

Elizabeth Hodes (Bar No. 0511108)
DAVIS WRIGHT TREMAINE LLP
188 W Northern Lights Blvd., Suite 1100
Anchorage, AK 99503
Telephone: 907-257-5300
elizabethhodes@dwt.com

Additional counsel listed below

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

PLANNED PARENTHOOD GREAT
NORTHWEST, HAWAI'I, ALASKA,
INDIANA, AND KENTUCKY,

Plaintiff,

v.

STATE OF ALASKA, et al.,

Defendants.

Case No. 3AN-26-07345CI

REPLY BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Table of Contents

INTRODUCTION 4

ARGUMENT 4

I. Unrebutted evidence shows that the Telehealth Ban burdens abortion access.. 4

II. Planned Parenthood is likely to succeed on its privacy claim. 8

A. The State fails to show that a compelling interest justifies the Ban. 9

B. The State fails to show that no less restrictive means exists..... 10

III. Planned Parenthood is likely to succeed on its equal protection claim..... 11

IV. Unrebutted evidence shows the balance of hardships favors an injunction. . 12

V. Planned Parenthood’s requested relief is neither vague nor overbroad. 13

VI. Bond should not be required. 13

Table of Authorities

Cases	Page(s)
<i>Alakayak v. B.C. Packers, Ltd.</i> 48 P.3d 432 (Alaska 2002)	8
<i>Alaskans for a Common Language, Inc. v. Kritz</i> 170 P.3d 183 (Alaska 2007)	12
<i>Breese v. Smith</i> 501 P.2d 159 (Alaska 1972)	10
<i>Brown v. Voss</i> 715 P.2d 514 (Wash. 1986)	14
<i>Chi. Women in Trades v. Trump</i> No. 25 C 2005, 2025 WL 1331743 (N.D. Ill. May 7, 2025)	7
<i>Dep't of Educ. & Early Dev. v. Alexander</i> 566 P.3d 268 (Alaska 2025)	9
<i>Fancher v. Home Sav. & Loan Ass'n,</i> No. S-3057, 1990 WL 10515477 (Alaska Aug. 1, 1990)	14
<i>Frank v. State</i> 604 P.2d 1068 (Alaska 1979)	10
<i>Grutter v. Bollinger</i> 539 U.S. 306 (2003)	12
<i>Kermani v. N.Y. State Bd. of Elections</i> 487 F. Supp. 2d 101 (N.D.N.Y. 2006)	14
<i>Klitzner Indus., Inc. v. H.K. James & Co.</i> 535 F. Supp. 1249 (E.D. Pa. 1982)	8
<i>Myers v. Alaska Psychiatric Inst.</i> 138 P.3d 238 (Alaska 2006)	10
<i>Phelps v. City of Winston-Salem</i> 157 S.E.2d 719 (N.C. 1967)	8
<i>Planned Parenthood Great Nw. v. State</i> No. 3AN-19-11710CI, 2024 WL 5411729 (Alaska Super. Ct. Sept. 4, 2024)	7
<i>Planned Parenthood of Se. Pa. v. Casey</i> 505 U.S. 833 (1992)	9
<i>Planned Parenthood of the Great Nw. v. State</i> 375 P.3d 1122 (Alaska 2016)	8
<i>State v. Alaska Democratic Party</i> 426 P.3d 901 (Alaska 2018)	14
<i>State v. Planned Parenthood of Alaska</i> 35 P.3d 30 (Alaska 2001)	5, 9, 13
<i>State v. Planned Parenthood of Alaska</i> 171 P.3d 577 (Alaska 2007)	7, 8, 9, 10

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)5, 8, 13

Trump v. Int’l Refugee Assistance Project
582 U.S. 571 (2017) 14

Valle del Sol Inc. v. Whiting
732 F.3d 1006 (9th Cir. 2013) 14

Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice
948 P.2d 963 (Alaska 1997)5, 8, 10

