

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 18, 2016

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Lodge, Senators Davis, Hill, Winder, Siddoway, Lakey, Stennett and Buckner-Webb

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman McKenzie** called the Senate State Affairs Committee (Committee) to order at 8:02 a.m. with a quorum present.

**VOTE ON GUBERNATORIAL APPOINTMENT:** Vote on the Gubernatorial reappointment of Paul J. Schneider to the Idaho State Racing Commission.

**MOTION:** **Senator Winder** moved to send the Gubernatorial reappointment of Paul J. Schneider to the Idaho State Racing Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** The Gubernatorial appointment of L. Daniel Cravens to the Idaho Commission on Human Rights (Commission) (phone interview).

**Chairman McKenzie** welcomed Mr. Cravens and asked him to provide some information on his background and how he sees his role on the Commission.

**L. Daniel Cravens** stated he is a native of Illinois; he graduated from Quincy University in Quincy, Illinois with a Bachelor of Arts degree in sociology and a minor in Political Science; he earned a Juris Doctorate in Law at Gonzaga University School of Law, Spokane, Washington, and a Master of Arts in government concentrating on political campaign management at Regent University, Virginia Beach, Virginia. He is currently completing his Doctorate of Business Administration from Argosy University in Salt Lake City, Utah with the expectation of finishing in April 2016.

**Mr. Cravens** currently works for Idaho State University as a coordinator for Bengal Solutions. Previous employment includes the *Idaho State Journal* and Idaho Department of Labor in Pocatello and GH, LLC, in West Lafayette, Indiana, as Vice President for Development. GH provides products and services for individuals with visual impairment.

**Mr. Cravens** said that Idaho government gives people like him the opportunity to serve. He said it is his desire to be engaged and interact with the community.

**Senator Davis** asked Mr. Cravens if he knew which member he replaced. Had he attended any meetings yet? Has he had an opportunity to be trained for the position relative to the time required and the duties involved? **Mr. Cravens** responded that he did not know who he was replacing and had not yet attended any meetings. He has been briefed by a current administrator at the

Commission, which included an introduction and overview of the responsibilities for the position. **Senator Davis** inquired if the time expectations could be met in light of Mr. Craven's current employment and education commitments. **Mr. Cravens** answered that he didn't see a problem. He has been assured by the Commission that if he couldn't get to Boise for meetings, they could use teleconferencing. As for his education, it is just a matter of signing the final paperwork.

**Senator Davis** asked Mr. Cravens how his background and education qualify him to serve on this Commission. What type of perspective does he bring as a new commissioner? **Mr. Cravens** stated that his experience with people with vision impairment prepares him for this position. People with disabilities are part of a protected class and so that is an expertise that he brings that is unique. His legal and government public policy education will be helpful. **Mr. Cravens** said that his background and education would help be a resource for the Commission to explore issues in more depth.

**Senator Buckner-Webb** asked what drew Mr. Cravens to this Commission. **Mr. Cravens** responded that one reason was his experience with disabilities but the other was his experience at the Department of Labor, which is the parent organization for the Commission. Those factors enticed him. This was a good area for his skill set and a good way for him to contribute.

**GUBERNATORIAL APPOINTMENT:**

The Gubernatorial appointment of Grant A. Brackebusch to the Idaho Lottery Commission (Lottery Commission) (phone interview).

**Chairman McKenzie** asked Mr. Brackebusch to provide some of his background as it relates to serving on the Lottery Commission and how he sees his role there. How does being a mining engineer influence his perspective?

**Grant A. Brackebusch** said he was born and raised in Kellogg, Idaho, and graduated from the University of Idaho with a degree in mining engineering. He worked on the Carlin Trend in Nevada and then returned to Idaho. He wanted to do some public service and this opportunity became available. He found it interesting, especially the funding for the public schools and the permanent building fund; he has a background in statistics. The more he learned about the lottery, the more he was interested.

**Chairman McKenzie** stated the Committee's appreciation to Mr. Brackebusch for his willingness to serve on the Lottery Commission.

**H 544**

RELATING TO PROHIBITED ACTS REGARDING ALCOHOL BEVERAGE LAWS applicable to standards that apply for the content of movies in certain facilities.

