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EXEMPT FROM FEES PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

BAKERSFIELD CRISIS PREGNANCY CENTER, a nonprofit religious California corporation dba Bakersfield Pregnancy Center; ERIN ROGERS, PATRICK BAGGOT; AND STEVEN BRAATZ

Plaintiffs,

v.

DEPARTMENT OF MANAGED HEALTH CARE; CALIFORNIA DEPARTMENT OF INSURANCE; ROB BONTA, Attorney General of the State of California,

Defendants.

Exempt from Filing Fees Pursuant to Gov. Code § 6103

Case No. BCV-22-102617-TSC

~~[PROPOSED]~~ JUDGMENT

Trial Date: October 23 & 24, 2024
Dept: 17
Judge: The Honorable Thomas S. Clark
Action Filed: October 5, 2022

JUDGMENT

The above-entitled case came on for trial before the undersigned on September 23 and 24, 2024. Plaintiffs the Bakersfield Crisis Pregnancy Center, dba Bakersfield Pregnancy Center, Erin Rogers, Patrick Baggot, and Steven Braatz appeared in person through their attorneys, Catherine Short and Corrine Konczal, and Defendants the Department of Managed Health Care, California

Department of Insurance, and Rob Bonta, Attorney General of the State of California, appeared in person through their attorneys, Lauren Zweier, Martine D'Agostino, and Karli Eisenberg. Evidence, oral and documentary, was presented, the matter was argued and submitted. A Tentative Statement of Decision was issued on November 26, 2024, Plaintiffs filed a Response to the Tentative Statement of Decision on December 10, 2024, and a Final Statement of Decision was rendered on December 17, 2024. The Final Statement of Decision is attached hereto as **Exhibit 1** and incorporated herein.

Pursuant to the Final Statement of Decision it is hereby ORDERED, ADJUDICATED, and DECREED that:

1. Plaintiffs are denied the relief sought pursuant to their Second Amended Complaint;

2. Judgment is entered in favor of Defendants;

3. Defendants are declared to be the prevailing parties;

4. Defendants are awarded their costs of suit;

5. Attorney's fees are to be decided by motion.

IT IS SO ORDERED

Signed: 1/15/2025 07:19 PM

Dated: 01/15/2025

Thomas S. Clark
Judge of the Superior Court

Approved as to form:

Dated: 12/30/2024

CATHERINE SHORT
CORRINE KONCZAL
Life Legal Defense Foundation
Attorneys for Plaintiffs

Exhibit 1

Superior Court of California
County of Kern
Bakersfield Department 17

Date: 12/17/2024 **Time: 8:00 AM - 5:00 PM**

BCV-22-102617

BAKERSFIELD CRISIS PREGNANCY CENTER, A NONPROFIT RELIGIOUS CALIFORNIA CORPORATION ET AL VS CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE ET AL

Courtroom Staff

Honorable: Thomas S. Clark **Clerk:** Linda K. Hall

NATURE OF PROCEEDINGS: RULING FINAL DECISION, STATEMENT OF FINDINGS AND CONCLUSIONS

The Court reaches the following decision:

FINAL DECISION, STATEMENT OF FINDINGS AND CONCLUSIONS

In their Second Amended Complaint, Plaintiffs seek declaratory and injunctive relief under two separate legal theories. In their First Cause of Action, they seek relief based upon their allegations/contentions that the Abortion Accessibility Act, also called SB 245, enacted 3-22-22 ("the Act") violates Article I, Section 7 ("Equal Protection") of the California Constitution. In their Second Cause of Action, they seek relief based upon their allegations/contentions that the Act violates Article I, Section 1 ("Privacy") of the California Constitution.

Defendants dispute the allegations/contentions of Plaintiffs and the facts, assumptions and legal theories underlying and supporting those allegations/contentions.

