

## MEMORANDUM

### Government Relations Board Report

**To: National NOW Board members**

**From: Bonnie Grabenhofer, Vice President, and Jan Erickson, Director, Government Relations**

**Date: March 1, 2016**

#### REPRODUCTIVE RIGHTS

##### Abortion Access under Serious Threat in Supreme Court Case

NOW Government Relations prepared an extensive Issue Advisory on *Whole Women's Health v. Hellerstedt* which was argued before the Supreme Court on March 2. This Texas case is the most important reproductive rights case to come before the Court since 1992 Planned Parenthood v. Casey – a case that opened the gates to the flood of state and federal restrictions that we have seen adopted since 1995 – 876 of those, to be exact. The Court is being asked to decide whether two **TRAP (Targeted Regulation of Abortion Providers)** restrictions such as requiring abortion providers to have admitting privileges as nearby hospitals and meeting ambulatory surgical center standards which require specific facilities' features .

**Medical Experts: Requirements Not Necessary for Women's Health** – Texas officials say that these requirements are necessary to protect women's health and safety, but the American Medical Association, The American College of Obstetrics and Gynecology and many other experts say that these restrictions are not necessary. Supporters of the TRAP laws say that they will prevent dangerous abortion mills like the one operated by Dr. Kermit Gosnell.

TRAP laws (otherwise known as “clinic shutdown” or “sham” laws) that have been adopted in 22 states are the product of a well-funded, highly-coordinated campaign in many states by Americans United for Life and other anti-abortion rights groups. Some states are under court orders halting implementation of TRAP laws; all are awaiting the outcome in *Whole Women's Health*. The Texas law grows out of the truly horrible omnibus bill that was first killed by an 11 hour filibuster by **State Sen. Wendy Davis** (D) in 2013, but **Gov. Rick Perry** ( R) later called for a special session to fast track the bill to passage. In addition to the TRAP requirements, the bill also prohibited abortions later than 20 weeks gestation.

Since then more than half of the 41 women's health clinics have ceased operating due to the new law's requirements which impose serious costs for the clinics. Additionally, it is difficult for abortion providers to get hospital admitting privileges and that also could have been factor.

**Briefs Argue that TRAP Laws Create “Undue Burden”** - *Whole Women's Health*, representing five Texas clinics, three physicians and their patients, are the plaintiffs in the case. On behalf of the plaintiffs, 45 *amicus* briefs, representing hundreds organizations and individuals have been submitted; about the

same number of briefs have been submitted by groups supporting TRAP laws. NOW Foundation signed on with 46 other organizations in a brief prepared by the National Women's Law Center. The brief makes a strong case that TRAP laws are not only unnecessary but create an undue burden for women and are in violation of the Constitution's equal treatment and due process provisions. The brief made clear the socioeconomic consequences for women who are not able to obtain an abortion, especially poor women and women of color, such as the many Latinas who reside in the state's poorest counties, (<http://www.reproductiverights.org/document/amicus-briefs-in-support-of-whole-womans-health> )

**Scalia's Death May Change Dynamic** - One of the complications in the case is the death of **Justice Antonin Scalia** and the very real possibility that the Republican-controlled Senate will not confirm his replacement. Abortion rights opponents were counting on the four sure votes from abortion rights opponents, **Chief Justice John Roberts, Samuel Alito, Clarence Thomas and Scalia**, and possibly the swing fifth voter, **Justice Anthony Kennedy**. The Court can postpone arguments until the Fall Term when a ninth justice might be confirmed. Or, if the Court has proceeded with oral arguments on March 2, their ruling is anticipated to be announced by the end of June.

Justice Kennedy, who does not support abortion rights but has said he will not act to overturn the *Roe* precedent, could vote against Texas and for *Whole Women's Health*, making it a 5-3 decision.

If the Supreme Court rules in favor of Texas or if the Court is split 4-4, we can expect that a majority of abortion clinics will have to close as they likely will not be able to meet ambulatory surgical center standards which are said to cost as much as \$40,000 a month more for each clinic. If that happens, many and perhaps even most states will not have an abortion clinic and for those states that do have clinics, women may have to travel significant distances and experience higher costs.

