

2011 HOUSE HUMAN SERVICES

HB 1450

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1450  
January 31, 2011  
Job #13677

Conference Committee

Committee Clerk Signature	<i>Vicky Crabtree</i>
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**Explanation or reason for introduction of bill/resolution:**

To define life at the beginning of conception.

**Minutes:**

<i>See attached Testimonies #1-11</i>
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**Chairman Weisz:** Called the meeting to order on HB 1450.

**Rep. Dan Ruby:** From District 38 sponsored and testified in support of the bill. You have seen a version of this bill in the past. I'm here to introduce this language and this bill. There will be other people here to testify in depth and also deal with the technicality as far as life and the biology that this represents. The bill before you was drafted to address what was brought up as perceived issues with the bill I had last session. The intent is to define life at beginning of concept. Having that definition be in the ND Century Code in a place other than the abortion section which then says, we have the ability to kill that human life. We can get into all the technicalities of when life begins, but I think science has answered that for us. That is where you will hear more discussion about that. Basically the bill before you starts on page 3, line 1 for and changes; defines a human being (reads from bill). Technology and genetics show that to begin very early in that development DNA can be used to distinguish that life is genetically different from the mother who is carrying that life. Go to bottom of page 3, defines "Person includes all human beings". Which we have just described. Persons, is a broad legal term and wanted to clarify that. On page 5, this is where we get into some of the language that seeks to make it clear that any result of this bill being furthered in courts or prosecution; would certainly not affect the treatment of certain pregnancy complications such as molar and ectopic pregnancies. Certainly not for treatment of conjoining twins. It goes on to make it clear that this will not infringe on the ability to use the technology of in vitro fertilization. All areas of treatment down in Section 3 talks about treatment for cancer and those types of treatments to make sure that we are not going to interfere with the patient and doctor and how they are treating problems and complications with pregnancy. I could speak a long time on why I believe what I believe. I think most of you know that already. I truly believe it is important that we define life at conception and I think science backs us up on that. I also I think it is important that we protect life. That is our charge as adults to protect our children and I think as legislators we protect our citizens. This is where I think we have that obligation. Other people will speak to you today. The sponsors will be first and then we have Sen. Dr. Berry who will talk to you about some of the technical medical side of it. We have Melissa Ohden that has a story

that is very compelling and make you sit back and think. We have Daniel Woodard who is with the ND Life League and Paul Maloney from Right to Life and anyone else who wishes to speak.

**Rep. Porter:** Are there other states that have this identical language where this is their law and all of the challenges from the other side have been taken care of and done? Are we setting ourselves for a lawsuit?

**Rep. Ruby:** I don't believe any state has the language as we have here and also have not put it into this context as of yet. There is a lot of efforts going on right now and have for the last couple of years. The legal challenges from last session, a million dollars was going to be a cost to the state to defend this. As you can see by the FN, it is \$20,000 to \$30,000 is what they estimate. My standpoint last time was that we had, if it was a million dollars that is basically a mile of roadway. We have eliminated more people than the population of the city of Minot in ND through abortion. I think that is worth more than a million dollars. I would gladly pay my taxes for that. I believe there were other groups willing to step in and help the state pay that if that were the case. The answer is, I think we would be setting some precedence here.

**Sen. Margaret Sitte:** From District 35 in Bismarck testified in support. I think each of us have had certain light bulb moments on this issue that have forever put us on one side or other. Maybe we are here because we are open minded to listen. I want to share with you my light bulb moment. I lost my first child in a miscarriage. I was pregnant a second time and was having quite a bit of spotting and went to the doctor and he said, "You know this is not a viable pregnancy. We may as well just schedule the DC." I said to him that I feel differently this time and I'm going to get a second opinion. I went and got a second opinion and the doctor said, "We have a new machine in town. It is called a sonogram". This was 32 years ago. He said, "Haven't been used very much, but I'd like to try it". So at six weeks gestational age I met my son. Little arm buds, no legs, but a heartbeat like a hammer going out from the side of his body. That son happens to be visiting today from Minneapolis (introduced son), Ben is now 31 years old. Thank you.

**Sen. Spencer Berry:** From District 27 testified in support of the bill. (See attached Testimony #1.)

**Rep. Porter:** As we get into other sections of the bill, how does the morning after pill fit into the definitions? We talk about on page 5 d, that contraception administered before the time when a pregnancy could be determined, but there is nothing talking about the other situation with the morning after pill.

**Sen. Berry:** There may be someone coming behind that explains more of the intent in that situation. Does it say before a pregnancy can be determined to have occurred? Is that what the bill says?

**Rep. Porter:** "Contraception administered before the time when a pregnancy could be determined through conventional medical testing."

**Sen. Berry:** And if were truly “a morning after”, say sexual intercourse the night before someone presenting the next day, at that point conventional methods are not able to determine if a pregnancy has occurred.

**Melissa Ohden:** Lives in Sioux City, Iowa and tells her story. I hope that as you hear my testimony today that you understand a little bit more about the need for your support of this HB 1450. I come here today as someone who is a mastered prepared social worker and a counselor. I could share with you today all of the research and statistics about how people’s lives are touched by abortion. I come here today as an adoptee and I could certainly tell you how adoption was a life affirming choice in my family for my older sister and myself. More importantly I come to you today as somebody’s daughter, sister, wife and that little girl’s mother standing here today. I stand before all of you today as a survivor of a failed abortion attempt in 1977. Most people would never guess that by looking at me today. But, in August of 1977 my biological mother who was 19 years old at the time and an unmarried college student went to a hospital to undergo what is called a saline infusion abortion. What that type of procedure actually involves is injecting a caustic salt solution into the amniotic fluid that surrounds the unborn child. The intent of that salt solution was to scald me to death from the outside in. That particular type of procedure usually took place over about a 72 hour period. I somehow was subjected to it for almost 5 days. There is no medical reason why I survived. Certainly I know we have our own beliefs about faith, but I know that there is no medical reason but, by the grace of God I stand here before you today. After that salt solution was delivered into the amniotic fluid surrounding me, I should have been scalded to death and I was bathed in that salt solution. As I was bathed in that salt solution and numerous rounds of potosen were delivered to my biological mother to induce her premature labor with me and ultimately dispel my dead body from her womb. I was delivered in bed by a nurse on the fifth day of the procedure and believed to be dead. Understandably, I should have been dead and I was left for dead. I was placed alongside the bedside table. But, as the nurse was attending to my biological mother she realized I was gasping for breath and making small movements and the doctors and nurses stepped in and started to provide me with the medical care I needed to sustain my life. And again, you wouldn’t know it by looking at me today, but at the time was fighting for my life. I weighed 2 lbs. 14 oz. I suffered severe respiratory problems, I had jaundice and suffered from seizures. I had to have multiply blood transfusions and I was too weak to suck from a bottle and so I was shaved from temple to temple and fed through an IV line in my head for months. And the doctors truly did not believe I would live, but as the days turned into weeks and the weeks turned into months I defied the odds. And as much as I could be angry with my biological parents for making that decision to end my life, I am not angry with them. What is sad for me is that there was no protection for me as a child. I stand before you today as someone who had no protection under the law. I’m grateful that after I survived the abortion attempt, my biological parents placed me for adoption. I lived a pretty normal life. I grew up in Iowa and I always tell people that I went without a lot of things in my life, but the one thing I didn’t go without was love. My adopted parents loved us unconditionally and they protected me from the truth about my life for a long time. It wasn’t until I was 14 that I found out the truth about my life. And the only reason I found out was because my older sister who is also adopted found herself in a crisis pregnancy. She was in 11<sup>th</sup> grade and was considering having an abortion so our parents told her about my survival in the hopes she would choose life for her own. She ultimately did. My nephew turned 18 this past summer and joined the Army before he even turned 18. As much as I

saved his life, he saved mine because that is how I found out the truth that I hadn't just been adopted, but there had been this lethal attempt on my life that I miraculously survived. Of course, I can stand here before you today and share my story without my voice shaking or crying uncontrollably, but I will tell you that I have led a very difficult life. I spent over 10 years of it being very ashamed about who I was. I was embarrassed, I felt guilty wondering why it was me that survived and not the other tens of millions of children we know have lost their lives to abortion. I know now there are lots of children like me. I know about 10 people around the world that have survived various abortion attempted. Most of us survived the same abortion procedure and that's why they don't do it anymore because too many of us lived. Not because it was too horrific by scalding me to death, but because too many of us lived. We have much more effective ways now like partial birth abortions to make sure that children like me don't have life and don't have testimony to give. As you will see today I am now blessed to be a mother myself. This is my urge to all of you today, I know my experience is unique as a survivor, but think about the fact that I shouldn't be here today. Who in this room wants to tell my daughter that her mother's life was not worth defending? I don't want the day to come where I have to explain to my daughter the truth about my life and the truth that she would never have had life because I would have never entered this world. I know people want to stay away from legislation that they feel could be controversial, but I truly believe that we live in a society right now that still doesn't have 100% respect and protection of lives like mine and like my daughter. And until we as a society step up and support lives, until we show respect and protect lives like mine every day, I believe we need to have legislation in place to protect lives like mine. I thank you so much for your time today.

**Daniel Woodward:** Consultant to ND Right to Life and ND Life League testified in support of the bill. (See Testimony #2.)

**Paul Maloney:** Director of Right to Life testified in support of the bill. When we went to the National Right to Life and asked their opinion of the language their response was simply, "The impact of this bill will be very similar to the unborn victims of violence bill. It makes the crime to kill an unborn child in any circumstance, where it would be a crime to kill anyone else under that circumstance where the state has the ability to prosecute." We have no grounds to oppose this bill and in fact it does exactly what our mission statement is and that is to defend all innocent human life from conception to natural death. Does this challenge Roe? It's the truth. If the truth about human life challenges Roe, then so be it. It challenges Roe. But, it is the truth about human life. To address your question about contraception, honestly the language in here about, administered in time of pregnancy could be determined through conventional medical testing; it is very similar to the language already used in the abortion control act. It says, "Intended to terminate a clinically diagnosable pregnancy". Really a lot of language in here is not outside what we have already established in ND law.

**Rep. Porter:** How does this differ from what SD did?

**Paul Maloney:** From what I have been advised, it is very similar to the language used in SD. How it differs I'd have to get back to you on that and compare it to their language. I've heard different lawyers compare it to the SD one. Sorry I don't have a better answer for you.

**Rep. Blair Thoreson:** From District 44 in Fargo. I strongly support this bill and hope the committee would give it a do pass recommendation. I think it is important to protect all life in our state.

**Tom Freier:** With the ND Family Alliance testified in support. (See Testimony #3.)

**Rep. Karen Karls:** From District 35 Bismarck a co-sponsor of bill testified in support of the bill.

**Christopher Dodson:** Executive Director of the ND Catholic Conference testified in support of the bill. (See Testimony #4.)

**Nadia Smetana:** Testified in support of the bill. (See Testimony #5.)

**Paul Sorum:** I'm representing myself. I ran for the U.S. Senate this past winter and spring. I just want to support this bill with all my heart because as I ran for the U.S. Senate, I heard a lot of complaints that they were losing their liberty and the economy was in crisis which it is and they feared the worse. I've heard other candidates say things like, well if they could do in Washington what we do in ND everything would be better, or if they would just not spend more money in Washington than they take in, in taxes like we do in ND, everything would be better. I think the real clarity to what is happening in our country in particular is ND is asked to be a leader in the country today. We are being asked for leadership. One thing people don't know that I learned on my campaign is that the federal government didn't create the states. States created the federal government and gave them limited authority so we can be sovereign and free. Our founding documents say we have the God given right to life, liberty and the pursuit of happiness. I would say an attack or limitation of the last two liberties, the rights to liberty and pursuit of happiness really are an attack on life. While our federal government picks winners and losers, in ND we have an opportunity and an obligation to say, no we all have these rights equally. We are guaranteed equal protection under the law. I believe without life we cannot lead this nation as a state out of this crisis. Without life the other liberties don't exist. They are one in the same. This bill will protect those who are lest able to defend themselves. If we guarantee life and liberty and pursuit of happiness at the state level, we will be leaders in this country. Thank you.

#### **Handed in Testimony in Support**

**William M. Schuh:** (See Testimony #6.)

**Tim Lindgren:** Director of ND Life League. (See Testimony #7.)

#### **Opposition**

**Connie Hildebrand:** Represents AAUW-ND. (See Testimony #8.)

**Amy Jacobson:** Read Dr. Stephanie Dahl's testimony. (See Testimony #9.)

**Janelle Moos:** Spoke on behalf of ND Council on Abused Women's Services. (See Testimony #10.)

**Renee Stromme:** Executive Director of ND Women's Network. (See Testimony #11.)

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1450  
February 7, 2010  
Job #14133

Conference Committee

Committee Clerk Signature

*Ticky Crabtree*

**Minutes:**

See attachment #1.

**Chairman Weisz:** Called the meeting to order on HB 1450. Passed out amendments. (See attachment #1.) I've asked Rep. Hruby to come and he can explain them. (Waited for Rep. Hruby. Recording starts again at 5:41)

**Chairman Weisz:** Committee you might want me to run through what the language would say. Rep. Hruby isn't here. The first change is on page 5 line 12. That was already brought up, you remove "licensed" and you say "licensed physician to practice medicine". Those changes are relatively benign. Then starting on line 15, you are deleting all the language with the including therapy treatment and in ending in separation and adjoined twins. So your language would say starting on line 14, "legitimate medical treatment for life threatening conditions not intended to harm a person, but which has a fore seeable effect of ending a person's life. Rep. Hruby we were just going through your amendments. We are actually on page 5 line 14. Do you want to explain what the results of your amendments do?

**Rep. Hruby:** For the record, Dan Hruby representing District 38. These amendments were worked on and accepted by an agglomeration of all the parties. Page 5 line 16, the idea was by having that say, "legitimate medical treatment for life threatening conditions not intending to harm a person, but which has a fore seeable effect of ending a person's life."; that covered pretty much everything. By listing some areas, first of all you could forget some, but then it is almost like a limiter in other areas of life saving treatments wouldn't be included in that. The other language is considered not necessarily needed in this area and also in the next section. Then page 5 line 19 removing "unknowingly", apparently that is already considered to be in parts of this code about knowingly with certain crimes. So, that wasn't necessarily needed. That is more legal interpretation than for something that I understand. Apparently that was something that was wanted. Page 5 line 20, removing "when a pregnancy could be" and also on the next line taking out, "determined through conventional testing", that it was preferable to say it in a different way. It would say, "contraception administered before the time when a clinically diagnosable pregnancy of a woman". I think that is consistent with the Abortion Control Act language. Page 5 line 22, this was the language that was offered to make it clear that the principle actor is not the pregnant woman. Page 5 line 23, removes the language below there when it talks about, "this section may not be interpreted as creating an action against the woman for indirectly harming her unborn child by failing to properly care for herself" and continue on. Again, that was addressed with what we put in above it dealing with other than a pregnant woman.

Page 6 line 2, gets back into the same pattern as above. Removing "licensed", it is pretty redundant there is what that is removing. Removing "licensed" for the same reason. Mainly what Christopher Dobson said to me this morning is that a physician is defined as a physician. The definition of physician in other areas is considered a licensed physician. They could certainly clarify that if they have a different interpretation of that. Page 6 line 2, again after "physician", licensed to practice under Chapter 43-17" so there basically licensed is added there so it isn't a licensed physician, but it is a physician licensed practice medicine under 43-17. (Reads) "Medical treatment for life threatening conditions provided to a person by a physician, licensed physician licensed to practice medicine under Chapter 43-17 which results in accidental or unintentional injury or death of another person." Then we also remove "including" on line 5 and then the same language we had before with the limiters, basically the limiting language. Remove "knowingly" on page 6 line 9. And then replace "the death of" with "injury to" because this is an area that deals with neglect and abuse not death. Page 6 line 10, under the contraception we removed "the time when a pregnancy could be" and also replaced line 11, so basically it would say, contraception administered before the time when a pregnancy could be determined through conventional medical testing". To me I didn't necessarily see the big difference there, but apparently that is important or clearer. Others could offer insight into that. Again, after "actor" put in "other than the pregnant woman", then removing those same sentences as above. That was the intent to address and to capture the amendments. If you have any specific questions from one either from Catholic Conference or Right to Life or Life League I would defer to them if you want to know how they interpret some of these areas. The main thing is and I want to make it clear in the intent, as far as I know I've heard specifically from Right to Life, Life League, Family Alliance and I assume the others are all on board with the language. The interpretation of what this will do and what affect it will have. Will it challenge Roe vs. Wade, will it ban abortion? Nobody knows. There are three things I could see could happen with this. 1. Nothing. 2. Using the language a state's attorney or prosecutor could possibly prosecute a doctor for performing abortions and where that would go, nobody knows how that would be challenged. 3. Or potentially, if this passes a group like Planned Parenthood or somebody could immediately challenge to get it stricken. Nobody knows or agrees for sure which one it will do. We do have our Abortion Control Act and some precedents with Supreme Court which makes it difficult to challenge. But, I wanted to make sure everybody knows that my intent with any language I put in is to find a way that we can eventually find an end to abortion. My intent would be to have a bill and this bill end abortion as we know it beyond demand that we have in this state. It is not necessarily a ban on abortion. It is putting language in to define when a human being is determined at the earliest that we can detect and where it goes from there I don't know.

**Chairman Weisz:** Are there any questions on the amendments?

**Rep. Louser:** Where we replaced "determined through conventional medical testing" in tow different areas, we change it two different types of terminology. Is there a reason for that? One is a clinically diagnosable pregnancy of a woman and the other is a time when the pregnancy can be determined.

**Chairman Weisz:** Actually Rep. Louser if you look closely you replaced it with the identical language that is already in the bill. I assume that is an error. If you look at the language that is deleted, it is replaced with the identical language that is deleted on page 6.

**Rep. Hruby:** The one area is referring to contraception and one is dealing with, maybe I should let somebody else answer that. (Talks with someone in audience.) I guess that is a mistake in drafting.

**Chairman Weisz:** Because it does replace the same language as the same language if you read closely. Because you are deleting a time when the pregnancy could be determined through conventional medical testing and you are replacing it with "the time when a pregnancy could be determined through conventional medical testing".

**Rep. Hruby:** That language on that page should read, "a clinically diagnosed pregnancy of a woman" should be in that lower part. Good catch. I would ask that be corrected in an amendment if you would.

**Chairman Weisz:** Thank you Rep. Hruby. We have a set of amendments in front of us. One, I assume if you were to adopt the amendments we would make the change on page 6 line 11 that the change would be the identical one that is on page 5 line 21. Committee we do have a couple of options. I realize there is issues here. If the committee thinks it needs more time, we certainly can take it.

**Rep. Kilichowski:** I move for the adoption of the amendment.

**Rep. Paur:** Second.

**Chairman Weisz:** The committee is comfortable with what the amendments do? Rep. Hruby pointed out, you take out all that language having to do with the type of treatments because it does up above say, "legitimate medical treatment for life threatening" so indeed it is somewhat redundant. Change in language from "clinically diagnosable pregnancy" instead of "conventional medical testing". Those are really the only two changes outside of correcting the language for a physician and also the section on assault having to do with the injury instead of death.

**Voice Vote: Motion Carried**

**Rep. Devlin:** I had a question for Mr. Dobson. Rep. Hruby's testimony was he wanted to ban abortion and you essentially said 1450 fell short and we already had a bill that banned abortion. Did the amendments make it any better as far as the Catholic Conference is concerned?

**Christopher Dobson:** Yes because (inaudible) is not an exact science. I think it falls short as an abortion ban, but on the chance it is, these amendments address the concerns we would have would have had if it was an abortion ban. No penalty for the woman, no big loopholes for medical treatments by name. Yes, it does address those concerns.

**Rep. Holman:** You are an attorney and you are well skilled in constitutional law so concerns there is a reason this is put forth because it will possibly provide a challenge. How would Planned Parenthood challenge something like this?

**Christopher Dobson:** If it is an attempted abortion ban, but there is more there too. Protection of embryos which is something that is not really been adjudicated much. On an abortion ban you would have to have a plaintiff that is someone who engages in abortion who things they would be prohibited by this act and if they had (inaudible) to the state attorney general would defend it. Those cases are usually in federal court under Section 19-83 under the Civil Rights Act. If the state loses, the state pays other side's attorney fees at the trial court level. But, this would very unlikely be a trial. It probably would be a motion for somebody (inaudible) because it is really a question of law and not facts in this particular case. You don't know until you actually see the complaint, on what would have to be decided.

**Rep. Holman:** So, if a doctor at the Fargo clinic performed an abortion that violated this, that could constitute charges being filed against that person?

**Dobson:** Actually I was thinking, typically abortion matters is taken up by somebody who thinks the law prohibits something they have a right to perform and they would bring the suit and be the plaintiff. They will wait for charges to be filed against them. If it banned abortion or banned a particular act too, the other scenario that a state's attorney could initiate actions and unconstitutional questions raised by the defense in that case.

**Rep. Schmidt:** On page 5, section 2 line 10, "does not apply to" if we go down to line 18, "the creation of a new human being through in vitro fertilization but, in no case does this section excuse or justify causing the death of a human being when we have taken out knowingly". I don't know how in vitro fertilization is done, but I would assume that at some point time there is human error. Totally unintended. Does this mean in that case if it is totally unintended and if something happens that causes the death. Because we have taken out the word "knowingly", explain to me what that really means.

**Dobson:** The reason "knowingly" is taken out is because there is already what is known as (inaudible) requirements, mental state requirements, in this section of the criminal code. I believe they are intentional, knowing, and maybe reckless. What the basic requirements of levels you for homicide. This confuses it by have "knowingly" when we already have (inaudible) requirements in those sections. Accidentally causing a death is not a crime. Reckless may be manslaughter.

**Chairman Weisz:** Rep. Schmidt is says, "intentionally or knowingly causes the death on the circumstances manifested in extreme indifference to the value of human life" or it goes into "attempting to commit treason, robbery, burglary, kidnapping or felonious restraint in the course of a crime". In is in under the murder statute, intentionally or knowingly.

**Dobson:** Crimes have a mental state and a physical act. The mental requirements are already in the code for this chapter.

**Chairman Weisz:** If the committee needs more time we can take it. You need more time? Ok, we won't take it up then. We will kick it out tomorrow or Wednesday for sure. Closed the meeting.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1450  
February 8, 2011  
Job #14195

Conference Committee

Committee Clerk Signature *Vicky Crattree*

**Minutes:**

You may make reference to "attached testimony."

**Vice-Chair Pietsch:** Called the meeting to order on HB 1450. Shall recess until our Chairman arrives or do you want to discuss either of the bills we have before us?

**Chairman Weisz:** We will call the committee back to order. Let's take up 1450. All I have is one set of amendments. Is that correct or are there others?

**Rep. Porter:** I have a set from Rep. Hruby.

**Chairman Weisz:** Right, 01001.

**Rep. Porter:** (Inaudible. Microphone not on.)

**Chairman Weisz:** But, I think 01001 replaces that and incorporates the changes. I don't believe there was anything else. Everybody understands the amendments? And there was a clerical mistake on Rep. Hruby's amendments which we will change.

**Rep. Porter:** I move the Hruby amendment 01.001.

**Rep. Schmidt:** Second.

**Rep. Porter:** With the correction.

**Chairman Weisz:** With the correction yes.

**Rep. Damschen:** I thought we adopted those yesterday.

**Chairman Weisz:** That's right. Thank you Rep. Damschen, we did adopt them.

**Chairman Weisz:** We have an amended bill in front of us. Any further amendments?

**Rep. Devlin:** I'll move a Do Pass as amended.

**Rep. Schmidt:**

**Rep. Holman:** I want to clarify my position on this. I'm not going to support the bill as most of you probably expect. My problem is that this bill which relates to the one item 15 on page 3. I feel because of that item we will have some potential litigation that the State of ND that we will be responsible to defend. I don't know that and testimony said we don't know where it is going to go. I also think this is polarizing legislation and it is a no win situation no matter how you vote on this, someone back home is going to hate you. My personal feelings come from (stops). I don't think there is a person in this room that favors abortion as a choice. Abortion in itself is not something any of us support. I'll clarify that. A little over 40 years ago, my wife and I went down to Fargo and picked up a baby at Lutheran Social Services. Because of the 16 year old mother making a choice and the system worked. I feel a year later I had the choice and I did a single parent adoption instead of giving my daughter up as was suggested by some people. I feel very strongly that I had these opportunities. Also I feel strongly and my voting record will show in this committee alone will see that I have supported on issues that support children. The baby bottle bill as I call it, that we voted out with a Do Not Pass. The children's health insurance bill which is on the floor today and I will respond to the carrier on that. I supported that, but our committee did not. The nurses in schools, I supported that and our committee did not. So I am on record and you check my voting record you will see I support issues that support children and support the health of children and support prenatal and post natal care for those in pregnancy situations. And so, my record is clear on supporting issues that support children, but I cannot support this bill because of potential problems it is going to create. Thank you.

