WITHOUT CONSCIENCE: A CRITIQUE OF PHARMACIST REFUSAL CLAUSE RHETORIC

by

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Abstract

The thesis analyzes the political and scientific rhetoric used to enact pharmacist refusal clauses. I examine how refusal clauses are rhetorically framed in politics as well as the "scientific" rhetoric advocates use to generate support for these laws. Additionally, I highlight the consequences these clauses have for women.

Chapter one focuses on the political discourse of refusal clauses. I develop an analysis of the phrase "conscience" versus "refusal" clause. I expose how pharmacists and refusal clause advocates make discrimination claims using Cindy Patton as a theoretical framework. Finally, I examine "refusal narratives" from women who have been denied contraceptives by pharmacists.

The second chapter analyzes "scientific" rhetorical strategies. Refusal clause advocates rhetorically reclassify contraceptives as an abortion method. I will discuss how this strategy of reclassification has wide implications on public policy.

In the conclusion I present the negative consequences refusal clauses have on women.

PROLOGUE: MY OWN INTRODUCTION TO RHETORICAL STRATEGIES

One evening in the fall of 2006, during my first week of graduate school at the University of Arizona, I sat down at my computer to check my e-mail and found the most misogynistic letter I have ever read waiting for me in my inbox.

I had just moved to Tucson and was attempting to acclimate to a new city while simultaneously dedicating myself to a heavy course load full of complicated feminist theory. All too quickly, the excitement and passion I felt for what I was studying came to a crashing halt thanks to just one email.

As an undergraduate at Ohio University, I wrote my senior thesis on refusal clauses and how these laws negatively affected women. Before moving across the country, I ran into an old family friend. I told her I was entering a Masters program in Women's Studies and that I was going to focus on reproductive rights. She expressed an interest in my undergraduate paper and asked me to email it to her. I could not have known that she would promptly forward my paper on to a priest living in the heart of the Bible belt, asking him to give me the moral guidance I obviously lacked. I felt tricked, humiliated, and infuriated by her actions. Moreover, I was shocked by the Priest's response. He introduced himself (I will refer to him as Priest X in my thesis to protect his identity), apologized for his "coarseness," and assured me his intentions were not to offend me as a researcher. He claimed he was responding "in [his] own style and at [his] own cost in time and effort," to my discourse and not to me as a person. He then wrote that he hoped his words would inspire me to "guide" my research in the "right direction," blessed me in my "search for the truth," and proceeded to rhetorically rip my paper apart.

This was my unsympathetic introduction to pro-refusal clause discourse and rhetoric. Priest X pulled out all the stops (both basic and sophisticated): using the term "conscience" as opposed to "refusal;" calling *potential* fetuses "innocent human beings;" minimizing the effects of refusal clauses on women as mere "inconveniences;" stereotyping the women who use emergency contraception as "drunks" and "sorority girls" who "banged the local frat rat;" equating forced pharmaceutical participation to WWII concentration camps; reclassifying contraceptives as abortifacients; providing quasi-scientific studies and clearly biased sources such as Priests For Life. All this, of course, was not without patronizing personal attacks (which I should point out Priest X promised not to do in his introduction) to "Grow the hell up!" "Use your brain and get a clue!" and irrational claims that the reason I want to be financially independent is because my parents do not love me enough to provide for me economically.

Many of the strategies Priest X used are not limited to his own personal strategic tool kit but are instead representative of a broader framework of discourse, borrowed by refusal clause advocates from the well established and politically powerful anti-abortion movement. More specifically, he does not stand alone in his denouncement of women's reproductive rights nor is he unaided in his argument that places white, middle class, and (mostly) male pharmacists as a minority in need of human rights and laws to protect them.

In a way, my thesis is a direct response to Priest X's email. In his introduction, he asked "if I offend you please let it inspire you to research what I'm saying." And this is exactly what my thesis does. I have researched what he says as well as the way in which

he says it, and why he is saying it. My thesis analyzes and exposes the refusal clause proponents' discourse and rhetorical strategies.

INTRODUCTION

In this thesis I analyze the political and scientific rhetoric used to enact pharmacist refusal clauses. I examine how refusal clauses are rhetorically framed in politics as well as the "scientific" rhetoric advocates use to generate support for these laws. I also explain what is at stake when refusal clauses are enacted into law and highlight the consequences these clauses have for women and their reproductive rights.

Pharmacist refusal clauses differ from state to state but generally they lawfully enable pharmacists to refuse to dispense medication (prescription or non-prescription)[1]. Many various forms of refusal clauses have been proposed differing in specifics but they typically target contraceptives and RU-486.[2] Essentially, pharmacist refusal clauses attempt to protect pharmacists from legal liability and disciplinary, discriminatory, or recriminatory actions that could result from "conscientious" objection.[3] Pharmacists may feel an objection to dispensing medication they do not morally agree with, such as birth control pills or RU-486, and could potentially face a number of consequences as a result from their moral objection. First, they could be terminated or demoted from their place of employment. Second, they could face potential tort liability as the pharmacists owe a duty of reasonable care to their patients. Finally, a woman may sue the pharmacists or his/her pharmaceutical establishment for emotional pain and suffering as well as hold the

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[1] As of August 2006, emergency contraception is available for women and men 18 years of age or older over the counter. Due to the age requirement, emergency contraception is still kept behind the counter. Upon request, a pharmacist would need to check if the person is of age and hand the medication over.
[2] Some pharmacist refusal clauses additionally cover drugs that would be dispensed in large quantities used for assisted suicide.
[3] Miller, Jed. "The Unconscionability of Conscience Clauses: Pharmacists Consciences and Women's Access to Contraception." Journal of Law-Medicine 16. (2006): 237.

pharmacist liable for wrongful birth, wrongful pregnancy, or wrongful conception claims.[4] While there are a number of consequences for refusing pharmacists, the consequences are much greater for women when their access to contraception is taken from them.

Although refusal clauses are more commonly known within the media, legal arenas, and by the general population as "conscience clauses," I will use the term refusal for several reasons. The term "conscience clause" highlights the role of the pharmacists and his moral "conscience" as if that is really what is at stake in the debate in opposition to women's access to contraceptives. Moreover, it is part of the refusal clause advocates rhetorical strategy and I refuse to perpetuate their conservative discourse and the associated imagery. In chapter 1 of my thesis, I develop a deeper analysis of these opposing terms.

Additionally, to help the reader, I will define and sort out RU-486 and emergency contraception as the two are often classified as one in pro-life rhetoric. Because of this popular misconception, it is important to note the medical differences between the two drugs which are often at the center of the refusal clause dispute. While RU-486 *terminates* an existing pregnancy and is medically classified as a *chemical abortion*, emergency contraception *prevents* a woman from becoming pregnant and is medically classified as a *contraceptive*. Medically, both emergency contraception and RU-486 are safer alternatives to surgical abortion because the oral administration removes the need for an invasive surgical procedure. There is no question that RU-486 is, medically,

[4] Miller, 3.

scientifically, and legally, an abortifacient. However, to pro-refusal clause pharmacists who define life as fertilization, emergency contraception becomes reclassified as a method of abortion. I will analyze the implications of this mis-classification in chapter two.

It should also be noted that the 1972 Supreme Court case of Eisenstat v. Baird, all women have a legal right to contraception. Previous to this decision, the Griswold federal court case stated married couples were entitled to contraceptives.[5] "If the right of privacy means anything," Justice William J. Brennan, Jr. wrote, "it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to whether to bear or beget a child."[6] So exactly how are refusal clauses becoming state laws?

THE HISTORY OF REFUSAL CLAUSES

Refusal clauses first emerged in 1973 as a response to the U.S. Supreme Court ruling legalizing abortion. The landmark decision of *Roe v. Wade* sent shockwaves across the country, making anti-abortion individuals cringe while the reproductive freedom advocates celebrated a victory for women's rights. The decision to legalize abortion created widespread fear among many health care providers as physicians who did not agree with abortion worried they would be forced to participate in such reproductive procedures despite their moral or religious beliefs.

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[5] Griswold v. Connecticut, 381 U.S. 479 (1965)
[6] Eisenstadt v. Baird, 405 U.S. 438 (1972).

In the 1973 district court case *Taylor v. St. Vincent's Hospital*, a couple successfully challenged the refusal of St. Vincent's Hospital in Billings, Montana to perform a tubal ligation on Ms. Taylor immediately after she gave birth. The district court issued an injunction against a Catholic hospital preventing it from refusing to allow a sterilization procedure to be performed in its facility.[7]

Following the *Taylor* decision, physicians called for protection from the law. Senator Frank Church, a Democrat from Idaho, responded at the federal level with the first refusal clause enacted into law. The original focus of refusal clauses was to protect health care providers, giving them the right to refuse participation in abortion or sterilization procedures based on religious or moral grounds. The "Church Amendment" states no "individual" or "entity" receiving federal funds would be required "to perform or assist in the performance of a sterilization procedure or abortion [or] to make its facilities available" for these procedures if doing so "would be contrary to religious beliefs and moral convictions"[8]. By the end of 1974 more than half of the United States had adopted state refusal clauses and by the end of 1978, nearly all states had some type of refusal clause variation.[9] Most of these laws remain intact today.

Once refusal clauses stretched across the nation, there was a lull in legal activity concerning these laws as many health care providers felt their refusal rights were fully protected. Because of their moral and/or religious objections, health care providers were no longer "forced" to participate in abortions or sterilizations.

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[7] Smearman, Claire A. "Drawing the Line: The legal, ethical and public policy implications of refusal clauses for pharmacists." Arizona Law Review Vol. 48. (2006): 468-539.
[8] Blagojevich, Rod and Karen Pearl. "In Search of Plan C." The Economist Vol. 375. (2005): 25-27.
[9] Feder, Jody. The History and Effect of Abortion Conscience Clause Laws. Washington D.C.: Congressional Information Service Library of Congress, 2004. 2.

In the mid-1990's, technological and medical advancements led religious advocates to reconsider the issue of refusal clauses.[10] In her article, "Pharmacists Refusals and Third-Party Interests: A Proposed Judicial Approach to Pharmacists Conscience Clauses," Lora Cicconi explains, "Advances in medical technology such as in vitro fertilization and increased patient requests for assisted suicide fueled a new debate about the expansion of refusal clauses beyond the abortion and sterilization context for physicians and hospitals."[11]

State governments began to pass new or expand existing refusal clauses that were major departures from the original Church Amendment of 1974 by widening their net to include new areas of health care. Refusal clauses were no longer limited to abortion and sterilization but to other procedures and services such as in vitro fertilization, doctor-to-patient advice, insurance coverage, and prescription distribution. The term "health care provider" has also expanded. Pushes have been made for the term to even include check out clerks at the local Wal-Mart.[12]

Two major Food and Drug Administration (FDA) approvals in the mid-1990's helped resurface refusal clauses in the United States and pushed the controversial topic into pharmacies. Mifepristone (RU486 or—as anti-abortion groups prefer to call it—the "abortion pill") was approved in 1996. Just two years later, emergency contraception

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[10] Cicconi, Lora. "Pharmacists Refusals and Third-Party Interests: A Proposed Judicial Approach to Pharmacists Conscience Clauses." UCLA Law Review Vol. 54. (2007): 709-749.
[11] Ciconni, 710.
[12] Page, Cristina. How the Pro-Choice Movement Saved America: Freedom, Politics, and the War on Sex. New York: Basic Books, 2006.

