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

PLANNED PARENTHOOD GREAT NORTHWEST, HAWAI'I, ALASKA, INDIANA, AND KENTUCKY, Plaintiffs, v. STATE OF ALASKA; CORI MILLS, in her official capacity as Acting Attorney General of the State of Alaska; ALASKA DEPARTMENT OF HEALTH; STATE MEDICAL BOARD; and ALASKA BOARD OF NURSING, Defendants.	Case No. 3AN-26-07345CI

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I. Introduction

Planned Parenthood asks the Court to enjoin the State from enforcing a duly enacted health-and-safety requirement prior to discovery, expert testimony, or trial. Its motion repackages AS 18.16.010(a)(2), a statute requiring that an abortion be performed in a hospital or other approved facility, as a categorical "Telehealth Ban." But Alaska law does not prohibit telehealth consultations. Planned Parenthood itself uses site-to-site telehealth[1] in Alaska. The challenged statute instead regulates where an abortion may be

[1] Site-to-site telehealth involves a patient at a health care facility consulting with a health care provider who is not at the same facility.

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performed. Alaska Statute 18.16.010(a)(2).[2] That statutory distinction is important. The requested injunction would not merely remove a communications restriction. It would judicially create an exception allowing abortions to be performed in unapproved locations throughout Alaska while the case is litigated.

Planned Parenthood has not made the clear showing required to obtain that relief. Its brief relies on generalized literature and affidavits from an organizational medical officer and an expert. Planned Parenthood has not provided affidavits from, or even a description of, a patient in Alaska who sought and was denied direct-to-patient ("DTP") medication abortion. It has not submitted data showing that the facility requirement caused a missed abortion or a particular delay. It has not provided Alaska-specific outcome data comparing DTP care with facility-based care. And it has not developed any specific evidence that the potential harm from an injunction due to screening failures, uncertain gestational dating, ectopic pregnancy, contraindications, shipping delays to remote communities, lack of adequate emergency response, continuity of records, or enforcement and reporting can be mitigated in a manner that protects patients.

Planned Parenthood's evidence may support the proposition that DTP medication abortion can be safe for screened patients under some—or even many—circumstances. But it does not establish that Alaska's constitution permits every abortion provider to

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[2] A separate statute provides that "a physician may not prescribe, dispense, or administer an abortion-inducing drug . . . unless the physician complies with AS 18.16.010." AS 08.64.364(c)(1).

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treat every patient at an unapproved location without the safeguards the legislature imposed.

Planned Parenthood has not shown that it meets the requirements for an injunction. Under the balance-of-hardships standard, Planned Parenthood must establish irreparable harm, serious and substantial merits questions, and that the State and the public are adequately protected. *State v. Arctic Village Council*, 495 P.3d 313, 319–20 (Alaska 2021). The public's interest in consistent enforcement of health, licensing, recordkeeping, and facility laws cannot be indemnified after the fact. Under the alternative probable-success standard, Planned Parenthood must clearly show probable success—not merely identify a constitutional question. *Id*. Planned Parenthood meets neither test on this incomplete record.

The Court should deny the motion. At a minimum, it should defer a decision until the State can submit responsive medical, operational, and enforcement evidence and cross-examine Planned Parenthood's affiants. If any interim relief is considered, it must be precisely limited, preserve independent statutory and regulatory safeguards, require defined protocols and reporting, and be secured under Civil Rule 65(c).

II. FACTUAL AND STATUTORY BACKGROUND

A. Alaska regulates the place and manner in which abortions are performed.

Alaska Statute 18.16.010(a) provides that "[a]n abortion may not be performed in this state unless" specified conditions are met. Paragraph (a)(1) identifies who may perform the abortion. Paragraph (a)(2) requires performance "in a hospital or other

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facility approved for the purpose by the Department of Health or a hospital operated by the federal government or an agency of the federal government." The remaining provisions address other prerequisites. A knowing violation may carry criminal consequences. Alaska Statute 18.16.010(c).