**Chairman Weisz:** Thank you Rep. Holman. Further discussion?

**Roll Call Vote:** 10 y 3 n

**Motion Carried on Do Pass as amended**

**Bill Carrier:** Rep. Louser

**FISCAL NOTE**  
 Requested by Legislative Council  
 03/21/2011

**REVISION**

Amendment to: HB 1450

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$0			
Appropriations			\$0			

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	03/21/2011

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/10/2011

Amendment to: HB 1450

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$20,000			
Appropriations			\$20,000			

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

See above

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	02/10/2011

# FISCAL NOTE

Requested by Legislative Council  
01/27/2011

REVISION

Bill/Resolution No.: HB 1450

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>			\$20,000			
<b>Appropriations</b>			\$20,000			

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

See above

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The above amount represents the approximate cost of paying the challenging party awarded costs and attorney's fees if they prevail.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
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Phone Number: 328-3622

Date Prepared: 01/27/2011

# FISCAL NOTE

Requested by Legislative Council  
01/19/2011

Bill/Resolution No.: HB 1450

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$30,000			
Appropriations			\$30,000			

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The above amount represents the approximate cost of defending a legal challenge against the bill.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The above amount represents the approximate cost of defending a legal challenge against the bill.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The amount shown above represents the approximate cost of defending a legal challenge against the bill.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amount shown above represents the approximate cost of defending a legal challenge against the bill.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/24/2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1450

Page 5, line 12, remove "licensed"

Page 5, line 12, after "physician" insert "licensed to practice medicine under chapter 43-17"

Page 5, line 15, remove ", including"

Page 5, remove line 16

Page 5, line 17, remove "molar pregnancies, and separation of conjoined twins"

Page 5, line 19, remove "knowingly"

Page 5, line 20, remove "the time when a pregnancy could be"

Page 5, line 21, replace "determined through conventional medical testing" with "a clinically diagnosable pregnancy of a woman"

Page 5, line 22, after "actor" insert ", other than the pregnant woman,"

Page 5, line 23, remove "This section may not be"

Page 5, remove lines 24 through 26

Page 6, line 2, remove "licensed"

Page 6, line 2, after "physician" insert "licensed to practice medicine under chapter 43-17"

Page 6, line 5, remove ", including"

Page 6, remove line 6

Page 6, line 7, remove "molar pregnancies, and separation of conjoined twins"

Page 6, line 9, remove "knowingly"

Page 6, line 9, replace "the death of" with "injury to"

Page 6, line 10, remove "the time when a pregnancy could be"

Page 6, line 11, replace "determined through conventional medical testing" with "the time when a pregnancy could be determined through conventional medical testing"

Page 6, line 12, after "actor" insert ", other than the pregnant woman,"

Page 6, line 13, remove "This section may not be"

Page 6, remove lines 14 through 16

Renumber accordingly

Date: 2-7-11  
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1450

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kilichowski Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote Motion Carried*

VK  
2/8/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1450

- Page 5, line 12, remove "licensed"
- Page 5, line 12, after "physician" insert "licensed to practice medicine under chapter 43-17"
- Page 5, line 15, remove ", including"
- Page 5, remove line 16
- Page 5, line 17, remove "molar pregnancies, and separation of conjoined twins"
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- Page 6, line 11, replace "determined through conventional medical testing" with "a clinically diagnosable pregnancy of a woman"
- Page 6, line 12, after "actor" insert ", other than the pregnant woman,"
- Page 6, line 13, remove "This section may not be"
- Page 6, remove lines 14 through 16
- Re-number accordingly

Date: 2-8-11  
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1450

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN		✓
VICE-CHAIR PIETSCH		✓	REP. HOLMAN		✓
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 10 No 3

Absent \_\_\_\_\_

Floor Assignment Rep. Louser

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

**REPORT OF STANDING COMMITTEE**

**HB 1450: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1450 was placed on the Sixth order on the calendar.

Page 5, line 12, remove "licensed"

Page 5, line 12, after "physician" insert "licensed to practice medicine under chapter 43-17"

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Renumber accordingly

2011 SENATE JUDICIARY

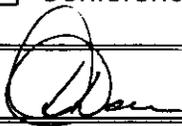
HB 1450

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1450  
3/15/11  
Job #15436

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to the definition of human being

Minutes:

There is attached testimony

**Senator Nething – Chairman Nething**

**Representative Ruby – District 38 – See written testimony.**

**Senator Olafson –** Asks him if he would be willing to work on amendments. He also asks if he is aware of any medical professional in ND that would be considered homicidal and why this bill if passed would be under homicide in the Century Code. He asks why it shouldn't be under the Abortion Control Act.

**Rep. Ruby –** States it is a different intent, abortion is a criminal act.

**Senator Berry –** See written testimony.

**Senator Sitte –** Would like to know about Section 2, A & B, she asks if we are providing adequate intent for physicians to treat ectopic pregnancies.

**Senator Olafson –** Asks Senator Berry if he isn't bothered that this if passed would go into the Century Code under the chapter on homicides.

**Senator Berry –** Replies yes at first glance, but we have been practicing this all along.

**Senator Olafson –** Asks if would be willing to work on an amendment to which Senator Berry replied yes.

**Senator Oley Larsen – District 3 –** Says he is in support of this bill

**Rebecca Kiessling – Pro-Life Speaker/Attorney –** Relates her story of being a product of a rape. She gave out a brochure and a DVD on her story. She says IVF doctors are abortionists. She said she offers to put a face to the issue.

**Senator Sitte** – Asks her to explain IVF.

**Kiessling** –Speaks of the freezing of sperm, ova, embryos, then picking and choosing some and disposing of the rest.

**Senator Olafson** – Responds by saying IVF doctors by nature are passionate at what they do, and Kiessling's statement is ideological.

**Kiessling** – Stands by her statement saying they are abortion doctors, they remove living beings.

**Karen Hanson** – Relates her story of a miscarriage and passes pictures around of her child at the time of the miscarriage. She said this was an individual and the only thing needed was time and nutrition. She is testifying and telling her story to be an encouragement to others.

**Gualberto Garcia Jones** – See written testimony.

**Senator Olafson** – Said he finds the language of the bill to be contradictory.

**Jones** – Agreed this language does not protect the physician and they do still need the ability to treat.

**Senator Sitte** – Asks if there are other places that treat IVF.

**Jones** – Said yes and gave examples, Italy, Germany, UK. He does not think the homicide section of the code is the right section to place this.

Opposition

**Stephanie Dahl** – Physician and infertility specialist, Fargo ND – See written testimony  
She answers a question from Senator Sitte by saying 60% of pregnancies are lost even when they are natural. She says this bill would make IVF illegal and take us back 40 years.

**Senator Sitte** – Says as a sponsor of the bill she would like to work with her on this.

**Dahl** – Relates this is not just her opinion, she says 8000 physicians across the country believe in this.

**John Grabinger** – See written testimony.

**Senator Sitte** – Asks him when he thinks life begins.

**Grabinger** – Responds by saying life begins with a beating heart.

**Shari Orser** – OB GYN Physician, Bismarck – See written testimony.

**Senator Olafson** – Asks her if this bill passes in its current form does she see people leaving the State.

**Orser** – Said she can't speak for other physicians but if the bill did pass in its current form her patients would have to go to Minneapolis or Denver.

**Senator Sorvaag** – Ask her about cancer treatment.

**Orser** – Says there is a high probability you will kill the fetus when giving some cancer treatments.

**Senator Olafson** – Asks her about the language on line 14.

**Orser** – Said she finds it very contradictory.

**John Witt** – OB GYN, Bismarck – He says this bill gives full legal status to a fertile egg cell, abortion would be banned, IVF could be banned and women who suffer from a miscarriage could be convicted of manslaughter. He says the bill is unclear in so many ways.

**Senator Sitte** – Asks Dr. Witt if he has ever heard of any woman prosecuted for miscarriage and if he thinks a zygote is a human being.

**Witt** – Responds not yet and yes to the zygote being a human being.

**Senator Sitte** – Asks him when life begins.

**Witt** – Replies on conception

**ShaunAnne Tangney** – Minot State University English Professor – Said she objects to the language and feels it is contradictory and just doesn't make sense. She also believes this is a veiled attempt at birth control.

**Janelle Moos** – ND Council on Abused Women's Services – See written testimony.

Neutral testimony

**Steve Cates** – See written testimony.

**Senator Nething** claims his testimony was biased in favor of so he allows the oppositions 7 minutes.

Opposed

**Linda Olson** – Embryologist – See written testimony.

Close the hearing on 1450

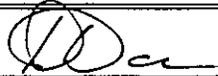
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1450  
4/4/11  
Job #16296

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the definition of human being

## Minutes:

There are attachments

## Senator Nething - Chairman

### Committee work

Senator Nething asks the sub-committee of two to present what they have. Senator Olafson gives his report and says they could agree with some things but after meeting several times there are things they could not agree on. They have each brought in amendments. Senator Olafson distributes his amendment for the committee to look over and explains what it changes. Senator Sitte questions some of the things in Senator Olafson's amendment. Senator Sitte distributes her amendments. The committee discusses the two amendments and asks if there are places they are the same or if each could accept the others. They question the definition of "not compatible with life". Senator Olafson said it is a commonly used medical definition. Senator Lyson questions the morning after pill and says he cannot vote for this bill as long as there is a morning after pill. Senator Nething says he will give them some time to clean up the amendments to make them more clear to the committee.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1450  
4/5/11  
Job #16370

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the definition of human being

Minutes:

*There are attachments*

**Senator Nething – Chairman**

## Committee Work

Senator Sitte proposes an amendment and goes through them line by line with the committee. She says her amendment is a meld of some of her prior amendments and Senator Olafson's amendment. Senator Olafson disputes some parts of her amendment and believes parts are contradictory to the bill. Senator Lyson wonders why they are playing games with words, just put in it black and white. Senator Sitte said it is very clear to her. Senator Sorvaag believes part of her amendment is already covered in section A. There is length committee discussion on whether parts of Section A or Section B are needed. They compromise by putting a period after pregnancy in those sections. Senator Olafson has questions on how supporters of the bill plan on handling the policing of IVF clinics and making sure they are complying with the law. Senator Sitte says she does not see there will be policing of IVF clinics. She thinks the discussion on IVF has raised some issues that they will revisit next session. She thinks those clinics will look at their practices and become more responsible with the number of embryos they are creating. She says regulating IVF was not the intent of this bill. She says the opponents made it all about IVF; the proponents made it all about a ban on abortion. She said they don't want to see anyone go to jail and would like everyone to be responsible in the way they treat these human beings. Senator Olafson asks why they don't say a person may not be criminally charged for any action with respect to a human embryo. He mentions this is in the Chapter on Homicide, if you charge someone with homicide then imprisonment follows. Senator Sitte says we talk of judicial discretion in this committee often and things a judge would just give a slap on the wrist. She said they want to make it abundantly clear there is no imprisonment intended here. Senator Olafson says this is the chapter on homicide and if you charge someone with homicide they do not get a slap on the wrist. Senator Nething breaks down the amendments and the committee discusses each of them. Senator Sitte discusses "incompatible with life". The committee discusses how long this would be for. Senator Nething suggests they stay on topic discussing IVF. Senator Olafson says if

Senator Sitte finds the language troubling in his amendment subsection C, and suggests they could take in Senator Sitte's amendment subsection 4 a person may not be criminally charged. He believes that will take care of it. Senator Nelson asks then why have it in this Section. Senator Olafson says the answer was no when he asked at the hearing whether they knew of anyone practicing in ND, other than the one abortion clinic, who is using medical procedures that would constitute homicide. He asks why are we even putting this in code. Senator Sitte said the major reason is that when the new health care reform law was passed it was the largest expansion of abortion in the nation and some of those regulations that were drafted were going to state that all hospitals would have to perform abortions and that all doctors would have to be trained in abortions. She said this bill is aimed at ending abortion in ND; it is a State's rights approach. She said this is a statement that ND values life, that is all this bill is intended to do but along the way they got caught discussing IVF because the doctor's that came forward raised these questions in committee. She said with all their protesting it has sparked curiosity on what they are really doing there. Senator Olafson says if it is her purpose to end abortion in ND then she should just say that. He thinks they should just bring forth an amendment that says abortions in ND shall be illegal and they would debate that on the floor. Senator Sitte thinks that is what this bill says. Senator Nething suggests Senator Olafson and Senator Sitte prepare new amendments and they will take up discussion again later.

#### **Afternoon session**

##### **Committee work**

Senator Olafson presents the amendments that he and Senator Sitte have agreed on and discusses it with the committee. Their sub-committee will continue discussions.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1450  
4/6/11  
Job #16401

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the definition of human being

Minutes:

**Senator Nething – Chairman**

### Committee work

Senator Olafson explains the amendment that he and Senator Sitte have worked on. Senator Sitte states after lengthy discussion with the members of the Pro Life community the consensus is that some of these have absolutely gone too far, this bill is intended as a defense of human life and to provide equal protection under the law for all human beings. She goes on to explain the parts of the amendment they do not agree with. Senator Olafson asks if Senator Sitte is able to speak on behalf of the supporters of the bill is it the intention of the supporters of the bill to make abortion illegal in ND. Senator Sitte replies yes it is.

**Senator Olafson** moves to adopt the amendment 02016

**Senator Lyson** seconded

Roll call vote – 4 yes, 2 no

Motion passes

### Discussion

Senator Sitte asks Senator Nething what the procedure is to which he responds in the Senate you can amend from the floor. Senator Sorvaag would like to say he voted against the amendment because of G.

**Senator Olafson** moves a do pass as amended

**Senator Sorvaag** seconded

Roll call vote – 5 yes, 1 no

**Senator Olafson** will carry

April 6, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1450

Page 5, replace lines 14 through 17 with:

- "b. Medical treatment for life-threatening conditions in pregnancy.
- c. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- d. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization, which has been subject to medical testing and analysis, and in the reasonable judgment of a medical professional, if transferred to a human uterus, would not produce a live birth.
- e. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization which has not progressed in development for thirty-six hours in culture."

Page 5, line 18, replace "d." with "f."

Page 5, after line 19, insert:

- "g. The termination of a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20."

Page 5, remove lines 30 and 31

Page 6, replace lines 1 and 2 with:

- "b. Medical treatment for life-threatening conditions in pregnancy.
- c. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- d. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization, which has been subject to medical testing and analysis, and in the reasonable judgment of a medical professional, if transferred to a human uterus, would not produce a live birth.
- e. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization which has not progressed in development for thirty-six hours in culture."

Page 6, line 3, replace "d." with "f."

Page 6, after line 4, insert:

- "g. The termination of a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20."



Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**HB 1450, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1450 was placed on the Sixth order on the calendar.**

Page 5, replace lines 14 through 17 with:

- "b. Medical treatment for life-threatening conditions in pregnancy.
- c. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- d. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization, which has been subject to medical testing and analysis, and in the reasonable judgment of a medical professional, if transferred to a human uterus, would not produce a live birth.
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- "g. The termination of a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20."

Renumber accordingly

2011 TESTIMONY

HB 1450

TESTIMONY ON HOUSE BILL 1450

HOUSE STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES

1/31/2011

SENATOR SPENCER BERRY, MD

Mr. Chairman and members of the committee. I will attempt to be brief and to the point. My testimony, as it relates to House Bill 1450, is as it pertains to the language used in the legislation.

May I direct your attention to page 3, line 1 of the bill. Beside the #15, new language is inserted to this statute. "Human being" means an individual member of the species Homo Sapiens at every stage of development. Further down the page on lines 30 and 31 new language is also inserted: Person includes all human beings.

As it relates to biological, scientific and medical knowledge these statements are congruent. Establishing congruency of this language before the committee is the essence of my testimony. The remainder of the bill and its intent and actions are for other testimonials to address, and for the committee to make determinations and recommendations upon.

I will try not to bog down in obscure language and definitions, however, there are necessary distinctions and points of emphasis that need to be made to in fact clarify the congruent nature of the wording in the bill before you.

I would like to have you focus on lines 1 and 2 of page 3, and the words at every stage of development. Skip down to lines 30 and 31 where it states person includes all human beings. As stated in H.C.R. #3107, passed in 2005 by the legislative assembly, said in part:

THE LEGISLATIVE ASSEMBLY FINDS THAT THE STATE OF NORTH DAKOTA HAS A COMPELLING AND PARAMOUNT INTEREST IN THE PRESERVATION AND PROTECTION OF THE LIFE OF ALL HUMAN BEINGS; AND THE LEGISLATIVE ASSEMBLY FINDS THAT THE LIFE OF A HUMAN BEING SHOULD BE PROTECTED AT EVERY STAGE OF BIOLOGICAL DEVELOPMENT.

Dictionaries define "human being" as – a person, especially as distinguished from other animals or as representing the human species (Random House Dictionary). The World English Dictionary (Collins English Dictionary) defines human being as - a member of any of the races of Homo Sapiens; person.

If in fact the legislative assembly has found that the life of a human being should be protected at every stage of biological development, that would include all stages of human development.

In biological terms, as it relates to studying life cycles, the definition of life cycle is as follows; the continuous sequence of changes undergone by an organism from one primary form to the development of the same form again (Random House Dictionary). Merriam-Webster's Medical Dictionary defines life cycle as "the series of stages in form and functional activity through which an organism passes between successive recurrences of a specified primary stage.

The common thread in the biological and medical definitions includes a reference to a primary form or primary stage. The primary form or stage may be referred to as "the first common stage of development through which all members of that organism go through." This is crucial in the understanding of this language.

As it relates to human beings, our primary form may be traced back to the zygote-this is the egg of the female of the species after fertilization by the sperm of the male of the species. This entity is the primary form of the new, unique, distinct living human being. This is the stage of life at which we all start and through which we all go through. It is the primary common form of our species. From here further maturation and development take place. Biologically and medically we break these stages of human development into time spans for the sake of clarity in discussing human life development. From zygote we move to embryo, fetus, infant, toddler, young child, older child, adolescent, young adult, middle aged adult, geriatric adult. These partitions are artificial and simply used to facilitate discussion of the human life cycle.

Again, I want to emphasize that all human life shares all of these stages of human development unless injury, illness or disease terminates their life cycle. Therefore, if the definition of human being includes "person" as previously shown and a "human being" has a common life cycle as noted above, then the definition of "person" should include "human beings" at all stages of development.

Daniel Woodard  
Consultant – ND Right to Life and ND Life League  
Monday, January 31, 2011

### **Purpose of HB 1450:**

To make it a crime to injure or kill an unborn child in circumstances where it would be a crime to harm anyone else under circumstances where the state has the ability to prosecute.

The Criminal Code (12.1) of the North Dakota Century Code protects all "human beings" in this state from a variety of crimes, most importantly homicide (12.1-16) and assault (injury) (12.1-17). This title does not currently define the term "human being." HB 1450 will add the scientific definition of human being to the definitions section of the criminal code:

""Human being" means an individual member of the species homo sapiens at every stage of development"

This will provide equal protection under the law for all human beings in North Dakota , including unborn children.

### **Clarifications/Exceptions:**

Section 2 & 3 of HB1450 clarify that it does not preclude:

- 1) The use of medical treatments which may unintentionally harm a human being. As stated in the bill, examples include "chemotherapy treatment and other cancer treatment, treatment for ectopic or molar pregnancies, and separation of conjoined twins."
- 2) The creation of a new human being through IVF.
- 3) "Contraception administered before the time when a pregnancy could be determined through conventional medical testing." (So in effect, the morning-after pill or lower chemical contraceptives will not be affected.)

Sections 2 and 3 also clarify that the assault and homicide statute cannot be used to prosecute "a woman for indirectly harming her unborn child." It is only "the principal actor with respect to criminal conduct upon a person who has not yet been born." In other words a woman who hires an abortionist will be immune from prosecution, but the abortionist himself may be charged.

### **Questions and Answers**

#### **1) Does this bill challenge Roe v Wade?**

A: There is disagreement among legal experts (even within the pro-life movement) as to whether this bill directly challenges Roe or simply takes advantage of the fact that the courts did not explicitly deny state governments the power to define humanity/personhood. This bill simply states that all human beings will be equal before our state's laws. If this does challenge Roe (as the abortionists will no doubt claim) then it is a challenge that needs to be made.

On the other hand, if abortionists don't challenge this law, it would be similar to how Pennsylvania's post-24 week abortion ban wasn't challenged or how Nebraska's post-20 week abortion ban wasn't challenged (and still shut down Dr. Carhart's clinic). Both laws arguably violate Roe. But they also arguably don't violate Roe, since they are both currently enforced. Abortion jurisprudence is very ambiguous, inconsistent, and back-and-forth. The courts have too much discretion so that they effectively legislate when interpreting the constitution.

The courts could refuse to take up HB 1450, or take it up and say that it may be used to ban all abortions or none, or somewhere in between (i.e. abortions post-heartbeat, post-20 weeks, post-viability, etc). And/or the bill may be used to ban other forms of fetal homicide.

Nobody can master the guessing game of how the courts would handle any legislation affecting abortion jurisprudence. What is most important is to pass good public policy for its own sake and because it's the right thing to do for every human being.

**2) Does this bill prohibit in vitro fertilization?**

A: No, new children may continue being created outside their mothers, but they may not be intentionally killed. The only thing this bill would require from IVF doctors is to keep children in the freezers until they are implanted in their mothers (or other women) or die naturally in the freezer. If this bill results in a little higher electric bill, then that's a low business cost of dealing in human lives.

**3) Does this bill have an exception for health of the mother?**

A: The bill does not explicitly outlaw any procedure so it does not exactly have exception clauses, but the bill does expressly permit medical treatment, even if it endangers the unborn, that is not intended "to cause the death of a person."

**4) Does this bill permit certain unborn children to be excluded from protection?**

A: No. Again the bill does not explicitly outlaw any procedure so it does not have exception clauses. This bill would make North Dakota law would treat all children as human beings. To exclude any children would require that the following phrase be amended out: "Person" includes all human beings. For example, if there was an exception for children with Down Syndrome, that would be a clear violation of human rights. Any such exception would be wrong.

part of #2

HOUSE BILL NO. 1450

Introduced by  
Representatives Ruby, Karls, Kasper  
Senators Larsen, Nodland, Sitte

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

15. "Human being" means an individual member of the species homo sapiens at every stage of development.

25. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state. "Person" includes all human beings.

SECTION 2. Section 12.1-16-06 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-16-06. Construction.** Sections 12.1-16-04 through 12.1-16-06 do not preclude the use of medications or procedures necessary to relieve a person's pain or discomfort if the use of the medications or procedures is not intentionally or knowingly prescribed or administered to cause the death of that a person. In addition, sections 12.1-16-04 through 12.1-16-06 do not preclude the withholding or withdrawal of life-prolonging treatment pursuant to state or federal law.

Sections 12.1-16-01 through 12.1-16-03 and 12.1-17-01 through 12.1-17-03 do not apply to:

a. Medical treatment for life-threatening conditions provided to a person by a licensed physician which results in the accidental or unintentional injury or death of another person.

b. Legitimate medical treatment for life-threatening conditions not intended to harm a person but which has the foreseeable effect of ending a person's life such as but not limited to: chemotherapy treatment and other cancer treatment, treatment for ectopic or molar pregnancies, and separation of conjoined twins.

c. The creation of a new human being through in vitro fertilization, but in no case shall excuse or justify knowingly causing the death of a human being.

d. Contraception administered before the time when a pregnancy could be determined through conventional medical testing.

Sections 12.1-16-01 through 12.1-16-03 and 12.1-17-01 through 12.1-17-03 apply only to the principal actor with respect to criminal conduct upon a person who has not yet been born. This section may not be interpreted as creating an action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

**Comment [dw1]:** By redefining "human being" and "person" in the criminal code to include unborn children, then unborn children would be protected from attempts to injure or kill them.

**Comment [dw2]:** By redefining "human being" and "person" in the criminal code to include unborn children, this bill makes it a crime to kill an unborn child in circumstances where it would be a crime to kill anyone else under circumstances where the state has the ability to prosecute.

**Comment [dw3]:** This change would permit unborn children to receive pain killers in case of life-saving fetal surgery.

