

**Texas Senate Session on June 25, 2013.
The Wendy Davis filibuster of Senate Bill 5.**

Full Video Link: <https://www.dropbox.com/s/a2umrovij18uecw/SB5-000-Wendy%20Davis%20Filibuster%20%28FULL%29.mp4>

Full Audio Link: <https://archive.org/details/SB5000WendyDavisFilibusterFULL>

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*[**EDITOR'S NOTE:** Notes may be added **between** lines to clarify points for readers. Words which are not understood by the transcriptionist will appear **in-line** but in square brackets.]*

**Part 001
Wendy Davis' Opening Remarks
00:00:00**

Video Link: <http://youtu.be/1IOijHOdx8c>

Audio Link: <http://archive.org/details/SB5001WendyDavisOpeningRemarks>

Transcribed by: Ana Mardoll

Lt. Gov. [David Dewhurst](#): Members of the Senate will come to order. What I wanted to do before we start today is remind our members, our guests on the floor, and all of our guests in the gallery that this is a traditional parliamentary body with strict rules of decorum. And senate rules prohibit outbursts on the floor and in the gallery, so I ask that you please keep your conversations to a minimum and any applause, make it polite, so that we can hear on the floor and proceed today. So thank you. Senator Watson, for what purpose do you rise?

Senator [Kirk Watson](#): Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Kirk Watson: You may have just addressed it, but I wanted to ask a parliamentary inquiry about the rules of decorum because this is one of those days, it could be a long day, it's a matter of great passion, among all of the people in the gallery and all the people that are on the senate floor, and I wanted to make sure that it was communicated, and as I indicated you may have already answered that question, but I wanted to make sure it's communicated that we ought to maintain decorum.

Lt. Gov. David Dewhurst: And I appreciate that, Senator Watson. We've had incidences in the past where people were not maintaining decorum and they had to be removed, and in extreme

cases clear the galleries, so we don't want to get to that point. So thank you. Thank you. Members, one of our colleagues and one of our friends, [Senator Van de Putte](#), her father passed away regrettably on Friday -- this last Friday -- and I'd like to do a memorial resolution, I know it's been signed by many of the members, but I'd like to do that later today. The chair recognizes Senator Hegar for motion to concur in the House amendments for Senate Bill 5.

[EDITOR'S NOTE: *Senate Bill 5 was the designation given to this bill during the special session in which Senator Wendy Davis choose to filibuster. After the bill was defeated in the filibuster, a second special session was called; there the bill was introduced as both House Bill 2 and Senate Bill 1 with identical language to the final version of Senate Bill 5, and was passed on July 13th. The full text of the bill can be found at [Texas Legislature Online](#) or in **Appendix A** below.]*

Senator [Glenn Hegar](#): Thank you, Mr. President. Members, as we all know, Senate Bill 5 was passed out of the senate on June 18th with an amendment that we put on by Senator Deuell. This bill is back before us in that exact version as well as the language that was passed out of the Health and Human Service committee on June 14th. This bill will do four things in particular.

One, it will establish a state compelling interest in pre-born children who can feel pain and ban abortion at 20 weeks threshold with the fact that there would be exceptions for medical emergencies and those definitions would: one, protect the life-threatening of the mother, her physical life, and also substantial irreversible impairment of any bodily function and also an exception for severe fetal anomaly which is in statute today.

It would also rise all clinics to the ambulatory surgical center standard, which we had passed into law several sessions ago for any abortion that was after 16 weeks. The bill thirdly, as we debated on this floor back on June 18th, would require doctors to have secured admitting privileges at hospitals within 30 miles of each clinic at which he or she performs those abortions. And then lastly, as we debated here last week on the floor, it would also include prescribing physician must examine the patient, her records, and determine the gestational age of a child, and also require the physician prescribing -- yes, sir?

Lt. Gov. David Dewhurst: I wonder if I could interrupt you just for a moment. Senator Davis, yesterday you gave me a sheet indicating it was your intention to filibuster. Is it still your intention to filibuster?

Senator [Wendy Davis](#): Yes, Mr. President, I --

Lt. Gov. David Dewhurst: You're recognized.

Senator Wendy Davis: -- intend to speak for an extended period of time on the bill, thank you very much.

Lt. Gov. David Dewhurst: Excuse me, I've just been asked by the Parliamentarian. I'd like to make one motion on excusing [Senator Eltife](#). [Senator Whitmire](#) moves to excuse Senator Eltife on matters of important business. Is there objection from any member? Chair raised no objections. So ordered. Chair recognizes Senator Davis.

[EDITOR'S NOTE: The Parliamentarian is the woman in white standing behind Lt. Gov. Dewhurst. Her name is Karina Davis. I do not know if she is related to Wendy Davis, and could find no mention of a relation online. Her job is to "provide advice on rules, procedure and precedent", and she is appointed by the lieutenant governor. LINK: [Argument About Rules Takes Center Stage at Texas Abortion Debate](#)]

Senator Wendy Davis: Thank you, Mr. President, and thank you, members. As we began to debate this bill on the senate floor last week, we talked about the fact that we were here on this particular motion because we had taken extraordinary measures to be here.

[EDITOR'S NOTE: This is a reference to placing the bill in the special session rather than the regular session. The Texas special session, as opposed to the regular session, can suspend the usual rule that bills must pass with a 2/3 majority and replace it with a rule which allows bills to pass with a simple majority. This is one reason why the special session is supposed to be used only for emergencies. LINK: [Texas Politics](#)]

Senator Wendy Davis: And I want to talk about that for a moment: how we wound up at this moment, on this day, on the senate floor, debating this bill. And we wound up here because extraordinary measures were taken in order to assure that we would land here. We all know that the bills that are before us today, that have been folded into this one bill, Senate Bill 5, are bills that were filed during the regular, called session of the Texas legislature.

And we all know, as a body, why we did not hear this bill during the regular session. And that is because, of course, under our rules, our traditions, it takes two-thirds of the members of this body in order to suspend the regular order of business, because it is typical for a blocker bill to be filed, in order for a bill to be taken up. And we know that there were 11 members of this body who refused to allow the suspension of that particular rule.

[EDITOR'S NOTE: There are 12 Democrats in the Texas Senate. One Democrat, Senator Eddie Lucio, Jr. supported Senate Bill 5. LINK: [Texas Tribune Directory](#)]

Senator Wendy Davis: We know that there were no real courses of action on the House side on this bill during the regular session, as well. And when the session ended, and within the hour, Governor Perry called us back. He initially called us back for another matter that also could not be heard on this senate floor during the regular session because of that two-thirds rule and of course that was our redistricting bills.

[EDITOR'S NOTE: Redistricting in Texas landed the state before the Supreme Court in 2012 on

accusations of racist gerrymandering designed to keep Republicans in power despite huge spikes in minority population numbers. LINK: [The Supreme Court and the Texas Gerrymander](#)

Senator Wendy Davis: And now something extraordinary has happened. We were called to a special session, our presiding officer has decided against tradition of the Texas senate to have us convene in order to talk about bills that could not be taken up in the regular session. And to not follow the tradition of the two-thirds rule in order to accommodate that occurring. This bill, of course, is one that impacts many, many people. And it's one that took extraordinary measures in order for us to be here and to converse on it today. Members, I'm rising on the floor today to humbly give voice to thousands of Texans who have been ignored. These are Texans who relied on the minority members of this senate in order for their voices to be heard.

These voices have been silenced by a governor who made blind partisanship and personal political ambition the official business of our great state. And sadly he's being abetted by legislative leaders who either share this blind partisanship or simply do not have the strength to oppose it. Partisanship and ambition are not unusual in the state capital, but here in Texas, right now, it has risen to a level of profound irresponsibility and the raw abuse of power.

The actions intended by our state leaders on this particular bill hurt Texans. There is no doubt about that. They hurt women; they hurt their families. The actions in this bill undermine the hard work and commitment of fair-minded, mainstream Texas families who want nothing more than to work hard, raise their children, stay healthy, and be a productive part of the greatest state in our country. These mainstream Texas families embrace the challenge to create the greatest possible Texas. Yet they're pushed back and they're held down by narrow and divisive interests that are driving our state. And this bill is an example of that narrow partisanship.

Today I'm going to talk about the path these leaders have chosen under this bill, and the dark place that the bill will take us. I will try to explain the history of the [failed] legislation before us, the impact of that legislation, and most importantly what history tells us about these policies and the motivations behind them. They do real damage to our state, and to the families whose rights are violated and whose personal relationship with their doctor and their Creator -- which should belong to them and them alone -- are being violated.

Most importantly today, I will share with you what thousands of families have had to say about this legislation, and those bringing this legislation to the floor, when the majority of Texans want us working to press upon genuine business of the state of Texas.

Video Link: <http://youtu.be/C6sguvWti1c>

Audio Link: <http://archive.org/details/SB5002TheHistoryOfSB5>

Transcribed by: Ana Mardoll

Senator Wendy Davis: The legislation before you has a history, as we talked about a moment ago. And I'm going to go specifically through the history of this particular bill. There was ample opportunity during the special session to move these pieces of legislation and some did move, but the will of the legislature did not propel them timely through the process. And here are the basics about what happened to each of those.

SB25 by [Senator Hager](#) was the 20-week abortion bill, filed on March the 5th. It was referred to State Affairs on March the 12th. It never received a senate hearing. The house companion, House Bill 2364, by [Representative Laubenberg](#) was filed on March the 5th, referred to State Affairs on March the 11th, a hearing was held on April 10th, it was reported out of House State Affairs on May the 2nd. The bill was sent to house calendars on May the 7th, and it was never placed on the calendar.

SB97 by [Senator Patrick](#) regarding abortion-inducing drugs and regulations on the administration of those drugs was filed on November the 12th, it was referred to Health and Human Services on January 28th, and a senate hearing was held on February 26th. It was reported out of the Senate Health and Human Service Committee on March 28th, but it died on the senate intents calendar. And it died for the reason that I mentioned a moment ago: because a third of the members of this senate who represented voices who deserve to be heard prevented the bill from coming forward. There was no house companion to that bill.

SB537 by [Senator Deuell](#) related to the regulation of abortion facilities, requiring that they all have a standard met for ambulatory surgical centers. That bill was filed on February 13th, it was referred to Health and Human Services on March 19th, excuse me, February 20th. There was a senate hearing on the bill on March 19th, it was reported out of committee on March 26th, and it died on the senate [intent] calendar. Again it died because a third of the members of this body made it so. There was no house companion filed to that bill.

SB98 by [Senator Taylor](#) related to hospital admitting privileges and the requirement that doctors who perform abortions have admitting privileges at a hospital within a certain distance. It was filed on March the 6th, it was referred to Health and Human Services Committee on March the 12th, the senate hearing was held on April the 16th, it was reported out of committee on April 22nd, and it died on the senate intent calendar for the reasons that I mentioned a moment ago: because a minority group of senators who represent voices across the state of Texas made it so. There was a house companion to that bill: HB2816 by [Representative Burkett](#). It was filed on March the 7th, it was referred to House State Affairs on March 18th, the house hearing was held on March 27th, it was reported out of committee on April 24th, and sent to house calendars on April 26th, where it died.

And how did we get here? Well, of course we were called to a special session. And, as I said, that session did not begin with the addition of this bill, it began with redistricting.

On June the 10th, [Governor Perry](#) added transportation funding to the call, and of course the Democrats in this chamber had indicated our intention that we would vote to advance that bill, were it placed before this one today. We understand that transportation is a priority. On June the 11th, these bills were filed; several bills were filed. Including also a bill by [Senator Huffman](#), SB23, a bill again that the Democrats have indicated, were it taken up today before this bill, we would have joined our colleagues in passing it, because we believe it's important.

Governor Perry, of course, on that day also expanded the special session to include legislation relating to the regulation of abortion procedures, providers, and facilities. He also spoke in support of that call, about the horrors of the national late-term abortion industry. He said that sadly some of those atrocities happen in our own state and in Texas we value all life, and we work to cultivate a culture that supports the birth of every child.

***[EDITOR'S NOTE:** On June 26th, one day after the filibuster, Texas executed its 500th death row inmate. The prisoner was a 52-year-old woman of color named Kimberly McCarthy. Her attorney had asked the Texas Court of Criminal Appeals to halt the execution on the grounds that black jurors were excluded from her trial by Dallas County prosecutors.*

In a statement issued following the execution of Kimberly McCarthy, attorney Levin said: "500 is 500 too many. I look forward to the day when we recognize that this pointless and barbaric practice, imposed almost exclusively on those who are poor and disproportionately on people of color, has no place in a civilized society." LINK: [Death by Numbers](#)]

Senator Wendy Davis: He said that we have an obligation to protect unborn children and to hold those who peddle abortions to standards that would minimize the death, disease, and pain that they cause. What he did not do was place on the call anything that would help to prevent unplanned pregnancies. What he did not do was place anything on the call that would aid women in making sure they never find themselves in need of the occasion that we meet here today to discuss.

On that same day the call was broadened again, the bills were referred and put on a fast track for hearing the following day, leaving little to no advance notice for a public hearing. But fortunately a procedural action forced the committee to wait an extra day -- a tagging of the bill -- allowing more Texans the opportunity to have their voices heard on these issues. Ultimately, the Republican leadership agreed to move only one bill on the Senate floor, and that was SB5 that is before us today.

Before bringing the bill up, there was discussion amongst the majority and the 20-week fetal pain portion of the bill was removed by Republicans before the bill was presented to us for our consideration on the floor. As you probably remember from that night, Democratic senators

offered seventeen amendments to the bill on the senate floor to address concerns from stakeholders. Primarily to address concerns, again, the prevention of abortion is the surest way -- excuse me. The prevention of pregnancy is the surest way to decrease the demand for abortion.

Included in those amendments were a request that we accept Medicaid from the federal level, which we knew would bring down a tremendous amount of money and assistance for women's health. Included in that was a full funding of the Women's Health Program which provides a 90 to 10 match for uses of helping women who are in need of family planning services. But all of those amendments were rejected.

The bill was voted out on party lines and then moved over to the house. The bill was received by the house on June 20th, and was set for a public hearing the following day. The hearing also included HB16 which was the 20-week stand-alone bill, and HB60, the omnibus bill. Hundreds of Texans from all over the state appeared to testify at the hearings. But unfortunately the hearing -- which lasted sometime until the wee hours of the morning, 3:30 to 4 o'clock -- was halted before all of the testimony was given by those who had waited, many of them, from the prior morning to voice their feelings on the bill. And it is my intention today to give them a voice. By reading all of their testimonies on the senate floor.

In committee, SB5 was changed to include the section of the bill -- the 20-week ban -- that was removed in the senate, also HB60 and HB61. On the house floor there was minimal engagement and participation by the house author on the legislation.

***[EDITOR'S NOTE:** The "minimal engagement and participation by the house author" is a reference to Representative Laubenberg who refused to take questions by the Democrats after she infamously stated that there was no need for an amended exception for cases of rape and/or incest because, "In an emergency room, they have what's called a rape kit where a woman can get cleaned out," adding that a rape kit is "equivalent to a D&C" abortion. Laubenberg refused to take questions after making this false and embarrassing statement, despite the Democrats pointing out that her refusal was unheard of and possibly a violation of house rules. LINK: [A Sunday At The Capitol](#)]*

Senator Wendy Davis: House Ds offered thirteen amendments targeted at addressing concerns raised by stakeholders. All were rejected. And now we find ourselves here. This is the omnibus piece of legislation that contains these elements of bills that were filled in the 83rd session: the 20-week ban, the abortion-inducing drugs provision, the ambulatory surgical center standard, and the hospital admitting privileges. The alleged reason for the bill is to enhance patient safety. But what they really do is create provisions that treat women as though they are not capable of making their own medical decisions.

They weaken standards of care, because as we all know, every member on this floor, knows that the provisions of the ambulatory surgical center standards will immediately place 37 of the

42 abortion clinics in Texas out of compliance. And though the arguments on the senate floor were made that the reasons for those standards was for patient safety, not a single instance, not a SINGLE INSTANCE, could be demonstrated to illustrate why those ambulatory surgical standards were important in assuring women's safety. Not a single example was provided where women had been provided a less safe atmosphere in the existing clinical setting today than they would receive in that setting.

What this bill really does is to threaten the doctor-patient relationship. And we know that we received a great deal of information from doctor's groups, which I'll read into the record in a little while, about the intrusion on that relationship and we know that in no other instance has this legislature chosen to place itself between a woman and her doctor, or any patient and their doctor. We know that these additional standards are unnecessary, they're unsupported by scientific evidence, including unnecessary requirements that may be extremely difficult and in some cases impossible to meet, without a basis in public health and safety.

As we've been debating this issue, we have been reminded that there was a time in our country when only the wealthy could afford to access abortion services because they had the ability to travel to places where it was legal. And that women who didn't have that access to care were relegated either to carrying a pregnancy to term, or -- and very sadly -- to some unsafe methods that they turned to to try to address that need. And we know that women lost their lives over that.

We also know, in written testimonies from the group -- the National Obstetrics and Gynecologic Group -- that their fear is the same thing is going to happen. In the state of Texas, through this bill, we are asking that women be forced to step back in history, back to a time where once again wealthy women who have the ability and the flexibility in their lives and their schedules to travel for these services will be accommodated and women who will not will suffer a different and unfortunately probably in some instances a life-threatening consequence.

Part 003
Testimony of Texas Medical Association
00:25:51

Video Link: <http://youtu.be/Wu2b1N9W1M0>

Audio Link: <http://archive.org/details/SB5003TestimonyOfTexasMedicalAssociation>

Transcribed by: Ana Mardoll

Senator Wendy Davis: The 20-week ban on abortion. We've heard a great deal of testimony about that particular provision, and I want to hit a few highlights of what has been shared with us. Number one, and most importantly, from our medical community we've heard the concern that this interferes with the practice of medicine. As important, we know that concerns have

been raised that this ban interferes with a woman's health care decision before she and her doctor may have important health information about her own health and the health of the pregnancy.

The ban will have devastating consequences when a woman is experiencing medical complications. And unfortunately, it bans abortion before a woman may receive important information about her own health and the health of her pregnancy. Fewer than 2% of abortions occur after 20 weeks, and while they are uncommon, it is important that a woman and her doctor have every medical option available.

On the abortion-inducing drugs restriction, some of the key concerns that we've heard about that: one, that it requires that the physician-preferred course of treatment be replaced with a treatment that is potentially more physically harmful to the patient. And again, though asked, no one on this senate floor was able to provide information to us that demonstrated any other incidents where the legislature had taken it upon itself to interfere in such a dramatic way in a physician's decision-making as it pertains to the administration of treatment.

The bill would require physicians to follow an outdated protocol, limiting women's access to safe effective medication abortion. It directly contradicts a physician's ability to provide the highest level of care for their patients, by requiring a government-prescribed course of treatment. It prohibits physicians in Texas from providing the standard of care to their patients, subjecting physicians to disciplinary action for providing the nationally-recognized standard of care endorsed by the leading medical professional association of obstetricians and gynecologists: ACOG.

On the ambulatory surgical center standards: additional state government regulations on an already heavily regulated practice of medicine was one of the primary concerns raised there. Healthcare providers comply with all federal, state, and local laws and regulations, and they strongly opposed regulations that failed to make healthcare more cost-effective, safer, efficient, or accessible. Texas already requires abortions performed after 16 weeks to be performed in ambulatory surgical centers. And we know, and I'll read some information in a little while about the fact, that there is a reason for that because the incidents of problems that arise prior to that period of time, at existing clinical settings, is extremely low. Much lower, in fact, than any complications that arise from the live birth, of which we are not subjecting to the same standards.

When these facilities close, and they will, women will lose access to their trusted provider. These closed facilities cannot offer any other services that they may have been providing. And we know that in Texas sometimes these facilities are shared facilities where family planning services are also provided.

What is required of reproductive healthcare centers today? Today in the United States, reproductive healthcare services are among the safest and most commonly sought forms of

care in the United States. Placing unreasonable requirements on healthcare centers that provide safe, legal abortion today is uncalled for and again not a hint of evidence has been offered as to why it's needed. And we know why. Governor Dewhurst's tweet told us why.

[EDITOR'S NOTE: This is a reference to a tweet sent from Lt. Gov. Dewhurst's official twitter account. The tweet said "We fought to pass SB5 thru the Senate last night, & this is why! #StandWithTXChildren #txlege pic.twitter.com/fJbQSJur7i". The accompanying picture was one that had been circulated by opponents of the bill, and stated:

Keep Abortion Safe & Legal

If SB5 passes, it would essentially ban abortion statewide:

** Abortion providers that may be forced to close*

[red color-coded pins on a map showing 37 of 42 Texas clinics]

** One of only 5 providers that will be able to provide safe and legal abortion*

[white color-coded pins on a map]

Dewhurst's tweet is essentially implying that the reason for the SB5 bill is explicitly to shut down Texas clinics and make abortion unsafe and legally banned in the state of Texas. LINK: [Lt. Gov. Dewhurst says in tweet that abortion bill all about shutting down accessibility](#)

Senator Wendy Davis: It is because the real aim of this bill is not to make women safer, but it is to force the closure of multiple facilities across the state of Texas without a single care or concern for the women whose lives will be impacted by that decision. Not a single care or concern. Because our leadership has demonstrated that it is prioritizing its own political possibilities over potential and devastating consequences for individual women.

Let's talk about the parts of the bill that are medically unnecessary. First of all, I think each of us would agree that as patients we trust our doctors, not the government, to determine what medical equipment and what size rooms is necessary to provide us with good care. It is medically unnecessary to require health centers to build a hospital-grade operating room for an abortion procedure when one is not required for this type of procedure. And in fact we know there are many out-patient clinical procedures that are more invasive, have higher incidences of problems, that today are allowed to take place in clinical settings such as a doctor's office, without the standards that are being required in this bill.

Texas, of course as I said a minute ago, already requires that abortions performed after 16 weeks be performed at ambulatory surgical centers. This provision, the provision in these bills, goes further by requiring that all health centers that provide abortions comply with regulations that are equivalent to those governing places where surgery takes place. The vast majority of abortions, however, are out-patient procedures that can be performed in a health center, making those requirements inappropriate, unnecessary, and not at all about the health of women.

I want to read into the record written testimony that we were provided by a variety of groups on

the measures that are before us today. This from the Texas Medical Association. It was addressed to the House committee on State Affairs, on House Bill 16 and 60 by Representative Jodie Laubenberg. And it's dated June the 20th, 2013.

"The Texas Medical Association is a private, voluntary, non-profit association of more than 47,000 member physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention, and cure of disease, and improvement of public health. Today our maxim continues in the same direction: physicians caring for Texans. TMA's diverse physician members practice in all fields of medical specialization. Our member physicians fall on both sides of any debate on abortion. Our concerns with House Bills [13] and 60 are not based on any position on abortion. Rather, our concerns are with legislative intrusion into the patient-physician relationship, and the details of the practice of medicine, and with a legislatively creative standard of care.

"Example of concerns that these proposed bills are:

"House Bill 60, Section 3, Sub-Chapter D directs physicians to take specific actions related to the prescription of an abortion-inducing drug approved by the U.S. Food and Drug Administration for use by women who seek an abortion. The bill prescribes details and the practice of medicine, such as the requirements for the examination, patient-physician communication, and protocols. As previously outlined in our written statement on Senate Bill 97 in the 83rd Texas legislature, TMA is concerned this legislation sets a dangerous precedent of the legislature prescribing the details of the practice of medicine. The medical community, based on science, must make these determinations. Not the legislature.

"Sections 171.0031 and 171.063c in HB60 would require a physician or other healthcare personnel to be available by phone 24 hours a day indefinitely. Although the intent of these provisions may be to allow the patient access to the provider for assistance with complications, as written they are overly broad and could require 24-7 access for years. Furthermore, these sections are vague and they appear to require access to medical records 24 hours a day, which is an overly broad and unprecedented requirement.

"House Bill 16, Section 2, Sub-Chapter C and House Bill 60, Section 3, Sub-Chapter C include a definition of profound and irremediable congenital anomalies based on the amount of time a physician reasonably believes the infant would survive after birth. The definition places that time at minutes-to-hours, which TMA opposes because it is arbitrary and would be impossible for a physician to predict. The bill may seek to allow an exception for conditions in which death after birth would be imminent, and in that regard use of the word 'imminent' would be more appropriate than minutes-to-hours.

"Additionally, this proposed definition does not take into account fetal trauma, which in severe situations could result in imminent death after birth. The following definition for severe fetal abnormalities currently exists in Section 285.202 Health and Safety Code and may be an

appropriate definition to replace the proposed definition for profound and irremediable congenital anomalies to severe fetal abnormalities, meaning 'a life-threatening physical condition that in reasonable medical judgment, regardless of the provision of life-saving medical treatment is incompatible with life outside the womb.

"The patient-physician relationship is one of mutuality and trust. Patients must be able to trust their physicians are always acting in each patient's individual best interest, and must be assured of candid communication with their physicians so they may effectively evaluate their medical care options. TMA strongly opposes any legislation that interferes in this relationship. TMA appreciates the opportunity to provide you our concerns regarding HBs 16 and 60 and urges you to take these comments in serious consideration. We are happy to provide any additional information, or assistance you may request."

And it is signed by [Stephen Brotherton, M.D.](#), the president of TMA.

Part 004
Testimony of Physicians for Reproductive Health
00:40:13

Video Link: <http://youtu.be/tcdAuEfroC8>

Audio Link: <https://archive.org/details/SB5004TestimonyOfPhysiciansForReproductiveHealth>

Transcribed by: Tammy Ackerson

Senator Wendy Davis: We also had written testimony provided to the Health and Human Services Committee by Robin Wallace, MD/MAS, who is a Leadership Training Academy Fellow with Physicians for Reproductive Health. She testified before the Texas Senate Committee on Health and Human Services, on Senate Bill 537, during the regular session on March 19, 2013, and she provided this written testimony, which I think is compelling:

"Physicians for Reproductive Health is a doctor-led national advocacy organization that uses evidence-based medicine to promote sound reproductive health policy. We work to make quality reproductive health services an integral part of women's health care.

"Physicians for Reproductive Health opposes Senate Bill 537, which would impose burdensome, expensive, and unnecessary requirements on facilities providing surgical abortion in Texas, causing many to shut down. Though this bill purports to improve patient safety, it would in fact harm women by reducing access to safe, timely abortion services.

"I am a board-certified family medicine doctor licensed to practice medicine in Texas. I received my medical degree from the University of North Carolina in Chapel Hill. I completed my postgraduate training at the Santa Rosa Family Medicine Residency, an affiliate of the

University of California, San Francisco. I also completed a fellowship in primary care research and family planning at UCSF, as one of a select number of family physicians who have participated in this specialty training. I currently live and practice in the Dallas/Fort Worth area. I am pleased to submit this testimony in opposition to SB537 on behalf of Physicians for Reproductive Health.

"SB537 is harmful to women. As a physician who takes care of women every single day, I cannot stress enough how dangerous these laws are to the health and well-being of my patients. Women need timely access to safe abortion care. SB537 imposes medically unnecessary standards on abortion facilities. SB537 would require abortion facilities to become ambulatory surgical centers (ASCs), [sic] which are the setting for complicated and invasive surgical procedures. Abortion, especially early abortion in the first twelve weeks, is a safe medical procedure with inherently low risk in outpatient settings without hospital-like facilities. Serious complications arising from surgical abortions at any gestational age are uncommon.

"By comparison, pregnancy and childbirth are significantly more dangerous to women than abortion. For example, CDC data indicates that the pregnant--pregnancy-related mortality ratio in the United States is 15.2 deaths per 100,000 live births compared to .64 deaths per 100,000 legal abortions."

Senator Wendy Davis: And she provides a footnote for that from the CDC in a report that was compiled in 2011.

"The requirements imposed by this bill are simply medically unnecessary, unsupported by scientific evidence, and contrary to the standards of care."

Senator Wendy Davis: She goes on to say:

"I think of my patient, Samantha, a mother of a two-year-old son who was born two months early. Upon determining that she was pregnant again, Samantha was overwhelmed by the thought of another pregnancy with a potential risk of complications, and she decided to terminate that pregnancy. Luckily, Samantha lived within fifteen miles of our outpatient clinic, which was easily accessible on a major city bus route. Samantha was able to have her abortion safely and timely in the first trimester.

"Another patient named Monica, a 23-year-old woman, presented to me at almost twelve weeks. She had a three-and-a-half-month-old baby girl at home who was delivered by Caesarean section. This patient did not realize she was pregnant earlier, because she had not had a menstrual period since her delivery. We were able to provide her abortion procedure to her safely and quickly, so that she could return home to care for her baby. A young mother does not have time to travel many miles or hours away. She needs to be able to get back to her infant and take care of herself and her family.

"My patients come from all walks of life, from every situation imaginable. One thing they have in common, is that they seek abortion because they've weighed all the options and know in their hearts that this private decision is best for themselves and their families. They do not deserve the burden of a law that has no medical benefit or basis.

"If SB 537 becomes law, I fear for my patients like Samantha and Monica, who already face challenges receiving abortion care in Texas. The cost-prohibitive regulations associated with SB 537 would force safe, accessible abortion facilities to close, while doing nothing to improve patient safety. SB 537 would deny women safe, needed medical care. SB 537 would create unreasonable obstacles for health care providers like myself, who are committed to protecting the health of women by making these needed services available. Many health centers would close due to the inability to comply with the standards of an ASC. In turn, this would force women in Texas to travel out of state, if they have the resources, or would deny them safe care altogether.

"I cared for a patient, Julia, a Registered Nurse with a young child at home. Julia was pregnant, and this was a very wanted pregnancy. She and her husband discovered through a routine 14-week ultrasound that she had a very high-risk pregnancy with a significant chance of stillbirth. They made the difficult decision to end the pregnancy. We were the closest provider to Julia, but still a four-hour bus ride away. Due to current Texas state law, she had to make this trip twice: once for her required ultrasound, and again after the mandatory 24-hour waiting period to have her procedure performed.

"Another patient of mine drove five hours by herself, because there was no provider closer to her. Her pregnancy was diagnosed at 22 weeks with a lethal fetal anomaly. Continuing the pregnancy would mean waiting for the fetus to die in utero, during labor, or immediately after delivery. My patient and her husband made the heartbreaking decision to end the pregnancy. She had to stay alone at her hotel until her husband could follow two days later for the final day of her procedure. I provided care for her, and she did medically well, but she experienced financial hardship associated with traveling such a long distance to receive care.

"As a physician, I know that access to safe and legal abortion care is critical to the health of women. When abortion becomes less accessible, it becomes less safe. Medically unnecessary restrictions on abortion cause women to delay their care as they locate a provider, travel greater distances, or even seek services of an unlicensed provider, all resulting in taking unnecessary risks with their health. While Texas women have the right to safe legal abortion, in reality, there are already very few facilities in Texas to provide this essential care. In 2008, 92% of Texas counties had no abortion provider."

Senator Wendy Davis: And she cites for that, a report prepared by the [Alan Guttmacher Institute](#), "[State Facts About Abortion](#)", available online and last accessed according to her footnote, March 15, 2013.

"Decreasing the number of providers in Texas will have negative effects on women, even beyond the immediate outcomes of their pregnancies. Recent research has shown that when a woman seeking an abortion is denied access to care, she is more likely in the future to become unemployed, live below the poverty line, and experience intimate partner violence."

Senator Wendy Davis: And she cites for that statement, [Diana] Greene Foster, "[Reports on the Socioeconomic Consequences of Abortion Compared to Unwanted Birth](#)", and she also cites K.S. Chibber, "[Receiving vs. Being Denied an Abortion and Subsequent Experiences of Intimate Partner Violence](#)", in support of her statement.

"If additional facilities are forced to close under the burden of SB 537, this would have a devastating impact on the health and well-being of Texas women and their families.

"Conclusion: SB537 does nothing to improve patient safety. Rather, it would close the doors on many clinics that provide comprehensive, safe, legal, and compassionate care to women in Texas. On behalf of Physicians for Reproductive Health, I strongly urge the Senate Health and Human Services Committee to oppose SB537 and protect Texas women's health."

Part 005

Testimony of Texas Hospital Association

00:52:32

Video Link: <http://youtu.be/Af5OP5ENLU8>

Audio Link: <https://archive.org/details/SB5005TestimonyOfTexasHospitalAssociation>

Transcribed by: Emily Harte

Senator Wendy Davis: We also received this written testimony from the Texas Hospital Association regarding admitting privileges. And this was provided on June 20, 2013. This was testimony given in opposition to Section 2 of House Bill 60, as filed by [Representative Laubenberg](#), relating to the regulation of abortion procedures, providers, and facilities, and given to the House Committee on State Affairs, June 20, 2013.

"The Texas Hospital Association, on behalf of its 450 member hospitals, offers the following statement in opposition to Section 2 of House Bill 60 as filed:

"Number one, hospitals should not be required to grant privileges to physicians who do not practice in the hospital. THA agrees that women should receive high-quality care, and that physicians should be held accountable for acts that violate their license. However, a requirement that physicians who perform one particular outpatient procedure, abortion, be privileged at a hospital is not the appropriate way to accomplish these goals. A hospital granting privileges to a physician serves to assure the hospital that the physician has the appropriate

qualifications to provide services to patients in the hospital.

"Thousands of physicians operate clinics and provide services in those clinics but do not have hospital admitting privileges. Requiring a hospital to grant admitting privileges to physicians who do not provide services inside the hospital is time-consuming and expensive for the hospital, and does not serve the purpose for which privileges were intended. Rather, the Texas Medical Board is the appropriate agency to address whether physicians are delivering appropriate care to patients, as the TMB regulates all physicians. Hospitals should not be required to assume responsibility for the qualifications of physicians who do not practice in the hospital.

"Should a woman develop complications from an abortion, or any other procedure performed outside the hospital, and need emergency care, she should present to a hospital Emergency Department. Requiring that a doctor have privileges at a particular hospital does not guarantee that this physician will be at the hospital when the woman arrives. She will appropriately be treated by the physicians staffing the emergency room when she presents there. If the emergency room physician needs to consult with the physician who performed the abortion, the treating physician can contact the doctor telephonically, which is often done in other emergency situations.

"Thus, THA respectfully requests that the language in proposed Section 171.0031, section A-1, be deleted, as the language in Section 171.0031, section A-2, is the best and most appropriate way to ensure that a woman who experiences complications from an abortion, can get advice about and treatment of those complications. Section 171.0031-A2 requires that the physician performing the abortion provide to the patient the following: a 24/7, 365 day a week--day a year--line, for her to be able to contact the physician or physician's office, the name and contact information of the hospital nearest to her home, as the woman will seek hospital services through the emergency department.

"Additionally, Section 245.023 of the Texas Health & Safety Code requires the Texas Department of State Health Services, the licensing agency for abortion facilities, to maintain a toll-free number through which individuals can learn, among other things: whether an administrative or civil penalty has been imposed against the facility or a physician who provides services at the facility, whether professional discipline has been imposed against a physician who provides services at the facility, and whether there are any criminal convictions of the facility or of a physician who provides services at the facility that is relevant to services provided at the facility. A copy of Section 245.023 and the implementing regulation are attached as Appendix A."

Senator Wendy Davis: They also propi--provided a proposed amendment, with alternative language:

"As an alternative to the deletion of Section 171.0031-A1, THA requests that new subsection C be added to Section 171.0031, to clarify that hospitals are not required to consider or grant

medical staff privileges to physicians who perform elective abortions.

"To begin the process of privileging, a physician submits an application to a hospital for membership on the medical staff, and a request for clinical privileging. The hospital is required to review any application received and take action on it within specified timelines. Failure of the hospital to review the application, or reject it without review, could be grounds for a discrimination lawsuit against the hospital. To require hospitals to consider applications for medical staff membership and privileges from a physician to perform abortions will impose unnecessary administrative costs on hospitals, and may subject hospitals to legal challenges if an application for membership and privileges is denied because a physician performs elective abortions. A copy of THA's recommended amendment to Section 171.0031 is attached."

Senator Wendy Davis: The attachment reads:

"Appendix A: [Sec. 245.023](#). PUBLIC INFORMATION: TOLL-FREE TELEPHONE NUMBER.

'(a) The department on request shall make the following information available to the public.

'(1) the status of the license of any abortion facility;

'(2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient of the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the Department and that is being undertaken by the facility with respect to the violation; and

'(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

'(b) Subsection (a) does not require the Department to provide information that is not in the possession of the Department. The Texas State Board of Medical Examiners shall provide to the Department information in the possession of the Board that the Department is required to provide under Subsection (a).

'(c) The Department shall maintain a toll-free telephone number that a person may call to obtain the information described by Subsection (a).

'(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available is...must be available in English and Spanish, and be in substantially the following form: A toll-free telephone number,

[EDITOR'S NOTE: Here Senator Davis reads the script of the proposed written statement which is intended to accompany the toll-free telephone number provided to the patient.]

Senator Wendy Davis: 'You have a right to access certain information concerning this abortion facility by using the toll-free telephone number above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

'(1) Whether this abortion facility is licensed by the Texas Department of Health;

'(2) The date of the last inspection of this facility by the Texas Department of Health, and any violations of law or rules discovered during that inspection that may pose a health risk to you;

'(3) Any relevant fine, penalty, or judgement rendered against this facility or a doctor who provides services at this facility.'

'(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility, or of a physician who provides services at an abortion facility.'"

Part 006
Testimony of ACOG (1)
1:02:32

Video Link: <http://youtu.be/VQXbTo3uMfw>

Audio Link: <https://archive.org/details/SB5006TestimonyOfACOG1>

Transcribed by: Hannah R. Deutsch

Senator Wendy Davis: And then this statement by the American Congress of Obstetricians and Gynecologists. "Texas ACOG Statement Opposing Texas Fetal Pain Legislation." And this comes from District 11 of that particular organization.

"The Texas District of the American Congress of Obstetricians and Gynecologists, Texas ACOG, opposes HB16 by Representative Laubenberg. Texas ACOG opposes HB16 and other legislative proposals that are not based on sound science or that attempt to prescribe how physicians should care for their individual patients.

"As a district of the nation's leading authority on women's health, our role is to insure that policy proposals accurately reflect the best available medical knowledge.

"Terminology. The use of appropriate standard terminology is essential. A "child" is a person

from birth until the age of legal majority. The proper term for the second to eighth week is “embryo.” The embryo becomes a fetus at ten weeks. The term “fetus” is the correct term to use until birth. The language regarding “post-fertilization age” is rarely used outside in vitro fertilization. The post-fertilization age of the embryo or fetus is not known. There is inherent variability in the timing of ovulation, fertilization, and implantation. Obstetricians, gynecologists, and the medical community at large use the first day of the last menstrual period, LMP, to date pregnancies. Post-fertilization dating is not an accurate substitute and should not be referenced in legislation.

“Fetal pain. The statement, quote, “substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization,” end quote, is not accurate. And of course members we know that that quote was in the bill analysis as well as in the bill itself. The medical profession produced a rigorous scientific review of the available evidence on fetal pain in the Journal of the American Medical Association, JAMA, in 2005. Pain perception requires conscious recognition or awareness of a noxious stimulus. Neither withdrawal reflexes nor hormonal stress responses to invasive procedures prove the existence of fetal pain because they can be elicited by non-painful stimuli and occur without conscious cortical processing. Fetal awareness of noxious stimuli requires functional thalamocortical connections.

“Thalamocortical fibers begin appearing between 23 to 30 weeks gestational age which electroencephalography suggests the capacity for functional pain perception in preterm neonates probably does not exist before 29 or 30 weeks. The review concluded that fetal perception of pain is unlikely before the third trimester. More recent studies confirm that finding.

“The Royal College of Obstetricians and Gynecologists, RCOG, is the UK-based equivalent to ACOG with 12,500 members worldwide and representation in over 100 countries on all 6 continents. In 2010, RCOG rigorously reviewed the scientific literature and quote, “in reviewing the neuroanatomical and physiological evidence in the fetus it was apparent that connections from the periphery to the cortex are not intact before 24 weeks of gestation. And, as most neuroscientists believe that the cortex is necessary for pain perception, it can be concluded that the fetus cannot experience pain in any sense prior to this gestation,” end quote.

Supporters of fetal pain legislation only present studies which support the claim of fetal pain prior to the third trimester. When weighed together with other available information, including the JAMA and RCOG studies, supporters’ conclusions do not stand.

“Fetal viability. Most obstetrician-gynecologists understand fetal viability as occurring near 24 weeks gestation, utilizing LMP dating. Supporters of fetal pain present misleading evidence about fetal viability, especially in using post-fertilization age instead of LMP dating, falsely implying high survival rates among neonates that are overwhelmingly pre-viable. Supporters may point to the survival of live-born infants in a June 2009 JAMA study, but fail to mention that the vast majority of infants born prior to 24 completed weeks LMP died prior to or during birth. In

this study 93% of infants at 22 weeks died, 66% at 23 weeks, and 40% at 24 weeks. 91% of those that lived were admitted to the NICU. Also not mentioned by supporters, is the fact that survival alone is not the only endpoint for neonatologists. *Intact* survival is. In this same study, 98% of infants born at 22 weeks LMP, and 91% born at 23 weeks LMP, had at least one major medical problem such as hemorrhaging brain or bowel.

“The American Academy of Pediatrics Committee on Fetus and Newborn states that the incidence of moderate or severe neurodevelopmental disability in surviving children assessed at the age of 18 to 30 months is high, approximately 30-50%, and remains at that high level until 25 weeks LMP. Babies delivered at these gestational ages often suffer hemorrhaging bowel, blindness, deafness, and stroke as a result of their premature delivery.

“Fetal anomalies. Many fetal anomalies can be diagnosed before 20 weeks, others are not diagnosed until around 20 weeks. HB16 provides an inadequate exception for severe fetal abnormalities. This exception puts into statute how a doctor should exercise medical judgment and interferes with the private nature of deciding what to do when a fetus has been diagnosed with severe fetal abnormality. There are numerous fetal anomalies that are regularly detected only after 20 weeks. While chromosomal anomalies can generally be diagnosed by 20 weeks, some low-risk couples do not elect to have testing, and instead learn that their fetus has a chromosomal anomaly during routine ultrasound later in pregnancy, an ultrasound that is often performed at 18 to 20 weeks gestational age. Moreover, many lethal or serious fetal problems that are not compatible with life outside of the womb are caused by conditions that are structural, not chromosomal and are not susceptible to testing by amniocentesis. These can only be diagnosed by detailed ultrasound examination. Many tests cannot definitively diagnose grave conditions affecting a pregnancy prior to 20 weeks because the fetus is not sufficiently developed for those conditions to be detected even in cases where an ultrasound detects indications of a structural anomaly prior to 20 weeks.

“Additional tests such as amniocentesis or echocardiogram are often necessary to confirm the diagnosis. Scheduling those additional tests and obtaining the results will take additional time, often up to 2 weeks. By the time a diagnosis is confirmed by a specialist capable of diagnosing these anomalies the pregnancy has often progressed beyond 20 weeks. As a result, a woman whose fetus is critically impaired often will not learn of that fact until well into the second trimester. The medical difficulty if not impossibility of diagnosing many of these lethal structural defects before 20 weeks is heightened by the fact that additional tests and doctors’ appointments are often needed to confirm the anomaly as discussed above. Once the diagnosis is confirmed many couples need additional time to make a well-informed, careful decision about whether to terminate a wanted pregnancy.

“General obstetricians who suspect a problem based on an ultrasound at 18-20 weeks often refer their patient to a perinatologist, the relevant specialist for confirmatory study and then diagnosis. These confirmatory tests take additional time, sometimes several weeks, to schedule and obtain results particularly for women who live in rural or underserved areas. The final

diagnosis will thus regularly take place near or after 20 weeks.

“Life of the mother. HB16 provides a limited exception for the life and health of the mother. However, it fails to entirely protect women for whom pregnancy poses serious health risks. Under the exception in HB16 a physician can perform a termination only once a medical condition has so compromised the woman’s health that she requires a quote, “immediate abortion,” end quote in order to quote, “avert her death or a serious risk of substantial and irreversible physical impairment of a major bodily function,” end quote. By requiring doctors to wait until a woman faces immediate injury or death, it indefensibly jeopardizes a patient’s health.

“ACOG opposes HB16 and strongly urges the legislature to closely examine and follow scientific facts and medical evidence in its consideration of this and other health care legislation. We stand ready to provide you with factual information on medical issues that come before the legislature and hope you will contact us at any time.”

And it’s signed, “Respectfully, Lisa M. Hollier, M.D., MPH, FACOG, Chair of the Texas District of the American Congress of Obstetricians and Gynecologists.”

Part 007
Testimony of ACOG (2)
01:15:14

Video Link: <http://youtu.be/-hTeTYv7Kaw>

Audio Link: <https://archive.org/details/SB5007TestimonyOfACOG2>

Transcribed by: S. Bennett

Senator Wendy Davis: Another statement by ACOG opposing SB5 by Senator Hegar and HB60 by Representative Laubenberg.

“Texas ACOG opposes SB5 by Senator Hegar and HB60 by Representative Laubenberg. SB5/HB60 is an accumulation of all the measures we opposed during the 83rd regular session, and remain opposed to in this special session.

“The Texas District of the American Congress of Obstetricians and Gynecologists, ACOG, opposes SB5, HB60, and other legislative proposals that are not based on sound science, or that attempt to prescribe how physicians should care for their individual patients. As a District of the nation’s leading authority in women’s health, our role is to ensure that policy proposals accurately reflect the best available medical knowledge. SB5/HB60 will not enhance patient safety or improve the quality of care that women receive. This bill does not promote women’s health, but erodes it, by denying women in Texas the benefits of well-researched, safe, and proven protocols.

“Texas ACOG opposes 20-week ban/fetal pain provisions.

“Terminology: The use of appropriate standard terminology is essential. ‘Embryo’ is the proper term to use for the second to eighth week of pregnancy; ‘fetus’ is the correct term to use until birth. ‘Post-fertilization’ is rarely used outside of in vitro fertilization. The medical community uses the first day after the last menstrual period (LMP) to date pregnancies. Post-fertilization is not an accurate substitute.

“Fetal pain: No credible scientific evidence exists of fetal pain perception pre-viability. The medical profession produced a rigorous scientific review of evidence on fetal pain in the Journal of American Medical Association (JAMA) in 2005. Fetal perception of pain is not confirmed prior to the 3rd trimester. Perception of pain is only confirmed after viability. Most obstetricians” – excuse me, there was another heading –

“Fetal viability: Most obstetrician/gynecologists understand fetal viability as occurring near 24 weeks gestation utilizing LMP dating. Supporters of fetal pain present misleading evidence about fetal viability, especially in using post-fertilization age instead of LMP dating, and falsely implying high survival rates among neonates that are overwhelmingly pre-viable.

“Fetal anomalies: Many fetal anomalies can be diagnosed before 20 weeks, others are not diagnosed until around 20 weeks. The committee’s substitute for Senate Bill 5 provides an inadequate exception for severe fetal abnormalities. This exception puts into statute how a doctor should exercise medical judgment and interferes with the private nature of deciding what to do when a fetus has been diagnosed with a severe fetal abnormality.

“Life of the mother: SB5/HB60 fails to entirely protect women for whom pregnancy poses serious health risks. By requiring doctors to wait until a woman faces immediate injury or death, it indefensibly jeopardizes the patient’s health. Instead, doctors are forced to compromise patient health by waiting until a woman’s condition deteriorates and becomes life-threatening or severely debilitating.

“Texas ACOG opposes provisions that treat women as if they cannot make their own medical decisions. Committee substitute for Senate Bill 5 would require a woman to come to an Ambulatory Surgical Center (ASC) to take a pill for a medical abortion. She would then have to return a second time to the ASC to be watched taking the second pill within the next 24 to 48 hours. Requiring a woman to physically come in to take a second dose increases the risk of her not being able to return. This increases the chance for hemorrhages, blood transfusion, and emergent D&C. Women outside of Dallas, Houston, San Antonio, and Austin will have to travel long distances to find a clinic that meets ASC regulations. These burdensome requirements will make these services harder to access, as well as make these services more costly.

“Texas ACOG opposes provisions dictating protocol for physicians to follow when prescribing

certain drugs. SB5/HB60 weakens standards of care and patient safety. SB5/HB60 requires providers to follow a protocol that has been proven to be less effective, more costly, and causes more detrimental side effects for women than care that is currently available and widely used. Committee Substitute for Senate Bill 5 has permissive language allowing dosage amounts that follow the ACOG practice bulletin guidelines as they existed on January 1, 2013. However, this is still codifying standard of care and is dangerous in the long term. Science and medicine evolve quicker than our laws.

“SB5/HB60 physicians can be -- under SB5/HB60, physicians can be punished for striving to provide the highest quality of care for their patients, the women of Texas. SB5/HB60 threatens the doctor/patient relationship. SB5/HB60 places an unacceptable level of control over the doctor/patient relationship in the hands of the legislature, essentially allowing legislature to practice medicine. SB5/HB60 creates medical protocol for physicians, dictates what to document, what tests to perform, what medications to prescribe, and when to schedule follow-up appointments.

“SB5/HB60 interferes with a doctor’s ability to use his or her professional judgment to determine the appropriate medical care in each individual patient’s unique circumstance. It undermines the standard of care and restricts the ability of physicians to prescribe and direct medication use. SB5/HB60 interferes with the physician’s ability to establish an individual care plan.

“Texas ACOG opposes overreaching requirements for abortion facilities. SB5/HB60 requires additional standards that are unnecessary and unsupported by scientific evidence. SB5/HB60 does not promote the public health objective it claims to enhance. In fact, it harms public health by restricting access to safe, legal and accessible abortion services. Late-term abortions (16 weeks and later) are already required to be provided at a facility licensed as an Ambulatory Surgical Center.

“SB5/HB60 has unintended consequences that make the treatment of certain conditions, for example, ectopic pregnancies, more difficult and expensive. Ectopic pregnancies are frequently treated in outpatient facilities and physician office settings. SB5/HB60 may prevent doctors from treating cases as they normally would. Ectopic pregnancies must be reported to DSHS as emergency abortions. This could result in physicians losing exemptions from abortion facility licensing requirements. Positive patient outcomes will decrease; medical costs will increase. It also affects more providers and facilities than just Planned Parenthood or traditional abortion facilities.

“Texas ACOG opposes unnecessary requirements that may be extremely difficult, and in some cases impossible to meet, without a basis in public health or safety. SB5/HB60 requires hospital admitting privileges for physicians performing an outpatient procedure that bears low risk. No other outpatient procedure requires a physician to have active admitting privileges in a hospital within a specific distance. Requirements for admitting privileges vary from hospital to hospital. Some hospitals bar physicians that perform terminations from being awarded hospital privileges.

Processes for approval of admitting...”

[EDITOR'S NOTE: During the previous paragraph, a single man is removed from the gallery for shouting “abortion is genocide” and other intelligible protestations. Lt. Gov. Dewhurst is forced to strike the gavel three times and interrupt Senator Davis as the man is removed from the gallery.]

Lt. Gov. David Dewhurst: There may be strong passions, but we want to be able to hear the Senator.

Senator Wendy Davis: Thank you, Mr. President.

“Processes for approval of admitting privileges can take a lengthy amount of time, sometimes as long as licensure and Board certification. A physician may have active admitting privileges, but not within a 30-mile radius. This is especially problematic for rural areas where hospitals are scarce. Not all hospitals may meet the requirement of providing obstetrical or gynecological health care service. There is not a special designation for hospitals providing OB/GYN services. This provision is vague, and could have extensive consequences.

“Criminally penalizing physicians for performing a legal procedure is inappropriate and prevents physicians for performing a legal procedure is inappropriate. [sic] Criminally penalizing physicians for performing a legal procedure is inappropriate and prevents physicians from exercising medical judgment in order to treat their patients as they see fit.

“ACOG opposes SB5/HB60 and strongly urges the legislature to closely examine and follow scientific facts and medical evidence in its consideration of this and other health care legislation. We stand ready to provide you with factual information on medical issues that come before the legislature, and hope you will contact us at any time.”

Senator Wendy Davis: And it is signed “Respectfully, Lisa M. Hollier MD, MPH, SACOG Chair, Texas District, American Congress of Obstetricians and Gynecologists.”

Part 008
Testimony of ACOG (3)
1:27:27

Video Link: <http://youtu.be/N7KF0ABi8Ik>

Audio Link: <https://archive.org/details/SB5008TestimonyOfACOG3>

Transcribed by: Catherine Macdonald

Senator Wendy Davis: And then this letter from ACOG related to admitting privileges, which was the bill filed by Senator Taylor:

“Texas ACOG opposes SB1198 by Senator Taylor, dated April 16th, 2013.

“Dear Chair Nelson and members of the Senate Health and Human Services Committee,

“Thank you for the opportunity to present this written testimony in opposition to SB1198. The Texas District of the American Congress of Obstetricians and Gynecologists represents more than 3,600 physicians and partners in women’s health. Texas ACOG opposes SB1198 by Senator Taylor.

“While ACOG recognizes that the issue of support for, or opposition to, abortion is a personal matter, and respects the need and responsibility of its members to determine their individual positions, as an organization ACOG recognizes that abortion is an essential health-care service and opposes laws regulating medical care that are unsupported by scientific evidence and that are not necessary to achieve an important public health objective.

“SB1198 sets up unnecessary requirements that may be extremely difficult and in some cases impossible to meet, without a basis in public health or safety. Requirements for admitting privileges vary from hospital to hospital. The process for approval of admitting privileges can take a lengthy amount of time – sometimes as long as licensure and board certification. We are not aware of other outpatient procedures that require a physician to have active admitting privileges in a hospital within a certain distance. A physician may have active admitting privileges but not within a 30-mile radius. This is especially problematic for rural areas where hospitals are scarce.

“Not all hospitals may meet the requirement of providing obstetrical or gynecological health care service. There is not a special designation for hospitals providing OB/GYN services. This provision is vague and could have extensive consequences.

“Creating unnecessary requirements and criminalizing, criminally penalizing physicians for performing a legal procedure is inappropriate and prevents physicians from exercising medical judgment in order to treat their patient as they see fit.

“For the reasons outlined above, Texas ACOG opposes SB1198.”

It’s signed, “Respectfully, Lisa M. Hollier, MD, MPH, FACOG
Chair of the Texas District American Congress of Obstetricians and Gynecologists”

A letter again from ACOG, this time opposing SB18 by Senator Patrick. “ACOG opposes SB18 by Senator Patrick,” and it’s dated June 12th, 2013:

“The Texas District of the American Congress of Obstetricians and Gynecologists, ACOG, represents more than 3,600 physicians and partners in women’s health. ACOG opposes Senate

Bill 18 because it is a significant intrusion into the doctor-patient relationship, legislating the practice of medicine. This bill unfortunately illustrates the perils of attempting to legislate a particular protocol, increases expenses, and undermines the quality of care for women.

