IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY, a Washington corporation, Plaintiff, v. STATE OF ALASKA, et al., Defendants.	Case No. 3AN-19-11710 CI

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

FACTS 2

A. Early Abortion Care Is Safe. 2

B. APCs Can Safely Provide Medication and Aspiration Abortion. 4

C. Prohibiting Qualified APCs from Providing Early Abortion Care Restricts Abortion Access in Alaska and Harms Alaskans 8

ARGUMENT 15

A. Standard for Granting a Motion for Summary Judgment. 15

B. Plaintiff Is Entitled to Summary Judgment. 15

1. The Alaska Constitution Protects the Right to Abortion and Other Medical Care. 16

2. The APC Ban Is Subject to, and Fails, Strict Scrutiny. 19

CONCLUSION 25

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

TABLE OF AUTHORITIES

Page

Cases

Alakayak v. Brit. Columbia Packers, Ltd.,
48 P.3d 432 (Alaska 2002) 15

Alaska Civ. Liberties Union v. State,
122 P.3d 781 (Alaska 2005) 17

Armstrong v. State,
989 P.2d 364 (Mont. 1999) 22, 23, 24

Baker v. City of Fairbanks,
471 P.2d 386 (Alaska 1970) 16

Christensen v. Alaska Sales & Serv., Inc.,
335 P.3d 514 (Alaska 2014) 15

Huffman v. State,
204 P.3d 339 (Alaska 2009) 16

Mahan v. Arctic Catering, Inc.,
133 P.3d 655 (Alaska 2006) 21

Malabed v. N. Slope Borough,
70 P.3d 416 (Alaska 2003) 17

Meyer v. State, Dep't of Revenue, Child Support Enf't Div. ex rel. N.G.T.,
994 P.2d 365 (Alaska 1999) 21

Planned Parenthood of Alaska v. State,
No. 3AN-97-6014, 2003 WL 25446126 (Alaska Super. Ct. Oct. 13, 2003), *aff'd,* 171 P.3d 577 19

Planned Parenthood of the Great Nw. v. State,
375 P.3d 1122 (Alaska 2016) ..... passim

State v. Planned Parenthood of Alaska,
171 P.3d 577 (Alaska 2007) 16, 17, 18

State v. Planned Parenthood of Alaska,
35 P.3d 30 (Alaska 2001) 18, 20

State v. Planned Parenthood of the Great Nw.,
436 P.3d 984 (Alaska 2019) ..... passim

State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc., 28 P.3d 904 (Alaska 2001) 17

Valley Hosp. Ass'n v. Mat–Su Coal. for Choice, 948 P.2d 963 (Alaska 1997) 16, 17, 18, 19

Yurioff v. Am. Honda Motor Co., 803 P.2d 386 (Alaska 1990) 15

Statutes

AS 08.68.170(c) 5

AS 18.16.010 ..... 19, 20

Rules

Alaska. R. Civ. P. 56(c) 15

Regulations

12 AAC 40.400 5

12 AAC 40.470 5

12 AAC 44.400 4

12 AAC 44.600-.620 5

Constitutional Provisions

Alaska Const. art. I, § 1 17

Alaska Const. art I, § 22 ..... 16, 17

Alaska Constitution 1, 15, 16

U.S. Const. Amend XIV 17

Other Authorities

Alaska Div. of Pub. Health, *2021 Primary Care Needs Assessment*, 33 (2021), https://alaskapca.org/wp-content/uploads/2021/05/SOA_PCO_NA_20211865-1.pdf ("Needs Assessment") 4, 8

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

CHA Program Certification Bd., *Standards and Procedures*, 10-11, 14-15 (amended Jan. 13, 2022), https://akchap.org/wp-content/uploads/2022/03/CHAPCB-Standards-Procedures-Amended-2022-01-13.pdf..... 8

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

INTRODUCTION

The Alaska Constitution protects abortion as a fundamental right, recognizing that as a matter of bodily integrity, decisional autonomy, and equality, women must be able to decide for themselves whether and when to bear a child.[1]

Abortion is also a time-sensitive medical treatment. It is safest the earliest it occurs in pregnancy, and most people, if they decide to end a pregnancy, strongly prefer to do so as soon as possible. Earlier in pregnancy, costs are lower and patients have the option—often strongly preferred—of ending their pregnancy without a procedure, using medications alone. Some people have pregnancies that are debilitating or risky, or that are traumatic (as in the case of rape), and others desperately need to conceal a pregnancy from a violent or controlling partner. And because people who seek abortions predominantly have low incomes, transportation limitations, and parenting and work responsibilities, delays in obtaining abortion care can spiral, particularly given Alaska's geography.

Yet, the law challenged here restricts access to early abortion—delaying, and in some cases preventing, Alaskans from accessing care. Even though there is no dispute that first-trimester abortions are extremely safe and straightforward clinically and can be safely provided by advanced practice clinicians ("APCs"), the State prohibits anyone other than a licensed physician from providing that care. This restriction ("APC Ban") starkly contrasts with State policy in all other areas of medicine; Alaska is among the states with

[1] References to "women" in this brief are meant as shorthand for people who are or may become pregnant. People with other gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services.

the broadest APC scope of practice, and recognizes that APCs are critical in increasing access to care. In fact, the State allows APCs to provide the very same medications and procedures for miscarriage patients that it bans them from providing for abortion patients.[2]

The APC Ban is wholly unjustified and hinders Alaskans from accessing constitutionally-protected, time-sensitive and essential medical care. For these reasons, the APC Ban is unconstitutional.

