NARAL Pro-Choice Ohio

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House Criminal Justice Committee
Senate Bill 145 Opponent Testimony
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Chairman Manning, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, my name is Jaime Miracle and I am the deputy director of NARAL Pro-Choice Ohio. I am here to testify on behalf of our more than 50,000 members and activists against SB 145.

SB 145 will ban the most commonly used abortion procedure for second trimester abortions (which begins at the 13th week of pregnancy). This bill is unconstitutional, bad medicine, and bad for the citizens of Ohio.

Supporters of this bill claim this abortion method ban is constitutional, however, nothing could be further from the truth. This bill goes against both the U.S. Supreme Court precedence in *Gonzales v. Carhart*, and the 2016 precedence in *Whole Women's Health v. Hellerstedt*.

In *Gonzales v. Carhart,* the court upheld a ban on the D&X procedure, citing that the most commonly used procedure (D&E) would remain available and therefore there would not be an undue burden placed on a woman trying to access second trimester abortion care. In fact, a Kansas court in 2016 ruled against a D&E ban stating, "[In Gonzales], the court considered a ban on an *uncommon* procedure and noted that the most common and generally safest abortion method remained available. Here, the State has done the opposite, banning the most common, safest procedure and leaving only uncommon and often unstudied options available."[1]

Furthermore, last year in their decision in *Whole Women's Health v. Hellerstedt,* the court clarified the undue burden standard, stating that the burden that women face because of an abortion restriction must be outweighed by the benefits they confer.[2] This bill falls far short of reaching this standard. According to the American College of Obstetricians and Gynecologists (ACOG), D&E is the "predominant approach to abortion after 13 weeks," and it is "evidence based and medically preferred because it results in the fewest complications for women compared to alternative

[1] *Hodes & Nauser, MDs, P.A. v. Schmidt,* P.3d 667, 667 (2016)
[2] *Whole Women's Health v. Hellerstedt,* 136 S. Ct. 2309 (2016)

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procedures."[3] Forcing women to undergo a procedure that may result in more complications does not meet the standard of ensuring that the burden placed on abortion access is outweighed by the benefits they confer.

Jessie Hill, Associate Dean for Academic Affairs, and Judge Ben C. Green, Professor of Law at Case Western Reserve University School of Law, has provided written testimony that goes into much more detail on the unconstitutional nature of this proposed bill. I encourage the committee to review her written remarks before forcing the State of Ohio to pay tens or hundreds of thousands of dollars defending this unconstitutional bill at a time when our state is facing serious economic challenges.

This bill is bad medicine.

As I stated before, according to ACOG, the D&E procedure is "evidence based and medically preferred because it results in the fewest complications for women compared to alternative procedures."[4]

In their official policy statement opposing bans such as SB 145, ACOG states, "Quite simply, these restrictions represent legislative interference at its worst: doctors will be forced, by ill-advised, unscientifically motivated policy, to provide lesser care to patients. This is unacceptable." Their statement continues by stating, "Medical care must be guided by sound science and by each patient's individual needs – not by legislative restrictions. We continue to oppose laws that limit the ability of American women to get the reproductive health services that they need and that take medical decisions out of the hands of physicians and their patients."[5]

During proponent testimony several individuals stated that the exceptions to this ban were sufficient to cover medical emergencies that could endanger a woman's health or life, and that exceptions for fetal anomalies were not needed because families could be referred to perinatal hospice services. The "health" exception in SB 145 is grossly inadequate, requiring doctors to wait until the woman faces "serious and irreversible organ damage" or death. In her written testimony submitted to Committee Dr. Perriera discusses how this bill would have impacted a patient she treated. Melanie came to the hospital after her water broke at 20 weeks of pregnancy. A severe uterine infection resulted from the premature rupture of membranes. Luckily this bill was not in place so the life saving D&E procedure could take place without delay. With this bill in place Dr. Perriera would have either had to wait until Melanie was sick enough to meet the criteria laid out in this bill or chose the only alternative procedure, induction of labor which could take 24-48 hours at which point Melanie could have succumb to the infection. Requiring a doctor to choose between waiting until their patient is sick

[3] ACOG, ACOG statement regarding abortion procedure bans. Oct. 9, 2015, http://www.acog.org/About-ACOG/News-Room/Statements/2015/ACOG-Statement-Regarding-Abortion-Procedure-Bans.
[4] Ibid
[5] Ibid

enough to fall under these categories or risk going to prison for providing the medical care that they felt was the best treatment for their patient, is not good medicine.

Additionally, as wonderful as perinatal hospice is for families who choose their services, saying that the existence of these services is the right choice for every family is frankly heartless. Last year when testifying against the 20 week ban, we brought the committee a story from a woman named Heather. At her 20 week diagnostic ultrasound they discovered that her fetus had a significant brain abnormality (Alobar holoprosencephaly) and learned that if the fetus didn't die in utero, it would die very shortly after birth. In her words "For us…it was an obvious, but not easy decision to make. To keep our child from suffering what we felt would be unspeakable pain, we made the decision to interrupt the pregnancy and to terminate." Forcing families like Heather's to continue pregnancies against their will is not what our state should be spending its time on.

This bill is bad for the citizens of Ohio.

Basing public policy on incendiary language created by anti-choice groups, rather on sound medical evidence is not good policy for the State of Ohio. In testimony last week when defining the practice outlawed in this bill, Ohio Right to Life didn't use a medical textbook, or scientific source, it quoted National Right to Life. Medical decisions, especially those regarding which procedure to be used by medical professionals, must be left to medical professionals.

I am not sure about you, but when I am facing a medical procedure, I rely on the fact that the medical practitioner performing the procedure will do it in the most effective, and safe way possible; that they will use their training and experience to determine how best to treat me, based on my medical history and possible complicating factors. I know I didn't go to medical school for four years, spend years in residency and fellowship programs, and based on the bios of the members of the committee, none of you did either.

This body should not be tying the hands of medical practitioners, forcing them to use procedures that are not the evidence based, medically preferred procedure just because it fits as the next opportunistic step towards banning abortion further in our state.

Thank you for your time today, and I am happy to answer any questions you may have at this time.

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