

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA AND THE  
COMMISSIONER OF DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES,

Appellants,

v.

PLANNED PARENTHOOD OF THE  
GREAT NORTHWEST,

Appellee.

Supreme Court No. S-16123

**BRIEF OF AMICUS CURIAE LEGAL VOICE**

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<i>State of Alaska, Dep’t. of Health &amp; Soc. Serv. v. Planned Parenthood of Alaska, Inc.</i> , 28 P.3d 904, 905 (Alaska 2001) .....	2
<i>United States v. Deegan</i> , 605 F.3d 625, 662-65 (8th Cir. 2010) .....	6

### OTHER AUTHORITIES

Alexia Cooper & Erica L. Smith, <i>Homicide Trends in the United States, 1980-2008, Annual Rates for 2009 and 2010</i> 10 (U.S. Dep’t of Justice 2011) .....	3
American College of Obstetricians & Gynecologists, Committee on Healthcare for Underserved Women, <i>Committee Opinion No. 518: Intimate Partner Violence</i> 2 (Feb. 2012) .....	17
American College of Obstetricians and Gynecologists, Committee on Health Care for Underserved Women, <i>Committee Opinion No. 554: Reproductive and Sexual Coercion</i> 2 (Feb. 2013) .....	11
André Rosay & Lauree Morton, <i>Intimate Partner Violence and Sexual Violence in the State of Alaska: Key Results from the 2015 Alaska Victimization Survey</i> 2 (U. Alaska Anchorage Justice Ctr. ed., 2016) .....	6
Ann L. Coker, <i>Does Physical Intimate Partner Violence Affect Sexual Health? A Systematic Review</i> , 8 <i>Trauma, Violence, &amp; Abuse</i> 149, 151-53 (2007) .....	13
Anna Aizer, <i>Poverty, Violence, and Health: The Impact of Domestic Violence During Pregnancy on Newborn Health</i> , 46 <i>J. Hum. Resour.</i> 518, 522 (2011) .....	4
Anne M. Moore et al., <i>Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States</i> , 70 <i>Soc. Science &amp; Med.</i> 1737 (2010) .....	13, 14, 15, 21
Beth A. Bailey, <i>Partner Violence During Pregnancy: Prevalence, Effects, Screening, and Management</i> , 2 <i>Int’l J. Women’s Health</i> 183 (2010) .....	17, 18
Cara V. James et al., <i>Putting Women’s Health Care Disparities on the Map: Examining Racial and Ethnic Disparities at the State Level</i> 68 (2009) .....	3, 7
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Christopher Ingraham, <i>Our Maternal Mortality Rate Is a National Embarrassment</i> , <i>The Washington Post Wonkblog</i> (Nov. 18, 2015) .....	16
Deborah Tuerkheimer, <i>Conceptualizing Violence Against Pregnant Women</i> , 81 <i>Ind. L.J.</i> 667, 672 (2006) .....	17

Diane K. Bohn et al., <i>Influences of Income, Education, Age, and Ethnicity on Physical Abuse Before and During Pregnancy</i> , 33 J. Obstet. & Gyn. Neonatal Nursing 561, 561 (2004) .....	5
Economic Research Service, <i>State Fact Sheets: Alaska</i> , United States Department of Agriculture .....	8
Elizabeth M. Schneider et al., <i>Domestic Violence and the Law: Theory and Practice</i> 68 (3d ed. 2013) .....	11
Elizabeth M. Schneider, <i>Battered Women and Feminist Lawmaking</i> 65 (2000) .....	9
Elizabeth Miller et al., <i>Male Partner Pregnancy – Promoting Behaviors and Adolescent Partner Violence: Findings from a Qualitative Study with Adolescent Females</i> , 7 Ambulatory Pediatrics 360, 364-65 (2007) .....	15
Elizabeth Miller et al., <i>Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy</i> , 81 Contraception 316 (2010) .....	13, 14
Evan Stark, <i>Coercive Control: How Men Entrap Women in Personal Life</i> 198-200 (2009) .....	9
Gigi Evins & Nancy Chescheir, <i>Prevalence of Domestic Violence Among Women Seeking Abortion Services</i> , 6 Women’s Health Issues 204 (1996) .....	19
Jacquelyn C. Campbell et al., <i>Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study</i> , 93 Am. J. Pub. Health 1089 (2003) .....	11
Jane K. Stoeber, <i>Enjoining Abuse: The Case for Indefinite Protection Orders</i> , 67 Vanderbilt L. Rev. 1015, 1025 (2014) .....	11
Janine Schoellhorn and Kathy Perham-Hester, <i>Pre-Pregnancy Physical Abuse in Alaska</i> , <i>State of Alaska Epidemiology Bulletin No. 26</i> 1 (Dep’t of Health and Soc. Serv. 2005) .....	5, 15
Jeani Chang et al., <i>Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999</i> , 95 Am. J. Pub. Health 471, 473 (2005) .....	18
Jill Davies, <i>Building Comprehensive Solutions to Domestic Violence Publication #15: Policy Blueprint on Domestic Violence and Poverty</i> , National Resource Center on Domestic Violence 5-6 (2002) .....	7
John Oetzel & Bonnie Duran, <i>Intimate Partner Violence in American Indian and/or Alaska Native Communities: A Social Ecological Framework of Determinants and Interventions</i> , 11 Am. Indian and Alaska Native Mental Health Research 48, 53 (2004) .....	21
Jonel Thaller & Jill Theresa Messing, <i>Reproductive Coercion by an Intimate Partner: Occurrence, Associations, and Interference with Sexual Health Decision Making</i> , Health & Social Work, Advance Access 2 (Dec. 12, 2015) ....	14, 16
Judith McFarlane, <i>Pregnancy Following Partner Rape: What We Know and What We Need to Know</i> , 8 Trauma, Violence, & Abuse 127, 128 (2007) .....	12, 16
Julie A. Gazmararian et al., <i>Prevalence of Violence Against Pregnant Women</i> , 275 JAMA 1915, 1918 (1996) .....	17
Julie Goldscheid, <i>Gender Violence and Work: Reckoning with the Boundaries of Sex Discrimination Law</i> , 18 Colum. J. Gender & L. 61, 75-77 (2008) .....	10

