

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Steven Brunk at 1:30 p.m. on January 26, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Mike Peterson-excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Representative Lance Kinzer
Arlyn Briggs
Michael Schuttloffel, Kansas Catholic Conference
Jeanne Gadun, Kansans for Life
Amber Versola, Kansas NOW
Sarah Gillooly, Planned Parenthood, Ks & Mid-Missouri
Douglas Mould, Trust Women, Written Only

Others attending:

See attached list.

The Chairman called for bill introductions. There were none.

The hearing on **HB 2013 Sale and purchase of rifles and shotguns** was carried over from January 25, 2011 and written only testimony from Patricia A. Stoneking was received (Attachment 1). The hearing on **HB 2013** was closed.

The Chairman opened the hearing on **HB 2035 Amending statutes on late-term and partial birth abortions.**

Mike Heim, Office of the Revisor of Statutes, explained the changes to the laws dealing with abortion that **HB 2035** would make (Attachment 2).

Representative Lance Kinzer appeared as a proponent of **HB 2035** (Attachment 3). He said that aside from the parental consent provisions much of the provisions of the bill have been passed by both chambers of the legislature as much as three times but were then vetoed by the governor. The law says that at 22 weeks gestation a determination must be made of viability. If the baby is determined to be viable (able to live outside the mother's womb) then there are two circumstances where abortion is allowed. The first is the life of the mother. The second is where there is a substantial and irreversible impairment of a major bodily function of the mother based on taking the pregnancy to term. The first circumstance has been very rarely used. The second circumstance has been used but no diagnosis was used in the explanation, only a repetition of the statute.

Representative Victor asked what the alternative was for a minor if the parents disagree on the course of action. Representative Kinzer said there was the judicial bypass that can be used in those cases.

Representative Loganbill mentioned that Representative Kenzer loved legal language. Our bills are written with very technical language. The word 'fetus' is a very technical term, so if we want to keep the language as technical as possible we should use 'fetus' rather than 'unborn child'. Representative Kinzer gave two responses. One is that there is an existing inconsistency in Kansas law where in some instances we use the term 'unborn child' and in other instances we use the term 'fetus'. For consistency sake we should pick one. We chose 'unborn child' because it gives a more common understanding than 'fetus'.

Arlyn Briggs appeared as a proponent of **HB 2035** (Attachment 4). He agrees that both parents should

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on January 26, 2011, in Room 346-S of the Capitol.

have the right of consent prior to an abortion. Parents should have the right to any information that is applicable to the case. Abortion providers must seek the consent of the parents or legal guardian.

Michael Schuttloffel gave testimony as a proponent of **HB 2035** (attachment 5). He maintained that abortion does harm women. The church teaches that the deliberate taking of an innocent, defenseless, human life is extraordinarily unjust and evil. The Declaration of Independence grants the right to life to all human beings from conception to death. We are grateful for the fact that this legislation will strengthen parental rights by requiring parental consent before a minor has an abortion.

Jeanne Gawdun presented testimony as a proponent of **HB 2035** (Attachment 6). She said that **HB 2035** will end the situation in which the Attorney General is refused ability to prosecute local cases. Adolescent girls are five times more likely to seek subsequent help for psychological and emotional problems compared to their peers who carry 'unwanted' pregnancies to term. Teens also experience up to 4 times higher rate of suicide compared to adult women who abort. Jeanne Gawdun's attachments are available from the Kansans for Life office.

Amber Versola appeared as an opponent of **HB 2035** (Attachment 7). She said that the bill would greatly limit the access a woman would have to a medical procedure. It also puts abortion providers at greater risk of civil litigation. It would also jeopardize the safety of women who are the victims of domestic violence.

Sarah Gillooly presented testimony as an opponent of **HB 2035** (Attachment 8). She said that some teens can't or won't go to their parents for legitimate reasons. Some live in dangerous homes. Planned Parenthood is opposed to additional restrictions being placed on the judicial bypass process.

Written only testimony was received from Douglas E. Mould, Ph.D. in opposition to **HB 2035** (Attachment 9).

The next meeting is scheduled for February 01, 2011.

The meeting was adjourned at 3:15 p.m.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

DATE: 1.26.11

ROOM 346-S

NAME	REPRESENTING
Dermise L. Cochran	CWA - KS
Alicia Chazman	CWA - KS
Maureen Kerkow	CWA - KS
David Klepper	KC STAR
Pete Rathier	Hein Law Firm
Edward Larson	KS Catholic Conference
Jeanne Sawdon	KFL
Kathy Ostrowski	KFL
Michael Schuttloffe	KS Catholic Conference
Amber Versola	KS NOW
RJ Wilson	KANSAS AGAINST LIBERAL LIQUOR LAWS
Virginia Phillips	Trust Women
Holly Weatherford	ACLU
Chella Krstas	TPK
Paula Sullivan	PAKM
Alyn BRIGGS	self
Cj Bauman	KFL
Kathryn Wood	KCSDV
Don Morin	KMS
Nicholas Brydson	Intern, Davis
Peter Northcott	Office of the Governor
Joey McLeachy	Intern - Self
Christie Krieschauer	Office of the Speaker
Kaitlin Alegria	Intern - Emmer
D. Charles Hunt	KDHE - BEPHI
Aimee Rose now	Intern - O'Brien
Jenna Troum	KSNT



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January 24, 2011

RE: House Federal And State Affairs Committee
House Bill No. 2013 Hearing

Dear Chairman Brunk and Members of the Committee:

Thank you for allowing me to submit testimony to you as a proponent of HB 2013, An Act repealing KSA 48-1901 through 48-1905; concerning the sale and purchase of certain firearms.

I am the President and Registered Lobbyist for the Kansas State Rifle Association. I speak for our membership which now hedges on 6000 individual members and over 20,000 club members. Several of our members are Federally Licensed Firearms Dealers.

The issue before you has been of strong concern to our membership and we ask that you vote in support of HB 2013 which will repeal an area of Kansas Statute that makes no sense. The repeal of these Statutes will in no way affect the States lawful compliance with Federal Code 18 USC 922(c) and in fact, will bring Kansas law parallel to Federal law.

