Approved: March 19, 2002
Date

MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hayzlett at 1:35 p.m. on March 14 , 2002 in Room 519-S of the Capitol.

All members were present except:
Representative Beggs, excused
Representative McKinney, excused
Representative Osborne, excused
Representative Phelps, excused

Committee staff present:
Bruce Kinzie, Office of the Revisor
Hank Avila, Legislative Research Department
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:
Mathew Moser, Bureau Chief, Titles and Registration, Division of Vehicles
Dennis Wilson, Johnson County Treasurer
Lowell Ramsey, Kansans For Life
Carla Mahany, Planned Parenthood

Others attending:
See attached sheet

**SB 449 - electronic certificates of title**

Chairman Hayzlett opened hearings on **SB 449.** Mathew Moser, Division of Vehicles, told the committee this bill proposes an electronic lien and paperless title program for Kansas, which will significantly change the way liens and certificates of titles are processed. It also eliminates the notary requirement for a transfer of ownership on titles. He listed some of the advantages of paperless titles and electronic lien filings and stated currently there are eight states that are using the ELT systems and one state is in the development stage. He asked the committee to favorably consider adding the Kansas Division of Vehicles to the list of progressive states in the country. (Attachment 1)

The next proponent was Dennis Wilson, Johnson County Treasurer. He said **SB 449** would allow the state Division of Motor Vehicles to hold certificates of title electronically until such time as all liens are removed, thereby saving the significant administrative burden and cost of routinely issuing multiple paper certificates of title. He concluded he supported this bill because he believed the changes proposed would reduce unnecessary costs and administrative burden, enhance efficiency and improve DMV customer service for both state and local governments. (Attachment 2)

Written testimony in support of **SB 449** was presented by Kathleen Taylor Olsen, Kansas Bankers Association, (Attachment 3) and Martha Neu Smith, Kansas Manufactured Housing Association. (Attachment 4)

There were no other proponents and no opponents. Following questions from the committee Chairman Hayzlett closed hearings on **SB 449.**

**SB 624 - providing for a choose life license plate**

Chairman Hayzlett opened hearings on **SB 624.** Lowell Ramsey, Kansans For Life, Inc., said this bill is identical in nature to the license plates that have been authorized for the Children's Trust Fund, the Shriners, the educational institutions and other worth causes. He told the committee the license plate is just another avenue to advance a charitable cause as the funds generated, by statute, will help women in crisis pregnancy and encouraging adoption. He then addressed some of the concerns that the opponents to this bill have raised. He concluded that Kansans For Life was not opening any new debates on the propriety of authorizing these types of charitable fund-raising license plates but was only asking for the same approval that have been

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

granted other charitable causes. (Attachment 5) He also presented a handout regarding the litigation in Florida regarding the "choose life" license plate. (Attachment 6)

There were no other proponents.

Carla Mahany, Planned Parenthood, spoke in opposition to **SB 624.** She stated the objections of Planned Parenthood to **SB 624** was two-fold: 1) the state must not allow license plates to be used for political speech unless it is prepared to open the door to all sides of all political arguments without censorship, and 2) the organizations to be funded under this bill are often deceptive and coercive, and the state should not help to support them without regulation (Attachment 7)

There were no other opponents.

Chairman Hayzlett closed hearings on **SB 624** following questions from the committee.

The minutes for the House Transportation Committee for February 25th, February 26th, March 7th and March 12th were presented for approval or corrections. Representative Dreher made a motion to accept the minutes as presented, seconded by Representative Larkin and the motion carried.

Chairman Hayzlett adjourned the meeting at 2:20 p.m. The next meeting of the House Transportation Committee will be Tuesday, March 19th in Room 519-S.

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: March 14, 2002

| NAME | REPRESENTING |
|---|---|
| Leslie W. Johnson | Independent Living |
| [illegible] | Kansans for Life |
| [illegible] | Johnson County Treasurer |
| Tom Whitaker | KS Motor Carriers Assn |
| Don McNeely | KS Automobile Dealers Assn. |
| Marcia Standaugh | KDOT |
| Martha Jean Smith | KMHA |
| Kathy Olsen | KS Bankers Assn. |
| Matthew Moser | KDOR - DMV |
| Rachael Yoder | Bethel College, N. Newton |
| Amy Hines | Bethel College Policy Analysis |
| Andrea Eley | Bethel College Policy Analysis |
| Wilma Mueller | Bethel College - Policy Analysis |
| Deann Williams | KMCA |
| Christi Stewart | KMCA |
| Bruce Dimmitt | KFL |
| Mary E. Turington | Economic Lifelines |
| Trista Beadles | Office of the Governor |
| Carla Mahany | PPKM |

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: March 14 2002 Cont.

| NAME | REPRESENTING |
|---|---|
| Tom Keating | Intern Rep Meeks |
| Whitney Damron | KS Automobile Dealers Assn. |
| Sheila J. Walker | KDOR-DMV |
| Diane Albert | " |
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S[illegible] OF KANSAS
*Bill Graves, Governor*

**Titles and Registrations/Dealer Licensing**
**Mathew H. Moser**, Manager
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66626-0001

**Division of Vehicles**

*DEPARTMENT OF RE[illegible]UE*
*Stephen S. Richards, Secretary*

(785) 296-3621
FAX (785) 296-3852
Hearing Impaired TTY (785) 296-8924
Web Site: www.ksrevenue.org/dmv

# TESTIMONY

**TO:** Chairman Gary Hayzlett
Members of the House Transportation Committee

**FROM:** Mathew H. Moser, Manager Mathew Moser
Titles & Registrations

**DATE:** March 14, 2002

**SUBJECT:** Senate Bill 449 – Electronic Liens and Paperless Titles

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Mr. Chairman, members of the Committee, I am Mathew Moser, Manager of the Title and Registration Bureau for the Division of Vehicles. I want to thank you for the opportunity to testify in support of Senate Bill 449, regarding electronic liens and paperless titles.

