

2009 HOUSE HUMAN SERVICES

HB 1445

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1445

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 8980

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz called the hearing to order on HB 1145.

Rep. Damschen district 10 Representative sponsored and introduced bill: Purpose of bill is to ensure a woman who is seeking an abortion realizes exactly what she is doing. Know of two cases in ND where the women are being charged with endangerment to their unborn child.

One of those women with premeditation with her doctor terminated the fetus and it was legal.

Tom Freyer, representing the ND Family Alliance: Testified in support. **See Testimony #1.**

(Trouble with microphones going out at this point).

Rep. Conrad: In our law, we already have gestation age of child. Would that take care of living being?

Tom Freyer: This does more to clearly define. The woman should have information about what is about to take place.

Rep. Conrad: Have live born child in definition, isn't that enough? Don't understand need for more. Women understand what they are doing?

Tom Freyer: Can't speak from a woman's perspective. Post abortive women can tell you of mental process up to and after abortion. South Dakota task force studied and interviewed

thousands of women. Study brought out they wanted more information.

Rep. Conrad: Putting this into law won't make physicians and nurses do this.

Tom Freyer: This is a list they have to share with woman and they will.

Rep. Holman: Reading the bill, the word "fertilization" came out at me. How would the morning after pill affect this?

Tom Freyer: May have to defer that to someone else. Will find out for you.

Christopher Dobson, Executive Director of ND Catholic Conference: Testified in support.

See Testimony #2.

Rep. Conrad: Has Supreme Court ruled on this?

C. Dobson: Hasn't ruled.

Rep. Conrad: Age and gestation, what more do you need? Can we get assurance this is closure of book on this?

C. Dobson: Not appropriate to talk about future. May be other bills. Data and evidence changes. At moment this is information we feel we need in bill.

Rep. Conrad: We are saying a child is a human being, We already have that in there.

C. Dobson: Focuses on requirement of law. That it determines a life not in there.

Rep. Potter: The purpose of the inclusion of the additional language is to supply physicians more information that they are to disclose to the women about these procedures? Is that correct?

C. Dobson: Correct.

Rep. Potter: Physicians perform many procedures and not sure it's all written in law on procedure done. If we do it on this procedure, maybe we need to do it on all procedures.

C. Dobson: In one sense, (inaudible) with the abortion law, no. An abortion is different. It's different for the women involved, it's different in many respects.

Rep. Potter: Many issues that women deal with.

Rep. Damschen: Do you see potential if this bill becomes law, any harm to a woman seeking an abortion?

C. Dobson: She can get more information and make a better informed decision.

Rep. Conrad: Do you see forcing court to make decision (inaudible)?

C. Dobson: In this area of law, depends. If this language continues to be challenged (inaudible).

Rep. Conrad: We could end up case here if SD has a court case.

C. Dobson: Every abortion case can be (inaudible).

Susan Lund, Director of New Life Pregnancy Care Center: Testified in support. Told of her story of getting an abortion. She was not informed. I was told it was a blob of tissue just like a period and no big deal and I fell for that lie. We are doing a major disservice to our young women who are not fully informed. To Rep. Potter's question, my procedures that were done were explained well. We are a pro-life organization, but because abortion is legal that is a girl's right and we don't twist arms and we just try to be very gentle and love them through whatever they are going through. We offer anything we can with tangible means to help them. I have had a couple of girls come to me who went through with their abortion and they have regretted it. Some will and some won't, but the post abortion counseling that I have done and it is much like post dramatic stress syndrome from a war. They said they were not given all of the facts. Planned parenthood is a big provider of abortion and it is a million dollar business. It is about making money, so why would they want to tell the young girl or woman that this is a baby from moment of conception. Scientists say that life begins at conception. We need to put language in this bill so girls and woman are told exactly what is going to happen.

Rep. Conrad: Where did you have abortion?

Susan Lund: A hospital in Minnesota.

Rep. Conrad: You really didn't know that was a child?

Susan Lund: Was told life doesn't begin until birth. I asked a minister's wife said she didn't know when life begins.

