

March 25, 2015

Senate President Pro Tempore Ginny Burdick and Rep. Ann Lininger
Co-Chairs, Joint Committee on Implementing Measure 91
Oregon State Legislature
900 Court Street N.E.
Salem, OR 97301

Re: Senate Bill 445

Dear Senator Burdick, Rep. Lininger, and Members of the Committee:

We write to urge you to reject Senate Bill 445, a bill that would require marijuana retailers and medical marijuana distributors to post signs warning of “the potential harmful effects of marijuana on pregnant women,” “fetuses,” and “breastfeeding infants.” For more than a decade, we have worked to defend and protect pregnant women from drug policies that stigmatize them and are based, far too often, on inaccurate or mischaracterized science. Unfortunately, such stigmatizing policies are frequently used to justify unconstitutional and dangerous prosecutions and child welfare interventions against pregnant women that devastate their lives and families. While promoting public health is an important and laudable goal, warnings about health risks serve that goal only when they are based on science, not on misinformation and stigma.



As drug policies change, pregnant women continue to be punished

Oregon is a leading state in trying to reverse the negative effects of drug policy in the United States. As you are aware, the war on drugs and its harsh arrest and sentencing policies, particularly directed at people of color, have sadly made the U.S. the world leader in incarcerating its people. Women’s incarceration has increased by upwards of 800 percent in the last three decades, as a direct result of U.S. drug policies; women of color are particularly burdened by this emphasis on punishment. While SB 445 does not directly criminalize pregnant women, in our experience myths and stigma about drug use have led directly to prosecutions, convictions, and punitive child welfare interventions against them. Their entire families feel the long-term effects of such punishments.

National Advocates for Pregnant Women is a leading authority on the harmful effects of drug policy on women’s lives

National Advocates for Pregnant Women (NAPW) is a non-profit public interest organization that works to protect the health and civil and human rights of pregnant women and their families. Since its founding, NAPW has served as legal counsel and as

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amicus curiae in cases throughout the United States in which pregnant women have been prosecuted, jailed, had their children removed from their care, or were forced to undergo unwanted medical procedures under the guise of protecting fetal health. Our research, published in the *Journal of Health Law and Policy* in 2013, documented over 400 such interventions in the U.S. between 1973 and 2005.¹ Since 2005, the stigmatizing effects of drug policy on pregnant women show no signs of abating.

Regulations regarding drugs – legal or criminalized – should be based on science

The women who are most likely to be subjected to these unconstitutional and harmful interventions are pregnant women accused of using criminalized drugs – even when scientific evidence demonstrates that those drugs are not as harmful to maternal and fetal health as people believe, and far less harmful than many things to which pregnant women are frequently exposed. In fact, relatively little research has been done on the question of whether or not there is a causal relationship between marijuana use by pregnant women and pregnancy outcomes.² Likewise, researchers have called for more studies of the potentially positive effects of marijuana use on pregnancy-related health conditions, like severe morning sickness.³

It is true that the National Institute of Health has reported on a study that finds an “association” that “may” indicate an identifiable effect of prenatal marijuana exposure on some areas of brain functioning; yet, other studies find no long term effects on brain functioning in people exposed to marijuana in utero. In short, medical science has not yet clearly established that marijuana has harmful long-term effects on children who were exposed to marijuana in utero. As Dr. Peter Fried, one of the world’s leading experts on this issue, explains, no research has demonstrated harmful effects on pregnancy or fetal development, and some research indicates a correlation (not necessarily causation) between brain functioning at 3 years of age and older – but, he concludes, more research is needed.⁴ Unlike cigarette smoking, which medical researchers agree increases the risk of harmful effects on maternal and fetal health, there is no such consensus about marijuana based on the current scientific knowledge.

Maternal and fetal health are far better served by focusing on what we do know: ensuring that all pregnant women have access to quality prenatal care, postpartum support that helps promote healthy breastfeeding, economic security, and a safe and healthy environment in which to live and raise their families. All of these aspects of pregnant

¹ Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women’s Legal Status and Public Health*, 38 *J. Health Pol. Pol’y & L.* 299 (2013).

² Fried, 2002.

³ Westfall, et al., 2006.

⁴ Fried, 2002.

women's lives have been demonstrably linked to maternal, fetal and child health⁵ – unlike marijuana use.

Unscientific drug policies directed at pregnant women have a stigmatizing and dangerous impact on women

While SB 445 delegates the content of such warnings to the Oregon Health Authority, it does not mandate that the warnings be based on current medical science. Worse, it contributes to the ongoing and mistaken belief that only women are responsible for pregnancy outcomes, ignoring any possibility that marijuana or other drugs may impact men's reproductive health. This gender discriminatory mandate further stigmatizes pregnant women and increases the likelihood that they will be the subject of punitive prosecutions and child welfare interventions.

We urge you to reject this bill, and would welcome the opportunity to speak with you and provide additional information for your consideration.

Sincerely,



Sara L. Ainsworth, J.D.
Director of Legal Advocacy

⁵ For example, babies born to mothers who did not receive prenatal care are three times more likely to be low birth weight and five times more likely to die than infants whose mothers received prenatal care.
<http://mchb.hrsa.gov/programs/womeninfants/prenatal.html>