Weems v. State
440 P.3d 4 (Mont. 2019)..... 14

Worth v. Ivy Cmty. Ctr., Inc.
679 S.E.2d 885 (N.C. Ct. App. 2009)..... 8

Statutes

AS 08.02.130 11

AS 18.16.010(a)(1) 14

AS 18.16.010(a)(2) 13, 14

Regulations

12 AAC 40.080 14

Filings

Affidavit of Colleen P. McNicholas, DO, MSCI, FACOGpassim

Affidavit of Daniel Grossman, M.D.passim

Answer 6, 12

Mem. of Law in Supp. of Pl.’s Mot. for a Prelim. Inj. 14

Opp. to Mot. for Prelim. Inj.....passim

Verified Compl.6, 12, 14

INTRODUCTION

Nothing in the State’s opposition undermines the conclusion that the Telehealth Ban should be enjoined. The State does not dispute that medication abortion is safe and effective as a general matter, and unrebutted evidence shows providing this care via direct-to-patient (“DTP”) telehealth is as safe and effective as doing so in person. The core of the State’s argument is instead that Planned Parenthood does not offer sufficient evidence that the Ban burdens access. But the evidence shows the Ban does just that, and the State fails to rebut this evidence with any of its own. The evidence shows no compelling interest justifies the Ban and that, even if it did, the Ban could not be the least restrictive means of achieving it, violating Alaskans’ constitutional right to privacy. The evidence also shows that, for no good reason, the Ban treats Alaskans who seek abortions differently from those who continue their pregnancies, violating equal protection. Nor do the State’s vague allusions to purported harms from an injunction come close to balancing the hardships in its favor.

ARGUMENT

I. Unrebutted evidence shows that the Telehealth Ban burdens abortion access.

Unrebutted evidence shows the Ban burdens access. The Alaska Supreme Court has held a law “need not expressly forbid” abortion to burden the right,¹ and that a plaintiff need only show a law “constrain[s],”² “restrict[s],”³ or “deters”⁴ access. Planned Parenthood offered testimony from an Alaska-licensed OB/GYN who oversees Planned Parenthood’s operations in Alaska and an OB/GYN who has conducted research on telehealth abortion care.⁵ Both relied on extensive peer-reviewed literature, the findings of

¹ *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 1001 (Alaska 2019) [hereinafter “*Planned Parenthood V*”].

² *Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997).

³ *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001) [hereinafter “*Planned Parenthood II*”].

⁴ *State, Dep’t of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 909 (Alaska 2001) [hereinafter “*Planned Parenthood I*”].

⁵ See Affidavit of Colleen P. McNicholas, DO, MSCI, FACOG [hereinafter “McNicholas Aff.”]; Affidavit of Daniel Grossman, M.D. [hereinafter “Grossman Aff.”].

mainstream medical organizations, and decades of experience as health care providers to explain the Ban prohibits a safe and effective abortion method.⁶ In fact, the State admits this evidence may show medication abortion via DTP telehealth is safe “under some—or even many—circumstances,”⁷ and it does not dispute that, even for in-person medication abortions, any rare complications would not occur until after a patient leaves a health center.⁸

Unrebutted evidence shows that, by prohibiting this care, the Ban burdens access. Planned Parenthood’s witnesses offered evidence that being forced to travel for care delays access; that Alaska’s geography, weather, and provider shortage amplify those barriers; and that being forced to travel for care prevents some patients from accessing care altogether, including those who cannot afford to travel and those who are at risk of or suffering from intimate partner violence.⁹ The State offers no evidence of its own to rebut this testimony; nor could it. There can be no question that patients forced to travel for care are burdened in accessing care, and as the State admits, “it is not possible to travel by car from some Alaska communities to Anchorage or Fairbanks.”¹⁰ The State even admits that DTP telehealth “significantly expands access to essential health care, especially for people in rural and remote areas,” and that the evidence raises “serious” concerns about “geographic, economic, and social barriers” to care.¹¹ The State offers no evidence that medication abortions are different from other telehealth care. And while the State suggests it “expects” to elicit testimony about harms from an injunction, it only provides a list of conclusory assertions for which it wholly fails to lay any groundwork.¹²

⁶ See McNicholas Aff. ¶¶ 13, 19–28; Grossman Aff. ¶¶ 9, 11, 14–16, 24–32, 39, 41–43, 46–49.

⁷ Opp. to Mot. for Prelim. Inj. [hereinafter “Opp.”] at 2.

⁸ See McNicholas Aff. ¶ 25; Grossman Aff. ¶ 29.

⁹ See McNicholas Aff. ¶¶ 29–38; Grossman Aff. ¶¶ 10, 52–74.

¹⁰ Answer ¶ 70.

¹¹ Answer ¶ 56; Verified Compl. ¶ 56; Opp. at 6–7.