“First, this bill would require physicians to practice medicine that is not evidence-based. Since the FDA approval of the regimen in this legislation in 2000, additional clinical studies have identified improvements in the treatment of medical abortion. The American College of Obstetricians and Gynecologists makes the following statement in Practice Bulletin Number 67, entitled, ‘Medical Management of Abortion’:

““Compared to the FDA approved regimen, mifepristone and misoprostol regimens using 200 milligrams of mifepristone orally and 800 mcg of misoprostol vaginally, are associated with a decreased rate of continuing pregnancies, decreased time to expulsion, fewer side effects, improved complete abortion rates, and lower costs for women, with pregnancies up to 16, 63 days of gestation based on LMP, the last missed period.

“The FDA-approved regimen, which this bill would mandate, that physicians prescribe for their patients, requires a 600 milligram dose of mifepristone, which is three times greater than in the non FDA-approved, evidence-based regimen, that ACOG endorses above.

“Furthermore, the misoprostol dose, though a lower dose on face value, is given orally in the FDA-approved regimen, whereas, it is administered vaginally in the evidence-based regimen. Oral administration results in higher peak levels of the drug in the bloodstream, which in turn results in greater side effects for women. Vaginal administration not only decreases side effects, but also results in greater uterine contractility.

“Together, as in the evidence-based regimen, a lower dose of mifepristone combined with a vaginal dose of misoprostol, acts superiorly to the FDA-approved regimen. Multiple, randomized controlled trials, which are considered the gold standard experimental design for research studies, have consistently demonstrated that the FDA-approved regimen is associated with greater side effects in women, roughly three times higher costs and lower overall success rates: 92 percent compared to 95 to 99 percent success with the evidence-based regimen.

“The FDA-approved protocol for these medications is no safer than the evidence-based protocols recommended by the American College of Obstetricians and Gynecologists, The Royal College of Obstetricians and Gynecologists, and the World Health Organization. This legislation prohibits - in fact, creates penalties for - the act of prescribing a medication regimen that has, in the simplest of terms, simply been proven to be far superior to the FDA-approved regimen. Under this legislation physicians would face penalties for striving to provide the highest quality of care for the women of Texas.

“Second, SB-18 places an unacceptable level of control over the doctor-patient setting in the hands of the legislature, essentially allowing the legislature to practice medicine. Again, this bill

actually creates a medical protocol for physicians, dictating what medications to prescribe, what doses to use, what to document, questions to ask the patient, and when to schedule follow-up appointments. For example, the bill requires that patients be scheduled to return to the physician that prescribes the medication for a follow-up visit within a specific 14-day time frame written into the law. I absolutely agree that women should have a follow-up exam to ensure a successful termination with no complications. However, frequently this follow-up care is better and more conveniently provided by a primary care provider or referring physician in their own community, particularly for women in remote areas who may have to travel long distances to access specialized gynecologic services. There is a medical necessity for follow-up care, but no medical rationale that this follow-up care must be provided by the prescribing physician. This requirement can create a distance and access barrier for patients with no medical rationale or benefits.

“Third, SB18 interferes with a doctor’s ability to use his or her professional judgment to determine the appropriate medical care in each individual patient’s unique circumstances. Patients have spent years acquiring the specialized knowledge—” excuse me, “Physicians have spent years acquiring the specialized knowledge, skills, clinical and research training needed to individualize a plan of care for their patients, based upon their unique medical, surgical, family and social histories. It is critically important that physicians have a toolbox, so to speak, to pull from when designing a plan of care for a patient, because we rarely find that one size fits all.

“For this reason, particularly in the setting of prescribing medication, it is standard medical practice in the United States for physicians to prescribe FDA-approved medicines in doses or contexts that were not specifically approved by the FDA, so long as the alternative use is supported by adequate research. These are sometimes referred to as off-label for evidence-based uses. Every physician has prescribed drugs for off-label uses, perhaps to your wives, daughters, sisters, or mothers: birth control pills for endometriosis, misoprostol for labor induction, magnesium sulfate to reduce the chance of neurologic complications for preterm newborns. These are all considered off-label uses standardly employed based on available evidence.

“Finally, legislation of a single specific medical protocol prevents an opportunity for continuous quality improvement. One of the pillars of medicine is the ability to compare protocols and advance the quality of the medical care that is provided. If this bill were to become law, we would be unable to test potentially better treatments and would need to wait for a legislative session to change the law to implement improvement in care that has developed elsewhere.

“The bill will not enhance public safety. This bill will not improve the quality of care that women receive. This bill does not promote women’s health. SB18 would deny women in Texas the benefits of well-researched, safe, and proven protocols that currently exist.”

And it’s signed, “Respectfully, Lisa M. Hollier, MD, MPH, FACOG, Chair of the Texas District, American Congress of Obstetricians and Gynecologists.”

Part 009
Citizen Testimony (1)
01:39:11

Video Link: <http://youtu.be/z97sJv4EZNk>

Audio Link: <https://archive.org/details/SB5009CitizenTestimony1>

Transcribed by: CJ George

Senator Wendy Davis: Now Members, I'm going to begin to read testimony from people who were unable to testify before the house committee. These were people who came to the Capitol and waited many, many, many hours for the chance for their voices to be heard. And unfortunately, the Chair of the Committee hearing that testimony, at one point around 1am, made a decision that no longer would testimony be accepted, in his words, "because it had become repetitive".

An answer to that was provided very poignantly by a young woman who was there to testify, apologizing that the chair believed her testimony on such an important issue was repetitive, when for her it was her individual story, and she felt her individual right to speak on the impact of legislation like this. Because that testimony was not allowed, I thought it particularly appropriate today to use the opportunity with this microphone in my hand to give voice to the people who were not able to provide their voices as part of that testimony. Because that is truly what we are to be: Representatives, Senators who are elected to serve our community and to give voice to them on the Senate floor.

Below are 31 testimonies that I have received from people who had registered to offer testimony at Thursday's State Affairs Committee meeting, but were denied the opportunity to do so.

***[EDITOR'S NOTE:** The spelling of citizens' names are best-guesses and may not be accurate. Places where Senator Davis sounds out names with alternative pronunciations (as with "Arenbide or Arenbide" below) will not be specially marked.]*

Senator Wendy Davis: Regarding House Bill 60 and House Bill 16, authored by state representative Jodie Laubenburg June 20, 2013, from Amy, I'm sorry Amy if I mispronounce your name, Arenbide or Arenbide, House District 121, [Representative Straus](#).

"Thank you Chair Strauss and committee for allowing me to testify," she was going to begin, "I live in House District 121, and I am a constituent of Chair Strauss. My name is Amy Arenbide, and my father, Dr. George Arenbide or Arenbide was an abortion provider.

"He was born in Chicago to a single Mexican immigrant woman, who worked 3 jobs at a

cannery during the Depression to provide for her 3 children. My father put himself through college and then medical school, and started off his career as an anesthesiologist. After a twenty-year career as an anesthesiologist, he went through residency again and became an OB/GYN in the early 70s. In addition to a full-time OB/GYN practice, he began performing abortions in the mid-seventies, shortly after *Roe v. Wade*, in San Antonio, and traveled once a week to provide reproductive healthcare at a clinic in Laredo.

"Growing up, I knew my father was a doctor and delivered babies. But I didn't understand the extent of his profession until one day when I was in the fifth grade. A fellow student and her parents told me that my father killed babies and I was aghast. I knew he delivered babies, he delivered me, but I didn't understand what they were talking about. I went home and confronted my parents, at which time they explained to me what an abortion was. I didn't understand.

"My father explained that while keeping a baby or putting up a baby for adoption were options, many girls and women chose,...were options that many chose, sometimes that was not truly an option. Many of his patients were really young or didn't have the means to provide for a child. And that being pregnant could end many of the opportunities that could better a woman's life, like getting an education. I still didn't fully understand, so my father decided to take me to the clinic, to Laredo, to give me an idea of the women that he helped each week.

"We drove through an impoverished town that I could hardly believe was in the United States that I grew up in. The waiting room was filled with women and girls from all over South Texas. Girls that had no other options for reproductive healthcare, except this one clinic, for hundreds of miles. The girls were as young as I was, around 12, and I could tell that they did not grow up with any means. After this trip to Laredo, I realized that my father was a hero. He helped women and girls that had nowhere else to go and who didn't have many options. He provided care, health services, and an option that could make their life better.

"The first year I lived in Austin, I got harassing phone calls from a gentleman looking for Dr. Arenbide's son. When my roommate told him that Dr. Arenbide's daughter lived there and not his son, he demanded to speak to me. He said that he worked with my father and owed him money. He wanted his home address so that he could send the check. When I told him that my father had worked at the same address for twenty years and he could send it there and when I asked him for his contact information, he refused. That's when I realized just how dangerous my father's job really was.

"Contrary to what some witnesses may say, the doctors who provide abortion are heroes and you cannot do this work unless you truly believe in women. My father wore a Kevlar vest to work every day, had an FBI agent assigned to us and chose houses in gated communities because he received threats from the violent opposition every day. In order to work one day a week in Laredo, he paid more in malpractice insurance than the money that he made there.

"My father was a hero. He believed that every woman deserved a chance to make her life

better. He believed in access to education, and choices that would facilitate that. My father provided comprehensive sex education and knowledge and choices for me that allowed me to go to college, to law school, to plan my family when I was ready. Because of his influence and what he did for women, I have two beautiful boys that I am ready to raise in a world that I strive to make a better place."

Senator Wendy Davis: This next testimony is from Nancy Cardenez from Austin, Texas.

"As a woman, I have struggled to understand how something as personal as my body is constantly a part of the political battleground. Furthermore, as a woman from South Texas, I am appalled that abortion clinics in the Valley, that provide excellent and safe healthcare, will no longer be available. Women seeking safe abortions will have to drive hundreds of miles for the healthcare they deserve. [Senator Bob Deuell](#) calls clinics quote, "money centers", end quote. The purpose of these centers is not to make money, but to give women access to excellent healthcare and safe abortions. These centers cannot afford an extra \$40,000 per month. Imposing these regulations will not only shut down 37 clinics, but will leave women who do not live in Dallas, San Antonio, and Houston to fend for themselves.

"Why don't we look at this bill for what it really is? A political maneuver that strips away the right of a woman to choose what to do with her own body and puts it in the hands of men who are more interested in fulfilling a religious, political agenda. What this bill does is disenfranchises certain sectors of the state, like El Paso, and actively discriminates against rural areas of Texas.

"Why don't you actually sit down and talk with your female constituents? We are voters. We have a voice. And we are responsible enough to make decisions over our own bodies. This bill strips the basic right of a woman to control her own body through one of the most difficult decisions of her life. House Bill 60 takes this decision out of the hands of a woman, her family, and her doctor, as it neglects the complexities of reality.

"I ask you to oppose HB60. Thank you for your time."

Senator Wendy Davis: This testimony, from Samantha Frederickson of Austin. House District 48, [Donna Howard](#).

"My name is Samantha Frederickson. I am a woman, a Texas voter in Representative Donna Howard's District 48, an attorney, and a person of faith. I'm speaking on behalf of myself. I strongly urge you to oppose HB16 and HB60. The legislature has no business regulating what I choose to do with my own body.

"I am very lucky in that I have not had to seek an abortion. I am also very lucky that I live in a country where abortions are safe and legal, should I have to make the difficult and painful decision to ever have one. Please don't take that choice away from me. If I or any other woman out there needs to seek an abortion for whatever very personal reason, I would like to know that

it is a possibility. These bills would make it nearly impossible for women in this state to seek a safe, legal abortion for whatever reason they choose to.

"I am new to Texas and I've lived in lots of different states. Before moving here, I was never very concerned about women's equality, because I felt that the law respected me and treated me as fully equal. I thought 'Oh, times are not like they were in my parents' and grandparents' days. Women truly do have equality now, so why should I be worried about it?'

"But frankly, since moving to Texas, my opinion on the matter has drastically changed. The law in Texas treats me as though I am a second-class citizen. I love Texas. It's a great place to live and I hope to stay here. But I do not appreciate that my legislators do not respect me, or treat me as an equal citizen. After everything that generations before me fought for, it is incredibly unfortunate that I live in a state where none of that seems to matter to the lawmakers. Please end this war on women and do not pass these bills. They will do nothing to protect women and are not crafted with women's healthcare in mind.

"A woman's right to access family planning services is vital to her ability to succeed in life and in her career. By severely limiting a woman's ability to choose when and how she will have a family, the legislature is curtailing women's possibilities. And the message this legislature is sending with these bills is that a woman's role is solely to have children. Whether or not I, or any other woman, chooses to have children is a choice that only we can make. The legislature needs to stay out of this decision.

"Please stand up for women's equality and reject these bills. Women are smart. We are smart enough to make a decision about how to plan a family without the legislature interfering. And as lawmakers, the women of Texas are looking to you to ensure that our rights and interests are protected. Please do your job and reject this legislation, which is detrimental to the health and security of all women in Texas. Thank you."

Part 010
Citizen Testimony (2)
01:53:42

Video Link: <http://youtu.be/FgQyr2wnXYg>

Audio Link: <https://archive.org/details/SB5010CitizenTestimony2>

Transcribed by: Conor Zeer Wanklyn

Senator Wendy Davis: This next testimony from Gary L Oldham from Round Rock, House District 52, [Representative Larry Gonzales](#)' district:

"Thank you chair and committee for allowing me to testify. My name is Gary Oldham and I am a

constituent of representative Larry Gonzales, and I'm here to testify in opposition to HB16 because I am immensely concerned about women's health along with children's health and men's health and the rejection of science by this body.

"I've heard much rhetoric that cavalierly rejects the concept of gun safety legislation, that uses the illogical argument that criminals and those who want to get guns but can't do so legally will continue to do so. If true, the unconstitutional banning of legal abortion by making safe legal abortion inaccessible to a vast number of Texas women will not cause it to cease. It will just make it illegal, and vastly more dangerous.

"Science is being routinely rejected by this body, as well as by the state Board of Education. The wonderful thing about science is that it's true whether you believe in it or not. Science is not dependent in your belief or mine; it simply is. To reject the collective science and medical wisdom of the American Medical Association, the Centers for Disease Control and the American College of Obstetricians and Gynecologists is embarrassing folly. Calling it 'speculation' is an embarrassment to any sentient being. Calling these peer reviewed findings by the best and brightest of our medical community 'speculation', is the most transparent and desperate political maneuvering. Calling science 'speculative' while supporting one's argument with unverified anecdotal stories would not pass muster in third grade.

"Once upon a time mankind believed that the sun revolved around the earth. The church officially believed it, world leaders believed it, the man and woman on the street believed it. Scientists who claimed otherwise became outcasts, were excommunicated, were put on trial for their blasphemy. But none of those rejections by the arrogantly ignorant changed the facts. Rejecting objective facts and science because they conflict with our ideology is the greatest form of ignorance imaginable. Promoting ideologies that conflict with facts, forcing ideology upon others, and then causing irreparable harm to others is inexcusable and unforgivable.

"Vote no on HB16 and protect women's health and rights. HB16, like HB60, is merely another effort by the American Legislative Research Council (ALEC) and their state representative to force legislation that is bad for your average human being, your average constituent, and that benefits corporations and corporate interests. If you are genuinely interested in the health and wellbeing of Texas women, you will not implement further draconian legislation to make even worse the already onerous restrictions placed upon Texas women. Do the right thing and vote no on HB16.

Thank you."

Senator Wendy Davis: This from Kathryn Kennemer Genet, Austin, Texas:

"I attended the hearing on Thursday evening, for HB60 and HB16, and registered to give my testimony. I was unable to give my testimony before the Chairman ended the committee meeting. My name is Kelly Genet. I'm speaking on my own behalf. I'm represented in the Texas

House by [Elliott Naishtat](#). I'm here to testify against HB60 and HB16. It was very easy for me to be here tonight, I live about one and a half miles from the Capital, so I'd like to speak in honor of women who live far away from Austin, or who did not have the financial means to be here tonight.

"There are 5.7 million women in Texas between the ages of 15 and 44, the childbearing years. With 700 of us here, we each represent over 8,000 women: 8,000 women with unique stories. I'm humbled by the stories of the women and the men in this room. People who have had pasts so different than mine. Going forwards, we 700 Texans, each representing 8,000 more, will continue to have unique lives. We all have the right to exercise our reproductive freedom, and Mr. Chairman and members of the house, you do not know what is right for me, for them, for our families, or for our health.

"I've been a patient of my OB/GYN since 2000. He and I have worked through a pregnancy and birth of one of my three children. He knows my medical history and has helped me to chose my birth control. I am a grown woman, who after having borne three children knows the very real emotional, financial, and spiritual weight of having that experience. It is hard, quite expensive and scary at times -- and it is intensely personal.

"You are cordially not invited to share that experience with me. I am a grown woman, a voter, a citizen, and a U.S. constitutionally protected American. You are cordially not invited to treat me as though I am not."

[EDITOR'S NOTE: After the first "cordially not invited", spontaneous applause breaks out in the gallery and is quickly silenced.]

"You are trying to pass a law to appease voters that make up a tiny sliver of our state's population; the most conservative branch of a conservative party. That is why you have committee meetings on short notice, and shut down citizen comments, and have follow-up meetings in tiny rooms with no cameras.

"It is why you didn't attempt to pass these laws abridging the constitutional rights affirmed in Roe v. Wade during the regular session. Lieutenant Governor Dewhurst and Governor Perry have suspended the voting rules during this special session because that is the only way you can pass this legislation.

"Polls show the majority of Texans do not support you. You game the system politically and use all the tricks because the majority of Americans and Texans and women would not approve of what you are doing. Meanwhile the 700 here representing the 5.7 million others are shining a light on your actions. We will not sit down while you attempt to strip us of our self-determination. We will not be quiet while you pander to the particular views of a minority of Texans who do not want us to make our own decisions and who continually punish poor women for wanting to have control over their reproductive lives.

“You are going to kill women, moms, sisters, daughters, and friends who will be disenfranchised from safe available medical care in rural Texas. I came here to champion the rights of all women, of all families, of all economic means, and living in all parts of our very vast state to have what I have: the right to make medical decisions about their reproductive lives. I came here for the birth control, but I’m staying here for the fight.”

Part 011
Citizen Testimony (3)
02:02:54

Video Link: http://youtu.be/IPjSI_xuuCU

Audio Link: <https://archive.org/details/SB5011CitizenTestimony3>

Transcribed by: Rasia Virani aka rasiqra/revulva

Senator Wendy Davis: From Julie Gillis, Austin Texas.

“Hi, my name is Julie Gillis and I am an Austin resident and a Texas native. [Dawnna Dukes](#) is my representative, and [Kirk Watson](#) is my senator.

“My mother was born in 1928, and her childhood was marked by the Great Depression, World War II, and FDR’s policies that helped America come back from economic devastation. She also witnessed massive social change in the sixties’ social justice movements she was adamantly for, but also the Pill.

“Prior to the Pill, people did indeed have sex. Lots of it, to hear her tell it. Back then, unmarried women couldn’t get the Pill on their own, and even married women had to get clearance from the husband so her doctor could prescribe it. She was overjoyed at the Pill and abortion rights, because she recognized that women’s bodies belonged to them, and access to reproductive services meant freedom.

“She had Alzheimer’s the last ten years, and so she’s been shielded from the backlash on women. She’d have been horrified to see the chipping away at Planned Parenthood, sex education in the schools, and the influence of the religious right on reproductive rights. She’d also have tied that chipping away directly to the desire to have a permanent poverty class: a kind of economic slavery class, and destruction of our economic safety.

“She’d have been ashamed of our elected officials for allowing this to happen – hell, for encouraging it. She would have said that people who are poor and kept from education wind up being desperate. They take bad jobs because that’s all there is. They find themselves trapped in marriages or pregnancies. The poverty class keeps itself locked in because there aren’t policies

in place to help.

“That being said, she, like me, would probably want to see abortion rates drop. Abstinence-only doesn’t work. Because we’ve got eleven-billion people on the planet. People like sex! Sex is a good thing. It’s such a good thing that I help produce a story-telling series about it: Smart, funny, risky stories about the human condition and sexuality. If you want to reduce abortion, take my advice and follow these three steps:

“One: Teach everyone about how their bodies work. Comprehensive, age-appropriate sex-ed is a moral issue, and a human right. Education is power. Don’t deny people education.

“Two: Offer many varieties of easily accessible, low-cost birth control options. Don’t chip away at Planned Parenthood; make sure there are even more. Access is power. Don’t deny people access.

“Make sure a social-- Three: Make sure a social safety net is in place, filled with unions, workers’ rights, fair wages, fair and ethical bank practices, health services, state-funded daycare services, insurance and more, so that those finding themselves pregnant who want to proceed with the pregnancy have resources. Resources are power. Don’t deny people resources.

“I fully expect all of those points to be rebuffed with anti-choice tropes about loving babies and loving women. What a strange kind of love. It’s strange love to refuse to teach people about sex, and put myths of purity on young girls. It’s strange love to force women to keep babies inside them that are wanted, but dying, and causing trauma for the mother. It’s strange love to ask rape victims to have a vaginal probe inserted inside them against their will.

“That’s not love. That’s sickness. But then, it’s not about love, is it? It’s about economics, and a perpetual poverty class, and about keeping power from those that have the right to it. Do the right thing for Texas women. We won’t back down.

Senator Wendy Davis: From Nicole [Gorrad], Austin Texas.

“There’s a popular bumper sticker that says “I’m not from Texas, but I got here as fast as I could!” That’s me! Coming from rural Louisiana, I’ve always heard how great Texas is. And now that I’m here, I feel as if it’s a place in which I could truly blossom.

“Our economy is strong; our unemployment is lower than national averages; and even our housing market is up. We’re so wonderful that our own governor feels compelled to recruit folks from California and New York to move to our state to create better lives for themselves. It’s an exciting time to be a Texan if you’re here for business.

“But if you are here as a woman who is concerned about her most deserved and protected rights, you might want to reconsider your trek down to the Lone Star State. This state has made

a travesty of its handling of a woman's right to contraceptive advice; and education; and safe, medically approved methods of abortion. We are being told that we no longer have the opportunity to make our own choices, to access healthcare wherever we may reside, and that the laws our federal government guarantees us do not count here, in the state of Texas.

"Lord knows I love to brag about our breakfast tacos. But aren't we more than good food, great business, and wide-open spaces? We should be champions of a fantastic quality of life for all Texans, whether they be Aggies or Longhorns; natives or transplants; men or women; or rich or poor. I want to know that the state who holds itself up so high they want to take on the East and West coasts, will protect and defend my rights to female healthcare.

"I know we can be a 21st-century, top-of-the-line state, who attracts the best and brightest talent. But we need to make sure that across the board, we live in the 21st century, and ensure that all Texans will be treated equally. I ask you to think about the Texas you want to live in. It's going to be great. But we've got to strike down this bill to get that."

Part 012
Citizen Testimony (4)
02:10:30

Video Link: http://youtu.be/Rs0_24va7Ko

Audio Link: <https://archive.org/details/SB5012CitizenTestimony4>

Transcribed by: Melanie Magnotto

Senator Wendy Davis: This from Andrea Grimes, Austin, Texas.

"My name is Andrea Grimes and I'm here representing myself testifying in strong opposition to HB60. I am one of [Representative Naishtat's](#) constituents here in Austin. I believe the practical effects of this bill are clear. It would significantly reduce access to safe, legal abortion in the state of Texas and that scares me. And I'm a Texan lady, so not a lot scares me. I've done some barrel racing, I've seen big 'ole snakes out in the Hill Country, and bar brawls on Sixth Street. But this legislation is terrifying, and I'll tell you why.

"The so-called 'Preborn Pain Act' ignores sound, mainstream medical science supported by the American Medical Association and the American College of Gynecologists. The restrictions on the administration of medical abortions would prevent Texans in rural areas from safely and swiftly obtaining medication that would allow them to end their pregnancies without multiple unnecessary visits to a doctor's office. Or, if this legislation passes, an ambulatory surgical center hundreds of miles from home. And I've yet to hear from a legislator who can provide any evidence whatsoever that shows abortions performed in ambulatory surgical centers are safer than those performed in licensed abortion facilities.

“There is a reason you’re hearing from me and women who look and sound like me today. I am an affluent, white, English-speaking woman with a flexible job who lives in an urban area. I will always be able to get an abortion if I need one, but the Texans who will be disproportionately negatively affected by this legislation are not able to take time off work, arrange child care, and drive hundreds of miles to sit in a cold, sterile room, either in hopes of getting an abortion or in hopes of testifying at a Capitol Committee Hearing.

“But in closing, what scares me most of all is the confusing and appalling fact that some of the members of this committee argued earlier today that intent is not important when drafting this legislation. If that is the case, I wonder why these bills include language about a compelling state interest in fetal pain in the first place. If we are legislating without intent, we are shooting blind. And as a Texas lady, I know one of the things we’re real proud of here is our aim. I would like to respectfully ask that you vote to keep state government out of my uterus.”

Senator Wendy Davis: And this, from Shelley [Hiam] from Austin, Texas.

“My name is Shelley [Hiam], and I am representing myself in opposition of HB60. As a young teenager, my religious and political beliefs were that of my parents, which is to say, pro-life. I was raised in Texas and went through our public school sex education program. I was taught abstinence. So was a good friend of mine.

“At age fourteen, she came to me frightened. She was pregnant, and she saw abortion as her only option. I was conflicted. I urged her to consider other options. She looked at me and explained that she was going to do it no matter what. It didn’t matter if she didn’t have the money. It didn’t matter if she didn’t have the transportation. She was going to find a way. Then she confided in me as she had been researching ways to terminate the pregnancy on her own. Truly awful, extremely risky ways.

“It was in this moment I realized her health was more important than my beliefs, and I took her to the clinic. Later that day I confided in my mom what had happened expecting to be grounded and severely punished. Instead my mom shared a similar story. In 1971, her friend in college was pregnant and had a back-alley abortion. My mom was the only person she told. We shared our fears on the health of our friends facing an unwanted pregnancy.

“Although I am strongly pro-choice now, that is not what this bill is about for me. Roe v. Wade has not been overturned. This bill is about access and women’s health. I am concerned that if this bill passes, women all over this state won’t have access. I worry about my potential future daughters. I worry about women of low economic means taking severe health risks to exercise their right to choose. I think of my fourteen-year-old friend crumpled in a corner, scared, and willing to take matters into her own hands even if it meant risking her life.

“Please don’t take a step back. Please don’t close these doors. Please don’t put your personal

beliefs before the health of Texas women. Please vote 'no' on HB60."

Senator Wendy Davis: This from [Aura] Houston, Austin, Texas.

"My name is [Aura] Houston. I am speaking against HB16 and HB60 on behalf of myself and my daughter, who decided at thirty that she did not want children. Her choice. Her right. I am against these bills on constitutional and moral grounds. I am an active, faithful Christian in the Episcopal tradition.

"Let's be clear. The reason we are having this hearing tonight is because elected officials in power, primarily male, are attempting to control the reproductive rights of every female in Texas through legislation based on their religious dogma and preferences. In my reading of the Constitution, the State of Texas is forbidden to legislate based on religious beliefs. In front of us tonight are two such pieces of legislation.

"I am against these bills on moral grounds. As a child of God, it is my belief that every decision I make about my body, including reproductive choices, is between me and God. Not me and politicians, regardless of their faith traditions. Historically, women with limited resources, unlike women of privilege, have one choice: unregulated, unsterile, back room operations. In the years since Roe v. Wade, all females have had years of healthy and safe options, including procedures if needed.

"To seek to limit the rights of females by passing bills which are more limiting, invasive, complicated, complex, and costly is morally reprehensible. What is even more outrageous is that the same legislators who draft and pass these bills also draft and pass bills which reduce state funding for health care, education, mental health services, etcetera for the very same babies they were so concerned about in the womb.

"It appears to me that legislators in power have extreme feelings for the unborn; little if any for children who are living and breathing outside of their mother's womb. The great thing about choice is that females who want to carry their babies to term have that choice and right. And those who don't also have that choice and right. What gives the State of Texas using thinly veiled language the right to superimpose their narrow religious beliefs on every female in Texas? Entitlement and power."

Senator Wendy Davis: And this from Jennifer [Jacquielco] from Austin, Texas.

"First I would like to thank the Chair of the Committee for allowing me to testify. My name is Jennifer [Jacquielco], and I am a constituent of Representative [Paul Workman](#). I am here today to voice my opposition to the anti-abortion bills HB16 and HB60. I realize that you may have already decided how you will vote on these bills. Nevertheless, I respectfully ask that you give me your attention and consider these points.

“First, if you enact these bills you alienate a growing number of your constituents, including me. I am a registered voter who participates in every election and I will vote against any candidate who is in favor of restricting women’s access to abortion.

“These anti-abortion bills are being presented in the guise of protecting women’s health. This is insulting to women’s intelligence. Women realize that these bills will not protect their health. They will only reduce their access to abortion providers and limit their ability to make their own medical and family planning decisions. Women and their like-minded partners will continue to be an increasing part of your constituency. Do you really want to alienate them?

“Second, if you enact these anti-choice bills, you risk reducing the talent pool for Texas jobs. Women are a greater portion of professional job candidates than ever before, and they now outnumber males in college enrollment. Let me ask you. What young, strong-minded, independent woman with multiple lucrative job opportunities would want to move to or remain in a state where she has little or no ability to make decisions about her own body and about family planning? How will this affect Texas’s ability to create and fill jobs? As you know, job creation has a point of pride for the governor and his supporters.

“Third, in order to keep its citizens healthy and productive and to attract more industry, Texas needs to have an adequate number of health care providers. Increasingly these providers are female. Women now make up nearly half of medical students, up from less than twenty-five percent in the 1970’s. Females are also the majority of members in the American College of Obstetrics and Gynecology. What female physician with a choice would want to practice in a state where the law severely limits her clinical judgment and her ability to do what she believes is right for her individual patients? How will this affect Texas’s ability to attract and maintain an adequate number of medical providers for its population?

“Before you vote on this anti-abortion bill, I urge you to think carefully about its potential impact on Texas, not just now but in the future. You have been warned. If you enact these harmful anti-abortion bills, be prepared for a mass exodus of talent from Texas. Thank you for your time.”

Part 013
Citizen Testimony (5)
02:23:08

Video Link: <http://youtu.be/4QWX8NbOWiQ>

Audio Link: <https://archive.org/details/SB5013CitizenTestimony5>

Transcribed by: Michelle Belden

Senator Wendy Davis: And this from Jennifer Jarl McCombs, Austin, Texas:

“Dear members of the committee: My name is Jennifer Jerry-- Jarrel, I'm sorry-- Jarrel-McComb. I'm a fifth-generation Austinite and a sixth-generation Texan. I am a mother, a wife, a sister, daughter, and small business owner. I appreciate the opportunity to be heard by the members of this committee.

“I'm speaking today about the ambulatory surgical centers portion of House Bill 60 that requires all licensed abortion providers' facilities become ambulatory surgical centers. As with most prudent legislation, a problem is identified and a solution is proposed in the form of a bill. The premise of HB60 assumes that existing abortion facilities are consistently failing or producing poor outcomes to the women who've had an abortion procedure in the state of Texas: 'The problem'.

“With the acceptance of this premise, the argument is to mandate existing abortion clinics to transition their facilities to ambulatory surgical centers: 'The solution'. But this is a solution looking for a problem. The reasoning for the creation of this bill is based on a fallacious foundation. The perceived problem is faulty in that the current regulations to which existing abortion facilities adhere to are producing exemplary results in the health and safety of their clients.

“Abortion is one of the safest surgical procedures for women in the United States. 'Fewer than 0.5 percent of women obtaining abortions experience a complication, and the risk of death associated with abortion is about one tenth of that associated with childbirth.'”

Senator Wendy Davis: She quotes the Guttmacher Institute in saying that.

“The bottom line is that the current abortion facilities in the state of Texas already operate and perform to high standards. The vast majority of reputable research in patient safety relating to an abortion procedure, medical or surgical, performed in a licensed facility conclude that favorable outcomes are currently being actualized.

“Further, HB60 would create problems for women. Financial burdens: This bill would force an existing clinic to either renovate their current facility, purchase an existing ASC if there happens to be one sitting for sale in the clinic's area, or build a new ASC. Based on the U.S. national average, ASCs have an estimated cost of approximately \$400 per square foot, including construction costs of \$300 per square foot, contractors fees of about \$75 a square foot, and architectural fees of between \$32 and \$35 per square foot.

“An ASC can vary in size from 4,000 square feet with one or two operating rooms, or to as large as 30,000 to 40,000 square feet, around 12 ORs. Assuming we go with the smallest square footage, 4,000 square feet, you're estimating a total cost to be 1.6 million for that facility. The estimate does not include the purchase of the land; permitting; local, county or state fees; or the

cost to provide the additional staff and training required to operate by ASC licensing law. This is unquestionably a severe and undue financial burden for existing clinics.

“Access: Any of these unreasonable options would be cost-prohibitive. It is estimated that of the 42 existing clinics in the state of Texas, only five would be able to remain open. That is a greater than 88% reduction in access for women in the state of Texas. With the shuttering of these existent, proficiently run facilities, reasonable access is denied to women, specifically from the rural areas of Texas.

“The health and safety of women are not the priority of HB60. It is with substantial historical context that one could reasonably conclude that women without or with restricted access to abortion providers will still have abortions. Unfortunately, they will have to turn back-alley abortions or self-performed abortions. This is a problem. Women in these situations are more likely to have severe complications or die. This problem has already had a solution in the safe and excellent care they receive in the existing abortion facilities as they are currently regulated across Texas.

“Simply stated, HB60’s origin hinges on the unfounded and unproven proposition that a problem exists for purposes of maneuvering around a woman’s constitutional right for a safe and legal abortion. I respectfully request that the members of this committee take careful consideration to the dramatic consequences that will occur due to the passage of this bill, and vote against the passage of HB60 out of this committee.

“Please note that the data I reference to my oral testimony is cited for you in the copies of my written testimony. I mention this to contrast the authors of HB60 and authors of all the abortion restriction bills in the House and the Senate, who have yet to provide a shred of factual data or peer-reviewed evidence to support their position on any portion of these bills, despite repeat requests throughout the regular and special session. Thank you.”

Senator Wendy Davis: And she cites the following work for the statistics that she gave in her letter:

- The Guttmacher Institute from 2011. [State facts about abortion: Texas](#). New York, Guttmacher Institute.
- RS Means, 2013, Reed construction data retrieved June 20 2013 from its [website](#).
- Physicians Capital Investment 2012 retrieved June 28, 2013 from Physicians Capital Investment [website](#).
- Planned Parenthood of greater Texas. 2013, February 25.
- DSHS AB facilities as of 2/25/2013. 2013, Texas, United States of America.

Senator Wendy Davis: And now from Jane Keaty, who lives in [Representative Dawwna Dukes'](#) District:

"My name is Jane Keaty. I'm here to testify against HB60 and HB16. My representative is Dawnna Dukes. Lieutenant Governor David Dewhurst bent the rules to add these bills. He had his chance during the regular session. This should not be happening. Shame on him, and shame on you who support these bills. A woman's body is hers. The state has no right limiting her health care choices, including abortion.

"Abortion is about women's health. Ask any woman who's been diagnosed with cancer at some point in a pregnancy, who was given a choice to begin treatment for cancer and advised to abort her unborn child or to carry the baby to term with no treatment at the risk she will die before the baby's due date. Women who have an abortion do not do so lightly. No woman gets pregnant so she can have an abortion. Sometimes families end up needing to terminate a pregnancy when they thought they never would.

"These bills will inordinately affect poor and working poor women. The clinics that will have to close are not just about abortion. They provide family counseling, breast exams, PAP smears, prenatal care. And under this bill, the abortion pill, which is safe and rarely results in complications, will require a before and an after appointment with the doctor. It also requires a woman to take a higher dosage than necessary, which only indicates the ignorance of those who wrote these bills, since it has been shown that the necessary dosage is much less than the bill would require.

"Shame on you who support these bills. The omnibus abortion bill will be challenged in the courts, causing an enormous waste of valuable tax dollars and state resources. We have seen this in other states, North Dakota and Kansas, where hundreds of thousands to over one million dollars and counting of state taxpayer money is being spent to defend similar legislation, these anti-women anti-abortion bills in other states.

"The bottom line is this: these bills will make abortion harder to obtain and more expensive. As a result we will see an increase in back-alley abortions, self-administered abortions, death among women seeking abortions, and unintended pregnancies carried to term, all of which directly create negative public health outcome and a huge financial drain on the state of Texas.

"This is not what any of us want for our state or for our women, children and families. Shame on you who support these bills. I'm sure your mamas and maybe your grandmamas uttered the old adage 'Be careful what you wish for.' This legislation has raised the ire of thousands upon thousands of women across this state, and they vote. Lieutenant Governor Dewhurst and those in the Texas Legislature backing these bills need to start planning their retirement.

"Shame on you, Lieutenant Governor Dewhurst, and shame on you who back these bills."

Citizen Testimony (6)

02:34:23

Video Link: <http://youtu.be/WuHvKXYiVJ0>

Audio Link: <https://archive.org/details/SB5014CitizenTestimony6>

Transcribed by: Joey

Senator Wendy Davis: From Lisa LeBlanc in Austin, Texas:

"I stand before you not to protect my reproductive rights. I do not need protection from you any longer. I started menopause at the young age of 27, and at the age of 29, all my reproductive organs were removed.

"I am a rape survivor. I did not pursue the legal justice I deserved because of fear of the system, and shame and guilt. The shame and guilt I assumed to be mine, but we all-- are all well aware it is not. I did everything right. I met this male through a close friend's brother. I spoke with him for a number of hours every other day for six weeks before consenting to a date. But when I opened the door to my home, I sensed I was in trouble. I was. I was attacked for over seven hours in my home. Now they call it 'date rape'.

"I was paralyzed by fear for three years. I was tortured nightly when the phone rang between the hours of 2 and 3 am, the same time the rapist left my house. This occurred nightly for two years after the rape. It was just a little daily reminder of what he did and could still do to me. I did turn off the phones closest to my bedroom. But I had roommates, and they did not know because of shame, and I didn't tell anyone for years. They were not aware of why their phones rang nightly, only ringing long enough to remind me who was aware.

"I stand here before you because you claim to be protecting the safety of women's health issues through passage of these legislative bills. That is a lie, and everyone in this room knows that to be true. The true intention of these bills is to attack a basic human right. The right for any woman in this American society today. And I remind you this is 2013, and any woman who lives in Texas has the ability to choose her own legal and medically safe choices guaranteed by the Supreme Court of the United States of America.

"The arguments we hear that support the intention of these bills imply scientific fact and knowledge, but these, too, are lies. There is no factual reason to make these changes. They are introduced, and the truth is they will harm access to tens of thousands of women, children, and men to quality healthcare clinics in their rural areas. These bills really are here to target the indigent women of color and their families, and let's be very clear about this fact. You see a room of people with very few faces of color here to represent themselves. They cannot afford to be here. That is why I am here.

"Do we, as a society, really understand all the implications of responsibility we assume if we

deny a woman's basic human right to choose her own healthcare decisions? If we support HB60, HB16, SB5, then we as a society have to make sure we continue to assume the health and welfare of this woman and the life we expect her to have if these bills become law.

"Today our society does not impose or focus any reasonable responsibility on these fathers if they are unwed and single mothers. We do not require their involvement or responsibility to support the mother's position, or the infant, then the child. Our time would be better spent making sure we protect and support mothers and their child's interest, and make the fathers accountable, and not just financially, because we know that raising a child requires so much more than just money, and we all know it is easier with supportive parents. We should be making sure that resources are in place to make this happen, not limiting a woman's basic right to choose.

"If we, as a society, are going to legislate and take away the basic human right to choose what happens to your own body, then we are assuming responsibility that requires us to ensure the welfare of both mother and child. We assume responsibility to treat a child's mother with dignity and trust, more trust than what we assumed she did not have in making the right medical decisions for herself. Dignity that demonstrates how much we really value a life, not causing hardship and harm in the process. Tex, Texas actually had legislation this past session concerning child care for teen parents wanting to complete their high school education, and referred to it as 'rewarding bad behavior.' When is deciding to become a parent considered bad behavior?

"The legislature seems to want it both ways. Not allowing the woman's right -- human right -- to choose what happens to their bodies, then when they decide to choose what these laws intend, they are not supported, but shamed. This not only brings great amounts of shame to the parents but to the child as well. It is a stigma that is created for this family by society in general when included in our written laws. Shame damages the soul. It does not create hurt feelings, it causes real damage to who and what that person is and will become. Either we support every aspect of a pregnancy or not. We cannot choose to support after 20 weeks, then the first year of life and second and then stop. Then we leave it up to the mother to fight for her human rights and her child. We need to provide adequate, affordable, safe healthcare offered within their communities. Not like these bills suggest where they must travel hours to find adequate care.

"You are voting to cause, to affect, two lives here. This vote requires a lifetime commitment. They imply that more legislation will pass to support and dignify these lives through safe housing; quality health-- quality healthy food; education in all areas needing attention; affordable daycare; a good, efficient transportation system to get to work, stores, daycare, schools, health services, and any other services needed. In addition, there will be the emotional cost, to keep a child or parent from feeling 'less than', that can lead to addiction, possibly crime, then the cost of treatment. And then there are the possibilities of birth-, learning-, or mental-disabilities, that continues to add more involvement and support that will be required by us, as a society.

“These are just a few concerns off the top of my head. I am sure there are many other ramifications from these laws that I’ve not been able to address. We cannot even provide the education of the children here today that they had in 2010. It is our duty to make sure we are totally responsible for the lives that we impact through our laws. That is the whole reasoning of why we are here. Laws are to create justice for all. It is our responsibility to take care of the lives here today. We are failing to accomplish this today. How are we possibly going to be able to include the unseen impact on the lives of tomorrow in our failing system?”

“We do not provide what is needed and required as basic human rights for Texas woman and children today. They go to bed hungry and wake up hungry. They go to bed sick and wake up sick. They cannot afford shoes, diapers, daycare expenses and school supplies, or a tank of gas. Women and children struggle for daily existence and are not able to come here today and tell what they know to be true. They need support that is not coming.

“I was taught that a civilization is measured by the way they treat the most vulnerable citizens: the elderly, the sick, the hungry, their children, and their poor. We, as a society, are failing to provide these measures of basic human needs. Why do you think we’re capable of adding more individuals when fiscal responsibilities are not being met today? If these are signed into law, where is the money coming from? Where is human decency going to fit? How many basic human rights are going to be left unfulfilled?”

Senator Wendy Davis: And this from a young woman named April in Austin, Texas:

“Thank you, Chair and committee members, for allowing me to testify. My name is April, and I am a constituent of [Representative Donna Howard](#). I am testifying today that I am against HB60. We’ve heard from Senators and Representatives here that this bill is to protect patient safety. But we all know, after seeing Lieutenant Governor Dewhurst’s Twitter account, that isn’t the goal at all. The goal of this bill is to limit access to abortion in Texas, which is in blatant opposition to the constitution of these United States.

“But let’s entertain for a moment, the idea that this bill is actually about patient safety. Humor me. Tell me this: If after one year, three years, five years, we find that infection and complication rates fail to improve, will the legislature commit to reversing these regulations?”

“Moreover, one of the components of this bill requires that physicians get admitting privileges in local hospitals. Never mind that, by law, hospitals may not refuse treatment of a patient in an emergent condition, and never mind that professional organizations like the American College of Obstetricians and Gynecologists, and the Texas Hospital Association, find this regulation egregious. Bottom line, you are asking these physicians to obtain admitting privileges in facilities where they are unable to practice their specialty. There is no hospital in the state of Texas that will allow an elective pregnancy termination procedure to be performed.

“I am a lifelong native Texan, as are many generations of my family. I was born here, raised

here, committed to obtaining a higher education here, and stayed here to work even when it might have been easier to move somewhere else where the weather is milder.

"I am appalled at the sheer audacity of my state government that has chosen to make medical decisions for the physicians and women of Texas, despite most of its Senators and Representatives not receiving any medical training at all.

"I am ashamed of my state government, who touts low taxes and small government, but has chosen to spend more taxpayer money by calling a special session in order to pass laws that have already failed to pass in the regular session.

"I am disappointed that my state government thinks so poorly of its own citizens that they don't trust them to make the right decisions for themselves, with the advice of their own physicians, their own families, and their own spiritual leaders.

"Ladies and gentlemen of the House of Representatives, thank you for allowing me to share my testimony today. Please do not pass this harmful, shameful bill."

Part 015
Citizen Testimony (7)
02:47:38

Video Link: <http://youtu.be/z3xPQK2203w>

Audio Link: <https://archive.org/details/SB5015CitizenTestimony7>

Transcribed by: Nicholas Kapur

Senator Wendy Davis: And this from Jane, from Manchaca, Texas:

"My name is Jane. I am here as a mother and grandmother and a Planned Parenthood volunteer. I grew up in a small Texas town in the 1950s and early '60s. Birth control pills had not been invented and abortion was illegal. There was no sex education in school, and just as today, girls did get pregnant.

"If a family had financial means or connections, they might arrange for their daughter to get a safe abortion in a faraway place. Less fortunate girls might find themselves in the hands of a shady, illegal abortionist, and suffer the consequences of injury or death. Many found themselves in sudden marriages at an early age. They found themselves trapped in unhappy marriages or living a hard life as a single mother; shamed in a community without education; with hard, low-paying jobs.

"I was right here, in this Capitol, in March 1972, when women filled the halls to lobby for the

Equal Rights Amendment. Even though the federal legislation failed to gain national ratification, I was proud that Texas was among the states that stood up for the rights of women. We have come a long way since then. Birth control and access to safe, legal abortions have changed the lives of women, men, and families.

"I have a friend who faced a very difficult choice a few years ago. She and her husband were expecting a baby that they very much wanted. They were so excited. Then genetic tests revealed that the child was carrying a specific gene that is common to serial killers. Not all persons with genes become serial killers, but many serial killers share the gene. What a terrible choice to make. Do you bring into the world a person who might someday kill the loved ones of others? Do you trust God to take care of everything?

"I won't tell you what choice they made. It's no one's business, and that is the point. How can the state of Texas insert itself into such a difficult, private dilemma? There has been a lot of dissembling about the purpose of this legislation being to make the health care safer for women. I salute our governor-- lieutenant governor for his honesty yesterday in tweeting the truth: That the purpose of this legislation is to end abortion in Texas.

"It makes me very sad as a sixth-generation Texan to see my home state moving back to the 1950s. I have seen the 1950s, and I don't want to go back there. I ask that you oppose HB60. Thank you for your time."

Senator Wendy Davis: And this from Carol, in Austin, Texas:

"No one ever thinks they are going to be faced with the decision of terminating a much-wanted pregnancy, of deciding when to shut off the life support of their beloved child. My spouse and I were faced with exactly that decision.

"On December 1st, 2008 I was thrilled to discover that I was pregnant with my first child. My husband and I had recently married and decided to start having kids right away. Four months later we went in for our regularly-scheduled ultrasound at twenty weeks, where we were going to find out if we were having a boy or a girl. Finding out your baby's sex is easily the most exciting time of any pregnancy, and we were ecstatic to discover that we were having a girl.

"Unfortunately that moment was cut short, when the OB/GYN also told us that our baby was sick, and referred us to the maternal-fetal specialist. Two days later, we were given the heartbreaking news that our daughter was not only sick, but had a terminal condition: [Hydrops fetalis](#), in which abnormal amounts of fluid build up in the body. Given the early onset of my daughter's illness, her condition was very grave, and we left the specialist's office with our choices. We could wait until she passed, induce my labor, or have a dilation and extraction.

"Knowing that your daughter is dying is heartbreaking. When you are given the news that there is nothing that can be done to save your baby's life, it feels like your soul has been ripped apart.

But we had a decision to make. Even if we decided not to do anything, we were still making a decision, and we had a limited amount of time to decide. There were so many things to consider. Did I want to hold my baby? Did I want to name her? Did I want to have her baptized? Where would she be buried? Would I be able to hold her while she died, if she somehow did survive until term?

“In the meantime, I couldn’t eat, I couldn’t sleep, and I couldn’t leave the house. Every time that I left the house, someone would comment on my pregnancy. They asked perfectly normal questions about my due date, the gender, the name. I answered their questions as nicely as I could, and then I would turn around and burst into tears. So eventually I stopped leaving my house.

[EDITOR’S NOTE: Senator Davis wipes her eye with one hand. Over the next few minutes, her voice grows shakier and more tearful and she pauses several times to use a tissue.]

“I couldn’t eat because my stomach was in knots from the anxiety. I didn’t know exactly what was going to happen, and I didn’t know when it would happen. And I definitely couldn’t sleep. I was petrified that my baby was going to die while I was asleep. I just knew that I was going to wake up one day and discover that she had died at some point during the night. The idea that I couldn’t be with her and know when she had passed was more than I could bear. We decided to have my labor induced. It felt like the best path for our family.

“We started making burial arrangements. We didn’t have a grave plot for her because we never anticipated needing one. Instead of planning a nursery, I was picking out a headstone for my baby. Instead of choosing an outfit for her to wear home, I was picking out her burial gown. It was devastating, but there was some comfort in the fact that we were moving forward. Except we weren’t really moving forward. Shortly after making our decision to have my labor induced, we were informed that it wasn’t really possible. My husband worked for Seton at the time, so we had Seton insurance.”

[EDITOR’S NOTE: Seton is a Catholic organization of several hospitals, clinics, and other medical facilities in Texas. LINK: [About Seton](#)]

“As a faith-based organization, Seton would not allow us to have our labor induced while our daughter still had a heartbeat. That meant that we were either forced to wait until she passed, or agree to have her heart stopped. After weeks of being crippled by grief and anxiety I couldn’t imagine waiting any longer. Our obstetrician appealed to the ethics board at Seton on our behalf, but our appeal was denied, so we made the decision to have our daughter’s heart stopped.

“In the meantime I prayed and begged for a miracle. A miracle that I knew wasn’t coming. Every night I would talk to my baby, who we named Amber Grace, and I would tell her that I loved her-- I would tell her that I loved her, and that I was sorry that she was sick. And then I would tell her

that it was okay to leave me.

“At this point, my daughter was going to die, and it was only a matter of time, when and where it happened, and if we could avoid having her heart stopped, then that is what we prayed for, but she didn’t die on her own. On April 8th, 2009, we went to the specialist’s office. 5:00 pm, we took a final look at our baby on the screen, said our goodbyes, and her heart was stopped less than an hour later. My labor was induced that night, and she was delivered four years ago, on April 9th. I held her, kissed her-- I watched her get baptized-- told her that I loved her, and said goodbye.

“None of our daughter’s life and death went as planned or expected. I expected to have her for the rest of my life. And when that wasn’t possible I expected to be able to say goodbye to her in the way that I had chosen, but that wasn’t possible either. It is very frustrating to feel like the choices you have made for your baby’s life and death are not being respected. Hearing that your baby is going to die makes everything in your life feel like it is out of your control. Being told that you don’t really have any control over how your baby is going to die is devastating and self-defeating.

“I chose to have a baby, and to bring her into this world. I should be allowed to make the very personal, very private, and very painful decision as to how she leaves it, guided by the best interest of my child and my family. If a 20-week ban had been in place four years ago, then I wouldn’t have been able to make this choice. Waiting for your child to pass is certainly a viable option for many who have been in my position. But so is the path that I chose and would choose again.

“Physically, I faced a small chance of developing complications from continuing to carry her while she was sick. Mentally and emotionally, however, I would have deteriorated, and mental illness can be just as debilitating as physical illness. I would hate to see other families denied the right to choose what is best for them. These decisions are hard enough without placing extra limits on them.”

Part 016
Citizen Testimony (8)
2:59:19

Video Link: <http://youtu.be/16O02kWGtl0>

Audio Link: <https://archive.org/details/SB5016CitizenTestimony8>

Transcribed by: @LadyDreamgirl

Senator Wendy Davis: From Geraldine in Austin Texas:

"I am representing myself and Faith Action for Women in Need and I am against HB60.

"Mr. Chairman, you tell me that you have treated me and the others here with respect. Sir, I know exactly what respect looks like. Respect is not calling a special session in order to ram anti-choice legislation through the legislature. Respect is not closing most of the abortion clinics in the state and calling it an improvement in women's health. Respect is not trying to create a *de facto* ban on abortion when safe and legal abortion is supported by the clear majority of Texans.

"Respect is not burning up the 3 minutes people are allowed to speak with your own reiteration of the procedures or grandstanding or cutting them off before their time is up. Respect is not wandering in and out of the chamber when men and women tell the most intimate stories of their lives. Respect is not shoving an ultrasound wand inside a woman's vagina for a painful, medically unnecessary, state-mandated rape because she should have the bad fortune to need an abortion or even because she is miscarrying her wanted child.

"I grew up in a Texas that had scientifically accurate sex education. I grew up in a Texas where a well-equipped and fully-funded Planned Parenthood was around the corner to provide the high quality healthcare and family planning that an uninsured teenager needed to ensure she could manage her fertility and make her own choices in life. I used to be so proud of being a Texan, but now I am ashamed. When friends tell me: "If you've got a uterus, you've got to leave that state," I have to agree that they speak the truth.

"I fear for my daughter's future in a state that values the right to carry a gun on the college campus she attends over her right, not just to bodily integrity and choice, but her right to life itself. Because HB60, if enacted, will cause even more deaths of Texas women already suffering from cuts to women's health programs and the failure of this state to expand Medicaid coverage. This bill is a hateful attack on Texas women and their families and must not be enacted."

Senator Wendy Davis: From Peggy in Austin, Texas:

"Dear Texas House Affairs Chair and Committee, I signed up to speak Thursday at the committee hearing about 1 pm, and was never allowed to speak even though I waited ten and a half hours and listened to many a male speaker who'd signed up after I did. Please accept this copy of my testimony.

"I appreciate your service and open ear to my story about why I'm testifying against both HB16 and 60. I'm Peggy from District 48, represented by the honorable and wise [Representative Donna Howard](#). If ya'll would listen to her intelligent input I wouldn't need to be here speaking to you today and I could be out volunteering as usual to help immigrants learn English, the homeless get fed, and poor kids find affordable tutoring during the summer.

"I'm a retired public school teacher currently volunteering as chair of the Social Action Committee of First Unitarian Universalist Church of Austin, which means I represent about 200

voting adults from the Austin area when I talk about how backwards you're leaning by considering proposed health bills 16 and 60.

