

YOUNG TEENS AND ORAL CONTRACEPTIVES: THE KING MIDDLE SCHOOL STUDENT HEALTH CENTER BIRTH CONTROL CONTROVERSY

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I. INTRODUCTION

In the fall of 2007, the Portland School Committee voted to ratify a proposal from the King Student Health Center (“Health Center”) located at the King Middle School in Portland, ME to expand its services to provide prescription contraception to Health Center users. The proposal to offer the full range of contraceptive services at the Health Center came about after seventeen middle school-aged girls became pregnant in the City’s three middle schools over a four-year period. The policy change drew intense and immediate scrutiny from local and national media. The American Center for Law & Justice (“ACLJ”), a public interest law firm, sent a letter to School Committee members threatening to sue the School Committee if the policy was not changed and the local prosecutor alleged that Health Center staff had not been properly complying with Maine’s mandatory reporting laws. The School Nurse Coordinator for Portland Public Schools, the King Middle School Principal and Health Center staff, along with supportive members of the School Committee and the

ABOUT THE DEFENSIVE LITIGATION PROJECT

Funded by the Robert Wood Johnson Foundation’s Public Health Practice & Policy Solutions, the Project uses case study research methodology to investigate threats of litigation made during the proposal and passage of public health laws. The case studies examine this experience across a range of public health issues. Public health officials, attorneys and advocates provide insight into their decision-making and planning process in anticipation of and in response to legal challenges.

community did not waiver in light of the national media attention and the legal threats made. The policy went into effect without delay or amendment and no litigation has been filed to challenge the policy.

II. TEEN PREGNANCY AND SCHOOL-BASED HEALTH CENTERS

A. National Teen Pregnancy Rates

Teen pregnancy and birth rates in the United States declined by about one-third between 1991 and 2003.¹ From 2003 to the present, however, this downward trend in teen pregnancy has stalled or reversed among certain racial and ethnic groups in which teen sexual activity rates have remained fairly constant and contraceptive use has declined.²

Nationally, seventy percent of school-based health centers providing reproductive health services are prohibited from dispensing contraception to students.³ The most common reason for why a school-based health center is prohibited from dispensing contraception is because a school district policy bars the practice (such policies were cited by sixty-six percent of the school-based health centers reporting that they do not offer contraception).⁴ Such policies may contravene public health recommendations intended to reduce teen pregnancy rates. As Santinelli, M.D. et al found, “[i]f the U.S. wants to effectively address teen pregnancy rates, reinvigorated efforts are needed at the state and national level to promote teen contraceptive use among teens through sex education and health services.”⁵

B. Portland, Maine's Response to Increased Middle School Pregnancies

In 2000, the State of Maine had relatively low rates of teen pregnancy and birth, ranking forty-sixth in the nation for girls aged fifteen through nineteen,⁶ with a total of twenty pregnancies for girls under the age of fifteen statewide.⁷ In recent years, school and public health officials in the City of Portland, Maine have become concerned about an uptick in pregnancies amongst middle school-aged girls.⁸ From 2003 to 2007, there were seventeen middle school-aged pregnancies known to school officials in Portland's three middle schools. Seven of these pregnancies occurred in the 2006-2007 school year.⁹ In response to the increase in Portland middle school pregnancies, public health officials proposed offering oral contraceptives to middle school students accessing the Health Center located at King Middle School, the City's only middle school-based health center.

Maine's school-based health center system consists of twenty-six health centers.¹⁰ Statewide, nineteen percent of these health centers are located in middle schools.¹¹ While Portland's high school-based health centers offered a full range of family planning services, middle school-based health centers did not offer oral contraceptives to students. In the fall of 2007, the Portland Division of Public Health proposed a policy change to expand the range of reproductive health services available to students using the King Student Health Center to include prescription birth control.

