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For Immediate Release
April 21, 2020

News Release 2020-54

Hawaii Attorney General Joins Coalition Fighting Alabama's Unconstitutional Abortion Ban During COVID-19 Pandemic

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a multistate coalition of 18 attorneys general in seeking to stop the State of Alabama from banning almost all abortions in the state, using the coronavirus disease 2019 (COVID-2019) public health crisis as an excuse. The coalition has filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit, supporting the plaintiffs in [Robinson v. Marshall](#), as they fight to preserve access to reproductive health care for the women across Alabama.

“More now than ever we have to be vigilant about protecting comprehensive access to healthcare,” said Attorney General Connors. “There is no justification for using the COVID-19 crisis to delay or block the provision of reproductive health care services.”

On March 17, 2020, [Alabama's State Health Officer issued an "Order of the State Health Officers Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19,"](#) declaring that, starting on March 28, 2020 at 5:00 PM, “all dental, medical, or surgical procedures shall be postponed until further notice,” with exceptions only in place where necessary for emergencies, to avoid serious harm, or to continue ongoing and active treatment. That same day, Alabama Attorney General Steve Marshall confirmed that abortion services would not be exempt from the order. A few days later, on March 30, Attorney General Marshall issued a news release in which he clarified the order applied “without exception” and falsely made a number of inaccurate claims about the risks abortion clinics have in spreading COVID-19, including that these clinics are depleting valuable personal protective equipment (PPE) and that abortions typically require hospitalization. Attorney General Marshall went on to threaten the state's abortion clinics by stating that he would enforce the order against “all violators.”

The next day, on March 30, a complaint was filed in the U.S. District Court for the Middle District of Alabama by Dr. Yashica Robinson and Alabama's three independent abortion clinics: the Alabama Women's Center, Reproductive Health Services, and West Alabama Women's Center. The plaintiffs are being represented by Planned Parenthood Federation of America and the American Civil Liberties Union.

That very same day, the district court issued a temporary restraining order blocking the state from enforcing its abortion ban. In a subsequent decision ordering a preliminary injunction, issued on April 12, the district court noted that, in Alabama, abortion becomes illegal after the 20th week of pregnancy. The court then stated, "this much is clear: for at least some women, a mandatory postponement" of abortions "would operate as a prohibition of abortion, entirely nullifying their right to terminate their pregnancies, or would impose a substantial burden on their ability to access an abortion." The district court was abundantly clear, labeling the implications of the state's attempt to postpone abortions "deeply troubling," adding that, "[f]or some group of women, a mandatory postponement will make a lawful abortion literally impossible," and "[f]or other women, a postponement would make securing a lawful abortion far more difficult, or even impossible, including because of major logistical hurdles."

The district court went on to note, "based on the current record, the defendants' efforts to combat COVID-19 do not outweigh the lasting harm imposed by the denial of an individual's right to terminate her pregnancy, [or] by an undue burden or increase in risk on patients imposed by a delayed procedure." The court concluded, "it is substantially likely that the medical restrictions, when interpreted to allow only those abortions necessary to protect the life and health of the [woman], are unconstitutional."

Alabama has now appealed the preliminary injunction to the U.S. Court of Appeals for the Eleventh Circuit.

In the amicus brief filed today in the Eleventh Circuit and led by New York Attorney General James Letitia James, the coalition lays out why they oppose the request to halt the lower court's preliminary injunction, stressing that the ban on abortions in Alabama infringes on a woman's constitutional rights. The coalition explains that the State of Alabama "fail[s] 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 attorneys general note, "As the district court found, the ban on abortions will irreparably injure any woman who reaches the legal limit for an abortion during the ban," resulting in some women losing their constitutional right to a legal abortion.

The coalition also explains that a prohibition on abortions, even for a short period of time, would harm some women by requiring more invasive and lengthier terminations.

Additionally, the coalition goes on to highlight that the abortion ban would force some women in Alabama 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 Alabama without a way to return home, but they still have a right to time-sensitive reproductive care.

The attorneys general add that: “To further decrease transmission risks in the context of reproductive health care, clinics in amici States have increased the use of telehealth to conduct assessments, which reduces travel and in-person interactions. Some amici have modified state rules to allow increased use of telehealth during the pandemic,” but Alabama has not done so for abortion 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 found in the preliminary injunction it ordered, the exact opposite is actually true. The attorneys general note that abortions require “far less PPE and medical resources than continuing a pregnancy” does and medication abortions typically require none. Additionally, abortion procedures rarely require admission to a hospital. In fact, only one out of 10,000 “emergency room visits in the United States [each year] are abortion-related,” whereas “a significant number of hospitalizations resulting from complications and miscarriages” occur early on in a pregnancy. The coalition adds, “because some of these events are inevitably avoided by providing access to timely abortions, denying access to timely abortions will not appreciably conserve hospital resources and PPE in the coming weeks,” but could actually use more resources.

This brief follows three [similar multistate amicus briefs filed 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*, the second in support a suit brought against state officials in the State of Oklahoma, in *Southwind Women’s Center LLC v. Stitt*, and the third in support of a suit brought against state officials in the State of Arkansas, in *Little Rock Family Planning Services v. In re Leslie Rutledge*.](#)

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 Alabama, Arkansas, Texas, and Oklahoma, the States of Iowa, Louisiana, Mississippi, Ohio, and Tennessee have all also attempted to ban many previability abortions during the COVID-19 pandemic, limiting their residents’ constitutional rights.

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, Vermont, Virginia, Washington, and the District of Columbia in filing today's amicus brief.

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