MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

1242

DESCRIPTION

2003 HOUSE JUDICIARY

HB 1242

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1242

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-12-03

Tape Number	Side A	Side B	Meter #
1		xx	26.6-end
2	xx		0-end
2		xx	0-26 & 36-46.1
Committee Clerk Signature	APenrose		

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1242. There will be 45 minutes of testimony, 15 minutes of questions for support and the same for opposition. That will take us to 12:00 noon.

Peter Crary, attorney in Fargo, constituent of Rep. Sandvig: Introduced the bill, support (see attached testimony, letter from Charles Rice). We want to focus on line 8 on the word "intentionally".

Chairman DeKrey: Thank you.

Patrick Delaney, Asst. Director of Public Policy at American Life League in Stafford, VA.: Support (see attached testimony), we are a large grassroots organization who support this bill, but would be willing to support an amendment reducing the penalty for mothers who perpetrate this crime from a AA felony to a class B or C felony.

Chairman DeKrey: Thank you. Further testimony in support.

Martin Wishnashki, Ph.D.: Support. Passed around a picture of a baby and aborted baby. The baby is a person at conception. It is not the abortionists or even the Supreme Court which will bring the wrath of God on America. It is the consent, that we are citizens of this state, give to these actual decrees by allowing them to continue that will seal our judgment. This bill will erase the line of demarcation between person and non-person. It ends the discrimination against the preborn child.

Chairman DeKrey: Thank you. Further testimony in support.

Laurie French: Support, I am pro-life and one nation under God.

Chairman DeKrey: Thank you.

Tim Lindgren, State Director of ND Life League: Support (see attached testimony).

Chairman DeKrey: Thank you.

Patricia Larson, Perry Center of Fargo: Support. I have been counseling post-abortion women for a number of years, and they are not the second victims of this act. They know what they are doing, that they are destroying their children.

Chairman DeKrey: Thank you. The time is up for testimony, are there any questions from the committee.

John Laughton: You mean a private citizen can't speak.

Chairman DeKrey: If there are no questions from the committee, we will take that 15 minutes for additional testimony.

Andy Heinze: Support (see attached testimony).

Chairman DeKrey: Thank you.

John Laughton, from Fargo: Support.

Chairman DeKrey: Thank you.

Eull Stephenson, Minot: Support. Congress has a bill in it, that will make it illegal to perform an abortion. It will pass. Is North Dakota going to stand up and take the lead?

Chairman DeKrey: Thank you.

Kathy Kirkebee, Fargo: Support. I counsel women outside the death clinic (the abortion clinic in Fargo). Something needs to be done to protect the unborn child.

Chairman DeKrey: Thank you.

Kari Michaelson: Support. I moved to ND from Washington DC around 12 years ago. This is not just a religious issue. I was a teen mother at 15. I was carrying a biracial child and everyone wanted me to get an abortion and I did not do it because I knew in my heart that it was murder. I pray you will vote with your conscience.

Chairman DeKrey: Thank you.

Tim Bedouin, Dickinson: Support. When one wants a baby, it is a baby from the beginning, but when a woman doesn't want the baby, it becomes something else. There is something wrong with this logic.

Chairman DeKrey: Thank you.

Evie Lawrence: Support. I lost my organized list of testimony. I do not consider abortion to be a religious issue, but I think it is a moral issue.

Chairman DeKrey: Thank you.

Brenda Malanaro: Support. This isn't a religious issue, but an economic issue. Just think of the 44 million people that have disappeared from our society and how that will affect our lives when we are ready to retire. They won't be there.

Chairman DeKrey: Thank you. We will now take testimony in opposition to HB 1242.

Bishop Zipfel: Opposed (see attached testimony). We are completely committed to building a culture of love, which means working to eliminate abortion by overturning Roe v. Wade.

Chairman DeKrey: Thank you.

Rep. James Kerzman: Opposed. I believe in life. I am determined to work in that direction. I have a problem with criminalizing the woman.

Chairman DeKrey: Thank you.

Carol Sawicki, employee of Red River Women's Clinic: Opposed (see attached testimony). This law would be unconstitutional.

Chairman DeKrey: Thank you.

Stacey Pfliiger, Executive Director of ND Right to Life: Opposed. (see attached testimony). She also presented testimony on behalf of Pauline Economon (see attached testimony).

Chairman DeKrey: Thank you.

Carol Two Eagles: Opposed (see attached testimony).

Chairman DeKrey: Thank you.

Christopher Dodson, Director of the ND Catholic Conference: Opposed. It is uncomfortable for any of us to oppose this bill, and be on the same side as the people who favor abortion. We are opposed to the criminalization of women.

Chairman DeKrey: Thank you.

Christina Kindel, ND Family Alliance: Opposed, we look at the issue as judgment or mercy, we are opposed to the methodology of this bill. We don't want to criminalize women.

Chairman DeKrey: Thank you.

Andrew Varvel: Opposed (see attached testimony and amendments).

Chairman DeKrey: Thank you.

Shelly Stone: Opposed (see attached testimony).

Chairman DeKrey: Thank you. We will take questions at this time.

Rep. Kretschmar: Question directed to Patrick Delaney - Does your organization work to oppose the death penalty.

Mr. Delaney: I am opposed to the death penalty personally, but the organization does not have a policy in place on that issue.

Chairman DeKrey: Thank you. We will now close the hearing.

(Reopened later in the afternoon)

Chairman DeKrey: What are the committee's wishes in regard to HB 1242.

Rep. Delmore: I move a Do Not Pass.

Rep. Wrangham: Seconded.

11 YES 2 NO 0 ABSENT DO NOT PASS CARRIER: Rep. DeKrey

Date: 2/12/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1242

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Wrangham

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin		✓			
Rep. Grande		✓			
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 2

Absent 0

Floor Assignment Rep. DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 7:49 a.m.

Module No: HR-28-2512
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1242: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1242 was placed on the Eleventh order on the calendar.

2003 TESTIMONY

HB 1242

Crary + Delaney

UNIVERSITY OF
NOTRE DAME

THE LAW SCHOOL

P.O. Box R
Notre Dame, Indiana
46556-0780 USA

Telephone (574) 631-6627

February 10, 2003

Hon. Sally Sandvig
North Dakota House of Representatives
600 East Blvd.
Bismarck, ND 58505

Dear Representative Sandvig:

Peter B. Crary requested that I inform you of my opinion of House Bill 1242, the Preborn Child Protection Act, which you have introduced. I have studied the bill and congratulate you on its introduction.

H.B. 1242 confronts *Roe v. Wade* on its basic holding, that the unborn child is a nonperson whose life is beyond the protection of the law. Some will argue that it is useless to enact state legislation which contradicts *Roe's* denial of legal protection to the child. On the contrary, I believe we ought to adopt the approach taken by Abraham Lincoln on the *Dred Scott* case. That case similarly denied the personhood of innocent human beings – the slaves. In his debates in 1858 with Stephen A. Douglas, Abraham Lincoln said:

> If I were in Congress, and a vote should come up on a question whether slavery should be prohibited in a new territory, in spite of that Dred Scott decision, I would vote that it should. [W]e will try to reverse that decision . . . [W]e will try to put it where Judge Douglas would not object, for he says he will obey it until it is reversed. Somebody has to reverse that decision, since it is made, and we mean to reverse it, and we mean to do it peaceably. But Judge Douglas will have it that all hands must take this extraordinary decision, made under these extraordinary circumstances, and give their vote in Congress in accordance with it, yield to it and obey it in every possible sense. Paul M. Angle, ed., Created Equal? The Complete Lincoln Douglas Debates of 1858, pg. 36-37.

It is important to present repeatedly to the Supreme Court enacted laws which affirm the conviction of the American people that *Roe* is totally wrong and that all human beings, including the unborn, are entitled to the protection of the law.

One of the curious aspects of this matter is that the North Dakota Catholic Conference and the two Catholic bishops of North Dakota, Bishop Samuel J. Aquila and Bishop Paul A. Zipfel, have refused to support your bill because it does not explicitly exclude possible prosecution of the mother. See letter Bishop Zipfel to Mr. Crary, Jan. 20, 2003; letter of Bishop Aquila to Mr. Crary, Jan. 28, 2003. This position makes no sense at all in the context of the history and practicalities of prosecutions for illegal abortions. The bishops ought to support your bill. Even the pre-Roe prohibitions of abortion theoretically exposed the mother as well as the abortionist to prosecution. Through the exercise of prosecutorial discretion and restraint, prosecutions were practically universally restricted to the abortionist who is the real target of legislative efforts against abortion. In principle, the mother is responsible for the death of her unborn child just as she would be for drowning her newborn infant in the bathtub. But an explicit disclaimer of maternal prosecution is unnecessary and could be confusing in a statute such as H.R. 1242. The enclosed 1982 essay by Paul Wohlers makes the point that through the first two centuries of this nation, when abortion was illegal, the mother was universally regarded as a victim of abortion rather than a criminal.

Please let me know if there is any further information I can provide.

With best wishes for the success of your forthright effort on behalf of the most defenseless innocent human beings.

Sincerely,

Charles E. Rice
Professor Emeritus of Law

CER/lp

bc: Peter B. Crary, Esq.

acb

October 6, 1982

Charles E. Rice
Professor of Law
Notre Dame Law School
Notre Dame, IN 46556

Dear Professor Rice:

Thank you for your interest in the research, publishing, and service projects of of The American Center for Bioethics (ACB). I would like to take this opportunity to tell you more about our activities.

The ACB, incorporated on April 20, 1982, is a new organization. However, it is actively pursuing its stated goals.

The ACB has published one article to date (sample enclosed). Next month, two other articles will be released. They address issues related to genetic engineering and adolescent pregnancy. The ACB anticipates the release of a full length book during the first quarter of 1983. A list of article reprints and pricing will be available upon request in December of 1982.

The ACB Bulletin, a periodic newsletter, will be published in January of 1983. It will contain reviews of books, articles, and films and report on newsworthy events.

We welcome proposals to publish or sponsor research. Those interested should submit a brief outline of their proposed project or materials for publishing. Topics are restricted to issues in bioethics.

To date, the major emphasis of the ACB in program development has been to support a national program known as the Crisis Pregnancy Center Program (CPC). The CPC program was developed and is managed by the Christian Action Council. The Centers minister to women with crisis pregnancies and are designed to provide positive alternatives to abortion. Currently, there are 22 centers operating nationally with a growth rate of approximately 1 center per month. Success of the program depends on the combined effort of professional and volunteer personnel. The program is generally initiated in a community by the local churches.

The ACB is developing media presentations for use in the Centers. The films, or video tapes, will provide education in prenatal care and other relevant matters to the client, and management and counseling to the staff. Also, the ACB will be giving financial grants to individual centers.

Again, thank you for your interest in our activities. If you would like any other information, please do not hesitate to call the Development Office at 202-544-5299.

Sincerely,

Sandra Jordan
Director of Development

SLJ/eaf

The American Center for Bioethics
422 C Street, Northeast, Washington D.C. 20002

WOMEN AND ABORTION:
The Prospects of Criminal Charges

"If you have a miscarriage," a full-page advertisement in the Washington Post recently warned, "you could be prosecuted for murder." The ad, one of a series purchased by Planned Parenthood in opposition to proposed antiabortion legislation, added, "Even a miscarriage could be investigated as a criminal offense. Amazing as it sounds, you could be prosecuted for manslaughter."[1]

"Prochoice" activists have long maintained that statutory restrictions on abortion would result in murder prosecutions for women who procure abortions. More recently, they have alleged that women who suffer miscarriages would similarly be charged with murder.

"Prolife" activists dispute these claims. They contend that a return to traditional prohibitions on abortion would result in neither wholesale murder charges against women nor criminal investigations of miscarriages.

Neither side documents its position.

This study penetrates the excessive rhetoric on this volatile issue in an effort to ascertain the probable legal effect of proposed restrictions on abortion. By comprehensively examining the enforcement of abortion statutes prior to the Supreme Court's Roe v. Wade decision (410 US 113) we can with reasonable accuracy predict how abortion prohibitions would be applied in the future. The American legal system's reliance on precedent makes the outcome of past cases essential in determining the probable outcome of similar cases in the future. If our legal system again has statutes criminalizing abortion to enforce, judges will seek guidance in the pre-Wade decisions, which constitute a virtual textbook on the enforcement of state abortion laws.

Because of the critical role of precedent, the author undertook an exhaustive study of pre-Wade abortion statutes and related case law. This study included an examination of the abortion statutes in every state from inception through subsequent revision. It also involved a review of every state and federal court decision bearing on these statutes.

What is the legal history of the application of abortion laws toward women? Is there justification for Planned Parenthood's claim that women who procure abortions would be charged with murder or that women who miscarry would be subject to criminal investigation?

The present study of the legal precedents involving state abortion statutes since the mid-1800's indicates that there is no basis for the claim. On the contrary, past court decisions tended to treat women who underwent abortions not as perpetrators of illegal acts, but as victims. These women were never charged with murder, only seldom were named co-conspirators, and still more rarely were regarded as accomplices.

Prosecution of Women for Murder

No woman has ever been prosecuted for murder for procuring an abortion. Extensive examination of case law in all fifty states, case law beginning in the mid-nineteenth century and continuing to 1973, reveals not a single instance of the filing of murder charges against a woman who obtained an abortion.