**Comment [dw4]:** This section ensures that a person would not be penalized for the death of an unborn child for actions where the person did not intentionally or knowingly try to harm an unborn child.

**Comment [dw5]:** This section would ensure that IVF would not be stopped in any way. This bill won't stop the creation, freezing or unfreezing, or transfer of embryos. IVF doctors simply wouldn't be able to participate in the wanton wasteful destruction of embryos. They would simply be responsible to keep them frozen.

**Comment [dw6]:** This section is saying that this legislation would not apply to products with amounts of chemicals equal to the morning-after pill or less. Every chemical contraceptive products are potentially abortifacient. They vary according to the amount.

**Comment [dw7]:** This section says that the person actually committing the crime is the one penalized. For example, in the case of abortion, that would be the abortionist. In the case of self-abortion, that would be the mother. (It is a felony in ND (and 42 other states) for the mother to commit self-abortion, because of how dangerous it is.) In effect, this is an exception for the mother.

**Comment [dw8]:** This section reiterates that the mother not be penalized for the death of an unborn child for actions where she did not intentionally or knowingly try to harm her child.

# North Dakota Family Alliance

*A Trusted Voice Impacting Our Legacy*

Tom D. Freier, EXECUTIVE DIRECTOR

A3

**House Human Services Committee  
January 31, 2011  
HB 1450**

Mr. Chairman and members of the House Human Services Committee, I am Tom Freier with the North Dakota Family Alliance, and I am here to support HB 1450.

I am here to primarily address one portion of the bill, albeit the foundational portion of the bill. In Section 1, definition #15 defines "human being". It states "*human being*" means an individual member of the species homo sapiens at every stage of development".

*I am a simple person. So what is a definition and why do we need it? The dictionary defines a definition as; the act of defining, making clear or distinct, stating the meaning or significance, and relating to the accuracy of sound or picture.*

*So why is it important? Because it provides meaning and clarity, in and of itself. It is not dependent on the other 33 definitions in this section. It stands on its own. In this section, the other 33 definitions should not influence this definition or this definition the others. As a practical matter, we know that eventually any or all of these definitions will be used in concert to carry out the purpose of the bill .*

*This definition must accurately stand on its own so that it can foundationally serve its purpose, to provide a definition throughout the chapter. So is it accurate? I believe it is. I believe the obvious, that I was as human being from the moment of conception. I have a unique, distinctive, one of a kind DNA. From the moment of conception, I always have been a human being, and always will be.*

*I want us to think about that phrase 'always have been' in conjunction with the definition language 'at every stage of development'. Over the years, advances in medical science and research have substantiated the obvious—that we are human beings from conception.*

*But I want us to consider another source, a pregnant woman. We know the joy of discovering a pregnancy!! We know the pain and sorrow of a miscarriage. It is about the life of their unborn child, a human being.*

*Dedicated To Strengthening Families*

3220 18th Street South Ste 8 • Fargo, ND 58104 • Phone: 701-364-0676  
www.ndfa.org • admin@ndfa.org

*Over the past few years I have listened to post abortive woman speak about the loss of their child. Only by listening to their testimonies can you grasp the full depth and intrinsic understanding of their loss. No matter what stage of development, the post abortive woman understands that her child, a human being has been lost. She understands that the emotional pain, suffering, and trauma are a result of that loss of a human life. The abortion terminated the life of a human being.*

*This issue of abortion may become complex at times, and obviously has for many years—as we have witnessed the discussion and debate. But the issue becomes very simple, if we go back to the foundational truth that a “human being” means an individual member of the species Homo sapiens at every stage of development.*

*The people of North Dakota understand this issue. I believe a high percentage of the people simply want us to define when life begins and protect it. This bill provides a definition of life, and provides the foundation to protect life at every stage of development.*

*Mr. Chairman, I urge the committee to support HB 1450 with a Do Pass recommendation.*

#4



Representing the Diocese of Fargo  
and the Diocese of Bismarck

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** House Human Services Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** House Bill 1450 - Definition of Human Being in Criminal Code  
**Date:** January 31, 2011

The North Dakota Catholic Conference supports some elements of House Bill 1450 and, based on a particular interpretation of the bill and the adoption of certain amendments, can support the bill as a means of protecting human embryos from harm and destruction.

**House Bill 1450 as an Abortion Ban**

As the Catholic bishops of North Dakota have previously stated: "We agree with the goal of establishing the full legal recognition of the right to life of every unborn child from the moment of conception and will never waver from that objective. Laws, however, are not just expressions of abstract ideas or desired goals, but concrete rules of action. This means that the truths of faith and reason must be chiseled into civil policy with great precision in both thought and execution, thus meeting the demands of the cardinal virtue of prudence."<sup>1</sup> As an abortion ban, House Bill 1450 falls short in that regard.

Most notably, if the Legislative Assembly thinks an immediate ban on abortion is constitutional it should work within the existing legal structure already enacted by this body. North Dakota Century Code section 12.1-31-12 contains a ban on abortion passed by the 2007 Legislative Assembly and signed by Governor Hoeven. That provision becomes effective when the Legislative Council approves by motion the recommendation of the attorney general that it is reasonably probable that the act would be upheld as constitutional. If the legislature wishes to ban abortion this session, it should respect existing law and past efforts of this body and seek the recommendation of the attorney general or

<sup>1</sup> Statement of the Catholic Bishops of North Dakota on Pro-Life Legislation in the North Dakota Legislative Assembly; March 12, 2009

repeal the act's trigger mechanism. Passage of yet another ban risks creating statutory confusion and raises questions about the legitimacy of legislative process.<sup>2</sup>

It is questionable, however, whether HB 1450 is actually an abortion ban. House Bill 1450 does not expressly criminalize abortion but tries to indirectly prohibit it and other offenses against unborn children through the homicide and assault statutes of the criminal code. The bill, however, leaves intact sections of the code that already expressly criminalize homicide and assault of unborn children (N.D.C.C. chp. 12.1-17.1.) It also leaves intact statutes on the killing of children partially-born (N.D.C.C. chp. 14-02.6), the state's trigger ban on abortion (N.D.C.C. sec. 12.1-31-12), the Abortion Control Act (N.D.C.C. chp. 14-02.1) and prohibition against killing or harming unborn children by experimentation (N.D.C.C. chp. 14-02.2.) House Bill 1450 would appear, therefore, to indirectly prohibit acts already prohibited and even expressly allowed under some of these statutes.

According to well-established principles of statutory construction, more specific statutes prevail over general statements. Moreover, statutes are to be construed toward harmonization rather than allowing one statute to implicitly repeal another statute. Applying these principles, it is doubtful that House Bill 1450 would be interpreted as an abortion ban.

Should, however, the bill be interpreted and applied as an abortion ban, certain provisions must be fixed. Most significantly, the bill appears to allow criminal prosecution of a woman who has had an abortion. The Conference's long-standing position is that legislation prohibiting abortion should only extend as far as necessary and not to the woman, who is often an abortion's second victim. The exceptions to prosecution on page 5, line 22, and page 6, line 12 must be amended to ensure that the woman would not be subject to prosecution.

In addition, the exceptions on page 5, lines 14 through 17 and page 6, lines 4 through 7 are too broad. The use of "including" means that the acts that follow are *included*, or are *examples* of, the types of acts described in the first clause of the sentence. For example, as it reads now, the

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<sup>2</sup> As an abortion ban, HB 1450 would also face significant challenges in the courts. The underlying theory has already been tried (see, e.g., *Doe v. Israel*, 358 F.Supp. 1193 (D.R.I. 1973), affirmed, 482 F.2d 156 (1st Cir. 1973), cert. denied, 416 U.S. 993 (1974)) and there is no reason to conclude that a majority of the court would uphold a complete abortion ban at this time.

separation of conjoined twins is, by definition, a “legitimate medical treatment for life-threatening conditions not intended to harm a person but which has the foreseeable effect of ending a person's life.” The separation of conjoined twins, however, like treatment of ectopic pregnancies, is not always a “legitimate medical treatment for life-threatening conditions not intended to harm a person but which has the foreseeable effect of ending a person's life.” This section must be fixed so the legitimacy of a particular act is judged on a case by case basis.

The conference also requests that the exceptions on page 5, lines 20 and 21, and page 6, lines 10 and 11 be amended as well. As House Bill 1450 currently reads, it protects human life created *in vitro* prior to implantation and, if it is an abortion ban, unborn children in the uterus post-implantation. It does not, however, protect human life created *in utero* from the time of fertilization to implantation in the uterine wall. Changing “a pregnancy” to “fertilization” would eliminate this gap in protection.

### **House Bill 1450 as Protection for Human Embryos**

While it falls short as an abortion ban, HB 1450 may succeed in providing basic protection to human life created *in vitro*. The body of a human being, from the very first stages of its existence, can never be reduced merely to a group of cells. The embryonic human body develops progressively according to a well-defined program with a proper finality, as is apparent in the birth of every baby. Solid scientific evidence demonstrates the humanity of nascent human life.

It is the duty of society to ensure that human life be respected and protected from its earliest stages. The Supreme Court has made protecting human life from abortions frustratingly difficult, but it has not thus far prohibited states from providing basic protection to embryos created in laboratories.<sup>3</sup> Indeed, North Dakota already prohibits destroying and injuring human embryos through experimentation. It only makes sense that we should also prohibit destroying and injuring human embryos in other situations.

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<sup>3</sup> Louisiana law recognizes a human embryo outside the womb as a “juridical person,” and prohibits the destruction of a viable fertilized ovum. La. Rev. Stat. tit. 9, §§ 123, 129

To provide effective protection to human embryos, House Bill 1450 would need yet another amendment. The exceptions to prosecution on page 5, lines 18 and 19 and page 6, lines 8 and 9 exclude the act of *in vitro* fertilization from prosecution, but not *knowingly* killing or harming of embryos created through *in vitro* fertilization. Both the homicide and assault statutes already have a mental intent requirements that are broader than “knowing.” As such, the inclusion of the word “knowingly” here is unduly restrictive and should be removed. Finally, the same sentence on page 6, which amends the assault statute, appears to mistakenly refer to causing death rather than causing harm or injury.

It is as a prohibition on destroying and harming human embryos that HB 1450 has the conference’s support. With this purpose and with the recommended amendments, the conference can support House Bill 1450.

ND  
Catholic  
Conference

PROPOSED AMENDMENTS TO HOUSE BILL 1450

Page 5, line 12, remove "licensed", replace "which" with "licensed to practice medicine under chapter 43-17 that"

Page 5, line 15, replace ", including" with "."

Page 5, remove lines 16 and 17

Page 5, line 20, remove "knowingly"

Page 5, line 20, replace "a pregnancy" with "fertilization"

Page 5, line 22, after "actor" insert "other than the pregnant female"

Page 6, line 2, remove "licensed", replace "which" with "licensed to practice medicine under chapter 43-17 that"

Page 6, line 5, replace ", including" with "."

Page 6, remove lines 6 and 7

Page 6, line 9, remove "knowingly", replace "the death of" with "injury to"

Page 6, line 10, replace "a pregnancy" with "fertilization"

Page 6, line 12, after "actor" insert "other than the pregnant female"

Renumber accordingly

*part of*

**12.1-31-12. (Contingent effective date — See note) Abortion — Affirmative defenses.**

1. As used in this section:
  - a. "Abortion" means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.
  - b. "Physician" means an individual licensed to practice medicine under chapter 43-17.
  - c. "Professional judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.
3. The following are affirmative defenses under this section:
  - a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.
  - b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
  - c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

**Source:** S.L. 2007, ch. 132, § 1.

**Effective Date.**

Section 2 of chapter 132, S.L. 2007, provides: "Section 1 becomes effective on the date the Legislative Council approves by motion

the recommendation of the Attorney General to the Legislative Council that it is reasonably probable that this Act would be upheld as constitutional."

#5  
Marta Smetana

Testimony

House Bill 1450

01/31/2011

I want to thank the chairman and members of the committee for the opportunity to testify in favor of this bill.

History is full of examples where a state along with its courts, has deprived certain groups of human persons of their life and/or liberty. In 1939, the Third Reich created the Action T4 program. Working with doctors, the Nazis set out to kill 70,000 people who were deemed to be "unworthy of life" – people who had been institutionalized because of a disability. To ensure the legality of this program, Hitler personally ordered German judges not to prosecute doctors for killing their patients.

Lothar Kreyssig, a respected judge in Saxony, wrote a letter of protest to Nazi officials, then charged a doctor with murder in connection with the deaths of his disabled patients.

When Judge Kreyssig was called in and told that Hitler himself had authorized the program, the judge's courageous reply was, "The Fuhrer's word does not create a right."

He escaped being sent to a concentration camp because it was feared it would draw public attention to the Action T4 program. The judge was forced to retire and spent the rest of the war working his farm and, oh yes, hiding Jews on his property.

This judge had it right, the "state" cannot create a right and neither does it have authority to take away the basic right to life of any certain group of human beings.

It is the duty of government to protect and preserve the basic right to life of all innocent human life. This bill is designed to do that.

I encourage all of our state officials and citizens to follow the example of Judge Kreyssig.

# 6

**Testimony Before the North Dakota House of Representatives Human Services Committee**

**January 31, 2011**

**By William M. Schuh**

**Please Vote Do Pass on House Bill 1450**

Chairman Weisz and Honorable Members of the House Human Services Committee.

Twenty-eight years ago, when I was working in eastern Wisconsin, the Appleton Post Crescent published an article about a baby, call her baby x, that had survived a saline abortion in a Madison hospital. As the doctors worked to save the painfully burned baby, they were wringing their hands over the suffering of the child. But the absurdity of a situation wherein one moment these same doctors were trying to kill the child, and the next moment lamenting the baby's condition struck me as bordering on insanity. One moment subjecting the child to a brutally painful death, and the next scrambling to save her life; one moment a worthless object to be exterminated without mercy, the next moment a human being – a baby, and defined as such merely be passing through the vaginal orifice.

One of the most dangerous human traits, one that we all must struggle with, is our infinite ability to rationalize our own self interest when confronted with situations that may cause us discomfort, inconvenience, or self sacrifice. How easy it is to ignore or even define away the humanity of another when that person's humanity has a cost to us. And how much easier it is yet when the inconvenient people are silent and cannot resist their extermination.

To subject the definition of human life to a vague and sliding scale, subject to change based on human selfishness or fear, is a grave danger to any civilized society. Medical science has shown that the development of a child, once conceived, is a continuum both within the womb, and outside of the womb after birth. But even if there were a doubt about the moment of humanity, the procedures of risk assessment applied in any other facet of our society would err on the most conservative standard where the risk entails loss of human life. Our bridges, buildings, dams, food additives, and pesticide uses all answer to the the highest and most conservative standards where human life is at risk. Yet, for a child with a personality and capable of suffering excruciating pain within its mother's womb, we are loathe to even define its human status, solely because it is inconvenient.

In his account of the 1994 genocide in Rwanda that claimed 800,000 lives, General Romeo Dallaire, the head of the U.N. Peacekeeping force which was unable to act because of world indifference, observed that “it was as if each troubling conflict we were faced with had to pass the test of whether we could “care” about it or “identify” with the victims before we'd get involved.” And he asked the question “Are we all human, or are some more human than others?”

The sliding scale of human worth, based on selfish convenience, may begin with the brutal extermination of 50 million babies; but in the end, it is a human failing that leaps the boundaries of silent children to consume others through violence and through indifference. Dallaire concluded that “we are in desperate need of a transfusion of humanity.” But that transfusion of humanity can never be built or supported on the sliding sand of a definition of humanity based only on fear and self interest. The only reationally defensible event that can provide that standard is the event of conception, when the human genome is complete.

# 7

**Testimony of Tim Lindgren  
State Director  
North Dakota Life League (NDLL)**

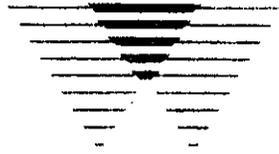
Honorable Chairman Robin Weisz, Vice-chairman Vonnie Pietsch and Members of the Human Services Committee,

North Dakota Life League is a grass roots non-profit organization dedicated to the protection and defense of all human beings from the moment of fertilization to natural death. We represent over 5000 families across the state of North Dakota. We have collected signatures from these same people who are more than happy to sign their names to petition the state and federal elected officials to protect all human beings.

North Dakota Life League thanks Representative Ruby and the other sponsors of HB 1450, the Defense of Human Life Act. This bill reflects the sentiments of our 5000 families in North Dakota. The definition of human being includes all preborn children and the term person applies to those children. This bill addresses all of the concerns we have heard over the years related to balancing good medicine and respect for human life. This is a bill that has broad support amongst the various advocates for the protection of all human beings.

This bill carries with it a fiscal note. I urge you to pass this as truly there is no problem in this state greater and more worth defending than the defense of our own young ones. This fiscal note represents just 30 cents per person in the state of North Dakota. Surely our children are worthy of this support and the benefits of more children far out weigh this small sum that is required in their defense.

As State Director of North Dakota Life League I urge a yes vote on HB 1450. Thank you for taking the time to read this testimony submitted this 31<sup>st</sup> day of January, 2011.



AAUW

TESTIMONY on HB 1450  
January 31, 2011

Chairman Weisz and Members of the House Human Services Committee:

My name is Connie M. Hildebrand and I represent AAUW-ND.  
I appear in opposition to HB 1450.

The AAUW's public policy position on Reproductive Rights, available through our Public Policy and Governmental Relations Department, and dated July, 2009 includes the paragraphs:

*AAUW supports the right of every woman to safe, accessible, affordable, and comprehensive family planning and reproductive health services. This position stems from AAUW's 2009-2011 Public Policy Program, which advocates, "choice in the determination of one's reproductive life, as well as increased access to health care and family planning services."*

*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, and further believes that these deeply personal decisions should be made without governmental interference.*

*AAUW has made protection of reproductive rights a policy principle since 1977.*

This bill seeks to legally define a fetus as an independent human being, thereby seeking to criminalize all abortion options and interfering with women's personal decisions regarding pregnancy and childbirth.

Based on AAUW's pro-choice public policy position and a near forty-year history of re-affirmation of this policy by our membership at our biennial conventions, we request a committee vote of Do Not Pass on HB 1450.

Thank you for the opportunity to provide AAUW's testimony in opposition to HB 1450 on behalf of North Dakota's AAUW members.

## **ND House testimony- February 1, 2011**

My name is Stephanie Dahl and I have been a physician at MeritCare in Fargo for 5 years. I would like to give you a little information on my background so you understand my training and credentials to testify on this bill.

I graduated from North Dakota State University in Fargo and went on to medical school at the University of North Dakota School of Medicine where I obtained an M.D. degree. I completed a four year residency in Obstetrics and Gynecology at St. Joseph Mercy Hospital in conjunction with the University of Michigan in Ann Arbor, MI. Finally, I completed a three year Reproductive Endocrinology and Infertility fellowship at the University of Cincinnati in Ohio. This is a total of 16 years of training and 5 years of experience as a Reproductive Endocrinologist. I am double board certified in Obstetrics and Gynecology and Reproductive Endocrinology and Infertility. Therefore, I feel, and I hope that you agree, that I have the knowledge, background and expertise in the fields of anatomy and physiology, women's health care, obstetrics and gynecology, early pregnancy, and embryology to testify at this hearing.

**House Bill 1450 would define a "Human being" as "an individual of the of the species homo sapiens at every stage of development."** However, reproduction is a complex process and large percentage of early development stages including the zygote, embryo and fetus are abnormal and not compatible with life.

The American College of Obstetrics and Gynecology, The American Society for Reproductive Medicine, and the Society for Assisted Reproduction all have formal position statements against personhood bills similar to this for the following reasons.

### **I. Miscarriage:**

After a zygote (early stage of human development) implants in the uterus, it may not result in a healthy baby. Spontaneous miscarriage rates range between 14-60% depending on the age of the female and her medical history. It is difficult to quote a true rate of miscarriage because a large percentage of miscarriages occur prior to the women's knowledge that she is pregnant. In a group of women who were trying to conceive and had daily urine pregnancy tests, 62% of pregnancies ended before 12 weeks gestation. This estimate doesn't include the number of eggs that fertilize but do not implant in the uterus.

**House Bill 1450 has the potential to impact medical care for women who require medical intervention during a miscarriage.**

An incomplete miscarriage occurs when a woman is bleeding and the cervix is dilated but the fetus or pregnancy tissue has not completely passed. This can result in a life threatening condition for the woman and requires a D&C (surgical evacuation of the uterus) to stop the bleeding. House Bill 1450 could impact the ability of a surgeon to treat women with an incomplete miscarriage.

We recently had a patient from rural North Dakota present to our ER in Fargo with an incomplete miscarriage. She was my infertility patient and after years of trying to conceive they became pregnant. Unfortunately, she began to bleed and was losing the pregnancy. The patient required multiple units of blood and a D&C (surgical procedure) to save her life. The fetus still had a heartbeat at the time of the D&C but the cervix was dilated and the patient was hemorrhaging. There was no way to prevent the miscarriage. This bill, if passed, however could delay the necessary surgery to stop the hemorrhage and save the life of the mother.

Reference:

Rock J, Thompson J. TeLinde's Operative Gynecology. Eighth Edition. 1997.

### **I. Assisted Reproductive Technologies (ART)**

In vitro fertilization (IVF) has been used for 35 years and has revolutionized fertility treatment. IVF allows couples who would otherwise be rendered sterile to have a family. Over 4 million healthy babies have been born from in vitro fertilization worldwide including hundreds of babies across the state of North Dakota. It is the accepted standard of care for many types of infertility and may be the only treatment option for millions of couples who are faced with infertility.

Approximately, 85% of Americans support the use of in vitro fertilization. Many religious organizations support and even encourage IVF including protestant, Jewish, Anglican, Hindu, Buddhism and Islam. Though the Catholic Church has a formal statement against IVF, 81% of Americans who consider themselves Catholic, support the use of IVF to achieve a family.

In vitro fertilization is a complicated medical procedure that involves multiple medications, careful monitoring, egg retrieval, and fertilization of the eggs in a laboratory. Resulting embryos are either transferred into the uterus or cryopreserved for future attempts at pregnancy. IVF cycles result in 15-50% pregnancy rates depending on the patient's age and medical conditions. However, some of those pregnancies will still be lost to miscarriage.

In vitro fertilization is the only option for men with severe male factor infertility to have a biologic child. Prior to IVF most couples with this history required donor sperm or utilized adoption to have a family.

IVF is often the only option for women with tubal occlusion and may be the only successful treatment for infertility caused by endometriosis, polycystic ovarian syndrome, and uterine anomalies. In vitro fertilization can also be used in women to preserve fertility in women who have been diagnosed with cancer and will be undergoing chemotherapy or radiation therapy. IVF can allow couples who carry lethal genetic abnormalities to have a healthy baby.

**House bill 1450 has the potential to impact IVF procedures and discriminate against infertility patients. Though there is an exemption for IVF in the current bill, the language is vague. "...does not apply to creation of a new human being by in vitro fertilization but no case does this section excuse or justify knowingly causing the death of a human being."**

Studies have shown 20-60% of human embryos demonstrate abnormal development and/or abnormal chromosomes. It is generally recommended not to place embryos that have obvious abnormalities into the uterus. Currently, if an embryo is abnormal, it is kept in culture and if continues to grow it is cryopreserved (frozen) for future IVF cycles. However, 10-30% of embryos die in culture and this loss of embryos is seen at every IVF program and is not preventable. It is not unlike the high number of pregnancy losses seen naturally that I mentioned earlier (14%-60%).

Another concern about this bill is the ability to impact embryos cryopreservation for future pregnancies. 20-30% of embryos will not survive the freeze-thaw process. We are concerned that we would not be able to cryopreserve embryos knowing that the embryo may not survive. So if we can't freeze the embryos and we can't discard embryos, we could be faced with a situation where we must transfer more embryos that considered safe.

If an embryo, or even a fertilized egg, is considered a person, than those persons would have the rights guaranteed by our constitution. Would the state need to find and "rent" uterine space for these embryos to fulfill their rights? Wouldn't be illegal to keep them cryopreserved (imprisoned).

