

Amend CSHB 15 (house committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill:

SECTION _____. (a) The legislature finds the following purposes and justifications for this law:

(1) States have "a substantial government interest justifying a requirement that a woman be apprised of the health risks of abortion and childbirth," including mental health considerations. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 882 (1992). "It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible." Id.

(2) The consideration of an abortion's consequences to a fetus is not contingent on the consideration of the health of the mother. Rather, those considerations provide a stand-alone basis for informed consent legislation. There is "no reason why the State may not require doctors to inform a woman seeking an abortion of the availability of materials relating to the consequences to the fetus, even when those consequences have no direct relation to her health." Id.

(3) In addition to the state's substantial interest in promoting the health and well-being of a pregnant woman, the state also has a "profound interest in potential life" of the unborn fetus. Id. at 878; see also Gonzales v. Carhart, 550 U.S. 124, 125 (2007) (recognizing that the state has a legitimate interest "in protecting the life of the fetus that may become a child").

(4) A statute furthering a state's "legitimate goal of protecting the life of the unborn" by "ensuring a decision that is

mature and informed" is permitted "even when in so doing the State expresses a preference for childbirth over abortion." Planned Parenthood, 505 U.S. at 883.

(5) In addition, the Supreme Court has held that "[r]egulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." Id. at 877. "Unless it has that effect on her right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal." Id. at 878.

(6) "The State also has an interest in protecting the integrity and ethics of the medical profession." Washington v. Glucksberg, 521 U.S. 702, 731 (1997). An abortion performed without a medical professional's full disclosure to a pregnant woman of the impact on the fetus and the potential health consequences of an abortion could undermine the woman's trust in medical professionals. This Act is intended to protect the integrity and ethics of the medical profession by establishing clear requirements that are designed to ensure the health and informed consent of a pregnant woman who is contemplating an abortion.

(b) Therefore, it is the legislature's intent in enacting this Act to further the purposes stated in Subsection (a) of this section.

(c) Furthermore, with regard to the severability clause contained in this Act, the legislature finds:

(1) As the United States Supreme Court has explained, when reviewing an abortion statute, "the proper means to consider exceptions is by as-applied challenge." Gonzales, 550 U.S. at 167. Moreover, when reviewing abortion statutes, "[t]he latitude given facial challenges in the First Amendment context is inapplicable." Id. See also U.S. v. Salerno, 481 U.S. 739, 745 (1987) ("The fact that [a legislative Act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth'

doctrine outside the limited context of the First Amendment.").

(2) The United States Supreme Court has made the role of the court clear when reviewing statutes: "It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop." Gonzales, 550 U.S. at 168. "[I]t would indeed be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation." Id. (quoting U.S. v. Raines, 362 U.S. 17, 21 (1960) (internal quotation marks omitted)). "For this reason, '[a]s-applied challenges are the basic building blocks of constitutional adjudication.'" Gonzales, 550 U.S. at 168 (quoting Richard Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 128 (2000)).

(3) Severability must be considered not only with respect to certain clauses or provisions of a statute but also with respect to applications of a statute or provision when some of the applications are unconstitutional. See Norman J. Singer, Statutes and Statutory Construction, Section 44.02 (4th ed. rev. 1986).

(4) Severability clauses in federal statutes treat severability of clauses and applications the same. See, e.g., 2 U.S.C. Section 1438 ("If any provision of this chapter or the application of such provision to any person or circumstance is held to be invalid, the remainder of this chapter and the application of the provisions of the remainder to any person or circumstance shall not be affected thereby."); Section 1103 of the Social Security Act (42 U.S.C. Section 1303); Section 15 of the National Labor Relations Act (29 U.S.C. Section 165); Section 11 of the Railway Labor Act (45 U.S.C. Section 161); Section 14 of the Agricultural Adjustment Act (7 U.S.C. Section 614).

(5) Courts have treated severability of clauses and applications the same. See Robert L. Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76 (1937).

SECTION _____. The purposes of this Act are to:

(1) protect the physical and psychological health and well-being of pregnant women;

(2) provide pregnant women access to information that would allow a pregnant woman to consider the impact an abortion would have on the pregnant woman's fetus; and

(3) protect the integrity and ethical standards of the medical profession.

SECTION _____. Every provision in this Act and every application of the provisions in this Act are severable from each other. If any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force.

(2) On page 8, strike lines 21-25.

(3) Renumber SECTIONS of the bill appropriately.