The telehealth statute, AS 08.64.364, does not erase these abortion-specific requirements. It generally addresses diagnosis, treatment, and prescribing without a physical examination, but subsection (c)(1) expressly conditions prescribing an abortion-inducing drug on compliance with AS 18.16.010. The specific cross-reference defeats any suggestion that the general telehealth authorization silently displaced the facility requirement. The provisions operate together. Telehealth may facilitate evaluation and consultation, but abortion care remains subject to the abortion statute's place-of-performance rule.

The Medical Board's rules supply additional safeguards. Among other things, 12 AAC 40.080 requires examination by an Alaska-licensed physician and a written record of a patient's physical and emotional health before an abortion, and 12 AAC 40.090 requires an attending physician's evaluation and estimate of gestational duration based on history, examination, and test results. Planned Parenthood asserts that "examination" may occur entirely by telehealth and conditionally challenges the regulation if the State disagrees.[3] That undeveloped alternative claim underscores why a broad preliminary injunction is inappropriate. Planned Parenthood has not yet established all of the

[3] PP Mem. at 25 n.82.

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provisions, specifically, it is challenging, how they interact, or which remain enforceable under Planned Parenthood's proposed order.

In its proposed order, Planned Parenthood makes a vague, overbroad request for relief. It asks the Court to enjoin the State from "enforcing AS 18.16.010(a)(2) and *from enforcing any other statutes or regulations that require all abortions to be provided in a hospital or other health care facility and/or that otherwise prohibit providing medication abortions via DTP telehealth*, with respect to abortions provided while this order is in effect." Among other significant problems, were the Court to grant the requested relief, practitioners would not have any certainty whether they were violating an enjoined statute or regulation, potentially placing them in criminal, civil, or professional jeopardy. Moreover, presumably at least some of the statutes or regulations (but it is impossible to know which ones Planned Parenthood has in mind because they have not said) contain other requirements that impact patient care, reporting, record keeping, and the like. Enjoining the enforcement of those provisions would, if they exist, cause the State (not to mention the citizens whose health the State is responsible for) irreparable harm.

B. Planned Parenthood's proposed DTP program depends on protocols and assumptions not established on this record.

According to the motion, Planned Parenthood would evaluate a patient remotely; rely on reported last menstrual period, medical history, symptoms, and other information; refer some patients for ultrasound or testing; mail mifepristone and misoprostol, usually by two-day carrier; provide instructions and a contact number; and

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use a home pregnancy test or other follow-up.[4] In Hawaii and Washington it allegedly limits mailing to patients at no more than 11 weeks and 3 days to account for shipping, but it does not describe or account for the unique delivery challenges present in rural Alaska.[5] In any event, these are operational choices—not terms of the injunction—and the motion does not show how they would be enforced, audited, or maintained.

The motion also concedes that some patients require ultrasound or other in-person testing and that screening must identify symptoms suggesting ectopic pregnancy or other contraindications.[6] Those concessions are important because the constitutional question is not whether DTP care is safe on average among selected patients. It is whether Planned Parenthood has clearly proved, on an Alaska-specific preliminary record, that the State lacks a compelling interest in facility-linked screening, documentation, continuity, oversight, and emergency readiness, and that invalidating the requirement is the least restrictive lawful remedy.

C. The motion's access assertions are generalized and do not establish injury caused by the statute.

Planned Parenthood operates abortion facilities in Anchorage and Fairbanks and asserts those are the only publicly identified facilities in Alaska.[7] It relies on geographic,

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4 PP Mem. at 17–22.

5 *Id*. at 22. Planned Parenthood's concerns about the challenges of remote air travel in Alaska cuts both ways. The same weather and equipment challenges that may create difficulties for patients to travel to Anchorage or Fairbanks will make it equally difficult to deliver time-sensitive medications to patients in their rural communities.

6 *Id.* at 18–19, 42 n.152.

7 *Id.* at 10.

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economic, and social barriers to travel and on studies associating travel distance with later or fewer abortions.[8] Those concerns are serious, but the motion does not identify a patient who was refused care because of AS 18.16.010(a)(2), quantify how many otherwise-eligible Alaska patients would use Planned Parenthood's actual DTP protocol, distinguish the effects of the statute from the availability of appointments and Planned Parenthood's own gestational/service limits, or account for patients who would still require testing, expedited delivery time, referral, or emergency care.

