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Disparities in the Use of Prophylactic Treatments in Reproductive Health Between the Sexes: A Recommendation for the Use of HPV Vaccination Schemes Rather than Surgical Interventions to Reduce Inequities and Threats to the Public's Health

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DISPARITIES IN THE USE OF PROPHYLACTIC TREATMENTS IN REPRODUCTIVE HEALTH BETWEEN THE SEXES: A RECOMMENDATION FOR THE USE OF HPV VACCINATION SCHEMES RATHER THAN SURGICAL INTERVENTIONS TO REDUCE INEQUITIES AND THREATS TO THE PUBLIC’S HEALTH

Paul McLaughlin*

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On the issue of prophylactic treatment of reproductive diseases, the sexes have historically been treated differently under medical ethics guidelines and the laws of the United States. Women have drawn the focus of medical and legal scrutiny on issues of prophylactic reproductive health. Women were often required to undergo quarantine and forced to receive treatment for reproductive diseases considered dangerous to public health. Women are now afforded protections against involuntary prophylactic procedures to prevent diseases in reproductive organs. Specifically, women are provided access to vaccinations against the human papillomavirus at a higher rate than males despite the disease’s ability to negatively impact both sexes. In order to control the spread of the human papillomavirus and to best ensure an opportunity for both sexes to maintain positive reproductive health, the rules guiding medical professionals and the laws of the United States must treat both sexes equally with regard to granting protections from unnecessary prophylactic treatments and in allowing access to human papillomavirus vaccinations.

INTRODUCTION

Sexually transmitted diseases (“STDs”) frequently have been used to treat differing groups of people as inferior or as morally wrong along many lines, including physical sex characteristics and sexual ori-

entation.¹ In the late 1900's, the United States government conducted a campaign of health care directives and laws against STDs, also known as the "American Plan."² Lawmakers were particularly concerned with controlling STDs and were focused on women as the potential carriers of STDs and being the source of immoral behavior.³ As a result, state and federal laws were passed that allowed women who were suspected of carrying sexually transmitted diseases to be arrested, forcibly examined, and imprisoned until the women completed treatment for disease or were no longer seen as a threat to public health.⁴ Although the American Plan was said to have declined by the 1970s, quarantine laws remained in place, though not as vigorously enforced.⁵ The quarantine laws allowed health authorities to detain and hold individuals to prevent the spread of diseases considered dangerous to social health. Essentially, quarantine laws were used to control the reproductive health of both sexes by using differing standards based on the individual's sex.⁶

However, after the Supreme Court's holding in *Reed v. Reed*,⁷ a person's sex was included as a category that was protected from discrimination under the Equal Protection Clause of the Fourteenth Amendment.⁸ Initially, under *Bradwell v. Illinois*, the standard of review for sex-based discrimination was subject to the lowest level of scrutiny – rational basis.⁹ Through a series of cases, however, the Supreme Court raised the standard of review to a heightened level known as skeptical (or intermediate) scrutiny.¹⁰ Under skeptical scrutiny, a party must show that the reasons for treating a sex differently are

1. See generally N. Gilmore & M. A. Somerville, *Stigmatization, Scapegoating and Discrimination in Sexually Transmitted Diseases: Overcoming 'Them' and 'Us'*, 39 Soc. Sci. & Med. 1339, 1343-45 (1994) (discussing the various impacts of stigmatization).

2. See Scott Wasserman Stern, *The Long American Plan: The U.S. Government Campaign Against Venereal Disease and Its Carriers*, 38 HARV. J.L. & GENDER 373, 374-75 (2015).

3. Stephanie Wahab, "For Their Own Good?:" *Sex Work, Social Control and Social Workers, a Historical Perspective*, 29 J. Soc. & Soc. Welfare 39, 44-45 (2002) (noting that "[i]n 1910, the New York legislature passed the Page Bill requiring women convicted of prostitution offenses to be examined for sexually transmitted diseases").

4. See Stern, *supra* note 2, at 375.

5. See generally Stern, *supra* note 2, at 416-32 (describing the history of the American Plan and laws that persisted even after its decline).

6. See generally Stern, *supra* note 2, at 416-32 (describing the history of the American Plan and laws that persisted even after its decline).

7. 404 U.S. 71 (1975).

8. See *id.* at 75-77; see also M. Margaret McKeown, *Beginning with Brown: Springboard for Gender Equality and Social Change*, 52 SAN DIEGO L. REV. 815, 818-19 (2015).

9. 86 U.S. 130, 140-42 (1872).

10. See Stern, *supra* note 2, at 821.

based on an “exceedingly persuasive justification.”¹¹ Even though the Supreme Court has set a high standard for differential treatment based on one’s sex, disparate treatment based on sex still persists with regards to prophylactic treatments for STDs in the areas of access to vaccinations and protections against unnecessary surgeries reputed to prevent cancers and diseases in reproductive organs.

This Article will examine the unequal treatment of the sexes under the law with regard to prophylactic treatments against STDs. The second section of this Article will discuss the ethical and legal issues in the use of prophylactic treatments and the issues involving informed consent regarding their use. The third section of this Article will discuss the historic and current use of prophylactic surgeries on both sexes to prevent disease and the challenges that have been raised against such practices. The fourth section of this Article will discuss the use of the H.P.V. vaccinations in both sexes to reduce the occurrence of many forms of cancer and the disparities between the vaccinations’ use along the line of sex due to medical and legal guidelines. The final section of this Article will argue that both sexes should be afforded the same opportunities to receive the human papillomavirus vaccinations, and will further argue equal protections against non-consensual genital altering surgeries regardless of if they are aimed to prevent genital cancer and diseases or because of cultural motivations.

I. ETHICAL AND LEGAL ISSUES CONCERNING THE USE OF PROPHYLACTIC TREATMENTS AND INFORMED CONSENT FOR MEDICAL TREATMENT

Prophylactic treatments are treatments performed to prevent, rather than cure, medical conditions.¹² The use of prophylactic treatments raises a variety of ethical issues including concerns over patient consent and questions as to which factors are to be considered when deciding if such treatments are necessary to preserve public health.¹³ Consent to medical treatment is considered valid when the patient is told of the: (1) nature of the treatment to be performed; (2) the risks and consequences of the treatment in light of the availability of alter-

11. *See generally* United States v. Virginia, 518 U.S. 515, 530-34 (1996) (discussing the skeptical scrutiny analysis and its application to gender classifications).

