

SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE — FIRST CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTH DAY

(Wednesday, July 26, 2017)

The Senate met at 5:01 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Garcia, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Perry, Rodríguez, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire, Zaffirini.

The President announced that a quorum of the Senate was present.

Senator Taylor of Collin offered the invocation as follows:

Father God, thank You for bringing us here today for this incredible opportunity to keep up Your promise of Texas. Please help us to work together to find great solutions for our great state. Please help us to walk in Your way, to know Your love, to find Your wisdom. Thank You for the sacrifice of Your son, Jesus Christ. Thank You for all You have given us. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The President at 5:03 p.m. announced the conclusion of morning call.

SENATE BILL 4 ON THIRD READING

The President laid before the Senate **SB 4** by Senator Schwertner at this time on its third reading and final passage:

SB 4, Relating to prohibiting certain transactions between a governmental entity and an abortion provider or affiliate of the provider.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

STATEMENT REGARDING SENATE BILL 4

Senator Rodríguez submitted the following statement regarding **SB 4**:

Senate Bill 4 will reduce access to reproductive health care for Texas women, thereby damaging our health care safety net. Furthermore, by limiting a local government's ability to address the unique health care needs of their respective communities, S.B. 4 is an attack on local control.

The author of the legislation stated that his intent was to prohibit any taxpayer dollars from going to Planned Parenthood and other abortion providers and their affiliates. The fact is that federal and state laws already prevent taxpayer dollars from funding abortion. Planned Parenthood health centers, which provide abortion care, are financially separate from those that provide preventative care. The two entities are not able to transfer funds. Therefore, this bill would only serve to prevent Texas women from receiving critical preventative care services.

S.B. 4 is the latest attempt by state leaders to eliminate the ability of Texas women to access care at Planned Parenthood by barring them from contracting with local public entities. This legislation would block access to cancer screenings, birth control, HIV and STI testing, and other preventive and essential care provided by Planned Parenthood health centers across the state.

S.B. 4 could exacerbate Texas' existing public health crisis. Texas' maternal mortality rate is currently the worst in the developed world, and the maternal mortality rate among African American women in Texas is three times higher than women of other races and ethnicities. Notably, Texas' maternal mortality rate doubled in two years, from 2010-2012, after state leaders began blocking Planned Parenthood, other abortion providers, and their affiliates from providing critical services.

Over the past several sessions, Texas has tried to prevent Planned Parenthood from providing preventative health care and family planning through a variety of legislative and regulatory actions. Since then, a number of reports have shown the disastrous impact on women's health. After the state barred abortion providers from providing care through the Texas Women's Health Program in 2011, the state's own numbers show that nearly 30,000 fewer women received birth control, cancer screenings, and other care through the program two years later. A study published in the *American Journal of Public Health* found that the state's family planning program served 54 percent fewer patients in the year following the 2011 budget cuts that blocked access to care at Planned Parenthood health centers.

Access to family planning is critical to combating maternal mortality. The state's Maternal Mortality and Morbidity Task Force's July 2016 report recommends "counseling on safe pregnancy spacing and family planning to prevent short inter-pregnancy intervals. . . which are associated with adverse and costly pregnancy and birth outcomes including maternal morbidity and mortality, and preterm birth and low birth weight." A study in the *New England Journal of Medicine* showed that blocking patients from going to Planned Parenthood in Texas was associated with a 35 percent decline in women in publicly-funded programs using the most effective methods of birth control, and a dramatic 27 percent increase in births among women who had previously accessed injectable contraception through those programs. Planned Parenthood is more likely than all other types of clinics, including federally-qualified health centers (FQHCs), to provide a LARC method, widely regarded as the most effective form of birth control (98% vs. 69-77%).

