

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, April 07, 2021

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Guthrie, Senators Winder, Anthon, Harris, Lee, Heider, Stennett, and Burgoyne

ABSENT/ EXCUSED: None

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 meeting of the Senate State Affairs Committee (Committee) to order at 8:02 a.m.

Chairwoman Lodge changed the order of the agenda to begin with **H 223**.

H 223 **Relating to Ballots to prevent harvesting of ballots and adding a new section to Idaho Code.**

Representative Mike Moyle, District 14, stated that, under this bill, carriers can't possess more than six ballots at one time. **Representative Moyle** explained that amendments to this bill are being drafted and suggested the bill be sent to the 14th order.

Phil McGrane, Ada County Clerk, and Chairman of the Elections Committee for the Idaho Association of County Recorders and Clerks, informed the Committee that Idaho has not had a problem with harvesting ballots, but the misuse of collecting ballots and the influence on elections from that practice has become a serious problem in other states. **Mr. McGrane** stated **H 223** would preemptively prepare Idaho to deal with such a situation should it arise. **Mr. McGrane** emphasized that, in order to file charges against a person for participating in such activities, the charge would have to be "knowingly" participating in fraudulent handling of ballots under the guise of assisting others.

Jason Hancock, Deputy Secretary of State, stated that the Secretary of State's office worked with Representative Moyle on this legislation. He defined ballot harvesting as a practice in which someone who is not the voter, an election official, a mail carrier, a parcel carrier, or a postal service employee, collects ballots and carries the ballots between the voter casting the ballot and election officials. **Mr. Hancock** gave an example of ballots being opened, and those ballots that did not agree with the harvester's political choice were not submitted to the election clerk. **Mr. Hancock** asserted that **H 223** would help ensure the integrity of Idaho's elections and build public confidence in the election process and results.

TESTIMONY: The following testified in opposition to **H 223**:

- Kathy Dawes, Representing Suzanne Ripley, President, League of Women Voters of Idaho (see Attachment A)
- Antonio Hernandez, Voting Rights Coordinator for Conservation Idaho
- Lauren Bramwell, Policy Strategist for the ACLU of Idaho

Written testimony in opposition to **H 223** (see Attachment B).

Those in opposition to **H 223** provided the following reasons: no evidence exists of tampering with ballots picked up by friends and family members and delivered to the elections clerk in Idaho; law is not necessary; this bill impedes the voting process for disabled individuals, nursing home residents, hospital patients, Idahoans lacking transportation, rural Native American tribes, and voters unable to take time away from work; and, exposes people trying to assist others to felony or misdemeanor charges.

MOTION: **Senator Winder** moved to send **H 223** to the 14th Order for possible amendment. **Senator Anthon** seconded the motion.

SUBSTITUTE MOTION: **Senator Stennett** made a substitute motion to hold **H 223** in committee. **Senator Burgoyne** seconded the motion.

VOTE: The substitute motion to hold **H 223** in Committee failed by **voice vote**.

VOTE: The motion to send **H 223** to the 14th Order for possible amendment carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

HCR 13 **Stating Findings of the Legislature to continue the recognition of March 14 as Idaho Women's Day.**

Janet Gallimore, Executive Director, State Historic Preservation Office, expressed her appreciation for the Committee's support of the Idaho Historical Society. She invited members to visit the new women's display at the museum. **Ms. Gallimore** encouraged the passage of **HCR 13** to continue recognizing March 14 as Idaho Women's Day. She mentioned that 2020 was the 100th anniversary of the 19th Amendment, which gave women the right to vote nationally. She also pointed out that in 1896, 24 years prior to the 19th Amendment, Idaho became the fourth state to grant this right to women. **Ms. Gallimore** identified several outstanding Idaho women, including Emma Edwards Green who designed the State seal and the State flag depicting the equality of men and women, hope for the future, and opportunities for economic and ethical growth. She emphasized that Idaho is the only state with a seal designed by a woman. **Ms. Gallimore** requested the support of **HCR 223** to continue Idaho's commitment to the importance of Idaho's past, present, and future women.

MOTION: **Senator Stennett** moved to send **HCR 13** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 302 **Relating to Abortion to amend the Informed Consent Law related to babies diagnosed with Down Syndrome.**

Representative Kevin Andrus, District 28, noted that studies have shown that up to 90 percent of babies diagnosed with Down Syndrome before birth are aborted. He stated that **H 302** requires information about Down Syndrome be provided to anyone seeking to abort a Down Syndrome baby. **Representative Andrus** explained the information would include alternatives to abortion, organizations that offer assistance, life expectancy, and the quality of life people with Down Syndrome can anticipate. **Representative Andrus** turned the time over to David Ripley, Idaho Chooses Life.

David Ripley, Idaho Chooses Life, acknowledged the strong support of Representative Andrus and Senator Cook for **H 302**. He indicated that in addition to the items mentioned by Representative Andrus, the information must also be provided in Spanish. **Mr. Ripley** provided an article describing the struggle of a mother dealing with a Down Syndrome diagnosis, and the hope given to her through medical information (see Attachment C). **Mr. Ripley** also noted that page 2, lines 46-47, reads "that a child that may be born with some physical or mental defect" would be a reason for an abortion. In **H 302**, that section would be removed.

