NORTHLAND
FAMILY PLANNING CENTERS

May 7, 2019

Chair Graham Filler
Judiciary Committee
House of Representatives
124 North Capitol Avenue
Lansing, Michigan 48933

Minority Vice-Chair David LaGrand
Judiciary Committee
House of Representatives
124 North Capitol Avenue
Lansing, Michigan 48933

Dear Chair Filler, Minority Vice-Chair LaGrand, and members of the Judiciary Committee:

Northland Family Planning Centers urge you to reject House Bill 4320 and House Bill 4321, which contain unconstitutional provisions and will unduly burden patients seeking abortion care.

Northland Family Planning Centers have been leaders in abortion care since our founding in 1976. We have three locations in the metro-Detroit area that specialize in abortion care, family planning care, gynecology and adoption.

We are mothers, daughters, aunts, sisters, friends. We are husbands, fathers, uncles, brothers, friends. We are united and share in this common goal: to provide exceptional pregnant people's reproductive health care in an environment that is safe, clean and filled with compassion and support.

Our highly-skilled doctors are board-certified and specially-trained experts in abortion care who have chosen to provide this service to pregnant people because they believe that pregnant people, not the government or religious organizations, should be able to choose whether or not to bring a new life into this world. They want to ensure that a woman who chooses to terminate her pregnancy can do so in a safe, supportive environment.

House Bill 4320 would ban our doctors from providing the standard dilation and extraction (D&E) abortion procedure with extremely limited exceptions. D&E is a safe, medically proven method of abortion care, accounting for approximately 95% of all second trimester procedures nationally.[1] In order to obtain care if this provision takes effect, pregnant people would be forced to undergo an additional, invasive, and unnecessary medical procedure—even against the medical judgment of their physician. The bill's health exception is extremely limited and only applies when the woman's life is "endangered." There are no exceptions for rape or incest. House Bill 4321 creates sentencing guidelines for violating the method ban. Both bills will collectively be referred to in this testimony as the "D&E method ban."

[1] Karen Pazol *et al*, CENTERS FOR DISEASE CONTROL AND PREVENTION, ABORTION SURVEILLANCE - UNITED STATES, 2009, 61(SS08); 1-44 (November 23, 2012), https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6108a1.htm.

This D&E method ban is an unconstitutional attempt by politicians to intervene in doctor-patient relationships. This letter sets forth the constitutional violations and health policy concerns inherent in HB 4320 and HB 4321. We urge you to reject these measures.

I. The D&E Method Ban Is Unconstitutional.

Under Supreme Court precedent, the D&E method ban is plainly unconstitutional because it imposes an undue burden on the right to abortion.[2] The U.S. Supreme Court has repeatedly declared that a ban on the most common method of abortion is unconstitutional.[3] In *Stenberg v. Carhart*, the Court held specifically that a D&E method ban, similar to one contemplated by HB 4320, was unconstitutional.[4] Moreover, in *Gonzales v. Carhart,* the Court ruled that a ban on another second-trimester procedure, D&X, was constitutional in reliance on the continued availability of D&E, the most commonly used method of second trimester abortion.[5] Accordingly, courts have blocked D&E bans each time they have been challenged, specifically in Alabama, Arkansas, Kansas, Kentucky, Louisiana, Ohio, Oklahoma, and Texas.

Additionally, the Supreme Court's recent decision in *Whole Woman's Health v. Hellerstedt* reaffirmed several Supreme Court decisions affording strong constitutional protection to pregnant people's right to terminate a pregnancy.[6] That decision makes clear that the undue burden standard requires courts to meaningfully scrutinize pre-viability abortion restrictions.[7]

House Bills 4320 and 4321 are divorced from any health-related state interest, with no evidence to support that the use of additional, medically unnecessary procedures increases the safety of the standard D&E procedure. In contrast, these bills impose significant burdens on patients by forcing them to accept unnecessary, and in some instances, untested, medical procedures in order to obtain an otherwise common and safe procedure. Such extreme burdens on pregnant people, violating both their physical and decisional autonomy, unquestionably impose an unconstitutional burden on access to abortion.

II. The D&E Method Ban Presents an Unwarranted Intrusion in the Doctor-Patient Relationship.

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[2] "A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus… [and]…a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends." Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 877 (1992); accord Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292, 2309-10 (2016).

[3] *See Stenberg v. Carhart*, 530 U.S. 914, 945-46 (2000); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 77-79 (1976).

[4] *See Stenberg*, 530 U.S. at 945-46.

[5] *See* Gonzales v. Carhart, 550 U.S. 124, 147, 164-65 (2007).

[6] *Whole Woman's Health*, 136 S.Ct. at 2309-10.

[7] *Id.*at 2310 ("[W]hen determining the constitutionality of laws regulating abortion procedures," courts must place "considerable weight upon evidence . . . presented[.]"); *id.* (courts cannot give "uncritical deference" to the facts supporting the government's position).

A ban on D&E abortions not only robs pregnant people of access to a common method of second trimester abortion, it also interferes with physicians' ability to care for their patients. House Bills 4320 and 4321 insert politicians into the examination room, potentially forcing physicians to perform experimental procedures in order to care for their patients. Unsurprisingly, medical experts do not support this legislation. The American Congress of Obstetricians and Gynecologists (ACOG) oppose method bans, stating that "efforts to ban specific types of procedures will limit the ability of physicians to provide pregnant people with the medically appropriate care they need and will likely result in worsened outcomes and increased complications."[8] AGOC further states that, "[m]edical decisions about reproductive health—especially given the complex circumstances that often accompany second-trimester abortions—should be made by each individual woman in consultation with those she trusts most, including her ob-gyn—not politicians."[9] Politicians in Michigan should heed the advice of medical experts and reject these harmful measures.

III. Conclusion

House Bills 4320 and 4321 are unconstitutional, medically unsound, and create unwarranted interference into private medical decisions. We urge you to reject the D&E method ban and stand up for pregnant people and families in our state.

Sincerely,

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[8] American College of Obstetricians and Gynecologist, *ACOG Statement Regarding Abortion Procedure Bans* (Oct. 9, 2015) https://www.acog.org/About-ACOG/News-Room/Statements/2015/ACOG-Statement-Regarding-Abortion-Procedure-Bans?IsMobileSet=false.
[9] *Id.*