

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3008

2001 HOUSE JUDICIARY

HCR 3008

✱

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3008

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-23-01

Tape Number	Side A	Side B	Meter #
Tape I	x		793 to 3581
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chr DeKrey opened the hearing on HCR 3008 and asked the clerk to read the title. A concurrent resolution to create and enact a new section to article 1 of the Constitution of North Dakota relating to the right of privacy. All present with the exception for Rep Onstad.

Rep Klemm: District 47, part of Burleigh County. This amendment would provide that the right of individual privacy is essential and may not be infringed without the showing of a compelling state interest.(see attached testimony)

Rep Delmore: I don't think that any of us here would argue with the premise that you have, but how does this really protect my right to privacy in this computer age?

Rep Klemm: IT would affect how we deal with some of the information that the state now has now on us and how people handle the information is available. There may not be anything that we can do with information that is collected outside the state, but every session we see new laws being purposed to take care some loop hole that keeps being found, that allows personal and

private information to make available that ask for it. I think this would provide an umbrella over that type of dissemination of information.

Rep Delmore: You are saying that thru the interpretation of the court, because it is part of the constitution, it would be a protective devise.

Rep Klemin: That is correct.

Rep Kretschmar: what would you describe as a compelling state interest.

Rep Klemin: For an example, a sexual predator that is living in the neighborhood. Information given to the school administrators so that they would know that they would have an individual that has charged with some type of crime, that person is in there school, so that they could take care of the safety in their school. Quite a few states have shown interest.

Chr DeKrey: Do you see anything on the books right as far as state statutes goes, that this bill would be in conflict with?

Rep Klemin: I don't know that I have been able to find anything yet, there is probably something.

Chr DeKrey: If we do have something in law which would be in conflict with this, which would take precedent?

Rep Klemin:the constitutional provision would take precedent.

Chr DeKrey: But it would have to be taken to court?

Rep Klemin: Not necessarily.

Chr DeKrey: Does anyone have questions for Rep Klemin, if not thank you for appearing. We will now that testimony in opposition of HCR 3008.

Rep Klemin: It has been brought to my attention that this may effect the abortion laws. I want to say that this was not my intent and there may have to be some amendments needed to correct this issue.

Jack Mc Donald: North Dakota Newspaper Association and the North Dakota Broadcasters Association. (see attached testimony). Spoke in opposition.

Rep Fairfield: Would this have the effect of a blanket privacy provisions, would we have to go back and piece meal to determine and see what are a compelling reason for the state.

Jack McDonald: I don't know, it probably will.

: Chr DeKrey If there are no further questions, thank you for appearing in front of this committee.

Greg Tschider: North Dakota Credit Union League, the Montana law is similar, but Montana added some language, article 2, section 9 of the Montana law (he proceeds to quote the Montana law) What Montana was concerned with was, how private are public records? I represent credit unions, when someone comes in to obtain a loan, we need credit information. Are we entitled to the information about someones credit? The problem that we have, we feel that the bill is too broad. We suppose the concept that everyone has the right to privacy, what does that mean and who is going to decide. What standards are going to be used to develop a compelling state interest. We oppose this bill because it is too soon but we need further study?

Rep Klemin: You stated that the credit union needs to know credit information. Every time that I have gone in to borrow money, I have had to sign a consent to the lender to look into my financial background. Would this change because we have a privacy act.

Greg Tschider: That would be in conflict with federal law. If you need to know someone's credit report, all you need to have is a legitimate business interest.

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House Judiciary Committee
Bill/Resolution Number HCR 3008
Hearing Date 01-23-01

Rep Klemin: If I am borrowing some money from a credit union, are you saying that you cannot ask for the consent for getting a credit history.

Greg Tschider: That is up to the financial institution. I would hope that the financial institution would be asking before they seek credit history.

Chr DeKrey: Anyone else wishing to testify in opposition of HCR 3008?

Stacie Pflieger: Executive Director of the North Dakota Right to Life Association, (see attached testimony).

Christopher Dodson: Executive Director and General Counsel for the North Dakota catholic Conference, (see attached testimony).

Chr DeKrey: Are there any questions, seeing none, thank you for appearing in front of the committee. We will close the hearing on HCR 3008.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3008a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	1489 to 3206
Committee Clerk Signature <i>Jean Duro</i>			

Minutes: Chairman DeKrey called the committee to order on HCR 3008.

Rep Klemin explained the amendments.

COMMITTEE ACTION

Vice Chr Kretschmar moved the amendments. Rep Grande seconded.

DISCUSSION

Voice vote on the amendments. Amendments passed.