**The bottom line ...**

- Not all eggs fertilize; not all fertilized eggs become embryos and not all embryos continue to develop
- 15 - 60% of embryos are abnormal and will not result in pregnancy

Our center has helped thousands of families in this state and I would like to relate one story to you today. This is a family that spontaneously conceived. They were thrilled with their baby girl who initially seemed healthy but grew progressively weaker and did not achieve her normal milestones. After multiple prolonged hospitalizations with many long weeks in the ICU undergoing painful procedures, she ultimately died when she was only 8 months old. It was a living nightmare for the parents to watch their baby girl grow weaker and weaker and ultimately die. The parents learned that they were both carriers for a deadly muscular dystrophy gene. They conceived again but unfortunately, the second child died at 15 months from the same disease. Both babies inherited a genetic abnormality that was literally a death sentence. These deaths could not be prevented by modern medicine. However, with in vitro fertilization, we had the ability to test the embryos for this deadly disease. The family utilized IVF and they now have a healthy set of twins that are not affected by the disease and the parents didn't have to watch another baby die in the ICU.

References:

Stéptoe and Edwards, Lancet 2:366, 1978.

Magli et al., Mol Cell endocrinol 183 (Suppl 1):S29, 2001

Magli et al., J Assist Reprod Genet 15:297, 1998.

Delhanty et al., Hum Genet 99:755, 1997.

**In closing, I am a physician and I have devoted my career and my life to helping North Dakota families fulfill their dream of having a baby. Patients drive hundreds of miles to see us and come from every corner of the state. My favorite part of my job is holding the babies in my arms that have resulted from our efforts. I do not support House Bill 1450 because the vague language will limit our ability to offer the highest standard of care in fertility medicine. In addition, this bill could literally tie the hands of physicians so they can not treat women with some complications of pregnancy. Although this bill is intended to stop abortion, it will impact the medical treatment of women across the state of North Dakota and could limit their access to fertility treatment.**

Thank you for your time.

Stephanie Dahl, M.D.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • [ndcaws@ndcaws.org](mailto:ndcaws@ndcaws.org)

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Testimony on HB 1450  
Senate Judiciary Committee  
January 31, 2011

Chair Weisz and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in opposition to HB 1450.

Our Coalition is a membership based organization that consists of 21 local domestic violence and rape crisis centers located throughout the state that provide services to domestic violence, sexual assault, and stalking victims in all 53 counties and the reservations in North Dakota. Last year alone, these centers provided services to nearly 900 victims of sexual assault.

Although our Coalition does not have a policy position on abortion, we are united in our concern for victims of sexual assault and incest. HB 1450, from our perspective, would ban all abortion, even for rape and incest victims and would also ban access to emergency contraceptives for victims of rape and incest. We aren't here today to debate the issue of abortion itself; so we will limit our testimony to the specific exclusion of these exemptions for rape and incest survivors in HB 1450.

A female sexual assault victim's number one concern is pregnancy, followed closely by sexually transmitted diseases. The risk of pregnancy from a sexual assault is 2 to 5%. In the U. S., an estimated 25,000 women become pregnant from sexual assault every year (Stewart, & Trussell, 2000). National recommendations from the American Medical Association, Sexual Assault Nurse Examiners, American College of Emergency Physicians, International Association of Forensic Nurses, and American College of Obstetricians and Gynecologists all state that providing FDA approved emergency contraception in cases of sexual assault is the standard of

care. This bill is so broadly written that it effectively eliminates the option for physicians to provide this invaluable treatment option for sexual assault victims.

I am not here today to tell you that all survivors should or even want to have abortions; however, we believe that since we cannot fully understand the path that brought them to us we cannot make that very difficult decision for them. This is about allowing a person who has had all decision making powers taken away from them as a result of the assault to make a very important and personal decision about their health, their family, and their future. This bill all but eliminates that option.

I urge you to oppose HB 1450.

Thank You.

2011

**House Human Services Committee**  
**HB 1450**

**January**

**31,**

**2011**

Good morning, Chairman Weisz and members of the House Human Services Committee. My name is Renee Stromme, and I am the Executive Director of the North Dakota Women's Network. Thank you for the opportunity to testify in opposition of House Bill 1450.

The North Dakota Women's Network serves as a catalyst for improving the lives of women through communication, legislation and increased public activism. We are a statewide organization with members from every corner of the state.

Most view HB1450 as a step toward outlawing abortion, what they aren't mentioning is that if it passes it will hurt all pregnant women and create unprecedented dangers to both maternal and fetal health.

Constitutional law ensures that people, including pregnant women, have the right to make their own health care decisions. Yet, cases from across the country make it clear that if fetuses are recognized as legal persons, pregnant women could very likely lose these constitutionally protected rights. That's because laws like Bill 1450 enable the state to intervene in pregnant women's lives in ways that are dangerous to both pregnant women and their children.

For example, Amber and John Marlowe found this out when Marlowe went into labor with their seventh child. She did not believe she needed a cesarean section and did not want to subject herself or her unborn child to unnecessary surgery. The hospital disagreed with both mother and father, and using the argument that the unborn child had a right to life, obtained a court order giving it custody of the fetus before, during, and after delivery, and the right to force Marlowe to undergo invasive surgery. Before the order was issued, Amber Marlowe (still in active labor) fled to another hospital. There, Amber delivered a healthy baby naturally.

Angela Carder was not so lucky. Twenty-seven years old and 25 weeks pregnant, Angela Carder, became critically ill. She, her family and her attending physicians agreed on treatment designed to keep her alive for as long as possible. Nevertheless, the hospital called an emergency hearing, and based on claims of fetal rights, ordered a Cesarean section, despite the fact that it could kill Ms. Carder. The surgery was performed, the pre-term infant survived for only two hours and Ms. Carder died two days later with the cesarean surgery listed as a contributing factor.

In Florida, fetal rights arguments provided the grounds for sending an armed sheriff to the home of Laura Pemberton a woman who was attempting a vaginal birth after having had a previous a c-section. The sheriff took her into custody, strapped her legs together and forced her to go to a hospital where the state's lawyer argued on behalf of the unborn child's rights. She, however, was left to defend her decision on her own while in active

labor. The judge ordered her to undergo the unnecessary surgery. When she sued for violations of her civil rights, she was told, in effect, that she had none. Ms. Pemberton's subsequent natural births disproved the state's claim that her medical decision-making was an act of "bravado" and a threat to the rights of the unborn.

In each of these cases, the state intervention was based on the claim that fetuses had separate legal rights — exactly the ones Bill 1450 would establish in North Dakota. In none of these cases did the forced interventions or deprivations of liberty actually protect mothers or babies.

During my own personal birthing experience in April of 2008, the attending physician forced pitocin on me after only four hours of labor, despite significant progress. My protests were not heard. I was literally told I had no choice. There was no medical need what-so-ever for labor inducing drugs.

Many women, including those who oppose abortion, believe they should not lose their rights to make medical decisions for themselves and their children because they are pregnant or are in labor. If the Bill passes, North Dakota's courts will have jurisdiction whenever doctors or family members disagree with a pregnant woman's medical decisions. As the examples make clear, women's right to bodily integrity, due process, and even life itself will disappear in the face of fetal personhood claims.

To oppose the recognition of fetal personhood as a matter of state law is not to deny the value of potential life as matter of religious belief, emotional conviction or personal experience. Rather, it is to recognize that re-writing the state's law to extend all rights to the unborn from the moment of fertilization will exclude women from the moment they become pregnant.

The Women's Network urges a do not pass on HB 1450. Thank you for allowing my testimony.

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March 15, 2011

Senate Judiciary Committee

House Bill 1450

Chairman Nething and members of the Judiciary Committee I am Dan Ruby, Representative from District 38, and I am here in support of House Bill 1450.

House Bill 1450 is a bill that will be familiar to some of you on this committee in its intent and to some extent in its form. The first intent of this bill is to define when human life begins and second, and just as important, to protect that life from harm or death. Currently similar defining language is contained in the abortion control act within the North Dakota Century Code, but then, through other language in that section allows the destruction of that human.

The language you see at the top of page three defines human life at every stage of development. By placing this language in the criminal code the intent is to protect that human from assault and murder including abortion. This isn't just my opinion but also the opinion of Walter M. Weber who is the Senior Litigation Counsel for the American Center for Law and Justice. Mr. Weber reviewed this bill and stated, "Thus, by adoption of this definition of "human being" the bill would make all abortions (other than to save the mother from a life-threatening condition) criminal homicides and assaults." By placing this definition in this one section of code it eliminates the concerns of unintended consequences that this committee expressed last session, such as inheritance and other issues.

The rest of the language was written to also address concerns some on this committee had related to treatment of life-threatening conditions such as ectopic and molar pregnancies which is covered by the language in Section 2 subsection 2 paragraph a. For treatments that are not intended to harm but has the foreseeable effect of ending a person's life with paragraph b. For the creation of a new human being through in vitro fertilization in paragraph c and the use of contraception before a clinically diagnosable pregnancy with paragraph d. Subsection 3 clarifies that the mother is not to be considered the principle actor. You will notice that language repeated in Section 3 because one area pertains to the assault section and the other to the homicide section.

Mr. Chairman and members of the committee, this issue is and always has been a passionate and contentious issue for many people and this full room is proof of that. The decision you have before you may not be an easy one for you to make. But please keep in mind. Protecting the lives of innocent human beings is the right thing to do. It is common in this country for doctors to partially remove babies from the uterus and perform life saving procedures on them and

replacing them back to continue their growth and development. They are doing so because they have learned how to treat these young people at very early stages. However, other doctors are destroying young lives at even later stages of development. How can it be a human life that we can treat, but also be one that we can kill?

House Bill 1450 recognizes that a human, which we know has its own DNA different from any other human, is protected no matter how that human is conceived. It is important to be consistent in this area and you will hear very compelling testimony later this morning that I believe will prove the sanctity of human life is precious regardless of how it is conceived.

House Bill 1450 not only has been written to address the concerns expressed last session but is the product of a collaborative effort from the North Dakota Life League, the Family Alliance, Concerned Women for America North Dakota, North Dakota Right to Life and the North Dakota Catholic Conference as well as other national groups. There are several other people here that will provide expert testimony in the areas of medicine and law so I will conclude my testimony and respectfully ask for a do pass recommendation.

TESTIMONY ON HOUSE BILL 1450  
SENATE JUDICIARY COMMITTEE  
SENATOR DAVE NETHING, CHAIRMAN  
3/15/2011  
SENATOR SPENCER BERRY

Mr. Chairman and members of the committee. For the record, my name is Spencer Berry. I am a North Dakota State Senator representing District #27 in South Fargo, and have been a practicing physician for nearly 25 years. My testimony, as it relates to House Bill 1450, is as it pertains to the language used in the legislation.

May I direct your attention to page 3, line 1 of the bill. Beside the #15, new language is inserted to this statute. "Human being" means an individual member of the species Homo sapiens at every stage of development. NDCC currently recognizes, and specifically states, in section 14-02.1-02 that "human being means an individual living member of the species of Homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation." Therefore, the new language being inserted into this statute is congruent with language currently present in the NDCC.

Further down the page on lines 30 and 31 new language is also inserted: Person includes all human beings.

Dictionaries define "human being" as – a person, especially as distinguished from other animals or as representing the human species (Random House Dictionary). The World English Dictionary (Collins English Dictionary) defines human being as - a member of any of the races of Homo sapiens; person.

As it relates to biological, scientific and medical knowledge these statements are congruent. Establishing congruency of this language before this committee is the essence of my testimony. The remainder of the bill and its intent and actions are for other testimonials to address, and for the committee to make determinations and recommendations upon.

I will try not to bog down in obscure language and definitions; however, there are necessary distinctions and points of emphasis that need to be made to, in fact, clarify the congruent nature of the wording in the bill before you.

I would like to have you focus on lines 1 and 2 of page 3, and the words at every stage of development. Skip down to lines 30 and 31 where it states person includes all human beings. As stated in H.C.R. #3107, passed in 2005 by the legislative assembly:

THE LEGISLATIVE ASSEMBLY FINDS THAT THE STATE OF NORTH DAKOTA HAS A COMPELLING AND PARAMOUNT INTEREST IN THE PRESERVATION AND PROTECTION OF THE LIFE OF ALL HUMAN BEINGS; AND THE LEGISLATIVE ASSEMBLY FINDS THAT THE LIFE OF A HUMAN

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## BEING SHOULD BE PROTECTED AT EVERY STAGE OF BIOLOGICAL DEVELOPMENT.

If, in fact, the legislative assembly has found that the life of a human being should be protected at every stage of biological development, that would include all stages of human development.

In biological terms, as it relates to studying life cycles, the definition of life cycle is as follows; the continuous sequence of changes undergone by an organism from one primary form to the development of the same form again (Random House Dictionary). Merriam-Webster's Medical Dictionary defines life cycle as "the series of stages in form and functional activity through which an organism passes between successive recurrences of a specified primary stage.

The common thread in the biological and medical definitions includes a reference to a primary form or primary stage. The primary form or stage may be referred to as "the first common stage of development through which all members of that organism go through." This is crucial in the understanding of this language.

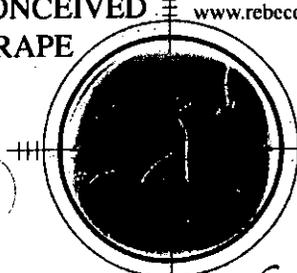
As it relates to human beings, our primary form may be traced back to the zygote-this is the egg of the female of the species after fertilization by the sperm of the male of the species. This entity is the primary form of the new, unique, distinct living human being. This is the stage of life at which we all start and through which we all go through. It is the primary common form of our species. From here further maturation and development take place. Biologically and medically we break these stages of human development into time spans for the sake of clarity in discussing human life development. From zygote we move to embryo, fetus, infant, toddler, young child, older child, adolescent, young adult, middle aged adult, geriatric adult. These partitions are artificial and simply used to facilitate discussion of the human life cycle.

Again, I want to emphasize that all human life shares all of these stages of human development unless injury, illness or disease terminates their life cycle. Therefore, if the definition of human being includes "person" as previously shown and a "human being" has a common life cycle as noted above, then the definition of "person" should include "human beings" at all stages of development.

Thank you for your time and consideration of this testimony, and I will stand for any questions that you may have.

CONCEIVED IN RAPE [www.rebecca@rebeccakiessling.com](http://www.rebecca@rebeccakiessling.com)

3



TARGETED FOR ABORTION

*Rebecca Kiessling*  
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## FOOTNOTES

- 1 The Gallup Organization, *The Gallup Poll: Public Opinion 1996* (Wilmington, Del.: Scholarly Resources, Inc., 1997), p. 113.
- 2 Julie Makimaa, Kathy Hoffmaster, *The 'Hard Cases' of Abortion: A Pro-life Response*, Family Research Council, Washington, DC, (2000), p.7.
- 3 Melisa M. Holmes, M.D., et al., "Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women," *American Journal of Obstetrics and Gynecology* 175, Issue 2 (August 1996), p.320.
- 4 David C. Reardon, Julie Makimaa, and Amy Sobie, *"Victims and Victors: Speaking Out About Their Pregnancies, Abortions, and Children Resulting from Sexual Assault,"* (Springfield, Ill.: Acorn Publishing, 2000), p.20.
- 5 *Ibid.*, p.22.
- 6 Makimaa, *op. cit.*, p.9.
- 7 Elliot Institute, "Women at Risk of Post-Abortion Trauma," (Springfield, Ill.: Springfield Right to Life, 1990), p.5.

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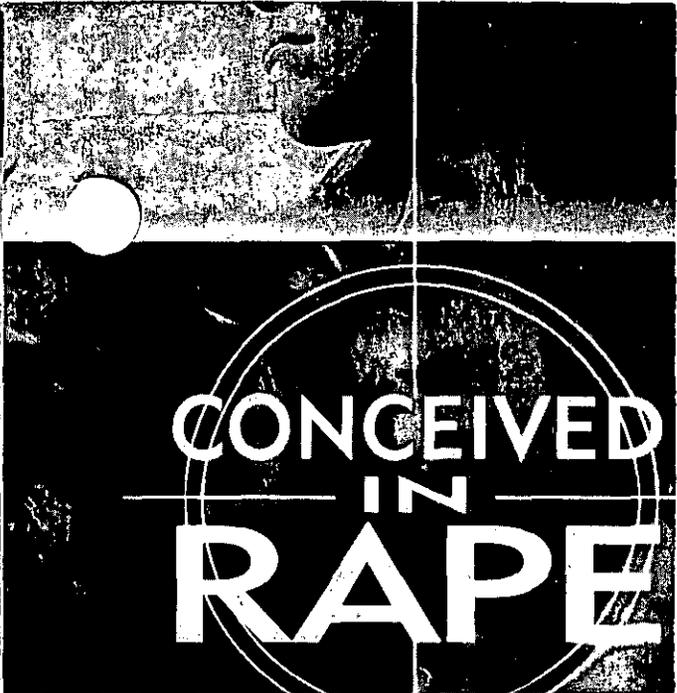
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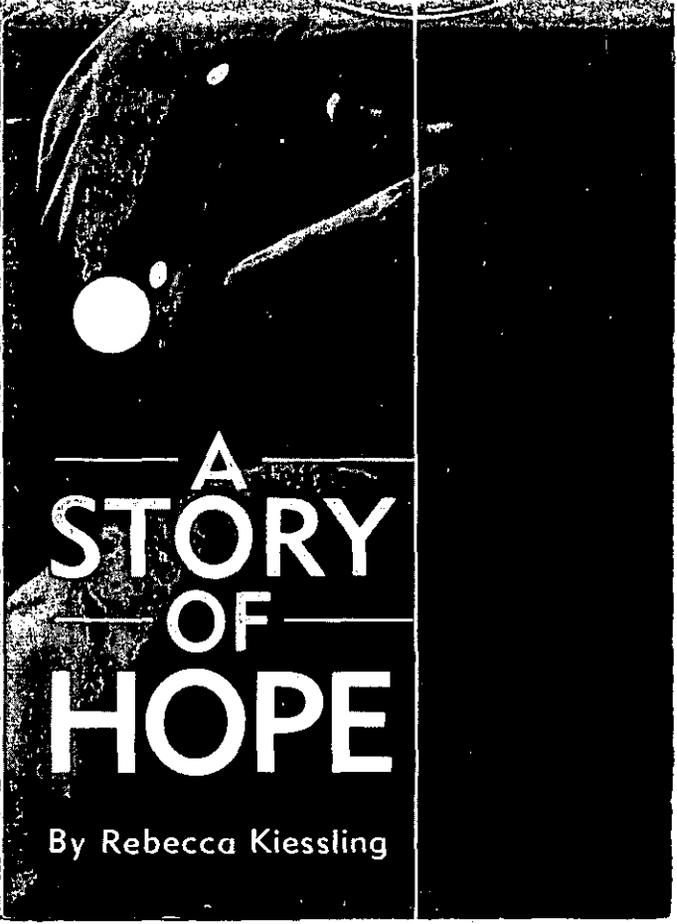
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CONCEIVED  
IN  
RAPE



A  
STORY  
OF  
HOPE

By Rebecca Kiessling

# Conceived In

**H**aving been adopted as a baby, I didn't know very much about my birth mother. At age 18 I requested my "non-identifying information" and learned a serial rapist had raped her at knifepoint. This was how I was conceived. I remember feeling ugly and unwanted, and wondered, "Who would ever love me?"

Growing up, I never really thought abortion applied to my life, but then in one moment, it not only applied to my life, it had to do with my very existence. I heard the echoes of all those people who would say: "Well, except in cases of rape...." or "Especially in cases of rape...." I realized they were talking about me—about my life—and I felt as if I was going to have to justify my own existence and prove to the world that I shouldn't have been aborted.

I thought of my birth mother, but negative images would bombard my mind: "She must hate me. She's never going to want to meet me. She probably wanted to abort me." But somehow I determined that, if I could just meet her and hear that she didn't want to abort me, then I could feel good about myself, I could feel safe, and I wouldn't have to feel as if I was still a target. At 19, after a judge appointed a confidential intermediary, I finally heard from my birth mother. She was thrilled at the prospect of meeting me, writing:

*My Dearest Rebecca,*

Hoping by now that the shock of finding out all the details of your birth is forgotten. For that was not reason enough to give something up as beautiful as you were—nothing as precious as a baby! I carried you for nine months and went through the birth feeling no one loved me, but I experienced love seeing you were so perfect and pretty. All these years I had nothing of you, no picture, nothing even saying you were part of me. Just the memory of carrying a baby that I hoped one day would try to find her real mother as I wanted to know my baby. I always loved you in my heart. You were always with me in my thoughts, mostly in July... It seems like a lifetime, I know. When I was sick two years ago I thought I would never get to know my little girl... It's been a long three weeks. Looking forward to our meeting. I didn't know how to express my inner feelings. IT'S SO GREAT—IT'S ALWAYS BEEN MY DREAM. I SO HAPPY I AM CRYING!

A love that ate at me for nineteen years, my daughter at last.

With love, your Mom,  
Joann

*By Many*

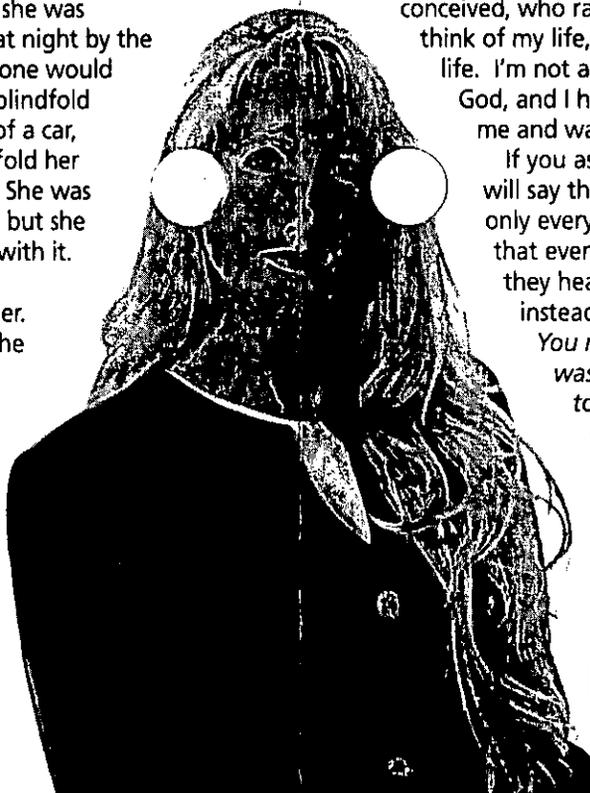
# A Story of HOPE

I felt great joy and relief that she wanted me—until I asked her about abortion. She maintained for the first six years of my knowing her that she would have aborted me had it been legal when I was conceived in October 1968. She later revealed she had actually gone to two back-alley abortionists, and that I was almost aborted. The first had the typical back-alley conditions you hear about as to why she should have been able to “safely and legally” abort me. Those conditions, and the fact that it was illegal, caused her to back out.

For the second abortionist, she was scheduled to meet someone at night by the Detroit Institute of Art. Someone would approach her, say her name, blindfold her, put her in the back seat of a car, take her and abort me, blindfold her again, and drop her back off. She was still afraid for her own safety, but she was prepared to go through with it. The day she was to abort me, my aunt was going to drive her. That's when she says one of the worst snowstorms of the century fell on the Detroit area. It snowed for days and days and the roads were blocked for weeks. That was it. She thought she was too far along to go through with it.

REBECCA

If you ask my birth mother today, she will say that I am a blessing to her. If only everyone would realize the truth that every child is a gift!



I just barely made it. The trial date in *Roe v. Wade* was on my first birth date, and the U.S. Supreme Court decision was exactly three and a half years to my birth date (July 22, 1969/January 22, 1973.) I'm so grateful my life was spared!

As a family law attorney, I've had the privilege of providing free legal representation to women who were being coerced into aborting, and I even had four abortion-related cases that made national news. Today, I am a stay-at-home mom of our adopted son. I'm honored that God has used my life in such ways, but I've learned that my value is not based on how I was conceived, who raised me, what other people think of my life, or even what I do with my life. I'm not a child of rape, but a child of God, and I have value because God created me and wanted me here.

If you ask my birth mother today, she will say that I am a blessing to her. If only everyone would realize the truth that every child is a gift! Then when they hear of a situation such as mine, instead of saying, “Oh how awful! You mean to tell me this woman was raped and was actually forced to carry that baby?”—people could say, “You mean to tell me that God rewarded this woman with the gift of this child's life for the suffering she endured? How good is God!”

