IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD OF THE GREAT NORTHWEST,	
Plaintiff, v.)
WILLIAM J. STREUR, ET AL.,	
Defendants.) Case No. 3AN-14-04711 CI
	Case No. 3AN-14-04/11 C.

DECISION AND ORDER ON PLAINTIFF'S SECOND MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Defendant Department of Health & Social Services (DHSS) promulgated a regulation limiting eligibility for state Medicaid funding of abortions to instances of medical necessity defined in terms of severe medical or psychiatric conditions. The court granted a preliminary injunction suspending the regulation, based on serious questions regarding its constitutional validity and the absence of serious prejudice to the state pending adjudication. Thereafter the Alaska Legislature enacted a statute defining medical necessity but eliminating consideration of psychiatric medical necessity. Planned Parenthood renews its request for injunctive relief, now as to enforcement of the statute.

II. DISCUSSION

In 2001 the Alaska Supreme Court overturned a DHSS regulation limiting Medicaid-funded abortions to instances of rape, incest, or risk of maternal death, on the ground that denial of medically necessary services to pregnant women violates state equal protection.1 In 2013 DHSS promulgated

new eligibility criteria that may also deny funding for medically necessary

abortions. The court enjoined enforcement of the regulations pending an

evidentiary hearing. The legislature then further narrowed the eligibility

criteria, most prominently by eliminating consideration of mental health factors

altogether.² Although restrictive legislation enhances the risk of constitutional

invalidity, DHSS again opposes a preliminary injunction, effectively seeking

reconsideration of the court's earlier grant of a preliminary injunction.

The Sixth Circuit invalidated a state ban on post-viability abortions, on

the ground that a state statute's medical necessity exception limited a

physician's consideration of medical-necessity solely to physical health

conditions:

[T]he Act's medical necessity exception is unconstitutional, because it does not allow post-viability abortions where

necessary to prevent a serious non-temporary threat to a pregnant woman's mental health. Additionally . . . we find that the Act impermissibly limits the physician's discretion to determine whether an abortion is necessary to preserve the woman's health, because it limits the physician's

consideration to physical health conditions.3

The Sixth Circuit's recognition that "medical necessity" in a pregnancy-related

context mandatorily includes mental health considerations suggests that the

Alaska Legislature may have overstepped constitutional bounds. Alaska

¹State, Dep't. of Health & Social Services v. Planned Parenthood of Alaska, Inc., 28 P.3d 904 (Alaska 2001).

² AS 47.07.068(b)(3).

³ Women's Medical Professional Corp. v. Voinovich, 130 F.3d 187, 209-10 (6th Cir. 1997).

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Statute 47.07.068(b)(3) more narrowly circumscribes medical necessity to physical health, physical disorder, physical injury, physical illness, or a physical condition entailing a risk of death. Planned Parenthood raises substantial issues going to the merits of the statute, and is entitled to its day in court before the statute takes effect.

III. ORDER

For the reasons set forth in the court's initial grant of a preliminary injunction, the court grants a preliminary injunction against enforcement of the provisions of AS 47.07.068(b)(3) narrowing eligibility for Medicaid-funded abortions, until the scheduled evidentiary hearing and ruling of the court on Planned Parenthood's pending motion for permanent injunction.

DATED at Anchorage, Alaska this _

day of July, 2014.

John Suddock Superior Court Judge

Janet Crepps / Susan Orlansky Laura Einstein / Stacie Kraly Margaret Paton-Walsh Helene Krasnoff / Autumn Katz Julia Kaye / Brigitte Amiri Thomas Stenson

Maryann Brault
Judicial Assistant

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