



2 February 2015

Senate Public Health and Welfare Committee
Sen. Mary Pilcher Cook, Chair
10th & Jackson
Topeka, KS 66612

Dear Madame Chair and Committee Members:

My name is Julie Burkhart and I am the CEO of Trust Women Foundation and South Wind Women's Center. We provide direct reproductive health care services, including abortion care, here in Kansas. I am here today to testify, as an opponent, to Senate Bill 95, which, if enacted, would restrict a woman's ability to access abortion services in Kansas.

I encourage the Committee to carefully consider this bill and the implications that it will have on Kansas women. There are a multitude of problems with the bill: three of which I'll touch on today.

1. **The bill dictates to *qualified physicians* the scope of their practice and implies that certain medical treatments that physicians may use would lead to criminalization.** I caution the committee against passing any law that would ban a particular procedure that a physician might need to utilize during a medical procedure. In medicine, each patient is unique and health care is not always delivered in the same absolute terms.

Violating the physician-patient relationship will negatively impact the health of women in our state. Please find enclosed with my testimony documentation that addresses this very issue: In Kansas, researchers have found a correlation between the highly restrictive abortion laws and women's and children's health outcomes. I encourage you to review this study.

Additionally, and perhaps most importantly, what happens if the standard of care calls for a D&E abortion? Medical practitioners across the state provide their patients with D&E abortions because they are a safe, legal and effective medical procedure. Further, if the standard of care calls for a D&E and it's not done and because of SB 95, may the physician hold up SB 95 as a defense to a Board of Healing Arts licensing action or medical malpractice action? This is a fundamental problem with SB 95. *It substitutes a legislative determination of the proper standard of care for a medically based standard of care.*

2. **Secondly, I urge you to consider the contradiction this bill raises to the decisions handed down by both the Kansas Supreme Court and the United States Supreme Court.**

Section 3(a) excludes mental health considerations in direct violation to specific directives by the Kansas Supreme Court in *Alpha Medial Center v. Anderson*, 280 Kan. 903, 923-24,

(2006) and *Doe v. Bolton* 410 U.S. 179, 191-192 (1973). Both say the mental health of a pregnant woman remains a necessary consideration to assure the constitutionality of the Kansas criminal abortion statute. SB 95 fails this constitutionality test.

For your further review, I have included a quote from the *Alpha* case:

For example, the United States Supreme Court has long held, and continues to hold that, *in* order to be constitutional, state restrictions on abortions must include exceptions to preserve both the life and health of the pregnant woman. See *Casey*, 505 U.S. at 846 (emphasizing this rule as part of the "essential holding" of *Roe v. Wade*, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705, *reh. denied* 410 U.S. 959, 93 S. Ct. 1409, 35 L. Ed. 2d 694 [1973]); see also *Ayotte v. Planned Parenthood of Northern New England*, __ U.S. __, 126 S. Ct. 961, 163 L. Ed. 2d 812, 2006 WL 119149 (January 18, 2006). Moreover, "health" has been interpreted by the United States Supreme Court to include the mental or psychological health of the pregnant woman. See *Doe v. Bolton*, 410 U.S. 179, 191-92, 35 L. Ed. 2d 201, 93 S. Ct. 739 (1973); *United States v. Vuitch*, 402 U.S. 62, 71-72, 28 L. Ed. 2d 601, 91 S. Ct. 1294 (1971). The attorney general has said he disagrees with requiring an exception to preserve the pregnant woman's mental health. Until the United States Supreme Court or the federal Constitution says otherwise, however, the mental health of the pregnant woman remains [924] a consideration necessary to assure the constitutionality of the Kansas criminal abortion statute.

Alpha Med. Clinic v. Anderson, 280 Kan. 903, 923-924, 128 P.3d 364, 378-379, 2006 Kan. LEXIS 18, 41-42 (Kan. 2006)

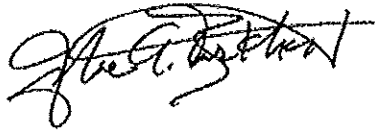
3. **Lastly, the state of Kansas is in a dire fiscal crisis and the job growth and economic stimulation has, quite clearly, been underwhelming.** Rather than focus on the crises of the state's budget and economy this bill serves as a distraction from the following:
 - a. We have a \$279 M budget shortfall that must be fixed by February 13th. The Legislative Research Department previously said the state would be unable to pay some of its bills by mid-February if the budget is not fixed.
 - b. The Department of Revenue has reported that January collections this year shows a shortfall of \$47 million.
 - c. Kansas ranks among the most-moved-out-of states in 2014 – the seventh most "moved-out-of" state in the country according to the 38th annual study by United Van Lines. In 2013, more than 4,200 people left Kansas than came in. Job growth in surrounding states exceed Kansas's and Kansas lags the national average. (Source: Wichita State's Center for Economic Development and Business Research (CEDER)).

In closing, I would like to remind the Committee that Kansas, as reported by the Attorney General's office, has paid private law firms slightly more than \$1 million to defend anti-choice laws enacted during the past three years. Additionally, litigation costs include \$179,000 in attorneys' fees and expenses associated with federal and state lawsuits filed over restrictions *enacted just last year*. This figure was

disclosed to The Associated Press by the Attorney General's office. If this bill were to pass, the state would incur more cost for the defense of an unconstitutional and damaging bill. We have over 390,000 people living in poverty in Kansas, citizens of this state would be served well if money to defend these lawsuits were utilized, instead, to help our fellow neighbors out of poverty and strife.

I encourage the Committee to vote no on SB 95. Thank you for hearing my testimony today.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie A. Burkhart". The signature is fluid and cursive, with a large, stylized initial "J" and "B".

Julie A. Burkhart
CEO
Trust Women Foundation
South Wind Women's Center