Karen Oehme et al., <i>Unheard Voices of Domestic Violence Victims: A Call to Remedy Physician Neglect</i> , 15 <i>Geo. J. Gender &amp; L.</i> 613, 633 (2014).....	22
Karla Fischer et al., <i>The Culture of Battering and the Role of Mediation in Domestic Violence Cases</i> , 46 <i>S.M.U. L. Rev.</i> 2117, 2126-27 (1993).....	9, 11
Kayla Gahagan, <i>Task Force Traces the Route of Native Alaskan Victims of Violence</i> , <i>Al Jazeera America</i> (June 13, 2014).....	8
Laura S. Johnson, <i>Frontier of Injustice: Alaska Native Victims of Domestic Violence</i> , 8 <i>Am U. Modern Am.</i> 2, 2 (2012).....	7
Lawrence B. Finer & Mina R. Zolna, <i>Declines in Unintended Pregnancy in the United States, 2008-2011</i> , 374 <i>N.E. J. of Med.</i> 843, 843 (2016).....	4
Leigh Goodmark, <i>A Troubled Marriage: Domestic Violence and the Legal System</i> 42 (2012).....	9, 10
Lindsey E. Clark, et al., <i>Reproductive Coercion and Co-occurring Intimate Partner Violence in Obstetrics and Gynecology Patients</i> , 210 <i>Am. J. Obstetrics &amp; Gynecology</i> 42.e1, 42.e6 (2014).....	16
Lisa Pruitt, <i>Place Matters: Domestic Violence and Rural Difference</i> , 23 <i>Wis. J.L. Gender &amp; Soc'y</i> 347, 351 (2008).....	8
Maja Altarac & Donna Strobino, <i>Abuse During Pregnancy and Stress Because of Abuse During Pregnancy and Birthweight</i> , 57 <i>J. Am. Med. Women's Ass'n</i> 208 (2002).....	17
Margi Coggins & Linda Bullock, <i>The Wavering Line in the Sand: The Effects of Domestic Violence and Sexual Coercion</i> , 24 <i>Issues in Mental Health Nursing</i> 723, 724 (2003).....	15
Martha R. Mahoney, <i>Legal Images of Battered Women: Redefining the Issue of Separation</i> , 90 <i>Mich. L. Rev.</i> 1 (1991).....	11
Mary Ann Dutton et al., <i>Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications</i> , 7 <i>Geo. J. on Poverty L. &amp; Pol'y</i> 245, 251-54 (2000).....	10
Megan Hall et al., <i>Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis</i> , 11 <i>PLoS Med</i> e1001581 (2014).....	19
Melisa M. Holmes et al., <i>Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women</i> , 175 <i>Am. J. Obstetrics &amp; Gynecology</i> 320, 322 (1996).....	20
Meredith Bagwell-Gray et al., <i>Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence</i> , 15 <i>Trauma, Violence, &amp; Abuse</i> 316, 317 (2015).....	12
Merle H. Weiner, <i>A Parent-Partner Status for American Family Law</i> 331-32 (2015).....	11
Michele C. Black et al., <i>The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report</i> , National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011).....	5, 6
Michelle J. Anderson, <i>Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates</i> , 54 <i>Hastings L. J.</i> 1465, 1509-13 (2003).....	12

N. Tanya Nagahawatte and Robert L. Goldenberg, <i>Poverty, Maternal Health, and Adverse Pregnancy Outcomes</i> , 1136 Ann. N.Y. Acad. Sci. 80, 81 (2008) .....	4
Naomi R. Cahn, <i>Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions</i> , 44 Vand. L. Rev. 1041, 1051 (1991) .....	18
National Domestic Violence Hotline, <i>Hotline News, 1 in 4 Callers Surveyed at the Hotline Report Birth Control Sabotage and Pregnancy Coercion</i> .....	14
National Institute of Justice, <i>Causes and Consequences of Intimate Partner Violence</i> , Office of Justice Programs .....	7
Patricia A. Janssen et al., <i>Intimate Partner Violence and Adverse Pregnancy Outcomes: A Population-Based Study</i> , 188 Am. J. Obstetrics & Gynecology 1341, 1346-47 (2003).....	17
Ryan Fortson, <i>Advancing Tribal Court Criminal Jurisdiction in Alaska</i> , 32 Alaska L. Rev. 93, 95-6 (2015).....	7
Samina T. Syed et al., <i>Traveling Towards Disease: Transportation Barriers to Health Care Access</i> , 38(5) J. Community Health 976, 981 (2013) .....	21
Sarah CM Roberts et al., <i>Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion</i> , 12 BMC Medicine 1 (2014) .....	20
Sarah M. Buel, <i>Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay</i> , 28 Colo. Law 19, 19-20 (1999).....	10
Shannan Catalano, <i>Special Report: Intimate Partner Violence, 1993-2010</i> , Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice 6 (2012, revised Sept. 29, 2015).....	11
Stephanie Martin & Alexandra Hill, <i>The Changing Economic Status of Alaska Natives, 1970-2007</i> 1 (Inst. of Soc. and Econ. Research, Univ. of Alaska Anchorage ed. 2009) .....	3, 7
Susan S. Glander et al., <i>The Prevalence of Domestic Violence Among Women Seeking Abortion</i> , 91 Obstetrics & Gynecology 1002 (1998) .....	19
United States Census Bureau, <i>Quick Facts: Alaska</i> .....	3
Vicki Breitbart, <i>Abortion, in Sexual Violence and Abuse: An Encyclopedia of Prevention, Impacts, and Recovery</i> (Judy L. Postmus, ed., 2012) .....	19

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## AUTHORITIES PRINCIPALLY RELIED UPON

### Alaska Constitutional Provisions

#### **Alaska Constitution, Article I, § 1**

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

### Alaska Statutes

#### **AS 47.07.068. Payment for abortions**

(a) The department may not pay for abortion services under this chapter unless the abortion services are for a medically necessary abortion or the pregnancy was the result of rape or incest. Payment may not be made for an elective abortion.

(b) In this section,

- (1) “abortion” has the meaning given in AS 18.16.090;
- (2) “elective abortion” means an abortion that is not a medically necessary abortion;
- (3) “medically necessary abortion” means that, in a physician's objective and reasonable professional judgment after considering medically relevant factors, an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy;
- (4) “serious risk to the life or physical health” includes, but is not limited to, a serious risk to the pregnant woman of
  - (A) death; or
  - (B) impairment of a major bodily function because of
    - (i) diabetes with acute metabolic derangement or severe end organ damage;

- (ii) renal disease that requires dialysis treatment;
- (iii) severe pre-eclampsia;
- (iv) eclampsia;
- (v) convulsions;
- (vi) status epilepticus;
- (vii) sickle cell anemia;
- (viii) severe congenital or acquired heart disease, class IV;
- (ix) pulmonary hypertension;
- (x) malignancy if pregnancy would prevent or limit treatment;
- (xi) kidney infection;
- (xii) congestive heart failure;
- (xiii) epilepsy;
- (xiv) seizures;
- (xv) coma;
- (xvi) severe infection exacerbated by pregnancy;
- (xvii) rupture of amniotic membranes;
- (xviii) advanced cervical dilation of more than six centimeters at less than 22 weeks gestation;
- (xix) cervical or cesarean section scar ectopic implantation;
- (xx) any pregnancy not implanted in the uterine cavity;
- (xxi) amniotic fluid embolus; or
- (xxii) another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed.

