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Response to committee question on SB 141

February 14, 2013

Kathy Ostrowski, *Kansans for Life* legislative director, responds to the committee: Without a transcript available, my recollection of the questions to which I promised a response are these: **Sen. Haley wondered** about the evidence needed, whether third parties could be involved, and at what point in obtaining the abortion (perhaps after seeing a sonogram) could an action proceed. **Sen. Kelly wondered** what mischief an abusive partner could cause with this law.

At the hearing I reminded the committee that:

- a legal action is predicated on an attorney filing suit only when the facts presented are believable and actionable, with perjury a threat to liars;
- abortion solely for sex-selection has been banned for decades in 2 states, and recently banned in 2 more states, with no court challenges or lawsuits to our knowledge.

Also to be noted is that every Kansas abortion clinic is already required to have a large-sized posting of the illegality of coerced abortion. New information that could more specifically assist a woman being pushed into an unwanted abortion is being proposed in HB 2253, section 12 (k).

Hypothetical scenario 1:

A pregnant woman obtains an abortion only to later claim the abortion provider knew her motive was solely gender-based.

Question:

What defense does the provider have and what evidence must she have to take legal action?

Response:

The burden of proof is on the plaintiff (the party bringing the lawsuit) to show by a "preponderance of evidence" or "weight of evidence" that all the facts necessary to win a judgment are probably true. It isn't enough for her to just 'claim' it. She can produce evidence from witnesses who can testify to exactly what they saw or heard relating to the abortion. She might produce documents such as medical reports, declarations from witnesses, and police reports to prove her case. She must, however, present sufficient evidence in court to convince a judge or jury to rule in her favor.

Question:

What evidence would a judge rely upon to close a clinic?

Response:

A judge would rely on any relevant evidence the state presents. It could be oral testimony of witnesses or physical evidence, such as medical records, police reports, written statements, etc.



Kansas Affiliate of the National Right to Life Committee

Hypothetical scenario 2:

A neighbor, friend, partner, or even third party contacts the abortion clinic to inform that a specific individual is obtaining an abortion solely for a sex-selection reason.

Question:

What assurance does the provider have that he will not be prosecuted?

Response:

If there is no evidence to indicate that he has performed an abortion in violation of the law, he cannot be prosecuted. If, however, evidence exists that convinces a state attorney that the law has been violated, then the state may seek an indictment and prosecute as is done in all cases brought by the state.

Question:

What responsibility does the provider have to act upon the information?

Response:

He would have the same responsibility as that of a reasonably prudent person under similar circumstances.

A sex-selection ban does not prevent abortions where the mother has other reasons for the abortion. It may be true that she has three sons and wants a girl, but she may be seeking the abortion because she can't 'afford a fourth child.'