Kansas law currently restricts the purchase of Rifles and Shotguns at dealers in Kansas to residents of Kansas and residents of states that are contiguous to Kansas. This is not necessary and is more restrictive than current Federal law. The repeal of these statutes will allow for residents of states that are not contiguous to Kansas to purchase Rifles and Shotguns at licensed dealers in Kansas and allow for Kansas residents to purchase guns in states not contiguous to Kansas. Federal law currently allows for this and there is no logical reason for Kansas law to be more restrictive than the Federal law.

There are many reasons why purchases outside of the contiguous states should be allowed for Kansas residents as it is under Federal code. For example, if I was traveling in Texas and should come upon a Rifle or Shotgun that is rare in nature, or of collector value, currently I could not purchase that firearm and would lose the opportunity to add that firearm to my collection. Another circumstance would be in a case where I saw a deal that was bargain pricing, I could not take advantage of that savings. These same situations would apply to those who are visiting Kansas from a non-contiguous state.

Another example would be a person who owns property in Kansas and resides in Kansas for say three months out of the year but their formal residency is a non-contiguous state. They would not be able to make any firearm purchases while in the State of Kansas. This is not only an inconvenience to that temporary resident but also a lost sale for the dealer in Kansas.

The current Statutes that we move to repeal are in no way necessary for the immediate or future preservation of public health, safety or welfare. We believe that the current restriction bares no merit and is an unreasonable restriction where there is no finding of its necessity. We see no obstacle to the repeal of the statutes in question.

Mr. Chairman and members of the Committee, thank you for considering our position in this most important matter. We respectfully ask that you vote in support of HB 2013 and submit it to the floor of the House of Representatives for a vote.

Respectfully Submitted,

President
913-667-3044 Direct Line
913-522-4765 Cell

House Fed & State Affairs

Date: 1/26/11

Attachment |

Mike Heim
Revisor of Statutes Office

Memo: Summary of House Bill 2035

House Bill 2035 makes a number of changes to the laws dealing with abortion. These include:

I: Parental Consent – Minor (K.S.A. 65-6705)

see Sec. 4, pp 7-12

- A. Current parental notice statute changed to parental consent
p. 8, lines 12-19
- B. Court waiver of consent
 - 1. Counseling by abortion provider first
p. 8, lines 29-38
 - 2. Reporting, by abortion provider, if sexual intercourse by father, step-father, etc.
p. 8, lines 24-28
 - 3. Court proceeding – clear and convincing evidence standard
p. 9, line 6; see also p. 11, lines 4-17
 - 4. Court may order minor to be evaluated and counseled by mental health professional
p. 10, lines 29-43; p. 11, lines 1-3
 - 5. Court reporting of waiver data to KDHE
p. 11, lines 26-36
 - 6. Court reporting of abuse/neglect or sexual abuse
p. 12, lines 7-15
 - 7. Civil cause of action
p. 11, lines 37-43; p. 12, lines 1-6

II: Partial Birth Abortion (K.S.A. 65-6721)

see Sec. 7, pp 17-19

- A. Criteria redefined for obtaining partial birth abortion – mental function of pregnant woman deleted
see p. 17, lines 25-42
- B. Partial birth abortion definition changed
see p. 18, lines 1-17
- C. Criminal penalty increased from level 10 to level 8, person felony
p. 19, line 19
- D. Civil cause of action
p. 18, lines 42-43; p 19, lines 1-11

House Fed & State Affairs

Date: 1/26/11

Attachment 2

Mike Heim
Revisor of Statutes Office

Memo: Summary of House Bill 2035

II: Partial Birth Abortion (K.S.A. 65-6721) (cont'd)

- E. Physician enhanced reporting
p. 18, lines 21 and 27-28
- F. Rules and regulations requirement, KDHE
p. 18, lines 34-41

III: Reporting Requirements Enhanced – Medical Diagnosis – Reasons (K.S.A. 65-445, 65-6703, 65-6721)

see Sections 1, 3 and 7

- A. KDHE reporting requirements
Sec. 1, page 1, lines 26-30; p. 2, lines 1-6
Medical diagnosis and conditions constituting a substantial and irreversible impairment of a major bodily function. Doctors performing abortions, doctors making abortion referrals and medical care facilities; reports required by KDHE
- B. Sec. 3 Late-term abortion near or after viability – (K.S.A. 65-6703)
p. 4, lines 21-43; p. 5, lines 1-8, lines 15-19
- C. Sec. 7 Partial Birth Abortion (K.S.A. 65-6721)
p. 17, lines 35-42; p. 18, lines 21, 27-28

IV: Civil Causes of Action Created (K.S.A. 65-6703, 65-6705, 65-6721)

- A. Sec. 3 Late Term Abortion
p. 7, lines 12-24
- B. Sec. 4. Parental Consent
p. 11, lines 37-43; p. 12, lines 1-12
- C. Sec. 7. Partial Birth Abortion
p. 18, lines 42-43; p. 19, lines 1-11

Mike Heim
Revisor of Statutes Office

Memo: Summary of House Bill 2035

V: Other Changes:

A. Terminology:

1. The term "fetus" is changed to "unborn child" throughout the bill
2. The definition of "viability" in K.S.A. 65-6701(K), p. 4, lines 7-15, is changed to reflect the definitions in K.S.A. 65-6703, p. 7, lines 28-33 and the later definition is deleted
3. Sec. 5 (K.S.A. 65-6709) a provision of the informed consent law is amended to add a definition of "human being" See p. 15, lines 37-39

B. Rules and Regulations - KDHE

Rules required and authority made specific;

1. p. 2, lines 42-43; p. 3, lines 1-4
2. p. 6, lines 35-43; p. 7, lines 1-5
3. p. 18, lines 34-41

C. New Reporting Requirements:

1. SRS required to report on data from abortion providers on child sexual abuse
p. 3, lines 5-11
2. District court chief judge required to report to KDHE data on number of judicial bypass of parental consent cases.
p.11, lines 26-36
3. Child sexual abuse reporting required
 - a. Abortion providers – parental consent
p. 8, lines 24-28
 - b. Court – parental consent bypass proceedings
p. 12, lines 7-15

D. Miscellaneous:

1. County and district attorney, as well as the attorney general, to have access to KDHE reports, if violations of law suspected
p. 2, lines 16 and 19;
see also; prosecution by the attorney general or county or district attorney for late-term abortion violations
p. 7, lines 25-27

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Mike Heim
Revisor of Statutes Office

Memo: Summary of House Bill 2035

V: Other Changes: (cont'd)