KIESSLING

# Facts about RAPE

## Public opinion is heavily on the side of abortion in cases of rape.

- According to the 1996 Gallup Poll of public opinion, 77 percent of Americans think abortion should be legal for a pregnancy caused by rape or incest.<sup>1</sup>

## There is a low incidence of pregnancy resulting after rape.

- The national rape-related pregnancy rate is 5 percent among victims of reproductive age; among adult women, about 32,101 pregnancies result from rape each year.<sup>2</sup>
- In 1996, the *American Journal of Obstetrics and Gynecology* published a report that focused on rape-related pregnancy as evaluated within the National Women's Study. Of a national sample of more than 4,000 women, there were 34 rape-related pregnancies, six of these committed by relatives.<sup>3</sup>

## Abortion isn't a healthy solution to a pregnant rape victim.

- In a survey of women pregnant by assault, 56 of 192 women ended their pregnancy by abortion. Forty-four women explicitly

regretted their abortions and said that abortion had been the wrong solution to their pregnancies.<sup>4</sup>

- In that same survey, of the 133 women who carried their babies to term, more than 80 percent explicitly expressed happiness that they had chosen to give birth to their child. None of the women stated that they did not want their child or wished that they had chosen abortion instead.<sup>5</sup>

## The effects of abortion are similar to the effects of rape.

- Rape victims have overwhelming feelings of anger, depression, and guilt. They feel dirty and violated and can have flashbacks, nightmares, and insomnia. After being sexually assaulted, many show a lack of interest in friends and family and become isolated. Some even contemplate suicide.<sup>6</sup>
- Among the reported reactions of women who have had abortions are depression, loss of self-esteem, self-destructive behavior, sleep disorders, sterility, increased risk of breast cancer, miscarriages, lower self-esteem, suicidal impulses, feelings of helplessness, anger, memory loss, chronic problems with relationships, anxiety attacks, and guilt and remorse.<sup>7</sup>

March 15, 2011

Transcript of Testimony in support of H.B. 1450

Gualberto Garcia Jones, J.D.

Esteemed members of the committee, my name is Gualberto Garcia Jones, I am a pro-life lawyer, and the Director of Legal Analysis with Personhood USA, a national non profit organization that advocates for the human and civil rights of preborn children.

I Graduated from the George Washington University Law School in Washington DC, and then spent 4 years lobbying the United States Congress on pro-life issues.

I have helped legislators draft over 20 principled pro-life measures in the last two years, and have written numerous legal articles on the subject of abortion.

TESTIMONY

In order to understand how the intentional killing of innocent preborn children became a fundamental federal "right," I believe that we have to understand how the words "person" and "human being" are used in the law. We also have to understand the proper relationship between federal and state lawmaking.

Before Roe v. Wade, preborn children were presumed to be legal persons with fundamental rights, and the protection of those fundamental rights was carried out by the states in their legislative capacity.

This is perfectly in keeping with the tenth amendment to the U.S. Constitution states that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

For 200 years, the states protected the right to life of preborn children through their police powers: specifically, in their state criminal codes.

In Williams vs. Marion Rapid Transit Co., a 1949 Ohio state supreme court decision the court wrote that “if the common law protects the rights of the unborn child and if every intendment in the law is favorable to him, the inference is inevitable that such unborn child is a person and possesses the rights that inhere in a person even though he is incapable himself to assert them.” Clearly, the child was presumed to be a person and was protected by state law.

Even after 1973, the Supreme Court recognized the state’s sovereign right under the 10th amendment to protect its citizens, but because of Roe, Doe, and Casey, the states have been prevented from protecting the preborn.

In Pruneyard, a supreme court case decided in 1980, the court stated that it is proper for “the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.” Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980).

This view is in keeping with Supreme Court Justice Antonin Scalia’s observations in his Dissent in Stenberg v. Carhart when he wrote “if only for the sake of its own preservation, the Court should return this matter to the people—where the Constitution, by its silence on the subject, left it—and let them decide, State by State, whether this practice should be allowed. Casey must be overruled.”

So why is a definition of human life in the criminal code, legally speaking, a good strategy.

For one, a definition of human life in the criminal code is an unambiguous way to say North Dakota truly respects life. H.B. 1450 proposes a consistent fundamental principle to guide the state’s regulations of offenses against the person, a principle that guarantees our most precious liberties to all, without exceptions. Intentionally killing a human being will no longer be a way for sub-par doctors to make a profit, it will be a crime.

Secondly, a definition of human life in the criminal code would speak with the greatest force possible to the issue of self governance. The states have for too long abdicated their responsibility to protect their most vulnerable citizens. H.B. 1450 would send a clear message to the U.S. Supreme Court; there are principles higher than those of five unelected judges. With

H.B. 1450, the people of North Dakota will speak in a loud and clear voice, the right to life is worth fighting for.

There is one last note that I would like to make in order to highlight the importance of a principled definition of human life in the criminal code as a legal concept to battle abortion. While arguing *Roe v. Wade* in 1973, in the halls of the Supreme Court, Chief Justice Burger posed a hypothetical question to Sarah Weddington, the pro-abortion attorney, which is incredibly appropriate in 2011. It was the following leading question: **“Could Texas, constitutionally in your view, declare, by statute, that a fetus is a person for all constitutional purposes?”**(Chief Justice Burger)

“The state could OBVIOUSLY adopt that kind of statute, and then it would have to be adjudicated.” (Pro-abortion Attorney, Sarah Weddington)

The Chief Justice of the Supreme Court basically told us 40 years ago, that North Dakota can declare the preborn child to be a legal person and the question would have to be adjudicated.

Dear members of the committee, although we have known that the legal status of the preborn child is the key to a fundamental paradigm shift in the abortion debate, the issue has never once been revisited fundamentally by the supreme court. The reason they haven't revisited the issue of the legal status of the preborn child is not because they have turned down the cases, it is hard to believe, but not once in almost 40 years has a case and controversy surrounding the issue of the legal status of the preborn child been presented to the supreme court.

By passing H.B. 1450, you will be forcing the Supreme Court to reconsider its nefarious ruling that the most defenseless amongst us, our very own posterity, are sub-human ... are not persons. What greater legacy could a state, could a legislator, leave to posterity than to sow the legal seeds to the protection of our posterity?

I urge you to find the courage to stand up for the children in the womb, just like prior generations of Americans stood up for other groups of people who had been stripped of their fundamental rights and dignity.

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## Europe

In general, Northern Europe has widely adopted single embryo transfer (SET), whereas Southern Europe has yet to implement this policy.

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### Belgium

- **Policy**  
 Patients can have up to 6 funded cycles of in vitro fertilisation (IVF) but for the first cycle, if they are under 36 years old they must have SET. Whether single embryo transfer is offered in follow-on treatment depends on the patient's age and the quality of the embryos.
- **Result**  
 Triplet births have been almost completely avoided; twin births have dropped to around 7%. There has not been a significant decrease in pregnancy rates.

## Finland

- **Policy**

There is no state regulation, but elective single embryo transfer (eSET) has been widely used for the last 10 years, together with follow-on treatment with frozen embryos. At present, single embryo transfer is used in almost 60% of cases, with triple embryo transfer reduced to under 1%.

- **Result**

Triplet births have been almost completely avoided. The IVF twin rate has dropped significantly and continues to drop each year. Overall pregnancy rates remain unchanged.

For Finland's IVF statistics (in English), see:

<http://www.stakes.fi/EN/tilastot/statisticsbytopic/reproduction/IVFtreatments.htm>

## France, Greece, Portugal and Spain

- **Policy**

There is no legislation or regulations on reducing numbers of multiple pregnancies, although the policy regarding the number of embryos transferred is now being examined in a number of countries. For example:

- In Greece, the law currently permits up to 3 embryos to be transferred for women up to the age of 40, and up to 4 for women over that age. However, the National Authority of Medically Assisted Reproduction is now deciding the exact number of embryos that should be transferred, depending on the woman's age and general prognosis.
- In Portugal, the law contains a general edict that multiple pregnancies should be avoided if possible. However, the official body responsible for regulating some aspects of Assisted Reproductive Technology (ART) is currently formulating regulations on the number of embryos to transfer. There is also a voluntary movement amongst clinicians to limit the number of embryos transferred to a maximum of two.

## Germany, Austria and Switzerland

- **Policy**

In Germany, state regulation says that no more than 3 immature eggs can be cultured beyond an early stage, embryo selection practices are not permitted, and no cleavage stage (2–3 day) embryos can be frozen, so all embryos have to be transferred. The policy in Austria and Switzerland is similar, although there is some variation, for example in Austria restrictions are voluntary, with a general trend towards transferring no more than 2 embryos for most patients.

- **Result**

In Germany, effective embryo selection is prevented and there is a very high triplet and twin rate. The situation in Switzerland and Austria is similar.

For information on Switzerland, see: <http://www.sgrm.org/>

## Hungary

- **Policy**

State regulation limits the number of embryos that can be transferred to 3, except in special circumstances (for example, older women or a history of failed IVF), when the maximum is 4.

- **Result**

In the years 2002–4, around 10% of transfers were SET, around 25% were 2 embryo transfers, approximately 50% were 3 embryo transfers and about 15% involved 4 embryos.

This resulted in a twin rate of around 30%.

## **Italy**

- **Policy**

State legislation changed to say that only a maximum of three eggs can be fertilised, but all the resulting embryos must be implanted.

- **Result**

This policy makes it difficult to offer elective single embryo transfer (eSET). The incidence of triplets is now rising in centres that had previously low rates.

## **Netherlands**

- **Policy**

There is no state regulation, but elective single embryo transfer (eSET) is now widely used, and a maximum of two embryos are transferred. As of January 2007, the first 3 IVF cycles are fully funded (SET or double embryo transfer (DET)).

- **Result**

At present, a significant proportion of cycles are now eSET.

## **Norway and Denmark**

- **Policy**

There is no state regulation, but elective single embryo transfer (eSET) is now more widely used.

- **Result**

Swedish, Norwegian and Danish groups have collaborated in a number of multi-centre trials and have shown good success rates for eSET cycles.

## **Sweden**

- **Policy**

State regulation says that in principle only one embryo should be replaced, apart from in exceptional circumstances.

- **Result**

70% of all IVF cycles are now elective single embryo transfer (eSET) cycles. The twin rate has reduced to around 5% and pregnancy rates have been maintained.

## **United Kingdom**

- **Policy**

In May 2008, the Human Fertilisation and Embryology Authority (HFEA) agreed to introduce a new policy which aims to lower the average national multiple birth rate following IVF. By 1st January 2009, all licensed treatment centres will need to have developed a multiple births

minimisation strategy which sets out how they intend to reduce their annual multiple birth rates and to ensure that they do not exceed HFEA-set maximum targets.

For the calendar year 2009, the HFEA-set multiple birth rate maximum target will be 24% (the current national average), followed by progressively lower targets over the next 3 to 4 years. The HFEA will carefully monitor the impact of its policy, including any impact on fresh cycle pregnancy rates, to ensure that the targets are appropriate.

This new policy builds on guidance introduced by the HFEA in 2002 suggesting limiting the number of embryos for transfer to 2 in women under 40, and to 3 for older women. This was introduced as a formal limit in 2004.

- **Result**

Following the introduction of the formal embryo transfer limits in 2004, the incidence of triplets decreased, but the number of twins continued to rise.

The impact of the new strategy will be monitored by the HFEA.

- [Accessibility](#)
- [Terms & conditions](#)
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**ND Senate testimony- March, 2011**

My name is Stephanie Dahl and I am a physician and an infertility specialist in Fargo. My job is to help families that are struggling with infertility have a baby. I would like to give you a little information on my background so you understand my training and credentials to testify on this bill.

I have 16 years of training and 5 years of experience as a Reproductive Endocrinologist and Infertility specialist. I am double board certified in Obstetrics and Gynecology and in Reproductive Endocrinology and Infertility. Therefore, I feel, and I hope that you agree, that I have the knowledge, background and expertise in the fields of anatomy and physiology, women’s health care, obstetrics and gynecology, early pregnancy, and embryology to testify at this hearing.

I am a member of the American Society for Reproductive Medicine which is composed of 8,000 physicians in Obstetrics and Gynecology, Reproductive Endocrinology, Infertility and Urology. They have partnered with the Society for Reproductive Technologies and released a formal letter (see attachment) against ND House bill 1450 for the following reasons.

1. Ectopic pregnancies:

We cannot legally treat ectopic pregnancies if this bill is passed and becomes law. Although there is an exception for “Legitimate medical treatment for life-threatening conditions **NOT INTENDED TO HARM** a person but which has the foreseeable effect of ending a person’s life.

Those 4 little words...**not intended to harm**... will make it impossible to treat ectopic pregnancies. Because, we **are intending to harm** the ectopic pregnancy. Ectopic pregnancies can rupture and lead to massive internal bleeding and death. In fact, ectopic pregnancies used to be one of the most common reasons of death during pregnancy. Women rarely die from ectopic pregnancies now because of early diagnosis and treatment but it still accounts for 8%-10% of all deaths in pregnancy.

Physicians treat ectopic pregnancies with a medication called methotrexate—which will stop the pregnancy from growing (**intent to harm**) or with surgery to remove the ectopic pregnancy completely (**intent to harm**). Two years ago, one of the supporters of the personhood bill suggested that we can remove the ectopic pregnancy from the fallopian tube and implant it into the uterus to allow a normal pregnancy. **This is not true.** I do not know of a single incidence where an ectopic pregnancy was moved into the uterus.

Women with cancer would be able to utilize chemotherapy because in that instance we are **not intending to harm** the pregnancy. However, the death of the fetus may result unintentionally as an effect of the treatment.

1. In vitro fertilization: "The creation of a new human being through in vitro fertilization, but in no case does this excuse or justify causing **injury** to a human being."

The simple process of moving an embryo from one culture dish to another could potentially cause **injury** and procedures that help increase the chance of successful pregnancy (assisted hatching) could potentially cause **injury** to the embryo. The transfer procedure itself could "**cause injury**" to the embryo. These embryos are microscopic and can only be seen with high power microscopes. The embryos can fragment (be injured) even in the best IVF culture conditions.

The process of IVF may lead to more embryos that can be transferred into the uterus. We freeze these embryos for future attempts at IVF. However, embryos may **be injured** during the freezing process and **may not survive** the cryopreservation process (they may not have survived in utero either—40-60% of embryos are abnormal and will not result in a successful pregnancy). So, if this bill passes, **we would not** be able to freeze any embryos because it may cause **injury to the embryo**. Also it could be considered false imprisonment.

The supporters of this bill have also stated that Louisiana has a similar law which allows IVF in their state to continue. However, I have attached a copy of the LA law and there are major differences. The LA law states that embryos are considered "juridicial persons". The LA law does not impair the ability to freeze embryos because it implicitly states that embryos may be cryopreserved. Also, it allows for an embryo that fails to develop after 36 hours to NOT be considered a person. The LA law was written to allow fertility patients to utilize IVF to have a family and to prohibit creating embryos to be sold or used only for research purposes.

Regardless of what the supporters of the bill say--- it comes down to this. If this bill passes the senate and becomes law in ND--- **we will NOT offer IVF at our center** and this is the only IVF program in the entire state. Why does it matter if IVF is available for North Dakota families?

In vitro fertilization (IVF) has been used for 35 years and has revolutionized fertility treatment. In fact, just a few months ago, Dr. Robert Edwards received the noble prize in medicine for his pioneering efforts in IVF. This technology allows couples who would otherwise be rendered sterile to have a family. Over 4 million healthy babies have been born from in vitro fertilization worldwide including thousands of babies across the state of North Dakota. It the accepted standard of care for many types of infertility and may be the only treatment option for millions of couples who are faced with infertility.

In vitro fertilization is a complicated medical procedure that involves multiple medications, careful monitoring, egg retrieval, and fertilization of the eggs in a laboratory. Resulting embryos are either transferred into the uterus or cryopreserved for future attempts at pregnancy. IVF cycles result in 15-50% pregnancy rates depending on the patient's age and medical conditions.

In vitro fertilization is the only option for men with severe male factor infertility to have a biologic child. Prior to IVF most couples with this history required donor sperm or utilized adoption to have a family. IVF is often the only option for women with tubal occlusion and may be the only successful treatment for infertility caused by endometriosis, polycystic ovarian syndrome, and uterine anomalies. In vitro fertilization can also be used in women to preserve fertility in women who have been diagnosed with cancer and will be undergoing chemotherapy or radiation therapy. IVF can allow couples who carry lethal genetic abnormalities to have a healthy baby. Nearly, 90% of Americans support the use of in vitro fertilization.

Our center has helped thousands of families in this state and I would like to relate one story to you today. This is a story about a family that spontaneously conceived. They were thrilled with their baby girl who initially seemed healthy but grew progressively weaker and did not achieve her normal milestones. After multiple prolonged hospitalizations with many long weeks in the ICU undergoing painful procedures, she ultimately died when she was only 8 months old. It was a living nightmare for the parents to watch their baby girl grow weaker and weaker and ultimately die. The parents learned that they were both carriers for a deadly gene. They conceived again but unfortunately, the second child died at 15 months from the same disease. These deaths could not be prevented by modern medicine. However, with in vitro fertilization, we had the ability to test the embryos for this deadly disease. The family utilized IVF and they now have a healthy set of twins that are not affected by the disease and the parents didn't have to watch another baby die in the ICU.

**In closing, I am a physician and I have devoted my career and my life to helping North Dakota families fulfill their dream of having a baby. Patients drive hundreds of miles to see us and come from every corner of the state. My favorite part of my job is holding the babies in my arms that have resulted from our efforts. I do not support House Bill 1450 because the poorly worded language will limit our ability to offer the highest standard of care in fertility medicine. In addition, this bill could literally tie the hands of physicians so they can not treat women with some complications of pregnancy including ectopic pregnancies. Although this bill is intended to stop abortion, it will impact the medical treatment of women across the state of North Dakota and will limit their access to fertility treatment.**

**Thank you for your time.**

**Stephanie Dahl, M.D.**

References:

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**Louisiana Health Law**

**CHAPTER 3. HUMAN EMBRYOS**

LA-RS 9 §121. Human embryo; definition

A "human embryo" for the purposes of this Chapter is an in vitro fertilized human ovum, with certain rights granted by law, composed of one or more living human cells and human genetic material so unified and organized that it will develop in utero into an unborn child. Acts 1986, No. 964, §1. LA-RS 9 §122. Uses of human embryo in vitro

**The use of a human ovum fertilized in vitro is solely for the support and contribution of the complete development of human in utero implantation. No in vitro fertilized human ovum will be farmed or cultured solely for research**

purposes or any other purposes. The sale of a human ovum, fertilized human ovum, or human embryo is expressly prohibited.

Acts 1986, No. 964, §1.  
LA-RS 9 §123. Capacity

An in vitro fertilized human ovum exists as a juridical person until such time as the in vitro fertilized ovum is implanted in the womb; or at any other time when rights attach to an unborn child in accordance with law.

Acts 1986, No. 964, §1.  
LA-RS 9 §124. Legal status

As a juridical person, the in vitro fertilized human ovum shall be given an identification by the medical facility for use within the medical facility which entitles such ovum to sue or be sued. The confidentiality of the in vitro fertilization patient shall be maintained.

Acts 1986, No. 964, §1.  
LA-RS 9 §125. Separate entity

An in vitro fertilized human ovum as a juridical person is recognized as a separate entity apart from the medical facility or clinic where it is housed or stored.

Acts 1986, No. 964, §1.  
LA-RS 9 §126. Ownership

An in vitro fertilized human ovum is a biological human being which is not the property of the physician which acts as an agent of fertilization, or the facility which employs him or the donors of the sperm and ovum. If the in vitro fertilization patients express their identity, then their rights as parents as provided under the Louisiana Civil Code will be preserved. If the in vitro fertilization patients fail to express their identity, then the physician shall be deemed to be temporary guardian of the in vitro fertilized human ovum until adoptive implantation can occur. A court in the parish where the in vitro fertilized ovum is located may appoint a curator, upon motion of the in vitro fertilization patients, their heirs, or physicians who caused in vitro fertilization to be performed, to protect the in vitro fertilized human ovum's rights.

Acts 1986, No. 964, §1.  
LA-RS 9 §127. Responsibility

Any physician or medical facility who causes in vitro fertilization of a human ovum in vitro will be directly responsible for the in vitro safekeeping of the fertilized ovum.

Acts 1986, No. 964, §1.  
LA-RS 9 §128. Qualifications

Only medical facilities meeting the standards of the American Fertility Society and the American College of Obstetricians and Gynecologists and directed by a medical doctor licensed to practice medicine in this state and possessing specialized training and skill in in vitro fertilization also in conformity with the standards established by the American Fertility Society or the American College of Obstetricians and Gynecologists shall cause the in vitro fertilization of a human ovum to occur. No person shall engage in in vitro fertilization procedures unless qualified as provided in this Section.

Acts 1986, No. 964, §1.  
LA-RS 9 §129. Destruction

A viable in vitro fertilized human ovum is a juridical person which shall not be intentionally destroyed by any natural or other juridical person or through the actions of any other such person. An in vitro fertilized human ovum that fails to develop further over a thirty-six hour period except when the embryo is in a state of cryopreservation, is considered non-viable and is not considered a juridical person.

Acts 1986, No. 964, §1.  
LA-RS 9 §130. Duties of donors

An in vitro fertilized human ovum is a juridical person which cannot be owned by the in vitro fertilization patients who owe it a high duty of care and prudent administration. If the in vitro fertilization patients renounce, by notarial act, their parental rights for in utero implantation, then the in vitro fertilized human ovum shall be available for adoptive implantation in accordance with written procedures of the facility where it is housed or stored. The in vitro fertilization patients may renounce their parental rights in favor of another married couple, but only if the other couple is willing and able to receive the in vitro fertilized ovum. No compensation shall be paid or received by either couple to renounce parental rights. Constructive fulfillment of the statutory provisions for adoption in this state shall occur when a married couple executes a notarial act of adoption of the in vitro fertilized ovum and birth occurs.

Acts 1986, No. 964, §1.  
LA-RS 9 §131. Judicial standard

In disputes arising between any parties regarding the in vitro fertilized ovum, the judicial standard for resolving such disputes is to be in the best interest of the in vitro fertilized ovum.

Acts 1986, No. 964, §1.  
LA-RS 9 §132. Liability

Strict liability or liability of any kind including actions relating to succession rights and inheritance shall not be applicable to any physician, hospital, in vitro fertilization clinic, or their agent who acts in good faith in the screening, collection, conservation, preparation, transfer, or cryopreservation of the human ovum fertilized in vitro for transfer to the human uterus. Any immunity granted by this Section is applicable only to an action brought on behalf of the in vitro fertilized human ovum as a juridical person.

Acts 1986, No. 964, §1.

LA-RS 9 §133. Inheritance rights

Inheritance rights will not flow to the in vitro fertilized ovum as a juridical person, unless the in vitro fertilized ovum develops into an unborn child that is born in a live birth, or at any other time when rights attach to an unborn child in accordance with law. As a juridical person, the embryo or child born as a result of in vitro fertilization and in vitro fertilized ovum donation to another couple does not retain its inheritance rights from the in vitro fertilization patients.

Acts 1986, No. 964, §1.



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February 4, 2011

Representative Jerry Kelsh  
Minority Leader  
North Dakota House of Representatives  
P.O. Box 27, Fullerton, ND 58441-0027

Dear Representative Kelsh:

On behalf of the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology (SART), we are writing to express opposition to North Dakota HB 1450.

ASRM is a multidisciplinary organization of nearly 8,000 dedicated to the advancement of the art, science, and practice of reproductive medicine. Distinguished members of ASRM include obstetricians and gynecologists, urologists, reproductive endocrinologists, embryologists, mental health professionals and others. SART is an organization of nearly 400 member practices performing more than 95% of the assisted reproductive technology (ART) cycles in the United States. SART's mission is to set and help maintain the highest medical and professional standards for ART. SART works with the ASRM to create practice guidelines and minimum standards of care. SART also serves as the governmental watchdog for ART and is actively involved in the collection of data outcomes from its member programs.

ASRM and SART strongly support the rights of patients to seek necessary medical treatment for diseases of the reproductive system and assistance in becoming pregnant. ASRM and SART also strongly support the availability of contraception.

HB 1450 not only threatens the reproductive rights of women, it also thwarts the ability of those who suffer from infertility to seek treatment appropriate for their disease and criminalizes the actions of these women and the reproductive doctors working to provide them a remedy. By defining a "human being" as "a member of the species homo sapiens at every stage of development" this bill would unduly restrict an infertile patient's right to make decisions about embryos created as part of the in vitro fertilization process. While assisted

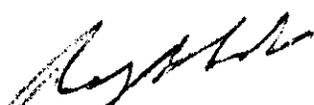
reproductive technologies are employed to assist infertile patients in their hope of achieving a successful pregnancy outcome, embryos in excess of a patient's clinic need may result. So too, embryos may be created that are not chromosomally suited for transfer to the patient's uterus. While these embryos are created for the purpose of the creation of a human being, it is a biological fact that not all embryos will become human beings.