One reason for this is that states, although they regarded abortion as criminal, and often as felonious, did not consider it murder. By the late 1800's, every state had enacted some type of sta-

---

[1] The Washington Post, April 27, 1981, p. A28.

prohibiting abortion; none classified abortion murder. The Ohio statute was typical of these laws.

> No person shall prescribe or administer a medicine, drug, or substance, or use an instrument or other means with intent to procure the miscarriage of a woman, unless such miscarriage is necessary to preserve her life, or is advised by two physicians to be necessary for that purpose.
>
> Whoever violates this section, if the woman either miscarries or dies in consequence thereof, shall be imprisoned not less than one nor more than seven years.

Ohio Rev. Code Ann., Sect. 2901.16 (1953)

It should first be explained that the words "abortion" and "miscarriage" were often used interchangeably in statutes and case law on this subject. A quick reading of such statutes may have contributed to the fear of prosecution for spontaneous miscarriages referred to earlier in this study. The term "miscarriage," however, was used in statutes, in case law, and in legislative discussion to denote "induced abortion"--the deliberate expulsion of a fetus from the womb. In no case was a spontaneous miscarriage made the object of criminal investigation or prosecution. Indeed, as the Ohio statute indicates, it was the abortionist--and not his client--who was regarded as having engaged in criminal activity.

Prosecution of Women for Lesser Crimes

Prior to 1973, seventeen states had an additional enforcement statute, this one aimed directly at the woman. The South Dakota law, for example, provided:

> Every woman who solicits of any person any medicine, drug, or substance and takes the same or who submits to any operation or to the use of any means with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars or both.

S.D. Compiled Laws Ann. 22-17-2 (1967)

Although provisions of this type did not characterize the procurement of abortion as murder, they nevertheless gave states power to fine and imprison women who solicited abortions. But an extensive examination of case law related to those statutes adduced no instance where a woman was prosecuted under such laws. While the courts commonly referred to the woman's role in her abortion as "immoral" and "illegal," no case was found in which a woman was brought to trial.

Women as Accomplices to Abortionists

The only context in which the courts regularly faced issue of a woman's culpability in her abortion was in connection with her alleged complicity or conspiracy with the abortionist. Roughly 90% of case law regarding the potential liability of women who procured abortions involved the question of whether such women were accomplices in criminal acts.

The primary issue in the complicity cases was not the guilt of the woman but of her abortionist. The defense--not the prosecution--sought to have such women named as accomplices because they often were the only eyewitnesses to their abortions. Since most states required that the testimony of an accomplice be corroborated before being admitted into evidence, the abortionist would typically allege that the woman was his accomplice in the performance of the abortion.[2] The defense hoped thereby to make the woman's testimony inadmissible and thus, in the absence of corroborating evidence, to win acquittal.

---

[2] California, for example, applied the following standard of admissibility:

> A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense. Cal. Penal Code, Sect. 1111 (1970).

In case after case, this question of complicity faced by courts as a preliminary issue in the [illegible] of the abortionist. Although the woman was not on trial and was not directly liable if the court found that she was indeed an accomplice, these cases provide the only opportunity to study the judicial system's attitude toward women who had obtained abortions.

Of the forty states that confronted the complicity issue, the courts in thirty-nine found that the woman was not an accomplice. The courts made such statements as:

- "It has been so many times decided by this court that the woman upon whom an abortion is committed is not an accomplice that we regard the question as settled." Gray v. State, 77 Tex. Crim. 221, 229; 178 S.W. 337, 341 (1915).

- "A woman who submits herself to a doctor to have an abortion procured is not an accomplice or particeps criminis." Commonwealth v. Sierakowski, 154 Pa. Super. Ct. 321, 327; 35 A.2d 790, 793 (1944).

- "[illegible]he does not, by consenting to the unlawful operation, become an accomplice in the crime. She should be regarded as the victim of the crime rather than as a participant in it." State v. Burlingame, 47 S.D. 332, 337; 198 N.W. 824, 826 (1924).

- "A woman who has submitted to an abortion is not an accomplice of the persons charged with performing, procuring, or conspiracy to procure the miscarriage." People v. Kutz, 9 Cal. Rptr. 626, 630; 187 Cal. App. 2d 431, (1961).

- "It may seem to be an unusual rule that one who solicits the commission of an offense, and willingly submits,...should not be deemed an accomplice...But in cases of this kind the public welfare demands the application of this rule, and its exception from the general rule seems to be justified by the wisdom of experience...She was the victim of a cruel act." State v. Pearce, 56 Minn. 226, 230; 57 N.W. 652, 653 (1894).

Other courts relied on their state's definition of "accomplice" as a person who was liable to indictment for the same crime as the principal to establish that women were not accomplices in their own abortions.[3] "The rule in this state," an Oregon court concluded, "is that an accomplice is one who is subject to be indicted and punished for the same crime for which the defendant is being tried. . . A reading of the statute indicates that the acts prohibited are those which are performed upon the mother rather than any action taken by her. She is the object of the acts prohibited rather than the actor." State v. Barnett, 249 Ore. 226, 228; 437 P.2d 821, 822 (1968).[4]

In People v. Vedder, 98 N.Y. 630 (1885), the New York Supreme Court similarly found that a woman could not be an accomplice to her abortion because she could not be indicted for committing her abortion. "It is quite clear that the woman spoken of in the statute is not regarded as one of the persons who could be guilty of the crime described in the 294th section and that she could not, therefore, be indicted under that section." People v. Vedder, 98 N.Y. 630, 632 (1885).[5]

Those states that did have a specific provision aimed at the woman often used its existence as further grounds for denying that the woman was her abortionist's accomplice. If she could be indicted for soliciting an abortion, the courts

---

[3]The California penal code defined an accomplice as "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." Cal. Penal Code, Sect. 1111 (1970).

[4]Similar holdings came in Zutz v. State, 52 Del. 492; 160 A.2d 727 (1967); People v. Clapp, 24 Cal. 2d [illegible]5, 151 P. 2d 237 (1944); and People v. Stone, 89 Cal. App. 2d 853; 202 P. 2d 333 (1949).

[5]Later New York cases followed this precedent. People v. McGonegal, 136 N.Y. 62; 32 N.E. 616 (1892); People v. Blank, 283 N.Y. 526; 29 N.E. 2d 73 (1940).

soned, she could not be indicted for forming an abortion and, consequently, could not be named an accomplice.[6] As noted earlier, there is no evidence that a woman was ever indicted for soliciting an abortion.

Even when the woman had performed the abortion on herself, the courts often declined to recognize her as an accomplice.[7] In Petition of Vickers, 371 Mich 114, 115; 123 N.W. 2d 253, 254 (1963), the Michigan Supreme Court stated, "The majority view is that not only may she not be held for abortion upon herself but neither as an accomplice."[8]

Women as Victims of Abortion

Most courts in fact regarded the woman as the victim in abortion cases, as the object of protection and not the object of prosecution. "The abortee is considered the victim of the crime," noted the court in People v. Reinard, 33 Cal. Rptr. 908, 912; 220 Cal. App. 2d 720, 724 (1963). "She is regarded as his victim, rather than an accomplice." Thompson v. U.S., 30 App. D.C. 352, 363 (1908). A Maryland court drew the same conclusion. "In Maryland a woman upon whom an abortion has been performed is regarded by the law as a victim of the crime, rather than as a participant in it." Basoff v. State, 208 Md. 643, 654; 118 A.2d 917, 923 (1956).[9]

Only in Alabama did courts rule that a woman could be an accomplice to her abortionist. Again, the woman's guilt was not at issue; the question of complicity was evidentiary only. The court in Trent v. State, 15 Ala. App. 485; 73 So. 834 (1916), maintained that Alabama's antiabortion statute would lose its moral force were women not considered accomplices.

No other state believed that exempting a woman from legal complicity in any sense diminished her moral culpability. In People v. Vedder, 98 N.Y. 630, 632 (1885), the court commented, "Even though there be no difference on a moral point of view as to the guilt imputable to the respective participators in the act of abortion, yet the statute has made a distinction in the cases..." This distinction between moral guilt and legal guilt was a prominent feature of many abortion-complicity cases.[10]

There are, of course, rare exceptions to the "no accomplice" findings in states other than Alabama. The appendix cites those decisions as well as the vast majority which support the "no accomplice" rule. But in the overwhelming majority of cases, women who procured abortions were regarded neither as principals nor as accomplices in criminal activity.

Women as Co-Conspirators with Abortionists

Some state courts held that a woman, although not an accomplice, was an abortionist's co-conspirator. The principal issue in the conspiracy cases, as in the complicity cases, was not the wo-

---

[6]People v. Vedder, 98 N.Y. 630 (1885); Wilson v. State, 36 Okla. Crim. 148; 252 P. 1106 (1927); State v. Proud, 74 Idaho 429; 262 P.2d 1016 (1953); State v. Tennyson, 212 Minn. 158; 2 N.W.2d 833 (1942).

[7]State v. Carey, 76 Conn. 342; 56 A. 632 (1904); Commonwealth v. Weible, 45 Pa. Super. Ct. 207 (1910); Fondren v. State, 74 Tex. Crim. 552; 169 S.W. 411 (1914).

[8]That precedent was followed in People v. Nixon, 42 Mich. App. 332; 201 N.W.2d 635 (1972), in another case of self-induced abortion.

[9]Similar conclusions were reached in People v. Gibson, 33 Cal. App. 459; 166 P. 585 (1917); State v. Rose, 75 Idaho 59; 267 P.2d 109 (1954); Richmond v. Commonwealth, Ky., 370 S.W.2d 399 (1963); and [illegible]no v. State, 117 Md. 435; 83 A. 759 (1912).

[10]Seifert v. State, 160 Ind. 464; 67 N.E. 100 (1903); Thompson v. United States, 30 App. D.C. 352 (1908); State v. Shaft, 166 N.C. 407; 81 S.E. 932 (1914); State v. McCurtain, 52 Utah 63; 172 P. 481 (1918); State v. Miller, 364 Mo. 320; 261 S.W.2d 103 (1953).

s guilt but the admissibility of her testimony against the abortionist. The woman was not a co-defendant. In some cases, the woman had died as a result of her abortion and the prosecutor, in an effort to use statements and letters she had written as evidence against the abortionist, petitioned the court to name her a co-conspirator.[11]

As in the accomplice decisions, the primary focus of the conspiracy cases thus was not on a particular woman's guilt, but on the admissibility of her statements. Wisconsin and Iowa were the only states with a significant number of rulings of this type; other states seem not to have employed the conspiracy approach. Again, the significance of the conspiracy cases was procedural, not substantive. No woman implicated as a co-conspirator was ever prosecuted.

Civil Claims of Women Who Procured Abortions

Civil cases are also instructive about the law's attitude toward women who procured abortions. These cases included claims on life insurance ies of women who died from abortions and claims against abortionists. Authority is split in these cases. The courts generally agreed that the women involved bore moral guilt, but disagreed on the effect of this guilt on their civil claims.

In Wells v. New England Mutual Life Insurance Co., 191 Pa. 207; 43 A. 126 (1899), a Pennsylvania court held that the beneficiary of a woman who died at the hands of an abortionist could not collect on her life insurance policy, since she died as the result of an illegal and immoral act. In Bowlan v. Lunsford, 176 Okla. 115; 54 P.2d 666 (1936), an Oklahoma court disallowed a woman's lawsuit against her abortionist, holding that she should not be permitted to recover damages stemming from her participation in an illegal activity. In Hunter v. Wheate, 53 App. D.C. 206; 289 F. 604 (1923), a federal court ruled that, though the woman was not an accomplice and not criminally liable, she was a participant in an immoral act and consequently ineligible to maintain a tort claim against her abortionist.

An Ohio court did allow claims on the part of a woman, however, despite her participation in an illegal act. Milliken v. Heddesheimer, 110 Ohio St. 381, 114 N.E. 264 (1924). No criminal charges against the woman arose from any of these lawsuits.

Conclusion

No evidence was found to support the proposition that women were prosecuted for undergoing or soliciting abortions. The charge that spontaneous miscarriages could result in criminal prosecutions is similarly unsupportable. There are no documented instances of prosecution of such women for murder or any other species o homicide; nor is there evidence that states that had provisions enabling them to prosecute women for procuring abortions ever applied those laws. The vast majority of courts were reluctant to implicate women even in a secondary fashion, through complicity and conspiracy charges. Even in those rare instances where an abortionist persuaded the court to recognize the woman as his accomplice, charges were not filed against her. In short, women were not prosecuted for abortion. Abortionists were.

The charges of Planned Parenthood and other "prochoice" proponents are without factual basis. Given the American legal system's reliance on precedent, it is unlikely that enforcement of future criminal sanctions on abortion would deviate substantially from past enforcement patterns.

---

[11] Solander v. People, 2 Colo. 48 (1873); State v. Crofford, 133 Iowa 478; 110 N.W. 921 (1907); State v. Gilmore, 151 Iowa 618; 132 N.W. 53 (1911); Kraut v. State, 228 Wis. 386; 280 N.W. 327 (1938); State v. Timm, 244 Wis. 508; 12 N.W. 2d 670 (1944).