Rep. Conrad: We are legislating a definition and religious perspective.

Susan Lund: I don't think it is a religious perspective at all. I don't think it has anything to do with religion. It has to do with the definition and when a woman goes to the abortion clinic, that she should be told this is a baby. I still have girls coming in after an abortion and they weren't told they are having a baby.

Stacey Pfliiger, Legislative Director of ND Right to Life Association: Testified in support.
See Testimony #3.

Janne Myrdal, Director for Concerned Women of ND: Testimony handed out by Stacey Pfliiger for Janne Myrdal. **See Testimony #4.**

OPPOSITION:

Tim Stanley, representing Planned Parenthood: Testified in opposition: **See Testimony #5.**

Rep. Nathe: You talked about bias counseling measures. Explain that to me.

Tim Stanley: I would have testified against the original bill as well. Planned Parenthood does not believe in a cookie cutter approach to informed consent. Informed consent is someone who is fully participating in decisions about their healthcare.

Rep. Nathe: What I'm looking for is an example of the bias. I read this and it seems pretty straight forward to me. I don't see where the bias is.

Tim Stanley: In these laws they are requiring again a cookie cutter approach to informed concerned. A woman who has a planned pregnancy, goes desperately wrong, still has to be read and shown photographs and read a bias script.

Rep. Damschen: Do you think the law is in error now that the law holds the woman responsible for protection of the child she is carrying? We've had a couple of cases where women have gotten in trouble with the law because they have carried on activities while pregnant that could endanger the fetus?

Tim Stanley: I'm not familiar with the law in ND regarding, I remember a case, but I'm not in a position to judge.

Rep. Damschen: I'm not asking you to judge, doesn't that conflict with what you are saying here?

Tim Stanley: I don't know enough about the case to be able to (inaudible) about it.

Rep. Damschen: Well I'll explain it just a little. The case is that a woman is pregnant and she is carrying a child and she's abusing drugs which is determined to be putting the child she is carrying at risk. Got that? Is that wrong the law supporting that in your opinion?

Tim Stanley: In opinion of the planned parenthood and the organization I represent and all people who believe in a woman's choice, the woman has got to be the one who makes the final determination about her life and all of her pregnancy options. We believe she's got the intelligence and integrity and the judgment to make her own reproductive decisions.

Rep. Damschen: You want her to be well informed when she makes that decision.

Tim Stanley: We want women to be completely (inaudible) decisions and there is no proof they are not getting all that information (inaudible). The medical association and physicians back this up that bias counseling laws, laws like this, go against their best interest as physicians, that there should be no cookie cutter approach to informed consent.

Rep. Damschen: With all that in mind, who decides what common sense public policy solutions are and what is a healthier and brighter future?

Tim Stanley: I would appeal to the citizens of this state and legislature to pass proactive legislation that would give women more access to health care (inaudible) to make safe and healthy choices for their lives.

Renee Stromme, Executive Director to ND Women's Network: Testified in opposition. **See Testimony #6.**

Rep. Damschen: What do you see in this bill, that could possibly harm a woman considering abortion?

Renee Stromme: This statement says, you are murdering.

Rep. Damschen: I think the failure to comprehend is what we heard in previous testimony. That women who have had an abortion, afterwards realize it was more serious than they thought at the time. I'm hard pressed understanding why having more information is a deterrent.

Renee Stromme: I don't agree (inaudible) they are getting a lot of information from the law that requires gestation period.

Rep. Frantsovog: Are requiring too much information we are giving them now?

Renee Stromme: Yes, the list is too long.

Rep. Porter: How many members in your organization?

Renee Stromme: Over 200.

Rep. Nathe: You say it is an overload of information for the ladies, the list being too long. Isn't that the same information they can find on the internet?

Renee Stromme: They take the time to do that on the internet. Multitude of information not helpful.

Rep. Conrad: I believe you said this is political information in bill is that correct?

Renee Stromme: I believe there is disagreement about that.

Rep. Damschen: Do you feel our current law that supports the unborn child when the mother engaging in destructive behavior, is wrong?

