

Utah's new abortion anesthesia law has doctor confused, outraged

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SARAH WELLIVER/Standard-Examiner

With the passage of a "fetal pain" abortion law last month during the 2016 General Session, doctors will now be required to provide anesthesia to unborn fetuses at 20 weeks gestation prior to performing an abortion.

By now, Dr. Leah Torres probably has [Gov. Gary Herbert's](http://www.utah.gov/governor/) phone number memorized. Or at least on her speed dial.

Torres, an OB-GYN practicing in Salt Lake City, has been making almost-daily calls to the governor's office — calls yet to be returned. She admits reaching out is partly a form of protest against a recent bill Herbert signed into law, requiring physicians performing elective abortions to administer anesthesia to fetuses past 20 weeks gestation.

But mostly, Torres says, her calls are a practical issue. The doctor simply wants to know how to avoid breaking the new law, as she is one of about a half-dozen doctors in the state who perform abortions at two

clinics in the Salt Lake Valley. In addition to her other typical OB-GYN duties, she performs between 100 and 200 abortions a year.

"I have no idea of what fetal anesthesia means," Torres says. "Does that mean if I give my patient a [Motrin \(http://www.motrin.com/\)](http://www.motrin.com/) I've now administered an analgesic to the fetus? I'm calling the governor, every day. ... I want to know how not to break the law."

- **RELATED:** [Utah took a step back on women's issues \(http://www.standard.net/Government/2016/04/07/utah-legislature-female-lawmakers-womens-issues.html\)](http://www.standard.net/Government/2016/04/07/utah-legislature-female-lawmakers-womens-issues.html)

Torres says doctors don't know how to administer fetal anesthesia because there's no such thing. She says that during hearings on the bill, its sponsor, [Sen. Curt Bramble, R-Provo \(http://curtbramble.org/\)](http://curtbramble.org/), was asked how fetal anesthesia should be administered.

"Sen. Bramble said — and I quote, because I memorized this quote — 'Well, I would leave it up to standard medical practice,'" Torres said. "So, Sen. Bramble has no idea what it means to give a fetus anesthesia; he also has no idea that it's not standard medical practice. We don't have a standard medical practice for fetal anesthesia. It doesn't exist."

ELECTIVE ABORTIONS

To Bramble, who introduced the original bill at this year's [Utah Legislature \(http://le.utah.gov/\)](http://le.utah.gov/), the concept seems simple enough. He said studies have suggested fetuses can feel pain at 20 weeks, and he wonders why they don't get the same consideration as our pets, or even murderers on death row.

"We go to extraordinary lengths to not inflict pain on animals," Bramble said. "The same goes for executing convicted criminals. And yet, for that unborn child, we do nothing."

Bramble says the new law applies only to elective abortions in which a healthy mother chooses to abort a healthy fetus after 20 weeks. Since Utah already has a law banning abortions at the stage of viability — which is becoming earlier and earlier in pregnancies based on medical advances — Bramble doesn't believe the new law will apply to many abortions.

"So there may not even be that many abortions that are prohibited with this," he said.

- **RELATED:** [Abortion anesthesia bill should have been vetoed \(http://www.standard.net/Our-View/2016/03/30/Our-View-Abortion-anesthesia-bill-should-have-been-vetoed.html\)](http://www.standard.net/Our-View/2016/03/30/Our-View-Abortion-anesthesia-bill-should-have-been-vetoed.html)

Torres agrees the law will apply to only a small number of pregnant women, but says that doesn't make them any less important. Statistics from 2014, which are the most recent available, show 17 Utah women had abortions after 20 weeks. And Torres points out that most later-term abortions are "wanted babies."

"Twenty weeks is when we do the ultrasound, and that's when we find stuff," she said. "Something is horribly wrong with the baby, so they're already traumatized by that, and now they're going to be told their baby is going to feel pain?"

MEASURING PAIN

Torres says Bramble's claim of "substantial medical evidence" for fetal pain is not good science.

"The quality evidence we have currently is that the part of the brain that processes pain isn't even present — hasn't even developed — until at least the third trimester," she said.

- **RELATED:** [Gov. Gary Herbert signs bill requiring abortion anesthesia \(http://www.standard.net/News/2016/03/29/Gov-Gary-Herbert-signs-bill-requiring-abortion-anesthesia-utah.html\)](http://www.standard.net/News/2016/03/29/Gov-Gary-Herbert-signs-bill-requiring-abortion-anesthesia-utah.html)

Bramble says a doctor and scientist at the [University of Utah \(http://www.utah.edu/\)](http://www.utah.edu/) emailed him to say a fetus is nothing more than a "non-responsive lump of tissue" before the third trimester.

"Well, those non-responsive lumps of tissue are surviving birth at 22 weeks — not the third trimester," Bramble said. "So the premise of the bill was if a healthy baby is terminated at 20 weeks or beyond, that the state has a compelling reason to protect the child from pain."