2. The informed consent laws is amended to require the additional statement that an abortion will terminate the life of a whole, separate, unique living human being.
p. 13, lines 32-33

STATE OF KANSAS
HOUSE OF REPRESENTATIVES



TOPEKA

—
LANCE KINZER

REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS
CHAIRMAN: JUDICIARY
VICE-CHAIRMAN: CORRECTIONS AND
JUVENILE JUSTICE
MEMBER: JOINT COMMITTEE ON
STATE-TRIBAL
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RULES & JOURNAL

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TESTIMONY REGARDING HB 2035

At its best the pro-life movement in the United States has stood for the bedrock principles of human dignity, compassion and the rule of law. The intent of this legislation is to advance each of these important values. All Kansans have a right to expect that existing laws limiting late term abortions in Kansas will be followed and enforced. Kansans also have an interest in making sure the language of our partial birth abortion ban is written in a fashion that is indisputably enforceable. Women have an interest in receiving medically accurate information when making a decision regarding abortion. Further, parents have an interest in being in a position to provide counsel and support to a minor daughter who is considering abortion. The bill before you today includes a number of provisions designed to strengthen enforcement of existing late term and partial birth abortion laws; expands the relevant information that must be provided to women who are considering abortion; and would add Kansas to the list of 26 states that currently require parental consent.

Key provisions include:

1. Clarifies existing late term abortion requirements by clearly setting forth the obligation to specify the medical diagnosis and condition constituting a "substantial and irreversible impairment."
2. Clarifies the definition of viability (current law defines the term differently in K.S.A. 65-6701 & 65-6703).
3. Requires that at least 30 minutes prior to the abortion, a woman seeking a late term abortion be provided with a copy of the referring physician's referral, and a copy of the abortion provider's written determination regarding fetal viability, and/or the reason and basis (including the specific medical diagnosis) justifying the abortion under Kansas law.
4. Grants standing to a woman, her husband or the parents of a minor, to bring a civil action for damage against any person who performs an abortion in violation of Kansas late term abortion law.
5. Establishes that prosecution for violation of Kansas late term abortion law can be brought by the Attorney General, or the District or County Attorney where the violation occurred.
6. Requires that prior to the performance of an abortion a woman be informed that "the abortion will terminate the life of a whole, separate, unique, living human being." (This language is law in South Dakota North Dakota and Missouri and was upheld by 8th circuit in the case of Planned Parenthood v. Rounds).

7. Updates Kansas' existing partial birth abortion ban by conforming it to the language of the federal ban upheld by the U.S. Supreme Court in *Gonzales v. Carhart*.
8. Replaces our existing parental notification requirement with a parental consent provision.
9. Requires two parent notarized consent in the absence of certain exceptions. A two parent consent law virtually identical to the one proposed here was upheld by the Fifth Circuit in *Barnes v. Mississippi*. Notarization requirements are currently in effect in six states. (Some limitations on parental consent provisions were imposed by a recent State Court opinion in Alaska. That opinion was based on a specific provision of the Alaska Constitution dissimilar to anything in Kansas law.)
10. Clarifies and strengthens our judicial bypass process by setting specific criteria to be considered by the Court and raising the standard of proof to clear and convincing evidence as is current law in a number of states including Arizona, Idaho, Louisiana, Mississippi and Oklahoma.

In considering any change in current Kansas abortion law it is important to first understand current Kansas law. Under Kansas law an unborn child is viable if it is reasonably probable "that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-support measures." K.S.A. 65-6703. Under Kansas law an unborn child who an abortion provider has determined to be viable cannot be aborted unless, two doctors determine that an abortion is necessary to preserve the life of the mother or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. K.S.A 65-6703(b)(4).

Kansas law further requires that a physician who aborts a viable unborn child must report the reasons and basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. K.S.A 65-6703(b)(4).

I think it's crucial in analyzing this statute to recognize the way in which the substantive requirements and reporting requirements found in the statute interrelate. These various requirements work hand in hand to create a clear and systematic approach to the implementation of our Kansas post viability abortion law.

If we look at K.S.A. 65-6703(4) we can see these steps quite clearly: 1) a determination is made as to gestational age; 2) if that age is 22 weeks or more a determination is made as to viability; 3) if the unborn baby is viable two doctors licensed to practice in Kansas then must determine if an abortion is necessary to preserve the mother's life, or to prevent substantial and irreversible impairment of a major bodily function of the mother; 4) if such a determination is made and an abortion takes place the doctor who performed the abortion must then report certain information; in particular the doctor who performed the abortion must report, 5) the determinations he made; 6) the reasons for such determinations; 7) the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function; 8) this information is provided to the Secretary of Health and Environment

under K.S.A. 65-445; 9) Pursuant to K.S.A. 65-445 the Secretary of Health and Environment may disclose all information reported to it to the Board of Healing Arts and the Attorney General, who may use said information for "the purposes of a disciplinary action or criminal proceeding."

In order for our post viability abortion law to function effectively each of these steps must be properly followed and administer. Unfortunately, I believe the evidence suggests that our law has not been followed by abortion providers nor, in past administrations, was it being properly implemented by the executive branch agencies charged with carrying out the law.

To understand why I believe this is the case its helpful to start by looking at the last 7 years of available post viability abortion data from the Kansas Department of Health and Environment. From these records we know that over that time 1,638 viable unborn children (as determined by the abortion provider) were aborted in Kansas . According to KDHE's statistics none of those abortions were performed to prevent the death of the mother. (KDHE Abortion Reporting Statistics, 2003 – 2009). That means that in order to be lawful all 1,638 such abortions over the last 7 years must have been performed because 2 doctors determined "that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman."

Unfortunately it is at this point that the KDHE statistics become much less than helpful in getting at the truth because rather than report, as the law requires, the reasons and basis for such determination, the statistics provided merely restate the statutory language offering no clue as to the actual medical diagnosis used by the abortion doctor to justify the abortion of these viable unborn children.

But in any event I think is important to consider what the available evidence suggests about the reality of illegal late term abortion in Kansas . We can for example look to the initial complaint filed in December of 2006 for violation of the current Kansas late term abortion law. Among the charges are 15 instances from 2003 where the justification for aborting a viable unborn child included things such as, anxiety and depressed mood, single episode depression, acute stress, and even "no established diagnosis." Recall that Kansas law allows such abortions only where there is a showing of substantial and irreversible impairment of a major bodily function.