The Court's decision is expected in June. For a more extensive discussion of *Whole Women's Health v. Hellerstedt* go to, <http://now.org/resource/issue-advisory-will-the-supreme-court-approve-clinic-shutdown-laws/>

## **Investigation Finds Clinics Closing at Record Rates**

As noted in the **Women's Health Policy Report**, Feb. 25, a **Bloomberg News** investigation has found that an average of 31 abortion clinics are closing per year – a rate of one clinic closing every two weeks.

According to the article, in 2011, the **Guttmacher Institute** found that there were 553 clinics nationwide. The Bloomberg count is an update of a survey they conducted in 2013. Overall, since 2011, 162 abortion providers in 35 states have closed or stopped offering abortion care. Those states, **Bloomberg Business** reports, are home to more than 30 million women of reproductive age. Only 21 new abortion clinics have opened in the last five years and very few clinics have re-opened.

Of the states that have lost the most clinics, Texas ranks at the top with at least 30 clinic closures since 2011, Iowa comes next with 14 clinics closed, Michigan lost 13 and California lost 12.

One-quarter of the 162 clinic closures were due to requirements that make it too costly or “logistically impossible,” for them to stay open. Other reasons relate to changing demographics, industry consolidation, lower demand (yes, abortion rates have gone down), and physician retirement.

### ***Zubik v. Burwell* – They Never Give Up**

This case could be called “Affordable Care Act’s Contraceptive Insurance Coverage mandate 2.0.”

On March 23<sup>rd</sup>, the Supreme Court will hear the case ***Zubik v. Burwell***. *Zubik* questions whether the Health and Human Services contraceptive-coverage mandate and its accommodation violate the **Religious Freedom Restoration Act (RFRA)** by forcing religious non-profits to act in violation of their religious beliefs as protected by the First Amendment. *Zubik* consolidates six cases: *Priests for Life v. Burwell*, *Southern Nazarene University v. Burwell*, *Geneva College v. Burwell*, *Roman Catholic Archbishop of Washington v. Burwell*, *East Texas Baptist University v. Burwell* and *Little Sisters of the Poor Home for the Aged v. Burwell*. The six cases originate from a total of 43 lawsuits filed against the ACA contraceptive mandate.

(<http://www.scotusblog.com/case-files/cases/zubik-v-burwell/>)

The specific legal question to be addressed is: Whether the HHS contraceptive-coverage mandate and its “accommodation” violate the Religious Freedom Restoration Act by forcing religious nonprofits to act in violation of their sincerely held religious beliefs, when the government has not proven that this compulsion is the least restrictive means of advancing any compelling interest,” <http://www.scotusblog.com/case-files/cases/zubik-v-burwell/> Announcement of the Court’s ruling is expected in June.

Following passage of the **Affordable Care Act**, the **Department of Health and Human Services** gave churches an exemption from the law. When numerous religiously-affiliated non-profit organizations (hospitals, universities, charitable entities, anti-choice groups) objected to the birth control coverage mandate, the **Obama administration** responded with an “accommodation” that permitted those objecting organizations an exemption from the law.

**Accommodation Allows Groups to Deny Insurance Coverage** - The original accommodation allowed a narrow exemption under which the religious non-profits had to inform their insurance carriers of their objection to contraceptive coverage; the insurers were to then issue separate contraceptive insurance coverage policies for the employees. Subsequent litigation pressure forced the administration to change the accommodation to require objecting employers to send a notification form with the insurer’s name an address directly to HHS and arrangements with a third party would be made with insurers to provide coverage. Some nonprofits object to even signing and submitting the form. This is the accommodation that is at issue in *Zubik*.

The claim that is made by religiously-affiliated groups is that the mandate is a violation of those groups’ religious liberty as guaranteed by the **First Amendment** and the Religious Freedom Restoration Act (the same law that was invoked in the *Hobby Lobby* case). But, NOW and other

women's and civil liberties groups argue that organizations refusing to provide contraceptive coverage in employees' insurance plans for religious belief reasons are imposing their religious beliefs on employees and are engaging in unfair discrimination based on religious belief.

**Note:** RFRA is now being used by an array of companies and organizations to avoid having to comply with various local, state and federal laws. A number of them have related to objections to providing services to same sex couples. This is the unfortunate outcome of the *Hobby Lobby* decision which in essence said that corporations can have a religious belief. *Hobby Lobby* was certainly the product of an activist Court majority inventing a new application for a religious liberty right and one benefiting -- not humans -- but corporations! The *Hobby Lobby* decision, some say, was predictable in that the Supreme Court has been deliberately stacked with very conservative members who also identify as Roman Catholic. (Not all, it should be said, oppose abortion rights nor are conservative in their political views.)

