

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

3
4 PLANNED PARENTHOOD OF ALASKA,)
JAN WHITEFIELD, M.D., ROBERT)
5 KLEM, M.D., JANE DOES I-X,)

6 Plaintiffs.)

7 v.)

8 STATE OF ALASKA,)

9 Defendant.)

10 Civ. No. 3AN 97-6014 CI

DEPUTY CLERK

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CLERK, TRIAL COURTS

FILED
STATE OF ALASKA
THIRD DISTRICT

11 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

12 Plaintiffs, by and through undersigned counsel, hereby set
13 forth the following allegations as their complaint for
14 declaratory and injunctive relief:

15 PRELIMINARY STATEMENT

16 1. On May 2, 1997, HCS CSSB 24(Fin) ("SB 24" or "the
17 Act") was enacted. A true and authentic copy of SB 24 is
18 attached hereto as Exhibit A. The effective date of the act is
19 July 31, 1997. In pertinent part, this law prevents any
20 unmarried woman under 17 years of age from having an abortion in
21 Alaska unless she has obtained the consent of a parent, guardian
22 or custodian or a court order authorizing this procedure. Any
23 person who performs an abortion on a minor who has not complied
24 with these consent procedures is subject to criminal and civil
25 liability.

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1 2. The Act requires that the minor seek consent or
2 judicial approval even if she is mature enough to make an
3 informed decision, even if she will suffer physical abuse if she
4 were to confer with a parent, even if she is pregnant as a
5 result of incest, and even if the pregnancy poses a threat to
6 her health. No similar requirement is imposed where a minor
7 seeks contraceptive, prenatal care or testing, or even when she
8 undergoes a cesarean section. Indeed, for more than twenty
9 years, no parental consent requirement has been enforced for
10 minors needing abortions. With passage of SB 24, that has
11 changed.

12 3. SB 24 will unlawfully interfere with a young woman's
13 fundamental right of reproductive choice. This law will prevent
14 many minors from obtaining safe abortions and force them into
15 continuing their pregnancies to term even when this decision is
16 adverse to their best interests. SB 24 will delay or impede
17 others from obtaining an abortion to the detriment of their
18 health. Moreover, SB 24 discriminates against young women
19 needing abortions.

20 4. The State of Alaska cannot show a compelling state
21 interest to justify enactment of this new law.

22 5. SB 24 therefore violates the Alaska Constitution's
23 right to privacy, Art. 1, sec. 22, its guarantee of equal
24 protection under the laws, Art. 1, sec. 1, its guarantee of due
25 process under Art. 1, sec. 7, its guarantee of equal rights,
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1 opportunities and protection under Art. 1, sec. 1, and its
2 guarantee of freedom from discrimination based on sex, Art. 1,
3 Secs. 1 and 3.

4 6. This Court has jurisdiction under AS 22.10.020. Venue
5 is appropriate in the Superior Court, Third Judicial District,
6 at Anchorage.

7 PARTIES

8 7. Plaintiff Planned Parenthood of Alaska, Inc. ("PPA")
9 is a non-profit corporation duly organized in accordance with
10 the laws of the State of Alaska and has its principal place of
11 business in Anchorage, Alaska. PPA operates clinics in
12 Anchorage, Sitka, and Soldotna, where it provides services to
13 more than 3500 patients per year, including young women under
14 the age of seventeen. Included among services PPA provides to
15 its clients are family planning, pregnancy testing and
16 counseling and referral on pregnancy options, including prenatal
17 care, abortion and adoption. PPA also provides educational
18 services to adolescents in schools and other institutional
19 settings. PPA is a public interest litigant. It sues on its own
20 behalf and that of its patients.

21 8. Plaintiff Dr. Jan Whitefield is a physician licensed to
22 practice medicine in the State of Alaska. Dr. Whitefield is
23 board-certified in obstetrics and gynecology and is the medical
24 director of Alaska Women's Health Services in Anchorage. Dr.
25 Whitefield and other physicians at that facility perform
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1 approximately 1200 first trimester abortions per year; of these
2 approximately five percent are provided to young women under the
3 age of seventeen. For fear of being abused, thrown from the
4 home, or prevented from having abortions, some of these minor
5 patients who need abortions cannot seek consent as now required
6 under SB 24. These patients' include unemancipated minors who
7 are mature enough to make an independent decision about abortion
8 and minors whose best interests would be served by an abortion.
9 Before proceeding with these services, Dr. Whitefield provides
10 his patients with counseling on pregnancy options, and performs
11 abortions on those patients whom he believes have made an
12 informed decision regarding their pregnancy. Under the new law,
13 Dr. Whitefield may be both criminally and civilly liable should
14 he provide abortion services to a minor who has not obtained
15 appropriate consent or a court order approving the abortion. Dr.
16 Whitefield is a public interest litigant who sues on behalf of
17 himself and his patients.