12. *See* WORLD HEALTH ORGANIZATION, ETHICAL CONSIDERATIONS IN DEVELOPING A PUBLIC HEALTH RESPONSE TO PANDEMIC INFLUENZA vi (2007), https://www.who.int/csr/resources/publications/WHO_CDS_EPR_GIP_2007_2/en/.

13. *See generally id.* at 1-8 (discussing the ethical considerations needed to establish a process that promotes equitable access to treatments).

native treatments; (3) risks involved with not receiving treatment; in addition, the patient must be asked to consent to the treatment again if the patient withdraws consent and later develops conditions that require treatment.¹⁴ However, there are two situations when the doctor is able to override the requirement of informed consent: (1) when the patient is unable to make their wishes as to medical treatment known thereby seeking consent from a parent or power of attorney;¹⁵ or (2) when there is a compelling social reason that a treatment should be administered without the patient's consent.¹⁶ As such, surgery should only be performed if there is a condition requiring such intervention, the patient is informed of the ramifications of the surgery, the procedure is for the overall health benefit of the patient, the procedure meets with the ethical and social justice considerations of performing the surgery, and the patient's autonomy is respected.¹⁷

Reliance on a surrogate decision maker for health decisions is only proper when the surrogate's decisions reflect those of the patient.¹⁸ Studies have shown, however, that surrogates often do not follow a patient's choices, and, at times, substitute their own wishes for those of the patient;¹⁹ this is true even with adults who had the ability to make their wishes as to medical treatment known.²⁰ As a general rule of law, because a child cannot consent to medical treatment, a parent and/or guardian must consent to the treatment on behalf of the child.²¹ Medical ethics and laws of the United States, however, go one step further and allow parents to make decisions for their children with regard to medical treatment even if those choices are harmful, as

14. See SCOTT BECKER, *HEALTH CARE LAW: A PRACTICAL GUIDE*, §§ 19.02[2][a][i]-[v] (1964), Westlaw.

15. See *Schloendorff v. Soc'y of N.Y. Hospital*, 211 N.Y. 125, 128-32 (1914); see also Christine Grady, *Enduring and Emerging Challenges of Informed Consent*, 372 *NEW ENG. J. MED.* 855, 856-60 (2015).

16. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 24-39 (1905) (holding that a law allowing smallpox vaccination to be administered regardless of consent by patient was constitutional as it was enacted for the purpose of protecting public health and safety should it be endangered by the presence of such disease).

17. See American College of Obstetricians and Gynecologists, *ACOG Committee Opinion Number 395 Surgery and Patient Choice*, 111 *OBSTETRICS & GYNECOLOGY* 243, 243-44 (2008).

18. See David I. Shalowitz et al., *The Accuracy of Surrogate Decision Makers: A Systematic Review*, 166 *ARCHIVES INTERNAL MED.* 493, 493, 495 (2006).

19. *Id.* at 495.

20. *Id.* at 495-97.

21. See *Bonner v. Moran*, 126 F.2d 121, 122-23 (D.C. Cir. 1941).

the law protects a parent's right to raise their child as they see fit.²² A parent's choice is generally deemed valid when it is an immediate, life threatening, clinically verifiable, disease, deformity, or injury that requires correction.²³ Medical experts have stated that prophylactic procedures on children are impermissible unless it can be shown that: (1) there is a disease or injury that must be treated to prevent further harm; (2) the treatment is the least invasive method available; (3) the treatment would most likely provide a net benefit to the child; (4) the child would consent to the treatment or there is a valid reason why the treatment should be given without consent; (5) the treatment is standard to prevent serious harm to the child or society; and (6) without the treatment that there is a high probability the child would develop a disease.²⁴

A. *Prophylactic Surgeries for Women and Reproductive Health*

For women, prophylactic mastectomies and hysterectomies can be performed to lower the risk of cancer to a woman's breasts when that woman carries tumor suppressor genes known as BCRA 1 and BCRA 2.²⁵ Even though prophylactic procedures have been found to reduce cancer risks, few medical experts have encouraged their use due to the availability of other treatments and concern that women would choose surgery due to misplaced fear of their chances of developing cancer.²⁶ If a woman is considered high risk for breast or ovarian cancer, experts recommend that she be counseled as to the risks of undergoing surgery or foregoing surgery so she can make the best decision for herself.²⁷ Experts also recommend that women speak with oncologists, psychologists, nurses, and surgeons, during multiple sessions before choosing to undergo prophylactic surgery.²⁸ Due to the possible negative impacts of prophylactic surgery on a woman's self-

22. See *Tabor v. Scobee*, 254 S.W.2d 474, 475-76 (Ky. 1951); see also Barry Lyons & Ralph Hurley O'Dwyer, *The Jacobs Parental Prerogative Test*, 15 AM. J. BIOETHICS 52, 52-53 (2015).

23. See F. M. Hodges et al., *Prophylactic Interventions on Children: Balancing Human Rights with Public Health*, 28 J. MED. ETHICS 10, 10 (2002).

24. *Id.* at 10-11.

25. Ibrahim Kansa et al., *Timing of Prophylactic Hysterectomy-Oophorectomy, Mastectomy, and Microsurgical Breast Reconstruction in BRCA 1 and BRCA 2 Carriers*, 34 MICROSURGERY 271, 271 (2013).

26. See F. Laloo et al., *A Protocol for Preventative Mastectomy in Women with An Increased Lifetime Risk of Breast Cancer*, 26 EUR. J. SURGICAL ONCOLOGY 711, 711-12 (2000).

27. See Lynn C. Hartmann & Noralane M. Lindor, *The Role of Risk-Reducing Surgery in Hereditary Breast and Ovarian Cancer*, 374 NEW ENG. J. OF MED. 454, 464-66 (2016).

28. See Laloo et al., *supra* note 26, at 712-13.

image, sexual sensitivity, and sexual relations, it is advised that women be given emotional and psychological support before and after undergoing a prophylactic procedure.²⁹ Prophylactic surgery on young women to prevent cancer, however, has been declared unethical as treatments remove healthy tissue from a vulnerable patient who does not have an acute condition or disease.³⁰

B. Prophylactic Surgeries for Men and Reproductive Health

Neonatal male circumcision has been touted as a preventative measure against penile cancer and a variety of other conditions with little or no credible evidence to support such claims. Neonatal circumcision as a form of prophylactic treatment has also gained strong opposition from medical and human rights groups.³¹ Even though the United States has one of the highest circumcision rates in the world, it also has the highest rates of genital cancers and STDs for sexually active circumcised males.³² In a study on the effects of male circumcision and HPV transmittal, Castellsague et al. found that circumcision of males does not have significant implications on the transmittal of the HPV virus to female partners, but may reduce rates of infections in males due to the removal of the specialized mucosal tissues of the penis and the consequent drying and hardening of the glans.³³ Though, experts have cautioned against recommending the use of circumcision as a prophylactic measure against the HPV due to the ethical issues in removing healthy tissue as a prophylactic treatment, the loss of specialized erogenous tissue for males, and the availability of less invasive methods of disease control (e.g. education, hygiene, safe sex practices, and vaccinations).³⁴

29. See P. Hopwood et al., *Clinical Follow-Up After Bilateral Risk Reducing ('Prophylactic') Mastectomy: Mental Health and Body Image Outcomes*, 9 *PSYCHO-ONCOLOGY* 462, 464 (2000).