**Catholic Bishops Lead in Contraceptive Challenges** - The organization most instrumental in recruiting the 100 plus lawsuits against the ACA's contraceptive mandate is the **U.S.**

**Conference of Catholic Bishops.** The bishops have taken a lead role in pressing for broader exemptions from the ACA mandate. To promote this agenda, the bishops tapped into their huge network of religious non-profit schools, universities, hospitals, and social service agencies, along with for-profit businesses and any individuals who are morally opposed to contraception. A public relations campaign against the ACA mandate and extensive litigation has been waged to those ends.

It is unfortunate that after many decades of wide use of modern contraception, plus the fact that more than 90 percent of Catholic women have used contraception that the bishops and other conservative groups will not accept reality. Some ardent feminists suggest that the contraception challenges are little more than an attempt to exert power and control over women – and even the federal government.

**SCOTUSblog Guest Writer Leslie Griffin** points out the Catholic women are the “missing interest” in this case. Even though the bishops claim to represent 69 million Catholic Americans, she writes, “Catholic women do not share the hierarchy’s views on contraception.” Interestingly, 82 percent of Catholics says that birth control is morally acceptable, compared to 90 percent of Non-Catholics and 89 percent of all Americans, according to a Gallup poll (May, 2012). So, really, who does the USCCB represent?

Griffin makes it clear that the accommodation was flawed from the very beginning in that the “exemption harmed Catholic women’s religious liberty to make their own decisions about contraceptive access and placed the government on the hierarchy’s side of the religious liberty debate, even though the hierarchy argued that contraception is unimportant to women’s health.” <http://www.scotusblog.com/2015/12/symposium-the-missing-interest-in-the-contraceptive-mandate-cases-catholic-women/>

**Accommodation Was the Wrong Solution** - So, the “accommodation” mechanism from the start was a flawed solution that harms women and empowers the wrong people. Griffin notes that the administration’s motivation may have more to do with concern over the so-called Catholic

vote, but it has never been demonstrated that the bishops can deliver on that. On the question of contraception, the bishops do not even represent the vast majority of Catholic laypersons.

Scores of amicus briefs have been filed on either side of the case. The **National Organization for Women Foundation** has signed onto the **National Women's Law Center** *amicus* brief along with 67 other interested organizations. The brief argues that the contraception regulations advance a compelling government interest because they protect women's health and promote gender equality. Also, contraception advances the health of women and children. The contraception regulations further those compelling government interests. The brief states that the Petitioners' proposed alternatives would not as effectively advance the government's interest and would also reinstate barriers that would unduly infringe on women and cause tangible harm.

NOW hopes that the Court will find in favor of the government and for women's health. It is clear to us that the "accommodation" – wrongly conceived as it was -- is the least restrictive means to advance what is clearly a compelling governmental interest in preserving women's health.

### **Women's, Health Organizations Urge Congress to Address Zika Virus**

NOW signed on to a joint **Open Statement on Zika Virus** urging the U.S government to include comprehensive reproductive, maternal and child health services through bilateral programs as well as through contributions to UNFPA, the United Nations Population Fund. The statement stresses that aid must specifically include access to family planning information, education, services and contraceptive commodities including emergency contraception. Services must also provide maternal and child health services to support healthy pregnancy outcomes and family with children who have microcephaly.

UNFPA has a presence in 40 countries in the region more affected by the Zika virus and is best equipped to provide services immediately and to coordinate with the U.S. government, the **World Health Organization** and **Pan-American Health Organization**.

The Statement was organized by **Planned Parenthood Federation of America's Global Advocacy** office. Sen. Patty Murray (D Wash.) highlighted it in her opening statement during a **Senate Health, Education, Labor and Pensions (HELP) Committee** hearing in late January; House members, **Eliot Engel** (D-New York) and **Ami Bera** (C-Calif.) referred to it in their remarks to the House Foreign Affairs Committee reviewing the FY 2017 State Department hearing with **Secretary of State John Kerry**.

