

February 19, 2018

The Honorable David Wilson, Chair  
Senate Health & Social Services Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

*by email:* Senator.David.Wilson@akleg.gov

**Re: Protecting Women's Health: ACLU of Alaska Opposition to SB 124**

Dear Chair Wilson, Vice-Chair von Imhof, and Members of the Senate Health & Social Services Committee:

The ACLU of Alaska opposes Senate Bill 124. The mission of the bill is simple: to chip away at a woman's right to control her body by forcing her to undergo a dangerous medical procedure risking her fertility and even her life. SB 124 also may be an unconstitutional infringement on a woman's fundamental right to privacy.

The ACLU of Alaska has successfully litigated unconstitutional laws targeting women's reproductive rights for several decades. Most recently, the ACLU of Alaska, Planned Parenthood, and the Center for Reproductive Rights successfully challenged longstanding restrictions that forced women seeking to terminate pregnancy after the first trimester to travel out of state. The ACLU of Alaska and its partners also successfully sued to have the courts declare a law prohibiting minor women from obtaining an abortion without consent of a parent or guardian unconstitutional. As a result of this litigation, the State of Alaska paid \$1 million in attorney fees.<sup>1</sup>

SB 124 may force women to undergo dangerous medical procedures when several safe outpatient alternatives are available.<sup>2</sup> The Alaska Supreme Court has made clear that reproductive rights, including the right to abortion, are fundamental rights.<sup>3</sup> The State may not infringe on the fundamental privacy right to make

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<sup>1</sup> Nathaniel Herz, "Alaska to pay \$1 million in legal fees after losing abortion-related lawsuit,"

<sup>2</sup> "Abortion (Termination of Pregnancy)," *Harvard Health Publishing, Harvard Medical School*, <https://www.health.harvard.edu/womens-health/abortion-termination-of-pregnancy->.

<sup>3</sup> *Planned Parenthood of the Great Northwest v. State* ("PPGNW"), 375 P.3d 1122, 1137-38 (Alaska 2016), *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997).

reproductive decisions except “when necessary to further a compelling state interest and only if no less restrictive means exist to advance the interest.”<sup>4</sup>

In fact, the United States Supreme Court recognized that abortion is “safer in terms of minor and serious complications [] than many common medical procedures” that typically are performed in outpatient settings, including colonoscopies and liposuction.<sup>5</sup> The Court even recognized that second trimester abortions can be safely performed in an outpatient clinic.<sup>6</sup> But the medical procedures that this bill would require women to undergo are not nearly as safe as the alternatives. And the United States Supreme Court has already overturned abortion regulations that adversely impact maternal health.<sup>7</sup> By compelling women to undergo dangerous medical procedures, this bill places an undue burden on women, which is unconstitutional, because it is “likely to prevent a significant number of women from obtaining an abortion.”<sup>8</sup>

It is also unenforceable. SB 124 does not specify the gestation period to which it applies, nor does it specify how physicians and patients should comply with the law. Even if it were not vague, the United States Supreme Court has stated that the “State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient.”<sup>9</sup>

We appreciate the opportunity to share our concerns about SB 124 with the Senate Health & Social Services Committee. We hope our testimony proves valuable to Members contemplating the bill’s constitutional deficiencies. Because of these deficiencies, we oppose this bill and urge the Committee to vote Do Not Pass.

Sincerely,



Melissa H. Goldstein  
Legal Fellow

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<sup>4</sup> *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001).

<sup>5</sup> *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2302, 2315 (2016).

<sup>6</sup> See *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. at 434-35.

<sup>7</sup> *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 78-79 (1976).

<sup>8</sup> *Planned Parenthood v. Casey*, 505 U.S. 878, 893 (1993).

<sup>9</sup> *Roe v. Wade*, 410 U.S. 113, 150 (1973).

Senate Health & Social Services Committee

*Forced Procedures – SB 124*

February 19, 2018

Page 3 of 3

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