

Approved: 5-1-93
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on March 17, 1993 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department
Emalene Correll, Legislative Research Department
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

The Chairman, Sen. Oleen, announced SB 181 has passed the Senate and is in the House for consideration and reminded the committee it amended SB 81 into SB 181 and asked for clean-up action on the bill. Sen. Papay made a motion the bill be reported unfavorably, and it was seconded by Sen. Tillotson; the motion passed.

Sen. Oleen announced the hearing for SB 202, concerning requirements and restrictions relating to abortion. She set equal time limitations for each side of the issue and announced the committee will first hear a briefing by staff on the current Kansas law and review the bill that is being heard. She introduced Emalene Correll, who referred to a memorandum on the current law governing abortion (Attachment 1). Ms. Correll also reviewed SB 202, stating the bill is patterned after a model bill from Americans United For Life and explained how the bill amends current law, the new sections added and stated the bill redefines "viable". Sen. Oleen interrupted Ms. Correll and made note of the fact that we have several conferees to be heard today, and asked Ms. Correll to continue her review tomorrow. She noted each side would be given the remaining time - 15 minutes - for testimony. She then introduced Sen. Phil Martin, one of the authors of the bill, who gave a brief history of why the current abortion law was drafted and its passage last session. He referred to a Statement from the Attorney General (Attachment 2) and stated his belief that current law is unconstitutional and encouraged the committee to support this legislation. Sens. Tiahrt and Harris, authors of the bill, made brief statements to the committee. Sen. Harris stated an amendment would have to be made to the bill in Section 12, Page 5, beginning with Line 40, since that provision has been ruled unconstitutional. The following gave testimony as proponents:

Karyl Graves, (Attachment 3);
Kenda Bartlett, (Attachment 4).

The following gave testimony as opponents:

Jenifer Brandeberry, (Attachment 5);
Kristin Van Voorst, (Attachment 6);
Sue Ledbetter, (Attachment 7).

Sen. Oleen announced tomorrow each side will be given 20 minutes for testimony to allow for questions from the committee. Sen. Vidricksen introduced pages from his district who are assisting the committee today.

Meeting adjourned at 12:10.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: MARCH 17, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jerry Mark Rife	900 SW 31 st Apt 2 to	Olathe, KS
Donna Hart	Box 233 Garnett, KS	Observer
Shawn Powelson	Box 233 Garnett, KS	Student
Anne Thornton	Olathe, KS	citizen
Dustin Thornton	olathe, KS	student
Derek Lowrey	Wichita, KS	Student
Marshall Kilpatrick	Haysville, KS	observer/shadower
Ruth Lowrey	Wichita, KS	citizen
Baina	Topeka, KS	Citizens
Stephanie White	Argonia, KS	Student
Kendal Bullitt	Leavenworth	CWA of KS
Karyl Hoares	Lawrence	Kansans For Life
Susan Wenger	Topeka, KS	Kansans For Life
Deb Hanvey	Topeka	KFL
Tim Solbe	olath	KFL
Susan Deener	Topeka KS	Myself
Cathy Schmidt	Olathe, KS.	citizen
Roger K. Schmidt	Olathe, KS.	citizen
Carla Anger	Kansas City	ACLU
Ruth Ann HIEBERT	W. Newton	Women And Men For Choice
Donna Neufeld	N. Newton	Women & Men For Choice
DOUG TOMBAUGH	KANSAS CITY	ACLU
Melissa Boyd	Topeka	Professor Sen. Jones
Amy Smith	Manhattan	Intern Sen. Conrad
Amy Bille	Topeka	ALOW

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: _____

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SENATE FEDERAL AND STATE AFFAIRS COMMITTEE HEARING

WEDNESDAY, MARCH 17, 1993

SENATE BILL 202

Staff Briefing - Emalene Correll, Legislative Research Dept.

