

HB1488
Bill Testimony
Rep. Eric J. Murphy
District 43, Grand Forks

Chairman Ruby and the honorable members of the House Human Services Committee, today I introduce and provide my rationale for HB1488. This bill is focused on providing adequate obstetrics care for North Dakota women, including abortion.

Introduction

This bill is undoubtedly a lightning rod so to speak. For the pro-choice left, it doesn't go far enough. For the North Dakota Medical Association, it doesn't go far enough. For the American College of Obstetricians and Gynecologists, it doesn't go far enough. For the members of the staunch anti-abortion community, it goes too far. Perhaps better stated, way too far. For the Catholic Church it is more than likely just unacceptable, but for our Jewish and Muslim residents, it might be just right. This bill is probably just right for atheists and agnostics as well, and well we all know about us Lutherans.

I was asked by a colleague in our chamber to consider not introducing this bill. I said NO. I was asked why I was doing this bill. I said because it is the right thing to do.

This is a bill I thought about bringing in the 68th session of the North Dakota Legislature. While I did not campaign on the topic of abortion, when asked I told folks that I was SLR. This is the old Republican position of safe, legal, and rare.

My personal feelings on abortion are rather simple. At 22 years old, Cindy and I found out she was pregnant. We had little money, had been married for two years. She had a minimum wage job, and I was in graduate school. We made a list of all our options, including abortion. You see that tool was available in Ohio in 1985. **We had that option.** That potential option lasted all of a minute or two, but we discussed it as a couple. What was right for us? Where did our moral compass direct us? Today our son is a business partner and was born on my birthday in 1986.

Why do I note that point? **Because we had an option.** We were trying to figure it out and we decided to plunge headfirst into parenthood. We were blessed with a non-complicated pregnancy, but a bummer of a delivery.

But what about others? Should our own moral compass point others in a direction that is our direction? Thereby imposing our will on others as if they are incapable of making their own decisions on a complicated matter. Or should we embrace the freedom of choice?

What North Dakotans Think

The North Dakota News Cooperative conducted a poll to assess North Dakotans' view on abortion and on our paused highly restrictive law. On the question about expanding the time where an abortion would be legal, 52% said yes, 36% said no, while 12% didn't know or would

not say. This is support for a change, but not overwhelming support for moving forward. Yet, it is a clear lack of support for our paused restrictive law.

Another question asked if respondents supported the North Dakota law that bans all abortions except in cases of rape and incest where an abortion can be done in the first six weeks of pregnancy. The law also makes it a felony for a doctor to perform an abortion after six weeks except to save the mother's life. In 2023 this question was asked and 44% of North Dakotans supported this law, while 48% opposed the law, with 7% unsure. In 2024 this gap increased with only 38% supporting the law, while 55% opposed the law, with 7% unsure.

This suggests that now is the time to bring a bill that as Mr. Rob Port noted in an article is probably the bill that most North Dakotans and most Americans want to see.

What's in this Bill?

This bill has three main sections:

- **Elective abortion from conception through 15 weeks of gestation.** Rational is that for older couples who undergo genetic testing at week 10, it gives them about 4 weeks to make a decision on what is their choice. The procedure is done by a licensed physician in a licensed health care facility.
- **Medical necessary abortions 16 through 26 weeks of gestation,** following approval by a 3 physician panel who examines the medical record. In an emergency, immediate medical aid and treatment can be given. These procedures must be done in a hospital by a board certified/eligible obstetrician or board certified/eligible family physician with obstetrics training.
- **Intervention after 27 weeks of gestation,** medical necessary procedures are permitted following approval by a 3 physician panel who examine the medical record. In an emergency, immediate medical aid and treatment can be given. All medical efforts must be made to save the life of the mother and the fetus. These procedures must be done in a hospital by a board certified/eligible obstetrician or board certified/eligible family physician with obstetrics training.

All abortions performed after 16 weeks must be reported to ND Health and Human Services who will track the number and reasons for abortions for statistical purposes.

Other minor changes involve replacing the pejorative "unborn child" with the more medically correct "fetus" throughout law pertaining to this section. In addition, the required literature to be given to pregnant women has been reduced in scope to eliminate the pejorative language and replace it with medically accurate and relevant information. The listing of services for women who want to have a baby are continued, including options for adoption.

Why is this Bill Important?

Texas has a very restrictive abortion law and like the currently paused law in North Dakota, it has provisions to provide felony charges for physicians who provide obstetrics care during

emergencies. This requires physicians to make a decision between when the law should be applied and medical aid rendered. The following two stories highlight this point.

"Candace Fails screamed for someone in the Texas hospital to help her pregnant daughter. "Do something," she pleaded, on the morning of Oct. 29, 2023.

