

Complaint Against Telecommunications Bill

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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ALEX SANGER, PLANNED PARENTHOOD of	:		
NEW YORK CITY, RHONDA COPELON,	:		
ADAM GUASCH-MELENDEZ,	:		
CALIFORNIA ABORTION AND REPRODUCTIVE	:		
RIGHTS ACTION LEAGUE (NORTH), NATIONAL	:		
ABORTION AND REPRODUCTIVE RIGHTS ACTION	:		
LEAGUE, FUND FOR THE FEMINIST MAJORITY,	:		
MEDICAL STUDENTS FOR CHOICE, and	:		
NATIONAL ABORTION FEDERATION, on behalf	:		
of themselves and all similarly situated	:		
persons,	:	COMPLAINT	
Plaintiffs,	:		
	:		
--versus--	:		
	:		
JANET RENO, in her official capacity as	:		
Attorney General of the United States,	:		

Defendant.

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:  
X

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Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named defendant, her employees agents and successors in office, and in support thereof allege the following:

I. Preliminary Statement

1. This class action challenges the constitutionality of 18 U.S.C. Section 1462(c) as amended by Section 507 of the Telecommunications Act of 1996 ("the challenged provision") as violative of the First and Fifth Amendments to the United States Constitution. A copy of the Telecommunications Act of 1996 ("the Act") is attached hereto as Exhibit A. For the convenience of the Court, a copy of Section 507 of the Telecommunications Act is attached hereto as Exhibit B and a copy of 18 U.S.C. Section 1462 prior to its amendment by the Act is attached hereto as Exhibit C.

2. Under Section 561(a) of the Act, this case, which is a civil action challenging the constitutionality on its face of an amendment made by Title V of the Act, "shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code." Plaintiffs therefore ask that a three-judge court be convened by the Chief Judge of this Circuit in accordance with 28 U.S.C. Section 2284.

3. Specifically, plaintiffs seek declaratory and injunctive relief on the grounds that the challenged provision violates the right to freedom of speech and freedom of the press under the First Amendment; the due process right to have notice of prohibited conduct under the Fifth Amendment; and the right to make personal reproductive decisions under the Fifth Amendment to the U.S. Constitution.

4. Upon information and belief, the President of the United States will sign the challenged provision into

law on Thursday, February 8, 1996, at approximately 11 a.m. Eastern Time. The amendments to the challenged provision are effective immediately upon the President's signature, and will immediately subject plaintiffs and the class they seek to represent to severe criminal penalties as set forth below.

## II. Jurisdiction

5. Jurisdiction is conferred on the Court by 28 U.S.C. Section 1331, and the First and Fifth Amendments to the United States Constitution.

6. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. Sections 2201 and 2202 and by rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

## III. Parties

### A. Plaintiffs

7. Plaintiff Alexander Sanger is a United States citizen and a resident of the state of New York. He is the President of Planned Parenthood of New York City (PPNYC), one of the largest affiliates of Planned Parenthood in the United States. Under his direction, PPNYC advertises in interstate commerce using common carriers and interactive computer services how abortions may be obtained at its offices. Plaintiff Sanger is subject to imprisonment of up to five years and a fine of up to \$250,000 for the first violation of the challenged provision, and imprisonment of up to ten years and a fine of up to \$250,000 for every subsequent violation of the challenged provision. Plaintiff Sanger sues on his own behalf and on behalf of all similarly situated individuals.

8. Plaintiff PPNYC is a New York non-profit corporation. It has three centers in New York City (in the South Bronx, Manhattan's East Side, and Brooklyn). Each year, PPNYC serves the reproductive health care needs of approximately 28,000 women from the New York City metropolitan area. PPNYC provides abortion services; contraceptives (Norplant, Depo Provera, condoms, spermicide,

diaphragm, IUD, and birth control pills); routine minor gynecological services; colposcopy; cryosurgery; prenatal care; HIV testing and counselling; and STD testing. PPNYC regularly uses the Internet to shop for and order medical and surgical equipment and drugs used in performing abortions. For example, it purchases vacuum aspiration machines over the Internet that are used in performing abortions. Unless PPNYC complies with the challenged provision, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. Plaintiff PPNYC sues on its own behalf and on behalf of all similarly situated organizations.

a) Plaintiff Rhonda Copelon is a Professor of Law at the law school of the City University of New York in Queens, New York, and is a resident of Brooklyn, New York. She is admitted to practice law in the state of New York and before various federal courts. As part of her academic research, she receives through interstate and foreign commerce, both through common carriers and through interactive computer services, "cards, letters, circulars, books, advertisements or notices of any kind" giving information about where, how, of whom, or by what means abortion may be obtained. Her receipt of such information after the challenged provision is in effect will subject her to imprisonment of up to five years and a fine of up to \$250,000 for the first violation of the challenged provision, and imprisonment of up to ten years and a fine of up to \$250,000 for every subsequent violation of the challenged provision. Plaintiff Copelon sues on her own behalf and on behalf of all similarly situated persons.