**Catholics for Choice** has sent several strong messages to **Pope Francis** advocating for a lifting of church prohibitions against abortion and use of contraception. Writing in a Time.com op-ed, CFC President **Jon O'Brien** discusses how the Catholic hierarchy's prohibition on modern methods of contraception and political obstinacy on the criminalization of abortion, leaves many women in Latin America with few options to protect themselves from the virus threatening their reproductive health, lives and well-being. The op-ed and ad in the **International New York Times** are part of a campaign to move the Catholic hierarchy to a more compassionate and medically appropriate response in this epidemic.

At the time, **Pope Francis** was visiting Mexico and made a statement to the effect that contraceptives may be the “lesser of two evils” and “avoiding pregnancy is not an absolute evil.” But he said that abortion in the face of the possibility of birth defects was an “absolute evil.” The Pope’s response was less than hoped for in the view of advocates for women’s reproductive health. CFC’s O’Brien decried the Pope’s response as business-as-usual, indicating the pontiff’s “blind spot on women,”

<http://www.catholicsforchoice.org/news/pr/2016/PopeFrancisBlindSpotOnWomenFacingZikaCrisis.asp>

The Zika virus epidemic has already resulted in the birth of more than 4,600 infants in Brazil alone. Without a strong emergency response to limit the spread of the mosquito that carries the virus more infants with serious birth defects could be born. Studies are being conducted currently to conclusively determine whether the Zika virus is the cause in these birth defects. The **World Health Organization** declared the Zika epidemic as a global health emergency and has issued guidelines for persons who may be at risk from a Zika exposure which has been linked to the paralytic syndrome, Guillain-Barre.

The **Centers for Disease Prevention and Control** (CDC) has also issued a guidance and offers an informative website on the Zika virus, addressing pregnancy concerns and travel advice with maps showing Zika mosquito distribution, <http://www.cdc.gov/zika/index.html>

### **House Republicans’ “Committee to Attack Women’s Health” Holds Hearings**

The select committee to “investigate” Planned Parenthood held a hearing on March 1 to continue bashing the organization; it was only an accidental coincidence that this was scheduled to occur on Super Tuesday primary elections day, right? Democrats have dubbed the Select Investigative Panel as “**Select Committee to Attack Women’s Health.**”

Minority Leader **Nancy Pelosi (Calif.)** appointed **Rep. Jan Schakowsky (Ill.)** to be the ranking member on the panel, along with **Reps. Jerrold Nadler (N.Y.) Diana DeGette (Colo.), Jackie Speier (Calif.), Susan Delbene (Wash.)** and **Bonnie Watson Coleman (N.J.)**. House democrats who have attended similar hearings by other committees “investigating” Planned Parenthood have called them “farces.”

According to an anti-abortion rights website, *Life Site News*,” the House committee will hear testimony from expert witnesses on the issue of Bioethics and Fetal Tissue as it relates to the alleged practice of abortion facilities profiting off the sale of aborted baby organs, and illegally altering surgical procedures to “live,” “intact” babies to sell to research companies.”

Prior to today’s hearing women’s reproductive health organizations and Democrats in Congress made repeated calls of the House Republican leadership to halt efforts to further attack Planned Parenthood and to disband the select committee.

The *Washington Post* editorial board lambasted House Republicans for engaging in a “witch hunt” of Planned Parenthood, “undeterred: by the fact that the deceptively edited videos that form the basis for their “reckless investigation” have been thoroughly debunked.” The February 21 editorial blasted the Republican-led Select Investigative Panel for wasting “time and money” on a “witch hunt” investigation that has “potential damage to health care and medical research,” according to a summary at

mediamatters.org blog, <http://mediamatters.org/blog/2016/02/21/washington-post-editorial-board-slams-gops-plan/208717> The Washington Post editorial can be read at, [https://www.washingtonpost.com/opinions/the-planned-parenthood-witch-hunt/2016/02/20/a6cb0e5c-d660-11e5-b195-2e29a4e13425\\_story.html](https://www.washingtonpost.com/opinions/the-planned-parenthood-witch-hunt/2016/02/20/a6cb0e5c-d660-11e5-b195-2e29a4e13425_story.html)

### **Phony Video Producers Indicted by Texas Grand Jury**

In late January, a grand jury in Houston, Tex. indicted the producers of the undercover videos which alleged that **Planned Parenthood** illegally sold fetal tissue to researchers for a profit. The grand jury also found that the Planned Parenthood committed no wrong-doing.