The parties agree that there are not many disputed facts and, for purposes of this action, have stipulated to 20 facts and points of law, set forth in Ex. 2. The written stipulation also includes some definitions to be used in reading the stipulation.

The Equal Protection arguments are to some degree intertwined with the Privacy arguments and it is difficult to entirely segregate one from the other. Nevertheless, the Court will attempt to analyze this case on a cause of action by cause of action basis.

In their argument and briefs, the parties felt it made sense to discuss the privacy issues first. The Court approached its analysis the same way.

PRIVACY - SECOND CAUSE OF ACTION

California has specifically incorporated a right of privacy into its constitution. The right to privacy in the California Constitution, Article I, section 1 has been interpreted not only to guarantee women the right to choose whether or not to bear a child, but to allow women to have a reasonable expectation of privacy with regard to making that decision. ***Committee to Defend Reproductive Rights v. Myers*** (1981) 29 Cal.3d 252.

The parties have stipulated to the accuracy of the California Health Benefits Review Program (CHBRP)'s estimate that, as a result of the Act being in place and followed, an estimated "additional 97 women would be new users of ABORTION SERVICES due to elimination of cost sharing." Ex. 2, Fact 13.

For purposes of the stipulation, "ABORTION SERVICES" is defined as "an ABORTION and associated services (pre-abortion services (pre-abortion and follow-up services)."

"ABORTION" is defined as "the use of medications or procedures to intentionally terminate a pregnancy, except for purposes of producing a live birth. For the purpose of this stipulation, ABORTION does not include treatment for an incomplete MISCARRIAGE."

"MISCARRIAGE" is defined as "the unintentional loss of a pregnancy in the first 20 weeks of gestation."

The parties have agreed to these definitions for purposes of reading their Stipulation only. The parties do not necessarily intend this stipulation to be a concession as to the interpretation of any part of the Act, which is the primary subject of this action.

In written and oral argument, the parties have sometimes characterized this stipulated fact as a stipulation that under the Act an additional 97 women will have abortions. The Court feels this is a fair characterization.

While the parties can agree as to this stipulated fact (and related definitions), the parties have drawn radically different conclusions from this fact. Each party is urging the Court to accept their conclusion as the basis for the Court's ultimate legal conclusions.

In the Plaintiffs' view, this stipulated fact can only mean that the State is intruding into private matters by encouraging (or worse) 97 women who would not otherwise desire or choose an abortion to have an abortion. Plaintiffs can see no other conclusion to be drawn.

Defendants conclude from the same stipulated fact that the State is removing barriers that prevent 97 women who otherwise desire abortions from obtaining one.

While there is some logic to both conclusions, there is no basis to adopt either conclusion as the only logical inference or conclusion to be drawn from the stipulated fact. The truth is probably somewhere in between, but it would require absolute speculation for the Court to attempt to make that determination based upon the record in this case.

After the Court issued its tentative decision, Plaintiffs filed a Response to the Tentative Statement of Decision in which they contended that Defendants identified only one key disputed fact, citing language from Defendants' Pre-Trial Brief: "Whether the Act removes barriers that interfere with people's ability to obtain abortions, after they decide they want one..."

Plaintiffs contend that this "key disputed fact" is "along similar lines" with the disputed fact, articulated in Plaintiffs' Pre-Trial Brief as: "Whether the cost-sharing eliminated by the Act forced women to delay obtaining

abortions when chosen, including to the point of having children they do not want." The Court sees these two issues, framed by each party, as separate issues.

In any event, Plaintiffs do not believe this/these issue[s] were addressed by the Court and requested that the Court clarify its ruling in this regard or, alternatively, specify that the Court determined that the issue was not essential to the determination of the ultimate issues in this case.

Accepting the stipulated statistical fact that under the Act an additional 97 women would obtain an elective abortion, the Court believes that it is statistically logical that in some of those instances the Act would remove barriers (primarily financial) that would otherwise have impacted the ability of those women to obtain a desired abortion. It appears to the Court that part of the Legislative intent was to remove such barriers.