Proponents:

Sponsors of bill: Sen. Phil Martin
 Sen. Mike Harris
 Sen. Todd Tiahrt

Karyl Graves, Kansans For Life

~~Dr. Nancy Toth, Physicians For Life~~

Ronda Bartlett, CIDA

Opponents:

Jenifer Brandeberry, ProChoice Action League

Kristin Van Voorst, Planned Parenthood of Kansas

Sue Ledbetter, National Organization For Women

Anyone else who wishes to testify may do so by submitting written testimony prior to the meeting to be distributed to committee members.

Attach 1

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N - Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

March 16, 1993

CURRENT LAW GOVERNING ABORTION

Abortion Restrictions Imposed

H.B. 2646 establishes restrictions on abortions after the point of "viability" as defined by the bill; requires counseling of minors prior to (except in emergencies as defined) and counseling after abortions; requires parental notification for unemancipated minors subject to certain exceptions and a judicial bypass procedure; requires the informed consent (except in emergencies as defined) of the person upon whom the abortion is to be performed; expands the definition of criminal trespass to include interfering with access to health care facilities; repeals the current crime of criminal abortion; and makes other changes.

1. Post Viability or Late-Term Abortions. Abortions after the point of viability as defined by the bill must be performed by a physician.

Viability is defined as "that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means."

The bill prohibits abortion when the fetus is viable as defined unless two physicians (a documented referral from a physician, who is not financially associated with the physician performing the abortion is required) determine: (a) the abortion is necessary to preserve the life of the pregnant woman; or (b) the fetus is affected by a severe or life threatening deformity or abnormality. Violation is made a class A misdemeanor, *i.e.*, maximum fine of \$2,500 and a maximum term in jail of one year.

2. Parental Notification; Exceptions -- Judicial Bypass. Before a person performs an abortion on a minor (under 18), that person or that person's agent must give actual notice to one of the minor's parents or legal guardian.

Parental notice will not be required if: (a) the minor declares that her pregnancy was the result of incest (note: the minor must be informed of the physician's duty to report sexual abuse to the Department of Social and Rehabilitation Services); (b) the attending physician believes an emergency exists that threatens the health, safety, or well-being of the minor; or (c) a parent or guardian has signed a written notarized waiver of notice which is placed in the minor's medical record.

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A judicial bypass procedure is available for a minor who objects to notice of a parent. The minor, or by an adult of her choice, may petition the district court of any county for a waiver of the notice requirement. A minor may participate in the court proceeding on her own behalf or through an adult of her choice. Court appointed counsel must be appointed to represent the minor free of cost. The notice requirement must be waived if the court finds by a preponderance of evidence the minor is mature and well-informed or parental notice is not in the minor's best interest.

Any person who intentionally performs an abortion in violation of this section is guilty of a class A misdemeanor.

Anyone who willfully discloses the identity of a minor's petition to the court or permits or encourages another to do so is guilty of a class B misdemeanor, *i.e.*, maximum fine of \$1,000 and a maximum jail term of six months.

3. Minors – Counseling Prior To and After an Abortion – Emergency Exception.

Before an abortion may be performed on a minor (under 18), except in emergencies, as defined, a counselor is required to provide information and counseling to the minor. Further, a counselor must provide counseling to assist a minor in adjusting to any post-abortion problems that the minor may have. A parent, guardian, or a person 21 years of age or older who is not associated with the abortion provider and who has a personal interest in the minor's well being must accompany the minor and be involved in the minor's decision making process. Information and counseling must include: (a) options including abortion, adoption, and other alternatives to abortion; (b) an explanation that a minor may change a decision to have an abortion at any time before the abortion is performed; (c) information on agencies available to assist the minor and where birth control information is available; (d) discussion of the possibility of involving parents or other adult family members in the decision making; and (e) the minor's rights in regard to parental notification. The minor and counselor are required to sign a statement related to the requirements and receipt of counseling.

An emergency is defined to exist if the attending physician believes the health, safety, or well-being of the minor is threatened in which case counseling of a minor is not required.