FACTS

A. Early Abortion Care Is Safe.

First-trimester abortion methods are straightforward and involve very little risk. Complications associated with medication and aspiration abortions are rare and usually minor. Affidavit of Shanthi Ramesh in Support of Summary Judgment ("Ramesh Aff.") ¶¶ 34–40 (medication abortion and aspiration procedures "are among the safest treatments in modern medicine"); Affidavit of Tanya Pasternack in Support of Motion for Summary Judgment ("Pasternack Aff.") ¶ 3; Affidavit of Vanessa Power in Support of Motion for Summary Judgment ("Power Aff.") Ex. E (Bender Dep.) 33:17-22. Indeed, the State's Commissioner of Health and Social Services concedes that abortion complications have not come up as a health concern during any conversations with community partners. Power Aff. Ex. C (Crum Dep.) 122:8-16.

[2] While at times allowing APCs to perform procedures for miscarriage, the State has at other times restricted this care. The State's current position on this is unclear, *see infra* n.3. Given this lack of clarity, Plaintiff is seeking relief that encompasses aspiration for miscarriage, and uses the term "APC Ban" to encompass the State's intermittent efforts to restrict that care.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Abortion care has improved significantly since it became widely legal in the 1970s, both in terms of procedural technique and in terms of medication. Ramesh Aff. ¶ 11. In 2000, the FDA approved a safe, effective medication abortion regimen, in which patients take a combination of two pills, mifepristone and misoprostol, that cause their body to expel the pregnancy in a process similar to miscarriage. *Id*. ¶ 13. These medications are at least as safe as some over-the-counter medications like ibuprofen. *Id*. ¶¶ 34–35. They are also prescribed in similar dosages to treat miscarriage. *Id*. ¶ 30. The other early abortion method is aspiration abortion, a brief outpatient procedure in which a small, flexible tube is inserted through the natural opening of the patient's cervix and gentle suction is used to empty their uterus. *Id*. ¶ 20; *see also* Pasternack Aff. ¶ 6. Neither method involves surgical incision. Ramesh Aff. ¶ 22.

Complications from medication and aspiration abortion are rare and generally can be treated on an outpatient basis through additional medications or aspiration; for medication abortion, complications would nearly always occur after a patient has left the clinic. Ramesh Aff. ¶¶ 36–39; Pasternack Aff. ¶¶ 3, 7, 15–16; Affidavit of Amy Bender in Support of Summary Judgment ("Bender Aff.") ¶¶ 13–14. Planned Parenthood has protocols in place to identify and treat abortion complications, including an after-hours phone line where patients can be assessed for follow-up or emergency care; this line is staffed by a nurse, with an APC and physician who are available 24 hours a day for consultation, as needed. Bender Aff. ¶ 13. In the extremely rare circumstance where a complication requires immediate higher level care, the standard of care is for that patient to be treated at the nearest hospital or other facility equipped to provide emergency care,

by the staff of that facility. Pasternack Aff. ¶ 16; Bender Aff. ¶ 16; Ramesh Aff. ¶¶ 19, 38; Power Aff. Ex. B (Wein Dep.) 63:20–64:10.

Planned Parenthood patient data confirm just how safe abortion care is: in the past five years, far less than one percent of Planned Parenthood's patients have required emergency follow-up care. Power Aff. Ex. D (Pasternack Dep.) 55:1–6, 56:25–57:6 (in the past five years, seven of Planned Parenthood's medication abortion patients (.35%) and eight of Planned Parenthood's aspiration abortion patients (.18%) have required emergency follow-up care); Ramesh Aff. ¶¶ 38–39 (it is exceedingly uncommon for an abortion complication to require hospital transfer; Alaska rates are well within expected range). Since this Court entered a preliminary injunction in November 2021 permitting APCs to provide medication abortion, no medication abortion patients have required emergency follow-up treatment. Bender Aff. ¶ 17.

B. APCs Can Safely Provide Medication and Aspiration Abortion.

APCs are highly trained medical professionals who practice autonomously as lead clinicians in health care settings; they have been authorized health care providers in Alaska since 1980. 12 AAC 44.400 (enacted 1980; last amended 2022); Ramesh Aff. ¶ 45; Affidavit of Joanne Spetz in Support of Summary Judgment ("Spetz Aff.") ¶¶ 8, 24; Pasternack Aff. ¶¶ 10–11 (describing work with APCs who practiced independently of physicians). APCs have a long history of providing reproductive health care, and they already provide the majority of women's health care across the country. Ramesh Aff. ¶ 46; Spetz Aff. ¶¶ 9, 11–13. Indeed, Alaska relies on APCs "more than most states," "[e]specially in rural areas." Ramesh Aff. ¶¶ 45–46; *see also* Alaska Div. of Pub. Health,

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

2021 Primary Care Needs Assessment, 33 (2021), https://alaskapca.org/wp-content/uploads/2021/05/SOA_PCO_NA_20211865-1.pdf ("Needs Assessment"); Spetz Aff. ¶ 24; Power Aff. Ex. C (Crum Dep.) 87:23–88:2 (stating that Alaska has a general "goal" that APCs and other medical professionals be able to exercise their full scope of practice, or "operate [at] the top of their license type").

Alaska law affords APCs an extremely broad scope of authority to increase health care access, particularly in underserved areas. *See, e.g.*, AS 08.68.170(c); 12 AAC 40.400, .470, 44.600-.620; Spetz Aff. ¶ 22. This gives APCs the authority to provide much of the same care as physicians, including evaluating and diagnosing patients and initiating and managing treatments. Spetz Aff. ¶¶ 12–15; Pasternack Aff. ¶¶ 13–16. Planned Parenthood employs six APCs, all of whom specialize in women's health. Bender Aff. ¶¶ 2–3, 6; Power Aff. Ex. E (Bender Dep.) 10:19–11:14; Pasternack Aff. ¶¶ 13–16. Like physicians, Planned Parenthood APCs are trained in all procedures they will be performing, regardless of prior training, and already receive extensive training around abortion care and assessing pregnancies. Bender Aff. ¶ 12; Power Aff. Ex. E (Bender Dep.) 19:23–21:18. For purposes of training in procedures like aspiration, APCs specializing in women's health have baseline gynecologic procedural skills comparable to those of family physicians. Pasternack Aff. ¶ 18.