Association is not causation. A reduction in abortions at greater distance does not itself establish that patients were forced to continue pregnancies, that the facility statute caused the result, or that DTP mailing would eliminate the barrier.[9] The cited studies also appear to involve different states, time periods, healthcare systems, selection criteria, and delivery models. Without the underlying data, neither the State—nor the Court—can adequately assess the applicability of those studies to the unique conditions present in Alaska.

III. LEGAL STANDARDS

A. The legal standard for granting injunctive relief

Preliminary injunctions are extraordinary remedies that should be infrequently granted. The Alaska Supreme Court has called preliminary injunctions "harsh remedies"

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[8] *Id*. at 25–31.

[9] If the weather or availability of an airplane prevents or delays a patient from leaving a rural community in order to travel to a Planned Parenthood facility, that same weather and equipment availability will prevent or delay the delivery of medications—an especially serious concern if the medicine must be delivered to treat an emergent, post-abortion complication.

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that are only used to "preserve the status quo" when necessary to prevent "the irreparable loss of rights before judgment."[10] To obtain a preliminary injunction, a plaintiff must satisfy one of two tests.

1. Balance of hardships test

Under the "balance of hardships" test, the plaintiff must show: (1) the plaintiff is faced with "irreparable harm"; (2) the opposing party "can be adequately protected"; and (3) the plaintiff raises "serious and substantial questions going to the merits of the case."[11]

In evaluating the harm to the parties, "a court is to assume the plaintiff ultimately will prevail when assessing the irreparable harm to the plaintiff absent an injunction, and to assume the defendant ultimately prevail when assessing the harm to the defendant from the injunction . . . ."[12]

Establishing irreparable harm presents a high burden. For example, in cases seeking injunctive relief based on allegations of immediate, irreparable harm to a group, evidence of an isolated harm to a single member is insufficient to meet the movant's burden. In *State v. Kluti Kaah Native Vill. of Copper Ctr.*, the Alaska Supreme Court noted that "a single affidavit containing the obviously self-interested statements of a

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[10] *Martin v. Coastal Vills. Region Fund*, 156 P.3d 1121, 1126 and n.4 (Alaska 2007) (quoting *United States v. Guess*, 390 F.Supp.2d 979, 984 (S.D. Cal. 2005)). The Alaska Supreme Court explained: "The purpose of preliminary injunctive relief is preventative – to prevent irreparable harm pending a full decision on the merits of a dispute – rather than punitive." *State v. Galvin*, 491 P.3d 325, 339 n.61 (Alaska 2021).

[11] *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (quoting *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 (Alaska 1992)).

[12] *Alsworth*, 323 P.3d at 54.

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single village resident" was insufficient to establish that residents of Kluti Kaah would suffer injury if injunctive relief was denied.[13]

Further, courts outside Alaska have explained that the alleged harm must be imminent, concrete, and irreparable, not hypothetical. In *Chaplaincy of Full Gospel Churches v. England*, the Ninth Circuit emphasized:

> This court has set a high standard for irreparable injury. First, the injury "must be both *certain and great; it must be actual and not theoretical."* The moving party must show "[t]he injury complained of is of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm."[14]

The Court should apply the same requirement here, before giving Planned Parenthood the benefit of the balance of hardships test.

2. Probable success on the merits test

When the plaintiff cannot show irreparable harm, it must make "a clear showing of probable success on the merits before preliminary injunctive relief will be accorded."[15] Similarly, where the issuance of an injunction would be a "zero-sum

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13 831 P.2d 1270, 1273 (Alaska 1992).

14 *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (9th Cir. 2006) (emphasis added, internal citations omitted); s*ee also MetroBanc v. Fed. Home Loan Bank Bd.*, 666 F. Supp. 981, 984 (E.D. Mich. 1987) ("The simple claim that a rule is unconstitutional is insufficient to demonstrate irreparable harm absent a showing of an imminent concrete and irreparable injury.") (citing *Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983) and *Hale v. Dept. of Energy*, 806 F.2d 910 (9th Cir.1986)).

15 *A.J. Indus., Inc. v. Alaska Public Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970).