## INTERESTS OF AMICUS CURIAE

Legal Voice is a non-profit organization dedicated to advancing women's legal rights. Founded in 1978, Legal Voice engages in impact litigation, policy advocacy, and public education in the five northwest states: Alaska, Washington, Oregon, Montana, and Idaho. Formerly known as the Northwest Women's Law Center, Legal Voice previously has appeared as *amicus curiae* before this Court in cases involving issues that affect women's lives, including domestic violence, gender-based discrimination, and reproductive health.

As an organization devoted to ensuring that women's full panoply of rights is realized, Legal Voice writes to share its particular expertise and concern about the adverse impact of an unduly narrow definition of "medical necessity" on Medicaid-eligible women's access to abortion, especially for those women who become pregnant by an abusive partner.

This brief will provide the Court with additional information about intimate partner violence and pregnancy, including the phenomenon of reproductive coercion, by which abusive partners force or coerce pregnancy. As explained below, women who become pregnant through intimate partner violence face extraordinary health risks, including an increased risk of violence during and after pregnancy. For many women in this situation, the ability to obtain an abortion without undue interference by the state is necessary to preserve and protect their health and, in some instances, their lives.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This Court previously has held that the Alaska Constitution prohibits singling out and restricting the ability of low-income women to obtain abortion services.<sup>1</sup> In keeping with this ruling, the superior court correctly decided that prohibiting Medicaid coverage for abortion care by restrictively defining “medical necessity” invidiously discriminates against and violates the rights of poor pregnant women to equal protection of the law. [Exc. 78].

The superior court’s decision recognizes the many ways that poverty exacerbates the risks of pregnancy complications, as well as the health of women after pregnancy. One of those health threats – the primary focus of this brief – is an increased likelihood of exposure to intimate partner violence, which is strongly correlated with both unintended pregnancy and severe health consequences to the pregnant woman.

Women in violent relationships are more likely to be forced, through rape or reproductive coercion, into unintended pregnancy. Because of this higher likelihood of unintended pregnancy, abused women are more likely to need abortions, and are more likely to remaining trapped in violent relationships if they are unable to access abortions when they seek them. The consequences of such entrapment range from more severe

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<sup>1</sup> *State of Alaska, Dep’t. of Health & Soc. Serv. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 905 (Alaska 2001) (“[S]elective denial of medical benefits violates Alaska’s constitutional guarantee of equal protection.”); *see also* Alaska Const. Article I, § 1 (“[A]ll persons are equal and entitled to equal rights, opportunities, and protection under the law.”).

abuse and injury during pregnancy, to being killed.<sup>2</sup> By excluding these and other health threats from the definition of medical necessity, AS 47.07.068 prevents physicians from considering all of the factors in a pregnant woman's life that would render an abortion medically necessary – a restriction that applies to no other covered pregnancy-related care. AS 47.07.068 thus selectively denies women facing a host of health threats, including intimate partner violence, the ability to obtain abortion care in violation of their right to equal protection.

## ARGUMENT

### I. **Poverty increases the likelihood that a woman will experience an unintended pregnancy, and exacerbates that pregnancy's threats to a woman's health.**

According to the U.S. Census Bureau, just over eleven percent of Alaskans were low-income in 2014.<sup>3</sup> For Alaska Native women, the poverty rate is especially stark; more than one-third live in poverty.<sup>4</sup> Poverty and unintended pregnancy are linked. While all women of reproductive age are at risk of unintended pregnancies, women living

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<sup>2</sup> Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980-2008, Annual Rates for 2009 and 2010* 10 (U.S. Dep't of Justice 2011), <http://bjs.gov/content/pub/pdf/htus8008.pdf> (over the course of the 28-year period studied, 63.7 percent of women homicide victims were killed by an intimate).

<sup>3</sup> United States Census Bureau, *Quick Facts: Alaska*, <https://www.census.gov/quickfacts/table/IPE120214/02> (last visited July 20, 2016).

<sup>4</sup> Cara V. James et al., *Putting Women's Health Care Disparities on the Map: Examining Racial and Ethnic Disparities at the State Level* 68 (2009); see also Stephanie Martin & Alexandra Hill, *The Changing Economic Status of Alaska Natives, 1970-2007* 1 (Inst. of Soc. and Econ. Research, Univ. of Alaska Anchorage ed. 2009).

at or below the federal poverty level have unintended pregnancies at two or three times the national average.<sup>5</sup>

Such pregnancies carry significant risks of negative health affects for all women, but pose particularly dangerous health consequences to women living in poverty. Health conditions that are more common in poor women, such as diabetes, obesity, and chronic hypertension, are associated with preeclampsia, one of the “major causes of maternal death worldwide.”<sup>6</sup> The pregnant woman’s mental health is also at risk; poverty is associated with an increased incidence of depression during pregnancy.<sup>7</sup> As the superior court found, “ten to fifteen percent of pregnant women experience major depression, and one in seven experiences psychiatric illness in some form. These statistics increase in the poverty-stricken population.” [Exc. 97, ¶ 32].

Disturbingly, assault or murder by an intimate partner is a risk factor of unintended pregnancy, one that is increased for poor women. While domestic violence affects people across the economic and social spectrum, poor women experience higher levels of abuse. One study found that poor women were more likely to be admitted to the hospital for an assault while pregnant.<sup>8</sup> Another found that poverty and limited education

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<sup>5</sup> Lawrence B. Finer & Mina R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008-2011*, 374 N.E. J. of Med. 843, 843 (2016).

<sup>6</sup> N. Tanya Nagahawatte and Robert L. Goldenberg, *Poverty, Maternal Health, and Adverse Pregnancy Outcomes*, 1136 Ann. N.Y. Acad. Sci. 80, 81 (2008).

<sup>7</sup> *Id.* at 82.

<sup>8</sup> Anna Aizer, *Poverty, Violence, and Health: The Impact of Domestic Violence During Pregnancy on Newborn Health*, 46 J. Hum. Resour. 518, 522 (2011).

were the most significant indicators of experiencing violence during pregnancy.<sup>9</sup> Alaskan statistics bear this out: among Alaskan women who gave birth in 2001, fifteen percent of Medicaid recipients experienced pre-pregnancy domestic abuse, as opposed to less than five percent of non-Medicaid recipients.<sup>10</sup> Thus, pregnant women eligible for Medicaid in Alaska are at heightened risk of experiencing intimate partner violence – which brings with it numerous health threats, including pregnancy complications, physical injury, and, potentially, homicide.