"I'm opposed to these bills and I'm perplexed about why you're wasting time on these bills that are not pro-life at all but only designed to prevent women from getting needed healthcare. You could better spend your time by looking at ways to help our many unwanted children in Texas. Not to mention helping the many women in this state who live in poverty because your laws have not fully funded education, women's healthcare, or family planning.

"Sure, you made up for some of the funding that was cut two years ago, but you know you have more work to do. Instead you're coming up with more ways to cost taxpayer money and limit women's healthcare. Every human, no matter what age, should be wanted. Yet I'm watching Texas politicians interfere with the healthcare decisions that should be between a woman, her family, and her doctor. Lawmakers, either get out of the vagina business or go to medical school.

"Regarding HB16, why did you come up with a generic ban on an abortion after 20 weeks when doctors sometimes learn new information later than that and abortions are legal for up to 24 to 48-- 28 weeks? I'd say that if you vote for this bill you're simply happy to ignore medical science and watch women and children die for no reason. I know it shouldn't surprise me since you sit back regularly and watch people killed via capitol punishment. Many of our inmates sitting on death row were once unwanted babies, and what have you done for them?

"Anyone who calls this a fetal pain bill is forgetting the pain of life. Granted this fetus will miss the good life which could be, if the fetus were fortunate enough to be born into a family with money. What about being forced into the pain of poverty and sexual discrimination? Think of the pain many women and children live with today, which you could eradicate with an open mind and heart.

"Why aren't you working to pass laws to educate our teens about human sexuality? Only 4% of Texas school districts teach our teens about responsible pregnancy, contraception, and disease prevention according to the Dallas Morning News. That's outrageous and you know it if you've been paying attention because Texas has one of our nation's highest teen pregnancy rates and second highest teen birth rates. What are you doing for these moms, families, and children? Why aren't you working more for our children to have health insurance and care?

"Additionally HB60 is absurd because it places unnecessary requirements on health centers which will reduce abortion facilities from 42 to 5. While women with money will still be able to get abortions it will assure more poor women of either bringing their unwanted babies in the world to be malnourished, unsupported, and uneducated or it will send them to the fatal abortionist who existed when I first went to college in 1972. Are you really okay with more coat hangers? A vote for this bill says you are.

"If I saw y'all working to truly support our many children living in poverty or in the broken foster care system I wouldn't consider you pro-death, but that is exactly how I will see any of you who vote for this horrific legislation. Please, in the name of humanity, vote no on HB16 and 60."

Senator Wendy Davis: And this from Amy in Austin, Texas:

"Thank you to the chair and committee for allowing me to testify. My name is Amy and I am a constituent of [Representative Elliott Naishtat](#) from Austin. I am here representing myself. I am also a volunteer with the Lilith Fund, an abortion assistance fund which speaks directly to low income women needing abortion care but unable to access it because of cost, distance, and many other reasons.

"I am here to testify against HB60 and HB16 because it is important that abortion remain legal, safe, and accessible for all Texas women. I had an abortion when I was 23. I was unemployed and suffering from health problems. My life wasn't stable enough to provide a home for a child and my health wasn't sturdy enough to continue the pregnancy.

"I had to borrow money for the abortion, but I was fortunate enough to live close to a clinic. My abortion was safe and professional and I recovered from it quickly. However my abortion was a wake up call. I decided that if I were to get pregnant again I wanted to be in a better position to have a healthy pregnancy and provide a stable home for a child.

"I got a job that led to a career. I went to grad school and I worked on improving my health. As it turns out I've never gotten pregnant again, but in the course of dealing with my health-- health issues I discovered that I have a genetic condition. It isn't fatal, but it does lead to a decreased life expectancy, a decreased quality of life, and a far greater chance of developing major fatal diseases.

"The worst part of it is the constant chronic pain that this condition causes. No matter the treatment or how well I take care of myself I have to live with constant chronic pain which gets worse every year. If I were to get pregnant again I could not imagine sentencing a child to a life of constant chronic pain due to some bad genes, my bad genes. While I take every precaution to make sure that I don't get pregnant, birth control sometimes fails and rapes sometimes happen.

"If I were to get pregnant again, I would have an abortion despite having a masters degree, despite having a good job and health insurance, despite being able to provide a stable and loving home for a child. It is my hope for every woman who is not able or willing to continue a pregnancy for whatever reason that she can have access to a safe, professional, and legal abortion. But if these bills pass it will guarantee the end of safe, professional, accessible, and legal abortion for a large number of Texas women. These bills put undue burdens on women and these bills will prevent women from being able to choose what's best for them, their health, their families, and their futures. Please do not vote for HB16 and HB60. Thank you."

Senator Wendy Davis: This from Alyssa who lives in District 45 [Representative Jason Isaac](#), District 25 [Senator Donna Campbell](#):

"My name is Alyssa and I would like to testify against House Bill 60 because it will restrict abortion in arbitrary and unnecessary ways. Ways that I fear are motivated to keep women from pursuing challenging competitive careers. Now would quite possibly be the worst time for me to become a mother, the worst time for me as well as my possible child.

"I have work to get my first degree and to build the beginning of a career as a professor. However this career will take a lot more time and effort to get it off the ground. I'm about to get my MA and hopefully PhD which will take from six to eight years to complete. During these years I will have to work tirelessly and for very little money. It will take all of the energy and time I have to make it through this period.

"If I do make it through this and successfully get on to the tenure track job market my success will be far from guaranteed. I will still have to campaign tirelessly to get hired, probably for several years and possibly work several jobs as an adjunct, positions that often pay significantly than the salaries of high school teachers in the state of Texas and allow faculty little time to do the research they really care about.

"But if I do eventually get the job I want, the job I know I am more than qualified to get, I will be able to do what I love for the rest of my life, to do research that is important, that will inspire students the way I have been inspired by my own professors.

"Getting pregnant could very well ruin this dream especially if I do not have the choice to end the pregnancy. If I had to drive far away because all the clinics near my university have been closed, adding the expense of gas to the expense of the procedure itself, abortion could be rendered prohibitively expensive for me. If I had a child I would likely be changing diapers instead of writing my dissertation and devoting all of my money to paying babysitters rather than traveling to deliver papers at a conference.

"If I do not make it through I will have to take whatever probably low-paying job my bachelors degree in English can get me. A job that would likely not ever be able to provide adequately for myself, much less a child, even when combined with my partner's salary. Though I am certainly taking precautions against getting pregnant, if I did happen to get pregnant I would want to know that I had the option of choosing to end that pregnancy.

"Choosing abortion would be difficult for me. I am not pro-abortion. I am pro-choice. However knowing that I had a choice would make it possible for me to come to a decision that I felt at peace with, a decision that I could at least say was my own. Every woman deserves this choice.

"The Texas Legislature is attempting to claim that this choice is really their own, bullying women

not located near urban areas into becoming mothers. This will likely result in many individual women losing the kind of economic and social power that full control over their reproductive lives makes possible for them now. It will keep them from being extraordinary.

“This is not even to mention the fact that many will likely be prevented from excelling because they will be dead from the many-- from the badly done illegal abortions they will begin to seek when their access to legal abortion is restricted. The Texas Legislature is proving that it has the power to push women into subordinate positions and even to kill them.

“During this special session the Texas Legislature had proved that it can do whatever it chooses, up to and including silencing the people's testimonies on this issue as they did in the State Affairs Committee on June 20th. Unfortunately for the Texas Legislature their power comes from the people's votes which cannot be silenced. Half of these votes will come from women who will make sure that the next time a special session like this is called it is filled with representatives who will value and attempt to protect their reproductive rights.”

Part 017
Citizen Testimony (9)
03:16:14

Video Link: <http://youtu.be/bKmMPtjExVg>

Audio Link: <https://archive.org/details/SB5017CitizenTestimony9>

Transcribed by: Vin

Senator Wendy Davis: And this from Melissa in Austin, Texas.

“Thank you chair and committee for allowing me to testify. I am Melissa, a constituent of [Representative Dukes](#), and mommy to Iris, who is six, and Sam, who is four. I'm here to testify against HB16 and the anti-abortion bills because there are thousands of reasons women make the choice to have an abortion procedure so many more than rape, incest, and the life of the mother.

“What happens to a woman's body should not be legislated. HB16 only makes an exception for the life of the mother and does not make an exception for fetal abnormalities. 0.57% of the abortions in Texas are after 20 weeks: almost half of one percent. The women who receive abortions after 20 weeks make this painful decision with their families, usually after receiving news that their child has such severe abnormal-- abnormalities it would only be able to live outside of the womb for minutes, hours, or days, and that their child would die possibly in extreme pain. These pregnancies are wanted, planned, and loved.

“The idea of fetal pain is being used as the excuse to outlaw abortion after 20 weeks. The

Journal of the American Medical Association found evidence that the brain connectors to feel pain are not formed until at least 24 weeks. I think we should use evidence found by the American Medical Association rather than an article in USA Today that Representative Laubenberg read on a plane.

“What about the mental and emotional pain of these parents, and the physical pain their child may be in from being born, before their pending death? Do you think that you, the lawmakers, have the right to make these women carry and then watch their babies suffer and die. How long is too long to watch your baby suffer before it dies? One minute? One hour? One day? Taking this choice away from these women is gut-wrenching and wrong. We are women. We are mothers, daughters, and most importantly we are human beings. Trust us to make decisions about our bodies and our health decisions, with our doctors. Thank you.”

Senator Wendy Davis: This from Pamela in Round Rock, Texas; District 52, [Representative Larry Gonzales](#). This was her planned testimony on HB16.

“I registered to testify on HB60 and HB16 and waited for more than 10 hours to be called to testify on HB60. I was denied the right to do so. After shutting down testimony on HB60, [Chairman Cook](#) then decided to arbitrarily and severely restrict the number of witnesses allowed to testify on HB16, thus preventing representatives from hearing from me and hundreds of other Texans. My prepared testimony against HB16 follows.

“Thank you, chair and committee, for allowing me to testify. My name is Pamela. I live and vote in Round Rock. I am a constituent of Representative Larry Gonzales in District 52. I'm here today to testify against House Bill 16, the proposed measure that would ban abortions after 20 weeks.

“Since the legalization of abortion in 1973, abortion services have become more widely accessible. As a result the overwhelming majority of abortions are performed in the first trimester of pregnancy. For a number of reasons, however, abortion after the first trimester remains a necessary option for women.

“Although the proponents of HB16 might say otherwise, their goal is to ban all abortions and severely restrict the right of women to control their own bodies. They call themselves pro-life, but in fact they threaten violence against doctors and endanger the health of women and the right of physicians to determine the most appropriate treatment for their patients. Their arguments about so-called ‘fetal pain’ and similar unfounded and fear-based claims are rehashes of decades-old rhetoric.

“Combined with HB60 and provisions in SB5, HB16 concocts a perfect storm that endangers the women of Texas and bars their access to abortion. Factors that force women to have abortions after the first trimester include barriers to service, provider shortages, cost, and legal restrictions. Other reasons include psychological denial of pregnancy as occurs in cases of rape

or incest, lack of financial support, lack of pregnancy symptoms, and a seeming continuation of monthly menstrual periods or irregular periods.

“Medical indications affecting pregnancy may also lead to abortion after the first trimester. Some of these include fetal health concerns from a lack of prenatal care, fetal exposure to prescription medication, and fetal anomaly due to advanced maternal age. Exist-- existing conditions in which a woman's health is threatened or aggravated by continuing her pregnancy include certain types of infections, health failure, malignant hypertension, including preeclampsia, out-of-control diabetes, serious renal disease, severe depression, and suicidal ideation. These and other symptoms may not occur until the second trimester, or they may become worse as the pregnancy progresses.

“In *Roe v. Wade*, the US Supreme Court held that the US Constitution protects a woman's personal decision to end a pregnancy. Only after viability, being capable of sustained survival outside a woman's body with or without artificial aid, may states ban abortion altogether. Abortions necessary to preserve the women life or health must still be allowed, however, even after viability. HB16, like its companion bill HB60, is not pro-life. It is an anti-woman's health measure that endangers the women of Texas and interferes with personal decisions between women and their doctors. I urge you to reject HB16.”

Senator Wendy Davis: And this, from Melissa in Austin.

“Thank you chair and committee for allowing me to testify. My name is Melissa, and I am a constituent of [Representative Mark Strama](#) of District 50. I'm here to testify against HB60 because I believe in the equality of women and reproductive justice.

“In 1978 I had an abortion. I had that surgical abortion in a doctor's office, and felt completely cared for and safe. It was a very difficult decision for me, and the right decision. I am grateful that I lived in a state where my rights as a woman and a citizen of the United States of America were respected. I was allowed to make the best choice for me and my family.

“I could give you a list of reasons why I did what I did, but the truth is that those reasons are private and none of your, or anyone else's, business. I don't have to defend my decision. It was my right to make it and should always be the right of each individual woman. No one else could possibly know my mind, my heart, or understand why I made the choice I did, and they don't have to. My right to make decisions about my own body are mine to make, just as you have the right to make your own decisions about your health, your body, your well-being.

“Why do you deny my freedom of choice? The idea that doctors would need admitting privileges at a hospital within 30 miles is ridiculous. There are many places in this state where there is not a hospital within 30 miles of the community. Why are you not concerned with the health of those Texans? And what about women giving birth? More women have complications and die in childbirth than from abortion. Shouldn't supporting small community hospitals be a priority? If

you really cared about life and reducing the number of abortions, wouldn't expanding Medicaid, providing science-based sex education, easy access to birth control, funding Planned Parenthood, and doing all you could to make-- all you could to make healthcare available to each child, woman, and man in Texas be your focus?

"If all you want to do is be pro-birth, then claim that. I hear that you claim a religious basis for your actions, yet I see no legislation reflecting compassion for the children in Texas that go to bed hungry each night, or the children that are abused, abandoned, and neglected. I see no legislation providing easy access to birth control to reduce the need for abortions. I see no legislation to provide for child care, a living minimum wage, or family leave, so more woman-- women would feel that they could care for a child.

"I am against this assault on my rights and the basic equality of women. Reproductive rights are central to women's equal rights and autonomy in society. Men are free to use and buy birth control at any age. Men are free to have vasectomies, or not, and if they impregnate someone they're not required to subsume their rights and the sovereignty over their own bodies at the directive of another person's religious beliefs. Freedom of choice means that every woman and man is free to make personal decisions about their reproductive lives based on their own religious beliefs and consciences."

Senator Wendy Davis: And this from Ellen, in Austin, Texas:

"Hello. Thank you for allowing me to testify. My name is Ellen. I reside in Rollingwood, Texas, House District 48, [Representative Donna Howard's](#) district. I am testifying against HB60.

"As a person of faith, as a Jew, I am dismayed that some religious views are not being taken into account and respected as this bill aims to make it more and more difficult for a woman to have access to abortion care.

"My faith is clear on this issue. My Jewish values state that every woman has a right to self-determination. And Judaism views the well-being of the mother as paramount, placing the highest value on existing life. My faith-based perspective informs me whether to terminate a pregnancy is a deeply personal and immensely complex decision, one that should be left to the woman in consultation with her doctor, her partner, her religious values, and her conscience.

"The bill being heard today represents an intrusion on these values. It seems more aimed to shame a woman than to support her. To treat an individual as if she cannot make and carry out this most important personal decision as her own moral guide. Too often we suppose to know what is in the heart of another person, but of course we all know that that is not possible.

"So I ask the members of this committee not to dictate a decision such as this for another person. Do not suppose to know what is truly in the heart of a woman who is seeking an abortion, particularly one who is perhaps a victim of rape or incest. I urge the members of this

committee to vote against these bills and keep abortion care safe, legal, and accessible for the women of Texas. Thank you for the opportunity.”

Part 018
Citizen Testimony (10)
03:30:33

Video Link: <http://youtu.be/gXDO1JCQds0>

Audio Link: <https://archive.org/details/SB5018CitizenTestimony10>

Transcribed by: Trinity

Senator Wendy Davis: And this from Julie, Pflugerville, Texas:

“Good afternoon thank you chair and committee for allowing me to testify. My name is Julie and I am a constituent of [Mark Strama](#). I am here to testify against these bills because I believe that the intent of these bills is to try to further restrict access to safe abortion care.

“I believe that our ability as women to make personal reproductive choices in the future will be in jeopardy if these bills are passed. I am currently employed at Austin Womens' Health Center and I've worked there for more than eight years. We pride ourselves on providing high quality reproductive care to the women of central Texas. From my experience working in an abortion clinic I know firsthand that abortion is an incredibly safe procedure. I have yet to hear or read about any data or studies that report to the contrary, and my own personal experience working in a clinic has been that the complication rate is incredibly low.

“Excessive regulations of abortion care are already in place in this state. We are regulated and subject to inspections by the Department of State Health Services, the Texas Medical Board, the Clinical Laboratory Improvement Amendment, the National Abortion Federation, and various insurance companies. I am concerned that requiring all abortions be performed in an ambulatory surgical center is extreme and unnecessary, and will in effect result in abortion being less safe by causing women to resort to illegal and unsafe methods to protect, or to end their pregnancies.

“It is incredibly worrisome to me to think that any women, any woman in need of an abortion service whether it is elective or therapeutic may only have five clinics in the entire state to choose from if these laws are passed. We encounter women at our clinic on a daily basis that already face difficulty arranging transportation to our office even when they live in the area. Many women will not be able to afford the financial burden associated with increased transportation cost. Delays in receiving treatment due to patient overload at the few remaining clinics may result in women having to wait until the second trimester to be seen. At that point the financial cost and medical risk begin to increase exponentially.

"If you really care about women's safety you will vote no to this bill. The need for safe abortion care in our community will not go away if this bill is passed. Women will not stop seeking abortion services. What will be different though, is we will lack legitimate regulated health centers that provide high quality medical care to women because this bill will drive legitimate providers, such as the one that I work for out of the practice.

"I have witnessed thousands of women walk through our doors seeking abortion services each with their own unique story to tell. These women are from every walk of life, every age bracket, every race, ethnicity, every income level, every education level, and every religion. They all choose abortion because they believe in their hearts that it is the best decision for them in their situation, and we trust them. I encourage you all to also trust them to make these medical decisions with the least amount of government interference. Thank you.

Senator Wendy Davis: From Martha in Luling, Texas:

"I am Martha I live in [Tim Kleinschmidt's](#) district seventeen I represent myself in absolute opposition to HB60. Today I am here to speak out for Texas women for the least of those among us. I want my voice to count for something tonight because for two years I have watched as my state leaders have leveled attack after attack on women's health care. From slashing funds for family planning services and wellness exams, to defunding Planned Parenthood I have seen with my own eyes what these cuts have done to women in my own community. My heart is breaking.

"As a concerned citizen I have done what I am supposed to do when I disagree with my state government. I've made phone calls to Mr. Kleinschmidt, to my state senator, [Judith Zaffirini](#), and to the governor's office. I have written letters to them, letters to the editors of many newspapers, and even protested on many occasions at the capitol yet nothing has changed.

"I want my voice to count. On Tuesday night during the senate hearing on SB5 I listened as Senators [Patrick](#), [Deuell](#), [Nelson](#), and the bill's author [Glenn Hegar](#) claimed that this action is pro-women's health. In my estimation nothing could be further from the truth.

"If Texas is truly about the business of being pro-women's health then shouldn't we start by fully restoring funds to the women's health program and the forfeited title ten funds? Shouldn't we see to it that there is a Planned Parenthood in every community in this state? Shouldn't we expand medicaid so that more women can enjoy access to healthcare? If we are really pro-women's health then we must ensure that all Texas women have access to education, to birth control, to options this bill and HB16 take away my options.

"These bills were dead at the close of regular session. I believe our lieutenant governor bent the rules to get them on the fast track of this special session. That we are even here today fighting the passage of the bill is an outrage. We now know because of his irresponsible tweet on

Wednesday morning that [Dewhurst's](#) goal is to close all clinics in Texas that provide abortion services, and we are not amused.

"In 2011, our legislature passed a sonogram law with nary an outcry from the public. Not this time. There are thousands of other citizens of this state who were unable to be here in person tonight who will fight every affront to Texas women's reproductive freedom. I want you to know that if this state's elected officials continue to wage war on women in my state I will do everything in my power to work toward their defeat. I am Martha. Let the record show that I vehemently oppose HB60. Thank you."

Senator Wendy Davis: From Kailey in Austin, Texas:

"I am here today to speak for myself and to voice my opposition to this legislation. I am opposed as a social worker, a health care professional, an abortion provider, and as a woman. I will not abide when others try to legislate away my rights by creating undue and unnecessary restrictions on a legal medical procedure.

"I do not want to live in a place where women are not trusted to make private decisions for themselves without legislative interference. I believe that decreasing access to abortion for political and religious reasons is bad and unconstitutional health policy.

"It does not serve to protect the health and safety of women. Limiting access to an already safe medical procedure, indeed safer than carrying a pregnancy to term, will force women into unsafe at home abortions or into the arms of unscrupulous people who take advantage of desperate women. Lastly, and most importantly I trust women to decide what is best for them, and that includes access to abortion on demand and without apology. Thank you."

Senator Wendy Davis: And this from Victoria in Buda, Texas:

"Hello my name is Victoria and I am here today as a concerned Texas resident opposing HB16 and HB60 and as a constituent of [Representative Jason Isaac](#).

"My story is one of traditional success: teenage girl makes it all the way through high school with great grades, gets into an elite college, works at a job she loves, and regularly educates herself on the politics of her state and nation. But I am lucky. I am not special, I have not lived my life any differently than many of the women who sought abortions in this state.

"The decision to terminate one's own pregnancy is an incredibly personal medical decision, and it is one that we have a constitutional right to as Americans. The bills on the floor tonight represent a belief in this country that the women who seek abortions are shameful, careless liars who do not have the mental capacity to make these decisions for themselves. As a young woman I find that belief to be abhorrent not to mention insulting and dead wrong.

"The women who have sought and continue to seek abortions are just like me. Women who are successful, compassionate, smart, and capable human beings. I am fortunate that I have not had to make the heart wrenching decision to end a pregnancy, but that is not because I am somehow better than the women who have had to face that decision. The rhetoric used to shame women who seek these services is intentionally designed to scapegoat them so that they become dehumanized in the eyes of the media and its consumers.

"If women who seek abortions are characterized as reckless and immoral it is easy to strip them of their rights, dignity, and humanity. It seems ironic then that in order to save the humanity of a fetus, grown adults must dehumanize and restrict the rights of women. If we assume that this rhetoric is not just rhetoric and a true belief held by those who are anti-choice how can they justifiably argue that the women who are seeking abortions and whom they believe to be incompetent should carry to term, give birth to, and raise a human being?

"We must begin to speak honestly and compassionately about and for women and our experiences because the choices that we make, the lives we live, and the children we do or do not bring into the world deserve more respect than the current rhetoric surrounding women's health.

"In conclusion, HB16 and HB60 are not just a danger to women's physical health, but to their mental health, to their self image, to their public image, and to their general dignity. I'm speaking against them as a young woman, a young woman who reserves the right to make decisions about my body, my mental health, and my capabilities. I do not believe that the Texas legislature has the right to make decisions about what healthcare I have access to or the personal decisions that I am or am not allowed to make as a woman, as a human being and as a constituent of the state of Texas I oppose these bills. Thank you for your time."

Part 019
Citizen Testimony (11)
03:44:03

Video Link: <http://youtu.be/xXrMGNNH9Bk>

Audio Link: <https://archive.org/details/SB5019CitizenTestimony11>

Transcribed by: Debbie Notkin

Senator Wendy Davis: And this from Danielle, from Austin, Texas:

"Many disagree about politics, but so many that I run into will agree, regardless of political affiliation, that it's difficult to fully love others if a person doesn't love herself. Similarly, it's hard to help or care for others without being able to do it for oneself first. That's why on airplanes, they always tell the adults to put on an oxygen mask before the child. What good is the adult to

the child if the adult is suffocating?

“In December of 1973, my mother was 18 and living in Amarillo, Texas. She conceived my half-sister, Avi, with a man she did not know well, who she felt affection for but did not love. She knew she was not ready for a baby. She made almost no money and had unresolved PTSD from sexual and emotional abuse. But her family was going to disown her if she put the child up for adoption. I can only imagine Texas was similar to what it might be like if this bill passed. Abortion was technically legal, but not very accessible. She had the option to be further shunned by her family, or to have the baby.

“When Avi was four years old, she was diagnosed with leukemia, which she lived with until she was 12 years old. She passed away in my mother’s arms while she was giving her a sponge bath. Avi’s leukemia was a result of growing up next to a nuclear power plant and jet fuel lines from an Air Force base.

“So how are we supposed to expect mothers to not seek out abortions when the government shows no interest in stopping the contributions to toxicity in our environment? While simultaneously encouraging families to control their daughters’ bodies? While simultaneously doing so little to help those who are victims of sexual violence and domestic abuse?

“My mother does not regret raising Avi, despite the trauma of eventually losing her. But she regrets that she grew up in a time where she had so little agency about a choice she needed to make herself; not her family, not her government. She believes as a result of her struggle, and so taught me: that all women need options.

“I ask the government and people in favor of this bill why they are so concerned with the fetus, but not the four-year-olds who are in toxic environments, who may not have access to healthy food, or any food at all. Why are they so convinced that a mother can properly care for another human being when the world puts up so many barriers for her to even take care of herself?

“If you value the life of a child, you must value the life of the woman who carries it. If you value the life of a child, then you need to value their entire life, not just when they are a collection of cells in a uterus. If you want to blame a woman for not wanting to bring a child in the world, I suggest making it better-- a better, an easier world, to raise the children we already have, who are struggling to thrive because of environmental decay and economic disparity.

“However, I suggest not blaming the woman at all, for you are likely to never be in her shoes.”

Senator Wendy Davis: From Jane, in Austin:

“To the chair and committee members, my name is Jane. I’m here to testify against HB60 and HB16. My representative is [Dawnna Dukes](#). Lieutenant Governor David Dewhurst bent the rules to add these bills. He had his chance during the regular session and this should not be

happening. Shame on him, and shame on you who support these bills.

“A woman’s body is hers. The state has no right limiting her healthcare choices, including abortion. Abortion is about women’s health. Ask any woman who has been diagnosed with cancer at some point in a pregnancy, who is given a choice between treatment for cancer, and advised to abort the child, or to carry the baby to term with no treatment, at the risk she will die before the baby’s due date.

“Women who have an abortion do not do so lightly. No woman gets pregnant so she can have an abortion. Sometimes families end up needing to terminate a pregnancy when they never thought they would.

“These bills will inordinately affect poor and poor working women. The clinics that will have to close are not just about abortion; they provide family counseling, breast exams, Pap smears, pre-natal care. And under this bill, the abortion pill -- which is safe, and rarely results in complications -- will require a before and an after appointment with a doctor. It also requires a woman to take a higher dosage than necessary, which only indicates the ignorance of those who wrote these bills, since it’s been shown that the necessary dosage is much less than the bill would require. Shame on you who support these bills.

“The omnibus abortion bill will be challenged in the courts, causing an enormous waste of tax dollars and state resources. We’ve seen this in other states. The bottom line is this: these bills will make abortion harder to obtain and more expensive. And as a result we will see an increase in back-alley abortions, self-administered abortions, deaths among women seeking abortion, and unintended pregnancies carried to term, all of which directly create negative public health outcomes and a huge financial drain on the state of Texas.

“This is not what any of us want for our state, or for our women, children, and families. Shame on you who support these bills.”

Senator Wendy Davis: This is from Linnea, in Austin:

“Thank you chair and committee for allowing me to testify. My name is Linnea and I’m a constituent of Representative [Dawnna Dukes](#) and I’m here to testify against bills SB5, HB60, and HB16. Mr. Chairman, I will gladly share my personal story with you at this hearing, if you feel that it will contribute to this hearing, and if you have the time and patience to listen to it through to the end. It is not very long, but it is longer than three minutes.

“Not too long ago, I became unexpectedly pregnant. Now, I’ve lived a fairly easy life. When I became pregnant, at the time I lived in a house owned by my family. I was thirty years old, married to the man I’ve been with for over a decade, relatively stable income, all the factors that one thinks one needs in order to raise a family. And yes, at first we decided to sustain the pregnancy; we even told our parents and some friends.

“And then the panic set in for me. I became overwhelmed with emotions. I tried to keep them at bay, but when I found myself resisting the urge to wish for a miscarriage, I knew I had made-- I knew I had to make a different choice. I could not find the strength within me, but when I went to my husband, and that wonderful man took my hand and said, ‘You don’t need to make this alone. I will make it with you. We will make this choice together.’

“What changed? I’m a person that loves life, honors life so much that I don’t even eat animals. I wish for there to be as little suffering as possible in this world. But in those days of moving toward a choice of abortion, the reality of my situation became crystal clear, as if I were going through a near-death experience.

“You see, my family discovered when I was very-- My family divorced when I was very young. My parents, the two people who brought me into this world, hated each other. I do not remember a time seeing them show love for each other. My concept of love had been for so long related to abandonment, to loss, to hate. How could I expect my child to love in a healthy way if I did not myself know how to love?

“Three other factors were the same as this: How could I expect my child to deal with anger and negativity if I did not know how? How could I expect my child to embrace its creative expression and follow its heart if I did not know how? How could I expect my child to be physically healthy and respect their body if I did not know how? These four things were irrefutable to me. I could not be the parent that I feel every child deserves without these factors in place. Even though the idea of abortion was, and still is, heartbreaking to me, bringing up a child with these disadvantages was even more painful.

“Throughout my pregnancy, all the way through my abortion, I did not drink or take my migraine medication, my little way of showing that I valued life, even as I found myself incapable of bearing it. Even during my surgical abortion procedure, I refused any sedation other than local anesthesia. I wanted to be present in the only way of which I was capable.

“There are no words to describe the intense myriad of emotions that I went through, and I imagine that will help people understand why so few women are sharing their personal experiences of abortion here today. It’s not that it’s shameful, it’s that it is the most singularly powerful life-changing experience they’ve had, and to reduce that to three minutes of half-hearted listening would be crushing.

“I have made my peace with my decision through enormous effort. Not only that, but I have worked on those other four factors. Thanks to Austin’s [Capital Area Counseling](#), I have an amazing, an absolutely amazing and gifted counselor who is helping me reshape my concept of love, anger, and how to be true to myself. I have worked hard to get fit. I have gone from obese to healthy on the BMI scale in the last year.

"I believe were I faced with that choice now that I could reach a different conclusion. Every step forward is a gift. It is empowering. And yet it always has the lining of sadness, of loss, of the choice that I made. It will always be with me. It was the hardest choice I have ever had to make and I don't wish it upon my worst enemy. Even if it made you understand, Mr. Chairman, that choosing abortion is not a choice against life, but a choice for life, I would not wish it upon you.

"I just ask you to keep in mind that number, that one in three women in our country have had, or will have, an abortion, and that it's not a choice made due to inconvenience or a simplistic disregard of human life. Quite the opposite. That when faced with a, with such a demanding, life-altering choice, most women will face a kaleidoscope range of emotions and thoughts that many humans will, if they are lucky, never have to face.

"As you can see, my choice had nothing to do with the availability of abortion. If abortion had been too expensive, or unavailable to me, I can promise you that I likely would have tried to create a cocktail of drugs to make it happen on my own. So if a lack of available abortion providers is not a deterrent, what could you have done to prevent me from having an abortion?

"Perhaps working to remove the stigma of giving up unwanted pregnancies for adoption. Perhaps making contraception more readily available via affordable healthcare. Perhaps via affordable healthcare providing quality counseling, so I could have dealt with these issues much earlier in my life, or even so early that my parents could have had proper counseling and learned to deal with each other without so grossly perverting my concept of love and family.

"There are many ways in which to show that you value life without trying to force a choice in which you have neither responsibility nor consequences. I have to deal with my choice for the remainder of my life, and I will always work tirelessly to be a better person in the name of that choice. How are you going to work tirelessly to empower more women and families to rise to the occasion of unexpected pregnancy?

"Thank you for your time."

Part 020
Citizen Testimony (12)
03:58:35

Video Link: http://youtu.be/BUHOP3ayQ_w

Audio Link: <https://archive.org/details/SB5020CitizenTestimony12>

Transcribed by: Lauren Nieman

Senator Wendy Davis: And now members I have personal testimonies that were sent to our office when people learned that we would be speaking against this bill today and asked us to be

their voice in this chamber.

This is from a young woman named Erica and it's titled "My Story":

"When I was young I knew the older sister a friend that was violently raped and was forced to bear the child. The young woman was a college student. One night the rapist entered through her sliding glass door and raped her brutally and left her battered. And as she healed, she discovered she was pregnant.

"Because abortions were illegal she had to suffer every day with the awful memories of that night, and she eventually dropped out of school. It was a nightmare for the entire family. When she walked down the street, people would whisper about her being a rape victim. At the grocery store people would congratulate her and ask questions about her pregnancy, always reminding her that she was carrying the rapist's fetus.

"Rape can happen to anybody. As a mother I cannot imagine forcing my child to endure that hell. The idea that the Texas government-- my daughter can't decide with her doctor and family how to handle her most important decisions about her own body sickens me. Thank you," and she signed it.

Senator Wendy Davis: This is from Patricia from Bellaire, Texas:

"Dear Senator Davis, Thank you with all my heart for standing up for all of us. It has been heartening to see so many wonderful Texans fighting for Texas women these past few days. Your courage is particularly inspiring. It's way past time for Texas women to declare 'don't tread on us' and mean it.

"In 1972, about 130,000 American women obtained illegal abortions or self-induced abortions. When I was in college, one of my friends almost died of an illegal abortion. We aren't going back there. We cannot allow the extremist minority, propelled by ignorance, misogyny, hypocrisy, political showboating, and the unconstitutional desire to impose their personal religious views on others to control what women do with their own bodies.

"The hypocrisy is particularly brazen when the same fanatics who want to force women to bear babies they don't want and can't care for, lose all interest once the fetus is an actual born child. These are the same people who are trying to cut funding for food stamps and further restrict Medicaid eligibility. Apparently, they don't realize that once a child is born he needs food and basic medical care.

"And what about the libertarian mantra that we need to get government out of our lives, which somehow fails to apply when it comes to the most personal and private decision a woman may need to make. The government has no right to take my guns, but does have the right to force me to have a baby I can't care for? Please.

"I believe with all my heart that the real sin is not to have an abortion, but to bring into this world a child whom you know you cannot care for properly. We've seen the tragic consequences of that all around us. Children abandoned, neglected or mistreated because they were never wanted or who had parents who are simply incapable of caring for them. I have three beautiful daughters. I want them to live happy healthy lives, and to have children when the time is right for them. I want them to control their own destinies. Please keep fighting for them, Wendy. With much gratitude and respect, Patricia."

Senator Wendy Davis: From Ellen:

"Thank you so much for speaking for me and millions of other Texas women about the republican attempt to dismantle women's health care.

"When I was 17, I was raped on a date. I didn't know what had happened to me; let alone what to do when I wound up pregnant. My only thought was to kill myself, because I didn't know any other option available to me. Thankfully I had a smart wonderful mother, who took me to have an abortion. The entire experience was horrible, but I cannot imagine what it would be like under the circumstance that Texas now wants to make women undergo.

I made a decision to save a life: my own. And it was the most important decision I've ever made and will ever make. Thank you Wendy for allowing me to tell my story and continuing the fight."

Senator Wendy Davis: From Patsy:

"Please be my voice. I have never needed an abortion but this should be the woman's choice. Sorry, God nor government got her pregnant and therefore neither in my opinion enters into the decision. A woman's body is just that: her body. Therefore she should be able to decide on pregnancy issues.

"It's not that I believe in abortion. I would hope women would try to prevent a pregnancy before it happens. However, hormones being what they are, pregnancies happen and it should be the woman's right to decide if she wants to give birth. One hopes that there is a good guy involved, who wants to be a good dad, but let's face it that's not always the case.

Thank you for what you're about to do to speak up for women in Texas."

Senator Wendy Davis: From Joyce:

"Would men want women to make the major choices about their lives and bodies for them? I don't think so. Why then do these Republican men think they are better qualified to make choices for women than the women themselves are? Men say they want liberty, why then do they want to rob women of liberty?

“These men are acting and speaking out of arrogance, serving their own narrow and possessive self-interest. Do they really think women don't know this? It is time for men shut up and let women make their own choices about their own lives. Elizabeth Cady Stanton was right: everything that the King of England did to men during colonial times the Republican men in the Texas Senate are doing to women now and more. Signed, Joyce.”

Senator Wendy Davis: And this is from Dale:

“My story is of my first wife, who I met in my senior year at North Texas. She had a troubled childhood and was probably abused by an uncle and perhaps by her father, but for many years I did not know that. What I did know was a girl who was a talented writer and a passionate person. I was too young to know that she was troubled by things I could not then imagine.

“After graduation I took a job in Dallas and after awhile she came to live with me. I think I wanted to marry her then, but she did not want to commit to that and after about a year she left me and went to UT in Austin to study. For a while we were not communicating much, but we did write to let each other know where we were. She was going to classes, living in a house with a group of other students and working in a clothing store in Hancock Center.

“That was forty years ago and there was a lot of experimentation going on. She tried LSD and had flashbacks for years, and she probably had other drugs as well. At some point she was impregnated. I never knew whether she was raped or not, but I think that the odds are good that she was. By the time that happened we'd been apart for over a year and I was living in Galveston. She came to me, desperate, with the story of what happened to her and the confession that she'd had an illegal and botched abortion done by a country doctor for \$300.00. She went to work the next day and her fetus came out in a public restroom and was flushed down the toilet.

“When she got to Galveston she was ill and upset and in a few days she was anemic from internal bleeding. I didn't understand what was happening. They got her to UTMB and she survived. The good thing was that it brought us back together and I was able to care for her and marry her. I won't go into what happened next, but the point is, that in those days before safe and legal abortion, her story was not uncommon and many girls who were not lucky died because of unsanitary-- unsanitary or inept procedures.

“I don't know if this story will help you in your talking. A person who did not know Marianne would write her off as a dissolute young woman who did drugs and had sex when she should not have, and perhaps not a good role model. But even then, a civilized society should have treated her better, and when abortion became legal we thought that humanity had come with it. Maybe there is no way you can tell this story to the Senate, but I want you to understand what things were like then and what happened and what happened to girls like her and why we cannot let things go back to the way they were. Good luck and many thanks for your courage,

Dale.”

Senator Wendy Davis: From Angela:

“I am fearful of raising my one- and three-year-old girls in an environment where the government eliminates all but five clinics in the entire state, where women aren’t allowed to make the most personal of decision about their reproductive health.

“Where is all the paternalistic faux health and safety concerns about vasectomies? Why should vasectomies be simple outpatient procedures when they pose such dire health risks to unsuspecting, uneducated men? Doesn't such an invasive procedure mandate similar restrictions on clinics and doctors? For the health of men, of course. Angela.”

Part 021
Questions from Bob Deuell (1)
4:10:11

Video Link: <http://youtu.be/slbKLMC8BSQ>

Audio Link: <https://archive.org/details/SB5021QuestionsFromBobDeuell1>

Transcribed by: Angela Zhang

Wendy Davis: This is from--

Lt. Gov. David Dewhurst: Senator Deuell, for what purpose does the senator from Hunt County wish to be recognized?

Senator Bob Deuell: Mr. President, I was wondering if Senator Davis would answer some questions?

Lt. Gov. David Dewhurst: Senator Davis, will you yield to Senator Deuell?

Senator Wendy Davis: I’m happy to answer your questions, Senator Deuell, but I, in doing so, I will not yield the floor. I will not give up the floor.

Lt. Gov. David Dewhurst: You’ll maintain the floor for questions, Senator Davis. Senator Deuell.

Senator Bob Deuell: Thank you, Mr. President. I have no intention of taking the floor from you, Senator Davis. I think all of us share the compassion for many of the people whose testimony you have read-- I wanted ... My first question, is that some of the references that you’ve made, and some of the references that some of the people whose testimony you read talk about

women being degraded, being called liars, or in some ways being held in contempt. I was wondering what you found in this bill that holds any disregard for a woman facing the tough decision of whether or not to have an abortion.

Senator Wendy Davis: What I find in this bill that disregards women who are confronting this decision ... are numerous. But I'll start with this, Senator Deuell... The ambulatory surgical center requirement has no basis in medical fact or science that necessitates the need for a woman to have an abortion procedure there. And in fact, you will probably recall numerous times I asked Senator Hegar to provide some empirical evidence for us to understand what was unsafe in the clinical setting today and how that would be made safer by virtue of this bill. And he was not able to provide any information to answer this question.

That same question I'm aware was asked in the House hearings on this particular bill and it was asked in the Senate hearings on this particular bill. And what we know -- and I think we would agree -- is that today, out of the 42 clinics that provide safe, legal abortion for women in Texas, only 5 of those currently satisfy the conditions of the ambulatory surgical center, and I understand that the response has been given to make all the others come up and there have been statements made that somehow ... abortion doctors are getting rich off of these facilities ought to be willing to put this money back into them in order to assure that women have proper healthcare.

But absent any justification, any reason that demonstrates why somehow, these centers would provide better healthcare -- I have to ask myself the question, and I know so many other women in Texas are asking themselves the question: to what purpose, then does this still serve? And could it be -- might it just be -- a desire to limit women's access to safe, healthy, legal, constitutionally protected abortions in the state of Texas?

Senator Bob Deuell: I know you've referenced a certain, uh, Twitter, but do you feel that's the same sentiment by the members of the body who support this bill?

Senator Wendy Davis: Senator Deuell, I don't want to impose upon any member an unkind ... starting point. I would hope to choose that every member on this floor shares the concern for women, men, and children... But because I've been unable to have a simple question answered that helps me understand how this leads to better care for women, I do have to question the justifying... the underlying reasons for advancing this.

Senator Bob Deuell: Why do you think the 5 clinics that have become ambulatory surgical centers have done so?

Senator Wendy Davis: You know, I don't have the expertise to answer that question.

Senator Bob Deuell: You don't think it might be to provide better care?

Senator Wendy Davis: Well-- You know, what I think it might be is that years ago, before I was here in the Senate, the decision was made that for pregnancies of 16 weeks or longer-- those needed to take place in ambulatory surgical centers. Then I'm sure there was some response to that, in terms of the growth of these 5 centers and the state of Texas to address that need.

As I said, I was not here at the time. I don't know if there was information provided that because they terminated a woman's pregnancy at 16 weeks or longer presents a greater risk, that there was actually some connection made between that greater standard of medical facilities and the ability to provide a safer environment for women existed. I don't know, but I imagine that's why we have those 5.

Senator Bob Deuell: Well do you remember the papers that I gave you about the requirements of an ambulatory surgical center some weeks ago when I spoke to the Democratic Caucus?

Senator Wendy Davis: Yes, I do.

Senator Bob Deuell: Did you review that?

Senator Wendy Davis: I browsed through it, yes. I didn't read it word for word.

Senator Bob Deuell: You compared it with-- it's comparing with abortion centers and ambulatory surgical clinics. Why don't you have-- do you know why we have ambulatory surgical clinics, why we have that designation?

Senator Wendy Davis: Well, my understanding is that it's for procedures that might require a certain amount of medical attention that wouldn't otherwise be provided in another clinical setting. But I also understand, Dr. Deuell... Senator Deuell? That there are all sorts of outpatient procedures, some of which are more invasive than an abortion procedure, and we aren't requiring that they be delivered through the services of an ambulatory surgical center.

And again, I'm yet to understand, I'm yet to hear what the specific reason is that this particular medical procedure should occur in such a facility. And I'm yet to understand how it is that we have not given pause to the impact that this will have on women's ability to access that safe, legal care. And when you layer it upon what happened in the last legislative session with the sonogram bill, I believe that in Texas a climate is being created that is slowly but surely chipping away at a woman's right to safely have an abortion. Not because the right itself is being taken away, but because for some women, the ability to access that right is taken away.

Senator Bob Deuell: Well I don't agree that this bill does that, Senator Davis. The intent of this bill, by the people who helped write it, and I'm one of them, is to increase safety. Now you've cited evidence from ACOG and various other medical entities but do you think that those entities who wrote you represent every physician in Texas?

Senator Wendy Davis: Well, of course they do not, and in fact I believe when I just read some of the letters from ACOG that they describe themselves as a member organization, and I stated the number of doctors who are a member of that organization. And I can't remember what it was.

Senator Bob Deuell: Sure, and do you agree with ACOG's support of tort reform?

Senator Wendy Davis: I do believe that tort reform was an important reform.

Senator Bob Deuell: So you agreed with them there. What-- you read a lot of testimony. Are you going to read all of the testimony that was read at the committee meeting both pro and con, or are you just reading testimony from people who are against this bill?

Senator Wendy Davis: The testimony that I'm reading was from women who had signed up to speak, and who at the very late hour of about 1 AM were told they were not going to be allowed to speak.

Senator Bob Deuell: Sure, I understand that, but there were also people that were for this bill that didn't get to speak as well, is that correct?

Senator Wendy Davis: I'm sure that is correct, and I'm sure you have the ability to read that information yourself, if you'd like to read it and ask me a question about it.

Senator Bob Deuell: Well I don't have it available right now, I was just curious if you were going to read everyone's testimony. Do you think the traditions of the Texas Senate are more important than women's safety?

Senator Wendy Davis: Of course not.

Senator Bob Deuell: And you mentioned a raw abuse of power-- could you explain that a little bit? We have a process here-- how do you feel that this bill is a raw abuse of power?

Senator Wendy Davis: Well first of all, this is a false choice to say that we should have to choose between women's health and the traditions of the Texas Senate. The traditions of the Texas Senate, actually, in the regular session assured that differing perspectives on women's health were made a part of the legislative decision-making that occurred here.

And when I talk about abuse of power, I don't believe that in a "little d" democratic state an individual should have the opportunity to override the express desires, thoughts, concerns, interests, of people that are represented by the 31 senators here on the Senate floor--

Senator Bob Deuell: *[unintelligible interruption]*

Senator Wendy Davis: Let me finish here -- and I believe that in the regular session, democracy, with a little D, works to ensure the balance of those opinions made its way into the bills that passed into law and those that did not. But--

Senator Bob Deuell: *[unintelligible interruption]*

Senator Wendy Davis: --but but! After we adjourned, and within the hour, as you know, we were called back by a single individual exercising his executive power over the state of Texas: Governor Perry. And as you know, another single individual, and we've made our concerns known to our president about this; Lt. Governor Dewhurst chose not to recognize the two-thirds rule as part of the way we would take up and consider legislation in the special session. I believe that when two individuals exercise power in that way, it abuses the power they've been entrusted with because it denies the minority voices that are represented by Democratic senators on this floor, an opportunity to be heard.

Lt. Gov. David Dewhurst: Well thank you--

[applause from the audience cuts him off]

Lt. Gov. David Dewhurst: *[gave]* The Senator did mention me by name; please, *[unintelligible]* if you can maintain the decorum ...

Senator Bob Deuell: Well, Senator Davis, Bill 537, which was the facilities bill, my bill in the regular session, had 20 senators supporting it-- that's 61.3% of the senate. So when you speak of minority rule, and minority power, do you not think it's fair that when 60% of the Senators want that bill to be passed, that perhaps it's fair, that perhaps it should, since it probably represents a majority of the people of Texas?

Senator Wendy Davis: Well the polling doesn't demonstrate that it represents a majority of the people in Texas and of course you know as well as I do -- and we could have a very long conversation, Senator Deuell -- about the consequences of a history of redistricting in the state of Texas.

Senator Bob Deuell: Well I understand that but in my particular district, when I ran against the Democrat, I got 67% of the vote. And I've been unapologetic about being pro-life. Would you certainly not think then that my vote to be pro-life in support of this bill would represent the majority, the overwhelming majority of my district, and that might be true for the other senators supporting this bill?

Senator Wendy Davis: I think that very well may be the case, Senator Deuell, but I also think that many people may have voted for you in your district for other reasons than that. And in fact, often times, on both sides of the party aisle, people vote based on the letter next to your name on the ballot. And that doesn't necessarily reflect their individual, independent decisions on a

variety of issues.

It may be the case that they feel on balance you represent their perspectives on most issues, but I would imagine there are probably people who voted for you, and people who voted for some of the other Republican senators, who are on our floor today, would disagree with taking a decision on this particular bill, even if they themselves identify as Republican and typically vote Republican.

Senator Bob Deuell: You think we have constituents who voted for you that are in support of this bill?

Senator Wendy Davis: That's probably likely.

Senator Bob Deuell: Another question I wanted to ask, Senator -- I think it was your word ... this was treating women as though they are not capable... I think for most women who choose to have an abortion, it's the first time, although that's not always the case, but you know, women, as you've pointed out by some of this testimony, who are facing this tough decision, are very vulnerable. Do you-- given what's happened in Philadelphia, Houston, and some of the other abortion clinics in these squalid conditions-- do you think perhaps that some of these vulnerable women should not have the state of Texas protect them by setting standards of care for their abortion?

Senator Wendy Davis: I think that the state of Texas has already established a fine standard of care. In fact, I've cited that from one of the letters that I read, a woman who works at one of these facilities talked about the variety of state agencies and municipal agencies that regulate them. I think that we ARE doing our jobs. Certainly with the passage of constitutional protections for women and their ability to choose, to make such a difficult decision, we've seen the standard of care rise tremendously. Because women are able to go to legal facilities that provides safe care for them.

Senator Bob Deuell: And you think that all abortion facilities are adequate for these women?

Senator Wendy Davis: Senator Deuell, I'm sure just like every other clinic that treats colds, that treats geriatrics, perhaps dentist offices, orthodontists -- I can't stand here today and tell you that every single one of them provides good care. But what I can tell you is that they have regulations in place that require that they do, and that we have the ability to respond when they don't. And again, where this particular bill is concerned, no one has said anything about the existing requirements in these facilities that is somehow creating an endangered environment for women.

I have no doubt that in one, or two, or some of them, one or two or some women may have experience care that none of us would be happy with. But it isn't because the facility was a problem, and it wasn't because the standards in the facility were a problem, and it wasn't

because the regulations of those facilities were a problem -- it was because, sometimes when human beings are involved in providing care, as you know, sometimes that care isn't what we all wish it would be. And changing to a ambulatory surgical center is going to do nothing to address that.

Senator Bob Deuell: Well, I would disagree. If you look at the regulations and the scrutiny, if you-- you might want to go back and review this paper that I gave you, that perhaps it would ensure that every woman gets a safe abortion under the best possible, possible care. You know, Senator Davis, this bill really is about women's health. It really is about abortions. Mr. President, I don't remember the opposition, or our side making any snide comments, as Senator Davis spoke, I would appreciate you holding decorum in this hall to the same standard.

Senator Tommy Williams: Mr. President.

Senator Wendy Davis: I have not yielded the floor, Mr. President.

Senator Tommy Williams: Parliamentary inquiry, Mr. President. Mr. President, can you describe for the body and our guests Rule 306 and what the punishment for obstruction of proceedings here in the Senate is?

Part 022
Questions from Bob Deuell (2)
04:30:00

Video Link: <http://youtu.be/PsKxZEAck0>

Audio Link: <https://archive.org/details/SB5022QuestionsFromBobDeuell2>

Transcribed by: Leslie McBay

Lt. Gov. David Dewhurst: You're asking me to read the rule.

Senator Tommy Williams: I'm asking if, yeah, I think that maybe we need a reminder about what the enforcement mechanism under Rule 3.06 is for this.

Lt. Gov. David Dewhurst: I'm sure everyone here is going to make best efforts to have good-- very good decorum but our Rule 3.06 does say, "The Senate, during its sessions, may imprison for 48 hours any person not a member for violation of the senate rules for disrespectful and disorderly conduct in its presence or for obstructing any Senate preceding."

Senator Tommy Williams: Thank you, Mr. President.

Lt. Gov. David Dewhurst: I'm sure everyone is going to behave themselves.

Senator Bob Deuell: Thank you, Mr President. Senator Davis, are you taking the position that if this bill becomes law and every abortion clinic in Texas becomes an ambulatory surgical center, that women would not be safer and get better care?

Senator Wendy Davis: No. I'm taking the position that if this bill becomes law, not every facility will have the capacity and the resources to become an ambulatory surgical center and that women who currently are being provided care, very safe care in existing clinics today will be denied that access, because--

Senator Bob Deuell: Why do you think those clinics would close? I mean, that's been-- there's five clinics that are ambulatory surgical centers and there's, I guess, three dozen or so other clinics. And what I've heard throughout this debate is that all of those clinics would close. But why do you think they would close?

Senator Wendy Davis: Well, Senator Deuell, because it's incredibly expensive to bring them up to this requirement, and in some of them quite physically-- quite literally, physically it would be impossible. It would require the closure and probably the-- from the ground up, new building of an ambulatory surgical center at great cost.

And the concern and the point that I have about that is we aren't doing that in any other arena of healthcare. We aren't saying that a vasectomy has to take place there. We aren't saying that a colonoscopy has to take place there. We aren't saying that a live birth has to take place in such a setting.

And what I'm suggesting is when we're demonstrating that we are going to put restrictions in place, rules in place, standards in place that are going to dramatically increase the cost of delivering that care. I do not doubt for a moment that there are some of those clinics who simply aren't going to have the financial capacities to accommodate that. And not only do I not doubt that for a moment, but what I fear most is that in the areas of our state that are most impoverished, that those will be the most likely areas where these will not produce, where these will not have the resources to appear.

And where women who, again, layered upon the sonogram from last session, who now have to: have a sonogram, a 24-hour waiting period, return, make sure the same doctor who did the sonogram is the person who performs her abortion, and if for some reason that doctor can't be there the next day she's got to start the whole process over again. I'm worried that women that are already going through that--

--and it's so easy for us to disregard as we stand here, in our nice clothing, in our relatively comfortable lives, it's so easy for us to say, "Why is that a big deal?" But Senator Deuell, it's a big deal! It is a big deal! And I have been there, that has been my life. I have been to the point when I literally could not put gasoline in my car to go anywhere but from work and back because

I could not afford an extra gallon of gas to make any other trips.

And these are the women who are impacted by these kinds of decisions. And shouldn't we be able to say to them that there is a reason for it, that there is absolute health reasons for it. And if there isn't, shouldn't we all agree that making sure that they have access is the best thing that we can do for their healthcare--

Senator Bob Deuell: Sen--

Senator Wendy Davis: -- in the state of Texas.

Senator Bob Deuell: Senator Davis, the medical literature supports that the higher standards that a given surgical center has, the better outcomes that all women have. And you stated the legislature has never before dictated such requirements. I could run you through my medical office in Greenville, and by the way I take care of a lot of low-income women and I have-- I was at the federally qualified health clinic there and I take a lot of Medicaid patients. I understand. I've given patients gas money before so that they can get home after they saw me.