30. See Hodges et al., *supra* note 23, at 11-12.

31. See J. Steven Svoboda et al., *Circumcision is Unethical and Unlawful*, 44 *J.L. MED. & ETHICS* 263, 264-68 (2016) ("There is no valid medical basis for circumcision; it is prohibited by the rules of medical ethics; and it violates the legal rights of the child.").

32. See Hodges et al., *supra* note 23, at 13.

33. See Xavier Castellsagué et al., *Male Circumcision, Penile Human Papillomavirus Infection, and Cervical Cancer in Female Partners*, 346 *NEW ENG. J. MED.* 1105, 1107-12 (2002).

34. See Xavier Castellsagué, *Letter to the Editor*, 347 *NEW ENG. J. MED.* 1148, 1452-53 (2002).

It is estimated that over a hundred boys die each year due to circumcisions and its complications;³⁵ however, parents are often not advised of this death risk by doctors before the procedure because such risk is not mentioned in the American Academy of Pediatrics', the College of Obstetricians and Gynecologists' or the American Medical Association's policy statements on circumcision.³⁶ Medical experts have found a strong connection to male circumcision and increased occurrences of sudden infant death syndrome ("SIDS") due to several factors including: the pain a child suffers during and post operation, the impacts of having analgesia used early in their lives, the resulting increase in pain responses that have been found to cause cardiac issues, and the lesser ability of young males to cope with the traumas of circumcision.³⁷ In 1975, the American Association of Pediatrics (AAP) stated that there was no medical need to put a child at risk by performing a circumcision when personal hygiene would reap the same benefits.³⁸ However, the current statement by the American Association of Pediatrics on male circumcision and the Center for Disease Control and Prevention's circumcision counseling recommendations do not recommend prophylactic circumcision be performed even though there may be possible health benefits.³⁹ A majority of professional health organizations around the world also do not recommend that child circumcision be performed and are concerned that its practice violates medical ethics and international law.⁴⁰

35. See Dan Bollinger, *Lost Boys: An Estimate of U.S. Circumcision-Related Infant Deaths*, 4 J. BOYHOOD STUD. 78, 81-84 (2010).

36. *Id.* at 78, 85.

37. See Eran Elhaik, A "Wear and Tear" Hypothesis to Explain Sudden Infant Death Syndrome, 7 FRONTIERS NEUROLOGY 1, 4-9 (2016).

38. See Hugh C. Thompson et al., *Report of the Ad Hoc Task Force on Circumcision*, 56 PEDIATRICS 610, 611 (1975).

39. See American Academy of Pediatrics Task Force on Circumcision, *Circumcision Policy Statement*, 130 PEDIATRICS 585, 585 (2012); see also U.S. Centers for Disease Control and Prevention, RECOMMENDATIONS FOR PROVIDERS COUNSELING MALE PATIENTS AND PARENTS REGARDING MALE CIRCUMCISION AND THE PREVENTION OF HIV INFECTION, STIS, AND OTHER HEALTH OUTCOMES (2014), <https://www.regulations.gov/document?D=CDC-2014-0012-0003>.

40. See J. Steven Svoboda & Robert S. Van Howe, *Out of Step: Fatal Flaws in the Latest AAP Policy Report on Neonatal Circumcision*, 39 J. MED. ETHICS 434, 435-38 (2013) (discussing the shift in Europe away from circumcision being a justifiable procedure to it being considered a violation of basic human rights in countries such as Sweden, Finland, and Netherlands).

C. *Use of Circumcision as a Prophylactic Treatment and Sexual Deterrent in Both Sexes*

One of the earliest descriptions of the effects of male circumcision praised the practice due to its ability to reduce sexual desire and sensation in men.⁴¹ A similar reason has also been given to justify the practice of female circumcision; many regions have stated that female circumcisions help reduce sexual sensation and ensure that wives remain faithful to their husbands.⁴² Much like male circumcision, female circumcision has also been declared as a method to prevent cervical cancers and STDs.⁴³ In fact, even in the Nineteenth Century, circumcision of males and females, including the use of clitoridectomies in females, was used to curb sexual desires and discourage masturbation – acts thought to cause a variety of diseases and abnormal mental conditions.⁴⁴

Although many reasons are given to support performing circumcision on children, it has been found to cause long lasting psychological harm to both young males and females.⁴⁵ As a result, child circumcision of both sexes has garnered strong resistance from medical experts and parenting groups,⁴⁶ and was even banned by federal law if performed on females.⁴⁷ The federal protections against circumcision for females extended beyond the United States' jurisdictions, by preventing parents from taking their children to other

41. See MOSES MAIMONIDES, *THE GUIDE FOR THE PERPLEXED* 378 (M. Friedlander trans., E. P. Dutton & Co., 2d ed., 1904).

42. See *Female Genital Mutilation*, WORLD HEALTH ORG. (Feb. 3, 2020), <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

43. Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision*, 13 *MED. & L.* 575, 593 (1994).

44. See Shea Lita Bond, *State Laws Criminalizing Female Circumcision: A Violation of the Equal Protection Clause of the Fourteenth Amendment*, 32 *J. MARSHALL L. REV.* 353, 358 (1999).

45. See Tim Hammond & Adrienne Carmack, *Long-Term Adverse Outcomes from Neonatal Circumcision Reported in a Survey of 1,008 Men: An Overview of Health and Human Rights Implications*, 21 *INT'L J. HUMAN RTS.* 189, 196-209 (2017); see also Dan Reisel & Sarah M. Creighton, *Long Term Health Consequences of Female Genital Mutilation (FGM)*, 80 *MATURITAS* 48, 50 (2015) (noting study finding that among females who had undergone female genital mutilation between ages 4-10 30.4% suffered from post-traumatic stress disorder).