**II. Pregnancy in the context of a violent relationship threatens the health of victims of intimate partner violence.**

**A. Women in the U.S. – and especially Alaska – experience high rates of intimate partner violence.**

Despite the gains of recent decades in public acknowledgement of domestic violence, and resources committed to eradicating it, intimate partner violence remains a devastating problem that affects nearly one third of women in the United States.<sup>11</sup> People

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<sup>9</sup> Diane K. Bohn et al., *Influences of Income, Education, Age, and Ethnicity on Physical Abuse Before and During Pregnancy*, 33 J. Obstet. & Gyn. Neonatal Nursing 561, 561 (2004).

<sup>10</sup> Janine Schoellhorn and Kathy Perham-Hester, *Pre-Pregnancy Physical Abuse in Alaska*, *State of Alaska Epidemiology Bulletin No. 26* 1 (Dep't of Health and Soc. Serv. 2005), <http://epibulletins.dhss.alaska.gov/Document/Display?DocumentId=341>.

<sup>11</sup> Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011), [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf); see also Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, Title II, § 201(1) (2006); see also *Planned Parenthood of SE Pa. v. Casey*, 505 U.S. 833, 891 (1992) (“[I]n an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male partners.”).

of all genders and sexual orientations are affected by intimate partner violence, but women are more likely to experience rape, stalking, and physical violence at the hands of an intimate partner; men are most likely to be the perpetrators of that violence.<sup>12</sup> Intimate partner violence is an even more common experience for women of color: four in ten Black and Native American women, and one in two multiracial women, will be raped, physically assaulted, or stalked by an intimate partner in their lifetime.<sup>13</sup>

Alaska has an unusually high rate of domestic and sexual violence. Nearly half of Alaskan women have experienced domestic or sexual violence or both; forty percent of Alaska women reported being victimized by intimate partner violence and thirty-three percent reported being sexually assaulted at some point in their lives.<sup>14</sup> More than thirty percent of Alaskan adults who experience intimate partner violence had also been sexually assaulted, compared to less than nine percent of Alaskan adults who had not experienced domestic violence.<sup>15</sup> These grim statistics reflect the experiences of people

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<sup>12</sup> Black et al., *supra* note 11, at 2-3.

<sup>13</sup> *Id.*; see also *United States v. Deegan*, 605 F.3d 625, 662-65 (8th Cir. 2010) (Bright, J., dissenting) (describing the shockingly high rates of domestic and sexual violence committed against Native American women).

<sup>14</sup> André Rosay & Lauree Morton, *Intimate Partner Violence and Sexual Violence in the State of Alaska: Key Results from the 2015 Alaska Victimization Survey 2* (U. Alaska Anchorage Justice Ctr. ed., 2016), [http://justice.uaa.alaska.edu/research/2010/1103.05.avs\\_fy15/1103.051a.statewide\\_summary.pdf](http://justice.uaa.alaska.edu/research/2010/1103.05.avs_fy15/1103.051a.statewide_summary.pdf).

<sup>15</sup> Charles Utermohle & Rebecca Wells, *Sexual Violence/Intimate Partner Violence: Socioeconomic and Mental Health Correlates of High Prevalence 1* (State of Alaska Dep't of Health and Soc. Serv. 2009).

across the socio-economic spectrum. Unfortunately, the picture is even worse for women living in poverty.

**B. Low-income Alaskans are particularly vulnerable to intimate partner violence.**

Just as living in poverty increases a woman's risk of pregnancy-related health threats, poverty is also associated with heightened exposure to intimate partner violence.<sup>16</sup> Impoverished women are more likely to experience intimate partner violence,<sup>17</sup> and their economic insecurity renders them less likely to be able to escape the violent relationship.<sup>18</sup>

In Alaska, Alaska Native women are more likely to live in poverty,<sup>19</sup> and also suffer disproportionately from intimate partner violence and sexual assault. Forty-seven percent of intimate partner violence victims in Alaska are Alaska Native women.<sup>20</sup> Even though Alaska Natives are just twenty percent of the Alaskan population, Alaska Native women are ten times more likely to be raped than other Alaskans, and make up just over

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<sup>16</sup> National Institute of Justice, *Causes and Consequences of Intimate Partner Violence*, Office of Justice Programs, <http://www.nij.gov/topics/crime/intimate-partner-violence/pages/causes.aspx> (last visited July 27, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> Jill Davies, *Building Comprehensive Solutions to Domestic Violence Publication #15: Policy Blueprint on Domestic Violence and Poverty*, National Resource Center on Domestic Violence 5-6 (2002).

<sup>19</sup> See Cara V. James et al., *supra* note 4 at 68; see also Martin & Hill, *supra* note 4 at 1.

<sup>20</sup> Ryan Fortson, *Advancing Tribal Court Criminal Jurisdiction in Alaska*, 32 Alaska L. Rev. 93, 95-6 (2015).

sixty percent of the reported sexual assault victims in the state.<sup>21</sup> Alaska Native women also live in circumstances that make it harder to escape intimate partner violence; as a federal Department of Justice task force member investigating Alaska Natives' experience with violence observed, "[t]he realities of geography and jurisdiction make this a place like no other."<sup>22</sup> Two-thirds of Alaskan Native villages lack road access, let alone domestic violence shelters, law enforcement, or other needed services.<sup>23</sup>

All rural Alaskans, who are more likely than their urban counterparts to live in poverty,<sup>24</sup> face geographic barriers to safety from intimate partner violence. Without the protections found in urban centers, rural Alaskan victims of intimate partner violence are twice as likely to suffer severe physical injury by their abusers as victims in urban areas, and are more likely to be sexually assaulted, threatened with a weapon, and threatened with death.<sup>25</sup>

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<sup>21</sup> Laura S. Johnson, *Frontier of Injustice: Alaska Native Victims of Domestic Violence*, 8 Am U. Modern Am. 2, 2 (2012).

<sup>22</sup> Kayla Gahagan, *Task Force Traces the Route of Native Alaskan Victims of Violence*, Al Jazeera America (June 13, 2014), <http://america.aljazeera.com/articles/2014/6/13/justice-officialsfollowtheroutesofnativealaskanvictimssofviolence.html>.

<sup>23</sup> *Id.*

<sup>24</sup> Economic Research Service, *State Fact Sheets: Alaska*, United States Department of Agriculture (data updated July, 2016) (13.2% of rural Alaskans live in poverty, while only 8.6% of the urban population are impoverished).

<sup>25</sup> Lisa Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 Wis. J.L. Gender & Soc'y 347, 351 (2008).

In short, women's lives are made more vulnerable by the intersection of poverty and intimate partner violence. One of those vulnerabilities is an increased likelihood of experiencing a forced or unintended pregnancy.