¹² Opp. at 12–13, 13 n.23. The State insists this Court should, at minimum, “defer a decision” until the State can “submit responsive” evidence and “cross-examine Planned Parenthood’s affiants.” Opp. at 3. But the State will get to cross-examine Planned

Rather than offer evidence of its own, the State complains Planned Parenthood has not offered various specific types of evidence. But the Alaska Supreme Court has never required patient affidavits, evidence of a particular missed abortion, or quantitative economic data to show that a law burdens abortion access. The Court has instead looked to the often common-sense effects of these laws without requiring their burdens to have been quantified. For instance, the Court held a parental consent requirement “no doubt” burdened abortion access because it required minors to get parental consent or judicial authorization before accessing care.¹³ This court also recently held in another case that Planned Parenthood had sufficiently shown that a law “substantially burden[ed]” access even though it did not present testimony from individual patients or evidence quantifying the affected patients.¹⁴ The State relies solely on inapposite, out-of-date federal case law,¹⁵ which applies a standard that has never been the law in Alaska. Alaska courts apply strict scrutiny to laws that burden abortion access—not the more lenient “undue burden” test.¹⁶ The State also protests that Planned Parenthood’s evidence is not “Alaska-specific,”¹⁷ ignoring the evidence that Alaska’s geography, weather, and provider shortage amplify the Ban’s burdens.¹⁸ And some of the “Alaska-specific” evidence the State claims is missing—

Parenthood’s affiants, and it has failed to offer evidence despite having two and a half months to respond to this motion. Nor can the State use witnesses it offers at the hearing to introduce evidence in support of arguments it failed to make with any substance in its brief. *Cf. Chi. Women in Trades v. Trump*, No. 25 C 2005, 2025 WL 1331743, at *4 (N.D. Ill. May 7, 2025) (holding government forfeited argument by “not mention[ing] [it] in its briefing at all” and referencing it “only during the preliminary injunction hearing”).

¹³ *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 582 (Alaska 2007) [hereinafter “*Planned Parenthood IIP*”].

¹⁴ *Planned Parenthood Great Nw. v. State*, No. 3AN-19-11710CI, 2024 WL 5411729, at *8–9, 11 (Alaska Super. Ct. Sept. 4, 2024).

¹⁵ Opp. at 18–20.

¹⁶ See *Planned Parenthood V*, 436 P.3d at 1001.

¹⁷ Opp. at 2, 6, 10, 12; see also *id.* at 7.

¹⁸ See McNicholas Aff. ¶¶ 29, 34–38; Grossman Aff. ¶¶ 10, 33, 49, 53–54, 59–60, 63, 65, 71. The State also claims Planned Parenthood only offered “generalized prevalence data” about intimate partner violence “rather than a declaration connecting an imminent risk because of the facility requirement or establishing that mailing medication to a home is

“Alaska-specific outcome data comparing DTP [medication abortion] with facility-based care”—*cannot exist*, because state law does not currently authorize providing medication abortions via DTP telehealth in Alaska.¹⁹

Contrary to the State’s suggestion, the way the Ban burdens access is not “fundamentally different” from the way in which other abortion laws the Alaska Supreme Court held unconstitutional burdened access.²⁰ None of those laws imposed “categorical bar[s] to abortion.”²¹ Like the Ban, those laws made abortion more difficult to access through certain *means* or for certain *populations*.²² Indeed, the State claims the Ban is different because it burdens “women facing *particular* circumstances,”²³ but admits the Medicaid restrictions the Court held unconstitutional applied to “*particular* patients.”²⁴

safer for an abused patient.” Opp. at 12. Not so. In fact, Planned Parenthood provided *two* affidavits explaining that the Ban raises the risk that these patients’ abortion decisions “will be revealed to their partner” by forcing them to travel to a health center to access care. McNicholas Aff. ¶ 33; *see also* Grossman Aff. ¶ 72.

¹⁹ Opp. at 2. Courts routinely rely on circumstantial evidence when direct evidence is not available. *See, e.g., Klitzner Indus., Inc. v. H.K. James & Co.*, 535 F. Supp. 1249, 1254 (E.D. Pa. 1982) (holding in a copyright action that, “[w]hen direct evidence is lacking,” certain “circumstantial evidence . . . may create an inference of copying”); *Worth v. Ivy Cmty. Ctr., Inc.*, 679 S.E.2d 885, 889 (N.C. Ct. App. 2009) (noting that, because it is “extremely rare that direct evidence [as to proof of the origin of fires] is available,” “circumstantial evidence is the only available method in a large majority of actions” (quoting *Phelps v. City of Winston-Salem*, 157 S.E.2d 719, 722 (N.C. 1967))); *see also Alakayak v. B.C. Packers, Ltd.*, 48 P.3d 432, 450 (Alaska 2002) (in an antitrust action, holding that “[a] plaintiff is not required to present any direct evidence, but may support his case solely with circumstantial evidence”).