**Representative Joe Palmer**, District 20, drew attention to the language that is being stricken on page 1, lines 35-42, and page 2, lines 1-2, stating that the intent is not to weaken current statute. This is a segment that may be unconstitutional. This specific code provision prohibits liquor license holders from showing films that contain some type of sexual content. He said the language "pushes" on the borders of the First Amendment. Law enforcement cannot enforce current Idaho law because of federal requirements. He indicated that professionals on this subject matter are in the room and they will be able to answer any questions. **Representative Palmer** introduced Russ Wheatley, Idaho State Police, to further explain the bill.

**Mr. Wheatley** explained that **H 544** is attempting to bring consistency to existing Idaho codes. Under Idaho Code § 23-944 subsection (7), the law deals with movie theaters and the showing of specific films. This section defaults to the obscenity codes under Title 18, Chapter 41, which contain specific standards of

what can and cannot be shown in a movie theater. Subsection (7) deals with beer and wine licensees and **H 544** is trying to apply the same standard to liquor license holders.

**Mr. Wheatley** said that **H 544** was drafted by Stephanie Altig, Deputy Attorney General, and has been reviewed by the Attorney General's office, the Idaho State Police, Alcohol Beverage Control as well as by industry.

**Senator Winder** recalled that the intent of the original law was to regulate XXX movie theaters versus a theater open to the general public that might run a restricted, "R", or "GP" type of movie. **Mr. Wheatley** concurred. That standard remains; this bill does not allow pornography in theaters.

**Senator Davis** asked Jeremy Chou from Givens Pursley, if this problem couldn't be solved by prohibiting the sale of any alcohol in all movie theaters. **Mr. Chou** said that would be one way. **Senator Davis** asked, why is **H 544** being considered rather than that option. **Mr. Chou** said the option Senator Davis proposed opens the door to many other issues, such as the impact on Supreme Court cases that are in effect and the ability to do commerce and business, and it would affect other movie theaters; he named a few. **Senator Davis** asked if the laws that are being dealt with here are a result of previous legislation allowing beer and wine in a movie theater. **Mr. Chou** said the original legislation involved a grandfathering of several movie theaters that were serving beer and wine.

**Senator Davis** asked when the language that is causing the trouble was put in Idaho Code. **Mr. Chou** answered that the original language occurred in 1977 with some amendments in 2000. That early language dealt with XXX establishments.

**Chairman McKenzie** asked if, under controlling interpretations of the First Amendment, is the language that is in code now constitutional or is it in violation of the First Amendment? Mr. Chou said it is their legal opinion that the statutory provision as it currently exists is unconstitutional. There is a California Ninth Circuit case from 2000, LSO vs Stroe, that addressed the exact same language and found that it was unconstitutional under the First Amendment. A Supreme Court case from Delaware, 44 Liquor Mar, was cited; the ruling was that the states have the ability to regulate First Amendment conduct based on their alcohol regulations. The Delaware holding was the reason the Ninth Circuit overturned the California case.

**Senator Winder** asked Mr. Chou to explain the Meridian Cinemas operation regarding the restaurant and its licensing to serve alcohol, and how the theater separates the area where alcohol is served from the general public. **Mr. Chou** disclosed that he represents the Meridian Cinemas in the Village at Meridian and provided that description. He described the restaurant, movie theater and the separation of the area where food and alcoholic beverages are sold. Mainstream movies are shown and there is no intent to do otherwise.

**Senator Winder** said that this business operation is in his district and he has been involved with this issue since the theater was first getting its license to serve alcohol. Senator Winder and his wife attend movies there but don't sit in that section; when entering the theater, that section is not noticeable. This owner does a great job managing the operation and providing proper separation.

**MOTION:**

**Senator Winder** moved to send **H 544** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

**Senator Davis** reminded the Committee that there was another alternative, which would be to ban the consumption of alcohol in all movie theaters. In the past, the Legislature, when faced with this issue, found that there was a commercial reason for allowing this type of operation, Meridian Cinemas does a good job.

Other theaters do not do such a good job of maintaining a separate section for alcohol beverage service. **Senator Davis** agrees that Idaho needs to do something but there are two options and this bill is the one before the Committee. The alternative is available if the Committee wants to pursue it and that option needed to be stated.

The motion carried by **voice vote**.

## H 331AA

RELATING TO ALCOHOLIC BEVERAGES to prohibit the possession, use, sale and purchase of powdered alcohol.