But if you look at every clinic, and you look at what's required for a family medicine clinic or pediatric clinic or a federally qualified health clinic, government dictates safety factors all of the time. We have to have people come through and look at our ophthalmoscopes and our otoscopes and put a sticker on them every year when there is very little chance for them to malfunction. We have to have a crash cart-- I mean, I could go on and on and on.

It is not unprecedented for the state or the federal government to require these requirements. And in an abortion, even in the first trimester, there are complications that can occur that can be devastating and even life-threatening. The uterus has a blood flow of 500 cc's a minute, and sometimes even under good hands, bad things can happen. And that's what we're trying to do. The medication with RU-486, bad things can happen.

I want to quote a journal here, you've quoted some authorities, this is entitled [Immediate Complications After Medical Compared with Surgical Termination of Pregnancy](#). It's been cited that the complication rate is 0.5%. This study showed-- it said "the overall incidence of adverse events was fourfold higher in the medical compared with surgical abortion cohort". Twenty percent with medical abortions versus 5.6%. And this was published in *Obstetrics and Gynecology* in 2009.

My point is, is it perhaps an abortion performed in a surgical center, perhaps all that they would have is not needed, but what about that one woman that does need it and that one life that's saved. It's already been through a lot of tragedy to make this. I mean, do you not see that this bill will provide the safest care for a woman that decides to have an abortion?

Senator Wendy Davis: Senator Deuell, first of all, I want to say that I respect you so much, I

truly do. You are a good person, you are a good doctor, you are a good Senator. And I know you care about people and I do not intend to suggest that you do not. But we have a difference of opinion.

I believe that a nexus should be shown, between the need to move to this sort of a standard of care and truly ensuring a better outcome for women's health. I believe that that nexus has not been demonstrated here. And I understand your point that if an argument could be made that even one woman would be made safer by virtue of it, doesn't it make sense.

But I would ask you to consider the very valid concern that there are many women who will lose their access to care as a consequence of this law. And that one woman, or that twenty women, or that three hundred women, or that three thousand women, should cause you and me and everyone else on this floor great concern.

Senator Bob Deuell: Well, and that's a big disagreement we have also, because I honestly don't see any reason for any of these clinics to close. They make a lot of money with these abortions. Look at-- you saw the list of surgical clinics in the state of Texas, four hundred and some of them, and many of them are in smaller towns than the smallest area of an abortion clinic. And we've exempted abortion clinics that do fifty or less procedures.

So, again, I go back to-- you know, we, I will not concede that any of these clinics have to close. I'm just, you know, we could maybe stop at this point and disagree, but I do not believe any of them have to close. I believe the money is there and I believe for the safety of women that they should do so. That's really what this debate is about and I appreciate you too. Obviously you wouldn't go through what you're going through now if you didn't believe-- believe in it.

But I'd like to go on, I have some more questions in other areas. I wanted to ask you, when you were talking about the twenty weeks, and there were some questions in some of the testimony about gestational age and I believe ACOG mentioned about the last menstrual period and how we figure that. And in the bill it references actual fertilization. I don't think that matters as long as we all know what we're talking about.

But you said that there was nothing in this bill that allowed for extenuating circumstances, but on page 5, line 21 and-- I'll read it to you. And I don't mean to be condescending I just happen to have it and maybe you don't. But it says that "prohibitions and requirements under sections 171.043, 171.044 and 171.045b do not apply to an abortion performed on an unborn child who has severe fetal abnormalities." It seems to me that that would take care of the situations that you described where perhaps the parents didn't find out until after the 20-week period. So, I wanted to clarify that or at least get your comments on that part.

Senator Wendy Davis: Well, I appreciate the clarification and I think that some of that testimony that I read occurred prior to the substitute language. Senator Deuell, I think the language previously as was cited by ACOG and some of the other expert testimony, which I

think really created the reason for the change in the language, necessitated that change and put it in the terms that you just read.

I think some of the lingering questions though from ACOG was what that would mean and their responsibility as doctors to make this determination in terms of what that means and whether there might be some liability or greater exposure on their part having to make that particular decision.

Senator Bob Deuell: OK, thank you. Then I wanted to address the physician privilege. You know, as a licensed physician in Texas I am required by the Medical Practice Act -- the Texas Board of Medicine oversees that -- I am required to provide for follow-up care, after hours care of my patients. And fortunately, I have nine very understanding partners who cover for me when I'm down here.

But what I have heard from patients who have had abortions and then had complications that end up in Greenville, is that they called the clinic that they had the abortion in and they couldn't reach anyone. And do you not think that a physician who performs an abortion should be responsible for the after care, especially for immediate complications of an abortion?

Senator Wendy Davis: I believe, and I think most women in Texas would agree, that it would make very good sense that women who've had such a procedure or any procedure-- I've had my wisdom teeth taken out and my dentist has provided me his phone number if I had any concerns in the night, with 24-hour ability to call and let him or her know that I've had a problem arise. I don't think anyone would disagree that those sorts of regulations provide a better climate if they don't already exist in abortion clinics in the state of Texas and I don't think that's what the disagreement with this particular bill is.

Senator Bob Deuell: Well, one thing that was mentioned I wanted to clarify that you said about the Texas Hospital Association, no hospital is required to grant privileges to a doctor, is that not true?

Senator Wendy Davis: That's absolutely true and I think that's part of the concern because where we require in law that an abortion provider be granted admitting privileges. The fact of the matter is, hospitals across the state exercise their own decision making with regard to whether they grant those admitting privileges.

And what it would mean is fewer doctors who would have the ability to perform abortions in Texas. And so it's sort of the double whammy: the double whammy of having to have an ambulatory surgical center, which there will now be fewer abortion centers in the state of Texas -- you and I will disagree over that -- but then having fewer doctors who are qualified and able to give that care.

And when we talked about this bill in the regular session and I asked Senator Hegar about that

woman who lives in Laredo, who, if she shows up at the emergency room in Laredo, obviously that hospital is going to have the ability provide care to her. I think it makes sense that they would be able to contact a doctor who has performed an abortion on her and ask questions if the need be, but I don't see any connection to providing better healthcare to the woman if she had an abortion all the way in San Antonio because it was the only clinic available to her. And the fact that the person who performed that doesn't have admitting privileges at a hospital near to her.

Senator Bob Deuell: Do we have any data about how far women have to travel to get an abortion? Are they-- since there are abortion centers in most of the major cities, do we know how many women have to travel those long distances?

Senator Wendy Davis: Well, under this bill, right now because only five centers would still be open, we know women would have to travel hundreds of miles. But when we debated the sonogram bill I clearly remember, although I can't cite to you the specifics, Senator Uresti making the very legitimate points about indeed how far women have to travel. And in fact that's why an exception was made to the 24-hour waiting period between the sonogram and the procedure for certain areas of our state, because there are such long distances that women have to travel.

Senator Bob Deuell: When a hospital grants hospital privileges they require a certain amount of training and ability by the physician. Is there a concern that perhaps the physicians doing abortions wouldn't have the credentials to be privileged by a hospital in 30-mile range?

Senator Wendy Davis: I'm sorry, can you repeat the question?

Senator Bob Deuell: Hospitals set standards for getting privileges.

Senator Wendy Davis: Yes.

Senator Bob Deuell: You know, when I apply and reapply to the hospital that I practice at both here and in Greenville, they look at my medical school, they look at my residency, they look at my continuing medical education, they look at whether I'm board-certified. There's a certain standard that a physician has to make to get hospital privileges. Is there a concern that the doctors performing abortions would not meet the criteria to get privileges at these various hospitals?

Senator Wendy Davis: Well, I think that under the letter that we heard from the Texas Hospital Association, there may be indeed that problem. Where the hospital may not, for whatever their reasons are, want to grant privileges to that particular doctor. They grant privileges to the doctors whose expertise they need, and if they've filled that need it's not at all atypical that hospitals choose not to simply go with an unlimited number of doctors allowing them admitting privileges.

So, it may be the case that doctors that are perfectly capable, wonderful, tremendously well-educated and good doctors don't get admitting privileges to a hospital simply because the expertise that they have is not something that the hospital needs.

Senator Bob Deuell: Well, but the doctors performing abortions would have to have certain training credentials. Do you think it's good to have abortions done by doctors who couldn't get basic hospital privileges?

Senator Wendy Davis: But that's not why-- you're assuming that the reason they wouldn't get the basic hospital privileges is because they don't have somehow adequate training or credentials in order to get it. And we know, again, based on what THA is saying to us, that there are multiple reasons why hospitals don't grant admitting privileges to doctors.

Senator Bob Deuell: Well, now, my point is that the angst about this part of the bill would be that many of these doctors would not have the credentials to be given admitting privileges to a hospital. And that perhaps this also is a safety part of the bill.

But I'd like to go on, if we can. You've mentioned about the health of the mother and you've mentioned that the mother would have-- pregnant woman would have to be brought to the point of compromise of immediate injury or death. And yet I can't really see that in the bill. Would you explain how the bill would prevent a woman who chooses to have an abortion or the doctors having to wait until there's an immediate danger, opposed to a danger that could be caught a little earlier?

Senator Wendy Davis: Well, in the bill, and-- I'm going to have to find the page. Hang on, I'm trying to mark my spot here. In the bill it speaks to--

Senator Bob Deuell: I would-- Page 2, line 2b, might address that, Senator. If you want to start there we could go through it.

Part 023
Questions from Bob Deuell (3)
04:50:10

Video Link: <http://youtu.be/bTynff6UMbc>

Audio Link: <https://archive.org/details/SB5023QuestionsFromBobDeuell3>

Transcribed by: Rebecca Morgan

Senator Bob Deuell: Well, that's...

Senator Wendy Davis: This act--

Senator Bob Deuell: Sorry, that was, that was, uh, my mistake. What, my point is that I don't see that in there, Page 5, Line 1, um: "It does not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment--" We're giving the judgment to the physician, we're not dictating, I might add: "--so complicates the medical condition of the woman that, to avert the woman's death or serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates as applicable--"

And then it lists 1, 2, and 3. I don't see how that forces the physician to wait until the woman is in immediate danger. Number one, it talks about the immediate abortion if her pregnancy without the delay is necessary to determine, they're talking about not dating the baby if there's a situation; in other words they don't have to worry what the gestational age is.

And then two, the abortion of her pregnancy even though a post-fertilization age of the unborn child is 20 or more weeks. That tells me that if there's a condition that threatens the life of the mother, you don't have to wait until that's about to happen, that it can be done as long as they believe it's going to happen. I don't see where you came to the conclusion that they would have to wait.

Senator Wendy Davis: Senator, I was reading from the testimony that someone provided--

Senator Bob Deuell: Yes, ma'am.

Senator Wendy Davis: What I recall, though, from the information that we received, concerns that we received, from doctors, I think, this was in something we received from ACOG, I'm not sure if it was part of the testimony that I read into the record. But they talked very specifically about exempting physicians where the procedure could be authorized if there was risk of death or substantial irreversible physical impairment of a major bodily function.

I think that the concern that they were raising, as I recall it, was putting a doctor into that decision-making role. And that where a doctor has to make that judgment call, in some instances they may not make it. They may instead force a woman, or refuse to provide a service to a woman, out of fear that somehow that broad category is going to arise. And the concern was really more one of liability, an increase liability for doctors because of this particular provision, than it was the immediacy of them making the decision.

Sen. Bob Deuell: Yeah, well, I-- and since I'm not an obstetrician-gynecologist, and I had concerns, but I just want to point out that it says very clearly it does, it-- requirements under these sections do not apply to an abortion, and it lists those areas, so. And again, I realize you were reading testimony, and some of that testimony, if it's not a lot of it, was more anecdotal than expert. But doctors are protected under this, and there is provisions as I pointed out earlier

for fetal abnormality.

Senator Davis, um. The 1973 Roe v. Wade... the Supreme Court said that abortions could be allowed up to the point of viability. As I pointed out in my floor testimony earlier, things have changed a lot. Are you aware that there are a lot of babies being aborted in Texas that are way past the viability age for no other reason than it's not wanted?

Senator Wendy Davis: Than what, Senator?

Senator Bob Deuell: That it's, the baby is not wanted, there's no medical issue, it's past the age of viability. That there are abortions occurring in Texas that are running into the third trimester.

Senator Wendy Davis: No. In fact, the information, the empirical information that I've read suggests that only, I think, 0.5-6, or 0.6% of abortions are ever performed past that 20-week period -- it might've been up to 1%, I'm sorry, I can't quite trust my memory on that.

But that in that instance, in the very low incidence rate where post 20-week abortions occur, most of those are situations where a mother's life was in jeopardy or there were very severe problems with the fetus. I don't think it's the case that women are just waiting until their third trimester and suddenly deciding, now's time to show up at an abortion clinic and have an abortion.

Senator Bob Deuell: Well I would submit that, it's probably not the greater number of abortions, but you know, dating a pregnancy is-- is hard.

Senator Wendy Davis: Yes.

Senator Bob Deuell: It's last menstrual period, it's active intercourse, it's physical exams, it's a sonogram, there's a blood test you can do called a quantitative beta-HCG, and all of those sometimes don't add up.

And my point of bringing this up in terms of the 20-week part of this bill and in terms of the regulation of medical abortions, and having all abortions in the ambulatory surgical clinics, is that sometimes mistakes are made. And they-- well-intentioned in the sense that they're good intentions, good doctors just trying to get the right date, and the date's not always accurate.

And I would just make the point again about the ambulatory surgical centers; sometimes a baby is small for gestational age, it's further along, there's questions about dates, and all that adds up. And sometimes bad things can happen with the dates, and that again is another reason that we support having all the centers being ambulatory surgical clinics.

Senator Davis, I don't have any other questions at this time, I appreciate your answers and I'm

glad that we can have a civil discussion here on the floor. Thank you so much for answering my questions.

Senator Wendy Davis: As am I. Senator Deuell, thank you for your questions.

Part 024
Questions from Eddie Lucio

Video Link: <http://youtu.be/z-DTeDGIs2Q>

Audio Link: <https://archive.org/details/SB5024QuestionsFromEddieLucio>

Transcribed by: *anonymous*

Senator Eddie Lucio: Mr. President?

Lt. Governor David Dewhurst: Senator Lucio, for what purpose?

Senator Eddie Lucio: Will Senator Davis yield?

Senator Wendy Davis: I will yield --

Senator Eddie Lucio: Not give up the floor.

Senator Wendy Davis: I will happily yield to you, Senator Lucio, but I do not yield the floor.

Senator Eddie Lucio: I appreciate the tone of conversation that just took place between you and Senator Deuell. I want to have the same type of conversation, one that's sincere. And I know that you speak from your heart, and I do too. As you well know, I have a great deal of respect, and everything you said about respect you have for Senator Deuell, I have for you and more. I think we know that. I did want to take just, in a very nice way, issue with the first thing you said in your opening remarks, when you said that-- and you set up the categories, two categories of legislators who are-- either/or why they are supporting this bill. You said partisanship, which I don't fall under.

Senator Wendy Davis: No, you do not.

Senator Eddie Lucio: Because I'm a Democratic pro-life legislator. And then, the strength-- lacking the strength to oppose it. And I know, on the contrary, you know that I do have an inner strength that supports, you know, this bill. And that strength is in the name of my faith as a Roman Catholic. I, um-- I really also took issue with one of the letters that you read, that said that some of us were showboating because of our religious beliefs, and I-- I, you know, I take issue with that because that's never been the case with this legislator, anyway. I take it at heart

in everything I do, and I've joined with you and with others in supporting funding, you know, for healthcare. And it pained me and it hurt me deeply two sessions ago, or last session, when we cut healthcare by \$7.2 billion in this state, and education by \$5.4. However, the reason we stand here today is because I made a decision to honor a colleague.

Senator Wendy Davis: Yes.

Senator Eddie Lucio: And I voted against suspension yesterday.

Senator Wendy Davis: Yes.

Senator Eddie Lucio: And I did it because it was the right thing to do, it was the Christian thing to do in my belief, because our colleague had lost her grandchild and her father, and was tied up with family to be able to-- to, um, get by the day with so much hurt. And I joined with her last night, and I paid my respects, on behalf of the entire Senate and staffs, so I decided to go ahead and allow this to start the day. One vote, that's how powerful a Senate vote is sometimes; one legislator, one vote, can change the way things happen.

And I wish you well physically and mentally because I know that you have a deep resolve in what you believe, and you're going to take this to the midnight hour and kill this bill. I feel awful about that for various reasons, because I know there are so many abortions going on on a daily basis in this state and this country. Senator, are you aware of how many abortions have taken place since Roe vs. Wade started in 1973, up to today?

Senator Wendy Davis: Senator, you gave us a piece of paper on the floor the other day that had that number, but I don't recall it. You'll have to refresh my memory.

Senator Eddie Lucio: Well, for those that are here and not aware, there's been 56,353,184. Now, statistics that our internet show, today there were 2,206 abortions so far in the United States. This year 581,166 in the United States. By Planned Parenthood 163,959. And due to rape and incest 5,637. My heart really hurts when I hear those two words: rape and incest.

Now, I love women because I have fond memories of my grandmothers, and my mama, who I thank for life. I'm one of ten kids, as you well know, so we were reared being pro-life. We even adopted a sister, because she was dying, and my dad, had a heart of gold, brought her home, and we— she's sixty-one years old now. We bought her home at about four months, she was four months old. So to me it's easy to stand before this body, or anywhere in public, and talk about the sanctity of life and the importance there is for us to be thankful about life.

The letters that you wrote [sic] were heartfelt and I cried inside when you were crying because of the hardships that women face in this world. But I also thought about the six-- fifty-six million plus babies that would never be born, would never be able to write a letter to their legislators, talking about how they felt about life, and how grateful they might have been, you know, for their

mothers to be giving them that opportunity.

The point I want to make is that the majority-- majority of abortions that are being conducted are-- in this state and country, are the result of unwanted pregnancies. And that is hard for me to understand because there's so many out there that I also run into who want to adopt someone. They want a baby. They can't have babies. And yet we haven't talked one minute, on this floor or in committee, about the rights of the unborn.

No one's talked about the rights of the unborn. They don't have any, quite frankly, because of Roe vs. Wade. And it pains me to know, because of my religious belief, that we'll continue-- because of the death of this bill, continue to see more death. I talked about a culture of death and why shouldn't I talk about that, when I see the statistics before me that are true? And it pains me just to know that more will die during this debate, right now, and if the governor doesn't call for another special session, well, we won't have an opportunity to address this issue, then more will die.

I share with your-- with you-- I agree with you, and I share your thoughts about helping women find the necessary healthcare services they deserve, other than abortions. And I make that very clear today. I will continue, and my record speaks for itself, to vote, and I even supported Planned Parenthood, for them to be funded on everything other than anything that lead to abortions--

Senator Wendy Davis: Yes.

Senator Eddie Lucio: --because I will continue to fight for the unborn, I will continue to speak for them, because they can't speak for themselves. They can't-- they will never have the opportunity to sit down and write me a letter, or you a letter, or anyone a letter, or in a schoolhouse, or grow up, and have their own babies.

So I-- I just needed to make that statement while those that are here today listen on, and I urge everyone to go home and write their mamas a letter and thank them for being pro-life or else they wouldn't be here today. I wouldn't be here today. I think those that got here today are very fortunate to have a mom or a dad or either one, that thought it necessary for them to live, so that they too could enjoy life, as God would want us to. And I thank you for this heartfelt conversation, because I have a greater respect for you.

Senator Wendy Davis: Senator Lucio, you are one of my dearest friends in the Senate chamber, and I believe you have a compassionate heart beyond compare. And as I read some of the letters that folks have written to us on this particular issue, and they've called on us to be pro-life in all regards if we're going to be pro-life. And I would suggest that you are the template that exhibits that.

Not only do you stand very firmly, based on your faith, and I know it is a deep faith; I see you

every day reading your Bible on your iPad as you sit here on the Senate floor. I know that your decisions on these issues come from that very deep place of faith. I also know that you are a man who fights for children in need. I watched you this session--

Senator Eddie Lucio: Gotta eat.

Senator Wendy Davis: --work on the food bill. And I watched how hard it was for you, and I saw the sadness and the despair that you had day after day as you tried to convince a two-thirds majority of the Senate to suspend so that your bill to feed hungry children in school could pass. In all respects, you've demonstrated a care and concern, after a child is born, before so; and you are consistent beyond compare, and I respect you tremendously.

I'm sorry that we disagree on this particular issue. I think that by your very comments, though, clearly your understanding, your hope, for what this bill would achieve is that abortion services would decrease in Texas. I don't think that's been the stated purpose for this bill. It's been stated that it's to make women who are having an abortion safer, and provide better healthcare.

But I appreciate your candor, I appreciate your support, the incredible good work that organizations like Planned Parenthood do to try to get that number down, that very alarming number that you read. I don't think there's a person on this floor who would say that we should feel good about that. And I know that you've supported making sure that women have access to family planning and healthcare services, which I believe is the number one way we'll get that number down. And I thank you for your support on those issues, Senator.

Senator Eddie Lucio: Thank you, Senator Davis. I just, you know, 56.3 million, it's two times the population of Texas, and growing. And let's continue to find the funding necessary for children with special needs, women with everyday needs, but let's also try to find a way of ending abortion. I-- I just feel that we have neglected the rights of the unborn at this point in Texas, and I hope that we can take a good turn to the right or left, but not go down the same path we've been on for so long. Thank you.

Senator Wendy Davis: Thank you, Senator.

Senator Eddie Lucio: Thank you, Mr. President.

Part 025
Citizen Testimony (13)
05:10:42

Video Link: <http://youtu.be/GPsqrosAHOA>
Audio Link: <https://archive.org/details/SB5025CitizenTestimony13>

Lt. Gov. Dewhurst: Senator Davis, you have the floor.

Senator Wendy Davis: Thank you. I'll continue reading these letters. I don't have too-- too many more of them. This one is from someone named Raul:

"Senator, I have four adult daughters and I appreciate you standing up for their right to choose what to do with their bodies and to continue to have that option. I would never encourage my daughter to have an abortion, however I believe in my heart that they must have the choice available to them.

"Let's keep our state moving forward and not regress to a time when women had to take huge health risks on top of the weight of a very personal situation. Keep up the fight and I will pray. Yes, a Christian praying for you. May God give you the strength to prevail in your effort to stand up, not only to defend women, but the laws of our great country."

Senator Wendy Davis: This is from a person named Nancy. Nancy writes:

"Last year, when they passed the sonogram law I was so upset I actually sent an email message to Governor Perry's office to veto the measure. I'm pretty sure he never saw it, but I had to express my dismay.

"You and I know it takes two people to conceive a baby, but if the pregnancy is unexpected or poorly timed and the male partner leaves the relationship, the female bears the total physical, emotional, economic, and social obligations to raise the child. She has a few choices and if she is lucky she will have family to help her with support as necessary.

"To conceive a child for many women is easy. To raise a child is really hard. To give birth and then place that child up for adoption is excruciating. To decide to abort is a truly hard decision, not made lightly and forever remembered. These are forever decisions. Why do men think they have the right to decide this very personal decision of a woman? To have no options except a back room, unsafe, and unsanitary procedure, puts women back into the 19th century.

"It's obvious that the governor and the Republicans of Texas care very little for the health of the women of this state. They also do not care for the quality of life for the children of this state. Unwanted children often suffer malnutrition, poor early development, abuse, neglect, and have lower self-esteem. A child should be born into a loving environment where it can grow and develop into a protect-- productive adult. Since the educational system of Texas now spends at the level less than 48 other states on the public education for the children in the state, it would seem that the state might want fewer children encumbered with a lack of nutrition, early childhood development, and social skills.

“By making abortions more difficult to obtain, more children will be born in Texas to families who cannot provide for them, or to single mothers without resources to create a nurt– nurturing environment. Women will go to other states, back rooms, or illegal centers. There might also be an increase in abuse to women because they got pregnant.

“It is amazing that men make the laws that regulate women’s bodies. If men carried babies, went through childbirth, and survived the continual responsibility for more than 18 years required to raise a child, they may think differently. They are removed from a good portion of child care, even if they think they are being proactive parents.

“Whether I believe in or would seek an abortion is not the issue. It is whether the option is available to a woman who would seek an abortion. It is extremely personal. To formulate legislation so the option is no longer available removes a woman’s right to control her own body. That legislation does not change the morality of anyone, it only increases the anguish some women must go through. I would never require anyone to have an abortion, but should I encounter someone who does want the procedure, then I want it readily available.

“There are many reasons a woman may want to abort: drug consumption during pregnancy, failed contraceptives, casual sexual encounter, economic strain on the current family, too young, known deformed fetus and probably many others I cannot list. In the right situation, these are all viable reason to not continue a pregnancy. Thank you for trying to stop this regressive and damaging legislation. Nancy.”

Senator Wendy Davis: This is from Paul; he writes:

“In Judaism, the health of the mother is paramount. The fetus is considered a part of the mother’s body, not a person with preferential rights. In Exodus 21, verse 22, when a miscarriage results from a woman being injured as a bystander to a fight, the guilty party must compensate the woman – her husband, actually, but this was 3300 years ago – just as they would be compensated for the loss of an arm. Therefore if carrying the baby to term would seriously threaten the mother’s health, an abortion is not just permissible, it is required in the same manner as the removal of a severely infected or damaged extremity.

“This legislation would take an alternative religious view, that the fetus is a separate full person whose rights are superior to those of the mother, and impose it on those who have a different sincerely held religious belief, in absolute violation of both the US and Texas constitutions.

“Just as it would be impermissible to require the Jewish standard to be imposed on a devout Catholic or Baptist, who believes that separate life begins at conception, and that the fetus takes precedence over the health of the mother, it is equally wrong to impose a standard that violates the Jewish and biblical principle of the primacy of the mother on someone who observes that understanding. I hope this helps both to inform and fill some of the many hours you have ahead. Paul.”

Senator Wendy Davis: From Penny:

"My mom died three years ago at 92. With three small children and a husband war-wounded in World War II, she was in physical danger from an unexpected fourth pregnancy. Abortions were legal in the 1940s, and one although sad, saved her life and our family.

"How could these people who want to prevent all abortions have looked into our eyes, ages five, three, and two, and said: 'It was for the greater good for our mother to die when she could be, and was, saved'? Penny."

Senator Wendy Davis: From Sharon:

"I stand with you as you battle for women's rights in Texas. I am a born and bred Catholic Texan with two daughters and one granddaughter. To think that my children's rights could be trampled by this bill simply enrages me. We have been so very blessed thus far with healthy and planned pregnancies. But tha-- that could change in the blink of an eye. No one ever foresees a crisis of the magnitude and despair that many women face.

"I fully support your efforts to stop this bad bill. I am pro-life and pro-choice. I also teach, so I look into the eyes of poverty each and every class day. I believe that as new Texans are born, their needs should be taken care of, but I don't see that happening. Shutting down clinics for women's health is certainly a giant leap in the wrong direction. Surely our esteemed legislators are all aware of the good that places like Planned Parenthood do. They prevent so many pregnancies as well as assist pregnant women to find adoptive loving homes for babies.

"Yet it is so very obvious that this bill is a purely political bill, designed to attract certain voters. Well, there are many other voters out here in this great big state: voters who want Texas to move forward, not backward. I stand united with you, Senator Davis, and the countless other women who have fought for the rights of women. This is 2013. What a travesty that in this new century, so many in our Texas legislature want to reverse the progress women, and men, have made."

Senator Wendy Davis: This from Myrtle:

"In 1944 when I was 10 years old, I almost lost my mother from a botched abortion. For the first time in many years, financially she was making it, but she knew that my grandmother, who had taken care of me and my sister, could no longer care for an infant.

"So she went to my dad's cousin, her obstetrician, and he refused to do it as he could lose his license. Instead she went to the neighborhood abortionist. Afterwards she started to bleed profusely. My dad called his cousin, who again refused to treat my mother. Dad finally found a doctor willing to keep my mother from bleeding to death. It was months 'til she felt well again.

She suffered from severe anemia and severe depression.

“Mother started speaking out for legalized abortion when Roe v. Wade came about. She didn’t want any other woman to suffer like she did. Fortunately no one else in my family has had to face the challenge of an unwanted pregnancy. I spent 8 years as a volunteer going through labor with women at John Peter Smith hospital. There they do not do abortions. They do – also do not train doctors to do them. Where is a poor woman in Tarrant County going to go if the proposed law passes?”

Senator Wendy Davis: This is from Judy:

“As a divorcee of 75 with four happily-married children, I don’t personally have a dog in this fight. But I am horrified for the women and children who will go without medical care because clinics are closed. Many women will die of female diseases; but the old, angry, white men don’t care. I don’t understand how they can turn their back on women’s health needs; needs of which they have no understanding or knowledge. I read some of them don’t even know what a rape kit is. Let them be told vasectomies are against the law and listen to the uproar.

“I grew up as a doctor’s daughter in the days of back-alley, coat-hanger abortions, and I remember too well a frantic call from a surgeon to my dad. I told him my dad was sleeping, and he swore, and said he didn’t care; to get him now. The surgeon had been called to help another doctor with a patient, and when he got there he discovered it was an illegal abortion. The patient died. The surgeon who had not participated saw his career go down the tubes and needed my dad’s advice. I remember too, always, my friend whose college roommate died from an illegal abortion. We can’t possibly go back to those days.

“If one of my daughters or daughters-in-law wanted abortion, I would be heartbroken. But it would be their choice, not a decision made by me, or made by men in the legislature.”

Senator Wendy Davis: This from Edie. Edie writes:

“Thank you– First, thank you for your courage in standing for Texas women. We need a lot more legislators in our Texas legislature like you. We all know this bill has nothing to do with protecting women’s health; in fact, it will do the opposite. I’m amazed that Republicans think this will win them elections. Primaries, maybe, but not elections.

“The truth is that women will always need, and get, abortions. I am old enough that I can remember when abortions were not legal. I remember girls who were sent away to have babies they were too young to care for, then giving them up for adoption not even understanding what they were signing, or its significance.

“I remember a college friend having a back-alley abortion. Fortunately she was okay, but it was very expensive, and she had to drop out of school for a semester. I know another young woman

who got pregnant at 26 by a man who was just a boyfriend. She was lucky that the Supreme Court had just made abortion legal, and she was able to get one in a hospital and avoid an unwanted pregnancy with a man she did not plan to spend her life with.

“Somehow the right-to-lifers are happy to protect the life of unborn fetuses but care nothing for the woman who would be giving birth to the fetus. She seems to have no rights, even in cases of rape or incest. Once a child is born, the right-to-lifers move on to the next pregnant woman to prevent her from having an abortion if she wants one. They are not the least bit interested in protecting the newly-born child, or the mother who brought it into the world.

“Also many right-to-lifers just happen to also believe in capital punishment. How is that consistent? It’s okay to kill a grown man or woman but absolutely not okay to destroy an unviable fetus a woman cannot afford to support?

“No legislation will ever prevent women from having abortions. They will return to back alleys and other dangerous situations. All the Texas legislators are doing is putting on full display their contempt for women. We will not forget when we next go to the voting booths.”

Part 026

Citizen Testimony (14)

05:25:34

Video Link: <http://youtu.be/8RCvhTjA-RY>

Audio Link: <https://archive.org/details/SB5026CitizenTestimony14>

Transcribed by: Debi Marlow

Senator Wendy Davis: This is from Robin:

“I was not able to have kids myself, so there was never a question of my needing an abortion. My son is adopted. His birth mother was only 15 when she got pregnant. I am glad my son’s birth mother didn’t have an abortion, either. That is what was right for her, and ultimately because of her love and generosity her decision ended up being more than right for me, too.

“But I stand firmly for each woman in Texas consulting her own conscience, the god of her own understanding, her own family, and her own doctor when she finds out she is expecting. No woman should have to consult with the Texas legislature over something so intensely personal, so life-altering, and so spiritual.

“Politics is not everything. Some decisions are too important for politics. The life of a child is one of those things. So I ask you to stay real steady and fighting for the rights of every woman to choose the path that is best for her, according to her own values and ideals and dreams. Some

women dream of having a child. Some dream of having a child...later. Some women dream of being free from children so they can lift their family out of poverty so they can go to, or finish school. Some women are just too young to have their own children, and don't have a family or a church who will pay for the child, and help.

"Texas needs to go forward, toward the future, not backward. A supporter who cares about all women, and not just the ones who agree with me -- Robin."

Senator Wendy Davis: This is from Patricia:

"Nearly 21 years ago I determined that I was pregnant. I had lost the love of my life many months before, and I was a little bit crazy, which led to the pregnancy. My first option was to schedule an abortion, which I did. Upon further contemplation I decided that I could support the child and I wanted to do so.

"I was 39 years old at the time. I was concerned about potential issues related to my age, so I had a lot of tests done, and decided to have the child. It was my decision and my decision alone. All of my family and friends supported me, but the important fact is that it was my decision. This is how it should be. My child and I made it. Every woman should have the opportunity to make the choice that's right for her."

Senator Wendy Davis: From Harold:

"I am old enough to remember when women were driven to seek unlawful and unsafe abortions, often suffering complications, and I clearly remember one death in my community. Women should have control of their bodies.

"The provisions to ensure safety for women are unnecessary and are there to limit access for those least able to negotiate the steps necessary to obtain what they need. Those who claim to want to decrease abortions have also hampered the ability to obtain information on birth control and family planning. They are hypocrites."

Senator Wendy Davis: This from someone who....did not sign their name:

"With this bill the Republicans are setting this state back 60 years. I believe in a woman's right to make choices for her own body. Ultimately a choice that would affect her, the child, and society as a whole, for a lifetime. It saddens me to know that some poor woman, young or old, would be essentially priced out by the restrictions set forth in this bill. In a state as large as Texas how can a woman receive fair, quality, equitable, medical care? I can only imagine the cost associated with having to go to a surgery center for an abortion.

"Several years ago my sister, a single parent of one, found herself facing an unplanned pregnancy. Although the decision was agonizing for her, she made the difficult choice to abort

the fetus. While not in complete agreement, I did support her right to make that decision for her life, and her future. So I was the one who took her to the clinic, held her hand, and supported her in the months that followed.

“I would have been devastated had that option not been available, or affordable, for her. Or even worse if her only other option would’ve been some back alley clinic. Oh, the mere thought of it right now brings me to tears. I urge each and every member of the Texas senate to put aside their own personal agendas, and do what their constituents desire, and what is right for women, children, and society.”

Senator Wendy Davis: And this from Brenda:

“I am a Christian. And an adoptive mother. The only way I could become a mother was for another woman to give birth and unselfishly give me her baby. I was so blessed that someone made that sacrifice for me. However, with that said, I strongly feel that every woman should have the right to do what they feel is best for themselves.

“Having an abortion is deeply personal. And should nev-- and no one should have to answer to anyone but God. Since Rick Perry and David Dewhurst did not make the ultimate sacrifice for our sins, they have no right to tell anyone what they can and cannot do with their bodies.

“Women who choose to have an abortion should not be made to feel any worse than they already do by protesters. And they are entitled to good medical care, not second rate clinics. When men can bear children, then they can make decisions on laws that would affect women. Thank you so much for standing up for women’s rights, and I will support you in every possible way.”

Senator Wendy Davis: This from Joy, from Fort Worth:

“I am shocked and appalled at the workings of the Texas legislature. To deny women the right to adequate health care while claiming to raise the standard of care for women is deceitful. I am so filled with concern for the plight of all women in the state of Texas. Especially those who will now no longer have health services available to them. Even those health services that some may find wrong.

“My mother worked in an abortion clinic for years. She worked with the women, mothers, daughters, husbands, and families that were faced with the choice of having to terminate a pregnancy. She believed strongly in what she did, and to this day she says that the counseling work that she did there was the most rewarding and valuable work she ever did. The women who visited the clinic where she worked were often harassed on their way to the clinic, to make what was undoubtedly a difficult and agonizing decision.

“What I learned from her experience there was that one should never judge the motives of

another. One of the stories that my mom told me has always stuck with me. She had a young, devoutly religious couple visit her clinic. They already had a number of children and knew that they could not support any more, and had no family around that could assist them. During the counseling session, one of the two young couples told my mother that God would understand. It doesn't get more powerful or clear than that. So many of the decisions that we make in our lives are truly between God and us and nobody else. This is something that I've carried with me as a guiding principle all of my life."

Senator Wendy Davis: From Ellen:

"My birthday is January 22 and I'll be celebrating my 65th year. As I do every year I also celebrate the day that Roe v. Wade was passed. It has provided all women the ability to get a chance to make a personal choice about her body and her life.

"As a registered nurse I have seen the results of back street abortions. We don't ever want to go back to those terrible days. I would never assume that I know what another person believes, or wants. So neither does anyone know what is good for me or my family. I have a daughter and a granddaughter. And all I want for them is for them to have a choice, with their physicians, to make the decision that is right for them."

Senator Wendy Davis: And this from Jessica, in Arlington:

"As a person of deep faith, and I am enraged with the continuing war on women. Especially when it comes to the banning of my health care dealing with abortions in Senate Bill 5.

"As a Christian I believe all life is sacred. The earth's population is over 7 billion people and our planet is hurting. I grew up in the church. Members of my family are, and have been, leaders in the faith community. I was taught that the bible talks about the oppression of women, yet the good news was told to them first.

"Protecting life does not start or end in the womb. Supporting family planning is fully pro life. Unfortunately too many members of the senate do not recognize women's rights or women's reproductive health issues. Family planning is comprehensive sex education, female empowerment, education, adoption, contraception, and fostering parenting initiatives. In addition, it is also testing and treatment for STDs and cancer, which protects women's ability to have and care for children, and clinics do not need to be at a hospital level to be safe.

"Too much government control limiting access to abortions only drives them underground and puts women and who they care for and their health at risk. If Governor Perry and others on the state legislature truly care about the health of its citizens, especially our sisters, mothers, grandmothers, daughters, and wives they would've focused on expanding Medicaid. Not restricting women's reproductive health. Particularly when over half the births in Texas are paid by medical aid. It is just being good stewards of our state funds.

“Family planning is the way to reduce unwanted pregnancies and abortions. And it protects religious freedom. Harsh restrictions on abortion are stepping on women’s constitutional rights to control their bodies. Like Senate Bill 5. Many of us who are pro choice want to work to reduce the number of abortions. We just can’t have a fundamental part of our health be banned. Members of the state senate please stop the over-reaching role of government and in my life, my faith, and vote no on all of this bill.”

Senator Wendy Davis: This is from Veletta:

“I find it ironic that on a day when we were learning from the Annie E Casey foundation that Texas once again ranks in the bottom ten for child well-being, that the legislature was inserting themselves into the relationship between a woman and her doctor. Are there not enough challenges for the legislature? Is our education system fixed? Is our air clean? Are our roads totally smooth?

“I’m old enough to remember what happened to women who did not get proper medical care. Every one of us today knows someone who has made the lonely drive to seek medical advice. The decision is not an easy one as that person talks to her doctor, her loved one, her family, a friend, her faith leader. And yes, God.

“Why must the legislature insert politics and ignorance into these discussions? Why must rural and poor women disproportionately bear the greatest burden of the heavy weight of politics? I hope the legislature stands up to the pressure of a few and responds to the call of many. Reject the inaccuracies and the hate and do not pass this legislation.”

Senator Wendy Davis: This is from Andrea:

“We lost our 24-year-old niece who became pregnant, but after about 5 months her body was rejecting the fetus. She was throwing blood clots for several days but the hospital would not abort the fetus, claiming they did not know what was causing the difficulties. We ended up losing them both.

“We will never know if she could’ve been saved. But the option of expeditiously making that sort of painful decision should always be available to us, without our government legislators standing in the way. This being the most intimate of places between a woman and her doctor. And they have no right to force themselves into that private space. Ever.”

Senator Wendy Davis: From James:

“There should be no laws preventing access to medical care. Protect our God-given right to choose our destinies for ourselves.”

Senator Wendy Davis: From Candy:

“There are so many stories from the days before abortions were legal and safe, as they should remain. Because no matter how many laws are put on the books, women will always have abortions. And have had, for thousands of years.

“I have never been in the position to need or have an abortion but I have way too many friends who have gone down that road. Often because they were forced to have an abortion by their husbands or their parents. This was before birth control was readily available and abortions were legal. I have a friend who is 60 now. She got pregnant at 15. Her father brought a fireman home to perform her abortion in her bedroom. She never had children. I have another friend who was also pregnant as a teenager. Whose father put her on a bus at the age of 15 with an address in New York city and told her not to come home until it was done.

“These are just a few of the many stories. The friend who got pregnant in the early 70’s and because her parents had money was able to get on an airplane, where she went to New York City where abortion was accessible. I don’t know if she chose that abortion, or if her parents did. The friend who got pregnant after her first sexual experience at 18. All went to New York, that liberal bastion. Thank God it was there, or who knows what would’ve happened to these women. College girls taken across the border in Mexico for their abortions. The list goes on and on.

“All this law will do is harm and prevent women from a safe abortion. It won’t stop them from having one. The point is that abortion should be a choice, made in private with a woman’s doctor. Not a choice made by a parent, or a husband, or a government. Because a government tells you that you must have a child can also be the government that will tell you you cannot have a child. And when that occurs we become a place like China.”

Senator Wendy Davis: From Paula:

“I don’t have a story of personal loss, or agony regarding choice. You see I am a white middle class woman, and I have the freedom of choice that money provides. The proposed legislation is an assault on poor women. Probably most often for women of color. I feel a powerlessness in all of this. And that is when I don’t feel the bile of disgust and anger welling up.

“But you know, I can’t even begin to imagine how this feels to a young African American or Latina woman who is hearing this from old white legislators. I ask you to speak my words, share my thoughts, and in some small way help me make a difference with this body of legislators. Who despite their partisan leanings have taken an oath to represent us. All of us. And vote our will. Not theirs.”

Senator Wendy Davis: From Robin:

"I had an abortion when I was 23. It was a horrible experience for me but it was a necessary decision. I was able to do that because there were affordable clinics. I grew up going to Planned Parenthood, and got my annual screenings and birth control.

"Please stay strong and speak for all of us women in Texas. I have been a nurse for over 40 years, and I now work in home health. I see on a daily basis what happens when poor under/uninsured people don't have access to the health care that we all deserve."

Senator Wendy Davis: This one's not signed:

"The words 'Freedom to Choose' summarize our position. My wife and I have two wonderful daughters, and an adopted grandchild. If there were an unwanted pregnancy in our family, we would have serious reservations about choosing an abortion. However, it is a very personal choice. And we would never impose our views on our daughters. Or on strangers.

"Allowing abortions up to a reasonable time, e.g. 24 weeks, and at a larger-- and at a large number of affordable safe locations makes sense to us. We could afford to fly to another state if abortions were banned in Texas. However many other families are less fortunate and would not have this option. Let us hope that the latest anti-abortion bill is not passed, and that more reasonable viewpoints prevail in Austin."

Senator Wendy Davis: This is from someone named Robin:

"I was in Austin yesterday. Came from D.C., but have to head back. I had an abortion in Houston a few years ago when my birth control failed due to antibiotics given after a surgery for cervical cancer. Because of health problems I've had – ovarian cysts, endometriosis, cervical cancer, and the surgeries I've had to treat them – carrying a pregnancy could be extremely dangerous both for me and for the fetus.

"Procedures to address my cervical cancer have compromised the strength of my cervix-- cervix. Later in a pregnancy it's possible my cervix wouldn't be able to hold a full uterus. But we couldn't know. If I carried the pregnancy and developed complications I would likely have had to abort in order to save my life and any possible future fertility. It would've been well past 20 weeks. My doctors had told me that any pregnancy for me will be very high risk. I was only 23, in a relationship with someone who didn't treat me very well and far from any family, emotional, or financial support. Carrying that pregnancy just wasn't possible.

"And women who face the same complications don't only live in Houston, Austin, San Antonio and Dallas. They live all over the state. In rural areas of limited contraception access, and high rates of teen pregnancy. They live in Oklahoma and Louisiana where the closest clinic by far is in Texas. All women need access to abortion. Whether healthy or not, whether a rape victim or not, or whether they have the financial resources to raise a child or not. Republicans would now tell me that I couldn't follow my doctor's advice. They should be ashamed of themselves for

preaching about freedom from government intrusion while stepping, quite literally, between me and my doctor.”

Part 027
Wendy Davis Explains Misplaced Priorities
05:46:52

Video Link: <http://youtu.be/511dwhWJxQk>

Audio Link: <https://archive.org/details/SB5027WendyDavisExplainsMisplacedPriorities>

Transcribed by: Heather Bodman

[EDITOR’S NOTE: Senator Davis reads a long section of [The War on Women’s Health](#) by Jordan Smith at this point. For expediency, the text has been pasted in from the article text linked above, retrieved by the transcriptionist on 16 July 2013.

There are a few places where Senator Davis’ spoken words deviate slightly from the text of the article. Since the square brackets that can be found within the article text below are original and do not reflect any verbal changes on Senator Davis’ part, the transcriptionist has used {curly braces} to indicate when Senator Davis spoken words deviate from the Austin Chronicle.]

Senator Wendy Davis: And now, members, I want to talk about the misplaced priorities that this bill represents. SB5 is merely the latest attack in what can only be characterized as a war on women’s health in this state. Steps taken by the legislature during the 82nd regular session helped pave the way for these most recent attempts to limit access to family planning and reproductive health services.

An article in the Austin Chronicle from April 22, 2011 lays out the dramatic actions taken by the legislature to defund Planned Parenthood, which results, of course, in an increase of unplanned births, and more women who will confront the difficulties that are presented by virtue of SB5. I’m going to read from that article. It was titled ‘The War on Women’s Health: To attack Planned Parenthood, lawmakers undermine healthcare and promote more abortions’. It was written on April 22nd, 2011, by Jordan Smith.

[EDITOR’S NOTE: Senator Davis begins reading from “The War on Women’s Health.”]

“On April 1, following several hours of intense floor debate in the Texas House on a string of budget amendments seeking to reallocate funds designated to provide basic women’s health care services, the dust was settling. Conservative Republicans claimed victory: Seven amendments had successfully stripped from the roughly \$99 million pot almost \$62 million intended to fulfill the state’s commitment to provide family-planning and reproductive health services for thousands of low-income, uninsured women. Meanwhile, another successful

amendment enacted a funding matrix designating to which health care providers, and in what order, the remaining funds would be allocated -- a move designed specifically to yank public funds from Planned Parenthood.

"Foes of reproductive choice with the statewide group Texas Right to Life were quick to post to the group's website a self-congratulatory statement taking credit for dismantling the state's family-planning program: 'Texas Right to Life removes \$61M {million} tax funds from abortion industry!' proclaimed the headline. Indeed, says TRL's Elizabeth Graham, her organization helped lawmakers orchestrate a strategy to strip the family-planning program of as much of its federal funding as is legally allowable. 'Spearheading [that effort] means that members [of the Legislature] had come to Texas Right to Life asking about family-planning revenue and how to take money away from abortion,' she said during a recent interview, and 'to redirect the funds to more deserving and more worthy' programs.

"With a \$27 billion state budget deficit for existing services, there's no shortage of underfunded programs, and some of the programs to which the family planning funds were diverted are certainly worthy -- one amendment moved funds to mental health care for children, for example, while another diverted funds to services for children with multiple disabilities. Yet conservative opponents of family planning, including TRL and the amendment sponsors, refuse to acknowledge that none of the federal money that the state has traditionally used to fund women's reproductive health care is used to fund abortion services. Federal law expressly prohibits using the funds for that purpose.

"Instead, the funds used for family planning provide low-income women with guaranteed access to very basic health services -- including annual gynecological exams, counseling on pregnancy planning and access to birth control, screening for breast and cervical cancers, testing for hypertension and tuberculosis, and screening for sexually transmitted infections, including HIV. Taken together, these preventative services make up what is commonly referred to as a 'well-woman check': For hundreds of thousands of Texas women, the services provided with these funds represent their only regular and reliable access to medical care. Not {surprising}, therefore, advocates for women's health care viewed the debate somberly. 'Devastating,' said Fran Hagerty, CEO of the Women's Health and Family Planning Association of Texas, a group that represents a diverse mix of 58 family-planning providers across Texas. 'There will be very quick consequences for the state,' she says -- including increased costs for unplanned pregnancies, costlier cancer treatments begun in later stages of disease, and, ironically, a likely increase in the number of abortions.

"The facts about what the federal money actually pays for -- and the long-term risks and costs of failing to fund these preventative health services -- have not prevented anti-abortion lawmakers and advocates from alleging that the opposite is true. Some simply ignore the facts (TRL insists that family-planning funds are merely 'blood money'), while others draw a direct line from family-planning funding to abortion via their favorite target, Planned Parenthood. In fact, the vast majority of the 90-year-old nonprofit's services are dedicated to preventative health care, and

less than 5% of its Texas operations -- not supported by government funds -- involve legally protected abortion services.

“That remains too much for these staunch defenders of ‘life.’ For years, Texas lawmakers have declared that they would love nothing more than to defund Planned Parenthood entirely -- regardless of the effect that would have on the larger women's health care network -- and this year, with a GOP supermajority at the Capitol, the rhetoric has been ratcheted up. The assault on family-planning funding in Texas is just one symptom of this singular focus nationwide. In Washington, D.C., GOP lawmakers recently tried and failed to ram through a budget amendment authored by Indiana {Representative} Mike Pence to ban Planned Parenthood from getting any federal funding for any purpose whatsoever; they're not about to quit the fight. Concurrently, conservative lawmakers propose cutting all funding for teen pregnancy prevention programs and for Title X, the 41-year-old source of revenue dedicated to women's reproductive health services -- and the one pot of money that Texas lawmakers are powerless to divert to other programs. ‘They are going after women's health,’ said Cecile Richards, president of the Planned Parenthood Federation of America, during a February press call. ‘This is the most extreme assault on [women] in decades. They want to eliminate vital health care for more than 5 million American women’ served by Planned Parenthood, including 3 million women its clinics serve nationwide using Title X funds.

“The Texas Senate has yet to debate its somewhat less draconian budget draft, but whatever the differences between the chambers that remain to be hashed out before final passage, it is clear that thousands of low-income and uninsured women will have little or no access to health care for at least the next two years. Amid all the supposedly high-minded and abstract debate about ‘where life begins,’ one overwhelming reality is all too easily ignored: What is misleadingly described as defunding ‘the abortion industry’ is in fact the wholesale shredding of the health care safety net for women, in Texas and the U.S.

“In Texas, attacks on funding for women's health care are nothing new, and the specific attacks on Planned Parenthood are as old as the organization itself. ‘No question. Planned Parenthood has been around for 90 years; from day one we've had a handful of folks who didn't think birth control should be legal,’ says Sarah Wheat, vice president of communications for Planned Parenthood of the Texas Capital Region. Those attacks have come from foes of birth control, of equal treatment for women, from those opposed to nonprocreative sex of any kind, and simply from opponents of abortion. ‘We believe that women's health is important and that women and families are healthier when pregnancies are planned and spaced,’ Wheat says. ‘Health care should be just as accessible and affordable for low-income women as it is for the rest.’ Planned Parenthood takes that commitment seriously, and over time it has come to be the nation's leading provider of reproductive health care for women. At one time or another, 20% of women nationwide have used Planned Parenthood's services; currently, the organization operates more than 800 clinics across the country, performs a million Pap tests and more than 800,000 breast exams each year (both critical to the early detection of cancer), and provides nearly 4 million tests and treatments for sexually transmitted infections. These preventative services, combined

with dispensing birth control to more than 2.5 million women annually, help each year to prevent more than 600,000 unplanned pregnancies, according to {Planned Parenthood} statistics. According to the federal government, \$1 invested in family-planning services saves taxpayers nearly \$4 in other health care costs.

"In 2010 alone, more than 260,000 Texas women, men, and teens were served by the state's 81 {Planned Parenthood} clinics; more than 120,000 were screened for cervical and breast cancers, and more than 380,000 received testing and treatment for STIs. In 2010, more than a quarter of {Planned Parenthood}'s Texas patients were low-income women served by the state's pass-through of federal funding, including from the state's pot of Title X funds.

"Planned Parenthood is not the only provider of health care {for} low-income Texas women. Each year, some 78 contractors across Texas (funding roughly 286 providers) receive federal funds allocated by the state to provide this basic care. In fiscal year 2010, these providers used roughly \$47.6 million in funds to provide basic health care to a total of 257,895 low-income clients. Of these groups, the public providers saw the most clients at just more than 86,000 -- 37% of all low-income reproductive health clients served with these funds -- but, at \$219, these groups' cost per client was higher than that of Planned Parenthood. The other contractors include city and county health departments, hospitals, community health centers (like Austin's People's Community Clinic), stand-alone family planning clinics, and federally qualified health centers. However, Planned Parenthood's long institutional history has allowed the organization to hone its delivery of preventative reproductive health care to women across the country and in Texas, making it uniquely able to provide services in a cost-effective manner in even the most isolated communities. Last year, {Planned Parenthood} clinics in Texas used federal funds to see more than 73,000 patients at an average cost of just \$168 per client.

"These economic realities haven't prevented lawmakers from trying to find a way to defund Planned Parenthood. Before this session, the last major attack came in the 2005 legislative session, in a budget rider authored by {Senator} Robert Deuell, R-Greenville. Deuell walks an interesting line on women's health care; he's a doctor, and neither the benefits of preventative care nor the unique needs of women are lost on him. Deuell is openly hostile toward {Planned Parenthood}, though his explicit reasoning is supposedly magnanimous. Planned Parenthood's services are limited and occupy a niche, he argues, and the state should focus its limited health care dollars on first funding more comprehensive medical providers, namely federally qualified health centers. These FQHCs aim to serve any and all indigent clients in need of a 'medical home,' serving as a portal for care for a variety of health services -- such as mental health and dental care -- in addition to reproductive {health}.

"Lawmakers approved the Deuell rider, directing the Department of State Health Services to direct \$10 million each year from the state's family-planning money first to fund FQHCs before allocating the remaining money to the rest of state's providers, including {Planned Parenthood} clinics. This would seem to make sense -- providing low-income patients a single point of entry for medical care is not a bad thing. In practice, however, it hasn't helped to expand access to

care. For starters, there are fewer than 70 FQHCs across the state, and because they aim to address so many different health issues for a needy population, many of them are already bursting with patients.

“The rider took effect beginning with the 2006 funding cycle, and the consequences were immediate: That year alone, more than 41,000 fewer women were provided with reproductive health care funded by three main pots of federal money -- Title V (the Maternal & Child Health Block Grant), Title XX (the Social Services Block Grant), and Title X; together, the three provide services for women not eligible for Medicaid. In the following year, more than 28,000 women lost services, according to Hagerty of the Women's Health and Family Planning Association of Texas, who regularly compiles statistics and crunches numbers provided by DSHS and the Health and Human {Service} Commission that pertain to women's health care.