²⁰ Opp. at 14; *see also id.* at 21.

²¹ *Id.* at 14–15.

²² *See Planned Parenthood V*, 436 P.3d at 1001–03; *Planned Parenthood of the Great Nw. v. State*, 375 P.3d 1122, 1136 (Alaska 2016) [hereinafter “*Planned Parenthood IV*”]; *Planned Parenthood III*, 171 P.3d at 583; *Planned Parenthood I*, 28 P.3d at 911; *Valley Hosp. Ass’n*, 948 P.2d at 971–72.

²³ Opp. at 15 (emphasis added).

²⁴ *Id.* (emphasis added); *see also Planned Parenthood V*, 436 P.3d at 1001–03; *Planned Parenthood I*, 28 P.3d at 911. The State also claims Planned Parenthood has not shown patients would be able to access care via DTP telehealth more easily than in person, *see* Opp. at 6 n.5, 7 n.9, 21–22, but Planned Parenthood’s witnesses explained at length why

Finally, in an attempt to argue Planned Parenthood cannot facially challenge the Ban, the State also asserts—without evidence—that the Ban “does not present an access problem for women in Anchorage or Fairbanks.”²⁵ But the Ban *does* burden access for those who live in Anchorage or Fairbanks, including because, for instance, they face barriers getting to a health center because of childcare or work obligations.²⁶ And in any event, in a facial challenge, “[t]he proper focus of constitutional inquiry is *the group for whom the law is a restriction*, not the group for whom the law is irrelevant.”²⁷ As a result, even assuming this Court were to find the Ban only burdens access for those who live in rural or remote areas—which would be inconsistent with fact and law for the reasons stated above—the Ban would nonetheless violate the Constitution if it violated those individuals’ constitutional rights. Whether a plaintiff is bringing a facial challenge relates not to which groups a challenged law affects, but rather whether a plaintiff seeks to strike down a statute “in full” or only under particular circumstances.²⁸ Unrebutted evidence shows the Ban should be struck down in full. Far from creating “occasional problems,” the Ban burdens abortion access for no reason and has no “plainly legitimate sweep.”²⁹

DTP telehealth is easier for many patients to access, *see, e.g.*, Grossman Aff. ¶¶ 53–59; McNicholas Aff. ¶¶ 29–35. Nor does the fact that weather could temporarily delay a medication shipment mean it is not easier for patients to access care via DTP telehealth. Whereas medications can still be shipped following a temporary weather delay, weather can permanently block patients from accessing in-person care by erasing the limited time away from work or family that they had to make a scheduled appointment.

²⁵ Opp. at 15.

²⁶ *See* McNicholas Aff. ¶¶ 30, 33; Grossman Aff. ¶ 61.

²⁷ *Planned Parenthood II*, 35 P.3d at 34–35 (emphasis added) (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894 (1992), *overruled on other grounds by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022)).

²⁸ *Dep’t of Educ. & Early Dev. v. Alexander*, 566 P.3d 268, 277 (Alaska 2025).

²⁹ *Planned Parenthood V*, 436 P.3d at 991–92 (quoting *Planned Parenthood III*, 171 P.3d at 581).

II. Planned Parenthood is likely to succeed on its privacy claim.

Planned Parenthood is likely to succeed on its privacy claim. Laws that “place[] a burden” on abortion access trigger strict scrutiny,³⁰ under which the State must show the law is the least restrictive means of advancing a compelling interest.³¹ Because un rebutted evidence shows the Ban burdens access,³² the only remaining questions are whether the Ban advances a compelling interest and is the least restrictive means of doing so.

As an initial matter, the State incorrectly claims it is Planned Parenthood’s burden to show that a compelling interest does not justify the Ban and that less restrictive means could achieve any such interest.³³ On the contrary, if a law burdens a fundamental right, it is the *State* that has the “substantial burden” of showing a compelling interest justifies it and that no less restrictive means could advance that interest.³⁴ The State here fails to introduce any evidence on either question and does not come close to meeting its burden.

