

**Testimony of Gretchen Borchelt  
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**Before the  
Council of the District of Columbia  
Committee on the Judiciary and Public Safety**

**June 23, 2014**

Chairperson Wells and members of the Committee, thank you for giving me the opportunity to testify today on behalf of the National Women's Law Center in support of Bill 20-790, the Reproductive Health Non-Discrimination Act of 2014. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, including their rights to be free from workplace discrimination and to make their own private, personal medical decisions. Because the Reproductive Health Non-Discrimination Act of 2014 advances both of those goals, the National Women's Law Center strongly urges you to move this bill forward.

**I. Employers are Discriminating Against Employees Because of their Reproductive Health Care Decisions**

We've seen employers across the country discriminate against their employees because of private reproductive health care decisions.

*Employers are discriminating against women for seeking to prevent pregnancy*

The Reproductive Health Non-Discrimination Act of 2014 would protect from employer discrimination those individuals who seek to prevent pregnancy. Across the country, we have seen employers threaten to fire workers who use birth control, and employers who refuse to provide insurance coverage of birth control.

- Employers with religious beliefs against birth control – including some in D.C. – are challenging the federal health care law's requirement that insurance plans provide coverage of all FDA-approved birth control methods, sterilization, and related education and counseling.<sup>1</sup> Over 63,000 women in the District of Columbia and 27 million women nationwide are benefiting from this requirement.<sup>2</sup>
- Just two years ago, politicians in Arizona revised a long-standing law requiring insurance coverage of birth control, to make it easier for a boss to penalize an employee for using it.<sup>3</sup>

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<sup>1</sup> National Women's Law Center, Status of the Lawsuits Challenging the Affordable Care Act's Birth Control Coverage Benefit (June 17, 2014), <http://www.nwlc.org/status-lawsuits-challenging-affordable-care-acts-birth-control-coverage-benefit>.

<sup>2</sup> Laura Skopec & Benjamin D. Sommers, Abstract of ASPE Issue Brief: Seventy-One Million Additional Americans are Receiving Preventive Services Coverage With-out Cost-Sharing under the Affordable Care Act (March 2013), available at [http://aspe.hhs.gov/health/reports/2013/PreventiveServices/ib\\_prevention.cfm](http://aspe.hhs.gov/health/reports/2013/PreventiveServices/ib_prevention.cfm).

<sup>3</sup> ARIZ. REV. STAT. ANN. §§ 20-1057.08 (2002) (amended 2012).

- After Wisconsin passed a law in 2009 requiring insurance plans to cover birth control, the Madison Catholic Diocese warned employees that if they took advantage of the benefit, they could face termination.<sup>4</sup>

Allowing employers to take birth control coverage away from women jeopardizes the health of women and any children they might conceive. It subjects them to financial burdens that men in the same group health plan do not face. And it has long-term negative consequences for women's and their families' economic, educational, and employment opportunities.<sup>5</sup>

### ***Employers are firing women for pursuing pregnancy through the use of assisted reproductive technology***

- Christa Dias, an unmarried teacher for two schools with the Archdiocese of Cincinnati, Ohio, was fired after she became pregnant through artificial insemination.<sup>6</sup>
- Kelly Romenesko was fired from her 7 year job teaching French at two Wisconsin Catholic schools, because she and her husband used in vitro fertilization to become pregnant.<sup>7</sup>
- Emily Herx was fired from her teaching job at a Catholic school in Indiana for using in vitro fertilization. In a letter Herx wrote to school officials shortly after being informed of her dismissal, she said "it was terrible to be forced to choose between trying to have children and keeping her job as a language arts teacher."<sup>8</sup>

### ***Employers are firing women for having sex outside of marriage***

- Christine John, a kindergarten teacher at a Christian school in Michigan, was called into a meeting with school officials. They asked why she was four months pregnant when she was married only two months before. John says that officials told her that premarital sex is strictly forbidden by the school and that her services were no longer needed.<sup>9</sup>
- Earlier this year, after an anonymous letter revealed her pregnancy, a Catholic school district in Montana fired middle school teacher Shaela Evenson for having sex outside of

<sup>4</sup> Doug Erickson, *Wisconsin Diocese Offers Birth Control Insurance, but Warns Employees Not to Use It*, WFCOURIER.COM (Aug. 10, 2010, 8:00 PM), [http://wfcourier.com/news/local/wisconsin-diocese-offers-birth-control-insurance-but-warns-employees-not/article\\_0b904262-a4e4-11df-bde9-001cc4c002e0.html](http://wfcourier.com/news/local/wisconsin-diocese-offers-birth-control-insurance-but-warns-employees-not/article_0b904262-a4e4-11df-bde9-001cc4c002e0.html).