Now again, these charges have often been treated dismissively because they were brought by a person who lost an election. But I would ask you to remove personalities from the equation and look at the fact that both Judge Richard Anderson and Judge Eric Yost reviewed evidence related to these charges and found probable cause that crimes had been committed. Much has been made of the fact that a finding of probable cause is not the same as a finding of proof beyond a reasonable doubt. This is most certainly true. "But neither is a probable cause finding a simple statesman that some overzealous prosecutor is suspicious that a crime might have been committed." Under Kansas law, as consistently reiterated by the Kansas Supreme Court:

"Probable cause is the reasonable belief that a specific crime has been committed and that the defendant committed the crime. Probable cause exists where the facts and circumstances/ within

the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to/ warrant a man of reasonable caution in the belief that an offense has been or is being committed."(State v. Ramirez, 278 Kan. 402, 2004).

This is the legal standard that two separate judges found to have been satisfied. Those charges were dismissed by a third judge who had not reviewed any evidence in the case. They were dismissed on the pretext that the Attorney General, the chief law enforcement officer of the State, lacked the authority to bring the charges. This despite that fact that K.S.A. 65-445 specifically requires abortion records gathered by KDHE to be provided to the Attorney General for the specific purpose of bringing criminal proceedings. K.S.A. 65-446 (c).

But the salient question now is not what has been done in the past, but what happens next. Since those initial charges were filed in December of 2006 new information has now come into public view that sheds further light on the reason that two judges have independently found probable cause to believe that illegal abortions on viable unborn children have been systematically performed in Kansas. In particular, we now have an understanding of the opinions of an expert who was retained to testify in the original 2006 case. This expert, Dr. Paul McHugh is a man of impeccable credentials and reputation within his field, here served 26 years as the Psychiatrist in Chief at Johns Hopkins Hospital and is currently the University Distinguished Services Professor of Psychiatry at that same institution. Dr. McHugh reviewed the medical records forming the basis for the charges discussed above. As is clear from a review of those charges, the alleged "substantial and irreversible impairments" relied upon are claimed to be psychological in nature.

Dr. McHugh, one of our nation's most preeminent psychologists, has reviewed that claim and determined, in an opinion as definitive as any I have ever heard, that none of the files he reviewed provide a showing of "substantial and irreversible impairment." Dr. McHugh's complete remarks in this regard are widely available.

My take on Dr. McHugh's remarks are that they are a stunning indictment of the failure to properly follow and implement our post viability abortion law. His comments add tremendous credence to the fear that illegal abortions have been performed in Kansas on viable unborn children capable of living outside their mother's wombs.

HB 2035 also addresses a problem regarding the need for a good faith medical basis for determinations made under K.S.A. 65-6703. On June 28, 2007 then Attorney General Morrison indicated how his office will interpret K.S.A. 65-6703 going forward. In particular he expressed his opinion that K.S.A. 65-6703 does not require that the doctors who determine that an abortion is necessary to prevent substantial and irreversible impairment of a major bodily function of the mother have a good faith basis for their belief. To quote Attorney General Morrison, "It doesn't matter if I think their reason was good or bad. It doesn't matter if I think he's a good doctor or a bad doctor. All that matters under Kansas law is that they sign off on that determination." In short this interpretation of Kansas law would say that two doctors can lie about the existence of a substantial an irresistible impairment and still lawfully perform an abortion on a viable unborn child. It appears that AG Six adopted this same interpretation.

I would posit that this interpretation, while facially plausible if one were to simply read two or three lines of the statute, is an absurd interpretation when the statute is read as a whole with due attention given to the interaction between the provisions various parts.

The upshot of all of this is that while we have a comprehensive statute intended to govern the performance of abortions on viable unborn babies that statute's effectiveness has been undermined in the past by the refusal of executive branch agencies to properly implement and enforce its provisions. This failure undermines a fundamental principle of American government, that we are a nation of laws and not of men.

The most famous exposition of this principle was drafted by John Adams for the constitution of the Commonwealth of Massachusetts in justification of the principle of separation of powers: In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men. - Massachusetts Constitution, Part The First, art. XXX (1780)

While the legislative branch can pass laws that are powerless to implement them. For that we must rely upon the diligence of the executive branch. This is the case because as Harvey Mansfield, the William R. Kenan Professor of Government at Harvard, recently noted in another context

"the law does not know how to make itself obeyed. Law assumes obedience, and as such seems oblivious to resistance to the law by the "governed," as if it were enough to require criminals to turn themselves in. No, the law must be "enforced," as we say. There must be police, and the rulers over the police must use energy (Alexander Hamilton's term) in addition to reason." If passed HB 2035 will go a great distance toward advancing meaningful enforcement of Kansas' substantive law regarding late term and partial birth abortion and as such restoring respect for the rule of law in Kansas.

HB 2035 will also place Kansas in the mainstream of States by requiring parental consent in most cases when a minor seeks an abortion. But just as important it will provide a more meaningful process in those cases where a minor seeks to have a Court waive the parental consent requirement. The decision to have an abortion is a grave matter and should be recognized as such by applying a clear and convincing (or substantially likely) standard to judicial waiver proceedings where the Court must determine if the minor is mature enough to make the decision on her own or if waiving the consent requirement would be in the best interest of the child. Our current statutory scheme provides little help or guidance to a trial court seeking to make this interpretation. HB 2035 borrows from the long standing practice of Louisiana law by setting forth clear, but non-exclusive, factors for the court to consider and by giving the court access to the opinion testimony of experts to assist in its determination.

For all of the reasons stated above, and in order to uphold the high ideal of human dignity, compassion and respect for the rule of law I ask you to report HB 2035 favorably.

January 26, 2011

I thank the chairman and the other committee members for allowing me to testify today on HB2035. I will be brief in my remarks and observations but it is my hope the legislature will consider this important issue, a matter of life and death, with the due diligence that is required.

My testimony begins during the pregnancy which resulted in the birth of my oldest daughter. At the birth of that daughter it was discovered my wife had developed hemolytic disease of the newborn (HDN). Simply stated this resulted from my wife having A- blood and myself being A+. The doctors assured this was something that was easily treated and we would be able to have more children if we were so inclined. She received an injection of RhoGAM and all seemed well. Our son was born and again another injection of RhoGAM was received.