Renee Stromme: Decision hasn't been made if she can be charged.

Rep. Damschen: You are aware of where some women have been killed and the fetus has died and they have been charged with double murders around the country?

Renee Stromme: Am aware, but gets into discussion of third party or the pregnant woman.

Rep. Damschen: I have more of a comment. I don't understand whether a third party or mother takes the life, whether that would decide if the fetus is a human being or not. I need that explained.

Renee Stromme: I believe that's where the divide happens. Very little agreement. We need to get to a place where we are making abortions unnecessary and that means supporting the women, making family planning more available.

Rep. Conrad: Do you believe this bill will interfere with the morning after pill?

Renne Stromme: Actually the morning after pill stops fertilization, therefore it is not causing an abortion.

Tom Six, principal of Tappen school: Testified in opposition.

Rep. Damschen: What's danger of making sure that women are informed?

Tom Six: Can't believe they are not informed. The doctor gives you information when doing a procedure.

Rep. Damschen: They have malpractice concerns that's why you are well informed when you see the doctor. This is different. Women seeking abortion goes to abortion clinic and they may not tell women the information. That is a reality we have to deal with. I don't think they are being informed of everything of everything they need to be informed of.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1445

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 10, 2009

Recorder Job Number: 9112

Committee Clerk Signature

Licky Crabtree

Minutes:

Chairman Weisz: Let's take up HB 1445.

Rep. Conrad: Motion a DO NOT PASS.

Rep. Potter: Second.

Rep. Damschen: I'm going to resist this motion. The testimony we heard, no one stated they were actually telling the clients this information. It was implied everyone knows it, but the information is available. Compare with buying a used car. You take the car to a mechanic and have him go over it find out everything about it and if you don't do that, you wouldn't know what was wrong. You are taking the word of the salesman and people that are in business are reputable, but don't always share all the information that will discourage business. From that perspective, the bill has warrant. What is the very worst thing that could result from passage of this bill? Even if one young woman could be spared the guilt of having had an abortion and not being totally informed, wouldn't it be worth passing this bill?

Rep. Conrad: Where I have difficulty with this bill is on the first page on line 14 and 15, "the entire embryonic and fetal ages from fertilization to full gestation." To talk about that is a religious discussion.

Rep. Holman: In agreement, this is the only part that really bothers me. Wonder about legal ramifications.

Rep. Damschen: This conforms with the law that is implied. In one case it was ironic where a woman was facing prosecution because her behavior was endangering her unborn child and she went and had an abortion and there were no charges. Really hard for me to understand. This puts the definition in line with what we are assuming. Just because you terminate a pregnancy that it was less than a child then if you were being reckless in your lifestyle and endangering the unborn child.

Roll Call Vote for a DO NOT PASS: 8 yes, 5 no, 0 absent.

MOTION FAILED.

Rep. Hofstad: Motion for a DO PASS.

Rep. Nathe: Second.

Roll Call Vote: 8 yes, 5 no, 0 absent.

MOTION CARRIED ON A DO PASS.

BILL CARRIER: Rep. Damschen.

Chairman Weisz:

Date: 2-10-09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1445

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Rep. Conrad Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ		✓	REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN		✓	REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG		✓	REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM		✓			

Total (Yes) 5 No 8

Absent 0

Bill Carrier _____

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

motion failed

Date: 2-10-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1445

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Hofstad Seconded By Rep. Nathe

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN		✓
VICE-CHAIR VONNIE PIETSCH		✓	REP. KARI L CONRAD		✓
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN		✓
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER		✓
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 8 No 5

Absent 0

Bill Carrier Rep. Damschen

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

Motion Carried
DO PASS

REPORT OF STANDING COMMITTEE

HB 1445: Human Services Committee (Rep. Welsz, Chairman) recommends DO PASS
(8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1445 was placed on the
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1445

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1445

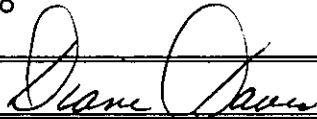
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 11018

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the requirements of informed consent to abortion.