"Counselor" is defined to include a person who is: (a) licensed to practice medicine and surgery; (b) licensed to practice psychology; (c) licensed to practice professional or practical nursing; (d) registered to practice professional counseling; (e) licensed as a social worker; (f) the holder of a master's or doctor's degree from an accredited graduate school of social work; (g) registered to practice marriage and family therapy; (h) a registered physician's assistant; or (i) a currently ordained member of the clergy or religious authority of any religious denomination or society. "Counselor" does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

4. Informed Consent – Emergency Situations. A woman upon whom an abortion is to be performed must give her informed consent unless an emergency exists.

Informed consent requires the physician who is to perform or induce the abortion or another health care provider to inform the woman, in writing, not less than eight hours before the abortion of: (a) the nature of the procedure, the risks and the alternatives to the procedure that a reasonable patient would consider material to the decision of whether or not to undergo the abortion; (b) the gestational age of the fetus; (c) the medical risks, if any, associated with terminating or

carrying the pregnancy to term; and (d) the community resources, if any, available to support the woman's decision to carry the pregnancy to term.

If a medical emergency compels an abortion to avert the woman's death or avert substantial and irreversible impairment of the woman's major bodily functions, the attending physician, if possible, shall inform the woman of this fact prior to the abortion.

5. Criminal Trespass Expanded. The definition of the crime of criminal trespass is expanded to include entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility in defiance of an order not to enter or to leave the land or structure personally communicated by the owner of the facility or other authorized person.

"Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center or mental health clinic, licensed psychiatric hospital, or other facility or office where services of a health care provider are provided directly to patients.

"Health care provider" means any person: (a) licensed to practice a branch of the healing arts; (b) licensed to practice psychology; (c) licensed to practice professional or practical nursing; (d) licensed to practice dentistry; (e) licensed to practice optometry; (f) licensed to practice pharmacy; (g) registered to practice podiatry; (h) licensed as a social worker; or (i) registered to practice physical therapy.

Criminal trespass is a class B misdemeanor, *i.e.*, maximum fine of \$1,000 and maximum jail term of six months.

6. Repeal of Current Criminal Abortion Statute. K.S.A. 21-3407, which is repealed by H.B. 2646, defines criminal abortion as the "purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth." The statute sets out conditions under which a physician may perform an abortion and makes the crime a class D felony. Portions of the statute have been found unconstitutional which require abortions be performed in an accredited hospital and require three physicians to certify that the abortion is justified under statutory criteria (impairment of the physical or mental health of the mother would be impaired; pregnancy was the result of rape, incest, or other felonious intercourse, or the child would have a physical or mental defect).

7. Local Government Regulation of Abortion Prohibited. Political subdivisions of Kansas are prohibited from regulating or restricting abortions.

8. Abortion Defined, Birth Control Methods Lawful, Other. "Abortion" is defined to mean the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) the use of any drug or device that inhibits or prevents ovulation, fertilization, or the implantation of an embryo; or (2) disposition of the product of *in vitro* fertilization prior to implantation. The bill further provides that the use of birth control drugs or devices which prevent ovulation, fertilization, or implantation of an embryo and the disposition of the product of *in vitro* fertilization are lawful and may not be prohibited by the state or any political subdivision.



Sen. Ma. *SW*
Attach. 2.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

STATEMENT OF
ATTORNEY GENERAL ROBERT T. STEPHAN

RE: Kansas Abortion Statute
Friday, August 21, 1992

MAIN PHONE: (913) 296-2218
CONSUMER PROTECTION 296-3751
TELECOPIER: 296-6296

For several weeks now, my staff and I have been taking a close look at the criminal abortion statute passed by the 1992 session of the Kansas Legislature which became effective July, 1, of this year.

The focus of our research centered on section three of House Bill 2646 which provides that:

"(a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that:

(1) The abortion is necessary to preserve the life of the pregnant woman; or (2) the fetus is affected by a severe or life threatening deformity or abnormality.

"(b) Violation of this section is a class A misdemeanor."

