

Senate Health, Children, & Social Services Committee Meeting

Official Minutes

149th General Assembly

First Session

Committee Meeting

Wednesday May 3rd, 2017

2:30 p.m.

Senate Hearing Room

Meeting Attendance

Committee Members:

Present:

Senator Bryan Townsend	Bryan.Townsend@state.de.us	302-744-4165
Senator Nicole Poore	Nicole.Poore@state.de.us	302-744-4164
Senator Stephanie Hansen	Stephanie.Hansen@state.de.us	302-744-4138
Senator Catherine Cloutier	Catherine.Cloutier@state.de.us	302-744-4137
Senator Ernie Lopez	Ernesto.Lopez@state.de.us	302-744-4136

Other Legislators Present:

Senator Gary Simpson	Gary.Simpson@state.de.us	302-744-4134
Senator Bryant Richardson	Bryant.Richardson@state.de.us	302-744-4298
Senator Greg Lavelle	Greg.Lavelle@state.de.us	302-744-4135
Senator Anthony DelCollo	Anthony.Delcollo@state.de.us	302-744-4133
Representative Debra Heffernan	Debra.Heffernan@state.de.us	302-744-4351

Staff:

Annie Gould	Anne.Gould@state.de.us	302-744-4059
-------------	--	--------------

Attendees:**Organization:****Phone:**

Ruth Lytle Barnaby	Planned Parenthood of DE	
Kathleen MacRae	ACLU of DE	
Yair Robinson	Clergy for Choice	
Sage Carson	Generation Action	
Dr. Greg Demeo	American College of OB/GYN	
Joanne Hass	League of Women Voters	
Cheryl Siskin		
Linda Barnet	AAUW	
Marian Palley	Planned Parenthood of DE	
Bess McAneny	DE Nurses for Life	(302) 593-7876
Moira Sheridan	DE Right to Life	(302) 478-5469
Donna Latteri	Citizen for Life	(862) 266-1099
Kathy Arnold	Citizen for Life	(302) 275-6370
James Anderson	We Stand for Life	(302) 663-0399
Linda Kok	DE Right to Life	(302) 559-2479
Natalie Kok	DE Right to Life	(302) 547-2627
Pat Squies		
Julie Clymen		(302) 368-2446
Amy Hughes	She Decides Delaware	(302) 652-2179
Cheryl Fetterolf	She Decides Delaware	(302) 750-4505
Terry Masters	She Decides Delaware	(203) 386-0956
Sharon Kwiatkowski	She Decides Delaware	(302) 999-1394
Deborah Snead		(302) 284-4972
Cheryl Precourt		(302) 734-8562
Priscilla Alexander	DE Right to Life	(302) 241-1801
William H. Daisey	DE Right to Life	(302) 648-9879
John Nichols		(302) 378-0683
Jon Walson		(302) 359-5039
Joanne Finnigan	DHSS	
Cheryl Heiks	Connections	
Michael T. Andrews	Faith Community Church	(281) 757-1076
John Roseti	Faith Community Church	(570) 856-3327
Dee Lynch	DE Right to Life	
Jennifer Fink		
Joe Fitzgerald	Catholic Diocese of Wilmington	

Agenda:**SB 5**

Senator Townsend brought the meeting to order at 2:35 p.m. He provided an outline for the hearing and introduced the members of the committee as well as the other legislators in attendance.

Senator Lopez made a motion to approve the minutes from the April 26, 2017 meeting of the committee. The motion was seconded by Senators Cloutier and Hansen. Minutes were approved unanimously.

SB 5 (Townsend) *AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE CODIFYING U.S. SUPREME COURT PRECEDENT RELATING TO THE TERMINATION OF PREGNANCY.*

SYNOPSIS - The United States Supreme Court's decisions in Roe v. Wade and subsequent cases established that access to abortion is a constitutional right and that states may not prohibit abortion prior to viability. As a result of these decisions, and the exercise of prosecutorial discretion by the Attorney General, see Del. Op. Att'y Gen. No. 73-030, § III (Apr. 12, 1973), the Delaware Code's prohibitions against abortion are unconstitutional, and thus unenforceable. This Act modernizes Delaware's laws on abortion to be consistent with the scope of the right protected by the United States Constitution and the practice in Delaware for the past 43 years. In doing so, this Act permits the termination of a pregnancy prior to viability, to protect the life or health of the mother, or in the event of serious fetal anomaly.