SB 449 proposes an electronic lien and paperless title program for Kansas, which will significantly change the way liens and certificates of titles are processed. It also eliminates the notary requirement for a transfer of ownership on titles.

Large financial institutions across the nation are storing and accounting for thousands of paper titles. In an effort to make this process more secure and accurate, some institutions began working with state motor vehicle departments and created the electronic lien and paperless title concept, otherwise known as ELT. An ELT system provides the ability to electronically exchange lien and title information directly between financial institutions and jurisdictions. Titles are held in an electronic format until all liens are released, and then the paper title is produced.

An ELT process in Kansas would provide participating institutions the ability to file Notice of Security Interests and lien releases directly with the Division of Vehicles through an electronic application. The institutions benefit through reductions in filing, retrieval and mailing of paper titles, reductions in storage space requirements, as well as faster and more accurate records.

The Division would have less paperwork to process and see a reduction in postage, and the use of secure forms. The Division would also benefit through maintenance of a more accurate database, reductions in exposure to liability for data entry errors, and improvement in the timeliness of data exchange.

Existing authority in K.S.A. 135(c)(5) already allows electronic lien filing and releases. SB 449 grants the Division of Vehicles new authority to create electronic titles whenever a lien or security interest is filed. The title would stay in an electronic format until all liens are satisfied, and a title will only be produced when it is free and clear of all encumbrances.

Kansas will in effect become a title holding state whenever there is a lien or security interest involved. This bill will be an enhancement in customer service for lien holders by helping to ensure that a transfer of ownership does not occur without the lienholder's knowledge or consent.

In addition, SB 449 eliminates duplicate paper titles for those that have already been issued and have a lien. A customer will not be able to obtain a duplicate title until all liens have been released.

In all ELT systems, contingencies to produce titles are provided for. Typically, turn around time for production of a title is twenty-four to forty-eight hours. The rule and regulation authority in SB 449 would permit the Division to address these types of special needs and circumstances when a title with a lien needs to be produced.

Some vehicle owners may have to adjust to not receiving paper titles, so the state can maintain an electronic copy instead. But the benefits outweigh that particular challenge. In summary, the benefits of paperless titles and electronic lien filing are:

- The state will see a reduction in the number of duplicate and reissued titles.
- The number of data entry errors will decrease.
- The state will issue titles more efficiently, improving quality assurance.
- Secured parties will be able to file their liens electronically.
- Financial institutions will be provided more security, as titles will be "paperless" until a lien is paid.
- Once a lien is paid off, the title will be issued.

Motor vehicle agencies across the nation are moving more and more toward electronic processes to enhance customer service and provide more efficient government. In the next few months, the Kansas Division of Vehicles will be implementing on-line vehicle registrations. The next logical step in providing electronic services to our citizens is the implementation of electronic for liens and titles.

Currently, there are eight states that are using ELT systems in partnership with numerous financial institutions, and one state is in the development stage. We appreciate your consideration for adding the Kansas Division of Vehicles to the list of progressive states in the country.

Again, thank you for permitting my appearance today. I will be pleased to attempt to answer any questions you may have.

OFFICE OF THE
Johnson County Treasurer
Dennis M. Wilson

111 S. Cherry Street, Suite 1500
Olathe, Kansas 66061-3471
Phone (913) 715-2600
Fax (913) 791-5360

To: Representative Gary Hayzlett, Chairman
Representative Jene Vickery, Vice-Chairman
Members, House Transportation Committee

From: Dennis Wilson, Johnson County Treasurer

Date: March 14, 2002

Subject: Support for SB 449 Motor Vehicle Provisions

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As Johnson County Treasurer, I would like to express my support for SB 449, which authorizes the state Division of Motor Vehicles to retain electronic certificates of title when a lien or other security interest is present and repeals the notarization requirement on motor vehicle title assignments.

Currently, any liens or security interests in a motor vehicle are reflected in its certificate of title. When the lien or security interest is removed, a new certificate of title must be issued for the vehicle. SB 449 would allow the state Division of Motor Vehicles to hold certificates of title electronically until such time as all liens are removed, thereby saving the significant administrative burden and cost of routinely issuing multiple paper certificates of title.

In addition, current state law requires that assignment of a motor vehicle certificate of title must be executed by the seller before a notary public. As of January 1999, however, only 9 states still require notarization of motor vehicle title assignments. Because few states still required notarization, residents who buy a motor vehicle – particularly motor vehicles purchased out of state – and apply to have it titled in Kansas are often unaware or confused about this requirement. These purchasers must re-engage the seller and make multiple trips to the local Department of Motor Vehicles, frustrating customers and slowing down the title process. Repealing the requirement that motor vehicle title assignments be notarized would align Kansas with most of its surrounding states and improve customer relations.

I believe the changes proposed in SB 449 would reduce unnecessary costs and administrative burden, enhance efficiency, and improve DMV customer service for both state and local governments. For these reasons, I support SB 449 and urge the committee to recommend the bill favorable for passage.

Thank you for your time and consideration.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 14, 2002

To: Members of the House Transportation Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: SB 449 – Electronic Certificates of Title**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony today in support of the provisions of **SB 449** which would authorize the use of electronic certificates of title with regard to motor vehicles and manufactured and mobile homes.