Based in large part upon their factual conclusion that the Act alters behavior and encourages women to have abortions who would not otherwise choose to do so, Plaintiffs argue that the Act unconstitutionally interferes with the right of California women to choose whether to have an abortion or continue their pregnancy "without state interference."

Plaintiffs have certainly not shown by any standard of proof that the Act interferes with the right of California women to choose to continue their pregnancies and Plaintiffs have certainly not shown that the Act interferes with the right of California women to choose to have an abortion.

The fine distinction Plaintiffs appear to be making is that California women have the right to make their decisions "without state interference" and that the existence of the Act somehow interferes with that right.

As is discussed in much more detail in the Equal Protection section, the State provides many benefits (exceeding the value of the benefits conferred by the Act) to pregnant women who choose not to terminate their pregnancies through means of elective abortions. This substantially undercuts the argument that the provisions of the Act, in isolation, encourage or compel pregnant women to choose elective abortions.

Plaintiffs have failed to show by a preponderance of the evidence (1) that the existence and enforcement of the Act in any way interferes with the ability of California women to exercise their right to choose whether to have an abortion or continue their pregnancy; (2) have failed to show by a preponderance of the evidence that the provisions of the Act constitute "state interference" with this right exercised by California women; (3) and have failed to show by a preponderance of the evidence that the provisions of the Act encourages or coerces some women into choosing abortions.

EQUAL PROTECTION - FIRST CAUSE OF ACTION

Initially, the parties devoted a fair amount of attention to identifying and defining the class who would be benefitted by the act and the comparable class to be used for comparison purposes (the similarly situated group).

There seems to be little question that the class to be benefitted would be those women who wish to terminate their pregnancies by means of elective abortions. For equal protection comparison purposes there are legitimate questions whether the appropriate comparable class would be (1) women who suffered spontaneous abortions (i.e. miscarriages); (2) women who wished to secure insurance coverage for pre-natal care as they chose to continue their pregnancy to term; (3) women who desired insurance coverage for birth and followup treatment; or (4) some combination of those groups.

It appears to this Court that this particular determination need not be decided since the very recent California Supreme Court decision in ***People v. Hardin*** (2024) 15 Cal.5th 834, 850-851 supersedes language in ***Vergara v State of California*** (2016) 246 Cal.App.4th 619 (and many prior cases) which discusses "similarly situated groups." It appears to this Court that the "similarly situated" requirement or analytical step has been eliminated for purposes of equal protection analysis.

Plaintiffs contend that the Act violates the equal protection provisions of the California Constitution because it provides a benefit to a single identifiable small class while excluding all others without a rational or constitutional basis.

In this case the Act will directly affect or benefit women who choose, for whatever reason, to terminate their pregnancies by means of elective abortions and will not provide the identical benefits to all other women. As a result of the Supreme Court decision in ***People v. Hardin***, it appears that the only pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review.

It may be tempting, at first glance, to take the simplistic view that women who choose to obtain elective abortions obtain a direct benefit and women who do not choose to obtain elective abortions do not obtain the identical or even substantially similar benefit (i.e. mandated insurance coverage); therefore, the latter group is denied equal protection.

However, the required constitutional analysis is much more complex than that.

One way of demonstrating the absurdity of the simplistic argument is to apply it in reverse. If it were that simple, one could argue that all other forms of government assistance to women who carry pregnancies to term (and perhaps, even childcare assistance) is a denial of equal protection because such assistance is unavailable to pregnant women who voluntarily terminate their pregnancies (but whose taxes are used to fund the programs) or to non-pregnant women. That would be an absurdity on several different levels.

Defendants contend that (1) it is rational to treat pregnant women who bear children and pregnant women who obtain elective abortions differently and (2) that the Act is equally applied to pregnant women who voluntarily seek abortions and pregnant women who suffer spontaneous abortions (i.e miscarriages). Both positions are strenuously disputed by Plaintiffs.