III. DESCRIPTION OF PROPOSED PUBLIC HEALTH INITIATIVE

A. School-Based Health Centers

Portland's school-based health centers are housed in individual public schools and operated by the Portland Division of Public Health. In order to access health center services, a child's parent must complete an enrollment form and provide parental consent. Under Maine law, however, once a child is enrolled in a health center, he/she can receive services related to mental health, substance abuse and reproductive health confidentially without parental notification. All students seeking medical care at school are first seen by a school nurse, and then, when necessary, students enrolled in the school-based health center are referred to the health center for primary care services.

B. Process of Ratifying the Policy Change

The Portland Division of Public Health has a Human Sexuality and Family Living Advisory Board ("HSFLAB") that meets four times a year. The HSFLAB's function is to oversee the Human Sexuality and Family Living curriculum and to act as an advisory board to the City's school-based health centers. It is comprised primarily of parents, with space also reserved for a clergy member and a physician.

In 2003, the HSFLAB recommended that Portland's high school-based health centers offer a full range of contraceptive services.¹² According to Amanda Rowe, School Nurse Coordinator for the Portland School District, the policy change to offer high school students contraceptive services in 2003 was met "with nary a whimper." It was approved by the School Committee by a vote of eight-to-one.¹³ Contraceptive services have been provided at all of Portland's high school-based health centers since then.

Several years after the Health Center policy change, there was an increase in pregnancy rates among middle school-aged girls in Portland. When Ms. Rowe looked into national data, she found a trend of younger children becoming sexually active. Although the issue affected a small number of middle school students overall, Ms. Rowe, King Middle School Principal Michael McCarthy, the King School Nurse and Lisa Belanger of the Portland Division of Public Health started to explore the idea of offering the full range of reproductive health services, including prescription oral contraceptives, at the Health Center and presented the policy change to the HSFLAB for comment and approval.

While the HSFLAB was fairly unified in its decision-making process, there was an initial sense of disbelief and concern from parents that kids were sexually active in middle school. During the 2006-2007 school year, five King Middle School children using the Health Center self-reported being sexually active. However, according to Ms. Rowe, “we certainly knew that there were more,” and school nurses were aware of seven middle school-aged pregnancies that same year.¹⁴ HSFLAB members were presented with the health data regarding middle school sexual activity and pregnancy and were reassured that only students with parental consent to could use the Health Center services. The HSFLAB then agreed to recommend the policy change.¹⁵

Equal access to health services was also a strong motivating factor behind the policy change. Despite efforts to make sure all students have a “medical home” beyond the school-based Health Center, “[f]or a small number of . . . students . . . the school-based health center is their de facto primary care provider.”¹⁶ Principal McCarthy felt

that to deny children using the Health Center the full range of reproductive health services available at private clinics or a primary care doctor's office was discriminatory. In a letter to King Middle School Parents explaining the rationale behind the policy change, Principal McCarthy wrote: "Our goal is to equalize access to health care for our students who use the Health Center as their primary source of health care. This gives the doctor the full range of options to prevent teen pregnancy."¹⁷

The school-based health centers operate independently from the schools and are not officially required to obtain permission from the School Committee with respect to services offered. Yet according to Ms. Rowe, "[g]iven that the school-based health center has a special relationship in the schools, we really wanted there to be clear and transparent . . . knowledge by the School Committee that this is what we were doing and to have them ok it."¹⁸ School Committee Chairman Mr. Coyne agreed: "Basically, the city could have done that [provide oral contraception] without our authorization, but they wanted our blessing. They wanted us to ratify this decision."¹⁹

In the fall of 2007, the Superintendent of Portland Public Schools was informed of the proposed middle school policy change and advised the Health Center that it would need to have the policy ratified by the School Committee.²⁰ The Portland Division of Public Health then asked the School Committee to ratify its proposed policy change to expand the range of reproductive health services so that prescription birth control would be available to students using the Health Center.