18 9. Plaintiff Dr. Robert Klem is a physician licensed to
19 practice medicine in the State of Alaska. Dr. Klem is the chief
20 of obstetrics/gynecology at the Sitka Community Hospital and is
21 a family practitioner at the Sitka Medical Center. Dr. Klem
22 provides medical abortions to women in Sitka through seven weeks
23 of pregnancy measured from the woman's last menstrual period
24 (LMP). Dr. Klem's patients include unmarried and pregnant women
25 under the age of seventeen. For fear of being abused, thrown
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1 from the home, or prevented from having an abortion, some of
2 these minor patients who need abortions cannot seek consent as
3 now required under SB 24. These patients include unemancipated
4 minors who are mature enough to make an independent decision
5 about abortion and minors whose best interests would be served
6 by an abortion. Before proceeding with these services, Dr. Klem
7 provides his patients with counseling on pregnancy options, and
8 performs abortions on those patients whom he believes have made
9 an informed decision regarding their pregnancy. Under the new
10 law, Dr. Klem may be both criminally and civilly liable should
11 he provide abortion services to a minor who has not obtained
12 appropriate consent or a judicial order approving the abortion.
13 Dr. Klem is a public interest litigant who sues on behalf of
14 himself and his patients.

15 10. Plaintiff JANE DOES 1-X are anonymous minor and
16 pregnant woman who may in the future seek abortion services
17 without complying with the consent or judicial bypass provisions
18 mandated under the new law. The rights and interests of
19 Plaintiffs Jane Does I-X with respect to autonomous reproductive
20 decisionmaking and access to safe, legal abortions may be
21 represented by the other named plaintiffs in this case.

22 11. Defendant, the State of Alaska, represented by the
23 Attorney General through the Department of Law, is charged with
24 prosecuting physicians and others who provide abortion services
25 in violation of the act. The State Medical Board is the agency
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1 charged with adopting procedures, regulations and standards to
2 implement AS 18.16.010, except for the forms for the complaint
3 and notice of appeal and court rules which are to be drafted by
4 the Alaska Supreme Court under SB 24.

5 SUMMARY OF SB 24

6 12. SB 24 prohibits physicians from providing abortion
7 services to "an unmarried, unemancipated minor under 17 years
8 of age" unless: (a) the minor's parent, custodian or guardian
9 has consented in writing to the abortion, (b) a court issues an
10 order authorizing the minor to consent to the abortion without
11 consent of the minor's parent, guardian or custodian, and the
12 minor consents to the abortion, or (c) a court, by not acting,
13 constructively authorizes the minor to consent to the abortion
14 without consent of her parent, guardian or custodian and the
15 minor consents.

16 13. Violations of the Act give rise to civil and criminal
17 penalties. SB 24 provides that any person who knowingly
18 provides an abortion in violation of the consent or judicial
19 bypass provisions is subject to prosecution for a Class C
20 felony, punishable by up to 5 years imprisonment and a fine up
21 to \$1000 and may be civilly liable to the minor, her parents,
22 guardian or custodian for compensatory and punitive damages.

23 14. The Act provides no exceptions to its mandates.
24 Rather, SB 24 only makes available affirmative defenses to
25 prosecution or a civil action. Even then, the defenses are
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1 limited. SB 24 provides for affirmative defenses where (a) the
2 minor gave the provider false, misleading or incorrect
3 information about the minor's age, marital status or
4 emancipation and the provider did not have reasonable cause to
5 believe the minor was under 17, unemancipated and unmarried, or
6 (b) compliance was not possible because, in the good faith
7 clinical judgment of the physician, an immediate abortion was
8 necessary to avert the minor's death or to prevent a "serious
9 risk of substantial and irreversible impairment of a major
10 bodily function". Under SB 24, a physician is subject to
11 penalty even if provided misleading information as to the
12 consent of the parent, guardian or custodian, or if the
13 pregnancy presents a serious risk of substantial, but temporary,
14 compromise of the minor's physical health. In these
15 circumstances, the Act does not provide a defense.

16 15. Under SB 24, to avoid the consent requirements, a
17 minor must proceed to court. She must file a complaint in
18 superior court alleging either that (a) she is "sufficiently
19 mature and well enough informed to decide intelligently whether
20 to have an abortion without parental, guardian or custodial
21 consent", (b) a parent, guardian or custodian physically,
22 sexually or emotionally abused the minor or that the consent of
23 such person is "otherwise not in the minor's best interest,"
24 or both. The Court must strictly construe the minor's petition
25 and consider only the grounds alleged in the petition. The
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1 court must accordingly deny the petition if the minor fails to
2 prove the asserted basis even if shows she is entitled to
3 judicial authorization.