Treating pregnant women who elect to terminate pregnancy differently from those who do not

Defendants argue that it is "obviously" rational to treat people who bear children and people who obtain abortions differently because these groups have different medical needs with different associated costs.

Defendants argue that the government may rationally treat the needs of pregnant women who obtain elective abortions with the Act and the needs of pregnant women who choose to carry pregnancies to term (which group includes those women who suffer miscarriages) with another set of laws, citing ***Peo. v. Green*** (2000) 79 Cal.App.4th 921,924:

"[e]qual protection does not require identical treatment." People v. Green (2000) 79 Cal.App.4th 921, 924.

Defendants go on to argue that, in this instance, other sets of laws offer more assistance to people who bear children. Defendants contend (and this Court agrees) that there is no requirement that the government address

the needs of all pregnant people in a single law. (***Williamson v. Lee Optical Co***. (1955) 348 U.S. 483, 489 [reform may take one step at a time.]

Pregnant women who choose to carry their pregnancy to term need different services for an extended period of time. The cost of these services generally is substantially more than the cost of elective abortions. These services include medical and non-medical needs. The government provides assistance in many ways and through many different programs to these pregnant women.

Plaintiffs argue that the Act does not cover pregnant women who suffer spontaneous abortions (i.e. miscarriages), that these women are in situations more closely comparable to women who seek elective abortions and that, at the very least, the Act discriminates against pregnant women who suffer spontaneous abortions.

Defendants argue, on one hand, that there is no disparity in treatment between pregnant women who choose to terminate their pregnancies and those who suffer miscarriages or spontaneous abortions because both are covered by the Act and its benefits. Defendants further argue, on the other hand, that even if pregnant women who suffer miscarriages are not covered by the Act, it is rational to treat them differently.

The "Strict Scrutiny" standard of review is ***triggered only when*** Plaintiffs demonstrates significant interference with exercise of a fundamental right. ***Fair Political Practices Com. v. Superior Court*** (1979) 25 Cal.3d 33, 47. Plaintiffs have not met their burden to show that the Act significantly interferes with reproduction decision-making. Plaintiffs have only engaged in questionable speculation in arguing that the Act coerces (or even incentivizes) unwilling women into having abortions.

In this case, the standard is the "Rational Basis" standard The burden is on Plaintiffs, as the parties challenging the law to show that the Legislature did not make the findings reflected in the Act on some rational basis.

This Court does not have the authority to re-weigh or substitute its judgment or opinion for that of the Legislature if it is determined that the Legislature acted on ***some*** rational basis. ***American Bank & Trust*** (1984) 36 Cal.3d 359, 372.
See more detailed discussion on the Rational Basis Standard below.

DOES THE ACT COVER NON-VIABLE PREGNANCIES (MISCARRIAGES, etc.)?

There is, without a doubt, a dispute between the parties as to whether or not the Act covers women who suffer miscarriages. At first glance, that dispute might seem to have little relationship to the constitutional issues of privacy and equal protection, although the Court found it to be a significant enough issue to prevent disposition by way of summary judgment.

Both parties feel that the issue of whether or not the Act covers spontaneous abortions (one of the few contested issues in this case) is significant because each side finds some support for their argument in their interpretation of the language of the Act in this regard..

It is important to keep in mind the distinction between the definition of "abortion" that the parties were able to agree upon for purposes of their stipulation to facts and points of law and the definition of "abortion" inserted in the statute and, presumably, reflecting the intent of the Legislature.

The language used in the Act to define abortion is as follows:

"(d) For purposes of this section, "abortion" means any medical treatment ***intended*** to induce the termination of a pregnancy except for the purpose of producing a live birth." [emphasis added]
(Health & Saf. Code, 1367.251(d))

The identical definition is used in Insurance Code section 10123.1961.