As we understand this bill, as long as a certificate of title indicates that there is a lien or security interest in the vehicle or home, the Department of Revenue, Division of Vehicles would hold that title electronically until the lien is released. At that time, a paper title would be issued to the owner.

We believe moving into the electronic age of record keeping is a great idea. There are many examples of how this will bring certainty and reduce fraud with regard to such certificates of title. For lenders, it will resolve the uncertainty about knowing whether or not the borrower/owner of the property has taken the paperwork in to register the vehicle or home and have a certificate of title (properly listing the lender as a lienholder) issued. It will also cure the problems caused by a lost or stolen certificate of title.

We look forward to working with the Director of Vehicles in the next year to provide what help we can to make this a seamless process with benefits to not only lenders but also to the property owners. With that said, we urge the favorable passage of **SB 449**.

House Transportation Committee
March 14, 2002
Attachment 3

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email kbaoffice@ink.org

KANSAS
MANUFACTURED HOUSING
ASSOCIATION

214 SW 6th St., Suite 206
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# TESTIMONY BEFORE THE

# HOUSE COMMITTEE ON

# TRANSPORTATION

TO: Representative Gary Hayzlett, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: March 14, 2002

RE: SB 449 – Electronic Certificates of Title

Chairman Hayzlett and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment. KMHA represents all facets of the manufactured housing industry in Kansas (i.e., manufacturers, retailers, community owners and operators, finance and insurance companies, suppliers and transporters).

In advance of SB 449's introduction in the 2002 Legislature, KMHA members met with Sheila Walker, Director of Division of Vehicles and Matt Moser, Manager of Titles and Registration to review how SB 449 might affect the manufactured housing industry. While our industry like the vehicle industry has certificate of titles issued, we do have some unique situations that we felt needed to be addressed by the Division. After our meeting, my members and I feel quite confident that if and when SB 449 is implemented that we will be able to work with the Division to make the paperless system work more efficiently than the current system.

Thank you for the opportunity to comment and I would respectfully ask for your support of SB 449.

House Transportation Committee
March 14, 2002
Attachment 4

# LifeMatters

*In the Kansas Legislature*

Testimony of Lowell D. Ramsey, J.D.
Lobbyist for Kansans For Life, Inc.

Mr. Chairman and Members of the Committee,

My name is Lowell Ramsey and I am appearing today on behalf of Kansans For Life in support of the Choose Life License Plate. I will be brief today because thankfully we are not breaking any new ground when we ask for your support of this legislation. Our bill is identical in nature to the license plates that have been authorized for the Children's Trust Fund, the Shriners, the educational institutions and other worthy causes. The license plate is just another avenue to advance a charitable cause, a cause I know you support and certainly the citizens of Kansas support. These funds are, by statute, designated for helping women in crisis pregnancy and encouraging adoption.

The *Choose Life* license will be used to provide a steady stream of income to help women in crisis pregnancy and to encourage adoption. We have identified sixty-seven Centers around the state that are engaged as their sole mission in helping women who find themselves in a crisis pregnancy. These Centers are shoe-string operations run by volunteers and funded by caring individuals and families. They provide everything from a friend to talk with to financial help. These centers provide support to women no matter whether they decide to carry to term or to abort and without regard to religion or race. They provide free pregnancy testing, maternity clothes, financial planning, job search help, money for rent, transportation, free diapers and formula and countless other services – all free of charge. I have personally been on the board of such a Center for many years. Our goal with this license plate would be to help such Centers to fund their charitable work by providing a steady stream of income for their use.

*For More Information Contact:*

*Lowell Ramsey, J.D.*
*(785) 234-2998*
*cell (785) 249-5500*
*fax (785)234-2939*

*legislation@kfl.org*

*Kansans for Life*
*919 S Kansas Ave.*
*Topeka, KS 66612*



House Transportation Committee
March 14, 2002
Attachment 5

# LifeMatters

*In the Kansas Legislature*

*For More Information Contact:*

*Lowell Ramsey, J.D.*
*(785) 234-2998*
*cell (785) 249-5500*
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*legislation@kfl.org*

Kansans For Life, as part of our mission, also wants to encourage the "adoption option". The income from this license plate would also be used to educate the public of the tremendous beauty of adoption. Adoption is an experience where something difficult and even, at times, heart-wrenching can be transformed into a beautiful outcome for the birth-mother and the child. For every adoptable newborn there are at least fifty-thousand couples looking to adopt. As an attorney, I have helped facilitate many adoptions and am the proud parent of three adopted children. We, at Kansans For Life, want to be a part in helping expose adoption as a viable option for mother and child.

I would like to address some of the concerns, valid or not, that our opponents have raised. The first is the constitutionality of the tag. You will notice (in the handout) that this issue has been litigated in the state and federal courts with the case arising out of Florida. In both court systems the cases filed by Planned Parenthood were dismissed and the Supreme Court of the United States refused to review. The *Choose Life* plate is the most popular tag sold in Florida since 1998 and has raised over $800,000 dollars to help women and children.

Secondly, apparently there is some sentiment being fomented that by allowing the issuance of the plate the State of Kansas is asserting that every citizen agrees with the viewpoint being asserted. I hope no one has told the Jayhawk fans this fact about the Powercat fundraising plates (or vice-versa)!