Representative Damschen - Introduces the bill. He says section one defines human beings as an individual living member of the species of homo sapiens including the unborn human being during its entire embryonic and fetal ages from fertilization to gestation. It requires that a woman considering abortion be informed that the abortion will terminate the life of a whole separate unique living human being. This does not limit or prohibit abortion but it does require that a woman considering it be fully informed. He explains this will not stop all abortions. He asks for a do pass.

Senator Fiebiger – Asks why do we need a human definition now when this has been around many years.

Rep. Damschen – Responds that women being in a stressful situation is probably not informed or aware of the magnitude of the decision she is making. Later on they are remorseful.

Senator Fiebiger – Asks if he is aware of the information that is provided to women before the abortion.

Rep. Damschen – Said he is aware of some information they have provided but hasn't personally witnessed it.

Christopher Dodd – Director of ND Catholic Conference – See written testimony.

Janne Myrdal – Director for Concerned Women for America of ND – See written testimony.

Terri Melby – She relates her own experience with abortion. Currently she works with women with after effects of abortion or post-abortion trauma or post-abortion syndrome. It is her experience that all women suffer from some post-abortion trauma.

Stacey Pflieger – Legislative Director of the ND Right to Life Association – See written testimony.

Tom Freier – ND Family Alliance – See written testimony.

Senator Nething – Asks him when we passed the current law in especially the informed consent portion, do you recall why this was not included at that time.

Freier – States, over the past years the understanding scientifically and medically has grown and brought this issue to life. In the past there was some uncertainty about it and this was taken care of by a law in 2005 in SD.

Senator Nething – Asks him if this is the same language as the SD law.

Maria Lancaster – Snoqualmie, WA – See written testimony.

Senator Nething – Asks when you freeze an embryo, are you not stopping life as well.

Lancaster – Replies, they are freeze dried and frozen in the form of suspended animation, they are still living. They can be killed in the freezing process and cannot be revived.

Senator Schneider – Asks if she knows how many frozen embryos are out there.

Lancaster – Said a study suggests there is between 400,000 and 500,000. 89% are saved for future family building.

Senator Schneider – Asks her what the “shelf life” is for embryos.

Lancaster – She says there is a boy in Washington that was in the freezer for 11 years. Embryos can now be frozen indefinitely.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1445

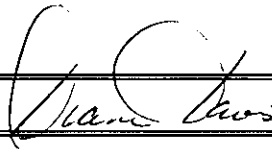
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 4/1/09

Recorder Job Number: 11589

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

Senator Lyson motions do pass

Senator Olafson seconds

Committee discussion

Senator Nelson says she has a problem with this bill; she doesn't have a problem with informed consent but does have a problem with the definition in the bill.

Senator Schneider agrees with the informed consent laws but doesn't think anyone who undergoes this type of procedure takes it lightly. He doesn't think a victim of rape or incest should have to be told they are ending a life or human being, it would add to an already difficult situation.

Vote do pass – 3 yes, 2 no, 1 absent

Senator Olafson will carry.

Date: 4/1
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

AB 1445

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Olson Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger		
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson		X
Sen. Stanley W. Lyson	X		Sen. Mac Schneider		X

Total (Yes) 3 (N) 2

Absent 1

Floor Assignment Sen. Olafson

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

REPORT OF STANDING COMMITTEE

HB 1445: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1445 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1445



North Dakota FAMILY ALLIANCE

DEDICATED TO STRENGTHENING FAMILIES

A Trusted Voice

#1
Tom D Freier
EXECUTIVE DIRECTOR

House Human Service Committee

HB 1445

February 9th, 2009

Mr. Chairman, and members of the House Human Services Committee, I am Tom Freier and represent the North Dakota Family Alliance, and am here to testify in favor of HB 1445.

The North Dakota Family Alliance works to protect the life of the unborn, and at the same time taking into account the well being of the mother. This bill addresses the best interests of both the pregnant woman and the baby.