Senator Townsend introduced the bill stating that the bill is intended to align Delaware law with current federal law. He explained that the impetus for the bill was the growing concern that the United States Supreme Court could overturn the *Roe v. Wade* decision, leaving the legality of abortion entirely up to the states. He emphasized that the bill does not make a change to how Delaware law has been interpreted under the federal framework for the last 43 years.

Ruth Lytle-Barnaby, CEO and President of Planned Parenthood of Delaware, spoke in support of SB 5. She stated that women who seek an abortion are human and making the best of circumstances not always within their control, making the decision about whether or not to continue their pregnancies with thoughtfulness and consciousness of everything and everyone else in their lives. She also stated that although better methods of contraception are available now, as long as contraception and its use are imperfect, the need for abortion will exist.

Kathleen MacRae, Executive Director of the ACLU of Delaware, spoke in support of SB 5. She stated that it was time that Delaware caught up with the federal laws that guarantee a woman the right to access to an abortion. She reminded the members of the committee that the US Supreme Court has voted five times in favor of a woman's right to access to an abortion in 1973, most recently in June 2016.

Rabbi Yair Robinson, senior rabbi of Congregation Beth Emeth, the largest Synagogue in Delaware, spoke in support of SB 5. He shared the phrase "Betzelem Elohim," which means, with humility, that to discriminate against any person is to discriminate against God. He stated that this must include women, especially over the choice of when or if they will bear children. He read a letter from Clergy for Choice in support of SB 5 and submitted it to the record.

Sage Carson, President of Generation Action at the University of Delaware, spoke in support of SB 5. She provided personal testimony about why she believes that access to reproductive health care and abortion is critical to the financial security of women. She specifically mentioned access to higher education and how becoming pregnant can derail the chances for many young women to pursue degrees or careers.

Dr. Greg Demeo, a representative of the American College of Obstetricians and Gynecologists (ACOG), spoke in support of SB 5. He stated that the legislation intentionally neither expands, nor restricts, access to abortions for women in Delaware and complies with current best practices. He stated that ACOG opposes the termination of a healthy pregnancy after viability in a healthy woman. He explained the definition of viability and that the legislation ensures physicians have the ability to provide care that is compassionate and medically appropriate under the circumstances, according to their years of training in what is medically and ethically appropriate.

Joanne Haas, a representative of the League of Women Voters, spoke in support of SB 5. She stated that the League's support is based on their national position, adopted in 1983, that public policy in a pluralistic society such as ours must affirm the constitutional right of privacy of the individual to make reproductive choices.

Cheryl Siskin spoke in support of SB 5. She provided personal testimony of her experience of having an abortion at Planned Parenthood when she was in high school. She went on to college, graduate school, and law school, then she was able to choose when to have children. She also shared the story of her cousin who also received an abortion at a young age, but through an underground, botched procedure, which affected her ability to have children once she was ready. Ms. Siskin donated her own eggs to her cousin so that she could also have children of her own.

Linda Barnett, a representative of the American Association of University Women (AAUW), spoke in support of SB 5. She shared that research has shown a strong relationship between the pursuit of higher education by women and the opportunity to choose therapeutic pregnancy termination. The public policy platform of the AAUW of Delaware calls for the guarantee of individual rights, which includes full access to civil and constitutional rights and choice in the determination of one's reproductive life.

Marian Lief Palley, Public Affairs Committee Chair and Member of the Board of Directors of Planned Parenthood of Delaware, spoke in support of SB 5. She stated that the bill will remove the unconstitutional language in Delaware law that has remained since 1973 when the Supreme Court overturned an abortion ban with the *Roe v. Wade* decision. In addition, it will protect the health of women by protecting constitutionally affirmed access to a safe and legal medical procedure. Like other medical procedures, the Board of Medical Licensure and Discipline carefully regulate the provision of abortion; further, as an invasive procedure, facilities that provide abortion are required to be accredited as part of DHSS regulation. She noted that Planned Parenthood has three separate accrediting bodies.