**Jeff Anderson**, Director, Idaho State Liquor Division, explained that the purpose of H 331aa is to bar the possession, use, sale and purchase of powdered alcohol for beverage purposes. He said that powdered alcohol is considered to be prone to abuse. Twenty-nine states have enacted statutory prohibitions that have been signed into law, with more considering it. The bill amends Idaho Code § 23-616; this statute banning vaporized alcohol was considered a logical place to address powdered alcohol. This bill is supported by law enforcement, the prevention community and industry. The Idaho State Police Alcohol Beverage Control was consulted throughout the bill-drafting process. The House amendment was the addition on page 1, lines 18 and 19, recognizing exemptions in Idaho Code § 23-504 for alcoholic non-beverages used in specific applications not related to beverage alcohol. The change on line 37 of page 1 allows judges more flexibility in sentencing.

**Mr. Anderson** continued his explanation of why this bill is necessary. He discussed how the dry weight converts to liquid: the label on powdered alcohol states that 55 percent alcohol by weight converts to 70 percent alcohol by volume. Concerns exist about the unfamiliarity with the metric system, the misuse by adults and minors, improper mixing with less than the prescribed amount of water, mixing with other liquors and the ease to conceal that will lead to illicit use where alcohol is prohibited. No one wants to see this product in the hands of children.

**Senator Lakey** asked Mr. Anderson if there was the potential of having a higher concentration of alcohol if the powder itself is consumed or is mixed with less water. **Mr. Anderson** answered that the branded product "Palcohol" is intended to be mixed with 200 ml of water; anything less than that would have a higher concentration of alcohol. The manufacturer has been clear that the intended use is for mixing with another liquid.

**Senator Buckner-Webb** inquired about the availability of this product. **Mr. Anderson** responded that at this time, "Palcohol" has not been introduced into the marketplace because more than 29 states have been debating its legality. This particular brand could be regulated by the Liquor Division, but it is possible that another product with less volume could end up on a convenience store shelf.

**Senator Lakey** noted that there are other potential commercial and industrial uses for this product. Would this legislation address that type of use? **Mr. Anderson** said this legislation would exclude those uses which include proprietary medicines, tinctures, food products and perfumes. **Senator Lakey** commented on the scope of the exception and that it is somewhat limited. **Mr. Anderson** agreed.

## TESTIMONY:

**Tyler Mallard**, Government Affairs Liaison with Risch Pisca representing the Idaho Beer and Wine Distributors Association, testified in support of **H 331aa**. Powdered alcohol is different than the beverages that are currently available in Idaho. **Mr. Mallard** described the ease in which powdered alcohol can be converted into hard liquor and that it is easily accessible to children. When added to other alcoholic beverages, it could create a potential lethal drink. The risk is not worth the reward.

**MOTION:**

**Senator Hill** moved to send **H 331aa** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**S 1404**

RELATING TO The Idaho Unborn Infants Dignity Act.

**Senator Cliff Bayer**, District 21, remarked that he is proud to be the Senate sponsor of **S 1404** because it sends a powerful message to our culture and the scientific community. A U.S. Congressional committee recently held hearings on the ethics of using tissue from aborted babies in medical research; several nationally prominent ethicists and researchers testified. One of those researchers, Dr. Kathleen Schmainda, Professor of Radiology and Biophysics at the Medical College of Wisconsin, answered three key claims that proponents of aborted tissue-based research often make to defend the practice. **Senator Bayer** read those three claims and her refuting statements from in her written testimony (see attachment 1).

**Senator Bayer** pointed out that **S 1404** allows for the medical donation of deceased pre-born babies in cases of miscarriage and stillbirth.

**Senator Bayer** continued his explanation about the validity and necessity of passing this legislation. Ethical standards on proper medical research appear to be eroding; researchers don't want to compromise core values to advance medical science or even keep a job. He said he wants Idaho to become a place where researchers will never have to make a choice between a career and their values. **Senator Bayer** asked David Ripley to continue with the explanation of **S 1404**.

**David Ripley**, Executive Director, Idaho Chooses Life, referred to last summer's news reports about the development of a business involving the harvesting and trafficking of organs from aborted babies in the name of "science" and "profit." Idaho Chooses Life launched a campaign for an investigation to see if these activities were happening in Idaho. In response to an invitation from Governor Otter to review current Idaho law to ensure that those types of practices would not be allowed here, Idaho Chooses Life began the review, which showed that organs and tissue from aborted babies could be legally harvested and marketed for resale so long as the abortionist did not "profit" from that transaction; Idaho law is much like federal law.

