



National Advocates
for Pregnant Women

N A P W

WRITING CONTESTS TO ADVANCE LEGAL SCHOLARSHIP ON BIRTHING RIGHTS AS A MATTER OF GENDER EQUALITY

HOW TO BE A CO-SPONSOR

NAPW is seeking your support to help implement two writing competitions relating to birthing rights as a matter of gender equality and reproductive justice.

NAPW knows that legal scholarship can be effective in bringing about social change. For example, the feminist legal community helped to bring issues such as sexual harassment into the lexicon of gender equality.

Moreover, courts often rely on influential law review articles when addressing new and difficult issues. A seminal article by Cyril Means¹ about abortion rights not only helped encourage academic discussion about an issue that was once unspeakable, it also helped shape the law when it was cited by the Supreme Court in *Roe v. Wade*.² The court in the case of Angela Carder's forced caesarean relied specifically on Janet Gallagher's³ groundbreaking article in the field when it recognized the procedural shortcomings inherent in emergency court hearings called to weigh maternal vs. state (fetal) rights.⁴ More recently, Sylvia Law's article on insurance coverage for contraception⁵ was cited in *Erickson v. Bartell Drug Co.*,⁶ in which a federal court in Washington State held that a company discriminated against its employees on the basis of sex by excluding contraception from its employee insurance policies. We believe that an academic writing competition can act as a catalyst for the legal community to join the dialogue on issues that NAPW and our allies consider crucial to a full understanding of Reproductive Justice. Directing the competition to law students will leverage the enthusiasm and creativity of a new generation of feminist legal scholars and spark critical thinking about the need to address childbirth and birthing rights as constitutional and human rights issues.

These contests will complement some of the very exciting grassroots organizing that groups like the Big Push for Midwives are doing and public education efforts, including the recent documen-

¹ Cyril Means, *The Phoenix of Abortional Freedom: Is a Penumbra or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?*, 17 N.Y.L.F. 335 (1971).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ Janet Gallagher, *Prenatal Invasions and Interventions: What's Wrong with Fetal Rights*, 10 HARV. WOMEN'S L.J. 9 (1987).

⁴ *In re A.C.*, 573 A.2d 1235, 1248 (D.C. 1990) (en banc).

⁵ Sylvia A. Law, *Sex Discrimination and Insurance for Contraception*, 73 WASH. L. REV. 363, 364-68 (1998).

⁶ *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266 (2001).

tary *The Business of Being Born*⁷ and the book *Pushed*.⁸ These grassroots and public education efforts have not only brought national attention to birthing rights and the need for a reevaluation of the American standard of prenatal and delivery care, they have helped to win legal victories: the Missouri Supreme Court recently reversed the decision of a lower court that eliminated certification for professional midwives and which had left them susceptible to criminal prosecution.⁹

To reinforce and advance these efforts further, NAPW has developed two separate challenges. The first asks for a critical theoretical analysis of the absence of birthing rights issues from gender discrimination and feminist jurisprudence textbooks and curricula. None of the top three casebooks used in law school courses dedicated to gender and the law address the issue of childbirth or midwifery. The treatment of reproductive rights as a whole is generally restricted to a couple of weeks. Within this section of the curriculum, abortion gets the lion's share of the discussion, with a few adventurous professors moving into the territory of criminalization of pregnancy for women who cannot overcome a drug problem, and a few touching on the brave new world of reproductive technologies, and then wrapping up the reproductive rights unit by segueing into the gendered construction of parenthood. This is a logical progression, but we are concerned that there is a glaring omission: how did a woman manage to transition down the syllabus from "maternal rights vs. fetal rights" to "motherhood" without crossing the threshold of childbirth? This contest will call attention to a topic with which many law students may be unfamiliar and will serve as a challenge to law professors to reexamine their textbooks and their curricula.

