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The Honorable Wes Keller, Chair
The Honorable Alan Dick, Vice-Chair
House Health and Social Services Committee
Alaska State House of Representatives
State Capitol
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[Representative Alan Dick@legis.state.ak.us](mailto:Representative_Alان_Dick@legis.state.ak.us)

Re: HB 363: Reproductive Health Funding
ACLU Review of Constitutional Issues

Dear Chair Keller and Vice-Chair Dick:

Thank you for the opportunity to provide written testimony with respect to House Bill 363, which seeks to strip public funds from an important aspect of women's healthcare.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, **we write to advise you that this bill is both unconstitutional and bad policy.**

HB 363 Is Unconstitutional

A woman's ability to make medical decisions, including reproductive ones, is a fundamental right guaranteed by the Alaska Constitution. *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 581 (Alaska 2007). "Reproductive rights are fundamental . . . [and] include the right to an abortion." *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 906 (Alaska 2001) (quoting *Valley*

Hospital Association, Inc. v. Mat-Su Coalition for Choice, 948 P.2d 963, 969 (Alaska 1997)) (omission and alteration in original).

The express purpose of this bill, as reflected in its text and sponsor statement, is to stop public funding, both direct and indirect, of abortion. This legislative retrenchment violates the Alaska Constitution and will likely be struck down by the courts.

The Alaska Legislature declared “as a matter of public concern that the needy persons of this state . . . should seek only uniform and high quality care . . . and receive that care, regardless of race, age, national origin, or economic standing.” Alaska Stat. § 47.07.010. Having made this policy choice, the State “may not selectively exclude from that program women who medically require abortions.” *State, Department of Health & Social Services*, 28 P.3d at 906. This bill selectively excludes that fundamental right.

HB 363 unconstitutionally denies public funding from medically necessary abortions. The exceptions of Section 2(g) are unconstitutionally narrow because the bill “denies [public funding] for medically necessary abortions unless a pregnant woman is at risk of dying or her pregnancy resulted from rape or incest.” *Id.* at 907.¹

Alaska may not exercise its “wide latitude to decide the manner in which it will allocate benefits” by choosing “criteria which discriminatorily burden the exercise of a fundamental right.” *Id.* at 909 (internal quotation omitted). The State’s interest in enacting HB 363 is “unrelated to the purposes of the public health care program,” and it would “discriminatorily burden[] the exercise of a constitutional right.” *Id.* at 915.

Were HB 363 to be enacted, Alaska courts would declare it unconstitutional.

HB 363 Endangers Women

This bill, apart from its fatal constitutional defect, threatens the health and lives of women. Pregnancy is a serious medical condition that is often fraught with health-threatening perils.

¹ Compare HB 363, § 2(g) (“The limitations in (a)–(f) of this section do not apply to an abortion performed when (1) the life of the mother is endangered by a physical disorder, physical illness, or physical injury; (2) the life of the mother is endangered by a physical condition caused by or arising from the pregnancy itself; or (3) the pregnancy is the result of an act of rape or incest.”) with 7 Alaska Admin. Code § 43.140(a), the regulation at issue in *State, Department of Health & Social Services* (“Payment for an abortion will, in the department’s discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the (1) life of the mother would be endangered if the pregnancy were carried to term; or (2) pregnancy is the result of an act of rape or incest.”), 28 P.3d at 907 n.9.

Pregnancy may complicate a woman's diabetes, causing them to "risk kidney failure, blindness, and preeclampsia or eclampsia — conditions characterized by simultaneous convulsions and comas," and pregnant women "with renal disease may lose a kidney and face a lifetime of dialysis if they cannot obtain an abortion." *Id.* at 907. Women with sickle cell anemia may find that their pregnancies "accelerate the disease, leading to pneumonia, kidney infections, congestive heart failure, and pulmonary conditions such as embolus." *Id.* The medications to treat individuals with epilepsy or bipolar disorder "can be highly dangerous to a developing fetus." *Id.*

HB 363 threatens women in at least two ways. First, for women who need an abortion, it creates a cruel dilemma: "choose either to seriously endanger their own health by forgoing medication, or to ensure their own safety but endanger the developing fetus by continuing medication." *Id.* Second, it will force women to "reach an advanced stage of pregnancy before they can gather enough money for an abortion [thus] resulting in late-term abortions [that] pose far greater health risks than earlier procedures." *Id.*

Conclusion

We appreciate the opportunity to share our concerns about House Bill 363.

We hope that the Health and Social Services Committee will refrain from approving a bill that would squarely violate the Alaska Constitution, endanger the health and well-being of Alaska women, and entangle the State in expensive, needless litigation.

Please feel free to contact the undersigned should you have any questions or seek additional information.

Sincerely,



Jeffrey Mittman
Executive Director
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