*Kansans for Life*
*919 S Kansas Ave.*
*Topeka, KS 66612*

# LifeMatters

*In the Kansas Legislature*

*For More Information Contact:*

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*legislation@kfl.org*

Thirdly, some have asserted that there should not be "social issues" on license plates. I have tried to find out from these well meaning folks what is a social issue. The best I can ascertain is, a social issue is whatever they say it is! Certainly, the Shriners are involved in social work as is the Children's Trust Fund and both already have their tags. All we want to do is further charitable work. If this makes us guilty of trying to further "social issues" we stand guilty as accused. We want to raise funds to help women and children.

Finally, let me clear up a couple of misunderstandings. The cost burden for screen printing our design is carried by us. We pay this fee up front and not the taxpayers. Secondly, if Planned Parenthood wants their own tag let them go through the process. We do not want to censor their viewpoint. You have to wonder why they want to censor ours? Maybe they will not have 500 constituents to buy their tag. (The minimum necessary by statute to keep the tag in print). If the Ku Klux Klan (the group that has been mentioned by Senator Adkins and others) tries to get a tag for their organization, we believe in the democratic process and we believe the Legislature as a whole would reject their message of hate.

Again, we at Kansans For Life are not opening any new debate on the propriety of authorizing these types of charitable fundraising license plates. We are following on the coat-tails of other charitable causes like The Children's Trust Fund, the Shriners, the educational institutions and others that have sought approval by this esteemed body and found it Thank you in advance for your favorable consideration of this legislation.

**Lowell D. Ramsey, J.D.**

*Kansans for Life*
*919 S Kansas Ave.*
*Topeka, KS 66612*

# Florida Chronology

- CHOOSE LIFE LICENSE PLATES IN FLORIDA RAISE FUNDS TO ***SUPPORT ADOPTION EFFORTS***.
- FLORIDA "CHOOSE LIFE" LICENSE PLATE BILL PASSED AND ***SIGNED INTO LAW BY GOVERNOR JEB BUSH IN JUNE 1999.***
- LITIGATION FILED JUNE 1999 IN FEDERAL COURT...***CASE DISMISSED WITH PREJUDICE DECEMBER 1999.***
- LITIGATION FILED DECEMBER 1999 IN STATE COURT...***CASE DISMISSED WITH PREJUDICE DECEMBER 2001.***
- TAGS ***RELEASED TO THE PUBLIC AUGUST 2000.***
- TOTAL TAG SALES **29,450**, RAISED OVER ***$820,000.00***...TO DATE AND ***CURRENTLY RAISING OVER $50,000.00 PER MONTH.***
- ***MOST POPULAR TAG RELEASED IN FLORIDA SINCE 1998. CURRENTLY OUTSELLING 41 OF THE 53 SPECIALTY TAGS IN FLORIDA.***

RUSS & JILL AMERLING
NATIONAL PUBLICITY COORDINATORS
CHOOSE LIFE, INC.
www.choose-life.org
877-454-1203

House Transportation Committee
March 14, 2002
Attachment 6

**Testimony in Opposition to SB 624, March 14, 2002, House Transportation Committee**

Planned Parenthood of Kansas and Mid-Missouri
Carla Mahany (913.312.5100, ext. 227)

Who can doubt that abortion is a political debate in this legislative body and in this country?

Our objections to SB 624 are two-fold: that the state must not allow license plates to be used for political speech unless it is prepared to open the door to all sides of all political arguments without censorship, and that the organizations to be funded under SB 624 are often deceptive and coercive, and the state should not help to support them without regulation.

In the past two years, three states – Florida, Louisiana, and South Carolina – have enacted "Choose Life" license plate laws. Lawsuits have been brought in all three states. Two of these laws – in Louisiana and South Carolina – are currently enjoined for the duration of the litigation. Alabama recently became the fourth state with "Choose Life" plates, when they were approved by a state administrative committee rather than by the legislature.

Here is what the court wrote in the Louisiana case: "The State has chosen license plates as a forum for speech. Once it makes this choice it cannot discriminate against another viewpoint." The court further explained that "[t]o provide through legislation for only one viewpoint to be expressed on such a polemical topic [as abortion] is very likely an unconstitutional restraint of free speech as it restricts the forum to only one view – that being the view of the State." (Henderson v. Stalder, 112 F. Supp. 2d 589, 598 (E.D. La. 2000).

History of "Choose Life" License Plates: Existing Laws and Legal Challenges

Florida: The "Choose Life" license plate was first authorized in 1999 in Florida. Choose Life, Inc. satisfied the stringent requirements imposed by Florida state law for new special license plates (including a fee of up to $60,000; a study demonstrating that 15,000 individuals would purchase the plate; marketing plans; financial studies), the legislature approved the application, and Governor Bush signed it into law. The law directs that the fees raised by the sale of the plates are to be distributed to each county, to be further distributed to non-profit organizations whose "services are limited to counseling and meeting the physical needs of pregnant women who are committed to placing their children for adoption." Funds may not be distributed to any organization that "is involved or associated with abortion activities."

Two Florida citizens challenged the "Choose Life" plates in U.S. District Court, claiming that the law constituted impermissible viewpoint discrimination under the First Amendment right of free speech because it authorized one side of the abortion debate to be displayed on special plates, but not the other side of the debate. In December 1999, the court dismissed the lawsuit, not on its merits, but because the plaintiffs had never applied for a Pro-Choice license plate. Subsequently, the National Organization for Women filed a lawsuit in state court, and that case was later dismissed on similar grounds, and may be appealed.