**Mr. Ripley** stated that it is the purpose of this legislation to close those loopholes so that trafficking in aborted baby parts cannot legally happen in the State. **S 1404** does five things:

- It makes it clear that medical professionals need to inform parents who lose a baby to miscarriage or stillbirth that they have a right to direct the final disposition of their baby's remains.
- It provides for a Certificate of Miscarriage if a mother chooses to make application.
- It prohibits the harvesting of tissue and organs from aborted babies.
- It prohibits public universities in Idaho from engaging in research projects using organs and tissue from aborted babies.
- It provides for the donation of tissue and organs in cases of stillbirth or miscarriage, but only with informed consent.

This legislation does not restrict abortion or access to abortion, but it is decidedly pro-life. It affirms the dignity of each human being by protecting the pre-born child from becoming a mere commodity. **Mr. Ripley** believes this legislation will help save babies from future abortions.

**Mr. Ripley** requested that three letters in support of the legislation be introduced: 1.) a letter from pastors around the state (see attachment 2a); 2.) a letter from the director of the Christian Medical and Dental Association, Dr. David Stevens (see attachment 2b); and 3.) a letter from Americans United for Life (AUL) (see attachment 2c).

**Mr. Ripley** pointed out that the AUL says that five states – Indiana, North Dakota, Ohio, Oklahoma and South Dakota – have laws in place prohibiting the use of fetal tissue obtained from abortions for medical experimentation. Six other states are currently considering legislation similar to **S 1404**, and ten states are reviewing bills to tighten restrictions or make it illegal to participate in these activities. **Mr. Ripley** concluded with an excerpt from a speech to the nation given by President George W. Bush in August of 2001: "As the genius of science extends the horizons of what we *can* do, we increasingly confront the complex questions about what we *should* do."

**Senator Stennett** referred to page 1, lines 22 and 23. How can there be a deceased unborn infant? Isn't it necessary to be born before one can be deceased? Also, line 23 talks about "other" human beings; who is "other"? **Senator Stennett** noted that she had an opinion from the Attorney General (AG) on some of the semantics she has pointed out that aren't clear, and there were recommendations by the AG about how to make the bill more clear (see attachment 3).

**Senator Stennett** related that the bill parsed words about "stillborn" or "miscarried" compared to "abortion." This language seems to elevate aborted fetuses to the same status as deceased human beings. The difficulty with that is it has been struck down in court repeatedly. If these bill are not written properly, they will be contested and the taxpayers will pay for that litigation.

**Senator Stennett** stated her discomfort with the miscarriage certificate. She gave some examples, such as a woman who miscarries at home and comes to a provider with a previous positive pregnancy test but there is no evidence of a pregnancy. Can she get a miscarriage certificate? **Mr. Ripley** replied that it would depend upon the judgement of her physician. **Senator Stennett** asked what is required in the case of an ectopic or molar pregnancy; could an abortion make it a saved miscarriage and would they then be able to get a certificate? **Mr. Ripley** said that in the case of an abortion, a miscarriage certificate would not be given. **Senator Stennett** asked if this would be the case if an abortion was performed because the pregnancy was not viable and that was the only option for the safety of the mother? **Mr. Ripley** agreed. **Senator Stennett** asked if midwives, who often provide prenatal care, could certify a miscarriage. If not, would the woman be able to get a certificate? **Mr. Ripley** stated his belief that the answer is no.

**Senator Buckner-Webb** asked if Mr. Ripley was aware that federal law prohibits the sale of fetal tissue. **Mr. Ripley** replied that the State law is similar to federal law and State law prohibits profit from the harvesting of aborted baby parts. The problem is the definition of "profit." Part of the failure in both codes is to anticipate the development of an industry around the harvesting and trafficking and resale of tissue and body parts. **Senator Buckner-Webb** stated that her research shows that federal law prohibits the sale of fetal tissue. Is that your understanding also? **Mr. Ripley** responded not exactly. The federal law allows for the recovery of costs associated with the harvesting, storage and transportation of tissue. The question is, what is a reasonable cost associated with those items?

The larger question is the money that is being made and transacted in the entire market across the country. **Senator Buckner-Webb** asked for clarity on the disposal of remains and the sale of fetal tissue. Those are two different things from her standpoint. **Mr. Ripley** said that there has been extraordinary efforts

with this legislation to distinguish between various methods of the disposal of aborted babies versus the harvesting of their organs for medical research.

