



November 5, 2008

Dear President-Elect Obama:

It is truly an auspicious time in America as we look forward to your inauguration and the opportunity it brings for positive change. I write to urge you to make reproductive health and rights a priority of your Administration. Under your direction, the United States can once again become a leader on these issues.

Founded in 1992, the Center for Reproductive Rights is the only global legal advocacy organization dedicated to advancing women's reproductive and sexual health care as a basic human right. The Center for Reproductive Rights advances women's equality worldwide by securing reproductive rights in statutory, constitutional, and international human rights law. Through litigation and advocacy, the Center works to ensure that women have access, without discrimination, to reproductive health information, contraception, abortion, and obstetrics care. In the last two years, we argued *Gonzales v. Carhart* (2007) in the U.S. Supreme Court and litigated in state and federal courts on a wide range of reproductive rights issues, including a pending lawsuit against the FDA to grant over-the-counter status to emergency contraception as supported by the Agency's scientific experts. Internationally, the Center works at the United Nations, and has filed groundbreaking cases in the European Court of Human Rights and the Inter-American human rights system, and has provided legal analysis and support in precedent-setting cases in national courts in Latin America, Asia, Eastern Europe, and Africa. We have partnered with women's rights advocates around the world, working in over 50 countries on cases, fact-finding reports, legal publications, and law reform efforts.

As a strong supporter of reproductive rights, you understand the values that underscore them – human dignity, self-determination, equality, and non-discrimination. These principles are embodied in the United States Constitution, one of the world's earliest human rights documents, as well as the Universal Declaration of Human Rights. You also understand, however, that the mere recognition of rights is not enough: they must improve the lives and health of women. Access to comprehensive information, contraception, abortion, prenatal, and obstetrics care are critical. To take just one example, we cannot meaningfully address the high rates of adolescent pregnancy in this country while at the same time denying comprehensive sexuality education and supporting ineffective abstinence-only programs. In order for this country to reduce high rates of unintended pregnancy, sexually transmitted infections, and maternal mortality, and to eliminate the shameful racial disparities in reproductive health, we must recognize a broader vision, guided by human rights principles, grounded in science and not ideology, and reflecting the understanding that access to reproductive health care will improve the lives of women and families.

The United States has been a world leader in championing equality and human rights, and of supporting access to essential reproductive health care around the world. For eight years, however, we have suffered under the yoke of an Administration that has suppressed science to the detriment of health and has done damage to constitutional and human rights values. Decades of hard-won progress have been eroded. Federal court decisions have undermined the protections established by *Roe v. Wade*; funding for basic reproductive health care is inadequate; and maternal mortality rates among women of color remain shamefully high. At the U.N., the United States has undermined protection for reproductive rights and health, and restrictions that the U.S. places on foreign assistance, hamper rather than promote progress.

These injustices demand a bold agenda for change. The Center for Reproductive Rights has laid out detailed policy recommendations in our Reproductive Rights Federal Policy Agenda.<sup>1</sup> Among all of the positive changes that are possible under your Administration, three stand out for immediate action:

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<sup>1</sup> Available at: [http://www.reproductiverights.org/pdf/FPA\\_UPDATED.pdf](http://www.reproductiverights.org/pdf/FPA_UPDATED.pdf).

## 1. Promote Reproductive Health Policies Guided by Science and Not Ideology

The policy agenda of the previous Administration was driven by ideology, often in disregard of objective scientific evidence. The detrimental effects of this ideological agenda are particularly troubling in the area of reproductive health. For example, in spite of numerous studies, including a report from the United States Department of Health and Human Services, demonstrating that abstinence education programs don't work, the previous Administration championed these programs. Additionally, in denying unrestricted over-the-counter access to emergency contraception for women of all ages, officials within the Food and Drug Administration, apparently under pressure from the White House, rejected the findings of the FDA's own scientific review staff.