<sup>5</sup> Brief for the National Women's Law Center and Sixty-Eight Other Organizations As *Amici Curiae* In Support of the Government, *Sebelius v. Hobby Lobby Stores, Inc.* 723 F.3d 1114 (10th Cir. 2013), *cert. granted*, 134 S.Ct. 678 (Nov. 26, 2013) (No. 13-354); *Conestoga Wood Specialties Corp. v. Sebelius*, 724 F.3d 377 (3d Cir. 2013), *cert. granted*, 134 S.Ct. 678 (Nov. 26, 2013) (No. 13-356), <http://www.nwlc.org/resource/nwlc-supreme-court-amicus-brief-supporting-contraceptive-coverage-benefit>.

<sup>6</sup> *Jury Rules Discrimination by Cincinnati Archdiocese*, RECORD-JOURNAL (Meriden, Ct.), June 8, 2013, 2013 WLNR 14096999.

<sup>7</sup> *Teacher Appeals Firing: Appleton Catholic System Cites In Vitro Pregnancy*, JOURNAL SENTINEL (Madison, Wis.), May 11, 2006, <http://news.google.com/newspapers?nid=1683&dat=20060511&id=-yMqAAAAIABAJ&sjid=GkUEAAAAIABAJ&pg=6530,702621>

<sup>8</sup> Charles D. Wilson, *Sides in Ind. In Vitro Lawsuit Argue Over Doctrine*, INDYSTAR (Feb. 8, 2014, 6:21 PM), <http://www.indystar.com/story/news/crime/2014/02/08/sides-in-ind-in-vitro-lawsuit-argue-over-doctrine/5319763/>.

<sup>9</sup> *Teacher Punished for Pregnancy*, GRAND RAPIDS PRESS, May 12, 2005, 2005 WLNR 7571283.

marriage. She was fired despite her 10 year career with them and the fact that the principal called her an “excellent teacher.”<sup>10</sup>

- After revealing her pregnancy, preschool teacher Michelle McCusker was fired from a Catholic school in New York for becoming pregnant outside of marriage.<sup>11</sup>

These women were dedicated to their jobs and fully qualified for their positions. It is unfair that these women would be fired simply because of their private activities outside of the workplace, including the decision to start a family.

All of these examples taken together demonstrate that women remain at serious risk of workplace discrimination based on their reproductive health decisions, and based on an employer’s religious beliefs about such decisions. The Reproductive Health Non-Discrimination Act of 2014 would make it clear that, in D.C., employers cannot ask individuals to choose between their job and their reproductive freedom.

## II. The Reproductive Health Non-Discrimination Act of 2014 Will Fulfill The Promise of D.C.’s Human Rights Act

As members of this Committee know well, D.C. has always been at the forefront of protecting employees from discrimination in the workplace. The original Human Rights Act of 1977 protected against discrimination on the basis of sexual orientation prior to any other similar state law.<sup>12</sup> The Human Rights Act now protects individuals in the workplace from various forms of discrimination, including on the basis of disability, sex, family responsibilities, marital status, genetic information, and gender identity and expression.<sup>13</sup>

Although many of the Human Rights Act’s existing protections – particularly its protection against discrimination on the basis of “pregnancy”<sup>14</sup> – could apply to the examples of reproductive health discrimination detailed above, we have seen in other states that these kinds of protections are often interpreted in such a way as to leave women without a legal remedy.<sup>15</sup> The Reproductive Health Non-Discrimination Act of 2014 will help ensure that

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<sup>10</sup> Molly Redden & Dana Liebelson, *A Montana School Just Fired a Teacher for Getting Pregnant. That Actually Happens All the Time*, MOTHER JONES (Feb. 10, 2014, 10:32 AM), <http://www.motherjones.com/politics/2014/02/catholic-religious-schools-fired-lady-teachers-being-pregnant>.