A. *The State fails to show that a compelling interest justifies the Ban.*

The State fails to meet its burden of showing the Ban furthers a compelling interest. Rather than accept an assertion of a compelling interest at face value, the Alaska Supreme Court has carefully examined the record for evidence an interest needs protection, explaining that “[t]he question is whether that interest . . . will suffer if” relief is granted.³⁵ In *Breese v. Smith*, the Court held the State had failed to prove its interest was compelling because it only “produced lay opinion testimony, unsupported by figures or statistics,” rather than “empirical studies” or “testimony from experts.”³⁶ And in *Planned Parenthood V*, when considering Planned Parenthood’s challenge to Medicaid funding restrictions for abortion, the Court noted the record “cast[] doubt” on the State’s claim that the restrictions

³⁰ *Planned Parenthood III*, 171 P.3d at 582.

³¹ *Valley Hosp. Ass’n*, 948 P.2d at 969.

³² *See supra* Section I.

³³ *See Opp.* at 6.

³⁴ *Breese v. Smith*, 501 P.2d 159, 171 (Alaska 1972); *see also Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245–46 (Alaska 2006).

³⁵ *Frank v. State*, 604 P.2d 1068, 1073 (Alaska 1979).

³⁶ 501 P.2d at 172.

addressed a “fiscal” problem because there was “no evidence that Medicaid had actually funded non-medically necessary abortions.”³⁷

The State offers no evidence that its purported interests need protecting, and most of its asserted interests are belied by the record. While the State asserts the Ban “protect[s] patient health,”³⁸ it does not dispute that medication abortion is a safe form of health care, and it admits the evidence may show that providing medication abortion via DTP telehealth is safe “under some—or even many—circumstances.”³⁹ It offers only conclusory assertions that enjoining the Ban entails assorted risks,⁴⁰ all of which the record shows are unfounded.⁴¹ Nor would enjoining the Ban affect “facility inspection and accountability” or the State’s “coherent licensing scheme.”⁴² The State has authority to license and discipline clinicians who provide telehealth care that falls outside the standard of care,⁴³ and it offers no evidence it cannot oversee telehealth abortion care like any other form of telehealth. Nor has the State provided any explanation (much less evidence) of how the Ban “promot[es] continuity and record keeping.”⁴⁴

B. The State fails to show that no less restrictive means exists.

Because the State fails to show the Ban advances a compelling interest, this Court need not decide whether less restrictive means exist. But in any event, the State fails to meet its burden on that point as well. According to the State, because the protocols Planned Parenthood would use to provide medication abortions via DTP telehealth “are neither

³⁷ 436 P.3d at 1004.

³⁸ Opp. at 22.

³⁹ *Id.* at 2; *see also* McNicholas Aff. ¶¶ 13, 19–28; Grossman Aff. ¶¶ 9, 11, 14–16, 24–32, 39, 41–43, 46–49.

⁴⁰ Opp. at 2; *see also id.* at 22.

⁴¹ *See, e.g.,* Grossman Aff. ¶¶ 26–27, 30, 42, 46; McNicholas Aff. ¶¶ 21–25, 27–28. Providers routinely screen patients for eligibility to receive many types of care via telehealth. *Cf.* Grossman Aff. ¶¶ 38–39. That not all patients are eligible for telehealth care is immaterial to whether banning the use of DTP telehealth for abortion care for *all* patients is the least restrictive means of advancing a compelling interest.

⁴² Opp. at 22.

⁴³ *See, e.g.,* AS 08.02.130 (statutory provisions regulating telehealth care).

⁴⁴ Opp. at 22.

statutory nor incorporated into the requested injunction,” Planned Parenthood has failed to show how these protocols “would be enforced, audited, or maintained.”⁴⁵ But the test is not whether less restrictive means exist elsewhere in state law or whether a plaintiff’s requested relief could be restricted. It is whether the State’s means are “specifically and narrowly framed to accomplish [its] purpose” or whether there are “less restrictive ways” to do so.⁴⁶ The State has not even attempted to satisfy that test.

III. Planned Parenthood is likely to succeed on its equal protection claim.

Planned Parenthood is also likely to succeed on its equal protection claim. In an equal protection challenge, Alaska courts first determine whether a challenged law treats similarly situated classes unequally, and then apply strict scrutiny when the fundamental right to abortion is impaired as a result.⁴⁷ The State argues the Ban does not treat similarly situated classes unequally, but unrebutted evidence shows otherwise.