**David Daleidan** of the **Center for Medical Progress** (CMP) and activist **Sandra Merritt** each face a felony charge of tampering with a governmental record, which carries a maximum penalty of 20 years in prison. Daleidan is also charged with a misdemeanor count related to purchasing human organs. Both have turned themselves in to federal authorities. The two will now face trials.

Public filings in the grand jury proceedings indicate that only a small number of people are affiliated with CMP, none of whom are scientists or physicians involved in advancing medical treatments. The individuals who are named as officers were identified as long-time anti-abortion activists with a history of drawing media attention.

Eleven state investigations, as of January 26, have cleared Planned Parenthood of claims that the organization profited from fetal tissue donations.

## **CONSTITUTIONAL EQUALITY**

### **Republicans Refuse to Replace Scalia This Term**

President Obama met with **Senate Majority Leader Mitch McConnell** (R-Ky.) and **Senate Judiciary Committee Chair Charles Grassley** (R- Iowa) on March 1 to urge them to move forward with consideration of a nominee to replace the late **Justice Antonin Scalia**. **Sen. Harry Reid**, Senate Minority Leader, also attended and said that the two Republican senators declined the President's offer to review a list of potential nominees in advance of the announcement.

Sen. Grassley is reported to have made it clear that the Republicans do not intend to take up the nominee or to have a hearing.

They argue that the responsibility to select a Supreme Court justice lies with a new administration, not the current lame duck administration. Democrats rightly respond that the Constitution specifically assigns that responsibility to the president regardless of when a vacancy occurs.

Various women's, progressive, labor, civil rights and other organizations are planning a campaign to put pressure on senators to hold hearings this year, especially targeting Republican Judiciary Committee members.

## **Documentary producer Michael Moore Pushes for the ERA**

If you have not seen the new **Michael Moore** movie, *Where to Invade Next*, be sure to add it to your viewing list. NOW staffers worked with Moore's promotional company to spread the word about the film which looks at enviable social policies in various European countries. Unlike Moore's previous documentaries which tend to be sober examinations of serious social and economic problems in the U.S. , this film is light-hearted with lots of good laughs. Because the movie makes a strong pitch for ratification of the Equal Rights Amendment in the U.S., NOW hopes that it can help educate the public on why women need to be in the Constitution. NOW reviewed the film at, <http://now.org/take-action/where-to-invade-next-a-new-film-by-michael-moore-that-promotes-the-era/>

In conjunction with *Where to Invade Next*, a social media quiz was circulated asking readers about the ERA. As of mid-February PictureMotion's Julie Kohn reported,

Over 10,000 people have taken the quiz to date. Of those 10,000 people, 32% believed that men and women have equal rights under the U.S. Constitution. We're glad that through this quiz, we were able to inform them of this unacceptable, but factual reality. In fact, 70% of Americans believe that women and men have equal rights under the U.S. Constitution (since this quiz was shared by women's organizations, we expected individual's knowledge on the issue to be greater, which it proved to be).

Please continue to encourage your members and supporters to see the film and share the quiz ([bit.ly/Invade4Equality](http://bit.ly/Invade4Equality)) in the coming weeks! In case you haven't seen the [news](#), the film had a terrific opening weekend. It is the highest-grossing documentary of the year and the second Michael Moore film to gross seven (or more) figures in its opening week!

You can view a trailer of the film at <http://wheretoinvadenext.com/>

## **EDUCATIONAL EQUITY**

### **NOW Testimony before DC Council's Education Committee on Boys-only High School**

As part of our national campaign to address race- and sex-discrimination against women of color, NOW's Government Relations Director, Jan Erickson presented testimony before the District of Columbia City Council's Education Committee. Following the testimony Education Committee Chair David Grosso said that he would carry our message to Chancellor of Education Kaya Henderson about girls and young women of color being in as much need of educational opportunity as boys and young men of color. The District recently announced the awarding of \$1.7 million grants to various schools in their Empowering Males of Color program; some or perhaps all may be in violation of Title IX. Here is the testimony:

### **Comments presented to the District of Columbia Council's Committee on Education at the DCPS Performance Oversight Hearing, February 18, 2016**

**By Jan Erickson, Director, Government Relations, National Organization for Women, and on behalf of the DC NOW Chapter, Jeanine Johnson, President.**

My name is Jan Erickson and I am director of government relations for the National Organization for Women (NOW), the largest feminist grassroots organization in the U.S., with hundreds of chapters in every state and the District of Columbia. Our president Terry O'Neill is

recovering from the flu and not able to speak today and our DC NOW Chapter president, Jeanine Johnson, also is not able to be present today but has endorsed this statement.

