

House Judiciary Committee Hearing

April 1, 2013

The Case for Opposing House Bill 173:

Protect Freedom, Privacy and
Fairness for All Alaskan Women



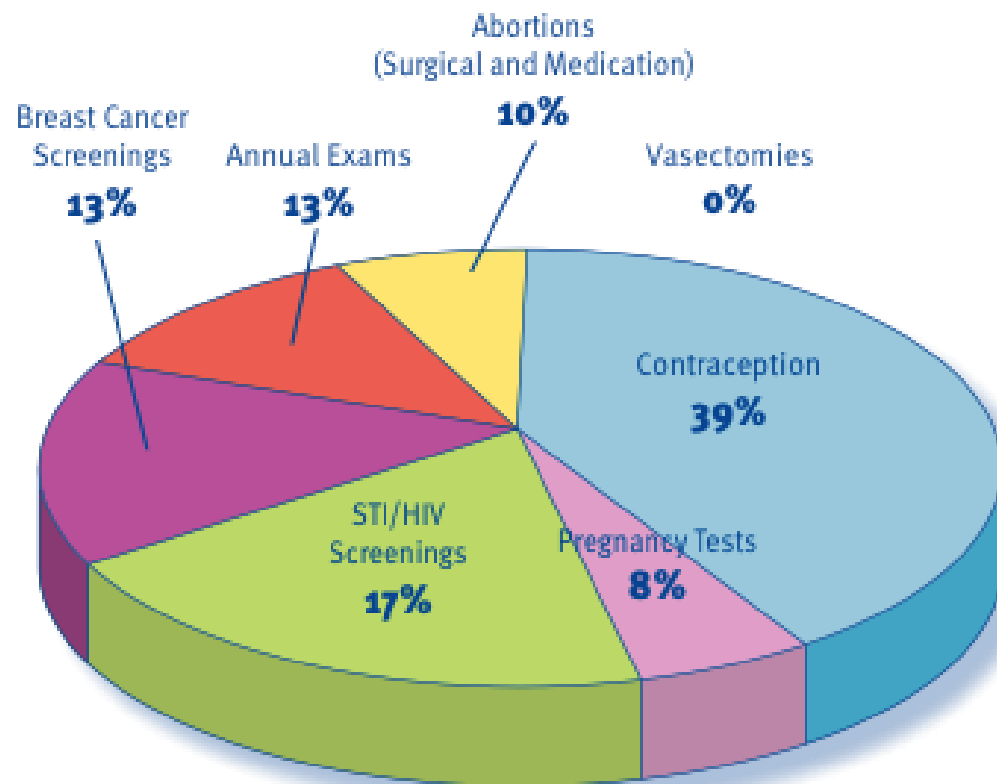
Who We Are

- 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 House Bill 173?

- House Bill 173 puts Alaskan women's health at risk.
- Pregnancy decisions, like other medical decisions, should be made privately by a woman and her doctor, not by politicians.
- The Alaska Supreme Court has long recognized that abortion should be available for low-income women ***without government interference.***
- There is a regulation in place to ensure medical necessity already, and no evidence it's not working.
- The cost of litigating this issue again would likely cost the taxpayers \$1 million or more.



Why Oppose House Bill 173?

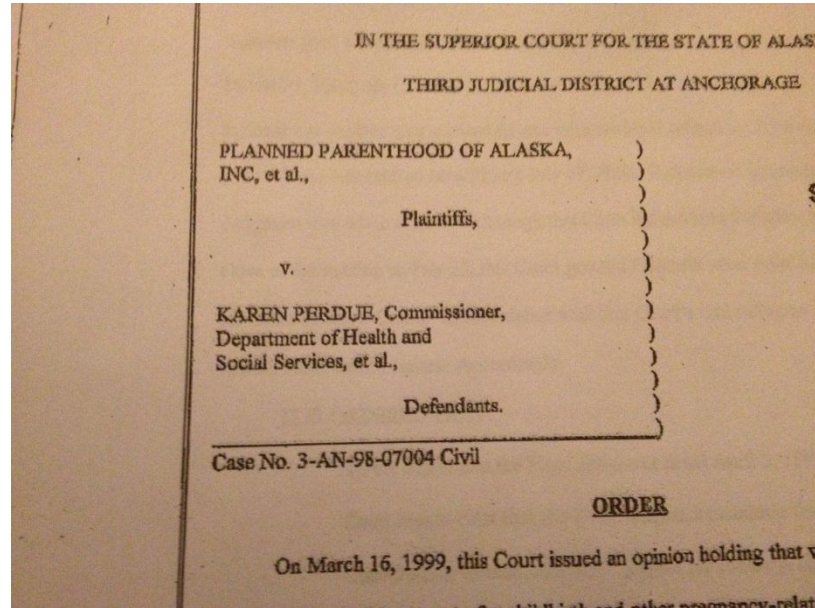
- **In Summary:**

- There is no evidence of misapplication of the medical necessity standard that exists today.
- The restrictions proposed in this bill are unnecessary and unconstitutional.
- This bill is a solution seeking a problem at a high cost to Alaskans in the state budget.
- If the legislature wants to reduce the number of abortions in Alaska and also reduce costs to the state, it should use a proven method to reduce unintended pregnancy: provide Medicaid birth control to more low-income women.



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)



SOA v. PPA: 2001

- “...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..”



2001: SOA v. PPA

- ***The Alaska Supreme Court affirmed the Superior Court—effectively affirming its definition of “medically necessary.”***
- ***Medicaid benefits must be applied in a neutral manner:***
 - When state governments seeks 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)



2001: SOA v. PPA

- ***The Court found that the challenged regulation violated equal protection.***
- “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)
- “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-LS1441\A March 13, 2012



2013: Senate Bill 49, 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. 12-28 REV March 1, 2013



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 on an individual basis in consultation with individual patients.
- HB 173 puts politicians between women and their doctors, and puts women's health at risk.
- HB 173 is unnecessary, unconstitutional, and potentially costly.

For the health of Alaskan women, no matter their income level, we urge you to oppose HB 173.