**TESTIMONY:**

**Leigh Doughty** spoke for herself in support of the bill. She outlined what happens when someone dies: a death certificate is issued, options are given about the remains and the person is buried or cremated – that is ingrained in our culture. Parents who have lost an unborn child have lost a beloved family member and they deserve the right to have their child recognized by the State with a miscarriage certificate and they deserve to lay their child to rest as they see fit. **Ms. Doughty** told her personal story about the loss of their child.

**Heidi Benson** spoke for herself in support of **S 1404**. She explained that she has had two tubal pregnancies and one miscarriage. She believes that the infants are alive at conception. After those deaths, she had a desire to bury them as she would have had for any other family member so there would be a place to mourn them. When a woman loses an unborn child, the family does not have the same options. A few words is all they get and then it is forgotten. It would be healing for a family that has experienced the loss of a stillborn child, a miscarriage or a tubal pregnancy to have a certificate of miscarriage and have the option to bury that child.

**Hannah Brass Greer**, Legislative Director, Planned Parenthood, spoke in opposition of **S 1404**. **Ms. Brass Greer** clearly stated that Planned Parenthood does not facilitate life saving fetal tissue donation in Idaho. Although opponents to safe and legal abortion have attempted to use heavily manipulated and doctored videos to prove that Planned Parenthood has engaged in illegal activity, those efforts have failed. Planned Parenthood has been cleared of all wrongdoing in every investigation launched in 13 states in response to these videos. Governor Otter declined to investigate even after continued pressure because there was nothing to investigate. The only people indicted for criminal activity are the individuals who created the fraudulent videos.

Planned Parenthood handles tissue in a sensitive and professional way in accordance with medical standards and regulations; this bill would force providers to deviate from those practices and it would force them to violate current guidelines and regulations governing the handling of fetal tissue. **Ms. Brass Greer** stated her appreciation of the work by Committee members to make changes to the legislation, but the language continues to be vague, overly broad and inconsistent. **Ms. Brass Greer** outlined Planned Parenthood's concerns with this bill (see attachment 5).

**Senator Stennett** asked if this legislation would be contested in court. **Ms. Brass Greer** said she didn't have a final answer. They wouldn't make that decision until the conclusion of the legislative process. They are watching and are concerned. If they can't advise their physicians about what they can and can't do, they may be forced to challenge it.

**Senator Buckner-Webb** said that miscarriage certificates would be new. The Bureau of Vital Records and Health Statistics report births, deaths and stillbirths. At this point, miscarriage certificates are not offered. **Ms. Brass Greer** stated that they are not currently offered. They are not opposed to miscarriage certificates, but it does leave questions for their providers about specific circumstances and what they would and wouldn't have to do based on the language of this bill and the request of the patient. Those two may conflict.

**Karen Simkins** representing herself, spoke in support of **S 1404**. She had two miscarriages and she experienced the first one at home. She called her doctor and asked if she should take it in and was told "no," just to discard it. The same thing happened with the second miscarriage. She expanded on her personal

story ultimately noting that if she and her husband would have had a death certificate and the opportunity to decide what to do with the remains of their little babies, it would have given them peace.

**Melissa Hemphill**, representing herself, spoke in support of **S 1404**. The loss of an unborn child is difficult and devastating; it is a true loss. She explained her experience with an ectopic pregnancy. The day after the surgery to remove the baby, Ms. Hemphill attempted to get information about the baby to no avail. She stated that her child deserved the dignity that any other deceased person does. In her opinion, she should have been afforded the opportunity to have her questions answered and to give her child a proper burial. A certificate of miscarriage would further dignify their children and acknowledge their loss.

**Senator Stennett** asked if Ms. Hemphill was comfortable with not being able to get a certificate because, in her case, it was an ectopic pregnancy. **Ms. Hemphill** said it was not her choice to lose that child; it was a life or death situation. She respectfully disagrees that ectopic and tubal pregnancies would not be treated the same as a miscarriage. **Senator Stennett** asked for clarity. **Ms. Hemphill** stated that the mother should be able to receive a certificate in that instance.

**Kathy Griesmyer**, Public Policy Strategist, American Civil Liberties Union of Idaho (ACLU), is appearing in opposition to **S 1404**. **Ms. Griesmyer** said that no one is buying or selling fetal tissue in the State of Idaho. **S 1404** is part of a nationwide attack on Planned Parenthood and other abortion providers despite the fact that no state that has investigated this issue has found any wrongdoing.