Making matters worse, millions of Texans lacks access to continuous basic health care, with the state having the highest uninsured rate in the United States. Researchers have identified that medical conditions such as diabetes, high blood pressure, and mental health issues are associated with the maternal mortality epidemic. When a woman lacks access to basic, continuous health care over her lifetime, opportunities are missed to detect and treat behaviors and illnesses that affect maternal health outcomes such as smoking, high blood pressure, substance abuse, and diabetes.

Defunding entities such as Planned Parenthood not only affects abortion access but other health services as well. Despite claims from state leaders that defunding Planned Parenthood would not result in a lapse of services, the facts show that other providers have been unable to fill the gap left by Planned Parenthood. For example, when the state cut Planned Parenthood's 28-year contract to provide HIV prevention services in Houston in December 2015, one of the new contractors, Harris County Health Department, did not provide a single HIV test for at least six months. From 1988 to 2015, Planned Parenthood tested more than 138,000 people in Harris, Fort Bend, Galveston, Brazoria and Montgomery counties, and identified almost 1,200 individuals with HIV. This bill would prevent communities from future successful partnerships like this one.

Local control has long been the gold standard of governance in Texas. However, increasingly, Texas Republicans are opposing local control when it is politically convenient (e.g., statewide efforts to revoke local bag and fracking bans and LGBTQ non-discrimination ordinances). Similarly, this legislation presumes to know what's best for local communities, dictating to local officials who they can and cannot partner with in their efforts to administer health care services in their communities.

Restricting a local governmental entity's ability to fulfill the health care needs of its community is not the role of the state, and jeopardizes the health care outcomes of Texas communities. The health care needs of Georgetown are vastly different than the health care needs of my constituents in El Paso and the West Texas region. The state should not micro-manage the contracts and partnerships of either.

In sum, as recent history shows, when the state politicizes the delivery of health care, Texans lose access to care.

For these reasons, I strongly oppose S.B. 4.

RODRÍGUEZ

STATEMENT REGARDING SENATE BILL 4

Senator Garcia submitted the following statement regarding **SB 4**:

Senate Bill 4 is just one more example of bureaucratic bullying by Senators who are looking to systematically tear down Planned Parenthood, one building at a time. This bill is literally targeting one Planned Parenthood clinic in Austin that does not even provide abortions.

What this clinic and others like it provide, are high quality essential services like HIV testing, breast cancer screenings, health education, contraceptives, and Zika testing to mostly low income women and men. The closure of even one Planned Parenthood clinic will leave an incredible void in services for low income communities that the state is not equipped to fill.

Planned Parenthood has become a political piñata, and tearing down a crucial piece of our health care system is a dangerous game to play, especially considering that health centers that currently receive state funds only meet 10% of the need for family planning services- the lowest proportion in the country.

After the cuts to Planned Parenthood in 2011 nearly 30,000 fewer women received cervical screenings and access to birth control. Since the state began putting money solely into Federally Qualified Health Centers, 41,574 fewer women have received treatment and 2 million less dollars have been spent on women's health care. That is a lot of women who are not receiving care over the span of two years.

As of June of 2016 Harris County has yet to perform a single HIV test but from 1998-2015, Planned Parenthood did over 198,000 HIV tests. Planned Parenthood's cancer screening program for breast and cervical cancer screenings performed 45,000 cancer screenings.

The additional dollars that have been allocated by the state to the women's health fund has not matched the number of patients that Planned Parenthood was able to achieve through their programs.

This bill does nothing to protect the health and safety of women, nor does it improve their quality of care. It's just another attempt to score political points by attacking local control and women's health.

Additionally, while SB 4 states that it does not apply to transactions involving federal law, I believe further clarity is needed to ensure that this prohibition will not conflict in any way with Medicaid. Any conflict could result in penalties and loss of federal matching funds.

On behalf of the women in my district, and women around Texas, I hope our state can provide quality access to women that need healthcare and reproductive services in years to come, because if SB 4 passes, cities and counties across Texas will be prevented from addressing their needs locally.