In Alaska, as elsewhere, APCs perform a variety of medical treatments and procedures that are at least as complex as medication and aspiration abortion. Ramesh Aff. ¶¶ 47–49, 52, 54–55; Bender Aff. ¶ 9; Pasternack Aff. ¶¶ 11–12. They regularly prescribe medications that are higher risk than medication abortion, such as gender affirming

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

hormone care, menopause hormone care, pre-exposure HIV prophylaxis, and treatment for pelvic infections and STIs. Pasternack Aff. ¶ 13; Ramesh Aff. ¶ 48. They diagnose serious complications like pre-eclampsia, and manage vaginal deliveries and serious complications such as postpartum hemorrhage. Ramesh Aff. ¶¶ 47–50, 52; Bender Aff. ¶¶ 7–8, 18–19; Pasternack Aff. ¶¶ 10–15, 18.

APCs also perform procedures such as vasectomies; episiotomies; vaginal laceration repairs; intrauterine pressure catheter insertions; endometrial biopsies (inserting a sterile tube through a patient's cervix into the uterus to suction and remove tissue from the uterine lining); intrauterine device ("IUD") insertions and removals (sometimes using ultrasound guidance and forceps); and colposcopies (using instruments to magnify the cervix and, when appropriate, removing tissue for biopsy); loop electrosurgical excision procedures ("LEEP"); and intrauterine inseminations (inserting a thin cannula into the patient's uterus and injecting sperm through the cannula). Ramesh Aff. ¶¶ 47–50, 52; Bender Aff. ¶¶ 7–8, 18–19; Pasternack Aff. ¶¶ 10–15, 18. And APCs in Alaska and elsewhere have long provided treatments medically identical to medication and aspiration abortion, as well as providing screening and follow-up care for medication abortion. Ramesh Aff. ¶¶ 29–30; Pasternack Aff. ¶ 14; Bender Aff. ¶¶ 7–9, 18–19.[3]

[3] The Alaska State Board of Nursing ("BON") recognized this in an Advisory Opinion issued on January 9, 2006, approving the request of an Advanced Practice Registered Nurse ("APRN") employed by Planned Parenthood to confirm that her scope of practice included providing uterine aspiration procedures for patients with a non-viable pregnancy, incomplete spontaneous abortion (miscarriage), or complicated procedural or medical abortion (where pregnancy is non-viable). *See* Power Aff. Ex. F (BON Letter); Ex. G (Advisory Opinion excerpt); Ex. A (Monrad Dep.) 82:3–15. The BON

(continued . . .)

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

The American College of Obstetricians and Gynecologists ("ACOG") and numerous other medical and scientific organizations have uniformly affirmed that medication and aspiration abortion are within APCs' scope of practice. Spetz Aff. ¶ 69; Ramesh Aff. ¶¶ 60–62. The FDA has long approved APC provision of medication abortion (subject to state law). Ramesh Aff. ¶ 15. Twenty-one states legally permit APCs to provide medication abortion care and 17 states allow them to perform aspiration abortion. *Id.* ¶ 56. Planned Parenthood's APCs provide this care in Washington and other states, with excellent safety records comparable to those of Planned Parenthood's physician providers. *Id.* ¶ 59.

APCs can and already do competently treat most early abortion complications—evaluating patients, prescribing medications, and performing aspirations after incomplete medication abortions. Bender Aff. ¶¶ 6–7, 9, 14; Ramesh Aff. ¶¶ 36–37. They also diagnose the exceedingly rare complications that require higher level care and can coordinate transition to that care just as a physician would. Ramesh Aff. ¶ 38; Bender Aff. ¶ 16; Power Aff. Ex. B (Wein Dep.) 146:13–147:2 ("[T]here's always the potential ability to transfer to higher care."), Ex. A (Monrad Dep.) 125:13–21 (Defendant conceding that APRNs, like physicians, could "just as readily diagnose serious complications if it is within their scope of practice").

subsequently denied similar applications, but recently stated that APCs can provide this care as long as it is consistent with their scope as outlined by national medical bodies. *Id.* Ex. A (Monrad Dep.) 91:13–92:5.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

C. Prohibiting Qualified APCs from Providing Early Abortion Care Restricts Abortion Access in Alaska and Harms Alaskans.

As the State has conceded, there is a shortage of primary care providers in Alaska, including reproductive health services providers. Power Aff. Ex. C (Crum Dep.) 75:2–8, 146:9–20, 54:7–9. To address the health care needs of Alaska patients, the State has afforded APCs a full scope of practice. *See supra* Facts § B.

But that has not been enough: The shortage of providers in Alaska is so severe in some regions that it has led to the pioneering of new categories of health care providers (community health aides/practitioners ("CHAs")), individuals without formal medical education who are occupationally trained and based in rural villages. These individuals perform critical and sometimes emergency care such as administering medicines, including by injection; treating wounds, such as from gunshots, including suturing; and setting bones, as well as receive training in "emergency care . . . including facial trauma, altered level of consciousness, potentially serious chest pain, acute orthopedic injuries, burns, hypothermia, poisoning, and uncomplicated emergency delivery." *See* CHA Program Certification Bd., *Standards and Procedures*, 10–11, 14–15 (amended Jan. 13, 2022), https://akchap.org/wp-content/uploads/2022/03/CHAPCB-Standards-Procedures-Amended-2022-01-13.pdf; Power Aff. Ex. C (Crum Dep.) 71:8–16.

CHAs also generally fill in primary care gaps by obtaining medical histories, performing physical examinations, assessing patients, and developing care plans, including referring patients as needed to APCs and physicians. *See* Needs Assessment at 34–35; Power Aff. Ex. C (Crum Dep.) 71:8–72:22. Community health aides/practitioners receive

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Medicaid funding from Alaska, and the State holds up the program as a model for "frontier areas around the rest of the country." Power Aff. Ex. C (Crum Dep.) 69:3–16, 71:24–73:14.