Chairman DeKrey what are the wishes of the committee. Rep Delmore move a DO NOT PASS as amend, seconded by Rep Fairfield. The motion passes wwith 8 YES, 5 NO, 2 ABSENT.

Carrier Rep Brekke.

VR
2/7/01

HOUSE AMENDMENTS TO HCR 3008 HOUSE JUDICIARY 02-08-01

Page 1, line 5, after the period insert "The amendment also would provide that the right of privacy would not prohibit or invalidate statutory provisions restricting or regulating abortion and assisted suicide."

Page 1, line 9, replace "general" with "primary"

Page 1, line 15, after the period insert "This section may not be construed to invalidate any legislation regulating or restricting abortion or assisted suicide."

Renumber accordingly

Date: 02-07-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3068

House JUDICIARY

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Not Pass as amend

Motion Made By

Rep Delmore

Seconded By

Rep Fairfield

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	☒	☒			
VICE CHR -- Wm E Kretschmar		☒			
Rep Curtis E Brekke	☒	☒			
Rep Lois Delmore	☒				
Rep Rachael Disrud	☒				
Rep Bruce Eckre	☒				
Rep April Fairfield	☒				
Rep Bette Grande		☒			
Rep G. Jane Gunter	☒				
Rep Joyce Kingsbury		☒			
Rep Lawrence R. Kiemin		☒			
Rep John Mahoney					
Rep Andrew G Maragos					
Rep Kenton Onstad	☒				
Rep Dwight Wrangham	☒				

Total

(Yes)

8

No

5

Absent

2

Floor Assignment

Rep Brekke

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2001 9:54 a.m.

Module No: HR-23-2694
Carrier: Fairfield
Insert LC: 13038.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HCR 3008: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HCR 3008 was placed on the Sixth order on the calendar.

Page 1, line 5, after the period insert "The amendment also would provide that the right of privacy would not prohibit or invalidate statutory provisions restricting or regulating abortion and assisted suicide."

Page 1, line 9, replace "general" with "primary"

Page 1, line 15, after the period insert "This section may not be construed to invalidate any legislation regulating or restricting abortion or assisted suicide."

Renumber accordingly

2001 TESTIMONY

HCR 3008

**TESTIMONY OF LAWRENCE R. KLEMIN
HOUSE CONCURRENT RESOLUTION NO. 3008
HOUSE JUDICIARY COMMITTEE
JANUARY 23, 2001**

Mr. Chairman and Members of the House Judiciary Committee.

I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here today to enlist your support for a constitutional amendment for a right of individual privacy. HCR3008 provides for a vote by the people of the State of North Dakota at the next general election in 2002 to determine whether or not a guarantee of the right of individual privacy should be included in our State Constitution.

The right of individual privacy seems so fundamental that one can hardly believe it's not among the rights guaranteed to us in either the State or the Federal Constitution. If our founding fathers had been aware of computers, the Internet, and the rapid dissemination of information and data, I have no doubt that a right of individual privacy would have been included. The dawn of the Information Age was far into the future at the beginning of our history and probably could not have even been imagined.

The right of individual privacy is a popular perception that does not exist in our Constitution or in our statutory laws. More accurately, it is a popular *misconception*. We have a patchwork quilt of laws providing for confidentiality, enacted in response to privacy concerns that continue to arise. It is time to clearly set forth a general principle to firmly establish the existence of a right of individual privacy - a right that should be the rule, not the exception.

About 40 years ago, while still in high school, I remember reading a book written in 1949 by Eric Blair - a pessimistic satire about the threat of political tyranny in the future. Eric Blair is better known by his pseudonym of George Orwell. The book was entitled "1984". The main character in the book, Winston Smith, was a "thought criminal" who eventually was rehabilitated to see the error of his ways. He came to love and revere "Big Brother". In Winston's society, there was a television in each home that also had the capability of looking into the home so "Big Brother" could watch its occupants.

In our society, that television is the computer monitor, figuratively and literally. There is no privacy. Every detail of our lives is gradually being computerized - vital statistics - driving records - income and financial records - medical records - insurance records - our likes and dislikes - buying patterns - where we go - what we like to do. The list goes on. There is no end. Big Brother is being fostered by the Information Age.

The "finger in the dike" approach to passing confidentiality laws after the fact should be replaced by this constitutional amendment - that the right of individual privacy is essential to the well-being of a free society and may not be infringed without the showing of a compelling state interest.

January 23, 2001

HOUSE JUDICIARY COMMITTEE
SCR 3008

REPRESENTATIVE DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose SCR 3008.