“The FQHCs simply could not absorb the clients who were hemorrhaged from the more traditional family-planning providers that lost funding because of the FQHC allocation. And the FQHCs that have received funding have not been able to spend all of it, each year returning a significant amount of money to the state for reallocation. And though the 26 FQHCs that are now receiving funding for these services have steadily increased the amount of money they're using, their average cost per client is \$225, so they're still not picking up as nearly as many clients as have lost care since the imposition of the Deuell funding scheme. In 2010, FQHCs saw just 13% of clients for reproductive health funded by family-planning dollars, according to {DSHS.}

[EDITOR'S NOTE: *Senator Davis pauses from reading "The War on Women's Health."*]

Senator Wendy Davis: And of course, this is part of why so many are concerned about Senate Bill 5. With fewer dollars being directed particularly toward reproductive health care, the need for those services, abortion services, has risen, and with that need, of course, the consequences of Senate Bill 5 becoming even greater. I return to reading the article.

Part 028

Nichols Raises First Point of Order

06:03:55

Video Link: <http://youtu.be/dNQnl51Uv7o>

Audio Link: <https://archive.org/details/SB5028NicholsRaisesFirstPointOfOrder>

Transcribed by: Lara E. Platt

Senator Wendy Davis: I return to reading the article:

[*Senator Davis reads from The Austin Chronicle Vol.30 No.34, [The War on Women's Health: To](#)*

[attack Planned Parenthood, lawmakers undermine health care ... and promote more abortions](#)
by *Jordan Smith, Fri., April 22, 2011*

“In short, say health care advocates – if the intention was indeed to improve access to health care – the Deuell plan hasn't worked out so well. Put simply, says Randall Ellis, senior director of government relations for the well-respected Houston FQHC Legacy Community Health Services, it takes the entire spectrum of providers, including Planned Parenthood, to meet the needs of the growing population of low-income people without access to reproductive and other basic health care services. ‘We work in conjunction with Planned Parenthood for family-planning and HIV services. We do referrals back and forth, so that people can receive services in the setting that they're most comfortable in,’ he said. ‘These family-planning providers, providers that specialize in family-planning services, provide these services in a much more cost-effective manner than do the other [providers] without the know-how – much more [cost-effectively] than Legacy or the other FQHCs...that don't have the background’ or expertise in providing...health care.

“These facts on the ground have done nothing to prompt lawmakers to reconsider the allocation scheme – and things are about to get worse.”

Senator Wendy Davis: And of course, members, we know they did.

“While Deuell's approach might be well-intended and based on his medical experience, the same cannot be said of most of the folks who have jumped on the funding-scheme train. Those include prominent foes of abortion, most without medical background or health care expertise, whose primary objective reflects no desire to see that as many low-income women as possible have access to basic health care but only that Planned Parenthood be defunded as the visible incarnation of ‘the abortion industry.’

“During testimony at a House Human Services Committee hearing last month, Joe Pojman, executive director of Austin-based Texas Alliance for Life, argued passionately that defunding PP would open up the doors to other providers – FQHCs and actual private physicians who accept Medicaid – to serve women. ‘These are where our tax dollars should be spent,’ he told the committee. ‘Don't women in Texas deserve better care? If Planned Parenthood in Texas was defunded ... those women will be far better off because they would [be given] a medical home.’”

Senator Wendy Davis: And members, to depart from this for a moment, and share a personal experience that I had with Planned Parenthood. Starting when I was in my late teens Planned Parenthood became my medical home. It was my only medical home. And had it not been for the Planned Parenthood clinic on Henderson Street in Ft. Worth, Texas, I wouldn't have been able to access any sort of care for myself. Not contraception, not blood pressure tests, not cancer screening tests. None of that would have been available to me because I was a poor, uninsured woman whose only care was provided through that facility. It was my medical home. To return to the article:

“The rallying cry of Pojman and others – dismissing the reality of how the funding is actually being allocated – has been bolstered this year by the addition of a charismatic new voice. Abby Johnson, former director of a PP clinic in Bryan, Texas, left that job and joined the pro-life movement, she says, after she witnessed during an ultrasound-guided abortion procedure a fetus struggle not to be terminated. Johnson is young, charming, and well-spoken – although there are serious questions about the veracity of her tale. She blames Planned Parenthood for trying to discredit her. ‘The holes in the story don't come from me,’ she insists. Johnson has been embraced by pro-lifers who see [Planned Parenthood] as an especially nefarious evildoer, simply a portal through which the stated goal of providing health care is in fact secondary to somehow enticing women facing unplanned pregnancies into abortion.

“Johnson promotes that notion. At least half of the women in her clinic seeking abortion care had been using contraception when they got pregnant; therefore, she claims, Planned Parenthood may be good at providing birth control ‘to the masses’ but not at providing good contraceptive and related education. ‘That's a pretty significant problem. Their health education is promoting sex without consequences, which ultimately is what abortion is really about,’ she says.

“Johnson also argues that if Planned Parenthood is taken out of the funding mix, plenty of providers will pick up the slack. Asked about the experiences of the last few years under the Deuell rider, Johnson responds that it simply doesn't go far enough. The problem, she argues, is that under Deuell's rider, [Planned Parenthood] remains eligible for some funding, and thus is still siphoning funds away from other providers – additional FQHCs and public health entities, for example, that might otherwise be able to provide more comprehensive services, including reproductive health care. ‘So I'm not concerned about where these women [would] go,’ she says. ‘It's not just FQHCs; it's rural health services, community hospitals. There are 10 to 20 times the number of places that women could go’ for care. Johnson says that while ‘you can't deny’ that Planned Parenthood does provide health care to low-income women, those services are too limited in scope to be an appropriate recipient of tax dollars. ‘What I try to reiterate is that while they are providing those good services, they're also providing more than 320,000 abortions each year’ in the U.S., she says.

“Johnson insists that she's ‘not a hardcore conservative’ and that she isn't just ‘pro-life. I say, I'm ‘pro-quality-of-life.’ I am for social programs,’ she says. ‘It doesn't just stop at birth for me. ... Women, men, and children should get health care that they deserve and that they need.’ So while she supports defunding Planned Parenthood, she's against any move to take money away from providing reproductive health care to low-income people – such as the proposal in Congress to eliminate Title X. ‘I am not for any kind of restrictions on funding that would take away money from women who need services. I don't want money [sic] tax money to go to clinics that perform abortion services,’ she says. ‘But I am not in any way in favor of taking money away from health services.’

“Unfortunately, despite Johnson's demurrals, defunding health care is in actual fact the current plan in Texas. Under the seven budget amendments passed this month in the Texas House, there will be very little left to fund reproductive health services at all. In the effort to attack Planned Parenthood, lawmakers have thrown the proverbial baby out with the bathwater. The amendments strip nearly \$62 million over the biennium from family planning – moving virtually all Title V and Title XX money to other ‘strategies,’ each move presumably allowable under federal law. What is left is only the biennial funds allocated for Title X, money that lawmakers could not redirect from reproductive health services. In all, there's roughly \$38 million left for two years.

“With the Deuell rider still in effect, that means there's \$18 million over the biennium – just \$9 million per year – to provide money to more than 50 non-FQHC contractors currently serving more than 227,000 women. Since 2005, those providers have had access to between roughly \$35 million and \$40 million a year to provide services to these women – who are but a fraction of the hundreds of thousands of women who actually need services in Texas; with Texas' dubious claim to fame as the state with the highest percentage of uninsured people (about 26% in 2009, according to the Kaiser Family Foundation), the number of Texas women in need of reproductive health care is roughly 1.5 million, according to the Guttmacher Institute.

“Moreover, in an attempt to deliver a death blow to [Planned Parenthood], conservative lawmakers also approved an eighth amendment, authored by Rep. Warren Chisum...that expands the 2005 Deuell funding rider by spelling out how the remaining \$9 million per year should be allocated. First, the money would go to ‘public entities’ that provide family planning, including community clinics and county and city health departments; second in line would be ‘non-public entities’ that provide ‘comprehensive primary and preventative care’ in addition to reproductive health services; third, whatever is left – and the presumption, of course, is that there won't be anything left – would go to ‘non-public entities’ that provide only reproductive health care, including Planned Parenthood.

“Texas Right to Life's Graham was nearly giddy about the amendment in a posting to the TRL website: ‘[T]he final amendment earned 113 votes to snatch the last \$9 million!’ she wrote. In an interview with the Texas Tribune prior to the debate, Rep. Sid Miller...(author of the ultrasound-before-abortion bill the House passed in March), foreshadowed the floor debate: ‘I would say [Planned Parenthood will] have a tough time getting any government funds, state funds, ...’”

Lt. Gov. David Dewhurst: Senator Nichols, for what purpose do you rise?

Senator Robert Nichols: Mr. President, under Rule 4.03, is the budget germane to this bill?

Lt. Gov. David Dewhurst: No.

Senator Robert Nichols: I think she's talking about the budget.

Senator Wendy Davis: Mr. President, may I please argue my point with regard to its germaneness and if you rule that it's not I'm happy to move on to something else. But in the debate over Senate Bill 5 I did argue, of course, about restoring the Women's Health Program funding. I made the argument and actually introduced an amendment to Senate Bill 5 that would have restored the Women's Health Program in Texas. Right now, as you know, we have completely turned away those dollars and we've done so because in order to take them we would have to provide them to providers like Planned Parenthood. I made the argument that we were giving up about 30 million dollars in federal funds that could have otherwise been brought down for preventing abortion, which, of course, is the topic of this bill. And because I introduced that as an amendment - it was voted on and declined - I believed that this was relevant to the discussion on this bill.

[Lt. Gov. Dewhurst consults with the parliamentarian.]

Lt. Gov. David Dewhurst: Senator, I don't think that the contents and the subject matter of the funding of Planned Parenthood is germane to this debate. And please consider this as a warning, and if you could, keep your comments to Senate Bill 5 and the elements in the bill and the subject of abortion. Thank you, Senator.

Senator Wendy Davis: Thank you, Mr. President.

Part 029

Questions from Kirk Watson (1)

06:16:39

Video Link: <http://youtu.be/KvstZSxdl6I>

Audio Link: <https://archive.org/details/SB5029QuestionsFromKirkWatson1>

Transcribed by: Lisa Karakaya

Senator Wendy Davis: At this time, I'd like to talk about alternatives to abortion through prevention. And again, a very lengthy part of our conversation on Senate Bill 5 had to do with its failure in the name of women's health to address women's health care in a way that would prevent the need for abortions. The *Houston Chronicle* had a good article on that, dated March 14, 2013:

"When it comes to a woman's right to choose, reasonable minds would agree that a decline in abortion rates should bode well for all of us. Every child should be a wanted child. However, the most recent study on the issue, showing that in the past two years, Texas abortion rates have declined by ten to fifteen percent, presents a more complicated picture. The national rate has been declining also but not as sharply."

Preliminary results as reported by the *Chronicle* study, "Abortions on Decline in Texas," show that the drop in-- is deeper in Texas not because fewer women are choosing abortion, but because the draconian budget cuts and punitive measures in the 2011 session are creating obstacles--

Lt. Gov. David Dewhurst: Senator Nichols, for what purpose do you rise?

Senator Robert Nichols: Uh-- call a question of point of order on Rule 4.03, on the germaneness. I don't think alternatives to abortion are related to Senate Bill 5.

[Consultation with the parliamentarian.]

Lt. Gov. David Dewhurst: Senator Nichols, as long as Senator Davis is on the subject of abortion, I think that's related to the subject matter of Senate Bill 5, but let me-- but I'll be glad to revisit that with you. I'll, I'll, we'll continue to listen to the debate.

Senator Robert Nichols: Okay. Thank you.

Senator Wendy Davis: I'll continue where I left off in the article.

Lt. Gov. David Dewhurst: You're recognized.

Senator Wendy Davis: In the rush to stamp out abortion, our state leaders also are wreaking havoc on the most practical, common-sense mechanisms for avoiding unplanned pregnancies in the first place, namely widespread, affordable access to family planning services. In an appallingly short-sighted measure, lawmakers last session slashed state family planning funding by two-thirds from \$115 million to \$37.9 million, resulting in the closing of more than half of the 300 state-funded clinics.

By the end of last year state researchers were predicting that due to this lost funding, births in the 14-15 biennium would increase by about 24,000 and would cost taxpayers up to an additional \$233, \$273 million. Researchers in this latest study of several hundred women seeking abortions, found that in about 90 percent of cases, the women did not change their minds after complying with the new demands. More evidence that our energies and our tax dollars should be focused on family planning services, not on creating more hurdles for women at a time when they are already facing a daunting choice. But there is hope that reason is beginning to prevail among a--

Lt. Gov. David Dewhurst: Senator Watson, for what purpose do you rise?

Senator Kirk Watson: Without Senator Davis yielding the floor, I wonder if she would yield for some questions.

Lt. Gov. David Dewhurst: Will Senator Davis--

Senator Wendy Davis: I will yield for questions without yielding the floor, thank you Senator.

Senator Kirk Watson: Thank you Mr. President. Senator Davis, I apologize for interrupting, but I was hopeful that we could talk a moment, and I could ask you some questions about some of the legal aspects to the abortion issue and start, if we could, with the case that has been mentioned by you and by others on the floor, *Roe vs. Wade*.

Senator Wendy Davis: Yes.

Senator Kirk Watson: You're familiar with the year that was decided.

Senator Wendy Davis: Yes. I have the case in front of me. It was decided in-- it was argued in 1971 and decided January 22, 1973.

Senator Kirk Watson: And in that case, you're probably familiar, as part of your legal background, with the fact that there had been issues in previous cases, issues like this being able to get in the courts because there were questions raised about standing, because pregnancies last only a certain period of time, the woman would be pregnant, she would end up having the baby, and then she would end up not having standing.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: Correct. And so one of the issues that came up in the case of *Roe vs. Wade* was that the usual rule in federal cases was that an actual controversy had to exist at the stages of the appellate, or the review on cert? and not simply at the date the action was initiated, so if a woman were pregnant, there would be a period of time where the case would be ongoing, she would have her baby, and then on appeal or on the review on cert, she would no longer be pregnant, and as I understand it, is it your understanding that that would then moot the case--

Senator Wendy Davis: Correct.

Senator Kirk Watson: And so some of these cases weren't able to make it to where there was review about what was the constitutional right of women--

Senator Wendy Davis: That's right. It was quite a, quite a challenge.

Senator Kirk Watson: As the court pointed out in the, in the case of *Roe vs. Wade*, and I would cite you to, to headnote 4 in that case, they pointed out that with human gestation they'd come to term before the appeal could be completed and so in this case, is it your understanding that

what the United States Supreme Court said is that they could rule in the case because they finally determined that pregnancy provided a classic justification for a conclusion of non-mootness, because it truly could be capable of repetition, yet evading review.

Senator Wendy Davis: That's exactly what they decided.

Senator Kirk Watson: Um, Senator, one of the big issues that had not been decided prior to the case of *Roe vs. Wade*, was in the instances of the termination of a pregnancy, is whether or not that in fact was protected and, by our, by the United States Constitution. And once the court was able to get past the issue of whether or not it was moot, is it your understanding that the court actually addressed the issue so that we had some definition on whether a woman's right to make that decision was constitutionally protected.

Senator Wendy Davis: That's right, for the first time.

Senator Kirk Watson: And was it your, is it your understanding that in the case of *Roe vs. Wade*, the principal thrust of the appellant's argument in that case, in fact, their attack on the Texas statute that made certain terminations of pregnancy a crime is that it improperly invaded a right said to be possessed by a pregnant woman to choose to terminate her pregnancy.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: In fact, that's the exact language of *Roe vs. Wade*, is that, that the thrust of the argument was that it improperly invaded a right said to be possessed by the pregnant woman to choose to terminate her pregnancy.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: Is it your understanding that in the case, when the court reviewed this case, that it pointed out that the appellant or in this case, the, the woman who was being charged with a crime, that they would discover this right in the concept of personal liberty.

Senator Wendy Davis: That's correct, that was the constitutional underpinning of their decision.

Senator Kirk Watson: So the const-- so what you're saying is the constitutional underpinning of *Roe vs. Wade* was that the woman's right, possessed, that she possessed-- invaded a right that she possessed-- was based upon the concept of personal liberty, and is it your understanding that what the court found was that was embodied, that personal liberty was embodied in the Fourteenth Amendment's due process clause.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: And, or, the argument was, that it was found in personal, marital, familial,

and sexual privacy that's said to be protected by the Bill of Rights or its penumbras.

Senator Wendy Davis: That's correct.

Lt. Gov. David Dewhurst: Senator Nichols, for what purpose do you rise, sir?

Senator Robert Nichols: To ask a question under 4.03, germaneness. It is my understanding that all questions have to be with regard to the body of the bill, and I don't quite understand what part of the bill this question relates to.

Senator Kirk Watson: May I, may I reply?

Lt. Gov. David Dewhurst: You may.

Senator Kirk Watson: The whole issue here is whether or not-- we're talking about abortion, we're talking about the underpinnings of personal liberty, we're talking about a woman's right to make choices. We're talking about the seminal case that gives rise to that recognition of personal liberty in *Roe vs. Wade*.

Senator Robert Nichols: Mr. President, that is not the body of the bill-- what he's talking about.

Lt. Gov. David Dewhurst: The Senate Rule 4.03 deals with, with, with the issue before us, the issue before us is Senate Bill 5. So I'm going to sustain the motion and ask that you stay on the subject of this bill, and how it works, and, and, as tightly construed as you can, a discussion on abortion.

Senator Robert Nichols: Mr. President, is that a warning?

Lt. Gov. David Dewhurst: That's the second warning.

Senator Robert Nichols: Thank you.

Senator Wendy Davis: Mr. President, I'm not-- I'm not sure that that's the second warning, under the rule, because it's not a warning to me the speaker.

Lt. Gov. David Dewhurst: I'm not calling you on a-- I'm not calling you on a warning. I'm not calling you on a warning.

Senator Wendy Davis: Thank you.

Senator Kirk Watson: Well, then let's, let us be clear. If you're not-- you're not calling Senator Davis on a warning, that warning was to me.

Lt. Gov. David Dewhurst: Simply that-- that is correct, that, please limit your questions to the

subject of the legislation or the legislation. And as tightly construed to abortion as you can.

Senator Royce West: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Royce West: I'm just trying to make certain we understand the rules, because we're hearing a bunch of warnings now. Under the rules, what impact would warnings of members have on Senator Davis's ability to continue her conversation about these bills?

Lt. Gov. David Dewhurst: Senator West, the warning was to Senator Watson to confine his comments to the subject of the bill that is being debated. It has nothing to do with Senator Davis.

Senator Royce West: Okay, parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Royce West: If Senator Davis is given three warnings, what impact does that have on her ability to maintain the floor?

Lt. Gov. David Dewhurst: Senator West, on the third point of order that would be sustained, then it's not a warning, and it would be put to the body for a vote on whether to end debate or to continue debate.

Senator Royce West: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Royce West: What would that vote be, is it two-thirds or a simple majority?

Lt. Gov. David Dewhurst: It's a simple majority.

Senator Royce West: Okay, so, the third decision-- the third, third warning upheld by the Lieutenant Governor, would then put the issue to the body to decide whether or not to, frankly, pass the bill.

[Consultation with the parliamentarian.]

Lt. Gov. David Dewhurst: Senator West.

Senator Royce West: Yes.

Lt. Gov. David Dewhurst: After the second warning to an individual, to a Senator that's conducting a filibuster, the next warning would be put to, the next point of order, if sustained, would be-- is put to the body.

Senator Royce West: And that's pursuant to Rule 4.03, and the precedent thereunder, or what?

Lt. Gov. David Dewhurst: Yes.

Senator Royce West: Okay. And that's to Senator Davis, that's not to an individual member.

Lt. Gov. David Dewhurst: That is correct.

Senator Royce West: Okay. Thank you Mr. President.

Lt. Gov. David Dewhurst: Senator Ellis, for what purpose do you rise, sir?

Senator Rodney Ellis: Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Rodney Ellis: Just to make sure I understand the nature of what questions I can ask in this filibuster. Am I, am I able to ask Senator Davis to read me sections of the committee substitute to Senate Bill 5, just to make sure that I don't stray from the subject at hand?

Lt. Gov. David Dewhurst: The subject that would be germane to the debate is the subject of Senate Bill 5.

Senator Rodney Ellis: So my parliamentary inquiry is, am I able to ask Senator Davis to read sections of the bill to me? Slowly?

[Laughter.]

Senator Rodney Ellis: I just want to make sure I can understand it.

[Consultation with parliamentarian.]

Lt. Gov. David Dewhurst: Senator, with all due respect, I'm not going to issue a ruling that permits a debate that's not subject, the subject is Senate Bill 5. And, you know as well as I do that, that a proper question would be on Senate Bill 5.

Senator Rodney Ellis: Okay. I'll have a series of questions about the committee substitute to Senate Bill 5, if it does not take Senator Davis off the floor.

Lt. Gov. David Dewhurst: When the, when the parliamentary inquiry was first made, it was made by Senator Watson, and he was asking questions. If Senator Watson wishes to continue asking--

Senator Kirk Watson: I would.

Lt. Gov. David Dewhurst: --questions, then he has the floor. But first, I noticed-- Senator Williams, for what purpose do you rise, sir?

Part 030
Questions from Kirk Watson (2)

Video Link: <http://youtu.be/eU4DccTwCRw>

Audio Link: <https://archive.org/details/SB5030QuestionsFromKirkWatson2>

Transcribed by: Emily Griffith

Lt. Gov. David Dewhurst: Senator Watson, you're recognized.

Senator Kirk Watson: Thank you. Senator Davis, we were talking about Roe vs. Wade and I hear the... the presiding officer, the president of the senate's ruling on the point of order that was raised. Let me bring it back to Senate Bill 5. In Senate Bill 5, is there a limitation, a time limitation, placed on when a woman would be allowed to have -- to terminate a pregnancy?

Senator Wendy Davis: Yes. Senate Bill 5 would prohibit an abortion past 20 weeks of gestation. And that gestational age itself, there's some argument about the way it's defined in the bill-- um, saying that typically under medical practice, it's practice to determine that date from the date of the last menstrual period, whereas here it's the date of the fertilization of the fetus. And as you heard earlier in some of the reports or the letters that I read from ACOG, they're very concerned about changing to a standard that probably moves the date even earlier than 20 weeks of gestation in terms of what would be prohibited in the abortion arena.

Senator Kirk Watson: And yet, even in the case that we were talking about, of Roe vs. Wade, in that case, the court, the Supreme Court looked at when states could be involved in taking certain action that would perhaps, could invade a woman's right to privacy and her constitutional rights as it applies to the termination of her pregnancy. Is that correct?

Senator Wendy Davis: That's right. And they of course created a standard in that opinion, the standard being that states could not regulate or inhibit a woman's constitutional right to an abortion procedure, um, prior to the viability of the fetus.

Senator Kirk Watson: And again to focus on SB 5, SB 5-- and I understand what you just

said-- And the answer to the question might be less than 20 weeks-- but SB 5 talks in terms of 20 weeks and the United States Supreme Court in Roe vs. Wade talked about a woman could terminate a pregnancy without interference by the state prior to approximately the end of the first trimester of the pregnancy.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: Let's say 28 weeks, roughly 28 weeks.

Senator Wendy Davis: Second trimester.

Senator Kirk Watson: I'm sorry. That's right. So...

Senator Wendy Davis: Second trimester.

Senator Kirk Watson: So, there's a companion case to Roe vs. Wade. Is that correct?

Senator Wendy Davis: Yes. That's right.

Senator Kirk Watson: And that's, that's the case that came out of Georgia called Doe vs. Bolton.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: And--

Lt. Gov. David Dewhurst: Senator Nichols, for what purpose do you rise, sir?

Senator Robert Nichols: Inquiring the point of order on 4.03 again, germaneness. We're back to questions related to Roe vs. Wade, which is not a part of this bill. And it's my, also I have a question about if the, uh, senator whose status is responding to a non-germane question, is that also included in the warning?

Senator Kirk Watson: Mr. President, I have cited specifically my questions related to this case and the underpinnings of the law specifically to SB 5.

Lt. Gov. David Dewhurst: Senator Watson, would you approach the podium?

[Dewhurst, Watson, Davis, and Nichols talk off-mic for five minutes.]

Lt. Gov. David Dewhurst: Senator Nichols, um, on the specific point of order that you raised, at the present time, it's respectfully overruled. But, um, the debate needs to be kept to the subject of the bill. And we'll be, I'm sure you'll be alert to that.

Senator Robert Nichols: Thank you.

Lt. Gov. David Dewhurst: Senator Watson, you're recognized for questions.

Senator Kirk Watson: Thank you Mr. President. Senator Davis, when we were interrupted I was asking about the underpinnings of states, like the state of Texas, being able to put restrictions on the constitutionally recognized right of a woman to terminate the pregnancy. And, um, in SB 5, are there restrictions being placed both literally and practically on a woman's right to terminate, her constitutional right to terminate her pregnancy, as we've been talking about?

Senator Wendy Davis: There are, and they come in several forms. As you know, this is an omnibus bill that included four new areas of law that would cover abortions in the state of Texas. One of those was in terms of the standard of what that facility needed to look like. And certainly an argument can be made that in the state of Texas the consequence of the ambulatory surgical center provision of SB 5 will decrease, in a fairly dramatic form, the number of centers at which abortions can and will be provided in Texas.

I would suspect that, as has been the case in other states that have confronted that question, there will be lawsuits um, if this law were to go into -- if this bill were to go into law. And Roe vs. Wade is the, one of the legal opinions to which any judge who was deciding the constitutionality of that provision would be allowable. Because Roe vs. Wade set a standard by which states must follow in terms of regulations that they put on abortion facilities, as did Doe vs. Bolton, the other case that you referenced.

There are three other pieces of this bill that would be subject to a review of the standards that were put in place in Roe vs. Wade. One of those is the provision of the abortion drug and how and when it can be administered. And in this bill, there are restrictions in terms of not only when it can be administered, but where it must be administered, with specific, um, instructions with regard to how a doctor is to administer it, how he's to, or she is to, instruct her patient and so on and so forth. And again, I would expect that if this bill were to become law, a challenge would be made to that particular provision to determine whether it's consistent with the decision in Roe vs. Wade and Doe vs. Bolton.

Senator Kirk Watson: And is that because those cases said that the state can't unduly burden the exercise of that fundamental right?

Senator Wendy Davis: That's correct.

Senator Kirk Watson: And in your opinion, is that one of the restrictions that SB5 does, that may very well indeed unduly burden the exercise of that fundamental right recognized by the courts?

Senator Wendy Davis: That's exactly right. And when the, when the Supreme Court recognized that right in *Roe vs. Wade*, what they recognized was that any intrusion, or alleged intrusion on that right would be subject to strict scrutiny by the court. And as you know as a lawyer, as I know as a lawyer, and other lawyers in the room know, that strict scrutiny is a very high standard. The state must demonstrate a compelling state interest in the laws that it's passing where there may be some constitutional infringement that might occur. And these are, of course, part of our questions with regard to SB5 and its provisions whether that strict scrutiny would allow even to, to find a compelling state interest. That's why I got so many questions of Senator Hegar and others with regard to the specific medical, empirical evidence that has demonstrated that the provisions of this bill actually are related to a compelling state interest. That somehow there is this interest that will be served in order to make them constitutionally um, viable under *Roe vs. Wade* and subsequent decisions by the US Supreme Court.

Senator Kirk Watson: What... part of my understanding, and I want to relate it to SB5. You've talked about literal and practical limitations on the exercise of what has been recognized as a fundamental right, and you've talked about the strict scrutiny standard. Talk to me about, in SB5, part of what my understanding of what *Roe vs. Wade* and *Doe vs. Bolton*, and correct me if I'm wrong, is that one of the things they said is that, that you can't undo... the state can't unduly burden the exercise of that fundamental right with regulations that prohibit or substantially limit access to the means of effectuating the decision to have an abortion. Is that your understanding?

Senator Wendy Davis: That's my understanding.

Senator Kirk Watson: Take it to SB5. Is there anything in SB5 that you believe is something we can point to that are regulations that prohibit or substantially limit access to the means of effectuating decisions for a woman to have an abortion, and exercise that fundamental right.

Senator Wendy Davis: Yes, there are several things in SB5 that I believe fall in that category. As I mentioned a moment ago, the requirement for an ambulatory surgical center, and, in a moment, I have a book that describes what those rules are, what an ambulatory surgical center must provide, what the federal standards are, the current locations in Texas, and then also the overview of credentialing and physician privileges. Because those are the key components of SB5, that could be challenged under that particular provision that you just cited.

Senator Kirk Watson: Explain that.

Senator Wendy Davis: Well, arguments can be made, of course, that if the ambulatory surgical center requirement is put in place, and if indeed it results in the closure of the vast majority of abortion clinics in the state of Texas, that could be deemed too limiting -- if you'll say the language again, exactly?

Senator Kirk Watson: Prohibit or substantially limit access to the means of effectuating the

decision to have an abortion.

Senator Wendy Davis: That could be ruled to substantially limit a woman's access. Also, what could be deemed to substantially limit a woman's access is the requirement that a provider, a physician provider of abortion services, must have admitting privileges in a hospital within 30 miles. Because that, of the fact, that it may so severely decrease the number of physicians who are qualified under that law, not in reality, but under that law, who are qualified to provide services to women, that once again, to use that language, may...

Senator Kirk Watson: Substantially limit access to the means of effectuating the decision.

Senator Wendy Davis: Exactly. And then finally, um, taken together and -- of course the state's laws have to be considered in a cumulative fashion -- but SB5 taken together with the sonogram law, that passed in the last legislative session, may be deemed to have created a constitutionally, um, suspect requirement that cannot meet those constitutional requirements.

As you know, with that sonogram bill from the last legislative session, women now have a 24-hour waiting period after a sonogram before they can come back for their abortion procedure. If you add to that, uh, for example, a provision in SB5 that now requires that a woman who is going to receive an abortion through means of the abortion inducing drug... A woman who is to receive that now under SB5 would have to be given the drug, first of all, at an ambulatory surgical center, of which right now there are only five, and come back for her second dose 24 to 48 hours to receive that second dose.

And again, we haven't heard any testimony, and I've asked questions about it, and it certainly has been the topic of committee hearings: what it is about the woman taking, ingesting that medicine, either orally or vaginally, in the presence of an ambulatory surgical center doctor, makes the provision of that abortion service somehow in the state's interest, somehow safer for her. And I think a constitutional challenge under that provision could be seen to be limiting her ability to...

Senator Kirk Watson: Whether there's a... your question is whether there's a compelling state interest to limit access so that she can effectuate um, that-- her decision.

Senator Wendy Davis: That's right.

Part 031
Questions from Kirk Watson (3)
06:54:42

Video Link: <http://youtu.be/ipYpArNeDJw>

Audio Link: <https://archive.org/details/SB5031QuestionsFromKirkWatson3>

Transcribed by: *Suzanne F. Boswell*

Senator Kirk Watson: Compare for me-- 'cause you just mentioned the sonogram law, and I want to talk about SB5 as compared to the sonogram law. Were there changes made in the sonogram law in an effort to try to-- to less-limit access that aren't being made in SB5?

Senator Wendy Davis: That's right. In fact, SB5 almost contradicts the changes that were put in place in the sonogram law.

Senator Kirk Watson: Make sure I understand the changes that were made in the sonogram bill so that I'll understand what you say about what doesn't happen in SB5 that contradicts?

Senator Wendy Davis: In the sonogram bill, what you may remember is that Senator Uresti, in order to secure his support on that bill, he was very insistent that women in the rural communities that he serves and that other members of the legislature serve, not have the burden of the 24-hour waiting period, where the clinics were a far enough distance away from the woman's home that it would create a hardship on her to have to travel back to that clinic two days in a row.

Senator Kirk Watson: So the argument would be that in order to not substantially limit access to the means effectuating that woman's decision, there needed to be a change.

Senator Wendy Davis: Correct.

Senator Kirk Watson: I'm sorry, I interrupted you.

Senator Wendy Davis: And, you know, obviously that was made to secure Senator Uresti's comfort with the bill, which he got there. I also believe, though, that making that change made it legally less subject to challenge under the-- the statutes that are in place today. The laws that are in the constitutional-- interpretive laws that are in place today.

What happens in SB5 that is different than that, is that in SB5, the ambulatory surgical centers that exist in Texas today are in San Antonio, they're in Dallas, Austin, and Houston. And when you think about women needing to access those services, or desiring to access those services, living, once again, in some of the rural areas Senator Uresti represents, or perhaps that Senator Zaffirini represents, or that Senator Hinojosa represents, or Senator Lucio represents, we know that if those become the only available abortion service centers in the state of Texas, women will have to travel in some instances hundreds of miles in order to access abortions care services. And that might be subject to, and I believe it would be subject to, a challenge under the existing constitutional law as it relates to abortion.

Senator Kirk Watson: And, and, um, you've indicated that there ought to be a compelling state

interest on that distance. I want to make sure I understand your position on the distance issue that we're talking about here. Have you been satisfied that there is a compelling state interest to require clinics that currently can perform the termination of a pregnancy to go to an ambulatory-- to go to the standard of an ambulatory surgical center in-- on, on the flip side of the coin, I guess, of limiting that access.

Senator Wendy Davis: I do not believe that there has been any testimony, any empirical information that has been provided on the Senate floor, on the House floor, in the Senate hearings both in the regular and the special sessions, in the House hearings, both in the regular and the special sessions that demonstrated some compelling state interest in this new provision that's being asked to pass into law in the state of Texas.

Senator Kirk Watson: Now, I've asked you about these cases that serve as kind of the underpinnings for laws related to abortion, and the constitutional right that a woman has to make these decisions.

Um, I want to ask you about, in SB5, another provision that I've heard you argue would limit access, and that is the 20-week provision. Are you familiar with any challenges that have been made in the United States, to states that have created a 20-week provision like is in SB5? Where they've been challenged on the basis that they violate a woman's right to choose as protected by the United States Constitution?

Senator Wendy Davis: Yes, I am. And I think there have been four different states that have attempted, or have passed similar laws.

Senator Kirk Watson: And, and I want to be clear, so that nobody has any question about, or, uh, we're talking about the provision in SB5.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: Okay. I'm sorry.

Senator Wendy Davis: And that provision in SB5 is the same provision that's been passed into law in, I think four other states and has been the subject of litigation. Thus far, I don't think any court has found that that particular prohibition satisfies the constitutional requirements that have heretofore been-- been set by the Supreme Court.

And the reason that is prominently stated, or-- or most often stated for that, is this issue of whether there truly is any scientific evidence that demonstrates fetal pain at that particular point in, um, gestation. And that absent that compelling state interest, which might be found to be a legitimate one, because there hasn't been any scientific support to demonstrate that that has occurred, constitutionally, laws in other states that have attempted to do that have heretofore not been upheld.

Senator Kirk Watson: Something you-- you'd said earlier in either answer to my question, or somebody else's question, with regard to SB5 and this 20-week provision I want to make sure I understood. Help me understand -- and I read some things from ACOG, the American Congress of Obstetricians and Gynecologists and, and others, other places -- the, the difference between 20 weeks post-fertilization and 20 weeks gestation. Help-- help walk me through that and as it applies to SB5.

Senator Wendy Davis: The concern that was raised -- and I read a letter about it, believe it was from TMA, it may have been from ACOG, a little while ago -- talked about the fact that the standard in determining the age of a fetus, the developmental age of the fetus, has always been based on prior menstrual cycle. And that is so because it's very difficult to determine the actual point of conception. For different women, it's different. We ovulate at different times. But that seems to provide the most sound basis for making that determination. Under the provisions in SB5--

Senator Kirk Watson: I'm sorry, if I might interrupt. The basis that is generally used as a sound basis for determining gestational time is last menstrual period.

Senator Wendy Davis: Correct.

Senator Kirk Watson: All right. I'm sorry.

Senator Wendy Davis: LMP, as, as it's referred to by, by doctors. And what's different about SB5 is that it asks instead for fertilization, the time of fertilization to become the operative time in which gestational age is measured. Now what the medical professionals say, and the testimony they provided during committee, and some of which I've read today, is that absent in vitro fertilization, there really is no medically reliable way to determine what that date is. And in fact by using that date, it actually probably is overestimating fetal age, perhaps even significantly. So that a 20-week fetal age based on that point of reference--

Senator Kirk Watson: Based upon fertilization.

Senator Wendy Davis: Exactly. May be inaccurate, and may be actually a gestational age that's only 18 weeks, for example.

Senator Kirk Watson: Okay. Is that one of the reasons-- is, is it your understanding that that's one of the reasons that ACOG, which is the American Congress of Obstetricians and Gynecologists... I think I've got that right, it may be American College. The-- but ACOG has established that it's opposed to Senate Bill 5.

Senator Wendy Davis: That's correct. That is one of their bases for opposition, among many.

Senator Kirk Watson: Have you heard anything, either on the floor or in the hearings that causes you to think that utilization, like SB5 does, of the 20 weeks post-fertilization, is a more appropriate standard than what the American Congress of Obstetricians and Gynecologists are indicating ought to be any standard of use of determining gestational age, which is LMP.

Senator Wendy Davis: I've not heard anything that leads me to believe that that is an incorrect-- that the LMP is an incorrect way, and that that is a better way of determining gestational age.

Senator Kirk Watson: Is there-- in your mind, is there, do you have any understanding as to *why* in Senate Bill 5 there's an effort to utilize fertilization-- 20 weeks post-fertilization, as opposed to utilizing LMP?

Senator Wendy Davis: Well, according to ACOG, their belief is that it is done in order to actually constrain even further the limit upon which a woman could receive an abortion service. Actually driving the gestational age not even to 20 weeks, but even lower than 20 weeks, because they believe it would create a lower gestational age, and likely would be prohibiting women from having an abortion even as early as 18 weeks of pregnancy, rather than the current protection that exists under Roe v. Wade and Doe v. Bolton.

Senator Kirk Watson: You mentioned earlier today, I think, that this-- Senate Bill 5 is also opposed by the Texas Medical Association.

Senator Wendy Davis: Correct.

Senator Kirk Watson: And what is your understanding as to the reason the Texas Medical Association is opposing Se-- the passage of Senate Bill 5?

Senator Wendy Davis: Their, the letter that they provided dealt in-- in most part with the licensing of physicians that would be required under Senate Bill 5. And that this requirement that a physician be licensed within a facility -- a hospital -- within 30 miles of the abortion facility is constraining the practice of medicine in a way that has not had a compelling interest demonstrated to prove why that's the case.

They also have objected to the bill because of the piece of it that was originally Senator Patrick's bill in terms of how the abortion-inducing drug is to be administered. And they believe that it is a tremendous, um, stepping into the doctor/patient relationship in a way that the legislature really has no business intruding upon, and can't demonstrate that they've intruded upon the patient/doctor relationship in other instances, and why somehow in this particular arena they would-- they would have this intrusion.

Senator Kirk Watson: My memory is that in the debate on the Senate floor with regard to SB5 that-- and, and I want to go to one of the reasons you said-- you indicated you believe TMA has

indicated its opposition to Senate Bill 5, and one of those was the requirement of having admitting privileges a certain distance away, 30 miles away.

My memory was that in that debate, an amendment was offered that that amendment said instead of the doctor needing to have privileges 30 miles away, we would codify an administrative code provision that would allow for that doctor to have a relationship with someone, another doctor, that had admitting privileges at a local hospital. Do you recall that?

Senator Wendy Davis: I do recall that.

Senator Kirk Watson: Now from the standpoint of -- and I, I know you are not going to be able to speak for TMA on this -- but if one of the objections of the leading physician organization in the state is that you've created an undue restriction on access because physicians may not be able to have admitting privileges at a local hospital 30 miles away.

Um, one of the ways to solve for that would at least be to utilize something that's already in the administrative code -- it's a rule that applies -- and codify that where you would say, "we will be able to deal with emergencies under Senate Bill 5 by allowing that doctor to have a relationship with someone at a local hospital". Is that correct?

Senator Wendy Davis: That's correct.

Senator Kirk Watson: So that would be, that, that would have at least been something that if we're just talking about providing protection for women and assuring that an appropriate standard of care is met -- that would have been one way to assure that safety without unduly restricting a woman's access to making that decision.

Senator Wendy Davis: That was the argument made at the introduction of that amendment, and I agree with the rationale behind that argument.

Senator Kirk Watson: Another amendment that was offered-- and, and let me ask you this question. In Senate Bill 5 -- which I think we would all agree, I don't think, I don't think I'm going to get a point of order on asking this -- Senate Bill 5 deals with abortions.

Senator Wendy Davis: That's right. In fact, I believe the subject line in the legislative list service where we typically look at our bills, the subject line on this bill says "abortion".

Senator Kirk Watson: And, and we've heard time and again that the reason to be for SB5 is that, um, we want to have safety for women, but we've also heard that it's to reduce the number of abortions. Have you heard that?

Senator Wendy Davis: I'm sorry, can you repeat that?

Senator Kirk Watson: Sure, I'd be happy to. One of the reasons we've heard that people support Senate Bill 5 is because they want it to reduce the number of abortions.

Senator Wendy Davis: That's right. Some people have indicated that.

Senator Kirk Watson: And, and frankly, we would all like to reduce the number of abortions.

Senator Wendy Davis: Yes, we would.

Senator Kirk Watson: Is there anything in Senate Bill 5 that reduces-- will help us reduce the number of unwanted pregnancies that could result in abortions?

Senator Wendy Davis: In fact, I do not believe there is. And, as you know, Senator Watson, those were a pertinent part of our debate on Senate Bill 5, that we believed that while it, in the name of making better health services for women available, actually will decrease abortion services to women.

We made arguments to decrease the need for abortions. We believe that the best way to decrease the need for abortion services was not through creating constitutional intrusions on women's rights to access those services, but instead to reduce the number of women who would be in demand for those services, because of certain things that we could do at the state level to assist with that.

Senator Kirk Watson: So, for example, my memory is that amendments were offered on the floor to SB5 that would have provided parents with notification about what their children were learning with regard to sex education in the schools.

Senator Wendy Davis: That's correct. I believe you had two amendments that you offered in that regard, Senator.

Senator Kirk Watson: And, and, neither one of those amendments were taken on SB5, so SB5 doesn't have any provision in it that would help us reduce the number of unwanted pregnancies in the state.

Senator Wendy Davis: That's correct.

Senator Kirk Watson: And, and, where-- what's your understanding about where the state of Texas ranks in terms of the number of teen pregnancies?

Senator Wendy Davis: I believe it's number two. I believe that's right. I know it's in the top three, but I believe it's number two in the country.

Senator Kirk Watson: How about on second teen pregnancy?

Senator Wendy Davis: And I believe it's possibly even number one on second teen pregnancy-- perhaps number two, now. But somewhere right there in the top five, no question about it.

Senator Kirk Watson: I want to go back to the idea that, that one of the reasons some have said -- and I think, by the way, some of the members on the floor legitimately want to increase safety, I think all of us want to increase safety in any realm of healthcare that someone might be receiving.

Senator Wendy Davis: No question.

Senator Kirk Watson: But the argument has been made that on SB5, the reason we should be supportive of it is because it would-- it would provide greater public health. Is that correct?

Senator Wendy Davis: That's the argument that was made by Senator Hager, yes.

Senator Kirk Watson: And, and I'm looking at the ACOG letter, the letter that you referred to, which is the letter of the American Congress of Obstetricians and Gynecologists, District 11 from Texas.

Senator Wendy Davis: Yes.

Senator Kirk Watson: Um, and I'm looking at page two.

Senator Wendy Davis: Yes.

Senator Kirk Watson: And down there at the bottom of the page, correct me if I'm wrong, but one thing it says, is it says, "The Committee Substitute for Senate Bill 5 requires additional standards that are unnecessary and unsupported by scientific evidence." And then it indicates, in that first bullet point, "Committee Substitute to Senate Bill 5 does not promote the public health objective it claims to enhance. In fact, it harms public health by restricting access to safe, legal, and accessible abortion services."

Now, I don't want to talk about the constitutional aspects of substantially limiting access to the means of effectuating the decision to have an abortion that is protected by our United States Constitution. But let me ask you, what is ACOG talking about when it says that it won't actually enhance safety; instead, it will do the opposite?

Senator Wendy Davis: Basically, what it what it's saying is that it will do the opposite because women now will have limited access, versus what they currently have in Texas today. And that that limited access actually will undermine women's health. It's not in this particular letter, Senator, I think ACOG wrote about four letters to us. It actually was not in the binder I had,

either. But I had it on the floor when we debated Senate Bill 5.

And ACOG specifically, in the closing part of that letter, talks about the fact that they believe this will do harm to women's health in Texas. And they essentially cite to that period of time where women sought abortions in less safe conditions. And that they fear that with a limitation on where women can go to access these services -- women, particularly poor women in rural communities, will once again be driven to an unsafe environment where they seek abortion services.

Interesting, Senator, uh, statistic, and I know in one of these binders I have somewhere, there's an article about the fact that when you compare different countries and their abortion laws, the demand for abortion and the incidence of abortion does not go down even where the laws try to tightly confine it or prohibit it altogether. And when ACOG talks about that as it relates to Senate Bill 5, I think they understand all too well -- much better than you or I, because this is the work that they do -- they understand all too well that by changing the law in Texas and limiting women's access to where they will get safe legal abortion, is not going decrease demand for abortion, but instead is going to push women into less safe circumstances where they'll seek it.

Senator Kirk Watson: Does it, it makes you worry -- well, let me ask you, since I'm asking questions -- does it make you worry that Senate Bill 5 won't limit abortions, it may just limit the legal ones?

Senator Wendy Davis: And even further, I would say, it just may limit the safe ones.

Senator Kirk Watson: Let me ask you about safety and unintended consequences of-- of Senate Bill 5. Did ACOG make any reference to unintended consequences that would make the treatment of certain conditions, like ectopic pregnancy, more expensive? Maybe you ought-- could you explain that aspect of one of your concerns about Senate Bill 5?

Senator Wendy Davis: Specifically what ACOG said relative to the Committee Substitute for Senate Bill 5, was that it would have unintended consequences by making the treatment of certain conditions more difficult and expensive. It said that ectopic pregnancies are frequently treated in outpatient facilities and physician office settings, and that SB5 would prevent doctors from treating those cases as they normally would. I actually will share something very personal with you. I have experienced an ectopic pregnancy where I was able to be treated by my doctor in his office. And it's a very timely procedure, because--

Senator Kirk Watson: Can you explain what it is?

Senator Wendy Davis: Yes. An ectopic pregnancy is when the embryo begins to develop outside the uterus, typically in the fallopian tube. And if that is not immediately dealt with, it can endanger the life of a woman if there is a rupture of the tube. Fortunately, many women right now can go to their doctor and immediately upon the discovery of that, rather than having to

wait to be admitted to a hospital or to an ambulatory surgical center, women can be treated for that ectopic pregnancy in that doctor's office.

Senator Kirk Watson: Right there in the office.

Senator Wendy Davis: Right there, and right then, and the "right then" is the important part.

Senator Kirk Watson: What does Senate Bill 5 do that changes that?

Senator Wendy Davis: What Senate Bill 5 would do, would be to require, according to ACOG, that those could no longer be provided in outpatient facilities. That instead, that they would also have to be provided under ambulatory surgical center settings in order for the doctor who is providing that ectopic termination to be legal.

Senator Kirk Watson: Thank you, Senator Davis. Thank you, Mr. President.

Senator Wendy Davis: Thank you.

Part 032
Williams Raises Second Point of Order
7:20:20

Video Link: <http://youtu.be/L2cAhk3dY1o>

Audio Link: <https://archive.org/details/SB5032WilliamsRaisesSecondPointOfOrder>

Transcribed by: CJ George

Senator Wendy Davis: Members, I'd like to continue in reading some of the...

Lt. Gov. David Dewhurst: You're recognized.

Senator Wendy Davis: Thank you, Mr. President. ...the letters that we've received on this particular bill that folks have wanted to make sure that we consider as we are considering the passage of this bill and our discussion of this bill.

[inaudible discussion]

Lt. Gov. David Dewhurst: Senator Ellis, for what purpose do you rise, sir?

Senator Rodney Ellis: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Rodney Ellis: I want to ask about Rule 4.03. The last subsection says “no rule of the senate prohibits repetitious remarks by a senator if the remarks are germane to the matter under consideration.” And that’s from 76 in the journal, regular 3920, 1993. So my question is, I asked earlier about her reading the bill. I didn’t get a clear answer, I think.

I could ask her-- ‘cause I think in this bill, I don’t understand, but is it possible for me to ask Senator Davis to repeat the testimony which we can all assume is germane because she gave that testimony earlier at some point before midnight tonight, can I ask her to go back and read those things that she read earlier from people who testified because I had to go off the floor a couple times I did not hear all of it, and I just want to make sure that does not violate any Senate rule according to....

Lt. Gov. David Dewhurst: Would you like for me to get you a copy?

Senator Rodney Ellis: Oh, I have it here.

Lt. Gov. David Dewhurst: Oh, alright, fine.

Senator Rodney Ellis: A copy of her testimony? No sir, it’s so much better when you have the human element involved. And slowly, preferably. I’m a slow learner, Mr. President.

Senator Tommy Williams: Mr. President?

Senator Wendy Davis: Mr. President, I do still have the floor. I just want to make sure and establish that I have not yielded the floor.

Lt. Gov. David Dewhurst: Senator Davis, and that’s fine, you do have the floor. Just bear with me a moment, I’m consulting with the Parliamentarian.

Senator Wendy Davis: Yes.

Lt. Gov. David Dewhurst: Senator Ellis, your question is a hypothetical one since Senator Davis has been involved in answering questions. I’m going to ask her to continue, and we’ll make a ruling with the body that the members if they feel like it’s not germane they can raise points of order, but I’m not going to rule on a hypothetical question.

Senator Rodney Ellis: Thank you, sir.

Lt. Gov. David Dewhurst: Thank you. Senator Williams, for what purpose do you rise, sir?

Senator Tommy Williams: Mr. President, I’d like to raise a point of order that Senator Davis has violated Rule 4.01 when she had Senator Ellis assist her by putting a back brace on during

a pause a moment ago when we had a point of order raised, and the members were at the dais.

Lt. Gov. David Dewhurst: Would you all approach the podium?

[inaudible discussion at the dais]

Lt. Gov. David Dewhurst: *[gave]* Senator Davis. I've been asked by a couple of the members whether during this discussion, whether you sit down, and I understand that you might want to, but...

Senator Wendy Davis: I'm fine.

Lt. Gov. David Dewhurst: ...the Parliamentarian has advised me that you need to stand in the debate.

Senator Wendy Davis: I understand that rule. I'm prepared to follow it.

Lt. Gov. David Dewhurst: I just wanted to share that with you.

Senator Wendy Davis: Thank you, Mr. President.

Senator Judith Zaffirini: Mr. President?

Lt. Gov. David Dewhurst: Senator Zaffirini, for what purpose?

Senator Judith Zaffirini: For a parliamentary inquiry related to your statement to Senator Davis just now.

Lt. Gov. David Dewhurst: What is your inquiry?

Senator Judith Zaffirini: Related to Rule 4.06, Mr. President. It states, "when a member shall be called to order by the President or by a Senator, the member shall sit down, and not be allowed to speak, except to the point of order, until the question of order is decided. If the decision be in the member's favor, the member shall be at liberty to proceed. If otherwise, the member shall not proceed without leave of the Senate.

My question is, wouldn't Rule .406 [sic] allow Senator Davis or anyone else who is called to order or subject to the raising of a point of order, be required to speak, should be required to sit during that time?

Lt. Gov. David Dewhurst: Would you come forward please?

[inaudible discussion at the dais]

Lt. Gov. David Dewhurst: The point of order is overruled.

Part 033
Back Brace Debate (1)
7:42:55

Video Link: <http://youtu.be/vIEyJ2IMtT0>

Audio Link: <https://archive.org/details/SB5033BackBraceDebate1>

Transcribed by: Vin

Lt. Gov. David Dewhurst: Members, the point of order raised by Senator Williams deals with whether a member can assist another member during a filibuster. And the precedents in the rules clearly show that you can't lean on your desk, you gotta stay within, what, a couple feet, three feet of the desk. And during a filibuster, previous rulings have dealt with the comfort of a member during a filibuster.

Now, while we've never seen a incident like this, or a point of order raised like this, I think this point of order addresses the issue of the comfort of a member, and I think it should be put to the body. So I'm going to start off with comment. Who... I'm gonna recognize... all right. The chair recognizes Senator Ellis to speak on the point of order.

Senator Rodney Ellis: Thank you, Mr. President, and, and members. I think the real issue here is whether or not this body respects the tradition of a filibuster or not. Now here are the real rules of engagement: A majority of the members on this floor decide all of the power in this body. A majority of the members on this floor even decides who presides over the body. Anything that we do, any traditions that we have, can be trumped by sixteen votes.

Now I have not been here as long as two other members on the floor, but I've been here for a very long time. As a staffer, back in the mid-70's, I remember when a distinguished Republican member of this body engaged in the longest filibuster that has been recorded in a state legislature in the history of the country. Maybe one of the longest one-person filibusters in the history of not only state legislature, but federal legislature as well. Senator Bill Meier from the Tarrant County area, I believe.

At one point, back then, we didn't have the technology that we have today, and he needed to take a break. But he was so passionate about the issue, whatever it was - as a young law student or LBJ student, I can't remember what it was, but obviously, he was very passionate about it. At one point he had to take a break and wouldn't leave the floor, and so the members of the Senate -- most of 'em were Democrats back then -- stood around his desk. Now, I was in the gallery, but I clearly remember these same wooden trash cans that we have today, and some

member of the opposing party was kind enough, dignified enough, respected this body and its traditions enough to organize his colleagues in both parties to stand around him in a circle, so that he could make the appropriate things that had to be put in place, so he could continue his some-40-hour filibuster.

Now members, that's where we're really headed here. At any point, some member could make a motion, be recognized by a presiding officer, and sixteen votes of -- we don't have thirty-one here -- majority of whatever IS here, as long as we have a quorum, would decide you just shut off the filibuster. Now, I've seen that happen from time to time, but it's not been when it's been an issue that has been something that members felt this strongly about on either side of the political aisle or the philosophical aisle. I've seen that happen when somebody has not recognized the tradition of sending a letter in, saying that "I will filibuster," and a member would just get angry, two or three days in a row, and decide well, I'm gonna filibuster this one, I'll filibuster that one. That has happened while many of you have been here on this floor. I won't call the names of the members, but I can remember at least two times that that has happened to members.

