

# Sponsor of bill on Down syndrome abortion ban says this year's version sidesteps constitutional issues

Salt Lake Tribune

February 6, 2019

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<https://www.sltrib.com/news/politics/2019/02/07/sponsor-bill-down/>

A bill that aims to forbid abortions sought simply because of a prenatal Down syndrome diagnosis passed out of a House committee Wednesday.

If the legislation succeeds, the ban provision wouldn't immediately kick in, and even if it did, critics have questioned the feasibility of enforcing it. But Rep. Brady Brammer said the measure, HB166, makes an important point.

"Message bills do send a message that people count, and in this case, that the unborn children that have disabilities count," Brammer, R-Pleasant Grove, said, although he believes the proposal does more than make a statement.

The proposal by Rep. Karianne Lisonbee also directs the state's health department to create a brochure and an online clearinghouse of resources and information about Down syndrome.

When a prenatal screening or test is positive for the genetic disorder, a physician must also point a pregnant woman to these resources if she's considering an abortion.

Last year, legislative analysts flagged a version of the bill as constitutionally problematic, saying courts have held that states cannot prohibit abortions before a fetus is viable outside the womb.

Lisonbee says this year's bill avoids legal pitfalls by staying the ban until courts with jurisdiction over Utah have upheld such a measure.

Already, she noted, a related proposal passed in Indiana is making its way through the courts.

The 2016 law was ruled unconstitutional, but Indiana's attorney general and his peers from other states — including Utah — have urged the U.S. Supreme Court to consider an appeal.

The bill includes exemptions from the proposed ban in cases of rape, incest, or if the life of the mother is at risk or the fetus has a lethal defect.

During Wednesday's hearing before the House Judiciary Committee, parents delivered emotional testimony about raising children who have Down syndrome, and they urged the committee to support the bill as an affirmation of the value and vibrancy of their lives.

Those opposing the bill said it was bolstered by misinformation, could embroil the state in costly litigation and would constitute an invasion of privacy for Utah's women.

"We are concerned that this measure inappropriately inserts the government into the complex and private decisions of parents facing a decision and believe that this decision should be left to

families in accordance with their faith and in consultation with their health-care providers,” said Marina Lowe, legislative and policy counsel for the American Civil Liberties Union of Utah. And while restricting women’s freedom to seek an abortion, the legislation would not address discrimination against individuals with disabilities, she said.

The committee also heard some conflicting testimony over the medical advice that pregnant women receive after a prenatal screening for Down syndrome. Lisonbee said “it is general practice to encourage an abortion just based on the initial screening” without followup testing; Dr. Michelle Debbink, an obstetrician-gynecologist with the University of Utah, said this is not the case.

Professional medical standards are that “those decisions should not be made on a screening test alone and that we are obligated to perform a diagnostic test thereafter,” Debbink testified.

Amber Merkley, a West Valley City mother of a 4-year-old boy with Down syndrome, told the committee that she’s excited about Lisonbee’s proposed requirement to connect pregnant women with information and resources. The way the genetic disorder is explained to parents can be negative and frightening, she said, yet her son is leading a full life despite the naysayers. “There’s a beautiful richness to our life that wouldn’t be there without Down syndrome,” Merkley said, as her son Finn stood on a chair next to her. “And people staring down a choice of whether to parent in the world of Down syndrome need to hear that too.”

Lisonbee’s bill cleared the committee, over opposition from three Democrats on the panel, and will now head to the full House. The version she sponsored last year passed through the House but got stuck in the Senate.