



March 7, 2011

**AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA**
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

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The Honorable Bettye Davis, Chair
Senate Health & Social Services Committee
Alaska State Senate
Juneau, AK 99801-1182
via email: Senator_Bettye_Davis@legis.state.ak.us

Re: Senate Bill 14
ACLU Statement in Opposition

Chair Davis:

Thank you for the opportunity to submit written testimony with respect to Senate Bill 14.

As you know, the American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we would like to advise the Committee of several issues with respect to SB 14, and register our **strong opposition to the proposed legislation.**

Importance of Religious Liberty

The ACLU has long been a defender of religious liberty. Our work in defending the free exercise rights of people of faith is robust – both at the National and State levels. For example, the ACLU of Alaska worked with the Russian Old Believer Community in the Homer area to ensure that the state would not improperly interfere with their practice of Holy Week. See, http://homernews.com/stories/021810/news_wto.shtml.

A quick review of the website ACLU Fights for Christians, at: <http://www.aclufightsforchristians.com/>, reveals the continuing work of our sister Affiliates to protect the rights of all Americans to practice and believe free of government interference.

Importance of Privacy and Right to Bodily Integrity

Pursuant to our mandate to protect the constitutional rights of Americans, the ACLU also defends the right to privacy, including medical privacy and reproductive freedom. Individuals must control decisions about their bodies and their health, and the government should not make those decisions for them.

SB 14 allows health care providers to refuse to provide health services, even if they are the only available provider, unless there are “life threatening circumstances.” It gives civil and criminal immunity to those health care providers regardless of the grievous harm that could be inflicted on a patient.

SB 14 does not draw the proper balance in protecting religious liberty and individual privacy, and in ensuring Alaskans’ health.

Refusals to Provide Health Care Services Threaten Public Health

An employee’s refusal to provide health care threatens the health and safety of Alaskans – particularly in rural areas where medical services are limited. ***SB 14 is a dangerous step away from government’s responsibility to protect public health.***

Instead of putting patients’ health first, it seeks to protect individuals ***who have otherwise taken an oath to provide medical services to those in need.*** A refusal can conflict with a health care provider’s ethical duty to her patient. And SB 14 does not provide the safeguards medically recommended:

Conscientious refusals that conflict with patient well-being should be accommodated only if the primary duty to the patient can be fulfilled. . . . In resource poor areas, access to safe and legal reproductive services should be maintained. Providers with moral or religious objections should either practice in proximity to individuals who do not share their views or ensure that referral processes are in place.

http://www.acog.org/from_home/publications/ethics/co385.pdf, American College of Obstetricians and Gynecologists, Committee on Ethics, Opinion No. 385, November 2007, (Reaffirmed 2010).

The Proper Balance of Patients' Rights & Public Health with Religious Belief

The debate over religious refusals and health services need not be cast as a “winner take all contest” between “opposing” sides. The ACLU believes in a solution that balances protecting patients’ rights and the public health with individual religious belief and institutional religious worship.

Institutions that operate in the public world ought to play by public rules. Health care providers serve and employ religiously diverse populations. Too, they often accept government funding. They are in the business of providing health services – not practicing religion. But SB 14 would permit a health care provider – even if that individual is the only provider on the premises – to refuse to provide care on the basis of “conscience” unless the patient was seeking care in life-threatening circumstances. It sanctions behaviors that are contrary to the interests of patients, and the standards of care required of Alaska health care providers.

This is bad public policy. Moreover, as written, SB 14 could come into conflict with the Alaska Supreme Court’s decision in *Valley Hospital Association, Inc., v. Mat-Su Coalition for Choice* (1997) 948 P.2d 963, and result in needless, costly, and extended litigation. (In light of existing federal law, *see below*, passage of SB 14 would thus be doubly unwise.)

Clearly, institutions such as churches, temples, or mosques, whose main purpose is to inculcate religious values, ***ought generally to be free from having to comply with health care requirements repugnant to their beliefs.*** But SB 14 dangerously goes beyond this principle.

SB 14 is Unnecessary

SB 14 is an unnecessary effort to protect an individual’s right to not participate in procedures he or she finds objectionable because ***that right is already protected under the Civil Rights Act.*** Title VII of that act requires an employer to attempt to accommodate current and prospective employees’ refusals to provide any health care service on the basis of their religious beliefs so long as the accommodation does not pose an undue hardship on the employer’s overall ability to provide health care services to its patients.

Title VII contemplates a careful balancing of interests. It gives employers leeway to take into account the effect of an employee’s refusal on public health and safety, and at the same time, Title VII seeks the maximum possible accommodation of an individual’s religious objection. The Civil Rights Act finds the middle ground between an employee’s moral and religious objections and the needs of the patient to have access to the best healthcare possible.

Except for a “life-threatening circumstance,” SB 14 makes no mention of the **patient’s needs.** It implies that the patient’s health is a low priority and that the patient’s own moral grounding on what is and is not acceptable is unimportant. In addition – other than “life-threatening circumstances” – SB 14 includes no provision requiring the healthcare provider to find the means

for the patient to have access to the procedure in question. If the employee refuses to give the patient the necessary treatment, the patient is harmed with no recourse.

As Bad Public Policy, SB 14 Should Die in Committee

For the reasons set forth above, the ACLU believes SB 14 is bad for Alaska and particularly threatens the health of those in rural areas who are most vulnerable and in need of improved medical care.

We trust that the Health and Social Services Committee will take the necessary steps to ensure this bill does not proceed any further through the legislative process.

Thank you again permitting us to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. Mittman', with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Dennis Egan, Senator_Dennis_Egan@legis.state.ak.us
Senator Johnny Ellis, Senator_Johnny_Ellis@legis.state.ak.us
Senator Kevin Meyer, Senator_Kevin_Meyer@legis.state.ak.us
Senator Fred Dyson, Senator_Fred_Dyson@legis.state.ak.us