(EC) was approved as safe and effective and made nationally available by prescription with in one month of the FDA approval.[13]

Immediately afterward, stories of pharmacists refusing to fill women's prescriptions started to emerge in the headlines. Companies such as CVS and K-Mart terminated pharmacists who declined to fill prescriptions for contraceptives. In 1998, 45 out of the 50 states did not have laws[14] protecting an employee pharmacist from being fired for refusing to dispense contraceptives.[15]

In response, pharmacists who had moral or religious objections to distributing contraceptives banded together, and demanded an expansion of existing refusal clause legislation to include their rights as pharmacists.

Some state legislators are introducing bills that explicitly offer pharmacists the right to refuse to dispense contraceptives. Pharmacist refusal clauses protect pharmacists from legal liability and disciplinary, discriminatory, or recriminatory actions that could result from conscientious objection.[16] Four states—Arkansas, Georgia, Mississippi, and South Dakota—have passed specific pharmacist refusal laws allowing a pharmacist to refuse to dispense birth control prescriptions without fear of being fired or sued for damages. For example, the South Dakota refusal clause reads:

> No pharmacists may be required to dispense medication if there is reason to believe that the medication would be used to: (1) Cause an abortion; or (2) Destroy an unborn child… No such refusal to dispense medication

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[13] Page, 103. In August of 2006, emergency contraception was approved as an over the counter (OTC) product.
[14] The reference to laws here protecting pharmacists from being fired refers not to pharmacy specific refusal clause laws, but to broad widely sweeping laws that would categorize pharmacists within that law.
[15] Brauer, Karen. "Kmart fires Pharmacist for not distributing abortifacient birth control methods." (2007) Available at <http://www.gargaro.com/kmart/>.
[16] Miller, 242.

> pursuant to this section may be the basis for any claim for damages against the pharmacist or the pharmacy or the basis for any disciplinary, recriminatory, or discriminatory action against the pharmacists. (S.D. CODIFIED LAWS § 36-11-70)

Under South Dakota Codified Laws § 22-1-2, the "unborn child" in the refusal clause is defined as "an individual organism of the species homo sapiens from fertilization until live birth."

The broad language of other refusal clauses that are not pharmacy-specific may also implicitly protect pharmacists.[17] These can be found in, but not limited to, states such as Colorado, Florida, Maine, and Ohio. Tennessee's Code § 68-34-104 allows physicians or any agent of such an entity to refuse to offer contraceptive services, supplies, or information if it interferes with a moral or religious belief. Maine's even broader legal definition gives physicians and "agents of medical and related facilities" the right to refuse to provide family planning services when such actions would interfere with moral or religious beliefs.[18] In a flurry to create refusal clause state legislation specific to pharmacists, there have been at least seventy-eight attempts across the nation since 2005.[19] While pharmacists' refusal and the spread of state pharmacist refusal clauses can not be considered an epidemic, it is without a doubt a dangerous trend that threatens women's reproductive rights.

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[17] Miller

[18] Pharmacist Conscience Clauses: Laws and Legislation. Revised March 2007. National Conference of State Legislatures. Accessed March 31, 2008. <http://www.ncsl.org/programs/health/conscienceclauses.htm>.

[19] Pharmacist Conscience Clauses: Laws and Legislation. Revised March 2007. National Conference of State Legislatures. Accessed March 31, 2008. <http://www.ncsl.org/programs/health/conscienceclauses.htm>.

CONFLATING RU-486, EMERGENCY CONTRACEPTION, AND BIRTH CONTROL

Despite the very different functions of RU-486[20] and emergency contraception, the two are often conflated, classified, or confused as one in the same—often in conjunction with hormonal birth control pills. RU-486 is medically classified as an abortifacient, terminating an existing pregnancy. Emergency contraception, on the other hand, is *not* classified as an abortifacient and instead *prevents* a woman from becoming pregnant. Both are safe alternatives to a surgical abortion.

Despite current medical definitions, many pharmacists believe emergency contraception is a form of abortion. They see RU-486 and contraception as one. There is no question that mifepristone is, medically, scientifically, and legally, an abortifacient. However, to anti-abortion pharmacists, emergency contraception (along with birth control pills, because of their similar functions) is also classified as a method of abortion because it prevents a fertilized egg from implanting in the uterus. To them, life begins at fertilization. To medical professionals, life begins at implantation.

In other instances, pharmacists may lack the knowledge or training to determine the difference between emergency contraception and RU-486. A 2004 New Mexico study demonstrated that the majority of pharmacists sampled could not clarify the difference between emergency contraception and RU-486 or even properly explain how emergency contraception works.[21] In "Objections, Confusion Among Pharmacists Threaten Access

[20] RU-486 is commonly known as mifepristone or "the abortion pill."
[21] Borrego, Matthew E., Jennifer Short, Naomi House, Gireesh Gupchup, Rupali Naik, and Denise Cuellar. "New Mexico Pharmacists' Knowledge, Attitudes, and Beliefs Toward Prescribing Oral Emergency Contraception." Journal of the American Pharmacists Association Vol. 46, No. 1. (2006): 33-43.

to Emergency Contraception," Susan A. Cohen describes how the misunderstanding that emergency contraception are abortifacients has been used to implement refusal clauses: "This confusion has impeded not only the availability of [emergency contraception] vis-à-vis pharmacies but also the formulation of responsible public policy to address issues of pharmacists conscience."[22] By muddying the science surrounding contraceptives, refusal clauses are more likely to be supported and thus enacted. This can have major public policy implications as well as huge consequences for women.

The real life consequences of refusal clauses for women vary from woman to woman depending on her socio-economic status, age, race, transportation, geographic location, among other factors. Consequences can range from the inconvenience of taking the prescription to another pharmacy to an unwanted pregnancy or an abortion. In the conclusion of my thesis I will delve more deeply into a discussion of the specific consequences refusal clauses have for women.

The underlying factor is that the woman is not in control of her own reproductive decisions. Implied in refusal clauses is the failure to take seriously the moral independence of women as free and rational agents able to make responsible decisions about their reproductive capacities.[23] Pharmacist refusal clauses ignore a woman's right to privacy and their own ability to make responsible decisions. Additionally, refusal clauses silence women's voices who wish to avoid the consequences of an unintended pregnancy.

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[22] Cohen, Susan. "Objections, Confusion Among Pharmacists Threaten Access to Emergency Contraception." The Guttmacher Report on Public Policy June (1999): 1-3.

[23] Smearman, 501.

METHODS

Refusal clause advocates give drugs that have separate functions the same rhetorical meaning of abortifacient. Drugs that were once separate become mixed together in a clash of differing definitions. Refusal clauses themselves vary rhetorically; some use specific pharmaceutical language while others can be interpreted differently due to the broad rhetorical content. Moreover, specific words or terms are used to get these clauses in place.

This is my attempt to unravel the "war of words" surrounding refusal clauses in the United States by analyzing and exposing the rhetorical strategies used by refusal clause advocates. Several research questions remain central to my analysis: What rhetorical strategies are being used to get refusal clauses in place? How are these strategies being implemented? And what are the consequences of the strategic conservative rhetorical strategies for women?

In order to address these questions, my primary method of analysis is a close reading of relevant texts and discourse analysis. I draw my interdisciplinary analysis from legal sources, governmental and organizational websites, scientific documents, and feminist theoretical texts. Currently, no social science scholarly writing has been published specifically on the rhetorical strategies surrounding refusal clauses. This means many of the texts I am using do not directly address my project. I reach my theoretical conclusions about the rhetorical strategies surrounding refusal clauses through a feminist rhetorical analysis. A feminist perspective allows me to expose conservative rhetorical

strategies while I simultaneously give voice to women's real life experiences and consequences that refusal clauses all too frequently silent.

Chapter one focuses on the legislative and political discourses of refusal clauses. I develop an analysis of the phrase "conscience clause" versus "refusal clause." By examining what kinds of images these phrases evoke, the varying intentional consequences of both camps (pro/anti) can be extracted. I also provide a discussion of pharmacists and refusal clause advocates making discrimination claims using Cindy Patton as a theoretical framework. Finally, this chapter examines what I call "refusal narratives" from women who have been denied birth control or emergency contraceptives by pharmacists.

The second chapter analyzes rhetorical strategies surrounding science. The close tie with the pro-life movement will become apparent through a discussion on how refusal clause advocates rhetorically reclassify contraceptives as an abortion method. I will discuss how this strategy of reclassification has wide implications on public policy.

In the conclusion I present the negative consequences refusal clauses have on women. I examine how these consequences can be direct (such as an unintended pregnancy) and other times they are more subtle (such as the proliferation of racial implications in pharmaceutical decisions).

CHAPTER 1
POLITICAL RHETORIC

RHETORIC

Public discourse is composed of rhetoric. The legislators, governors, judges, organizational members, and individuals who speak in public have their own political agendas at work and use language to alter or shape the public's understanding of reality. They are seeking to persuade listeners of something in their own interest. The method of convincing requires not only that a specified policy be accepted but also that a particular vocabulary be incorporated into the public repertoire. Celeste Michelle Condit in her book *Decoding Abortion Rhetoric: Communicating Social Change* (1990) explains, "These meanings are reflected, reproduced, and revised throughout the social formation at various levels—in the law, in cultural artifacts, in social and economic practices, and in individual lives."[24]

Public rhetoric used in newspapers, television programs, speeches, websites, and laws has important social functions and strong social force, as it is the most immediate foundation for social meanings. Controversial issues tend to pit groups against each other in rhetorical debates about meanings, definitions, classifications, and vocabularies. The debate surrounding refusal clauses is no exception.

In this chapter I will analyze the use of rhetoric as a strategy for both refusal clause proponents and opponents. I argue that by using a rights discourse, pharmacists

[24] Condit, Celeste Michelle Decoding Abortion Rhetoric: Communicating Social Change New York: University of Illinois Press, 1990. p. 6-7.

who agree with the enactment of refusal clauses are attempting to emerge as a "minority group," and use human rights and discrimination rhetoric to further these laws. I also will analyze what I call "refusal narratives," which are stories about and told by women who were denied their prescribed contraceptives by a pharmacist.

TERMINOLOGY: "CONSCIENCE" VERSUS "REFUSAL" CLAUSE

The terminology used to describe the refusal clause legislation is not accidental. The rhetoric illustrates the hidden motivations as well as tensions within the controversial debate, which pits religious freedom claims of pharmacists against the reproductive rights of women. Refusal clause proponents have the force and strong rhetoric of the pro-life movement as a backbone for structuring rhetorical strategies since, as Cristina Page points out, "to be pro-life today means to be inside a movement that finds fault with every kind of birth control."[25] Page argues that the pro-life movement has given more thought to rhetorical strategies than the pro-choice movement as seen in their tactical choice to cleverly call themselves pro-life suggesting their opponents are pro-death.[26] Think tanks are formed and are hard at work framing reproductive rights in ways that appeal to people with conservative values. For example, in his handbook *Closed: 99 Ways to Stop Abortion,* Joseph Scheidler, director of the Pro-Life Action League, instructs so called pro-life activists on how properly to speak to the press by advising,

[25] Page, 3.
[26] Page, 3.

"Rarely use the word 'fetus.' Use 'baby' or 'unborn child.'"[27] Once this conservative pro-life discourse is used and disseminated via the media, their values are permanently embedded in discussions surrounding reproductive rights. This same powerful rhetorical stratagem applied to the abortion debate is extended to and repeated within refusal clause terminology. In fact, Page claims that the intensification and perpetuation of rhetoric speaking out against birth control is becoming the heart of the broader pro-life strategy.