Existing federal law governs this issue in 42 U.S.C. 289g-2, which states "It shall be unlawful for any person to knowingly acquire, receive or otherwise transfer fetal tissue for valuable consideration." "Valuable consideration" does not include reasonable payments . . . or storage of human fetal tissue." Medical clinics currently handle embryonic or fetal tissue in accordance with Idaho State law. This legislation contains vague language and definitions that could jeopardize medical clinics or facilities in the final disposition and manner in which they legally dispose of medical waste. The conflict is between Idaho Code § 39-9306 and § 39-9304. Instead of passing laws that complicate a woman's decision based on her experience and forcing her to consider burial services or death certificates outlined in this bill, the focus should be to make sure she is supported and respected in her decision.

**Ms. Griesmyer** noted that donated fetal tissue has produced valuable strides in medical research. According to the Guttmacher Institute, fetal tissue has been used to develop vaccines that have saved and improved the lives of billions of people worldwide. She listed the areas of medical improvements that have been impacted, which are all dependent on fetal tissue research according to the U.S. Department of Health. **S 1404** is unnecessary and based on a mistaken assumption about the practices in place at Idaho medical facilities.

**Senator Buckner-Webb** asked if medical facilities have been involved in the discussions concerning the release of fetal tissue. **Ms. Griesmyer** said she hasn't had any direct conversations with medical waste disposal companies but there are guidelines provided through the Department of Environmental Quality. **Senator Buckner-Webb** questioned the term "mother or her representative." Mother and father may not be in a relationship; could that be a point of contention? Who would the remains be released too? **Ms. Griesmyer** responded that there could be a question. As Ms. Brass-Greer stated, there is a lot of vague language and potential unintended consequences included in this legislation that need to be considered before moving this legislation forward.

**Caitlyn Scherer**, representing herself as the mother of two lost children, spoke



in support of this legislation. She said it would be a blessing and solace to parents of unborn babies. The bill would provide parents the opportunity to grieve and ultimately heal. She compared the loss of her unborn babies with that of a cousin whose death was memorialized and life was celebrated. This bill gives parents a chance for support, to memorialize the lost, to get a certificate of death and the option to bury or cremate.

**Annick Slick**, representing herself, spoke in favor of **S 1404**. **Ms. Slick** told about her experience when they lost their son, Jacob, one day before his due date. He suffered from a genetic abnormality, holoprosencephaly and trisomy 13. They had the opportunity to connect with their son before saying goodbye. They were able to have a funeral where they could gather with loved ones who were very supportive, and Jacob was buried in a cemetery that was accessible to them. Parents need to go through a complete grieving process no matter at what point a child dies. Having some time to say goodbye or having some type of service helps tremendously. She asked for **S 1404** to pass so all mothers can have a chance to connect, grieve and have closure. It is a woman's right as her child's mother.

**Matt Slick**, representing himself in support of **S 1404**, explained that he and his wife endured this tragedy about 22 years ago, and to this day it still hurts. He is a minister of the gospel and runs a very large website so he gets emails from all over the world; he also has a radio show. He counsels people. It is his opinion that one of the things people need to do is heal. He has counseled many people who have been injured by the death of their children and can't properly heal because they are not given a decent, dignified opportunity to show the respect and love to their children whether death is in or outside the womb. This bill addresses a complicated issue.

**Kerry Uhlenkott**, Legislative Coordinator, Idaho Right to Life, spoke in support of **S 1404**. **Ms. Uhlenkott** expressed appreciation to Mr. Ripley and Idaho Chooses Life for their work on this bill to help restore the respect and dignity to unborn babies who have been aborted or miscarried; this bill attempts to do that.

**Ms. Uhlenkott** noted that the hearings investigating Planned Parenthood have found several Planned Parenthood clinics harvesting and selling baby parts. It is inhumane to treat the remains of these innocent victims of abortion with disrespect by not giving them a proper burial, treating them only as medical waste to be discarded. They stand with the pro-life community in strong support of this legislation.

**Julie Lynde**, Executive Director of Cornerstone Family Council, stated that they join the pro-life community in Idaho in strong support of **S 1404**. She stated her gratitude to Idaho Chooses Life, the sponsors and the many cosponsors of **S 1404**. This bill directly addresses the issue of harvesting and trafficking body parts of unborn babies. It allows for organ and tissue donation in cases other than abortion with the proper consent of the mother, thus allowing her dignity and respect. The bill also clarifies that mothers have the right to respectful disposition of their baby's remains. **Ms. Lynde** described the bill in detail from her perspective and offered references and links for her remarks (see attachment 6). She elaborated on several issues noted in her written statement. **Ms. Lynde** urged the Committee to vote yes on **S 1404** so that Idaho goes on record to say, "Not in My House."