I can remember times in the past when members would pass some ice chips, or someone would pass some Life Savers to someone. Usually, I might add, it would be someone who didn't agree with the position of the person who was filibustering. Members, that's really what this is about. What goes around, tends to come around. If you don't respect the filibuster tradition -- hey, I carried that gaming legislation a number of years. Senator Corona has made progress with it as well. There'll be members on this body who feel very strongly and adamantly against that legislation. Let me tell you, even if I'm carrying the bill, I would respect that member's right to use the tool of the filibuster, to kill that bill, or to stop that bill, to make a point.

So members, that really what it's all about. We've changed a lot of traditions in this body over the last several years, and I just want to encourage you, when you get ready to cast your vote, you're not going to get re-elected or elected based on this one vote. If you think it's gonna hurt you that much if you vote your conscience instead of what you're getting from your political analysts or staffers who may think they can tell you what to think it is you ought to do to make it safe. At some point you gotta decide, is winning everything? Is winning everything, or do traditions in this body mean something to you?

So based on that, I would respectfully, as a member of this family, and it's a great family - on my worst days around here, I can't think of a greater honor in my life than being one of the thirty-one members of the Texas Senate. And I wanna ask you, I want to plead with you, don't destroy the few traditions that we've left in place in this body. Winning that one issue is not everything. Thank you.

Lt. Gov. David Dewhurst: Thank you, Senator Ellis.

Senator Judith Zaffirini: Mr. President?

Lt. Gov. David Dewhurst: Senator Zaffirini?

Senator Judith Zaffirini: Thank you, Mr. President. Mr. President...

Lt. Gov. David Dewhurst: You're recognized.

Senator Judith Zaffirini: Thank you, Mr. President. Mr. President and members, I agree wholeheartedly with Senator Ellis and endorse every word that he said. In the 27 years that I have served in the Texas Senate, and the years before that, when I worked with Senator Wayne Connally, I saw, first hand, the traditions of this Senate to support and to honor a person who was engaged in the filibuster, regardless of what side a Senator was on. The question today focuses on specifically Article 4 of our rules, "Decorum and Debate of Members of the Senate, Members to Address the President." Specifically, Senator Williams has raised an issue related to Rule 4.01. Allow me to read it to you.

This is the rule, and the only essence of this rule: "When a Senator is about to speak in debate or to communicate any matter to the Senate, the member shall rise in his or her place and address the President of the Senate."

That. Is. The. Rule. There is no other part of this rule. Allow me to repeat it: "When a Senator is about to speak in debate or to communicate any matter to the Senate, the member shall rise in his or her place and address the President of the Senate."

Everything that Senator Davis has done is consistent with that rule. Now, granted, there is an editorial note. But it is *only* an editorial note. Allow me to read that to you: "A member who desires to speak on a pending question should address the chair and, having obtained recognition, may speak, in an orderly and parliamentary way, and subject to the rules of the Senate, as long as he desires."

Everything that Senator Davis has done is consistent with that editorial note. Now, there are notes on two rulings. Those rulings were given 44 years ago, in 1969. They are not rules, they are simply notes about another lieutenant governor's rules in 1969 - again, 44 years ago. The first note is this: "When a member has been recognized and is speaking on a motion to re-refer a bill, he must stand upright at his desk and may not lean thereon."

Senator Davis has not leaned on her desk, and you know it, because many of you are watching her every move. Her *every* move. She has not leaned on her desk. The other note is this: "When a member has the floor and is speaking on a bill or resolution, he must stand upright at his desk and may not lean or sit on his desk or chair."

Senator Davis has not leaned on her desk. She has not sat on her desk. She has not sat on her chair. And I might note, Mr. President, she's a woman. The note refers to "his desk," "his chair."

So I would argue that this rule does not apply to Senator Davis.

[laughter and applause from gallery]

[gavel]

Senator Judith Zaffirini: So members, let's be literal about this. Let's be fair. Let's honor the tradition of the Texas Senate. And let's abide by the letter of the rule. Open your book. Look at your rules. Read it, and understand that everything Senator Davis has done is consistent with the rule of the Senate. Please read the rule, realize how specific it is, and honor this member, and honor the tradition of the Senate. Senator Davis, I applaud you for your understanding of the rules, and for your being consistent with them in every way. Thank you for your leadership. Thank you, Mr. President and members.

Lt. Gov. David Dewhurst: Senator Zaffirini. Senator Whitmire, you wanted to speak last, is that what I heard? The chair recognizes Senator Williams. Senator Whitmire wished to speak last, but, but...

Senator Tommy Williams: Well, I think I brought the motion, I think I have the right to close. That's, all I want to do is close, and then I'll have to make a motion to call for the vote. If that would please the chair.

Lt. Gov. David Dewhurst: Senator Whitmire, I'm going to go ahead and recognize you, please? Perfect.

Senator John Whitmire: Members, it's kind of sad that we'd normally have a Senate Caucus to resolve some of these matters, but we've allowed this issue and the politics surrounding today's deliberations to really kind of prevent us from having a Senate Caucus. Because normally we'd caucus, discuss procedural matters, scheduling, relationships, and we'd come out as the family that we're often referred to. But I haven't called a caucus because I didn't know what the end game was, Senator Williams.

Normally when we have a caucus we know what the considerations are, and we decide that we're gonna definitely come out with positive results and respect. But this week, you've noticed we haven't had a caucus, I've had a couple of people ask me. One, Senator Hegar. This would probably be an excellent opportunity for us to have a caucus. And I would actually entertain that matter. But we find ourselves considering this point of order, and I cannot do a better job than Senator Ellis reflecting on the traditions of the Senate.

My good friend, second behind me in most seniority, Senator Zaffirini, talked about how we've assisted one another hearing debates. Senator Gonzalo Barrientos went 21 hours, people gave him ice cubes. I gave him some candy mints. The tradition of this body has been to assist another Senator in being an effective Senator, representing his or her district and the people of

Texas. And we're very close to leaving that Senate tradition.

Senator Williams, I have the highest respect for you. I've gone on and on this spring and this summer about the fine job you've done leading us and actually bringing us together, producing a budget. I think, members, that we need to slow down, right this moment, and recognize what this very emotional issue is doing to this body. The politics of this issue, what it's doing to this body. And we must stop in our tracks and take a deep breath, and look each other in the eye and remember the relationships, how we have gone to each other's children's services, how we've gone to each other's children's graduations.

We weren't this tough on one another in trying to destroy this process during the days that we were in Albuquerque. Senator Duncan, you came to Albuquerque to talk to us, to assist us in reaching a compromise and coming back to the state because of the damage it was doing to this body. We're worse off today than we were 35 days in Albuquerque, because then we were still respecting each other. I urge you to slow down.

I can go back to when I got here in 1983 and tell you, darn near every filibuster. Each one was unique, each one was special. Even if you opposed the person's position, you were still kind to them, you still respected them as a Senator. You know what they go through to get here, you know what it does to their families while they're gone for a hundred forty days. Put back the face of the body that we work on on a daily basis. We'll be here 'til midnight tonight. We respect one another, and we've lost it, so let's slow down for a moment.

Senator Davis, I've heard people on the opposing side grudgingly say, "She's doing an outstanding job." People of all persuasions in this body are respecting you now, because you're been very statesman-like, doing something that I know most of us couldn't do. I think there's some resentment here because there's some members who don't have the courage or the physical or the capabilities to do it. There's admiration there. What has happened, members, without going into the details of the issue before us, did Senator Ellis hand her a back brace or did not?

Remember the other day when I was talking to you about an issue and I said I most often on issues and in my personal daily life say I'll put it to the greater good, the greater good test. Could I ask you to put this issue to the greater good test? What is the greater good? First of all, members, if she's found in violation, Senator Williams, it's gonna be the second warning. It's not gonna take her off the floor. So you're not gonna get the greater good of removing her from the floor.

But isn't there a greater good of respecting the woman? Isn't it a greater good of respecting a colleague that asked someone to do something that she could have done for herself? Senator Ellis, you're the one we ought to be angry at. She didn't need your help. You didn't assist her. You made the mistake of being a gentleman and a colleague, of handing her something from behind the brass rail, and then when she began to place it on her waist, you apparently made

contact. Violation, Senator Ellis, don't do it again.

Members, the tradition of this body is, you reach out and assist one another. We've had a great regular session. It's unfortunate that we find ourselves in a Special. It's unfortunate that we find ourselves dealing with an emotional issue in this. Before, Senator Williams, I rest, I would say members, separate the emotion of the issue, which will be resolved sooner than later. And quite frankly, members, there's a right way to do something and there's a wrong way. I think you know you have the votes in a Special Session to pass this piece of legislation which I oppose. If you don't complete it tonight, it's none of our fault that it was placed in the call two weeks into the Special, that the House spent more time than maybe was anticipated.

If we don't finish it tonight, we can start back at the call of the governor's message, and ultimately, you probably have the votes, unfortunately, to pass this. So, this is not an up or down position on this issue, which is yet to be resolved. This is about the dignity of the body, the integrity of the body, and I would ask you, don't let this be a partisan vote. Don't let this be a vote whether you're for or against Senate Bill 5. Let this be a vote on the respect, the tradition of this body, and quite frankly... I will close by saying, when I sit down, regardless of how this vote is resolved, can we not commit ourselves to going through the remainder of these considerations without personal attacks.

Senator Nichols, can we just agree to let her finish her filibuster? It is a legislative procedure that historically in this body separates us from other bodies. That's why we're not, in all due respect, the Texas House of Representatives. They raise points of orders on each other regularly. We allow people to file bills after the constitutional deadline. We try to assist each other in being effective representatives of our districts. Some 800,000+ people, depend on each and every one of us.

So I will say, Mr. President, under oath if necessary, I have seen the tradition in this body allow what took place on that side of the chamber, where Senator Ellis assisted by giving her something that she could do herself. She did not lean, she did not sit. She's been an outstanding state Senator that, in the tradition of this body, if we even disagree with her, we ought to respect her convictions and her opportunity to represent her district and her point of view.

Members, do what is the greater good, in respecting a colleague and let's finish this debate tonight honorably.

Lt. Gov. David Dewhurst: Senator Whitmire, I don't think anyone's questioning their respect. And I'm not going to get into a dialogue. I think we all respect Senator Davis, and we, I agree, I think she's doing a good job, although I disagree with her, but she, I think she's doing a good job. Senator Lucio, for what purpose do you rise?

Senator Eddie Lucio, Jr.: Very briefly, to make a comment, Mr. President.

Lt. Gov. David Dewhurst: You're not recognized, we had three comments by, by...

Part 034
Back Brace Debate (2)

Video Link: <http://youtu.be/9ytM5fWoNAo>

Audio Link: <https://archive.org/details/SB5034BackBraceDebate2>

Transcribed by: Xtina Schelin

Senator Eddie Lucio: Thank you, Mr. President, thank you.

Lt. Gov. David Dewhurst: I'll recognize you for--

Senator Eddie Lucio: Thank you, Mr. President.

Lt. Gov. David Dewhurst: --for some brief comments.

Senator Eddie Lucio: Very briefly, I came in a couple of months after my good friend Senator Ellis. I, too, have seen many things happen on this Senate floor for close to twenty-three years now. I'm 4th in seniority behind the [Dean](#), Senator Zaffirini, and Senator Ellis.

I, too, had a bill filibustered my first year here, and we were able to pass that bill over the objections of Senator Carlos Truan, the [late Carlos Truan](#). I gave him a cough drop during the process, because I felt sorry for my colleague, and I respected him, and he had the right to speak out against my bill. I did exactly what Senator Ellis stated a little while ago.

So I just want to go on record: I *want* this bill to pass, but yet I stand before you to tell you that Senator Davis does have the right to oppose this bill until she drops, and I don't think that'd be before 12. And I just want to say this: that we have an opportunity of a lifetime to be able to show, not only Texas but the whole country, what we're all about, and let's do it right. Thank you.

Lt. Gov. David Dewhurst: The chair recognizes Senator Williams.

Senator Tommy Williams: Thank you, Mr. President. Members, there's been a lot of things said here, and I'm just gonna make a few comments; we've all been here a long time. The first thing that I would say is that I have enormous respect for Senator Davis. She is my deskmate; she sits right behind me, we chat frequently. We agree on very little, but we are on friendly terms, and I've included her in many meetings in the Finance Committee and given her opportunities to ask questions extensively. The implication that I have anything but the deepest respect for her is frankly out of bounds.

And what I would further say is that I have tremendous respect for the traditions of this Senate. And I want to be clear about what my objection is here: the tradition and the rules that we have-- and I would encourage you to read [Rule 401](#) and all the notes of the ruling, some of which have been conveniently omitted by my colleagues as they read them aloud to all of us. I would encourage you to read all of those, and what I would say is that it's very clear to me-- and it was made clear to me when I came to the Senate, and in the filibusters that I have witnessed during the twelve years that I've been here, the six regular sessions and so many special sessions I can't count them any more-- that a filibuster is an endurance contest, and it's to be made unaided and unassisted. And that's been made very clear to me since the very beginning.

And what my objection relates to is not the fact that Senator Davis is wearing a back brace. I'm wearing orthotics and tennis shoes because my back bothers me, and my feet are bothering me, too. I don't object to that at all. But the tradition of this filibuster in the Senate has *always* been that you had to do it on your own. And Senator Ellis, you're well aware of that, I believe, because I was frankly surprised that you said you didn't help her put it on, and there's a [picture on Twitter](#) right now of you helping her put it on.

When we were at the front dais, you said, "No, I just handed it to her," and there's a picture of you putting it around her waist, just as I said. And so frankly, I'm surprised at the implication here that things were just handed across the railing like it was a piece of paper. That's not true, that's not what happened.

And so I want to be clear that I have enormous respect for Senator Davis, I respect her right to filibuster, and I think that it is an important tradition that I hope we will maintain in this body. And part of that tradition is that the rules clearly state under what circumstances you can filibuster, and that if three points of order are called-- and we've had clarification on this from Senator West-- if three points of order are called, then you cannot continue your filibuster.

And that further points to what my point is, that it is an endurance contest. And so I respectfully ask that you would vote with me on this, and Mr. President, I would move that we-- Mr. President, I think you've indicated that you'd like for the body to vote on this, and I would like to make the appropriate motion to do so.

Lt. Gov. David Dewhurst: You're recognized.

Senator Tommy Williams: I move the question on the point of order.

Lt. Gov. David Dewhurst: Members, the issue before us is whether or not the point of order raised by Senator Williams be sustained. The secretary will call the roll. Yes, a vote "yes" is to sustain the point of order, "no" is to not sustain the...

Secretary [Patsy Spaw](#): Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes,

Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodriguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Lt. Gov. David Dewhurst: Members, there being 17 ayes and 11 nays, the, the point of order is sustained. The chair recognizes Senator West for what purpose?

Senator Royce West: Will this ruling-- would a motion be in order to spread this ruling on the, on the [Journal](#)?

Lt. Gov. David Dewhurst: I'm sorry, say again, sir?

Senator Royce West: In terms of making certain that this ruling be reduced to writing and be spread upon the Journal.

Lt. Gov. David Dewhurst: Yes. Members, Senator West moves to put the exchange that has occurred on this ruling in the Journal. Is there objection from any member? Chair hears no objection; it is so ordered.

Senator Royce West: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Royce West: In terms of-- and, and I know I can go look at these rules-- in terms of the rules that govern appeal of the chair's ruling.

Lt. Gov. David Dewhurst: Right.

Senator Royce West: What are those rule numbers, and what is the process? *[Cheering from the gallery.]* What rules govern appeals of the chair's decision, and--what is the process?

[Lt. Gov. Dewhurst consults with the parliamentarian.]

Lt. Gov. David Dewhurst: Senator West, on an appeal by a ruling by the chair-- in this case, the President-- it can be made by any member, and then it's put to a vote of the body.

Senator Royce West: Is it immediately put to the vote at that time, or is there a process that's put in place? Do you have to go through a process before you can put it to the vote?

Lt. Gov. David Dewhurst: Senator West, the members could debate-- there could be *some* debate on the point of order, as we just did, but then it's put to a vote of the body.

Senator Royce West: Okay, thank you.

Lt. Gov. David Dewhurst: Senator Watson, for what purpose?

Senator Kirk Watson: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry, sir.

Senator Kirk Watson: The ruling that was just made with regard to Senator Williams' point of order-- what is the effect of that ruling?

Lt. Gov. David Dewhurst: The effect that it's the second warning to Senator Davis. There was a first warning many hours ago, it was on germaneness; this is the second warning. If there's a third warning, then that would go to the vote of the body to make a decision as to whether or not the filibuster continues.

Senator Kirk Watson: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry, sir.

Senator Kirk Watson: And I think I know the answer based on the practice we've been following here tonight, but I want to make sure for the rest of the evening. A member of the Senate rising with the parliamentary inquiry does not cause Senator Davis to yield the floor to that person.

Lt. Gov. David Dewhurst: That is correct.

Senator Kirk Watson: Thank you, Mr. President.

Lt. Gov. David Dewhurst: Thank you, Senator Watson. Senator Whitmire, for what purpose?

Senator John Whitmire: Parliamentary inquiry. Following Senator Watson's questioning, so there's been a finding of two violations, sustained point of orders at this point.

Lt. Gov. David Dewhurst: That is correct.

Senator John Whitmire: So if there is another, then you'll submit the question to the body as to whether the debate-- I mean, the filibuster shall continue?

Lt. Gov. David Dewhurst: Yes, that is correct.

Senator John Whitmire: Could the [parliamentarian](#) maybe advise Senator Davis -- certainly myself -- how would be the best way? First of all, there was a ruling earlier that she's not responsible if someone asked her a non-germane question.

Lt. Gov. David Dewhurst: That is exactly right, and she was not called-- that, there's been no warning on Senator Davis for a non-germane question by another member.

Senator John Whitmire: So as she continues her filibuster and answering questions, I assume the burden is on her to make *absolutely* certain that every time she says something, that it's germane. Because we know that there are members looking for the opportunity for that third point of order.

And as the parliamentarian, or even you, Mr. President, as our leader, is there any way you could advise Senator Davis, or those asking questions, to make certain that they're germane? I mean, if in fact we want this process to go forward, how could we prevent, on behalf of the Senate, from having someone raise that third point of order?

Lt. Gov. David Dewhurst: By focusing the questions and the answers by Senator Davis on Senate Bill 5; the body of the legislation, the different parts of it, and focus both questions and answers on the bill before us, which is Senate Bill 5.

Senator John Whitmire: Okay. Being very positive that that's going to occur, because I'm at--

Lt. Gov. David Dewhurst: Senator Whitmire, would you pause, just for a moment?

The parliamentarian wanted me to make clear -- and I thought I had -- that the warning to Senator Watson has *no* impact whatsoever, and is not counted towards Senator Davis.

Senator John Whitmire: But this last vote was the second point of order--

Lt. Gov. David Dewhurst: That is correct.

Senator John Whitmire: --and if I understood from your answer a moment ago, the next one will submit the question to the body as to whether to continue the filibuster. Which is why I'm trying to be as cautious as I can with the leadership, and Senator Davis, and the members, that if everyone makes certain that their questions and commentary is germane, there's no reason why this filibuster should not be allowed to continue to conclusion, assuming Senator Davis's strength, capabilities, and motivation, and-- I know she wants to. So if everything is germane, this leads to my next question: assuming she's able to go forward, which I'm positive--

Lt. Gov. David Dewhurst: Senator Whitmire--

Senator John Whitmire: What is the leadership's plan to do with SDR2 and Senate Bill 23?

Lt. Gov. David Dewhurst: Senator, so as that we don't have another filibuster going right now, it's clear that that the body, Republicans and Democrats, are observing the tradition of the

Senate having a filibuster. Having said that, it's also clear that from the will of the majority of the Senators that there's a-- that strict enforcement should be maintained. Period. And you know that better than I do.

Senator John Whitmire: And I think that's fair to put every member present, certainly Senator Davis, on notice: strict enforcement. That means the questions and the answers in any discussion during a filibuster is going to be watched very carefully, because we understand the motivation by those that are raising the point of order. So we're all on notice. And there's no reason though, with that notice, that we shouldn't be able to go forward--

Lt. Gov. David Dewhurst: Mr. Whitmire: yes. And thank you very much. I'm going to recognize Senator Davis to continue.

Senator Judith Zaffirini: Mr. President? Mr. President?

Lt. Gov. David Dewhurst: Senator Zaffirini for what purpose?

Senator Judith Zaffirini: Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Judith Zaffirini: Thank you. To follow up on Senator Whitmire's line of questioning: suppose that an unfriendly Senator, and I mean unfriendly to the issue that Senator Davis is promulgating, support-- suppose that an unfriendly Senator asks a question that is not germane and asks perhaps a series of questions that are not germane and Senator Davis politely answers the question. Would she be held responsible for answering a question that is not germane?

Lt. Gov. David Dewhurst: Senator Zaffirini, I've addressed that before in my comments about Senator Watson, in which-- so that a question by a Senator that's not germane to Senator Davis is not counted as a warning.

Senator Judith Zaffirini: Even if she answers.

Lt. Gov. David Dewhurst: Even if she answers.

Senator Judith Zaffirini: Okay. Thank you, Mr. President.

Lt. Gov. David Dewhurst: But the next point of order that is sustained, I have to put it to the body for a decision.

Part 035
Wendy Davis Discusses Fetal Pain (1)
08:19:46

Video Link: <http://youtu.be/r6zTavYx7mk>

Audio Link: <https://archive.org/details/SB5035WendyDavisDiscussesFetalPain1>

Transcribed by: *Laura Boutet*

Lt. Gov. David Dewhurst: Chair recognizes Senator Davis.

Senator Wendy Davis: Thank you Mr. President.

I want to continue by reading the portion of the bill as it came back over from the house. As you know, members, when we passed this bill out of the Senate we passed it without the prohibition of abortion at or after 20-weeks post-fertilization.

So first I'm going to read that section of the bill and then I'm going to read some medical information with regard to the 20-week provision and whether indeed the findings of the bill that support the inclusion of this subchapter are indeed in keeping with scientific research. The bill section where this can be found is on page 3 of the House Amendments to Committee Substitute to Senate Bill 5.

On page 3 in the bill under Subchapter C. Title of the subchapter is "Abortion prohibited at or after 20-weeks post-fertilization".

Section 171.041. Short Title: "This subchapter may be cited as the Preborn Pain Act".

Section 171.042. Definitions: "In this subchapter 'post-fertilization age' means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum."

Subchapter-- or Subsection 2. "'Severe fetal abnormality' has the meaning assigned by section 285.202."

Section 171.043. "Determination of post-fertilization age required. Except as otherwise provided by section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure, number one: making a determination of the probable post-fertilization age of the unborn child, or number two: possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician."

Section 171.044. "Abortion of unborn child of 20 or more weeks post-fertilization age prohibited. Except as otherwise provided by section 171.046, a person may not perform or induce, or attempt to perform or induce, an abortion on a woman if it has been determined by the physician

performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination the physician relies the probable post-fertilization of the unborn child is 20 or more weeks.”

Section 171.045. “Method of abortion. Subsection A. This section applies only to an abortion authorized under section 171.046, subsection A1 or 2. In which, one: the probably post-fertilization age of the unborn child is 20 or more weeks, or two: the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks. Subsection B. Except as otherwise provided by section 171.046 subsection A3: a, a physician performing an abortion under subsection A shall terminate the pregnancy in a manner that in the physician's reasonable medical judgement provides the best opportunity for the unborn child to survive.”

Section 171.046 lays out the exceptions. “A, the prohibitions and requirements under sections 171.043, 171.044, and 171.045B do not apply to an abortion performed if there exists a condition that in a physician's reasonable medical judgement so complicates the medical condition of the woman that to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function other than a psychological condition, it necessitates as applicable, one: the immediate abortion of a pregnancy without the delay necessary to determine the probable post fertilization age of the unborn child, two: the abortion of her pregnancy even though the post fertilization age of the unborn child is 20 or more weeks, or three: the use of a method of abortion other than a method described by section 171.045B.”

Subsection B. “A physician may not take an action authorized under subsection A if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial or irreversible physical impairment of a major bodily function.”

Subsection C. “The prohibitions and requirements under Sections 171.043, 171.044, and 171.045B do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.”

Section 171.047 provides for protection of privacy in court proceedings. Subsection A. “Except as otherwise provided by this section in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced, or attempted to be performed or induced, is not subject to public disclosure if the woman does not give consent to disclosure unless the court makes a ruling under subsection C to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure. A court may order the disclosure of information that is confidential under this section if a motion is filed with the court requesting release of the information and a hearing on that request; notice of the hearing is served on each interested

party; and the court determines after the hearing and an in-camera review that disclosure is essential to the administration of justice, and there is no reasonable alternative to disclosure.”

Lt. Gov. David Dewhurst: Excuse me for a second Senator Davis. Senator Deuell, were you rising?

Senator Deuell: I have, uh, questions for the, ah, for Senator Davis. But, that, if she's just gonna read that section I would wait until she's finished, I wasn't gonna rise until then. Uh, so

Lt. Gov. David Dewhurst: I'll recognize you in a few minutes.

Senator Deuell: Is that her intent to, uh

Senator Wendy Davis: My intent, Senator Deuell is to finish reading the subsection as it relates to the fetal pain bill if you'll allow

Senator Deuell: Okay, I'll let you, that, be okay with me to let her finish that and then I have some questions if she yields to

Lt. Gov. David Dewhurst: Senator Davis has the floor.

Senator Wendy Davis: Section 171.048 construction of subchapter A. “This subchapter shall be construed as a matter of state law to be enforceable up to but no further than the maximum possible extent consisted, consistent, with federal constitutional requirements, even if that construction is not readily apparent as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory languages is explicitly authorized only to the extent necessary to save the statutory provisions from invalidity.”

Subsection B. “If any court determines that a provision of this subchapter is unconstitutionally vague the court shall interpret the provision as a matter of state law to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter, or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by the subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provision that avoids the constitutional problem while enforcing the statute’s restriction to the maximum possible extent, and shall agree to answer any questions certified from a federal appellate court regarding the statute.”

Subsection C. “A state executive or administrative official may not decline to enforce this subchapter or adopt a construction of the subchapter in a way that narrows its applicability based on the official's own beliefs about what the state or federal constitution requires unless the official is enjoined by a state or federal court from enforcing the subchapter.”

Subsection D. "This subchapter may not be construed to authorize the prosecution of, or a cause of action to be brought against a woman on whom an abortion is performed or induced, or attempted to be performed or induced, in violation of this subchapter."

Now, that, of course, is the entirety of the provision that deals with fetal pain and the 20-week prohibition with the exception of the introduction portion of the bill, and it states that "the findings indicate". Doesn't say whose findings; at one point in time it said that "the legislature finds that" and I think that Senator Zaffirini objected to that in committee that the legislature as a body had made no such finding that she was aware of, and it was changed. The language was changed so that now it simply says, "the findings indicate that the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain."

And what I have here, members, is a study specific to that particular issue, and whether there is, uh, the ability or scientific evidence that demonstrates the ability regarding fetal pain. It's a key provision of this bill, and it's a key provision of the state's stated interest in why passage of a 20-week ban would be allowed.

[EDITOR'S NOTE: Senator Davis reads sections of [Fetal Pain: A Systematic Multidisciplinary Review of the Evidence](#) by Susan J. Lee et. al. at this point. Medical Subject Headings (MeSH) is a controlled vocabulary thesaurus used by the U.S. National Library of Medicine (NLM) to index articles at PubMed, the government repository for medical research.]

I have here a clinical review dated August 24th through 31st 2005 published in something called "Clinician's Corner," the authors being Susan J Lee JD, Henry J Peter Ralston MD, Eleanor A Dray MD EDM, John Collin Partridge MD MPH, and Mark A Rosen MD. The affiliations of these authors: Ms Lee, the School of Medicine; Doctor Ralston, Department of Anatomy and WM Keck Foundation of Integrative Neuroscience; Doctors Dray and Rosen, Departments of Obstetrics, Gynecology, and Reproductive Services; Dr Partidge, Pediatrics; Dr Rosen, Anesthesia and Perioperative Care and also the University of California, San Francisco.

The context in the abstract is that "proposed federal legislation would require physicians to inform women seeking abortions at 20 or more weeks after fertilization that the fetus feels pain and to offer anesthesia administered directly to the fetus." Now of course this would simply address an issue where women were being told that they are going to submit a fetus to pain if undergoing an abortion and it analyzes whether fetal pain actually has been medically demonstrated, again as in, as in the context and the defense of this provision in Senate Bill 5.

For evidence acquisition there was a "systematic search conducted by the authors of PubMed for English-language articles focusing on human studies related to fetal pain, anesthesia, and analgesia. Included articles studied fetuses of less than 30 weeks' gestational age, or specifically addressed fetal pain perception or nociception. Articles were reviewed for additional

references. The search was performed without date limitations and was current as of June of '05."

The evidence synthesis here provides that "pain perception requires conscious recognition or awareness of a noxious stimulus. Neither withdrawal reflexes nor hormonal stress responses to invasive procedures prove the existence of fetal pain because they can be elicited by nonpainful stimuli and occur without conscious cortical processing. Fetal awareness of noxious stimuli requires functional thalamocortical connections. Thalamocortical fibres begin appearing between 23 to 30 weeks gestational age, while electroencephalography suggests a capacity for functional pain perception in preterm neonates probably does not exist before 29 or 30 weeks. For fetal surgery, women may receive general anesthesia and/or analgesics intended for placental transfer, and parenteral opioids may be administered to the fetus under direct or sonographic visual-- visualization. In these circumstances, administration of anesthesia and analgesia serves purposes unrelated to reduction of fetal pain, including inhibition of fetal movement, prevention of fetal hormonal stress responses, and induction of uterine atony."

The conclusion from the abstract found that "evidence regarding the capacity for fetal pain is limited but indicates that the fetal perception of pain is unlikely before the third trimester. Little or no evidence addresses the effectiveness of direct fetal anesthetic or analgesic techniques. Similarly, limited or no data exists on the safety of such techniques for pregnant women in the context of abortion. Anesthetic techniques currently used during fetal surgery are not directly applicable to abortion procedures."

"Over the last several years many states including California, Kentucky, Minnesota, Montana, New York, Oregon, and Virginia have considered legislation requiring physicians to inform women seeking abortion that the fetus feels pain and to offer fetal anesthesia. This year Arkansas and Georgia enacted such statutes." And of course now, under this bill, the state of Texas would not only be enacting a statute that would require anesthesia, in fact it wouldn't require that at all, it would absolutely prohibit abortion at 20-weeks using as the basis for that new state regulation the existence of fetal pain and, of course in the bill's language, scientific evidence that demonstrates that.

According to these authors, "currently Congress is considering legislation requiring physicians to inform women seeking abortions 20 or more weeks after fertilization (i.e. 22 weeks gestational age) that the fetus has physical structures necessary to experience pain as evidenced by drawing away from surgical instruments. The physician must also offer anesthesia or analgesia 'administered directly' to the fetus. Physicians who do not comply may be subjected to substantial fines, license revocation, and civil suits for punitive damages." Although that national legislation that they're talking about "would not affect most US abortions because only 1.4% are performed at or after 21 weeks' gestational age, this legislation raises important scientific, clinical, ethical and policy issues." And of course, members, the legislation before us raises those same clinical, ethical and policy issues.

And the important question is “when does a fetus have the functional capacity to feel pain?” If we're going to justify the inclusion of a 20-week abortion ban in this bill, it's important that we answer that question.

Part 036
Wendy Davis Discusses Fetal Pain (2)
08:40:20

Video Link: <http://youtu.be/0aX0rhN-epk>

Audio Link: <https://archive.org/details/SB5036WendyDavisDiscussesFetalPain2>

Transcribed by: Stephanie H.

[EDITOR'S NOTE: Senator Davis continues to read sections of [Fetal Pain: A Systematic Multidisciplinary Review of the Evidence](#) by Susan J. Lee et. al. at this point. Medical Subject Headings (MeSH) is a controlled vocabulary thesaurus used by the U.S. National Library of Medicine (NLM) to index articles at PubMed, the government repository for medical research.]

Senator Wendy Davis: As the first step in answering it, the authors reviewed the literature on fetal pain and fetal anesthesia and analgesia. Now, their evidence acquisition, in order to reach their findings, consisted of the following:

They reviewed English language articles involving human participants and searched PubMed for articles on “fetal pain.” They found 16 articles. Articles on “fetal anesthesia,” they found 6 articles. Articles on “fetal analgesia,” they found 3 articles. “Fetus” and (“anesthesia” or “analgesia”), they found 1,239 articles. Medical Subject Headings using the terms “analgesics” or “administration” and “dosage” and “fetus,” they found 44 articles. MeSH at “anesthesia,” “administration,” and “dosage” and “fetus,” they found 0 articles in that. Searching under (“neurodevelopment” or “development” or “anatomy”) and (“fetus” or “fetal”) and (“pain” or “nociception” or “noxious”), they found 306 articles. Searching under terms (“thalamocortical” or “thalamus” or “cortex”) and (“fetus” or “fetal”) and (“pain” or “nociception” or “noxious”) they found 13 articles. Searching under terms (“electroencephalog” or “EEG” or “evoked potential”) and (“fetus” or “fetal” or “premature neonate” or “premature infant” or “preterm neonate” or “preterm infant”) and (“pain” or “nociception” or “noxious” or “conscious”), they found 7 articles.

[EDITOR'S NOTE: The published article has typographical errors such that spaces were lost between some search terms, which is why Senator Davis' pronunciation of the search terms here is awkward. Example: The term “EEGorevokedpotential” appears in the article, and is quoted by Davis as “EEG-o-revoked-potential”, but should have been rendered as two separate search terms: (“EEG” or “evoked potential”). In the interests of clarity, the transcript has been written to reflect the corrected text of the article, with Senator Davis' pronunciation errors not replicated. The transcript has also replicated parenthesis around grouped search terms as

denoted in the article in order to clarify the order of operations.]

“The search was performed without date limitations and was current as of” the date of this article. And “from those search results, they excluded articles that did not study fetuses of less than 30 weeks’ gestational age, or that did not specifically address fetal pain perception or nociception. With a focus on topics addressed by earlier review articles on fetal pain, anesthesia and analgesia, articles were reviewed for additional references.”

The synthesis of that evidence in this journal entry was that “pain is a subjective sensory and emotional experience that requires a presence of consciousness to permit recognition of a stimulus as unpleasant. Although pain is commonly associated with physical noxious stimuli, such as when one suffers a wound, pain is fundamentally a psychological construct that may exist even in the absence of physical stimuli, as seen in phantom limb pain. The psychological nature of pain also distinguishes it from nociception which involves physical activation of nociceptive pathways without the subjective emotional experience of pain. For example, nociception without pain exists below the level of a spinal cord lesion where reflex withdrawal from a noxious stimulus occurs without conscious perception of pain.”

And they have a diagram to indicate what they’re talking about there. And they find that “because pain is a psychological construct with emotional content, the experience of pain is modulated by changing emotional input, and may need to be learned through life experience. Regardless of whether the emotional content of pain is acquired, the psychological nature of pain presupposes the presence of functional thalamocortical circuitry required for conscious perception as discussed below.”

“Nociception may be characterized by reflex movement in response to a noxious stimulus, without cortical involvement or conscious pain perception. Nociception involves peripheral sensory receptors, whose afferent fibers synapse in the spinal cord on interneurons, which synapse on motor neurons that also reside in the spinal cord. These motor neurons trigger muscle contraction, causing limb flexion away from the stimulus.

“In contrast, pain perception requires cortical recognition of the stimulus as unpleasant. Peripheral sensory receptor afferents synapse on spinal cord neurons, the axons of which project to the thalamus, which sends afferents to the cerebral cortex. By activating any number of cortical regions, sensory receptors and spinal cord synapses required for nociception develop earlier than the thalamocortical pathways required for conscious perception of pain.”

Now, once again I refer to the section of the bill: “the State has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain.” The abstract that I just read to you refutes that. There are other articles that refute that as well.

I want to go to the bill analysis of the bill and read that section in the bill analysis.

Senator Bob Deuell: Mist-- Mr. President, this-- uh, I've been waiting. I figured this might be a good time for me to ask questions if Senator Davis would allow me to do so without yielding the floor.

Senator Wendy Davis: Not at this time, Mr. President.

Lt. Gov. David Dewhurst: Do you have any idea of how long you would want to wait?

Senator Wendy Davis: I'm not sure at this point.

Lt. Gov. David Dewhurst: Would you hold for a moment?

[EDITOR'S NOTE: *There is silence while Lt. Gov. Dewhurst consults with the parliamentarian.*]

Lt. Gov. David Dewhurst: Senator Davis has the floor. I'll come back to you. Could you hold just for a moment?

Senator Bob Deuell: Yes, sir.

Senator Wendy Davis: Thank you, Mr. President. I'm gonna read the bill analysis, and there of course is a section here that deals with the fetal pain issue as well. This is the bill analysis prepared on June the 14th, 2013 to the substituted committee report, to the Committee Substitute to Senate Bill 5, prepared by the Senate Research Center. Under the section about the author's sponsor's statement of intent, it states that "at 20-weeks post-fertilization, scientific evidence suggests that preborn children are capable of feeling pain, as all the neuroreceptors for pain are in place and functioning.

"Myriad peer reviewed studies have found anatomical, behavioral, and physiological evidence that the developing preborn child is capable of experience pain by twenty weeks post-fertilization. A 2007 study by the Department of Obstetrics and Gynecology at the University of Arkansas for Medical Science states that fetuses undergoing intrauterine invasive procedures definitively illustrative of pain signaling were reported to show coordinated responses signaling the avoidance of tissue injury. Preborn pain laws similar to this legislation have been passed in other states."

What this doesn't indicate, of course, is that those have been subject to challenge, and those challenges have been, at this point, successful.

"Committee Substitute to Senate Bill 5 establishes a separate and independent compelling state interest in protecting the lives of the unborn children from the state, at which the medical evidence indicates they are capable of feeling pain.

“Mifeprex, RU-486, was approved by the United States Food and Drug Administration (FDA) for use by pregnant women wishing to terminate a pregnancy for up to forty-nine days gestation only. The drug has no other approved indication for use during pregnancy. The RU-486 label instructs that tablets are intended for oral administration only and should be administered only in a clinic, medical office, or hospital, and by or under the supervision of a physician able to assess the gestational age of an embryo, and to diagnose ectopic pregnancies. Abortion-inducing drugs pose substantial risks to women, and these risks are magnified when the drugs are misused.

“The purpose of Committee Substitute to Senate Bill 5 is to protect the health and welfare of women considering a drug-induced abortion. It ensures that physicians providing drug-induced abortions are only doing so in the way in which the FDA tested and approved the abortion inducing drug.” And of course we had a tremendous amount of testimony during the debate on this bill about that particular provision, and about whether that is actually in keeping with medical evidence that’s been learned by practicing physicians with the use of this drug.

Senator Van de Putte, of course, made a compelling argument as a pharmacist about the fact that, were the provisions of this bill to go into law as they were discussed here in the bill analysis, it actually controverts the medical practice-- the current medical practice and use of that drug for purposes of medical abortion. And it does that because over time, what doctors who administer this drug have found, is that women who have been administered the drug, number one, need far lower dosage than what the FDA had originally put in place, and also number two, that using the drug, especially on the second day, through vaginal insertion versus oral administration actually produced much better and safer outcomes for the patient.

As a consequence of that, we worked on making changes to that, but this amendment that came over from the House -- I do not believe -- included the amendments that were made to try to acknowledge and put into place Senator Van de Putte’s concerns that she justifiably raised with regard to that particular provision of the bill. Committee substitute to Senate Bill 5, according to the bill analysis, requires that Texas abortion providers meet the basic standards prescribed by the manufacturer of RU-486 and the FDA. And again, those are in direct contradiction to the use of the drug today that medical practitioners have determined to be safest for women.

And of course, it begs the question that we’ve talked about earlier today about legislators stepping into the role of medical providers and making decisions about administrations of drugs to women under the argument that doing it in this particular manner is safer when, in fact, practicing medical professionals have found otherwise. The concern being that through this legislation, we actually are creating a less healthy climate for women who might take this drug than they-- there would be under the ways that physicians are currently administering it.

Committee Substitute to Senate Bill 5 also requires that “the woman receive the name and telephone number of the physician or other healthcare personnel who will handle emergencies that arise from the use of the abortion-inducing drug.” And “finally, the physician must provide a

written report of adverse events to the [FDA MedWatch Reporting System](#).” Now, members, I firmly believe that had those been the sole provisions in this bill, there would have been uniform support, both of which provide ways that I think we all would find common agreement create a safer climate for women who are undergoing abortion.

One, that the woman as she leaves the abortion clinic— I do believe this is the practice today, but it certainly doesn’t hurt to assure that it is more than just a practice, that it is actually a requirement— that as women leave a facility, they be given “the name and telephone number of the physician or other healthcare personnel who will handle emergencies that arise from the use of the abortion inducing drug.” And that makes sense, of course. And, that the physician should give a report on adverse events to the FDA MedWatch Reporting System makes excellent sense as well.

Senator Bob Deuell: Mist-- Mr. President.

Part 037
Wendy Davis Continues Bill Analysis
08:55:23

Video Link: <http://youtu.be/MfDR4VctgRI>

Audio Link: <https://archive.org/details/SB5037WendyDavisContinuesBillAnalysis>

Transcribed by: Lisa Karakaya

Lt. Gov. David Dewhurst: Senator Deuell, for what purpose?

Senator Bob Deuell: I waited until Senator Davis finished the um, part she was talking about – fetal pain – and she’s gone on to another subject so I’d like to ask her now if she’d allow me some questions.

Senator Wendy Davis: Not at this time, Mr. President. I’d like to continue please.

Senator Bob Deuell: Uh, would the President ask Senator Davis when she plans on taking more questions?

Lt. Gov. David Dewhurst: Senator Davis, do you have an idea of when you might take questions?

Senator Wendy Davis: I-- I’m not sure. I’d like to at least finish the bill analysis and going through that before I do.

Senator Kirk Watson: Mr. President.

Lt. Gov. David Dewhurst: Senator Watson, for what purpose?

Senator Kirk Watson: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Kirk Watson: Is Senator Davis required to take questions when she has the floor?

Lt. Gov. David Dewhurst: I'm advised by the parliamentarian that she is not.

Senator Kirk Watson: Thank you Mr. President.

Senator Wendy Davis: Thank you—

Senator Bob Deuell: Mr. President, I might point out that taking questions from members is part of a long-standing Senate tradition. *[laughter from the gallery]*

Lt. Gov. David Dewhurst: Senator Davis, you're recognized to continue.

Senator Wendy Davis: Thank you. According to the bill analysis, many women suffer from minor to severe medical complications as a result of surgical procedures including abortions. Women who choose to have an abortion should receive the same standard of care any other individual in Texas receives, regardless of the surgical procedure performed. The Committee Substitute to Senate Bill 5 seeks to "increase the health and safety of a woman who chooses to have an abortion by requiring a physician performing or inducing an abortion to have admitting privileges at a hospital and to provide certain information to the woman".

Now again, this is an issue which a number of us on the Senate floor believe does not create a greater state of well-being and care for women who have had an abortion procedure. Requiring that a physician performing or inducing the abortion to have admitting privileges at a hospital and to provide certain information to the woman in reality does two things.

First of all, it decreases the number of doctors who would be able to provide this service to women. And unfortunately, by decreasing the number of doctors who would be qualified to provide this support we are actually, if such a provision were to pass into law, creating a situation where women actually would be subjected to what we all talked about earlier: the-- the less safe procedures, where she turns to doctors who are not licensed under the law to perform abortions because they do not fit a particular legal criteria. And unfortunately the outgrowth of doctors who may begin to perform these services outside the law that might take us back to that point in time that once existed, not only in the state of Texas, but in the country as a whole, where women subjected themselves to the medical care of someone who was less than competent to provide that care.

The Committee Substitute to Senate Bill 5 also states that that physician has to provide certain information to the woman. And the information that we've received from TMA and from the Obstetrics and Gynecological Group have all indicated to us that requiring a certain communication between a doctor and her patient is in controversy or in-- contravenes the typical law in Texas as it relates to respecting the doctor-patient privilege. The bill analysis goes on to say that in 1992 the Supreme Court ruled in Casey vs. Planned Parenthood that states have the right to regulate abortion clinics. In 1997 Texas enforced increased regulations however, according to the bill analysis, today 38 licensed abortion facilities still operate at a second-lower standard for the most common surgical procedure in Texas performed solely on women.

Six Texas abortion facilities meet the standard as ambulatory surgical facilities. And I think we've had some differing information on that: some people say there are five that meet the standard; some people say that there are six. And again, of course, we've had the conversation about whether that standard actually increase-- creates an enhanced safety for women, and I actually have what Senator Deuell referenced a little while ago, a side-by-side comparison of what's required in each of those facilities, so we can discuss that and make a determination about the differences between those and whether indeed it is the case that ambulatory surgical centers actually provide, through the licensing requirements, a greater standard of care for women in the state of Texas. But I want to finish the bill analysis before I do that.

In medical practice, Medicare is the national standard for insurance reimburse-- reimbursement. Abortion is an all-cash or limited credit card business, so abortion facilities have not been subject to the same oversight as other surgical facilities. Moving abortion clinics under the guidelines for ambulatory surgical centers, according to the bill analysis, will provide Texas women choosing abortion the highest standard of care-- of health care. Texas allows no other procedure to opt out of the accepted standard of care. Miscarriages are excluded from the definition of abortion, as defined in Section 245.002 of the Texas Health and Safety Code. Physicians, offices, and clinics performing less than 50 abortions in any twelve-month period are excluded by Section 245.004 of the Texas Health and Safety Code.

Committee Substitute to Senate Bill 5 amends Chapter 171 of the Health and Safety Code to prohibit abortions at or after 20 weeks post-fertilization, unless there is a significant physical threat to the life of the mother; amends current law relating to requirements for physicians who perform abortions and creates an offense; amends current law relating to distributing or prescribing abortion-inducing drugs and provides penalties; and amends current law relating to minimum standards for abortion facilities. Committee Substitute for Senate Bill 5 amends current law relating to the regulation of abortion procedures, providers, and facilities, and provides penalties.

Now, the bill analysis contains a note, a side note: "While the statutory reference in this bill is to the Texas Department of Health, and the Texas Board of Health, the following amendment act-- affects the Executive Commissioner of the Health and Human Services and the Department of

State Health Services as the successor agencies to TDH and the Board.” Then it sets out the rule-making authority: “Rule-making authority previously granted to the Texas Board of Health is modified in Section 4, Section 245.010, Health and Safety Code, of this bill.”

Now the section by section analysis of the bill. Section 1A provides that the findings indicate that, number one, “substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization”. And members, I have a stack of articles that refute that there is substantial medical evidence that demonstrates that. And in fact, I don’t believe that, as a member of the Senate, I’ve been provided with information that demonstrates that “substantial medical evidence.”

Number two, the Section A, provides that “the findings” indicate -- again, we don’t know whose these, whose findings these are -- “the findings” indicate that the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain.

Now, you heard Senator Watson and I having the conversation about compelling state interest and there is a reason that the bill analysis and the bill discuss and lay out this compelling state interest. And they do so in an attempt to protect the law, if it were to go into law, from a constitutional challenge under the provisions of Roe v. Wade, which of course created a standard that strict scrutiny should be the review by which any actions by a state in legislating restrictions on abortions should be met. And only under a strict scrutiny standard where substantial or a compelling state interest can be demonstrated can that strict scrutiny be met.

Simply to say that it’s so in the bill analysis, members, and simply to say that it’s so in the bill itself does not create a compelling state interest. And it’s very interesting, actually, this -- and I’ll go back to it again -- the bill provides that “the findings indicate” and then there are no cited findings that demonstrate an indication of this compelling state interest. Not a single one is mentioned in the bill. Instead, from somewhere on high -- again, we don’t know from whom -- “the findings indicate.” And we actually know that there is substantial medical evidence that demonstrates otherwise.

The Section A3 also provides that “the findings” indicate that “the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain, is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other”.

Now that’s kind of a belt and suspension— suspenders, members, that’s put on to make sure that the state doesn’t lose somehow its ability to argue that it has a compelling state interest in protecting a fetus after it is viable, and that simply by putting this 20-week pain provision in the bill, the state wants to make it clear that it’s not giving up its other argument that it has a substantial, a compelling state interest in the viability and protecting a child from viability. In a

way, that's rather interesting, because it's very clear that the state is unable-- the bill's authors are unable-- to make the argument that the 20-week point of gestation is a viability point, and the authors were very careful to make sure to preserve viability as a protected and compelling state interest.

Under Section 4 of Subsection A, "restrictive elective abortions at or later than 20 weeks post-fertilization, as provided by this act, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion". Now the reason that's set out, again under Constitutional law as it's developed post *Roe v. Wade*, is that the state must demonstrate that it's not imposing an undue burden or a substantial obstacle on a woman's ability to have a legal abortion. And again, this is a finding -- "the findings indicate that" -- this doesn't occur. But I think there's certainly an argument that can be made, that indeed this does impose an undue burden, and that indeed it is a substantial obstacle on a woman's ability to have an abortion. And of course were this to become law, that will be an argument most certainly made by proponents who believe that this law is in violation of the Constitution.

This provides that the reason it's not an undue burden is two-fold. One, because the woman has adequate time to decide whether to have an abortion in the first 20 weeks after fertilization. And members, we've heard some stories from testimony, women who routinely have missed periods, they have menstrual cycles that are not reliable, and sometimes it actually is later than 20 weeks when a woman discovers that she's pregnant. We've also heard that sometimes medical treatments that a woman is receiving can interfere with that cycle and, and also throw her into a situation where she doesn't understand, by virtue of a missed period, that she is pregnant until beyond this time.

And of course we also know, as has been provided in multiple evidence to us on this bill, that sometimes fetal abnormalities, in fact many times, are not discovered until after this point in time. The other reason that the section by section analysis indicates that this would not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion is because "the act does not apply to abortions that are necessary to avert the death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman".

Now we know, we've been hearing it from the medical community, that they feel that this puts them in a terrible position. Because in order not to violate this law and to be subject to penalties under this law, doctors would have to approve-- they would have to prove that the abortion post 20-weeks was necessary to "avert the death or substantial and irreversible physical impairment of a major bodily function" of a pregnant woman. And as you can imagine, reasonable minds could likely disagree on this issue. And what the likely outcome of this particular provision will be is that women who seek a post 20-week abortion may be unable to find a doctor who's willing to take this risk.

Even if she is undergoing some substantial medical harm that might occur to her, a doctor may not want to be the decider as to whether this would be necessary to avert death or substantial

and irreversible physical impairment of a major bodily function. There hasn't been any case law developed on that yet. And most doctors are not going to want to take that risk. And if we do care about making sure that we're not subjecting doctors to unnecessary risk, we certainly would want to make sure that we gave thought and care to that particular provision and at the very least exempt doctors from any kind of penalty if they violate that. But that is not the case. There is a penalty for a doctor who violates this particular provision, and I'll, I'll get to that in the bill analysis in a moment.

There's a Subsection B that provides that the legislature intends that every application of this statute to every individual woman be severable from each other. It requires that the application of the statute to those women in the unexpected event that the application of this statute is found to impose "an impermissible undue burden on any pregnant woman or group of pregnant women be severed from the remaining applications of the statute that do not impose an undue burden. And those remaining applications are required to remain in force and unaffected consistent with Section 10 of this act".

Now again, not atypical for a bill to have a severability clause in it. And that's another belt-and-suspenders item that's included, so that if there were a portion of this bill that some women were successful in demonstrating actually did not meet the Constitutional standards that it's meant to-- to meet, if some women were able to demonstrate that, this is an attempt by the author of the bill to sever that finding from an impact that it would have on other decisions that may be made under this bill and to different women under different circumstances.

Part 038

Wendy Davis Gestational vs Fertilization Age

9:16:28

Video Link: http://youtu.be/sPsQrz_tNqo

Audio Link: <https://archive.org/details/SB5038WendyDavisGestationalVsFertilizationAge>

Transcribed by: Amy Weiler

Senator Wendy Davis: Section 2 in the bill analysis amends Subchapter A, Chapter 171 of the Health and Safety Code, by adding 171.0031 as follows: Section 171.0031 is titled "Requirement of Physician Offense." This is what I was talking about a moment ago - the offenses that physicians will be subject to if they are found to have violated provisions of this particular area of the bill.

Subsection A requires a physician performing or inducing an abortion to: number one, on the day the abortion is performed, have active admitting privileges at a hospital that is located not further than thirty miles from the location from which the abortion is performed or induced, and

provides obstetrical or gynecological health care services. So let's break that down. On the date that the abortion is performed this has to be in place. The doctor must have active admitting privileges at the hospital and that means the doctor needs to on an active basis be participating in providing care, medical care, at the hospital.

A question was asked a moment ago, "Oh, why wouldn't a doctor go ahead and just get admitting privileges and then continue to be able to provide these services?" Well, I have two responses to that. Number one, because this requires the doctor have active admitting privileges and if the doctor doesn't practice medicine in a hospital facility like Dr. Campbell does in the ER, then a doctor isn't going to have these active admitting privileges. And to require that they be active -- not just that there be an admitting privilege but to require that they be active as this bill does -- serves the very purpose that many of us are concerned that it serves. It serves the purpose that doctors -- fewer, far fewer doctors would be provided with the capacity under the law to provide what today they are providing in legal safe clinical settings to women.

And actually it would be very interesting to know and I don't know if anyone's done this analysis yet: How many fewer doctors would there be, who would satisfy the provisions of this ordinance and therefore be able to practice medicine in abortion clinics were this particular provision to go in place. And would hospitals somehow then feel pressured to create admitting privileges -- active admitting privileges -- and how would they handle that? Of course we got a letter from THA that spoke directly to that and, and they said "We reserve the right to grant admitting privileges to doctors who practice in areas we need them to be practicing in our hospital." But most of them don't have the need for doctors who perform abortion services as active admitted admitting privileges doctors for their hospital. And I think the bill authors understand that. That at the end of the day what this is going to do is create fewer and fewer options for women to exercise their constitutional right.

Now the fact that it has to be located not further than thirty miles from the abortion facility -- again, I, I don't know if anyone has done the analysis on this yet, but I'd be really curious to know how many of the existing abortion facilities are within thirty miles from a hospital where a doctor could be licensed. In fact I'd be interested to know, of the ambulatory surgical centers, would that actually disqualify any of them even under this bill. If a doctor who practices in that ambulatory surgical center didn't have a hospital even within thirty miles to which he or she could gain active admitting privileges, what's that going to do in terms of the number of facilities that would qualify here?

