



MEMO

To: Interested Parties
From: Bruce Brown, District Attorney, 5th Judicial District
Date: September 3, 2014
Re: The disturbing consequences of Rep. Gardner's abortion ban

Executive Summary: As a District Attorney tasked with upholding the law and prosecuting crimes in court, bills championed by Congressman Gardner at both the state and federal level are cause for great concern. During his time in the Colorado State House of Representatives, Congressman Cory Gardner sponsored a controversial bill to outlaw abortion in the State of Colorado. The bill, which did not pass into law, would have made performing an abortion a class 3 felony, with no exceptions for rape or incest, and a doctor providing abortion care for a victim of rape could be sentenced to a lengthier term than the average rapist serves. This would not only be morally backward, it would severely threaten prosecutors' ability to enforce the law and would endanger the safety of Colorado communities.

Colorado has a long, proud history of leading the nation in women's rights. We were one of the first states to give women the right to vote, long before the ratification of the 19th amendment. We've also been pioneers when it comes to expanding women's reproductive health choices. In 1967, Colorado became the first state to decriminalize abortion. It wasn't a law as broad as current United States Supreme Court decisions like *Roe v. Wade*, but it was our Centennial State's own bold action that allowed abortion in cases of rape, incest or threat to the mother's life.

This should come as no surprise – our trailblazing nature is practically woven into our state's DNA. And it's that type of forward-looking, pioneering mentality that we expect from our elected officials, a mentality that takes us forward, not backwards.

Unfortunately, on the November 4 ballot there will be two throwbacks that belie this spirit and, instead, harken back to the territorial days when access to safe reproductive health care was impossible. First, Amendment 67 seeks to include in the Criminal Code a definition of 'person' and 'child' as unborn human beings. Secondly, Congressman Cory Gardner is running for the United States Senate with a track record of championing legislation that would restrict access to reproductive health care and criminalize those physicians who provide abortion services.

In 2007, Rep. Gardner co-sponsored legislation in the State House (SB07-143), which would have subjected physicians to class 3 felony charges, with up to a twelve year prison sentence, for performing abortions in all cases except to save the life of the pregnant woman. To put the level of felony assigned by this legislative proposal in perspective, for physicians treating women who had been raped, the punishment assigned would be equal to that reserved for a residential arsonist and some second-degree murderers.

Most grotesquely, if Congressman Gardner's law were enacted, a doctor providing abortion care for a victim of rape could be sentenced to a lengthier prison term than the average rapist serves.

Rep. Gardner's legislation is not an aberrational attempt to outlaw abortion but part of a consistent, radical agenda that he has pushed onto the national stage during his congressional terms.

Enactment of criminal laws necessitates a broad moral base to sustain confidence in the institutions of courts

jurors understand when summoned on cases of theft, violence and crimes committed against children, that whether or not the evidence can sustain the charges, the morality of the state in bringing such cases is unquestioned – people, property and children need the strongest protections under the law. Imagine the dissent that would emerge from a panel of jurors summoned to weigh the guilt of a physician charged under Gardner’s 2007 law, criminalizing abortion in a case of rape.

Not only would it be near impossible to seat a jury, which serves as the conscience of our community, but even if such a charge did get past the jury to a guilty verdict, how would a judge charged with sentencing a physician rationalize a more severe sentence for the doctor than the victim’s rapist serves?

Furthermore, as a prosecutor charged with enforcing the law and ensuring the safety of my community, I am deeply concerned about Congressman Gardner’s attempt to use criminal prosecutions as a tool to implement his own social agenda. By treating the courts as a means to achieve his own political end, Congressman Gardner would make it more difficult for me to keep the public safe.

Like all District Attorneys, my time and resources are finite. Instead of using the limited resources of my office to fight the crimes that tear communities apart, such as methamphetamine production, armed burglary, and murder, Congressman Gardner would rather we focus on punishing doctors who provide medical care to the victims of rape.

As a prosecutor, as a Coloradan, and as a father, I am concerned that Congressman Gardner’s radical ideology would hinder our ability to fight crime and would threaten the safety of our communities.

The tragic, heart wrenching cases found in my tattered old law books are a regrettable part of our history as a state and as a nation. Our elected leaders have a duty to both acknowledge our government’s mistakes and to take a stand against those who would repeat them. As a District Attorney tasked with upholding the law and prosecuting crimes in court, bills championed by Congressman Gardner at both the state and federal level are cause for great concern.

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