46. See Hodges et al., *supra* note 23, at 13-15.

47. See 18 U.S.C. § 116 (2019).

countries if there is a likelihood that a circumcision will be performed on them.⁴⁸

II. ETHICAL AND LEGAL ISSUES THAT NEED TO BE ADDRESSED REGARDING THE USE OF PROPHYLACTIC SURGERY ON REPRODUCTIVE ORGANS FOR BOTH SEXES

A. *Legal and Medical Protections for Women Against Circumcision*

In response to pressures against the practice of female circumcision, some countries have allowed female circumcisions to be performed in medical settings to give the practice a more acceptable appearance and to offer the possibility of practitioners to suggest that the practice is medically necessary to preserve women's health.⁴⁹ Whether female circumcision is performed in a medical care facility or not, the majority of the world's health organizations have declared that there are no compelling medical reasons for female circumcision.⁵⁰ While many states have passed laws that prohibit female circumcision, often legally and medically known as female genital mutilation, as of 2016 over half of the states had not passed laws banning its practice and offering relief to victims of female circumcision.⁵¹ Until a recent decision by a federal criminal judge held that federal bans on female genital mutilation were unconstitutional,⁵² young girls were protected from having circumcisions performed on them in the United States, even if cultural norms or religious rights call for a circumcision to be performed.⁵³

48. See *Olowo v. Ashcroft*, 386 F.3d 692, 702-05 (7th Cir. 2004) (holding that a mother could not take her daughters out of the country as she was being deported due to the strong possibility that the daughters faced being circumcised).

49. See Rajat Khosla et al., *Gender Equality and Human Rights Approaches to Female Genital Mutilation: A Review of International Human Rights Norms and Standards*, 14 REPRODUCTIVE HEALTH, at 59, 6-9 (2017).

50. See WORLD HEALTH ORGANIZATION, WHO GUIDELINES ON THE MANAGEMENT OF HEALTH COMPLICATIONS FROM FEMALE GENITAL MUTILATION 8-10 (2016), <http://www.who.int/reproductivehealth/topics/fgm/management-health-complications-fgm/en/>.

51. See Pooja Shah, Note, *Cutting Female Genital Mutilation from the United States: A European-Influenced Proposal to Alter State and Federal Legal Responses When Affording Relief to Somali Victims in Minnesota*, 22 CARDOZO J. L. & GENDER 583, 597-99 (2016).

52. *United States v. Nagarwala*, No. 17-CR-20274, 2018 WL 6064968, at 13-14 (E.D. Mich. Nov. 20, 2018).

53. 18 U.S.C. §§ 116(c) (2019).

B. Legal and Medical Ethical Stances on Male Circumcision

Due to ethical views and differing cultural views on circumcising along with scientific findings of its effects, male circumcision has been left to the discretion of the child's parents.⁵⁴ In 1989, the American Association of Pediatrics issued a statement with regard to circumcision in an attempt to avoid the ethical issues of taking healthy tissue from a patient who cannot consent, possible law suits against doctors that perform child circumcisions, and eliminate insurance companies refusal to pay for the procedure;⁵⁵ the American Association of Pediatrics stated that it was medically ethical for a doctor to perform a circumcision on a child even where the child had no acute condition requiring circumcision if parental consent could be obtained.⁵⁶ However in 2010, the American Association of Pediatrics modified its stance on female circumcision by becoming more open to the possibility of its practice while criticizing the use of the term 'female genital mutilation' for not being culturally sensitive.⁵⁷

International outcry quickly followed the American Association of Pediatrics' 2010 statement, thus, the AAP quickly retracted its statement to attempt to mitigate the uproar it caused.⁵⁸ Commentators have suggested that the AAP changed its stance on female circumcision to make it more in line with its view of male circumcision in order to protect the flows of money derived from male circumcisions to its members, due to it being a trade organization aimed at increasing its member's business profits rather than a non-partisan health organization.⁵⁹

Courts throughout the United States have taken a variety of stances, and often conflict with each other, on the issue of male circumcision. In *State v. Baxter*,⁶⁰ the Washington Court of Appeals held that while a parent has a right to control the upbringing of their son that

54. See Michael Benatar & David Benatar, *Between Prophylaxis and Child Abuse: The Ethics of Neonatal Male Circumcision*, 3 AM. J. BIOETHICS 35, 43-45 (2003).

55. See Hodges, *supra* note 23, at 33-35.

56. See American Academy of Pediatrics, *Report of the Task Force on Circumcision*, 84 PEDIATRICS 388, 388-91 (1989).

57. See American Academy of Pediatrics, *Policy Statement—Ritual Genital Cutting of Female Minors*, 26 PEDIATRICS 1088, 1088-93 (2010), <http://pediatrics.aappublications.org/content/early/2010/04/26/peds.2010-0187.short>.

58. See Norra MacReady, *AAP Retracts Statement on Controversial Procedure*, 376 LANCET 15, 15 (2010).

59. See Matthew R. Giannetti, *Circumcision and the American Academy of Pediatrics: Should Scientific Misconduct Result in Trade Association Liability*, 85 IOWA L. REV. 1507, 1514-68 (2000).

60. 141 P.3d 92 (2006).

right does not include using circumcision as a form of corporal punishment or as part of a religious or cultural ritual.⁶¹ In stark contrast to *Baxter*, in *Nebus v. Hironimus*, a Florida court ordered the non-therapeutic circumcision of a child as part of the parties Agreed Parenting Plan even after the only medical expert who testified stated that circumcision would put the child's health at risk and the court acknowledged the procedure was not medically necessary.⁶²

In *Boldt v. Boldt*, a mother sought to prevent the circumcision of her 4-year-old son when the father (whom the mother was divorced from) was intending to have their son circumcised as a part of a religious ritual.⁶³ While the mother did not protest the religious aspects of the circumcision or that her son may later follow Judaism, she was concerned that her son would incur permanent injury if the circumcision was performed improperly; she also wished to protect her son who had expressed fear of being circumcised.⁶⁴ Ultimately, the Oregon Supreme Court sided with the mother and prevented the circumcision of their son until the son turned twelve, at which point the trial court would consider the son's wishes as to whether or not he wants to be circumcised.⁶⁵

*C. Challenges to the Protections for Women Against Circumcision
Due to the Lack of Similar Protections for Men*

Due to the lack of protections for males against circumcisions, challenges against bans on female circumcisions have been raised on the state and federal levels. In *Fishbeck v. North Dakota*, Fishbeck's son was circumcised, without her consent, by the child's father.⁶⁶ In response to her son's circumcision, Fishbeck challenged North Dakota's statute banning female circumcision arguing that it violated the Fourteenth Amendment's Equal Protection Clause by not providing protection for male children as well as females.⁶⁷ However, the Eighth Circuit Court of Appeals held that Fishbeck lacked standing to challenge the state's anti-female genital mutilation statute since her son's circumcision had already been performed and there was only a small chance that such a series of events could happen to a potential son of

61. *See Id.* at 99-100.

