

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

**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

¹*State, 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).

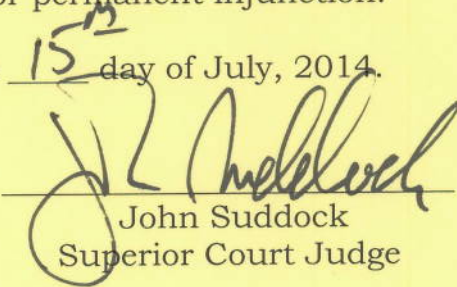
³ *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187, 209-10 (6th Cir. 1997).

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

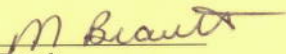
For the reasons set forth in the court's initial grant of a preliminary injunction, the court grants a preliminary injunction against enforcement of the provisions of AS 47.07.068(b)(3) narrowing eligibility for Medicaid-funded abortions, until the scheduled evidentiary hearing and ruling of the court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

DATED at Anchorage, Alaska this 15th day of July, 2014.


John Suddock
Superior Court Judge

I certify that on 7-15-14
a copy of the above was e-mailed
to each of the following at their
addresses of record:

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