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event"—where one party or the other will invariably see harm to its interests—the plaintiff must demonstrate a likelihood of success on the merits.[16]

3. Rule 65

Satisfying a preliminary injunction threshold does not compel granting the requested relief.[17] The decision remains equitable and discretionary, and the Court must consider the public consequences of an injunction.[18] The injunction must also be specific enough to identify the prohibited and required conduct.[19] And Rule 65(c) states that no preliminary injunction shall issue without security "in such sum as the court deems proper" to cover costs and damages if the restraint proves wrongful, subject to exceptions not applicable to this private applicant.

IV. ARGUMENT

A. Planned Parenthood cannot satisfy the balance-of-hardships standard.

1. Planned Parenthood has not proved imminent, non-speculative irreparable harm caused by the challenged requirement.

Irreparable harm must be actual and supported by the record, not inferred from the existence of a constitutional claim. Planned Parenthood's motion offers generalized

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16 *Alsworth*, 323 P.3d at 55-56 (*citing State, Div. of Elections v. Metcalf*, 110 P.3d 976, 979 (Alaska 2005)).

17 *Arctic Village Council*, 495 P.3d at 319 (Alaska 2021) ("Finally, 'once a party establishes the required elements for preliminary injunctive relief, the [superior] court exercises its discretionary authority' when deciding whether to grant or deny the requested relief . . . .") (quoting *Galvin*, 491 P.3d at 332).

18 *Galvin*, 491 P.3d at 332, 339.

19 Alaska R. Civ. P. 65(d).

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assertions that distance correlates with delay and fewer abortions, and then assumes the facility rule is causing identifiable Alaskans to miss care. But it provides no named or anonymous patient declaration, no imminent patient appointment, and no comparison between patients who would pass Planned Parenthood's DTP screen and those who currently obtain care at facilities. Planned Parenthood's institutional statement that it "would" offer DTP care if permitted does not prove that a specific constitutional injury is imminent during the pendency of this case.

Planned Parenthood's timing in challenging the statute is significant. Alaska Statute 18.16.010(a)(2) is longstanding, while Planned Parenthood filed this action in 2026. Delay alone does not mechanically defeat relief, but it bears on claims of emergency and on equitable discretion—particularly absent evidence of a recent enforcement change or newly injured patient, none of which exist in the record. Planned Parenthood cites a superior-court footnote stating that the age of a statute is irrelevant.[20] That nonprecedential observation does not prevent the Court from assessing whether Planned Parenthood proved imminent harm on this preliminary record or whether orderly discovery will materially worsen any identified injury.

Nor can Planned Parenthood convert every asserted travel cost into irreparable harm. Economic expenses can ordinarily be measured, and Planned Parenthood could have, but elected not to, present evidence of the range of those costs and the scope of public and non-profit resources available to offset travel costs for medical care. Without

[20] PP Mem. at 32 n.115.

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that information, the Court can only speculate on the relative burden to a patient imposed by the facilities requirement.

Planned Parenthood's assertions regarding patient inconvenience and patient preference between medication and procedural methods requires evidence specific to Alaska—evidence which is missing in this preliminary record.

An association between delay and incremental medical risk does not show that any particular patient will suffer an un-redressable injury because of this law during litigation.

The privacy and intimate-partner-violence concerns are grave, but the motion again supplies generalized prevalence data rather than a declaration connecting an imminent risk because of the facility requirement or establishing that mailing medication to a home is safer for an abused patient.

2. The State and the public cannot be adequately protected from a broad injunction.

Planned Parenthood says the State suffers "no harm" from nonenforcement because the law is unconstitutional.[21] That is circular: constitutionality is the disputed merits question. *Galvin* instructs courts to consider public interests that cannot be repaired by money.[22] An injunction here would alter the regulated system statewide, permit abortion performance outside approved facilities, complicate licensing and

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21 PP Mem. at 44–45.

22 491 P.3d at 339.

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enforcement, and shift clinical and emergency consequences to local providers and communities.[23]

The State also represents interests beyond its own treasury: patients who may be mis-screened; emergency clinicians receiving incomplete histories; rural facilities facing complications; licensing bodies charged with oversight; and the public's interest in predictable enforcement of statutes.[24] Even if adverse outcomes are uncommon, the magnitude and irreversibility of a serious outcome is of real and considerable importance. Planned Parenthood has not shown that these harms are "relatively slight" or otherwise protected.