In September of 1992 our youngest daughter was conceived. About 2 months into the pregnancy we were told a problem with the HDN condition existed but not to worry as there was a way to correct it. We went home but wondered why the doctor had not told us the remedy to the problem. We talked about it and after several days began to wonder if the doctor was talking about an elective abortion. The doctor was called and he confirmed our suspicions. When questioned why he had not come out and told us at the office he indicated this was a sensitive area with some people. I responded that he was a spineless individual and asked how delaying the inevitable was going to be helpful.

While I am a very strong advocate of life when the shoe is put on your feet everything about talk flies out the window. I knew I could not tell my wife what to do in this situation where her life was literally going to be put at risk. Thankfully, she was just as strong in her faith as I was. She did not hesitate to say the baby would be carried to full term. We trusted God and believed He would provide for us.

As the pregnancy went along in the early stages the toxicity in my wife's body increased dramatically. The doctor reiterated the possibility of abortion as a way to overcome the problem. He told me the levels were quite high and would only get worse the further the pregnancy went. My wife ended up having three amniocentesis tests done with the each showing higher levels of toxicity. After the last one the doctor indicated he had never seen that level of toxin and the mother survive. Still my wife was adamant about not having an abortion, even in the face of all the medical advice to abort.

At the eighth month the toxicity leveled off and did not increase further. Our problem shifted from that to finding the baby was breech and the umbilical cord was wrapped around the neck of the infant. An attempt was made to turn the baby but with no success. A C-section was planned for May.

On May 9, 1992 my wife began having labor contractions in the early evening. They were much different than the previous times. She contacted the doctor who told her it was false labor and not to worry. The occasional hard contractions persisted into the night. She called again but again was told not to worry about it. Finally she called the hospital and the nurse said to come in for a check. We arrived around 5:30 AM on May 10, 1992....Mothers Day.

When the nurse performed the check, she ran from the room yelling "Emergency C-section now, she is dilated to an 8 and the baby is headed down the canal in the breech position." She was wheeled to the ER quickly and the baby was delivered without being any time to administer anesthesia by the doctors. I carried the imprints of her fingernails in my hands for three days as she endured the pain of cutting flesh without any pain medication. The anguish turned to joy when our daughter was placed in her arms a short time later.

House Fed & State Affairs

Date: 1/26/11

Attachment

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All seemed well until a routine well visit to the doctor several months later. At that time we were told something sounded out of the ordinary in her heart and there most likely was a hole in it. We were told to continue monitoring it and it might close on its own.

To most people this might not cause concern, but to us it was alarming as we had lost a niece at eight months of age during surgery to correct a missing wall in the heart chambers. All those events came flooding back like a bad nightmare. Little did we know the outcome would be markedly different than that of my niece.

Each year our daughter had a test to determine the current condition. Finally around age three or four the cardiologist wanted to perform a heart cath to make a more thorough diagnosis. It was found she had pocket near an artery and the blood passing over that area was causing the sounds that had concerned them.

Our daughter started gymnastics and progressed to compete at a level 9 at the club level and twice placed fourth at the state level as well as competing in other states. In addition she was an honor student, cheerleader and is currently attending college on a track scholarship.

You may wonder why all of the history was given but it is to contrast what has happened since that time. Over the Halloween weekend in 2009 she became pregnant and she was forced to begin making some difficult decisions. Would she loose the ability to compete in track her senior year? If she did not compete would she loose her scholarship? What would her parents and friends think and say?

She called me in November and wanted to have lunch. As my wife and I had finalized our divorce in May, 2009, I was happy to meet with her for lunch. As I waited for her, I wondered what the real reason for her wanting to meet for lunch. It was out of the ordinary. She brought another girl with her and we had lunch.

At the conclusion she handed me a folded sheet of paper and said I needed to sign it and give it back to her. I opened it and read it. It was then I found out she was pregnant and was asking for my consent to have an abortion at Planned Parenthood of Overland Park. I immediately knew I would not sign it but delayed saying that as I knew it would only drive her away for good, as she was scared. When asked if her mother was aware of her pregnancy she said no, she didn't want her to even know about it. I could hear the fear in her voice. It was one of a scared person who needed help and not condemnation.

Over the next week I talked with her and sought the counsel of Advice and Aid and others. I reminded my daughter how we had been advised to abort her due to the medical complications and how God had been faithful in our time of need. I told her a scholarship was a small price to pay compared to the life of a child. I had already found two families who were willing to adopt the baby and help with the expenses. She agreed to watch a video that explained options available to her and what she could expect.

I went home feeling better as she had not run immediately to have an abortion. I told her she needed to confide in her mother and if she didn't do it within a certain time frame I would tell her myself as she had every right to know about the pregnancy. I felt it was the only just action I could take with my ex wife as she loved our daughter as much as I did.

In early December I found out my daughter had an abortion at The Aid for Women clinic in Kansas City, Kansas. To this day I do not know what route she took to get the abortion. I do know her mother would not authorize it and serious doubt if she had any fore knowledge of it happening. I was not given any notice about it from that clinic nor would I have consented to it if I had known about it. I do know a pastor tried to intervene but was told to leave the premises.

How does all this play into this proposed legislation of HB2035? While this bill makes some improvements in reporting of information to the Department of Health and I feel it does not go far enough. I would ask for the following changes be made to the proposed bill.

- 1.) There should be specific language relating to the definition of "an intact family." I feel it is important that both parents have the right notification and consent prior to any abortion. How does the state determine which parent should be allowed to make that decision without the other?
- 2.) The language to keep the identity of an abortion provider should not be kept from the reporting. If they are afraid and ashamed of what they are doing they should cease their actions. Do they talk to prospective clients behind a veil to keep their identity unknown? What are they fearful?
- 3.) I believe the parents or legal guardian(s) of an under age lady should have the right to obtain any information that is applicable to that case. An identifying code could be used for the girl as well as the doctor. This information should include any and all documentation related to the case.
- 4.) The penalty for failure to comply with any of the law should be to the fullest extent the first time rather than waiting for the second and subsequent failures to comply.
- 5.) Any provider must attempt to notify and seek the consent of the parents or legal guardian, regardless of whether that was done by another provider in Kansas or other state.

I thank the committee for hearing my testimony. I am available to answer any questions you may have.

Arlyn Briggs



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House Committee on Federal and State Affairs

January 26, 2011

1:30 PM

Testimony in Support of HB 2035

Michael Schuttloffel

Executive Director, Kansas Catholic Conference

Mr. Chairman and members of the committee, the Kansas Catholic Conference strongly supports House Bill 2035.

