

February 11, 2021

Dear Chairman Burckhard and Members of the Senate Political Subdivisions Committee:

The ACLU of North Dakota strongly opposes Senate Bill 2323, “relating to the zoning authority of counties and cities with respect to abortion facilities.” Per the bill’s description, SB 2323 appears to be a bill about zoning regulations. Yet any reading of the bill’s text makes clear one simple fact: that the purpose of this bill is to shut down North Dakota’s existing abortion clinic and to completely eliminate access to abortion.

The ACLU of North Dakota urges a **do not pass** recommendation on SB 2323.

This piece of legislation suffers from incurable constitutional flaws and, if passed, it would put North Dakota taxpayers on the hook – yet again – for legal fees arising out of litigation. To understand the likelihood that SB 2323 would ultimately be found unconstitutional by the courts one has to look no further than the states of Alabama and Tennessee.

Each of those states passed similar “zoning” laws over the past several years. In both instances, the ACLU successfully sued. In Alabama,¹ the federal court permanently blocked the restriction and the state did not appeal. In Mt. Juliet, Tennessee,² the federal court issued a preliminary injunction of the town’s zoning ordinance and in September 2020 the suit was settled after the town voluntarily repealed its ordinance.

Though courts found both of these laws and/or ordinances to be unconstitutional, it is worth noting that each of these regulations were *less extreme* than the distance requirements included in SB 2323. The regulations at issue in Alabama and Tennessee regulated clinic zoning at a distance of 1,000 to 2,000 feet from public or private schools. In contrast, SB 2323 attempts to prohibit abortion clinics from being granted zoning permits for either new builds or building additions within a 30-mile radius of a school. It is without question that if SB 2323 passes it will end up in court and be found unconstitutional.

SB 2323 is yet another attempt in a long line of attacks against abortion in North Dakota. We respectfully ask the committee to vote for a **do not pass** recommendation on this extreme and unconstitutional piece of legislation.

Sincerely,



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¹ *West Alabama Women's Center v. Miller*, 217 F.Supp.3d 1313 (M.D. Ala. 2016).

² *FemHealth USA, Inc. v. City of Mount Juliet*, M.D. Tenn., agreed order of compromise and settlement dated Sept. 2020, avail. [here](#).



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