IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, et al., Appellants, vs. PLANNED PARENTHOOD OF THE GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, AND WASHINGTON, a Washington Corporation, Appellee,	Supreme Court No. **S-19277**

Trial Court Case No. **3AN-19-11710CI**

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE JUDGE JOSIE GARTON

AMICUS BRIEF OF STANDING TOGETHER AGAINST RAPE, INC. ("STAR")

CASHION GILMORE & LINDEMUTH
Attorneys for Standing Together Against Rape, Inc. ("STAR")

Scott M. Kendall, Alaska Bar No. 0405019
Samuel G. Gottstein, Alaska Bar No. 1511099
510 L Street, Suite 601
Anchorage, AK 99501
Phone: 907-222-7932
Fax: 907-222-7938

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AS 18.16.010(a)(1) Abortions.

(a) An abortion may not be performed in this state unless

(1) the abortion is performed by a physician licensed by the State Medical Board under AS 08.64.200[.]

CONSTITUTIONAL PROVISIONS

Article I, Section 1. Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article I, Section 22. Right of Privacy

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

STATEMENT OF AMICUS INTEREST

Standing Together Against Rape, Inc. ("STAR") is a non-profit, non-partisan, public interest organization that advocates for the health and well-being of victims of sexual violence in Alaska. STAR's mission is to prevent sexual trauma and provide comprehensive, collaborative crisis intervention, advocacy, and support to victims, survivors, their families, and their communities. STAR has been fulfilling this mission since its founding in 1978. STAR also connects survivors with resources and information, including information about reproductive health care, following an assault.

STAR is familiar with the challenges that survivors of sexual violence face in exercising their autonomy and understand the barriers that make it especially difficult for survivors, particularly rural Alaskans, to access reproductive health care, including abortion care. STAR is also familiar with the fact the Alaska Native women suffer violence, including sexual violence, at disproportionate rates.

As advocates for Alaska Natives and all Alaskan survivors of sexual assault, STAR has a strong interest in ensuring that Alaskan survivors have ready access to reproductive healthcare in this State, and that their suffering is not compounded by barriers to such access.

SUMMARY OF ARGUMENT

The superior court correctly struck down AS 18.16.010(a)(1) as violative of the constitutional rights of pregnant women seeking an abortion. That statute creates barriers

to access without serving any important State interest. In fact, the statute worsens the healthcare outcomes of Alaskans.

When the needs of those who already have difficulty accessing healthcare services due to geographic remoteness, intimate partner violence, or sexual assault are considered, the impacts of AS 18.16.010(a)(1) are exponentially worse. In order to uphold the constitutional rights of women and protect survivors of sexual violence, this Court should AFFIRM.

ARGUMENT

I. The Superior Court's Factual Findings Demonstrate The Barriers That Women In Alaska Face When Accessing Reproductive Health Care, And Confirm That AS 18.16.010(a)(1) Increases Those Barriers.

Before the superior court struck it down, AS 18.16.010(a)(1) ("the Statute") prohibited anyone — other than a licensed physician — from performing a medication abortion or aspiration abortion.[1] The court's findings of fact and conclusions of law ("the Order") [*See* Exc. 108-134] establishes a strong factual basis for its conclusion that the Statute violates both article I, section 1, and article I, section 22 of the Alaska Constitution by depriving women in Alaska of both their right to equal protection as well as their right to privacy.[2]

The Statute artificially limits the number of days and locations that abortion-related care is available, causing delay and compounding potential physical and mental health

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1 *See* AS 18.16.010(a)(1).

2 *See* Alaska Const. art. I, §§ 1, 22.

impacts. [Exc. 110] An advanced practice clinician ("APC") is medically qualified to perform medication and aspiration abortion but prohibited from doing so by the Statute. [Exc. 110-111] APCs performing abortions expands services, in part because they are additional providers, but in particular because they are more likely to accept Medicaid and to practice in community health centers and rural health settings. [Exc. 111] Accordingly, APCs are essential to delivering care for low income and rural populations. [Exc. 111]

The Statute imposes a burden that is medically unnecessary for abortion services that could otherwise be provided by an APC. This burden is more acute because these services are, by their very nature, time sensitive. [Exc. 112] Abortion services are considered within the appropriate scope of practice for APCs, meaning the Statute harms patient access without providing any health benefit. [Exc. 112] In fact, APCs routinely manage pregnancies and births in Alaska, both of which are more hazardous to the patient than an abortion. [Exc. 117, 119]