Mr. Coyne noted: "I personally didn't agree with it . . . but as the Chairman I was obligated to bring it forward . . . and put it out to my Board and look at it in the public

eye.”²¹ According to Mr. Coyne, the School Committee consulted the School District’s legal counsel prior to voting on the policy change: “[w]e wanted to make sure that we weren’t agreeing to something that we couldn’t provide . . . and we were basically told that we were . . . approving something for [the Health Center] to . . . [provide oral contraception that] was perfectly legal.”²² In October of 2007, the School Committee held a public hearing on the issue. At a subsequent business meeting, the School Committee ratified the Health Center policy change by a vote of seven-to-two. The measure would allow practitioners to dispense contraceptives at the Health Center. During the School Committee’s discussion and debate on the issue, Mr. Coyne and another member who opposed the policy change offered amendments to limit the scope of parental consent to include an opt-out provision for reproductive health services.²³ The School Committee did not adopt any of the amendments offered at the business meeting.²⁴ The Health Center contraception policy remains in effect and unchanged from when it was ratified by the School Committee in October of 2007.

IV. LEGAL AND POLICY CHALLENGES

The School Committee’s decision to ratify the Health Center’s oral contraception policy drew national media attention, an overt threat of a legal challenge by the ACLJ and in an inquiry by the local prosecutor’s office. The provision of contraceptives to children under fourteen years of age in a medical setting implicates Maine criminal law deeming all sexual activity by children under fourteen years of age as “gross sexual assault,” the provision of Maine’s doctor/patient confidentiality law, which allows physicians to provide reproductive health services to minors without parental consent or

notification, and Maine’s mandatory reporting law for child abuse. These laws overlap, and in some ways, conflict with one another.

A. The Media Firestorm and Public Outcry

The immediacy and intensity of the local and national media attention caused by the Health Center policy change caught most people involved by surprise. When asked whether he anticipated the intense public scrutiny, Mr. Coyne said, “No, I don’t think that anybody sitting around that table, the nine of us [on the School Committee], really thought that this would go the way that it did.”²⁵ With respect to the timing of the media frenzy, Mr. Coyne said that “[i]t was almost instantaneously . . . typically you . . . get about ten people at these meetings and this night I would hazard to say there were about 150 people there . . . We were pretty much in front of cameras for a good couple of weeks.”²⁶ Mr. Coyne “actually had to take a few days off from work to talk with the press.”²⁷

The story was reported in print by major newspapers such as the *Boston Globe*, the *Washington Post* and the *New York Times*. Television broadcast coverage included: ABC’s *Good Morning America* and *World News*, CBS’ *Evening News*, MSNBC’s *Hardball with Chris Matthews* and was mentioned on FOXNews’ *The O’Reilly Factor*.²⁸

In addition to press inquiries from local and national media outlets, Mr. Coyne noted that School Committee members were “the recipients of hundreds and hundreds of emails and some stuff got mailed to our homes because our names and addresses are on our website.”²⁹ Because he voted against the policy change, Mr. Coyne got some supportive emails but also said that some of the emails were “disturbing.”³⁰

B. The ACLJ Threatens to Sue

Based in Washington, D.C., the ACLJ dedicates itself to religious liberties work and constitutional law involving issues of human life and marriage, among other topics.³¹ In a letter dated November 2, 2007 and addressed to Mr. Coyne, the ACLJ outlined its moral and legal objections to the King Middle School Health Center’s oral contraception policy.³² The ACLJ described itself as a public interest law firm writing “on behalf of the thousands of ACLJ members in Maine and across the country that have expressed to us their outrage and disgust over the [School] Committee’s usurpation of parental responsibility to protect the health and morality of their children.”³³ Stephen Whiting co-authored a letter addressed to the School Committee and signed as the Maine Director of the ACLJ, N.E.

The ACLJ urged the School Committee to “revise its policies for King Middle School’s health center to ensure that sexual activity involving young children is reported to law enforcement rather than facilitated.”³⁴ In its letter, the ACLJ cited Maine State criminal law whereby all sexual activity with a child thirteen years old or younger constitutes the crime of gross sexual assault unless the parties are married and argued that under Maine’s Child and Family Services and Child Protection Act, mandatory reporting provision health care providers “must report any known or suspected sexual activity involving children 13 years of age or younger.”³⁵ From the perspective of the ACLJ, since all sexual activity by children thirteen years old or younger is defined by Maine law as a crime, then all such sexual activity constitutes abuse and should be reported to law enforcement. Furthermore, the failure of a doctor or nurse to report all

sexual activity by students thirteen and under would constitute a civil infraction under Maine’s mandatory reporting laws.