Proponents of a law permitting pharmacists to refuse to dispense contraceptives refer to these bills as "conscience clauses." The term "conscience" is, I argue, a very carefully chosen term and a profound strategic move. According to Webster's Dictionary, the word "conscience" can be described in several different ways:

> 1. The inner sense of what is right or wrong in one's conduct or motives, impelling one toward right action.
> 2. The complex of ethical and moral principles that controls or inhibits the actions or thoughts of an individual
> 3. An inhibiting sense of what is prudent[28]

Each description implies a moral and ethical conscientiousness that the individual person, in this case the pharmacist, encompasses as an *inner* part of the self. A conscience is something someone has *inside* of them that *informs* the distinct person exclusively before action is taken of what is right or what is wrong. It can also lead to feelings of remorse if the person completes an action that is against their individual moral values (such as dispensing medications the pharmacist does not ethically agree with such as birth control or emergency contraceptives). As these descriptions entail, the conscience is a very

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[27] Scheidler, Joseph. Closed: 99 Ways to Stop Abortion. Rockford, IL: Tan Books & Publishers, 1994.

[28] Webster's Encyclopedic Unabridged Dictionary of the English Language. New York: Random House, 1996.

personalized, private, and singular part of ones self. Because the conscience is so personal, the term “conscience clause” implies that the law occurs in a very individualistic manner. It becomes an act of one person, the pharmacist. The term signifies that the law is about individual pharmacists and *only* the pharmacists. It makes the power issues of the pharmacist as the gatekeeper and the woman as the petitioner invisible. By highlighting the pharmacist, the phrase ignores the woman, silences her voice, and disregards her reproductive rights, making the pharmacist the most, and only, important part of the equation.

Another function of the term “conscience clause” is that it assigns moral and ethical worth to the pharmacists, while allocating immorality to the woman. The “conscientious” individual represents the good, moral, and the *right* choice. Opposite of “conscience” represents the bad, sinful, cold-blooded, and *wrong* choice. In regards to refusal clauses, the conflicting dichotomous images of the moral “conscience” choice and the immoral “un-conscience” choice are assigned to pharmacist and woman, respectively. In opposition to the “conscientious” pharmacist taking the moral high ground, is the “immoral” woman attempting to obtain contraceptives. The ideology surrounding religious “consciousness” traditionally places the majority of sins on women, particularly centering on women’s bodies. “Conscience clause” rhetoric plays into that idea specifically. The Illinois “Healthcare Right of Conscience Act” appeals to the morality of religion when it defines "Conscience" in Section 3 (e) as meaning “…a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God

among adherents to religious faiths."[29] This legal definition of "conscience" places pharmacists on a moral and ethical pedestal by making an appeal to God. The definition simultaneously implies the immorality of the women and demonizes them for trying to be reproductively responsible.

Overall, the term "conscience clause" has a powerful two-fold rhetorical effect: 1) it highlights the individual nature of the law, placing importance on the pharmacists' rights and making invisible those of the woman; and 2) it assigns pharmacists a conscience and implies women are lacking morality.

In contrast, opponents of the clauses trade in the term "conscience" for "refusal." While the term "refusal" is also strategically chosen in opposition to "conscience clause," it is used less often and is not universally used. Additionally, it is not used as a short title for any clause for the refusal of contraception dispension. Refusal can be defined as:

1. An act of instance of refusing
2. Priority in refusing or taking something[30]

As seen from these definitions, refusal implies *an action* of declining, rejecting, withholding, etc. This action is the pharmacist *refusing* to dispense contraception to a woman.

By choosing the word "refusal," the rights of the woman are brought to the forefront of the debate rather than those of the pharmacist. It reflects the action taken by the pharmacists as well as the impact of the action on a patient trying to obtain access to a safe and legal medication. The term conjures images of the woman being turned away at

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[29] Healthcare Right of Conscience Act. Pub. 745 ILCS 70/1. January1,1998. Stat. 86-1324.

[30] Webster's Encyclopedic Unabridged Dictionary of the English Language. New York: Random House, 1996.

a pharmacy, rejecting her request for contraceptives, implying that decisions regarding a woman's personal freedom are wrongly being infringed upon by pharmacists.

The term "refusal clause" also highlights the obvious power issues at play between a pharmacists and a woman. The term correctly illustrates the pharmacist as the gatekeeper of the needed medication (as well as information on prescriptions) while the woman is depicted as the petitioner. The pharmacist is the active agent with more power and control as he/she has the ability to *refuse* to dispense medication to the passive female customer. Just as the term "conscience clause" depicted women as the immoral agents in the equation, the term "refusal clause" turns the immorality onto the pharmacists. The "autonomous" pharmacist who takes advantage of refusal clauses stands in the way of women's access to basic health care and therefore is the unethical individual—not the woman.

One of the best examples of this war over terminology happened in Wisconsin in April 2005 when eight conservative legislators wrote and proposed Senate Bill 155 which they claimed was a "labor protection bill."[31] The bill which proposed to allow pharmacists to deny women birth control pills was known as the "Pharmacists Conscience Clause Bill." Planned Parenthood of Wisconsin *unofficially renamed* the bill the "Prescription Denial Bill."[32] Despite the futile attempts by reproductive freedom activists to get the term "prescription denial bill" (and the emotionally charged imagery associated with the term) popularized, the phrase "pharmacists conscience clause bill"

[31] Wis. Sen. 155, 111 Leg. 337. (2005).
[32] Lalley, Jacqueline. "I had an abortion" and other ululations." Abortion Under Attack: Women on the Challenges Facing Choice. Ed. Krista Jacob. Emeryville, CA: Seal Press, 2006. 207-220.

was the legal short name for the bill and thus what the media most commonly referred to as SB 155.

This is a national trend. Proponents of refusal clauses have an advantage as their favored terminology—the "conscience clause"—has become universal for legal discussions. For example, Illinois has a "Healthcare Right of Conscience Act." References to "refusal clause" by the media and general public are far less frequent than "conscience clause." Because conservative legislators are proposing these bills, they are the ones who get to name them. As seen in the Wisconsin case, it becomes difficult for refusal clause opponents to put their own political framework on bills that already have such a highly conservatively charged name. Thus, the political term "conscience clause" has emerged as a historical standard, which is a key rhetorical strategy for advocates of refusal clause legislation. Condit explains,

> To the extent that rhetoric is a social process undertaken by interest groups, public rhetoric will always be constituted by spokespersons for particular interests, who recognize that getting those interests legitimated through public acceptance of their vocabulary is advantageous, even essential, to their interests; they will recognize that representing their partisan interests as universal is an essential rhetorical move. [33]

Because of the historical universality of the term "conscience clause" opposed to "refusal clause" in both social and legal arenas, those in favor of refusal clauses are benefiting from the meanings, imagery, and beliefs associated with the terms popularity. On the other hand, opponents of the refusal clauses and—more importantly—women are impaired by the general acceptance of this term. The term "conscience clause" focuses on

[33] Condit, 9-10.

the autonomy of the pharmacists and erases the woman's body, silences her voice, and ignores her reproductive rights. This demonstrates a set of social relations in which women and their bodies are subject to pharmacists (generally male) and patriarchal medical institutions. Page explains, "They call it 'conscience'-based medicine. The conscience, it should be noted, isn't that of the woman patient, who doesn't really factor into this hand-wringing, but that of the immaculate pharmacist, or nurse, or, perhaps, the cashier at your local Wal-Mart."[34]

As previously stated, the term "conscience clause" highlights the pharmacist's rights as opposed to the women's rights. Advocates of refusals clauses are taking full advantage of this discourse by banding together and claiming minority rights by using liberal human rights rhetoric that, ironically, are often used by women to claim reproductive rights.

THE STOLEN LIBERAL TOOLKIT: DISCRIMINATION

In the article, "The Conscience Clause," which appeared in *The American Prospect* in April of 2006, Jaana Goodrich scrutinizes the rhetorical strategies of conscience clause advocates as stolen from the liberal "toolkit" and revamped to accommodate their political agenda. She states,

> We liberals have a lot on our consciences. Who taught the right wing how to use religion for social causes during the Martin Luther King era? Who showed them that discrimination on the basis of race or sex was not something most Americans see as part of the generous bounty of this country? It was us, and now we reap the harvest of all these past

[34] Page, 8.

> successes: The Christian right has stolen our toolkit and is busily using it to demolish the human rights we so laboriously built.[35]

This "toolkit" is the use of liberal human rights rhetoric. These human rights, it should be noted, are not those of women who are trying to responsibly prevent an unwanted pregnancy. Instead the rights that are being protected are those of pharmacists—often at the expense of women.

Again, proponents of refusal clauses have the so called "pro-life" framework of contemporary abortion debates to use. They use the liberal rights discourse, giving fetuses autonomy. Comparable to the discussion regarding terminology, this well-established rights discourse framework and the notion of individualism surrounding fetuses can be replicated and repeated for pharmacists. In either case, by focusing on and allocating autonomy and "rights" to a fetus or a pharmacist, women are displayed as incapable of being an "individual" deserving of rights.[36]

By using terms such as "basic human rights," "injustice," "discrimination," and so on, pro-refusal clause legislators, organizations, and individuals are turning the meaning of discrimination rhetoric on its head. They are appropriating terms that implicitly carry notions of individual autonomy and personhood, and modifying them to fit a political agenda that represents a small proportion of the United States: pharmacists. The population to whom these rights refer to—pharmacists who refuse to dispense birth control or emergency contraceptives—is even smaller. To put this in perspective, there are currently 42 million sexually active women who do not wish to become pregnant and

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[35] Goodrich, Jaana, "The Conscience Clause." The American Prospect 17.1 (2006): 9.
[36] Newman, Karen. Fetal Positions: Individualism, Science, Visuality. Stanford: Stanford University Press,1996.

just 300,000 pharmacists nationwide. 300,000 is then broken down to approximately 60,000 (~20%) pro-life pharmacists who would refuse contraceptives to women if legally covered.[37] A large majority of the American female population (82%) will use birth control pills at some point in their life.[38] Yet this small population of pharmacists becomes a rights-bearing entity.

Refusal clause advocates are attacking the liberal left with their own rhetorical strategies, daring them to be the self-proclaimed "so-called champions of choice"[39] and recognize pharmacists' rights. What is ironic about taking claim over these terms, which generally apply to demographic minorities, is that the majority of pharmacists are white, heterosexual, middle-class, Christian males—hardly a marginal group of individuals.[40]

As an example of the refusal clause proponents "minority rights" rhetorical use, Goodrich cites a bill that was proposed in the state of Missouri. The bill promised pharmacists protection against employment discrimination covering the hiring process, promotion, job assignment, and termination when deciding to invoke their moral or religious beliefs. It states,

> Employers cannot refuse to hire, discriminate against, segregate, or terminate a pharmaceutical professional because of their opposition to any service involving a particular drug or device that they have a good faith belief is used for abortions. [41]

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[37] American Women Are Waiting to Begin Families. December 11, 2002. National Center for Health Statistics. Accessed September 15th, 2007. <http://www.cdc.gov/nchs/pressroom/02news/armiwomen.htm>

[38] Mosher et al. "Use of Contraception and Use of Family Planning Services in the United States, 1982-2002," *Centers for Disease Control Advance Data from Vital and Health Statistics*, no. 350

[39] Zaft, Gordon. Letter. "Customers and pharmacists have rights." The Arizona Citizen. October, 2006.

[40] Borrego et al., 35.

[41] Goodrich, 10. It should also be noted that the term "good faith belief" within this clause is a subjective standard which means the beliefs of the pharmacists do not even need to be reasonable.