For abortion care, the State's policy has been the exact opposite: despite the State's recognition in all other areas that APCs can and should practice to the top of their license, and despite clear and longstanding medical consensus that APCs are qualified to provide abortion care and that barring them from doing so harms patients, the State has for decades refused to repeal or cease enforcing the APC Ban. *See* Power Aff. Ex. A (Monrad Dep.) 65:7–11, 67:4–10, 94:3–6 (conceding that there are no other procedures that APCs are banned by statute from performing). The results are stark.

Planned Parenthood is currently the only publicly known abortion provider in the State. Pasternack Aff. ¶ 4.[4] Eighty-six percent of Alaska boroughs lack an abortion provider, and 32 percent of women live in those boroughs. *Id*. Because there are only three health centers that provide abortion, patients often need to travel long distances for abortion services. Bender Aff. ¶ 25. Not only is abortion available at only three locations, but it is only provided on an intermittent basis. Because of constraints on hiring physicians for abortion care, especially in rural areas, Planned Parenthood can only offer abortion services on limited days of the month. Pasternack Aff. ¶¶ 20–22; Spetz Aff. ¶ 92 (APCs are more likely to practice in rural areas of Alaska than physicians); Order Granting Pls.' Mot. Prelim. Inj. ("PI Order") 2. Before the Court granted the injunction, medication abortion

[4] Planned Parenthood provides medication abortion up to 11 weeks, as measured from a patient's last menstrual period ("LMP") and aspiration abortion up to 13.6 weeks LMP in Anchorage, Juneau, and Fairbanks, as well as procedural abortion up to 17.6 weeks LMP in Anchorage. Bender Aff. ¶ 4; Pasternack Aff. ¶¶ 4–6.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

generally was only available one or two days per week in Anchorage and weekly elsewhere, and aspiration abortion is still generally available only about once a week in Anchorage, about twice monthly in Fairbanks, and about monthly in Juneau. Pasternack Aff. ¶¶ 20–22; Power Aff. Ex. D (Pasternack Dep.) 12:19–13:1; Bender Aff. ¶¶ 22, 24.

Since the injunction, medication abortion has been available virtually any day a clinic is open, and many more patients have obtained a medication abortion. Pasternack Aff. ¶¶ 21–22; Bender Aff. ¶ 11; Power Aff. Ex. I (New Dep.) 40:6–41:6 (defense expert conceding post-injunction increase in medication abortions in Alaska). Increased access to medication abortion has also increased the number of Alaskans able to access abortion care. Power Aff. Ex. I (New Dep.) 118:8–21 (conceding that, even on an overly conservative analysis, he found an over 80 percent likelihood that the injunction was increasing Alaska's abortion rate); *id.* at 90:18–21 (generally, increased access to medication abortion increases abortion access overall). If the Ban were enjoined in full, Planned Parenthood could continue offering flexible scheduling for medication abortion and could provide aspiration abortion about once a week in Juneau and more often in Anchorage. Pasternack Aff. ¶¶ 22–24; Bender Aff. ¶¶ 20–21.

When appointment availability is limited, patients must either travel farther for care (often from Fairbanks or Juneau to Anchorage) or, if they cannot travel to Anchorage, wait until they find an appointment time in Fairbanks or Juneau that fits their schedule. Bender Aff. ¶ 25; Pasternack Aff. ¶¶ 24, 27, 30. Patients who have already traveled to a health center to receive other care from an APC may need to reschedule an additional appointment on a later day for their abortion. Bender Aff. ¶ 11. All of these alternatives burden and

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

delay patients, sometimes for several weeks. Bender Aff. ¶¶ 25–30; Pasternack Aff. ¶¶ 26–31; Ramesh Aff. ¶¶ 65, 69–76, 79–82; Power Aff. Ex. I (New Dep.) 69:4–9 (conceding that scheduling conflicts are more likely to occur when appointment days are limited). The APC Ban also deprives patients of the opportunity to receive care from clinicians with whom they may have an established relationship and feel more comfortable. Bender Aff. ¶ 22; Power Aff. Ex. E (Bender Dep.) 86:16–89:17; Pasternack Aff. ¶ 31.

Patients struggle to access abortion when it is only available far from their home or on limited days for limited hours. Bender Aff. ¶ 26. Most abortion patients have low incomes, are parents, and/or have inflexible and/or seasonal work schedules. *Id*. ¶ 27; Pasternack Aff. ¶¶ 27–29. Limited access makes it harder for patients to arrange transportation, childcare, and time off from work (often unpaid), all while keeping their decision private. Bender Aff. ¶ 27; Pasternack Aff. ¶ 29. A significant percentage of abortion patients have a controlling or violent intimate partner; it can be particularly hard for them to arrange a medical appointment, and it is harder when these appointments are as limited as they are in Alaska. Bender Aff. ¶ 26; Affidavit of Ingrid Johnson in Support of Motion for Summary Judgment ("Johnson Aff.") ¶ 8. These barriers are particularly severe for Alaska Native women, who are more likely to live in rural areas and who suffer higher rates of partner coercion and violence. Bender Aff. ¶ 32. Weather also sometimes interferes with patient travel, staffing, and/or health center operations, a problem compounded when appointment days and rescheduling options are so limited to begin with. *Id*. ¶ 28; Pasternack Aff. ¶ 27.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

The delays Alaskans face as they struggle to coordinate medical appointments increase their health risks. Though abortion is extremely safe, the risks increase as pregnancy progresses. Ramesh Aff. ¶ 77; *see also* Power Aff. Ex. B (Wein Dep.) 156:20–157:8 (agreeing that first-trimester abortion is generally safer than second-trimester abortion and that medication abortion is safer and more effective the earlier it is provided in a pregnancy); Power Aff. Ex. B (Wein Dep.) at 164:6–19 (agreeing that it is generally safer for a patient to receive abortion care earlier in their pregnancy); Pasternack Aff. ¶ 3. For pregnancies terminated by medication, the amount of bleeding and (extremely low) risk of needing a blood transfusion increase as the gestational age increases. Ramesh Aff. ¶ 77. Patients delayed past 11 weeks lose the option of a medication abortion, and must have a procedure instead. Pasternack Aff. ¶¶ 6, 17, 30; Bender Aff. ¶ 29; Ramesh Aff. ¶ 73.[5] And as gestational age increases, this procedure becomes more complex and more likely to require sedation. Ramesh Aff. ¶ 77.