While there is nothing to suggest that the ACLJ coordinated efforts with the local prosecutor’s office, District Attorney Anderson indicated that she would demand that King Middle School officials report to the Maine Department of Health and Human Services and to the appropriate district attorney all cases of known or suspected sex with minors under fourteen years of age.³⁶ District Attorney Anderson told the press, “When it’s somebody under age fourteen, it is a crime and it must be reported . . . The health care provider has no discretion in the matter. It’s up to the district attorney to decide.”³⁷ City Attorney Gary Wood told the press that he would seek guidance on the issue from the Maine Attorney General’s Office.³⁸ Proponents of the King Middle School measure feared that requiring the Health Center to report all underage sex to the Prosecutor’s Office would chill participation in the Health Center.³⁹ According to Mr. Coyne, after the reporting procedures of the Health Center were clarified, there was no further action taken by the District Attorney’s Office.⁴⁰

The ACLJ argued that the “[School] [C]ommittee’s decision to offer prescription birth control to students as young as 11 years old undermines the right of parents to direct the upbringing of their children.”⁴¹ The letter discussed parental rights: “As one of the only pre-constitutional rights recognized by the Supreme Court of the United States under the Due Process Clause of the Fourteenth Amendment, parental rights have been deemed one of the most sacred liberties in our nation.”⁴² It contended that although school officials are responsible for children while on school premises, “this does not

provide a justification for overriding the judgment of parents regarding the moral upbringing of their children.”⁴³

The ACLJ also argued that the Health Center policy “comes dangerously close to promoting the violation of state law:”⁴⁴

Providing contraceptives to young children sends the message that sexual behavior is acceptable for a person their age. It is akin to providing students with hypodermic needles to ensure that those that choose to engage in illegal drug use do so in the safest manner possible. Providing contraceptives to young children also helps to conceal criminal sexual activity by making it less likely to be detected. Health care providers should discourage and report criminal sexual behavior rather than facilitating it by providing contraceptives to young children.⁴⁵

As of June 24, 2009, according to the ACLJ’s website, 44,391 people had signed the following online petition:

Petition to Protect Children

The Portland School Committee

As a responsible member of the American Center of Law and Justice, I am outraged by the bold power-play of the Portland School Committee. It is my position that usurping parental responsibility in health and moral issues does not fall within your realm of authority. I firmly stand with concerned parents of the Portland community, and with the hundreds of innocent children in your care whose lives are touched and possibly altered by your decision, and demand that this disturbing reproductive health services policy be immediately revoked at King Middle School.⁴⁶

Moreover, the ACLJ made overt threats of litigation in a series of online press releases and “Trial Notebook” entries with the following titles: “ACLJ Demands that Maine School District Remove Policy Providing Students with Prescription Contraceptives or Face Legal Action,”⁴⁷ “More Than 30,000 Americans Sign Petition Demanding Maine School District Remove Policy to Distribute Prescription

Contraceptives”⁴⁸ and “ACLJ Headed to Court Against Maine School District.”⁴⁹ The ACLJ made overt threats of legal action: “. . . we will not hesitate to bring a lawsuit on behalf of concerned parents to get this policy removed.”⁵⁰

Ms. Rowe heard from people in the Portland community that the ACLJ made telephone calls to a number of King Middle School parents in search of potential plaintiffs for a suit challenging the policy.⁵¹ To date, no lawsuit has been filed.