Under Title VII of the Civil Rights Act of 1964, if an employer refuses to hire a pharmacist because the person is African American or female, then the employer is discriminating against the potential employee because characteristics such as race, color, religion, sex, and national origin are irrelevant to performing the duties of the job. Title VII also states employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. [42] Refusing to fill a prescription because of religious or moral beliefs *does* impose an undue hardship on the employer as it affects the performance of the job. Goodrich points out that under Missouri's refusal clause, a Christian Scientist who does not believe in conventional medical care could be legally hired as a pharmacist and refuse to dispense any medications at all.[43]

The borrowing of liberal human rights rhetoric can be seen on every level of the debate—from the government, to organization websites, to opinion columns in local newspapers. The following statements are excerpts from various opinion columns in newspapers with the italics as my own emphasis.

> To demand they act against their moral principles would be a grave *injustice and violation of their basic rights as humans.* They are not prescription-filling machines, but *humans* who have the *right* to act as such even while working. [44]

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[42] Title VII of the Civil Rights Act of 1964. Revised January 15, 1997. The U.S. Equal Employment Opportunity Commission. Accessed December 2, 2007. <http://www.eeoc.gov/policy/vii.html>.
[43] Goodrich, 10.
[44] Montgomery, Silas. Letter. "Pharmacists shouldn't be accessories to 'heinous crime' of abortion," The Daily Wildcat. Nov. 7, 2005. 4.

> If a physician chooses not to prescribe the morning-after pill, for whatever reason, no one would think twice. We as pharmacists should have the same *right* and our decisions should be respected just as much. [45]
>
> It is ironic the left, *the so-called champions of choice*, are the ones trying to force pharmacists to act in this way. A woman's *right* to prescription doesn't mean the *right* to force another to fill it. [46]

Each statement illustrates how pharmacists' privileges get repeatedly couched in "human rights" rhetoric. They also demonstrate how pharmacists who believe in a "right" to refuse are emerging as a new minority group that is being more and more accepted by the United States public.

In her article, "Queer Space/God's Space: Counting Down to the Apocalypse," Cindy Patton explains how the emergence of minority identity claims by the New Right happens. In the liberal pluralist, post-World War II United States, identity was used to articulate civil rights. Groups were formed around a common oppression in hopes for the advancement of that particular marginalized group's interests. Identity politics centered on race, gender, ethnicity, sexual orientation, physical disability, religion, or any other marginalized identity. Identity politics had the ability to empower oppressed factions to express their subjugation within a discourse that surrounded their own experience. The recognition of a minority identity was predicated on the transformation of social into political capital. Patton states:

> The general idea of minority identity proliferated and became more specific through local struggles to increase the value ("social capital") of networks of recognition by naming them. The more recent, American

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[45] Thomas, Aaron. Letter. "Forcing pharmacists to dispense medications makes them obsolete." The Daily Wildcat. Nov. 7, 2005. 4.
[46] Zaft, Gordon. Letter. "Customers and pharmacists have rights." The Arizona Citizen. October, 2006.

> version of multiculturalism tries to stabilize the abstract possibility of further elaboration: any translocal network with general rules of mutual recognition could, in principle, mark itself with an identity.[47]

Here, Patton explains that the idea of minority identities grew as groups attempted to increase their social capital. This resulted in identifying and naming marginalized groups. The general rules in identifying a minority group, however have become applicable to any collection of people who is seemingly oppressed, that has mutual recognition of a shared interest, and that can "mark themselves" with a minority identity. Through this process, pro-life pharmacists have marked themselves as a "moral minority," thus gaining minority status despite their typically white, male, and middle class demographics. In the same way that the New Right has corrupted the notion of political space with the logic that "we," the New Right, have been over run by a radical "they," the pro-life pharmacist claim that they, as a collective group, have been run over by an immoral and oppressive "they." "They" being women in search of contraception.

By adopting civil rights and New Left strategies, Patton says, "religion can use a rhetoric of "return," while black, gay or environmental groups have to describe their new significance for a "new age" or to a new consciousness."[48] She further states, "White male demands for civil rights represented a return, a stabilization of the privileges that civil rights law had attempted to extend to everyone else."[49] In this sense, once women are given more civil liberties regarding reproductive choice, pro-life pharmacists who use

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[47] Patton, Cindy. "Queer Space/God's Space: Counting Down to the Apocalypse." Rethinking Marxism 9.2 (1996): 9.

[48] Patton, 4.
[49] Patton, 10.

civil rights rhetoric to promote refusal clauses are "returning" to a stabilization of patriarchal privilege.

In terms of physical space, Patton describes a fight for public space between the New Right and gay and lesbian activists. This ranged from the use of public buildings to establishing Christian day schools, to cable televisions broadcasting, to prayer in public places. Patton explains the Christian Rights' use of public space is an attempt to recapture the physical area from the secular world. This is also happening within pharmacies as pro-life pharmacists are "reclaiming" the pharmacy as their own space. The pharmacy was once a place where women and their allies, after many legal battles, could go to have their prescriptions filled with out interference. Now, in some states, the pharmacy has become a battlefield. The establishment of refusal clauses is a way of "recapturing a space *from* the secular world, decreasing the territory in which evil might take hold."[50] Patton explains, by the end of the 1980s, "places of work" were established as a *space* where the New Right claimed "the depleted stock of our common ethos must be replenished."[51] The pharmacy illustrates Patton's claim, as the anti-abortion movement attempts to "stock up" on what they view as "ethics" and "morals" into the American pharmaceutical work force, instead of stocking up on contraceptives.

The spatial "battlefield" is often described in what I refer to as "refusal narratives:" women's personal accounts of the fight to reclaim this space as well as their own reproductive rights. These narratives are one of the few advantages opponents of pharmacist refusal clauses have in the rhetorical war over rights.

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[50] Patton, 12.
[51] Patton, 13.

REFUSAL NARRATIVES

Pick up any article about refusal clauses and within the first page it will include what I refer to as a "refusal narrative." Similar to abortion narratives, refusal narratives paint the crucial story of women being denied their prescribed contraceptives by a pharmacist. In "Consciousness-Raising as Collective Rhetoric: The Articulatoin of Experience in the Redstockings' Abortion Speak-Out of 1969," Tasha N. Dubriwny explains that rhetoric is essentially a collaborative activity.[52] She goes on to say that persuasion functions as a collective rather than individual process. She states, "Persuasion is…not simply the altering of opinions, but rather the creation of situations in which the telling of individual experiences makes possible a reframing of one's understanding of the world."[53] She goes on to claim that one way oppressed groups rename their experiences is through the articulation of lived experiences. Emerging as a collective rhetoric, refusal narratives allow for verbalization of women's experiences with pharmacist refusal clauses.

Many narratives express shared and overlapping experiences. The following are examples of three different yet typically reported types of refusal narratives:

> July 2004: Idalia Moran attempts to fill her prescription for birth control pills at a Medicine Shoppe pharmacy in Fabens, Texas. The pharmacists, after having recently listened to a radio program that claimed birth control

[52] Dubriwny, Tasha N. "Conscienceness-Raising as Collective Rhetoric: The Articulatoin of Experience in the Redstockings' Abortion Speak-Out of 1969." Quarterly Journal of Speech. 91.4 (2005): 395-422.
[53] Dubriwny, 396.

> pills cause abortions, tells Moran he will not fill her prescription because it is against his religion. Moran then drives thirty-three miles to El Paso, the next nearest pharmacy willing to fill her prescription for standard birth control pills. [54]
>
> January 2004: A woman is released from the emergency room. She's just been raped. After treatment, she is given a prescription for emergency contraception (EC) to prevent her from getting pregnant by the attacker. This is standard procedure. ED is just two birth control pills, but taken up to seventy-two hours after sex it is effective at averting a pregnancy. A friend takes her to an Eckerd pharmacy in Denton, Texas, to fill the prescription. Though the pharmacist had declined five or six times in the past to fill such prescriptions, this is the first time a rape victim has requested the medication. The pharmacist goes to the back room, prays, and calls his pastor before deciding not to fill the prescription. The two other pharmacists on duty decline to fill the prescription as well. The friend of the rape victime explains, "I had been watching my friend, her emotional state going down and down and down. And I knew I was going to have to…say 'Sorry, you know, morally they say you're wrong.'[55]
>
> Near the Indiana-Ohio state line, college student Katie has her own story to tell…She's not pregnant, she's not even sexually active. Katie is 19, a virgin and unable to get her prescription for birth control filled. There is only one pharmacy near her rural campus. It's a mom and pop place, and Pop won't fill birth control prescriptions for women who aren't married…Katie explains, "I have horrible periods. Lots of blood, lots of cramps, lots of pain. So my mom took me to the gynecologist and she put me on the pill. Since then my periods haven't been as bad. Before that, I would miss school." [The pharmacists told her] "…I don't hand out pills so young girls can have sex…If you have a husband, which I doubt, bring him in with you next time and you can have the pills."[56]

These narratives are a particularly moving and effective rhetorical strategy for opponents of refusal clauses as they provide an illustrated translation of private experiences of individual women into a collective and persuasive case for social change. Obtaining contraceptives (especially emergency contraception) and the reasons surrounding the

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[54] Page, 2.
[55] Page, 1.
[56] McPhee, Laura. "The Conscience Clause." NUVO online 4 May 2005: Accessed February 22, 2007. <http://dev.nuvo.net/aritcles/article_4121/>

event are extremely personal and private. When pharmacists deny women contraceptives, they are alienating women and silencing their rights. Women may find this hard to discuss due to the private nature and social stigma surrounding contraceptives. Going public, whether that be to a few people or to a news reporter, means the woman's personal life is open for public scrutiny. In "Safe to Talk: Abortion Narratives as a Rite of Return," Helen Susan Edelman explains, "Silence's tactical function is to prevent attracting stigma attached to women who become 'structural males' by denying their 'natural obligation' to bear children."[57] She explains silence creates and maintains social boundaries by controlling the flow of personal information. She states, "Silence disenfranchises, disavows and renders invisible the woman and her experience."[58] Silence regarding refusal clauses does this as well as makes invisible the woman's rights. Instead it perpetuates the importance of pharmacists' rights.

Refusal narratives allow women to break the silence, speak about the incident, and create an opportunity to publicly demonstrate how the denial personally affected them. Other women may read these narratives and make connections to their own shared experiences and emotions. For others, they may be enlightening or demystifying. By mobilizing silence surrounding the event, refusal narratives are a great rhetorical strategy for refusal clause opponents because of the interchangeability of the narrator with the reader.

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[57] Edelman, Helen Susan. "Safe to Talk: Abortion Narratives as a Rite of Return." Journal of American Culture. 19.4 (1996): 29-40.
[58] Edelman, 33.