The proposed relief also appears insufficiently defined. Enjoining a so-called "Telehealth Ban" may leave unresolved whether 12 AAC 40.080, 12 AAC 40.090, facility-approval rules, informed-consent requirements, reporting duties, physician requirements, and professional standards remain operative. Rule 65(d) requires precise notice of what States may enforce and what conduct is permitted. A vague order would expose officials to contempt while leaving providers and patients uncertain.

In sum, Planned Parenthood has failed to establish imminent, concrete, and irreparable harm; nor has it shown that the State can be adequately protected. Thus, it is not entitled to relief under the balance of hardships test.

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[23] The State expects to elicit testimony to these effects at the evidentiary hearing.

[24] *See State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273–74 (Alaska 1992) (requiring consideration of interests represented by the State).

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B. Planned Parenthood has not made a clear showing of probable success on the merits.

1. The Court should begin with the statute Planned Parenthood actually challenges, not the label "Telehealth Ban."

Planned Parenthood's label assumes its conclusion. AS 18.16.010(a)(2) does not mention telehealth, mail, mifepristone, or a remote consultation. It applies to all abortions and identifies permissible places of performance. Site-to-site telehealth remains available, and nothing in the challenged language bars remote counseling, informed-consent discussions, scheduling, or follow-up consistent with other law. The more accurate description is an abortion-facility requirement with consequences for one proposed DTP delivery model. As discussed below, that distinction affects constitutional analysis and Planned Parenthood's proposed remedy.

2. The statute at issue is fundamentally different from those previously held unconstitutional by the Alaska Supreme Court.

Not surprisingly, Planned Parenthood relies heavily on four Alaska Supreme Court cases invalidating State laws on the basis that they violated the Alaska Constitution's privacy and/or equal protection guarantees.[25] While those cases are clearly relevant and instructive, the statutes at issue in those cases are fundamentally different from the one at issue here.

Those statutes imposed requirements that functioned as a categorical bar to abortion care—parental consent, parental notification, and limits on Medicaid funding

[25] *See, e.g., Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122 (Alaska 2016); *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007); *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984 (Alaska 2019); *Valley Hosp. Ass'n Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963 (Alaska 1997).

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for particular patients. Here, even according to Planned Parenthood, the statute presents a problem only for certain women facing particular circumstances: so, for example, the statute does not present an access problem for women in Anchorage or Fairbanks, but according to Planned Parenthood, it may for a hypothetical woman residing in a rural community, who has limited days off work, other children, and for whom paying for a flight imposes a significant financial burden.

Given that fundamental difference, the prior cases do not answer the questions presented here: What level of access to abortion is guaranteed by the Alaska Constitution? In regulating public health and safety, is the constitutionality of a legislative determination judged from the standpoint of a woman in the direst circumstances (*e.g.*, the woman in a rural community with other children and limited days off and limited funds), or are statutes judged on their general application? Is a single showing of infringement enough, or is Planned Parenthood required to show a real, quantifiable access problem that impacts a material number of Alaskan women seeking abortion care?

The facilities statute is entitled to the presumption of constitutionality accorded to all statutes.[26] But Planned Parenthood nevertheless asks this Court to substitute its policy judgment for that of the legislature, despite the absence of hard evidence demonstrating that women's access to abortion in Alaska is compromised by the facilities requirement.

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[26] *See Planned Parenthood 2019*, 436 P.3d at 1000.

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3. Planned Parenthood's burden of proof on its constitutional claims.