DISCUSSION: **Senator Burgoyne** expressed concern that striking the language would be seen as a prohibition; that section of language goes well beyond Down Syndrome.

Mr. Ripley replied that a woman would still have the choice to have an abortion as set forth in Roe vs Wade.

TESTIMONY: The following testified in support of **H 302**:

- Sandi Emminger and Tabitha Grace, themselves (see Attachment D)
- Senator Christy Zito
- Christian Welp, Catholic Church Diocese
- Blaine Conzatti, Executive Director, Family Policy Alliance of Idaho

Those in support of **H 302** provided the following reasons: reduces discrimination facing infants with Down Syndrome both before and after birth; provides medically accurate information to be given to families upon a diagnosis to assist in making informed decisions regarding aborting the pregnancy; allows people to better understand individuals with Down Syndrome and how they touch the lives of others for the better; allows those with Down Syndrome to show they are loving and how they transform others into compassionate and tolerant individuals; fulfills Governor Brad Little's recent Trisomy Awareness Month proclamation; and Down Syndrome children are vulnerable and special, bringing light into the lives of others.

The following testified in opposition to **H 302**:

- Moné Miller, Coalition Against Sexual and Domestic Violence
- Cameron Needham
- Lauren Bramwell, Policy Strategist, ACLU of Idaho
- Mistie Tollman, State Director, Planned Parenthood Alliance Advocates
- Richelle Tierney, Idaho Council on Developmental Disabilities

Those in opposition to **H 302** provided the following reasons: survivors of sexual violence should have access to information and support to make intentional decisions; information should not be provided with the intent of shaming or coercing survivors into keeping a pregnancy; funding and energy should go toward advocating for increased health care, access, and education; abortion is safe, legal, and common; information given people making a decision regarding abortion could be biased or coercive; information should be given at diagnosis rather than at the time of abortion; there was no consultation with any disability rights organizations in the preparation of this legislation; people deserve the freedom to have an abortion without shame and stigma; physicians are forced to provide additional state created materials intended to discourage abortion; adequate Medicaid funding is not provided to access early intervention and other supports; and information offered may interfere with decisions between family and physician.

Written testimony submitted in opposition to **H 302**. (see Attachment E)

DISCUSSION: **Senator Anthon** stated he felt the policies set forth in **H 302** were appropriate and a good step forward in recognizing the needs of Down Syndrome children, pre-born or after birth. He alleged the main problem was about agencies not being consulted in the drafting of this bill, rather than the content of the bill.

Senator Burgoyne commented that those who work in the fields of child protection, medicine, child care, and women's health are better prepared to deal with these issues; consulting with the right people is important. He also addressed the lines that were stricken on page 2, lines 46-47 of the bill so any child that would be born with physical or mental defect would not be covered for an abortion, not just Down Syndrome children. **Senator Burgoyne** pointed out there should be safety nets for these children, such as funding of our social services, support for families in financial distress due to catastrophic medical conditions, and funding for travel and hotel stays

when the children need out of town care. **Senator Burgoyne** declared this bill needs to include a fiscal note that addresses the financial issues.

MOTION: **Senator Anthon** moved to send **H 302** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

H 220 **Relating to Public Funds for Abortion to ensure taxpayer dollars do not support abortion.**

Senator Zito, District 23, presented **H 220** stating the main focus of this bill is to prevent state funds from going to abortion providers. Hopefully this action can save babies lives. **Representative Zito** deferred to Representative Skaug to explain the mechanics of the bill.

Representative Bruce Skaug, District 12, explained the mechanics of the bill. He pointed out that **H 220** does not outlaw abortion, but it prevents state and local funding for organizations that provide abortion services. Following are the main points of the bill:

- prevents state and local government funds from flowing to abortion providers
- prevents public school districts, public colleges, and public universities from contracting with abortion providers to provide sex education or other programs and services
- prevents the use of public facilities for abortion procedures
- prevents Title 10 funds from flowing to family planning businesses where abortions are performed

Representative Skaug noted that the use of public funds, intentionally and knowingly, by an abortion provider could result in a misdemeanor. He said there are exceptions for Medicaid and for hospitals because of federal funding.

DISCUSSION: **Senator Lee** expressed concern about the reference to an affiliate of an abortion provider. She indicated that there is no exact definition of an "affiliate" in the bill. **Representative Skaug** identified affiliates as those with whom the abortion providers work such as the clinic, nonprofit healthcare services, their lobbyists, and similar entities. **Senator Lee** stated the definition and mechanics of the bill are very broad when it addresses contractual agreements and exactly what all those would entail, especially in small communities.

Senator Stennett stated her concern about the Fiscal Note and that the State will retain authority for the distribution of Title 10 funds. **Representative Skaug** said this bill would prevent federal funds from going to an abortion provider. **Senator Stennett** inquired how a direct contribution or grant coming from a government entity would be stopped. **Representative Skaug** stated he didn't have an answer at that time.