My concern with this provision is that the Supreme Court of the United States has ruled that the health of the mother has to be one of the factors considered in an abortion decision. The statute allows the abortion of a viable fetus only to preserve the life of the pregnant woman or because of

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a life threatening deformity or abnormality of the fetus, but does not provide for the health of the mother.

In Roe v. Wade, the U.S. Supreme Court stated that:

"(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother..." (emphasis added)

In other words, the Court specifically said that the mother's health was to be considered by the state in regulating abortions once the fetus has reached the stage of viability.

The most recent decision by the Supreme Court, in Planned Parenthood of Southeastern Pennsylvania v. Casey, specifically affirmed the Roe v. Wade language regarding the health of the mother. In another decision handed down by the Supreme Court in 1980 (Harris v. McRae) the Court further discussed the protection of the pregnant woman's health by saying:

"It is evident that a woman's interest in protecting her health was an important theme in Wade. In concluding that the freedom of a woman to decide whether to terminate her pregnancy falls within the personal liberty protected by the Due Process Clause, the court in Wade emphasized that the fact that the woman's decision carries with it significant personal health implications--both physical and psychological. In fact, although the Court in Wade recognized that the state interest in protecting potential life becomes sufficiently compelling in the period after fetal viability to justify an absolute criminal prohibition of nontherapeutic abortions, the Court held that even after fetal viability a State may not

prohibit abortions 'necessary to preserve the life or health of the mother,...'"

It appears from the cases I have mentioned that the Kansas statute falls short of Roe v. Wade's standard and I feel it is necessary to express my concern that this section would be found unconstitutional if challenged.

I presume it was the intent of the legislature to prohibit post-viability abortions to the extent allowed by the Supreme Court. With regard to parental consent, informed consent and the provision of counseling for minors, the legislature included exemptions based upon an emergency which would threaten the health, safety, or well-being of the pregnant woman. In all other areas, the the legislature appears to have attempted to strictly comply with Roe v. Wade.

I would like to note that the abortion statute does contain a severability clause so that if the courts were to strike down section three as unconstitutional, the ruling would not affect the remainder of the statute. However, if the courts struck down section three as unconstitutional, Kansas again would have no law prohibiting the abortion of a viable fetus.

I believe it is necessary, in its next session, for the legislature to address this issue. I believe neither side of the abortion issue would be well served by a court declaring as unconstitutional Kansas' only statute prohibiting the abortion of a viable fetus.

Kansans for Life

Attach.

Chapters and Affiliates

3202 W. 13TH St.
Wichita, Kansas 67203
(316) 945-9291 or 1-800-288-0733

Abilene
Atchison
Arkansas City
Augusta
Barber County
Chanute
Chase County
Clay Center
Coffey County
Coffeyville
Columbus
Concordia
Copeland
Decatur County
Derby
Dodge City
Doniphan County
Edwards County
El Dorado
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Hanover
Harper County
Harvey County
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Horton
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Osborne
Parsons
Phillips County
Pittsburg
Pratt
Republic County
St. Paul
Salina
West Sedgwick County
Smith County
Topeka (4 chapters)
Wellington
Wichita (5 chapters)
Wilson County
Winfield
Wyandotte County

Colleges &
Universities
(9) Chapters

Madam Chairperson, distinguished members of the committee, my name is Karyl Graves, lobbyist for Kansans for Life. Kansans for Life is the official state affiliate to the National Right To Life Committee in the State of Kansas. We presently have seventy-five (75) local chapters within the state and seven (7) collegiate and university chapters. The organization is active in both education and political action.

The bylaws for Kansans for Life prohibit the organization from engaging in or encouraging civil disobedience. Kansans for Life believes in working within the system for change and thanks this committee for the opportunity to participate in a legislative hearing on Senate Bill number 202.

The Kansans for Life Legislative Committee has voted to endorse and support enactment of Senate Bill number 202 into law. Senate Bill number 202 would strengthen the parental notice, informed consent and waiting period enacted by the last legislature. We view the issue as primarily the woman's right to know and make an informed decision after careful reflection based upon all the available information so that the woman will make the choice for life.