GARCIA

SENATE BILL 8 ON THIRD READING

The President laid before the Senate **SB 8** by Senator Creighton at this time on its third reading and final passage:

SB 8, Relating to health plan and health benefit plan coverage for elective abortion.

The bill was read third time and was passed by the following vote: Yeas 20, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Absent: Lucio.

STATEMENT REGARDING SENATE BILL 8

Senator Rodríguez submitted the following statement regarding **SB 8**:

Senate Bill 8 would prohibit insurance plans offered through the federal exchange in Texas from covering elective abortions, requiring women to purchase a supplemental rider. This legislation ignores the fact that abortions are the result of an *unplanned* pregnancy or a pregnancy in which the fetus develops a fatal abnormality. Common sense tells us that these situations are not ones that we can plan for. Additionally, S.B. 8 places an undue burden on women, when the state does not otherwise require men or women to buy a supplemental policy for other procedures.

Roe v. Wade established access to safe and legal abortion as a constitutional right in 1973, and, just one year ago, that decision was reinforced in *Whole Woman's Health v. Hellerstedt*, which held that a woman should be able to get safe abortion care without undue burdens. This legislation disregards these rulings.

When politicians place restrictions on abortion coverage, they put Texans' health and safety at risk by taking away a person's ability to make the health decisions that are best for their circumstances and access safe care. Restricting insurance coverage for abortion jeopardizes Texans' health and disproportionately impacts low-income Texans, immigrants, people of color and their families, young people, and people in rural communities, thereby blocking their access to health care. As shown in the recent Turnaway Study conducted by University of California San Francisco, when a woman seeks an abortion, but is denied one, she is more likely to fall into poverty, endangering herself, and potentially her newborn baby. In Texas, 1.2 million women earn less than 250 percent of the federal poverty level and are in need of publicly funded family planning services. Women in our state are struggling to make ends meet and should not have to pay out-of-pocket for necessary health care.

I proposed three amendments that would have created exceptions to S.B. 8 for the treatment of an involuntary miscarriage, serious mental impairment, and fetal abnormality. These would have provided a woman greater access to necessary health care in extenuating circumstances. The first amendment would ensure that the insurance would cover treatment for an involuntary miscarriage (i.e., one that is not an elective abortion). The second amendment applies to situations in which the mental health of the mother is at a substantial risk of serious impairment. This would include a woman who is forced to discontinue usage of a medication she is prescribed for a mental illness, due to the potential harm it may have on the fetus. The third

amendment relates to fetal abnormalities that are so severe that no medical treatment can save the fetus' life. Other Senators proposed amendments to make exceptions for rape and incest. The bill's author refused to accept any of these amendments.

The lack of exceptions for mental health, miscarriage, fetal abnormality, rape and incest exposes this bill for what it really is – an attempt to limit access to abortion. S.B. 8 ultimately seeks to strip women of the ability to make decisions regarding their own pregnancy. Many factors play a role in this decision, including health risks, financial concerns and other familial considerations. The state should not have a say in a women's pregnancy when they are not aware of her circumstances.

For these reasons, I strongly oppose S.B. 8.

RODRÍGUEZ

STATEMENT REGARDING SENATE BILL 8

Senator Garcia submitted the following statement regarding **SB 8**:

This is opening the door for more restrictions on insurance coverage in the future. Insurance companies want to meet the demand of the market, and they should be allowed to without mandates or interruptions from our state.

A woman who pays for an abortion out of pocket may be forced to delay the procedure to raise the necessary funds, and forcing women to carry high risk pregnancies to term costs more in terms of dollars as well as health complications and even maternal mortality. More restrictions on abortion coverage will have a disproportionate impact on low-income women, women of color, immigrant women and young women, who already have suffered the most at the hands of anti-choice policymakers and activists. I am speaking out against this bill on behalf of women in my district, and will continue to fight for their access to safe, legal abortions.

Additionally, we must acknowledge, as a legislative body, that incest and rape are not "elective" for the victim, and the termination of a pregnancy that results from these unconscionable acts should not be defined as "elective". I will keep working to redefine "elective abortion", as I have done in two sessions now.