Although the parties were able to agree on a definition of the term "abortion" in a different context in their effort to reach a stipulation as to certain facts to be utilized by the Court in deciding this matter, the parties do not agree on the scope of the term "abortion" as used by the Legislature in the Act.

In the context of understanding the Parties Stipulation to Facts, Defendants' Ex. 2, the parties have defined some terms, including "abortion". In that context, the parties have agreed that their use of the term "Abortion" in the Stipulation does not include treatment for an incomplete miscarriage.

The parties (particularly Defendants) certainly do not agree that that definition applies to the statute. In fact, Defendants take a substantially different position in interpreting the statute.

The Court does not take the parties' consent to use of one definition in the stipulation to be a concession or a limitation to the interpretation of the language in H&S Code section 1367.251(d). Given Defendants' contentions in this action, that was not their intent and the Court does not read anything in the Stipulation to the contrary.

A review of both of the Post-Trial closing briefs demonstrates why resolution of this issue is necessary to evaluate the position of the parties on the constitutional issues.

Among other arguments, Plaintiffs argue that there is no rational basis to provide the benefits of the Act to pregnant women who voluntarily seek an abortion, but to deny similar benefits to pregnant women who suffer miscarriages.

Defendants respond with two arguments: (1) the Act ***does*** provide similar benefits to women who suffer miscarriages; and (2) alternatively, even if the Act is read not to apply to miscarriages, there is still a rational basis for the Act.

<u>Expert Witnesses</u>

Both parties presented testimony and opinions from expert medical witnesses. [An issue was raised during oral argument about possible bias on the part of an expert witness. As the Court indicated at that time, the Court finds no reason to assume the existence of bias based upon evidence of or assumptions about the moral beliefs of any of the expert witnesses. The Court finds no evidence of such bias and the Court accepts the testimony of all of the expert witnesses (particularly Dr.Karen Meckstroth and Dr. Steven Braatz) as the scientific-based opinions of those witnesses.

While the testimony of those witnesses is somewhat helpful in helping the Court understand practices in the medical field, the Court finds that evidence of the common use and meaning of words and phrases among members of the medical field is not necessarily of great assistance in determining the use and intended meaning of terms used by the Legislature in enacting legislation.

While the definition of "abortion" in the Act ("any medical treatment intended to induce the termination of a pregnancy, except for the purpose of producing a live birth") may be broader than street usage, the definition, as a

legal matter, is precise, clear and unambiguous.

The primary expert testimony presented by Defendants in support of their position that spontaneous abortions (i.e. miscarriages) were covered by the Act was that of Karen Meckstroth, M.D. Dr. Meckstroth is the Medical Director of Center for Pregnancy Options at UCSF, the primary service at UCSF, which specializes in both elective abortion and miscarriage care. 9-24-24 transcript, pg. 167. She has extensive experience in both areas.

To summarize and characterize her testimony, she discussed numerous similarities in medical procedures used in elective abortions and in treatment of "non-viable pregnancy", "pregnancy loss", "fetal demise", "embryonic demise" etc. These terms seem to be more clinically descriptive but basically describe what is commonly referred to as a miscarriage.
She testified that words like "termination" can be used as a noun or a verb and the words "termination" and "abortion" are often used to describe an elective abortion.

She felt that the Legislature's use of the language "medical treatment intended to induce the termination of a pregnancy" was a much broader term and was thus intended to cover a wider range of treatments and conditions. Since there are many similarities between treatments for elective abortions and miscarriages, she felt that the wider range she perceived in the statute was intended to cover the treatment for miscarriages because that treatment was not intended to produce a live birth and would inevitably by design or otherwise result in the termination of a pregnancy.

While there is logic to her application of the words of the statute to her experiences in the field, there is much significant, relevant information of which she was unaware or of which she did not consider.

Plaintiffs raised a number of very good arguments, not considered by Dr. Meckstroth.