In 1998, Kansas passed legislation restricting the cruel and barbaric practice of aborting fully viable unborn children to only those circumstances where the life or health of the mother was in grave danger. In time, it became clear that this law was being ignored, both by the abortion industry and by many of the executive branch officials charged with enforcing the law. Thus, in recent years, the Kansas Legislature attempted to clarify and strengthen its late-term abortion law, only to have those efforts vetoed repeatedly.

Those previously vetoed bills form the basis of HB 2035. Most of HB 2035's provisions are not only not new to the Legislature, but are essentially extensions of existing law, written to close loopholes being exploited to thwart clear legislative intent.

For instance, HB 2035 will require an abortionist to report an actual medical diagnosis as to why a late-term abortion is necessary to preserve the life or health of the mother, and thus is legal in Kansas. We are pleased to see that the Secretary of the Kansas Department of Health & Environment has announced that this information will now be required of abortion providers. Until now, the abortion industry has been allowed to simply declare that there was a medical need for the abortion, without elaborating. That became the loophole by which Kansas became the late-term abortion capital of the Midwest. Such was never the will of the Legislature nor the people of Kansas.

The Catholic Church approaches the abortion issue from a moral perspective, as should all men and women of goodwill, for this is an issue that transcends party or partisan politics. The Church

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ARCHDIOCESE OF KANSAS CITY IN KANSAS

MICHAEL M. SCHUTTLOFFEL
EXECUTIVE DIRECTOR

House Fed & State Affairs

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MOST REVEREND GEORGE K. FITZSIMONS, D.D.
BISHOP EMERITUS - DIOCESE OF SALINA

D.

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teaches clearly and unambiguously that the deliberate taking of an innocent, defenseless, human life is extraordinarily unjust and evil. This belief is shared by people of other faiths and of no faith. It is a position rooted both in the clear and indisputable scientific proof of the unborn child's humanity, and the timeless principles of human rights so eloquently immortalized in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Life has pride of place in the Declaration, and should in our hearts as well. We believe that all people, from conception to natural death, have a right to life. We believe that all human life has dignity and value, regardless of age or disability. We also contend that public and private efforts should be made to assist women facing difficult pregnancies in accessing support systems that can help them understand that they are not alone, and we have tried to lead in this regard. The Catholic Church also offers counseling for post-abortive women; unsurprisingly, the decision to abort rarely brings the emotional comfort and relief that is promised by those who stand to gain from that particular decision.

The Catholic Church prays for an end to abortion, and we believe that just laws that reflect moral truths can help form the consciences of our people. To that end, we are strongly supportive of HB 2035's language that abortion terminates "the life of a whole, separate, unique, living human being." We have heard from so many women who regret their abortions who tragically give the same account: they were told by their abortionist that there was no baby inside them, but just a piece of tissue. This crucial language will ensure that the medical facts of the matter are given a hearing as a woman considers her options, and not just the lies of the multi-billion dollar abortion industry.

We are also grateful for the fact that this legislation will strengthen parental rights by requiring parental consent before a minor has an abortion. So much about abortion would never be tolerated if it were any other medical procedure. In past years, the Legislature has had to debate whether a woman should be informed about the nature of the procedure she is about to undergo, and whether she should be allowed to see the sonogram image of her unborn baby or hear the heartbeat if she so requested. That such a debate could even take place would be inconceivable for any other procedure. Much the same, it is unimaginable that parents could be excluded from having a role in a major health decision involving their child. But today we actually have to debate whether a parent should be able to protect their child from a decision that will have grave physical, mental, and emotional ramifications for her, perhaps for the rest of her life. It is long past time to de-codify the proposition that the abortion industry has a right to overrule parents.

HB 2035 is perhaps best understood as an attempt to restore respect not only for human life, but for the rule of law, for the will of the Legislature, and for the will of the people itself. The majority of Kansans are Pro-Life. It is time we begin to ensure that our laws, and the enforcement of those laws, reflect the character and wishes of this state's people.



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January 26, 2011

Good afternoon,

I am Jeanne Gawdun, senior lobbyist for Kansans for Life, here to testify in support of HB 2035, the Abortion Reporting Accuracy and Parental Rights Act.

Monday, the new KDHE director, Dr. Robert Moser, revealed a long-awaited change in attitude, namely, that KDHE will straightforwardly interpret the 1998 late-term abortion reporting provisions (AP article attached.)

But we do not want to endanger any more unborn children in future administrations, so we welcome the clarifications in **Sections 1 and 3 of HB 2035** that will prevent abortionists from daring to submit reports with "non-answers." A short history of legislative attempts to address this problem is included, along with a sample KDHE report in your packet.

HB 2035 will also end the current absurd situation in which district attorneys can prosecute for illegal abortions but are denied access to state abortion reports while the Attorney General is granted specific access to those reports but is refused the ability to locally prosecute!

Section 2 is merely a technical correction, replacing the 1992 definition of viability in K.S.A.65-6701 with the operative 1998 definition in K.S.A. 65-6703.

Section 4 of HB 2035 improves the protocol for abortions to minors. In 2009, 1473 Kansas minors became pregnant, of whom 270 (18%) obtained abortions. This was down slightly from 2008, in which 1618 Kansas minors were pregnant, with 309 (19%) obtaining abortions.

Parents have the right to protect their daughters from exploitation, abuse and physical and emotional trauma. Parents are ordinarily the best equipped to help their pregnant teens seek appropriate care, especially as teens are more likely to

- feel pressured into abortion,
- report being misinformed in pre-abortion counseling
- experience more severe psychological stress after abortion.

Adolescent girls who abort unintended pregnancies are **5 times more likely to seek subsequent help** for psychological and emotional problems compared to their peers who carry "unwanted" pregnancies to term. Teens also experience up to **4 times higher a rate of suicide** compared to adult women who abort. [see fact sheets attached with research citations]



Kansas Affiliate of the National Right to Life

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Further, having a secret abortion puts a teen at risk because her parents may underestimate the gravity of any subsequent personality changes, odd behavior, and physical problems that **actually require intervention**.

Minors are not required to bring a parent with them when they seek abortions in Kansas. K.S.A. 65-6705(a) requires the clinic to notify one parent prior to performing the minor's abortion unless she asks for a waiver, called a judicial bypass.