The Alaska Constitution's privacy clause encompasses a woman's fundamental right to reproductive choice, and the Alaska Supreme Court has historically been protective of that right.[27] But the Court has also emphasized a countervailing principle:

> We are not legislators, policy makers, or pundits charged with making law *or assessing the wisdom of legislative enactments*…We are focused only on upholding the constitution and laws of the State of Alaska.[28]

Additionally, the Court has made clear that a plaintiff raising a constitutional challenge to a statute always bears the initial burden of demonstrating the constitutional violation.[29] How the plaintiff satisfies its burden depends on the type of challenge asserted—facial, or as-applied.

a. Facial challenges

A constitutional challenge begins with a presumption of constitutionality.[30] All doubts are resolved in favor of upholding the statute.[31] To overcome the presumption, the plaintiff is required to prove a "constitutional

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27 *Planned Parenthood III*, 171 P.3d at 582. Reproductive rights under Alaska's Constitution have historically been interpreted as being broader than those guaranteed by the United States Constitution. *Valley Hosp. Ass'n, Inc.*, 948 P.2d at 967.

28 *Id*. at 579 (emphasis added). The legislature, not the court, is charged with regulating public health and safety; therefore, statutes should not be declared unconstitutional simply because a court finds they are not "wise public policy." *Falls Church Medical Center, LLC v. Oliver*, 412 F.Supp.3d 668, 692 (E.D.Va. 2019) Instead, the plaintiff must show the statute actually amounts to a constitutional violation.

29 *See Planned Parenthood 2019*, 436 P.3d at 1000.

30 *Planned Parenthood 2019*, 436 P.3d at 991.

31 *Id*.

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violation."[32] While the Alaska Supreme Court has not definitively addressed what a plaintiff must prove to establish a constitutional violation, it has drawn some boundaries.[33] For example, the Court will "uphold a statute against a facial constitutional challenge if 'despite ... occasional problems it might create in its application to specific cases, [it] has a plainly legitimate sweep."[34] In other words, the plaintiff must, at a minimum, establish a level of infringement beyond just a few isolated instances.

Applying that framework here, Planned Parenthood must provide evidence establishing a *real, verifiable* access problem in order to prove a constitutional violation. Abstract speculation about theoretical problems in rural communities is insufficient.

b. As-applied challenges

An as-applied challenge to a statute requires evaluation of the facts of the particular case in which the challenge arises.[35] Generally, the plaintiff will not prevail on an as-applied challenge unless it can prove the regulation at issue has in fact been or is sufficiently likely to be unconstitutionally applied *to her*.[36]

Here, if making an as-applied challenge on behalf of its patients, Planned Parenthood is required to show the fundamental rights of a particular patient or group of

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32 *Id*.

33 *Id.*

34 *Id*. at 991-991 (brackets in original) (quoting *Planned Parenthood 2007*, 171 P.3d at 581).

35 *Dapo v. State*, 454 P.3d 171, 180 (Alaska 2019).

36 *Id*.

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patients were infringed upon. But it has not done so. Instead, Planned Parenthood waffles between alleging harm to *all* Alaskan women who seek abortions (a facial challenge), and theoretical instances where an unidentified Alaskan woman residing in a rural community might encounter logistical difficulties traveling to Anchorage or Fairbanks for a medication abortion. In the end, the Motion fails to identify any specific patient or group of patients harmed by the statute, as required for an as-applied challenge.

3. Federal case law is instructive as to the type of evidence available in access cases.

Although the Alaska Constitution is more protective than the federal constitution, federal case law is nevertheless useful in demonstrating the type of specific, quantitative evidence that has been, and can be, presented in access cases. In particular, these cases highlight the deficiencies in Planned Parenthood's evidence in support of its Motion.

In *Planned Parenthood of Arkansas & Eastern Oklahoma v. Jegley*, the Eighth Circuit vacated a preliminary injunction because the trial court failed to "make a finding that the...contract-physician requirement is an undue burden for a large fraction of women seeking medication abortions in Arkansas."[37] Specifically, the court explained

[37] 864 F.3d 953, 959 (8th Cir. 2017).