Unfortunately, the Statute's burdens are especially acute for victims of violence and rural victims. [Exc. 113] By adding unnecessary barriers, the Statute empowers the perpetrators of domestic violence who often monitor their victims' behaviors and exert reproductive control over them. [Exc. 113] Accordingly, victims of intimate partner violence, as well as rural victims, already face significant barriers to obtaining reproductive healthcare; the barriers erected by the Statute exacerbate them. [Exc. 113]

At the time of the superior court's ruling, only Juneau, Anchorage, and Fairbanks had clinics where abortion-related services are provided;[3] women who resided outside of these three cities needed make travel arrangements to access such services. [Exc. 127] Limiting the number of practitioners who can provide these services, at the Statute does, therefore has a disproportionate impact on women in rural Alaska. [Exc. 127]

Many patients who suffer from sexual assault prefer medication abortion as a way to avoid the trauma of the invasive nature of an aspiration abortion. [Exc. 116] And survivors of sexual violence who are unable to access abortion services in a timely manner may experience increased psychological harm resulting from the delay. [Exc. 128]

Both medication abortion and aspiration abortion are known to be extremely safe for the patient. [Exc. 115] However, any associated risks do increase with gestational age, making timely access to services important to patient safety. [Exc. 116, 118] Additionally, abortion itself is actually safer for patients than continuing a pregnancy or undergoing childbirth. [Exc. 117]

In the context of the various barriers patients face in accessing reproductive healthcare, the Statute heightens those barriers. [Exc. 129] For victims of sexual violence, particularly in rural Alaska, those barriers are much worse. [Exc. 129] Given the grave burdens the Statute imposes, the State must demonstrate a compelling interest in keeping AS 18.16.010(a)(1) in effect. The State failed to demonstrate how, without the Statute,

[3] Planned Parenthood's Juneau-based clinic apparently ceased operating in December of 2024.

other health and safety laws are not adequate to protect the health of patients. [Exc. 132] In fact, the balance of the evidence at trial amply demonstrated that the Statute actually puts patients' health at *greater* risk, while also severely burdening their constitutional rights to equal protection (when compared to pregnant women seeking any healthcare service apart from abortion) and privacy.

II. Rural Alaskans, And Alaska Native Women In Particular, Suffer From Disproportionate Rates Of Sexual Assault And Disproportionate Burdens In Obtaining Abortion Care.

STAR works to assist all victims of sexual violence, regardless of race and regardless of geographic location. However, STAR understands the reality that rural Alaskans — and especially Alaska Native women — suffer from sexual violence at much higher rates than other populations. Accordingly, although STAR supports extinguishing the unconstitutional barriers of AS 18.16.010(a)(1) as they apply to all victims, this brief focuses especially on those rural and Alaska Native victims who suffer the burdens more keenly.

Alaska Native women occupy a uniquely perilous position at the intersection of gender, race, geography, and sovereignty. Alaska Native women endure some of the highest rates of sexual assault in the United States, and are simultaneously more likely to suffer from complications during pregnancy or childbirth. However, the federal government's provision of healthcare to these women is strictly limited by the Hyde Amendment, a federal law prohibiting nearly all abortions at Indian Health Service ("IHS") clinics. Accordingly, Alaska Native women are often forced to seek such care from private

providers. Given additional socioeconomic and geographic burdens to obtaining private care, the State erecting additional barriers to abortion care for Alaska Native women through the Statute would have especially devastating consequences.

A. Alaska Native women experience higher rates of violence and sexual assault.

American Indian and Alaska Native women face staggeringly high levels of sexual violence. Native women and girls suffer the highest rates of stalking, rape and femicide in the nation.[4] One in three Native American women will be raped or sexually assaulted in her lifetime, a rate 3.5 times greater than other racialized groups.[5] Native women in the United States suffer from the highest rates of sexual violence.

In Indigenous communities, more than half of American Indian and Alaska Native women (56.1%) have experienced sexual violence in their lives, and the vast majority of those are victimized by a non-Native perpetrator.[6] Sexual violence is based on power and control, and an abuser may see the unpredictability of pregnancy as an opportunity to

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[4] *See* Stronghearts Native Helpline, *Impacts of the* Roe v. Wade *Decision on Native American and Alaska Native Women Sexual Violence Victim-Survivors*, NATIVE NEWS ONLINE (July 13, 2022) [hereinafter *Impacts of* Roe v. Wade], https://nativenewsonline.net/health/impacts-of-the-roe-v-wade-decision-on-native-american-and-alaska-native-women-sexual-violence-victim-survivors.