APPENDIX

Case Law Involving Liability of Women for Abortion

Alabama

Woman submitting to abortion not indictable under any statute. Could be liable under common law after quickening. Smith v. Gafford, 31 Ala. 45 (1857).

Woman knowingly consented to abortion without believing it necessary to save her life is guilty of aiding and abetting, indictable as accomplice. Trent v. State, 15 Ala. App. 485, 73 So. 834 (1916); Steed v. State, 27 Ala. App. 263, 170 So. 489 (1936); Dykes v. State, 30 Ala. App. 129, 1 So. 2d 754 (1941).

Arkansas

Woman not accomplice--no penalty. Heath [illegible]tate, 249 Ark. 217, 459 S.W. 2d 420 (1970).

California

Woman not accomplice. People v. Gibson, 33 Cal. App. 459, 166 P. 585 (1917); People v. Wilson, 54 Cal. App. 2d 434, 129 P. 2d 149 (1942); People v. Pierson, 69 Cal. App. 2d 285, 159 P. 2d 39 (1945); People v. Stone, 89 Cal. App. 2d 853, 202 P. 2d 333 (1949); People v. Rhoades, 93 Cal. App. 2d 448, 209 P. 2d 33 (1949); People v. Miner, 96 Cal. App. 2d 43, 214 P. 2d 557 (1950); People v. Buffum, 40 Cal. 2d 709, 256 P. 2d 317 (1953); People v. Califro, 120 Cal. App. 2d 504, 261 P. 2d 332 (1953); People v. Bowlby, 135 Cal. App. 2d 519, 287 P. 2d 547 (1955); People v. Kurtz, 187 Cal. App. 2d 431, 9 Cal. Rptr. 626 (1961); People v. Moore, 213 Cal. App. 2d 160, 28 Cal. Rptr. 530 (1963); People v. Kramer, 259 Cal. App. 2d 452, 66 Cal. Rptr. 638 (1968).

Woman not an accomplice but her testimony must be corroborated if it is to be admissible. People v. Clapp, 24 Cal. 2d 835, 151 P. 2d 237 (1944); People v. Reimringer, 116 Cal. App. 2d [illegible] 253 P. 2d 756 (1953); People v. Gallardo, 41 2d 57, 257 P. 2d 29 (1953); People v. Bowden, 208 Cal. App. 2d 589, 25 Cal. Rptr. 368 (1962); People v. Reinard, 220 Cal. App. 2d 720, 33 Cal. Rptr. 908 (1963).

Civil action. Woman held to have submitted to an illegal act and thus unable to recover damages from lover who persuaded her to have abortion. Sayadoff v. Wanda, 125 Cal. App. 2d 626, 271 P. 2d 140 (1954).

Colorado

Woman may be part of conspiracy to procure an abortion. Solander v. People, 2 Colo. 48 (1873).

Connecticut

Woman not accomplice in self-abortion. Could be charged for soliciting abortion, though not in this case. State v. Carey, 76 Conn. 342, 56 A. 632.

Delaware

Woman not accomplice, but a victim. Zutz v. State, 52 Del. 492, 160 A. 2d 727 (1960).

District of Columbia

Woman not accomplice, but a victim. No offense committed. Maxey v. U.S., 30 App. D.C. 63 (1907); Thompson v. U.S., 30 App. D.C. 352 (1908); U.S. v. Vuitch, 305 F. Supp. 1032 (D. D.C. 1969), rev'd on other grounds, 402 U.S. 62, 91 S. Ct. 1924 (1971).

Civil case. Woman not accomplice or criminally liable. But has been involved in illegal, immoral act and cannot recover for negligence of abortionist. Hunter v. Wheate, 63 App. D.C. 206, 289 F. 604 (1923).

Georgia

Woman not accomplice. Gullet v. State, 14 Ga. App. 53, 80 S.E. 340 (1913).

Civil case. Woman not accomplice and can sue abortionist for negligence. Gaines v. Wolcott, 119 Ga. App. 313, 167 S.E. 2d 366 (1969), aff'd 225 Ga. 373, 169 S.E. 2d 165 (1969).

Woman can be prosecuted under statute that prohibits solicitation of abortion, but not as an accomplice in the procurement of the abortion. State v. Proud, 74 Idaho 429, 262 P. 2d 1016 (1953); State v. Rose, 75 Idaho 59, 267 P. 2d 109 (1954).

Civil case. Woman cannot recover damages for negligence in an abortion. Woman has committed criminal act. Nash v. Meyer, 54 Idaho 283, 31 P. 2d 273 (1934).

Illinois

Woman not accomplice. People v. Young, 398 Ill. 117, 75 N.E. 2d 349 (1947).

Civil case. Insurer not liable for payment on life insurance policy of deceased who died from illegal abortion. Lundholm v. Mystic Workers, 164 Ill. App. 472 (1911).

Civil case. Consent to illegal abortion bars recovery for negligence. Castronovo v. Musky, 3 Ill. App. 2d 168, 120 N.E. 2d 871 (1954).

Indiana

Woman not accomplice. Seifert v. State, 160 Ind. 464, 67 N.E. 100 (1903).

Civil case. Consent to abortion by deceased does not bar recovery by estate for negligence. Martin v. Hardesty, 91 Ind. App. 239, 163 N.E. 610 (1928).

Iowa

Woman not accomplice. State v. Smith, 99 Iowa 26, 68 N.W. 428 (1896); State v. Stafford, 145 Iowa 285, 123 N.W. 167 (1909).

Woman can be part of conspiracy to do unlawful abortion. State v. Brown, 95 Iowa 381, 64 N.W. 277 (1895); State v. Crofford, 133 Iowa 478, 110 N.W. 921 (1907); State v. Gilmore, 151 Iowa 618, 132 N.W. 53 (1911).

Woman not indictable for procuring abortion herself. Hatfield v. Gano, 15 Iowa 77 (1863).

Kansas

Civil cases. Woman can recover damages for negligence in illegal abortion. Joy v. Brown, 173 Kan. 833, 252 P. 2d 889 (1953); Richey v. Darling, 183 Kan. 642, 331 P. 2d 281 (1958); Kimberly v. Ledbetter, 183 Kan. 644, 331 P. 2d 307 (1958).

Kentucky

Woman is victim, not accomplice. Peoples v. Commonwealth, 87 Ky. 487, 9 S.W. 509 (1888); Richmond v. Commonwealth, 370 S.W. 2d 399 (1963).

Civil case. Woman consenting to illegal abortion cannot recover from person who urged her to have abortion. Goldnamer v. O'Brien, 98 Ky. 569 (1896).

Louisiana

Civil cases. Woman consenting to abortion not criminally responsible. Insurance company must pay on life insurance policy of deceased. Simmons v. Victory Industrial Life Insurance Co. of Louisiana, 18 La. App. 660, 139 So. 68 (1932); Payne v. Louisiana Industrial Life Insurance, 33 So. 2d 444 (Ct. App. 1948); Rosen v. Louisiana State Board of Medical Examiners, 318 F. Supp. 1217 (E.D. La. 1970), vacated, 412 U.S. 902, 93 S.Ct. 2285 (1973).

Maine

Civil case. Woman's consent to illegal abortion not a bar to recovery for doctor's negligence. Lembo v. Donnell, 117 Me. 143, 103 A. 11 (1918).

Maryland

Woman is a victim, not accomplice. Meno v. State, 117 Md. 435, 83 A. 759 (1912); Basoff v. State, 208 Md. 643, 119 A. 2d 917 (1956).

Massachusetts

Woman not accomplice. Commonwealth v. Wood, 77 Mass. 85 (1858); Commonwealth v. Boynton, 116 Mass. 343 (1874); Commonwealth v. Brown, 121 Mass. 69 (1876); Commonwealth v. Follansbee, 155 Mass. 274, 29 N.E. 471 (1892); Commonwealth v. Turner, 224 Mass. 229,

N.E. 864 (1916); Commonwealth v. Hersey, Mass. 196, 86 N.E. 2d 447 (1949); Doe v. Doe, 365 Mass. 563, 314 N.E. 2d 128 (1974); see also U.S. v. Holte, 236 U.S. 148, 35 S.Ct. 271 (1915).

Civil cases. Consent to illegal abortion bars recovery for negligence or resulting death or on life insurance policy. Hatch v. Mutual Life Insurance Co., 120 Mass. 550 (1876); Szadiwicz v. Cantor, 257 Mass. 518, 154 N.E. 251 (1926).

Michigan

Woman not charged with conspiracy or any other crime. Petition of Vickers, 371 Mich. 114, 123 N.W. 2d 253 (1963); People v. Nixon, 42 Mich. App. 332, 201 N.W. 2d 635 (1972).

Minnesota

Woman not accomplice. State v. Owens, 22 Minn. 238 (1875); State v. Pearce, 56 Minn. 226, 57 N.W. 652 (1894); State v. Tennyson, 212 Minn. 158, 2 N.W. 2d 833 (1942).

Civil case. Consent to illegal abortion not to recovery for negligence when consent not totally voluntary and negligence took place after abortion. True v. Older, 227 Minn. 154, 34 N.W. 2d 200 (1948).

Missouri

Woman not accomplice. State v. Miller, 364 Mo. 320, 261 S.W. 2d 103 (1953).

Nebraska

Woman not accomplice. Haus v. State, 147 Neb. 67, 22 N.W. 2d 385; vacated on other grounds, 147 Neb. 730, 25 N.W. 2d 35.

New Jersey

Woman not accomplice or principal. State v. Murphy, 27 N.J.L. 112 (1858); State v. Hyer, 39 N.J.L. 598 (1877); State v. Thompson, 56 N.J. Super. 438, 153 A. 2d 364 (1959); rev'd on other grounds, 31 N.J. 540, 158 A. 2d 333 (1960).

Under common law, woman could be guilty e child quickened. In re Vince, 2 N.J. 443, 67 2d 141 (1949).

New York

Woman not accomplice. Dunn v. People, 29 N.Y. 523 (1864); People v. Vedder, 98 N.Y. 630 (1885); People v. McGonegal, 136 N.Y. 62, 32 N.E. 616 (1892); People v. Blank, 283 N.Y. 526, 29 N.E. 2d 73 (1940); People v. Lovell, 242 N.Y.S. 2d 958, 40 Misc. 2d 458 (1963).

Woman could be accomplice or co-conspirator. People v. Davis, 56 N.Y. 95 (1874); People v. Murphy, 101 N.Y. 126; 4 N.E. 326 (1886); People v. Candib, 129 N.Y.S. 2d 176 (Co. Ct. 1954).

Civil cases. Woman's consent bars recovery for malpractice or wrongful death. Larocque v. Counelm, 87 N.Y. S. 625, 42 Misc. 613 (1904).

North Carolina

Woman not accomplice. State v. Shaft, 166 N.C. 407, 81 S.E. 932 (1914).

North Dakota

Woman co-conspirator or committed a crime, although deceased and not charged. State v. Reilly, 25 N.D. 339, 141 N.W. 720 (1913); State v. Mattson, 53 N.E. 486, 206 N.W. 778 (1925).

Ohio

Woman treated as accomplice. State v. McCoy, 52 Ohio St. 157, 89 N.E. 316 (1894); Waite v. State, 4 Ohio App. 451, 23 Ohio C.C. (n.s.) 455, 38 Ohio C.C. 414 (1915); State v. Jones, 80 Ohio App. 269, 70 N.E. 2d 913 (1946).

Civil case. Deceased woman's estate permitted to maintan suit against abortionist although woman held by court to be aider and abetter. Milliken v. Heddesheimer, 110 Ohio St. 381, 144 N.E. 264 (1924).

Oklahoma

Woman not accomplice. ...lson v. State, 36 Okla. Crim. 148, 252 P. 1106 (1927); Cahill v. State, 84 Okla. Crim. 1, 178 P. 2d 657 (1947).

Civil cases. Woman barred from recovery for negligence when she has consented to abortion, but may recover for negligent treatment after the abortion. Bowlan v. Lunsford, 176

Okla. 115, 54 P. 2d 666 (1936); Henrie v. Griffith, 395 P. 2d 809 (Okla. 1965).

Oregon

Woman not accomplice. State v. Glass, 5 Or. 73 (1873); State v. Wilson, 113 Or. 450, 230 P. 810 (1925); State v. Barnett, 249 Or. 226, 437 P. 2d 821 (1968).

Pennsylvania

Woman not accomplice. Commonwealth v. Welble, 45 Pa. Super. Ct. 207 (1910); Commonwealth v. Weaver, 61 Pa. Super. Ct. 571 (1915); Commonwealth v. Bricker, 74 Pa. Super. Ct. 234 (1920); Commonwealth v. Sperling, 26 Luz. 127 (1930); Commonwealth v. Sierakowski, 154 Pa. Super. Ct. 321, 35 A. 2d 790 (1944); Commonwealth v. Fisher, 189 Pa. Super. Ct. 13, 149 A. 2d 666 (1959), 398 Pa. 237, 157 A. 2d 207 (1960); Commonwealth v. Bell, 4 Pa. Super. Ct. 187 (1897).

Civil cases. Deceased woman's estate cannot collect on life insurance policy after death from illegal abortion. Wells v. New England Mutual Life Insurance Company of Boston, 191 Pa. 207, 43 A. 126 (1899); McCreighton v. American Catholic Union. 71 Pa. Super. Ct. 332 (1919).

