



April 20, 2012

VIA FACSIMILE, FEDERAL EXPRESS AND ELECTRONIC MAIL

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Senate Bill 1921

Dear Governor Dayton:

The Center for Reproductive Rights strongly opposes Senate Bill 1921, which would impose unnecessary, medically inappropriate regulations on the provision of abortion services in Minnesota. Senate Bill 1921 raises serious health policy and constitutional concerns and the Center for Reproductive Rights urges you to veto this measure.

The Center for Reproductive Rights is a non-profit advocacy organization that seeks to advance reproductive freedom as a fundamental human right. A key part of our mission is ensuring that women throughout the United States have meaningful access to high-quality, comprehensive reproductive health care services. In furtherance of our mission, we have litigated cases all over the United States that secure the rights of women to have safe and legal abortions, including in Minnesota. In light of our background and experience, we believe that Senate Bill 1921 would create ideologically-motivated regulations totally divorced from appropriate medical standards and could result in the closure of safe, reliable health care providers across the state. The bill also would likely violate the U.S. and the Minnesota Constitutions.

I. Senate Bill 1921 Would Impose Medically Inappropriate Regulations on Health Care Providers, Potentially Eliminating Access to Care

Abortion is one of the most common surgical procedures sought by women in America. By the age of forty-five, approximately one in three women in this country will have had an abortion.¹ Women seek abortions for many reasons: some choose to terminate unwanted pregnancies, some seek abortions to protect their own health, and some seek abortions because of a serious fetal anomaly.

¹ Guttmacher Institute, An Overview of Abortion in the United States, <http://www.guttmacher.org/media/presskits/2008/01/12/abortionoverview.html> (last visited April 18, 2012).

Senate Bill 1921 would require facilities that provide ten or more abortions per month to become licensed “outpatient surgical centers”—essentially requiring such facilities to become “mini-hospitals.” However, the Minnesota regulations that govern outpatient surgical centers are inappropriate for facilities that specialize in providing abortion. Abortion care is regularly provided in office-based practices and it is neither necessary nor consistent with medical standards of care to require that it be provided in outpatient surgical centers. Procedures provided in those facilities are far more complicated and invasive than abortion, typically requiring more staff, longer operating times and deeper anesthesia. Surgical abortion care, in contrast, is a simple procedure, and is similar in both its risks and level of invasiveness to a variety of other office-based surgeries.² Significantly, some abortions may be provided through medication alone and clearly should not be subject to regulations applicable to any type of surgery. Senate Bill 1921, would, however, apply to both surgical and medication abortions.

If Senate Bill 1921 became law, reproductive health providers would be required to make numerous changes to their staffing, equipment, and physical facilities, all for purely political reasons. Such changes might be difficult or impossible, particularly in cases where significant construction would be necessary to comply with physical plant requirements. If this bill forces abortion facilities to shut their doors, women in Minnesota will be harmed. Young, minority, low-income, uninsured, rural women, as well as victims of domestic violence and sexual assault could be further marginalized by onerous regulations that reduce their access to affordable reproductive health care. Many women, particularly those with limited access to health care, go to reproductive health care facilities for a variety of essential services, including pap smears, breast cancer screening and contraception. By making it harder or impossible for health centers to stay open, this bill could limit or eliminate access for these women, not just to abortion, but to a broad range of critical reproductive health care.

Regulations for abortion facilities should reflect the medical reality and safety of abortion care, rather than incorporating extensive, burdensome requirements that will reduce or eliminate access to care without improving services. Even if abortion facilities were able to comply with Senate Bill 1921, the bill could vastly increase the costs of providing health care services with no gain in terms of health outcomes or quality of care. Requiring abortion facilities to meet outpatient surgical center regulations would be medically inappropriate, detrimental to patients, and a wasteful use of limited health care resources.

II. Senate Bill 1921 Would Violate Women’s Right to Privacy Under the Minnesota Constitution

Senate Bill 1921 is clearly intended to prevent the provision of abortion services by forcing providers to comply with unnecessary, medically inappropriate regulations. The imposition of such restrictions and the resulting elimination or reduction of access to care would violate women’s rights under the Minnesota Constitution.

The Minnesota Supreme Court has recognized that the state’s Constitution provides strong protection for the right to privacy, including “a woman’s right to decide to terminate her

² Surgical procedures performed in office-based practices that have similar risks and complications to surgical abortion, include gynecological procedures, general surgery, head and neck surgery, oral surgery and plastic surgery.

pregnancy,” which is a “decision . . . of such great import that it governs whether the woman will undergo extreme physical and psychological changes and whether she will create lifelong attachments and responsibilities.”³ In fact, the Minnesota Constitution provides “more protection” for a woman’s right to choose an abortion “than that afforded under the federal constitution.”⁴ Further, it protects “the woman’s *decision* to abort [and] any legislation infringing on the decision-making process . . . violates this fundamental right.”⁵ As a result, abortion restrictions that infringe on this decision will be subject to the strictest scrutiny and will be struck down unless the state demonstrates that the law is necessary to promote a compelling governmental interest.⁶