And what I found was really interesting about that too, we talked about this in debate on the bill was there are so many ambulatory surgical centers I, I've got a list of them here I may read that in a minute. There's a long list of them. But only five or maybe six actually perform abortion services at them. And what we wondered out loud when we debated this bill on the floor was you know, if what we really care about is that abortions take place in ambulatory surgical centers, why don't we require ambulatory surgical centers to provide that service?

Here we're providing -- we're requiring for hospitals do something. We're requiring that if they have an interest in making sure that abortion services can continue to exist in an area in which they reside, that they will have to admit these physicians as active admitted physicians. We're, we're actually imposing a legislative requirement on hospitals to do that. But we're not imposing any kind of requirement on ambulatory surgical centers to allow these procedures. And if what we really cared about was women's safety and well-being, why wouldn't we think about doing that? There are, there are many many many surgical centers, ambulatory surgical centers that fit this bill.

The other requirement of the physician -- in an offense, if the physician does not meet it, is that the physician must provide the pregnant woman with a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed, with access to the woman's relevant medical records 24 hours a day to request assistance to any complications that arise from the performance of the abortion, or ask health related questions regarding the abortion.

Now I talked about that requirement a moment ago and I think that most people would agree that if a woman has had an abortion, and -- there may be complications that would arise. I used the example long ago when I had my wisdom teeth out my dentist made sure I had his number that I could call him in the next twenty four hours even if it was twelve o'clock at night if I had some excessive bleeding. He also gave me the phone number of someone who worked in his dental office if I couldn't reach him.

And I don't think any of us would disagree, that a woman who has an abortion should be provided with information in the event that something happens after she leaves the facility. Of course it's the practice of the facilities right now for women to wait for a certain period of time for them to determine that she is okay and ready to be released. But certainly I think we can all agree if, if this were the provision of the bill, if this were it, if we were truly talking about women's health care, if we were truly talking about making sure women were safe after an abortion, this is the kind of thing that goes right to the heart of that and that we could agree should happen.

The other thing that the woman must be provided with according to the bill analysis is the name and telephone number of the nearest hospital to the home of the pregnant woman. Now, now lets think about that for a minute. Not the nearest hospital to the abortion facility. It's not the hospital within thirty miles of the abortion facility; it's that the woman be given the telephone number of the nearest hospital to her home. And remember, remember when we debated this bill and we talked about that woman from Loreto who's returned home. If she has a complication that arises and she's driven the two hundred miles to San Antonio to one of the only ambulatory surgical centers that provides abortion services in the state of Texas, and she gets all the way back to Loreto.

She's not going to go back to a hospital that's thirty miles from the abortion facility. She's going to go to a hospital near her home. And it's another indicator why it makes absolutely no sense

for the doctor who performed her abortion to have admitting privileges at a hospital that's thirty miles away from the facility, when even the bill itself says the doctor -- the abortion facility is not supposed to give the woman the name and the address of the hospital that's thirty miles away from the facility. He's supposed to give her the name and telephone number of the nearest hospital to her home.

Under Subsection B it provides that a physician who violates Subsection A commits an offense and provides that under the section it's a Class A misdemeanor. Punishable only by a fine but it's a Class A misdemeanor. It's a crime, Members, for a doctor to fail to have privileges at a hospital within thirty miles of an abortion facility, and a failure for the doctor to provide the information that's required, and that I think we all agree should be required.

Section 3 amends Chapter 171 of the Health and Safety Code by adding Subchapters C and D as follows. Subchapter C: Abortion prohibited at or after twenty weeks post-fertilization. Section 171.041 short title authorizes that this the Subchapter be cited as the "Preborn Pain Act." Wants to make sure that that title is provided to this particular provision of the law. The "Preborn Pain Act." Again because that's used, argued as the compelling state interest for which this twenty week pain provision is being required -- or being prohibited, excuse me, the twenty week abortion.

In the definition it defines pre-fertilization age and severe fetal abnormality in the chapter. So lets talk about the fertilization age issue. Section 171.043 requires a determination of post-fertilization age, and it prohibits a physician, except as otherwise provided by Section 171.046, from performing, or inducing, or attempting to perform or induce an abortion, without first making a determination of the "probable post-fertilization age of the unborn child." Now let's think about that for a minute. We're going to hold doctors to a very difficult standard here. We're going to ask doctors to make a determination of the probable post-fertilization age of the fetus.

Now, Members, we've all gotten a lot of information from the medical community on this particular issue. And what they tell us is, this isn't the standard that's used. It's never been the standard that's used, because it's an impossible standard to meet. Because it's asking doctors to do something that they are incapable of doing. Unless a woman becomes impregnated by in-vitro fertilization, well, then they can tell you the "probable post-fertilization age" of a fetus. But doctors use a different standard for determining gestational age and they do it for a reason. They do it because it's the most reliable.

And they do it because they have absolutely no idea exactly when fertilization occurred. Because for every woman her ovulation period is different. Some women actually ovulate during their menstrual cycle and get pregnant when they think they can't get pregnant. They're in their menstrual cycle because they're ovulating during that period of time and there is a reason that fertilization is not the standard that's used because, Members, doctors have a better understanding of how to judge gestational age than a bunch of senators from the state of Texas do. But we're going to tell them, by golly, that they can't even--

[Senator Craig Estes rises to interrupt.]

Part 039
Estes Inquires Reading of Papers
09:32:07

Video Link: <http://youtu.be/qhIV5zysdHc>

Audio Link: <https://archive.org/details/SB5039EstesInquiresReadingOfPapers>

Transcribed by: Eliza Diener-Brazelle

[EDITOR'S NOTE: *In this segment, Republican opposition member Senator Craig Estes (who was listed as a coauthor of Senate Bill 5, noted in **Appendix A**) inquires about a ruling which would prevent a Senator from reading from "a paper". The editor believes that the intent of this inquiry was to prevent Senator Davis from reading further citizen testimony later in the evening, after she had previously indicated an intent to do so. After this inquiry, Senator Davis did not read citizen testimony, instead choosing to continue discussing the expected impact of the bill, at which point a third Point of Order relating to germaneness was ruled against her.]*

Senator Craig Estes: Mr. President.

Lt. Gov. David Dewhurst: For what purpose do you rise?

Senator Craig Estes: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Craig Estes: We been-- I've been looking at Rule 6.13. Says "when the reading of papers is called for and the same is objected by any member it shall be determined by a majority vote of the Senate without debate." Is it appropriate to make a parliamentary inquiry about the reading of papers in this filibuster?

Lt. Gov. David Dewhurst: You're recognized.

Senator Craig Estes: A little bit later on, it says "the Senator addressing the Senate" -- this is in the rulings -- "on the question of whether or not the Senate shall concur in the House amendments to the bill may read in full the legal opinion relating to the subject matter of the amendments unless the Senate orders the reading discontinued." Is that correct?

Lt. Gov. David Dewhurst: That is correct.

Senator Craig Estes: Thank you, Mr. President.

Lt. Gov. David Dewhurst: Senator Davis, you're recognized.

Senator Wendy Davis: Thank you, Mr. President.

[Senator Judith Zaffirini](#): Mr. President? Mr. President?

Lt. Gov. David Dewhurst: Senator Zaffirini, for what purpose do you arise?

Senator Judith Zaffirini: For a point of information, Mr. President.

Lt. Gov. David Dewhurst: You're recognized.

Senator Judith Zaffirini: Thank you. Some of us did not hear Senator Estes' question and your answer. Would you mind repeating it for us, please?

Lt. Gov. David Dewhurst: I didn't make a ruling -- did *not* make a ruling -- but Senator Estes is asking about Rule 6.13: "When the reading of a paper is called for and the same is objected to by any member it should be determined by a majority vote of the Senate and without debate." I think what Senator Estes was asking is that if the Senate-- if a Senator objects to the reading of documents and the Senate votes, that the Senator shall stop reading from that document.

Senator Judith Zaffirini: Thank you, Mr President. I have another point of information.

Lt. Gov. David Dewhurst: You're recognized.

Senator Judith Zaffirini: Thank you, Mr. President. Senator Van de Putte has arrived, and my question is, at what point will we consider the resolution honoring her father?

Lt. Gov. David Dewhurst: Later this evening.

Senator Judith Zaffirini: Later this evening, thank you.

Lt. Gov. David Dewhurst: Senator Watson, for what purpose?

Senator Kirk Watson: Parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

[Senator Kirk Watson](#): With regard to Rule 6.13, entitled "To Dispense with Reading of Papers," if, in fact, there is an objection by a member, and it is determined by a majority vote of the Senate, I suppose the determination would be that the paper can't be read. Is that correct?

Lt. Gov. David Dewhurst: Senator, that is correct, if the members vote to determine that.

Senator Kirk Watson: Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Kirk Watson: If the Senate were to vote that the papers could not be read, that would not be a strike-- a warning or a strike that would lead to a determination by the Senate about whether the filibuster goes on, is that correct?

Lt. Gov. David Dewhurst: Senator, I'm advised by the parliamentarian that not on the first case, but if she continued to read different documents, it would be.

Senator Kirk Watson: But for clarity purposes, there would have to be an objection to the reading of papers--

Lt. Gov. David Dewhurst: That is correct.

Senator Kirk Watson: --there would have to be--

Lt. Gov. David Dewhurst: A vote.

Senator Kirk Watson: --a vote. I suppose it would be subject to a debate as to whether or not--

Lt. Gov. David Dewhurst: Without debate.

Senator Kirk Watson: --without debate, it would just be a straight vote, and that would not be a strike unless there were continued issues.

Lt. Gov. David Dewhurst: That is correct.

Senator Kirk Watson: Thank you, Mr. President.

Lt. Gov. David Dewhurst: Senator Ellis, for what purpose?

[Senator Rodney Ellis:](#) Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Rodney Ellis: This rule, 6.13, relates to the reading of a *paper*. My inquiry is, is a member who is conducting a filibuster permitted to read from a computer, or to read from an iPad? This specifically says, "when the reading of a *PAPER* is called," so my question is: Is a

Senator permitted to read from something other than paper? It specifically says “paper” in the rulebook. Since we have a strict conformity with the rules, it does say “paper,” Mr. President. Not a computer.

[Senator Rodney Ellis speaks in an aside to someone on the floor: “Somebody can give her one.” There is laughter from the party or parties to whom the aside is addressed. Ellis says: “I don’t have to give it to her. I won’t give it to her.” There is more laughter.]

[EDITOR’S NOTE: Senator Ellis’ statement that he “won’t give [an iPad] to her” is a reference to the second Point of Order sustained against Senator Davis, when it was ruled that Senator Ellis touched Senator Davis’ back brace at the same time as she, thus supposedly constituting “help” from another senator on the floor. Senator Ellis’ reference to “strict conformity with the rules” is also a reference to the second sustained Point of Order since the Republican opposition argued that this strict conformity required them to vote against his touching of the back brace.]

Lt. Gov. David Dewhurst: Senator Ellis, our rules were written a number of years ago. The meaning of the word “paper” would include reading from printed documents whether they’re on your computer or you have them in hard copy right in front of you.

Senator Rodney Ellis: Thank you, Mr. President. Another parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Rodney Ellis: Is it fair to say that these rules have become *very flexible* in this body?

Lt. Gov. David Dewhurst: I don’t think that’s a proper inquiry.

Senator Rodney Ellis: Okay. Thank you, Mr. President.

Lt. Gov. David Dewhurst: Senator West, for what purpose do you rise, sir?

Senator Royce West: I just want to make sure I understand the rule, first of all. Let me make sure I read it right, and if I’m wrong, someone let me know: “When the reading of a paper is called for.” So this rule would only apply if the reading of the paper was “called for” initially, right?

[Silence lasting nearly 40 seconds while Lt. Gov. Dewhurst consults the rulebook and the parliamentarian.]

Lt. Gov. David Dewhurst: Senator West, it’s my understanding that when Senator Estes made his inquiry, he was referring to rule 6 1-- 6.13--

Senator Royce West: Correct.

Lt. Gov. David Dewhurst: --but he was referring to a specific ruling, that says “a Senator addressing the Senate-- a Senator addressing the Senate on the question of whether or not the Senate shall concur in the House amendments to a bill may read in full a legal opinion relating to the subject matter of the paper, uh, of the amendments, unless the Senate orders its reading discontinued.”

Senator Royce West: So, then, all right, so, then do we just limit that to the facts, and the facts being a legal opinion? Or is it to be construed more broadly that that? Because the rule specifically says when the reading of a paper is “called for,” and the same is objected to by a member, so it looks like, at least based on the rules that we passed, okay, the reading has to be “called for” and the same objected to by a member.

That’s what the rule says. Now, that’s what the black-and-white letter of the rules that we passed at the beginning of the session-- when the reading of a paper is “called for” and the same is objected to by any member, it shall be determined by the majority vote of the Senate without debate. And I’m just trying to figure out in this instance what reading was “called for” for purposes of its applicability to the filibuster that’s being--

Lt. Gov. David Dewhurst: Senator, why don’t you address the-- if you come forward, I’ll address this--

Senator Royce West: Sure.

[Silence lasting approximately 7 minutes while Senator Royce West and other Senators confer with Lt. Gov. Dewhurst and the parliamentarian at the podium.]

Part 040
Wendy Davis Discusses Legal Proceedings
09:47:30

Video Link: <http://youtu.be/FIOBM67YOzQ>

Audio Link: <https://archive.org/details/SB5040WendyDavisDiscussesLegalProceedings>

Transcribed by: Carol R.

Lt. Gov. David Dewhurst: Members, we’re going to move forward. Senator Davis has the floor.

Senator Wendy Davis: Thank you, Mr. President. Now, I’m going through this-- this bill analysis bit-by-bit because I have something to say about all of it, and I want to make sure that the public understands exactly what the provisions of this bill require.

We were just having a conversation about post-fertilization age, and that the physician is

required under the terms of this bill to determine post-fertilization age, and that the physician can then only perform, or induce, or attempt to perform or induce an abortion once he or she has determined that the fetus is 20 weeks or less from fertilization. And I want to make the point about the incalculability of that and what we are suggesting doctors do.

And if we say to doctors from this point forward that that's the starting point, how in the world are they ever going to make that determination? And to be on the safe side, let's face it, the way they're going to make the determination is they're going to over-correct. And it's very likely that in the over-correct, women who are 18 months or, excuse me, 18 weeks gestational age of their fetus, those women will have a very hard time finding a doctor who doesn't want to risk violating this, because the doctor can't be clear about the \$20 million question of when fertilization occurred.

Now, a doctor can rely, this is kind of interesting under the bill, they can rely on the determination of that post-fertilization that another doctor has done. And so now, now we're going to have two of them involved. So, now we're going to ask, and I just don't see that this will ever occur, that one doctor is willing to say to another doctor, "You know what? Fertilization occurred on November the 8th. And therefore, 20 weeks from November the 8th is X." That's Physician A. And then Physician B says, "Well I was relying on what Physician A told me." So now we got two of them who potentially have a problem. What if Physician A says, "I didn't say that! I was talking about the date of the last menstrual cycle. I was talking about the date of the woman's last period. I wasn't talking about fertilization. How am I supposed to know when fertilization occurred?"

And what we know, members, by doing this, is we are subjecting doctors to a requirement that they cannot meet. And we're asking them to put their practices essentially on the line if they make a mistake. So, in the grand scheme of what we've been talking about here, and the impact on women in Texas, there's so many people who say, "This isn't going to limit women's abilities to have abortions in the state of Texas." Well, yes it is. Because every single one of the pieces of this legislation that I've been talking about adds up to a sum, and that sum is one that creates a greater and greater and greater challenge to women in the state of Texas to do what? To exercise her constitutional, protected right to have an abortion. To exercise the most difficult decision of her life.

And, members, we've, we've all heard from these witnesses. I read from so many of them today. You heard their testimony in committee. We've heard them before. We heard them when we were taking up the sonogram bill last session. And we know that women can find themselves in situations where the provisions of this bill are going to create true hardships for them. And you heard it in some of the letters: a lot of women really resent the fact that this legislating is being done and voted on, look around the room, primarily by men. And, yes, there were a few women over in the Senate side and a few over in the House side that supported this bill.

But you can imagine, or maybe you can't, how a woman feels to be told that her feelings on

these issues, that no matter how difficult, no matter the circumstance that she's dealing with, if she can't fit into every one of these little square pegs that she's going to be asked to fit into by this bill, she is not going to be able to exercise her constitutional right. And what's so disturbing is that we don't seem to care. And maybe that is because so many of us on this floor have never ever had to face that and never will face it, because you don't have the equipment. And I've got it, and my daughters have it, and other women that I care about have it, and women who I don't know have it. And what I know for a fact is that each of them has a unique circumstance that's going to be impacted directly by virtue of the provisions in this particular bill.

Senator Bob Deuell: Mr. President?

Lt. Gov. David Dewhurst: Senator Deuell, for what purpose do you rise?

Senator Bob Deuell: Ask Senator Davis some questions, would she yield?

Lt. Gov. David Dewhurst: Senator Davis, do you yield?

Senator Wendy Davis: I'm not yielding for any questions at this point at this point, thank you.

Lt. Gov. David Dewhurst: Senator Deuell, Senator does not yield. Senator Nelson, for what purpose?

Senator Jane Nelson: Well I was going to ask if the gentlelady would yield.

Senator Wendy Davis: I don't wish to yield for a question at this time.

Senator Jane Nelson: Is-- Mr President, may I ask the gentlelady if there is any point this evening that she will yield for some questions from another woman?

Senator Wendy Davis: I, I, I may do that, but I, I am not yielding for a question at this time.

Senator Jane Nelson: Thank you, Mr. President.

Lt. Gov. David Dewhurst: The floor is yours, Senator Davis.

Senator Wendy Davis: Thank you, Mr. President. Now, the prohibition in this bill says that a doctor can't perform or induce or attempt to perform or induce an abortion on a woman if it's determined, as we said a moment ago, that the fetus is 20 or more weeks post fertilization. We've already talked about how difficult that is.

But then there's a provision in here about the method of abortion. And again, this implies or, or, or puts in place a requirement that physicians function from a post-fertilization age perspective when applying the provisions of this particular piece of the bill. But it does say that there are

exceptions. And it provides the prohibitions and the requirements under the bill and all the sections thus far that I've referred to, do not apply if there exists a condition that in the physician's reasonable medical judgement would so complicate the medical condition of the woman to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function. And we've talked about that.

So now there's an exception to this 20 week bill. There's an exception. And the exception puts a doctor once again in a very precarious situation. Because it provides that the doctor, number one, using reasonable medical judgement-- so, we're in the trial, and I can tell you how that goes. First thing that happens is the jury or the judge is going to have to decide what was "reasonable medical judgement". And what's interesting about that is oftentimes you have a lot of people who don't really know what "reasonable medical judgement" is.

You of course call experts to the stand, and they talk about what might be reasonable and what wasn't reasonable, and juries have to put themselves in the mind of a medical professional and they have to decide what is "reasonable medical judgement". But then they've also got to decide what that judgement reasonable in relation to other terms that are fairly subjective in nature and require, and I think differing minds would agree, when these conditions are met. The conditions are this: that in the physician's reasonable medical judgement failing to provide this service, this post 20-week abortion, would so complicate the medical condition of a woman that to avert her death or a serious risk of substantial and irreversible physical impairment of a major bodily function must be demonstrated.

Now, I wonder what that means. "Irreversible physical impairment of a major bodily function." I've been pregnant. I'm sure a lot of women here and in the gallery have been pregnant. And we've probably had changes in our bodies that have occurred as a consequence of that. Some of us might refer to them as physical impairments. For many women, hate to be graphic, but for many women who've carried a child she has problems holding her, her bladder. She has problems with urination. I wonder if a jury would think about that as being a physical impairment.

I wonder what a jury might decide was a irreversible physical impairment that justified a doctor using reasonable medical judgement to avert. What might that be? And there's no guidance. There's no guidance in the bill analysis. There's no guidance in the bill itself as to what that might be. And does it make you pause for a moment and consider why the medical community has so many concerns about this bill. What are the subjecting themselves to, and, and will doctors continue to practice in this arena?

So we talked a lot about that, before I was here, but it was a major part of the conversation in deciding whether we should move forward with tort reform. Part of the argument being that when doctors feel like they're subjected to unreasonable risks they will not practice in that arena. On the tort reform arena-- the arena was the state of Texas. And there was argument made and information put forward that doctors were leaving the state of Texas or if they'd gone to residency school somewhere they weren't coming back to the state of Texas because they

worried that they couldn't practice here without subjecting themselves to unreasonable risk.

Could that perhaps be the purpose of legislation like this? Could, perhaps, a justification, a motive for legislation like this be in any way related to having physicians think twice about practicing in this area of medicine? Could it be that in Texas what they hoped for outcome would be that fewer and fewer doctors practice in this area of medicine? And, as a doctor, I wonder what they think about that particular piece of this. And as things advance, I wonder how many will be willing to take these risks?

Now there's also a provision here that protects privacy in court proceedings.

And it's a, it's a good protection, I think. It's assuring that, in the laundry list of litigation I've just gone through in the last hour, that when that litigation occurs, whether it's in a criminal court of law or a civil court of law, the woman would have her identity protected and not subject to public disclosure if she does not consent to giving that disclosure. And, and there's a, a greater protection here requiring the court to issue orders to the parties that this protection would be in place. To witnesses and to the counsel that they aren't supposed to reveal outside of the courtroom a woman's identity, who may be a subject of a proceeding where a doctor is actually having some challenges to a provision of the medical care that they provided.

And then there is some provision that would authorize a court to disclose that information, in certain circumstances. Number one, if a motion is filed with the court requesting it, if notice of that motion is served on each interested party, and if the court determines that disclosure is "essential to the administration of justice, and there is no reasonable alternative to disclosure".

Now, what does that mean? When might a court find that disclosing the identity of a woman who's had a very traumatic procedure, and who's gone through the personal pain and the scarring of having undergone that procedure, when might it be the case that that woman, her identity would be disclosed because it would be deemed "essential to the administration of justice" and that "there's no reasonable alternative to that disclosure"? Might that have a chilling effect? Could that be the hoped for impact?

Part 041

Wendy Davis Explains Abortion Pills

10:04:40

Video Link: <http://youtu.be/fiSCHGBq4wY>

Audio Link: <https://archive.org/details/SB5041WendyDavisExplainsAbortionPills>

Transcribed by: Mamareadsalot

Senator Wendy Davis: Now, there's another section in the bill about the abortion-inducing

drugs, and I see that Senator Van de Putte has joined the body this evening. We're so happy to have Senator Van de Putte on the floor, and we of course all share in the pain she's going through right now.

She did a great job the other day on abortion-inducing drugs, and talking about the way the bill is written. And from her perspective as a pharmacist, why the way the terms of this provision are written can actually put women in harm's way. And let's go back to that original intent that we talked about with this bill: to protect women's health. Not what the Twitter said, the tweet, but that's what we've said here on the Senate floor: to protect women's health.

And Senator Van de Putte made some excellent points about the fact that there is now this very tightly defined administration of abortion-inducing drugs that will occur as a consequence of this particular bill, if it's to go into law. It provides enforcement through the Texas Medical Board. And it requires the Texas Medical Board, interestingly enough, a board that's made up of physicians, to--

Lt. Gov. David Dewhurst: Senator Davis--

Senator Wendy Davis: Basically--

Lt. Gov. David Dewhurst: --if you'll excuse me for a moment, Senator Campbell, for what purpose do you rise?

Senator Donna Campbell: Will the gentlewoman yield for questions?

Senator Wendy Davis: I'll not yield at this time, thank you, Mr. President.

Lt. Gov. David Dewhurst: Senator Davis declines to yield.

Senator Donna Campbell: Um, even to a female and a physician?

Senator Wendy Davis: Uh--

Lt. Gov. David Dewhurst: The Senator has declined to yield.

Senator Donna Campbell: Thank you, Mr. President. Thank you for your consideration.

Lt. Gov. David Dewhurst: Thank you, Senator Campbell. Senator Davis.

Senator Wendy Davis: Thank you, Mr. President. Now the, as I was saying, the Texas Medical Board is charged with actually enforcing this. And, and the interesting thing about it is, the requirements in the bill here fly completely in the face of what typically happens in the medical arena and the administration of drugs.

Now what typically happens is a, a drug is approved by the FDA, and doctors administer it, perhaps initially according to the label, and as they experience the impacts of that drug on their patient community, they find that the label actually isn't creating administration that provides the best care for their patient in the administration of that drug.

They also sometimes find that drugs can be used in off-label uses, as the saying goes. For example, I think Senator Van de Putte gave us the example of aspirin. Used to think, you know, you take aspirin if you have a fever, take aspirin if you had a headache, I think that's what the label says. But now, we know that doctors tell people who are at risk of heart disease and stroke that it's a good idea to chew a baby aspirin every single day. A baby aspirin a day keeps the heart attack away.

And of course medical professionals know this, and what medical professionals have learned about this particular drug, and the point that Senator Van de Putte made so well, is that this particular drug, if administered according to the label, and according to the FDA-prescribed recommendations for its use, actually have resulted in creating problems for women. Have actually created in greater uterine bleeding, and actually have put women at greater risk.

Because the dosages were higher on the label and by the FDA recommendation than doctors learned in their experience was really needed to provide a woman with a safe abortion procedure. And what doctors also learned was the administration of the drug, not just the amount of drug to be given, actually made a difference in terms of the well-being of women depending on whether it was administered orally or vaginally.

And I read something earlier about that, that talked about the fact that a lower dose than that first dose, I think it was about a third lower than what the label and what the FDA requirement says should be given. And then on the second day that the second dose, again a lower dose, should be given vaginally, not orally, and that the outcomes for their patients are far better when they do that.

But the legislature has decided, in its all-knowingness, to change that, and to subject physicians to standards that they know are not in the best interests of their patients. And then not only are they doing that, but they require the Texas Medical Board to enforce this. A Texas Medical Board, made up of doctors who probably know that this is not in keeping with good medical practice. But their legislators told them that they have to enforce this. That's going to be a really interesting enforcement action, if it causes action against the doctor, is brought before the Texas Medical Board. And-- and let's talk about exactly what legislators in their wisdom have decided in place of what doctors have decided in terms of the administration of this drug.

First of all, it requires that the physician, before he or she gives or sells or dispenses, administers, provides, or prescribes the drug, to examine the pregnant woman and document in her medical record the gestational age and intrauterine location of the pregnancy. Now,

interestingly here, when it says gestational age it doesn't refer to fertilization date, so if I'm a doctor and other parts of the bill say I've gotta document fetal age based on fertilization date, but this particular section of the bill doesn't address that, what if I put the date as being something that's relative to the woman's last menstrual cycle? Am I violating a provision of this law unknowingly, accidentally? Because it doesn't really speak to it in this section. It only speaks to it in that previous section that I was talking about.

It requires that the physician who gives or sells or dispenses those medicines to provide the pregnant woman with, now this is interesting: a copy of the final printed label of the drug. So, I'm gonna give Susan a label. Now I don't know about you, but when I buy an over-the-counter drug, I read the label, and then I take the drug according to the label. And so if my doctor now is required not just to give me a prescription, where I go to the drug store, and I pick it up, and on it are written the doctor's orders for when I'm supposed to take it, but instead what I gotta get now, what the doctor has to give me, is "the label".

And the label, thanks to the great information provided to us by our pharmacist Senator Van de Putte, the label actually tells the woman to do something that physicians have learned not to be in her best health and safety interests. But she's gonna have that label now, and if the doctor tells her to take it otherwise, she's probably gonna question that. Which should she do?

Well then, in case she has any questions, according to the bill, the physician also has to give the pregnant woman a telephone number so that she can reach her doctor, or other healthcare personnel employed by the physician, at which the abortion was performed. Now that's kind of interesting, um, I'd have a-- I'd have an interesting time with that as a lawyer in a courtroom. "The facility at which an abortion was performed," when a woman taking the drug-- what's that drug called, um, I had it here somewhere. RU-486.

It's my understanding that an abortion that occurs as a consequence of taking that drug doesn't happen when the woman takes it. In fact, she has to take two doses of it, and then typically it takes several days after the administration of that second dose for the abortion to occur. For her body basically to go into a labor that expels the fetus. So the doctor's gotta give her a telephone number of health care personnel "at which the abortion was performed". When is the abortion performed when you take RU-486? Kind of an interesting question.

And again, I think it subjects doctors to some concerns about some lack of true direction and objectivity-- objective direction in the bill.

Video Link: <http://youtu.be/nY09zP2gtRg>

Audio Link: <https://archive.org/details/SB5042CampbellRaisesThirdPointOfOrder>

Transcribed by: Marwa Kandil

Senator Davis: Then it requires that the physician who gives or sells or dispenses, provides this abortion-inducing drug, to schedule a follow up visit for the woman, to occur not more than 14 days after the administration or use of the drug. Now, I read some testimony previously from doctors who've said typically the practice is that the woman doesn't go back to the abortion facility, instead she goes to her family doctor or her own OB/GYN in order to assure that everything went as it should have and that she's okay and that she doesn't need any further medical care in terms of completing that procedure.

But this is going to require that the physician schedule a follow up visit for the woman to occur not more than 14 days after the administration or use of the drug. Now, let's layer that upon that sonogram bill from last session. And remember, that sonogram bill, there have been a lot of stories since that went into law, about the hardship it's created for women, who now have to go for a sonogram on one day and then return no less than 24 hours later on the second day. There've been instances...

Senator Campbell: Mr. President.

Senator Davis: ...where women have had some real hardships because...

Senator Campbell: Mr. President.

Senator Davis: ...they've have shown up on the second day...

Senator Campbell: Mr. President.

Senator Davis: ...and the same doctor is not there.

President: Senator Campbell, for what purpose do you rise?

Senator Campbell: Um, a point of order to just inquire about the subject matter at this moment.

President: State your point of order.

Senator Campbell: Um, I believe we're talking about, we're talking about the sonogram bill and the, you know, doctors and sonogram bill, versus we're supposed to be, the last topic she was on was on RU486. Are we still germane to this bill? Because, um, analogies to sonogram bill is not specific to this bill.

Lt. Gov. David Dewhurst: Would you please come to the platform, and we'll discuss this with

the parliamentarian?

Senator Campbell: Yes, sir.

Senator Davis: Mr. Pres--

Lt. Gov. David Dewhurst: Senator Davis, would you like to address that point of order?

Senator Davis: I would like to respond, I know that y'all are going to go up there and talk about it but I don't feel that I can leave my little...

Lt. Gov. David Dewhurst: Please proceed.

Senator Davis: ...sphere here. But what I'm talking about is this bill layered upon a previous law that this legislature enacted, and the further hardships that are created for women. And it's important in order for me to describe the impact of this particular bill. And that's what I'm clearly talking about, the impact of this particular bill. I think it's perfectly reasonable to talk about it in the context of what women in Texas today will face if this provision goes in place. And that's why, of course, I was referring to the existing visit requirements.

Lt. Gov. David Dewhurst: Thank you, Senator Davis.

[EDITOR'S NOTE: *Silence while the point of order is being discussed on the platform. It would appear the microphone has been turned off. The silence lasts for approximately 33 minutes.*]

Part 043

Dewhurst Rules on Third Point of Order

Video Link: <http://youtu.be/NSA8pbvaTvs>

Audio Link: <https://archive.org/details/SB5043DewhurstRulesOnThirdPointOfOrder>

Transcribed by: Jill Jones

Lt. Gov. David Dewhurst: *[gave/s]* Members, after consultation with the parliamentarian and after going over what people heard as far as discussion, Senator Campbell, your point of order is well taken and is sustained. *[gave/s]* The chair recognizes Senator Hegar for a motion.

[EDITOR'S NOTE: *The audience in the gallery jeers. The following dialogue takes place over the sounds of the crowd.*]

Senator Glenn Hegar: With regard to the Senate Bill – House amendment to Senate Bill 5 –

Lt. Gov. David Dewhurst: Go ahead, go ahead.

Senator Glenn Hegar: I move to concur with the House amendment to Senate Bill 5.

Lt. Gov. David Dewhurst: Senator Watson, can you hear me?

[Unidentified man on Senate floor]: The speaker concurs.

Senator Kirk Watson: This ruling that – it is my understanding from your previous ruling that if a third point of order was sustained –

Lt. Gov. David Dewhurst: *[gavels four times to subdue the audience in the gallery]*

[Unidentified Gallery Participant]: Bullshit!

Lt. Gov. David Dewhurst: Senator Watson, what is –

[shouting from gallery]

Lt. Gov. David Dewhurst: *[gavels three times]*

[EDITOR'S NOTE: *The audience in the gallery chants "Let her speak" for nearly a minute while Lt. Gov. Dewhurst confers with the parliamentarian. The following dialogue takes place over continued chants of "Let her speak".]*

Lt. Gov. David Dewhurst: Senator Watson, can you hear me? *[pause]* Senator Watson, for what purpose do you rise? OK, fine. *[pause]* Senator Hegar, you are recognized for a motion.

Senator Glenn Hegar: I move to concur –

Senator Kirk Watson: *[simultaneously with Senator Hegar]* Mr. President?

Senator Glenn Hegar: – with the House Amendment to Senate Bill 5.

Senator Kirk Watson: Mr. President, I have a parliamentary inquiry.

Lt. Gov. David Dewhurst: I've just recognized you twice. Can you hear me?

Senator Kirk Watson: Mr. President, it is my understanding from your previous ruling that if there was a third finding of violation, it was going to be submitted to the body – the third point of order would be submitted to the body. That's one ruling that I understood you to make. And then my second – my understanding of another ruling that you made, was if there was found to be a third violation, it would be submitted to the body to determine whether or not the filibuster would

come to an end.

[EDITOR'S NOTE: *Chanting from the gallery fades out.*]

Lt. Gov. David Dewhurst: Senator, you heard your own members say that there were two violations and a third would result in the end of the filibuster.

Senator Kirk Watson: *[simultaneously with Lt. Gov. Dewhurst]* A vote by the membership –

Lt. Gov. David Dewhurst: One was germane – the germaneness, the second was the assistance by Senator Ellis and the third was lack of germaneness on the discussion.

Senator Kirk Watson: Your previous ruling was that one – if there were in fact a finding of three violations, it would be submitted to the body to determine whether or not you would end the filibuster.

[Unidentified Gallery Participant]: Yeah!

[EDITOR'S NOTE: *Gallery members begin chanting "Wendy" while Lt. Gov. Dewhurst confers with the parliamentarian.*]

Lt. Gov. David Dewhurst: Senator Watson, the – I chose to go ahead and make a ruling myself, so the ruling – I sustained the point of order by Senator Campbell.

Senator Kirk Watson: Parliamentary inquiry, Mr. President.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Kirk Watson: Doesn't that, then, require the matter be submitted to the body to determine *[mic cuts out for a second]* ...end?

Lt. Gov. David Dewhurst: Senator Watson, this point – this same point was the point that we had a lot of conversation between Senator West and the parliamentarian and myself, that, under the rules, either the *[mic cuts out for a second]* ...or we can submit it to the body.

Senator Kirk Watson: Mr. President, parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry, sir.

Senator Kirk Watson: Isn't it – the statement you're making now applies to a ruling on a point of order. I understand that you have chosen to rule on the point of order as opposed to submitting that to the body. But once you have made a determination that there are the three warnings, or whatever you want to... *[mic cuts out for a second]* ...that matter must then be

submitted to the body to determine if there will be an end of the filibuster.

[EDITOR'S NOTE: *Lt. Gov. Dewhurst confers with the parliamentarian.]*

[Unidentified man on Senate floor]: Absolutely right. He has to submit it to the body. Kirk, you're absolutely right. You're right.

Senator Kirk Watson: Mr. President? Mr. President?

Lt. Gov. David Dewhurst: Yes, Senator Watson?

Senator Kirk Watson: I move that the ruling of the chair be overruled and I seek to appeal the ruling of the Chair.

[EDITOR'S NOTE: *Audience in the gallery cheers.]*

Senator Craig Estes: Mr. President? Mr. President?

Lt. Gov. David Dewhurst: One moment.

Lt. Gov. David Dewhurst: Senator Watson, any member of the Senate has a right to appeal a ruling by the chair and you're recognized.

Senator Kirk Watson: Thank you, Mr. President, and parliamentary inquiry.

Lt. Gov. David Dewhurst: State your inquiry.

Senator Kirk Watson: It's my understanding that this is a debatable motion.

Lt. Gov. David Dewhurst: That is correct.

Senator Kirk Watson: *[mic cuts out for a second]*...start, as part of this debate –

[EDITOR'S NOTE: *Audience in the gallery cheers. Lt. Gov. Dewhurst gavels twice.]*

Senator Craig Estes: Mr. President, Mr. President, Mr. President?

Lt. Gov. David Dewhurst: Members, with a motion by Senator Watson to appeal the decision by the chair, then I am going to step down and put Senator Duncan in the chair.

[EDITOR'S NOTE: *Senator Robert Duncan approaches the microphone and confers with the parliamentarian and Lt. Gov. Dewhurst.]*

Senator Craig Estes: Mr. President.

Senator Robert Duncan: Senator Estes, if you could just hold on a minute, please.

Senator Craig Estes: Thank you.

[EDITOR'S NOTE: *Senator Duncan continues to confer with the parliamentarian as gallery participants chant "Shame".*]

Senator Robert Duncan: Alright, members and persons in the gallery, if you could listen to me very closely. Governor Dewhurst, at the beginning of the session today, as we do many times, read the rules with regard to the decorum required in the Senate. This is a very serious issue. This is a very serious debate. You are here to observe and the members cannot accurately debate with disruptions in the chamber, so there will be strict enforcement with regard to disruptions in the chamber so that the Senate can debate this important issue.

Senator Leticia Van de Putte: Mr. President.

Senator Robert Duncan: If there is another outburst, as we observed earlier, then we will request that the gallery be cleared.

Senator Leticia Van de Putte: President? *[pause]* Mr. President?

Senator Robert Duncan: What purpose?

Senator Leticia Van de Putte: Parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Leticia Van de Putte: Mr. President, as noted by my absence earlier, I was not here during the conversations and the discussions on the process that would be used should we get to this point during the filibuster. I would request that the President inform me, so that I may be able to make a decision about what the process was – what did I miss before I arrived here so that I may be able to cast a vote.

Senator Robert Duncan: Senator, the process is the process for a filibuster stated in the rules, and as we have gone through the day there have been certain rulings on different points of order or motions made during the day and it's – there is no process in place other than the rules.

Senator Leticia Van de Putte: Mr. President, parliamentary inquiry. Since I was not able to be here on the floor, since I was at my father's funeral, I ask that you please let me know what were the three motions, or what were the three points of order, so that I may understand. I was not here, and I do not know, and I was not looking online because I was at my father's funeral.

Would the chair please advise me of the three instances of the points of order so that I may understand, even in the most basic way, the debate about to begin?

[EDITOR'S NOTE: *Faint chants of "Let us in" are heard from outside the gallery while Sen. Duncan confers with Lt. Gov. Dewhurst.*]

Senator Robert Duncan: All right, Senator. At – in the beginning of the session today, there were three – during the filibuster, there were three points of order that were raised. One was on germaneness and that was sustained. The other one was on aid by a member involving Senator Ellis and Senator Davis. That one was sustained. The last one, as you were here, was on germaneness. The issue before the body at this time is an appeal of the motion for the chair, and that's why I'm in the chair right now.

Senator Leticia Van de Putte: Parliamentary inquiry, Mr. President.

Senator Robert Duncan: State your inquiry.

Senator Leticia Van de Putte: Mr. President, since I was not here, I understand there were two points of order. Would the chair please advise me of the first point of order? I know the subject matter, but who called the point of order?

[Unidentified man on the Senate floor]: Nichols.

Senator Robert Duncan: Senator Van de Putte, Senator Nichols called the first point of order on germaneness.

Senator Leticia Van de Putte: And that, Mr. President, was sustained?

Senator Robert Duncan: That was sustained.

Senator Leticia Van de Putte: And the second point of order – parliamentary inquiry, Mr. President. The second point of order was called by which Senator? And I am sorry, I was not here.

Senator Robert Duncan: I believe Senator Williams called the point of order on aiding a member of the senate during a filibuster.

Senator Leticia Van de Putte: And was – parliamentary inquiry, Mr. President. Was the second point of order also one that was called on germaneness?

Senator Robert Duncan: No, it was called on I believe on Senate Rule 403 with regard to aiding a member and Senate Rule 401, I believe.

Senator Leticia Van de Putte: Parliamentary inquiry, Mr. President. That second point of order that was called by Senator Williams on assisting a senator during a filibuster, and that was sustained?

Senator Robert Duncan: That was sustained by a vote of the body.

Senator Leticia Van de Putte: It was sustained by not the decision of the chair?

Senator Robert Duncan: The chair left the vote to the body.

Senator Leticia Van de Putte: Thank you, Mr. President.

Part 044
Watson Appeals Chair Ruling
11:06:52

Video Link: http://youtu.be/z3U7GWHw_JQ

Audio Link: <https://archive.org/details/SB5044WatsonAppealsChairRuling>

Transcribed by: Kristy Griffin Green

Senator Craig Estes and Senator Leticia Van de Putte: *[simultaneous]* Mr. President.

Senator John Whitmire: Mr. President.

Senator Craig Estes: Mr. President.

Senator Robert Duncan: Senator Estes, for what purpose?

Senator Craig Estes: I move... to...

Senator John Whitmire: Mr. President, parliamentary inquiry. I know what I want to say.

Senator Craig Estes: I move to--

Senator Robert Duncan: Senator Whitmire, for what purpose?

Senator John Whitmire: Before we get to the issue of challenging the decision of the chair, can we get some clarification on how the decision was made in terms of the guidelines and the actual commitment made earlier tonight to the members? It was decided early on the first point of order, on germaneness, to submit it to the body; which was carried out. The second point of order, Senator Ellis' issue of assisting Senator Davis, was submitted to the body.

I have heard repeatedly tonight that those points of order will be submitted to this body. Most of us were standing at ease, waiting for the transcript, so it could be decided whether to even submit it to the body. How in the world was a change made; what rule, what tradition, went into just a ruling? Because when I asked my questions earlier tonight, we were doing our darned best to give Senator Davis some guidelines and some guidance not to violate a germaneness issue, which I don't believe she has.

But instead of submitting that to the body, as we have twice before tonight, knowing that the third violation would be submitting the issue of whether we end the filibuster or not, what in the world happened that a decision was made arbitrarily without submitting it to the body while, I would guess, most of us were standing here waiting for that submission--

Senator Robert Duncan: Senator Whitmire--

Senator John Whitmire: --determination of whether even submit it!

Senator Robert Duncan: Senator Whitmire, the first point of order, on germaneness, was not submitted to the body. It was a decision of the lieutenant governor. It was not a field. The second point of order was submitted to the body and sustained by the body. The third point of order was made by the lieutenant governor and the ruling-- and the rule that would apply is found in, and I'll just read it to you here: "Raising of the third--"

Senator John Whitmire: On, on, on whether to submit it, or whether to rule?

Senator Robert Duncan: Well-- well, now, hold it, let me read this to you. "Raising of a third point of order against further debate by a senator on the floor who has digressed for a third time from a discussion opinion-- of any amendment, after having been twice requested to confine his debate to the amendment, justifies the presiding officer in calling for a vote by the senate on the question of whether or not he shall be permitted to resume and continue his remarks." And that was the ruling of the Chair, or would be the ruling of the Chair following the appeal on this point of order.

Senator John Whitmire: Why would it not be submitted to the body?

Senator Robert Duncan: The-- a point of order is being submitted to the body pursuant to the appeal, and the motion to appeal, that is on the floor-- by Senator Watson.

[EDITOR'S NOTE: *The following remarks occur from multiple people simultaneously. This transcript is an approximation of order.*]

Senator Craig Estes: Mr. President

Senator Kirk Watson: Mr. President, Mr. President, I have the floor. Mr. President, Mr. President, do I have--

Senator Craig Estes: Mr. President, I have the floor, and I guess that--

Senator Robert Duncan: Senator Estes has the floor--

Senator Kirk Watson: Senator Estes does not have-- Mr. President, he does not have the floor. Parliamentary inquiry, Mr. President, I have the floor and I've not yielded the floor.

[EDITOR'S NOTE: *Simultaneous talking ends.*]

Senator Royce West: Parliamentary inquiry. Parliamentary inquiry.

Senator Robert Duncan: Senator Estes was recognized.

Senator Craig Estes: Thank you, Mr. President. I move to table Senator Watson's motion.

Senator Royce West: Parliamentary-- I thought a parliamentary inquiry goes before any other motion. That's a privileged motion.

[EDITOR'S NOTE: *A brief silence followed by a low ripple of laughter in the gallery.*]

Senator Robert Duncan: Senator West, you'll be recognized, hold on. [Senator Duncan confers with the parliamentarian.] Members, at this point I had earlier recognized Senator Estes. Senator Es-- Senator Estes made a motion to table. That is the motion now on the floor. Now, Senator West, you're recognized with your parliamentary inquiry.

Senator Royce West: Ah, Mr. President.

Senator Robert Duncan: Yes, before I--

Senator Royce West: You recognized Senator Watson first, and--

Senator Robert Duncan: Do you yield to Senator Watson?

Senator Royce West: Well, I'm asking, parliamentary inquiry. If the first person that's-- if someone's already recognized, does that person get to go before someone else unless there's a privileged, to, um, motion ahead of that?

Senator Robert Duncan: Senator Estes was recognized for a motion, and made a motion to table.

Senator Royce West: Well, Senator Watson was recognized for a motion to appeal. I mean, that's what I recall. And that's-- and he had the floor. He made the motion. And he yield, I believe, to Whitmire. Well, can we-- I think if you go back and look at the transcript, Senator Watson had the floor. He was recognized. And can we go back and-- before, obviously this is a critical juncture. And I'd ask you to at least go back and look at the transcript to see exactly the sequence of events. That's only gonna take a few minutes.

Senator Robert Duncan: Senator West, hear me out.

Senator Royce West: Yes

Senator Robert Duncan: Senator Watson made a motion to table.

Senator Kirk Watson: No.

Senator Robert Duncan: I mean to appeal the ruling of the chair.

Senator Royce West: Right.

Senator Robert Duncan: Senator Estes was recognized and made a motion to table. Senator Whitmire made a parliamentary inquiry. You made a parliamentary inquiry. That's where we are at this point in time. You have-- you have a parliamentary inquiry before the chair?

Senator Royce West: Yes, I do.

Senator Robert Duncan: State your inquiry.

Senator Royce West: Again, if you look at the sequence of events, Senator Whitmire-- Senator Watson made the motion to appeal. Senator Watson-- uh, Senator Whitmire then made a motion to-- ah, did a parliamentary inquiry.

Senator Robert Duncan: That's right

Senator Royce West: And then, Senator-- you recognized Senator Estes. And he made a motion to table. But the, the reality--

Senator Kirk Watson: I had started to debate.

Senator Royce West: Now, let-- let me finish. But he had, Senator Watson had the floor.

Senator Kirk Watson: The only reason the floor was given up was parliamentary inquiry.

Senator Robert Duncan: Sir, you're not re-- Hold on a minute, Senator Watson. This is Senator

West's parliamentary inquiry; let me respond. Senator Watson moved to table-- I mean, oh-- Senator Watson moved to appeal, Senator Estes moved to table, Senator--

Senator Royce West: No, that's not-- that's not, that's not, that's not the way it--

Senator Robert Duncan: Wait a minute, wait a minute-- and, Senator Estes moved to table. Senator Whitmire had a parliamentary inquiry, you've had a parliamentary inquiry, Senator Watson will be able to close on the motion to table.

Senator Royce West: Sir, but, parliamentary inquiry--

Senator Robert Duncan: Th-that is the procedure that we follow on a motion to table.

Senator Royce West: Parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Royce West: If you look at the transcript, you will see that's not the sequence of events. That's all I'm saying. And, Senator, and if a member has the floor, what removes that member from the floor if he asks-- and I believe the transcripts said that that, it didn't take him off the floor. I may be wrong on that, but--

Senator Robert Duncan: Senator Watson is able to close on the motion to table. He made the motion. Senator Estes moved to table. So at this point in time, we're on the motion to table.

Senator Rodney Ellis: Mr. President, parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Rodney Ellis: Mr. President, is it permissible to just pause for a few seconds to look at the tape? I may stand to be corrected if you look at the tape, but I believe that my deskmate Senator Estes forgot his motion. And that happens to all of us. He was trying to think of what motion he was gonna make -- to table, or to move to the previous question -- I assume something was going on, I--

Senator Craig Estes: Mr. President.

Senator Rodney Ellis: --as soon as I finish my parliamentary inquiry. If you would please just go and check the tape, Mr. President, so we don't make a mockery of our rules. Just go and simply look at the tape, you have a-- you-- it's 10:30 now, I know you tryin' to do what you wanna do before midnight, but at least let's not make a mockery of the Texas Senate.

Senator Craig Estes: Mr. President. I was in the middle of making-- am I recognized?

Senator Robert Duncan: Senator Estes, you're recognized.

Senator Craig Estes: Thank you. I was in the middle of making my motion. At that time, you recognized Senator Whitmire, then I asked to be recognized again, not protesting that I thought I had the floor when he asked to be recognized. And then I made my motion.

Senator Kirk Watson: Mr. President?

Senator Craig Estes: That's the way it went down, and--

Senator Kirk Watson: Mr. President?

Senator Craig Estes: --that's it.

Senator Robert Duncan: Senator... who is he? Senator... Watson?

Senator Kirk Watson: Thank you. I have a parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Kirk Watson: When I took the floor and made a motion and appealed the ruling of the Chair, and you took the chair, the position in the chair. I had begun the debate. The only-- I was not yielding the floor. The only reason the floor was yielded, I believe, was for parliamentary inquiries, which I understand to be-- take precedence.

But I had begun the process of debating. I had turned and started the debate. And the chair began recognizing other people while I had started the process of debating the motion. I did not yield the floor. Except on parliamentary inquiries that were being made.

Senator Estes' motion was out of order because I had the floor, yielding it only for a matter of precedence. He was not recognized as part of the debate to make a motion to table. I have not yielded the floor except on matters of precedence, and-- and will not yield the floor, unless we have the debate on my motion. Once a motion to table becomes appropriate, in an appropriate recognition, then I'll have the opportunity to close. But as of yet, there has not been an appropriate motion to table.

Senator Robert Duncan: Senator, you made a motion to table earlier before--

Senator Kirk Watson: I'm sorry, I appealed the ruling of the Chair.

Senator Robert Duncan: I-- I'm sorry, you appealed the ruling of the chair, and then Senator Estes was recognized, and he moved to table. And then there were parliamentary inquiries,

which I have responded to, and tried to at least clear the record of where we are. The issue before us now is the motion to table the-- your motion to appeal.

Senator Royce West: Mr. President? ...Mr. President?

Senator Robert Duncan: Once a motion is made to the body, it is open to debate. Including a motion to appeal, including a motion to table. Senator Estes was recognized as part of that debate, on a motion to table. And that's the issue before us now.

Senator Royce West: Mr. President? Parliamentary inquiry?

Senator Robert Duncan: [sigh] Senator West. State your inquiry.

Senator Royce West: Is your decision appealable?

[pause]

Senator Robert Duncan: State your, uh, appealable point.

Senator Royce West: The decision that you've made as it relates to the sequence of events that transpired.

Senator Robert Duncan: I made no decision; that is what-- those were the dec-- the-- those were the sequences of events.

Senator Royce West: May I, may I finish? I think you have said that Senator Estes' motion to table is in order. And I'm asking whether that decision is an appealable decision. And if so, what rule, practice, or tradition?

Senator Robert Duncan: Uh, Senator, you haven't couched an appealable point.

Senator Royce West: Well, I-- I thought, I thought then-- um, I still have the floor. Um, I thought that once you-- you have made a ruling, that Senator Estes' motion was, in fact, in order, and I think that you've made that ruling, and so I-- I believe that's appealable. Just as any other decision by the Chair is appealable. I mean, we-- we're right now, we're debating whether or not our Lieutenant Governor's decision is appealable.

Senator Robert Duncan: The issues before the body--

Senator Royce West: Exactly.

Senator Robert Duncan: --are Senator Watson's appeal of the point of order, and Senator Estes' motion to table. The debate can begin on the motion to table.

Senator Royce West: Yes--

Senator Robert Duncan: Senator Watson is recognized to close on the motion to table.

Senator Royce West: But you have-- there was a question as to whether or not Senator Estes' motion was in order. And the debate was whether or not his-- his motion was, in fact, in order. And many of us are saying it was not in order, and the cour-- and the court. I'm sorry, the presiding officers ruled that it's in order. And so, we should be able to appeal that ruling. I'm trying to figure out, what makes it different from any other appeal?

Senator Robert Duncan: The-- the issue that you're raising is whether or not Senator Estes made a motion to table. The Chair has ruled that he did.

Senator Royce West: And-- and I'm appeal-- and I wanna-- and, and I wanna appeal that ruling. That's what I'm trying to do.

[EDITOR'S NOTE: *An inaudible voice on the floor says something in disagreement to Senator West.*]

Senator Royce West: But he just said he ruled that.

Senator Robert Duncan: It-- it's-- it's not a ruling. It--

Senator Royce West: But that's what you just said.

Senator Robert Duncan: Now, hold on a minute. It's up to the presiding officer to recognize members when they stand to be recognized. And that's what happened, whenever Senator Estes rose to state a motion to table. And that's the issue before the body right now.

Senator Royce West: And and again, and-- if indeed you make a ruling that it's in order-- the question is, whether or not it was in order. Members of the body are saying that it was not in order. And you have ruled that it was in order. And so, that ruling impacts our substantive right as it relates to the debate.

And so what I'm saying to you is, is that, just like the substantive right is being appealed as it relates to the Lieutenant Governor's rule-- ruling, we should be able to appeal your ruling because it violates a-- I think it violates a substantive procedural right. As to a member of this body. By saying that it was in fact in order, when we believe that it wasn't in order.

And you said it was a ruling.

Senator Robert Duncan: Senator, are you raising a point of order that the motion to table is not

in order is not in order at this time?

Senator Royce West: No-- no, no, well-- what I'm saying is, is that you have ruled that the motion to table is in order. Ok? And so what I'm raising is: I want to appeal your decision that it's in order.

Senator Robert Duncan: Do you want to raise a point of order with regard to the decision of the Chair that Senator Estes made a motion to table, is that what you're saying?

Senator Royce West: Now, look, let me be real clear about what I'm saying. What I'm saying is, is that you have ruled already that it's in order. And so what I want to do is to appeal your ruling that it was in order.

