



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

February 24, 2020

U.S. House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Letter of Support for the “Strengthening the Opposition to Female Genital Mutilation Act” (or “STOP FGM Act”)**

Dear Chairman Nadler and Ranking Member Collins,

We are attorneys at Georgetown Law’s Institute for Constitutional Advocacy and Protection. We write to express the Institute’s enthusiastic support for the pending bill to amend 18 U.S.C. § 116 to clarify the criminalization of female genital mutilation, known as the “Strengthening the Opposition to Female Genital Mutilation Act” (or “STOP FGM Act”).

FGM is a form of physical torture that causes grave and lasting harm to female children. In recognition of the practice’s brutality, Congress criminalized the performance of FGM on minors in 1996. A federal district court recently concluded that this prohibition could not be sustained as an exercise of either Congress’s Commerce Clause power or its treaty-implementing authority. *See United States v. Nagarwala*, 350 F. Supp. 3d 613 (E.D. Mich. 2018). Because we concluded that both of those holdings were mistaken and because the Department of Justice abandoned its defense of the FGM law, the Institute represented the U.S. House of Representatives in its effort to defend the law’s constitutionality on appeal. In the course of doing so, we acquired substantial expertise in the constitutional basis for regulating FGM at the federal level.

The proposed amendments to § 116—though, in our view, constitutionally unnecessary—would place the FGM law’s constitutionality beyond debate and are therefore worthy of immediate passage. Under the STOP FGM Act, every federal FGM prosecution would require a demonstrated connection to either interstate or foreign commerce, thereby eliminating defendants’ ability to challenge § 116 as facially exceeding Congress’s regulatory authority. *See United States v. Morrison*, 529 U.S. 598, 613 (2000) (explaining that such a “jurisdictional element” would “establish[] that the federal cause of action is in pursuance of Congress’ power to regulate interstate commerce”).

For each known instance of FGM, we expect that prosecutors would have little difficulty in proving a connection to interstate or foreign commerce—whether through electronic communications, associated travel, a payment of some sort, or the use of any instrumentality that had crossed state lines. In practice, then, the STOP FGM Act should prove equally as effective

as the existing federal prohibition. The Act's robust reporting requirements would further strengthen the U.S. government's coordinated efforts to ensure the global eradication of FGM.

In sum, the STOP FGM Act would cure any even arguable constitutional deficiency in the existing FGM prohibition and would demonstrate the U.S. government's commitment to eliminating the practice of FGM. Both Democrats and Republicans should applaud these welcome features, and we respectfully urge you to move the bill forward expeditiously.

Thank you for your careful consideration. Please do not hesitate to contact us if we can be of any assistance.

Sincerely,

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