On January 15, 2001, two non-profit organizations and an individual filed a second suit in U.S. District Court. Women's Emergency Network v. Bush (S.D. Fla.). That case focuses on the distribution of funds under the Act, and contends that the Act unconstitutionally discriminates by authorizing distribution of funds to agencies that counsel and refer women for adoption services, but not to those that counsel and refer women for abortion services. In addition, plaintiffs claim that the State of Florida's distribution violates the Establishment Clause because in some counties, the responsibility for handling of these funds has been bestowed upon religiously affiliated groups. The Center for Reproductive Law and Policy filed a lawsuit more recently, based on the handling of money by religiously affiliated groups. That lawsuit has been dismissed, but there may be an appeal.

Louisiana: In 1999, Louisiana became the second state to authorize "Choose Life" license plates. The Louisiana law provides that the revenue from plates sales is to be distributed, upon the recommendation of the "Choose Life" Advisory Council, to not-for-profit organizations that counsel women to place their children up

for ption, but no funds may be distributed to any organization "involved in, or associated with counseli for, or referrals to, abortion clinics, providing medical abortion-related procedures, or pro-abortion advertising."

A lawsuit (Planned Parenthood of Louisiana, Inc. is one of the plaintiffs) was filed in August 2000 in federal district court. That month, the court issued a preliminary injunction, finding that Plaintiffs had established that they were likely to succeed on their claim that the Act violated their free speech rights because it authorizes individuals opposed to abortion to express their anti-choice views on their license plates, but precludes pro-choice individuals from exercising that same right. The State of Louisiana appealed the decision, and argument was heard in the U.S. Court of Appeals for the Fifth Circuit in August 2001.

South Carolina: South Carolina's "Choose Life" license plate was signed into law on September 2, 2001. The proceeds from the sale of the plates are to be used to support "crisis pregnancy" programs, and the Act disqualifies from eligibility for the funds "any agency, institution, or organization" that "provides, promotes, or refers for abortion." S.C. Stat. § 56-3-8910. The General Assembly considered but did not pass a "Pro Choice" plate. Planned Parenthood of South Carolina filed suit in federal court, and the court issued a preliminary injunction.

Alabama: In October 2001, Alabama became the fourth state to authorize "Choose Life" license plates when a committee set up by the legislature to approve all new special license plates – the Legislative Oversight Committee – approved the Alabama Pro-Life Coalition Education Fund's application. The state will begin to produce and distribute the license plates if it receives 1000 applications for the license plate. Proceeds from sales of the plates will be distributed to Pro-Life Coalition Education Fund, which has said it intends to distribute the money to "crisis pregnancy" centers.

Proponents of "Choose Life" laws frequently contend that "Choose Life" is a noncontroversial, nonpolemical statement, and not a slogan of the anti-choice movement. I would like you to note that this not only flies in the face of common sense, but court cases that have addressed this issue have properly assumed that "Choose Life" is an anti-choice slogan.

Since this issue has generated a lot of activity in the courts, with states needing to defend their decision to offer only "Choose Life" license plates, and since as we all know this state cannot well afford litigation in which it is unlikely to succeed, and because the passage of SB 624 would open, as was said in the Senate, a "Pandora's box" of political license plates that could include hate speech, I urge this Committee to do one of two things: reject SB 624 now – this is by far the most sensible route, or add two amendments to it.

The first amendment we recommend simply adds another license plate to the bill, this one with the words "pro choice," with the proceeds from the sale of 500 or more plates benefiting "Planned Parenthood of Kansas and Mid-Missouri" and used to fund "community based programs for the prevention of unintended pregnancy in Kansas." We hope you will consider this amendment if you agree that the prevention of abortion begins with the prevention of pregnancy.

We further recommend that regulatory language be added to ensure that the funds are used in ways that protect the consumer, in this case women who may be pregnant. Attached is an account of litigation against CPCs, which will give you an idea of some of the problems women have encountered with them.

Also attached is a document from the Pro-Life Infonet that describes the New York Attorney General's investigations into CPCs there.

New York Attorney General Elliot Spitzer began issuing subpoenas to numerous NY crisis pregnancy centers on January 9th. Thirty-four subpoenas were issued. According to one of these, Spitzer's initial investigation revealed that the centers "may have violated one or more…statutes by misrepresenting the services they provide, diagnosing pregnancy and advising persons on medical options without being licensed to do so, and/or providing deceptive and inaccurate medical information.

**Litigation against "crisis pregnancy centers"**

**Decisions for the plaintiff**

*Stoner v. Williams*[1] (California, 1996)

A CPC client successfully sued a CPC counselor for fraud after the counselor induced her to sign adoption papers. While she was in labor, the client was presented with papers and told they were hospital forms. She signed them not knowing she was giving her baby up for adoption to a Tennessee couple. The patient tried to get her baby back, but a Tennessee court notified her that her parental rights had been terminated on the grounds of abandonment. Another woman who had given her baby up for adoption to the same CPC, Delina Villa, successfully sued a Texas couple to regain custody of her child.

*Hughes v. Abrams*[2] (New York, 1995)

After the initiation of a lawsuit, a CPC agreed to 1) stop soliciting, accepting, and collecting urine for the purposes of administering urine tests without a valid permit; 2) stop pregnancy diagnosis; 3) advertise under the heading "Abortion Alternatives;" 4) tell telephone callers that the CPC does not perform or refer for abortion. Although settlements are not binding, they are useful in identifying trends in lawsuits.

*Roe v. San Diego Pregnancy Services*[3] (California, 1994)

In this case, the court entered a six-part injunction. First, the defendant CPC was prohibited from advertising "pregnancy testing" or "pregnancy test." Second, the CPC was prohibited from advertising that its pregnancy tests were "free" if the kits were conditional upon anything, including, but not limited to, signing a waiver, receiving counseling, or listening to any presentation. Third, the CPC was prohibited from advertising in such a way as to deceive the public into believing that it offers abortion counseling that meets the standard of care for such counseling. Fourth, CPC was prohibited from advertising under a misleading heading in the phone book. Fifth, the CPC was required to disclose over the telephone to each caller that it did not perform abortions or give abortion referrals and that its counseling was by volunteers from a Biblical, "anti-abortion" perspective. Sixth, the CPC was prohibited from performing pregnancy testing until it became licensed to do so.