If during a pregnancy, an abortion is being considered, the woman needs all the information available to make the most informed decision possible. As was shared during the testimony on HB 1371, regarding the benefit of an ultrasound being offered, the medical procedure being contemplated requires full disclosure.

The nature of the medical procedure requires the physician or agent to disclose all the facts necessary for an informed decision to be made. This disclosure includes: the name of the physician, the medical risks, risks of infection, infertility, the probable gestation age of the unborn child, medical assistance benefits, obligations of the father, and information on alternatives to abortion.

One important statement is missing from the provided list of information disclosed. It is the statement found in this legislation, HB 1445, 'the abortion will terminate the life of a whole, separate, unique, living human being'. The pregnant woman has a unique relationship with this separate, living human being, the unborn. If the decision is made to go forward with the abortion, that relationship will be severed and terminated, permanently.

It is this permanent termination of a relationship, and the potential consequences, not only to the unborn, but to the mother and her family, which requires complete and full disclosure to make the most informed decision. As others share testimony from entirely unique perspectives, let me close as I began. This bill addresses the best interests of the pregnant woman and the baby.

Thank you for your time, and please support HB 1445 with a 'Do Pass'.

#2



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 1445 -- Informed Consent Before Abortion
Date: February 9, 2009

House Bill 1445 does one thing and has one purpose.

House Bill 1445 requires that before a woman consents to an abortion she is informed that [t]he abortion will terminate the life of a whole, separate, unique, living human being," with "human being" meaning "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."

It is a statement of scientific fact and nothing else. It does not restrict abortion. It does establish rights for the unborn. It does constitute a statement of opinion or ideology. It does not equate "human being" with "personhood."

The United States Court of Appeals for the Eighth Circuit, which includes North Dakota, has recognized this fact when reviewing the exact same language from a statute enacted in South Dakota. For its part, the state of South Dakota relied on testimony that the term "human being" was accurate because:

Becoming a member of our species is conferred immediately upon conception. At the moment of conception a human being with 46 chromosomes comes into existence. These chromosomes, the organization, the chromosomal pattern is specifically human. The RNA, the messenger protein, the proteins are distinctly human proteins. So this new human being is a member of our species, and humanity is not acquired sometime along the path, it occurs right at conception.¹

The court further noted the scientific accuracy and limited effect of the statute:

¹ Testimony by Marie Peeters-Ney, M.D. Dr. Peeters-Ney also stated that an embryo or fetus is whole in the sense that "[a]ll the genetic information sufficient and necessary to mature, and the information that is needed for this human being's entire life is present at the time of conception"; that it is "separate from the mother" because "[t]he genetic program is totally complete and this human being will mature according to his or her own program"; and that it is unique because it has "a totally unique genetic code." *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, (8th Cir. U.S. Court of Appeals Case No: 05-3093.)

The State augmented the points raised in the legislative history with eight affidavits from medical experts and eight from women who had undergone abortions or worked at crisis pregnancy centers. For example, David Fu-Chi Mark, Ph.D., a molecular biologist employed in the pharmaceutical industry, stated that the Act's definition of "human being" as an "individual living member of the species *Homo sapiens*," including human beings living in utero, makes it clear that the statement under [§ 7(1)(b)] is stated as a scientific fact and nothing more. As such, it is truthful and scientifically accurate." [citation.] The affidavit described in detail the DNA and RNA science supporting the accuracy of the statement. Similarly, Bruce Carlson, M.D., Ph.D., a professor of medicine and author of a widely used textbook on human embryology, stated that "[t]he post implantation human embryo is a distinct individual human being, a complete separate member of the species *Homo sapiens*, and is recognizable as such."

Accordingly, the court rejected claims that requiring disclosure of this scientific information compelled communication of an ideological or philosophical opinion.

House Bill 1445 has one purpose -- to ensure that a woman has truthful, non-misleading information relevant to her decision to have an abortion.