South Dakota

Woman not accomplice. State v. Burlingame, 47 S.D. 332, 198 N.W. 824 (1924).

Tennessee

Woman not accomplice or principal. Smart v. State, 112 Tenn. 539, 80 S.W. 586 (1904).

Civil case. Woman not accomplice but cannot recover damages in connection with illegal abortion. Martin v. Morris, 163 Tenn. 10, 42 S.W. 2d 207 (1931).

Texas

Woman not accomplice. Watson v. State, 9 Tex. Crim. 237 (1880); Willingham v. State, 33 Tex. Crim. 98, 25 S.W. 424 (1894); Moore v. State, 37 Tex. Crim. 552, 40 S.W. 287 (1897); Miller v. State, 37 Tex. Crim. 575, 40 S.W. 313 (1897); Hunter v. State, 38 Tex. Crim. 61, 41 S.W. 602 (1897); Shaw v. State, 73 Tex. Crim. 337, 165 S.W. 930 (1914); Fondren v. State, 74 Tex. Crim. 552, 169 S.W. 411 (1914); Gray v. State, 77 Tex. Crim. 221, 178 S.W. 337 (1915); Hammett v. State, 84 Tex. Crim. 635, 209 S.W. 661 (1919); Crissman v. State, 93 Tex. Crim. 15; 245 S.W. 438 (1922); Bristow v. State, 137 Tex. Crim. 220, 128 S.W. 2d 818 (1939); Thompson v. State, 493 S.W. 2d 913 (Tex. Crim. App. 1971).

Woman is technically an accomplice but not subject to prosecution. Wandell v. State, 25 S.W. 27 (Tex. Crim. App. 1894).

Utah

Woman not accomplice. State v. McCurtain, 52 Utah 63, 172 P. 481 (1918); State v. Cragun, 85 Utah 149, 83 P. 2d 1071 (1934).

Vermont

Woman not accomplice. State v. Montifoire, 95 Vt. 508, 116 A. 77 (1921); Beecham v. Leahy, 130 Vt. 164, 287 A. 2d 836 (1972).

Virginia

Woman not accomplice. Miller v. Bennett, 190 Va. 162, 56 S.E. 2d 217 (1949).

Washington

Civil case. Woman cannot recover damages for abortion but may recover for negligent treatment following the abortion. Andrews v. Coulter, 163 Wash. 429, 1 P. 2d 320 (1931).

Wisconsin

Woman is accomplice or co-conspirator. State v. Henderson, 226 Wis. 154, 274 N.W. 266 (1937); Kraut v. State, 228 Wis. 386, 280 N.W. 327 (1938); State v. Timm, 244 Wis. 508, 12 N.W. 2d 670 (1944); State ex rel. Tingley v. Hanley, 248 Wis. 578, 22 N.W. 2d 510 (1946); State v. Adams, 257 Wis. 433, 43 N.W. 2d 446 (1950).

Civil case. Woman's consent to abortion does not bar recovery for negligence in abortion. Miller v. Bayer, 94 Wis. 123, 68 N.W. 869 (1896).

Delaney

American Life League

P.O. Box 1350
Stafford, VA 22555
phone: 540-659-4171
fax: 540-659-2586
e-mail: jbrown@all.org
web: www.all.org

February 11, 2003

To Whom it May Concern:

Re: North Dakota House Bill 1242 – Preborn Child Protection Act

On behalf of the Board of Directors of American Life League, and the more than 350,000 American families supporting our work, it is my privilege to endorse the language of House Bill 1242. The scientific facts are clear and undeniable: a human being begins at conception/fertilization.

House Bill 1242 acknowledges these facts and accurately concludes that when the act of abortion results in the death of a preborn child, the act is nothing less than a felonious assault on a human being which results in the death of that person.

In the same way that the perpetrator of an act of killing would be held responsible under the law and subsequently tried for that crime, so too the act of abortion and those who perpetrate the act should be held responsible under the law and tried for that crime.

Though we support this bill in whole—the way it is currently written—we would also support an amendment reducing the penalty for mothers who perpetrate this crime against their own preborn children from a AA felony to a class B or C felony due to their reduced empirical knowledge of the preborn child's humanity and the vicious cultural climate in which they would make such decisions. In service to justice and as a deterrent from committing this abominable crime however, a serious penalty should never be wholly removed.

It is our hope that the good people of North Dakota will be heard through their elected representatives and that House Bill #1242 will be enacted into law.

Judie Brown,
President, American Life League

The policies expressed herein have also been endorsed by
Fr. Tom Euteneuer,
President, Human Life International
Front Royal, Virginia

Approximate Testimony of Patrick Delaney
American Life League
On North Dakota House Bill 1242
February 12, 2003

Mr. Chairman, members of the committee, Your Excellency,

My name is Patrick Delaney and I am here as a representative of *American Life League* to voice support for the HB 1242. ALL is the largest national grassroots pro-life educational organization in the United States. We are located just south of Washington, D.C. in Stafford, Virginia. We have several different national outreach divisions including STOPP Planned Parenthood International, Rock For Life, the American Bioethics Advisory Commission, and Rachel's Vineyard Ministries. We also have 80 associate groups including a couple dozen statewide affiliates as well.

It is important to emphasize, in the context of my comments today, that *American Life League* is a Catholic organization. We adhere fully to the teaching of the Magisterium of the Catholic Church in all matters of faith and morals. Indeed our public policy is regulated and guided by the social and moral teachings of the Catholic Church- particularly the Church's teaching on the dignity of the human person and the building of just social structures in the law.

It is also relevant to note that I am speaking on behalf of Fr. Tom Euteneuer and *Human Life International*, another international Catholic pro-life organization headquartered in Front Royal, Virginia.

In addition, I would like to state that I personally submit fully to all the teachings of the Catholic Church, and practice my faith on a daily basis. Furthermore, I happen to hold a Masters of Divinity Degree in Catholic Theology and am currently in the final stages of completing a second Master of Arts Degree in Catholic Moral Theology.

HB 1242
American Life League never, ever supports legislation that contradicts the teaching of the Catholic Church. HB1242, the Preborn Child Protection Act, states: "A person is guilty of a class AA felony if the person intentionally terminates the life of a preborn child."

Some have objected to the bill including Catholic groups and authorities (North Dakota Bishops Samuel J. Aquila and Bishop Paul A. Zipfel), stating that such a law should not penalize the mother who is a necessary participant in this crime of killing her child.

Before we argue against this position, we need to properly qualify its relevance. This is a political opinion, not a teaching in faith or morals. This means that it has absolutely no binding effect on the consciences of *anyone*: no citizen, legislator, Catholic, religious, or priest. Not even the priests who have promised obedience to these bishops have the slightest obligation to agree with or adhere to this policy. This means that there is ample room for legitimate disagreement. And that is what I am here today to do. Not only will I testify that this policy is wrong, but I will prove to you that it actually violates the clear

teaching of the Catholic Church.

Church Teaching
St. Thomas Aquinas is the preeminent Catholic philosopher and theologian. Routinely his systematic presentation of the truth of the faith is referenced as a clear guide in articulating and arriving at objective principles of faith and morals. St. Thomas taught that law acts in two distinct ways: didactically as a teacher to guide citizens to virtue, and if necessary, in a penal fashion, to restrain and punish in order to protect the innocent.

L'Osservatore Romano
While searching for an appropriate authoritative quote to apply to the question at hand, I came across an article in this newspaper, *L'Osservatore Romano* (display of an issue). *L'Osservatore Romano* is the official newspaper of the Vatican, of the Holy See. It routinely covers the activities of John Paul II, providing the text of his statements on current events, homilies of special occasions, and the release of official doctrinal statements of the Church. In other words, they do not print opinions of questionable theological credibility in this newspaper.

Last fall they printed an article titled *"Evangelium Vitae 73: The Catholic Lawmaker and the problem of a seriously unjust law"* authored my moral theologian Angel Rodriguez Luno, a professor at the Pontifical University of the Holy Cross in Rome.

This essay treats several questions regarding pro-life legislation. In laying out the groundwork for his main points, the theologian articulates principles that are uncontested in the sacred science of moral theology. Most relevantly, for our purposes, he expresses the truth that laws are "seriously unjust" if they fail to properly punish violations of the right to life of innocents. He states:

> *Not only are those laws seriously unjust which allow the state to attack a human right, but also those through which the state fails in its duty to prohibit and punish, in a reasonable and proportionate way, the violation of fundamental human rights by others*(*L'Osservatore Romano*, 9/18/2002, weekly English edition, p. 3, my emphasis).

If the "Preborn Child Protection Act" failed in its duty to prohibit and punish in a reasonable and proportionate way, the violation of the fundamental right to life of others, it would be considered a "seriously unjust law."

Therefore, a policy proposed and supported by Catholics which seeks to exempt from punishment some-in this case mothers-who commit the crime of abortion against their own children is a serious deprivation of the proper goodness and integrity of the law. According to this statement, as proposed in the Vatican's official newspaper, such a deprivation would make the law "seriously unjust." I therefore assert, that to support such deprivation in the law is itself immoral according to Catholic teaching.

In the words of Fr. Tim Euteneuer, *President of Human Life International*, insisting that there be no penalty for the mother whatsoever is to "endorse the situation of

decriminalized abortion that *Roe v. Wade* gave us."

Catechism of the Catholic Church
The point made by Professor Luno above is confirmed and eloquently expressed in the Catechism of the Catholic Church. Paragraph 2273 of the Catechism states:

> *As a consequence of the respect and protection which must be ensured for the unborn child from the moment of his conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights*(my emphases).

Notice that this doctrinal teaching does not say that the law must provide appropriate penal sanctions for "almost every" or "virtually every" deliberate violation of child's right to life. It simply says, "**every**" violation must incur appropriate penal sanctions. "Every" means "every," no exceptions. If House Bill 1242 did not provide appropriate penal sanctions for all citizens who participate in the killing of a pre-born child, including the mother of that child, it would violate Catholic teaching.

Canon Law
In a letter dated January 28, 2003, His Excellency Bishop Samuel Aquila, Bishop of the Diocese of Fargo writes to attorney Peter Crary defending the position of the North Dakota Catholic Conference on HB 1242. In insisting that the civil law must exempt women from prosecution he quotes a 1988 encyclical letter of John Paul II, *Mulieris Dignitatem.*

In no way does this citation make any reference whatsoever to civil law or the role of civil law in deterring the "abominable crime" of abortion. In no way does it even imply that women should be exempt from the "*appropriate penal sanctions*" that natural and divine law require for "*deliberate violation(s)*" of a child's right to life. Indeed, the Church would hold, that such penal sanctions are necessary to deter women from harming themselves and killing their child through the act of abortion.

How do we know this? Because the Church has laws as well. Consistent with St. Thomas Aquinas' teaching on the law, the Church's Canon Law serves to *teach* the gravity of the crime of abortion, and *penalize* when this crime of irreparable damage is committed.

Consistent with the reflection of John Paul II offered by Bishop Aquila, the Church's canon law works in a *complementary* fashion to advance the Church's overall mission which is *always* mercy, compassion, and reconciliation with Christ-so we can all, (please God), one day make it to heaven.

It should be noted that the Catholic Church has one penalty which is its *swiftest* and *most severe* means of teaching the gravity of a particular evil and penalizing those who have committed such a crime in the hope that they may return to the Church for reconciliation, penance, and rehabilitation. It is called a *latae sententiae* excommunication; meaning that this penalty is incurred "by the very commission of the offense" (CCC, 2272). There

are only seven offenses that a Catholic can commit in order to be automatically excommunicated by the very commission of that crime: physical violence to the Pope is one, desecration of the Most Blessed Sacrament is another, and a third is the successful procurement of a "completed abortion."

Canon 1398 states: "A person who procures a successful abortion incurs an automatic (*latae sententiae*) excommunication."

With this law, the Church in her mission of compassion seeks to *teach* the grave evil of abortion in order to effectively *deter* women, and others who may influence her, from participating in the killing of her preborn child. In order to do this, the Church must properly *punish* such offenses in the law.

Analogously, this body, the North Dakota House of Representatives, has the same duty as the Church's Canon law: to teach and punish as a deterrent for those who may be inclined to slaughtering their innocent preborn boys and girls and causing grave spiritual, emotional, and perhaps physical damage to their mothers. That is the duty of this body and frankly the most fundamental duty of civil law and government as well: to protect the innocent from bloodshed, coercion, and abuse.

It should be noted that it will be awfully dangerous for a boyfriend or family members to coerce a mother to kill her preborn child, if they know that they can get 20 years to life for doing it. Not to mention the fact that there will not even be any abortionists available to go to, for these individuals will not want to go to prison either. When this bill gets passed, despite the obstacles from the strangest quarters imaginable, abortion will simply no longer be an option.

House Bill 1242, not only protects children from being directly killed, but protects mothers from such abuse, anguish, isolation, and lifelong grief as well.

Summary

I have attempted to prove that the policy of the North Dakota Catholic Conference and the Catholic bishops of North Dakota is not only counterproductive to achieving their own stated goals (and positive duty before God) of "overturning *Roe v. Wade*" and "building a culture of life," but violates the objective moral principles of the of the Church to which they have given their lives to advance and defend. The Bishops' policies clearly violate the *Catechism of the Catholic Church*, and contradict the established principles of moral theology as reflected in canon law.