1. <u>The definition in the Act is the exact same definition used in different contexts in other code sections</u>

The context of those statutes make it clear that that definition is intended to apply to elective abortions only. It defies logic that the Legislature would adopt that definition if it intended it to mean something else in the context of this Act.

2. <u>If the Legislature intended the scope of the Act to be broader than the definition used in other code sections, it would be very easy for it to say so</u>

Plaintiffs cited language from statues from other states. Out of state authority has little weight as precedent. However, it does serve as a very good example of how easy it would have been for the Legislature to express their intent, if they intended the Act to have broader coverage than elective abortions. Plaintiffs point out that statutes in several other jurisdictions use the definition "termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus." That language was available as an example had the Legislature intended broader coverage. Had the Legislature intended broader coverage, it defies reason that they would consciously adopt a definition already in place in contexts which were applicable to elective abortions only.

3. <u>Spontaneous pregnancy loss is not the same thing as inducing a pregnancy loss</u>

The Court does not question the sincerity of Dr. Meckstroth's interpretation or of her logic or of her belief that treatment for miscarriages, fetal death or non-viable pregnancies was properly characterized as pregnancy care.

However, the logic supporting Plaintiffs' position is simply superior logic. The Act defines "abortion" in terms of "inducing". This is inconsistent with the concept of a spontaneous event.

The language of the statutory definition is clear, concise and unambiguous. It does not require reference to physician's practices to understand.

The Court has no trouble rejecting Defendants' position and rejecting the contention that the Act covers spontaneous abortions, miscarriages, non-viable pregnancies, fetal demise, etc.

In light of the Court's reliance on the clear meaning of the statutory language, it is not necessary to discuss the testimony of other expert witnesses on this point.

The Court does not agree with Defendants' first argument: that the Act does provide similar benefits to women who suffer miscarriages

IS THERE A RATIONAL BASIS FOR TREATING PREGNANT WOMEN SEEKING ELECTIVE ABORTIONS DIFFERENTLY?

The parties have agreed to the following facts (among others) with respect to pre-natal care:

1.Preventative prenatal visits (estimated at 8-14 visits) must be covered without cost-sharing. Stipulated Fact. 2 and 3

2. Prenatal Screening Program (including followup testing and services if screening shows an increased chance of birth defects must be covered without cost-sharing. Stipulate Fact 2.

3. Other services specified in Women's Preventative Services Initiative Well-Woman chart, attached as Ex. A to the Stipulation must be covered without cost-sharing. Facts 2 and 3

4. Other prenatal services must be covered, but may be subject to cost-sharing. Fact 5.

Plaintiffs present a more basic argument. They argue that pregnant women who choose abortion are a distinctly separate group from pregnant women who choose to carry to term or pregnant women who miscarry; that the Act provides no benefits to any group other than pregnant women who choose abortion; therefore, all other groups of pregnant women are denied equal protection.

Defendants contend that two groups may be treated differently without violating constitutional principles so long as there is a rational basis for doing so. Defendants have cited case authority as examples of a low bar or "permissive standard" of rationality to be met by the Legislature in this regard.

Defendants have reminded the Court of at least two things:

1. It is Plaintiffs' burden to prove that any distinction in treatment between people who choose abortion and people who miscarry is irrational.

2. The Court may not substitute its own judgment on the wisdom or fairness of the Legislative determination if it is determined that the Legislature has met the low bar or "permissive standard" of rationality.

Determining constitutionality based on an equal protection basis is much more complex than the approach

advocated by Plaintiffs.

Initially, the Act is entitled to a rebuttable presumption of constitutionality. ***Heller v. Doe***, (1993) 509 U.S. 312, 319-320; ***Peo. v. Chatman*** ((2018) 4 Cal.5th 277, 289.

