

Protecting children is a parent's domain

By James Higgins

Who should have primary responsibility for your children's welfare: the federal government or you? If your name were Donna Shalala or Hillary Clinton, you might answer "the federal government." But if you are a sincere conservative parent, it's very likely you believe you ought to have that responsibility.

Unfortunately, a handful of normally pro-family groups don't want you to have the responsibility, at least not in cyberspace. These groups have handed over much of your parental responsibility to the federal government by pushing into law the "Communications Decency Act," (CDA) which criminalizes "indecent" communication on the Internet.

The political world has turned upside down: some "conservatives" have lined up on the left by creating a broad new role for the federal government, while many liberals have joined traditional conservatives in viewing government power skeptically.

It seems only yesterday that conservatives were properly alarmed about politicized federal law enforcement, be it at Ruby Ridge or at the White House Travel Office. Supporters of the CDA want to let

these bygones be bygones.

The problems with the CDA are threefold: 1) It expands federal law enforcement authority at a time when conservatives should be particularly skeptical of any such expansion 2) It sets a precedent for discretionary federal regulation of the Internet. This precedent will encourage regulation by other federal agencies — notably the IRS, the FBI and the Treasury/Bureau of Alcohol, Tobacco and Firearms (ATF). 3) It puts at risk any speech that Clinton appointees might deem "indecent." How long will it be before the Clinton Justice Department and their liberal allies in the federal judiciary determine the on-line opposition to affirmative action is "hate speech" and is therefore "indecent"? Such a position is almost exactly what the Clinton Department of Housing and Urban Development has used against those who oppose homeless shelters in residential neighborhoods. Pro-family groups should remember the origins of their own movement: much religious conservative activism started as self-defense when Jimmy Carter's IRS and Federal Communications Commission began using this type of imaginative legal bullying against religious organizations they didn't like.

Pro-CDA groups present two arguments: 1) Federal regulation was necessary to criminalize activity that had heretofore been legal; and 2) the CDA allows adults to view any material, so long as they identi-

fy themselves by means of an ATM-type identification code. The first argument is simply wrong; the second argument is disingenuous.

Both child pornography and the sale of pornography to children, the problems the CDA purports to address, were already illegal. The pro-CDA faction claims such material was not illegal over the Internet. This assertion would come as quite a surprise to Robert and Carleen Thomas, who, as William F. Buckley points out, were recently convicted — without the help of the CDA — of transmitting child pornography by Internet.

And in an age when the media ferreted out Robert Bork's video rental records, it is not difficult to figure out the consequences of compulsory on-line identification. How long will it be before the ATF wants the name of everyone who looks at a gun-related Web site?

There have been three tip-offs



that Internet regulation is not as obviously desirable as CDA supporters claim:

First, the CDA camp waved the "bloody shirt" of child pornography. CDA supporters have bluntly and publicly accused opponents of being pro-pornography. Such ad hominem nonsense is not how pro-family groups do business when facts and logic are on their side. For example, it is not necessary to invent lurid tales to discredit the welfare system. The evidence does the job. The evidence doesn't do the job of justifying CDA. CDA supporters never presented anything more than anecdotal evidence to support their position. They never even allowed a hearing on CDA.

The second tipoff was that the advocates of CDA didn't bother to inform themselves about the government's interest in the Internet. On conservative issues such as school prayer or home schooling, pro-family leaders are the most informed participants in the debate, not the least informed. The opposite is true in this case. Pro-CDA leaders uniformly seem to have been under the impression that CDA is the federal government's first foray into regulating the Internet. Wrong. The government agencies that conservatives are most concerned about have for years been trying to gain a regulatory toehold in cyberspace.

Pro-CDA organizations seem sincere in opposing child pornography but dangerously uninformed about

the precedent their approach sets. I asked one pro-CDA leader for an opinion on the Clipper Chip, the well-known Clinton-Gore initiative that would give the Government access to anyone's private electronic communication. "What's a Clipper Chip?" was the reply. When I queried another vocal CDA advocate about the risk of expanded IRS/FBI/Treasury powers, the person was surprised to learn that there is a connection between the CDA and politicized law enforcement.

None of the pro-CDA leaders seems to have been aware that a debate on encryption, on electronic transactions, and on Government cyber-snooping has been going on for years.

Finally, it should be a warning to conservatives that the CDA coalition inaccurately portrays opponents of CDA as all being American Civil Liberties Union (ACLU) members. Yes, the ACLU opposes CDA. But ACLU's sociopathic view that children have a "right" to pornography is unrelated to conservative arguments against CDA.

Pre-CDA statutes have generally proved effective at keeping pornographers away from children and at punishing those few who aren't deterred. We should let existing laws continue to work. Only if existing laws prove ineffective should we consider broad Federal measures. This is the conservative approach. This is also the argument that defeated an earlier liberal cause: the Equal Rights Amendment. Why should conservatives take a stance on CDA that is the opposite of their principled stand on ERA?

Concerned parents can do better

for their children than to rely on the false promise of CDA. There are a number anti-smut software screens out on the market, all priced under \$50. (And whose would you bet on to stay ahead of cyber-smut in the future: software companies, or government bureaucrats.) I believe that there are enough concerned parents in America to create a market for such software. CDA leaders have said publicly that they believe only the government, not parents, has sufficient intelligence and sense of responsibility to manage this problem. It is amazing that one can hold such a view and still claim to be conservative.

Perhaps the oddest dimension of the "pro-family" movement's discussion of the Internet has been their exclusive focus on pornography. As James Lucier points out, advanced communication technologies — such as the Internet — offer many opportunities to promote responsible parenting. Such technologies may allow parents more time at home by reducing the need to commute, break the liberal monopoly on textbooks, and facilitate home schooling. There are already on-line adoption services. Pro-family groups should have spotted these benefits and tried to promote them. But what we've gotten is a monomaniacal discussion on one topic: pornography. Why?

As Arianna Huffington points out, this debate is not just about free speech but about "our core values and most sacred priorities." Unfortunately, the pro-CDA faction has lost sight of what those "core values and sacred priorities" are: parental responsibility and limited government.

James Higgins is a partner in an investment group based in New York.