There are some small technical amendments we would suggest to the Bill to clarify what we believe to be the sponsor's intent. With regard to reporting of abortions performed, the current language in the Bill is limited to hospitals and licensed facilities. The present language would not mandate record keeping and reporting by individual practitioners who perform most abortions in Kansas. Kansans for Life believes that accurate reporting of abortions, which protects the confidentiality of patient and doctor, is necessary for the formulation of public policy.

Kansans for Life, with or without the amendments, strongly supports Senate Bill number 202 and thanks this committee for the opportunity to appear at this hearing in support of Senate Bill number 202 which we believe will save lives.

Madam Chairperson, members of the Senate Federal and State Affairs Committee and particularly sponsors of Senate Bill number 202, thank you for the opportunity to speak in favor of this woman's right to know legislation.

Thank you.



Kansas affiliate to the National Right to Life Committee

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Concerned Women for America

370 L'Enfant Promenade, S.W., Suite 800 Washington, D.C. 20024 (202) 488-7000
P.O. Box 46 Leavenworth, KS 66048 (913) 682-8393

Beverly LaHaye
President

Kenda Bartlett
Kansas
Area Representative

March 17, 1993

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
Lana Oleen, Chairwoman
SB 202

Madam Chairwoman and Members of the Committee:

Thank you for the opportunity to address the committee today.
We rise in support of SB 202.

I would like to address what I believe are the two main concepts in this bill. The first is found in Sections One through Three on pages one through four of the bill. The changes that would be made by the amendments to this portion of the current law would serve to close some of the loopholes that are found in the current law. As many of you on the committee know, the legislature fought a long hard battle last year on this issue of abortion. The final outcome of that debate was the current law which was intended to regulate the abortion industry in this state to a modest degree. But because of vague wording and stipulations that have proven to be unenforceable, the current law has not made any difference in how the abortion facilities in this state do business. If the intent of the legislature was, in fact, to regulate abortion, then the amendments recommended in this bill need to be enacted. They do not place undue burden on the abortion provider or on the woman seeking the abortion. They do, though, make possible the smallest regulation of this multimillion dollar industry. Our organization hears from people regularly with stories of how the law is being circumvented. The legislature and the governor indicated by their actions last year their belief that this industry be regulated; we would ask you to put at least some baby teeth into this law by enacting the changes in sections one through three.

We have chosen not to address sections four and five because the Senate as a body addressed the issue of reporting two weeks ago.

"Protecting the rights of the family through prayer and action"

*Sen. F. & S. A.
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The second major portion of this bill that I would like to address is sections 6 through 13. This portion of the bill could best be titled "Woman's Right to Know" legislation. It offers solutions for women in crisis pregnancies by providing her with a 24-hour "reflection period" and an opportunity to review accurate information on alternatives, the baby's development and medical risks. This bill meets the constitutional requirements established under the U. S. Supreme Court's Casey decision.

In the law passed by the legislature last year, it was established that the state has the authority to require that women be provided with information prior to making the important decision of whether or not to seek an abortion. The U. S. Supreme Court in Planned Parenthood v. Casey (112 S.Ct. 2818) said "Though the woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the state is prohibited from taking steps to ensure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy, the State may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child herself."

This section of the bill is to insure that the woman is given the opportunity to make a fully informed decision. This is a most critical decision that will impact upon her for the rest of her life. Requiring anything less than full knowledge would be a violation of the woman's right to know. Woman's Right to Know legislation is consumer protection. There is an inherent conflict of interest in allowing the abortionist to determine what the informed consent will be. Since the abortion counselor's income depends on the woman's decision, there is a certain economic incentive to encourage abortion.

The state also has the authority to require a "reflection period" after the information is provided to the woman who is seeking an abortion. "The idea that important decisions will be more informed and deliberate if they follow some period of reflection does not strike us as unreasonable." (Planned Parenthood v. Casey 112 S.Ct. 2825). This "reflection period" is good public policy. Informed consent and reflection periods are required for adoption, sterilization, major purchases, marriage, and for general medical and surgical procedures under current state law.