The state's legitimate interest in requiring disclosures to ensure informed consent is well-established. In *Planned Parenthood of Southeast Pennsylvania v. Casey*, the U.S. Supreme Court held that requiring disclosing of such information "furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." 505 U.S. 833, 882 (1992). More recently, in *Gonzales v. Carhart*, the Supreme Court reaffirmed that "the State has a significant role to play in regulating the medical profession" and that "[t]he government may use its voice and its regulatory authority to show its profound respect for the life within the woman." 550 U.S. 124, 127 S. Ct. 1610, 1633 (2007).

Citing *Casey* and *Gonzales*, the Eighth Circuit concluded that the exact the same language used in House Bill 1445 is a legitimate conveyance of truthful and non-misleading information relevant to a patient's decision to have an abortion. Indeed, the court noted that the biological information about the fetus is at least as relevant to the patient's decision to have an abortion as

the gestational age of the fetus, which was deemed relevant in *Casey* and is already a part of North Dakota's statute.

Abortion terminates the life of a whole, separate, unique, living human being. People can debate the *morality* of abortion, but it does not change what abortion *is* in the factual sense. Women deserve to know the facts about abortion. House Bill 1445 helps ensure that women receive all the factual information that may be relevant to their decision.

We request a **Do Pass** recommendation on House Bill 1445.



#3
Same given
to Senate.

Testimony before the HOUSE HUMAN SERVICES COMMITTEE
House Bill 1445
February 9, 2009

Chairman Weisz, members of the committee, I am Stacey Pfliiger, Legislative Director of the North Dakota Right to Life Association. I am here today in support of HB 1445 relating to the requirements of informed consent to abortion.

HB 1445 is about empowering women to have all of the facts and details of their decision: an informed choice. Just like women are informed of:

- the name of the physician who will perform the abortion;
- the medical risks associated with the abortion procedure;
- the gestational age of the unborn child at the time of the abortion; and
- the medical risks associated with carrying the child to term.

Women should also be informed that the abortion will terminate the life of a whole, separate, unique, living human being.

With today's intelligent, information savvy women, we need to continue to support her right to make an informed decision. I urge the committee to give HB 1445 a **DO PASS** recommendation.

Thank you for the opportunity to testify today. I would be happy to answer any questions the committee may have.

#5



Planned Parenthood®

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Testimony House Bill 1445
House Human Services Committee
February 9, 2009

Chairman Weisz, members of the Human Services committee, I am Tim Stanley, the Senior Director of Government and Public Affairs for Planned Parenthood Minnesota, North Dakota, South Dakota. Thank you for the opportunity to present testimony in opposition of House Bill 1445.

For more than 80 years, Planned Parenthood has worked in our region to make sure all people have the information and the means to decide freely and responsibly whether and when to have children. Planned Parenthood is also committed to providing women with medically accurate scientific information about their reproductive health. Biased counseling measures such as House Bill 1445 are an example of the government forcing political ideology into the doctor patient relationship. Women depend on their doctors to provide them with accurate, scientific information that is in the best interest of their health and safety. HB 1445 will do nothing to protect women's health and well-being. Instead, this bill brings divisive politics into the doctor's office.

In short, HB 1445 is about interference, not information and we are hopeful that the committee will see the bill for what it is: government interference in personal decisions best left between women and their doctors.

Please give HB 1445 a DO NOT PASS recommendation

Planned Parenthood believes strongly that decisions surrounding reproductive health care are best left to women, families and their doctors, and we oppose the existing anti-choice provisions in Section 14-02.1-02; moreover, I am here today to oppose the additions to North Dakota century code being proposed in House Bill 1445.

This bill, which proposes additions to an existing anti-choice statute, falls well short of what the women of North Dakota really need: common sense public policy solutions that help them plan healthier, brighter futures and give them access to the health care they need to do just that. House Bill 1445 does nothing to prevent unintended pregnancies, reduce the need for abortion or advance women's health.

This bill doesn't help one woman prevent even one unintended pregnancy, nor does it do anything to reduce the need for abortion in North Dakota. It's time for some common sense public policy, not more government intrusion into personal decisions best left between women and their doctors.

