

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Tuesday, March 10, 2020

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Souza, Stennett, and Buckner-Webb

ABSENT/ EXCUSED: Senator Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

H 509 RELATING TO VITAL STATISTICS for provisions regarding specific requirements for reporting on birth certificates and methods for completion or correction of those statistics.

Senator Vick explained that there is a compelling interest in maintaining accurate, quantitative, and biologically based facts on Idaho birth certificates that provide material facts fundamental to the performance of government functions. He advised the Committee that **H 509** provides for the inclusion of this information. **Senator Vick** yielded to Representative Julianne Young.

Representative Julianne Young, District 31, reiterated that the most important purpose of the bill is to maintain reliable public documents to support the government in protecting the health and safety of its citizens. She identified the specific information in **H 509** that would be included on the birth certificate as time of birth, date of birth, sex, birth weight, birth length, and place of birth.

Representative Young explained the following elements of the bill: the definition of "sex" as used in this Legislation, the compelling interest of the State in maintaining accurate vital records, the difference between and uses of legal facts and material facts. She discussed the functions of the XX and XY chromosomes as well as the results of altering the functions of genes. She shared information regarding the impact definitions have on many laws and contractual actions, how biological sex relates to the general public, and how many policies are dependent on being male or female.

Representative Young reviewed concerns that are being discussed in the courts, the medical field, and the public regarding the following: impact of biological basis of sex, affect on privacy, affect on the public at large, affect on the basis of medical history, affect on the equality principal, function of first responders and emergency care, court rulings, and constitutional considerations.

She discussed the conflict involved between the courts and the Legislature. She noted that court decisions have been rendered because the statute was silent on the issues. She presented, as an example, the confusion between the use of the terms "sex" and "gender identity." She emphasized that the Legislature has a responsibility to give direction based on the interests of the State as a whole. She noted that a process, similar to that of changing paternity on a birth certificate, has been developed.

Senator Stennett and **Representative Young** discussed the definition of male and female, the involvement with the judiciary that may occur, and the rationality and necessity of the bill.

TESTIMONY: Those presenting written or oral testimony in support of **H 509** were:

- Doug Trauber, a former police officer;
- Heather Goodworth, a registered nurse;
- Blaine Conzotti, Director, Family Policy Alliance;
- Lindsey Zea, representing self; and
- Scott Watson, representing self.

Reasons for their support were:

- the bill assists in preventing interference in public safety with regard to criminal activity;
- it alleviates privacy concerns in searching and housing inmates;
- the existence of verifiable factual data on birth certificates related to federal reimbursement payout for various entities;
- to provide biological data on birth certificates affecting genetic research; and
- the protection of women and children in shelters and schools.

Those presenting written or oral testimony in opposition of **H 509** were:

- Misty Tolman, Idaho State Director for Planned Parenthood, Boise;
- Emilie Jackson-Edney, Garden City, representing self;
- Kathy Griesmeyer, Director, American Civil Liberties Union (ACLU);
- Moné Miller, Legal Advocate, Idaho Coalition;
- Reverend Sara LaWall, representing the Boise Unitarian Universalist Fellowship and the Interfaith Equality Coalition;
- Tanisha Newton, ACLU of Idaho, representing self;
- Corinna Omlsey, representing self; and
- Monica Cockerille, Lambda Legal.

Reasons for their opposition were:

- Idahoans' need for accurate, consistent identity documents representing how they live in the world;
- concern about discrimination against transgender people from medical providers and health insurance providers;
- the bill targets vulnerable transgender people;
- the violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution;
- the bill violates Vital Statistics' rule 201 permitting adult transgender Idahoans to change their birth certificate gender marker;
- the harassment of individuals whose presentation does not match an identity, e.g., when seeking employment, obtaining a driver's license, and enrolling in higher education facilities;
- that it is unnecessary because a court order is already in place which does the same thing as this legislation; and

- it infringes on the right to informational privacy, individual liberty, autonomy, and dignity.

DISCUSSION: The Committee asked a variety of questions addressing issues raised in the above testimonies. To hear the full testimony and discussion, visit the Idaho legislative website (legislature.idaho.gov).

Senator Vick summarized the legislation as supporting the requirements set forth for birth certificates in order to provide material facts fundamental to the performance of government functions.

MOTION: **Senator Vick** moved to send **H 509** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Buckner-Webb** requested they be recorded as voting nay.

H 548 **RELATING TO INITIATIVES AND REFERENDUMS** to improve clarity, transparency, and integrity in the initiative process.

Chairwoman Lodge stated **H 548** would be heard at a later date.

S 1387 **RELATING TO VITAL STATISTICS** to amend Idaho Code by adding a new section to provide for changing the sex indicator on a birth certificate and requirements for an amended birth certificate in compliance with a federal district court order.

Senator Martin explained **S 1387** is being presented as a backup to possible litigation with **H 509** to comply with a federal district court order. He pointed out that **S 1387** provides a process for an individual 18 years of age or older to have the sex indicator changed on his/her birth certificate.

TESTIMONY: **Kathy Griesmeyer**, Policy Director, ACLU, spoke in opposition to **S 1387**. She advised the Committee that remarks in her testimony for **H 509** can be applied to **S 1387**. She said the Idaho Department of Health and Welfare (DHW) has been able to successfully practice gender marker changes for minors under the age of 18 through the self-attestation process, and there have been no known complications or problems presented by State or DHW officials. She noted that there have been health care denials for transgender patients and the current process provides for parental consent.