Through the Woman's Right to Know legislation offered in this bill, women will be empowered with the truth to make the right decision.

Thank you,
Kenda Bartlett
Legislative Liaison

Dist. 2/19
Attach. -

ProChoice Action League ★ P.O. Box 3622, Wichita, KS 67201 ★ 316-681-2121

Dedicated ★ Determined ★ Decisive

TO: MEMBERS OF SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: Jenifer Brandeberry, Pro Choice Action League
RE: S.B. 202
DATE: March 18, 1993

Members of the Committee I come before you today to ask that you defeat S.B. 202. The reasons why this legislation should be defeated are probably obvious to most all of you, and I won't waste much of your time attacking the numerous inconsistencies and problematic areas which can be found in almost every paragraph of this bill. I would like to take a little of your time to remind the committee of how we as a state arrived at the current rules and regulations regarding abortion services in Kansas.

Until the 1992 legislative session abortion law in Kansas reflective no state legislative action since the 1973 Roe v Wade decision legalizing abortion for the women of America. Throughout the late 1970's and all throughout the 1980's the only impetus to regulate and restrict abortion services in Kansas were initiated by the anti-choice movement. Every year for almost two decades the Kansas legislative body rejected the anti-choice movements efforts to restrict abortion services. Kansas has and continues to reflect a great respect and trust for the women of this state, and I am personally glad to have had the opportunity to work with Kansas legislators for the past three years.

Last year, Pro Choice Action League decided that we could no longer afford to sit back and just defeat the anti-choice movements proposed legislation and we decided to work vigorously to pass legislation that would ensure access to abortion services for the women of Kansas. The state of Kansas passed the first and probably most comprehensive abortion bill in the country last session. The current law allows and ensures access to abortion services for all women in Kansas. The current law also contains a comprehensive parental notification section, informed consent provision accompanied by an 8 hr waiting period, strict guidelines regarding the counseling of minors and a definition of viability centered around the concept that abortion is and should remain a choice for all women up until a fetus could in the best medical judgement of a physician be capable of sustained survival outside the uterus without the application of extraordinary medical means. The current law also protects doctors, patients and cities from being terrorized by the Operation Rescue types that continue lurk about in our country.

Prior to 1992 anti-choice legislators and lobbyist have pushed for abortion restrictions; knowing that a call for an all out ban on abortion would not an any likelihood have enough support to become law. The anti-choice movement worked hard to pass strict

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and dangerous bills on parental notification. The argument they used when pushing their parental notification bills was that the state had a responsibility to "protect minors". The anti-choice movement tried to sell parental notification year after year as legislation that was designed to protect young women. Pro Choice Action League worked hard and successfully in illustrating to the majority of Kansas lawmakers that parental notification written by the anti-choice faction had NOTHING to do with protecting teens but everything to do with denying access to abortion services for young women. The same or similar arguments were the crux of the anti-choice faction's attempt to convince the legislature to pass bills which were designed to "protect women", by mandating informed consent restrictions. The same "protection" arguments were used when the anti-choice movement attempted to muddle the definition of viability by removing provisions in the law for post viability abortions when those services were needed to protect women's lives and when their health was in danger. The anti-choice movement has also consistently tried to deny protection for those women who discover that the fetuses they carry are grossly deformed. An anti-choice legislator even went so far as to suggest that women in the state of Kansas were having abortions on healthy nine month old fetuses because they might be having a bad hair day! Fortunately, the state legislature consistently, persistently and for over a decade saw through this "desire to protect minors, women and viable fetuses" and defeated the anti-choice movements often ridiculous and unconstitutional legislation.

