

February 28, 2022

Re: ACLU of SD Urges Opposition to House Bill 1318

Hello members of the South Dakota Senate,

I write to you today on behalf of the ACLU of South Dakota to urge your opposition to House Bill 1318. The ability to obtain abortion care is fundamental to a person's independence, freedom, equality, and economic security.

The American Civil Liberties Union of South Dakota opposes House Bill 1318 for the following reasons:

**1. House Bill 1318 proposes restrictions on medication abortion care that have no medical justification**

Medication abortion is safe, common and essential health care that involves taking two pills - Mifepristone and Misoprostol. This method of abortion care can be preferable to patients in the early stages of pregnancy for a variety of reasons. It is considered more private and less invasive, and for some people it is not only preferred, but medically indicated. It is safe, effective, and FDA-approved with a 20-year track record. Mifepristone has been used by more than 4 million people since the FDA first approved it two decades ago, and has been proven to have a 99% safety rate and in the FDA's own words, it's safety and efficacy are "well established."<sup>1</sup>

Furthermore, the additional requirement of an in-person visit to receive the Misoprostol alone exceeds what was required by the Federal Risk Evaluation and Mitigation Strategy (REMS) that was the impetus for the administrative rules that House Bill 1318 aims to codify. It also goes against the standard of care that has been in place for more than 20 years and the recommendations of leading medical organizations, including the American College of Obstetricians and Gynecologists.

**2. This bill poses a serious threat to the health and well-being of individuals seeking abortion care and ignores a pregnant person's individual needs and circumstances**

Proponents of this bill argue that not requiring an in-person visit to procure Misoprostol creates unsafe conditions and potential harm to South Dakotans who can get pregnant. However, the evidence points to the opposite conclusion. By taking away an option for abortion care that is preferred and sometimes medically indicated for pregnant people, House Bill 1318 will push abortion care out of reach for some South Dakotans.

Forcing someone to carry a pregnancy against their will results in increased levels of poverty and an inability to cover basic needs like food, housing, and transportation.<sup>2</sup> Those who are denied an abortion are more likely than those who receive an abortion to



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<sup>1</sup> [https://www.accessdata.fda.gov/drugsatfda\\_docs/nda/2016/020687Orig1s020MedR.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/nda/2016/020687Orig1s020MedR.pdf)

<sup>2</sup> <https://www.ansirh.org/research/ongoing/turnaway-study>

be living in poverty and lacking full-time employment six months after the denial of care, and more likely to stay tethered to abusive partners.<sup>3</sup>

This bill, like other attacks on abortion access, will disproportionately harm the same people who have always faced systemic barriers to care — Black, Latinx, and Indigenous communities, the LGBTQ+ and two spirit community, undocumented immigrants, young people, those living in rural communities, people with disabilities, and people with low incomes. Persistent disparities in healthcare access already put up substantial barriers to abortion care, and this bill would further exasperate existing disparities.

The fact that House Bill 1318 is both medically unjustified and will harm pregnant South Dakotans seeking abortion care makes it clear that the purpose of this bill is not to protect or promote the safety of South Dakotans who can get pregnant, but to further push abortion care out of reach and place politicians in-between doctors and their patients.

It is essential that a pregnant person's health, not politics, should be the most important factor when making personal medical decisions. It is extremely dangerous for politicians to tell doctors how to practice medicine, force them to act against their best medical judgment, and take away a safe, non-invasive option for early abortion care.

### **3. House Bill 1318 imposes an undue burden on people seeking abortion care and abortion providers**

The American Civil Liberties Union (ACLU), the ACLU of Hawaii, and Arnold & Porter Kaye Scholar LLP, are currently challenging the constitutionality of the REMS restrictions that until recently required an in-person visit to procure Mifepristone.<sup>4</sup> In *Chelius vs Beccerra* plaintiffs argue that the REMS restrictions violate their patients' and members' rights to liberty, privacy and equal protection as guaranteed by the U.S. Constitution by imposing significant burdens on abortion access without proof of a valid medical justification.

House Bill 1318 presents an even more significant burden on abortion access by imposing restrictions on Misoprostol as well, that require an additional trip to the clinic, exceeding federal REMS requirements. This additional restriction adds to the numerous existing barriers that people seeking abortion care in South Dakota already face. Existing state law, even before the rules, required two in-person visits – for informed consent and to receive the Mifepristone and Misoprostol. An additional in-person visit and waiting time can delay a patient's abortion – typically by weeks – while they arrange and pay for transportation, time off work, and child care. This delay pushes some patients past the point at which they can use this early medication method; others cannot access abortion care at all.

Compliance with the additional in-person requirements and mandatory waiting periods also creates a logistical burden for Planned Parenthood, the only abortion clinic in South Dakota. That burden is too great to overcome and would effectively eliminate their ability to provide medication abortion as an option, leaving patients seeking abortion care only the option of procedural abortion regardless of their preference, circumstances, or medical needs.

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<sup>3</sup> Id.

<sup>4</sup> <https://www.aclu.org/cases/chelius-v-beccerra>



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#### 4. House Bill 1318 aims to codify regulations that are currently enjoined

The ACLU has been fighting for freedom and autonomy for abortion access since before *Roe v. Wade* was decided, and has more than 25 lawsuits challenging state abortion restrictions in court. One of those is *Planned Parenthood v Noem*, challenging the new rule from the South Dakota Department of Health, created at the direction of Gov. Kristi Noem, that would create the additional in-person visit for Misoprostol and waiting period that House Bill 1318 aims to codify. However, a federal district court judge recently granted a preliminary injunction against the portion of the regulations that created the undue burden on people seeking medication abortions. In the ruling, the federal district court found that the new regulation requirement of a third visit is medically unnecessary, imposes unnecessary medical risks, and amounts to a substantial obstacle for patients seeking medication abortion.<sup>5</sup>



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The ACLU of South Dakota holds that every person, as a matter of their right to the enjoyment of life, liberty, and privacy, should be free to determine whether and when to bear children. The decision about whether, when, or how to become a parent is one of the most important life decisions we make and is best made by each person with their family and faith. All South Dakotans should be able to do so without manufactured barriers and political interference.

For these reasons and more we urge you to vote no on House Bill 1318.

Sincerely,

A handwritten signature in black ink that reads "Jett Jonelis". The signature is written in a cursive, flowing style.

Jett Jonelis  
Advocacy Manager  
ACLU of South Dakota  
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<sup>5</sup> [https://www.aclusd.org/sites/default/files/field\\_documents/pi\\_granted.pdf](https://www.aclusd.org/sites/default/files/field_documents/pi_granted.pdf)