**Chairman McKenzie** asked if there was anyone else who would like to testify. Being none, he asked Mr. Ripley for his closing statement.

**Mr. Ripley** said this very simple bill is complicated as it relates to the various parts of current statutes, and the definitions are very important. **Mr. Ripley**

referred to the definition section on page 2, (7), the definition of "miscarriage." He spoke to one of the mothers who had testified regarding the ectopic death of her unborn child; that unborn baby was deceased before surgery so under the definition of "miscarriage" the mother would be eligible for a certificate.

**Mr. Ripley** answered another question regarding section (4)(a) which addresses diagnostic or remedial tests, procedures or observations that have the purpose of promoting the life or health of an unborn infant or of the mother of an unborn infant. Determining whether or not all of the baby has been removed from the womb is vitally important to the health and life of the mother and those procedures would be allowed under this bill.

**Senator Stennett** asked what prohibits a mother, in the case of a miscarriage, from burying the tissue and honoring it appropriately. **Mr. Ripley** said that in certain circumstances, probably nothing. In those cases where that could or would happen, a certificate of miscarriage would validate what had happened but it would also leave a paper trail to prove what had happened.

**Senator Bayer** said that there are a lot of sources of tissue and progenitor cells available without ethical compromise for medical research; this is in reference to human tissue only. This is about ethics and dignity, it is not a measure changing abortion provisions and it does not single out any entity.

He said this conversation is about ethical standards and how they are developed in this field. Horrific things have happened in history during wartime, and studies have been conducted, even in this country, with the military and infectious diseases. Not only were those unethical, but by current guidelines, it is unethical to use the data that was gleaned in such a way. The ends does not justify the means. This legislation helps discern and draw a clear line for ethics in regards to this issue and doesn't limit any concerns in regard to medical advancement for the greater good.

**Senator Bayer** said there has been a lot of due diligence with supporters, sponsors and cosponsors, colleagues in the Legislature and with the AG's office. He is requesting the Committee to send this bill to the 14th Order due to some confusion with some of the language and that Senator Lakey would explain the proposed amendments.

**Senator Stennett** stated that she also had an AG's opinion that was a little different than Senator Lakey's and she offered to have it included as well (see attachment 3).

**Senator Lakey** briefed the Committee about work he has been doing on this legislation in conjunction with the sponsors and the AG's office. The legislation as it is now written is part of an effort to revise some of the initial language. He said the opinion obtained on the existing language was likely constitutionally defensible and may withstand a constitutional challenge. The AG's office had a couple of suggestions for additional language (see attachment 4). The additional suggested language is in the initial legislation's Findings of Purpose. The new language is included in subsection (c) of the AG's opinion and **Senator Lakey** read that paragraph. An additional amendment is in 39-9304 relating to the "Release of Remains for Final Disposition." The AG's language says the remains could be released in the case of stillbirth or miscarriage and removes the other language which would require that the mother in an abortion be advised of the disposition of the remains. It focuses that section solely on stillbirth or miscarriage and not abortion. With those two additions, the AG's opinion is that yes, the proposed amendments renders **S 1404** reasonably, legally defensible.

**Senator Lakey** said that the bill, as it stands now, is legally defensible.

**Senator Lakey** addressed an item Senator Stennett mentioned in 39-9302(a) which states that "Deceased unborn infants deserve the same respect and dignity as other deceased human beings." It is not a statement that 'they are,' but it states "they deserve." He wouldn't support removing the word "other."

**MOTION:**

**Senator Lakey** moved to send **S 1404** to the 14th Order for possible amendment. **Senator Hill** seconded the motion.

**Senator Buckner-Webb** supports the motion and would like to clean up the language and get some clarity for the facilities that will have to implement some of these policies. She said she had not heard any discussion about input from medical clinics, medical professionals or the hospitals.

**Senator Stennett** noted that she had forwarded a copy of the Attorney General's opinion received to the Committee (see attachment 3).

The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman McKenzie** adjourned the meeting at 10:05 a.m.

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Senator McKenzie  
Chair

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Twyla Melton  
Secretary