Since I have been working for Pro Choice Action League I have met and talked to lots of legislators and have tried to explain to them as to why we as an organization we were opposed to the anti-choice movements restrictions. Our reasons were many and detailed, but over and over again we explained to legislators that the desire to "protect women, minors and viable fetuses" was nothing but a lot of smoke and mirrors, and that the true agenda of the anti-choice movement has been and still is today to outlaw and criminalize all abortion. This agenda was never as clear as it was last year when Pro Choice Action League and many pro-choice organizations and legislators worked to pass our current law. The anti-choice factions were dumbfounded when we attempted to write into law reasonable, albeit somewhat painful restrictions regarding abortion services in Kansas. The Kansas legislature debated long and hard and throughout much of the 1992 legislative session and eventually passed H.B. 2646 into law. The anti-choice movement was even more dumbstruck when "their" strong anti-choice Governor signed this bill into law. What I remember most vividly about last session is the vigorous lobbying and intensity in which the anti-choice movement fought this legislation. They fought legislation which did for the first time seriously and with great sensitivity entertain the idea as to what was the state's responsibility in creating legislation that would truly "protect minors, women and viable fetuses". By pushing for the passage of H.B. 2646, Pro Choice Action League encouraged legislators to reflect upon what appropriate state

policy was and should be in the arena of abortion. Philosophically Pro Choice Action League believes as do many legislators that government has no business interfering with a woman's right to choose abortion, but we understood that on a national level the Supreme Court was in effect encouraging states to engage ideas regarding the regulation of abortion services. Pro Choice Action League as an organization recognized and I believe respected the integrity of state lawmakers to take up this notion of "appropriate state policy" regarding abortion services and feels very strongly that the state did a fine job on drafting legislation which did for the first time since the Roe v Wade decision delve into the privacy of a woman's right to choose.

Last year was an ugly and often vicious attempt by the anti-choice movement to defeat the "abortion compromise legislation"; the very similar legislation that they had for over a decade urged legislators to pass. The "it will never be enough" agenda never became more clear than it did last year as the anti-choice groups opposed EVERY SINGLE aspect of the H.B. 2878 and H.B. 2646.

I find it ironic and somewhat insulting that here we are again, hearing a bill that the anti-choice movement supports and are now trying to sell to you the committee as legislation designed to "protect women, minors and viable fetuses". I felt it was important to come to you today to remind you of our legislative history regarding abortion, and to say to you that I am confident you will reject, as you always have in the past, yet another closeted attempt to ban abortion in Kansas.

Attach.

To: Senate Federal & State Affairs
From: Kristin Van Voorst
Planned Parenthood of Kansas

Planned Parenthood of Kansas firmly opposes Senate bill 202. This bill appears to ignore the fact that abortions are legal medical procedures in state of Kansas. The areas I will be addressing this morning will be the medical emergency exception, the 24 hour waiting period, and the conflicting definitions of abortion.

The medical emergency exception in Senate bill 202 would not satisfy the Roe v. Wade doctrine that the health of a woman patient must be the state's paramount interest when regulating abortions. After Roe, the United States Supreme Court expressly held that: "the woman's life and health must always prevail over the fetus' life and health when they conflict." Colautti v. Franklin, 439 U.S. 379, 401 (1979).

In the recent case of Planned Parenthood of S.E. Pa. v. Casey, the Supreme Court considered a medical emergency exception applicable to regulations involving parental notice, informed consent, etc. The Court did not consider such an exception as applied directly to the provision of abortion services. Casey, did not in any way overrule the Roe and Colautti emphasis on the woman patient's health.

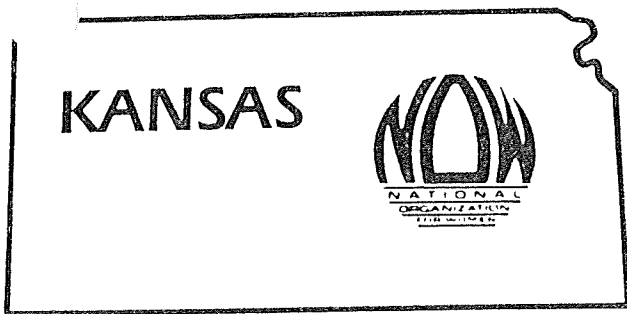
It would be a serious failing of the Kansas legislature to follow the same troublesome Pennsylvania wording for a medical emergency exception, as contained in S.B. 202. Standing alone, such statutory language is obviously unconstitutional, and would require extensive litigation to develop the judicial contortions necessary to mold the exception back within the Roe holding. It took four years for the Pennsylvania laws to be litigated before the intent of the legislature was finally held to be consistent with the Roe mandate that the "health" of the woman patient be paramount.