*Summit Co. Crisis Pregnancy Center v. Fisher*[4] (Ohio, 1993)

In 1993, Ohio Attorney General Lee Fisher announced that he would use Ohio consumer protection law to stop CPCs from deceptively advertising their services. A CPC sought a declaration from a federal court that its advertisements under the headings "Clinics" and "Abortion Services" did not violate the Ohio Consumer Sales Practices Act (CSPA). The CPC also sought a permanent injunction preventing the Attorney General of Ohio from enforcing the CSPA against the CPC. The Ohio Attorney General's motion to dismiss on abstention grounds was denied. The lawsuit was eventually settled out of

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[1] 46 Cal. App. 4th 986 (1996).
[2] No. 88-970 (Sup. Ct., Suffolk Co., Aug. 17, 1995.)
[3] 1994 WL 498012 (Cal. Super. 1994).
[4] 830 F. Supp. 1029 (N.D. Ohio 1993).

court when the CPCs agreed to use disclaimers in its advertising indicating that it was not a medical facility.

*Committee to Defend Reproductive Rights v. A Free Pregnancy Center*[5] (California, 1991)

In this case, the court considered the award of attorney fees to plaintiffs who successfully challenged the practices of CPCs. Although the court's opinion does not address the merits of the injunction issued against the CPC, it does delineate the facts of the case and the nature of the injunction issued. The plaintiffs claimed that the defendant CPC was operating fraudulently and illegally in that they falsely advertised they were a medical facility that provided abortion counseling and referral, when in fact the Center represented an antiabortion viewpoint, provided no abortion counseling other than to recommend against abortion, and was not a medical facility. The plaintiffs also claimed that the Center ran an illegal adoption center and disseminated false and misleading information about the safety of abortion through written and visual material. After trial, the court restrained the Center from disseminating certain false information about abortion safety and from operating the Center in such a way as to suggest that abortion services were available there. The Center did not appeal the court's order.

*Friend v. Pregnancy Counseling Center*[6] (California, 1989)

A state court permanently enjoined certain CPCs from 1) collecting any urine samples or assisting persons taking pregnancy tests by providing their facilities for the collection of urine samples (i.e. allowing clients to use their bathrooms for privacy); 2) administering urine pregnancy tests; 3) interpreting laboratory results of urine pregnancy tests; 4) diagnosing the condition of pregnancy or non-pregnancy; and 5) conveying to any person the laboratory results of any pregnancy test. The CPCs were also permanently enjoined from 1) advertising in the "clinic" section of the telephone book; and 2) stating in any advertisement that they offer pregnancy *testing*. The court based its ruling on the CPC's lack of license to operate a medical clinic or community clinic.

*Boes v. Deschu*[7] (Missouri, 1989)

The plaintiff, a patient, stated a claim for intentional infliction of emotional distress against the executive director of a CPC because of an encounter at the CPC. The CPC employees withheld results of plaintiff's pregnancy test until after the plaintiff had watched a movie showing mutilated advanced fetuses and had listened to CPC employees tell her that religion was the sole expiation for women who had had an abortion, even though the employees knew that the plaintiff did not intend to have an abortion and had suffered emotional problems requiring continued treatment by a psychiatrist following a previous abortion. The court held that this conduct could be considered "outrageous," allowing the plaintiff to prevail.

*New York v. Mother and Child Services*[8] (New York, 1987)

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[5] 229 Cal. App. 3d 633 (1991).

[6] No. C531 158 (Superior Ct., LA County, Nov. 16, 1989).

[7] 768 S.W.2d 205 (Mo. 1989).

[8] No. 41236/87 (Sup. Ct., New York Co., Mar. 19, 1987). The same order was also issued in *New York v. Mother and Unborn Baby Love*, No. 41272/87 (Sup. Ct., New York Co., Mar. 19, 1987) and *New York v. Evergreen Association*, No. 41237/87 (Sup. Ct. New York Co., May 1, 1987).

A settlement was reached that prohibited a CPC from, among other things: 1) soliciting, accepting, and collecting urine for the purposes of administering urine tests without a valid permit; 2) diagnosing pregnancy; 3) advertising services that they do not provide, including, but not limited to, advertising, expressly or by implication, that the CPC provides medical services, clinical laboratory testing services, abortions, referrals for abortions, birth control, or financial assistance for any of the above-mentioned services; 4) advertising under the headings "Clinics," "Medical Service," or "Abortion Services.

*South Dakota v. The Alpha Center for Women*[9] (South Dakota, 1987)

A Minnehaha county grand jury indicted the Alpha Center for Women on twenty-two counts, including 1) the crime of compelling, coercing, or forcing another person by threat of civil debt to release, place, or relinquish her child for adoption in violation of SDCL § 26-6-4.1; 2) offering money or other consideration or things of value in connection with placement for adoption in violation of a SDCL § 25-6-4.2; 3) false advertising by publishing a phone directory ad under "adoption agencies" that was false and made with the intent to defraud in violation of SCSL § 22-41-410; 4) unlicensed placement for foster care; 5) unlicensed receiving of a minor child for adoption placement; 6) unlicensed receiving for foster care; 7) unlicensed receiving of an infant for placement in an unlicensed foster home.