With their positive participation, this bill very well could have (some experts contend "would have") been passed and been signed into law. It is strange enough that the bishops have not supported the bill. But the oddity gets even worse. Though they had some misgivings, they didn't just refrain from commenting or supporting the bill, or simply choose to issue a statement opposing the bill, or even ask for dialogue concerning their objections, or consider proposing amendments to address their concerns. Rather, in a unprecedented fashion, His Excellency Paul A. Zipfel, Bishop of the Diocese of Bismarck, choose to testify in person *against* the bill at the hearing of this Committee.

Remember this is a bill (HB 1242) that virtually expresses, embodies, and executes this very teaching from the Catechism of the Catholic Church:

> *As a consequence of the respect and protection which must be ensured for the unborn child from the moment of his conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights* (CCC, 2273).

Cardinal Joseph Ratzinger, the Vatican's "the prefect of the Congregation for the Doctrine of the Faith," recently gave a reflection stating that "it is not possible to remove God's judgment and punishment from the Christian faith, because to do so would mean that God is indifferent to evil, 'God combats evil and for this reason, as judge, he must also punish to do justice.'" (Zenit, 2/23/2003). So too, as a reflection of God's natural and divine law, must man's civil law "punish to do justice."

This is a sad day for the Church, for North Dakota, the babies who are being slaughtered right now as we speak-and will continue to be slaughtered for the foreseeable future-the mommies who are abandoned and coerced to have abortions that would be virtually and completely unavailable when this law is passed and enforced. (In time, we wouldn't need *Rachel's Vineyard* ministries anymore because we wouldn't have to be striving to heal thousands of women who are spiritually and emotionally hemorrhaging due to their past abortions.) It is also a sad day for couples who wish to adopt children that they cannot conceive on their own, and for the community as a whole who will not reap the benefits of the presence of these little brothers and sisters of ours who have been sliced and diced by abortionists.

The Testimony of Charles Rice

To be entered in the record.

Main points emphasized in the letter below:

- Charles Rice is a Catholic Professor of Jurisprudence and Constitutional Law. This means he understand Catholic ethical principles and the process to overturn *Roe v. Wade*.
- To vote in favor of HB 1242 is stand with the reasoning of Lincoln in his opposition to the Dred Scott decision. To vote against it is to stand with Stephan Douglas in the example given.
- "The bishops ought to support your bill (HB 1242)."
- Pre-Roe laws exposed the mother as well as the abortionist to criminal prosecution. "Through the exercise of prosecutorial discretion and restraint, prosecutions were practically universally restricted to the abortionist who is the real target of legislative efforts against abortion."

The Letter:

UNIVERSITY OF

NOTRE DAME

THE LAW

SCHOOL

February 10, 2003

P.O. Box R
Notre Dame, Indiana
46556-0780 USA
Telephone (574) 631-6627

Hon. Sally Sandvig
North Dakota House of Representatives
600 East Blvd.
Bismarck, ND 58505

Dear Representative Sandvig:

Peter B. Crary requested that I inform you of my opinion of House Bill 1242, the Preborn Child Protection Act, which you have introduced. I have studied the bill and congratulate you on its introduction.

H.B. 1242 confronts *Roe v. Wade* on its basic holding, that the unborn child is a nonperson whose life is beyond the protection of the law. Some will argue that it is useless to enact state legislation which contradicts *Roe's* denial of legal protection to the child. On the contrary,. I believe we ought to adopt the approach taken by Abraham Lincoln on the *Dred Scott* case. That case similarly. denied the personhood of innocent human beings - the slaves. In his debates in 1858 with Stephen A. Douglas, Abraham Lincoln said:

> If I were in Congress, and a vote should come up on a question whether slavery should be prohibited in a new territory, in spite of that Dred Scott decision, I would vote that it should. We will try to reverse that decision . . . We will try to put it where Judge Douglas would not object, for he says he will obey it until it is reversed. Somebody has to reverse that decision, since it is made, and we mean to reverse it, and we mean to do it peaceably. But Judge Douglas will have it that all hands must take this extraordinary decision, made under these extraordinary circumstances, and give their vote in Congress in accordance with it, yield to it and obey it in every possible sense. Paul M. Angle, ed., Created Equal? The Complete Lincoln Douglas Debates of 1858, pg. 36-37.

It is important to present repeatedly to the Supreme Court enacted laws which affirm the conviction of the American people that Roe is totally wrong and that all human beings, including the unborn, are entitled to the protection of the law.

One of the curious aspects of this matter is that the North Dakota Catholic Conference and the two Catholic bishops of North Dakota, Bishop Samuel J. Aquila and Bishop Paul A. Zipfel, have refused to support your bill because it does not explicitly exclude possible prosecution of the mother. See letter Bishop Zipfel to Mr. Crary, Jan. 20, 2003; letter of Bishop Aquila to Mr. Crary, Jan. 28, 2003. This position makes no sense at all in the context of the history and practicalities of prosecutions for illegal abortions. The bishops ought to support your bill. Even the pre-*Roe* prohibitions of abortion theoretically exposed the mother as was the abortionist to prosecution. Through the exercise of prosecutorial discretion and restraint, prosecutions were practically universally restricted to the abortionist who is the real target of legislative efforts against abortion. In principle, the mother is responsible for the death of her unborn child just as she would be for drowning her newborn infant in the bathtub. But an explicit disclaimer of maternal prosecution is unnecessary and could be confusing in a statute such as H.R. 1242. The enclosed 1982 essay by Paul Wohlers makes the point that through the first two centuries of this nation, when abortion was illegal, the mother was universally regarded as a victim of abortion rather than a criminal.

Please let me know if there is any further information I can provide.

With best wishes for the success of your forthright effort on behalf of the most defenseless innocent human beings.

Sincerely,

Charles E. Rice
Professor Emeritus of Law

End Rice Letter.

Official Statement of Support from *American Life League* and *Human Life International*

Main Point:

- "Though we support this bill in whole-the way it is currently written-we would also support an amendment reducing the penalty for mothers who perpetrate this crime against their own preborn children from a AA felony to a class B or C felony due to their reduced empirical knowledge of the preborn child's humanity and the vicious cultural climate in which they would make such decisions. In service to justice and as a deterrent from committing this abominable crime however, a serious penalty should never be wholly removed."

Official Statement:

February 11, 2003

To Whom it May Concern:

Re: North Dakota House Bill 1242 - Preborn Child Protection Act

On behalf of the Board of Directors of American Life League, and the more than 350,000 American families supporting our work, it is my privilege to endorse the language of House Bill 1242. The scientific facts are clear and undeniable: a human being begins at conception/fertilization.

House Bill 1242 acknowledges these facts and accurately concludes that when the act of abortion results in the death of a preborn child, the act is nothing less than a felonious assault on a human being which results in the death of that person.

In the same way that the perpetrator of an act of killing would be held responsible under the law and subsequently tried for that crime, so too the act of abortion and those who perpetrate the act should be held responsible under the law and tried for that crime.

Though we support this bill in whole-the way it is currently written-we would also support an amendment reducing the penalty for mothers who perpetrate this crime against their own preborn children from a AA felony to a class B or C felony due to their reduced empirical knowledge of the preborn child's humanity and the vicious cultural climate in which they would make such decisions. In service to justice and as a deterrent from committing this abominable crime however, a serious penalty should never be wholly removed.

It is our hope that the good people of North Dakota will be heard through their elected representatives and that House Bill #1242 will be enacted into law.

Judie Brown,
President, American Life League

The policies expressed herein have also been endorsed by
Fr. Tom Euteneuer,
President, Human Life International
Front Royal, Virginia

Testimony of Tim Lindgren
North Dakota Life League
On House Bill 1242

Chairman Duane DeKrey and members of the Judiciary Committee:

Thank you for the opportunity to testify in favor of House Bill 1242, an act to protect preborn children from abortion.

North Dakota Life League is a statewide educational organization with over 1500 supporters. We have worked primarily in education and sidewalk counseling in efforts to save preborn children from abortion. Nearly 25 babies are saved from abortion each year as a result of sidewalk counseling. We work in other areas of education as well through publications, speaking, etc.

North Dakota Life League has consistently worked for legislation that would protect all innocent preborn babies from abortion in North Dakota. You may recall that there was similar legislation to this current bill that was introduced in 1999 by former Senator Pete Naaden. North Dakota Life League worked closely with the legislators in an effort to draft legislation that would provide legal protection for preborn children.

Originally, that bill called for a Class B Felony. It was argued by some that the penalty was not stiff enough. We amended that bill which made it a Class AA Felony to terminate the life of a preborn child. When we switched the penalty to Class AA we allowed for a lesser penalty for the mother.

A review of North Dakota law reveals that in 1973 the penalty for abortion in North Dakota was a Class B Felony after quickening (of the baby), a Class C Felony prior to quickening, and a Class A Misdemeanor for the mother who submitted to any medical treatment that would cause the death of her preborn child.

North Dakota Life League asks for your support of HB 1242. This bill would make it a Class AA Felony to terminate the life of a preborn child and it requires that a physician shall make every effort to save the life of the mother and the life of the preborn child.

There are many who have expressed concerns over the possibility that a mother could be charged with a Class AA Felony for murdering her unborn child. The writers of this bill, which was adapted from the final version of the bill considered in 1999 with some minor modification, have determined that this discretion is best left in the hands of prosecutors. They have some good reasons for this for which others have or will testify. North Dakota Life League would like to point out that prior to the Roe v. Wade ruling in 1973 that decriminalized abortion, rarely if ever was the mother prosecuted. And even if the mother were prosecuted, the severity of the penalty can be handled in the sentencing of the mother. For these reasons we feel that even if this bill is not amended to lesson the penalty for the mother, North Dakota Life League can fully endorse and support HB 1242.

Having said that, North Dakota Life League wishes to state that we are not opposed and in fact would urge you to amend this bill to distinguish the mother who submits to any medical procedure that would intentionally or knowingly terminate the life of a preborn child, be guilty of a Class B or Class C Felony. We do not believe this would weaken the legal status of the preborn child and would accommodate the concerns of many that the potential penalty for the mother may be to harsh. In stating this, we wish to clarify that in no way does this indicate nor should it be construed as to suggest that the preborn child is any less a human being than that of a born child. And if the equality of the preborn child and the born child were the only consideration, we would argue that the Class AA Felony should stand as is. However, when considering what is a just penalty one must also consider the culpability of the mother. It is here that North Dakota Life League believes that there is room for lessoning the penalty of a mother who submits to abortion.

There are several factors to consider:

1. Civil law is a teacher of the moral law. When civil law contradicts the moral law, it corrupts the law. Thus, today's society has lived under a corrupt law and our judgments have been corrupted by the distortion of the moral law.
2. There are certain distinguishing factors that separate the culpability of one who murders a born child from a preborn child. One is able to with the senses see, hear and touch a born child. This is not possible with a preborn child. Thus, we would argue the culpability is weakened by this simple observation.
3. There is also the constant drumbeat of propaganda that reverberates throughout every sector of society that distorts, confuses and in some cases defies the truths of life.

It is here I wish to state that there are also those who wish to completely abrogate any and all responsibility for the actions of mothers who submit to medical procedures or instruments that they intend and know will terminate the lives of their preborn children. Despite the fact that the culpability of some may be diminished can in no way alleviate any and all responsibility for the willful act to terminate the life of a preborn child. Every mother of legal age, by consent and in most cases providing monetary compensation for the services, hires an abortionist to terminate the life of her preborn child. Approximately one third of all abortions are repeat abortions, sometimes having three, four and five abortions. In fact, in North Dakota, I have seen statistics showing that there are women who have had up to nine abortions.

Women cannot defy the laws of nature and of God. The Catholic Church states: Formal cooperation in an abortion constitutes a grave offense. The Church attaches the canonical penalty of excommunication to this crime against human life. "A person who procures a completed abortion incurs excommunication latae sententiae," "by the very commission of the offense,"... The reason for attaching this penalty to procured abortion by the Church is made clear and also applies to why a mother should be held morally and criminally responsible by the state. With respect to this penalty the Catechism of the Catholic Church states: "The Church does not thereby intend to restrict the scope of mercy. Rather, she makes clear the gravity of the crime committed, the irreparable harm

done to the innocent who is put to death, as well as to the parents and the whole of society."

Thus, we can see a distinction and clarification of the penalty which serves to properly acknowledge and punish the wrong but also to act as a deterrent and to inform of the serious nature of the crime committed against another innocent person and the harm done to the parents and to all of society.

In summary, prosecutors are charged with determining the facts of the case and who is responsible for the crime. In most cases with illegal abortion it is safe to say that he abortionist will be the target of most prosecutions. None the less, the mother may NOT be completely impugned of her responsibility nor can the father. Prosecutors will have to determine who paid for the abortion, which made the appointment, who solicited the abortion, etc...

North Dakota Life League urges you to vote for HB 1242.

However, since it is possible that one party or another could attempt to amend this bill, we wish to make it clear that we would oppose any amendment that permitted abortion by any means and we would oppose any amendment that would completely abrogate a mother of her maternal, moral and civil duties to protect her innocent preborn child's life.

