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TESTIMONY ON SENATE BILL 432

**PRESENTED BY THE AMERICAN CIVIL LIBERTIES UNION OF
PENNSYLVANIA BEFORE THE HOUSE JUDICIARY COMMITTEE,
SUBCOMMITTEE ON COURTS**

AUGUST 29, 1995

Good morning. My name is Larry Frankel and I am the Legislative Director of the American Civil Liberties Union of Pennsylvania. I would like to thank the House Judiciary Committee for giving me this opportunity to testify regarding Senate Bill 432. This legislation provides for the establishment of mediation programs in divorce and custody cases.

While mediation may be an appropriate means for resolving a variety of conflicts, the ACLU believes that it should be up to the parties, on their own and without legal interference, to seek mediation. We do not think that courts should be ordering parties to attend orientation sessions about the mediation process. Once a court indicates any support for mediation, a party may feel an obligation to consent to mediation, believing that, by doing so, the court will view her or him more favorably. Parties can seek information about mediation without court orders. They should not be subject to direct or indirect judicial coercion.

We recognize that the Senate easily passed this legislation. If this Subcommittee supports moving forward, we would encourage you to make two changes to the bill. We oppose

the imposition of an additional filing fee on all divorce and custody complaints. Many parties seeking a divorce have already resolved all of the economic issues and questions related to child custody and visitation. They are merely looking for the court to enter a divorce decree. In other cases, the parties have been separated for many years and no one imagines that they will reconcile. Imposing an additional fee on these parties, who derive no benefit from the mediation program, is unwarranted. The ACLU does not believe that every party should be required to pay the additional fee to obtain a divorce. This fee is particularly inappropriate for victims of domestic abuse who are automatically exempted from the mediation program. The imposition of this extra cost on an abused party would be patently unfair. We recommend that the bill be amended so that the mediation program will be funded either through general revenues or through fees paid by those who actually use the services.

We are also wary of the possibility that court ordered counseling can become a vehicle for the promotion of religious points of view. We are representing a woman who characterizes herself as a "born-again Christian." The Court of Common Pleas in her county has issued an order requiring all divorcees with minor children attend counseling. Pursuant to a contract awarded by that Court, Catholic Charities conduct the counseling and that organization charges the divorcee \$35.00. Our client is petitioning for an exemption to that rule. I bring this case to your attention because it shows the need for including specific language to guarantee that the mediation programs will not unconstitutionally endorse any religion or violate any Pennsylvanian's rights under the Free Exercise Clause of the First Amendment.

Once again, I thank you for inviting me to testify. I will be happy to try to answer any questions you may have.