[5] *See* Lawyering for Reproductive Justice, *Women of Color and the Struggle for Reproductive Freedom*, VAWnet (Aug. 2016) [hereinafter *Women of Color*], https://vawnet.org/sites/default/files/materials/files/2016-08/Women-of-Color-and-the-Struggle-for-RJ-Issue-Brief.pdf.

[6] *See* National Congress of American Indians, *Violence Against AI/AN Women & Girls—Data Trends*, (October 2021), https://www.ncai.org/section/vawa/overview/key-statistics. (Non-Native perpetrators are nationally responsible for 96% of such assaults).

increase their power and control. Sexual violence robs Native women of the right to body sovereignty and the choice of reproductive autonomy.[7] Finally, Native American women are disproportionately at risk for sexual assault and adolescent pregnancy. Nearly half (46%) of Native American women are younger than 20 years old when they give birth to their first child.[8]

There are many barriers to reporting intimate partner violence and sexual violence, including lack of law enforcement, in rural communities, which likely perpetuate such violence.[9] Poor reproductive and sexual health outcomes among American Indian and Alaska Native women, including unintended pregnancy, are related to histories of oppression and structural racism.[10]

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[7] *See Impacts of* Roe v. Wade; National Indigenous Women's Resource Center, *Sexual Violence Against Women and Children in Indian Country: Fact Sheet*, https://www.niwrc.org/sites/default/files/images/resource/niwrc_fact_sheet_sexual_violence_indian_country.jpg.

[8] *See* Shaye Beverly Arnold, *Reproductive Rights Denied: The Hyde Amendment and Access to Abortion for Native American Women Using Indian Health Service Facilities*, 104 AM. J. OF PUB. HEALTH 10 (Oct. 2014), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC4167108/pdf/AJPH.2014.302084.pdf; Kati Schindler et al., *Indigenous Women's Reproductive Rights: The Indian Health Service and Its Inconsistent Application of the Hyde Amendment* (Oct. 2022), https://www.prochoice.org/pubs_research/publications/downloads/about_abortion/indigenous_women.pdf.

[9] *See* Jessica L. Liddell et al., *Reproductive Justice for Native American and Alaska Native Women: A Review of the Literature*, 14 INT'L J. ENV'T RES. PUB. HEALTH 146 (2022); Elena Giacci et al., *Intimate Partner and Sexual Violence, Reproductive Coercion, and Reproductive Health among American Indian and Alaska Native Women: A Narrative Interview Study* 31 J. WOMEN'S HEALTH 1 (2022), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC8785763/pdf/jwh.2021.0056.pdf.

[10] *See* Liddell et al., *supra* note 7; Giacci et al., *supra* note 7.

The higher rates of sexual violence against Native women, and the already existing deficit of law enforcement and healthcare access in rural Alaska, means that the unconstitutional barriers in AS 18.16.010(a)(1) hurt these women the most.

B. Native Women are More Likely to Encounter Complications During Pregnancy or Childbirth.

Pregnancy is more dangerous for Alaska Native women than for other populations. Complications during pregnancy or childbirth (or both) are three to four times more likely for Native women.[11] In comparison, American Indian and Alaska Native women are two times more likely to die of pregnancy-related causes than White women.[12] And, although severe maternal morbidity and mortality is elevated among indigenous women compared with white women, that incidence is highest among rural indigenous residents.[13]

Given that pregnancy itself is already more dangerous for Alaska Native women, the barriers to abortion access in AS 18.16.010(a)(1) present an even more acute risk for this population.

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[11] *See* National Partnership for Women & Families, *American Indian and Alaska Native Women's Maternal Health: Addressing the Crisis* (Oct. 2019), https://nationalpartnership.org/wp-content/uploads/2023/02/american-indian-and-alaska.pdf; *Impacts of* Roe v. Wade.

[12] *See* CDC, *Disparities and Resilience Among American Indian and Alaska Native Women Who Are Pregnant or Postpartum* (May 15, 2024), https://www.cdc.gov/hearher/aian/disparities.html.

[13] *See* Katy B. Kozhimannil et al., *Severe Maternal Morbidity and Mortality Among Indigenous Women in the United States*, 135 OBSTETRICS & GYNECOLOGY 2 (Feb. 2020), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC7012336/pdf/ong-135-294.pdf.

