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## 2012 NEWS

### **SLC CO-COUNSELS LANDMARK CASE TO BROADEN ACCESS TO EMERGENCY CONTRACEPTION**

SLC is co-counsel representing some of the plaintiffs in *Tummino v. Hamburg* with the Center for Reproductive Rights and Andrea Costello of the Partnership for Civil Justice Fund in the Eastern District of New York. In a landmark decision ([click here for opinion](#)), the Court ruled that the U.S. Food and Drug Administration (FDA) must allow over-the-counter sale of the “morning-after pill” to women of all ages and lift current point-of-sale restrictions.

The federal judge ordered the FDA to lift longstanding restrictions that impede and delay women’s access to emergency contraception and make levonorgestrel-based emergency contraception available over-the-counter without age or point of sale restriction. The judge cited the actions by the U.S. Department of Health and Human Services Secretary Kathleen Sebelius as “politically motivated, scientifically unjustified, and contrary to agency precedent.”

SLC attorney Kirsten Clanton said, "This court decision recognized that the government cannot justify denying women access to emergency contraception by politically motivated considerations. This victory ensures that women do not continue to face unnecessary barriers in obtaining access to safe and effective emergency contraception."

The court ordered the FDA to make emergency contraception available without a prescription and without point-of-sale or age restrictions within 30 days—with the option to limit the change to only Plan B One-Step if the agency “actually believes there is any significant difference between the one- and two-pill products” and to require new labeling if necessary. Currently, emergency contraceptives (EC) are available to women 17 and older without a prescription, with young women under 17 required to obtain a prescription from a physician. Even for women 17 and older, however, the medication is available only at health clinics or pharmacies, upon request and with adequate identification. This unique and unnecessary dual scheme has impeded access even for women who are allowed to obtain the drug without a prescription, as evidenced by several studies, including one published in the journal *Pediatrics* earlier this year.

The lawsuit, originally filed on January 21, 2005, uncovered evidence that the Bush Administration pressured FDA review staff to enact an age limit on the pill for political reasons. On March 23, 2009, the Court ruled that the FDA "acted in bad faith and in response to political pressure," "departed in significant ways from the agency's normal

procedures," and engaged in "repeated and unreasonable delays." The Court ordered the FDA to make Plan B available over-the-counter without a prescription to 17 year olds (the drug was previously limited to women ages 18 and up). The Court also ruled that the FDA had to reconsider whether to approve a Citizen Petition, filed by women's health and reproductive rights organizations in 2001, asking for unrestricted over-the-counter status for women and girls of all ages.

In December 2011, the FDA finally decided to eliminate the unnecessary age restriction, but in an unprecedented move, HHS blocked the change with President Obama's support. The FDA then denied the Citizen Petition. On February 8, 2012, Plaintiffs moved to re-open the case and added HHS Secretary Kathleen Sebelius as a Defendant.

### **SLC FILES CLASS ACTION SEEKING DUE PROCESS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**

Life hasn't been easy for Roddie. When he was just 2-years-old, he suffered from a stroke that left him with a severe seizure disorder and without the ability to speak. Although loving him is easy, caring for him is difficult and expensive.

Roddie, now 38, requires constant supervision, so when his parents are at work, an attendant comes to assist him with tasks most other people take for granted. Showering, eating or simply going for a walk would not be possible without assistance. Roddie and his parents alone could not manage his care without the assistance of a special Medicaid Waiver program for community services.

Last year, Roddie received a letter from the Florida Agency for Persons with Disabilities informing him that he would be receiving nearly \$15,000 less each year from Medicaid. There was no explanation for the reductions.

Roddie wasn't the only Floridian with a disability to receive that letter. Approximately 11,850 others were mailed the same letter – none receiving an explanation. Some put the letter in a drawer out of confusion while others never opened it. Roddie's parents, however, contacted Southern Legal Counsel.

Along with nine other people, in November 2012, Roddie and SLC filed a class action seeking due process - an explanation for the reductions and a meaningful opportunity to challenge them. No money is to be gained from winning this case, but rather systemic change to ensure that the state operates the Medicaid Waiver program fairly and in accordance with the US Constitution. In many cases over the years, SLC has successfully demanded that government provide due process to the citizens it serves. We will continue to do so.

### **FLORIDA SUPREME COURT ALLOWS EDUCATION CASE TO GO FORWARD**

In September 2012, the Florida Supreme Court denied the State's final attempt to avoid a trial in *Citizens for Strong Schools, et al. v. State Bd. of Educ.* The goal of this litigation

is to improve education with positive policy changes and increased funding. After three years of procedural motions by the State, SLC is preparing its case to prove that Florida is not meeting its constitutional mandate.

## **COURT FINDS THAT STATE NOW HAS EFFECTIVE NURSING HOME TRANSITION PROGRAM**

In 2008, when Southern Legal Counsel and three national co-counsel filed *Lee v. Dudek*, a class action systemic reform case, about 8,500 Medicaid-eligible individuals were stuck in nursing homes because the State had no system to identify Medicaid recipients who wanted to move into the community, had waiting lists for Medicaid Waiver services, and failed to offer services in community settings. The Supreme Court had years earlier found such unnecessary segregation to be discrimination under the Americans with Disabilities Act. After four years of litigation, the Court found that Florida Medicaid now has a functioning nursing home transition program, as well as a virtually unlimited funding source for individuals who wish to transition from nursing homes to community placements. Approximately 1,600 Medicaid recipients were transitioned between March 2009 and February 2011. The Court therefore found there was no longer a need for class relief and decertified the class, but ordered a permanent injunction for the named plaintiff who had previously obtained a preliminary injunction.