

MINUTES
HOUSE STATE AFFAIRS COMMITTEE

DATE: Monday, March 06, 2017

TIME: 8:30 A.M.

PLACE: Room EW40

MEMBERS: Chairman Loertscher, Vice Chairman Monks, Representatives Luker, Crane, Palmer, Barbieri, Holtzclaw, Harris, Armstrong, Giddings, Manwaring, Zito, Scott, Smith, Jordan

**ABSENT/
EXCUSED:** None

GUESTS: Mistie Tolman, Hannah Brass Greer, Dusty Ginner, Planned Parenthood; Juliette Rubin; Rebecca DelliCarpini; Kathy Griesmyer, ACLU; Molly Steckel, Idaho Medical Association

Chairman Loertscher called the meeting to order at 8:31 A.M.

MOTION: **Rep. Armstrong** made a motion to approve the minutes of the March 1, 2017 meeting. **Motion carried by voice vote.**

H 250: **David Ripley**, Idaho Chooses Life, presented **H 250**. The purpose of this legislation is to terminate the lawsuit now pending against the State of Idaho in the United States District Court for the District of Idaho (Planned Parenthood of the Great Northwest and the Hawaiian Islands v. Wasden, et.al., Case No. 1:15-cv-00557-BLW). This legislation would repeal certain provisions of the law regulating to the performance of chemical abortions adopted by the Legislature in 2015. Under the 2015 laws, women are banned from receiving abortifacients through telemedicine, and require that a doctor be present. In January 2016, a federal judge declared that the two laws would not be deemed unconstitutional if the ban on telemedical abortions was reversed.

Mr. Ripley explained that **H 154** was enacted by the Legislature in 2015, the law took effect July 2015, Planned Parenthood filed a lawsuit against the State of Idaho in December 2015, and sometime during the winter of 2016, Planned Parenthood requested a preliminary injunction preventing the further enforcement of the telemed abortion ban. Rather than fight the preliminary injunction, the Idaho Attorney General reached an agreement with Planned Parenthood saying that the ban on telemed abortions would not be enforced for the duration of the lawsuit, effectively becoming legal as of April 2016. The Attorney General's office entered into another agreement with Planned Parenthood in December 2016. On the basis of the stipulated facts document, Idaho Chooses Life believes that it is impossible for the State of Idaho to win the lawsuit at the trial court level. Idaho Chooses Life has come before the committee to request that the lawsuit be moot.

Mr. Ripley requested three documents be submitted into the committee record: the minutes of the House State Affairs committee from February 23, 2015, the minutes of the Senate State Affairs committee from March 16, 2015, and a memo from **Mailie Smith**, Staff Counsel to Americans United for Life. (See Attachments 1, 2, and 3) This memo was submitted as evidence to Mailie Smith during the House State Affairs committee meeting on February 23, 2015 regarding **H 154**, and explains the medical necessity of banning telemed abortion. The testimony provided during the committee meeting was reflected in the stipulated facts before the federal district court.

Mr. Ripley requested support for **H 250** in order for pro-life groups to preserve their options going forward.

In response to committee questions, **Mr. Ripley** stated the purpose of this legislation is to repeal part of **H 154** and to repeal part of the telehealth legislation passed during 2015, especially the two provisions that make it illegal to perform telemed abortions. The purpose of Section 1 is to defend the legislature and pro-life community, because the record in front of the federal court is misleading. There is a belief that the legislature enacted the ban on telemed abortions because of a ID Medical Association lobbyist. None of the documents that are in front of the federal district court are those that were presented and debated, along with hours of testimony, before the House and Senate State Affairs committees.

In response to committee questions, **Mr. Ripley** stated there are nine specific findings listed in Section 1 of the legislation, including the health risks of telemed abortions, the right of the legislature to defend women and girls, and the risk of using drug RU-486. None of these findings are on the court record in the federal district court. In Spring 2016, the FDA changed the protocols for the use of RU-486 that represented a setback for the lawyers defending the state. These changed protocols included how long into a pregnancy the drug could be used, the labeling requirements, and the labeling information available. These changes undermined the state's ability to defend the statute.