The second contest asks students to develop legal theories that can be used to challenge hospital/insurance company and regional/state policies banning pregnant women from having a vaginal birth after a prior caesarean section (VBAC). This topic will encourage students to address a growing problem that has received very little attention from the feminist legal community both in academia and within the leading women's rights legal advocacy organizations. With the exception of NAPW allies at the Northwest Women's Law Center, no group is currently planning a challenge to such prohibitions. This contest will generate new conversations, legal theories, and strategies that can be included in the discussion of gender discrimination and human rights. These contests can have a practical effect by encouraging legal practitioners to challenge VBAC bans, and by providing courts with authority they can cite in ruling in favor of women seeking to retain their civil and human rights while pregnant.

We are launching the contest in late August at the beginning of the law school term. We will advertise the two competitions to law students through a variety of channels. Law Students for Reproductive Justice has agreed to help advertise the contest and we are seeking support from a wide range of birthing rights and pro-choice organizations. We will also reach out through law schools and law student organizations, career planning offices, law reviews, the ABA Law Student Division, the American Constitutional Society, National Lawyers Guild, Black Law Students Association, Latin American Law Students Association, and student groups dedicated to women's rights and reproductive justice, as well as through other venues for feminist legal

⁷ THE BUSINESS OF BEING BORN (Barranca Productions 2007). For more information, *see* <http://www.thebusinessofbeingborn.com>.

⁸ JENNIFER BLOCK, *PUSHED: THE PAINFUL TRUTH ABOUT CHILDBIRTH AND MODERN MATERNITY CARE* (2008). For more information, *see* <http://www.pushedbirth.com>.

⁹ *Missouri State Medical Ass'n v. State*, No. SC88783, 2008 WL 2501838 (Mo. June 24, 2008).

scholars and activists, such as law blogs, listservs, and websites. We have suggested a length and style for the article that would allow students who participate in the contest to also use the article to fulfill law school writing requirements. The contest deadline will be May of 2009, to coincide with the end of the academic law school year.

NAPW and its allies will organize panels of childbirth/reproductive justice experts and activists to judge the articles. We are in the process of exploring ways to guarantee placement of the winning articles in a law journal, or at least to generate interest among journals to consider the winning selections for publication. In addition, the winning scholar in each contest will receive a \$1,000* prize. Second and third prize will be \$500* and \$250*, respectively. We will also arrange for the first prize winners to meet some of the judges, and are exploring opportunities to present the prize at upcoming birthing rights/reproductive justice conferences and events that will be held in the summer or fall of 2009.

We hope that you will to support this timely and catalytic effort by:

- 1) Allowing us to list you as a co-sponsor of these competitions; and
- 2) Giving us your suggestions for other possible supporters and contest judges.

* *We hope to be able to offer higher prize awards, as funding permits.*



CONTESTS TO ENCOURAGE FEMINIST LEGAL SCHOLARSHIP AND EXPAND THE REPRODUCTIVE JUSTICE CONVERSATION

CO-SPONSORSHIP/ENDORSEMENT AUTHORIZATION FORM

If you would like to co-sponsor these contests as an organization or to endorse them as an individual fill out the form below and return it to NAPW via email, fax, or mail. For more information contact Farah Diaz-Tello at writingcontest@advocatesforpregnantwomen.org, or by phone at 718-316-8922.

By my signature below, I grant the National Advocates for Pregnant Women permission to add my organization/name to a list of co-sponsors/individual endorsers of the Contest and to list my:

Organization as a Co-Sponsor

My individual name as an Endorser with my affiliation for identification purposes only

Organizational/Individual Contact information:

Street City State Zip

Email Phone(s) Fax

Signature/Date

I/ My organization will contribute: \$_____ (\$25.00 - \$25,000.00) to help pay for the contest prizes and the administration of this contest. Checks may be made out to National Advocates for Pregnant Women with "Contest" marked in the memo section and mailed to NAPW headquarters at:

National Advocates for Pregnant Women
15 West 36th Street, Suite 901
New York, New York, 10018
Phone: (212) 255-9252, Fax: (212) 255-9253

Thank you so much for your support of this effort to encourage new feminist legal scholarship!