**C. Survivors of intimate partner violence are at heightened risk of unintended pregnancy.**

Intimate partner violence typically involves more than the physical assault of one partner by another. Abusive partners maintain the relationship – and their power within it – through coercion. Among the ways in which abusive partners exert coercive control is through dominating reproductive decisions, sabotaging birth control, and forcing or coercing sex. Women and adolescents abused by male partners are thus at heightened risk of unintended pregnancy.

**1. Abusive partners create the conditions for unintended pregnancy through the use of violence and coercive control.**

“Coercive control” describes the domination of an intimate partner through a variety of tactics that degrade the other partner’s physical safety, economic security, and sense of self-worth.<sup>26</sup> These tactics include isolating the abused person from family, friends, and co-workers, and monitoring the abuse victim’s whereabouts and relationships.<sup>27</sup> Abusive partners may limit their partners’ access to financial resources,

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<sup>26</sup> See Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* 198-200 (2009); see also Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* 65 (2000).

<sup>27</sup> Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 S.M.U. L. Rev. 2117, 2126-27 (1993).

track their use of transportation, and catalogue their time spent out of the home.<sup>28</sup> They frequently threaten to retaliate against their partners by harming or kidnapping their children.<sup>29</sup> These difficulties are heightened for abuse victims who are immigrants or whose first language is not English, because their isolation from social support may be more profound.<sup>30</sup>

Economic control is another common aspect of coercive control of an intimate partner, and may include threats or stalking at the workplace, severe restriction of the partner's access to money, and sabotaging employment.<sup>31</sup> Together, these actions position the battering partner to use violence with relative impunity, because the abused person's support system, economic security, and resources to seek safety from abuse have been severely compromised.

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<sup>28</sup> *Id.* at 2121-22, 2131-32; see also Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* 42 (2012).

<sup>29</sup> Fischer et al., *supra* note 27, at 2122-23.

<sup>30</sup> See Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 *Geo. J. on Poverty L. & Pol'y* 245, 251-54 (2000); see also Amanda M. Cummings et al., *Intimate Partner Violence Among Hispanics: A Review of the Literature*, 28 *J. Family Violence* 153, 168 (2012) (reviewing existing research and finding that intimate partner violence against Latinas was associated with “[l]ack of social support or social isolation . . . consistent with what we know about the cycle of violence in which the abusive partner often aims to isolate the victim from his or her family and friends, making it difficult to leave the relationship”).

<sup>31</sup> Goodmark, *supra* note 28, at 42 (these behaviors contribute to an abused woman's economic insecurity, making it even more difficult to leave the relationship); see also Julie Goldscheid, *Gender Violence and Work: Reckoning with the Boundaries of Sex Discrimination Law*, 18 *Colum. J. Gender & L.* 61, 75-77 (2008) (reviewing studies demonstrating adverse employment experiences of survivors of intimate partner violence).

Even though the astonishing measures that abusive partners take to control their partners are well understood, people still ask: why do abuse victims stay?<sup>32</sup> Simply put: the conduct of the abuser. While poor health and economic insecurity contribute to the difficulty survivors face in leaving abusive relationships, that difficulty is compounded by the increased likelihood of severe violence – including homicide – when the survivor seeks to end the relationship.<sup>33</sup> Federal Bureau of Justice Programs statistics demonstrate that separation from an abuser is one of the most dangerous times for a survivor of intimate partner violence<sup>34</sup> – a danger that is exacerbated if she is pregnant.<sup>35</sup>

Through these and other coercive control tactics, an abusive partner attempts to subjugate the abused intimate partner entirely. It is not surprising, then, that abusers

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<sup>32</sup> See Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 Colo. Law 19, 19-20 (1999) (contrary to staying in a dangerous relationship out of “stupidity, masochism, or co-dependence,” people may remain in abusive relationships because it is more dangerous to leave, explaining that “a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays”).

<sup>33</sup> Elizabeth M. Schneider et al., *Domestic Violence and the Law: Theory and Practice* 68 (3d ed. 2013) (explaining the heightened risk of assault at separation); Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Protection Orders*, 67 Vanderbilt L. Rev. 1015, 1025 (2014) (arguing for legal reforms to protection order statutes to allow indefinite, rather than time-bound, restraining orders, because “leaving or attempting to leave often escalates and intensifies the violence”); see also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991); Fischer et al., *supra* note 20, at 2138-39.

<sup>34</sup> Shannan Catalano, *Special Report: Intimate Partner Violence, 1993-2010*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice 6 (2012, revised Sept. 29, 2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>; see also Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089 (2003).

<sup>35</sup> See Merle H. Weiner, *A Parent-Partner Status for American Family Law* 331-32 (2015) (noting that abuse victims are three times more likely to be murdered by their intimate partners when they become pregnant).

frequently use sexual attacks and coercion, as well as domination of reproductive decisions, as yet another means of exerting power over their partners. As a result, survivors of intimate partner violence are at increased risk of unintended pregnancy.<sup>36</sup>

**2. Rape is a disturbingly common aspect of intimate partner violence, and contributes to unintended pregnancies.**

Rape frequently co-occurs with intimate partner violence.<sup>37</sup> Women raped by their intimate partners are often more traumatized than victims of other perpetrators, and are more likely to suffer multiple rapes; consequently, they are also more likely to suffer acute and chronic physical and reproductive injuries.<sup>38</sup> In addition to these injuries, survivors of rape risk forced pregnancy.<sup>39</sup> Approximately one in four survivors of intimate partner violence who are raped by their intimate partners become pregnant, a rate five times the national average for rape-related pregnancy.<sup>40</sup>

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<sup>36</sup> American College of Obstetricians and Gynecologists, Committee on Health Care for Underserved Women, *Committee Opinion No. 554: Reproductive and Sexual Coercion 2* (Feb. 2013), <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co554.pdf?dmc=1&ts=20151228T1259486661>.

<sup>37</sup> Meredith Bagwell-Gray et al., *Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence*, 15 *Trauma, Violence, & Abuse* 316, 317 (2015) (reported rates of intimate partner rape among women who have been physically assaulted by their partners range from 28 to 68 percent); see also Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 *Hastings L. J.* 1465, 1509-13 (2003).

<sup>38</sup> Anderson, *supra* note 37, at 1511-12 (analyzing the research on the experiences of victims of marital rape and noting that victims are both less likely to report “and . . . less likely to receive support when they do”).

<sup>39</sup> Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need to Know*, 8 *Trauma, Violence, & Abuse* 127, 128 (2007).

<sup>40</sup> *Id.* at 130.

