

The Women's Health Protection Act (LB 594)

-- Talking Points --

The Problem

- ◆ Many abortion providers have compromised the standard of care for counseling and screening of patients in order to reduce costs and maximize profits.
- ◆ In hundreds of cases each day, known risk factors for physical and psychological complications are not being detected because of negligent pre-abortion screening.
- ◆ Women are suffering from avoidable physical and psychological complications that may have been prevented or minimized if the proper pre-abortion screening standards had been met.
- ◆ Without adequate screening for risk factors it is impossible for abortion providers to give accurate information about risks to women based on their individual risk profile.

What the Women's Health Protection Act Does

- ◆ It better protects women from undergoing coerced abortions, which is a major risk factor for severe post-abortion psychological problems.
- ◆ It clarifies in statute the duty of physicians to screen for risk factors which place women at higher risk of physical or negative complications of abortion.
- ◆ It strengthens the Women's Right to Know Law by ensuring that women are given not only the general information about abortion risks, but also the specific information most relevant to individual women according to their own unique risk factors.
- ◆ It removes legal obstacles which typically make it difficult or impossible for a woman to hold an abortion provider liable for avoidable injuries which may have been avoided with proper screening and counseling.
- ◆ It better protects women from illegal abortions and/or the marketing of self-abortion kits.

What the Women's Health Protection Act Does NOT Do

- ◆ It does not impose any requirements on abortion providers that are contrary to the standard of care for screening which applies to other medical procedures.
- ◆ It does not impose any burdens on women seeking abortions.
- ◆ It does not ban any abortions, even in those cases where a woman may be at higher risk of one or more adverse reactions.

The Benefits

- ◆ It may reduce the number of women who are being coerced into unwanted abortions by others. (64% report feeling pressured by others.)
- ◆ It may reduce abortion rates among the group of women who are at highest risk of suffering complications from the abortion who would prefer to seek other options in the context of proper counseling.
- ◆ It will reduce the number of abortion related physical and/or psychological injuries suffered by women.
- ◆ It will reverse the decline in the standard of care in abortion clinics.
- ◆ It will *immediately* protect women from negligent screening because (a) it provides no basis for abortion providers to obtain a federal injunction as affirmed in *Okpalobi v Foster*, 244 F_3d 405 (5th Cir_2001) because it erects no threats of criminal penalties or loss of license, and (b) even in the event an injunction is obtained, the statute is tolled until all legal challenges are settled.

Protecting Women's Right to Redress For Negligent Abortion Screening & Counseling Is Constitutional

- ◆ "[T]he abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intra-professional, are available." *Roe v Wade* 410 U.S. 113, 166
- ◆ "The medical, emotional, and psychological consequences of abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician." *H.L. v Matheson* 450 U.S. 398, 411 (1980).
- ◆ "It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know.... Considerations of marginal safety, including the balance of risks, are within the legislative competence when the regulation is rational and in pursuit of legitimate ends....and if some procedures have different risks than others, it does not follow that the State is altogether barred from imposing reasonable regulations." *Gonzales v. Carhart*, 550

U.S. (2007).