<sup>11</sup> Statement of Michelle McCusker, Pregnant Teacher Fired by Catholic School (Nov. 21, 2005), <http://www.nyclu.org/node/861>.

<sup>12</sup> Human Rights Act of 1977, D.C. Law 2-38, title I, § 101, 24 DCR 6038 (1978).

<sup>13</sup> D.C. Code § 2-1401.01–1411.06.

<sup>14</sup> D.C. Code § 2-1401.05.

<sup>15</sup> See, e.g., *In re Union Pacific Railroad Employment Practices Litigation*, 479 F.3d 936, 943 (8th Cir. 2007) (holding that it is not sex discrimination to refuse to cover birth control in an otherwise comprehensive plan); *LaPorta v. Wal-Mart Stores, Inc.*, 163 F. Supp. 2d 758 (W.D. Mich. 2001) (holding that firing an employee for taking time off work in order to undergo infertility treatment is not sex discrimination, because infertility is not part of “pregnancy, childbirth, or related medical conditions”). In the case of Kelly Romenesko mentioned above, who was fired for using in vitro fertilization, an investigator for the state’s agency charged with enforcing anti-discrimination laws upheld her termination, saying she had not been fired for becoming pregnant but for undergoing in vitro fertilization, which was not protected under state law. Redden & Liebelson, *supra* note 10.

discrimination on the basis of reproductive health decisions does not fall into a gap in existing D.C. law.<sup>16</sup>

As Council Member Grosso explained when he introduced the bill, “While the District enjoys some of the strongest non-discrimination laws in the country, this specific legislation signals that we stand by the rights of women and families to make their own reproductive health decisions.”<sup>17</sup>

The Reproductive Health Non-Discrimination Act of 2014 is an important step for the D.C. Council to fulfill the promise of the Human Rights Act, and ensure that its citizens are protected against employer discrimination in all aspects of their lives.

### III. Conclusion

The National Women’s Law Center strongly supports the Reproductive Health Non-Discrimination Act of 2014. It will ensure that women – and men – are explicitly protected against employment discrimination when they make reproductive health decisions. It will ensure that an employer’s religious beliefs do not trump women’s health and access to the health care she needs. It will show the D.C. Council’s support for the idea that people should be judged at work by their performance, not based on their personal, private health care decisions.

Thank you.

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<sup>16</sup> Other states, including Michigan, New York, and North Carolina, are taking similar steps to ensure that non-discrimination principles explicitly include reproductive health decisions. *See, e.g.*, S6578B, 2013 Leg., Reg. Sess. (N.Y. 2013), <http://open.nysenate.gov/legislation/bill/S6578B-2013>; H.B. 5416, 2014 Leg., Reg. Sess. (Mich. 2014), <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/pdf/2014-HIB-5416.pdf>; SB 855, 2013 Leg., Reg. Sess. (N.C. 2013), <http://www.ncga.state.nc.us/Sessions/2013/Bills/Senate/HTML/S855v1.html>. As New York State Senator Gustavo Rivera said, “It is simply unacceptable that under New York law women are still susceptible to discriminatory practices in the workplace when it comes to making personal decisions about their reproductive health.” *See* Press Release, Senator Liz Krueger, Sen. Krueger, Advocates Applaud Passage of “Boss Bill” in Senate Labor Committee, Call for Floor Vote Before End of Session (June 3, 2014), <http://www.nysenate.gov/press-release/sen-krueger-advocates-applaud-passage-boss-bill-senate-labor-committee-call-floor-vote>.

<sup>17</sup> Press Release, David Grosso, D.C. Council At-Large, Grosso’s Reproductive Rights Legislation to Protect Women and Families (May 6, 2014), <http://www.davidgrosso.org/news/2014/5/6/grossos-reproductive-rights-legislation-to-protect-women-and-families>.