The State concedes it treats those who seek abortions differently from those who seek other pregnancy-related care or other types of care. It admits that it “widely authorizes DTP telehealth for non-abortion services”⁴⁸ and even “allows clinicians to use DTP telehealth to care for patients experiencing a miscarriage by prescribing the exact same medications used for medication abortions.”⁴⁹ There is no material difference between those seeking abortions and those seeking other types of pregnancy-related care or other care.⁵⁰ The Ban thus treats similarly situated classes differently.

The State argues, without evidence, that these comparator groups are not similarly situated,⁵¹ but the Alaska Supreme Court has held these groups are precisely the

⁴⁵ *Id.* at 6, 22.

⁴⁶ *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 207–09 (Alaska 2007) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003)).

⁴⁷ *Planned Parenthood V*, 436 P.3d at 1000–01.

⁴⁸ Answer ¶ 70; Verified Compl. ¶ 70.

⁴⁹ Answer ¶ 3; Verified Compl. ¶ 3.

⁵⁰ See Grossman Aff. ¶¶ 15, 31, 39.

⁵¹ Opp. at 23.

comparators to use when evaluating equal protection claims in the abortion context.⁵² The State tries to distinguish these holdings by claiming that, unlike the Medicaid restrictions at issue in *Planned Parenthood I* and *V*, the Ban does “not allocat[e] a benefit between two choices.”⁵³ But the Court did not limit its holding in those cases to state benefits; it held that equal protection does not permit “governmental discrimination” between Alaskans who seek an abortion and those who want to continue their pregnancies.⁵⁴

The State also argues that this differential treatment is properly fitted to its interests because the Ban “covers abortions as a category.”⁵⁵ But in so arguing, the State acknowledges the Ban subjects Alaskans seeking abortions—and *just* abortions—to different treatment. The State claims the Ban is just a “generally applicable place-of-performance rule for abortions,”⁵⁶ but a law cannot be “generally applicable” if it imposes unique restrictions only on patients seeking one type of care.

IV. Unrebutted evidence shows the balance of hardships favors an injunction.

The balance of hardships also warrants a preliminary injunction. Unrebutted evidence shows that being forced to travel for abortion care that patients could otherwise safely access at home delays and denies access, causing irreparable harm.⁵⁷ While the State suggests this harm cannot be imminent because AS 18.16.010(a)(2) is “longstanding,” it admits “[d]elay alone does not mechanically defeat relief” and cites no law showing that a statute’s age makes relief unwarranted.⁵⁸ Indeed, the fact that harm is *ongoing* does not

⁵² See *Planned Parenthood I*, 28 P.3d at 913; *Planned Parenthood II*, 35 P.3d at 43.

⁵³ Opp. at 23–24.

⁵⁴ *Planned Parenthood I*, 28 P.3d at 913; see also *Planned Parenthood V*, 436 P.3d at 1000–01. There is no material difference between abortion and miscarriage care as to the “nature of the treatment” or “condition being managed.” Opp. at 23; see McNicholas Aff. ¶¶ 13, 25; Grossman Aff. ¶¶ 15, 31, 39. The State fails to cite any case showing this comparison is improper, let alone that “the statutory framework, patient-selection issues, and the governmental interests” require treating abortion differently. Opp. at 23.

⁵⁵ Opp. at 24.

⁵⁶ *Id.*

⁵⁷ See *supra* Section I.

⁵⁸ Opp. at 11.

mean it is not also imminent.⁵⁹ Courts—including Alaska courts—enjoin laws long after their enactment.⁶⁰ In contrast, the State only alludes to wholly unsupported concerns.⁶¹

V. Planned Parenthood’s requested relief is neither vague nor overbroad.

While the State seeks to complicate Planned Parenthood’s requested relief, the request is straightforward. In addition to challenging AS 18.16.010(a)(2), which bans providing medication abortions via DTP telehealth by requiring abortions to be provided in hospitals or health care facilities, Planned Parenthood explained it would also challenge AS 18.16.010(a)(1) and 12 AAC 40.080 if the State believed they separately ban this care, and included corresponding language in its requested relief to address this concern.⁶² To the extent there is uncertainty about the required scope of relief, it is because the *State* has declined to take a position on whether AS 18.16.010(a)(1) or 12 AAC 40.080 ban the care at issue. Nevertheless, should this Court find the request vague or overbroad, it need not deny relief: it has discretion to fashion a narrower injunction.⁶³

