.

330. *See id.*

331. Lepore, *supra* note 4, at 55.

cans. However, a return to Victorian values would not provide for the contemporary health care needs of women. As Margaret Sanger declared in 1914, the "first step towards getting life, liberty or the pursuit of happiness for any woman is her decision whether or not she shall become a mother."³³² If the organization ceased to exist, women would lose a valuable mechanism for seizing control of their bodies and health. *New York Times* columnist Gail Collins keenly noted, "[t]he people trying to put Planned Parenthood out of business do not seem concerned about what would happen to the 1.85 million low-income women who get family-planning help and medical care at the clinics each year. It just doesn't come up. There's not even a vague contingency plan."³³³ Indeed, there is no contingency plan to meet the unique health needs of women if Planned Parenthood is essentially run out of town.³³⁴

The rhetoric of those opposed to Planned Parenthood and contraceptives in general seems to be one of disgust towards reproductive rights and the women's rights movement. Further, while Planned Parenthood opponents focus on abortion, they fail to see the positive effects that the organization has had on the lives of women. Ideally, funding will remain intact in order to allow the organization to continue functioning at its current level. Obviously, the government cannot fund every organization. However, funding Planned Parenthood makes financial sense since it saves money in the long run for taxpayers. Furthermore,

332. ALEXANDER SANGER, *BEYOND CHOICE: REPRODUCTIVE FREEDOM IN THE 21ST CENTURY* 71 (2004).

333. Collins, *supra* note 251. See also Eckholm, *supra* note 253 ("In an e-mailed response, Lila Rose, the president of Live Action, did not say how Planned Parenthood's birth control services could be replaced but wrote: 'The answer for poor women is not a corporation that is happy to help sex traffickers and that has enabled the sexual abuse and exploitation of countless girls and young women.'").

334. See Hammell, *supra* note 32, at 177-78 ("[W]omen face greater risks from sexually transmitted infections (STIs) than men do, putting their health at risk and giving them a greater need for testing, prevention, and treatment. It is suspected that herpes and HIV are more easily transferred from men to women rather than from women to men. Further, STIs in women have significant adverse consequences that men do not face, including infertility, cancer, pelvic inflammatory disease, and infant death or stillbirth. For example, human papillomavirus (HPV) infection in men can lead only to warts; in women, the same virus can also lead to cervical cancer. Similarly, chlamydia in men usually leads only to itching, burning, and discomfort; in women, untreated chlamydia can also cause pelvic inflammatory disease (PID). PID is an infection of the fallopian tubes and other reproductive organs, and can lead to infertility or ectopic pregnancy. Because of the extreme consequences that can result from STIs for women, they have a greater need for STI tests and reproductive health checkups.").

for many women, Planned Parenthood is their only affordable source of healthcare. Given that the organization provides healthcare services in a relatively cost-effective manner, it should be valued. The preventative healthcare provided by Planned Parenthood saves money and lives. As Martha Nussbaum wisely noted, “[d]isgust has two opponents today, each increasingly powerful in social, political, and even legal life: respect and sympathy.”³³⁵ A greater respect is needed for the health needs of women, along with sympathy for those that are limited in contraceptive options and healthcare by their financial status.

335. MARTHA C. NUSSBAUM, *FROM DISGUST TO HUMANITY: SEXUAL ORIENTATION AND CONSTITUTIONAL LAW* xv (2010).