C. When federally provided healthcare is insufficient, Alaska Native women must seek care from private providers.

The IHS, an agency within the U.S. Department of Health and Human Services, is responsible for providing direct medical and public health services to members of federally recognized Native American Tribes and Alaska Native people. Although this system is robust in Alaska, that does not guarantee that Alaska Natives and rural Alaskans have ready access to *reproductive* healthcare.

The 1976 "Hyde Amendment" refers to an annual funding restriction that Congress perennially includes in the annual appropriations acts for the Departments of Labor, Health and Human Services, and Education, and related agencies.[14] The Hyde Amendment prohibits the use of federal funds by the IHS for abortion care except in cases of rape, incest, or threat to the mother's life.[15] It is unclear what level of proof is needed to access these exceptions because, despite their existence, between 1981 and 2001, IHS funded only 25 abortions. "Of those 25 abortions, only 9 were performed in IHS clinics; the other 16 were performed at contracted facilities."[16] In fact, a 2005 report found that IHS provided only 25 abortions over the course of 20 years, and reported that 62% of facilities did not

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[14] *See* Edward C. Liu & Wen W. Shen, *The Hyde Amendment: An Overview*, CONGRESSIONAL RESEARCH SERVICE, IF12167 (July 20, 2022), *available at* https://www.congress.gov/crs-product/IF12167.

[15] *See id.* ("[T]he Hyde Amendment has been incorporated by statutory cross-reference to apply to the [IHS], which provides health services to American Indians and Alaska Natives[.").

[16] *See* Schindler et al., *supra* note 6, at 9.

offer abortions even when the woman's life was in danger.[17] Another 2002 study found that 85% of IHS facilities did not have abortion services available or did not refer to abortion providers, even for women in permitted circumstances.[18]

In short, the Hyde Amendment effectively prevents the robust Native health system in Alaska from providing these abortion services.

D. Survivors of sexual assault are at greater risk of unintended pregnancy, creating significant risks for survivors' health and safety.

For obvious reasons, survivors of sexual assault are at a greater risk of unintended pregnancy. Among women in the United States as a whole, approximately one in twenty (5%) have experienced a pregnancy from either rape, sexual coercion, or both in their lifetimes.[19] Thirty percent of the women who were raped by an intimate partner also experienced reproductive coercion from the same person. About 20% reported that their partner tried to make them pregnant when they did not want to be, and/or their partner tried to stop them from using birth control. Around 23% said their partner refused to use a condom.[20]

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17 *See* Women of Color; *see also* Liddell et al., *supra* note 7.

18 *See* Noellyn Smith & Maddy Keyes, *Indigenous Women Navigate Abortion Access Hurdles Post*-Roe, SOURCE NM (Aug. 29, 2023), *available at* https://sourcenm.com/2023/08/29/indigenous-women-navigate-abortion-access-hurdles-post-roe/.

19 *See* Denise V. D'Angelo et al., *Rape and Sexual Coercion Related Pregnancy in the United States*, AM. J. PREVENTATIVE MED. (Mar. 2024), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC10951889/pdf/nihms-1977096.pdf.

20 *See* CDC, *Pregnancy Resulting from Sexual Violence* (Oct. 28, 2024), https://www.cdc.gov/sexual-violence/about/pregnancy-resulting-from-rape.html.

Survivors of sexual assault who have unintended pregnancies must also attempt to navigate the convoluted healthcare system while processing their trauma. Research has shown that sexual victimization often has mental health consequences, particularly post-traumatic stress disorder, depression, and anxiety.[21] Such concerns are elevated when a pregnancy results from an assault.

Abortion is lifesaving medical care for many survivors. Every pregnancy carries some level of risk. But unintended pregnancies have significantly greater health risks, including pregnancy complications and poor birth outcomes like miscarriage or stillbirth.[22] Several studies have also found that rape survivors suffer increased labor complications.[23]

Sadly, these concerns are elevated in Alaska due to our rates of sexual assault being much higher than the national average, and that disparity is increasing. In contrast to a national decline, Alaska's rate of violent crimes has increased, and the bulk of that increase is driven by extremely high rates of rape and aggravated assault.[24] Alaska's rape rate since

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21 *See* Stephanie Pappas, *How to Support Patients who have Experienced Sexual Assault: Psychologists can help their patients navigate the complex contexts that survivors often face while attempting to cope with their assault*, 53 AM. PSYCHOLOGICAL ASS'N 6 (Sept. 1, 2022), *available at* https://www.apa.org/monitor/2022/09/sexual-assault-patients.