Planned Parenthood is absolutely committed to giving women the information and services they need to stay safe and healthy and helping women avoid unintended pregnancy; it is the core of our mission. We devote significant resources to educating women about contraception and their contraceptive options. Family planning is no easy task. Indeed, a typical woman spends roughly five of her childbearing years trying to become pregnant or being pregnant, and an additional THIRTY years trying to AVOID pregnancyⁱ.

The overwhelming majority of women in this country attempt to control their fertility by using contraception. The CDC describes contraceptive use as "virtually universal among women of reproductive age."ⁱⁱ And 98% of sexually active American women have used a contraceptive method at some time.ⁱⁱⁱ

Planned Parenthood along with our thousands of North Dakota supporters encourages efforts to protect the health of and provide services to women in need in our communities. Bills like SB 2283, which increases income eligibility limits under Medicaid for pregnancy related care would provide women and families with limited income access to prenatal care, which is imperative to ensuring healthy pregnancies, healthy women and healthy children.

Rather than passing laws that do nothing to reduce the need for abortion, elected officials should stop playing politics and address the issues that lead to unintended pregnancy in the first place – such as insufficient access to family planning services. Only by focusing on preventing unintended pregnancy will the need for abortion in North Dakota be reduced.

Please give HB 1445 a DO NOT PASS recommendation

Tim Stanley
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tstanley@ppmns.org

ⁱ The Alan Guttmacher Institute (AGI), *Hopes and Realities: Closing the Gap Between Woman's Aspirations and Their Reproductive Experiences*, New York: AGI (1995): 39; and AGI, *Fulfilling the Promise: Public Policy and U.S. Family Planning Clinic*. New York: AGI (2000): 44.

ⁱⁱ Mosher WD et al., Use of contraception and use of family planning services in the United States: 1982-2002, *Advance Data from Vital and Health Statistics*, 2004, No. 350, p.1.

ⁱⁱⁱ Heather D Boonstra, et al., *Abortion in Women's Lives*. New York: AGI (2006): 6.



House Human Services Committee

HB 1445

February 9, 2009

Chairman Weisz and members of the House Human Services Committee, my name is Renee Stromme. I am the Executive Director of the North Dakota Women's Network. We are a statewide organization whose mission is to improve the lives of women through communication, legislation and increased public activism. We are a membership based organization with members in all areas of the state. Thank you for the opportunity to speak on HB 1445.

I stand here to testify in opposition to HB 1445, which would add an additional statement to the informed consent language told to a woman before she consents to an abortion. The North Dakota Women's Network believes everyone should have relevant medical information prior to all medical procedures. As more and more peripheral and political information is given to a patient, the relevant gets lost in the process.

24 hours prior to an abortion, a woman is given a laundry list of information – both factual medical information and political opinion information. As that list grows ever longer, you run the likely risk that a patient may well fail to comprehend and consider the information that is most relevant to her situation. I encourage this committee to consider if adding more language to informed consent will result in making the totality of informed consent ineffectual.

The North Dakota Women's Network asks for a **do not pass** on HB 1445 as we believe informed consent should not get bogged down with political rhetoric but instead stay focused on relevant medical information. We want women and patients to truly give informed consent from a position of understanding.

Thank you for your time and I stand for questions.

Renee Stromme
Executive Director

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AS LEADERS, THE NORTH DAKOTA WOMEN'S NETWORK WILL SERVE AS THE CATALYST FOR IMPROVING THE LIVES OF WOMEN THROUGH LEGISLATION, COMMUNICATION AND INCREASED PUBLIC ACTIVISM.

Attachment 1

HB 1445

To: Senate Judiciary Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1445 -- Informed Consent Before Abortion
Date: March 16, 2009

House Bill 1445 does one thing and has one purpose.

House Bill 1445 requires that before a woman consents to an abortion she is informed that [t]he abortion will terminate the life of a whole, separate, unique, living human being," with "human being" meaning "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."