The story of Idalia Moran (first narrative) appeals to many women because her "ordinary" status is something many individuals can identify with. The relatability of the narrative strengthens emotional appeal, allow women to sympathize with Idalia, and then realize a similar situation could (or in some cases, has) happen to them. Condit explains, "Audiences are more likely to act on a social issue if they perceive their *own* interests as threatened—if they see *themselves* or others like them as vulnerable to the problematic social situation."[59] And the vast majority of American women could find themselves in this vulnerable position. Today, 43 million American women (7 in 10 women of reproductive age) are sexually active and do not want to become pregnant.[60] As previously stated, an overwhelming 82% of women in the United States take oral contraceptives at some time in their life.[61] The larger the number of threatened individuals, the more justification there is for social action and "ordinariness" makes such numerical strength more plausible.[62]

While "ordinariness" provides a strong base for rhetorical narratives, a broad spectrum of stories must be shared to expose and challenge ideas surrounding the subject. This is extremely important in refusal narratives because women are often portrayed by refusal clause advocates as reproductively irresponsible. They generalize these women as young and promiscuous who use birth control or emergency contraception carelessly. Priest X responded to a narrative similar to Indalia Moran's claiming the likelihood she

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[59] Condit, 26.
[60] Facts in Brief: Contraceptive Use. Revised January 2008. Alan Guttmacher Institute. Accessed Febuary 28, 2008. <http://www.guttmacher.org/pubs/fb_contr_use.html#2>
[61] Use of Contraception and Use of Family Planning Services in the United States, 1982-2002. Centers for Disease Control and Prevention. Accessed April 1, 2008. <http://www.cdc.gov/nchs/data/ad/ad350FactSheet.pdf>.
[62] Condit, 26.

was a "rich white sorority sister who got drunk and banged the local frat rat." Accounts of married women with children being denied birth control or women like "Katie" (third narrative), taking oral contraceptives for medical reasons other than pregnancy prevention, paint a different picture. Stories similar to the second narrative above regarding rape, abuse, incest, and sexual assault are particularly important to break down this stereotype. Condit states, "In each case, the purpose cited avoided challenging the key values held by the public at the time, generally by portraying the woman as a helpless victim. She was making a choice not against motherhood but against situations which themselves violated the idealized image of motherhood."[63]

The individual woman's opportunity to transform experience into a story is not only powerful for the speaker but also politically important. These narratives call for the visibility of women's rights and the ability to make their own reproductive decisions. They are a call for action from public policy makes for an end to all pharmacist refusal clauses.

Narratives are something the advocates of refusal clauses are lacking in this rhetorical battle over refusal clauses.[64] The closest they come to refusal narratives are accounts of women who have died due to complications with their contraception or RU-486 prescriptions. These reports are few and far between compared to the amount of refusal narratives in circulation around the nation. Yet because refusal clause advocates like to conflate all contraceptives into the category of abortifacients (discussed in chapter two) the death narratives become interchangeable. There have only been two deaths in

[63] Condit 26.
[64] I have yet to come across a narrative from the pharmacists perspective.

the United States after women took RU-486, resulting in outcries for an emergency RU-486 ban.[65] Two deaths repeated over and over again begin to sound like two thousand. Additionally, because RU-486 is often conflated with contraceptives, these narratives of "innocent women" dying at the hands of immoral medications are often cited for reasons not to distribute birth control or emergency contraception.[66] These stories are extremely rare when compared to the occurrence of refusal narrative, yet get continually repeated.

EXPOSING THE RHETORICAL STRATEGIES

While refusal narratives are a strong rhetorical strategy for opponents of refusal clauses, however they are still reactionary to clauses already in place or actions pharmacists have taken. *Refusal narratives would not happen if laws were not already in place*. The same reactionary standpoint can be seen in the terminology of *refusal* clause. Pro-conscience clause advocates have the strong, tricky, and—as much as I hate to admit it—strategically smart rhetoric borrowed from the pro-life movement. Yet by exposing these rhetorical strategies, their argument for right to refuse legislation is weakened. Opening up and analyzing their strategies is essentially exposing their bag of dirty tricks used to deprive women of their own reproductive freedom.

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[65] Page, 64.

[66] To put this in perspective, there are 13 pregnancy-related deaths per 100,000 live births in the US. Additionally, according to the *Journal of the American Medical Association,* Viagra has caused 564 deaths in sixteen million users as of 1999. (Fraser, p. 182-183).

CHAPTER 2
SCIENTIFIC RHETORIC

There is an intimate relationship between politics and scientific definitions. Definitions may be misclassified, misinterpreted, conflated, redefined, accepted or rejected depending on the political agenda of the movements associated within the controversial debate. One of these debates is the over the question of when life begins between the reproductive freedom and anti-abortion movements. By redefining the moment when life commences, refusal clause advocates reclassify contraceptives as abortifacients. I argue that the anti-abortion movement's redefinition of when life begins, and thus conflation of contraceptives (birth control pills, emergency contraceptives) with abortifacients (RU-486), is a rhetorical strategy used in order to muddy scientific, medical, and legal definitions. They deliberately produce fluidity within definitions of contraceptives and abortifacients. By muddying the rhetoric, the American public is purposefully left in a state of confusion regarding contraceptives, abortion methods, and reproduction in general. This can have a significant impact on refusal clauses and their acceptance by the public as well as by policy makers. Generally, refusal clauses for abortion procedures are more accepted than pharmacist refusal clauses. When birth control pills or emergency contraception are classified as abortion and not contraceptives, there is more sympathy for the pharmacist's moral decision. Additionally, when classified as an abortion method, pharmacists in many states are protected under broader, overarching medical refusal clauses.

While refusal clause advocates love to lump all contraceptives—oral birth control pills, intra-uterine devices, transdermal patches, vaginal rings, emergency contraception, and even barrior methods such as condoms—together and then conflate them with abortifacients,[67] I have focused my research on the specific conflation of emergency contraception with RU-486. I do this for several reasons. First, the conflation of contraceptives with abortifacients intensified once emergency contraception was approved by the FDA in 1998. Second, emergency contraception is the most common contraceptive that is coupled with RU-486 because of the similarity in reproductive function (preventing pregnancy), timing of their FDA approval (late 1900s), popularity, and oral administration. Third, I have found that trying to cover how all contraceptives become identified as abortifacients is a very large subject matter and warrants its own thesis!

In this chapter, I demonstrate how refusal clause advocates strategically redefine, mis-use and mis-represent science to conflate emergency contraception and RU-486 as interchangeable entities and how this linking of abortion and contraception is indicative or a larger anti-abortion agenda. I expose how this faction of people confuses not only the general American public but pharmacists as well. Finally I look at how this reclassification affects refusal-clause policy-making in the United States.

[67] See the Iowa Right to Life Committee's "glossary of abortifacients" as an example. (http://www.ifrl.org/topic/chemical/)

REDEFINITIONS AND RECLASSIFICATIONS

By scientific, medical and legal definitions, pregnancy begins during implantation. The American College of Obstetricians and Gynecologists (ACOG),[68] as well as the National Institutes of Health (NIH)[69] state pregnancy begins when a fertilized egg implants in the womb.[70] The American Medical Association (AMA)[71] backs up this statement, defining conception as the implantation of the blastocyst in the uterus.[72] These prestigious medical institutions maintain this definition for two primary reasons. First, nutrients from the woman's body that dictate embryo survival are not received unless the fertilized egg attaches to her womb. Additionally, implantation is the first moment at which a pregnancy can be determined.[73]

Most controversy studies find that once authoritative institutions establish a position on a debate, it becomes harder to continue a controversy.[74] Yet for refusal clause advocates, the definition in question is not *pregnancy* but instead *life.* To them, life begins the moment the sperm fertilizes the egg. The argument over when life begins has led pro-life pharmacists to assume contraceptives and abortifacients as one entity. Life is a category designed to create confusion between contraception and abortion, thus conflating the two together. This reclassification defies all scientific, medical and legal

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[68] ACOG is the nations leading group of professionals providing health care for women, with over 49,000 members. (www.acog.org/from_home/acoginfo.cfm)
[69] NIH is the nation's medial research agency. It is part of the U.S. Department of Health and Human Services.
[70] Page, 21.
[71] The AMA is the nation's largest physicians group.
[72] Spahn, Elizabeth and Barbara Andrade. "Mis-Conceptions: The Moment of Conception in Religion, Science, and Law." U.S.F.L. Review 32 (1998). 261-294.
[73] Page, 21.
[74] Huff, April. "Questioning Authority: The Science and Politics of the Abortion-Breast Cancer Debate." Unpublished master's thesis. University of Arizona. Tucson, Arizona. (2004). 8.

definitions of when conception occurs. The controversy is not a scientific issue as anti-abortion advocates blatantly ignore the definition of pregnancy. Instead, by using the term *life*, the issue has turned social and political, resulting in legal ramifications.

As previously stated, the reclassification of contraceptives as abortifacients intensified once emergency contraception was approved by the FDA in 1998. Despite the very different functions of RU-486 and emergency contraception, the two are often classified as one in pro-life rhetoric. This can be seen on the Pharmacists for Life International (PFLI) website when they repeatedly refer to emergency contraception as "the abortion pill," a term usually reserved for RU-486.[75] Additionally, a brochure on emergency contraception sponsored by Concerned Women for America, an influential, 500,000 member, biblically-based organization, advises that emergency contraception's "main function is to abort a living human embryo."[76] Because of this popular misconception, it is important to note the medical differences between the two drugs which are often at the center of the refusal clause dispute.

RU-486 terminates an existing pregnancy. It is medically classified as a chemical abortion. The drug chemically induces abortion by blocking the activity of the naturally occurring hormone progesterone and thus causing the uterus lining to shed with the *already-implanted* fertilized egg. RU-486 can be taken up to 49 days after the beginning of the patient's last menstrual cycle. Two days after the patient takes the drug, she takes misoprostol which dilates the cervix and causes the uterus to contract, aiding in dislodging the embryo. Within four hours of taking RU-486, there is a 50% chance of

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[75] Pharmacists For Life International. Accessed April 1, 2008. < http://pfli.org/>.
[76] Shorto, Russell. "The War on Contraception." The New York Times Magazine. May 7, 2006. 54.

complete termination. Within 24 hours, the chance of termination is at its highest at 75%.[77]

Emergency Contraception prevents a woman from becoming pregnant. It is medically classified as a contraceptive. The drug consists of combined oral contraceptives, thus functioning similarly to birth control pills. Emergency contraception stops ovulation and fertilization of the egg. It is taken orally within 72 hours of intercourse to disrupt the development of the egg and prohibits or delays its release from the ovary. Because this occurs before the sperm and egg unite, a fertilized egg never implants in the uterus.[78]

Medically, both emergency contraception and RU-486 are safer alternatives to surgical abortion because the oral administration removes the need for an invasive surgical procedure. Additionally, both are taken very early on in the pregnancy or possible *perceived* pregnancy. Compare this scenario to a woman who is denied emergency contraception and becomes pregnant. If she does not wish to be pregnant, she must wait at least 6 weeks to obtain a safe and effective surgical abortion.[79]

There is no question that RU-486 is, medically, scientifically, and legally, an abortifacient. However, to pro-refusal clause pharmacists who define life as the moment sperm meets egg, emergency contraception becomes reclassified as a method of abortion. Essentially, this is part of the larger anti-abortion movement. In "The War on Contraception," author Russell Shorto states, "the abortion pill and the emergency

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[77] Green, Jason. "Refusal Clauses and the Weldon Amendment: Inherently Unconstitutional and a Dangerous Precedent." The Journal of Legal Medicine 26 (2005): 403-404.
[78] Green, 403.
[79] Green, 406.

contraception pill—because of their ease of use, the mechanisms by which they work and the fact that they are taken after sex—have blurred the line between contraception and abortion and have added a new wrinkle to the traditional anti-abortion movement."[80] Shorto explains the evolution of the anti-abortion movement and how it became anti-contraception: "Once, the definition of abortion was simple—a surgical procedure to extract a fetus—and with the advent of technology that allowed imaging of the fetus within the womb, abortion opponents found they had a powerful tool; photographs of 'pre-born babies' with human features were common in anti-abortion campaigns."[81] He goes on to explain that while the imaging technology helped personify the fetus, new drugs such as RU-486 and emergency contraception threatened to undercut such efforts. "The battle line," he states, "is shifting backward, from viability to implantation."[82] Page furthers Shorto's point by saying, "In order for pro-life groups to advance in their anti-birth control campaigns, birth control must become something different. Pro-lifers therefore now attempt to reclassify the most common contraceptives methods as abortion."[83] Attacking contraceptives such as emergency contraception or the medicinal abortifacient RU-486 makes sense. What makes even more sense is to attack them together, as one entity, and thus a definitional conflation of the two pills occurs.