Our position is that an embryo is neither a person, nor property, but an entity deserving special respect. However, we believe that the responsibility for determining what happens to an embryo lies with the progenitors of the embryo. An embryo, in vitro or in vivo, is a cluster of cells with a unique potential to grow into a full-fledged individual. However, in human reproduction, even as undertaken without medical assistance, fewer than 20% of fertilized eggs implant in the uterus. Given the uncertainty that any particular embryo will develop to become a person, it is unreasonable and imbalanced to define a "human being" to include fertilized eggs or embryos. While HB 1450 attempts to provide protections for the process of in vitro fertilization, this bill was drafted and introduced without any consultation from anyone in the infertility community and therefore does not adequately protect infertile patients or the reproductive endocrinologists who care for them.

HB 1450 would also prohibit human embryonic stem cell research which provides more options for infertility patients as they make decisions about embryos beyond their clinical need, and which holds great promise to expand our knowledge and develop potential cures for many debilitating diseases and conditions.

We strongly urge you to oppose House Bill 1450.

Sincerely,



Rogerio A. Lobo, MD  
President, ASRM

Robert W. Rebar, MD  
Executive Director, ASRM



R. Stan William, MD  
President, SART

Chairman Nething and committee members, My name is John Grabinger and I am a resident of Jamestown, along with me today is my daughter Alexis.

I come before you regarding HB 1450. This bill as I am understanding it could be very detrimental to the citizens out there who find themselves in the unenviable position, such as my wife and I were.

In 1995 a bill was passed for us on the gestational carrier procedure that allowed us to bring "our" daughter home. As the law was, we would have needed to go through an expensive adoption procedure to bring her home. We will always be grateful for that decision.

The reason I'm so concerned with this particular bill is actually twofold. One, when an invitro or gestational procedure is done, the doctors actually try to capture and fertilize more than just one egg. In our case it was actually eight eggs that were fertilized, with three being implanted with the hopes of at least one taking hold. The reason for the extra eggs, is in the event it doesn't work on the first implementation, the parents can try again to bring life without the added burden of revisiting the capture and fertilization procedure, as well as avoiding the additional expense it would incur.

If this law were to pass, I think these people would need to leave North Dakota to get their help. If they were not successful right away it could become very expensive for them. On the other hand, if they were successful and had left over fertilized embryo's, as was our case with five left frozen, they would face the burden of paying to keep these embryo's frozen( in our case we were told I believe this would be \$411.00 a year) forever or face possible prosecution for terminating them under this bill.

Debbie and I decided to never ask anyone to do what my sister-in-law and her family did for us again, we were also very much content with one child, and did not want to donate the embryo's, so we had them terminated. This brings me to the second problem I have with HB 1450. This bill again determines that life begins at conception. If that is the case, Debbie and I are abortionist's five times over. Our own Catholic faith comes into struggle with this very point, as our Bishop Aquila is very adamant about this. My personal belief is, life is a beating heart and that, I understand, starts around the nineteenth day after conception. I have yet to hear of any living animal with a beating heart, having been able to be frozen completely in -200 cel and that life came back. That is what they do with frozen embryo's. I do not believe we committed abortions, but rather took advantage of the medical capabilities available and several miracles from God to create life where there wasn't one before. By the way that life is now a straight A student sophomore and girls hockey player at JHS and as I said before she is right here with me. I would also add that during the pregnancy of my sister-in-law, two of the three embryo's implanted actually took hold. Although one was a tubal pregnancy and had to be aborted to not only save the remaining embryo (my daughter) but probably the life of my sister-in-law also. She had started to hemorrhage and through another miracle of God, my daughter came through this.

And one last point, if anyone does question the motivation behind us, I am Catholic and do oppose abortion as a form of birth control. We were on the Catholic family services adoption list for seven years prior to our successful procedure. So we did try adoption, with no success. I'm sorry for getting a little long with this, but truly believe this could hamper the dreams of some good people who are simply trying to bring life where there is none now. maybe this is where our religion needs to catch up with modern medicine.

Thank you for your time

Senator Nething and members of the Committee, thank you for the opportunity to speak about HB 1450. I am Dr. Shari Orser, an OB GYN in Bismarck, and am testifying for myself, not as a representative of any organization. I work at Medcenter One and I have been in practice in the field of women's health for 30 years.

This bill creates a number of problems affecting the care of women. It designates as a "human being" a member of the species Homo sapiens, at every stage of development. This would give fertilized eggs, embryos, and fetuses the status of human beings for the purpose of criminal laws. It is not true that everything that contains the genome of homo sapiens is a person.

One example is a molar pregnancy. A molar pregnancy has the genome of a homo sapiens and normal chromosomes, but will never be a living person. These pregnancies put the mother at risk and must be ended surgically or can act as a cancer and spread throughout the body.

Another example is a tumor of the ovary called a teratoma. These tumors contain the human genome and many tissues of a growing human such as skin, bone, hair and teeth, but will never be a living person.

Ectopic pregnancies are fertilized eggs that implant in the Fallopian tube rather than in the uterus and may be chromosomally normal in every

way. However, the tube cannot sustain a growing pregnancy and if not treated either surgically or medically by destroying the pregnancy, the tube will most likely eventually rupture and can cause serious harm or death to the mother. Prior to present treatments only about 1/3 of women survived these pregnancies. Ectopic pregnancies are very common and occur in about 1 in 80 pregnancies.

Even when a fertilized egg implants in the uterus it often will not result in a living baby. At least 15-20% of confirmed pregnancies spontaneously abort. Sometimes these patients present with hemorrhage and a dilated cervix so you know the miscarriage is inevitable but a heart beat may still be present. Failure to perform a D&C at this point may put the mother at risk but doing nothing cannot save the pregnancy. Can doctors be expected to act in the mother's best interest if it can expose them to criminal charges for ending the life of the fetus?

The use of intrauterine devices for contraception and for treatment of heavy periods or even pre-cancerous lesions of the uterus may be prevented by passage of this bill. The IUD has been proven to prevent pregnancy by preventing fertilization but sometimes it prevents implantation of a fertilized egg. Rarely a fertilized egg can implant in the presence of an IUD. The

recommendation then is to remove the IUD but removing it may cause loss of the pregnancy. Conversely, leaving it in place may cause the loss of a pregnancy. A physician could face criminal charges either way. It is not clear in this bill how a physician should respond so the best course may be to deny patients the option of an IUD. Various cancers can affect pregnant women.

Common cancers in this age group include cervical cancer, leukemia, lymphoma, thyroid cancer, ovarian cancer, melanoma, and brain cancer.

Treatments for cancer cause death of rapidly growing tissues including fetal tissue so have a high probability of killing the fetus or injuring the fetus. Are

women to be denied cancer treatment if they are pregnant? The life-saving abortion exemption is not adequate as fetal demise would not be “accidental,” “unintentional,” or “not intended” but may be necessary to treat the mother.

The in vitro fertilization exemption is also inadequate. It states persons are exempt from criminal liability for the “creation of a new human being” but only as long as it does not “cause the death of a human being.”

Discarding embryos or fertilized eggs is part of IVF practice. Some patients choose to discard embryos they don’t use and always choose to discard them if the embryos are determined to be abnormal. Even if embryos are saved with cryo preservation they may not survive the freezing and thawing

process. Shady Grove Reproductive Science Center in Maryland, one of the largest practices in the U.S., reports that between 2004 and 2008 they performed 14,324 IVF cycles. In those cycles they retrieved 192,991 eggs. 110,939 were fertilized but only 44,282 continued to develop to embryos that could be used – either transferred or cryopreserved.

With the most optimistic set of assumptions this would result in 8,366 babies. Only about 7.5% of all fertilized eggs go on to become live born children. The importance of this is to realize that the majority of fertilized eggs do not become viable embryos and only a small percentage of embryos thought to be viable produce a child. To suggest that every embryo is a person is absurd.

If IVF doctors could not discard abandoned, unused, or abnormal embryos, could not freeze them due to the risk of harming them, and cannot implant them all due to the risks of high order multiples, what are they supposed to do? My infertility colleagues have informed me they would most likely leave the state due to the difficulties of providing IVF services under this bill.

There is no exemption for terminating pregnancies when the fetus has an anomaly incompatible with life, such as Potter's syndrome, anencephaly,

Trisomy 15 and Trisomy 18. These diagnoses are often made in the first half of the pregnancies. Should a woman be forced to continue the pregnancy when she knows the baby will die? Or can she be spared the emotional distress and the risks of carrying to term?

There is also no exemption if an abortion would be in the best interest of a woman's health, when carrying a pregnancy risks an irreversible health impairment. Examples might be a diabetic woman whose pregnancy could hasten retinopathy causing blindness, or a woman with congestive heart failure who could develop much more severe disease. It is standard of care to offer termination in cases such as these.

As you can see from these examples, passage of this bill could severely impact the reproductive health and rights of the women of North Dakota. It potentially criminalizes legitimate medical practice and puts doctors and patients at risk. I would urge you to recommend do not pass for HB 1450.

Thank you.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

4 Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on HB 1450  
Senate Judiciary Committee  
March 15, 2011

Chair Nething and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in opposition to HB 1450.

Our Coalition is a membership based organization that consists of 21 local domestic violence and rape crisis centers located throughout the state that provide services to domestic violence, sexual assault, and stalking victims in all 53 counties and the reservations in North Dakota. Last year alone, these centers provided services to nearly 900 victims of sexual assault.

Although our Coalition does not have a policy position on abortion, we are united in our concern for victims of sexual assault and incest. HB 1450, from our perspective, would ban all abortion, even for rape and incest victims and would also ban access to emergency contraceptives for victims of rape and incest. We aren't here today to debate the issue of abortion itself; so we will limit our testimony to the specific exclusion of these exemptions for rape and incest survivors in HB 1450.

A female sexual assault victim's number one concern is pregnancy, followed closely by sexually transmitted diseases. The risk of pregnancy from a sexual assault is 2 to 5%. In the U. S., an estimated 25,000 women become pregnant from sexual assault every year (Stewart, & Trussell, 2000). National recommendations from the American Medical Association, Sexual Assault Nurse Examiners, American College of Emergency Physicians, International Association of Forensic Nurses, and American College of Obstetricians and Gynecologists all state that providing FDA approved emergency contraception in cases of sexual assault is the standard of

care. This bill is so broadly written that it effectively eliminates the option for physicians to provide this invaluable treatment option for sexual assault victims.

I am not here today to tell you that all survivors should or even want to have abortions; however, we believe that since we cannot fully understand the path that brought them to us we cannot make that very difficult decision for them. This is about allowing a person who has had all decision making powers taken away from them as a result of the assault to make a very important and personal decision about their health, their family, and their future. This bill all but eliminates that option.

I urge you to oppose HB 1450.

Thank You.

# The Logic of Life

## Testimony of Steve Cates regarding HB1450

### Webster's Dictionary Definitions:

#### HUMAN

1: of, relating to, or characteristic of humans

2: consisting of humans

**3a : having human form or attributes** b : susceptible to or representative of the sympathies and frailties of human nature <such an inconsistency is very human — P. E. More>

#### BEING

1a : the quality or state of having existence b (1) : something conceivable as existing (2) : something that actually exists (3) : the totality of existing things c : conscious existence : life

2: the qualities that constitute an existent thing : essence; especially : personality

**3: a living thing; especially : person**

### Black's Law Definitions

**Baby** – Not defined

**Being** – Not defined

**Embryo.** 1. A developing but unborn or unhatched animal, esp., **an unborn human from conception until development of organs** (ie. Until about the eighth week of pregnancy).

**Human** – Not defined

**Person** 1. A human being.

**Child.** 1. A person under the age of majority 2. *Hist* At common law, a person who has not reached the age of 14 3. A boy or girl; a young person. 4. A son or daughter 5. A baby or fetus.

### Wikipedia – Age Related **Physical stages of human life**

- Prenatal (fertilization - birth)
  - Embryo - (fertilization - 8 weeks of gestational phase)
    - Zygote, the point of conception, fertilization

- Blastocyst the period between conception and embryonic stages
- Embryo; the embryonic period starts at three weeks and continues until the end of the 8th week of pregnancy
- Fetus (8 weeks of gestational phase - birth)

The terms embryo, Zygote, Fetus are to designate a time period of the human life cycle, they do not infer a state of sub-humanity.

### **Coming Distractions of Planned Parenthood**

Amy Jacobson, North Dakota Public Affairs Manager for Planned Parenthood MN, ND, SD. In light of Ms. Jacobson's recent articles concerning HB1450 and Planned Parenthood in general, I expected more prevarication and was not disappointed. Below are excerpts from her article on the Planned Parenthood website at:

[http://www.plannedparenthoodadvocate.org/content/north\\_dakota\\_house\\_passed\\_dangerous\\_personhood\\_bill...again](http://www.plannedparenthoodadvocate.org/content/north_dakota_house_passed_dangerous_personhood_bill...again)

#### **Fertilized Egg Deception**

"These are dangerous days for the women and families of North Dakota. Today the North Dakota House of Representatives passed House Bill 1450; a bill which seeking to define a fertilized egg as a human being. ...."

"Personhood gives fertile eggs the rights of life, liberty and the pursuit of happiness in its pre-pregnancy state. That is right, pre-pregnancy! By medical definition pregnancy begin at the point when a fertilized egg is implanted in the uterus. But North Dakota's Representatives have voted to overrule the standards, definitions, and procedures of the medical community; apparently they know what's best for women."

As a fertilized human egg is most certainly a living thing and is absolutely human HB1450 does not as claimed by Ms. Jacobson seek "to define a fertilized egg as a human being" but instead attempts to put into North Dakota law a well established scientific fact. In consideration of Planned Parenthoods "fertilized egg" deception, consider the medical textbook statements of fact:

**"Almost all higher animals start their lives from a single cell, the fertilized ovum (zygote)... The time of fertilization represents the starting point in the life history, or ontogeny, of the individual." - [Carlson, Bruce M. Patten's Foundations of Embryology. 6th edition. New York: McGraw-Hill, 1996, p. 3]**

**"The development of a human begins with fertilization, a process by which the spermatozoon from the male and the oocyte from the female unite to give rise to a**

**new organism, the zygote.”** - [Sadler, T.W. Langman’s Medical Embryology. 7th edition. Baltimore: Williams & Wilkins 1995, p. 3]

**“Zygote. This cell, formed by the union of an ovum and a sperm (Gr. zyg tos, yoked together), represents the beginning of a human being. The common expression ‘fertilized ovum’ refers to the zygote.”** - [Moore, Keith L. and Persaud, T.V.N. Before We Are Born: Essentials of Embryology and Birth Defects. 4th edition. Philadelphia: W.B. Saunders Company, 1993, p. 1]

So it would seem that “voted to overrule the standards, definitions, and procedures of the medical community” is not true as being perpetrated by Planned Parenthood. Ms. Jacobson goes on to state that:

“The goal of Personhood legislation is clear: it was crafted specifically to reach a divided Supreme Court in an attempt to overturn the 1973 Roe v Wade decision. ..”

I would take issue with that statement by this logic: Putting scientific TRUTH into the North Dakota Century Code is ALWAYS a good idea. If TRUTH challenges Roe v Wade it is nor HB1450 or the North Dakota Legislature that would challenge but FACT.

Ms. Jacobson further asserts that ““Here a just a few of the ramifications of the perilous Personhood bill...”:

“-In vitro fertilization could be banned, as fertilized eggs would have full legal rights.”

This is false as the bill explicitly states that under the construction heading “...do not apply” saying, “c. The creation of a new human being through in vitro fertilization, but in no case does this section excuse or justify causing the death of a human being.”

Ms. Jacobson then states that:

“-The same is true of some stem cell research and some methods of birth control (like the Pill).”

Again under the heading “...do not apply”: “d. Contraception administered before a clinically diagnosable pregnancy of a woman.”

Then Ms. Jacobson further claims:

“-Should this bill become law in North Dakota, women who suffer miscarriages or pregnancy complications could be investigated for homicide, manslaughter or reckless endangerment.”

“More frightening is the brave new world in which women will live if this bill becomes law. The new definition of human being would leave women needing to know their body was carrying a fertilized egg immediately upon the union of her egg and a sperm.....”

The bill is explicit in stating that:

“3. Sections 12.1 - 16 - 01 through 12.1 - 16 - 03 apply only to the principal actor, other than the pregnant woman, with respect to criminal conduct upon a person who has not yet been born.”

**Planned Parenthood killed 332,278 unborn babies in 2009 at an average of approximately \$600 per infanticide, and that calculates to at least \$199,366,800.**



My name is Linda Olson. I have been an embryologist at an IVF laboratory in North Dakota for fifteen years.

I am asking you to vote NO on HB 1450.

I realize that there is a provision to allow invitro fertilization, but the proposal would make it cost prohibitive for our patients.

Imagine if someone in your family were having trouble conceiving. Current insurance (if they have IVF coverage) only fully covers one cycle. The chances of getting pregnant on one IVF cycle with only two eggs fertilized are extremely low.

If cryopreservation of embryos is not allowed because it MIGHT harm the embryo, then ALL fertilized eggs would need to be transferred. We do not need a ND "octomom."

Some eggs/ embryos have genetic or structural flaws that cause them to not survive. Will you make the doctor/embryologist liable for MURDER based on the assumption that they did something to cause that embryo's demise?



Please reconsider the implications of this bill and how it would affect the hundreds of families that have been and currently are in our care.

Thank you for your time.





# North Dakota Family Alliance

*A Trusted Voice Impacting Our Legacy*

Senate Judiciary Committee

March 15, 2011

HB 1450

Tom D. Freier, EXECUTIVE DIRECTOR

Mr. Chairman and members of the Senate Judiciary Committee, I am Tom Freier with the North Dakota Family Alliance, and I am here to support HB 1450.

The purpose of HB 1450 is to provide equal protection under the law for all human beings in North Dakota, including unborn children. Defining a 'human being' as an individual member of the species of Homo sapiens at every stage of development provides a simple but accurate definition.

I believe the obvious, that I was a human being from the moment of conception. I have a unique, distinctive, one of a kind DNA. From the moment of conception, I always have been a human being, always will be, and as such deserve equal protection under the law.

I want us to think about that phrase 'always have been' in conjunction with the definition language 'at every stage of development'. Over the years, advances in medical science and research have substantiated the obvious—that we are human beings from conception. And as such, deserve protection.

But I want us to consider another source, a pregnant woman. We know the joy of discovering a pregnancy!! We know the pain and sorrow of a miscarriage. It is about the life of their unborn child, a human being.

Over the past few years I have listened to post abortive woman speak about the loss of their child. Only by listening to their testimonies can you grasp the full depth and intrinsic understanding of their loss. No matter what stage of development, the post abortive woman understands that her child, a human being has been lost. She understands that the emotional pain, suffering, and trauma are a result of that loss of a human life. The abortion terminated the life of a human being.

This issue of abortion may become complex at times, and obviously has for many years—as we have witnessed the discussion and debate. But the issue becomes very simple, if we go back to the foundational truth that a "human being" means an individual member of the species Homo sapiens at every stage of development.

The people of North Dakota understand this issue. I believe a high percentage of the people simply want us to define when life begins and protect it. This bill provides a definition of life, and provides the foundation to protect life at every stage of development.

Mr. Chairman, I urge the committee to support HB 1450 with a Do Pass recommendation.

*Dedicated To Strengthening Families*

3220 18th Street South Ste 8 • Fargo, ND 58104 • Phone: 701-364-0676  
www.ndfa.org • admin@ndfa.org

## **Overview of HB 1450, The Defense of Human Life Act:**

**What does this bill do?** HB 1450 provides equal protection under the law for all human beings in North Dakota, including unborn children. Thus the bill would make all abortions (other than to save the mother from a life-threatening condition) criminal homicides.

**Does the bill protect mothers from prosecution?** Yes, the bill explicitly exempts the mother from punishment for any harm to her unborn child whether the harm was intentional or unintentional.

**Does the bill have an exception for rape?** The bill treats all unborn children (including those conceived in rape) as human beings. The bill allows any contraception administered before a pregnancy is “clinically diagnosable.” Thus emergency contraception (also known as the morning after pill or plan B) is not prohibited for anyone and this is the treatment most commonly given to rape victims.

**Could this be upheld in Federal Court?** Yes, it has been 20 years since the last major Supreme Court ruling that found a constitutional right to an abortion. Since that time 2/3 of the court has been replaced and awareness of the humanity of the unborn has grown dramatically. The uncertain outcome of a possible future court challenge is hardly a reason for the state of North Dakota to refuse to provide equal protection under the law for all human beings in this state.

**Does the bill allow IVF?** Yes, the bill explicitly states that it allows IVF. Louisiana has adopted similar language regarding embryos created for fertility treatment and IVF clinics in Louisiana have remained fully functional. The bill would only prohibit treatments that require the intentional destruction of “excess” embryos that have been mass produced even though they are unwanted. Responsible, nondestructive methods would not be prohibited.

**Is there a life of the mother exception?** Yes, the bill explicitly allows treatment for life-threatening conditions even if they result in the death of another person (i.e. the unborn child).

*NDFFA supports HB 1450 as introduced.*

Testimonies of Raped Women Who Aborted

There is strong evidence that abortion will not only not alleviate the sufferings of sexual assault victims, but, only make them worse.

Theresa Burke writes:

[In] the largest study ever done of women who had pregnancies resulting from rape ... 89% of those who aborted a pregnancy resulting from sexual assault explicitly stated that they regretted having their abortions. They often described their abortions as more traumatic and difficult to deal with than the sexual assault. ... Conversely, among the sexual assault victims who carried to term, in retrospect they all believed they made the right decision in giving birth. None regretted not having an abortion.[5]

Some typical examples of the testimony given by the women in the study Burke mentions follow—the women's identities were kept confidential; the names given are aliases.

"Nina":

The rape was bad but I could have gotten over it. The abortion is something I will never get over. No one realizes how much that event damaged my life. I hate my rapist, but I hate the abortionist too. I can't believe I paid to be raped again. This will affect the rest of my life.[6]

"Patricia":

I killed part of myself when I had the abortion. It only compounded my pain; it didn't solve anything. ... I would definitely discourage a woman from having an abortion following rape. ... Only through seeing the pregnancy through to completion will she really allow herself the chance to heal completely. ... The effects of abortion are much more far-reaching than the effects of the rape in my life.[7]

"Marie":

Far from helping me deal with the rape, the abortion just covered the issue. ... Abortion is not helpful; it only obscures the areas that need healing by placing a huge wall of guilt between the real issues and the woman's conscience.[8]

"Helene":

The negative feelings resulting from the rape were not eliminated by the abortion. Nothing was solved; instead, the grief was now doubled. ... I no longer have any negative feelings about the rape. ... It is the abortion that I still struggle with on a daily basis. ... In my opinion an abortion is never, in any circumstances, a good solution to rape or incest or any crisis pregnancy. An abortion only adds to and compounds the trauma that has already occurred. ... I feel those who support abortion in cases of rape and incest do not know what they are talking about. What they think of as an act of mercy, is no mercy at all. Abortion does not help or solve a problem—it only compounds and creates another trauma for the already grieving victim by taking away the one thing that can bring joy.[9]

<http://publicsquare.net/why-pregnancy-due-to-rape-fails-as-a-justification-for-abortion>

Abortion Providers on Whether Abortion is Killing

North  
Dakota  
Life League

"It [abortion] is a form of killing. **You're ending a life.**" (10)

Abortion Advocate and President of the National Coalition of Abortion Providers, Ron Fitzsimmons

"Abortion is killing the fetus....**Human life, in and of itself, is not sacred.** Human life, per se, is not inviolate." (13)

Abortionist "Dr. Smith" (Pseudonym)

**'We know that it is killing,** but the states permit killing under certain circumstances.' (17)

Dr. Neville Sender, founder of Metropolitan Medical Service, an abortion clinic in Milwaukee, Wisconsin

Dr. Magda Denes, who spent two years interviewing abortionists for her book In Necessity and Sorrow: Life and Death Inside an Abortion Hospital, told a newspaper the following:

"There wasn't a doctor, who at one time or another in the questioning did not say, **'This is murder.'**" (18)

Abortionist Don Sloan, explaining the morality of abortion to his teenage niece:

'Is abortion murder? All killing isn't murder. A cop shoots a teenager who 'appeared to be going for a gun,' and we call it justifiable homicide 'a tragedy for all concerned, but not murder'. And then there's war...' (24)

"I have angry feelings at myself for feeling good about grasping the calvaria [head], for feeling good about doing a technically good procedure that **destroys a fetus, kills a baby.**" (9)

Anonymous abortionist

"It [abortion] goes against all things which are natural. **It's a termination of a life,** however you look at it." (7)

Abortionist Robert Harris

"In the beginning I was mixed up because I was taught by the Hippocratic Oath not to take a life." (6)

Abortionist Michael Christie

"It's a really interesting thing that is happening. It's fascinating, when you can think about it clinically and not get involved in the babies, or the people..." (16)

Clinic Worker Dora Greenwald

"Women are not stupid ... women have always known that **there was a life there.**" (15)

Faye Wattleton, then President of Planned Parenthood

"No one, neither the patient receiving the abortion, nor the person doing the abortion, is ever, at any time, unaware that **they are ending a life...**" (14)

Abortion provider William F Harrison, MD

"When you do a D & C most of the tissue is removed by the Olden forceps or ring clamp and you actually get gross parts of the fetus out. So **you can see a miniature person** so to speak, and even now I occasionally feel a little peculiar about it because as a physician I'm trained to conserve life and here **I am destroying life.**" (5)

Dr. Benjamin Kalish, abortionist

246 4<sup>th</sup> Ave W  
Dickinson, ND 58601

Please Support HB 1450 Without Hostile Amendments

Chairman Nething and Committee Members:

My name is Daniel Woodard. I filed the initiative to ban skull-crushing and decapitation of unborn children in 2010. We collected over half the signatures necessary to place it on the ballot. But when I heard that a pro-life bill to stop all types of preborn injury would be introduced, and had a great chance of passing, then it was no longer necessary for me to continue the petition. Please don't make me regret that I had continued to collecting signatures.