Thank you very much for this opportunity to offer our comments, particularly with regard to the need to provide equal education opportunities for children of color in the District of Columbia. Last June, together with the National Congress of Black Women, the Feminist Majority Foundation and the DC NOW chapter, NOW submitted a letter to Chair Mendelson and District Council members urging a revision in plans for the exclusion of girls of color from local initiatives inspired by or created in conjunction with President Obama's signature initiative on race, My Brother's Keeper. These plans include a boys-only high school in Ward 7, a \$5 million, multi-year grant program to improve social and educational outcomes, and a mentorship program. We were joined in that view by more than forty women's rights and educational organizations who submitted written and oral testimony.

While we applaud efforts to address deplorable racial disparities among school children in the District, we insist that girls and young women of color must be included equally in these efforts. A promised study at some future date of the educational needs of girls and young women will not suffice. Then as now, we believe that there is insufficient evidence to justify the District's single-sex education programs as a means of reducing racial disparities. These programs unjustifiably discriminate against girls and young women of color in the District and likely would not overcome prohibitions in District and federal laws against discrimination based on gender.

As we recounted in the attached letter sent (May 7, 2015) to Mayor Bowser, Chancellor Henderson, and members of the Council regarding the DC Boys and Men of Color Initiative (BMOC) that proposals for improving achievement scores and graduation rates for boys and young men of color were neglecting the very real and nearly identical needs of girls and young women of color. Boys of color do not "have it worse" than do girls of color: the vast majority of national statistical evidence cited in My Brother's Keeper Task Force Report to the President (May, 2014) relates to both boys and girls – only nine of the 114 statements are ones in which males are seen to be worse off than females. The MBK report documents that challenges facing girls and young women of color are either identical or nearly so to those of boys and young men of color.

On measures of poverty, unemployment, health conditions such as asthma, diabetes along with intellectual, learning or emotional disabilities an Institute for Women's Policy Research (IWPR) analysis found little differences between the sexes. The few exceptions pertain to arrest and incarceration rates which are higher for Black males compared to those for Black females. Girls of color ages 0 to 17 have higher rates of poverty than do boys in the same age group, have higher rates of maltreatment, lower rates of mathematics achievement in fourth through 12th grade. The consequences are seen in findings of young adults of color, 18 to 24, where women have higher shares in remedial postsecondary classes, have lower shares with four year degrees in STEM fields, have lower labor force participation and lower median earnings, and have higher rates of obesity than their male counterparts, according to the IWPR analysis.

In the May 7 letter we stressed that girls' educational needs cannot be dismissed by saying that they are "doing better" than boys of color. Just as boys of color, girls of color are not achieving at the level they should be and DC girls' risk of not graduating from high school is unacceptably high. Graduation data as cited in the May 7 letter (attached) show that the extraordinary disparity in graduation rates for girls of color compared with white girls is a critical indicator that girls of color in DC face serious risks.

Dropout rates in DC are higher than the national average with the rate for grades nine through 12 in 2011 at 8.6 percent -- higher than the national average of seven percent in 2013. There was little difference nationally between the sexes with seven percent of males ages 16 to 24 as high school dropouts compared to six percent of females. Multiple studies find that Black girls are suspended five to six times more often than white girls whereas Black boys are suspended at just three times the rate for white boys. A 2013 report on District discipline found an overuse of suspension and expulsion with 13 percent of the population during the 2011-2012 school year being suspended at least once in both District of Columbia Public Schools and Public Charter schools. Suspensions disproportionately impacted students in special education and students attending school in wards with higher rates of child poverty, though no race- or gender-specific data were included.

There is a critical need for race and gender data disaggregation pertaining to all measures of student performance and conduct in school, and we strongly urge the District to make that information publicly available on its websites and in official reports.