Senator Townsend asked if there were any comments or questions from members of the committee. Seeing no questions or comments from the committee, he asked if there were any comments from the other elected officials in attendance.

Senator Richardson opined on the negative health implications that a late-term abortion could have on a woman. His comments were based on his thorough reading of both *Roe v. Wade* and *Planned Parenthood of Southeastern PA v. Casey*. He also stated that he was there to represent a voice not otherwise represented, the voice of the unborn child. He believes that life begins at conception. In response to earlier comments about reproductive health care correlating to

economic security for women, he shared the story of his wife's father who provided for all nine of his children even though his income was very limited. He stated that he did not believe that the state should give authority to physicians to perform abortions.

Senator DelCollo asked for the definition of "viability," and asked if the definition was taken from *Planned Parenthood of Southeastern PA v. Casey* or from another source.

Senator Townsend asked Mark Cutrona, the drafter of the legislation, to provide an answer to Senator DelCollo's question. He also stated that given the medical implications of the question, medical professionals were on hand to answer questions if need be.

Mark Cutrona, Deputy Director of the Division of Research, stated that the definition of "viability" is based in part on US Supreme Court cases including *Roe* and *Casey*.

Senator Richardson read a definition of viability from case law.

Senator DelCollo asked which case Senator Richardson was referring to.

Senator Richardson said that he did not know, but it came from a case around 1977.

Senator DelCollo asked if a member of the medical community could also speak to his question. He also asked about the phrase "good faith medical judgment" and how that might be interpreted.

Dr. Larry Glazerman, board certified OB/GYN and Medical Director of Planned Parenthood of Delaware, stated that all patients rely on "good faith medical judgment" everyday and that he considers the language to be very appropriate.

Senator DelCollo followed up and asked if there were differing schools of thought in the literature in regards to when a fetus becomes viable.

Dr. Larry Glazerman said that he wouldn't use the phrase "certainty" for when viability begins, but he would say that there is a consensus among physicians that the beginning of viability changes over time with medical advances, and that today it virtually never occurs before about 23 weeks. He mentioned that there are individual cases that would fall outside of that, for example, there are fetuses that at term are not viable.

Senator Townsend asked if there were any additional comments or questions from legislators. Seeing none, he opened up public comment. Public comment was received in the order that people signed in on the sign-in sheets. Senator Townsend asked for each speaker to keep comments to two minutes or less in order to accommodate as many speakers as possible in the time allotted for the hearing.

Bess McAneny, RN, a representative of Delaware Nurses for Life, spoke in opposition to SB 5. She stated that the bill relating to termination of a pregnancy does not uphold the public and medical standards of health for several reasons. She stated that the bill eliminated the requirement to provide the patient with informed consent, did not define the phrases "viability" or "health," eliminated protections for the mentally ill and incompetent females under the age

of 18, omitted safety measures including a 24-hour waiting period, and with the inclusion of the language “serious fetal anomaly,” opened up the ability for a woman to receive an abortion because of Down Syndrome, cleft palates, or even because it was not the sex that the parents hoped it would be. She submitted written testimony for the record.

Moira Sheridan, a representative of Delaware Right to Life, spoke in opposition to SB 5. She stated that this bill does not modernize Delaware’s abortion laws, but rather radicalizes them. It eliminates medical safeguards and protocols that protect women. She claimed that the ambiguity of the phrase “viability” opens up the possibility of late-term abortions. She shared that the health risks involved for women who receive an abortion after 20 weeks skyrocket compared to abortions before that time. She also criticized the elimination of the residency requirement in the bill. She referenced several doctors who had been charged with crimes related to abortion procedures in the last several years in Delaware and claimed that there is no oversight of abortion clinics in the state.

Donna Latteri spoke in opposition to SB 5. She believes that doctors who perform abortions will take advantage of the “good faith” language and that the money they will receive for performing an abortion will cloud their decision-making and prevent them from clearly explaining all of the available options to a woman. She also asked what recourse parents have, if the parental consent provision is eliminated if something goes wrong during the abortion procedure. She provided an example of a young woman she knew.