The 24 hour waiting period is troublesome because the facts of this situation ~~is~~^{are} markedly different from that of Pennsylvania. In the state of Pennsylvania there are approximately 90 abortion providers throughout the state. That is not the case in Kansas. At the most, Kansas has no more than 15 abortion providers in the state, these few providers are located in only four counties in the state. The Supreme Court in Casey addressed only the facts specific to Pennsylvania, a much smaller state in terms of square miles. I believe that if the Supreme Court was to look at the facts specific to Kansas that the Justices would rule that an "undue burden" would be placed on the women of Kansas. The 24 hour waiting period would in some cases make it impossible for some rural women to attain an abortion, thus the 24 hour waiting period would be found to be unconstitutional.

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Lastly, I would like to address the conflicting definitions of abortion in S.B. 202. The definition of abortion on page 1 of the bill is the same as the current law. What is troublesome is the second definition of abortion on page 9 of the bill, which contradicts the first definition on page 1. The second definition in the bill would ban the use of birth control pills, IUDs, and Norplant. This definition implies that frozen embryos will be treated as total human beings under the law. There is no question that this second, conflicting definition would be found to be unconstitutional.

I have briefly touched on the legal issues in S.B. 202 that are wrought with apparent flaws. It is my hope that this committee would agree that S.B. 202 would be a major step backwards after last year's long struggle with this issue.



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Attach
To: Senate Federal and State Affairs

From: Sue Ledbetter and Amy C. Bixler,
National Organization for Women

Re: In Opposition to Senate Bill No. 202

Date: March 17, 1993

The National Organization for Women, Kansas Chapter, stands in opposition to the passage of Senate Bill No. 202. We feel this Bill contains major flaws. We will address only a few points of this Bill as other opponent conferees will address the remainder.

N.O.W. questions the economic impact of the added pathology mandated in this Bill. The cost, ultimately, will be passed on to the women seeking services, adding to an already over-burdened, costly health care system.

Section 7 of this Bill proposes a 24-hour waiting period between the time a woman receives the counseling and mandated information -- in person -- and the time the procedure actually occurs.

Last year, through much effort and heartache, the '92 Legislature passed a "compromise" abortion; a true compromise, for, to paraphrase Senator Martin, both sides walked away with a tear in their eye. In that Bill, an 8-hour waiting period was adopted. This has been law now since last July.

With such a background, N.O.W. must question the motives of proposing a more-restrictive waiting period. It would appear that the intent, ultimately, is to decrease accessibility and further harass patients. Making a more-restrictive waiting period only penalizes the *women* in crisis pregnancies seeking to terminate them, particularly those from rural areas. They are the ones who must find housing overnight; they are the ones who must arrange transportation; they are the ones who must miss work or school.

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Finally, there is no evidence to suggest that women who endure mandatory waiting periods change their minds. This is merely compounding a difficult situation for no legitimate reason.

N.O.W. believes this Bill targets and is a vehicle for harassment against health care providers. Anti-abortion violence began in the early 1980's with a kidnapping of a Michigan physician and his wife. Soon we had clinic bombing, arson, clinic invasions, death threats and last week another threshold was crossed with the murder of a physician. This is nothing less than pure terrorism. Kansas is not exempt from these attacks. We, too, have had a clinic bombings, vandalism, harassment and death threats to health-care providers, clinic employees, volunteers and advocates. And the harassment continues...

Therefore, for the reasons set forth above, N.O.W. encourages this Committee to send a strong message that acts of violence and harassment of legal health care services will not be tolerated. We oppose the passage of Senate Bill No. 202.