North Dakota Life League would support and is willing to assist in writing an amendment that would stipulate that a mother who knowingly and intentionally submits to a medial procedure or device that terminates the life of her preborn child is guilty of a Class B or C Felony.

Thank you for your considerations of our testimony.

Let us pray that it is God's time to hear America and America Bless God for the nation that is His. We give Him all glory and honor for our freedom to exercise the worship of our Lord and Savior, Jesus Christ for "in Thee the orphan finds mercy", Hosea 14:13.

We hope that it is the Lord's time to expose abortion for what it is. That which is an unlawful act violating the State's protection of the unborn. At no time did ROE v. WADE make abortion lawful in which the news media reported the half truth "that the word "person" as used in the Fourteenth Amendment, does not include the unborn." "However", the supreme court said, "if the word "person" as used in the Amendment did include the unborn, [410 US 157] "..... the fetus' right to life would then be guaranteed specifically by the Amendment." Therefore, Federal protection would have superseded the State protection.

The Supreme Court emphasized, "Texas urges that, apart from the (14th) Amendment, life begins at conception and is present throughout the pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. *We need not resolve the difficult question of when life begins."* at page 162 we quote in part, ".....that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, ... that it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes 'compelling.'.....

"..... If the State is interested in protecting fetal life after viability it may go so far as to proscribe (make unlawful) abortion during that period, except when it is necessary to preserve the life or health of the mother." at page 159, to wit in part: "..... the (Supreme) Court does emphatically insist its concern for the "potential life" of the unbo n child, and repeatedly encourages the States to assume the responsibility thereof and assert the "State's important and legitimate interest in potential life, ... the court extends permission for the State to prohibit abortion ....." Therefore, the State protection does supersede the Federal protection. It is time to wake up America and demand that the laws be obeyed. All abortion is and has been unlawful.

Every State has laws prohibiting abortion. The Supreme Court asserts that the proper place to proscribe (make unlawful) abortion is within the States. With Christ as our witness families need bring up that child. Furthermore, those that have been endowed by the Creator ..... Life, Liberty, and the pursuit of Happiness; need to open up there homes, hearts and purses. Let us come boldly unto the throne of grace that we may obtain mercy, ... to help in time of need as He said, "Bring up a child in the way he should go, and he shall not depart from it."

to Heal the Brokenhearted ... to comfort All who Mourn

For many people 2000 means Y2K, and that spells trouble. But for Catholics, 2000 means something much greater and certainly more hopeful than the anticipated computer-generated glitches.

Pope John Paul II has called 2000 the Great Jubilee, a "year of the Lord's favor," when God will pour out graces in abundance. "Above all," John Paul explains, "the joy of every Jubilee" is a "*joy based upon the forgiveness of sins, the joy of conversion.*"[1] From Isaiah we know that God not only forgives, He also promises to "heal the brokenhearted ... to comfort all who mourn ... to give them ... a glorious mantle instead of a listless spirit" (Is 61:1-3).

As we look back over the Twentieth Century—indeed over the last year alone—we find much to mourn: genocidal slaughter based on ethnic and religious differences, cold-blooded killings by teens, ten prisoners a month executed by the state, doctors in Oregon and The Netherlands assisting patients to commit suicide with the law's blessing and 50 million children destroyed by abortion worldwide.

Violence and "legitimized" killing are such serious and pervasive problems they may seem to be beyond our control. And so, we reason, we have no power nor responsibility to change things. Yet the observation of Edmund Burke rings true: All it takes for evil to triumph is for good people to do nothing.

We are *not* helpless onlookers: "The future is not determined; we co-author it with God," as one bishop reminds us. Just as countless *individual sins* contribute to the "culture of death" now infecting the world, countless *individual choices to be virtuous* are needed to build a "culture of life" in the coming millennium.[2]

We start by making the personal choice to uphold—to really witness to—the sanctity and dignity of every human life. Forgiveness and conversion must take root in our hearts and in our communities, so that we can hold out to others a vision of hope and healing. St. Paul describes the Christian mission as being "ambassadors" in God's "ministry of reconciliation" (*2 Cor 5:18, 20*).

And nowhere, perhaps, is the need for reconciliation and for healing more urgently felt than in the hearts of those wounded by abortion. Theirs is often a hidden world of profound remorse, of darkness and despair. The death of a child through abortion is a loss of such magnitude that time not only fails to heal all wounds, it deepens them. Often grief becomes manifest through alcoholism, drug abuse, depression, chronic anxiety, fragmented relationships, marital unhappiness, loss of joy in life and spiritual alienation. Women find themselves trapped by the circular message that whirs inside:

"I allowed the life of my child to be taken; my sin is too great for even God to forgive."

Breaking through the darkness and despair with words of hope, Pope John Paul II says to these women:

The Church is aware of the many factors which may have influenced your decision, and she does not doubt that in many

cases it was a painful and even shattering decision. The wound in your heart may not yet have healed. Certainly what happened was and remains terribly wrong. But do not give in to discouragement and do not lose hope ...give yourselves over with humility and trust to repentance. The Father of mercies is ready to give you his forgiveness and his peace in the Sacrament of Reconciliation. You will come to understand that nothing is definitively lost and you will also be able to ask forgiveness from your child, who is now living in the Lord.
(*The Gospel of Life*, 99)

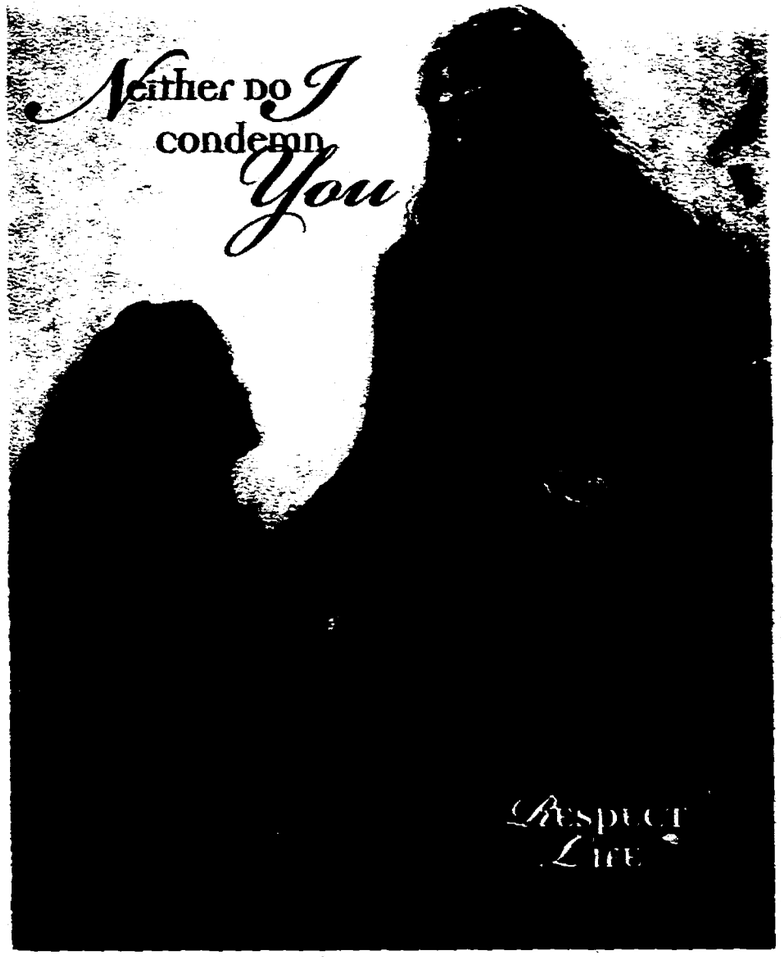
Each of us can help transform this message of hope from words on a page to life-giving water. How? By sharing this message of Christ's unconditional love and forgiveness with someone who is hurting from abortion. We can become the catalyst for restoring that person to new life in Jesus Christ.

A culture of life will flourish if people of faith, people of life, give witness to God's love. And united as one body, may we enter the Jubilee Year of 2000 with great rejoicing, proclaiming the redeeming power of God's merciful love.

1 Pope John Paul II, *As the Third Millennium Draws Near* (32), 1994.
2 Most Rev. Charles J. Chaput, O.E.M. Cap., Archbishop of Denver, "River of Mercy," December 1998.

Help is available throughout the U.S. For the nearest location, contact your diocesan pro-life office, phone 800-5WE-CARE or see www.nu.edu/rachel

9906



Diocese of Bismarck

THE CHANCERY
420 Raymond Street • P.O. Box 1575 • Bismarck, ND 58502-1575
Phone 701-223-1347

Mr. Chairman and members of the committee, thank you for this opportunity to address you today concerning House bill 1242

Allow me to begin by stating unequivocally that my fellow Catholic bishops and myself are completely committed to building a culture of life. This means working to eliminate abortion by overturning ***Roe v. Wade***. It means embracing initiatives that truly further the cause of life. I am happy to say that North Dakota has led the nation in this respect and has what is considered the most pro-life laws in the nation. The work, of course, is not done. BishopAquila and I remain determined to work with the people of North Dakota to do what must be done so that no woman would ever feel compelled to have an abortion.

Although I share with some of the supporters of this bill the desire to end abortion, neither Bishop Aquila nor I can embrace this bill as a means to that end.

The central problem with the proposed legislation is the imposition of a criminal punishment on a woman who has an abortion. My fellow bishops, reflecting the guidance of Pope John Paul II, have consistently held that for pastoral, moral, and prudential reasons, the law should not criminalize the woman. In most cases, if not all, she is an abortion's second victim. Our experience as counselors, spiritual advisors, and caregivers to women who have had abortions tells us that the decision to have an abortion is often the result of intense pressure, coercion by others, and a fear-driven attempt at self-preservation—all in a culture of lies about the choices before her and a society that too often leaves her alone with her "choice." Criminalizing her only compounds her victimization.

Let me make this clear – abortion is a grave moral wrong. Not every moral wrong, however, demands a corresponding penalty in the civil law. Moreover, civil law must further a legitimate purpose and extend only so far as is necessary to achieve the desired end. Since she is a victim, criminalizing a woman who has had an abortion does not further the interest of justice. To punish the woman as a criminal is unnecessary. It is enough to extend criminal culpability to the abortionist, who is truly the wrongful actor.

To say that a woman who has had an abortion should not be punished in the civil law does not mean that she has acted without fault. Her act is terribly wrong. However, compassion, not a desire to punish, should guide our response to her. We should be mindful of Christ's response to the woman accused of adultery: "Neither do I condemn you."

It is this spirit that must guide our efforts to build a culture of life. Penalizing the woman is contrary to this spirit. House Bill 1242 is not a pro-life bill as we envision the meaning of "pro-life." House Bill 1242 is not a Catholic response to abortion. As an example of our Church's response to abortion, I am providing you with a small handout from the United States Conference of Catholic Bishops which summarizes the Church's call to respect life by reaching out to those who have had abortions. Please take the time to read it.

I realize that this must be a very difficult issue for members of this committee who oppose abortion. We all want abortion to come to an end. However we cannot embrace the proposal recommended in this bill as a virtuous one. It is inconsistent with what it means to respect life. I believe that anyone who is genuinely pro-life can, in good conscience, oppose this bill.

Mister Chairman & members of the House Judiciary Committee. My name is Carol Sawicki and I am from Fargo. I am an employee of the Red River Women's Clinic, and I am here to speak in opposition to House Bill 1242.

You are already aware that this bill is unconstitutional and is in direct conflict with a Supreme Court ruling of 30 years standing. This bill would ban all abortions, even when the life or health of the mother was in jeopardy and in cases of rape and incest. It would make felons out of women who have thoughtfully made a very difficult decision at a time of crisis in their lives. This bill would also have the effect of outlawing several forms of contraception, including IUD's, the "morning after pill" and probably also the birth control pill.

The state of North Dakota cannot afford to waste valuable resources defending a law that is clearly unconstitutional and that the legislators know is unconstitutional. At a time like this, when resources are so tight, there are much better ways to use the taxpayer's dollars. In fact, some might say it would be irresponsible to waste the taxpayer's money this way.

As an employee of the Red River Women's Clinic, I personally am deeply troubled by a law that would label as criminals, people that I work with and know well. The doctors and employees at the Clinic are compassionate, caring and generous. We all do the work that we do, not for great financial gain, as is often assumed, but because we believe that every woman dealing with a problem pregnancy must have all possible options to choose from. We are glad that we are able use our training to make sure that abortion is one of the choices available to her.

I have brought along a lot of information and statistics. If any of you have questions about abortion or the Red River Women's Clinic, I would be glad to answer them.

Thank you very much for allowing me an opportunity to testify at this hearing.

NDRL

North Dakota Right to Life Association

Testimony before the HOUSE JUDICIARY COMMITTEE

Regarding HOUSE BILL 1242

February 12, 2003 8:00 a.m.

Chairman DeKrey, members of the committee, I am Stacey Pfliiger, Executive Director of the North Dakota Right to Life Association. I am here today in opposition of HB 1242 relating to the protection of a preborn child and the duty of physicians.