Kathy Arnold, a trauma nurse, spoke in opposition to SB 5. She first became pregnant at age 17 and a mother at age 18. She was able to go to college while raising 5 children. Her concern is the stricken consent language on line 68 of the bill. She asked if this would lead to the elimination of consent for every medical procedure in the State of Delaware. She also talked about evidence she had seen that links abortions to breast cancer. She also claimed that Planned Parenthood is exempt from state safety guidelines.

James Anderson spoke in opposition to SB 5. He asked the elected officials to exhibit leadership and to recognize the injustice occurring when abortions are permitted. He shared his concerns about the negative health effects that occur to women who have an abortion and his beliefs that the government has gotten too involved in this issue by allowing it to occur. He also stated that he disagreed with the elimination of the parental consent language.

Linda Kok spoke in opposition to SB 5. She shared a October 1995 column written by Paul Greenberg, a syndicated columnist, titled “Culture of Death.” She shared her concerns that the bill gives unbridled authority for abortions to occur.

Natalie Kok, President of Delaware Right to Life, spoke in opposition to SB 5. She opposes the bill because it eliminates consent provisions, it does not define “viability,” and the bill also does not require an independent inquiry before the abortion can take place.

Terry Masters, with She Decides Delaware, spoke in favor of SB 5. She thanked the sponsors of the bill for bringing it forward and holding a hearing. She said that codifying *Roe v. Wade* is such a simple step and only the first step. She reminded those in favor of the bill that they have tremendous amounts of support in their communities.

John Nichols spoke in opposition to SB 5. He said that he found the ACLU's position remarkable and cited statistics related to minority women and abortion. He insinuated that Planned Parenthood targets minority communities for the purposes of maximizing the number of African-American children aborted in Delaware. He also expressed his grave concern over the elimination of parental consent.

Jon Walson spoke in opposition to SB 5. He was born with a developmental disability and has dedicated his life to serve others who were born with developmental disabilities. He shared that those in his community are often the targets of abortions. He stated that he was grateful that he was born before abortion were legal and is able to testify before the committee. He hoped to speak for those who were not able to be there and who do not have a voice. He referenced the shooting of Cpl. Ballard and asked how Delawareans could expect anything different when the bills considered by the General Assembly clearly do not value life.

Sharon Kwiatkowski, with She Decides Delaware, spoke in support of SB 5. She shared that her mother had been a volunteer at Planned Parenthood in Delaware as she was growing up. She stated that her mother shared stories with her about horrific abortions and deaths that occurred before abortion was legalized. Many of the women seeking abortions already had children, and those children were left orphaned. She reminded the committee that even if abortion becomes illegal again, women will still seek them out, only in a much less safe environment.

Michael T. Andrews, Pastor at Faith Community Church in Camden, spoke in opposition to SB 5. He stated that the bill clearly expands access to abortion, otherwise it would not be before the committee. He said that there had been a lot of talk about the health and preferences of the women, but not the health and preferences of the unborn baby. He made a moral argument against abortion and shared scripture.

Dee Lynch spoke in opposition to SB 5. She shared that she is very pro-life, but her concern is the elimination of parental consent. She believes that our society is based on the family unit and shared her experience growing up with foster siblings and being a foster mother herself.

Senator Townsend stated that everyone who had signed up to speak had had their opportunity and asked if there was anyone else in the room who had not signed up to speak, but would like to.

Nella Davis spoke in opposition to SB 5. She recounted the story of when she became pregnant while in college. She said that other women in her dormitory, who had had abortions, tried to convince her to also have one. She decided not to and today her daughter is married with three children of her own. She told the committee that when you abort a child, you abort a generation.

Bill Daisey spoke in opposition to SB 5. He expressed his concern at the elimination of parental consent. He does not believe that a decision of that magnitude be placed on a child. He said that it is hard enough to be parents today and asked the committee members to allow parents to retain their responsibilities.

Joe Fitzgerald, on behalf of the Catholic Diocese of Wilmington, stated that the Bishop had submitted a letter for the written record. He also shared that the letter could be found on the diocese's website.