*Ingram v. Problem Pregnancy of Worcester, Inc.*[10] (Massachusetts, 1986)

In this case, a landlord was trying to evict a CPC on the grounds that the CPC had interfered with the rights of Planned Parenthood (another tenant of the building) and their patients in the building's common areas such as the corridors. The CPC would initiate personal contacts intended to dissuade prospective clients of Planned Parenthood from seeking their services. The landlord began eviction proceedings after Planned Parenthood lodged a complaint. The CPC argued that the eviction was wrongful in that the corridors were dedicated to a public use. The court held that the building was essentially private and that the reasons for eviction were not relevant since tenancies may generally be terminated by either party.

*Fargo Women's Health Organization v. Larson*[11] (North Dakota, 1986)

The Supreme Court of North Dakota modified and affirmed the lower court's preliminary injunction against a CPC, the Women's Help Clinic. The lower court had held that the Help Clinic, through false and deceptive advertising and related activity, had misled persons into believing that abortions were conducted at the clinic. The court upheld the parts of the injunction that: 1) enjoined the CPC from using the name "Women's Help Clinic" or comparable words that are similar and confusing; 2) prohibited the CPC from falsely and deceptively advertising that they provide elective abortions and financial assistance for such services; 3) prohibiting the lulling of people that come to them for counseling into thinking that they are, in fact, the Women's Health Organization. The court overturned the part of the injunction that required the CPC to state that they do not perform abortions if they use the word abortion in their advertisements. This case suggests that CPCs with names similar to those of abortion clinics can be made to stop using those names. As with other cases, CPCs cannot

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[9] No. 87-1488, 2nd Cir. Minnehaha Co., May 21, 1987

[10] 396 Mass. 720 (1986).

[11] 381 N.W.2d 176 (N.D. 1986).

advertise that they perform abortions or give financial assistance for abortion if that it is not true.

**Decisions against the plaintiff**

*Darrah v. Yolo County Superior Court*[12] (California 1994)

In this case, a plaintiff appealed a lower court decision that she had not been coerced by a CPC to give her child up for adoption. The plaintiff argued that after giving birth in a college dorm room she was coerced by CPC counselors who told her she had no rights, her parents would hate her, and that she could not get medical care until she gave her baby up for adoption. The trial court found that she was not coerced. The plaintiff lost on appeal.

*Lewis v. Pearson Foundation*[13] (Missouri, 1990)

After a patient was subjected to gruesome pictures, referred to a Catholic hospital after she requested an abortion, and called at home after she eventually had an abortion to find out how her pregnancy was progressing she filed suit against the CPC alleging that they had conspired to deprive her of rights of privacy, autonomy, personhood, and liberty in exercising a choice as to the decision whether to terminate her pregnancy. The patient also sued the state of Missouri alleging that they had aided the conspiracy by refusing to halt the CPC's deceptive advertising practices. The trial court concluded that because the defendants acted out of moral-religious beliefs that a class-based discriminatory animus was not met under federal law. They also held that women such as that patient were not a protected class. Although the appeals court overturned the lower court decision with favorable language,[14] the entire circuit court reheard the case and reversed, affirming the trial court's decision.

*Neary v. Pennsylvania Public Utility Commission*[15] (Pennsylvania, 1983)

The court reversed a decision of the Pennsylvania Public Utility Commission that had directed the telephone company to delete the listing of a CPC under the heading "Abortion, Birth Control, and Pregnancy Testing Clinic." The court held that the telephone company had not violated regulations because listing the CPC under the specified heading did not "mislead or deceive…the public in identifying the listed party." The court chose to interpret the regulations as requiring the deletion of advertising which misled parties as to the identity of the advertiser rather than their services.

**Mixed Outcome**

*Planned Parenthood v. Problem Pregnancy of Worcester*[16] (Massachusetts, 1986)

In this case, the Supreme Judicial Court of Massachusetts held that a CPC using the logo "PP" had infringed upon Planned Parenthood's trademark. The trial court judge found that the letters PP caused confusion to three women and by inference drew the conclusion that other prospective clients of Planned Parenthood were being confused as well, hurting the women and Planned Parenthood. The CPC, however, was not liable under the unfair

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[12] 1994 Cal. Lexis 1926 (1994).
[13] 917 F.2d 1077 (8th Cir. 1990).
[14] 908 F. 2d 318 (8th Cir. 1990).
[15] 468 A.2d 520 (Pa. 1983), *affirmed*, 487 A.2d 345.
[16] 398 Mass. 481 (1986).

and deceptive business practices statute because it was not engaged in "trade" or "commerce" as contemplated under the statute because it did not charge for its services.

*Mother and Unborn Baby Care of North Texas v. Doe*[17] (Texas, 1985)

An appellate court overturned the lower court's entry of temporary injunction that prohibited the Mother and Unborn Baby Care of North Texas Center (Unborn Baby Center), an anti-abortion organization that provides services and support to women who carry their pregnancies to term, from advertising in the telephone book under certain headings. Three women had sued the Unborn Baby Center because they had tried to obtain abortion information and services from the Center, but were instead subjected to questions about sex, contraceptives, previous abortions, and forced to watch anti-abortion films. The lower court granted a temporary injunction, prohibiting the Unborn Baby Center from advertising in the telephone book under the headings "Clinic-Medical" or "Abortion Information of Services."

The appellate court overturned the injunction holding, among other things, that the "evidence falls short of establishing threat to [the women] from the current advertisements of [the Unborn Baby Center] in the Yellow Pages." Despite this anti-choice result, the court stated that its opinion was "not to be construed or considered as approval or sanction of [Unborn Baby Center's] camouflage tactics....