Tom Hudachko, spokesman for the [Utah Department of Health \(http://health.utah.gov/\)](http://health.utah.gov/), says the new law also requires a change in Utah's informed consent law, which requires doctors to provide educational materials to women 72 hours before an abortion.

"Essentially, the way the bill was written requires us to provide a brochure that states medical evidence suggests that at 20 weeks a fetus may be capable of feeling pain," Hudachko said.

A MATTER OF AUTHORITY

Torres is admittedly liberal in her views on the subject of abortion. She believes a pregnant woman is the ultimate authority on her own body.

"Basically, if someone who is pregnant doesn't want to be pregnant, that's the only reason ever needed to have an abortion," Torres says. "Anyone who is pregnant and doesn't want to be has every right to not be pregnant."

Bramble is as entrenched in his position as Torres is.

"On a personal level, if it would pass judicial scrutiny, I would willingly sponsor overturning *Roe v. Wade*," Bramble said of the landmark [U.S. Supreme Court \(http://www.supremecourt.gov/\)](http://www.supremecourt.gov/) decision on abortion. "But I don't see that happening."

And Bramble takes issue with the oft-repeated "woman's right to choose" mantra.

"People say the question is that the woman has a right to choose — that it's between a woman and her doctor," he said. "I agree with that completely. But who's the doctor for her baby? A woman can choose what she wants for her body, but we're not talking about her body — we're talking about another human being."

Gayle Ruzicka, president of the conservative [Utah Eagle Forum](http://www.utaheagleforum.org/) (<http://www.utaheagleforum.org/>), says her organization supported the new law “all the way through” the legislative process. She said the only intent of the law is to protect babies from pain and insists that, at some point in time, an aborted fetus can feel pain.

“If it were up to me, they’d have to do it earlier,” she said.

LEGAL PROTECTION?

Utah is the first state to have a law requiring abortion doctors to administer pain medication to the fetus, and Bramble says it’s difficult to overestimate the importance of the new statute.

“This will be the first state in the nation that has actually established a statutory protection — a legal protection — for an unborn child,” he said. “It may be nothing more than the protection from the infliction of pain, but it establishes a legal protection for an unborn child before viability.”

Bramble says he fully expects the new law to be challenged in the courts. But he also likes his chances.

“We believe any challenge would be rejected, because this doesn’t prohibit a woman’s ability to terminate a child at this point,” he said. “A woman still can exercise her right.”

Torres said she imagines a few doctors will side with Bramble and Herbert on the subject of fetal anesthesia. But she says they’ll do it “based on political ideology and not based on medical effect and medical evidence.” Torres said physicians should practice evidence-based — rather than ideology-based — medicine.

“Why don’t we use leeches for infections anymore? Because we found antibiotics,” she said. “So for a doctor to say, ‘No, I think it’s reasonable to give the fetus anesthesia because there’s one paper out there that was a bad study that says we should,’ that’s wrong.”

Karrie Galloway is CEO of [Planned Parenthood Association of Utah](https://www.plannedparenthood.org/planned-parenthood-utah) (<https://www.plannedparenthood.org/planned-parenthood-utah>), one of two clinics in Utah offering abortions. The other one, [Wasatch Women’s Center](http://www.wasatchwomenscenter.net/) (<http://www.wasatchwomenscenter.net/>), performs abortions only up to 13 weeks.

Galloway says Bramble and Herbert are trying to pass politics off as an issue of safety.

“These are laws packaged as protecting women’s health,” she said. “They tell us, ‘We’re doing this to make things safer for women.’ But this was nothing more than a message bill. It’s intended to make it harder to provide services to women.”

And Torres says forcing doctors to do procedures against their medical judgment will needlessly put women at risk.

“I wish it was hyperbole, I wish it was my frustration, but it’s just medical fact that when you revoke somebody’s ability to make their own medical decisions, harm happens,” Torres said.

FIGURE IT OUT

Bramble says he was recently asked on a national media program if he believes life begins at conception. His answer? "I don't know."

"I'm not opposed, personally or morally, to birth control," Bramble said. "But on this continuum from date of conception to birth, somewhere along that continuum, you've got a human being that has developed to a stage where they react to pain, they feel pain, and I believe they are statutorily entitled to some protection, at least from the infliction of that pain."

As for Torres, until she hears back from the governor's office, anesthetizing fetuses will be a matter of guesswork.

"I'm going to give the woman a Motrin and say I provided pain relief for the fetus, because I don't know what the state wants," Torres said. "I don't even know what the fetal dose of Motrin is, but I'm just going to guess. It's silly, but it's so true. We told them not to do this bad law, and they did it anyway. So now we're asking them to tell us what to do."

But Ruzicka feels no sympathy for Torres and others who claim they don't know how to administer fetal anesthesia in order to comply with the law.

"It's not up to the legislature. Legislators are not doctors," Ruzicka said. "They're the doctors, and they need to figure out how to do it."

Contact Mark Saal at 801-625-4272, or msaal@standard.net. Follow him on Twitter at @Saalman. Like him on Facebook at [facebook.com/SEMarkSaal](https://www.facebook.com/SEMarkSaal).