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For Immediate Release  
April 20, 2020

News Release 2020-52

**Hawaii Attorney General Joins Coalition Challenging Arkansas' Unconstitutional Abortion Ban During COVID-19 Pandemic**

HONOLULU – Hawaii Attorney General Clare E. Connors has joined a multistate coalition of 19 attorneys general seeking to stop the State of Arkansas from banning almost all procedural abortions in the state, as the state has improperly used the coronavirus disease 2019 (COVID-2019) public health crisis as a justification. The coalition filed an amicus brief in the U.S. Court of Appeals for the Eighth Circuit, supporting the plaintiffs in [In re Leslie Rutledge](#), as they fight to preserve access to reproductive health care for the women across Arkansas.

“The continuing COVID-19 crisis should not be used as an excuse to do away with longstanding constitutional rights,” said Attorney General Connors. “The actions taken by the Arkansas Department of Health are not necessary to respond to the COVID-19 crisis, and adversely impact matters related to women’s health.”

Women seeking an abortion in Arkansas typically have the choice between one of two options: a medication abortion (induced by taking two different prescription drugs) or a procedural abortion (which does not require general anesthesia or incision). Medication abortions can take place through the 10<sup>th</sup> week of pregnancy in Arkansas, while a procedural abortion can currently take place through approximately 22 weeks of pregnancy, despite new state laws, passed last year, attempting to scale back that period to just 18 weeks. Only one abortion clinic in the entire State of Arkansas is currently licensed to perform procedural abortions — the Little Rock Family Planning Services (LRFPS) health clinic.

On March 11, 2020, [Arkansas Governor Asa Hutchinson issued Executive Order 20-03](#), declaring a state of emergency. Ten days later, on March 21, 2020, the Arkansas Department of Health (ADH) issued a public statement recommending that health care facilities and clinicians “prioritize urgent and emergency visits and procedures now and for the coming several weeks.” The statement detailed that its goals were to “preserve staff, personal protective equipment (PPE), and patient care supplies; ensure staff and

patient safety; and expand available hospital capacity during the COVID-19 pandemic.” The ADH stated that “[p]rocedures ... that can be safely postponed shall be rescheduled to an appropriate future date.” [The ADH issued another directive on April 3](#) with the same language as the March 21 directive, but which further specified that “urgent” and “care designated as an exception...will continue,” including care for circumstances in which “there is a risk of... progression of staging of a...condition if surgery is not performed.”

On April 1, representatives from the ADH called LRFPS twice to inquire about what the clinic was doing to reduce non-essential services, preserve PPE, and protect against the spread of COVID-19. On both occasions, LRFPS summarized practices it was following. On April 7, ADH inspectors performed an unannounced in-person inspection at LRFPS. At no point during either of the phone calls or the in-person inspection (which occurred on a day during which both procedural and medication abortions were being provided) did the ADH representatives suggest that LRFPS was not complying with the state’s April 3 directive.

However, on the morning of April 10, ADH inspectors hand delivered a cease-and-desist order to LRFPS asserting that the clinic was “in violation of the April 3, 2020 Arkansas Department of Health Directive on Elective Surgeries,” despite acknowledging that the April 7 inspection “did not reveal any deficiencies with respect to the rules for abortion facilities in Arkansas.” The cease-and-desist order stated that the April 3 “prohibition applies to surgical abortions that are not immediately necessary to protect the life or health of the patient” and that “[a]ny further violations of the April 3 Directive will result in an immediate suspension of [LRFPS’s] license.”

Although the ADH is using the April 3 directive as the basis for ordering LRFPS to stop performing procedural abortions — except when the life or health of the woman was at immediate risk — the ADH has, to date, continued to allow a range of other non-urgent medical services, including orthodontist visits to adjust orthodontic wires and dentist visits to treat cracked teeth. Further, at an April 9 press conference with Governor Hutchinson and Arkansas State Health Director Dr. Nathaniel Smith, Dr. Smith was asked if “elective surgery” was still permitted in the state, and he responded that judgments at surgical centers would be left primarily to the providers.