In *Doe v. Gomez*, the Minnesota Supreme Court struck down a statute that prohibited Medicaid payment for therapeutic abortions while at the same time permitting payment for costs associated with prenatal care and childbirth.⁷ The Court focused on the financial burden imposed on indigent women and held that by offering to pay for prenatal and other pregnancy care but refusing to pay for therapeutic abortions, the state’s policy could essentially coerce indigent women into continuing a pregnancy.⁸ As a result, the Court concluded that the policy interfered with the woman’s right to decide to choose an abortion and therefore “constitute[d] an infringement on the fundamental right to privacy.”⁹

Under Senate Bill 1921, the state would interfere with the child-bearing decisions of a number of women by imposing unnecessary, medically inappropriate and politically-motivated regulations on providers of abortion services. Abortion providers would be faced with severe financial burdens in restructuring their facilities, increasing staffing and potentially having to undergo significant construction, all because the legislature is determined to make abortion harder to obtain. It is also possible that some providers would be forced to close their doors. As a result, this bill would increase the costs of an abortion for all Minnesota women, and could result in some women having to travel great distances or even out of state in order to obtain an abortion. These burdens, which would fall most heavily on low-income women,¹⁰ would violate women’s right to privacy under the Minnesota Constitution by “‘adding state created financial considerations to the woman’s decision making process’” for no compelling reason.¹¹

III. Senate Bill 1921 Could Impose Restrictions on Women’s Access to Reproductive Health Care in Violation of the U.S. Constitution

³ *Id.* at 27.

⁴ *Doe v. Gomez*, 542 N.W.2d 17, 27, 30 (Minn. 1995).

⁵ *Id.* at 31.

⁶ *See, e.g., id.* at 19.

⁷ *Id.* at 23.

⁸ *Id.* at 31.

⁹ *Id.*

¹⁰ The Minnesota Supreme Court also noted in *Doe v. Gomez* that “Minnesota possess a long tradition of affording persons on the periphery of society a greater measure of government support and protection than may be available elsewhere,” including “on behalf of the poor, the ill, the developmentally disabled and other persons largely without influence in society.” *Id.* at 30.

¹¹ *Id.* at 28, 32.

In addition to violating the Minnesota Constitution, Senate Bill 1921 could also violate women's right to privacy under the United States Constitution. While states may regulate health care services, they are not permitted to regulate abortion services in a manner intended to impose an "undue burden" on women seeking that care.¹² The Supreme Court has specifically held that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right [to choose an abortion]."¹³ Moreover, in some cases, excessive or irrational regulatory requirements, or those adopted through unfair regulatory processes, have been enjoined by state and federal courts.¹⁴

Such regulatory schemes not only threaten patients' rights to privacy as recognized by the Supreme Court, but also to their right to equal protection under the law. The Supreme Court has held that statutes that subject men and women to differing classifications or standards must be closely scrutinized.¹⁵ Here, the legislature has passed a bill that is clearly intended to prevent women from accessing office-based reproductive health care, rather than to achieve any important health or medical goal, while leaving access to all surgical procedures obtained by men untouched. By targeting a procedure obtained only by women without addressing similarly or more invasive procedures obtained by men, Senate Bill 1921 raises serious concerns about impermissible sex discrimination.

IV. Conclusion

Senate Bill 1921 threatens Minnesota women's access to critical reproductive health care. The bill would impose medically inappropriate and unnecessary requirements on health care providers, potentially causing them to close their doors and thereby eliminating access for women. This could violate both patients' and providers' constitutional rights, as well as harm women's health. In light of these serious objections, we strongly urge you to veto this legislation. Please do not hesitate to contact us if you would like further information.

Sincerely,

¹² See *Planned Parenthood of Southeast Pa. v. Casey*, 505 U.S. 833, 878 (1992) (holding that while states "may take measures to ensure that the woman's choice is informed These measures must not be an undue burden on the right."); *Planned Parenthood of Heartland v. Heineman*, 724 F. Supp. 2d 1025 (D. Neb. 2010) (granting plaintiffs' motion for a preliminary injunction based in part on the fact that "the only sensible construction that this Court can provide for" a bill that would have required physicians to provide exhaustive and potentially impossible risk-assessment screening "is that the Legislature intended to place a substantial, if not insurmountable, obstacle in the path of any woman seeking an abortion in Nebraska").

¹³ *Planned Parenthood of Southeast Pa. v. Casey*, 505 U.S. at 878.

¹⁴ See *Hodes & Nauser v. Moser*, No. 11-2365-CM (D. Kan. 2011); *Hodes & Nauser et al. v. Moser*, No. 11C1298, Nov. 10, 2011 (3rd Judicial District Court of Kansas), Order Granting Temporary Restraining Order (order in effect until final judgment at the agreement of the parties) (case addresses variety of onerous and medically inappropriate regulations imposed on abortion providers, including some that are similar to the regulations that would be imposed on abortion providers under Senate Bill 1921); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 553 (9th Cir. 2004) (finding that a regulatory scheme that increased the cost of abortion, and that would have the result of limiting the number of providers, could impose an unconstitutional undue burden to women seeking abortions).

¹⁵ See, e.g., *United States v. Virginia*, 518 U.S. 515, 524 (1996) (holding under the Equal Protection Clause, that statutes that classify between men and women must be closely scrutinized to ensure that there is an "important governmental objective" underlying that classification and that the "discriminatory means employed are substantially related to the achievement of those objectives").



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