EXHIBIT 2
DATE 3.11.05
SB SB 203

Testimony in Support of SB203
To: Montana House Business and Labor Committee
American Civil Liberties Union of Montana
Presented by Jan VanRiper (443-8590)
3/10/05

ACLU of Montana urges the members of the Senate Committee on Public Health, Welfare and Safety to vote favorably on SB203. The bill will ensure that insurance carriers doing business in Montana do not discriminate against women with respect to reproductive health by failing to provide contraceptive coverage when other drugs and devices are covered. Providing contraceptive coverage in insurance plans that cover other prescriptions and devices is a simple matter of gender equity, and would require insurers doing business in Montana to be in compliance with anti-discrimination law law.

The failure to cover contraception has already been determined to constitute illegal sex discrimination under *federal law*.

The federal Equal Employment Opportunity Commission[1] and a district court in the federal Ninth Circuit (which includes Montana),[2] have both concluded that the exclusion of prescription drugs and devices that are used overwhelmingly by women (like contraceptives) is illegal sex discrimination. These decisions do not require insurance carriers to provide contraceptives *per se*, but hold that when an employer offers a health plan that includes other prescription and medical device coverage, the exclusion of contraceptives violates federal prohibitions against discrimination based on pregnancy. (SB203 would require insurers, rather than employers, to appropriately include contraceptive coverage, thereby protecting women who are insured in both group and individual health plans.)

Insurance carriers' failure to provide contraceptive coverage is problematic under Montana law.

In 1993, the Montana Supreme Court[3] unanimously found that health insurance policies that failed to provide coverage for pregnancy violated Montana prohibitions against sex discrimination in insurance. Applying Montana's statute against sex discrimination in insurance (49-2-309, MCA) Court noted, "[T]he exclusion of maternity expenses imposes a hardship on women not imposed on men."[4] Clearly the failure to cover contraceptives imposes a similar unequal hardship on Montana women, forcing them to pay out-of-pocket for prescriptions. By passing SB203, this Committee and Legislature will ensure that Montana women will be treated fairly by insurers, instead of waiting for the Court to act.

By passing SB203, this Legislature will be setting good policy instead of waiting for the issue to reach the Courts.

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1 EEOC Decision on Coverage of Contraception, 12/04/2000, at www.eeoc.gov/policy/docs/decision-contraception.html.

2 *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266 (W.D. Wash. 2001).

3 *Bankers Life & Casualty Co. v Peterson*, 263 MT156, 866 P2nd 241 (1993).

4 *Bankers* @ p.150.