9. Plaintiff Adam Guasch-Melendez is a United States citizen and a resident of the District of Columbia. He maintains a site on the World Wide Web, an interactive computer service, which directly or indirectly contains information about how, where, of whom, or by what means abortions may be obtained. Unless he eliminates this site, he will be subject to imprisonment of up to five years and a fine of up to \$250,000 for the first violation of the challenged provision, and imprisonment of up to ten years and a fine of up to \$250,000 for every subsequent violation of the challenged provision. Plaintiff Guasch-Melendez sues

on his own behalf and on behalf of all other similarly situated persons.

10. Plaintiff California Abortion and Reproductive Rights Action League (North) (CARAL), is a California non-profit organization which maintains a site on the World Wide Web at <http://www.caral.org> and <http://www.choice.org>. These sites contain information about drugs, medicines or other devices intended for use in producing abortions. Unless CARAL complies with the challenged provision by deleting these Web sites, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. Plaintiff CARAL sues on its own behalf and on behalf of all similarly situated organizations, and on behalf of its members who use or seek to use express companies, common carriers, or interactive computer services to take or receive information in interstate or foreign commerce about where, how or of whom to obtain abortions.

11. Plaintiff National Abortion and Reproductive Rights Action League (NARAL) is a non-profit membership organization incorporated under the District of Columbia Non-Profit Corporation Act. Currently, NARAL has approximately 500,000 members nationwide. NARAL currently uses express companies, common carriers, and interactive computer services to gather information about a variety of issues related to abortion, including information about particular abortion methods such as RU 486, methotrexate/misoprostol and intact dilation and evacuation. NARAL has entered into a contract for the construction of a NARAL site on the World Wide Web, an interactive computer service, for dissemination of information about abortion, including information about abortion methods and where abortions may be obtained. Unless NARAL complies with the challenged provision, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. Plaintiff NARAL sues on its own behalf and on behalf of all similarly situated organizations, and on behalf of its members who use or seek to use express companies, common carriers, or interactive computer services to take or receive information in interstate or foreign commerce about where, how or of whom to obtain abortions.

12. Plaintiff Feminist Majority Foundation (FMF) is

a non-profit research, education and action organization committed to the empowerment of women with offices in Los Angeles and Arlington, Virginia. FMF uses interactive computer services to disseminate information about drugs, medicines or other devices intended for use in producing abortions. Unless FMF complies with the challenged provision, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. FMF sues on its own behalf and on behalf of all similarly situated organizations, and on behalf of its members who use or seek to use express companies, common carriers, or interactive computer services to take or receive information in interstate or foreign commerce about where, how or of whom to obtain abortions.

13. Plaintiff Medical Students for Choice (MSFC) is a national organization founded in 1993 by medical students concerned about the shortage of abortion practitioners, the lack of abortion education in medical schools, and the escalating violence against abortion providers. MSFC has five major goals: to increase educational opportunities for medical students and residents on abortion and reproductive health; to reform curricula to include abortion education; to educate policymakers about the importance of abortion training and access; to increase student access to clinical opportunities in reproductive health; and to provide a network of support and resources for pro-choice students. MSFC utilizes interactive computer services on the Internet and World Wide Web to further each of its goals. Unless MSFC complies with the challenged provision, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. MSFC sues on its own behalf and on behalf of all similarly situated organizations, and on behalf of its members who use or seek to use express companies, common carriers, or interactive computer services to take or receive information in interstate or foreign commerce about where, how or of whom to obtain abortions.

14. Plaintiff National Abortion Federation (NAF) is the oldest and largest nonprofit, professional association of abortion providers, representing physicians, nurses, administrators, counselors, and other medical staff at over 300 abortion facilities in the United States and Canada. NAF regularly uses express companies and common carriers to

take and receive information about how, where and of whom to obtain abortions. For example, NAF uses express companies and common carriers, and plans to use interactive computer services, to offer abortion providers a group purchasing product list of supplies that are used to produce abortions. NAF is planning to go on the Internet within the next few months as an organization. Currently, one of its staff members uses the internet on behalf of NAF, and many of NAF's members use the internet regularly to exchange information on abortion practice. Under the challenged provision, dissemination of this list is prohibited. Unless NAF complies with the challenged provision, it will be subject to a fine of up to \$500,000 for each violation of the challenged provision. NAF sues on its own behalf and on behalf of all similarly situated organizations, and on behalf of its members who use or seek to use express companies, common carriers, or interactive computer services to take or receive information in interstate or foreign commerce about where, how or of whom to obtain abortions.

#### B. Defendant

15. Defendant Janet Reno is the Attorney General of the United States. She is charged with enforcing the challenged provision. See 28 U.S.C. Section 515(a); 28 U.S.C. Section 547. She is sued in her official capacity.

#### IV. Class Action Allegations

16. Plaintiffs all use or seek to use express companies, common carriers, or interactive computer services to carry or receive information in interstate or foreign commerce about how or where to obtain abortions, all or some of which conduct is prohibited by the challenged provision.