HB 1242 states that a person is guilty of a class AA felony if the person intentionally destroys or terminates the life of a preborn child. However, the bill does not define who that person is. I conclude it is meant to target the abortionist **and** the mother of the unborn child. Thus making the mother, who the pro-life movement has recognized as a victim, suddenly now, a suspect. The North Dakota Right to Life Association's position is that a woman receiving an abortion is the second victim of the abortion holocaust, not a criminal.

Women faced with unexpected pregnancies often face coercion from loved ones who insist that abortion is the best solution. Pressure to do the 'right' thing is usually done out of love for the woman and with the sincere belief that such care will be appreciated later on. At other times loved ones will push abortion on a woman not out of concern for her but out of concern for themselves. In either case, the woman who gives in to such pressure suffers because the abortion is not the result of her own free choice. She feels compelled to compromise her own values in order to please others.

The most powerful form of this coercion is the threat that families and boyfriends will withdraw their love and support. For example, Sandra Morean was forced to choose between her husband and her unborn child: "The more I thought about being pregnant, I realized there was a life in me, and I wanted to give birth to it. But my husband told me, "Either you have an abortion, or I'll leave you. You can raise it by yourself, because I don't want any more children." Not being strong enough to do what was right, and too afraid to go it alone, I gave in."

Another woman describes her experience as pressures from all directions: "My family would not support my decision to keep my baby. My boyfriend said he would give me no

P.O. Box 551 • Bismarck, North Dakota 58502 • (701) 258-3811 • Fax (701) 224-1963 • 1-800-247-0343

emotional or financial help whatsoever. All the people that mattered told me to abort.... I started feeling like maybe I was crazy to want to keep it. I finally told everyone that I would have the abortion just to get them off my back. But inside I still didn't want to have the abortion. Unfortunately, when the abortion day came I shut off my inside feelings. I was scared to not do it because of how my family and boyfriend felt. I'm *so* angry at myself for giving in to the pressure others. I just felt so alone in my feelings to have my baby." Two days later this woman attempted suicide. Seven months later she was attempting to deceive her boyfriend into making her pregnant again in the belief that a second pregnancy could somehow make up for the first.

Sociologist Mary K. Zimmerman has studied how women experience abortion. Throughout the course of Zimmerman's work she concluded that 35 percent of the aborted women she studied remained confused throughout most of the decision-making process. Many were not clear about what they would do until right before the abortion was performed. Of the 65 percent who said that the decision to abort was clear, most saw it not as a choice but rather as their only alternative. In general, the choice seemed clear because all the persons with whom they consulted positively encouraged and supported the abortion option. Altogether, over two-thirds of the women made statements suggesting that they had had "no choice" or had been "forced" to have the abortion.

Over and over again, we see women choosing abortion in an attempt to please others not herself. If a woman who is coerced into having an abortion is guilty of a class AA felony, when do we begin charging the boyfriends, the husbands, the family members, the friends, the counselors, the clergy, etc....?

The North Dakota Right to Life Association shares in the desire to end the abortion holocaust. The North Dakota Right to Life Association believes in the sanctity of all innocent human life. However, recognizing the reality of our imperfect society, the Association sees the necessity of working in an incremental fashion to protect as many lives as possible while still striving to achieve its Vision that all abortion be ended.

I respectfully request this committee to give HB 1242 a **do NOT pass** recommendation.

At this time I would be available for any questions you may have.

AAA Pregnancy Clinic
Make a Sound Choice
Alternatives • Assistance • Abstinence

February 11, 2003

RE: HB 1242 – which focuses on criminalization of the woman

Dear Chairperson and Committee members,

The purpose of this letter is to request that you do not support HB 1242. My name is Pauline Economon, I am the executive director of the AAA Pregnancy Clinic. The Clinic is located in Fargo and is the largest pregnancy help center in the state of North Dakota; in 2002 we recorded 825 client visits. We provide medical and practical support services for women who are unprepared for pregnancy. Our primary goal is to serve women and children in need. During the confusing period of time surrounding an unplanned pregnancy, women can benefit from receiving complete and thorough information regarding the existing options for their pregnancy. Our Clinic is designed to allow women the opportunity to consider these options in an environment that is neither time pressured nor financially profitable to us in whatever their choice may be. Coercion is not viewed as an acceptable form of counseling with the Clinic's policies regarding the care of women during unplanned pregnancy.

Based on my experience working with women in an unplanned pregnancy, the solution to stop or reduce abortion is not what is proposed in HB1242. Its not uncommon for women who find themselves in an unplanned pregnancy to experience many internal and external pressures (e.g., parents, boyfriend, lack of emotional support, etc.). By criminalizing the woman this would further victimize her. Rather, what the State needs to consider, is to truly help women faced with an unplanned pregnancy by helping them find resources and options which will respect their dignity. By caring for the woman's needs we will protect the unborn child and provide true justice for the circumstance.

By vilifying the woman there is nothing to be gained, nothing is gained by making her difficult circumstance more difficult. Treating her as a criminal is not the answer. Again, I cannot stress how inappropriate this legislation is and how unjust this legislation is. Thank you for your consideration of this matter.

Sincerely,

Pauline Economon, RN, MSN, MA
Executive Director

1351 Page Drive, Suite 205 • Fargo, ND 58103 • *Business:* (701) 237-5902 • *Fax:* (701) 237-0363
Appointments: (701) 237-6530 *or Toll Free:* 1-888-237-6530 • *E-Mail:* AAAPregClinic@attglobal.net

TESTIMONY OF CAROL TWO EAGLE ON HB 1242.

Hau mitakuyapi. Hello my relatives. For the record, my name is Carol Two Eagles & I come as a spiritual person and as a grandmother, to stand in opposition to HB 1242.

Anti-abortion bills take the position that the primary purpose of women is to birth babies, and that on one hand a woman is automatically deemed mentally, spiritually, and emotionally competent and knowledgeable enough to raise a child from birth to productive adulthood – but she is simultaneously not mentally, spiritually, emotionally capable or wise or knowledgeable enough to know when it is best that she not continue a pregnancy.

This is as invalid an argument as claiming to be virgin and not virgin at the same time; or to be intelligent and retarded at the same time. It is not true.

This perspective is insulting to the intelligence, the strength, the wisdom of women. Bills such as HB 1242 make women – who are productive intelligent adults, less important than something that is not yet born, which is not productive, and which is not intelligent. They diminish women to the position of mere breeders.

If a woman is intelligent, wise, and knowledgeable enough to run the lives of her children once they are here, to run businesses, pilot jets, do major surgeries, then she is intelligent, wise, and knowledgeable enough to know when she should not continue a pregnancy.

In the Indian Way, since a woman is the only one who can take the mental, emotional, spiritual, and physical risks associated with pregnancy and birthing and she cannot have so much as one instant of vacation from these risks and responsibilities, she is the only one who can have any say in whether or not she remains pregnant. She has the right to take the spiritual risks either way. Her right to choose quality of life versus mere quantity of life is hers inherently. It is her business and hers alone, earned by dint of her unique ability to take these risks during pregnancy. A woman lays her life on the line when she becomes pregnant. There are a wide variety of well-known risks to her health throughout pregnancy; and death from childbirth is not uncommon. It is unconscionable to force her to take these risks to her life against her will.

Bills such as HB 1242 will result in a return to back-alley abortions, with all their dangers and nightmarish consequences. Children who are not wanted, for whatever reason, suffer abuse and neglect; and society suffers as well.

Bills such as HB 1242 may be well-intentioned, but the Road to Hell is paved with good intentions. From what I have seen, it is already fully paved. We do not need to put any more bricks into it.

Please vote for quality of life, not mere quantity of life, and for showing respect to women, not viewing them as mere and mindless breeders. Give HB 1242 a unanimous Do Not Pass vote.

Thank you for hearing me in a good way now. I will answer any questions you may have.

Testimony of Andrew Varvel to the North Dakota House Judiciary Committee February 12, 2003

Mr. Chairman and members of the committee:

As written, I oppose HB 1242.

Although I'm not a lawyer, I think it would be thrown out in the courts.

This legislation infringes upon the Fourth Amendment, even as interpreted by Chief Justice Rehnquist. Worse, HB 1242 effectively mandates that a victim of rape, incest, or other non-consensual sexual contact must endure a pregnancy she did not consent to. This amounts to slavery and infringes upon the Thirteenth Amendment. I don't want the State of North Dakota turned into a slave state.

If we decide to restrict abortion, let's do our best to make sure North Dakota wins its court battles. I'm not particularly fond of having the State of North Dakota pay attorney's fees. Those who oppose abortion should request the Attorney General's Office to craft the most restrictive legislation that would have a legitimate possibility of being upheld by the Supreme Court.

Saving the lives of unborn children is more important than making futile gestures, so the Legislature should take this opportunity to turn 1242 into a useful piece of legislation. In *Planned Parenthood v. Casey*, Chief Justice Rehnquist set out a roadmap on how to restrict abortion within the Constitution. He wrote the following:

> "Nor do the historical traditions of the American people support the view that the right to terminate one's pregnancy is "fundamental." The common law which we inherited from England made abortion after "quickening" an offense. At the time of the adoption of the Fourteenth Amendment, statutory prohibitions or restrictions on abortion were commonplace; in 1868, at least 28 of the then 37 States and 8 Territories had statutes banning or limiting abortion. J. Mohr, Abortion in America 200 (1978)."

A strict interpretation of the Fourth Amendment according to original intent would regard the common law standard at the time of the adoption of the Bill of Rights to be the correct interpretation of the right of privacy. "Quickening" is a vague concept that varies from pregnancy to pregnancy. However, a similar standard that using sensory perception, motor reflexes, distinctively human morphology, and potential viability as indicators of whether the human life inside the womb constitutes a human being would approximate the original intent of the Fourth Amendment. So, laws that restrict abortion should use a legal standard analogous to "quickening".

Chapter 12.1-16, does not prohibit causing the death of another human life. It prohibits causing the death of another human being. When one writes abortion law, one should ask what a being is.

A great philosopher, Rene Descartes, wrote the following.

"Cogito, ergo sum."

Translated into English, it means "I think, therefore I am."

Although some people may argue that a human can be without thinking, a human cannot think without already existing.

I'm known to have opinions. I have had opinions since before I was born. My memories only go back to eleven months since my birth, so I'll rely on my mother's recollections of me when I was still inside her.

Four and a half to five months after I was conceived, my parents were at a St. Louis Cardinals baseball game. There was a loud drunk behind us. He yelled. I jumped and caused my mother's maternity dress to fly straight up. A few moments later, the drunk yelled again. I jumped again and her maternity dress flew straight up. He would keep on shouting, and every time he'd do that I would respond -- with my opinions quite obvious to anyone looking at my mother. Luckily for my mother, the drunk behind us eventually got hoarse, so I wasn't so startled every time I heard him.

This was over four months before I was born. My mother wanted me. Yet, it saddens me to know that other children at that age can be legally killed in North Dakota.

I don't like the sound of manual typewriters. As a child, I really hated that sound. I certainly didn't like the sound when I was a fetus. At seven months of pregnancy, my mother wanted to type some recipes onto cards. She started to type. I kicked hard. She stopped and the kicking stopped. She thought that maybe this was a fluke, so she started to type again. I kicked again. She stopped until I'd settle down. She tried to type recipes yet again, but she found herself getting kicked repeatedly by the fetus inside her until she stopped. Every time she typed recipes, I would protest vigorously. Finally, she gave up on typing her recipes because it was clear I was forcefully expressing my opposition to her typing.

I had opinions then, and I have opinions now.

An embryo is a potential human being, and as such, must be protected when there is no countervailing right of a woman to not become enslaved to a pregnancy resulting from sexual contact without her consent. Once an embryo becomes a human being with sensory perception, motor reflexes, distinctively human morphology, and potential viability, the only legitimate reason for a woman to override the unborn child's right to life must be the woman's own right to life.

A woman's right to privacy must be protected. As a society, we should be willing to understand that a woman who has not consented to sexual contact would not want to advertise her condition. As sad as it sounds, society should take a woman at her word and help prevent a pregnancy she did not consent to and understand her reticence about divulging details. However, twelve weeks should not only be sufficient time for a woman to end her pregnancy, but a point when it is obvious that an active and formed human being exists whose interests must also be considered.

In the past, I had supported the status quo because I thought the status quo protected a woman's right to privacy. However, a woman's right to privacy ends when her pregnancy is so obvious that anyone looking at her will notice her pregnancy. The issue of partial birth abortion forced me to reconsider the issue because it seems that some pro-abortion activists wish to distort a woman's right to control her body and her right to privacy into a right to kill people as long as they live inside a woman.

Do I believe in a woman's right to choose? Yes. An adult has the right to choose one's sexual partners. Although there are disagreements over how far the marriage contract limits this right, it is a right protected by the First Amendment provision of "freedom of association". Consensual sexual contact constitutes an ipso facto contract to provide for the welfare of a resulting human being. I also regard birth control as God's gift to humanity, especially when one considers the decline of the infant mortality rate in the past hundred years.

There are times when sexual contact is wanted but the resulting child is not. It's unfortunate that parents may not want a child, but do we as a society want that child? Should we as a society tell children that we value them so little that we will permit abortions merely because parents don't want a child? Are we so heartless? As a society, we should tell the children of this state that every child is wanted.