The reclassification can best be explained in the *Pro-Life Activist's Encyclopedia* section on "contraception," which reads:

> Contraception cannot be separated from abortion. In fact, anyone who debates on the topic of abortion will inevitably be drawn to the topic of

[80] Shorto, 50.
[81] Shorto, 55.
[82] Shorto, 55
[83] Page, 14.

> artificial contraception over and over again, especially in the post-*Roe* era of pro-life activism. Therefore, every pro-life activist should understand the many relationships between abortion and artificial contraception. How does contraception lead to abortion? Quite simply, they are *virtually indistinguishable* in a psychological, physical, and legal sense…Those individuals who use artificial contraception take the critical step of separating sex from procreation. Contraception *not abortion* was the first step down the slippery slope.[84]

Another section titled "Contraception = Genocide," goes even farther in their reclassification to state that wide spread use of contraception by women is a subtle form of mass genocide. The authors claim, "Most artificial contraception…is abortifacient. In the scriptural sense, the killing of a person is not only murder, it is genocide, because it kills that person's descendants as well."[85]

The above definition from this strategically rhetorically titled "encyclopedia" provides no medical, scientific, or legal definition of contraception. Instead, it offers the reader a definitive view equating contraceptives (emergency contraception) as abortion (RU-486). This equation could have devastating effects on public policy making and women's rights because it allows pharmacists to completely skip over pharmaceutically specific refusal clauses (including the "trouble" involved in getting these clauses supported and signed into law). If the definition of emergency contraception as abortion is legally accepted by the state, pharmacists are covered under broader abortion refusal clauses.

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[84] Clowes, Brian. The Pro-Life Activist's Encyclopedia. Stafford, VA: The American Life League, 1994.
[85] Clowes, 104-3.

WHAT THIS MEANS FOR REFUSAL CLAUSES

By redefining emergency contraception as an abortifacient, some pharmacists may be able to legally fit under broader abortion refusal clauses that do not directly identify pharmaceutical health care. As previously stated in the introduction, these abortion refusal clauses were a direct response to *Roe v. Wade* and were intended for pro-life medical doctors who objected to performing surgical abortions.

An example of this is Title 18, Chapter 32 of Pennsylvania's Consolidated Statues which reads:

> (d) Right of conscience.--It is the further public policy of the Commonwealth of Pennsylvania to respect and protect the right of conscience of all persons who refuse to obtain, receive, subsidize, accept or provide abortions including those persons who are engaged in the delivery of medical services and medical care whether acting individually, corporately or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability or financial burden upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, subsidize, accept or provide abortions.[86]

If a pharmacist wanted to deny a woman emergency contraception because he/she believed it was "contrary to their conscience or conscientious convictions" by redefining it as an abortion, this clause would possibly legally cover the pharmacists as a "person who [is] engaged in the delivery of medical services."

Pharmacists For Life International (PFLI) has dedicated part of its organization to perpetuating this conflation in a campaign "appropriately" titled, "Human Right to Conscience." This campaign was spearheaded by PFLI in opposition to proposed

[86] 18 Pa. Consol. Stat. §3202 (2005).

amendments to Washington's (WAC 246-863-095) "Pharmacist's Professional Responsibilities" bill. The amendment takes women's rights into consideration by requiring all pharmacies to dispense emergency contraception. Within the online section titled "The Issue" PFLI clearly state, "Plan B can prevent implantation of the human embryo, thus, causing an abortion. Current WA State Law states, 'No person or private medical facility…may be required…in any circumstances to participate in the performance of an abortion if such person or private medical facility…objects to so doing (RCW9.02.150)."[87] Here, PFLI blatantly and unapologetically makes claims that emergency contraception is, in fact, an abortion, conflating the two definitions, and making the claim that pharmacists are protected under a broader abortion refusal clause.

Another example is illustrated in Missouri's attempt to enact a refusal clause that would "protect the conscience rights of pharmaceutical professionals, where they would not be required to perform, assist, recommend, refer for, or participate in any service involving a particular drug or device that they have a good faith belief is used for abortions."[88] This bill was filed and referred back to the committee in January of 2007. This bill is particularly scary as it bypasses the need for a rhetorical trick of reclassifying contraception as abortion to be applicable to other clauses (such as the one above) and directly states pharmacists already have to have a belief in the reclassification.

This conflation of contraceptives and abortion is repeated across the United States in legal rhetoric. The 2004 Ohio legislature considered a bill to make insurers cover birth

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[87] The REAL issue: Protecting the right to live and act according to one's conscience. Human Right To Conscience. Accessed March 21, 2008. <http://www.pfli.org/humanrighttoconscience/TheIssue.html>
[88] Mo. Sen. 285. 386 Leg. 341. (Jan. 2007).

control. By claiming that contraception is not medically necessary, Paula Westwood, the executive director of Right to Life of Greater Cincinnati, argued against the bill. When making a public statement she quickly added, "Some people define contraceptives very broadly to include the RU-486 abortion drug." Page criticizes Westwood's claim as the proposed bill clearly did not propose to cover RU-486. Instead, she suspects Westwood made this statement to deliberately produce ambiguity in the of definitions. Page claims, "right-to-lifers systematically blurred the lines between contraception and abortion."[89]

Conflating emergency contraception as an abortifacient has more implications than allowing pharmacists to be covered under abortion refusal clauses. It can lead to a lack of education within pharmacy schools as well as forced agreement and support of the re-definition in exchange for political endorsements. This rhetorical strategy of conflating definitions reaches far beyond the pharmacy and into the education and political institutions.

IMPLICATIONS BEYOND THE PHARMACY

Unfortunately, the conflation of contraceptives and abortifacients has many social side effects and implications for women through public policy making. In "Objections, Confusion Among Pharmacists Threaten Access to Emergency Contraception," Susan A. Cohen describes how the misunderstanding that emergency contraception are abortifacients has been used to implement refusal clauses: "This confusion has impeded

[89] Page, 15-16.

not only the availability of [emergency contraception] vis-à-vis pharmacies but also the formulation of responsible public policy to address issues of pharmacists 'conscience.'"[90]

One example of conflating definitions of abortion and contraceptives can be seen here at the University of Arizona's campus. In 1974, as a reaction to Roe v. Wade, a legislator from Scottsdale attached an amendment to a 5.5 million dollar funding bill to renovate the University of Arizona football stadium. A provision of this funding was that the University of Arizona Medical Center was, and still currently is, barred from performing abortions and teaching the abortion procedure.[91] Because contraceptives may be viewed as abortifacients, UA professors in the Doctor of Pharmacy program can opt out of teaching about contraceptives**.** As a result of ambiguous definitions of abortion perpetuated by refusal clause advocates with the help of the anti-abortion movement, University of Arizona PharmD students may graduate without any knowledge regarding the difference between emergency contraception and RU-486, let alone the basic knowledge of contraception. This problem is not limited to Tucson, Arizona, but extends to any university in the United States with provisions prohibiting the performance of an abortion procedure or education of students on abortion procedures in exchange for funding.

Pro-life organizations promote the reclassification of contraceptives as abortifacients through political endorsements. For a candidate, to disagree with this theory means to lose an endorsement—even if they are pro-life. For example, the

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[90] Cohen, Susan. "Objections, Confusion Among Pharmacists Threaten Access to Emergency Contraception." The Guttmacher Report on Public Policy June (1999): 1-3.
[91] Ariz. Rev. Stat. §15-1630. (1974). NARAL Pro-Choice America's Online Action Center. Revised 2008. NARAL Pro-Choice America. Accessed March 21, 2008. <http://prochoiceaction.org/grassroots/newsletter1102b.html>.

Northern Kentucky Right to Life Organization asks candidates to state that they believe the use of birth control pills (including, but not limited to emergency contraception) is equivalent to the woman obtaining an abortion. Barb Black, an elected, pro-life official and registered nurse, refused to return the organization's candidate questionnaire and thus lost their influential endorsement. She explained, "To get the endorsement…you had to have been willing to grit your teeth, shut your eyes, turn off your brain and mark 'yes.'"[92] Ironically, Black was recognized in 1999 by the same organization that denied her an endorsement "for the tremendous works she has already accomplished for human life."[93] The question on their endorsement survey, new in 2002, asked,

> Will you actively support…legislation which prohibits all use of state, federal and/or Medicaid funds for abortion, including chemical abortions, such as RU-486, and the so-called "morning after pill," and the so-called "standard birth control pill?"[94]

The question appeals to pharmaceutical backing when it continues: "It is now acknowledged that the pharmaceutical manufacturers agree that the so-called "standard birth control pill" carries an abortifacient function." [95]

Other pro-life organizations attack anti-refusal clause candidates more directly. In 2004-2005, Texas Right to Life stated they would not endorse any state legislature candidate who supported access to emergency contraception due to its ability to "cause a chemical abortion." This included access for rape victims.[96] In their endorsement survey, Question 11 gave scientifically unsound information stating:

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[92] Page, 19.
[93] Schroeder, Cindy. "Right to Life adds Pill to list." Cincinnati Enquirer 26 April 2002. 01C.
[94] Schroeder.
[95] Schroeder.
[96] Page, 19.

> Emergency Contraception…is a powerful concoction of birth control hormones, which can cause a chemical abortion. Advocates of emergency contraception recommend that this potent drug be taken within 72 hours of unprotected intercourse to prevent fertilization. However, the time of fertilization is unknown. If emergency contraception is taken after fertilization, then a chemical abortion occurs. Texas Right to Life opposes so-called emergency contraception because of the risk of aborting a newly fertilized human life. Additionally, only minimal testing has been conducted by the FDA, and the side effects are presently unknown. Would you oppose measures to market and sell so-called Emergency Contraception as an over the counter medicine?[97]

Additional questions included "Would you oppose efforts mandating that emergency contraception be included in the routine treatment of rape and sexual assault victims in every emergency room?" and "Would you support conscience clauses allowing all health care providers and pharmacists to opt out of participation in any type of induced or elective abortion"[98] A "no" to either question knocked the candidate out of the running for a Texas Right to Life endorsement.

As described above, this rhetorical strategy of conflation has not been contained within the pharmacy. Instead it has stretched into educational and political institutions. Unfortunately, much to refusal clause advocates delight, the idea that emergency contraception is a form of abortion has leaked out to the general public, leaving people deliberately dazed and confused in a blur of fluid, muddied, and fused definitions of emergency contraception and abortifacients.

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[97] State Legislature Questionnaire, 2004-2005. Texas Right to Life. Accessed November 10, 2007. <http://www.texasrighttolife.com/vote/2004/stateleg0405.htm>.

[98] State Legislature Questionnaire, 2004-2005. Texas Right to Life. Accessed November 10, 2007. <http://www.texasrighttolife.com/vote/2004/stateleg0405.htm>.