4 16. Under SB 24, failure of the superior court to hold a
5 hearing within the fifth business day of the minor's filing the
6 complaint constitutes a constructive order authorizing the
7 complainant to consent to the abortion.

8 17. SB 24 permits a complainant to request that the
9 hearing be held telephonically. However, the Act does not
10 require the Court to accommodate the minor at the hearing,
11 whether in person or telephonically.

12 18. Should the superior court hold the hearing, the minor
13 must prove her allegations by clear and convincing evidence. If
14 after a hearing the court dismisses the complaint, the minor may
15 appeal to the Supreme Court. The minor must file a brief within
16 four days of the notice of appeal being docketed. The Supreme
17 Court must hold a hearing within five days after the appeal is
18 docketed. Failure of that court to enter judgment within five
19 days of docketing of the appeal constitutes a constructive order
20 of the court authorizing the minor to obtain an abortion.

21 19. SB 24 states the court may not notify the parents,
22 guardian or custodian that a complainant is pregnant and seeks
23 an abortion and that judicial proceedings are to be done in a
24 manner to preserve the anonymity of the complainant. The Act
25 also states that the complaint and all other records pertaining
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1 to the action are to be kept confidential and are not public
2 records.

3 20. If a minor alleges abuse as a ground for judicial
4 authorization, or during the bypass hearing evidence is
5 introduced indicating that the minor has been subjected to
6 abuse, the superior court may order a preliminary investigation
7 to determine whether the minor is a child in need of aid (CINA)
8 under A.S. 47.10.010, et seq. If the investigation results in a
9 CINA petition being filed, the minor's parents must receive
10 notice of the CINA proceedings under A.S. 47.10.030(b).

11 21. SB 24 also requires the court to appoint an attorney
12 if the complainant has not retained counsel. However, this
13 right to appointed counsel does not arise until after the minor
14 files her petition alleging the basis for the requested relief.

15 22. SB 24 was enacted over the veto of the Governor and
16 despite an opinion letter from the Attorney General that the act
17 is "vulnerable to a successful challenge under the United
18 States Constitution and will likely be determined
19 unconstitutional under the Alaska Constitution". A true and
20 authentic copy of this April 24, 1997 Attorney General opinion
21 letter is attached hereto as Exhibit B.

22 23. SB 24 repeals, in part, former AS 18.16.010(a)(3) which
23 contained a parental consent requirement for minors seeking
24 abortions. That provision, however, has not been enforced since
25 1976 because the Department of Law opined repeatedly that the
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1 statute was constitutionally infirm. As a result, the law has
2 not been enforced since 1976.

3 STATEMENT OF THE CASE

4 24. Women in Alaska, including minors, seek abortions for
5 a variety of physical health, psychological, familial, economic
6 and personal reasons.

7 25. In Alaska and throughout the United States, in the
8 majority of cases, one or both of the minor's parents know she
9 is obtaining an abortion. The younger the minor, the more
10 likely she is to involve a parent.

11 26. When minors do not involve a parent in deciding
12 whether to have an abortion, they generally have compelling
13 reasons. Forced notice can lead to a number of serious adverse
14 consequences, including, but not limited to, physical violence
15 against the minor, physical violence against other family
16 members, forced pregnancy, childbirth and motherhood (when the
17 parent prevents the minor from terminating the pregnancy), or
18 other types of parental retribution against the minor, such as
19 expulsion from the home or other punishment.

20 27. Minors who cannot involve a parent in the decision
21 whether to continue or terminate their pregnancies will take
22 extreme action to avoid parental involvement, including, but not
23 limited to, suicide, obtaining illegal abortions, self-inducing
24 abortions, or carrying an unwanted pregnancy to term. Each of
25 these alternatives seriously risks a minor's life and health.
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1 Some minors will travel to a jurisdiction where parental
2 involvement is not required, thus necessitating long travel
3 before and after surgery.

4 28. Minors tend to seek abortions later in pregnancy than
5 adult women for a number of reasons, including the increased
6 irregularity of their menstrual cycles, making it harder to
7 detect their pregnancy, a greater likelihood of denying their
8 pregnancies, and added difficulties in amassing funds and
9 arranging travel to obtain an abortion.