The Center for Reproductive Rights recommends that you 1) strike funding for abstinence-only programs in the proposed budgets for the Title V Maternal-Child health Block grant and the Community-Based Abstinence-Education programs, 2) appoint agency heads, including the Secretary of Health and Human Services and the Director of the Food and Drug Administration, who will not allow politics to trump science, and 3) that you direct the Secretary of HHS to instruct the FDA to review and evaluate the scientific data underlying the age restriction on over-the-counter access to EC, to ensure that the FDA's policy is based on medical evidence and not ideology.

## 2. Appoint Federal Judges Committed to Supporting Established Constitutional Rights

The importance of judicial appointments to the preservation of reproductive rights in the U.S. cannot be understated. Judges address critical issues, including protection for abortion, issues affecting access to contraception, so-called conscientious refusals to provide health care, and sex discrimination claims. At this time, only four of the nine current Justices of the Supreme Court have expressed clear support for *Roe v. Wade*, and many believe that the fate of *Roe* hangs in the balance of the next appointment. Indeed, the Court's decision in *Carhart v. Gonzales* (2007) upholding the federal abortion ban, signals five Justices' willingness to further undermine constitutional protections for women's reproductive rights and possibly to overturn *Roe* entirely. One particularly troubling aspect of that opinion is that the Court ignored findings of fact made by lower courts and based on sound medical evidence, and deferred to Congress' "facts," some of which were acknowledged to be demonstrably false. As Justice Ginsburg noted in her dissent:

Today's decision is alarming. It refuses to take *Casey* and *Stenberg* seriously. It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG) ... And, for the first time since *Roe*, the Court blesses a prohibition with no exception safeguarding a woman's health.

In sharp contrast to the erosion of protection for reproductive rights in U.S. law, the global trend within United Nations', regional, and national jurisprudence has been towards the recognition of reproductive rights as human rights. Recent decisions by the United Nations Human Rights Committee and the European Court of Human Rights have found that denying women abortions in certain circumstances violated human rights guarantees. In 2006, the Colombian Constitutional Court held that country's ban on abortion unconstitutional, stating that: "Women's sexual and reproductive rights have been finally recognized as human rights, and as such, they have become part of constitutional law, in turn a basic foundation of any democratic State." In addition, in the last twenty years, 16 countries have liberalized their abortion laws. At a time when the world is moving towards greater recognition and protection of these rights, the United States, too, should be advancing and not retreating.

The Center recommends that you ensure that nominees to the federal bench, including the United States Supreme Court, will affirm recognized constitutional rights, including women's right to choose an abortion.

### **3. Support Reproductive Rights and Health at the United Nations and Within Foreign Assistance Programs**

Over the past eight years, the United States has undermined decades of global improvements in women's reproductive health and in the recognition of reproductive rights as basic human rights. At the United Nations, in meetings to advance consensus documents supporting reproductive rights and health that were agreed to by the U.S in Beijing and Cairo, U.S. representatives obstructed progress by pushing ultimately unsuccessful anti-abortion and abstinence-only agendas. U.S. foreign assistance policy has also reflected extreme ideological positions that have ignored the dire need to make family planning more available in developing nations (at least 100 million couples worldwide have an unmet need for family planning), including the re-imposition of the "Mexico City Policy," (the Global Gag Rule), and the denial of funds to the United Nations Population Fund (\$240 million since 2002).

The Center recommends that you 1) nominate representatives to the United Nations who are committed to living up to the U.S.'s prior commitments to promote and protect reproductive rights, 2) repeal the Global Gag Rule, and 3) restore funding to the United Nations Population Fund.

We hope that your vision for reproductive rights and health will go further than simply undoing the policies of the previous Administration, which continue to inflict needless deprivations. We ask that you work toward a nation and world in which all women are free to decide whether and when to have children, where all women have access to quality reproductive health care, where all women can exercise their choices without coercion or discrimination, and where all women can participate with full dignity as equal members of society.

The Center stands ready to work with you and hope that you will take advantage of the assistance and expertise that we can provide as you move ahead to develop sound policies that reflect both science and respect for constitutional and human rights principles.

Sincerely,



Nancy Northup  
President  
Center for Reproductive Rights