GOING MAINSTREAM

As stated above, most controversial medical or scientific issues stop once authoritative institutions establish a position on the debate. Despite the large, authoritative medical institutions and organizations such as the NIH, AMA, and ACOG defining pregnancy as the moment of implantation, this debate continues by the anti-abortion movement pushing it into the public arena where standards of proof are less articulate. This allows refusal clause advocates to redefine emergency contraception as an abortifacient, pair it with RU-486, and provide the public with opposing and contradictory definitions of emergency contraception's function. Shorto explains how each side of the culture war over contraception clearly and strongly stakes their claim, leaving the public to sort out sticky, confusing, and contradictory definitions:

> At the heart of it is the question of whether EC is or could be a form of abortion. 'The science is very clear that this does not cause an abortion,' William Smith of Siecus told me. The same clarity exists on the other side. One of the 'common and intended modes of action' of EC, according to the United States Conference of Catholic Bishops, 'is to prevent the development of the embryo, resulting in his or her death.[99]

These contradictory statements are just a small sample of the conflicting rhetoric from opposing sides of the debate. When someone who is not knowledgeable in this subject matter is presented with clashing definitions, emergency contraception's real function remains unclear.

When emergency contraception was approved by the FDA in 1998 and word started to spread about the pill, not much was known about the drug. The opportunity for false information and confusion about its true function was ripe for refusal clause

[99] Shorto, 53.

advocates. This can be seen in emergency contraception's strategic nickname, "the morning after pill," which dictates a specific time the pill can be taken (the morning after) when really it can be taken anytime up to 72 hours (some studies show even up to 5 days) after intercourse. Cristina Page further explains how the anti-abortion movement (including refusal clause advocates) purposefully tricks and confuses the public by their use of rhetoric. She states the movement "has been particularly energetic in spreading its message online, where it seems to have, it anything, less compunction about mixing fact and fiction. Sometimes this confusing mix appears to be a simple mistake. Other times, it clearly is a part of a strategy calculated to convert people to the cause."[100] An example of this can be seen on Illinois Federation for Right to Life's website. In their news section which leans more towards conspiracy than validity, they have placed a March 2006 "shocking" headliner stating "12-Year Old Girl Given Abortifacient Pill." Upon reading the article, the author is clearly discussing emergency contraception.[101]

This confusion is not reserved for the general, uneducated, non-pharmacy population either. Some pharmacists fully believe emergency contraception is an abortion method; other pharmacists lack education or training to know the difference; while others are confused by the muddying of definitions thanks to the conservative, anti-abortion movement.

A recent New Mexico study demonstrated just how conflated emergency contraception and RU-486 have become. A shocking number of pharmacists sampled

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[100] Page, 19-20.
[101] Basnett, Guy. "12-Year-Old Girl Given Pill." Red Orbit News Online 11 March 2006: <http://www.redorbit.com/modules/new/tools.php?=print&i=424237>.

could not clarify the difference between emergency contraception and RU-486 or even properly explain how emergency contraception works. Matthew E. Borrego et al.'s cross-sectional study titled "New Mexico Pharmacists' Knowledge, Attitudes, and Beliefs Toward Prescribing Oral Emergency Contraception,"[102] investigated pharmacists knowledge of emergency contraception and the conscience clause from January through March 2004. They found that while the pharmacists sampled had positive attitudes and beliefs toward emergency contraceptives, their knowledge in this area was below average. 18.5% of respondents answered incorrectly when asked if "Oral emergency contraceptives interrupt an established pregnancy." 53% of the pharmacists surveyed answered incorrectly when inquired about the time restraints on emergency contraception. Finally and most shocking of all, nearly 36% of responding pharmacists incorrectly believed that emergency contraceptives were also known as RU-486.

A similar study was conducted in Pennsylvania to measure pharmacists' knowledge of emergency contraception. 320 pharmacists were surveyed via telephone by a "mystery shopper" inquiring about emergency contraception. In response to the question, "Can you tell me about something called emergency contraception?" just under half (49%) identified emergency contraception as birth control pills or hormones taken in high doses. 35% of the pharmacists said they did not know what emergency contraception was, and 13% incorrectly stated that emergency contraception "causes an abortion/is RU-486." 5% of respondents stated emergency contraception was not

[102] Borrego, Matthew E., Jennifer Short, Naomi House, Gireesh Gupchup, Rupali Naik, and Denise Cuellar. "New Mexico Pharmacists' Knowledge, Attitudes, and Beliefs Toward Prescribing Oral Emergency Contraception." Journal of the American Pharmacists Association Vol. 46, No. 1. (2006): 33-43.

available in the United States. When asked about the side effects of emergency contraception, 5% said that emergency contraception would cause the side effect of "an abortion."[103]

The New Mexico and Pennsylvania studies are important to understand because pharmacists have an important role in not only dispensing emergency contraception, but also advising medical colleagues, answering women's questions and dispelling any misconceptions about the drug.[104] It is crucial for all health care providers to be informed with the accurate information regarding emergency contraception and RU-486 in order to provide the best care for their patients. Currently, only 20% of obstetrician-gynecologists and 23% of family practice physicians routinely discuss emergency contraception with their patients, so pharmacists are often the health care provider that is on the frontline for answering questions about emergency contraception.[105] As a result, most of the America public (60 percent) remains unaware that pregnancy prevention is still possible after unprotected sex. Page asks her readers to compare this to Switzerland where 90 percent of sexually active women and 75 percent of young men know about emergency contraception.[106] If the pharmacists who are perceived as the gatekeepers of knowledge are themselves confused about the differences between emergency contraception and RU-486, the reclassification of emergency contraception as an abortifacient could spread like wildfire.

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[103] Bennett, Wendy, Carol Petraitis, Alicia D'Anella, and Stephen Marcella. "Pharmacists' knowledge and the difficulty of obtaining emergency contraception." Contraception. 68. (2003): 265.
[104] Bennett et al., 261.
[105] Women's Health Care Providers' Experiences with Emergency Contraception: Survey Snapshot. Updated June 2003. Kaiser Family Foundation. < http://www.kff.org/womenshealth/contraception.cfm>
[106] Page, 103.

In an attempt to "discover the truth," twenty-two pro-life ob-gyns researched and analyzed the daunting "myth" that emergency contraception caused abortions rather than prevented pregnancy. The physicians were worried that the theory of "contraception as abortion" was getting the status of "scientific fact" without substantial research within the medical field. In their article, "Birth Control Pills: Contraceptive or Abortifacients?" the pro-life physicians concluded, "The 'hormonal contraception is abortifacient' theory is not established scientific fact. It is speculation, and the discussion presented here suggests it is error."[107]

How mainstream this confusion is can be described by the opinion columnist for the *Arizona Daily Star* and self-proclaimed "long time pro-lifer," Steve Chapman. He explains his own quest for knowledge and his discovery of being "tricked" into believing emergency contraceptives are a form of abortion. He states:

> Anti-abortion groups argue that by preventing implantation of a fertilized egg, it destroys a fetus. That reputation has made many people justifiably leery of it….But it turns out the reputation is groundless. The best scientific evidence we have indicates that the morning-after pill serves to block fertilization, while having no effect on implantation. That makes it contraception, not abortion. As a longtime pro-lifer, I think anti-abortion groups had solid grounds to oppose the morning-after pill when its function was unclear…[108]

Thus, for refusal clause advocates, it makes sense for the opposing definitions and functions of post coital emergency contraceptives to remain unclear, confusing, often contradictory, and ultimately conflated with RU-486.

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[107] Page, 25.
[108] Chapman, Steve. "Morning-after pill is pro-life." Arizona Daily Star 20 November 2005: H2.

CONCLUSION

Page claims, “Calling run-of-the-mill contraception an abortion is a breathtaking bit of misinformation. But it’s working.”[109] By conflating contraceptives and abortifacients, there are implications across the board. Legislators may be forced to sign on to a belief system they feel to be false and pressured to support certain laws in reciprocation to their endorsement. Pharmacists may remain ignorant or uneducated about reproductive issues while simultaneously slip into the coverage of rhetorically broad refusal clauses. And finally, women are more likely to be denied contraceptives and thus more likely to have an unwanted pregnancy or abortion.

[109] Page, 14.

CONCLUSION

My thesis analyzes the political and scientific rhetoric of pharmacist refusal clauses. This analysis is important to expose the implications of the anti-abortion movement's rhetorical strategies to prevent women's access to contraception. Public rhetoric on refusal clauses is highly orchestrated in an effort to push the anti-abortion movement's political agenda and is used to alter or shape the public's understanding about refusal clauses, reproductive rights, and contraceptives. This rhetoric is carefully orchestrated to generate certain images, emotions, and meanings to try to persuade the audience to mobilize and respond with pro-refusal clause actions such as voting for legislatures who support refusal clauses, donating money to organizations such as PFLI, or joining organizations that promote refusal clauses. Currently, the words and terms such as "conscience clause" and "abortion pills" are, unfortunately, part of the public discourse, are repeated, and the conservative associations are reproduced.

In chapter one of my thesis I analyzed the rhetorical strategies of current refusal clauses as well as the strategies used by refusal clause advocates to get those laws into place. I deconstructed the terminology of "conscience" versus "refusal" clause. The term "conscience clause" highlights the individual nature of the law, placing importance on the pharmacists' rights and making invisible those of the woman. I also explained in the first chapter that pharmacists are taking over liberal rights claims of minority status. These pharmacists—who are typically Caucasian, middle class men—are making discrimination claims and fighting for legal protection. Additionally, I explained that what I call "Refusal Narratives," stories of women denied contraceptives by pharmacists,

are the only rhetorical advantage available for refusal clause opponents. These narratives give voice back to silenced women when their rights are infringed upon, highlighting how the event affected them personally.

In chapter two, I discussed the scientific rhetoric surrounding refusal clauses. Despite the vast medical differences in emergency contraceptive and RU-486, refusal clause advocates tend to rhetorically conflate the two, strategically redefining emergency contraception as an abortifacient. Additionally, this reclassification becomes mainstream and not only confuses the public but pharmacists as well. Negative implications of this rhetorical manipulation are vast for public policy as well as for women.

In both chapters, I have highlighted the close tie refusal clause rhetorical strategies have with the powerful anti-abortion movement of the late twentieth and early twenty-first centuries. Advocates of refusal clauses already have legal and scientific rhetorical frameworks and strategies that are borrowed from the anti-abortionists and then reapplied to refusal-clause public-policy making.

There are already four states that have passed refusal clauses specific to pharmacists: Arkansas, Georgia, Mississippi, and South Dakota. For women living in these states, a legal barrier has been built, making it increasingly difficult for women to obtain contraceptives. Women from these states have stepped forward to share their refusal narrative with the public. Their stories illustrate how these laws have affected everyone, from rape survivors in search of emergency contraception to married mothers

needing birth control pills.[110] The proliferation of refusal clauses across the country is a serious threat to women's health.

But, exactly, what are these threats? Are the consequences *that* drastic? Why can't a woman simply go to another pharmacy when she is denied her contraceptives? What does where you live have to do with obtaining your prescription? What about transportation? Education? *Just what is the big deal?*

CONSEQUENCES FOR WOMEN: WHAT IS AT STAKE

The institution of law was assembled at a time when women were systematically excluded from legal participation. Men translated women's experiences and roles into legal discourse but excluded their voices. The current laws surrounding contraception, including but not limited to refusal clauses, reflect this male bias.[111] Refusal clause debates are often couched in an abstract dichotomy of religious freedom versus lifestyle choice. I argue the debate needs to extend beyond this dichotomy in order to examine how the refusal clauses fail to take into account the real life experiences of and costs for women.