V. PROPONENTS’ RESPONSE

In response to the high level of media attention, Principal McCarthy circulated a letter on October 19, 2007 to King Middle School parents to “address the swirl of controversy surrounding the King Middle School’s Health Center.”⁵² Principal McCarthy clarified in the letter what he saw as “misinformation out in the national media.”⁵³ In response to allegations that the proposed Health Center policy would lead to casual distribution of prescription birth control to young girls, Principal McCarthy wrote:

Contraception would only be prescribed in rare cases after counseling about abstinence and postponing sexual behavior was not productive. Every effort is always made to encourage the student to join with her parents in making this decision . . . There is also counseling to determine if this is a case of abuse or coercion. In this case proper authorities would be informed.⁵⁴

With respect to parental notification, Principal McCarthy informed parents that “[i]f a student does not wish to inform their parent – the doctor is required by Maine State Law to keep the diagnosis confidential. This is also the case if a private physician treats a student.”⁵⁵

The letter the ACLJ sent to School Committee members and subsequent statements that it would sue did cause concern amongst members. The ACLJ's letter did not acknowledge the unique relationship between the School Committee and the Health Center. The Portland Division of Public Health is the actual entity delivering the services at the Health Center. According to Mr. Coyne, the school legal staff reassured School Committee members that the School Committee was simply ratifying the city-run Health Center's decision, and since the School Committee was not actually providing the service, the legal rhetoric aimed at School Committee members was misplaced.⁵⁶

In order to better inform its decision-making around reporting the sexual activity of minors to the District Attorney and its own abuse and neglect case management, on November 1, 2007 Commissioner Brenda Harvey of the Maine Department of Health and Human Services requested an Attorney General Opinion to clarify whether or not Maine's mandatory reporting law "should be read 'to include all defined crimes of sexual act or contact involving children under age 14, so as to require the Department both to report such cases to the District Attorneys and to require the Department to accept such cases for our own child welfare investigations?'"⁵⁷ The legal question addressed in the Attorney General Opinion was "whether a mandated reporter is required to report sexual conduct by a minor that may constitute a crime involving a sexual act or contact even where the mandated reporter does not know or have reason to suspect that the conduct presents a threat to a child's health or welfare."⁵⁸ The Attorney General Opinion concluded that "if a mandated reporter reasonably concludes, based on the totality of the circumstances and exercising the reporter's professional expertise where applicable,

that sexual conduct between minors does not threaten the health or welfare of the children involved, we do not believe that a court would conclude that a report is legally required.”⁵⁹

The Opinion also discussed the interplay between the mandatory reporting statute and Maine law allowing for provision of confidential reproductive health services to minors: “An interpretation of the mandatory reporting law that requires reports to the district attorneys of minors engaging in sexual conduct, including intercourse, with age mates or near age mates appears to be inconsistent with legislative intent in giving these minors the right to obtain health services with respect to that same behavior, and to keep treatment confidential.”⁶⁰

VI. OPPOSITION’S RESPONSE

In December of 2007, the ACLJ posted the following statement on its website: “Maine School District Changes Policy.”⁶¹ The ACLJ told its members that King Middle School had “modified and changed its policy,” whereby “parents have to sign a new consent form to opt into the program which includes clear notice that reproduction services are offered at the health clinic.”⁶²

According to Ms. Rowe, the Health Center always planned to revise the consent form to notify parents that contraceptive services would be offered and had done so when the policy change was made at the high school level.⁶³ In response to initial concerns of a School Committee member, they also revised the Health Center enrollment form to include a clear description of Maine’s confidentiality laws around provision of mental health, substance abuse and reproductive health services to minors

without parental consent, including a link to the relevant statute.⁶⁴As early as October 18, 2007, Ms. Belanger of the Health Center told the press that “[w]hen prescription birth control is available, parents will be sent a new enrollment form that clearly states the services offered and related student confidentiality requirements under Maine Law.”⁶⁵

VII. IMPACT OF THE THREAT OF LITIGATION

Locally, the threat of litigation and national media scrutiny did not change the Health Center’s policy. It was ratified and implemented without any undo delay or amendment. Implementation of the policy was slowed by the need to revise the Health Center enrollment form and to re-obtain parental consent for students to access Health Center services. According to Ms. Rowe, the policy change did not seem to have any long lasting impact on Health Center enrollment other than an initial decrease in enrollment caused by having to revise, disseminate and obtain the completed enrollment forms from parents.⁶⁶

In April of 2008, David Sharp of the Associated Press reported that the Health Center only had “one taker” of the newly available prescription contraceptive service.⁶⁷ It is unknown whether the fact that one student had accessed services reflected the actual need or whether the media uproar caused a “chill” on accessing the services.