Senator Robert Duncan: The ruling was, I recognized Senator Watson. And there's no debate about that. I mean, Senator Estes. There's no debate about that. Wh-- is there--

Senator Royce West: Yes, there-- I mean, we-- if you read the record--

Senator Robert Duncan: He made a motion to table. I heard it; that's the-- that is the issue before the body at this point in time. If you want to call a point of order on it, then you're welcome to bring it down. But that is where we are at this point in time.

Senator Royce West: Okay, so, regardless: I thought there was a debate on whether or not the point of the-- point raised by my colleague Craig Estes was in fact in order. That's-- I-- there was a debate, we can go back and read the record on that. We debated for probably about fifteen minutes. And so - and then you ruled, finally, that it was in order. And it's a ruling of the Chair. And I thought all rulings of the Chair, based on the rules-- and I can, if you need me I can-- I'll get the rules, all rulings of the Chair can be appealed.

Senator Robert Duncan: Senator, you have raised parliamentary inquiries, for which I have answered. But were not rulings.

Senator Royce West: But-- the recognition of Senator Estes being in order is not a ruling?

Senator Robert Duncan: It's up to the Chair to determine what motion is before the body, and I have made that ruling, that the motion before the body is the motion to table, which is not a debatable motion.

Senator Royce West: Parliamentary inquiry. Can a member appeal a ruling of the Chair?

Senator Robert Duncan: I have not made a ruling. That is who I have recognized. He has-- Senator Estes is recognized, on a motion to table, and that's the issue before the body--

Senator Royce West: I may be using-- I may be using the wrong terminology. When you recognized Senator Estes over Senator Watson, what did you do? It's-- it wasn't a ruling, then what was it?

Senator Robert Duncan: I, uh, I recognized Senator Estes, and he made a motion.

Senator Royce West: So, I can't appeal your recognition of Senator Estes if I agr-- disagree with you? I think the rules provide that I can.

Senator Robert Duncan: Do you have a point of order?

Senator Royce West: Again, the point of order is, I want to--

Senator Robert Duncan: If you have a point of order, bring it down.

Part 045
Fraser Raises Point of Order
11:26:20

Video Link: <http://youtu.be/yWqQHDOPTw>

Audio Link: <https://archive.org/details/SB5045FraserRaisesPointOfOrder>

Transcribed by: Rkac

Senator Kirk Watson: Mr. President, I do have a point of order that I would like to raise.

Senator Troy Fraser: Mr. President, point of order.

Senator Robert Duncan: Senator Fraser.

Senator Troy Fraser: Mr. President, we have a motion before the floor to table. The motion to table is a non-debatable motion. I would raise the point of order to act on the motion.

Senator Kirk Watson: Mr., Mr. President, do I have the floor? *[pause]* Mr. President? Mr..President, do I have the floor?

Senator Robert Duncan: Just a minute, Senator Watson. *[consultation with parliamentarian]* Senator-- Senator Fraser, we are at this point in time still in parliamentary inquiry, we are not in debate on the motion to table. So a point of order on that issue is not right at this time. Senator Watson.

Senator Kirk Watson: Yes. Mr. President, I have a-- I want to raise a point of order on your

decision to recognize the motion to table, and I would ask you, with regard to Rule 1.01, the editorial note indicates, a member -- that would be you -- called to the chair, pending an appeal, does not entertain any motions, nor accept any further point of order.

I would also point you to Rule 5.15. Every question of order shall, in the first instance, be decided by the president, and whose decision any member may appeal to the Senate. Rulings which set or alter precedent shall be printed as an annotation to the rules. Again, it speaks of appeal. The first editorial note: "A member called to the chair, pending an appeal, does not entertain any motions, nor accept any further point of order."

The motion to table is out of order, pending this appeal.

[pause]

Senator Robert Duncan: Senator Watson, bring your point down please.

[consultation at the dais]

Part 046
Zaffirini Explains Three-Warning Rule
11:55:30

Video Link: <http://youtu.be/wCAI4541k8>

Audio Link: <https://archive.org/details/SB5046ZaffiriniExplainsThreeWarningRule>

Transcribed by: Xtina Schelin

Senator Robert Duncan: Members, we have carefully looked at the rules of the Texas Senate, as well as other secondary authority on which our rules are primarily based. In particular, [Mason's Legislative Manual](#), which I think many of you probably have in your office.

And referring to [Division 3](#), which deals with subsidiary motions, which a motion to table is, we find in [Section 331](#) that a motion to lay on the table may be applied to any main motion, any question of privilege, any order of the day after it is before the House for consideration, any appeal, any motion to reconsider when immediately pending a bill of either House at any stage of its progress, even after being returned from the other House with amendments, only, and then G, only questions [unintelligible] before the House. To rule that a member in the Chair does not have the authority to recognize members or motions to close debate would create a circular situation in which there would not be order in the Senate with regard to the ability to con-- cut off debate when it's appropriate and when it's the desire of the majority of the body to so.

So, with that explanation, your, your point of order is expect-- respectfully overruled. Senator

Watson, you're recognized to close on the motion to table.

Senator Judith Zaffirini: Mr. President.

Senator Robert Duncan: For what purpose?

Senator Judith Zaffirini: Parliamentary inquiry, Mr. President.

Senator Robert Duncan: State your inquiry.

Senator Judith Zaffirini: Exactly what is the ruling that is under appeal at this point? So much time has passed that there is much confusion.

Senator Robert Duncan: The ruling that is on appeal is the ruling on the third-- on the point of order that was raised on germaneness on Senator Davis's debate.

Senator Judith Zaffirini: And as I'm reading [Rule 7.15](#) on page 62 of our rulebook, "germaneness" is defined in reference to a rule stating: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or as a substitute for the motion or proposition under debate." And so, the question was whether a discussion about sonograms would be germane. Is that correct, to this Senate [Bill 5](#)?

Senator Robert Duncan: That's correct.

Senator Judith Zaffirini: And the question was whether it was germane, because, in fact, we passed a law requiring women who were going to take abortions to first get a sonogram. And the ruling was that that was not germane? Was that the ruling?

Senator Robert Duncan: Right, Senator Zaffirini. And now we're on an appeal of that ruling. And now we need to go to Senator Watson to close.

Senator Judith Zaffirini: All right, but I have another parliamentary inquiry, Mr. President.

Senator Robert Duncan: State your inquiry.

Senator Judith Zaffirini: And the question under consideration, and the reason that we are debating whether the membership vote on this particular ruling, is that the reference was to three warnings related to germaneness. Is that correct?

[Senator Duncan consults with the parliamentarian.]

Senator Robert Duncan: Senator, these questions have been asked and answered I think with several parliamentary inquiries.

Senator Judith Zaffirini: But I do have a parliamentary inquiry, Mr. President, I would like to clarify it. So much time has passed that people are confused, and I certainly would like to clarify it and ask for the privilege of parliamentary inquiry.

[Senator Duncan consults with the parliamentarian.]

Senator Robert Duncan: State your parliamentary inquiry.

Senator Judith Zaffirini: My parliamentary inquiry is, first of all, the first ruling, as you explained to Senator Van de Putte, was about germaneness. Correct?

Senator Robert Duncan: That's correct, Senator.

Senator Judith Zaffirini: The second one was about aid to a, to Senator Davis--

Senator Robert Duncan: That's correct, and the third one was about germaneness.

Senator Judith Zaffirini: --and germaneness. So, there have been two rulings relative to germaneness, and one about aid, which was also questioned by some of the members.

Senator Robert Duncan: That's correct.

Senator Judith Zaffirini: Well if I'm reading-- First of all, going back to Rule point, 4.03 on page 9 of the rule book titled "[Interruption of Member Speaking](#)", which really has nothing to do with aid at all. Under the editorial note -- and please note that it is only an editorial note- - on page 10, it is written: "The point of order having been raised for the third time that a Senator who had the floor was [...] not confining his remarks to the bill before the Senate, the chair requested the Senate to vote on the point of order." So please note that the reference is to confining the remarks to the Bill before the Senate. Now--

Senator Robert Duncan: Senator, are you stating an inquiry, or are you debating the motion to table?

Senator Judith Zaffirini: I'm getting to my inquiry. On page 11, under the Note of Rulings, you would agree with me I hope, Mr. President, that the reference in this Note of a Ruling -- not a rule, and not an editorial note, but simply a Note of a Ruling -- reads: "Raising of a third point of order against further debate by a Senator on the floor who has digressed for a third time from a discussion of the pending amendment, after having been twice requested to confine his debate to the amendment, justifies the president's office-- the presiding officer in calling for a vote by the Senate on the question of whether or not he shall be permitted to resume and continue his remarks."

My parliamentary inquiry is: if the editorial note, and the Note on the Ruling, pertain unto rule 4.03, "Interruption of Member Speaking", clearly refers to *three*, three points of order relative to germaneness. And we have established, through your answers to my question, that only *two* were relative to germaneness, and one was relative to aid. My parliamentary inquiry is: isn't that ruling out of order and premature at this point in time? Because there have been only *two* references to germaneness, *not* three.

[*Senator Duncan consults with the parliamentarian.*]

[**Unidentified voice off-camera**]: You're right.

Senator Judith Zaffirini: [*murmuring*] I know I'm right, but we're the minority.

Senator Robert Duncan: Senator, I think that as the debate has followed through, the presiding officer has indicated that three infractions of the rules would be sufficient to move the body-- for the body to move to remove the Senator from the floor for the purpose of debate.

Senator Judith Zaffirini: Parliamentary inquiry--

Senator Robert Duncan: We're presently on the appeal of the third infraction and the third point of order.

Senator Judith Zaffirini: My parliamentary inquiry, Mr. President?

Senator Robert Duncan: State your inquiry.

Senator Judith Zaffirini: My inquiry is that perhaps that ruling has been premature, so we should not be having this discussion. If the reference was only *two* actions related to germaneness, not three.

Senator Robert Duncan: Senator, I think-- I'm going-- I believe you're debating the motion-- you, you, you're debating the appeal, the motion to table the appeal. That's a non-available motion; Senator Watson, you're recognized to close.

Senator Judith Zaffirini: Parliamentary inquiry, Mr. President.

Senator Robert Duncan: Senator--

Senator Judith Zaffirini: To what rule are you, are you referencing? What rule are you referencing in making that, that ruling?

Senator Robert Duncan: Senator, I'm referencing the procedure and process that we've gone through to get where we are. We had a point of order that's been overruled, Senator Watson

moved to appeal, Senator Estes moved to table, Senator Watson is now recognized to close on the motion to table. Senator Watson.

Part 047
Watson Debates Motion to Appeal
12:03:59

Video Link: <http://youtu.be/sqjOyO2JIHl>

Audio Link: <https://archive.org/details/SB5047WatsonDebatesMotionToAppeal>

Transcribed by: Sage

Senator Kirk Watson: Mr. President, members. This is an unfortunate set of circumstances that we find ourselves in. As I look around the room, at different senators that are on this floor, not a single one of which I don't consider to be a friend and someone that I care about. And hopefully someone that feels the same about me. But yet here we are, in what is probably the worst night that I've experienced since I've been in the Senate, and maybe since I've been in public life.

And it's now coming down to a motion to table an appeal on something related to germaneness to stop a filibuster that someone has worked all day long. And granted, it's something we all feel passionate about. It is something we all care deeply about. But I would ask you to consider where we are, as we consider a motion to table on the last night of this legislative session, on something this big and this important.

We should not table something like this because we are faced with a ruling that is, and this is not a slight to the presiding officer, but it is a ruling on something that by definition is going to have more than one way of looking at it, when you talk about germaneness. And if we're honest, intellectually honest and otherwise, we will know that. We all stood up there arguing our points, and we know that on this matter there are shades of grey. We should not be ending this important debate on a motion to table when there's that much grey.

Now what are we talking about? Senator Zaffirini just made reference to it.

Senator Davis has been talking for almost thirteen hours today on a bill that the caption, which has now been taken down, deals with "the regulation and operation of abortions". As part of that discussion, she has pointed out that the reason she is arguing against it, and the reason she opposes it, is because we are making it too difficult for women to carry out their constitutional right to make the decision about terminating a pregnancy. And in doing so, she's created some context for us.

In the context what she has said, is that in Texas this isn't the first bill to deal with abortions and regulation of abortions. In fact, in the last session of the legislature, this body debated,

discussed, and fought over a bill related to abortions. That bill was the sonogram bill. That bill set certain requirements on women who sought to get an abortion. And required them, as part of that procedure, to get a sonogram. It also had provisions that were objected to by members who have districts that expand a large part of geography of our great state. And in order to make the bill palatable to some of those members, there were changes and amendments made to those procedures.

Senator Davis, in arguing against SB5, was creating context by saying: if you look at – and I'll make two points about this – if you look at the burden we're placing on women to be able to exercise their constitutional right to determine whether or not they're going to terminate a pregnancy, you have to look at all of the requirements we place on women. Not just SB5, because SB5 isn't the only requirement. And she was pointing out -- in creating that context, a very germane context -- she was pointing out that the requirements of the sonogram bill, added to the requirements of SB5, create a great burden on women wanting to carry out their con--, to, to be able to make their constitutional, exercise their constitutional right.

That is germane, creating that context. In addition, she has pointed out, and was pointing out at the time, that the sonogram bill, as I've pointed out, made amend-- there were amendments made to it, so that it would reduce the burden on women who live in places where it would be very difficult for them to get back and forth in certain time frames. But that SB5 does not have that. What she was pointing out was that it increase-- when she mentioned the sonogram bill from last session, is that it increases the burden on women, particularly when you add it to SB5, and she was pointing out that some of the problems with SB5, no one was willing to try to address and fix in the same way as they did with the sonogram bill.

Now we deal with bills all the time. If you want to, for example, see what is an aggravated offense, and you're arguing for aggravating the offense, and giving a greater penalty for that offense, it is entirely germane to that argument to say, "Let's look at what the original bill does. Let's look at what we passed last session, or the session before that, so that I can then tell you why what we're doing here is either better or worse." It is-- is entirely within that context.

Now, I also would point out that-- and I think it's important for us to pay attention. We're vote-- we're getting ready to vote on a motion to table after all of this debate and discussion. Again, I don't believe that's the way we want to end this legislative session, particularly when we take into account -- and some of us have been through some filibuster and have watched filibusters over the years. What is really -- and I think everybody would agree and I'm not going to ask anybody to agree out loud, but in your own minds you know -- this has been, if not the most scrutinized filibuster, one of the most scrutinized filibusters, maybe in the history of the state, but certainly in my knowledge about the legislature.

There has been an effort at every moment to try to say, to try to raise a point of order to stop this filibuster. Uh, you know, one of the points of order that was sustained was that in a debate on abortion, in a bill regulating a woman's constitutional right to exercise her right to terminate a

pregnancy, it was out of order to discuss the case of Roe vs. Wade decided by the United States Supreme Court, which gave rise to the constitutional right. It's been a very scrutinized filibuster where we're dealing with shades of grey.

If you read our rules, Rule 7.15 is the rule on germaneness. And it-- what it says, is "No motion or proposition on a subject different from that under consideration", and then it goes on and it's not precisely on point here, but it says, "shall be admitted under color of amendment or as substitute for the motion or proposition under debate." The key for our purposes on deciding whether or not we want to table my motion to appeal is "no motion or proposition on a subject *different* from that under consideration".

The objection, and the point of order was, that she was talking about a sonogram law that reg-- is part of the regulation of abortions, at the same time she's filibustering a bill that's caption is about the regulation of abortions. Members, I would suggest that before we table that, and don't have the opportunity to appeal the ruling, we ask whether that really is a subject different from that under consideration.

I think we ought to also ask, is it a subject different from that under consideration when we put it into the appropriate context of what Senator Davis was arguing when she was talk, bringing up, the fact, the, the, the sonogram bill. In the practice note to our rules, it says "germaneness"-- stick with me on this-- "germaneness is not a precise concept". That the, and by the way, that's in all capital letters as the first part of the practice note.

The point is, we are getting ready to vote at the end of a very long day and at the end of a very long legislative session. To table a motion to appeal, to end this filibuster or attempt to end this filibuster, because I will tell you I don't believe it's appropriate to end the filibuster without a vote of the body, I think that's what we've been promised and told in rulings all day today, and I think that rule requires that there be three findings of not-germaneness, as opposed to what we've had here today. But, but set that aside for the moment. Germaneness is not a precise concept. Why would we, as senators in the state of Texas, end on something like a motion to table?

The rule also give us some examples on things that were held germane. Here's the text: "Relating to public assistance and programs to assist needy individuals in becoming self-dependent. The amendment, which was held to be germane, authorizing maintenance payments to a divorcing spouse who lacked means of self-support." It in fact is not a precise concept. But that was something held germane, with that big a difference in what the reasons were. Those held not germane, as examples, the text was: "Recognizing May 1, 2007, as Cold War Victory Day." The amendment was: "Recognizing same day as Texas Regret for Slavery Day instead."

Another text: "Granting certain county and regional tollway authorities certain powers in building road projects requiring state assistance for those projects, and imposing a statewide moratorium on certain contracts with private road builders." The amendment that was held not to be

germane was: "Prohibiting a person contracting with the county under the bill from making a political contribution to a county judge or county commissioner or candidate therefore."

Now, members, we've all been at this a while. There's nobody here that hasn't served in a body like this before, with maybe one exception. And we all know that rulings related to germaneness end up being all over the place. But here we are, on something this big, something that we all care this much about, moving to table to avoid an appeal of the chair.

I want to give another example. In the text it indicates: "Extending authority of transportation department and county tax assessment collectors to refuse motor vehicle registrations when the owner owes any county a fine, fee, or tax." What was held not to be germane was: "Vesting rights associated with non-conforming billboards in the owner." That's a mile apart from what was going on when Senator Davis was talking about the regulation of abortions because of a sonogram law and how that applies to the regulation of abortions under SB5. It's not even in the same ballpark.

But yet here we are, getting a ruling on germaneness that we ought to have a right to appeal and debate— fully debate. Because it's a debatable motion. But instead we're going to cut off debate on a motion to table.

Part 048
Estes Moves To Table
12:20:23

Video Link: http://youtu.be/3k_XEmumyXI

Audio Link: <https://archive.org/details/SB5048EstesMovesToTable>

Transcribed by: anonymous

Senator Robert Duncan: For what purpose, Mr. Senator Estes, for what purpose?

Senator Craig Estes: I would like to move the previous question.

Senator Robert Duncan: Do you have five seconds?

Senator Craig Estes: Yes, I do.

Senator Robert Duncan: State your--

Senator Craig Estes: Senator Hancock, Senator Paxton, Senator Campbell, Senator Taylor, Senator Patrick.

Senator Kirk Watson: Parliamentary inquiry, Mr. President.

Senator Robert Duncan: State your inquiry, Senator.

Senator Kirk Watson: Before a motion to call the previous question can be made, the person who holds the floor must have completed and yielded the floor, and then the motion to call the question may be made, so that there is no further debate or discussion. But if the person has not yielded the floor, a motion to call the question would be, out of order.

Senator Robert Duncan: The motion for the previous question is not out of order. Secretary will call the roll.

[Several unidentified off-microphone voices]: Mr. President, Mr. President. Mr. President, out of order.

Senator Robert Duncan: The, the-- the motion for previous question is not a debatable motion. The secretary will call the roll.

Secretary Patsy Spaw: Birdwell.

Senator Royce West: Mr. President, Mr. President, out of order.

Senator Robert Duncan: West, state your point.

Senator Royce West: Rule 6.03 requires that all motions shall be reduced to writing and read by the secretary if desired by the presiding officer or any Senator present. I desire that it be reduced to writing and read by the secretary.

Senator Robert Duncan: Senator Estes, you've heard the request of Senator West. Would you reduce your motion to writing?

Senator Royce West: It needs to be, it needs to be in as biggest fonts as possible.

Senator Kirk Watson: Mr. President?

Senator Robert Duncan: Senator Watson, for what purpose?

Senator Kirk Watson: A parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Kirk Watson: Mr. President, I believe there is precedent for a motion—during the course of a discussion, for a motion to call the previous question, and then there being a vote

and the person being allowed to continue because of the point that I made, which is, they have not yielded the floor. And I would like for—I would like to understand the, the presiding officer's ruling that a person who has not yielded the floor can simply have someone move to call the previous question without them yielding the floor.

[consultation with parliamentarian]

Senator Robert Duncan: Senator, at this time we have a motion to put the previous question with five seconds. We will take a vote on that, and then when that's done, then if the question is ordered, then we'll go onto your question at that point in time. But for right now, the secretary will call the roll.

Senator Kirk Watson: The question is, the previous question --

Senator Robert Duncan: The secretary will call the roll.

Secretary Patsy Spaw: Birdwell, Campbell.

Senator Robert Duncan: The secretary will continue to call the roll.

Secretary Patsy Spaw: Carona, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio...

Senator Robert Duncan: We're in the middle of a roll call.

Secretary Patsy Spaw: ...Nichols, Patrick, Paxton, Rodriguez, Schwertner, Seliger, Taylor,

[wordless shout from the gallery]

Secretary Patsy Spaw: Uresti, Van de Putte, Watson...

Senator Robert Duncan: *[gave/]* We're in the middle of a roll call. Order, please.

Secretary Patsy Spaw: Whitmire, Williams, Zaffirini.

Senator Robert Duncan: There being seventeen ayes and twelve nays, the previous question prevails. Senator Van de Putte, you are recognized.

Senator Leticia Van de Putte: Mr. President, parliamentary inquiry.

Senator Robert Duncan: Recognized under your motion to adjourn.

Senator Leticia Van de Putte: Mr. President, after the-- on page 38 of our rulebook, Rule 6.09.

After the previous question has been ordered, no motions are to be made until the question or questions of which there have been ordered have been voted upon, except for motions to adjourn. Mr. President, I moved to adjourn before the roll call had started. I moved to adjourn and was heard by the members in the gallery, and I was heard by the members on the Senate. That motion to adjourn should take precedence over the motion to-- have the previous question.

Senator Robert Duncan: Senator--

Senator Leticia Van de Putte: Parliamentary inquiry, Mr. President.

Senator Robert Duncan: Senator, you were not recognized at that time. You are recognized now. You have a motion now on the table, on the floor, to adjourn, is that correct?

Senator Leticia Van de Putte: Mr. President, my parliamentary inquiry was, is that I moved to adjourn *before* the Senate roll call began, and the motion to adjourn takes precedence over the motion on the previous question, as stated by our rules.

Senator Robert Duncan: Senator, you were not recognized at that time for any motion, and you are recognized now though for a motion, if you so wish.

Senator Leticia Van de Putte: Mr. President, my fear in, in asking for a motion to adjourn is that any Senator on this floor, we have seen today to throw the rule book--

Senator Robert Duncan: Senator--

Senator Leticia Van de Putte: --out on the floor.

Senator Robert Duncan: Are you, are you, do you wish to make a motion?

Senator Leticia Van de Putte: I'm asking for, I'm asking for a parliamentary inquiry and a question of the Chair, why I was not recognized when I was clearly heard on a motion to adjourn.

Senator Robert Duncan: Senator, you were not clearly heard, we were in the process of a roll call vote.

[shouting from the gallery]

Senator Robert Duncan: Senator, you are, you are recognized now for a motion to adjourn.

Senator Leticia Van de Putte: Mr. President, my motion to adjourn was stated before the motion on the previous question, as stated in our rulebook, and that's when I wanted the motion to adjourn. That motion to adjourn takes precedence over the, the motion on the previous

question. And at that time, I wanted to make a motion. And my question is, parliamentary inquiry, did the president hear me state the motion, or did the president hear me and refuse to recognize it?

Senator Robert Duncan: Senator, you are now recognized on the motion to adjourn.

Senator Leticia Van de Putte: I do not wish to make that motion at this time, Senator—

Senator Robert Duncan: Okay.

Senator Leticia Van de Putte: Mr. President, I wish, I had wished to make it beforehand.

Senator Robert Duncan: So now the motion, so now the motion, now the issue before the body is the appeal of the lieutenant, of the presiding officer's ruling on the point of order related to germaneness raised by Senator Campbell. The secretary will call the roll.

[Unidentified feminine voice]: The president's ruling stands.

Secretary Patsy Spaw: Birdwell.

Senator Robert Duncan: The issue before you is shall the president's ruling on the point of order on germaneness raised by Senator Campbell stand. The secretary will call the roll.

Secretary Patsy Spaw: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodriguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte...Watson, West, Whit...Whitmire, Williams, Zaffirini.

Senator Robert Duncan: The-- there being nineteen ayes and ten nays, the president's ruling stands. Senator Patrick?

Senator Dan Patrick: I move the previous question, Mr. President.

Senator Robert Duncan: Do you have five seconds?

Senator Dan Patrick: I have five seconds.

Senator Robert Duncan: State the seconds.

Senator Dan Patrick: Hancock. Birdwell. Campbell. Estes. Paxton.*[pause]*And Taylor.

Senator Robert Duncan: Members, the previous question has been moved on, Senate Bill 5. The question will be on the previous question, there are five seconds. Uh, Senator Watson, I

think, did you have a parliamentary inquiry?

Senator Kirk Watson: I did, Mr. President, I have a parliamentary inquiry. Before there can be a motion to call the question, shouldn't there be a ruling on whether or not there is an end to the filibuster, put to the body?

Senator Robert Duncan: The president's ruling was, that the effect of the president's ruling on the third infraction is the vote of the body, and the previous question is in order at this time.

Part 049
Van de Putte Recognized
12:32:48

Video Link: <http://youtu.be/SLBzJe7n0Bc>

Audio Link: <https://archive.org/details/SB5049VanDePutteRecognized>

Transcribed by: A.O.

Senator Robert Duncan: Senator Van de Putte, uh, for what purpose?

Senator Leticia Van de Putte: Mr. President, parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Van de Putte: Mr. President, parliamentary inquiry. If a member on the prevailing side of the motion can be recognized for a motion to reconsider the vote by which the last vote occurred, does that motion take-- does not that motion take precedence?

Senator Robert Duncan: Not... uh, hang on a second... We are on another motion at this time, and so, it would not be in order at this time to reconsider the vote, on a previous matter before the body.

Senator Leticia Van de Putte: Mr. President, parliamentary inquiry.

Senator Robert Duncan: State your inquiry.

Senator Leticia Van de Putte: At what point must a female Senator raise her hand or her voice to be recognized over the male colleagues in the room?

[EDITOR'S NOTE: *Loud cheering and applause from the gallery. The following dialogue takes place over the sounds of the crowd.*]

Senator Robert Duncan: The Sec-- the, uh, the issue before the body, is the previous question. The secretary will call the roll.

Secretary: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodriguez, Schwertner--

Senator Robert Duncan: *[gavels]*

Senator Royce West: We're not voting yet.

Senator Robert Duncan: Members, we are in the middle of a vote, the Secretary has called the vote.

[EDITOR'S NOTE: *The recording loses audio for about twenty seconds after this, the mic apparently having been turned off.*]

Secretary: --Seliger, Taylor, Uresti, Van de Putte--

Senator Robert Duncan: If we can have order in the chamber--

Secretary: W--

Senator Robert Duncan: --so that the members can properly cast their vote.

Secretary: --West, West?

Senator Robert Duncan: Let's--

Secretary: --West, Whitmire.

Senator Robert Duncan: If I could have order--

Secretary: Wi-

Senator Robert Duncan: --we will suspend the roll call vote until we can get order in the chamber. If we can get order in the chamber, we will suspend the roll call vote.

Secretary: Zaffirini... Zaffirini?

Senator Robert Duncan: I'm trying to do it.

[EDITOR'S NOTE: *The audience in the gallery cheers, claps, whistles, yells, and chants*

"Wendy" for about 7.5 minutes.]

Senator Robert Duncan: If I can have some order...

Senator Robert Duncan: The, uh, if I can have your attention...

Senator Robert Duncan: There being 19 ayes and 10 nays, the, uh, previous question is adopted...

[EDITOR'S NOTE: *The audience in the gallery cheers, claps, whistles, yells, and chants "Wendy" and "Shame!" for about 2 minutes.]*

Senator Royce West: *[Holding his watch aloft.]* It's twelve o'clock! It's twelve o'clock!

Secretary: *[Beginning of roll call is unintelligible over the shouting in the gallery.]* Estes, Fraser, Garcia, Hancock, Heger, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodriguez, Rodriguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West... Whitmire... Zaffirini *[Shouting and chanting continue from the gallery through the end of the segment.]*

**Part 050
West Reads Clock at Midnight
12:52:05**

Video Link: <http://youtu.be/c1iTSY7Qysc>

Audio Link: <https://archive.org/details/SB5050WestReadsClockAtMidnight>

Transcribed by: Debbie Notkin

[EDITOR'S NOTE: *The gallery members continues to cheer and chant. Legislators mill about; very few are in their seats. A large group is clustered around the podium. Several unidentified senators make repeated calls for "Mr. President!"; Senators Royce West and Kirk Watson are among them. The gallery members quiet so that Senators West and Watson may speak.]*

Unidentified Senator(s): Mr. President! Mr. President! Mr. President!

Senator Royce West: Mr. President?

Senator Kirk Watson: Mr. President?

Unidentified Gallery Participant: We are the people!

Senator Royce West: Mr. President?

Senator Kirk Watson: Mr. President?

Unidentified Senator: There's nobody in the Chair!

[EDITOR'S NOTE: *Lt. Gov. Dewhurst climbs the podium and takes the Chair.*]

Senator Royce West: Mr. President! What time does the session end? Midnight! We-- We can't take the vote after midnight! There's no session. Point of order! Constitutional point of order. Constitutional point of order!

Unidentified Gallery Participant: We are the people! We are your constituents! Listen to us!

Unidentified Senator: Make a record.

Senator Kirk Watson: Mr. President?

Senator Royce West: Constitutional point of order.

Lt. Gov. David Dewhurst: Members, it's now past midnight, and so I'm going to look for a motion from Senator Whitmire to *sine die*.

[EDITOR'S NOTE: *"Sine die" is Latin for "without day" and means to adjourn without setting a day for additional meeting or hearing. It is used in place of dissolution to allow the body to be recalled into a special session.*]

Senator Royce West: No. No, don't do that.

Senator Kirk Watson: Mr. President?

Unidentified Senator(s): Mr. President! Mr. President! Mr. President! Mr. President!

Senator Kirk Watson: Parliamentary inquiry. Parliamentary inquiry.

Senator Royce West: Point of order.

[EDITOR'S NOTE: *Lt. Gov. Dewhurst leaves the chair. A faint, but rising, chant of "Shame!" can be heard from the protesters circling the outside of the Capitol building. Legislators move about the floor in discussion; all discussion is muted and/or unintelligible.*]

Closed Door Session

13:00:00

Video Link: <http://youtu.be/XxX7wWV2PJs>

Audio Link: <https://archive.org/details/SB5051ClosedDoorSession>

Transcribed by @LadyDreamgirl and Transcribed by Erika from “Something Short and Snappy”

[EDITOR’S NOTE: This video portion is significantly long (2 hours, 51 minutes, and 48 seconds) and mostly silent while the legislators debate on and off the floor and the protesters from outside continue to chant and cheer.]

Unidentified Voice [at 13:12:52]: Wireless microphone, lock it up. Wireless microphone. Wireless microphone, [unintelligible].

Senator Tommy Williams [at 14:16:50]: Chair recognizes Senator Whitmire for an announcement.

[EDITOR’S NOTE: Senator John Whitmire ranks first in seniority in the Texas Senate due to his 27+ years of experience; this seniority grants him the title “Dean of the Senate”. LINK: [Senator John Whitmire: District 15.](#)]

Senator John Whitmire: Mr. President, this is for all the members. Some, I understand, are in their office, some have staff on the floor, but it's necessary to have a Senate caucus at this time. So I'd ask everyone to caucus in the Betty King room immediately. And if there's any staff on the floor, they could get word to those senators that are either in their office or even conceivably if they've left, it would be probably advisable to come back.

Senator Tommy Williams: Thank you, Dean.

[EDITOR’S NOTE: There is the sound of a gavel. Senator Williams gestures up at someone off-camera and walks quickly away from the podium chair. Senator Whitmire’s microphone appears to cut out while he is speaking the next sentence.]

Senator John Whitmire: Well, I was going to say right now but give--

[EDITOR’S NOTE: It should be noted here that it was during this video portion (at approximately 12:53 a.m.) that the timestamp for the Senate vote was initially put up on the Senate website as taking place on June 26th, after the end of the special session. The website was then quickly altered (at approximately 1:03 a.m.) to indicate that the Senate vote had taken place on June 25th, before the end of the special session.

Screenshots by @MatthewKeysLive are [here](#). Discussion by Lauren Hockenson is here: [How a](#)

[photo on Twitter helped kill a controversial Texas abortion bill](#). Discussion by Neetzan Zimmerman is here: [Internet Catches Texas Senate Altering Timestamp on Abortion Bill Vote](#).

During this time, the Associated Press ran an article at 1:34 a.m. titled "Texas Senate GOP passes restrictive abortion bill" with a byline credited to "Jim Vertuno and Chris Tomlinson". This article stated that the vote had been taken and the bill passed, citing that "Reporters and Democrats saw the voting begin after midnight, but Lt. Gov. David Dewhurst said it began just before." This article was later removed from the AP website, but the original page was [here](#) and a Google cached version of the page can be found [here](#), as of 8/2/2013. The full text of the article was run in the LMTonline [here](#), with an editor's note indicating that AP's assertion that the bill was passed could not be verified by LMTonline.

On June 27th, the Huffington Post ran an interview with Senator Leticia Van de Putte in which stated her belief that a government investigation into the altered timestamp should soon follow, on the grounds that alteration of a government document is a felony offense. "I think there will be an investigation," she told The Huffington Post in an interview. "You can't try to change a government document. The length they were willing to go to to break Senate rules -- tampering with a government document? That's a felony." LINK: [Leticia Van De Putte. Texas Senator: GOP Should Be Investigated For Changing Abortion Vote Timestamp](#)]

Part 052
Dewhurst Concedes
15:51:40

Video Link: <http://youtu.be/BoJXndK7EIs>
Audio Link: <https://archive.org/details/SB5052DewhurstConcedes>
Transcribed by: Jacqueline Kuzio

Lt. Gov. David Dewhurst: Members, regrettable the constitutional time for the first called session of the 83rd legislature has expired. Senate Bill 5 cannot be signed in the presence of the senate, at this time, and therefore cannot be enrolled.

Lt. Gov. David Dewhurst: It's been fun. But, um, see you soon.

APPENDIX A

Text of Senate Bill 1 in 83(2) Session / Senate Bill 5 in 83(1) Session

Link: <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=832&Bill=SB1>

Bill: SB 1

Legislative Session: 83(2)

Council Document: 83S2 17 JSC-F

Caption Text: Relating to the regulation of abortion procedures, providers, and facilities; providing penalties.

Author: [Hegar](#)

Coauthor: [Birdwell](#) | [Campbell](#) | [Estes](#) | [Lucio](#) | [Nelson](#) | [Patrick](#) | [Paxton](#) | [Taylor](#) | [Williams](#)

Sponsors: [Laubenberg](#) | [Hilderbran](#)

Subjects:

Abortion (I0005)

PREBORN PAIN ACT (P0624)

HEALTH & HUMAN SERVICES COMMISSION (V0177)

MEDICAL BOARD, TEXAS (V0644)

Senate Committee: Health & Human Services

[Bill Text:](#)

83S20017 JSC-F

By: Hegar

S.B. No. 1

A BILL TO BE ENTITLED AN ACT

relating to the regulation of abortion procedures, providers, and facilities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The findings indicate that:

(1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;

(2) the state has a compelling state interest in protecting the lives of unborn children

from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

(3) the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and

(4) restricting elective abortions at or later than 20 weeks post-fertilization, as provided by this Act, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:

(A) the woman has adequate time to decide whether to have an abortion in the first 20 weeks after fertilization; and

(B) this Act does not apply to abortions that are necessary to avert the death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman or abortions that are performed on unborn children with severe fetal abnormalities.

(b) The legislature intends that every application of this statute to every individual woman shall be severable from each other. In the unexpected event that the application of this statute is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of the statute to those women shall be severed from the remaining applications of the statute that do not impose an undue burden, and those remaining applications shall remain in force and unaffected, consistent with Section 10 of this Act.

SECTION 2. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.0031 to read as follows:

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) A physician performing or inducing an abortion:

(1) must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(A) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B) provides obstetrical or gynecological health care services; and

(2) shall provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b) A physician who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

SECTION 3. Chapter 171, Health and Safety Code, is amended by adding Subchapters C and D to read as follows: SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION

Sec. 171.041. SHORT TITLE. This subchapter may be cited as the Preborn Pain Act.

Sec. 171.042. DEFINITIONS. In this subchapter:

(1) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(2) "Severe fetal abnormality" has the meaning assigned by Section 285.202.

Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:

(1) making a determination of the probable post-fertilization age of the unborn child; or

(2) possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician.

Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

Sec. 171.045. METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

(1) the probable post-fertilization age of the unborn child is 20 or more weeks; or

(2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.

(b) Except as otherwise provided by Section 171.046(a)(3), a physician performing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

(1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;

(2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or

(3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) A physician may not take an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(b) Unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall

direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(c) A court may order the disclosure of information that is confidential under this section if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on each interested party; and

(3) the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter. SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.061. DEFINITIONS. In this subchapter:

(1) "Abortion" means the act of using, administering, prescribing, or otherwise providing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to terminate a clinically diagnosable pregnancy of a woman and with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the woman's unborn child. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion;

(C) remove an ectopic pregnancy; or

(D) treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(3) "Final printed label" or "FPL" means the informational document approved by the United States Food and Drug Administration for an abortion-inducing drug that:

(A) outlines the protocol authorized by that agency and agreed to by the drug company applying for authorization of the drug by that agency; and

(B) delineates how a drug is to be used according to approval by that agency.

(4) "Gestational age" means the amount of time that has elapsed since the first day of a woman's last menstrual period.

(5) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion.

(6) "Mifeprex regimen," "RU-486 regimen," or "RU-486" means the abortion-inducing drug regimen approved by the United States Food and Drug Administration that consists of administering mifepristone and misoprostol.

(7) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(8) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus.

(9) "Unborn child" means an offspring of human beings from conception until birth.

Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD. Notwithstanding Section 171.005, the Texas Medical Board shall enforce this subchapter.

Sec. 171.063. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly give, sell, dispense, administer, provide, or prescribe an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

(1) the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician; and

(2) except as otherwise provided by Subsection (b), the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug.

(b) A person may provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(c) Before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, the physician must examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(e) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug. At the follow-up visit, the physician must:

(1) confirm that the pregnancy is completely terminated; and

(2) assess the degree of bleeding.

(f) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (e). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(g) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred.

Sec. 171.064. ADMINISTRATIVE PENALTY. (a) The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code, against a person who violates Section 171.063.

(b) A penalty may not be assessed under this section against a pregnant woman who receives a medical abortion.

SECTION 4. Section 245.010(a), Health and Safety Code, is amended to read as follows:

(a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171. On and after September 1, 2014, the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under Section 243.010 for ambulatory surgical centers.

SECTION 5. Section 245.011(c), Health and Safety Code, is amended to read as

follows:

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient; and

(9) the number of previous induced abortions of the patient.

SECTION 6. Section 164.052(a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment; or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis; [or]

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian; or

(20) performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, Chapter 171, Health and Safety Code.

SECTION 7. Section 164.055(b), Occupations Code, is amended to read as follows:

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

SECTION 8. Effective September 1, 2014, Section 245.010(c), Health and Safety Code, is repealed.

SECTION 9. This Act may not be construed to repeal, by implication or otherwise, Section 164.052(a)(18), Occupations Code, Section 170.002, Health and Safety Code, or any other provision of Texas law regulating or restricting abortion not specifically addressed by this Act. An abortion that complies with this Act but violates any other law is unlawful. An abortion that complies with another state law but violates this Act is unlawful as provided in this Act.

SECTION 10. (a) If some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Texas law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.

(b) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The legislature further declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional or to represent an undue burden.

(c) If Subchapter C, Chapter 171, Health and Safety Code, as added by this Act, prohibiting abortions performed on an unborn child 20 or more weeks after fertilization is found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which the subchapter can be constitutionally applied.

(d) If any provision of this Act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

SECTION 11. (a) The executive commissioner of the Health and Human Services Commission shall adopt the standards required by Section 245.010, Health and Safety Code, as amended by this Act, not later than January 1, 2014.

(b) A facility licensed under Chapter 245, Health and Safety Code, is not required to

comply with the standards adopted under Section 245.010, Health and Safety Code, as amended by this Act, before September 1, 2014.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Bill Analysis:

Senate Research Center
83S20017 JSC-F

S.B. 1

By: Hegar
Health & Human Services
7/1/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

At 20 weeks post-fertilization, scientific evidence suggests that preborn children are capable of feeling pain as all the neuro-receptors for pain are in place and functioning. Myriad peer-reviewed studies have found anatomical, behavioral, and physiological evidence that the developing preborn child is capable of experiencing pain by 20 weeks post-fertilization. A 2007 study by the Department of Obstetrics and Gynecology at the University of Arkansas for Medical Sciences states that "fetuses undergoing intrauterine invasive procedures, definitely illustrative of pain signaling, were reported to show coordinated responses signaling the avoidance of tissue injury." Pre-born pain laws similar to this legislation have been passed in other states.

S.B. 1 establishes a separate and independent compelling state interest in protecting the lives of the unborn children from the state at which the medical evidence indicates they are capable of feeling pain.

Mifeprex (RU-486) was approved by the United States Food and Drug Administration (FDA) for use by pregnant women wishing to terminate a pregnancy for up to 49 days gestation only. The drug has no other approved indication for use during pregnancy. The RU-486 label instructs that tablets are intended for oral administration only, and should be administered only in a clinic, medical office, or hospital, and by or under the supervision of a physician able to assess the gestational age of an embryo and to diagnose ectopic pregnancies. Abortion-inducing drugs pose substantial risks to women, and these risks are magnified when the drugs are misused. The purpose of S.B. 1 is to protect the health and welfare of women considering a drug-induced

abortion. It ensures that physicians providing drug-induced abortions are only doing so in the way in which the FDA tested and approved the abortion-inducing drug.

S.B. 1 requires that Texas abortion providers meet the basic standards prescribed by the manufacturer of RU-486 and the FDA. This includes requiring that abortion-inducing drugs be provided only by a physician and that the physician examine the woman prior to administering the abortion-inducing drug. S.B. 1 requires that the drug label be provided to the patient.

S.B. 1 requires that the woman receive the name and telephone number of the physician or other health care personnel who will handle emergencies that arise from the use of the abortion-inducing drug. Finally, the physician must provide a written report of adverse events to the FDA MedWatch Reporting System.

Many women suffer from minor to severe medical complications as a result of surgical procedures, including abortions. Women who choose to have an abortion should receive the same standard of care any other individual in Texas receives, regardless of the surgical procedure performed. S.B. 1 seeks to increase the health and safety of a woman who chooses to have an abortion by requiring a physician performing or inducing an abortion to have admitting privileges at a hospital and to provide certain information to the woman.

In 1992, the Supreme Court ruled in *Casey v. Planned Parenthood* that states have the right to regulate abortion clinics. In 1997, Texas enforced increased regulations; however, today 38 licensed abortion facilities still operate at a second, lower standard for the most common surgical procedure in Texas performed solely on women. Six Texas abortion facilities meet the standard as ambulatory surgical facilities. In medical practice, Medicare is the national standard for insurance reimbursement. Abortion is an all cash (or limited credit card) business, so abortion facilities have not been subject to the same oversight as other surgical facilities.

Moving abortion clinics under the guidelines for ambulatory surgical centers will provide Texas women choosing abortion the highest standard of health care. Texas allows no other procedure to opt out of the accepted standard of care.

Miscarriages are excluded from the definition of abortion as defined in Section 245.002 of the Texas Health and Safety Code. Physicians' offices and clinics performing less than 50 abortions in any 12-month period are excluded by Section 245.004 (Exemptions From Licensing Requirement) of the Texas Health and Safety Code.

S.B. 1 amends Chapter 171 of the Health and Safety Code to prohibit abortions at or after 20 weeks post-fertilization unless there is a significant physical threat to the life of the mother; amends current law relating to requirements for physicians who perform abortions, and creates an offense; amends current law relating to distributing or prescribing abortion-inducing drugs and provides penalties; and amends current law relating to minimum standards for abortion facilities.

S.B. 1 amends current law relating to the regulation of abortion procedures, providers, and facilities and provides penalties.

[Note: While the statutory reference in this bill is to the Texas Board of Health (board), the following amendments affect the executive commissioner of the Health and Human Services Commission and the Department of State Health Services, as the successor agencies to the board.]

As proposed, S.B. 1 amends current law relating to the regulation of abortion procedures, providers, and facilities; providing penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is modified in SECTION 4 (Section 245.010, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Provides that the findings indicate that:

(1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;

(2) the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

(3) the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and

(4) restricting elective abortions at or later than 20 weeks post-fertilization, as provided by this Act, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:

(A) the woman has adequate time to decide whether to have an abortion in the first 20 weeks after fertilization; and

(B) this Act does not apply to abortions that are necessary to avert the death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman or abortions

that are performed on unborn children with severe fetal abnormalities.

(b) Provides that the legislature intends that every application of this statute to every individual woman be severable from each other. Requires that the application of the statute to those women, in the unexpected event that the application of this statute is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, be severed from the remaining applications of the statute that do not impose an undue burden, and those remaining applications are required to remain in force and unaffected, consistent with Section 10 of this Act.

SECTION 2. Amends Subchapter A, Chapter 171, Health and Safety Code, by adding Section 171.0031, as follows:

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) Requires a physician performing or inducing an abortion to:

(1) on the date the abortion is performed or induced, have active admitting privileges at a hospital that is located not further than 30 miles from the location at which the abortion is performed or induced and provides obstetrical or gynecological health care services; and

(2) provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b) Provides that a physician who violates Subsection (a) commits an offense. Provides that an offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

SECTION 3. Amends Chapter 171, Health and Safety Code by adding Subchapters C and D, as follows:

SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION

Sec. 171.041. SHORT TITLE. Authorizes that this subchapter be cited as the Preborn Pain Act.

Sec. 171.042. DEFINITIONS. Defines "post-fertilization age" and "severe fetal abnormality" in this subchapter.

Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Prohibits a physician, except as otherwise provided by Section 171.046, from performing or inducing or attempting to perform or induce an abortion without, prior to the procedure:

- (1) making a determination of the probable post-fertilization age of the unborn child; or
- (2) possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician.

Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Prohibits a person, except as otherwise provided by Section 171.046, from performing or inducing or attempting to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

Sec. 171.045. METHOD OF ABORTION. (a) Provides that this section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

- (1) the probable post-fertilization age of the unborn child is 20 or more weeks; or
 - (2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.
- (b) Requires a physician performing an abortion under Subsection (a), except as otherwise provided by Section 171.046(a)(3), to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Sec. 171.046. EXCEPTIONS. (a) Provides that the prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

- (1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;
- (2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20

or more weeks; or

(3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) Prohibits a physician from taking an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) Provides that the prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Provides that except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(b) Requires the court to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity.

(c) Authorizes a court to order the disclosure of information that is confidential under this section if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on each interested party; and

(3) the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) Requires that this subchapter be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Provides that judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) Requires the court to interpret the provision, as a matter of state law, to avoid the vagueness problem and to enforce the provision to the maximum possible extent if any court determines that a provision of this subchapter is unconstitutionally vague. Requires the Supreme Court of Texas to provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and to agree to answer any question certified from a federal appellate court regarding the statute if a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection.

(c) Prohibits a state executive or administrative official from declining to enforce this subchapter, or adopting a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) Prohibits this subchapter from being construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter.

SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.061. DEFINITIONS. Defines "abortion," "abortion-inducing drug," "final printed label" or "FPL," "gestational age," "medical abortion," "Mifeprex regimen," "RU-486 regimen," "RU-486," "physician," "pregnant," and "unborn child" in this subchapter.

Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD. Requires the Texas Medical Board (TMB), notwithstanding Section 171.005 (Department to Enforce), to enforce this subchapter.

Sec. 171.063. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a) Prohibits a person from knowingly giving, selling, dispensing, administering, providing, or prescribing an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

(1) the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician; and

(2) except as otherwise provided by Subsection (b), the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug.

(b) Authorizes a person to provide, prescribe, or administer the abortion-inducing drug in the

dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(c) Requires the physician, before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, to examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

(d) Requires the physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(e) Requires the physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, to schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug. Requires the physician, at the follow-up visit, to confirm that the pregnancy is completely terminated and assess the degree of bleeding.

(f) Requires the physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, to make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (e). Requires the physician or the physician's agent to document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(g) Requires the physician to report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred if a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug.

Sec. 171.064. ADMINISTRATIVE PENALTY. (a) Authorizes TMB to take disciplinary action under Chapter 164 (Disciplinary Actions and Procedures), Occupations Code, or assess an administrative penalty under Subchapter A (Administrative Penalties), Chapter 165 (Penalties),

Occupations Code, against a person who violates Section 171.063.

(b) Prohibits a penalty from being assessed under this section against a pregnant woman who receives a medical abortion.

SECTION 4. Amends Section 245.010(a), Health and Safety Code, as follows:

(a) Requires that the rules contain minimum standards to protect the health and safety of a patient of an abortion facility and contain provisions requiring compliance with the requirements of Subchapter B (Informed Consent), Chapter 171. Requires that the minimum standards for an abortion facility, on and after September 1, 2014, be equivalent to the minimum standards adopted under Section 243.010 (Minimum Standards) for ambulatory surgical centers.

SECTION 5. Amends Section 245.011(c), Health and Safety Code, to require that the annual report each abortion facility is required to submit to the Texas Department of Health include certain information, including the probable post-fertilization age of the unborn child, rather than the period of gestation, based on the best medical judgment of the attending physician at the time of the procedure.

SECTION 6. Amends Section 164.052(a), Occupations Code, to provide that a physician or an applicant for a license to practice medicine commits a prohibited practice if that person commits certain actions, including performing or inducing or attempting to perform or induce an abortion in violation of Subchapter C, Chapter 171, Health and Safety Code.

SECTION 7. Amends Section 164.055(b), Occupations Code, to provide that the criminal penalties provided by Section 165.152 (Practicing Medicine in Violation of Subtitle) do not apply to a violation of Section 170.002 (Prohibited Acts; Exemption) or Subchapter C, Chapter 171, Health and Safety Code.

SECTION 8. Repealer, effective September 1, 2014: Section 245.010(c) (relating to prohibiting certain standards from being more stringent than Medicare certification standards), Health and Safety Code.

SECTION 9. Prohibits this Act from being construed to repeal, by implication or otherwise, Section 164.052(a)(18) (relating to providing that a physician or an applicant for a license to practice medicine commits a prohibited practice if that person performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy under certain conditions), Occupations Code, Section 170.002, Health and Safety Code, or any other provision of Texas law regulating or restricting abortion not specifically addressed by this Act. Provides that an abortion that complies with this Act but violates any other law is unlawful. Provides that an abortion that complies with another state law but violates this Act is unlawful as provided in this Act.

SECTION 10. (a) Requires that all other provisions of Texas law regulating or restricting abortion be enforced as though the restrained or enjoined provisions had not been adopted if some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions are required to have full force and effect.

(b) Provides that, mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. Requires that the remaining applications of that provision to all other persons and circumstances be severed and are prohibited from being affected if any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid. Requires that all constitutionally valid applications of this Act be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Requires that the applications that do not present an undue burden be severed from the remaining provisions and remain in force, and be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden even if a reviewing court finds a provision of this Act to impose an undue burden in a large or substantial fraction of relevant cases. Provides that the legislature further declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional or to represent an undue burden.

(c) Requires that the prohibition apply to a person or group of persons or circumstances on the earliest date on which the subchapter can be constitutionally applied if Subchapter C, Chapter 171, Health and Safety Code, as added by this Act, prohibiting abortions performed on an unborn child 20 or more weeks after fertilization is found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances.

(d) Requires that the applications of a provision that do not present constitutional vagueness problems be severed and remain in force if any provision of this Act is found by any court to be unconstitutionally vague.

SECTION 11. (a) Requires the executive commissioner of the Health and Human Services Commission to adopt the standards required by Section 245.010, Health and Safety Code, as amended by this Act, not later than January 1, 2014.

(b) Provides that a facility licensed under Chapter 245 (Abortion Facilities), Health and Safety

Code, is not required to comply with the standards adopted under Section 245.010, Health and Safety Code, as amended by this Act, before September 1, 2014.

SECTION 12. Effective date: upon passage or on the 91st day after the last day of the legislative session.

Bill Fiscal Note:

LEGISLATIVE BUDGET BOARD
Austin, Texas
FISCAL NOTE, 83rd LEGISLATURE 2nd CALLED SESSION - 2013
July 3, 2013

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1 by Hegar (Relating to the regulation of abortion procedures, providers, and facilities; providing penalties.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code and the Occupations Code relating to the regulation of abortion procedures, providers, and facilities and providing penalties. The bill would prohibit abortions at or after 20 weeks post-fertilization and adds a violation related to abortions performed at or after 20 weeks post-fertilization to the list of prohibited practices by physicians or license applicants. The bill includes provisions of exception which allow an abortion, via the method most likely to lead to live birth, if the mother's life or physical impairment of a major bodily function is at risk or if the unborn child has a severe fetal abnormality as defined in the bill.

The bill would authorize the Texas Medical Board to assess administrative penalties for violations of physicians distributing or prescribing abortion-inducing drugs in certain situations. The bill would create a new minimum standard for abortion facilities licensed by the Department of State Health Services (DSHS). A facility licensed under the chapter would not be required to meet the new standards until September 1, 2014.

The bill states that the requirements of the bill are severable if a portion of the bill is found by a court to be invalid. The bill would take effect immediately if a two-thirds majority vote in both houses of the Legislature is received. Otherwise, the bill would take effect on the 91st day after the last day of the legislative session.

Based on the analysis provided by DSHS, the Texas Medical Board, and the Office of Court Administration, it is assumed that the provisions of the bill can be implemented within existing resources. DSHS indicates that any potential loss of revenue in licensing fees related to the new facility licensing standards could be absorbed within existing resources.

Local Government Impact

The bill would create a fine-only Class A misdemeanor offense punishable by a fine not to exceed \$4,000. Costs associated with enforcement, prosecution, and confinement could likely be absorbed with existing resources. Revenue from fines imposed and collected is not anticipated to have a significant fiscal impact.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 503 Texas Medical Board, 537 State Health Services, Department of

LBB Staff: UP, CL, MB, CH, LR, NB