

**Testimony in Opposition to SB 1404
Hannah Brass Greer, J.D. – Legislative Director
Senate State Affairs Committee
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Mr. Chairman, members of the committee, my name is Hannah Brass Greer, I'm the Legislative Director for Planned Parenthood in Idaho. I stand in opposition to SB 1404.

I would like to start out by making it very clear that Planned Parenthood does not facilitate life-saving fetal tissue donation in the state of Idaho. Although opponents to safe and legal abortion have attempted to use heavily manipulated and doctored videos to prove Planned Parenthood has engaged in illegal activity, those efforts have failed. Planned Parenthood has been cleared of all wrongdoing in every investigation launched in 13 states in response to these videos. As you know, Governor Otter declined to investigate even after continued pressure, because there was nothing to investigate. In fact, the only people indicted for criminal activity are the individuals who created the fraudulent videos.

Like all healthcare providers, we handle tissue in a sensitive and professional manner in accordance with medical standards and regulations. This bill, however, would actually force providers to deviate from safe tissue handling practices and would force them to violate current guidelines and regulations governing the handling of fetal tissue.

I appreciate all of the work by members of this committee over the last month to make changes to this legislation. Unfortunately, even after a month of work on this bill, significant problems remain. The language continues to be vague, overly broad and internally inconsistent – which is what often happens when the legislature attempts to legislate medicine. I would like to bring your attention to some of our biggest concerns with the language of this bill:

1. The definitions of “experiment” and “experimentation” remain unconstitutionally vague and impermissibly broad:

The definitions of “experiment” and “experimentation” in proposed Idaho Code § 39-9303(4) page 2, lines 13-21 suffer from the same problems as the original language, still leaving the provision open for legal challenge.¹ The definitions could arguably include nearly all medical procedures and tests on fetal tissue, and could even prevent doctors from collecting information that is important for future reproductive and health care choices. For example, does this language prohibit chronic villi sampling or an amniocentesis? Does the prohibition on experiments – which includes “observation” in its definition – mean that doctors cannot visually inspect fetal tissue to ensure an abortion is complete? Such questions are left unanswered in this bill, putting a physician at risk of unintentionally violating this law even when acting in accordance with the standard of practice and his/her best medical judgment.

2. Proposed § 39-9304 “Release of Remains for Final Disposition” includes inconsistent and impermissibly vague language:

On page 2, lines 45-46, the bill states that, “[i]n every instance of fetal death, regardless of duration of the pregnancy,” “institutions shall make arrangements for the release of the bodily remains for final disposition.” But in the definitions section, “fetal death” requires that “the unborn infant reached a stage of development such that there are cartilaginous structures or fetal or skeletal parts” (Proposed Idaho Code § 39-9303(5), p 2, lines 20-23). These two definitions are in direct conflict with each other and put doctors at risk of unintentionally violating this section, leaving the law vulnerable to a challenge under the due

¹ Proposed Idaho Code § 39-9303(4) “Experiment” or “experimentation” means the use of bodily remains, including embryonic stem cells, or the use of the unborn infant intended to be aborted, in any trial, test, procedure or observation carried out with the goal of verifying, refuting or establishing the validity of a hypothesis, but does not include: (a) Diagnostic or remedial tests, procedures or observations that have the purpose of promoting the life or health of an unborn infant or of the mother of the unborn infant; or (b) Pathological study.

process clause of the Fourteenth Amendment. Individuals must be able to determine what actually constitutes a violation of the law, or the statute is void for vagueness. This standard is particularly heightened when there are criminal penalties, as there are in SB 1404. The conflicting and vague definitions about when a doctor must offer to release tissue for final disposition make it impossible for them to know what is expected of them under the proposed statute.

This section also requires that at the request of the woman, providers must release the remains to the woman “for final disposition *in accordance with applicable law*” (emphasis added). Under current state and federal regulations, providers are not permitted to release fetal tissue to the woman upon her request, yet the language of this section directs providers to do just that while also complying with all applicable laws. These internal inconsistencies and inability to follow this provision given current law and regulations render this section unworkable.

3. **The Miscarriage Certificates requirement is vague and impossible to implement:**

Proposed Idaho Code § 39-9305 requires the state to establish forms and procedures to allow for the filing of miscarriage certificates. However, it raises many unanswered questions for our physicians, who would be required to certify the miscarriage: What if a woman miscarries at home and comes to a provider with a previous positive home pregnancy test, but there is now no evidence of a pregnancy? Can the woman get a miscarriage certificate? What is required in the cases of ectopic pregnancies? What if a doctor must perform an abortion to safely complete the miscarriage? Will the woman be able to get a certificate if she requests it? Can midwives – who often provide prenatal care - certify a miscarriage? If not, does that unfairly deny a woman the opportunity to get a miscarriage certificate simply because of how she is getting prenatal care? The lack of clarity in this section makes it unworkable for physicians who have to guess at what is required of them.

Overall, the language in this bill leaves too many unanswered questions for providers who want to care for their patients and complying with the law.



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Providers may be faced with the decision between continuing to provide abortions or risk felony prosecution for simply providing for their patients under the standard of care and their best medical judgment. Forcing doctors to cease performing abortions out of fear of violating an unclear law places an unconstitutional burden on a woman's ability to obtain an abortion. There are simply too many inconsistencies, overly broad and vague language in this legislation to make it workable for doctors in this state. Instead of quickly pushing this deeply flawed legislation through in the last days of the session, we urge you to hold this bill in committee.

Thank you.