Early on in the controversy, USA Today ran a story entitled “Others not likely to follow school’s contraceptive move,” discussing how rare it is for a middle school to offer oral contraceptives, citing just ten total middle schools located in Seattle, WA and Baltimore, MD.⁶⁸ Apparently, there was some additional disappointment expressed by

other school-based health centers in Maine that had been considering similar policy changes but felt that the uproar around Portland’s policy rendered any attempts in their own communities politically unfeasible.⁶⁹ From a public health perspective, it would be detrimental to the public health if the fear of national media scrutiny and legal action deters school committee members and student health center providers in other parts of Maine or other states from exploring and proposing evidence-based approaches to teen pregnancy prevention.

The School Committee’s action pushed the issue of teen sexuality into the spotlight. Many parents initially reacted with disbelief to the news of middle school-age children engaging in sexual intercourse. Mr. Coyne expressed the feelings of many middle school parents: “I have a daughter in middle school, so that’s why I was like, no way, this can’t be happening.”⁷⁰ The very public nature of the debate seemed to have fostered a community-wide discussion amongst parents and younger children about sexual activity. Principal McCarthy noted in his letter home to parents: “I have talked with a number of parents and I know one positive outcome of this controversy is that parents and teens have (in some cases for the first time) had a discussion about sexual activity.”⁷¹ Ms. Rowe commented that she even received complaints from parents about the attention paid to teen sexuality: “we had some concerns from parents who wrote to say . . . ‘I can’t believe you’ve done this; I’ve had to talk to my daughter . . . about sex.’”⁷² Mr. Coyne, who voted against the policy change, agreed that “The best thing that came out of this was the community conversations that parents and children started to have.”⁷³

VIII. LESSONS LEARNED

Ms. Rowe noted the importance of having support from key people. For example, Principal McCarthy took the brunt of the public outcry against the policy change. Ms. Rowe recalled a meeting where Health Center staff met with Principal McCarthy to discuss whether they should go forward with the policy change in light of the disruptive nature of the media attention and public outcry. Principal McCarthy firmly stood behind the policy and from that point on there was a sense that “we were all . . . in this for the long haul.”⁷⁴ The support the Health Center had from the Principal, the Superintendent and the majority of School Committee members was a key component to going forward.

As the School Nurse Coordinator for over twenty years, Ms. Rowe gave the following advice to other officials: “I would say if it’s the right thing to do, go for it and deal with it.”⁷⁵ She also put the experience into some perspective based on her past work and the changing media landscape:

When we first . . . brought the school-based health centers forward it was the same kind of thing . . . locally it was quite a hoop-dee-do when we first wanted to have school-based primary care services . . . people were coming up and putting their finger in my face . . . and then we worked through it and we started the service and . . . it was a wonderful service and everybody loved it. Now I’m sure . . . that kind of thing would be national news immediately.⁷⁶

When asked if he had any advice for other officials, Mr. Coyne said:

When you are talking about being in an elected office, you have to understand some of the litigious things that can go on and it’s just a part of the process. If you’ve acted in the best interest of what you’re doing and researched it adequately if there are some negative comments or negative feelings about the decision that’s been made and you’ve followed a thorough process and a clear process and can provide all of that information You’ll be fine. We learned a lot from this.⁷⁷