17. Plaintiffs sue on behalf of all other individuals and organizations similarly situated and seek, pursuant to Fed R. Civ. P. 23(b)(2), to represent a class of all individuals and organizations in the United States who use or seek to use express companies, common carriers, or interactive computer services to carry or receive information either in interstate or foreign commerce about how or where to obtain abortions.

18. The prerequisites to class certification are met

in that:

(a) Upon information and belief, thousands of persons use express companies, common carriers, and interactive computer services to exchange information about abortion and where and how abortions may be obtained; consequently, the class is so numerous that joinder of all members is impracticable;

(b) The challenged provision applies with equal force to all members of the class, such that questions of law and of fact relating to the constitutionality of the challenged provision are common to all members of the class;

(c) The claims of the representative parties as to the unconstitutionality of the challenged provision are typical of those in the class; and

(d) The representative parties have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class.

19. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the legality and constitutionality of the challenged provision and thus a risk of establishing incompatible standards of conduct for the defendant who is charged with enforcing the challenged provision.

#### V. The Statutory Scheme

20. As amended by Section 507(a) of the Act, 18 U.S.C. Section 1462(c) reads as follows (1996 amendments underscored):

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or other interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934), for carriage in interstate or foreign commerce -

\* \* \*

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or a notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes \_or receives\_ from such express company or other common carrier \_or interactive computer service\_ any matter or thing the carriage \_or importation\_ of which is herein made unlawful -

Shall be fined under this title or imprisoned not more than five years, or both, for the first such offense and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

21. Under 18 U.S.C. Section 3559(a), violation of 18 U.S.C. Section 1462 is a Class D felony. As such, under 18 U.S.C. Section 3571(b), the fines for individuals for violating 18 U.S.C. Section 1462 may be up to \$250,000; and, under 18 U.S.C. Section 3571(c), the fines for organizations for violating 18 U.S.C. Section 1462 may be up to \$500,000.

22. Section 507(c) of the Act states:

The amendments made by this section are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in *United States v. Alpers*, 338 U.S. 680 (1950). Thus, Congress has explicitly indicated its intent to leave in force all pre-existing provisions of 18 U.S.C. Section 1462.

23. Section 507(c) of the Act is part of Title V of the Act, captioned "Obscenity and Violence." Under section 561 of the Act, as set forth above at Paragraph 2, this complaint must be heard by a statutory three-judge court convened pursuant to 28 U.S.C. Section 2284.

24. The language of 18 U.S.C. Section 1462(c) is based on the language used by Congress in the Comstock Act, 17 Stat. 598 (1873). Similar language appears in 18 U.S.C. Section 1461.

25. The phrase "any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use" is not further defined in the United States Code. Its plain meaning includes all known methods of inducing abortion.

26. The plain meaning of the phrase "any written or printed card, letter, circular, book, pamphlet, advertisement, or a notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things [to produce abortion] may be obtained or made," includes both commercial and non-commercial speech and publications about abortion.

## VI. Causes of Action

### First Cause of Action

27. Plaintiffs hereby incorporate by reference Paragraphs 1 through 27 above.

28. The challenged provision as amended by the Telecommunications Act of 1996 is unconstitutional under the First Amendment to the United States Constitution because it abridges freedom of speech and freedom of the press, in that it imposes a criminal ban on all interstate speech and publications, both commercial and non-commercial, that contains information about where, how, of whom, or by what means an abortion may be obtained.

### Second Cause of Action

29. Plaintiffs hereby incorporate by reference Paragraphs 1 through 29 above.

30. The challenged provision as amended by the Telecommunications Act of 1996 is unconstitutional under the

Fifth Amendment to the United States Constitution because it is so vague that it fails to give plaintiffs adequate notice of what conduct it prohibits and will encourage arbitrary and discriminatory enforcement.

#### Third Cause of Action

31. Plaintiffs hereby incorporate by reference Paragraphs 1 through 31 above.

32. The challenged provision as amended by the Telecommunications Act of 1996 is unconstitutional under the Fifth Amendment to the United States Constitution because it imposes an undue burden on the right of women to obtain an abortion in that it prohibits women from receiving information through express companies, other common carriers, or interactive computer services, about where to obtain an abortion.

#### Irreparable Harm

33. If the challenged provision is not immediately enjoined, plaintiffs will be subjected to immediate and irreparable injury for which no adequate remedy at law exists in the following respects:

(a) Plaintiffs will be forced immediately to remove or delete information about abortion they have placed for public availability on interactive computer services; and

(b) Plaintiffs will be forced immediately to cease obtaining any interstate or foreign information about abortion from interactive computer services, express companies, or other common carriers.

(d) Plaintiffs will be deprived of their constitutional rights.

WHEREFORE, plaintiffs ask this Court:

A. To issue a temporary restraining order and preliminary injunction restraining defendant, her employees, agents and successors from enforcing the challenged provision;

B. To enter judgment declaring the challenged provision to be in violation of the United States Constitution and permanently enjoin the ban; and

C. To grant such other and further relief as this Court should find just and proper including attorney's fees and costs.

Respectfully submitted,

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Dated February 7, 1996.