The Fargo abortion clinic does abortions on unborn children through 18 weeks gestation. They insist that they only do abortions up through 15 weeks, but the Health Department reports almost every year that they do abortions through 16 weeks. And they measure from the LNMP (last normal menstrual period), which is 2 weeks before human fertilization, which means you should add 2 weeks to whatever week of abortion they advertise. Not that the age of the child matters, but the gruesomeness is more evident. After 15 weeks, the abortionist is required to dismember body parts piece by piece.

The second most common type of abortion is called Dilation and Evacuation (D&E). This is done between 13 weeks and 24 weeks, even earlier if the baby won't be sucked out.

This surgical abortion is done during the second trimester of pregnancy. Because the developing fetus doubles in size between the eleventh and twelfth weeks of pregnancy, the body of the fetus is too large to be broken up by suction and will not pass through the suction tubing. In this procedure, the cervix must be opened wider than in a first trimester abortion. This is done by inserting laminaria a day or two before the abortion. After opening the cervix, the doctor pulls out the fetal parts with forceps. The fetus' skull is crushed to ease removal. The abortionist will know that the child's skull has been sufficiently collapsed when the baby's brains flow out of the uterus. Among abortionists this is called the "calvaria sign" and it signals that the skull will then be much easier to remove.

Kathy Lindgren from Alice, North Dakota used to sidewalk counsel women outside of abortion clinics. Here is the story she emailed me:

**October 12, 1987 I and several friends discovered about ten aborted babies remains in a garbage dumpster behind the abortion facility located near the UND campus in Grand Forks. The babies were approximately between the ages of 4 and 16 weeks gestation.**

**The smallest baby's body had a visible rib cage, arms and legs. The head had been decapitated (See picture).**

**Each child's development was clear and distinct, the only difference being that some were older and thus their sizes varied according to their age and their own personal characteristics.**

**Some of the babies' heads were flat as the result of having been crushed.**

**Others babies were mangled, legs with feet attached, some arms with hands and other with their hands and feet pulled apart from their arms and legs.**

**On another occasion, I found the baby's head (skull cap) crushed and decapitated from the body.**

# North Dakota Life League

## HB 1450: Abortion Pushes Vulnerable Women To Suicide And Other Problems

Abortion is the worst thing a doctor can do to a woman and should be banned, especially for the most vulnerable categories of raped women and teenagers.

Not a single study has ever shown statistically significant benefits associated with abortion compared to birth. In terms of maximizing women's health and well-being, the scientific evidence overwhelmingly indicates that birth is preferable to abortion, no matter the situation.

The suicide rates are high of sexual assault victims who have become pregnant and had a subsequent abortion:

- Raped women were "three times more likely to commit suicide within a year of their abortions than women in the general population, and more than six times more likely than the women who carried their pregnancies to term."<sup>[10]</sup>
- "According to another study undertaken at the University of Minnesota, teenage girls are ten times more likely to attempt suicide if they have had an abortion in the last six months than are teens who have not had an abortion"<sup>[11]</sup>
- A Finnish study that surveyed, literally, all the medical records of Finnish women over a seven-year period found the "women who aborted were seven times more likely to commit suicide."<sup>[12]</sup>

Sandra Mahkorn, a rape counselor with decades of experience, argues that "encouraging abortion as a 'solution' to a rape pregnancy is in fact counterproductive, because abortion only serves to reinforce negative attitudes."<sup>[13]</sup> Mahkorn had the following to say about abortion and pregnancy resulting from sexual assault:

- While on the surface this "suggestion" [to abort] may appear acceptable and even "humane" to many, the victim is dealt another disservice. Such condescending attitudes on the part of physicians, friends and family can only reaffirm the sense of helplessness and vulnerability that was so violently conveyed in the act of sexual assault itself.<sup>[15]</sup>

- 
- Teenagers are 6 times more likely to attempt suicide if they have had an abortion in the last six months than are teens who have not had an abortion,<sup>1</sup> and four times more likely to commit suicide than adults who abort.<sup>2</sup>
  - Overall, women who have abortions have a 6 times higher rate of suicide compared to women who carry to term.<sup>3</sup>
  - Teens who abort are nearly three times more likely to be admitted to mental health hospitals than teens in general.<sup>5</sup>

### **Grief, trauma and self-destructive outcomes**

- Teens who abort are twice as likely as their peers to abuse alcohol, marijuana, or cocaine.<sup>22</sup>
- Teens who report "being particularly fond of children" do not do as well psychologically after an abortion.<sup>24</sup> Teens who have abortions often have later problems regarding sexuality and parenting.<sup>25</sup>
- The abortion procedure itself is considered by many teens to be stressful and associated with feelings of guilt, depression, and a sense of isolation.<sup>26</sup>
- Teens who abort are likely to become pregnant again within the next few years.<sup>28</sup> Among pregnant teens, those who had had an abortion were at least 4 times more likely to abort.<sup>29</sup>
- Teens who abort are more likely to develop psychological problems, and are nearly three times more likely to be admitted to mental health hospitals than teens in general.

<http://afterabortion.org/2009/teens-face-more-mental-health-risks-from-abortion-than-from-bearing-an-unplanned-pregnancy/>

SENATE JUDICIARY COMMITTEE  
Tuesday, March 15, 2011

**HOUSE BILL NO. 1450**

Testimony of:

Ramona E. Garcia, JD

Chairman Nething and Members of the Committee:

My name is Ramona Garcia. I am an attorney with a law firm located in Bismarck and for the past ten years have practiced primarily in the area of civil defense litigation. Prior to that, I worked as a registered nurse for 13 years with the majority of my career spent caring for patients hospitalized in the ICU or intensive care unit.

This bill would define the terms “human being” and “person” as they are used in the criminal code, to essentially assign rights of personhood to an embryo including a fertilized egg.<sup>1</sup> I am appearing today as a citizen of the state in *opposition* to HB 1450 for the following reasons:

**1. The Exemptions Are Not Adequate.**

The exemptions in this bill are not adequate to protect a woman and her physician, and potentially other health care providers from criminal liability for obtaining and providing medical procedures that are recognized in the medical community as the standard. For example, the definition of murder under North Dakota’s homicide statute includes a person who “causes the death of another human being . . . .”<sup>2</sup> and assault under North Dakota statutes has a definition which includes a person who “causes substantial bodily injury to another human being . . . .”<sup>3</sup> If we call a fertilized egg a human being or a person, then every time a

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<sup>1</sup> “‘Human being’ means an individual member of the species homo sapiens at every stage of development.”

<sup>2</sup> N.D.C.C. 12.1-16-01. Murder.

<sup>3</sup> N.D.C.C. 12.1-17-01.1. Assault

fertilized egg is destroyed or injured, the woman and at the least, her physician, will be subject to criminal liability. The effect will be that accepted medical procedures such as in vitro fertilization and abortion would be criminalized as homicide or assault or some form of those offenses such as manslaughter. The proposed amendment attempts to carve out exceptions for some of these situations, but the exemptions are inadequate because they are ambiguously worded and don't consider other life circumstances. For example, under these exceptions, a doctor could perform an abortion to save the life of a woman but only if fetal demise were "accidental," "unintentional," or "not intended," but you can't have an abortion without intending fetal demise. That is what an abortion is: termination of human pregnancy with an intention other than to produce a live birth. Thus fetal death is not "accidental," "unintentional," or "not intended," no matter why the abortion is performed. Consequently, the "life-saving" exemptions are functionally meaningless, leaving physician and the woman open to prosecution for homicide.

#### Health of The Woman

There also needs to be an exemption for termination of a pregnancy to protect the woman's health. There are many disease processes that when combined with pregnancy can have a detrimental effect on the health of a woman. For example, women with diabetes and certain heart conditions can suffer irreversible blindness, kidney damage and heart failure. When these circumstances arise, the standard is to give the woman the option of terminating her pregnancy to protect her health. However, an abortion performed under these circumstances would be viewed as criminal, under this amendment.

#### Fetal Anomaly

There also needs to be an exemption for fetal anomaly. With the advancement in medical technology, physicians can sometimes determine that a fetus will not survive after it is born, or will never live a normal life. In these circumstances, the woman may choose to have an abortion rather than continue the pregnancy. Having the choice to terminate the pregnancy can help a woman avoid the emotional distress and risks of carrying a pregnancy to term when there is no hope for survival or little to no, quality of life. Under this amendment, a woman would not have this choice.

#### Rape

There also needs to be an exemption when a woman is a victim of rape or incest.

#### **2. HB 1450 Could Be Read As Banning All Abortions.**

The United States Supreme Court decided the case of *Roe v. Wade*, 410 U.S. 113 (1973) in 1973. In the 38 years since, the decision has been distinguished by multiple other cases but for all the adjustments, Court has never deviated from the essential holding of *Roe v. Wade*, which is this: The Constitution gives a woman total autonomy over her body and her pregnancy including the right to terminate her pregnancy before viability. “[I]t is as settled now, as it was when the Court heard arguments in *Roe v. Wade*, that the Constitution places limits on a State ‘s right to interfere with a person’s most basic decisions about family and parenthood,” including the right to terminate a pregnancy. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. at 849, 852-53. “The woman’s right to terminate her pregnancy before viability is the most central principal of *Roe v. Wade*. It is the law and a component of liberty we cannot renounce.” *Id.* at 871.

I am concerned that this bill could be understood to be a ban on all abortions. The exceptions could pass Constitutional muster if the statute perhaps added a policy statement that

these amendments are not intended to override Constitutional law. Otherwise, the state could be faced with long and expensive litigation. Constitutional issues aside, North Dakota faces other unintended consequences including extensive litigation because the ND courts would have to interpret and clarify the legal meaning of this bill.

**3. This Bill Could Have Unintended Implications On The Laws of North Dakota.**

Giving full rights of life and liberty to a fertilized egg would be unprecedented in this country. No other state in the country has passed such a law. North Dakota would stand alone and become the testing ground to ferret out all its ramifications. Consider a woman, early in her pregnancy who is driving down the street, texting on her cell phone, or maybe speeding, or not wearing a seat belt. She crashes her car, resulting in a miscarriage. Is it the intention of this bill that she be subject to a charged with negligent homicide, manslaughter or other offense? Consider the woman who consumes a glass or more, of alcohol, or suffers from the disease of addiction to alcohol or drugs, prescribed or illicit, or cigarettes. When she has a miscarriage or delivers a compromised baby, is it the intention, that she be subjected to charges of reckless endangerment or the like because of her maternal conduct early in the pregnancy. Consider the young resident or nurse who makes a mistake. Will that malpractice also be subject to criminal charges? These are just a few scenarios.

Granting rights of a person to a fertilized egg will cast a wide net over many areas and has too many unconsidered consequences.

I urge a DO NOT pass on HB 1450.



Representing the Diocese of Fargo  
and the Diocese of Bismarck

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** Senate Judiciary Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** House Bill 1450 - Human Embryo Protection  
**Date:** March 15, 2011

The North Dakota Catholic Conference supports House Bill 1450 as a means of protecting human embryos from harm and destruction.<sup>1</sup>

The body of a human being, from the very first stages of its existence, can never be reduced merely to a group of cells. The embryonic<sup>2</sup> human body develops progressively according to a well-defined program with a proper finality, as is apparent in the birth of every baby. Solid scientific evidence demonstrates the humanity of nascent human life.

It is the duty of society to respect and protect human life from its earliest stages. The Supreme Court has made protecting human life from abortions frustratingly difficult, but it has not prohibited states from providing basic protection to embryos created in laboratories. Indeed, North Dakota already prohibits destroying or injuring human embryos by experimentation. It only makes sense that we should also prohibit destroying or injuring human embryos in other situations.

House Bill 1450 accomplishes this by extending to human embryos the same basic and fundamental protections enjoyed by older human beings, namely protection from homicide and assault. Chapter 12.1-17.1 applies these protections to unborn children conceived *in utero* or after implantation in the case of unborn children conceived *in vitro*. Chapters 12.1-16 and 12.1-17 apply these protections to post-born human beings. What is missing from this continuum, with the exception of abortion of children *in utero*, is protection for human beings conceived *in vitro* between the time of conception and the time of implantation. This gap in protection exists despite the fact that an embryo at the exact same stage of development with the same biological characteristics is protected from death or injury by a third party if the embryo resides *in utero*.

To put it yet another way: if someone causes the death of a human embryo while it is inside his or her mother, that individual has committed a felony under North Dakota law.<sup>3</sup> If, however, someone causes the death of a human embryo in a laboratory, they have acted with impunity. This makes no sense.

Therefore, at the outset, we should dismiss as unwarranted claims that HB 1450 gives human embryos unprecedented legal protections. North Dakota has already done that. House Bill 1450 is about eliminating a gap in that protection.

House Bill 1450 does not ban the practice of *in vitro* fertilization (IVF). Claims that it will drive away fertility specialists from North Dakota are unfounded. Although written differently, the scope of prohibitions in HB 1450 are not much different from those enacted in Louisiana and the practice of IVF in Louisiana has not suffered.

Some may claim that the negligent homicide provisions of chapter 12.1-16 will expose physicians and laboratory workers to criminal sanctions for actions negligently causing the death of human embryos created by IVF. This may be true. Why, however, would we allow negligently killing human embryos outside the womb when we prohibit negligently killing them inside the womb? (N.D.C.C. sec. 12.1-17.1-04) Negligent homicide should never be considered the “cost” of treating fertility.

House Bill 1450 does not criminalize the natural death of embryos in culture or the natural death of embryos that might occur during cryopreservation or thawing. House Bill 1450 allows responsible practices that treat human embryos with respect rather than as a means to an end. In short, practitioners of IVF have no reason to oppose HB 1450 unless they are seeking an unfettered right to *cause* harm and destruction to embryos.

A few other claims about HB 1450 warrant attention. Some claim that it will lead women who suffer miscarriages or pregnancy complications to be investigated for homicide, manslaughter or reckless endangerment. Another claim is that the bill would impact medical care for women who require medical intervention during a miscarriage. These claims completely ignore the fact

that homicide, manslaughter, and reckless endangerment of unborn children are already crimes and have been so since 1987. House Bill 1450 does not change that law, which, by the way, has not unleashed a rash of investigations of miscarriages or impacted medical intervention during a miscarriage.

In 1981, the French geneticist who discovered the genetic basis of Down's syndrome and is often called the "Father of Modern Genetics" said: "To accept the fact that, after fertilization has taken place, a new human has come into being is no longer a matter of taste or of opinion. The human nature of the human being from conception to old age is not a metaphysical contention. It is plain experimental evidence."

House Bill 1450 helps the law catch up with science and common sense.

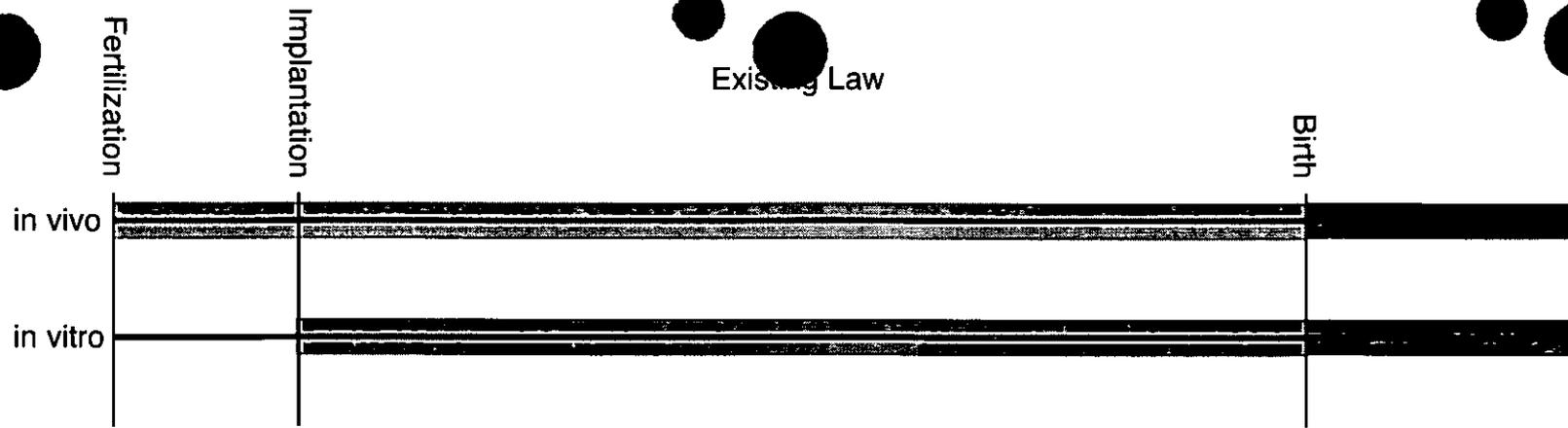
<sup>1</sup> The conference does not interpret House Bill 1450 as prohibiting abortion or creating new crimes against unborn children *in utero*. The bill does not expressly criminalize killing unborn children *in utero* and leaves intact sections of the code that already expressly criminalize homicide and assault of unborn children (N.D.C.C. chp. 12.1-17.1), the killing of children partially-born (N.D.C.C. chp. 14-02.6), the state's trigger ban on abortion (N.D.C.C. sec. 12.1-31-12), and the Abortion Control Act (N.D.C.C. chp. 14-02.1). According to well-established principles of statutory construction, more specific statutes prevail over general statements. Moreover, statutes are to be construed toward harmonization rather than allowing one statute to implicitly repeal another statute. Applying these principles, it is doubtful that House Bill 1450 would be interpreted as an abortion ban or unborn homicide and assault statute.

Moreover, as an abortion ban, HB 1450 would also face significant challenges in the courts. The underlying theory has already been tried (see, e.g., *Doe v. Israel*, 358 F.Supp. 1193 (D.R.I. 1973), affirmed, 482 F.2d 156 (1st Cir. 1973), cert. denied, 416 U.S. 993 (1974)) and there is no reason to conclude that a majority of the court would uphold a complete abortion ban at this time.

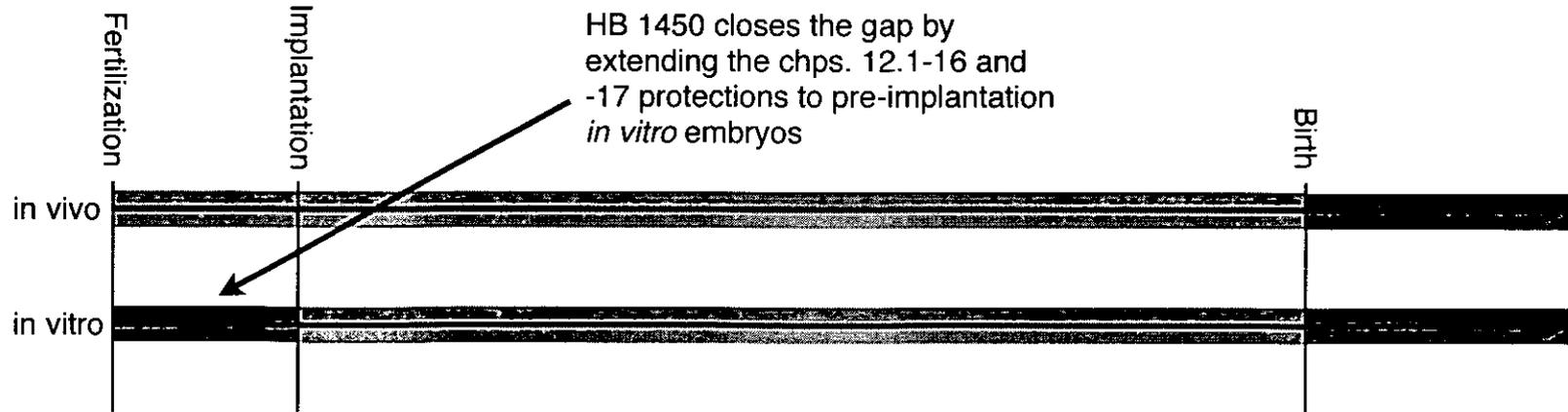
Nevertheless, constitutional law is not an exact science and, in the event that HB 1450 is interpreted as and enforced as an abortion ban, the North Dakota Catholic Conference feels that the parameters of the bill are sufficient to prevent unintended consequences in application.

<sup>2</sup> The embryonic stage exists from the moment of conception, when a zygote is formed, to about eight weeks. For purposes of this testimony "embryo" refers to all the embryonic stages of development.

<sup>3</sup> The exception is if the death is caused by a legal abortion.



Protection from homicide and assault under chp. 12.1-17.1  
 Protection from homicide under chp. 12.1-16 and assault under chp. 12.1-17



Protection from homicide and assault under chp. 12.1-17.1  
 Protection from homicide under chp. 12.1-16 and assault under chp. 12.1-17

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
CONCERNING HOUSE BILL 1450

Tuesday, March 15, 2011

Chairman Nething and Members of the Senate Judiciary Committee, my name is William Schuh, and I am testifying in favor of House Bill 1450. I urge you to vote Do Pass on this bill, without amendment. In this regard I would like to address specifically the exemptions for in vitro fertilization under Amendment Section 2, item 2. [c] on page 5, lines 16-17 and under Amendment Section 3, item 1 [c] on page 6, lines 1 and 2, which exempt in vitro fertilization from prosecution in criminal code, but deny the right of practitioners to deliberately kill the human embryos once conceived.

One of the most dangerous human traits is our infinite ability to rationalize our own self interest when confronted with situations that may cause us inconvenience, or hardship. To subject the definition of human life to a vague and sliding scale, subject to change based on human selfishness or fear, is a grave danger to any civilized society. History has shown that it is easy to ignore or even define away the humanity of others when they are inconvenient. It's even easier when the inconvenient people are silent or powerless and cannot resist their extermination.

Medical science has shown that the development of a child, once conceived, is a continuum both within and outside of the womb. There is not a single rational basis, after conception, for defining humanity that is non subjective, and which can stand separate from the bias of one who wishes to dispose of the child. Certainly the mere passage of a child through the cervix is an utterly absurd basis for the definition of humanity. But even if there were a doubt about the moment of humanity, the procedures of risk assessment applied elsewhere in our society would err on the most conservative standard where the risk entails loss of human life. Our bridges, buildings, dams, food additives, and pesticide uses all answer to the the highest and most conservative standards where human life is at risk. Yet, for a child within its mother's womb, we are loathe to even define its human status, solely because it is inconvenient.

My daughter, Ann Marie, has Downs Syndrome. She is 24 years old. She lives with her parents and helps in the home, she works at a motel making beds and she peels potatoes for a delicatessen. She is good at what she does, she loves doing it, and she is proud. Annie has always been a source of love and happiness who all who have known her, her family, teachers, coaches, coworkers, and fellow students. Ann has aspirations like anyone else. She loves life, she values her privileges, and takes pride in her work, and she fears injury and death.