Delays are also stressful, and compound costs. Pasternack Aff. ¶¶ 6, 29 (costs may increase if more complex care is needed due to a later gestational age, and "it is an emotional burden, and extremely stressful, for our patients to arrange the logistics of accessing the limited care available"); Bender Aff. ¶ 30 (delay and obstacles are distressing to patients); Power Aff. Ex. E (Bender Dep.) 73:3–7 (before the injunction, patients would regularly express frustration at needing to schedule an additional appointment for their

[5] Some patients have medical conditions that make medication abortion a safer option for them. Ramesh Aff. ¶¶ 24–25; Pasternack Aff. ¶ 8. Others have a strong personal preference for avoiding a procedure. Ramesh Aff. ¶ 25; Bender Aff. ¶ 29; Pasternack Aff. ¶ 8.

abortion). Some patients, if delayed, suffer prolonged debilitating pregnancy symptoms, or prolonged distress or trauma related to their pregnancy (e.g., if they survived rape), or must delay other needed medical care incompatible with pregnancy; others face increasing risk of partner coercion or violence as their pregnancy becomes harder to conceal. Bender Aff. ¶ 26; Ramesh Aff. ¶ 78; Johnson Aff. ¶ 8; Pasternack Aff. ¶ 28. In general, once a patient decides to end a pregnancy, they have a strong preference for doing so as soon as possible. Ramesh Aff. ¶ 78; Bender Aff. ¶ 22.

Compounding the stress associated with delay, many patients fear that they will be pushed beyond the point at which they may obtain a legal abortion and will be forced to carry the pregnancy to term. Ramesh Aff. ¶ 80. And some Alaskans *are* unable to access care and forced to carry to term. Bender Aff. ¶ 30; Ramesh Aff. ¶ 80; Power Aff. Ex. E (Bender Dep.) 92:10–93:13, 111:3–9; Pasternack Aff. ¶ 30; Power Aff. Ex. I (New Dep.) 87:11–88:17, 93:8–94:12 (conceding that, according to studies, restrictions on the provision of abortion prevent some people from accessing abortion); Power Aff. Ex. I (New Dep.) at 53:9-13 (economic theory suggests an APC Ban would be particularly likely to prevent some abortions in Alaska, given its rural population and small number of abortion facilities); Power Aff. Ex. I (New Dep.) at 100:9–24 (Alaska's APC Ban likely prevents some abortions).

People forced to carry an unwanted pregnancy to term are exposed to increased risk of death and major complications from childbirth, and they and their newborns are at risk of negative health consequences, including reduced use of prenatal care, higher rates of preterm delivery and birth defects, and lower breastfeeding rates, as well as poor maternal

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

and neonatal outcomes. Ramesh Aff. ¶¶ 44, 81. They are more likely to become depressed—and postpartum depression, which Alaska Native women experience at a higher rate, is a common complication of all pregnancies. *Id.* ¶¶ 43, 81.[6] They also are significantly less likely to be able to bring themselves and their families out of poverty, and those who are victims of intimate partner violence will, in many cases, face increased difficulty escaping that relationship (because of new financial, emotional, practical, and legal ties to that partner). *Id.* ¶ 81; *see also* Johnson Aff. ¶¶ 8, 26–32, 35 (barriers to obtaining abortion for those experiencing intimate partner violence). Faced with barriers to abortion access, some people attempt to self-induce, sometimes risking great harm. Ramesh Aff. ¶ 82; *see also* Bender Aff. ¶ 30.

For these and other reasons, major medical organizations such as ACOG, the American Medical Association, the American Academy of Family Physicians, the American Osteopathic Association, the American Academy of Pediatrics, the American Psychiatric Association, and the American Psychological Association have all affirmed that abortion access is critical to women's health and well-being. Ramesh Aff. ¶¶ 83–84. Contrary to the State's position, Alaska's restriction on access does nothing to protect Alaskans, and instead harms them.

[6] Children from unintended pregnancies also have poorer mental and physical health during childhood. *Id.* ¶ 81.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

ARGUMENT

A. Standard for Granting a Motion for Summary Judgment.

Summary judgment is warranted if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Alaska. R. Civ. P. 56(c). The moving party may meet its burden with "affidavits setting forth concise statements of material facts made upon personal knowledge." *Id.* Once the party seeking summary judgment has met its initial burden, "the burden shifts to the non-moving party 'to set forth specific facts showing that [it] could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issue of fact exists.'" *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (citations omitted). The non-moving party "must present more than a 'scintilla' of evidence to avoid summary judgment; [it] must present enough evidence to 'reasonably tend[] to dispute or contradict' the evidence presented by the [moving party]." *Alakayak v. Brit. Columbia Packers, Ltd.*, 48 P.3d 432, 449 (Alaska 2002) (quoting *Yurioff v. Am. Honda Motor Co.*, 803 P.2d 386, 389 (Alaska 1990)).

B. Plaintiff Is Entitled to Summary Judgment.

In its order granting Plaintiff's motion to preliminarily enjoin the APC Ban as applied to medication abortion, this Court found that Plaintiff was likely to succeed in showing that "prohibiting advanced practice clinicians from providing medication abortion violates patients' right to privacy under the Alaska Constitution by significantly restricting the availability of abortions in this state without sufficient justification," and that "[t]he law also likely violates patients' right to equal protection, since it prevents patients seeking

abortions from receiving care from advanced practice clinicians that patients experiencing miscarriage may receive from the same providers." PI Order 1–2. Since this Court's order, Plaintiff has produced further evidence that the Ban (as applied to both medication abortion and aspiration) is an unjustified infringement of its patients' rights, and the State has failed to produce "more than a scintilla" of evidence to the contrary.