62. *See* Order Enforcing January 6, 2012 Final Judgment at 1-3, *Nebus v. Hironimus*, (Fla. Palm Beach Cty. Ct. 2014) (No. 502010DR013957).

63. *See* 176 P.3d 388, 390-91 (Or. 2008).

64. *Id.*

65. *Id.* at 392-95.

66. *See* 115 F.3d 580, 580-81 (8th Cir. 1997).

67. *Id.*

hers again.⁶⁸ Thus, the Eighth Circuit did not address the merits of Fishbeck's claim.⁶⁹

Further, after the Court entered its order in *Nebus v. Hironimus* discussed above, Hironimus sought to prevent her son's court ordered circumcision by appealing to the United States District Court for the Southern District of Florida.⁷⁰ Hironimus argued that under federal and state law, her son was being treated differently than females and, therefore, deserved the same protections against circumcision as females.⁷¹ However, before the case could be decided, the parties in *Nebus v. Hironimus* settled out of court,⁷² which left the question as to whether federal and state bans prohibiting only female – and not male – circumcisions were permissible under the Equal Protection Clause.

III. USE OF THE HPV VACCINE TO PREVENT CANCER IN MEN AND WOMEN

In the United States, there is a strong possibility that an individual, regardless of sex or sexual orientation, will contract the human papillomavirus (HPV) if they are sexually active.⁷³ While the HPV virus is primarily transmitted by sexual contact and causes disease of reproductive organs, it has been found to be transmitted through other vectors including contaminated surgical instruments, during childbirth from mother to child, making contact with contaminated surfaces, and by hand to genital contact.⁷⁴ The HPV virus has also been found to cause throat and respiratory issues in some patients.⁷⁵ HPV vaccinations have been found to help prevent a variety of cancers

68. *Id.* at 581.

69. *Id.*

70. See Civil Rights Complaint Under Title 42 United States Code Sections 1983 and 1985 at 7, *Hironimus v. Nebus* (S.D. Fla. 2015) (No. 9:15-cv-800480).

71. *Id.* at 8-9.

72. See Notice of Voluntary Dismissal, *Hironimus v. Nebus* (S.D. Fla. 2015) (No. 9:15-cv-800480).

73. See Harrell W. Chesson et al., *The Estimated Lifetime Probability of Acquiring Human Papillomavirus in the United States*, 41 *SEXUALLY TRANSMITTED DISEASES* 660, 662-63 (2014).

74. Flora Bacopoulou et al., *Genital HPV in Children and Adolescents: Does Sexual Activity Make a Difference?*, 29 *J. PEDIATRIC ADOLESCENT GYNECOLOGY* 228, 231-32 (2016); see also Zhiyue Liu et al., *Penises Not Required: A Systematic Review of the Potential for Human Papillomavirus Horizontal Transmission that is Non-Sexual or Does Not Include Penile Penetration*, 13 *SEXUAL HEALTH* 10 (2016) (listing articles discussing the many non-sexual means of transmittal of the HPV virus).

75. See Eric J. Ryndock & Craig Meyers, *A Risk for Non-Sexual Transmission of Papillomavirus?*, 12 *EXPERT REV. ANTI-INFECTIVE THERAPY* 1165, 1166-68 (2014).

in both men and women.⁷⁶ Despite the low percentage of the population having received the HPV vaccine, the prevalence of the HPV virus and the number of reported cases of genital warts has decreased.⁷⁷ In young women, the number of precancerous cervical lesions by the HPV virus has also decreased.⁷⁸ The AAP and the CDC recommended that both young men and women receive the HPV vaccine before the age of 15 and that the costs associated with receiving the vaccination would be mitigated by third party insurance or medical plans.⁷⁹

Though discussions on the HPV often focus on women, men can also carry the virus and are the most common source of transmission (irrespective of whether they are engaged in a hetero- or homosexual relationship).⁸⁰ The HPV's impact on the male body is studied less than it is on women; this is partly because of the historic stereotypes that women are seen as the primary carriers of STDs and their health is considered a greater public concern.⁸¹ Studies have found that the HPV vaccine also prevents several conditions in men including genital warts; lesions; and cancers of the anus, mouth, and penis.⁸² Further, it has also been found that younger men are at a higher risk of contracting the HPV than other groups; the prevalence of the HPV in younger men has also been linked to higher rates of penile cancer and cancerous lesions later in life.⁸³ In addition to preventing many diseases in men, males have been found to experience fewer adverse effects from receiving the HPV vaccine than females.⁸⁴ Similar to its

76. See Jane J. Kim, *Focus on Research: Weighing the Benefits and Cost of HPV Vaccination of Young Men*, 364 N. ENG. J. MED. 393, 394-95 (2011).

77. See Laurie E. Markowitz et al., *Reduction in Human Papillomavirus (HPV) Prevalence Among Young Women Following HPV Vaccine Introduction in the United States, National Health and Nutrition Examination Surveys, 2003-2010*, 208 J. INFECTIOUS DISEASES 385, 387-92 (2013).

78. See Susan Hariri et al., *Reduction in HPV 16/18 – Associated High Grade Cervical Lesions Following HPV Vaccine Introduction in the United States – 2008-2012*, 33 VACCINE 1608, 1611-12 (2015).

79. See American Academy of Pediatrics, *HPV VACCINE IMPLEMENTATION GUIDANCE UPDATED FEBRUARY 2017 1-5* (2017), https://www.aap.org/en-us/Documents/immunization_hpvimplementationguidance.pdf.

80. See Katherine M. Aizpuru, *Gardasil, Gendered Discourse, and Public Health*, 16 GO. J. GENDER & L. 347, 367-69 (2015).

81. *Id.*

82. Mona Saraiya et al., *US Assessment of HPV Types in Cancers: Implications for Current and 9-Valent HPV Vaccines*, 107 J. NAT'L CANCER INST. 1, 2, 4-12 (2015).

83. See Donna J. Ingles et al., *Human Papillomavirus Virus (HPV) Genotype – and Age Specific Analysis of External Genital Lesions Among Men in the HPV Infection in Men (HIM) Study*, 211 J. INFECTIOUS DISEASES 1060, 1066-67 (2015).