RESEARCH METHODOLOGY

The Project utilized descriptive case study methodology to examine instances of state and local public health legislation that was opposed with legal rhetoric or faced a direct legal challenge. Descriptive case study methodology is designed to present a complete description of a case within its context. The descriptive case study technique was selected because of the lack of prior research on the issue of defensive public health litigation and the resulting lack of established theory in the area. The primary unit of analysis for each study was the proponent of the public health initiative. Background research for each case study included local and national media coverage, legislative and/or administrative documents, documents generated by the opposition, scholarly articles, legal filings and judicial opinions. A minimum of two in-depth telephone interviews were conducted for each case. Where possible, one interview was of a public health official, and one interview was with an attorney affiliated with the public health official. Given the resources available to conduct the studies interviews with opponents were not conducted.

¹ John S. Santelli, M.D., et al, *Changing Behavioral Risk for Pregnancy among High School Students in the United States, 1991-2007*, 44(7) J. OF ADOLESCENT HEALTH 23 (July 2009) (galley available at http://www.guttmacher.org/pubs/journals/reprints/Behavioral_Risk_Santelli_JAH.pdf) (last visited Aug. 6, 2009).

² *Id.*

³ National Assembly on School-Based Health Care, *School-Based Health Centers: National Census School Year 2004-2005*, http://ww2.nasbhc.org/RoadMap/Public/EQ_2005census.pdf (last visited Aug. 6, 2009).

⁴ *Id.*

⁵ Santelli, *supra* note 2,

⁶ Guttmacher Institute, *U.S. Teenage Pregnancy Statistics National and State Trends and Trends by Race and Ethnicity* 11 (Sep. 2006), <http://www.guttmacher.org/pubs/2006/09/12/USTPstats.pdf> (last visited Aug. 6, 2009).

⁷ *Id.*

⁸ Telephone Interview with Amanda Rowe, School Nurse Coordinator, Portland Public Schools (Nov. 21, 2008) (hereinafter “Rowe Interview”).

⁹ *Id.* See also Katie Zezima, *Not All Are Pleased at Plan to Offer Birth Control at Maine Middle School*, N.Y. TIMES, Oct. 21, 2007.

¹⁰ Maine Children’s Alliance, *School-Based Health – Fast Facts*, http://www.mainechildrensalliance.org/am/publish/article_94.shtml (last visited Aug. 6, 2009).

¹¹ *Id.*

¹² Rowe Interview, *supra* note 9.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter from Michael J. McCarthy, Principal, King Middle School, to Parents (Oct. 19, 2007), <http://king.portlandschools.org/files/news/images/mccarthyletter1019.pdf> (last visited Aug. 6, 2009) (hereinafter “Letter from Principal McCarthy to Parents”).

¹⁸ Rowe Interview, *supra* note 9.

¹⁹ Telephone Interview with John Coyne, Chairman, Portland School Committee (Oct. 17, 2008) (hereinafter “Coyne Interview”).

²⁰ Rowe Interview, *supra* note 9.

²¹ Coyne Interview, *supra* note 20.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Kaisernetwork.org, *Daily Reports: Portland, Maine, School Committee Approves Measure To Allow City Middle School To Provide Birth Control to Students* (Oct. 19, 2007), http://www.kaisernetwork.org/Daily_Reports/rep_index.cfm?DR_ID=48315 (last visited Aug. 6, 2009).

²⁹ Coyne Interview, *supra* note 20.

³⁰ *Id.*

³¹ ACLJ.org, *History of ACLJ*, <http://www.aclj.org/About/Default.aspx?Section=10> (last visited Aug. 6, 2009).

³² Letter from Jay Alan Sekulow, Chief Counsel, ACLJ and Stephen Whiting, Maine Director, ACLJ, N.E., to John Coyne, Chairman, Portland School Committee (Nov. 2, 2007), http://www.aclj.org/media/pdf/Parental_Rights_at_King_Middle_School_11022007.pdf (last visited Aug. 6, 2009) (hereinafter “Letter From ACLJ to Chairman Coyne”).

³³ *Id.*

³⁴ *Id.* at 2.

³⁵ *Id.* at 5.