"For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. [numerous citations deleted] Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitmate governmental purpose. [numerous citations deleted] Further, a legislature that creates these categories need not 'actually articulate at any time the purpose or rationale supporting its classification. [numerous citations deleted] Instead, a classification ' must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" [emphasis added] ***Heller v. Doe*** at pgs. 319-320

To make the point that it is a low bar to meet the standard of rational basis, Defendants cite examples where the wisdom, fairness or sensibility of the Legislature's determination might be questioned.

They start by citing ***People v. Chatman*** (2018) 4 Cal.5th 277, 289 for a statement attempting to define the standard. The issue in that case revolved around eligibility of convicted felons for participation in a Certificate of Rehabilitation program, which carried with it significant benefits. Felons who are committed to state prison are eligible for the program even if they were incarcerated after serving their initial sentence. On the other hand, felons who had had their felonies subsequently dismissed were only eligible if they met a far more rigorous set of requirements (one of which was that they not be on probation for the commission of any other felony). Among other anomalies, a felon who was incarcerated for a subsequent felony could be eligible, while a felon who was on probation for a subsequent felony would not be eligible.

In their post-trial brief, Defendants cited some phrases from the ***Chatman*** case. In discussing the standard the Court recognized that "...not all convicted felons are eligible on an equal basis for such certificates." [emphasis added] ***Chatman*** at pg. 282

The State rationalized that the latter class had earlier had access to other remedies such as having their convictions dismissed after completing their probation terms and were, thus (even though fully rehabilitated), less in need of the services being provided through the program.

" ... where the law challenged neither draws a suspect classification nor burdens fundamental rights, the question we ask is different. We find a denial of equal protection only if there is no rational relationship between a disparity in treatment and some legitimate government purpose. [citation deleted] This core feature of equal protection sets a high bar before a law is deemed to lack even the minimal rationality necessary for it to survive constitutional scrutiny. Coupled with a rebuttable presumption that legislation is constitutional, this high bar helps ensure that democratically enacted laws are not invalidated merely based on a court's cursory conclusion that a statute's tradeoffs seem unwise or unfair. (See ***Heller v. Doe*** (1993) 509 U.S. 312, 319 [125 L. Ed. 2d 257, 113 S. Ct. 2637] ["[R]ational-basis review ... 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.' [Citations.] Nor does it authorize 'the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'"];" ***Chatman*** at pg. 289

Other somewhat surprising examples where the "extremely permissible" standard was applied to approve legislation, included Warden v State Bar (1999) 21 Cal.4th 628, 645 where the Supreme Court found a rational

basis for requiring licensed attorneys to complete continuing education courses when the requirement was not applied to elected officials, full-time law professors, state officers or retired judges even though the Court acknowledged that the wisdom of some of the exemptions were debatable at best.

Another even more surprising example was a set of regulations which penalized entities which directly discharged toxic pollutants into waterways, but did not penalize entities that indirectly discharged toxic pollutants into waterways. In that case the appellate court disregarded the logical discrepancy with the following explanation:

"Moreover, appellants assert that the Bay-Delta system receives its worst toxic pollution from mercury and selenium discharged "indirectly" into tributaries far upstream of the Delta, yet the dischargers of these toxic pollutants escape fees, a result contrary to the purpose of the statute. Even assuming the truth of appellants' factual assertions, these arguments fail because they are not germane to the rational-relationship test."

The " 'Legislature need not address all facets of a problem at once, or at all, but may deal with particular parties and issues in accordance with priorities satisfying to itself[.]' [Citation.]" [citation deleted] "In the area of economics and social welfare, the State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, it may be, and unscientific. [U.S. Supreme Court citation and internal quotation marks omitted]." [other citations deleted] Therefore, the fact (if it be a fact) that indirect dischargers who release toxic pollution equal to or greater than that released by direct dischargers are not assessed fees under section 13396.5, subdivision (a) does not prove that the "direct-indirect" distinction lacks a rational basis." ***Central Delta Water Agency v State Water Resources Control Bd*** (1993) 17 Cal.App.4th 621, 636-637

In the instant case, Defendants present several justifications for disparate treatment of pregnant women seeking abortions.