This bill does not solve a problem, does nothing to make women safer, and will not increase the quality of care for patients. This is something unique to women, and not anything unique to men. It's an example of yet another piece, of anti-woman legislation.

No woman plans to have an abortion. To target a safe medical procedure that is unique to women from private insurance coverage, when the author cannot cite any other medical procedure that is treated this way, is anti-women and anti-choice.

GARCIA

SENATE BILL 5 ON THIRD READING

The President laid before the Senate **SB 5** by Senator Hancock at this time on its third reading and final passage:

SB 5, Relating to the prevention of fraud in the conduct of an election; creating a criminal offense; increasing criminal penalties.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

STATEMENT REGARDING SENATE BILL 5

Senator Rodríguez submitted the following statement regarding **SB 5**:

I submit this statement to explain my vote against Senate Bill 5. I strongly believe that we must address mail-in ballot fraud but legislation that only enhances criminal penalties and does nothing else will not solve the problem. If this legislation is not amended, we will be opening the door to abuse, selective enforcement, and potential First Amendment violations.

Section 11 of the bill (page 5, lines 4-8) is poorly worded. It creates a penalty for a person that knowingly or intentionally makes any effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process. The bill contains no definition for "influencing," and in contrast to sections 5, 6, and 7 of the bill, there are no exceptions for family members.

Section 11 would result in a crime being committed if two family members or friends discuss candidates or ballot issues in the presence of the ballot in their own home. I offered an amendment that would exempt family members. The author of the bill had two, somewhat conflicting, responses when he refused to accept the amendment. First, the author stated that we should not make any exceptions because these are the same prohibitions that exist at a voting booth when an individual votes in-person. This simply ignores the practical differences between mail-in ballots and in-person voting. Second, he commented that family members that engage in this activity would likely not be prosecuted for the offense created by this legislation because they would be unlikely to file a complaint against a family member. This is nonsensical, and it demonstrates that the author recognizes this new offense is too broadly defined and goes beyond the goal of addressing mail-in ballot fraud by criminalizing common "dinner table" discussions amongst families and friends.

Another fundamental problem with the legislation is that it does not provide any penalties for deceptive election practices perpetuated against voters. The bill provides a penalty for causing any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or other official election-related form or document, but misleading statements made to a voter that undermines his or her right to vote are not addressed in the bill. I offered an amendment that would have added this to the bill. Although I presented evidence of misleading information that has been propagated in minority communities, the author refused to accept my amendment. Therefore, the bill still fails to address this issue.

For the forgoing reasons, I cannot support Senate Bill 5.

RODRÍGUEZ

SENATE BILL 6 ON THIRD READING

The President laid before the Senate **SB 6** by Senator Campbell at this time on its third reading and final passage:

SB 6, Relating to municipal annexation.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

SENATE BILL 15 ON THIRD READING

The President laid before the Senate **SB 15** by Senator Huffines at this time on its third reading and final passage:

SB 15, Relating to prosecution of certain offenses involving and preemption of local regulation of the use of a wireless communication device while operating a motor vehicle.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

COMMITTEE SUBSTITUTE SENATE BILL 13 ON THIRD READING

The President laid before the Senate **CSSB 13** by Senator Burton at this time on its third reading and final passage:

CSSB 13, Relating to the issuance of a permit by a political subdivision.

The bill was read third time.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend Floor Amendment No. 1 (Burton), as amended, to **CSSB 13** as follows:

(1) On page 2, line 15 between "(1)" and "each" insert "a plain language description of".

(2) On page 2, line 18 replace "the specific actions required by the applicant" with "general guidance regarding how".

(3) On page 2, line 28 between "(1)" and "each" insert "a plain language description of".

(4) On page 2, line 31 replace "the specific actions required by the applicant" with "general guidance regarding how".