But do parents *actually* receive notification of their minor daughters' abortions? Or do minors figure out when the clinic's registered letter will come to their home and have the registered receipt signed by some one other than the parent?

(Has the mailman ever asked for your i.d. you when you sign for registered mail? Will the clinic inspect the signature they get—or even be able to verify it?)

47% of our abortions each year are women coming from Missouri, where parental consent is required, so how many Missouri minors come to Kansas for abortions to avoid Missouri's parental consent law? That figure could be requested of KDHE.

Requests for judicial bypass/parental **waivers are remarkably few: 14 in 2008 and 10 in 2009**. The judicial administrator keeps the tally and it is unknown whether the waivers come from Kansas residents, whether they are granted and for what reasons they are sought. This indicates the possibility that minors know their parents will not become aware, will not interfere, and thus do not seek a waiver.

HB 2035 replaces parental notification with consent. **Parental consent laws have been found constitutional since the 1983 U.S. Supreme Court *Planned Parenthood of Kansas City v. Ashcroft* ruling**, so long as they also allowed a judicial bypass if such consent could not be acquired.

HB 2035 also improves the court's duties during the bypass protocol, based on existing law in other states. We have included a National Right to Life chart showing various state parental involvement laws.

Section 5 replaces fetus with "unborn child" consistent with the 2007 *Alexa's Law* and **Section 6** inserts a medically factual sentence that "abortion will terminate a separate, whole, unique, living human being." This sentence is law in 3 states and was upheld on appeal in the 8th circuit.

Section 7 replaces the 1998 partial birth abortion statute with the federal language upheld in the 2007 U.S. Supreme Court decision, *Carhart v Gonzales*. Our last attachment is a subject summary of the bill and a medically accurate sketch of the partial birth procedure.

HB 2035 reflects the will of Kansans to enforce the post-viability abortion ban and enhance parental rights. Kansans for Life urges you to pass this legislation favorably out of committee. Thank you, I stand for questions.

ansas NOW
Amber Versola, Lobbyist
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PO BOX 1860
Wichita, KS 67201



1/26/2011

TO: The House Committee on Federal and State Affairs

FR: Amber Versola, Kansas NOW Lobbyist

RE: Opposition to Kansas HB 2035, Written Testimony

As the lobbyist for one of our state's most active organizations for women, I respectfully ask of the committee to reject HB 2035. This bill comes at a time when our state is facing great economic hardships, and carries great potential to harm Kansas women who may be at their most vulnerable point. Please consider that:

- HB 2035 would greatly limit the access a woman would have to a medical procedure, but does nothing to decrease the need for that procedure. It denies women from receiving health care in their time of need.
- This legislation redefines "viable" as *"that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures."* This may force a woman to give birth to a baby with a fetal anomaly - an anomaly that leaves her child with a dismal quality of life, and no chance of survival without artificial life support.
- This bill contains several sections that would put health care providers at greater risk for civil litigation (including the repeal of the Women's Right to Know Act in section 8). It even allows for a woman's husband or family to sue a physician **without the consent of the woman**.
- HB 2035 jeopardizes the safety of women who are the silent victims of domestic violence. Many circumstances prevent victims of domestic violence from disclosing their situation to anyone. It is possible that a teens' mother would consent to the medical care, but could potentially put either herself or her daughter (or both of them) at risk of getting hurt by asking an abusive father to also consent to the medical procedure. It is also possible that the perpetrator of abuse could use his required signature on the form as a source of control over his wife or daughter.
- This piece of legislation removes the mental health exception. Not only does this completely overlook valid health concerns of the mother, but there is also question as to whether this would stand up to constitutional scrutiny.

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Testimony of Sarah M. Gillooly, M.A.

Kansas Public Affairs Manager of

Planned Parenthood of Kansas & Mid-Missouri,

in opposition to House Bill No. 2035

before the

House Federal & State Affairs Committee

of the Kansas Legislature

January 26, 2011

House Fed & State Affairs

Date: 1/26/11

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Good afternoon. My name is Sarah M. Gillooly and I am the Kansas Public Affairs Manager for Planned Parenthood of Kansas and Mid-Missouri. Thank you for this opportunity to present testimony in opposition to HB 2034. In Kansas, Planned Parenthood maintains family planning health and education centers in Wichita, Hays and Overland Park. Our most important goal is to help men and women make responsible choices that prevent unintended pregnancies and sexually transmitted infections. More than ninety percent of our patients come to our agency for family planning and other preventive health services. At our Comprehensive Health facility in Overland Park, we also provide safe and legal abortion care.

Proponents of HB 2035 have claimed the bill is “mostly a late term bill,” when in fact at least 25 of the approximately 36 proposed substantive changes to statute apply to abortion at any point in pregnancy. This legislation is a direct attack on women facing the most difficult circumstances – whether they are women facing medically difficult pregnancies or minors in untenable family circumstances. Although Planned Parenthood opposes this bill in its entirety, I will highlight how these proposed changes put the lives of Kansas’ most vulnerable women in serious jeopardy.

Section 4 of HB 2035 will place Kansas’ most vulnerable young women and families at considerable risk. Let me first explain the current parental notification procedures. When a minor seeks abortion care at our Comprehensive Health facility, written notification is given, and we must receive a signed and notarized form from a parent confirming she or he has been notified. In the real world of families, such notice, in practice, is tantamount to consent. The number of minors who have abortions is low, only 2 percent nationwide, and the vast majority of these young women, over 90 percent, do consult their parents and other family members when making such a significant life decision. Parents rightfully want to be involved in their teen’s lives, and Planned Parenthood’s counselors always encourage parental involvement. We want our daughters to come to us if they become pregnant, and most do. In fact, of the small number of minors we serve, most are accompanied by at least one parent to the health center.

However, some teens can’t or won’t go to their parents for very legitimate reasons. Tragically, some live in dangerous homes. HB 2035 may sound good, but in the real world it would have terrible consequences. We - Planned Parenthood, this legislative body, and all Kansans - cannot ignore the fact that not all families are perfect and no law can mandate family communication and functionality.