Annie's are now being systematically killed before birth. A recent paper published in the journal "Prenatal Diagnosis, Vol. 18, Issue 9, pages 808-812 (1999) reviewing the literature on termination rates of pregnancies for various genetic abnormalities detected using prenatal testing, reported that 91 to 93% of all Downs babies detected are destroyed in their mothers' wombs. Numbers differed for other traits. The lowest was Klinefelter's syndrome, with a destruction rate of about 58%. Now it was one thing, and bad enough, that a mother, out of fear and with state sanction and lack of loving support, destroy the child in her womb. But it is another dangerous and socially degrading step, that in a perverse and further dehumanizing twist the medical profession has turned its genetic testing ability to the task of providing a quality product through the detection and and cold and rational liquidation of those having undesirable traits. In doing so we have crossed the border into eugenics, and have entered

a territory that has already in the last century cost the lives of millions already born.

This dangerous and ultimately dehumanizing development has now extended its grip beyond the womb in some practices of in vitro fertilization. In applying the many wonderful skills of modern medical science to problems of infertility, and in using those skills to assist parents in conceiving and nurturing human life, the cold processes of total quality management, of unnatural selection have reared their ugly head. And we hear some of our highly skilled and credentialed people asserting, in effect, that unless they have the right to direct the conception of multiple children, test for their desirability, and deliberately slaughter the less desirable, they are impaired from delivering the quality product their clients expect.

I would point out to the committee that medical science, for all the wonderful benefits it has bestowed upon human society, has not had an unchecked ethical track record; that medical personnel, as such, are neither more nor less moral or ethical than others; and that without appropriate checks and limitations the profession has had its share of disastrous ethical failures, some of which which I could, but will not here enumerate. The more recent assertion of the right to direct conception, then test, select and slaughter is one of those failures. It is not unreasonable that the people of this state, in protecting human life, expect that the medical profession practice its skills without deliberate killing. I would urge the committee and the Senate to protect all human life from deliberate unjust killing, and to reject any amendment that would allow the slaughter of human beings simply for the purpose of selecting a better product.



*North Dakota Right to Life Association*

Testimony before the SENATE JUDICIARY COMMITTEE  
House Bill 1450  
March 15<sup>th</sup> 2011

Chairman Nething, members of the committee, I am Paul Maloney, Executive Director of the North Dakota Right to Life Association. I am here today in support of HB 1450 the Defense of Human Life Act.

HB 1450 reaffirms the tradition of the state of North Dakota by upholding the value and dignity of all human life. As you can see by reading through HB 1450, the bill does the following:

**HB 1450 defines "human being" to include every stage of development.** HB 1450 (page 3, lines 1 and 2: *"Human being" means an individual member of the species homo sapiens at every stage of development.*)

**HB 1450 allows IVF.** HB 1450 explicitly states that it allows IVF. (Page 5 line 16 and page 6 line 1: *The creation of a new human being through in vitro fertilization.*) Louisiana has adopted similar language regarding embryos created for fertility treatment and IVF clinics in Louisiana have remained equally functional. Responsible collection, conservation, preparation, transfer, or cryopreservation would not be prohibited.

**HB 1450 protects the life of the mother.** HB 1450 explicitly allows treatment for life-threatening conditions (page 5 line 11-15 and 27-31) even if they result in the death of another person (i.e. the unborn child). In other words, doctors would be permitted to resolve every single medical situation that arises equal to what they may now do even if they unintentionally result in the death of the unborn child.

**HB 1450 only applies to the criminal code.** HB 1450 for example would have no effect on inheritance. All of the language in HB1450 is exclusively applied to the criminal code (Title 12.1) while inheritance law is all in chapter 30.1. So inheritance, insurance, voting rights, driver's licenses, drinking, and any other non-criminal matter would not apply to HB 1450, because none of these are in Title 12.1.

**HB 1450 allows for Embryo adoption.** Embryos can be adopted and they frequently are. After Maria Lancaster, a woman who runs an adoption program for embryos created during IVF, testified in front of the House Human Services Committee in 2009 a couple came forward wanting use her program. Because of that couple two babies are expected to be born soon.

**HB 1450 embodies the vision statement of North Dakota Right to Life Association.**

### **VISION STATEMENT**

The vision of the North Dakota Right to Life Association is that all vulnerable persons in our society are protected throughout the span of their lives from conception to natural death. It is our vision that all euthanasia and abortion be ended and that every person's attitude and commitment changes to a fervent respect for all innocent human life.

Adopted by North Dakota Right to Life Board of Directors October 29, 1994.

The North Dakota Right to Life Association urges a **DO PASS** recommendation on HB 1450.

Thank you. I would be happy to address any questions the committee may have.



TESTIMONY on HB 1450  
March 15, 2011

AAUW

Chairman Nething and Members of the Senate Judiciary Committee:

My name is Connie M. Hildebrand and I represent AAUW-ND.  
I appear in opposition to HB 1450.

The AAUW's public policy position on Reproductive Rights, available through our Public Policy and Governmental Relations Department, and dated July, 2009 includes the paragraphs:

*AAUW supports the right of every woman to safe, accessible, affordable, and comprehensive family planning and reproductive health services. This position stems from AAUW's 2009-2011 Public Policy Program, which advocates, "choice in the determination of one's reproductive life, as well as increased access to health care and family planning services."*

*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, and further believes that these deeply personal decisions should be made without governmental interference.*

*AAUW has made protection of reproductive rights a policy principle since 1977.*

This bill seeks to legally define a fetus as an independent human being, thereby seeking to criminalize all abortion options and interfering with women's personal decisions regarding pregnancy and childbirth.

Based on AAUW's pro-choice public policy position and a near forty-year history of re-affirmation of this policy by our membership at our biennial conventions, we request a committee vote of Do Not Pass on HB 1450.

Thank you for the opportunity to provide AAUW's testimony in opposition to HB 1450 on behalf of North Dakota's AAUW members.

*Melissa Ohden, LISW; Abortion survivor*

*Testimony for March 15, 2011 ND Senate-HB 1450*

Thank you so much for your time today, Senators. I appreciate your attention to HB 1450, and I hope that as you hear my testimony today, you understand the importance for you to support it.

I come here today as a Master's prepared social worker, a counselor, and I could share research and statistics on how many lives have been ended by abortion and how abortion negatively impacts individuals and society.

I come here today as an adoptee, who could tell you how adoption was a positive, life-affirming choice for me and my older sister, who is also adopted.

More importantly, however, I come to you as someone's daughter, someone's wife, as a little 2 ½ year old girl's mother, and as an abortion survivor, and I ask you to consider the importance of defending my life, my daughter's life, and the lives of all pre-born children.

You wouldn't know it by looking at me today, but in August of 1977, I survived a failed saline infusion abortion. For those of you that are not aware, a saline infusion abortion involves injecting a toxic salt solution into the amniotic fluid surrounding the preborn child. The intent of that salt solution is to scald the child to death, from the outside in. That's why, if you ever read about children like me in medical journals, we're called the red-skinned or candy-apple babies, because our skin is burned bright red and peeled off as the solution then moves to burn up our internal organs. This type of procedure typically takes place over a 72-hour period, but for some reason, my biological mother's procedure took place over a five day period.

After the salt solution was delivered into the amniotic fluid surrounding me, and I was bathed in the substance, it intending to burn me to death within 24 hours of it being delivered, than numerous rounds of Pitocin were delivered to my biological mother, who was a 19-year-old, unmarried college student at the time, with the intent to induce her labor with me and ultimately dispel my dead body from her womb.

On the fifth day of the procedure, she delivered me, and I should have been delivered dead. I was actually believed to be dead and even left for dead, as so many children before and after me have been after they've survived failed abortion attempts. But by the grace of God, a nurse noticed that I was grunting and making small movements, and the medical professionals stepped in to provide me with the medical care I needed to sustain my life.

I weighed a little less than 3 pounds, I suffered from jaundice, severe respiratory problems, seizures, had to undergo multiple blood transfusions, and because I was too weak to suck from a bottle, I was fed through an intravenous line in my head. My future was bleak, but I was alive!

It took me over 10 years of trying to finally obtain my medical records, and the first documentation by a doctor after the “saline infusion for abortion was done but was unsuccessful” (as it reads) was that I looked like a child of 31 weeks gestational age. My biological mother had thought she was somewhere between 18 and 22 weeks pregnant at the time she went for the abortion. Whether she was 18 weeks or 31 weeks pregnant, the bottom line is that there were NO PROTECTIONS FOR ME.

Although I wish that my biological mother wouldn't have made that decision to end my life, I am forever grateful that after I survived, my biological parents made an adoption plan for me. I ultimately went home to my adoptive family within just two months of surviving the abortion (literally going home to them before I was even supposed to be born!) My parents had been told the truth right away that I had survived an abortion, and that the doctors didn't believe that I would live for very long, and if I did that I would likely be disabled, but that did not deter them one bit. I meet parents like them each and every day who would do the same thing, if only they were given the chance to adopt a child.

I grew up seemingly always knowing that I was adopted. My sister and I always felt accepted, loved, respected and wanted by both our biological and adoptive parents due to them choosing life for us, and our adoptive parents valuing us as just as much a part of their family as their own biological child. And it wasn't until I was 14 that I found out the truth about my life, that I hadn't just been adopted, but had survived the failed abortion attempt.

My parents and even medical professionals that I have gotten to know over time who cared for me have made it clear that they wanted to protect me from the truth about my life, but I am now grateful to know the truth about me and about what abortion does to children like me each day.

I wasn't always grateful or proud to be who I am, however. I struggled for well over 10 years with shame, guilt, and embarrassment about who I am. At 14, I had never heard of anyone like me before. I now know of LOTS of other survivors like me around the world—eight others in the U.S. alone. Most of us survived the same type of abortion procedure—that's why they stopped doing it—because too many of us lived—and they went on to find much more successful, horrific ways of making sure children like us don't live to share our stories. I bear no physical consequences as a result of the abortion procedure meant to end my life. I stand here today as one of the lucky ones. But most of us that I know are from here in the U.S. and everyone else, as far as I am aware, have also been physically impaired in one way, shape, or form by the abortion procedure meant to end their life. **I would ask, Senators, that you please add a section to HB 1450 permitting future survivors of abortion to sue their abortionists for damages.**

Over the past 4 years, I have been united with members of my biological father's family, and I was blessed to have correspondence from some members of my biological mother's family. I am grateful to have them in my life, and I know that their lives have been forever changed by

knowing that I lived, and I am doing great things with the circumstances that were so terrible. But it is not easy.

My biological parents and their families have been forever changed, forever devastated by that abortion that should have ended my life. This is the ripple effect of abortion—it isn't just about a woman and a child. It is about grandparents, siblings, aunts and uncles, cousins, friends, communities, and our nation. We are all impacted by abortion. That negative ripple effect can end here, though, and it can end now.

As a fellow American, as a fellow human being, I deserved the same right to life, the same equal protection under the law as each and every one of you. I was not a 'choice,' I was a child. And I was as much "me" then, as I am now. It saddens me that we must introduce legislation such as HB 1450 in order to defend human lives like mine, but until we, as a society, respect and protect lives from the moment of conception, I believe such legislation is necessary, and I believe that all of you have a role in making sure your state government protects and enhances the lives of ALL of your constituents, born and pre-born.

As you consider your support of this bill, I urge you to think about not just me and the thousands upon thousands of North Dakota children who have been unprotected from abortion, but so, too, the lives of children like my daughter, Olivia, who would've never had life if that abortion would have succeeded in ending my life. Who in this room wants to look her in the eye and tell her that her mother's life was not worth defending?

**Senate Judiciary Committee**  
**HB 1450**  
**March 15, 2011**

Good morning, Chairman Nething and members of the Senate Judiciary Committee. My name is Renee Stromme, and I am the Executive Director of the North Dakota Women's Network. Thank you for the opportunity to testify in opposition of House Bill 1450.

The North Dakota Women's Network serves as a catalyst for improving the lives of women through communication, legislation and increased public activism. We are a statewide organization with members from every corner of the state.

Most view HB1450 as a step toward outlawing abortion, what they aren't mentioning is that if it passes it will hurt all pregnant women and create unprecedented dangers to both maternal and fetal health.

Constitutional law ensures that people, including pregnant women, have the right to make their own health care decisions. Yet, cases from across the country make it clear that if fetuses are recognized as legal persons, pregnant women could very likely lose these constitutionally protected rights. That's because laws like Bill 1450 enable the state to intervene in pregnant women's lives in ways that are dangerous to both pregnant women and their children.

For example, Amber and John Marlowe found this out when Marlowe went into labor with their seventh child. She did not believe she needed a cesarean section and did not want to subject herself or her unborn child to unnecessary surgery. The hospital disagreed with both mother and father, and using the argument that the unborn child had a right to life, obtained a court order giving it custody of the fetus before, during, and after delivery, and the right to force Marlowe to undergo invasive surgery. Before the order was issued, Amber Marlowe (still in active labor) fled to another hospital. There, Amber delivered a healthy baby naturally.

Angela Carder was not so lucky. Twenty-seven years old and 25 weeks pregnant, Angela Carder, became critically ill. She, her family and her attending physicians agreed on treatment designed to keep her alive for as long as possible. Nevertheless, the hospital called an emergency hearing, and based on claims of fetal rights, ordered a Cesarean section, despite the fact that it could kill Ms. Carder. The surgery was performed, the pre-term infant survived for only two hours and Ms. Carder died two days later with the cesarean surgery listed as a contributing factor.

In Florida, fetal rights arguments provided the grounds for sending an armed sheriff to the home of Laura Pemberton a woman who was attempting a vaginal birth after having had a previous a c-section. The sheriff took her into custody, strapped her legs together and forced her to go to a hospital where the state's lawyer argued on behalf of the unborn

child's rights. She, however, was left to defend her decision on her own while in active labor. The judge ordered her to undergo the unnecessary surgery. When she sued for violations of her civil rights, she was told, in effect, that she had none. Ms. Pemberton's subsequent natural births disproved the state's claim that her medical decision-making was an act of "bravado" and a threat to the rights of the unborn.

In each of these cases, the state intervention was based on the claim that fetuses had separate legal rights — exactly the ones Bill 1450 would establish in North Dakota. In none of these cases did the forced interventions or deprivations of liberty actually protect mothers or babies.

During my own personal birthing experience in April of 2008, the attending physician forced pitocin on me after only four hours of labor, despite significant progress. My protests were not heard. I was literally told I had no choice. There was no medical need what-so-ever for labor inducing drugs.

Many women, including those who oppose abortion, believe they should not lose their rights to make medical decisions for themselves and their children because they are pregnant or are in labor. If the Bill passes, North Dakota's courts will have jurisdiction whenever doctors or family members disagree with a pregnant woman's medical decisions. As the examples make clear, women's right to bodily integrity, due process, and even life itself will disappear in the face of fetal personhood claims.

To oppose the recognition of fetal personhood as a matter of state law is not to deny the value of potential life as matter of religious belief, emotional conviction or personal experience. Rather, it is to recognize that re-writing the state's law to extend all rights to the unborn from the moment of fertilization will exclude women from the moment they become pregnant.

The Women's Network urges a do not pass on HB 1450. Thank you for allowing my testimony.

Renee Stromme  
Executive Director  
North Dakota Women's Network  
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**Testimony of Gretchen Dobervich**  
**Senate Judiciary Committee**  
**3.14.11**

Senator Nething, Members of the Committee, my name is Gretchen Dobervich. I am from Fargo. My testimony being read today is in opposition of House Bill 1450.

I have lived for the last two decades with rheumatoid arthritis, an autoimmune disease that is progressive, degenerative and excruciatingly painful. It has no known cause or cure at this time. The disease robs me of my strength, energy and physical abilities. Some of the treatments in an effort to control it have horrible side effects- including serious birth defects to a fetus should I become pregnant. Despite all this, it is not life threatening.

Due to the physical impact rheumatoid arthritis has on me, my husband and I have made the choice not have children of our own. However, birth control is not always 100% effective. Should our birth control fail House Bill 1450 would force my already compromised body to carry and birth a child, who would almost certainly be profoundly debilitated.

Each Sunday I inject a chemotherapy drug called Methotrexate as part of my treatment. Methotrexate has a 90-97% rate of inducing miscarriage in early pregnancy. If I were pregnant without knowing, due to failed birth control, and injected, the odds of terminating the pregnancy are close to certain. The treatments improve my quality of life and slow disability, as they are not for a life threatening condition I would be a murderer under House Bill 1450, as taking my medication "results in the accidental or unintentional injury or death of another person" as defined in the bill.

I cannot think of anyone who would not like to live in a world where every child is brought into this world with love and intention. This is not reality and House Bill 1450 will not change that. It will force women with unintended or medically fragile pregnancies to seek unregulated, unsafe treatment, for what is a Constitutionally legal medical procedure- I deserve better than sewing machine oil and coat hangers if faced with an unintended pregnancy. It will make me, a social worker and licensed foster parent, who along with my husband, has filled our home with love and children, a murderer; if my birth control fails.

As a North Dakota tax payer and foster parent I feel the \$40,000 in the fiscal note attached that designated for fighting to overturn Constitutional Law might be of better use in improving the quality of life for children living in North Dakota now and in need of love and care. As opposed to the potential expenditure as I am I question at that amount it's ability impact either.

I hope that I have been able to provide you with a glimpse of how House Bill 1450 can hurt women, with non-life threatening chronic diseases and their families. There are no provisions in the bill for my family's situation; nor should there be, because House Bill 1450 is about making a medical procedure illegal, not care for people's physical or mental health in relation to their reproductive health, not improving quality of life for children, women and families, not about upholding true family values or supporting things that make a state a great place to raise a family. House Bill 1450 is not going to do anything to stop women from needing to or seeking out pregnancy terminations, it is not going to make all unplanned pregnancies grow into healthy families filled with love, for these reasons alone House Bill 1450 deserves a Do Not Pass vote.

Thank you for the opportunity to have my testimony read before you today.

April 1, 2011

4/14  
Olafson  
①

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1450

Page 5, replace lines 14 through 17 with:

- "b. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- c. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization, which has been subject to medical testing and analysis and has been determined to have defects not compatible with life or has not progressed in development for thirty-six hours in culture."

Page 5, after line 19, insert:

- "e. Legitimate medical treatment performed to terminate a pregnancy for life-threatening conditions, severe health risks to the mother, or abnormalities in the fetus which are not compatible with life.
- f. The termination of a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20."

Page 5, remove lines 30 and 31

Page 6, replace lines 1 and 2 with:

- "b. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- c. The disposal or destruction of a fertilized human ovum, zygote, or embryo, created through in vitro fertilization, which has been subject to medical testing and analysis and has been determined to have defects not compatible with life or has not progressed in development for thirty-six hours in culture."

Page 6, after line 4, insert:

- "e. Legitimate medical treatment performed to terminate a pregnancy for life-threatening conditions, severe health risks to the mother, or abnormalities in the fetus which are not compatible with life.
- f. The termination of a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20."

Re-number accordingly

April 1, 2011

Sitte  
amend. (2)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1450

Page 5, replace lines 16 and 17 with:

- "c. The routine screening, collecting, conserving, preparing, processing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus before implantation in that uterus.
- d. The disposing of or the destruction of a fertilized human ovum, zygote, or embryo created through in vitro fertilization that fails to develop further over a thirty-six-hour period."

Page 5, line 18, replace "d." with "e."

Page 6, replace lines 1 and 2 with:

- "c. The routine screening, collecting, conserving, preparing, processing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus before implantation in that uterus.
- d. The disposing of or the destruction of a fertilized human ovum, zygote, or embryo created through in vitro fertilization that fails to develop further over a thirty-six-hour period."

Page 6, line 3, replace "d." with "e."

Renumber accordingly

Sitte ③  
amend

11.0665.02013  
Title.

Prepared by the Legislative Council staff for  
Senator Sitte

April 4, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1450

Page 5, remove lines 14 and 15

Page 5, line 16, replace "c." with "b."

Page 5, line 18, replace "d." with "c."

Page 5, remove lines 30 and 31

Page 6, line 1, replace "c." with "b."

Page 6, line 3, replace "d." with "c."

Renumber accordingly

April 5, 2011

Sitte  
Amend. ①

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1450

Page 5, replace lines 14 through 17 with:

- "b. Medical treatment for life-threatening conditions even if the treatment may increase the risk that a person will die, including chemotherapy treatment and other cancer treatment or treatment for ectopic or molar pregnancies, so long as the treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, a person's death, for any reason.
- c. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- d. The disposing of or the destruction of a fertilized human ovum, zygote, or embryo created through in vitro fertilization which fails to develop further over a thirty-six-hour period."

Page 5, line 18, replace "d." with "e."

Page 5, line 20, replace "Sections" with "With respect to criminal conduct including abortions against a person who has not yet been born, sections"

Page 5, line 21, remove ", with respect to criminal conduct upon a person who has not yet"

Page 5, line 22, remove "been born"

Page 5, after line 22, insert:

- "4. With respect to sections 12.1-16-01 through 12.1-16-03, a person may not be imprisoned for any action with respect to a human embryo who has not been transferred to a human uterus."

Page 5, remove lines 30 and 31

Page 6, replace lines 1 and 2 with:

- "b. Medical treatment for life-threatening conditions even if the treatment may increase the risk that a person will die, including chemotherapy treatment and other cancer treatment or treatment for ectopic or molar pregnancies, so long as the treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, a person's death, for any reason.
- c. The screening, collecting, preparing, transferring, or cryopreserving of a human being created through in vitro fertilization for the purpose of being transferred to a human uterus.
- d. The disposing of or the destruction of a fertilized human ovum, zygote, or embryo created through in vitro fertilization which fails to develop further over a thirty-six-hour period."

Page 6, line 3, replace "d." with "e."

Page 6, line 5, replace "Sections" with "With respect to criminal conduct including abortions against a person who has not yet been born, sections"

Page 6, line 6, remove ", with respect to criminal conduct upon a person who has not yet"

Page 6, line 7, remove "been born"

Page 6, after line 7, insert:

"3. With respect to sections 12.1-17-01 through 12.1-17-03, a person may not be imprisoned for any action with respect to a human embryo who has not been transferred to a human uterus."

Renumber accordingly

# North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360

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April 5, 2011

Honorable Tim Flakoll  
State Senator  
Senate Chamber  
State Capitol  
Bismarck, ND 58505

Dear Senator Flakoll:

This letter is in response to your request for information regarding Engrossed House Bill No. 1450.

Section 1 of the bill provides for amendments to the definitions that are used in North Dakota Century Code Title 12.1, commonly referred to as the criminal code. This section amends the definition of "person" to include "all human beings." The amendments to this section define a "human being" as "an individual member of the species homo sapiens at every stage of development." When applied to Title 12.1, the effect of these amended definitions would be that for purposes of crimes committed against a person under Title 12.1, a crime can be committed against a person at every stage of development, not just after the person is born.

Section 2 of Engrossed House Bill No. 1450 amends Section 12.1-16-06 to create exemptions from three crimes--murder, manslaughter, and negligent homicide--for certain medical procedures and treatment.

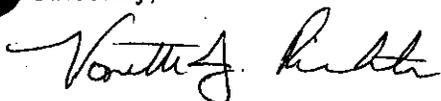
Section 3 of the bill creates a new section to Chapter 12.1-17, which relates to assault. This new section would create an exemption from four crimes--simple assault, assault, aggravated assault, and reckless endangerment--for certain medical procedures and treatment.

You asked whether medical doctors and related people would be breaking the law under this bill by performing typical procedures for and surrounding in vitro fertilization. The exemptions in the bill related to in vitro fertilization are found on page 5, lines 16 and 17, and on page 6, lines 1 and 2. The language provides that the criminal code sections listed above do not apply to "[t]he creation of a new human being through in vitro fertilization, but in no case does this section excuse or justify causing the death of a human being." While this language attempts to exempt the in vitro process, the language "but in no case does this section excuse or justify causing the death of a human being" likely would be contrary to the commonly used procedures in the in vitro fertilization process when dealing with fertilized eggs and embryos that are not used or that are not medically suited for transfer into the human uterus. As written, since a human being at every stage of development is considered a person for purposes of Title 12.1, it would appear that there are typical procedures for and surrounding the in vitro fertilization process, such as the medical decision to discard, destroy, or fail to use fertilized eggs or embryos, which could be considered criminal violations of Title 12.1.

You also asked whether the bill contains any exceptions from criminal liability for an abortion performed on a woman whose pregnancy is the result of rape or incest. The bill does not contain any exemptions for abortions performed for pregnancies that result from rape or incest.

We hope this information will be helpful. Please contact this office if you have further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vonette J. Richter".

Vonette J. Richter  
Counsel

VJR/BJM