In response to committee questions, **Mr. Ripley** stated the Attorney General was representing the State.

In response to committee questions, **Mr. Ripley** stated the pro-life community has viewed the lawsuit with utmost seriousness since it was filed. Idaho Chooses Life hired **Mailee Smith** as a consultant to help them assist the State. The loosening of federal regulations posed a serious problem. The simultaneous passage of the Telehealth Act in the same session undermined the organizations ability to defend **H 154**. The court was misled by the two pieces of legislation moving through the committees, one in State Affairs and one in Health and Welfare, when its been a long-standing precedent for all abortion matters to go through State Affairs. The Attorney General's office found it difficult to find in-state medical testimony that would corroborate Idaho Chooses Life's position that telemed abortions represented a health risk to women.

In response to committee questions, **Mr. Ripley** stated this legislation does not include or involve taxpayer funding for telemed abortions.

In response to committee questions, **Mr. Ripley** stated the legalization of telemed abortions would undoubtedly lead to an increase in health consequences and increased risk for women and girls. As the time allotted to take this drug during pregnancy to induce an abortion is increased, there will be an increase in adverse affects, although there have not been any adverse reaction studies performed on RU-486 since 2011.

In response to committee questions, **Mr. Ripley** stated if this legislation is not passed, the lawsuit in district court will run its course, potentially taking weeks. The lawsuit would determine that the telemed abortion ban in **H 154** is unconstitutional, and the attorney's fees would be paid to the plaintiff, Planned Parenthood. This ruling would affect the other 16 states that have telemed abortions banned if it went to the Supreme Court. Passing this legislation presents a better course of action going forward. There is a zero percent chance that the State can defend the statute as it sits today.

In response to committee questions, **Mr. Ripley** stated the passage of this legislation would not create harm for women and babies.

Misty Tolman, Legislative Director for Planned Parenthood, spoke **in partial support** for **H 250** regarding telemedicine and abortion, or "chemical abortion" as it's referred to in the legislation. Planned Parenthood strives to give quality care and to provide safe, legal abortions along with education, support, and counseling. Planned Parenthood thanks the committee for hearing the bill which changes the unconstitutional restrictions on access to telemedical abortions. Planned Parenthood urges the committee to alter the legislative findings portion of the bill, which asserts that telemedical abortion is substandard care.

In response to committee questions, **Ms. Tolman** stated the Americans Congress of Obstetricians and Gynecologists find that medication abortions are extremely safe, and that earlier access to telemedical abortions during pregnancy is safer than later access.

In response to committee questions, **Ms. Tolman** stated that there are medical professionals present during the procedure, and that professional may be a physician, a physician's assistant, or nurse practitioner, who can gain informed consent.

Molly Steckel, Idaho Medical Association, identified herself as the lobbyist referred to in **Mr. Ripley's** presentation, and spoke to **H 250**. Ms. Steckel provided background to the issue. IDMA does not maintain a position on the legislation.

MOTION: **Rep. Palmer** made a motion to send **H 250** to the floor with a **DO PASS** recommendation.

Rep. Zito spoke **in support** of the motion, stating she was very begrudgingly in support of **H 250** because it will make it easier to stand up for pro-life issues in the future if this case does not go to the Supreme Court.

Rep. Barbieri spoke **in opposition** to the motion, citing the separation of powers despite his own beliefs.

VOTE ON THE MOTION: **Chairman Loertscher** requested a roll call vote. The motion carried by a vote of **12 AYE, 3 NAY**. **Voting in favor** of the motion: **Chairman Loertscher, Vice Chairman Monks, Reps. Luker, Crane, Palmer, Harris, Armstrong, Giddings, Manwaring, Zito, Smith, and Jordan**. **Voting in opposition** to the motion: **Reps. Barbieri, Holtzclaw, and Scott**. **Chairman Loertscher** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 9:11 A.M.

Representative Loertscher
Chair

Jasmine Platt
Secretary