VI. Bond should not be required.

A bond should not be required if the defendant faces no realistic likelihood of financial harm.⁶⁴ The State only summarily asserts an injunction would cause it assorted financial harms, without evidence or even an explanation of what those costs are.⁶⁵

⁵⁹ See, e.g., *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

⁶⁰ See, e.g., *State v. Alaska Democratic Party*, 426 P.3d 901, 914–15 (Alaska 2018) (enjoining longstanding party affiliation rule); *Weems v. State*, 440 P.3d 4, 13 (Mont. 2019) (“That a statute has been on the books for some time is not the relevant inquiry when entertaining a request to enjoin it.”); *Kermani v. N.Y. State Bd. of Elections*, 487 F. Supp. 2d 101, 117 (N.D.N.Y. 2006) (enjoining longstanding campaign finance law).

⁶¹ Opp. at 13. If the State elicits testimony on these points through as-yet undisclosed witnesses, Planned Parenthood reserves the right to present rebuttal witnesses.

⁶² See Verified Compl. ¶¶ 62 n.57, 65 n.59; *id.* at 34.

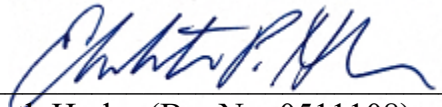
⁶³ See *Fancher v. Home Sav. & Loan Ass’n*, No. S-3057, 1990 WL 10515477, at *6 n.3 (Alaska Aug. 1, 1990) (unpublished) (favorably quoting *Brown v. Voss*, 715 P.2d 514, 517 (Wash. 1986), that courts have “broad discretionary powers ‘to shape and fashion’” an injunction); see also *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 579 (2017).

⁶⁴ See Mem. of Law in Supp. of Pl.’s Mot. for a Prelim. Inj. at 45 n.164.

⁶⁵ Opp. at 25.

Dated this 18th day of September, 2026

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

By: 
Elizabeth Hodes (Bar No. 0511108)
DAVIS WRIGHT TREMAINE LLP
188 W Northern Lights Blvd., Suite 1100
Anchorage, AK 99503
Telephone: 907-257-5300
elizabethhodes@dwt.com

PLANNED PARENTHOOD FEDERATION
OF AMERICA

Dylan Cowit (Bar No. NA21944)*
C. Peyton Humphreville (Bar No. NA20664)*
123 William St., 9th Floor
New York, NY 10038
Telephone: 929-626-0025
dylan.cowit@ppfa.org
peyton.humphreville@ppfa.org

PLANNED PARENTHOOD FEDERATION
OF AMERICA

Emily Nestler (Bar No. NA21943)*
1110 Vermont Ave NW
Washington, DC 20005
Telephone: 202-973-4800
emily.nestler@ppfa.org

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Alice Clapman (Bar No. NA21921)*
Rachel Reeves (Bar No. NA21936)*

915 15th Street NW
Washington, DC 20005
Telephone: 212-549-2633
aclapman@aclu.org
rreeves@aclu.org

ACLU OF ALASKA FOUNDATION

Susan Orlansky (Bar No. 8106042)
PO Box 90788
Anchorage, AK 99509
Telephone: 907-952-1668
sorlansky@acluak.org

**Registered to engage in pro bono practice as
out-of-state attorney supervised by a qualified
legal services provider, pursuant to Alaska Bar
Rule 43.6*

Certificate of Service

I certify that on the 18th day of September 2026, a true and correct copy of the foregoing document was served on the following via TrueFiling:

Acting Attorney General Cori Mills

Office of the Attorney General
Alaska Department of Law – Civil Division
1031 W 4th Ave, Suite 200
Anchorage AK 99501-1994

Attorney General (Juneau)

Alaska Department of Law – Civil Division
Po Box 110300
Juneau AK 99811-0300

Alaska Department of Health

Commissioner's Office
3601 C Street, Suite 902
Anchorage AK 99503

Alaska State Medical Board

PO Box 110806
Juneau AK 99811-0806

Alaska Board of Nursing

550 W 7th Ave, Suite 1500
Anchorage AK 99501-3567

By: _____



Alyssa Robyl on behalf of
Attorneys for Plaintiff