

‘If we pass this bill, we are buying ourselves a lawsuit’: A proposed abortion bill might be unconstitutional, but that’s not stopping Utah lawmakers

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A contentious Down syndrome abortion bill moved forward in the Utah Legislature on Thursday, even after state attorneys reported a “high probability” that a court would find it unconstitutional. House Bill 205 would bar a doctor from performing an abortion if the pregnant woman seeks the procedure after the fetus is diagnosed with Down syndrome.

“If we pass this bill, we are buying ourselves a lawsuit,” said Rep. Brian King, D-Salt Lake City, urging his colleagues on the Utah Judiciary Committee not to approve the legislation.



He reminded them of their oath to uphold the U.S. Constitution when they entered office, later adding that *Roe v. Wade* — the landmark U.S. Supreme Court case affirming a woman’s right to have an abortion under the 14th Amendment — “is the law of the land.”

“It’s not going anywhere,” King said.

But the committee moved ahead anyway, voting 8-3 to send HB205 to the full House. The vote came after several dozen emotional Utahns testified for and against the bill, lining the walls of the committee room and overflowing into another, where the meeting was broadcast.

The legislation had caught widespread attention Monday, the first day of the session, when the bill’s sponsor, Rep. Karianne Lisonbee, R-Clearfield, held a news conference laying out the details. She reiterated her belief Thursday that aborting a fetus due to a Down syndrome diagnosis is “one of the worst types of discrimination,” and that such procedures smack of eugenics.

The bill would make carrying out such an abortion a class A misdemeanor for the doctor.

Before the hearing, the Legislature's general counsel added a note to the bill, which said, based on state and federal constitutional language and case law, "this legislation has a high probability of being declared unconstitutional by a court." It cited *Roe v. Wade* and several other cases.



Marina Lowe, legislative and policy

counsel with the American Civil Liberties Union of Utah, agreed with that assessment, telling legislators that several conservative states that recently passed similar legislation faced swift legal challenges — including one from a federal judge who blocked Indiana's version.

She was not aware of a court that had upheld similar bans, she said, adding that, in general, the legislation would improperly insert the government into a place where women and families are trying to make difficult decisions.

William Duncan, a director at the conservative Sutherland Institute think tank, said this abortion ban has not been heard by the Supreme Court before, so there's a "lack of data" on what the court might do. He disagreed with the state's legal assessment, but he added that it's the right thing to pass even if it did face significant legal hurdles.

"This kind of an abortion is an instance of eugenics, which we have repudiated as a people, including by the Supreme Court many decades ago," Duncan said.

A number of people spoke in favor of the bill, including a few people who have Down syndrome and parents of children who have the chromosomal disorder, which causes intellectual disabilities and other physical problems in development after birth.

A 48-year-old woman with Down syndrome sang her testimony to the lawmakers: "It's true I don't walk or talk just like you / It could be I'm slow but one thing I know / I want to be good at things just like you / I have feelings, too."

One advocate said the bill would not help disabled people lead better lives and would discriminate against women like herself, people who have been forced to make difficult reproductive decisions. "This is a hurtful bill, and it only brings more discrimination" to pregnant women, she said.

The bill also would require physicians to conduct in-person consultations with pregnant women who have had positive tests, to provide information about Down syndrome advocacy groups and to refer them to specialists on the disorder.

Several medical professionals and a Utah Medical Association representative said the provisions are problematic because they would add unnecessary requirements for doctors who already have patients' best interests in mind.

The Planned Parenthood Association of Utah said the bill is about lawmakers wanting to restrict abortion access — not protecting people with Down syndrome.

King repeated another argument against HB205 several times Thursday: "It's patently unconstitutional."