22 *See* Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need to Know*, 8 TRAUMA, VIOLENCE, & ABUSE 127, 130 (2007).

23 *See* Michelle L. Munro et al., *Comprehensive care and pregnancy: The unmet care needs of pregnant women with a history of rape*, MENTAL HEALTH NURSING (Dec. 2012), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC3763823/pdf/nihms492417.pdf.

24 *See* Yereth Rosen, *Rapes and Aggravated Assaults push Alaska Violent-Crime Rates up; Property-Crime Rates fall*, ALASKA BEACON (Feb. 27, 2023); *see also* Troy C. Payne, *Alaska UCR Trends: 1979-2021*, ALASKA JUST. INFO. CTR., *available at* https://www.akleg.gov/basis/get_documents.asp?session=33&docid=1547.

2013 has been three to four times higher than the national average based on reported cases.[25] Statewide surveys conducted in 2010, 2015, and 2020, show that rates of sexual violence against women are rising in Alaska. In 2020, 40.5% of women reported experiencing sexual violence in their lifetime; this is an almost 7% increase in only five years.[26]

As harrowing as these statistics are, the reality may be much worse, because most sexual assaults are never even reported. Rape is the most under-reported crime; 63% of sexual assaults are not reported to police.[27]

E. Barriers to abortion services endangers victims of intimate partner abuse.

In addition to the medical danger that comes from carrying a pregnancy to term, pregnant women in an abusive relationship face heightened risks. Women who are not able to obtain an abortion are more likely to continue experiencing abuse from a violent

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25 *See* Rosen, *supra* note 22.

26 *See* UNIVERSITY OF ALASKA ANCHORAGE, *Statewide Results from the Alaska Victimization Survey*, *available at* https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/avs/avs-results/statewide-results.cshtml.

27 *See* National Sexual Violence Resource Center, *Statistics About Sexual Violence*, https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf; *see also* Jacey Passmore, *The Underreporting and Dismissal of Sexual Assault Cases Against Women in the United States*, BALLARD BRIEF (Mar. 2023), *available at* https://static1.squarespace.com/static/5f088a46ebe405013044f1a4/t/665f7ef4ca9bfb33caa292c7/1717534456452/Jacey+Passmore+PDF.pdf.

partner.[28] In contrast, women who are able to obtain an abortion experience a reduction in physical violence.[29] In the U.S. as a whole, pregnant women are more likely to die of homicide by an intimate partner than by any pregnancy-related causes.[30] The harrowing fate faced by a pregnant woman with a physically abusive partner is best summed up by a single statistic: homicide during pregnancy, or within 42 days of the end of pregnancy, exceeded all the leading causes of maternal mortality by more than twofold.[31]

CONCLUSION

Access to abortion care and choice of providers without barriers is particularly important for rape survivors, rural Alaskans, and those who face heightened health risks. Given the many barriers Alaskan women face in obtaining abortion care after a sexual assault, structural impediments that further curtail access to abortion rights are disproportionately harmful. Reversing the superior court's judgment would immediately create grave consequences for these populations, and further would suppress *all* Alaskan women's fundamental right to bodily autonomy.

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28 *See* Sarah C.M. Roberts et al., *Risk of Violence from the man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MEDICINE 12, 144 (2014), *available at* https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-014-0144-z.

29 *See id.*

30 *See* Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States: 2018-2019*, 138 OBSTETRICS & GYNECOLOGY 5 (Nov. 2021), https://journals.lww.com/greenjournal/abstract/2021/11000/homicide_during_pregnancy_and_the_postpartum.10.aspx.

31 *See id.*

Obtaining an abortion may not be the choice all survivors of sexual assault make, but access to that choice is imperative to STAR's mission, and to the fundamental rights of every survivor.[32] Accordingly, STAR respectfully urges this Court to AFFIRM the superior court's decision permanently enjoining enforcement of AS 18.16.010(a)(1).

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 4th day of June, 2025.

CASHION GILMORE & LINDEMUTH

By: _____

Scott M. Kendall
Alaska Bar No. 0405019
Samuel G. Gottstein
Alaska Bar No. 1511099

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32 *See Planned Parenthood of the Great Northwest v. State*, 375 P.3d 1122, 1133 & n.48 (Alaska 2016) ("A law is measured for constitutional validity 'by its impact on those whose conduct it affects,' and the proper constitutional inquiry focuses on 'the group for whom the law is a restriction, not the group for whom the law is irrelevant.' " (citation omitted)).