SCR 3008, while perhaps well intentioned, creates a vague and ambiguous new right about which only one thing is certain: It will take a lot of lawsuits, and a lot of lawyers, to determine exactly what this right is, how it is defined and how it is to be interpreted.

The 107th Congress is just a few days old, and there are already about 10 different privacy bills being floated about. The Federal Trade Commission has issued a gigantic report on privacy and has just issued new federal regulations. There are tough federal privacy laws concerning banks, insurance companies and the security industry. There are federal laws concerning telemarketing and privacy.

In this legislative session, the former attorney general has two large bills concerning privacy rights of individuals. There are at least two, if not more, bills dealing with the privacy rights of banking customers. I am told there will be bills dealing with privacy rights in the insurance industry. We are suffering from a plethora of privacy legislation, and we have another week to go for introduction of bills.

This is a subject that is far too important and far reaching to handle on such a piecemeal, hodge-podge basis. Attorney General Wayne Stenehjem has indicated he wants to convene a two-year study of the privacy issue and come up with some comprehensive proposals. We think this is a far better approach to the situation than rushing in now with several legislative enactments that may or may not be in conflict. And, it is certainly too soon to put into our constitution such a vague and uncertain concept.

You have heard today, and will hear from others, the wide variety of concerns they have on how this will be interpreted. When a court looks for legislative intent, they will only find that no one was certain what was intended. I don't think this is the background for enshrinement in the constitution.

Therefore, we respectfully urge you today to give a do not pass to this measure and to await the results of the Attorney General's interim study of this issue.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.



North Dakota Right to Life Association

Testimony before the HOUSE JUDICIARY COMMITTEE

Regarding HOUSE CONCURRENT RESOLUTION NO. 3008

January 23, 2001 8:30 a.m.

Chairman DeKrey, members of the committee, I am Stacey Pflieger, Executive Director of the North Dakota Right to Life Association. I thank you for this opportunity to testify before you today. I am here today in opposition to HCR 3008 relating to the right of privacy.

The phrase "right of privacy" sounds very appealing to private citizens, a seemingly innocent phrase; however, the results of this innocent sounding phrase carries with it grave consequences. The "right of privacy" phrase is really code for "the right to an abortion".

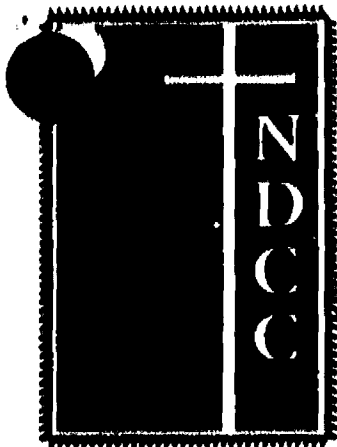
The 1973 United States Supreme Court decision, *Roe v. Wade*, construed that the "right to privacy" is secured by the federal Constitution. Abortion rights under state constitutions are of great importance to anti-life supporters. Currently, the North Dakota Century Code, Chapter 14-02.1, the Abortion Control Act, states: "The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick."

If this resolution passes, it would jeopardize our Abortion Control Act. It has the strong potential of striking down our parental notification law, our informed consent law including the 24-hour waiting period, our physician only law, and mandate state funded abortions.

A "right of privacy" under the Constitution of North Dakota goes beyond *Roe v. Wade*. Yesterday was the 28th anniversary of *Roe*, 28 years of killing the unborn in a mother's womb because its people believe that to be a right. For 28 years North Dakota has passed life-affirming constitutional limits, let's not jeopardize 28 years of hard work.

I urge this committee a do NOT pass on HCR 3008.

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



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

To: House Judiciary Committee
From: Christopher Dodson, Executive Director and General Counsel
Subject: House Concurrent Resolution 3008
Date: January 23, 2001

Unfortunately, words do not always carry the meaning - and only the meaning - we intend them to convey. This is particularly true in the law. Consequently, we can sometimes get legislation with unintended and even disastrous consequences. That is the case with the language proposed in HCR 3008. Although, the language seems benign, it could very well lead to the unraveling of state laws designed to protect the most innocent among us, respect religious liberty, and strengthen families. This is not mere conjecture. We have to guide us the application of similar, and even identical, constitutional provisions from other states.