Nevaeh Crain was crying in pain, too weak to walk, blood staining her thighs. Feverish and vomiting the day of her baby shower, the 18-year-old had gone to two different emergency rooms within 12 hours, returning home each time worse than before.

The first hospital diagnosed her with strep throat without investigating her sharp abdominal cramps. At the second, she screened positive for sepsis, a life-threatening and fast-moving reaction to an infection, medical records show. But doctors said her six-month fetus had a heartbeat and that Crain was fine to leave.

Now on Crain's third hospital visit, an obstetrician insisted on two ultrasounds to "confirm fetal demise," a nurse wrote, before moving her to intensive care.

By then, more than two hours after her arrival, Crain's blood pressure had plummeted and a nurse had noted that her lips were "blue and dusky." Her organs began failing.

Hours later, she was dead."

ProPublica Nov. 1, 2024 by Lizzie Presser and Kavitha Surana

Another tragic event in Texas involving Josseli Barnica who needlessly died from sepsis.

Josseli Barnica grieved the news as she lay in a Houston hospital bed on Sept. 3, 2021: The sibling she'd dreamt of giving her daughter would not survive this pregnancy.

The fetus was on the verge of coming out, its head pressed against her dilated cervix; she was 17 weeks pregnant and a miscarriage was "in progress," doctors noted in hospital records. At that point, they should have offered to speed up the delivery or empty her uterus to stave off a deadly infection, more than a dozen medical experts told ProPublica.

But when Barnica's husband rushed to her side from his job on a construction site, she relayed what she said the medical team had told her: "They had to wait until there was no heartbeat," he told ProPublica in Spanish. "It would be a crime to give her an abortion."

For 40 hours, the anguished 28-year-old mother prayed for doctors to help her get home to her daughter; all the while, her uterus remained exposed to bacteria.

Three days after she delivered, Barnica died of an infection.

ProPublica Oct 20, 2024 by Lizzie Presser and Kavitha Surana

These are two tragedies, but these are not all of the tragedies that have occurred in the U.S. in states with stringent, inflexible abortion laws. Rendering proper and timely obstetrics care would have saved these women's lives. Rather, physicians felt compelled to follow the law and both women died so that an inane law could be followed.

This my colleagues, is not pro-life. It is a misguided effort to constrain deployment of life-saving obstetrics care to stave off potential arrest and prosecution afforded by a restrictive law. A law that is similar to what some in North Dakota want to restore in our State. **This bill provides for a different way. A better way.**

While the late Tony Bender and I didn't agree on a lot politically, I enjoyed his musings. He had a particularly unique wit. His last column before he died was entitled "Bender: Not in Kansas anymore" with a subtitle of "Life is rarely starkly black and white but a palette of grays."

From this column I took this passage.

We had opted for an intact delivery. Over days, using natural methods, labor would be induced. But first, another ultrasound to confirm what we already knew. An injection stilled what there was of our baby's heart. My wife was under conscious sedation during the process, merciful and logical, I suppose. There's no turning back.

After our baby was euthanized, she wondered, "When do you suppose they're going to do it?" "They already have," I answered in that motel room. And then I wept.

There were other couples from across America, each carrying their own personal tragedy into a room where we met each day for counseling from Dr. Tiller. Among the refugees was a young lawyer and his wife from Pennsylvania. Their daughter, Olivia, was missing a brain.

It dawns on me that we were clinging to each other like shipwreck victims.

One by one, the women went into labor and then went home to heal. We were the last. Gunnar was stillborn the day before my birthday. Dr. Tiller, who was ordained, performed a baptism as I held the tiny cold body of my son. It was hard to let him go.

As we drove back to our living son, my wife began to emerge from the fog and grapple with her grief. We were at different stages in the process.

The ashes arrived in a small brown package. Dust. We held a small funeral, conducted by an understanding minister, and scattered the ashes at the base of a freshly planted weeping willow, forever known to us as Gunnar's Tree. My wife framed the tiny ink footprints they gave us and later had them replicated in a tattoo.

Two physician friends told us we had made the right choice. That eased some of the pain, doubt and guilt. Our new obstetrician encouraged us to not give up, and we didn't. India was born full of life in 2000.

On May 31, 2009, we heard the news. George Tiller had been gunned down while ushering. In church. In America. And I wept.

InForum Nov. 5, 2024 by Tony Bender

The options for abortion as well as dilation and curettage permitted in HB1488 will enable women in North Dakota to hopefully avoid the pitfalls that resulted in the death of Josseli and of Nevaeh. Mr. and Mrs. Bender's experience should not occur in some hotel room and clinic in

Wichita, but here in North Dakota under the care of their physician. To think that women in North Dakota are not undergoing these procedures by being sent out of state for medical care is one of denial. They undergo these medical procedures to save their lives, yes, that my colleagues is pro-life.

I respectfully stand for questions.