Lanky Griffin spoke in opposition to SB 5. She is an educator who has spent her life serving children and families. She shared personal testimony of the negative side effects that she experienced after only a few days on birth control, which have left her unable to bare children. She stated that while there may be unplanned children, there is no such thing as an unwanted child.

Julie Clymen spoke in support of SB 5. She said that if abortion becomes illegal in Delaware again, it will just hurt women who cannot afford to go out of state to have the procedure.

Senator Townsend confirmed that everyone who had wanted to speak had gotten the chance to speak.

Dr. Larry Glazerman responded to some of the public comments, in order to clarify aspects of the bill. He stated that Delaware does have a parental notification law that not only requires parental notification, but also a 24-hour advance notification of the parent before any reproductive health procedure on a minor. SB 5 does not change that law. He responded to the claim that an abortion increases the risk of breast cancer, and stated that such a claim has been clearly disproven by all of the scientific evidence. He emphasized that no medical procedure in Delaware can be done without the consent of the patient, and that is governed by the Medical Practice Act. SB 5 does not amend the Medical Practice Act. He also shared that at Planned Parenthood every patient is counseled by trained counselors about their options, including parenting, adoption, and abortion. He also responded to the comment that Planned Parenthood is not accredited or overseen by any agencies. He said that Planned Parenthood is accredited by multiple national accrediting bodies.

Senator Townsend stated that since some of the allotted time was still left for the bill's hearing he would allow for additional questions or comments from members of the public who had already spoken.

Senator Lopez responded to an earlier comment about doctors making decisions based on greed and wanted to clarify that he did not agree with that comment, nor did he believe most of the people in the room did either. He shared that while he very much disagrees with the testimony that Dr. Demeo provided, Dr. Demeo delivered his first daughter at Christiana Hospital and did a terrific job. He shared that he has a difficult time when he hears groups, including the League of Women Voters and American Association for University Women, support legislation that allows for abortion, but oppose legislation that reinstates the death penalty.

Linda Kok asked for clarification of Dr. Glazerman's comments about patient consent in regards to lines 68-70, which mention written consent and are stricken in the bill.

Senator Townsend responded that the language had been taken out because the language was not necessary since the Medical Practice Act covers all medical procedures, including abortions. The Medical Practices Act was written after the *Roe* decision and after the language in question was no longer actionable in Delaware. In the process of cleaning up and simplifying the code the

language was removed, knowing that it would not have any real effect on how procedures are conducted given that the Medical Practices Act has precedence over this part of the Delaware Code.

Linda Kok asked why the language would be stricken and leave the appearance that consent was not required for this procedure.

Senator Townsend noted that given that this section of the Delaware Code has not been updated in several decades, there is strong possibility of significant misunderstanding of what impacts the legislation actually would have.

Linda Kok asked Senator Townsend if he would consider amending the bill so that the specific consent language in this statute remains in the Delaware Code.

Senator Townsend said that his inclination was not to make that amendment because of the comprehensive nature of the Medical Practices Act, which was not written when the statute in question was written. He said that he makes that statement knowing, understanding, and respecting the comments that abortion is a different and separate issue.

Jon Walson asked what would happen to the statute if the US Supreme Court were to overturn their *Roe* decision?

Senator Townsend said that without knowing how the Court would choose to overrule the decision, it is hard to say. If the Court chose to simply lift the federal framework that began with the *Roe* decision, then the state laws would immediately go into effect and in Delaware it would once again be a felony for a doctor to perform an abortion and a misdemeanor for a woman to have the procedure.

Sandy Spence, with the League of Women Voters, asked to respond to Senator Lopez's comments on behalf of the League and the AAUW (to which she is also a member). She said that she does not understand how an individual could be so protective of the life of an unborn child, yet in favor of murdering criminals.

Donna Latteri, said that she volunteers outside of Planned Parenthood and talks to the women who are going in to receive services. She says that she is there simply to listen, not to pass judgment. She shared the story of one woman whom she convinced not to have an abortion who later had complications relating to an abortion with what would have been her third child.

Senator Townsend adjourned the meeting.

Committee Minutes were prepared by Annie Gould on May 4, 2017
This meeting was recorded and an MP3 audio file is available upon request.