10 29. Abortion at any stage of pregnancy is considered one
11 of the safest medical procedures. However, delay in the
12 performance of an abortion increases the health risk that women
13 face in connection with the procedure. While the risks
14 associated with abortion increase with gestational age, the
15 risks of childbirth are twice the risk of an abortion after
16 twelve weeks. At no time before 21 weeks do the risks of
17 abortion exceed those incurred with childbirth.

18 30. Abortions become more expensive the later in pregnancy
19 they are performed, and there are fewer providers available to
20 provide the service later in pregnancy. In Southeast Alaska,
21 abortion services are not available after seven weeks of
22 pregnancy. Alaskan women who seek an abortion after 14 weeks
23 LMP have limited options and often must travel outside the
24 state.

1 31. The farther a woman has to travel to obtain an
2 abortion, the less likely she is to obtain one. Travel imposes
3 burdens such as increased cost and time on women seeking
4 abortions.

5 32. A requirement that all minors consult a parent,
6 guardian or custodian will harm minors. Some, if forced to
7 consult a parent, will suffer harm including abuse, eviction
8 from the home, or forced parenthood. In other instances, the
9 parent or other adult who may consent will be unavailable,
10 leading to delay in the minor obtaining care, to the detriment
11 of her health.

12 33. The mandated parental consent requirements will not
13 foster family structure. When a fundamental conflict exists
14 between a parent and a minor child, affording parents a veto
15 power over the minor's fundamental right to reproductive choice
16 will not remedy an already troubled relationship.

17 34. The mandated consent requirement also will not protect
18 the health of minor women. Most minors seeking abortion
19 services are sufficiently mature to provide informed consent in
20 consultation with their physician. In those limited
21 circumstances where minors are unable to consult with their
22 parents on their medical needs, minors in consultation with
23 their physicians, other family members and other counseling
24 resources are able to best address the decision of whether to
25 continue or terminate the pregnancy. Physicians will not provide
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1 abortion services to those minors who cannot make such an
2 informed decision.

3 35. For those minors who cannot obtain parental, guardian
4 or custodial consent, the judicial bypass provisions does not
5 provide an adequate substitute. The reasons include, but are not
6 limited to, the following: "

7 (a) Minors forced to pursue a judicial bypass will be
8 delayed in obtaining care, as they struggle to determine how to
9 pursue a bypass, await a time when they can travel to court
10 undetected by a parent or guardian, and pursue the bypass.

11 (b) The problems presented by the bypass will be
12 particularly great for minors in rural areas. They will face
13 increased hurdles attempting to travel to court and to do so
14 without detection from a parent or guardian. Should they get to
15 court, they risk being seen by a family friend or acquaintance,
16 and thus losing confidentiality. A telephonic hearing does not
17 cure these problems since a minor still must find access to a
18 private line, outside the home, during court hours.

19 (c) For all minors, the delay created by the bypass
20 will come at the expense of their health. The delay also will
21 make the abortion more expensive and less available. For some
22 minors, the delay inherent in the bypass will prevent them from
23 being able to obtain an abortion in Alaska. For still others,
24 even attempting the bypass will be impossible, leaving the minor
25 little choice but to continue the pregnancy to term.
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1 (d) The specific bypass procedure under SB 24 burdens
2 minors seeking abortions. The act's strict pleading
3 requirements will infringe on a minor's right of reproductive
4 choice, by causing the court to deny some minors bypasses to
5 which they would be entitled but for these strictures.

6 (e) The standard of proof required by the Act will
7 impermissibly restrict minors' access to abortion.

8 (f) The Act burdens the minor's right to
9 confidentiality for the grounds set forth above and by
10 permitting the court to trigger a CINA investigation under AS
11 47.10. et seq. when, in the course of a bypass, the minor
12 discloses abuse.

13 (g) A requirement of a judicial bypass will not
14 further the minors' health or otherwise serve a state interest.

15 (h) By its express language, the Act does not allow
16 the court to address whether the abortion is in the best
17 interest of the minor.

18 (i) The Act precludes the court from providing
19 substitute consent for an abortion procedure for a minor whom
20 the court finds is insufficiently mature to make this decision
21 if the Court concludes that the minor's best interest is served
22 by obtaining parental consent.

23 36. SB 24 will impair a minor's exercise of her right of
24 reproductive choice by deterring physicians from providing
25 abortion services. Physicians will be chilled from providing
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1 care for reasons including but not limited to the act's failure
2 to provide a life and health exception to civil or criminal
3 prosecution, the act's limited and vague definition of medical
4 emergency, and the act's failure to include as a defense fraud
5 or misrepresentation as to the provision of parental consent.