1. The Alaska Constitution Protects the Right to Abortion and Other Medical Care.

Article I, section 22 of the Alaska Constitution (the "Privacy Clause") provides: "The right of the people to privacy is recognized and shall not be infringed." "Because this right to privacy is explicit, its protections are necessarily more robust and 'broader in scope' than those of the implied federal right to privacy." *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 581 (Alaska 2007) (hereinafter "*Planned Parenthood II*"). The Privacy Clause protects, as a fundamental right, "[a] woman's control of her body, and the choice whether or when to bear children, [which] involves the kind of decision-making that is 'necessary for . . . civilized life and ordered liberty.'" *Valley Hosp. Ass'n v. Mat–Su Coal. for Choice*, 948 P.2d 963, 968 (Alaska 1997) (ellipsis in original) (quoting *Baker v. City of Fairbanks*, 471 P.2d 386, 402 (Alaska 1970)); *Planned Parenthood II* at 581 ("[F]ew things are more personal than a woman's control of her body, including the choice of whether and when to have children.") (quoting *Valley Hosp. Ass'n,* 948 P.2d at 968). More broadly, the Privacy Clause protects as fundamental Alaskans' "right to make decisions about medical treatments." *Huffman v. State*, 204 P.3d 339, 346 (Alaska 2009).

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Article I, section 1 of the Alaska Constitution (the "Equal Protection Clause"), which provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law" (Alaska Const. art. I, § 1), likewise "'affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment.'" *Alaska Civ. Liberties Union v. State*, 122 P.3d 781, 785 n.16, 787–88 (Alaska 2005) (quoting *Malabed v. N. Slope Borough*, 70 P.3d 416, 420 (Alaska 2003)); *see also State v. Planned Parenthood of the Great Nw.,* 436 P.3d 984, 1000 (Alaska 2019) (hereinafter "*Planned Parenthood IV*"*)*. As does the Privacy Clause, the Equal Protection Clause protects abortion as a fundamental right. *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 913 (Alaska 2001) ("[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 governmental discrimination against either woman.").

The Alaska Supreme Court has repeatedly recognized that, based on the Privacy and Equal Protection Clauses, laws that restrict access to abortion are invalid unless they satisfy strict scrutiny. *Valley Hosp. Ass'n,* 948 P.2d at 967–72 (applying analysis under a state right to privacy); *Planned Parenthood II*, 171 P.3d at 581–85 (same); *Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122, 1137–43 (Alaska 2016) (hereinafter "*Planned Parenthood III*") (applying equal protection analysis); *Planned Parenthood IV*, 436 P.3d at 1000–04 (same); PI Order 7. The strict scrutiny standard places a "'high burden'" of justification on the State, *Planned Parenthood IV,* 436 P.3d at 1000 (quoting *State, Dep't of Health & Soc. Servs.*, 28 P.3d at 912), and specifically requires the State to show that

the challenged restriction is the least restrictive means of furthering a compelling State interest. *Planned Parenthood II*, 171 P.3d at 581.[7] Applying strict scrutiny, the Court has invalidated a range of abortion restrictions, from a restrictive State hospital policy, *see State v. Planned Parenthood of Alaska*, 35 P.3d 30 (Alaska 2001) (hereinafter "*Planned Parenthood I*")*)*, to laws that require minors to involve their parents before obtaining an abortion*, see Planned Parenthood II*, 171 P.3d 577; *Planned Parenthood III*, 375 P.3d 1122, to restrictions on State funding for abortion care, *see Planned Parenthood IV*, 436 P.3d 984.

The Court's privacy and equal protection analyses "closely resemble[]" each other, *Planned Parenthood III*, 375 P.3d at 1146. The difference is that a privacy analysis asks whether the *restriction* itself is the least restrictive means of advancing a compelling State interest, *see Planned Parenthood II*, 171 P.3d at 583–85, whereas an equal protection analysis asks whether the State's *selective* restriction of a particular class, and not of similarly situated classes, is the least restrictive means of advancing a compelling State interest, *see Planned Parenthood III*, 375 P.3d at 1139–43; *Planned Parenthood IV*, 436 P.3d at 1004 ("Our equal protection analysis does not ask what interests might justify restricting funding for abortion *specifically*, but what interests would justify treating abortion *differently* from childbirth and other pregnancy care."). Under either "separate and independent" analysis, a restriction is invalid if it is underinclusive or overinclusive.

[7] Before applying this standard, the Court considered and rejected the more permissive standard then applied by federal courts. *Valley Hosp. Ass'n*, 948 P.2d at 969.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Planned Parenthood III, 375 P.3d at 1134, 1138; *Planned Parenthood IV*, 436 P.3d at 1004.

2. The APC Ban Is Subject to, and Fails, Strict Scrutiny.

The APC Ban restricts access to abortion.[8] Plaintiff has presented undisputed, common sense evidence that having full-time APCs offer abortion care would make this care more accessible than relying on occasional per diem physicians to make time outside their regular practice, particularly outside Anchorage where the physician network is more limited. *See* Pasternack Aff. ¶¶ 20–24, 31; Bender Aff. ¶¶ 11, 20–23; *cf.* PI Order 8 (finding sufficient evidence that the Ban violated Alaskans' rights "by limiting the days each month that medication abortion appointments are available").[9] And the Ban's restrictive effects have been illustrated by the fact that, since the Court temporarily enjoined the Ban as to medication abortion, Planned Parenthood has been able to dramatically expand the days of the week when medication abortion is available and far more patients than before are

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

[8] As set forth above, Planned Parenthood uses the term "APC Ban" to include not only AS 18.16.010 but also the BON's restrictive policy toward APCs performing aspiration for miscarriage and incomplete abortion. This policy restricts access to that care in the same way that the statutory ban restricts access to aspiration abortion.