³⁶ Kelley Bouchard, *Centers failed to tell DA of sex by minors*, PORTLAND PRESS HERALD, Oct. 26, 2007, at A1.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Coyne Interview, *supra* note 20.

⁴¹ Letter from ACLJ to Chairman Coyne, *supra* note 33, at 6.

⁴² *Id.* at 7.

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 8.

⁴⁵ *Id.* at 8.

⁴⁶ ACLJ.org, *Support Our Efforts: Petition to Protect Children*, <http://www.aclj.org/Petition/Default.aspx?sc=3296&ac=1> (last visited Aug. 6, 2009).

⁴⁷ ACLJ.org, *ACLJ Demands that Maine School District Remove Policy Providing Students with Prescription Contraceptives or Face Legal Action* (Nov. 5, 2007), <http://www.aclj.org/news/Read.aspx?ID=2779> (last visited Aug. 6, 2009).

⁴⁸ ACLJ.org, *Press Release: More Than 30,000 Americans Sign Petition Demanding Maine School District Remove Policy to Distribute Prescription Contraceptives* (Nov. 7, 2007), <http://www.aclj.org/TrialNotebook/Read.aspx?id=549> (last visited Aug. 6, 2009).

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- ⁴⁹ ACLJ.org, *Jay Sekulow's Trial Notebook -- Notebook Entry: ACLJ Headed to Court Against Maine School District* (Nov. 8, 2007) <http://www.aclj.org/TrialNotebook/Read.aspx?id=550> (last visited Aug. 6, 2009).
- ⁵⁰ ACLJ.org, *Jay Sekulow's Trial Notebook -- Notebook Entry: More Than 30,000 Americans Sign Petition Demanding Maine School District Remove Policy to Distribute Prescription Contraceptives* (Nov. 7, 2009), <http://www.aclj.org/TrialNotebook/Read.aspx?id=549> (last visited Aug. 6, 2009).
- ⁵¹ Rowe Interview, *supra* note 9.
- ⁵² Letter from Principal McCarthy to Parents, *supra* note 18.
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ Coyne Interview, *supra* note 20.
- ⁵⁷ 2008 ME AG LEXIS 4 (March 15, 2008).
- ⁵⁸ *Id.* at *4.
- ⁵⁹ *Id.* at *5.
- ⁶⁰ *Id.* at *48-49.
- ⁶¹ ACLJ.org, *Jay Sekulow's Trial Notebook -- Notebook Entry: Maine School District Changes Policy*, (Dec. 13, 2007), <http://www.aclj.org/TrialNotebook/Read.aspx?id=567> (last visited Aug. 6, 2009).
- ⁶² *Id.*
- ⁶³ Rowe Interview, *supra* note 9.
- ⁶⁴ *Id.* See also King Student Health Center, *Service Description*, <http://king.portlandschools.org/files/ourschool/health/King%20Student%20Health%20Center.pdf> (last visited Aug. 6, 2009).
- ⁶⁵ Kelley Bouchard, *School adds birth control options*, PORTLAND PRESS HERALD, Oct. 18, 2007, at A1.
- ⁶⁶ Rowe Interview, *supra* note 9.
- ⁶⁷ David Sharp, *Middle school has 1 taker months after contraceptives furor*, WASH. POST, APRIL 18, 2008.
- ⁶⁸ Wendy Koch, *Others not likely to follow school's contraceptive move*, USA TODAY Oct. 19, 2007, at 4a.
- ⁶⁹ Rowe Interview, *supra* note 9.
- ⁷⁰ Coyne Interview, *supra* note 20.
- ⁷¹ Letter from Principal McCarthy to Parents, *supra* note 18.
- ⁷² Rowe Interview, *supra* note 9.
- ⁷³ Coyne Interview, *supra* note 20.
- ⁷⁴ Rowe Interview, *supra* note 9.
- ⁷⁵ *Id.*
- ⁷⁶ *Id.*
- ⁷⁷ Coyne Interview, *supra* note 20.