HB 2035 would change the current requirement from notification signed and notarized by one parent to notarized consent of both parents. HB 2035 acknowledges parents who are divorced or unmarried, but ignores other complicated family situations. It does not include provisions for parents who have entered into a legal separation agreement. It does not recognize situations where the minor’s parents live together, but where seeking the consent of one of the parents would risk the other parent’s or the minor’s safety because of a pattern of domestic violence. There is no alternative for a minor whose parents disagree on a course of action for their daughter; in this situation, who prevails? These missing alternatives, among others, demonstrate the reality that

legislature cannot know the complexity of each teen's situation. The failure of this bill to provide adequate options for young women in at-risk and dysfunctional families is deeply troubling.

In some rare circumstances, it is not only appropriate but safest for the minor to obtain safe, legal abortion care without parental involvement. The unfortunate reality, which this legislature must acknowledge, is that desperate teens will do desperate things. In the real world, HB 2035 can't force teens to talk to their parents, but may force them to seek illegal, unsafe abortions or even consider suicide. No matter what, our daughters need professional medical care and counseling without delay. Their safety must remain the priority. Judicial bypass, an alternative to parental notification or consent, is a constitutionally protected way to protect the safety of young women who are unable to seek parental involvement in their decision to end a pregnancy.

The changes in HB 2035 to the judicial bypass process are unnecessary and only provide additional hurdles for teens in difficult circumstances. At Planned Parenthood, instances of minors seeking abortion care who must use the judicial bypass process are extremely rare. There is no evidence to suggest the bypass waiver is abused or that judges don't make serious consideration when granting the waivers. We believe judicial decisions are best left to judges, and not to elected politicians who cannot begin to enumerate all the possible circumstances faced by teens and families in our state. To believe that young women may be misusing or abusing the judicial bypass process is absurd. A scared pregnant teen who is afraid to tell her parents isn't going to navigate a crowded court system and reveal intimate details about her life to an unfamiliar judge in an impersonal courtroom without first considering every other option.

In addition to our real and serious concerns about this bill placing vulnerable teens in danger, we oppose HB 2035 because of the numerous other provisions which will reduce access to abortion care for all women, especially those facing medically challenging pregnancies, including: amending all the abortion statutes to contain medically inaccurate, and in some cases, misleading information; amendments to the reporting requirements which are unnecessary given the extremely low number of abortions later in pregnancy that may be occurring in Kansas since the murder of Dr. Tiller; expansion of prosecutorial authority and access to confidential medical information, which given the legacy of Phil Kline, is especially troubling; and the creation of new civil courses of action, which are intended to have a chilling effect on physicians who choose to provide a safe and legal medical service.

In closing, Planned Parenthood asks this Committee to oppose HB 2035 as it seeks only to place more unnecessary burdens on abortion providers and women seeking abortion care. HB 2035 does not, and cannot, take into account the complex realities of families and will put minors in considerable danger. The cruel irony of HB 2035 is that teens who need help the most will be the least likely to get it. HB 2035 does nothing to reduce the need for or number of abortions in Kansas, but we know what does work. The real answer to reducing the abortion rate for all women is access to affordable birth control and comprehensive sex education.

Written Testimony of Douglas E. Mould, Ph.D.
Licensed Psychologist,
in opposition to House Bill No. 2035
to the House Federal and State Affairs Committee
of the Kansas Legislature
January 26, 2011

I cannot attempt to address each of the issues proposed by the Legislature. And, before I attempt to address any, I must frame my beliefs in the context of my personal experience working in the mental health field. So, indulge me.

In 1970, I went to work at the Austin State Hospital as an "attendant." It took me two or three weeks to understand that Rachel was not one of the other attendants, but was one of the patients. She was nineteen. When she was seventeen, she had gotten pregnant and had the baby. One day, the baby would not stop crying; Rachel told me she took a belt, put it around the baby's neck and hung it from a door knob so it would stop crying. Once it stopped crying, she took it to the kitchen sink and sliced off its head with a carving knife. She had a quarter; all the money she had, and she went to McDonald's and ordered French fries and a soft-drink. She ate the French fries, and with the dime left over, called the police and told them she had just murdered her baby. To think that post-partum depression is not real, to think that mental health diagnoses are irrelevant in decision-making where abortion is concerned, for me as a mental health professional, just flies in the face of reason.

The legislation eliminating the mental health provision, especially in the context of how the legislature has slashed funding for mental health, and indeed is seeking to eliminate funding for community mental health centers, is extraordinarily irresponsible, and virtually guarantees there will be more like Rachel.

The provision stipulating that a woman must be informed that abortion is terminating a human life is one that I find most pernicious. It begs the question as to whether human life begins at conception and incorporates that idea inherently into the legislation. At its most basic, it is a rejection of science. That human life begins at conception is a religious belief, not a medical one. At its most basic, I believe it is a violation of the Establishment clause. On a practical level, there is a slippery slope not usually addressed. If human life begins at conception, then the demise of any fertilized egg is necessarily a human death. This lends itself easily to the idea that whenever a woman miscarries, since it is the death of a human being, the circumstances bear examination by the county coroner. When viewed by the radical action Attorney General Phill Kline was willing to go to, this is not as absurd as it might seem at first blush. This provision would give unprecedented power of county prosecutors and coroners over women's reproductive rights.

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I have not had a lawyer look into this in some time, so I may be wrong here, but the last I knew, the law stipulated that a mental health professional, teacher, etc. was only mandated to report sexual abuse if they believed the child was still in danger. I understand that is not how it is usually construed, but I do believe that is how the law is actually structured. The proposed provision would restructure that law in that an abortion provider would become an extension of law enforcement in the case of performing an abortion on a teenager less than sixteen years old. The question here is the best interest of the "child." I put "child" in quotes because prosecutors want to use that word to describe a fifteen year-old when it is an issue of sexual issues, but never use it when describing a teenager who has committed homicide. But, I digress. It seems to me what should be of paramount importance is what is in the best interest of the "child." So, is a prosecutor more interested in the "best interest of the child," or in securing a conviction? We know the general answer to that.

Suffice it to say, this provision, as well as making records available to prosecutors, has great potential to twice victimize a child, and to victimize a "child" who gave consent.

The two parent consent provision is confusing at best, as it is not apparent to me how it is going to be assessed that the minor is "living in a stable, intact family with no evidence of abuse." This is clearly a road-block designed to stall things. More importantly, it places a barrier that discourages open communication between parent and child, and as such has great potential for discouraging a teen from disclosing pregnancy to a parent. I have a teenage daughter. Many of her friends are on the pill with mom's consent, and dad doesn't know.

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