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that the district court's findings should have included an estimate of the *number of women* burdened by the challenged requirement.[38]

Similarly, in *Comprehensive Health of Planned Parenthood Great Plains v. Williams*, a case challenging a Missouri regulation requiring that facilities administering medication abortions have a complication plan approved by Missouri's Department of Health and Senior Services, the court denied the plaintiff's request for preliminary injunction based on insufficient evidence regarding the *number of women* burdened by the challenged statute.[39]

Finally, in *Falls Church Medical Center, LLC v. Oliver*, the court upheld a challenge to the State of Virginia's physician-only licensing requirement after an eight-day trial on the merits.[40] In *Falls Church*, the court heard specific evidence regarding, among other things: (1) the historical length of time between the patient's first visit and the actual abortion procedure; (2) the percentage of women in Virginia of childbearing

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[38] *Id*. ("As a result, we are left with no concrete district court findings estimating the number of women who would be unduly burdened by the contract-physician requirement—either because they would forgo the procedure or postpone it—and whether they constitute a "large fraction" of women seeking medication abortions in Arkansas..."); s*ee also id*. at pp. 959-960 (noting that the district court also failed to make findings as to *how many women* would face increased travel distances as a result of the requirement; the *number of women* who would forgo abortions as a result of the requirement; and the *number of women* who would postpone abortions as a result of the requirement).

[39] *Comprehensive Health of Planned Parenthood Great Plains v. Williams*, 296 F. Supp. 3d 1134, 1140 (W.D. Mo. 2017) ("There is *no evidence regarding the number of women who will be affected*, or how they will be affected.") (emphasis added).

[40] 412 F.Supp.3d 668, 688 (E.D.Va. 2019).

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years that live in a community that lacks an abortion provider; and (3) the average travel distance to the nearest first trimester abortion provider.

Despite this evidence, the court upheld the requirement because the number of women allegedly burdened was unquantified:

> …the evidence has not shown that such restriction has caused an undue burden on *a significant number of women seeking abortion care*….[B]ased on the record at hand, *the number of women facing that situation is unquantified*. Plaintiffs' evidence consisted primarily of estimates by experts.[41]

In sum, courts generally require specific, quantitative evidence to show an access problem. The Court should require no less here.

4. Planned Parenthood has not shown that the facility requirement burdens the privacy right in the manner necessary to trigger—and fail—strict scrutiny.

The State recognizes that the Alaska Constitution protects reproductive choice.[42] But recognition of the right does not require the conclusion that every regulation touching abortion imposes a constitutionally cognizable burden or that every method and setting for abortion care must be available. Planned Parenthood must identify the burden caused by this law and prove it. The word "abortion" cannot substitute for that analysis.

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41 *Id*. at 691 (emphasis added).

42 *Valley Hospital Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969 (Alaska 1997).

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The cases Planned Parenthood invokes involved materially different government actions: exclusion of abortion from a quasi-public hospital,[43] funding classifications between continuation and termination of pregnancy,[44] parental-involvement rules,[45] or restrictions on categories of clinicians.[46] They do not hold that a place-of-performance rule is unconstitutional whenever a provider asserts that some selected patients could safely receive medication elsewhere.

Planned Parenthood's claimed burden is also contingent. Were its patients to receive DTP abortion care, they must be eligible under its protocol, contact the provider in time, accurately report relevant history and symptoms, have reliable private connectivity and a safe mailing address, receive the drugs before the cutoff date, self-administer them, and obtain emergency or follow-up care as needed. Some will still need ultrasound, laboratory testing, or an in-person examination. These are significant burdens. And because Planned Parenthood supplies no Alaska patient declarations or patient-level data connecting AS 18.16.010(a)(2) to an actual failure to receive abortion care, it is not at all clear that the facilities requirement imposes a greater burden than DTP care. General evidence about distance may support a policy debate, but it does not

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43 *Id.* at 971.

44 *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.,* 28 P.3d 904, 913 (Alaska 2001) (*Planned Parenthood I*); *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 1001-05 (Alaska 2019) (*Planned Parenthood V*).

45 *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 583-85 (Alaska 2007) (*Planned Parenthood III*).

46 *See, e.g., Planned Parenthood of the Greater Nw. v State*, 3AN 1-19-11710CI, 2024 WL5411729 (Alaska Super. Ct. Sept 4, 2024).

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clearly prove the constitutional magnitude of—or causation with respect to—the facility requirement's purported burden.