[9] In granting Plaintiff's PI Motion, this Court rejected the State's position that Plaintiff had a burden to "quantify" the law's harms. PI Order 8–9. Alaska courts have routinely invalidated abortion restrictions without requiring such quantification. *See Planned Parenthood IV,* 436 P.3d 984; *Planned Parenthood of Alaska v. State*, No. 3AN-97-6014, 2003 WL 25446126, at ¶¶ 78–86 (Alaska Super. Ct. Oct. 13, 2003), *aff'd,* 171 P.3d 577; *Planned Parenthood III,* 375 P.3d at 1136; *Valley Hosp. Ass'n*, 948 P.2d at 968, 971 (by refusing to provide abortion care, state hospital "interfere[d] with" the right to abortion, among other reasons by forcing patients to travel for care).

accessing this method. *Supra* Facts § C.[10] In addition to meaningfully restricting access, the Ban also discriminates between women seeking an abortion and other pregnant women, burdening access for the former but not the latter class.[11] *Accord* PI Order 9–10 ("Planned Parenthood has also demonstrated that AS 18.16.010, as applied to the provision of medication abortion by APCs, results in different treatment for two groups of people: pregnant patients seeking abortion and pregnant patients not seeking abortions but experiencing miscarriage[,] . . . and dictates a patient's access to care based on their decision to obtain an abortion."). For both independent reasons, the APC Ban is subject to strict scrutiny, under which the State must justify it as narrowly tailored to a compelling State interest. *Planned Parenthood III,* 375 P.3d at 1137.

Defendants have suggested that the APC Ban serves a compelling State interest in patient safety. Power Aff. Ex. H (State's Resp. to Pl.'s Interrog. No. 4) at 6–7. As this Court found, the State failed to support this position with evidence in opposing a preliminary

[10] The injunction has also enabled Planned Parenthood to offer same-day care in many instances. Bender Aff. ¶¶ 11, 23. Patients have reported to staff that these changes have been extremely helpful in enabling them to access timely care. *Id.* ¶ 23.

[11] As set forth below, the State has justified restricting abortion care based on concerns about the medical risk associated with this care. Because people carrying a pregnancy to term also require medical care that carries risk, the two groups are "similarly situated" for purposes of an equal protection analysis. *Cf. Planned Parenthood IV*, 436 P.3d at 1000 ("In order to determine whether differently treated groups are similarly situated, we look to the state's reasons for treating the groups differently." (internal quotation marks and citation omitted)). Although this comparison is sufficient, there are other classes that the State is treating differently from Alaskans seeking an abortion, such as Alaskans seeking other low-risk medical care, *cf. Planned Parenthood I*, 35 P.3d 30, 43 & n.86 (in equal protection analysis, comparing treatment of minors seeking an abortion not only to that of those carrying a pregnancy to term, but also to that of those seeking other medical and dental care without parental involvement; also noting disparate effect of restrictions on minors living in remote areas).

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

injunction, PI Order 10–11; that has not changed. *See Meyer v. State, Dep't of Revenue, Child Support Enf't Div. ex rel. N.G.T.*, 994 P.2d 365, 369-70 (Alaska 1999) (affirming grant of summary judgment where "broad denial" in interrogatories did not challenge otherwise "strong evidence" and noting that the Alaska Supreme Court "has affirmed summary judgment . . . where the nonmovant has provided only his own meager statements unsupported by other evidence"); *Mahan v. Arctic Catering, Inc.*, 133 P.3d 655, 659 (Alaska 2006) (affirming grant of summary judgment where vague assertion in initial interrogatory was unsubstantiated by subsequent deposition and affidavit).

The medical consensus is that first-trimester abortion is extremely safe, and that APCs are qualified to provide this care safely. *See supra* Facts §§ A–B. Indeed, Alaska courts have described abortion as "'quintessentially' and 'extraordinarily' safe." *Planned Parenthood III*, 375 P.3d at 1141 (citing trial court findings with approval). Medication abortion is medically equivalent to care Alaska APCs already provide for miscarriage, and aspiration abortion is medically equivalent to aspiration care that the BON has confirmed APCs can safely provide and that APCs routinely provide in other states. Ramesh Aff. ¶¶ 29–30; Pasternack Aff. ¶¶ 15, 18, 23; *supra* n.3. Both methods are comparable in risk and complexity to other care APCs provide. *See supra* Facts § B. The FDA has long authorized APCs to provide medication abortion, where consistent with state law. Ramesh Aff. ¶ 15.

There is also expert consensus that public health considerations militate toward *expanding* access to abortion so that people can obtain that care earlier in pregnancy, when it is a safer, and so that they are not forced to carry to term. *Id*. ¶¶ 57–62, 77, 80. Finally, it bears emphasis that a person prevented from accessing abortion by the APC Ban may

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

end up bearing the far higher risks of childbirth *attended by an APC*. *Id*. ¶ 44 (Alaska has one of the highest rates in the country of midwife-attended birth); *Planned Parenthood III,* 375 P.3d at 1141 (citing findings that "abortion raises *fewer* health concerns . . . than does giving birth" (emphasis in original)).

Given these undisputed facts, there is no "medically-acknowledged, *bona fide* health risk" that would justify the State's intrusion into "the patient's own informed health care decisions made in partnership with his or her chosen health care provider." *Armstrong v. State*, 989 P.2d 364, 380, 384 (Mont. 1999). Nor is there any justification for the State's decision to restrict care for Alaskans seeking abortion care but not for those seeking other, higher-risk pregnancy-related care. *See Planned Parenthood IV*, 436 P.3d at 1005 (faulting State for refusing to pay for "elective" abortion procedures while paying for other elective pregnancy-related care).

