RESPONSE OF CAROL TOBIAS,
PRESIDENT, NATIONAL RIGHT TO LIFE COMMITTEE

August 4, 2014

QUESTION FROM SENATOR GRAHAM: *At the hearing I asked Ms. Northup whether a waiting period for elective abortion would be permissible under S. 1696. She said it would depend on various factors, yet she evaded my repeated requests that she name a single state waiting-period law that might survive under the bill. Do you believe that a state law requiring a waiting period prior to an elective abortion could survive under the prohibitions that S. 1696 would impose, and if not, why not?*

The waiting-period or reflection-period laws are specific to abortion, and therefore are presumptively invalid under S. 1696's prohibition on singling out abortion. If a state somehow crafted a law that required a waiting period not only for abortion but also for all other "medically comparable procedure[s]," that law would simply be attacked under the separate and distinct alternative prohibition contained in S. 1696, which renders presumptively invalid any law that directly or indirectly reduces "access" to abortion. The bill explicitly provides that "whether the measure or action is reasonably likely to delay some women in accessing abortion services" is a factor to be considered by a court "in determining whether a measure or action impedes access to abortion services for purposes of" the prohibition. It seems self-evident that a mandatory delay violates this prohibition.