

SENATE PUBLIC HEALTH, WELFARE & SAFETY

EXHIBIT NO. 8DATE: MARCH 11, 2005BILL NO. HB 737**Walt McNutt**

From: "Worsech, Jeannie" <jworsech@mt.gov>
 To: "'Walt McNutt' (E-mail)" <wmcnutt@bresnan.net>
 Cc: "Rep Walter McNutt (E-mail)" <walt@midrivers.com>
 Sent: Monday, February 21, 2005 9:24 AM
 Subject: Summary of the Supreme Court case on Abortion (HB 737)

Representative McNutt:

Here is the brief summary of the Supreme Court case regarding the unconstitutional abortion law 37-20-103 for your floor discussion if needed on HB 737.

AMENDMENT TO 37-20-103

- Section 37-20-103, MCA, which states "A physician assistant-certified may not perform an abortion" must be amended to reflect the 199 decision of the Montana Supreme Court in the case of Armstrong v. State, 296 Mont. 361 which found that this language violates the Montana Constitution.
- Article II, Section 10 of the Montana Constitution protects citizens from legislation and governmental practices that interfere with the autonomy of individuals to make decision in matters generally considered private. The Court in Armstrong found that the legislature has no interest in interfering with an individual's fundamental privacy right to obtain a particular lawful medical procedure from a health care provider who is licensed to provide that procedure.
- The Supreme Court found that the legislature, in enacting Section 37-20-101, expressly provided for the licensing of certified physician assistants who practice under the supervision of physicians pursuant to terms approved by the Board of Medical Examiners.
- The Supreme Court found that there was no evidence that laws requiring that previability abortions be performed only by a physician, and not by a physician assistant, was necessary to protect the life, health or safety of women in Montana.

The Supreme Court concluded that the 1995 amendments to Section 37-20-103, MCA and Section 50-20-109, MCA enacted pursuant to Ch. 321, L. 1995, prohibiting a physician assistant-certified from performing a previability abortion are unconstitutional. Thus, it is imperative that this statute be amended in order to comply with the Montana Constitution and the ruling of the Montana Supreme Court.

Thank you.

Jeannie Worsech

2/21/2005