

House Human Services Committee

House Bill 1488

Andrew Alexis Varvel

Written Testimony

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Chairman Ruby and Members of the Committee:

My name is Andrew Alexis Varvel.

I live in Bismarck.

This testimony is labeled **NEUTRAL** because, while I am opposed to House Bill 1488 in its current form, I recognize how this bill is a good start on reforming our state's abortion laws so they can align more faithfully with our state constitution as understood in 1889.

While the present law is far too restrictive toward abortion, this legislation goes too far in the other direction. I want a version of this bill to come out of committee in a form that I could support.

Five metrics we should use on the question of abortion are (1) adherence at least in spirit to the common law concept of “quickenings”, (2) adherence to a morphological understanding of personhood, (3) adherence to a concept of personhood based on fetal brain development, (4) prohibiting discriminatory selection based on sex or having Down's Syndrome, (5) and requiring all surgical abortions to use uterine anaesthesia to ensure both a painless death for the fetus and pain management for the mother.

Although “quickening” is a vague concept, it is also a traditional concept that is referenced in Justice Rehnquist's dissent in *Planned Parenthood v. Casey*. The basic concept is that once a woman's pregnancy becomes obvious for all to see, the existence of this pregnancy no longer becomes a matter of protected privacy. It is an implicit reflection of the idea of “ensoulment” where a fetus attaining human characteristics which should afford the fetus some rights – perhaps not analogous to full human rights of a born infant, but at least the same rights as an animal would have against cruelty.

Morphology is important. Does the infant look human, or does the infant look more like a dolphin? It matters. Does the infant have two ears, two eyes, two lungs, two kidneys, recognizable toes, recognizable fingers, gonads, a liver, a stomach, and a brain?

Does the infant have sensory perception, motor reflexes that can respond to outside stimuli, and a nervous system sufficiently sensitive to feel pain? I'm not talking about mental gymnastics here, but very real criteria for being morphologically human.

From my point of view, the optimal cut-off line for permitting abortion should not be fifteen weeks, but rather twelve weeks. It should not be earlier, as there may be legitimate reasons for a mother to kill her fetus before twelve months. It should not be later, as the fetus has developed human morphology by that time.

I was disappointed that the last legislative session voted to end our state's prohibition against sex selective abortions and abortions that would discriminate against people with Down's Syndrome. We should bring those prohibitions back on general principles.

North Dakota should also prohibit any method of abortion that may cause pain for the fetus. If an abortion is truly necessary because the fetus is unviable or the mother's health is in danger, we need to mandate uterine anaesthesia for all surgical abortions.

Just as veterinarians are expected to euthanize animals in a humane and painless manner, abortionists should be expected to maintain equivalent ethical standards for euthanizing unborn children.

We must not let raging arguments over the morality (or lack thereof) of abortion distract from ensuring that any death of an unborn child must be accomplished painlessly for the fetus.

While House Bill 1488 is a good start, it should not go to the House floor in its present form. Hence, I strongly recommend that it go to a **subcommittee** to ensure that something better gets to the floor.

At present, I would not support this bill. If the changes I recommend are incorporated into this bill, I feel I could support it.

Thank you.