The real life consequences of refusal clauses for women vary from woman to woman depending on her socio-economic status, age, race, access to transportation, geographic location, and other factors. Consequences can range from the inconvenience of taking the prescription to another pharmacy to—in worst case scenarios—an unwanted

[110] Greenberger, Marcia D. and Rachel Vogelstein. "Pharmacists Refusals: A Threat to Women's Health." Science 308.10 (2005). 1557-1558.
[111] Smearman, 494.

pregnancy. The bottom line is pharmacist refusal clauses can have devastating consequences for women's health.

Refusal clauses legally allow pharmacists to deny women contraceptives. For some women this event might be nothing more than a mere inconvenience or annoyance. In fact, this is one of the central arguments for refusal clause advocates. They argue pharmacists who have moral objections to dispensing contraceptives to women have daily moral penance to prevent inconvenience for women. In priest X's email correspondence to me, he also claimed this argument, stating, "Just go to another pharmacy, There are plenty of folks willing to sell the poison to you. It may seem an inconvenience to you but it is a matter of conscience to some of them." It is true that after being denied, the woman might have the ability to leave the pharmacy, get in her car, and drive a few blocks over to the next pharmacy. Yet, for other women this might not be as simple.

Women located in **rural areas** have a more difficult time attaining birth control. Many rural areas have only one or two pharmacies in their town. If the pharmacy has a refusal policy and the pharmacists object to contraceptives, it could be extremely difficult to obtain birth control or emergency contraception in that town. Rural women do not have the luxury urban or suburban women have to get in their car and drive until they find a pharmacy that will fill their prescriptions or that carries emergency contraception. Some refusal clauses allow pharmacy owners to decide whether or not their pharmacy will carry emergency contraception, now that it is over the counter. If there is just one pharmacy in town and that pharmacy owner decides not to carry emergency

contraception, women in that rural town may not be able to obtain the time sensitive contraceptives. For example, in chapter 1, I introduce the refusal narrative of a young woman, Katie, who lives in a rural town on the Indiana-Ohio border. Because of the small size of her town, there is just one pharmacy and the pharmacist will not dispense birth control pills to unmarried women. Instead, Katie has to have her birth control pills mailed to her from Arizona.

Women who lack the **proper education** on birth control, emergency contraception, or refusal clauses might not know why the pharmacists denied them their contraceptives. Pharmacists have been known to state varying indirect reasons other than personal beliefs for not distributing the contraceptives. These "excuses" include: "We are out of stock;" "Emergency contraception is not over the counter;" and "Emergency contraception is not FDA approved." Many of these statements are false. If the woman does not have the knowledge or opportunity to properly educate herself, how would she know the pharmacist was lying to her? If she is told that emergency contraception is not FDA approved, how would she know to attempt to obtain the pills from another pharmacy? These "excuses" could very well lead to unintended pregnancies or preventable abortions.

Additionally, there are other instances where the prescriptions for birth control or emergency contraception (pre-2006 when a prescription was needed) have been thrown away by the objecting pharmacist as well as several instances of pharmacists *lecturing* women about their choice of lifestyle. This perpetuates the idea of women not being able to make their own decisions.

PHYSICAL: POSSIBLE PREGNANCY

In all the scenarios above, the outcome is the same. Contraceptives are not handed over to the woman by the pharmacist. As previously explained, contraceptives (especially emergency contraception) are time sensitive. If birth control pills are skipped or emergency contraception is not taken within 72 hours of intercourse, a woman is more likely to become pregnant than if the pills were properly taken at the right times. By denying women contraceptives, pharmacists are upping the chances of an unwanted pregnancy. Unintended pregnancies are life-altering. For some women, pregnancy can entail great health risks and even be dangerous. The woman must make the decision to either obtain an abortion or carry the baby to term.

If the woman decides to carry her baby to term, this can be both directly and indirectly dangerous, especially for women who are young or unmarried, for women who have recently given birth, and for women who already have children and can not financially support another child. Serious medical conditions and health risks for the mother and the newborn such as low birth weight babies, lack of prenatal care, poor birth spacing or giving birth before or after one's child-bearing prime are associated with unintended pregnancies.[112]

[112] Sonfield, Adam. "Preventing Unintended Pregnancy: The Need and the Means." Guttmacher Rep. on Public Policy, Dec. 2003..

For a **teenager**,[113] an unintended pregnancy increases the chances of an incomplete high school education, rearing a child as a single parent, and further presents a greater probability that the teen will live in poverty, more so than other teens.[114] Unintended pregnancies interfere with education, resulting in long-term implications for the young woman's employment opportunities and ability to support herself. These consequences fall disproportionately on the side of African-American and Hispanic teenage mothers.[115]

Unplanned pregnancies increase a woman's risk of **physical abuse** and abandonment by her partner as well as an infant's risk of physical abuse and death before his or her first birthday.[116] When a woman and her partner plan for a pregnancy, they are better prepared to deal with the demands of pregnancy and are more able to provide economically for the child.

Ironically, an increase in refusal clauses will lead to an increase in **abortion**. Surgical abortion is far more invasive than contraceptives. While surgical abortion is far less risky than giving birth, it is still riskier than emergency contraception, birth control pills, or RU-486. Additionally, it is more time consuming due to waiting periods, appointments, and the recovery time.

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[113] According to the FDA, young women under the age of 18 are legally allowed to obtain contraceptives but not emergency contraceptives. I would like to highlight the hypocrisy in this as emergency contraceptives are simply a higher (but still safe) dosage of oral birth control pills (typically 2-4 pills depending on what type of oral birth control pills they are).

[114] Pregnancy and Childbearing Among U.S. Teens. Revised 2006. Planned Parenthood. Accessed April 1, 2008. <http://www.plannedparenthood.org/issues-action/sex-education/teen-pregnancy-6239.htm>

[115] Teen Pregnancy. Revised October 5, 2007. Center for Disease Control and Prevention. Accessed April 1, 2008. <http://www.cdc.gov/reproductivehealth/AdolescentReproHealth/>.

[116] Smearman, 503

Additionally, surgical abortion is far more economically expensive than contraceptives. The average pack of oral birth control pills ranges from $15.00 to $50.00 per month.[117] The cost of a one time dosage of emergency contraception ranges from $10.00 to $45.00.[118] This pales in comparison to the financial cost of a first-trimester abortion, which can range any where from $350.00-$700.00 depending on which state you are located in.[119] This does not include the cost of transportation or money lost from not being able to work during the abortion or recovery period. By denying a woman contraceptives, a pharmacist could be potentially placing her in a dangerous financial situation.

UNEQUAL IMPLEMENTATION

Given the history of reproductive rights in the United States and seeing how reproductive issues have affected women of color and of varying classes differently, it is certainly possible that refusal clauses will affect women differently depending on their demographics. The United States eugenics movement in the late nineteenth century and early twentieth century has proven some births are valued over other births. Forced, state-mandated, sterilizations of African American women continued as late as the 1970s in an effort to promote white child birth.[120] Since the 1990s, there have been campaigns to inject Norpalnt and Depo-Provera (a long-acting contraceptive) into the arms of women

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[117] Birth Control Pill. Updated February 9, 2008. Planned Parenthood. Accessed April 1, 2008. <http://www.plannedparenthood.org/health-topics/birth-control/pill-4228.htm>
[118] Getting EC. Updated December 5, 2006. Planned Parenthood. Accessed March 7, 2008. <http://www.plannedparenthood.org/health-topics/morning-after-pill/getting-ec.htm> .
[119] Abortion Procedures. Updated February 8, 2008. Planned Parenthood. Accessed March 7, 2008. <http://www.plannedparenthood.org/health-topics/abortion/abortion-procedures-4359.htm>.
[120] Davis, Angela. *Women, Race, & Class.* New York, NY: Vintage Books, 1983.

on welfare, whether the women wanted to be on contraceptives or not.[121] In striking contrast to forced sterilizations of women of color, refusal clauses have been used to deny white women *voluntary* sterilizations.

By looking at the history of unequal birth control regulation across race and class, it can be assumed refusal clauses will not be applied across the board evenly for all women. By putting the decision making power into a pharmacist's hands, legislatures are placing a lot of faith in the pharmacist. But pharmacists' conscience may not be as pure as they claim it to be. They may enforce refusal clauses unequally, denying white, middle class women contraceptives while simultaneously and eagerly handing over those medications to women of color and poor women. While there is no immediate evidence for this, the pattern of unequal treatment illustrated in the past could easily resurface within the pharmacy.

CONCLUSION

Access to contraception and other reproductive rights is an essential health care component for women in their reproductive years to prevent unintentional pregnancies. In the United States, sixty-two million women are in their childbearing years.[122] 70% of women (forty-three million) are sexually active and do not want to become pregnant; of

[121] Roberts, Dorothy. "Killing the Black Body." In Women: Images and Realities, 3rd Edition. Ed. Amy Kesselman, Lily D. McNair, and Nancy Schniedewind. New York, NY: McGraw-Hill, 2005. 349-351.
[122] Facts in Brief: Contraceptive Use. Revised January 2008. Alan Guttmacher Institute. Accessed Febuary 28, 2008. <http://www.guttmacher.org/pubs/fb_contr_use.html#2>

these, eighty-nine percent use some form of contraceptive.[123] The proliferation of refusal clauses has the potential to directly affect millions of women.

The most important factor in all of these consequences is that women are not in control of their own reproductive decisions. Implied in refusal clauses is the failure to take seriously the moral independence of women as free and rational agents able to make responsible decisions about their reproductive capacities.[124] Women have a basic human right to decide what to do about a pregnancy. Women should have equal participation in public life. Deciding whether and when to have children is central to the goal of equality.[125] Pharmacist refusal clauses silence women's voices who wish to avoid the consequences of an unintended pregnancy.

Words often seem abstract and language is often taken for granted. Most people speak on a daily basis without regard to the consequences their verbal communication might have. The outcomes, significance, or importance of a specific, commonly used word embedded in a sentence may rarely be thought of as worth any type of analytical evaluation. Yet rhetoric has real-life consequences, especially rhetoric that is orchestrated and supported by a politically powerful anti-abortion movement. For pharmacist refusal clauses, these consequences have extended beyond the pharmacy, medical institutions, and government and have leaked into educational systems, the economy, and most importantly women's lives.

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[123] Unintended Pregnancy Prevention: Contraception. Updated 2006. Dept of Health and Human Serv., Center for Disease Control and Prevention. <http://www.cdc.gov/reproductivehealth/unintendedpregnancy/contrcation.htm.>

[124] Smearman, 501.

[125] Without contraceptives, the average woman would bear between 12 and 15 children in her lifetime. (Greenberger)

EPILOGUE

When I received the email from Priest X, I initially wanted to retaliate. He made infuriating claims that my paper was a "wild conspiracy theory" dreamed up over "cocktail hour with my friends" and written by an "immature Feminazi" with "weak arguments." My visceral reaction was to write him back immediately, defending my stance, arguing why his response was problematic for women, and expressing my disgust with his misogynistic comments.

Flash forward almost two years: It is now the spring of 2008. Almost weekly I pull out Priest X's email response to my paper and read it. No longer do I get angry when I read it. Instead I dissect it, analyze it, pull out all the rhetorical strategies and expose them. What used to make me furiously hot blooded, now makes me laugh. Ironically, Priest X's email has inspired me to further my research on refusal clauses and investigate the rhetorical strategies he used in his response.

I would like to dedicate the inspiration for my thesis to Priest X who, after calling women who use birth control "cum-dumpsters" and "sperm-mittens," concluded with giving me this bit of inspiration: "I encourage you to use your brain and your life to help people to live a better quality of life."

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