

Senate Judiciary Committee Hearing

March 4, 2013

The Case for Opposing Senate Bill 49:

Protect Freedom, Privacy and
Fairness for All Alaskan Women

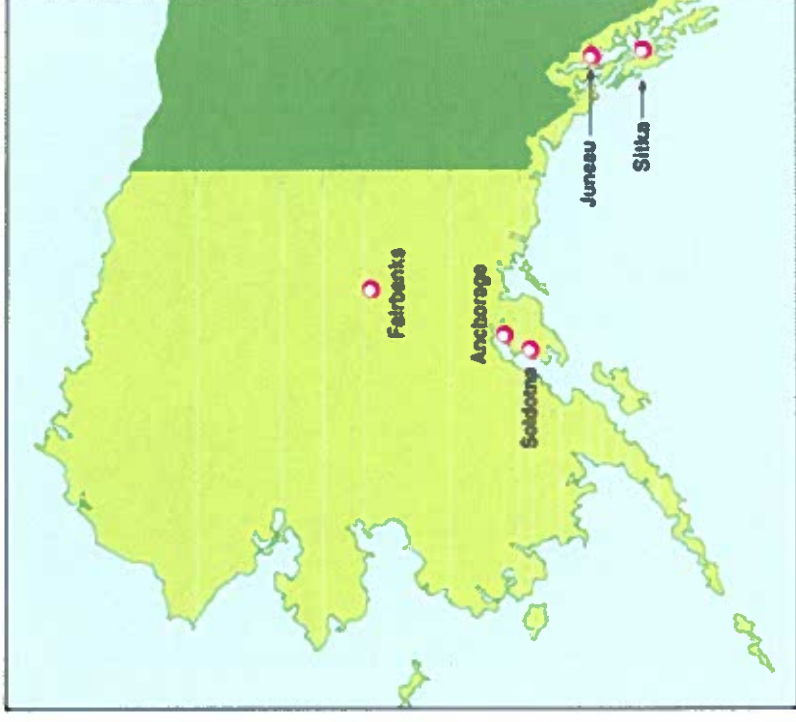


Planned Parenthood Votes Northwest

Who We Are

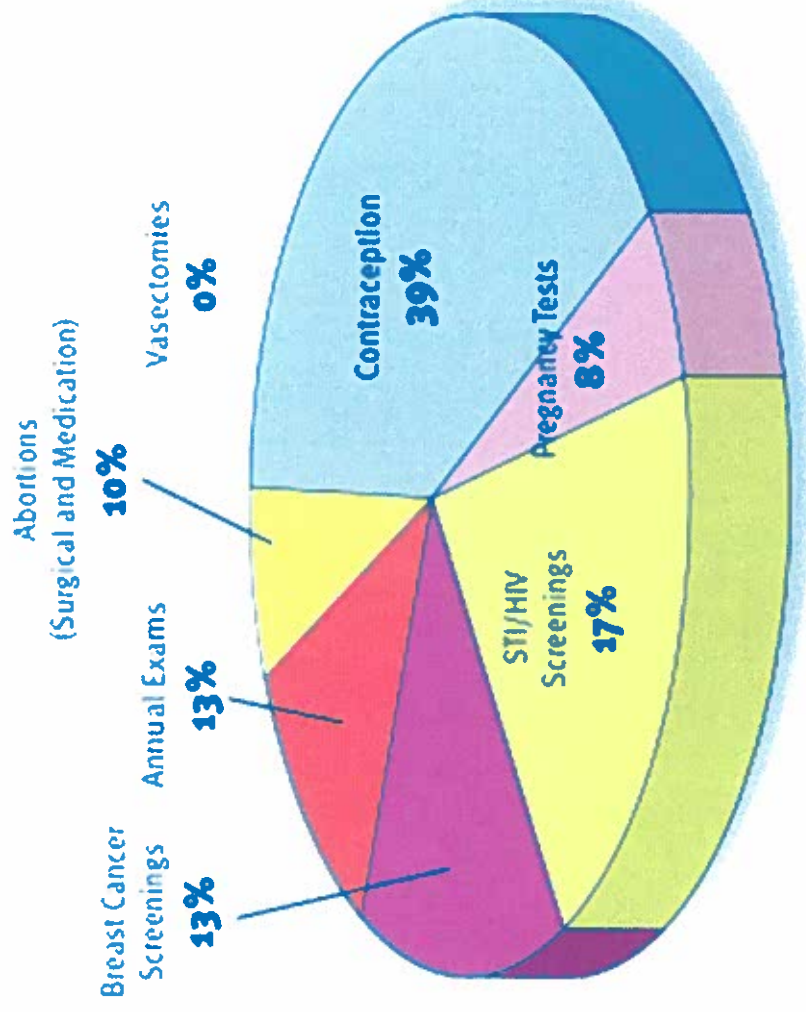
- Planned Parenthood of the Great Northwest operates 5 health centers in Alaska:

- Anchorage
- Fairbanks
- Juneau
- Sitka
- Soldotna



Who We Are

- In 2011, Planned Parenthood health centers:
 - Served 7,294 Alaskans
 - Provided 13,948 services



Why Oppose Senate Bill 49?

- The Alaska Supreme Court has long recognized that abortion should be available for low-income women ***without government interference.***
- Pregnancy decisions, like other medical decisions, should be made by ***a woman and her doctor, not by politicians.***
- Senate Bill 49 seeks to put government into women's private decision-making, and it puts Alaskan women's health at risk.