The State of Texas eventually successfully sued the Unborn Baby Center for violating the Deceptive Trade Practices Act. This occurred during the administration of Mark White, a Democrat. The lower court found that the Center had violated the Deceptive Trade Practices Act, and penalized it accordingly, held the president of Unborn Baby Center personally liable, and mandated disclosure in advertising. The appellate court affirmed the lower court in *Mother and Unborn Baby Care of North Texas v. Texas*, 749 S.W.2d 533 (Tex. 1988) and the United States Supreme Court allowed the decision to stand.

[17] 689 S.W.2d 336 (Tex. 1985).

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From: The Pro-Life Infonet <infonet@prolifeinfo.org>
Reply-To: Steven Ertelt <infonet@prolifeinfo.org>
Subject: New York Atty General Backing Down on CPC Attacks
Source: Cybercast News Service; January 31, 2002

New York Atty General Backing Down on CPC Attacks

Albany, NY -- The New York attorney general's office is seeking to extinguish a firestorm sparked by an investigation into 24 crisis pregnancy centers statewide.

Beginning Jan. 4, Eliot Spitzer's office began issuing subpoenas to several New York City crisis pregnancy centers, which have been in existence since the early 1980s, offering women a variety of abortion alternatives.

Spitzer's spokesman, Darren Dopp, said that allegations that the attorney general's investigation is trying to intimidate or close down the pregnancy centers are simply untrue. What Spitzer is trying to do, Dopp said, is to ensure the centers are following proper protocol in its advertising and services.

"We are definitely not seeking to close down any facility," the spokesman said. "Should we find a problem we would work with the facilities to bring them into compliance.

"Just as our previous attorneys general, we would see if this is a problem, and bring them into compliance ourselves, but if need be, we will accomplish this through a court order," he said.

Dopp also said the attorney general's office appreciates the work the centers do, but Spitzer is obligated to look into the allegations made against the centers.

"We are aware that the facility does provide services that many people view as valuable," the spokesman said. "And we think it is valuable, too."

The investigation was instigated by several complaints, most notably one involving a pregnant girl on Long Island who was allegedly held in a crisis pregnancy center against her will, so that she could be confronted by her father and the family's pastor.

Spitzer's office claims the investigation into the crisis pregnancy centers is to determine whether they are practicing medicine without a license and enticing pregnant women into their facilities with deceptive ads.

Seven subpoenas were issued to pregnancy crisis centers in and around New York City, with a Feb. 1 deadline for the centers to provide the attorney general with copies of all advertisements, Web site addresses, services provided, staff who provide the services, training materials, blank forms and records of all agreements made.

The deadline has since been extended to Feb. 15, as "a demonstration of us trying to recognizing that we might create a burden on some of the facilities," Dopp said. "We always try to work in good faith with anyone who works in good faith with us."

The investigation has sparked outrage from many pro-lifers nationwide. Over 7,000 signatures have been gathered for a petition being sent to Spitzer, asking the attorney general to lay off the centers.

Bi[illegible] Henry J. Mansell of [illegible] Catholic Diocese of Buffalo j[illegible]ed the fray Jan. 22 on the anniversary of the Supreme Court's Roe v. Wade decision, telling pro-lifers to be "watchful" as to whether Spitzer will treat planned parenthood and abortion facilities in the same way as the pregnancy crisis centers.

"We want to be sure that similar examination is being made of the abortion clinics," Mansell said.

The bishop added that the investigation may be part of a national campaign "to intimidate and to harass people who are in crisis pregnancy centers."

Slattery echoed the bishop's sentiment, saying that abortion clinics are "the ones that need to be investigated" and that they "have had free ride in this state for too long."

Dopp said such an investigation would be implemented if, and when, there were complaints about the facilities.

"Should there be a complaint about the [abortion clinics] we would obviously review that complaint and act accordingly," he said. "The key issue is that the Planned Parenthood facilities are regulated very closely by the state health department. They are medical facilities that are inspected with some regularity."

Spitzer has also been accued of being in collusion with the pro-abortion lobby, in particular the National Abortion and Reproductive Rights Action League (NARAL), in the investigation of the pregnancy centers.

On NARAL's website, the group features a program in which they ask women to take part in a study "to expose the true nature and tactics of deceptive crisis pregnancy centers."

Spitzer was once asked to speak at a NARAL function, and was given a political contribution of $2,800 by the group. Dopp said that Spitzer's past dealings with NARAL have in no way influenced the direction of the investigation.

"We try to do things in a non-partisan way, and we try not to use our office to advance political agendas," Dopp said. "I don't know how $2,800 contribution affects the policy of the state's attorney general's office in the New York State Department of Law.

"We have never talked to [NARAL] about this particular subject, and they never have come in and said this is a priority so please do it," he said. "We do not act in that way."

Dopp said the investigation has been severely misunderstood and overblown to be an attack on the pro-life movement.

"We have a preliminary investigation underway and we have developed some indication that there could be a problem at some of the centers," he said. "In the end, if we find a remarkable smoking gun what are we going to do, we are going ask them to work with us to bring them into compliance.

"It is terribly frustrating, in the end we wish people would judge us by [what] the outcome is, not the request for information," Dopp concluded.

However, one center's director Chris Slattery doesn't buy it, and says he and his supporters have no intention of backing down from the fight.

"They seem to be backing off from their rhetoric because of the outpouring of support for [the] centers from across the country," Slattery said. "We are still extremely disturbed by [the] attack, and will not be deterred from launching a vigorous legal and public relations defense.

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