Amicus includes statistics about partner rape because, although AS 47.07.068(a) expressly provides Medicaid coverage for rape-related pregnancy, it is not likely that women who are raped by their intimate partners and become pregnant will disclose the sexual assault so as to avail themselves of that exception.<sup>41</sup> In fact, women who are raped in their intimate relationships are far less likely to report these attacks to anyone.<sup>42</sup> Given this reality, it is reasonable to conclude that some low-income women who are pregnant because of rape by an intimate partner will need abortions because of threats to their physical and mental health, and will seek coverage of those abortions under the medical necessity provision of AS 47.07.068.

**3. “Reproductive coercion” also contributes to unintended pregnancies.**

Sexual assaults are not the only means by which abusers force pregnancy on their partners. A significant number of women and adolescents in violent relationships experience reproductive control resulting in coerced pregnancies.<sup>43</sup> “Reproductive coercion” describes a spectrum of conduct, ranging from rape to threats of physical harm

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<sup>41</sup> See *Casey*, 505 U.S. at 893 (“[I]f anything in this field is certain, it is it is that victims of spousal sexual assault are extremely reluctant to report the abuse to the government . . .”).

<sup>42</sup> Anderson, *supra* note 37, at 1511-12 (“[V]ictims [of intimate partner sexual assault] are less likely to tell family members, rape crisis counselors, or police officers about their experiences...”).

<sup>43</sup> Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 *Contraception* 316 (2010); see also Anne M. Moore et al., *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 *Soc. Science & Med.* 1737 (2010).

to sabotaging a woman's birth control, used primarily to force pregnancy.<sup>44</sup> "Abused women face compromised decision-making regarding . . . contraceptive use and family planning, including fear of condom negotiation."<sup>45</sup> Intimate partners may prevent women's access to barrier contraception methods, such as condoms, and to hormonal contraception;<sup>46</sup> a respondent to one study described how her partner "repeatedly flushed her birth control pills down the toilet and refused to use condoms."<sup>47</sup>

Experiences like these abound. When the National Domestic Violence Hotline surveyed over 3,000 women who called their national hotline, more than 25 percent reported that their abusive partner sabotaged birth control and tried to coerce pregnancy.<sup>48</sup> As one caller explained: "I better be pregnant, or I'm in trouble with him."<sup>49</sup> Another said "[h]e admitted to me and the psychologist that he intentionally got me pregnant to trap me."<sup>50</sup> While reproductive coercion may take place within a relationship

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<sup>44</sup> Miller et al., *Pregnancy Coercion*, *supra* note 43, at 316-17; Moore et al., *supra* note 43, at 1738.

<sup>45</sup> Miller et al., *Pregnancy Coercion*, *supra* note 43, at 316-17; *see also* Ann L. Coker, *Does Physical Intimate Partner Violence Affect Sexual Health? A Systematic Review*, 8 *Trauma, Violence, & Abuse* 149, 151-53 (2007).

<sup>46</sup> *Id.*; *see also* Miller et al., *Pregnancy Coercion*, *supra* note 43, at 316-17, 319.

<sup>47</sup> Moore et al., *supra* note 43, at 1740.

<sup>48</sup> National Domestic Violence Hotline, *Hotline News, 1 in 4 Callers Surveyed at the Hotline Report Birth Control Sabotage and Pregnancy Coercion*, <http://www.thehotline.org/2011/02/1-in-4-callers-surveyed-at-the-hotline-report-birth-control-sabotage-and-pregnancy-coercion/> (Feb. 18, 2011).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

that is not violent, in the context of intimate partner violence the prevalence is higher, the severity is higher, and the risk of unintended pregnancy is doubled.<sup>51</sup>

Adolescents' unintended pregnancies correlate highly with abuse and reproductive coercion.<sup>52</sup> Reproductive coercion of adolescents may include rape, coerced sex, and pressure to get pregnant as a means of proving loyalty to the abusive partner.<sup>53</sup> Research specific to Alaska found similar results. According to that research, young women in Alaska are at particularly high risk for experiencing abuse before, during, and after pregnancy, and are also at higher risk of having conceived as a result of sexual abuse or statutory rape.<sup>54</sup> Like women of all ages, young women in abusive relationships are more vulnerable to abuse and violence at the hands of their partner when pregnant, and have a more difficult time leaving an abusive partner with whom they have a child.<sup>55</sup>

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<sup>51</sup> Jonel Thaller & Jill Theresa Messing, *Reproductive Coercion by an Intimate Partner: Occurrence, Associations, and Interference with Sexual Health Decision Making*, Health & Social Work, Advance Access 2 (Dec. 12, 2015); see also Elizabeth Miller et al., *Editorial: Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy*, 81 *Contraception* 457, 457 (2010); see also Miller et al., *Pregnancy Coercion*, *supra* note 43, at 320.

<sup>52</sup> Elizabeth Miller et al., *Male Partner Pregnancy – Promoting Behaviors and Adolescent Partner Violence: Findings from a Qualitative Study with Adolescent Females*, 7 *Ambulatory Pediatrics* 360, 364-65 (2007); Jay G. Silverman et al., *Dating Violence and Associated Sexual Risk and Pregnancy Among Adolescents in the United States*, 114 *Pediatrics* e220, e221 (2004); Coker, *supra* note 43, at 169.

<sup>53</sup> Miller et al., *Male Partner Pregnancy-Promoting Behaviors*, *supra* note 52, at 363-64; see generally Moore et al., *supra* note 43, at 1737-41.

<sup>54</sup> Schoellhorn & Perham-Hester, *supra* note 10, at 1; Bradford Gessner & Katherine Perham-Hester, *Violence among Teenage Mothers in Alaska*, 22 *J. of Adolescent Health* 383, 383 (1998).

<sup>55</sup> Miller et al., *Male Partner Pregnancy-Promoting Behaviors*, *supra* note 42, at 364; Moore et al., *supra* note 43, at 1739; Margi Coggins & Linda Bullock, *The*

These studies demonstrated that women and adolescents who suffered abuse were more likely to experience reproductive coercion. A 2014 study at a large urban hospital made explicit the link between reproductive coercion in a woman's current relationship and intimate partner violence in that same relationship. Sixteen percent of women reported experiencing reproductive coercion in their lifetimes.<sup>56</sup> Thirty-two percent of those women reported that intimate partner violence co-occurred with reproductive coercion in the same relationship.<sup>57</sup> All of these studies add to the understanding that unintended pregnancy is associated with intimate partner violence.<sup>58</sup>

### **III. Coerced pregnancy and forced childbearing carry significant health risks to survivors of intimate partner violence.**

Every pregnancy carries some level of risk to a woman's health.<sup>59</sup> Unintended pregnancies, however, have significantly more health consequences.<sup>60</sup> Not only do

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*Wavering Line in the Sand: The Effects of Domestic Violence and Sexual Coercion*, 24 Issues in Mental Health Nursing 723, 724 (2003).