Mistie Tolman, Idaho State Director, Planned Parenthood, spoke in opposition to **S 1387**. She stated that testimony she gave for **H 509** can be applied to **S 1387**. **Ms. Tolman** noted that **S 1387** required minors to have a signed attestation form from a licensed professional. She observed that the person to make that determination is the person requesting the change. **Ms. Tolman** advised the Committee that there are also financial considerations which leave youth without needed health care services. She stated that the bill intrudes on Idaho families' basic right to privacy.

Monica Cockerill, Lambda Legal, spoke in opposition to **S 1387** explaining that a reasonable rule is already in place. She added this legislation would invite costly litigation, require a medical provider attestation which is not consistent with the court order, and additional personal costs are not in line with the court order.

James Goiffre` spoke in opposition to both **H 509** and **S 1387** stating that this is a very small problem in Idaho and this issue is way overblown.

Fred Birnbaum, Idaho Freedom Foundation, spoke in opposition to this bill stating that this issue is a relatively new issue for both the State and the country. There will be further litigation because one opinion of a district court judge will not end the legal process. The methodology behind **H 509** is correct and **S 1387** should be held in Committee.

DISCUSSION: **Senator Stennett** asked if this is worth over \$1 million in legal costs. **Mr. Birnbaum** said he didn't know what the litigation costs would be but he has heard that an outside

legal foundation has volunteered to support **H 509** so perhaps the cost would be zero. They do believe that the issue will end up in the Supreme Court.

Senator Martin stated he has received an Attorney General's (AG's) opinion dated February 26, 2020 indicating **S 1387** requirements are fairly minor and they improved the consistency and clarity of the law. It appears to comply with the judge's dual tools order. He read additional details contained in the letter.

Senator Souza asked if anything in the AG's letter conflicts with **H 509**. **Senator Martin** explained the steps he had taken since receiving the AG's letter. **S 1387** only bridges the gap until **H 509** is resolved.

MOTION: **Senator Souza** moved to send **S 1387** to the 14th Order of Business for possible amendment. **Senator Hill** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Buckner-Webb** requested to be recorded as voting nay.

S 1385 **RELATING TO ABORTION** that when the U.S. Supreme Court restores authority to the states regarding abortion, this statute makes the performance of an abortion a crime.

Senator Lakey, District 12, stated that nullification of *Roe vs Wade* is not viable at this time but this bill is not reliant on that premise. **S 1385** becomes effective upon either of the following; 1.) a decision by the U.S. Supreme Court restoring to the states the right to prohibit abortion, or 2.) an amendment to the U.S. Constitution restoring to the states the right to prohibit abortion. It makes performance of an abortion a felony crime for the provider and establishes certain affirmative defenses for the physician related to the life of the mother and defenses for rape and incest. It also provides exclusions for other health care providers if their treatment of an individual results in the accidental death or unintentional injury to an unborn child. This is a trigger bill that becomes effective dependent on future action. Other states have similar bills in place. **S 1385** provides the ability for legislation to become effective without the need for further legislative action. **Senator Lakey** stated the purpose and intent of this legislation is to be in compliance with either the U.S. Constitution or the U.S. Supreme Court. **Senator Lakey** yielded time to David Ripley, who has worked on this bill.

David Ripley, Executive Director, Idaho Chooses Life, stated his belief that this bill will create a new paradigm in Idaho regarding abortion. Some will argue that this bill should be defeated because of the exceptions for the life of the mother or in cases of rape and incest. The issue is not the baby, it is the circumstance of the woman who is a victim. Babies can be saved through love and compassion by changing the social paradigm regarding pre-born children to one in which the inherent value of every human being is appreciated.

TESTIMONY: Those presenting testimony supporting **S 1385**:

Blaine Gonzetti, Director, Family Policy Alliance of Idaho, supports this bill.

Christian Welp, Catholic Church, supports the bill.

Samuel Schaefer, Abolish Abortion Idaho, supports **S 1385**.

Dennis Mansfield, self, supports the bill.

Kelly Walton, Idaho Chooses Life spoke for Jim Halbert, Crossroads Community Church, supporting the bill.

Bill Teske, self, supports the bill.

Jackie Wakefield, Right to Life, supports the bill but doesn't accept exceptions of rape and incest.

David Snyder, is in support of the bill.

Those presenting testimony opposing **S 1385**:

Scott Herndon, Abolish Abortion in Idaho, spoke in opposition to **S 1385**.

Arlene Herndon, self, opposes the bill.

Benje Graves, Vission Community Church, opposes this bill.

Scott Watson, self, opposes the bill.

Misty Tolman, State Director, Planned Parenthood, spoke in strong opposition.

The majority of the discussion of those supporting and opposing **S 1385** revolved around *Roe v Wade* either by direct or indirect reference.

Senator Lakey closed by stating that if this bill abolished abortion, the State would lose and be liable for attorney's fees. **Senator Lakey** quoted from Title 18, Chapter 6 of Idaho Code, to show that this is not new ground. **S 1385** allows for the protection of the lives of unborn children in an expeditious manner. He stated his belief that this is what the majority of Idahoans want. He reiterated what the bill includes and asked the Committee to send **S 1385** to the floor with a do pass recommendation.

MOTION: **Vice Chairman Harris** moved to send **S 1385** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Buckner-Webb** requested to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 10:00 a.m.

Chairwoman Lodge, Chair

Twyla Melton, Secretary

Carol Cornwall, Assistant Secretary