84. See Anna R. Giuliano et al., *Efficacy of Quadrivalent HPV Vaccine Against HPV Infection and Disease in Males*, 364 NEW ENG. J. MED. 401, 409-11 (2011).

impact on females, the HPV vaccine also helps prevent the contraction of the HPV through genital or oral sexual contact.⁸⁵

A. *Ethical and Legal Issues Concerning the Use of HPV Vaccinations to Prevent Communicable Disease*

The ability for the government to influence an individual's medical decision was established by the United States Supreme Court's holding in *Jacobson v. Massachusetts*.⁸⁶ In *Jacobson*, the Supreme Court held that the government could compel an individual to receive the small pox vaccination if the requirement was likely to protect the public from harm (i.e., the spread of disease such as chickenpox), the government's invasion on the person's ability to make their own health decisions was minor, and the benefit to society as a whole outweighed the needs of an individual to determine their own medical treatment.⁸⁷

While both the federal and state governments originally had the power to regulate aspects of public health, today the state has primary control.⁸⁸ Other examples of the state's valid exercise of its police powers infringing on the rights of an individual occurred in *Railroad Company v. Husen*⁸⁹ and *Zucht v. King*.⁹⁰ In *Husen*, the Supreme Court held that states had the power to enact sanitary laws to protect the health of their citizens, animals, and property against dangerous diseases only if the laws did not interfere with interstate commerce.⁹¹

Further, in *Zucht*, the Supreme Court also held that state legislatures could precondition their child's enrollment in school on the requirement that they be vaccinated.⁹² Not having a child vaccinated, when state law compels them to be, can be considered a form of neglect because the parent is viewed as willingly withholding necessary medi-

85. *Id.* at 404-08.

86. 197 U.S. 11 (1905); *see also* Scott Wasserman Stern, *The Long American Plan: The U.S. Government's Campaign Against Venereal Disease and Its Carriers*, 38 HARV. WOMEN'S L. J. 373, 389-90 (2015).

87. *See Jacobson*, 197 U.S. at 24-39.

88. *See* Erin M. Page, *Balancing Individual Rights and Public Health Safety During Quarantine: The U.S. and Canada*, 38 CASE W. RES. J. INT'L L. 517, 518-19 (2007).

89. *Railroad Co. v. Husen*, 95 U.S. 465 (1877).

90. *Zucht v. King*, 260 U.S. 174 (1922).

91. *See Husen*, 95 U.S. at 472.

92. *See Zucht*, 260 U.S. at 176 (citing *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905)); *see also* *Commonwealth v. Green*, 268 Mass. 585, 585-86 (1929) (noting that it has long been held that requiring vaccination for smallpox even over a parent's objection is unconstitutional).

cal care.⁹³ Though states may recognize a variety of exemptions (i.e., excusing parents from the requirement that they have their child vaccinated) to include philosophical and religious objections.⁹⁴ The wide variety of exemptions and how states handle them has created an inconsistent approach to the subject of vaccination legislation and in case holdings as to what the proper procedures for vaccinations are.⁹⁵

B. The Public's Attitudes Towards and Understanding of the HPV Vaccine

Studies have found that views on the use of the HPV vaccine differ among cultural and educational backgrounds.⁹⁶ A study conducted by Hendry et al. found that both young women and their parents had little knowledge about the HPV and its vaccination, and that parents had a good deal of misinformation if they did have knowledge.⁹⁷ Another study conducted by Olshen et al. found that parents were generally favorable to having their children receive the HPV vaccine, with some parents wanting to discuss the issue with their pediatricians before making a decision.⁹⁸ Parents also agreed that the vaccine should be given to both their sons and daughters even if there were less benefits for their sons because they viewed the vaccine as important in protecting against the transmission of the HPV from their future partners.⁹⁹

Despite the support from parents on administration of the HPV vaccine, some commentators believe that making the vaccine mandatory for minors would violate their right to refuse an unneces-

93. See, e.g., *Mannis v. State ex rel. Dewitt School Dist. No. 1*, 398 S.W.2d 206, 206-07 (Ark. 1965) (“A child attending school in non-compliance with this health regulation is doing so in violation of the law. This fact alone is sufficient evidence upon which to base a finding of neglect. Furthermore, the refusal of parents to permit vaccination as a prerequisite to school attendance is sufficient evidence upon which to base a finding of neglect.”).

94. See Marjorie Shields, Annotation, *Power of Court or Other Public Agency to Order Vaccination Over Parental Religious Objection*, 94 A.L.R. 5th 613, 620-41 (2001).

95. *Id.*

96. See Isabell C. Scarinei et al., *An Examination of Acceptability of HPV Vaccination Among African American Women and Latina Immigrants*, 16 J. WOMEN'S HEALTH 1224, 1230-33 (2017).

97. See generally Maggie Hendry et al., “HPV? Never heard of it!”: A Systematic Review of Girls' and Parents' Information Needs, Views, and Preferences About Human Papillomavirus Vaccination, 31 VACCINE 5152 (2013) (discussing the common misconceptions and lack of knowledge some parents have about the HPV virus and HPV vaccinations).

98. See generally Elyse Olshen et al., *Parental Acceptance of the Human Papillomavirus Vaccine*, 37 J. ADOLESCENT HEALTH 248 (2005) (discussing the concerns and feelings of parents regarding having their children receive the HPV vaccine).

99. *Id.*

sary treatment because the HPV vaccine is not necessarily considered vital to protect public health from contagious diseases.¹⁰⁰ In addition, it is also argued that making the HPV vaccine mandatory would also encourage young girls to become sexually active earlier in life.¹⁰¹ On the other hand, supporters of a compulsory HPV vaccine requirement countered that the legislatures' and policy makers' focus should be that the vaccines are against cancer and for them not to consider that HPV is predominately spread by sexual contact over the vaccine's benefits (i.e., preventing cancer).¹⁰²

C. Concerns About the FDA Approval of the HPV Vaccine

In 2006, the FDA approved the HPV using a fast track approval method based on limited safety data for the vaccine and with questionable lobbying and marketing efforts on the part of a developing company, Merck.¹⁰³ The HPV vaccine was marketed under the name Gardasil and heavily touted as a vaccine preventing cervical cancer rather than the HPV.¹⁰⁴ The marketing scheme drew criticism from medical experts and regulators because it attempted to avoid a vaccination campaign that would have involved public health officials and broke the tradition of using the name of the disease that a vaccine was created to guard against.¹⁰⁵ Using the name Gardasil allowed Merck to avoid the stigma of creating a vaccine aimed at stopping a STD.¹⁰⁶ In order to increase sales and to give the vaccine more legitimacy, Merck established a series of non-profit organizations, including the Society of Gynecology Oncologists.¹⁰⁷ The Society of Gynecology Oncologists created a series of programs to support approving the HPV vaccine and pushing for insurance and governmental medical programs to bear the costs of administering the vaccine instead of focusing its efforts on

100. See Laura K. Lacci & Kathleen M. Hamm, *The HPV Vaccine and a Minor's Right to Consent to Medical Treatment*, 28 CHILD. LEGAL RTS. J. 30, 38-40 (2008).