Women and girls of color suffer from combined racial- and gender-based discrimination. Just as police violence against women of color has been overlooked so has entrenched discrimination and abusive treatment of girls and young women of color in our nation's schools. Sexual victimization of females before age 18 has been reported in various studies to range between 34 to 67 percent. Sexual abuse is interconnected with poverty; DC's child poverty rate is higher than in any other state. For survivors of sexual abuse there are higher rates of depression, post-traumatic stress disorder and illicit drug use. Effects of such violence have a bearing on conduct and performance of girls of color in school, often not being met with appropriate interventions designed to address underlying problems and provide supportive solutions. In far too many situations, Black girls are subject to harsh and often unwarranted school discipline measures and end up in the juvenile justice system which carries life-long impacts. Black girls find themselves caught in the juvenile justice system for infractions much less serious than those of boys, mainly related to status offenses like truancy, running away and incorrigibility – being a disobedient youth, essentially.

In closing, the National Organization for Women strongly urges the District to adopt a comprehensive Racial and Gender Justice Initiative which would guide the development of educational and other programs in the District of Columbia. As the local government for the Nation's capital, we believe that the District government and its school system could be the model for the nation in demonstrating fairness and equity in all its policies and programs and,

among many other beneficial outcomes, would guard against the neglect of the educational needs of girls and young women of color. A racial justice initiative that excludes girls and young women of color is simply unjust.

### **Request of DoED to Issue Guidance to Schools on Social Media Threats**

NOW joined with the **Feminist Majority Foundation** at a Dec. 1 in a meeting with officials at the Department of Education to discuss our request that the agency issue a guidance concerning threats and harassment via anonymous social media. Present at the meeting were **James Ferg Cadima**, Acting Deputy Assistant Secretary for Policy, **Matt Feilella**, Deputy Director, Program Legal Group and several staff attorneys. The department's **Office of Civil Rights** had requested the meeting.

**Women Students Often Targets** - FMF's president and former NOW national president, **Ellie Smeal**, outlined the problem with anonymous social media outlets such as Yik Yak that are used primarily by students and have been a conduit for threats and harassment of other students, often attacking women students. Recent incidents have occurred at the University of Mary Washington when female students were threatened with rape, murder and abuse via Yik Yak and at Clemson University where racially abusive Yaks appeared after a student march protesting the failure to indict the police officer responsible for the death of African-American teenager Michael Brown in Ferguson, Missouri.

A detailed letter had been submitted to **Education Secretary Arne Duncan** and **Office of Civil Rights Assistant Secretary Catherine Lhamon** reminding them of the department's obligations under Title IX and Title VI to address sex- and race-based harassment at schools receiving federal funds. "As the popularity and use of anonymous social media applications grows on college campuses, it is important that schools do not abdicate their responsibilities under Title IX and Title VI to protect students from discrimination, including harassment and intimidation based on sex, gender, sex stereotypes or race, color, or national origin, simply because that harassment has found a new home," the letter stressed.

**DoED Asked for More Information** - Department officials indicated that these school-based social media outlets are so new, they were not familiar with how many operated and requested more information from our group. We are waiting for a report back from the department. The letter was signed by more than 70 organizations, including 22 NOW chapters.

## **ECONOMIC EQUITY**

### **New Policy Guidance on Workplace Retaliation**

In late February, NOW joined with 25 other organizations in submitting extensive comments to the **Equal Employment Opportunity Commission (EEOC)** concerning their Proposed Enforcement Guidance on Retaliation and Related Issues (EEOC-2016-0001-001). The comments were prepared by the **National Women's Law Center**.

**Guidance Concerning Retaliation Needed Updating** - The last time that the EEOC issued policy guidance on retaliation was in 1998 and, as the comments point out, the law has evolved significantly since then and retaliation has become the most frequently alleged basis of discrimination in EEOC claims. Because sex-based employment discrimination continues to hold women workers back in pay and promotion, retaliation – particularly related to compensation discussions between employees – is a

critically important matter. The EEOC's Proposed Enforcement Guidance was commended for recognizing that inquiries about wages and other discussions can constitute protected activity, and that enforcement or threatened enforcement of punitive pay secrecy policies can constitute retaliation.

The comments assessed the proposed guidance in situations such as "inquiries that reveal apparently discriminatory pay disparities can constitute protected activities" and "punitive pay secrecy policies that make no exception for protected activities run afoul of retaliation protections." The comments urged that the guidance should make clear that imposing nondisclosure requirements on employees complaining of discrimination constitutes an adverse action. Finally, the comments urged that the final guidance address requests for pregnancy-related accommodations.

If anyone would like to a copy of the these comments, email Jan Erickson at [govtrel@now.org](mailto:govtrel@now.org)