

December 23rd 2021

Re: Opposition to Proposed Rule § 44:67:04:13

Dear Members of the Interim Rules Review Committee,



P.O. Box 1170
Sioux Falls, SD 57101
aclusd.org

I write to you today on behalf of the American Civil Liberties Union of South Dakota to oppose the Proposed Rule § 44:67:04:13 relating to mifepristone and misoprostol administration in South Dakota.

For more than 20 years, mifepristone and misoprostol have offered an exceedingly safe and effective, FDA- approved means of ending a pregnancy. However, the proposed rule aims to implement regulations regarding both mifepristone and misoprostol that further restrict access to abortion care with no medical basis, imposing an undue burden on people seeking abortion care and a particularly significant burden on people with unequal access to healthcare such as low-income patients, Black, Indigenous and people of color, and people living in rural areas.

The American Civil Liberties Union (ACLU), the ACLU of Hawaii, and Arnold & Porter Kaye Scholar LLP, are currently challenging the constitutionality of the Risk Evaluation Mitigation Strategy (REMS) for mifepristone, which the proposed rule purports to implement on a state level.¹ *Chelius vs Becerra* is being brought on behalf of a Hawaii doctor and several professional health care associations. Plaintiffs argue that the REMS restrictions violate their patients' and members' rights to liberty, privacy and equal protection as guaranteed by the U.S. Constitution by imposing significant burdens on abortion access without proof of a valid medical justification.

The proposed rule presents an even more significant burden on abortion access by imposing new restrictions on misoprostol that require an additional trip to the clinic, far exceeding federal REMS requirements which only address mifepristone.² This additional restriction adds to the numerous existing barriers that people seeking abortion care in South Dakota already face. Additional trips and waiting times can delay a patient's abortion – typically by weeks – while they arrange and pay for transportation, time off work, and child care. This delay pushes some patients past the point at which they can use this early medication method; others cannot access abortion care at all. This additional restriction has no medical justification and makes it clear that the intention of this proposed rule is not to protect or promote the safety of South Dakotans who can get pregnant, but to further an anti-choice political agenda that aims to push abortion care out of reach entirely and place politicians in-between doctors and their patients.

Furthermore, Executive Order 2021-12 asserts that lifting federal REMS protocols for mifepristone creates unsafe conditions and potential harm to South Dakotans who can get pregnant. However, the evidence points to the opposite conclusion. Studies show that

¹ <https://www.aclu.org/cases/chelius-v-becerra>

² <https://www.accessdata.fda.gov/scripts/cder/remis/index.cfm>



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there can be serious negative physical and economic consequences for people who are denied abortion care and their families.³ People who are denied an abortion are more likely to experience subsequent poverty, to have insufficient funds to pay for basic living expenses, to have poorer health, and are more likely to be in violent romantic relationships. After being denied an abortion, a person has three times greater odds of being unemployed than a person who was able to obtain abortion care. On the other hand, people who are able to get abortion care, compared to those who are denied, are six times more likely to have positive life plans and to achieve them.

Reproductive freedom is a fundamental constitutional right grounded in the privacy protections of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution. The ACLU holds that every person, as a matter of their right to the enjoyment of life, liberty, and privacy, should be free to determine whether and when to bear children. The decision about whether, when, or how to become a parent is one of the most important life decisions we make and is best made by each person with their family and faith. All South Dakotans should be afforded the freedom to do so without manufactured barriers and political interference.

We urge you to reconsider adopting the Proposed Rule § 44:67:04:13 and in doing so to uphold the constitutional rights of all South Dakotans.

Sincerely,

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

Jett Jonelis
Advocacy Manager
ACLU of South Dakota

³ <https://www.ansirh.org/research/ongoing/turnaway-study>