6 37. The inadequacies of the judicial bypass provision will
7 result in some minors being forced to leave the State to obtain
8 an abortion. These young women will face not only prohibitive
9 expenses, but possibly substantial risks to their health from
10 undue delay in access to these medical services. Other minors
11 may simply forego seeking an abortion rather than comply with
12 the consent or judicial bypass provisions of the act and carry
13 an unwanted pregnancy to term. Others may resort to self-help
14 or inadequately trained persons to seek to terminate their
15 pregnancies.

16 38. SB 24 will immediately and irreparably harm some
17 pregnant minors by denying them the opportunity to obtain timely
18 and safe abortions. These young women will suffer the
19 irreparable harm of forced parenthood.

20 39. For some minors in need of abortion services, SB 24
21 will pose an insurmountable barrier because they do not want or
22 cannot obtain parental or guardian consent, they are fearful of
23 the judicial bypass procedure, they cannot satisfy those
24 requirements in a timely fashion, or they cannot locate
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1 physicians to perform abortions due to provider reluctance to
2 continue to provide abortion services.

3 40. SB 24 subjects minors choosing to terminate their
4 pregnancies to unique burdens. Under Alaska law, unemancipated
5 minors under the age of seventeen can obtain other medical
6 services and exercise other privileges and rights, including the
7 right to carry a pregnancy to term, without being required to
8 obtain parental consent or satisfy a judicial bypass provision.
9 Minors choosing to carry a pregnancy can obtain prenatal
10 services, invasive testing and even cesarean sections without
11 parental consent or court order. Minors also may obtain
12 treatment for venereal disease, among other services, without
13 parental consent.

14 COUNT I -- CONSTITUTIONAL RIGHT TO PRIVACY

15 41. Plaintiffs incorporate by reference the allegations set
16 forth in pars. 1-40 above.

17 42. SB 24 unlawfully infringes upon a minor's right to
18 reproductive choice under the Alaska Constitution's right to
19 privacy, article 1, sec. 22. That constitutional section is
20 interpreted by the Alaska Courts to provide privacy protection
21 greater than that afforded under the U.S. Constitution.

22 COUNT II -- EQUAL PROTECTION

23 43. Plaintiffs incorporate by reference the allegations
24 set forth in pars. 1-42 above.

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1 44. SB 24 violates the equal protection and inherent
2 rights clause of Art. 1, Sec. 1, of the Alaska Constitution by
3 unjustly discriminating among suspect and arbitrary
4 classifications, including but not limited to, between those
5 minors who reside in rural areas and those who reside in urban
6 areas, between those minors who reside in areas with ready
7 access to the courts and those who do not, between those minors
8 who seek abortion services and those who seek to carry their
9 pregnancies to term, between those minors who seek abortion
10 services and those minors who seek other services, between those
11 persons under age 17 and those persons who are older, and
12 between those persons who are married and emancipated and those
13 persons who are not. SB 24 also discriminates against young
14 women based on their residency, marital status, pregnancy,
15 medical needs and sex.

16 COUNT III -- DUE PROCESS

17 45. Plaintiffs incorporate by reference the allegations
18 set forth in pars. 1-44 above.

19 46. SB 24 violates the due process clause of Art. 1, sec.
20 7 of the Alaska Constitution denies substantive due process
21 because this law is not substantially related to any lawful,
22 valid purpose and it is unconstitutionally vague.

23 COUNT IV -- VIOLATION OF CONSTITUTIONAL CIVIL RIGHTS

24 47. Plaintiffs incorporate by reference the allegations
25 set forth in paragraphs 1-46 above.

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48. SB 24 violates the civil rights of plaintiffs protected by the Alaska Constitution, Article I, section 3, which provides, in relevant part, that "[n]o person is to be denied the enjoyment of any civil or political right because of sex . . ." by imposing substantial restrictions on the constitutional rights of young women.

PRAYER FOR RELIEF

Wherefore, plaintiffs pray for the following relief:

1. That the Court issue a judgment declaring that SB 24 is unlawful and void under the Alaska Constitution;
 2. That the Court issue an injunction permanently restraining the State of Alaska and its agencies and instrumentalities from implementing or enforcing this act;
 3. That the Court declare plaintiffs are public interest litigants;
 4. That the Court award plaintiffs attorneys fees and costs;
- and
5. That the Court award plaintiffs such other relief as it deems just.

WHEREFORE, Plaintiffs respectfully request that the Court enter Judgment in their favor on the claims made and for the relief requested in this complaint.

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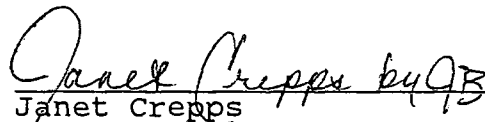
Dated this 25th day of July, 1997.

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