

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CORA MCPRAE, et al.,

Plaintiffs,

v.

F.W. MATHEWS, Secretary of
Health, Education and Welfare,

Defendant.

Index No. C 16-1804

BRIEF AMICI CURIAE

This brief is filed on behalf of amici curiae National Medical Association, the National Association of Social Workers, the American Public Health Association, the National Organization for Women, the National Organization for Women Legal Defense Fund, Planned Parenthood Federation of America, Inc., and the Association of Planned Parenthood Physicians. Amici submit this brief in support of plaintiffs' motion for a temporary restraining order.

INTERESTS OF AMICI CURIAE

The National Medical Association is a national organization of approximately 1,500 physicians which carries out professional, educational and research activities. Its members consist of predominantly black and other minority physicians. One of its principle concerns is the quality and availability of medical services of all kinds to minorities who must depend disproportionately on Medicaid for health care and other public programs financed in whole or in part with HEW funds.

The National Association of Social Workers, which

represents 70,000 professional social workers in fifty states, is devoted to the advancement of sound public policy for the benefit of social work clients as well as the social work profession.

The American Public Health Association is a national non-governmental organization established in 1872. Its object is to protect and promote personal and environmental health. With a membership of over 50,000, it is the largest public health organization in the world. Within this membership, both professional health workers and consumers act in a leadership role to develop a national policy to provide equitable, quality health care for all citizens.

The National Organization for Women (NOW) is a non-profit civil rights organization of over 30,000 members and 700 chapters throughout the United States. Organized in 1966, NOW exists to secure full and equal social, political and economic rights for women.

The National Organization for Women (NOW) Legal Defense Fund is a charitable foundation which operates as the legal and educational arm of NOW. A priority of the organization is the protection of the legal rights of poor and minority women.

Planned Parenthood Federation of America, Inc., also known as Planned Parenthood-World Population (Planned Parenthood), is a non-profit corporation organized in 1922 under the laws of the State of New York. With headquarters in New York City, and 188 affiliates in 45 states and the

District of Columbia, it is the leading national voluntary public health organization in the field of family planning.

The Association of Planned Parenthood Physicians is a national professional organization of Physicians established in 1963. Its purpose is to promote the stability and health of the family through responsible parenthood. The Association carries out educational activities focused on fertility control and other medical aspects of human reproductive behavior. Headquartered in New York, it has 873 members in 44 states, the District of Columbia and Puerto Rico; all are active practitioners in the field of fertility control.

POINT

THIS COURT SHOULD GRANT RELIEF PREVENTING THE ENFORCEMENT OF THE CHALLENGED HEW/LABOR APPROPRIATIONS BILL TO AVOID VIOLATIONS OF FUNDAMENTAL CONSTITUTIONAL RIGHTS

The amici organizations, representing professionals and institutions working on behalf of the health and social welfare of women and poor people, support the plaintiffs' challenge to the constitutionality of the rider to the HEW/Labor Appropriations Bill for the fiscal year beginning October 1, 1976. This provision would prevent the use of federal Medicaid funds for abortions unless a woman's life were endangered by pregnancy. The amici organizations join in asking for immediate and final relief preventing the enforcement of the challenged provision.

The provision restricts basic and vital constitutional guarantees of individual liberty. Most deeply affected is the constitutional right to privacy which protects individual freedom in the overlapping areas of family and sexual life. Pierce v. Society of Sisters, 268 U.S. 510 (1925), Loving v. Virginia, 388 U.S. 1 (1967), Griswold v. Connecticut, 381 U.S. 479 (1965). Protected by the right of privacy is the right to decide when and whether to bear and beget children, Eisenstadt v. Baird, 405 U.S. 438 (1972) and the right of a woman to choose, with the advice of her physician, to terminate a pregnancy by abortion, Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood of Central Missouri v. Danforth, 96 S.Ct. 2831 (1976).

The challenged provision conditions the receipt of government benefits on relinquishing these constitutionally guaranteed rights to privacy and reproductive choice. The Constitution forbids the government to condition the receipt of benefits on the sacrifice of constitutional rights. The United States Supreme Court has said the government must show a compelling justification in order to force people to choose between a constitutional right and a government benefit, Sherbert v. Verner, 374 U.S. 398 (1963). No state interest, let alone a compelling one, supports this restriction. Indeed the direct and inevitable effect of the legislation is to burden the public fisc and endanger the health of women. The legislation favors delivery, the more expensive and hazardous procedure, over

abortion, which is simpler, less costly, and, at least in the early months, less dangerous. All legitimate state interests militate against this provision which will cost money and endanger, rather than foster, the health of women.

Also directly and immediately threatened is the right of women to the equal protection of the laws guaranteed by the due process clause of the fifth amendment, Bolling v. Sharpe, 347 U.S. 497 (1954). The challenged provision instructs the federal government to divide pregnant poor women into two classes: the class of women who decide to carry their pregnancy to term and the class of women who decide, with the advice of their physicians, to terminate their pregnancies. Under the provision the federal government must treat these two classes differently and provide Medicaid to those who choose childbirth while denying it to those who choose abortion. The constitutional right to the equal protection of the laws mandates even-handed grants of medical assistance to pregnant poor women, whether they choose abortion or delivery. Singling out abortion as the one medical procedure for which the government refuses to reimburse pregnant women is a clear constitutional violation. Wulff v. Singleton, 508 F.2d 1211 (8th Cir. 1974), aff'd in part, rev'd in part, 44 U.S.L.W. 5213 (1976), Doe v. Rose, 499 F.2d 1112 (10th Cir. 1974), aff'd 380 F.Supp. 779 (D. Utah 1973).

Enforcement of this unconstitutional provision will have an immediate, irreversible, and often tragic effect on the lives of poor women who must look to Medicaid to pay for their abortions. Some poor women will seek free medical care. Their search will be difficult because this society provides medical care for its poor, not through charity, but through Medicaid. And while they search, the abortion is delayed and the risks to health attendant on a late abortion increase. Failing to find free medical services, women, already burdened by poverty, will inevitably be forced to either bear children or to resort to "kitchen table" or self-abortion, at an untold financial, emotional and physical cost.

To prevent the violation of these constitutional rights and the inevitable and often brutal harm that will follow, this court must grant immediate and final relief preventing the enforcement of the legislation.

Respectfully submitted,



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Dated: October 1, 1976

CERTIFICATE OF SERVICE

I hereby certify that the attached Brief
Amici Curaie has been served upon the attorney for
defendant by mailing a copy to:

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JANET BENSHOOF

Dated: October 1, 1976.