(5) On page 5, line 26 between "(1)" and "each" insert "a plain language description of".

(6) On page 5, line 29 replace "the specific actions required by the applicant" with "general guidance regarding how".

(7) On page 6, line 8 between "(1)" and "each" insert "a plain language description of".

(8) On page 6, line 11 replace "the specific actions required by the applicant" with "general guidance regarding how".

The amendment to **CSSB 13** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

CSSB 13 as again amended was finally passed by the following vote: Yeas 18, Nays 13.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Seliger, Taylor of Galveston, Uresti, Watson, West, Whitmire, Zaffirini.

COMMITTEE SUBSTITUTE SENATE BILL 14 ON THIRD READING

The President laid before the Senate **CSSB 14** by Senator Hall at this time on its third reading and final passage:

CSSB 14, Relating to a property owner's right to remove a tree or vegetation.

The bill was read third time and was passed by the following vote: Yeas 17, Nays 14.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Hughes, Kolkhorst, Nichols, Perry, Schwertner, Seliger, Taylor of Collin.

Nays: Garcia, Hinojosa, Huffman, Lucio, Menéndez, Miles, Nelson, Rodríguez, Taylor of Galveston, Uresti, Watson, West, Whitmire, Zaffirini.

RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 5:19 p.m. recessed until 10:00 a.m. Friday, July 28, 2017.

SIXTH DAY

(Continued)

(Friday, July 28, 2017)

AFTER RECESS

The Senate met at 10:00 a.m. and was called to order by President Pro Tempore Nichols.

MESSAGE FROM THE SUPREME COURT OF TEXAS

The following Message from the Supreme Court of Texas was read and was referred to the Committee on Nominations:

THE SUPREME COURT OF TEXAS

July 25, 2017

The Honorable Dan Patrick
Lieutenant Governor of Texas
Texas Capitol Station
Austin, Texas

Dear Lieutenant Governor Patrick:

Since adjournment of the 85th Legislature, the Supreme Court of Texas has made the following appointments that require the advice and consent of the Senate:

To the Board of Directors of the State Bar of Texas

Jarrold T. Foerster, of Houston, Texas, on May 30, 2017 for a term of three years to expire on June 30, 2020 (succeeding Barbara Bass).

Michael E. Dokupil, of Houston, Texas, on May 30, 2017, for a term effective immediately and to expire June 30, 2019, upon recommendation by the Governor pursuant to Texas Government Code Section 81.020 (succeeding Alexander Ford Sasser, III). Mr. Dokupil is filling an unexpired term.

The Supreme Court of Texas respectfully requests the consent and confirmation of the Senate for each of these appointments.

Sincerely,

/s/Nathan L. Hecht
Chief Justice

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 78 by Schwertner, In memory of Emil Eugene Ogden.

Congratulatory Resolutions

SR 79 by Watson, Recognizing Reynaldo Rojas on the occasion of his retirement.

SR 80 by Watson, Recognizing Gilbert Bega on the occasion of his retirement.

SR 81 by Garcia, Recognizing Aaron Stewart Jr. on the occasion of his retirement.

RECESS

On motion of Senator Buckingham and by unanimous consent, the Senate at 10:02 a.m. recessed until 2:00 p.m. Monday, July 31, 2017.

APPENDIX

BILLS ENGROSSED

July 25, 2017

SB 2, SB 10, SB 16, SB 17, SB 73

July 26, 2017

SB 1, SB 3, SB 4, SB 5, SB 6, SB 7, SB 8, SB 9, SB 11, SB 13, SB 14, SB 15, SB 19

RESOLUTIONS ENROLLED

July 25, 2017

SR 61, SR 62, SR 63, SR 65, SR 66, SR 67, SR 68, SR 69, SR 70, SR 71

July 26, 2017

SR 64, SR 72, SR 73, SR 74, SR 75, SR 76, SR 77

July 28, 2017

SR 78, SR 79, SR 80, SR 81

