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Battle over circumcision is shaping up in California

By Sue Fishkoff · May 30, 2011

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Rabbi Gil Leeds, right, performs a brit milah in Palo Alto, Calif., in July 2010. The baby is being held by Mitchell Ackerson, while Rabbi Yitzchok Feldman looks on. (Alex Axelrod)

SAN FRANCISCO (JTA) -- In November, San Franciscans will vote on a ballot measure that would outlaw circumcision on boys under the age of 18.

Although experts say it is highly unlikely the measure will pass -- very few state propositions pass, much less one this controversial -- the mere fact that it reached the ballot, and in such a major city, has caused much concern for Jews and their allies.

Opponents of the bill see it as a violation of the Constitution's protection of religious rights and an infringement on physicians' ability to practice medicine. More than that, however, the measure is being seen as a frontal attack on a central tenet of Judaism.

"The stakes are very high," said Nathan Diament, director of the Orthodox Union's Institute for Public Affairs. "Circumcision is a fundamental aspect of Jewish ritual practice and Jewish identity. While we

certainly hope the prospect of its being enacted is remote, the precedent it would set and the message it would send would be terrible, not just in the United States but around the world.

"We don't just want it defeated," he said, "we want it defeated resoundly."

Anti-circumcision activists have been around for decades, particularly on the West Coast.

They range from the BayArea Intactivists, a loosely organized group that protests outside medical conferences in and around San Francisco, to MGMBill (MGM stands for male genital mutilation), a San Diego-based advocacy group that has prepared anti-circumcision legislation for 46 states. MGM has managed to find a legislative sponsor in only one state: Massachusetts, last year. The bill didn't even make it out of committee.

Matthew Hess, who founded MGMBill in 2003 and spearheads its legislative efforts, says he is trying to protect boys from what he considers a barbaric mutilation of their bodies. He became an activist in his mid-20s, he says, when he decided that his own circumcision as an infant resulted in diminished sexual sensitivity as an adult.

"Freedom of religion stops at another person's body," he told JTA.

Last fall, MGMBill changed its tactics, deciding to bypass the U.S. Congress and go straight to voters. The group gathered more than 12,000 signatures in San Francisco, enough to have the measure placed on the Nov. 8 ballot. If it passes, anyone who circumcises a boy under the age of 18 within city limits faces a \$1,000 fine and up to one year in jail. The only exception would be for "compelling and immediate medical need."

A similar effort is under way in Santa Monica, Calif., for that city's November 2012 election. Hess says no other cities are being targeted -- for now.

The Jewish community responded immediately and loudly to the San Francisco ballot initiative, with denunciations from across the nation. The American Jewish Committee called it a "direct assault on Jewish religious practice" that was "unprecedented in American Jewish life." The Orthodox Union said the measure is "likely illegal" and is "patently discriminatory against Jews and Muslims."

Locally, the San Francisco Jewish Community Relations Council organized a wide-ranging coalition of religious, medical, legal and political leaders to oppose the ballot measure. It was the first time that the Jewish community organized a formal counter effort because it was the first time that such a measure has made it to the ballot, according to Abby Porth, the JCRC's associate director and the force behind the Committee for Parental Choice and Religious Freedom.

The newly formed committee, which also includes Muslim and Christian leaders, is still organizing its legal strategy, Porth declined to provide details.

Muslims also practice ritual circumcision on boys, although it can take place at any time before puberty.

The fight against the San Francisco ballot measure has brought a number of Muslim organizations into the JCRC-

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led coalition, including the Council on American-Islamic Relations. BayArea director Zahra Billoo notes that CAIR rarely finds itself on the same political side as groups such as the Orthodox Union.

It's the assault on religious freedoms that brings the two together, Billoo said.

"The civil rights of Jewish and Muslims are being impacted," she told JTA. "We don't agree on all things all the time, but we do find common cause in many areas. An attack on one religion is an attack on all religions."

Apopular local mohel, Rabbi Gil Leeds, director of the Chabad Center of the University of California, Berkeley, says he's been fielding calls and e-mails from all over the area expressing concern.

"Jews from across the spectrum of Jewish observance, as well as many non-Jews, have responded in shock at this attempt to undermine our basic human rights as parents and as Jews," Leeds said.

Proponents and opponents of a ban on circumcision argue over the health benefits and legal aspects of the practice.

"To say it has no medical benefit and so should be outlawed is completely untrue," said Dr. Mark Glasser, a retired BayArea ob-gyn who estimates that he has performed hundreds of circumcisions during his 35 years in practice.

Glasser notes that the World Health Organization supports circumcision as a preventative measure against HIV transmission, and several Centers for Disease Control studies show the same result. The American Academy of Pediatrics is neutral, as is the American College of Obstetrics and Gynecology. But Glasser says those positions have not be revisited since the most recent AIDS studies.

"The unfortunate part is that people laugh -- they say the San Francisco crazies are at it again. But this is no laughing matter," he said. "Circumcision is very low-risk and has tremendous benefits, including life-saving benefits."

Joel Paul, professor of constitutional law and associate dean of the University of California Hastings School of Law, says the law likely would not survive a court challenge -- which could come even before the Nov. 8 ballot.

The proposed measure appears to violate the First Amendment protection of the free exercise of religion, and entangles the state in religious matters by putting the state in the position of judging whether a certain religious practice is permissible. Moreover, putting such a matter to a popular vote contravenes the Constitution's many protections of the rights of individuals and minorities.

"This proposition would let the majority decide religious practice for a religious group," Paul told JTA. "It's not part of our politics. No one should have to go into an election and be asked to defend their religion."

Hess argues, on the other hand, that the law is on his side. Noting that female genital mutilation is illegal in this country, he says boys should get equal protection under the law, no matter the religious beliefs of their parents.

That is a false and dangerous analogy, Porth says.

"Female genital mutilation is illegal because it is a cruel practice, medically harmful and performed for the explicit purpose of preventing female sexual satisfaction," she said. "In contrast, there's no credible medical evidence that male circumcision is harmful or that it prevents sexual satisfaction. Its purpose is for health reasons and religious belief."

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Sue Fishkoff writes about Jewish life for the JTA and is the author of the 2010 book "Kosher Nation."

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