<sup>56</sup> Lindsey E. Clark, et al., *Reproductive Coercion and Co-occurring Intimate Partner Violence in Obstetrics and Gynecology Patients*, 210 Am. J. Obstetrics & Gynecology 42.e1, 42.e6 (2014).

<sup>57</sup> *Id.*

<sup>58</sup> See generally Thaller & Messing, *supra* note 51.

<sup>59</sup> Unfortunately, the United States is one of the only wealthy countries in the world where maternal mortality has increased in recent years. Pregnant women in the United States are more likely to die than women in forty-five other countries. Christopher Ingraham, *Our Maternal Mortality Rate Is a National Embarrassment*, The Washington Post Wonkblog (Nov. 18, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/11/18/our-maternal-mortality-rate-is-a-national-embarrassment/> (citing statistics from World Health Organization, *Trends in Maternal Mortality 1990-2015: Estimates from WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division* (2015)).

pregnant women in abusive relationships face all the risks associated with pregnancy, they must also contend with the health dangers presented by the violent intimate partner.

Violence by intimates is understood to increase during pregnancy, in both frequency and intensity.<sup>61</sup> Pregnant women experience high rates of domestic violence;<sup>62</sup> this abuse is often severe, frequently resulting in serious injuries.<sup>63</sup> Women physically abused during pregnancy are more likely to experience hemorrhage, low-birth weight babies, and pregnancy loss.<sup>64</sup> Intimate partner violence against pregnant women is also associated with a host of other serious pregnancy complications, including “infection, anemia . . . , pelvic fracture . . . , preterm delivery, and low birth weight.”<sup>65</sup>

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<sup>60</sup> McFarlane, *supra* note 39, at 130 (unintended pregnancy is associated with a host of poor health outcomes, for both the pregnant woman and the child once born).

<sup>61</sup> See, e.g., Julie A. Gazmararian et al., *Prevalence of Violence Against Pregnant Women*, 275 JAMA 1915, 1918 (1996).

<sup>62</sup> Beth A. Bailey, *Partner Violence During Pregnancy: Prevalence, Effects, Screening, and Management*, 2 Int'l J. Women's Health 183 (2010) (reviewing the literature on pregnancy and intimate partner violence, explaining that prevalence rates appear lower in population-based studies that used terminology unlikely to elicit disclosure; based on more appropriate studies, researchers estimate that up to 300,000 pregnant women in the United States experience intimate partner violence each year).

<sup>63</sup> Gazmararian et al., *supra* note 61, at 1918.

<sup>64</sup> Patricia A. Janssen et al., *Intimate Partner Violence and Adverse Pregnancy Outcomes: A Population-Based Study*, 188 Am. J. Obstetrics & Gynecology 1341, 1346-47 (2003); see also Deborah Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 Ind. L.J. 667, 672 (2006); Maja Altarac & Donna Strobino, *Abuse During Pregnancy and Stress Because of Abuse During Pregnancy and Birthweight*, 57 J. Am. Med. Women's Ass'n 208 (2002).

<sup>65</sup> American College of Obstetricians & Gynecologists, Committee on Healthcare for Underserved Women, *Committee Opinion No. 518: Intimate Partner Violence 2* (Feb. 2012), <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co518.pdf?dmc=1&ts=20151228T1609351571>.

Women abused before and during pregnancy have heightened risks of urinary tract infections, sexually transmitted infections and HIV, which increase the risk of serious pregnancy complications including cervical infections, hypertension, and gestational diabetes.<sup>66</sup> Moreover, depression and anxiety disorders, which increase the risks of serious pregnancy complications, are more prevalent in pregnant women experiencing intimate partner violence.<sup>67</sup> The extreme levels of violence directed at pregnant women by their abusers may have the ultimate horrific result: the murder of the pregnant woman. In the United States, homicide is a leading cause of the deaths of pregnant women.<sup>68</sup>

And if the survivor of intimate partner violence who is coerced into a pregnancy goes on to have a child with that partner, her ability to sever that abusive relationship is significantly curtailed, putting her at risk of further violence and injury. Having a child with an abusive partner makes it exponentially more difficult to safely leave the relationship.<sup>69</sup> As Dr. Sharon Smith, a family practitioner in Anchorage, testified: “Some

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<sup>66</sup> Bailey, *supra* note 62, at 187.

<sup>67</sup> *Id.*

<sup>68</sup> Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999*, 95 Am. J. Pub. Health 471, 473 (2005) (homicide ranked third among causes of pregnant women’s deaths; African American women and very young women were most likely to be murdered during pregnancy).

<sup>69</sup> See, e.g., Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 Vand. L. Rev. 1041, 1051 (1991) (describing abused women’s legal difficulties when leaving with children and their reluctance to flee without them).

patients are in serious domestic violence relationships. Having a child tends to tie the mother to her abuser, with potentially fatal results.” [Exc. 099].<sup>70</sup>

Physicians must be able to provide their pregnant patients the medical care necessary to treat and prevent these health threats. Because abortion may be medically necessary to address these threats, denying abortion coverage while covering all other health threats is dangerous to pregnant women. It also unconstitutionally treats them differently than Medicaid-eligible pregnant women who carry their pregnancies to term.<sup>71</sup>

#### **IV. Women pregnant by abusers seek abortions at higher rates.**

Given the prevalence of sexual violence and reproductive coercion in abusive relationships, it is unremarkable that women who are victims of intimate partner violence need abortions to prevent or ameliorate the threat to their health posed by such a pregnancy.<sup>72</sup> Indeed, pregnancy termination and intimate partner violence are linked; in every study considering the question, in the United States and around the world,

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<sup>70</sup> Additional witnesses provided similar testimony. Dr. Jan Whitefield, an obstetrician-gynecologist, testified that his patients include “women in bad relationships, sometimes deathly afraid of a partner.” [Exc. 101]. Dr. Renee Bibeault testified that she has observed this phenomenon as well: “a victim of domestic violence by an abusive husband wished to flee the relationship, but was frantic that carrying her fetus to term would tie her to her abuser.” [Exc. 96].

<sup>71</sup> See *Planned Parenthood v. State*, No. S-15010, 2016 WL 3959952, at 21 (Alaska July 22, 2016). (“It is clear that the Notification Law treats the two classes of pregnant minors differently, burdening the fundamental privacy rights of those seeking termination but not the fundamental privacy rights of those seeking to carry to term.”).