Even if strict scrutiny applies, the record does not clearly negate the State's compelling interests. Alaska's interests include protecting patient health, ensuring accurate assessment and informed consent, promoting continuity and record keeping, facilitating emergency response, preserving facility inspection and accountability, and enforcing a coherent licensing scheme. Planned Parenthood frames the interest as whether the medication is "generally safe" and whether most complications occur after patients leave a clinic. That is too narrow. A low average-adverse-event rate does not eliminate the State's interest in identifying the patients for whom the risk is serious, ensuring that selection and referral protocols operate as claimed, or maintaining enforceable safeguards across a vast state with uneven emergency access and the potential for significant delays in mailing follow-up medications in emergent situations.

Planned Parenthood likewise has not proved that the State has less-restrictive means available to it on the present record. It offers its own protocols, but those protocols are neither statutory nor incorporated into the requested injunction. The motion does not establish who would monitor compliance, what happens if the protocol changes, how records follow the patient, how exceptions are verified, or how the State could investigate adverse events. A court cannot find the statute unnecessary by comparing it to a voluntary, mutable program whose operative details are not before it.

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5. Planned Parenthood's equal-protection theory uses comparison classes defined at the wrong level of generality.

Equal protection begins by identifying similarly situated classes and unequal treatment. Planned Parenthood compares abortion patients with (1) patients continuing pregnancies; and (2) everyone receiving any care that can sometimes occur by telehealth. Those classes assume away the factual predicates for the operation of the statute. The relevant law regulates abortions performed in Alaska; it does not classify persons based on access to a generic communications technology. Patients receiving miscarriage management, prenatal care, controlled substances, or unrelated telehealth services are not necessarily similarly situated with respect to purpose, diagnosis, statutory reporting, clinical course, facility oversight, or the legal act regulated.

Planned Parenthood's reliance on medication management of miscarriage because it may use the same drugs and dosages illustrates the problem. The same drug can be used for legally and medically distinct purposes. Equal protection does not require the State to regulate every use identically merely because a product overlaps. The relevant comparison must account for the nature of the treatment, the condition being managed, the statutory framework, patient-selection issues, and the governmental interests implicated.

The Alaska abortion-funding decisions do not eliminate this threshold. Those cases compared pregnant Medicaid recipients who exercised opposite branches of the

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same reproductive choice while the State funded one branch and restricted the other.[47] Here the State is not allocating a benefit between two choices; it is enforcing a generally applicable place-of-performance rule for abortions. Planned Parenthood must prove that its proposed comparison classes are alike for the purposes of that rule.

In any event, the same evidentiary gaps defeat Planned Parenthood's claim of "poor fit." The facility rule covers abortions as a category rather than singling out only prescriptions for patients in remote communities, and Planned Parenthood has not shown that its voluntary protocol achieves each governmental interest equally well. Its under- and over-inclusiveness arguments rest on the premise that the sole legitimate interest is average comparative safety of the drugs. The State's interests are broader, and fit cannot be judged without a developed record.

V. Rule 65(C) requires security and Planned Parenthood has not justified a zero bond.

Civil Rule 65(c) provides that "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper," for costs and damages if a party is wrongfully enjoined. Planned Parenthood is a private applicant, so the Rule's express exemption for the State, municipalities, and their officers or agencies does not apply. Planned Parenthood's request for no bond relegated to a footnote does not satisfy the Rule's text.

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47 *See Planned Parenthood I*, 28 P.3d at 909–13; *Planned Parenthood V*, 436 P.3d at 1000–04.

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Planned Parenthood cites *Bitler v. Lindquist*, an unpublished superior-court decision, and a prior superior-court order in separate abortion litigation.[48] Neither binds this Court or creates a categorical constitutional-litigation exception. And Planned Parenthood's premise that States face no monetary harm ignores administrative, compliance, training, investigation, records, and potential emergency-response costs caused by an injunction.

If the Court grants relief, it should require evidence regarding likely costs and set meaningful security. Alternatively, the Court should condition any reduced bond on strict reporting, record preservation, indemnification to the extent lawful, and prompt modification if costs emerge. The Court should make findings supporting the amount rather than defaulting to zero.

VI. CONCLUSION

Planned Parenthood has not shown that it meets the balance of hardships test or the probable success on the merits test. The Court should deny Planned Parenthood's motion for a preliminary injunction.

DATED August 28, 2026.

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[48] PP Mem. at 45 n.164.