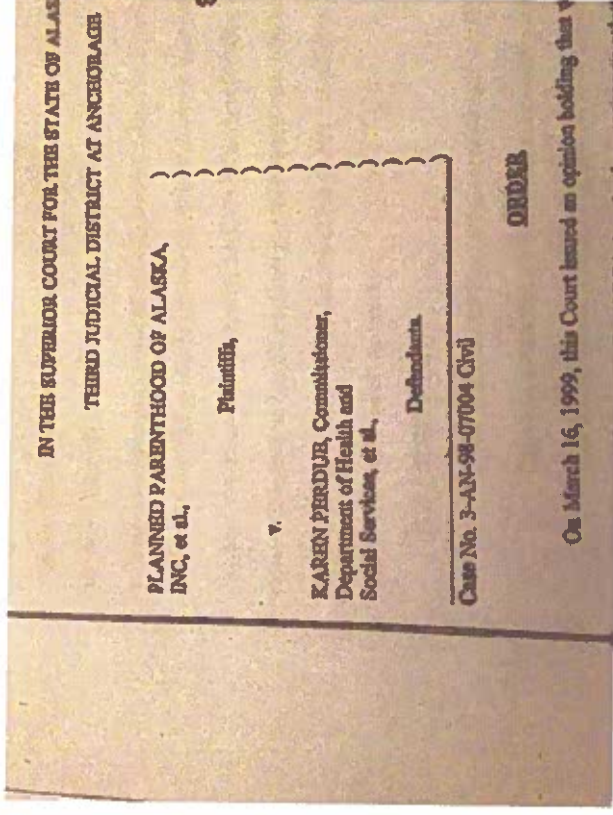
The U.S. Supreme Court

- The Medicaid Act does not define “medically necessary.”
- “Whether...an ‘abortion is necessary’ is a professional judgment that...may be exercised in the light of all ‘factors—physical, emotional, psychological, familial, and the women’ s age—relevant to the well being of the patient.’ All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.” *Doe v. Bolton*, 410 U.S. 179 at 192 (1973)



2001: SOA v. PPA

"The terms medically necessary abortions or therapeutic abortions are used interchangeably to refer to those abortions certified by a physician as necessary to prevent the death or disability of a woman, or ameliorate a condition harmful to a woman's physical or psychological health, as determined by the treating physician performing the abortion. PPA v. Perdue, No. 3-AN-98-07004 (2000)



- “...abortions certified by a physician as necessary to prevent the death or disability of a woman, or ameliorate a condition harmful to a women’s physical or psychological health..”

SOA v. PPA: 2001



2001: SOA v. PPA

- *The Alaska Supreme Court affirmed the Superior Court—effectively affirming its definition of “medically necessary.”*
- *The Court found that the challenged regulation violated equal protection.*
 - [3] “By providing health care to all poor Alaskans except women who need abortions, the challenged regulation violates the state constitutional guarantee of “equal rights, opportunities, and protection under the law.” *SOA v. PPA*, 28 P.3d 904, 908 (2001)



2001: SOA v. PPA

- When state governments seek to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens. “SOA v. PPA, 28 P.3d 904, 908 (2001)
- “Indeed, a woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. **Alaska’s equal protection clause does not permit government discrimination against either woman; both must be granted access to state health care under the same terms...**” SOA v. PPA, 28 P.3d 904 (2001)



2002: Senate Bill 364

- In 2002, the Attorney General's office, at the request of the Governor, issued a brief on SB 364:
 - "...the limitations imposed by this legislation likely exclude many women for whom the women's physician would consider the procedure to be medically necessary. *Memo to the Honorable Tony Knowles, Governor Our file: 883-02-0031 May 28, 2002*
 - "To the extent that the certification criteria of (b) divide payments for medical services for similarly situated women for whom an abortion is medically necessary into two groups of women, one comprised of women for whom an abortion is medically necessary for one of the enumerated reasons and another of a woman for whom an abortion is medically necessary for a reason not enumerated, **the bill would be found to fail equal protection analysis and will be determined unconstitutional.**" *Memo to the Honorable Tony Knowles, Governor Our file: 883-02-0031 May 28, 2002*



2010: Inquiry to Legislative Counsel

- In referring to language in the *SOA v. PPA* case, the legislative counsel memo states: “...**strongly suggests that the Alaska Supreme Court considers women who carry their pregnancy to term to be similarly situated with women who have an abortion (in that they are both exercising their constitutional freedom of reproductive choice)...And in the absence of comparable burdens on continuation of pregnancy the state cannot burden the right to abortion services.**” Legislative Counsel memo to Senator Bettye Davis,

From: Jean M Mischel, Legislative Counsel Work Order No. 27-LS0175



2012: House Bill 363, Inquiry to Legislative Counsel

- Constitutionality of prohibition on the use of public funds and facilities for an abortion?
 - “**Short answer is ‘no’** under current Alaska Supreme Court interpretations of equal protection principles unless all reproductive services coverage, including pregnancy and childbirth, is similarly restricted and the combined restriction withstands the state’s significant constitutional protections over privacy an liberty interests.” Legislative Counsel Memo to Representative Lindsey Holmes, From Jean M Mishcel Legislative Counsel Work Order No. 27-LS1441VA March 13, 2012



2012: DHSS Rulemaking

- DHSS proposed a rule that would have defined “medically necessary abortions” to mean that “the health of the mother is endangered by the pregnancy.”
- After considering constitutional concerns DHSS abandoned its proposed rule and adopted a new rule that recognizes that medically necessary is a determination that will be made in the judgment of the treating physician, as is true for virtually all Medicaid services.
- This rule, currently in place, does add a layer of work for providers, but keeps the determination of medical necessity in the purview of the physician.



Conclusion

- Only trained and licensed health care providers can determine medical necessity.
- SB 49 puts politicians between women and their doctors, and puts women's health at risk.
- SB 49 is unnecessary and unconstitutional.

For the health of Alaskan women, no matter their income level, we urge you to oppose SB 49.