A lawsuit LRFPS filed last year against government officials in the State of Arkansas in the U.S. District Court for the Eastern District of Arkansas was amended on April 13 to add a challenge to the ADH April 3 directive and, specifically, the cease-and-desist order issued on April 10. The next day, the district court issued a temporary restraining order blocking the state from shutting down LRFPS’s procedural abortion services, in which the court noted that the state’s ban would, among other things, “bar access to abortion because medication abortion is contraindicated” for some women; “likely push [some women] to a more complex and more time-intensive” abortion procedure; and “likely push [other women] beyond the point at which abortion is available in the State.”

The district court also noted that the continuation of procedural abortions would not preserve PPE or hospital resources because procedural abortions make minimal use of both, and that continuing to allow procedural abortions would not increase the risk of

transmission of COVID-19 any more than other activities that Governor Hutchinson has allowed to continue in Arkansas. Instead, the court observed, the state's decision to bar procedural abortions in Arkansas will cause some women to undertake lengthy interstate travel that will actually increase the risk of transmission of the disease. The different defendants then asked the U.S. Court of Appeals for the Eighth Circuit to halt the lower court's order, which would effectively reinstitute the ban on procedural abortions in the State of Arkansas.

In the amicus brief filed on Friday, the coalition — led by New York Attorney General Letitia James — lays out why they oppose the request to halt the lower court's temporary restraining order, stressing that the ban on procedural abortions in Arkansas infringes on a woman's constitutional rights. The coalition explains that the "characterization of the ban as prohibiting only 'elective' procedures fails to recognize how the time-sensitive nature of abortion care distinguishes that care from services that can be postponed without patient harm during the current public health crisis" because "abortions cannot be deferred indefinitely or for long stretches without increasing risks for some women and denying access to others." The coalition explains that Arkansas' "ban on [procedural] abortions will irreparably injure any woman who reaches the legal limit for an abortion during the ban," resulting in some women "permanently los[ing] their right to lawfully obtain an abortion in Arkansas."

Additionally, the coalition goes on to highlight that if the ban were to be reinstated, some women in Arkansas would be forced to make "risky and expensive" travel plans to cross state lines in order to obtain an abortion. This is especially troublesome at a time when the entire U.S. population is being asked to limit travel to stop the spread of COVID-19. Further, the coalition notes that residents of New York and other amici states may currently be in Arkansas without a way to return home, but they still have a right to time-sensitive reproductive care.

Finally, the coalition explains why a ban on abortion would not help the state preserve PPE, free up hospital beds, or prevent the spread of COVID-19 transmissions. As the district court noted in its temporary restraining order, the exact opposite is actually true. The attorneys general note that procedural abortions require limited PPE and actually require "far less PPE and medical resources than continuing a pregnancy" does. Additionally, procedural abortions rarely require admission to a hospital.

The amended complaint by LRFPS was filed in a suit brought last year when the governor, in March 2019, signed into law several bills intended to restrict a woman's access to abortion services throughout the state. The laws would criminalize abortions performed after 18 weeks and impose additional undue burdens on a woman's constitutional right to an abortion. In July 2019, the U.S. District Court for the Eastern District of Arkansas granted a preliminary injunction and temporarily blocked the laws restricting abortion care from taking effect. The State of Arkansas appealed the decision to the Eighth Circuit Court of Appeals shortly thereafter. Earlier this year, in January, a multistate coalition filed a multistate amicus brief in support of LRFPS's lawsuit that seeks to protect a woman's right to safe and legal abortion care without the burdensome restrictions imposed by Arkansas' laws.

Today's brief follows two similar multistate amicus briefs Attorney General Connors joined in filing earlier this month in support of challenges to similar efforts to ban abortion during the COVID-19 public health crisis — [one in support of a suit brought against state officials in the State of Texas, in \*Planned Parenthood v. Abbott\*](#) and the [second in support a suit brought against state officials in the State of Oklahoma, in \*Southwind Women's Center LLC v. Stitt\*](#).

Medical professionals — including the American College of Obstetricians and Gynecologists — recently denounced the abortion bans being imposed by multiple states during the spread of COVID-19, highlighting that delays in providing time-sensitive reproductive health care could “profoundly impact a person’s life, health, and well-being.”

In addition to Arkansas, Texas, and Oklahoma, the States of Alabama, Iowa, Louisiana, Mississippi, Ohio, and Tennessee have all also implemented similar orders banning abortions during the COVID-19 pandemic, limiting their residents’ constitutional rights to access an abortion.

Attorney General Connors joins Attorney General James and the attorneys general of California, Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia in filing this amicus brief.

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