TESTIMONY: The following testified in support of **H 220**:

- Christian Welp, Catholic Church Diocese
- Brandon Durst
- David Ripley, Executive Director, Idaho Chooses Life
- Blaine Conzatti, Family Policy Alliance of Idaho (see Attachment F)

Those in support of **H 220** provided the following reasons: Idahoans do not want taxpayer money to support abortion providers; abortion clubs should not be in schools; Idaho needs to stop the expansion of public money supporting the abortion industry.

The following testified in opposition to **H 220**.

- Monet Miller, Idaho Coalition against Sexual and Domestic Violence
- Paige McMahon
- Cameron Needam
- Lauren Bramwell, Policy Strategist, ACLU of Idaho
- Mistie Tolman, State Director, Planned Parenthood

Those in opposition to **H 220** provided the following reasons: health facilities that provide services in addition to those related to abortion would have to close; the bill is based on misinformation; autonomy of survivors of sexual violence resulting in pregnancy would be lost; Medicaid coverage for instances of rape and incest would be lost; Idaho's values of freedom, independence, individual choice, and public health would be compromised; definition of affiliate is too broad; penalty for violation is a misdemeanor; funding in the case of rape or incest is eliminated; and a full range of options is compromised.

DISCUSSION: **Senator Stennett** asked Ms. Miller to clarify her comment that this bill would remove the use of Medicaid funding for those seeking an abortion as a result of domestic violence. **Ms. Miller** responded that their attorney read the bill and came to that conclusion for both rape and incest.

Senator Lee had two questions for Mr. Durst: 1) how to ensure that public officials would not be charged with misuse of public funds for contracting services with an affiliate of an abortion entity, and 2) what does this bill have to do with the Republican platform. **Mr. Durst** stated that the first question would fall under prosecutorial discretion and the misuse would have to be knowingly. In response to the platform, **Mr. Durst** said it specifically states that the State legislature should support legislation that seeks to end the funding of abortion providers through taxpayer funds.

Senator Stennett asked Mr. Ripley to explain how this bill prohibits any fund or committee authorized by Idaho code for the special protection for women and children from using or distributing funds. She stated the language is unclear, requested clarification, and asked how that section would be applied. She asserted functional language is important to policy and clarity is an issue for this section of the bill. **Mr. Ripley** deferred the question to Representative Skaug. **Representative Skaug** referred to page 2 lines 35-45 that clarifies the intent of the bill.

Senator Winder asked for clarification about Idaho's ability to stop federal funds from being used in the State to provide for abortions. **Representative Skaug** explained that Title 10 funds that pass through the State, county or public health districts, or cities would be withheld. If the federal government gives the funds directly to an abortion provider, that is beyond the scope of Idaho law. **Senator Winder** referred to page 3, lines 27-28 which says that a contract or commercial transaction subject to federal law related to Medicaid is an exception. **Representative Skaug** explained that the State cannot stop federal Medicaid funds because we are involved in the use of Medicaid funds, but we can stop Title 10 funds from flowing through local government entities to abortion providers. That difference is based on case law.

Senator Guthrie asked for an exact definition of what an affiliate is. **Representative Skaug** stated that it is someone affiliated with the abortion provider, but not service people bringing in oxygen or laundry, and he doesn't think anyone would consider prosecution for those entities.

Representative Skaug, in closing, responded to some comments that had been made during testimony and reviewed what **H 220** was meant to accomplish.

Senator Burgoyne gave some examples of why this bill will not work because of the lack of clarity for "affiliate". He also gave other scenarios where this bill would not work. **Senator Burgoyne** stated his belief that this is boycott legislation and explained how that would affect the private sector and local communities.

MOTION: **Senator Lee** moved to hold **H 220** in Committee. **Senator Guthrie** seconded the motion.

DISCUSSION: **Senator Lee** commented that there is a risk of unintended consequences. She reiterated her concern regarding the vagueness of the term "affiliate" as used in the bill. She emphasized that she is pro-life, and if this legislation were clearly about limiting taxpayer money going toward abortion efforts, she would be supportive.

Senator Guthrie stated he is also pro-life and would support **H 220** if it were just about limiting taxpayer funding. However, it reaches beyond that and the unintended consequences could be significant.

SUBSTITUTE MOTION: **Senator Winder** made a substitute motion to send **H 220** to the 14th Order of Business for possible amendment. **Senator Anthon** seconded the motion.

Senator Winder believes that this bill brings a principle forward that has been supported in the past which is to eliminate the use of State dollars to encourage or fund abortion.

Chairwoman Lodge agreed with the comments about the definition of affiliate and is concerned about it. She is also concerned about page 4, 18-8711, Right of Intervention. However, she will support the substitute motion.

VOTE: The substitute motion passed with a **roll call** vote. **Senators Winder, Anthon, Harris, Heider, and Chairwoman Lodge** voted **aye**. **Senators Guthrie, Lee, Stennett, and Burgoyne** voted **nay**.

Chairwoman Lodge announced that future meetings of the Committee will be at the Call of the Chair.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 10:51 a.m.

Senator Lodge, Chair

Twyla Melton, Secretary

Carol Cornwall, Assistant Secretary