Perhaps Defendants overstate the argument, when they argue that pregnant women choosing abortion are at risk of being forced to continue a pregnancy if there are financial barriers to abortion, but pregnant women who are unable to obtain an abortion have no alternative to continuing the pregnancy. It is undeniable, however, that continuing a pregnancy is more expensive and is medically risky.

For one thing, pregnant women choosing abortion and pregnant women who continue their pregnancies have entirely different medical needs and goals with far different associated costs. The cost of obtaining an elective abortion ($543) is minimal compared to the cost of carrying a pregnancy to term ($2,854), not to mention the cost of raising a child. Ex. 2, Stipulated Fact No.13. The Legislature could assume that cost-sharing for abortion care risks nullifying the right to abortion more than cost-sharing for continued pregnancy care risks nullifying the right to continued pregnancy.

The Act focuses on addressing the needs and goals of women choosing abortion. The needs and goals of other pregnant women are addressed by a number of other laws and programs.

These include but are not limited to Ins. Code sections 10123.865-.866 and H & S Code sections 1367.005-006 (containing requirements for insurance plans to cover many specified maternity services including but not limited to labor and delivery); H & S Code section 1373.4 and Ins. Code section 10119.5 (containing prohibitions and limitations on certain co-pays for maternity services); Ex. 2, Stipulated Facts 2-5.

Perhaps a different (but no less rational) analysis applies to pregnant women who experience pregnancy loss. They are not facing a decision---the decision has been made for them. Nothing the government does or doesn't do influences any choice for them. They do not face the same risks as pregnant women carrying to term. They do not face the same risks involuntarily as would a woman who is prevented from obtaining an abortion by financial barriers.

If the reasons cited by the government in making the distinctions in the above-cited cases are sufficient to establish a reasonable basis, the reasons in this instance easily satisfy the "reasonable basis" test.

The Court finds that there is a reasonable basis for treating other pregnant women in a different manner than pregnant women seeking elective abortions.

CONCLUSIONS

Plaintiffs have failed to meet their burden of proof.

Accordingly, the Court orders:

1. That Plaintiffs are denied the relief sought pursuant to their Second Amended Complaint;

2. Judgement is entered in favor of Defendants;

3. Defendants are declared to be the prevailing parties;

4. Defendants are awarded their costs of suit;

5. Attorneys fees are to be decided by motion.

Once this decision becomes final, Defendants are directed to prepare and submit a formal Judgment consistent with this ruling pursuant to C.R.C. Rule 3.1312 and , thereafter, serve Notice of Ruling.

Copy of Final Decision, Statement of Findings and Conclusions emailed to all counsel as stated on the attached declaration.

Minute order notice.

Copy of minute order sent based on Certificate of Service.

BAKERSFIELD CRISIS PREGNANCY CENTER, A NONPROFIT RELIGIOUS CALIFORNIA CORPORATION ET AL VS CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE ET AL
BCV-22-102617

CERTIFICATE OF SERVICE

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is 1415 Truxtun Avenue Bakersfield, CA 93301, that I served the **Minutes dated December 17, 2024** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: December 17, 2024

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tara Leal
CLERK OF THE SUPERIOR COURT

Date: December 17, 2024

By: Linda Hall
Linda Hall, Deputy Clerk

SERVICE LIST

CATHERINE W SHORT
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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Bakersfield Crisis Pregnancy Center et al. v. DMHC et al.**
Case No.: **BCV-22-102617**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service.

On December 30, 2024, I served the attached **PROPOSED JUDGMENT** by transmitting a true copy via electronic mail addressed as follows:

Catherine Short , kshort@lldf.org
Alexandra Snyder, alexandra@lldf.org
Corrina Konczal, ckonczal@lldf.org

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 30, 2024, at San Diego, California.

Ceasar Endozo
Declarant

Signature

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