<sup>72</sup> See, e.g., Vicki Breitbart, *Abortion, in Sexual Violence and Abuse: An Encyclopedia of Prevention, Impacts, and Recovery* (Judy L. Postmus, ed., 2012); Gigi Evins & Nancy Chescheir, *Prevalence of Domestic Violence Among Women Seeking Abortion Services*, 6 *Women’s Health Issues* 204 (1996); Susan S. Glander et al., *The Prevalence of Domestic Violence Among Women Seeking Abortion*, 91 *Obstetrics & Gynecology* 1002 (1998).

researchers found an association between intimate partner violence and pregnancy termination.<sup>73</sup>

If the pregnancy is a result of a rape or coercion, a survivor of intimate partner violence may decide to terminate the pregnancy because it was forced upon her; approximately half of women who become pregnant as a result of rape will have abortions.<sup>74</sup> She may need to terminate the pregnancy because she will face ongoing physical harm if she carries the pregnancy to term.<sup>75</sup> She may suffer ongoing violence from entrapment in the abusive relationship if she continues her pregnancy.<sup>76</sup> Research bears that out; for women in abusive relationships who sought abortions but were denied them, having a baby with the abuser appeared to result in ongoing violence, measured over the course of two and one-half years after the pregnancy.<sup>77</sup> Conversely, “having an

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<sup>73</sup> See Megan Hall et al., *Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLoS Med e1001581 (2014) (identifying seventy-four studies from the United States and around the world that demonstrated a correlation between seeking abortion and experiencing intimate partner violence).

<sup>74</sup> Melisa M. Holmes et al., *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 Am. J. Obstetrics & Gynecology 320, 322 (1996) (50 percent of women pregnant through rape had abortions).

<sup>75</sup> Sarah CM Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC Medicine 1 (2014); see also Junda Woo et al., *Abortion Disclosure and the Association with Domestic Violence*, 105 Obstetrics & Gynecology 1329 (2005) (a significant subset of women who do not disclose their abortion decision to their partners did so because they feared physical violence).

<sup>76</sup> Roberts et al., *supra* note 75, at 2, 5.

<sup>77</sup> *Id.* at 5.

abortion was associated in a reduction over time in physical violence” from the man involved in the pregnancy.<sup>78</sup>

All of these health threats, and more, are present in a pregnancy that occurs in the context of a violent relationship. A rule that limits Medicaid coverage for abortion to such narrow circumstances ties the hands of physicians who must consider all of the factors that put pregnant women’s health at risk, including intimate partner violence. AS 47.07.068 thus unconstitutionally treats pregnant women needing abortions differently than all other Medicaid recipients.

**V. Survivors of intimate partner violence face additional barriers to accessing abortion; lack of health coverage should not be one of them.**

Even though abortion may be necessary medical care for pregnancy in the context of intimate partner violence, the impoverished abused pregnant woman faces a host of barriers to health care by virtue of both poverty and the controlling conduct of the abusive partner. Abusers limit access to health care as yet another means of controlling their partners.<sup>79</sup> People experiencing reproductive coercion often report that their partners interfered with their abortion appointments or used other strategies to postpone their partner’s abortions, often resulting in more expensive and risky procedures, or preventing the abortion altogether.<sup>80</sup> This poses a particularly serious problem for pregnant people

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<sup>78</sup> *Id.*

<sup>79</sup> *See, e.g.,* Coggins & Bullock, *supra* note 55, at 729-30; Moore et al., *supra* note 43, at 1741; Michael Rodriguez et al., *Intimate Partner Violence and Barriers to Mental Health Care for Ethnically Diverse Populations of Women*, 10 *Trauma Violence Abuse* 358, 358 (2009).

<sup>80</sup> Moore et al., *supra* note 43, at 1741.

living in Alaska, where transportation options are already limited and costly, particularly for Alaska Natives and other Alaskans living in poverty.<sup>81</sup>

An abuser may also control his pregnant partner's access to health care by insisting on accompanying the abused partner to medical visits and refusing to allow private conversations between her and her health care provider.<sup>82</sup> One survivor of intimate partner violence explained this phenomenon as follows: "I am seven months pregnant and he's assaulting me. My doctor has never asked me about domestic violence. My husband never leaves me alone during my doctor visits--[he] is always by my side."<sup>83</sup>

Alaskan survivors of intimate partner violence already face multiple barriers to access to reproductive health care, including the private control and violence of their abusers. Alaska's Medicaid program must not – and constitutionally, cannot – collude in the deprivation of women's equality, privacy, and dignity by creating additional barriers that force them to go through with coerced, dangerous pregnancies.

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<sup>81</sup> John Oetzel & Bonnie Duran, *Intimate Partner Violence in American Indian and/or Alaska Native Communities: A Social Ecological Framework of Determinants and Interventions*, 11 *Am. Indian and Alaska Native Mental Health Research* 48, 53 (2004); Samina T. Syed et al., *Traveling Towards Disease: Transportation Barriers to Health Care Access*, 38(5) *J. Community Health* 976, 981 (2013).

<sup>82</sup> See Karen Oehme et al., *Unheard Voices of Domestic Violence Victims: A Call to Remedy Physician Neglect*, 15 *Geo. J. Gender & L.* 613, 633 (2014).

<sup>83</sup> *Id.* at 636 (brackets in original; citation omitted).

## CONCLUSION

As the United States Supreme Court has found, the right to terminate a pregnancy concerns the “urgent claims of the woman to retain the ultimate control over her destiny and her body.”<sup>84</sup> For a woman pregnant through reproductive coercion or intimate partner rape, a meaningful abortion right is just as essential, as the abuser has attempted to wrest that control from her. It is not an exaggeration to say that her ability to have an abortion may mean the difference between her life and death.

As Appellants correctly have explained, Alaska’s Medicaid program is charged with meeting the basic health needs of poor Alaskans; the Alaska Constitution ensures that, in carrying out that mandate, Medicaid recipients are treated equally, without discrimination and without actions that impinge on fundamental rights. Falsely circumscribing the definition of “medically necessary” services to eliminate Medicaid-eligible women’s abortion coverage will only escalate the risks of severe physical injury, mental trauma, and ongoing assaults for low-income survivors of abuse who become pregnant by an abusive intimate partner.

Abortion services, like other health care services, are necessary health care for people in abusive relationships and women living in poverty, for whom an unintended pregnancy may bring a host of dangerous health consequences. Amicus, who daily sees the tremendous negative impact of intimate partner violence on women’s health, lives, and safety, urge this Court to affirm the superior court’s decision.

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<sup>84</sup> *Casey*, 505 U.S. at 869.

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DATED this 28th day of July, 2016.

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## CERTIFICATE OF SERVICE

The undersigned certifies under the laws of penalty of perjury that on this date she caused to be served a copy of the foregoing via U.S. Mail, postage pre-paid, on the following:

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DATED this 28th day of July, 2016.



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