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ACOG WI Section Applauds Unconstitutionality of Punitive Law

Washington, DC – *The following is a statement from Kathy D. Hartke, MD, Chair of the Wisconsin Section of the American Congress of Obstetricians and Gynecologists (ACOG):*

“Finally after 19 years, Wisconsin Children’s Code Act 292 has been found unconstitutional by a Federal Court, thanks to a brave woman, Tammy Loertscher with the assistance of National Advocates for Pregnant Women, the Perkins Coie law firm in Madison and several experts.

“Hundreds of pregnant women have been subjected to punitive responses contrary to public health recommendations under this Act. Some have been jailed and denied their rights to an attorney when they presented for prenatal care, acknowledged using drugs or alcohol, and declined treatment. Others while incarcerated have been denied basic prenatal care and healthy nutrition, treatment of mental health disorders, and treatment for substance use disorder or withdrawal. Some women were brought to court in handcuffs and shackles. Ms. Loertscher was jailed for 19 days and even placed in solitary confinement.”

“Not only was the law vague and misinterpreted, it acted as a deterrent for women to seek prenatal care and was dangerous to both maternal and fetal health. Scientific evidence shows that pregnant women are best treated for substance use or any other medical condition with open, honest communication with their provider and respect for their autonomy. A [Committee Opinion](#) from ACOG states, ‘Incarceration and the threat of incarceration have proved to be ineffective in reducing the incidence of alcohol or drug abuse.’

“The American Congress of Obstetricians and Gynecologists (ACOG), along with the American Society of Addiction Medicine (ASAM), the American Public Health Association (APHA), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP), the American Medical Association (AMA) and many other leading medical and public health organizations have concluded that substance use during pregnancy is a health concern best addressed through education, prevention and community-based treatment, not through punitive drug laws or criminal prosecution.

“As the state’s leading organization of physicians providing care for women, Wisconsin ACOG understands the impact our country’s opioid crisis has on Wisconsin families. ACOG Wisconsin continues to fight for action to ensure a healthy outcome for both mother and baby while offering non-punitive, family-centered medical treatment.”

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Representing over 900 practicing ob-gyn physicians in the state, Wisconsin ACOG is a Section of the American Congress of Obstetricians and Gynecologists, the Nation’s leading group of physicians providing health care for

women. As a private, voluntary, nonprofit membership organization of more than 58,000 members, The Congress strongly advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women's health care.. www.acog.org