As far as I know, the arguments presented here, especially the question of "being", have not been explored in the American judicial system.

The line of twelve weeks for restricting abortion is carefully chosen. The source I use is The First Months of Life, by Geraldine Lux Flanagan. At twelve weeks, the hands and feet of a fetus look distinctively human. By twelve weeks, it's possible for a physician to determine the sex of an unborn child. This restriction is particularly important because of modern immigration patterns from South Asia, where it is a custom of selectively abort unborn girls. At twelve weeks, a fetus has a functioning nervous system and can respond to an outside stimulus.

Section 1 establishes a definition of a human being based upon sensory perception, motor reflexes, distinctively human morphology, and potential viability. In essence, it is based upon a Cartesian understanding of being that can be used as easily in artificial intelligence as in philosophical discussions.

Sections 2 and 3 shifts the post-viability limitations on abortion to potential viability, which is defined at twelve weeks. It changes the reference to "physical or mental health" to "health". "Health" is a more precise term. The written consent requirements are deleted to lessen the chance of coerced abortions.

Section 3 mandates anesthesia during all abortions. This is not only intended to eliminate the possibility of pain for the potential human being, but ease suffering for the mother.

Section 4 creates a new chapter partly based on Louisiana statutes to regulate in vitro fertilization and ensure that every embryo created in fertility clinics has a home. Alternatively, these amendments could be added to chapter 14-18.

Section 5 is based partly on Iowa statutes that ban cloning and adds a provision to ensure that those who clone human beings are fully responsible for the well being of any resulting child. This section is presented as an alternative amendment because I don't want to interfere with HB 1424 that would also ban cloning. Please note there are some differences because I had written the language before I had become aware of HB 1424.

Section 6 establishes an umbilical cord library at the State Medical Center. Although this mandate may require a fiscal note, this library would be a low cost means to attract researchers throughout the world since this would be among the first umbilical cord libraries. It is also intended to promote stem cell research in a manner that discourages the destruction of embryos.

I would be happy to answer questions. Thank you.

APPENDIX

PROPOSED IMPROVEMENTS TO HOUSE BILL NO. 1242

Page 1, lines 1 through 3 are replaced with:

"A BILL for an Act to create and enact a new subsection to chapter 12.1-16-01 of the North Dakota Century Code, relating to the definition of a human being; amend and reenact subsection 2 of section 14-02.1-03 of the North Dakota Century Code, relating to the protection of human beings; amend and reenact section 14-02.1-04 of the North Dakota Century Code, relating to uterine anesthesia; create and enact a new chapter of the North Dakota Century Code, relating to status of human embryos; create and enact a new section to chapter 14-02.2 of the North Dakota Century Code, relating to prohibition of human cloning, and to provide a penalty; and create and enact a new section to chapter 15-52 of the North Dakota Century Code, relating to the establishment of an umbilical cord library.

Page 1, line 5, replace "section" with "subsection"

Page 1, line 5, replace "12.1-16" with "12.1-16-01"

Page 1, lines 7 through 10 are replaced with:

Definition of human being. For the purpose of this chapter, "human being" means a living organism of the species Homo sapiens from the moment the living organism becomes a fetus to its moment of death.

For the purpose of this chapter, "fetus" means a living organism of the species Homo sapiens that has developed sentience, distinctively human morphology, and potential viability.

a. A fetus has sentience when it has the following attributes:

(1) sensory perception

(2) motor reflexes that can respond to an outside stimulus

(3) a nervous system sufficiently sensitive to feel pain

b. A fetus has a distinctively human morphology if it has the following attributes:

(1) hands with the shape of hands of a healthy infant born at full term

(2) feet with the shape of feet of a healthy infant born at full term

(3) genitals sufficiently differentiated for a physician to determine the gender of the fetus

c. A fetus has potential viability if it has the following attributes:

(1) twelve weeks of development since its moment of conception

(2) a brain

(3) a heartbeat

(4) two lungs

(5) a liver

(6) two kidneys

(7) a stomach

(8) two ears

Page 1, lines 13 through 19 are replaced with:

SECTION 2. AMENDMENT. Subsection 2 of section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached potential viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her ~~physical or mental~~ health, may be performed upon any woman, ~~in the absence of:~~

~~a. The written consent of her husband unless her husband is voluntarily separated from her; or~~

~~b. The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.~~

SECTION 3. AMENDMENT. Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. No abortion may be done by any person other than a licensed physician using medical standards applicable to all other surgical procedures.

2. After the first twelve weeks of pregnancy ~~but prior to the time at which the fetus may reasonably be expected to have reached viability~~, no abortion may be performed in any facility other than a licensed hospital.

3. The attending physician shall perform all abortions with uterine anesthesia unless, in the opinion of the attending physician, general anesthesia is appropriate.

~~3.~~ 4. After the point in pregnancy where the fetus may reasonably be expected to have reached potential viability, no abortion may be performed except in a

hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her ~~physical or mental~~ health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by the physician in writing, setting forth in detail the facts upon which the physician relies in making his judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency where the abortion is necessary to preserve the life of the patient.

~~4.~~ 5. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.

~~5.~~ 6. It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

SECTION 4. A new chapter is created and enacted as follows:

Human embryo -- definition. For the purposes of this chapter, a "human embryo" means an in vitro fertilized human ovum composed of one or more living human cells and human genetic material so unified and organized that it will develop in utero into a human being.

Legal status. A human embryo exists as a juridical person until the human embryo is implanted in the womb. The medical facility shall give the human embryo an identification as a juridical person for the use of the medical facility. A human embryo shall be recognized as a separate entity from the medical facility or clinic where it is housed or stored. Except when the human embryo is in a state of cryopreservation, a human embryo that fails to develop further over a thirty-six hour period is not considered a juridical person.

Responsibility. Any physician or medical facility causing in vitro fertilization of a human embryo shall be directly responsible for the in vitro safekeeping of the human embryo. The medical facility shall maintain the confidentiality of the in vitro fertilization patient.

Uses of human embryo in vitro. A human embryo shall only be used to support and contribute to the complete development of human in utero implantation. A viable human embryo shall not be intentionally destroyed by any natural or other juridical person or through the actions of any other person.

Guardianship. If the in vitro fertilization patients are unknown, the physician shall act as the temporary guardian of the human embryo until adoptive implantation can occur. A court may appoint a guardian, upon motion of the in vitro fertilization patients, their heirs, or physicians to protect the human embryo's rights.

Judicial standard. In disputes arising between any parties regarding the human embryo, the judicial standard for resolving such disputes is to be in the best interest of the human embryo.

Liability. Liability of any kind must not be applicable to any physician, hospital, in vitro fertilization clinic, or agent who acts in good faith in the screening, collection, conservation, preparation, transfer, or cryopreservation of the human embryo for transfer into the human uterus. This immunity applies only to an action brought on behalf of the human embryo as a juridical person.

SECTION 5. If House Bill No. 1424 does not become effective, a new section to chapter 14-02.2 of the North Dakota Century Code is created and enacted as follows:

Cloning – Penalty.

1. "Human cloning" means human asexual reproduction accomplished by inserting the genetic material of a human cell into a fertilized or unfertilized human ovum with its nucleus removed.

2. Any person who knowingly performs or attempts to perform human cloning is guilty of a Class C felony.

3. Any person who knowingly participates in performing or attempting to perform human cloning is guilty of a Class C felony.

4. Any person who knowingly sells, transfers, distributes, gives away, accepts, uses, or attempts to use a cloned human embryo for any purpose is guilty of a Class A misdemeanor.

5. Any person who knowingly sells, transfers, distributes, gives away, accepts, uses, or attempts to use, in whole or in part, any oocyte, human embryo, fetus, or human somatic cell, for the purpose of human cloning is guilty of a Class A misdemeanor.

6. A person who violates this section in a manner that results in monetary gain to the person is subject to a civil penalty that is twice the amount of the gross gain.

7. A person who creates a human clone is liable for child support for the cloned human being.

8. A person who creates a human clone is liable for all medical treatment of the cloned human being deemed necessary by an independent physician unaffiliated with the person in violation of this section.

9. A violation of this section is grounds for denial of an application for, denial of renewal of, or revocation of any license, permit, certification, or any other form of permission required to practice or engage in any trade, occupation, or profession regulated by the state.

SECTION 6. A new section to chapter 15-52 is created and enacted as follows:

Establishment of an umbilical cord library.

1. The state medical center shall establish an umbilical cord library in cooperation with the state health department to serve as long term cryopreservation, repository of documentation, and catalog for umbilical cord tissue for the purpose of scientific research and medical therapy.

2. When a child is born, a parent may give a written refusal of permission to allow umbilical cord tissue to be taken to the state medical center. Otherwise, the state shall presume parental consent for state acquisition of umbilical cord tissue.

3. The state health department shall make arrangements for the transportation of umbilical cord tissue from the place of a child's birth to the umbilical cord library.

4. The purpose of the umbilical cord library is to promote genetic research, stem cell research, and storing stem cells for future use by the child who was connected to the umbilical cord. The umbilical cord library is intended to encourage stem cell research that does not harm embryos in any way.

Renumber accordingly

Shelly Stone
Thief River Falls, MN
218-681-8657

February 12, 2003

Mr. or Madam Chairman and members of the committee:

My name is Shelly Stone and I oppose ND House Bill 1242 for the following reasons:

I am a post-abortive woman who has come from the depths of anguish and pain to find, finally, a healthy and happy life. I passionately believe in the need for the State of ND to ban all abortions and to challenge the Supreme Court decision of Roe vs. Wade, the decision that robbed our country and families of millions of children.

I do not believe, however, that the criminalization of women who abort should be a part of this bill. From my personal experience, as well as hearing the testimonies of hundreds of other women who have been in much the same circumstances as myself, I do not believe that this could possibly help the plight of women who have often been coerced and lied to and who will continue to be given false information.

The idea that the fear of prosecution would somehow be a deterrent to the woman seeking an abortion is a very hard fact to determine. However, what is not a hard fact to determine is that it would be impossible to prosecute the abortionist if this were to become law. Illegal abortion would then become the abortionist's hold on the abo e women. Not only would they not be able to seek medical help or psychological help, there would never be prosecution or punishment for the abortionist or abortion facility.

I can not imagine what my life would be like now if I would not have been able to turn to others for help in my anguish over my abortions. First of all, to not have been able to confide in my husband or family about the truth of my abortions because of the fear of

legal repercussions, would have very likely taken it's tole on my marriage and my family life. That kind of secret is not the kind that many people can live comfortably with. Although we all live with certain secrets in our lives , abortion is the kind that will eat away at a person's soul. Next, the seeking of forgiveness from God would have been much more difficult. Being of the Catholic faith, we are privileged to have the sacrament of reconciliation available to us. However, the act of just saying the words "abortion" puts chills up a post-abortive woman's spine. The confessional is not always where a person receives the healing that they need. The knowledge that one's sins are forgiven is not always the answer to a person's guilt. It takes time and countless hours of spiritual direction, and sometimes many years of counseling to be able to continue on with one's life in a healthy and productive manner.

From a very personal standpoint, there would have been several other aspects of my life that I would have needed to for-go had I had the fear of prosecution and punishment. I have been able to find healing, and to help others, through the Rachel's Vinyard ministry. This type of ministry would never be available to women or men who have to deal with the pain of abortion in their past. I also am the director of a Crisis Pregnancy Center in my home town. I would never have had the courage to help others who are contemplating abortion if I lived in fear. And lastly, right here in my own country, the United States of America, I most certainly would not be able to be here today, telling you my story.

I ask you, as a very concerned citizen and as a post abortive woman, to recognize the

fact that the only way to prevent illegal abortions and to bring about the end to this culture of death is to prosecute the right people, the people who will profit from the illegal abortions that they perform, not the women and families who only find pain and sorrow from this killing of our unborn children. Thank you

Did not testify.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

TESTIMONY ON HB 1242
ND House Judiciary Committee
February 13, 2003

Chairman DeKrey and members of the House of Representatives Judiciary Committee:

My name is Muriel Peterson, Bismarck resident, who appears before you on behalf of the American Association of University Women (AAUW) in opposition to HB 1242 . AAUW has 100,000 members nationally, over 300 are in North Dakota's 9 local branches.

The U.S. Supreme Court's 1973 ruling in Roe v. Wade determined that the right to privacy extends to a woman's decision to terminate her pregnancy. Roe also held that states could ban abortion in the third trimester except in cases of life and health endangerment of the woman.

AAUW supports the right of every woman to safe, accessible and comprehensive reproductive health care and believes that **decisions concerning reproductive health are personal and should be made without governmental interference**. AAUW trusts that every woman has the ability to make her own choices concerning her reproductive life within the dictates of her own moral and religious beliefs. AAUW members have made this position an action priority since 1977.

AAUW believes that improved pregnancy prevention programs, new technologies, and access to complete reproductive health services enhance women's reproductive choices. AAUW's advocacy of a woman's right to safe, accessible, and comprehensive reproductive health care without governmental interference is an integral part of its efforts to gain equity and justice for all women.

Thank you for the opportunity to testify in opposition to HB 1242 on behalf of North Dakota's members of the American Association of University Women.

Promotes equity for all women and girls,
lifelong education and positive societal change