The experience of our neighbor, Montana, is revealing. Montana's state constitution has a provision identical to that proposed in HCR 3008. Relying on that provision, courts in that state have:

- Struck down limitations on the use of state funds to pay for abortions in Medicaid. *Jeannette R. v. Ellery*, No. BDV-94-811 (Mont. Dist. Ct. May 22, 1995);
- Struck down the state's law requiring parental notice or judicial waiver before a minor can obtain an abortion. *Wicklund v. State*, No. ADV-97-671 (Mont. Dist. Ct. Feb. 12, 1999);
- Struck down a state law requiring a 24-hour waiting period prior to an abortion. *Planned Parenthood of Missoula v. State*, No. BDV-95-722 (Mont. Dist. Ct. Mar. 12, 1999), appeal dismissed (Mont. Nov. 29, 1999);
- Struck down the state's ban on partial-birth abortions. *Intermountain Planned Parenthood v. State*, No. BDV 97-477 (Mont. Dist. Ct. June 29, 1998); and, in what is the perhaps the most bizarre ruling,
- Struck down a state law requiring that only physician perform abortions. *Armstrong v. State*, 989 P.2d 364 (Mont. 1999).

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More is expected. The Chief Justice of the Montana Supreme Court has stated that he thinks it is inevitable that a right to assisted suicide will be found to exist under the state's constitutional right of privacy. A recent law review article traces how such a right would be found under the state's right of privacy language -- language identical to that in HCR 3008. See, "The Last Best Place to Die," 59 Mont. L. Rev. 301 (1998.)

Alaska provides another example of how a constitutional right of privacy could be applied.¹ As in Montana, the constitutional right of privacy in Alaska prohibits laws requiring parental consent or judicial waiver before a minor may obtain an abortion (*Planned Parenthood of Alaska, Inc. v. State*, No. 3AN-97-6014 CI, Alaska Super. Ct. Feb. 25, 1998), restrictions on using state funds for abortions (*Planned Parenthood of Alaska, Inc. v. Perdue*, No. 3AN 98-7004, Alaska Super. Ct. Mar. 16, 1999), and bans on partial-birth abortions (*Planned Parenthood of Alaska, Inc. v. State*, No. 3AN-97-6019 CIV, Alaska Super. Ct. Mar. 13, 1998).

In addition, the Alaska Supreme Court - relying on the state constitutional right of privacy - struck down a conscience protection law protecting private hospitals that have policies against performing abortions. The court essentially found that the right of privacy trumps the moral or ethical policies of the private hospital so long as the hospital is somehow connected to the public interest. *Valley Hosp. Assn. v. Mat-Su Coalition*, 948 P.2d 963 (1997) [holding applies to a private hospital that receives government reimbursement, was constructed with government assistance, had received a certificate of need, or was the only hospital in the community.]

Although not identical², a similar California constitutional provision was the grounds for striking down requirements for parental consent or judicial waiver for minors (*Am. Academy of Pediatrics v. Van de Kamp*, 263 Cal Rptr. 46 (App.1. Dist. 1989)) and restrictions on use of state funds for abortion (*Committee to Defend Reproductive Rights v. Myers*, 625 P.2d 779 (Cal. 1981.)) An attorney general's opinion goes further, stating that the state's constitutional right of privacy gives public schools the authority to release a minor from scheduled classes to obtain an abortion without informing a parent. 66 Ops. Atty. Gen. 244 (7-28-83.)

¹ Alaska's provision states: "The right of the people to privacy is recognized and shall not be infringed." Alaska Const., Art. I, § 22.

² California's constitutional provision states, in relevant part: "All people . . . have inalienable rights. Among these are . . . privacy." Cal. Const. Art. 1, § 1.

The Minnesota Constitution's right of privacy, which does not even explicitly mention "privacy,"³ was found as grounds for striking down restrictions on use of state funds for abortion. *Women of State v. Gomez*, 542 NW2d 17 (1995.)

I wish I could say that these are all the occurrences where a right of privacy has struck down abortion laws, but there are more. Courts in fourteen states have ruled that their state constitution's privacy clauses provide a greater right to abortion than is provided under *Roe v. Wade* and *Casey v. Planned Parenthood*. (AK, CA, CT, FL, ID, IL, MA, MN, MT, NJ, NM, OR, VT, WV). Typically, these courts have struck down popular and important laws such as restrictions on the use of taxpayer funds for abortion and parental notification or consent for minors.

According observers on both sides of the abortion debate, North Dakota has the most pro-life laws in the nation. While these laws do not provide a complete solution to the problem of abortion in our state and much more work needs to be done, they are an important step in the right direction. A constitutional amendment like HCR 3008 puts all those laws in jeopardy and the risks thwarting the will of the people of North Dakota .

We urge a **DO NOT PASS** on HCR 3008.

³ Minnesota's constitution protects "rights and privileges." Minn. Const. Art. 1, § 2. "Rights" has been construed to cover the right to privacy and, by extension, a right to abortion more expansive than *Roe* and *Casey*.