

OPPOSE S. 2061
MOTHERS AND BABIES SHOULD NOT BE TREATED AS
SECOND CLASS CITIZENS IN OUR NATION'S COURTS

February 23, 2004

Dear Senator:

We are writing to urge you to oppose any effort to bring S. 2061, the misnamed "Healthy Mothers and Healthy Babies Access to Care Act," to the Senate floor. By singling out pregnant women and their babies, S. 2061 is the most troubling attempt yet to place limits on the legal rights of individuals who have been harmed by someone else's negligence or wrongdoing.

Incredibly, S. 2061 places limits only on medical malpractice cases "concerning the provision of obstetrical or gynecological goods or services." In other words, the bill targets *only* the legal rights of women - particularly pregnant women - and babies. Adult men have nothing to fear from this legislation - if they are injured by medical malpractice, they can sue their doctor, HMO, or drug company under state law without any limits imposed by this bill.

In addition, S. 2061 fails to include provisions that will make liability insurance for ob/gyns more available or more affordable. What is more, the bill fails to attempt to provide access to health care for women and babies who are uninsured or underinsured.

Even so, the proponents of this bill claim that it will result in greater access to healthcare by women and babies. The facts do not support this claim.

- Insurers have refused to lower malpractice insurance premiums after caps and other "tort reforms" have been enacted. To the contrary, states that have enacted legal restrictions have seen their insurance rates continue to shoot up, even after passing severe liability limits (e.g., Florida, Nevada, Ohio, Missouri and Texas).
- Lawsuits are not limiting access to health care. In August, 2003, after an extensive investigation, the U.S. General Accounting Office found that it could not substantiate doctors' groups' claims that malpractice insurance problems have limited access to health care. In many cases, the GAO found the claims that doctors had left their practices or their states because of high malpractice premiums to be wrong.
- Medical malpractice costs are a tiny percentage of overall health care expenditures - under 1 percent according to the GAO and the Congressional Budget Office.

- Medical malpractice lawsuit filings, payouts and jury verdicts are all dropping, according to the National Center for State Courts.

Very simply, S. 2061 discriminates against women and infants by restricting their rights to hold physicians, hospitals, insurance companies, HMOs, and drug and medical device manufacturers accountable for injuries or death resulting from negligent obstetrical or gynecological care. The bill will do nothing to make healthcare for women more available or more affordable.

The provisions of the bill include:

- **\$250,000 cap on pain and suffering damages.** Non-economic damages compensate patients for very real injuries, such as loss of fertility, excruciating pain, permanent and severe disfigurement, or the loss of a spouse or child. In many cases, the victim may have few out-of-pocket losses, but suffer great harm. For example, an 18-year-old woman who loses her ability to have a child for the rest of her life may suffer no monetary loss. Under S. 2061, the most she could recover in a medical malpractice lawsuit would be \$250,000. This cap is also very inequitable for persons with disabilities. An individual who becomes disabled as a result of medical malpractice at age 40 will be able to recover unlimited damages for pain and suffering while a baby born with a severe life-long disability as a result of medical malpractice at birth will be limited in what he or she can recover for pain and suffering for a lifetime.
- **Protections for HMOs and manufacturers of drugs and medical devices.** The bill does not protect only ob/gyns. It also shields manufacturers of defective drugs and medical devices from punitive damage liability, and protects HMOs from bad faith insurance claims. Those protections have nothing to do with the liability insurance crisis facing ob/gyns.
- **Restrictive statute of limitations.** Under the bill, a lawsuit would have to be filed no later than one year from the date the injury was discovered or should have been discovered, but in no case later than three years after the "manifestation" of injury. This unfair rule is much more restrictive than many state rules, and would arbitrarily cut off meritorious claims involving diseases or injuries with long incubation periods that may be difficult to identify. In addition, the bill limits the rights of injured newborns by requiring claims to be filed within three years of the manifestation of the injury. In contrast, many state laws preserve the rights of minors to bring suit on their own behalf until they reach the age of majority.

- **Elimination of joint liability for all damages.** Proponents of S. 2061 claim that the bill does not limit the out-of-pocket losses of injured patients. However, by eliminating joint liability for all damages, the bill will undercompensate injured mothers and babies whenever one or more defendants are unable to pay their share. This overturns many state laws, based on centuries of common law jurisprudence, that place the burden of an insolvent defendant on the other negligent parties instead of shortchanging the innocent victim.

S. 2061 will limit the rights of women and children, but it will help neither patients nor doctors. The real beneficiaries will be insurance companies, HMOs and drug and medical device companies. On behalf of our organizations, and the millions of individuals we represent, please oppose any effort to bring S. 2061 to the Senate floor.

If you have any questions or want more information, please contact Pamela Gilbert, Center for Justice & Democracy, (202) 789-3960.

Sincerely,
Alliance for Justice
American Association on Mental Retardation
American Association of People with Disabilities
Center for Justice & Democracy
Citizens for Consumer Justice (Pennsylvania)
Consumer Federation of America
Consumers Union
Maine People's Alliance
National Academy of Elder Law Attorneys
National Center for Policy Research for Women & Families
National Organization for Women
National Partnership for Women & Families
National Women's Health Network
National Women's Law Center
North Dakota Progressive Coalition
NOW Legal Defense and Education Fund
Ocean State Action (Rhode Island)
Public Citizen
The Arc of the United States
United Cerebral Palsy
U.S. Action
U.S. Public Interest Research Group
Wisconsin Citizen Action