101. See Amber Oleson, *Legislature Update: Should the Human Papillomavirus Be Mandated for Pre-Adolescent Girls – The HPV Vaccine Becomes a Political Issue*, 28 CHILD. LEG. RTS. J. 64, 65-66 (2008).

102. See Janelle Skaloud, *Mandating the HPV Vaccine in Illinois: How Far Should the State Go to Protect Girls?*, 13 PUB. INT. L. REP. 31, 32-33 (2008).

103. See Lucija Tomljenovic & Christopher A. Shaw, *Too Fast or Not Too Fast: The FDA's Approval of Merck's HPV Vaccine Gardasil*, 40 J. L. MED. & ETHICS 673, 674-79 (2012).

104. See Sheila M. Rothman & David J. Rothman, *Marketing HPV Vaccine: Implications for Adolescent Health and Medical Professionalism*, 302 JAMA 781, 781-82 (2009).

105. *Id.* at 781.

106. *Id.* at 782-84.

107. *Id.* at 783-84.

proving the impacts of the vaccine.¹⁰⁸ Critics have used the manner in which the HPV vaccine was approved to argue that it was released before its safety had been confirmed.¹⁰⁹ Critics have also argued that it is unknown what side effects the vaccine may cause,¹¹⁰ specifically, opponents have argued that the vaccine may cause Guillain-Barre Syndrome and mental retardation, but such claims are not scientifically supported.¹¹¹

D. Concerns About the Focus on Heterosexual Behavior and HPV Vaccination

Typically, HPV discussions have focused on heterosexual couples while minimalizing discussions about the possible impacts that the HPV vaccine could have on homosexual couples who are considered to be at a higher risk of contracting the HPV virus.¹¹² For instance, homosexual men have been found to have limited knowledge of the HPV vaccine and often see the HPV as a women's health issue.¹¹³ Among homosexual men, the HPV vaccine has been found to reduce the number of HPV related cancers, including anal cancer, and genital warts in a manner that is more cost effective than treating patients after they have developed acute conditions and diseases.¹¹⁴ Homosexual women have been found to have a low rate of the HPV vaccination that is influenced by the level of education that they have on the vaccination and whether they have insurance coverage that would assist them with the cost of the vaccination.¹¹⁵ A survey conducted by Jones et al. found that homosexual men were more likely to be immunized

108. *Id.* at 784-85.

109. See Laura Mamo & Steven Epstein, *The Pharmaceuticalization of Sexual Risk: Vaccine Development and the New Politics of Cancer Prevention*, 101 *SOC. SCI. & MED.* 155, 161-63 (2014).

110. See Rachel Reynolds, *Dispatch from the Culture War: Virginia's Failed HPV Vaccination Mandate*, 16 *RICH. J. L. & PUB.* 59, 60-63 (2012).

111. *Id.* at 63.

112. See Marnina Cherkin, *Three Shots in the Arm: The HPV Vaccine and Inclusive Health Policy*, 15 *U. PA. J. L. & SOC. CHANGE* 475, 483-86 (2012).

113. See Christopher W. Wheldon et al., *HPV Vaccine Decision-Making Among Young Men Who Have Sex with Men*, 76 *HEALTH EDU. J.* 52, 55-63 (2017).

114. See Jane J. Kim, *A Cost-Effective Analysis of Targeted Papillomavirus Vaccination on Men Who Have Sex with Men in the United States*, 10 *LANCET INFECTIOUS DISEASES* 845, 848-51 (2010).

115. See Nicole Makris et al., *Rate and Predictors of Human Papillomavirus Vaccine Uptake Among Women Who Have Sex with Women in the United States, the National Health and Nutrition Examination Survey, 2009 – 2012*, 25 *J. CLINICAL NURSING* 3619, 3623-25 (2016).

against the HPV virus than heterosexual men.¹¹⁶ The same survey found homosexual women and that homosexuals of both sexes were more likely to have been vaccinated against a variety of diseases than heterosexuals.¹¹⁷

E. Issues in Connection to Mandating the Use of the HPV Vaccination

The federal government has the legislative power to create vaccination requirements for immigration into the United States and this power is often delegated to agencies within the Department of Homeland Security.¹¹⁸ Under the Immigration and Nationality Act, immigrants in the United States must receive a series of vaccinations before they are allowed to enter the country.¹¹⁹ For a short time, the HPV vaccine was required for women immigrating to the United States and seeking permanent resident status; however, the federal government has not proposed the same requirements for citizens.¹²⁰ The requirement that women immigrating to the U.S. receive the HPV vaccine was highly criticized due to its inherent gender bias and for requiring a vaccination that does not guard against communicable disease.¹²¹ Critics have also argued that requiring such vaccinations for immigrations to a country seemed to violate international law.¹²²

Some states have created policies on the use of HPV vaccinations, but they have faced legal challenges and have not focused on providing vaccinations for both sexes equally.¹²³ Whether air borne, contact transmitted, or sexually transmitted diseases are involved, vaccination rates of young men and women must be high enough to establish herd immunity and prevent unvaccinated individuals from

116. See Jeff Jones et al., *LGBT Health and Vaccinations: Findings from a Community Health Survey of Lexington-Fayette County, Kentucky, USA*, 34 *VACCINE* 1909, 1911-13 (2016).

117. *Id.*

118. See Christe V. Canales, Note, *HPV Vaccination Requirements for Female Immigrants: An Example of Discrimination*, 13 *J. GENDER RACE & JUST.* 779, 787 (2010); see also Stephen W. Yale-Loehr et al., *Overview of U.S. Immigration Law*, in *BASIC IMMIGRATION LAW* 2008 17, 20 (Cyrus D. Mehta ed., 2008).

119. See 8 U.S.C. § 1182(a)(1)(A)(ii) (2019).

120. See Canales, *supra* note 118, at 779-81.

121. See Elizabeth R. Sheyn, *An Accidental Violation: How Required Vaccinations for Female Immigrants to United States Contravene International Law*, 88 *NEB. L. REV.* 524, 548-59 (2010).