Even setting these facts and the expert consensus aside, Defendants' justification, on its face, does not match the APC Ban's actual effect with respect to medication abortion. While significantly reducing the days on which a patient can be scheduled to *receive* the medications, the APC Ban does not prevent APCs from screening patients before a medication abortion or managing complications after they have taken the medications, as Plaintiff's APCs already do in the regular scope of their practice. *See supra* Facts § B; Bender Aff. ¶¶ 7, 13–14. The only act the APC Ban prohibits is the actual *prescription* of the pills, and Defendants have not even claimed that APCs could not safely undertake that specific act.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Critically, in the rare event that a patient has a complication from a medication abortion, this invariably occurs after they have left the clinic, Bender Aff. ¶¶ 14–16; under Planned Parenthood's protocols, they call an after-hours line where nurses assess their need for follow-up or emergency care, consulting a physician or APC as needed, *id.* ¶ 13. This would still be the case for a patient experiencing a complication from a medication abortion absent the APC Ban. *Id.* ¶ 21. Thus, the factual context here does not support any assertion that the State is actually protecting medication abortion patients. *Cf. Planned Parenthood III*, 375 P.3d at 1139–40 (State assertions of a general interest in protecting minors "requires context").

Even were there evidence that first-trimester abortion carries risks justifying legal restrictions, which there is not, the APC Ban would be underinclusive because it does not apply to miscarriage care, which involves the same methods and the same associated risks, or to higher-risk obstetrics care. *See* Ramesh Aff. ¶¶ 29–30, 44, 48–49.[12] Nor does the APC Ban apply to other comparable or higher-risk care that APCs routinely provide, such as vaginal childbirth, LEEPs, vasectomies, or endometrial biopsies. *See supra* Facts § B; *cf. Armstrong*, 989 P.2d at 385 (faulting the State for barring an APC plaintiff from providing abortion care while "ma[king] no attempt to prohibit her from performing other more risky

[12] In their discovery responses, Defendants attempt to distinguish miscarriage care as more time-sensitive than abortion care. *See* Power Aff. Ex. H (State's Resp. to Pl.'s Interrog. No. 22) at 28–29. Even if accurate, this assertion would not actually justify *restricting* safe abortion care, as the state has done. At any rate, it is inaccurate. Bender Aff. ¶ 31; Pasternack Aff. ¶ 25; Power Aff. Ex. A (Monrad Dep.) 128:8–129:8 (conceding that not all miscarriage care is time-sensitive and that abortion care may be emergent).

medical procedures such as uncomplicated deliveries of babies, inserting IUDs, and prescribing and administering most drugs" (citation omitted)).

The APC Ban is also *over*inclusive, for numerous reasons. To name a few: (1) the APC Ban makes no exception for patients who urgently need abortion care, including because they are victims of sexual assault or intimate partner violence or are about to become ineligible for a medication abortion, or because they are transient or traveling to Plaintiff's health centers from far away and may not be able to return, *see supra* Facts § C; (2) it applies to all APCs, regardless of their level of training or experience; indeed, it applies regardless of whether APCs have safely provided abortion care in other states; and (3) it applies to APCs regardless of whether they are trained to perform any necessary follow-up care or refer the patient for that care, *see id.* This overinclusion is constitutionally fatal. *Cf. Planned Parenthood III*, 375 P.3d at 1137 ("If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated." (citation omitted)).

At bottom, the APC Ban is a poor fit for the State's interest in protecting patients because it was enacted in 1970, over 50 years ago, when safe, legal medication abortion had not even been developed (let alone studied, or approved by the FDA); when abortion procedures were less safe; and when APCs did not exist as a category of authorized and irreplaceable health care providers in Alaska. *See supra* Facts §§ A–B. Rather than acknowledge this inescapable logic, Defendants seek to continue enforcing this 1970 statute and restricting abortion access. The State's approach to abortion stands in stark contrast to its general approach to regulating APCs: "defin[ing] the scopes of practice of APRNs and PAs in an *open-ended* manner, with reference to recognized national

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

educational and credentialing programs, in recognition of the *constantly-evolving* nature of the educational and certification programs of these professions as well as the constantly-evolving nature of medical knowledge and procedures." Power Aff. Ex. H (State's Resp. to Pl.'s Interrog. No. 13) at 14–15 (emphasis added). This contrast highlights what a poor fit the APC Ban is for the State's asserted interest and why the APC Ban cannot possibly meet the close tailoring requirements of strict scrutiny.

For these reasons, based on undisputed facts, the APC Ban plainly fails strict scrutiny review. It does not advance patient safety at all, still less is it the least restrictive means of doing so. To the contrary, it deprives abortion patients, and only abortion patients, of a large pool of qualified, otherwise-available providers, thereby exposing them to a range of risks and other harms.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests that this Court enter summary judgment in its favor and permanently enjoin the APC Ban as to first-trimester medication and aspiration abortion and miscarriage aspiration.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

Dated this 1st day of August, 2022.

STOEL RIVES LLP

By: /s/ Vanessa Power
Shannon M. Bleicher (Bar No. 1910081)
Veronica M. Keithley (Bar No. 1411100)
Vanessa Soriano Power, *pro hac vice*

PLANNED PARENTHOOD FEDERATION OF AMERICA

Alice Clapman, *pro hac vice*
Camila Vega, *pro hac vice*

LEGAL VOICE

Kim C. Clark, *pro hac vice*

Attorneys for Plaintiff Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, and Kentucky

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920

CERTIFICATE OF SERVICE

This certifies that on August 1, 2022, a copy of the forgoing was served via email on:

Harriet D. Milks
Senior Assistant Attorney General
harriet.dinegar@alaska.gov

Margaret Paton-Walsh
Chief Assistant Attorney General
margaret.paton-walsh@alaska.gov

Christopher A. Robison
Special Litigation Attorney
chris.robison@alaska.gov

Attorneys for Defendants

/s/ Leslie Lomax
Leslie Lomax, Legal Practice Assistant

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main 907.277.1900 Fax 907.277.1920