122. *Id.*

123. See N. Osazuwa-Peters, *Human Papillomavirus (HPV), HPV-Associated Oropharyngeal Cancer, and HPV Vaccine in the United States – Do We Need a Broader Vaccine Policy?*, 31 *VACCINE* 5500, 5502 (2013).

reintroducing diseases into a population.¹²⁴ Due to the costs of the HPV vaccine, both genders are often excluded from receiving the vaccine.¹²⁵ To gain the full benefits of the HPV vaccine, states must coordinate their efforts to raise the rates of vaccination in men and women due to the migratory nature of citizens and to reduce the cost of healthcare overall.¹²⁶ Many state legislatures have taken up the idea of making the HPV vaccination mandatory for young women, before they reach the age of 13, to ensure they receive the vaccine before they become sexually active, but have excluded young men from vaccination legislation.¹²⁷ In Australia, where the HPV vaccine is backed by governmental programs for girls and boys, the rate of cervical cancer diagnoses has dropped to the point that there is hope that the disease will be all but eliminated in a couple of decades.¹²⁸ For states that have passed legislation for the HPV that apply to both genders, some commentators have argued that due to the vaccination's cost that as the HPV vaccination rates rise that funding for vaccination for young men should be reduced.¹²⁹ Only New Hampshire has created a system that provides the HPV vaccine free of cost and encourages, but does not require, the vaccine for students of both sexes before they enter the school system.¹³⁰

IV. CONCLUSION

A. *The Necessity for Strict Medical and Legal Rules Regarding Prophylactic Treatment of Both Sexes*

The use of prophylactic treatment is ethically and medically questioned due to its use not treating a current condition or disease, as

124. See generally R. M. Anderson, *The Concept of Herd Immunity and the Design of Community-Based Immunization Programmes*, 10 *VACCINE* 928, 929-34 (1992) (discussing the need for a threshold number of individuals to be vaccinated to prevent reintroduction or resurgence of a disease).

125. See Micah Globerson, *Protecting Women: A Feminist Legal Analysis of the HPV Vaccine, Gardasil*, 17 *TEX. J. WOMEN & L.* 67, 72-74 (2007).

126. See David P. Durham et al., *National-and State- Level Impact and Cost-Effectiveness of Nonavalent HPV Vaccination in the United States*, 113 *PROC. NAT'L ACAD. SCI.* 5107, 5109-11 (2016).

127. See Sheyn, *supra* note 121, at 128-29.

128. Livia Albeck-Ripka, *In Australia, Cervical Cancer Could Soon Be Eliminated*, *N.Y. TIMES* (Oct. 3, 2018), <https://www.nytimes.com/2018/10/03/world/australia/cervical-cancer-hpv-vaccine.html>.

129. See Jane J. Kim, *Focus on Research: Weighing the Benefits and Costs of HPV Vaccination of Young Men*, 364 *NEW ENG. J. MED.* 393, 394-95 (2011).

130. See Jessica Kennington, *Mandating Health: Comparing Different State Approaches to the Distribution of the HPV Vaccine*, 2 *HEALTH L. & POL'Y* 58, 60-62 (2008).

required by medical ethics and most legal schemes, and not conforming to the principles of informed consent for medical treatment. Though informed consent is necessary for most treatments, if a person does not have capacity to consent due to their physical or legal status, surrogate decision makers can agree to the patient's medical treatment. Informed consent requirements can also be overwritten by government actors who can require that an individual undergo treatment if social health needs demand it. Due to the large benefit to society and the small possibility of harm to an individual who is administered a vaccine, the use of vaccinations is one of the few instances where government actors can compel individuals to undergo treatment or require they vaccinate their children before the children can enter school.

B. The Need for Equal Access to HPV Vaccination for Both Sexes

Sexually active citizens of the United States are likely to contract the HPV virus. HPV causes a variety of detrimental health impacts in both men and women, which has caused medical experts to recommend that both sexes receive vaccinations against the virus. To maximize the effectiveness of the vaccination, both sexes must receive the vaccine to build up herd immunity against the HPV virus in the United States' population as a whole. Due to the costs of the HPV vaccination, many individuals cannot afford the vaccination without aid from insurance or governmental assistance programs. With states having the majority of legislative power over the use of vaccines, states must create legislative schemes that mandate their citizens receive the HPV vaccine and help counter the costs of the vaccinations or allow their citizens to choose to take the vaccine and help citizens afford HPV vaccinations. When creating HPV vaccine legislation, issues such as the HPV being predominantly a sexually transmitted disease should not be taken into account due to its widespread impact on the population and the vaccines ability to prevent a variety of lower healthcare costs as a whole, no matter the method of transmission.

C. The Need for Equal Treatment Under Medical Ethics and the Law as to Prophylactic Reproductive Health Treatments for the Sexes

Women are afforded the opportunity to be tested for the presence of indicators they may be at risk for cancers of the reproductive system and are encouraged to seek counseling with a variety of experts before choosing to undergo prophylactic surgery to reduce the risk of

the development of cancer in their bodies. Under medical ethical guidelines, prophylactic surgeries of young women are not permissible due to their vulnerability and there being no condition that would need treatment being present. Young men are not given the same medical and legal protections against involuntary prophylactic surgeries to prevent cancers and are often subjected to circumcision of their genitals at an early age without individualized consultations as to the possibility of the development of cancer in their bodies and without similar pre-operative and postoperative emotional and medical counseling to support them before and after procedures. Circumcision in both males and females is not recommended by the majority of the world's health organizations and has been seen as a violation of human rights by medical and legal experts worldwide, but under the laws of the United States only young women have been protected from circumcision.

Men should be granted the same medical ethical and legal protections against involuntary prophylactic reproductive organ surgeries to conform to the ethical and legal requirements of informed consent for medical treatment, to meet the requirements of equal treatment of the sexes as required by the 14th Amendment, to allow them the opportunity to make their own health choices, and to prevent challenges to the federal and state laws that protect women from female genital mutilation. Due to the HPV virus' ability to cause cancers and other harms in both sexes, legislatures should treat the sexes equally when mandating the HPV vaccination or funding voluntary HPV informational and vaccination programs. Legislating equally for both sexes would not only meet the equal protection requirements of the 14th Amendment, it would also allow society to gain the most benefit from preventative HPV education and treatments by reducing the number of new HPV infections and increasing the vaccination rate of the American population.