It is a statement of scientific fact and nothing else. It does not restrict abortion. It does not establish rights for the unborn. It does not constitute a statement of opinion or ideology. It does not equate "human being" with "personhood." It does not impact any statutes other than Section 14-02.1-02 of the North Dakota Century Code, which is the abortion informed consent statute.

The United States Court of Appeals for the Eighth Circuit, which includes North Dakota, has already reviewed identical language from a statute enacted in South Dakota. The court found that South Dakota appropriately relied on evidence that the term "human being" was accurate because:

Becoming a member of our species is conferred immediately upon conception. At the moment of conception a human being with 46 chromosomes comes into existence. These chromosomes, the organization, the chromosomal pattern is specifically human. The RNA, the messenger protein, the proteins are distinctly human proteins. So this new human being is a member of our species, and humanity is not acquired sometime along the path, it occurs right at conception.¹

The court further noted the scientific accuracy and limited effect of the statute:

The State augmented the points raised in the legislative history with eight affidavits from medical experts and eight from women who had undergone abortions or worked at crisis pregnancy centers. For example, David Fu-



Representing the Diocese of Fargo
and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

Chi Mark, Ph.D., a molecular biologist employed in the pharmaceutical industry, stated that the Act's definition of "human being" as an "individual living member of the species *Homo sapiens*," including human beings living in utero, makes it clear that the statement under [§ 7(1)(b)] is stated as a scientific fact and nothing more. As such, it is truthful and scientifically accurate." [citation.] The affidavit described in detail the DNA and RNA science supporting the accuracy of the statement. Similarly, Bruce Carlson, M.D., Ph.D., a professor of medicine and author of a widely used textbook on human embryology, stated that "[t]he post implantation human embryo is a distinct individual human being, a complete separate member of the species *Homo sapiens*, and is recognizable as such." (*Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, (8th Cir. U.S. Court of Appeals Case No: 05-3093. p. 7)

Notably, the plaintiffs Planned Parenthood of Minnesota, North Dakota, and South Dakota conceded the scientific accuracy of the statutory language, submitting no evidence to dispute the statement's accuracy.² The court also rejected claims that requiring disclosure of this scientific information compelled communication of an ideological or philosophical opinion.³

House Bill 1445 has one purpose -- to ensure that a woman has truthful, non-misleading information relevant to her decision to have an abortion.

The state's legitimate interest in requiring disclosures to ensure informed consent is well-established. In *Planned Parenthood of Southeast Pennsylvania v. Casey*, the U.S. Supreme Court held that requiring disclosing of such information "further the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." 505 U.S. 833, 882 (1992). More recently, in *Gonzales v. Carhart*, the Supreme Court reaffirmed that "the State has a significant role to play in regulating the medical profession" and that "[t]he government may use its voice and its regulatory authority to show its profound respect for the life within the woman." 550 U.S. 124, 127 S. Ct. 1610, 1633 (2007).

Citing *Casey* and *Gonzales*, the Eighth Circuit concluded that the exact the same language used in House Bill 1445 is a legitimate conveyance of truthful and non-misleading information

relevant to a patient's decision to have an abortion. Indeed, the court noted that the biological information about the fetus is at least as relevant to the patient's decision to have an abortion as the gestational age of the fetus, which was deemed relevant in *Casey* and is already a part of North Dakota's statute.

Abortion terminates the life of a whole, separate, unique, living human being. People can debate the *morality* of abortion, but it does not change what abortion *is* in the factual sense. A woman considering abortion deserves to know this fact. House Bill 1445 helps ensure that women receive *all* the factual information that may be relevant to their decision.

We request a **Do Pass** recommendation on House Bill 1445.

¹ Testimony by Marie Peeters-Ney, M.D. Dr. Peeters-Ney also stated that an embryo or fetus is whole in the sense that "[a]ll the genetic information sufficient and necessary to mature, and the information that is needed for this human being's entire life is present at the time of conception"; that it is "separate from the mother" because "[t]he genetic program is totally complete and this human being will mature according to his or her own program"; and that it is unique because it has "a totally unique genetic code." *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, (8th Cir. U.S. Court of Appeals Case No: 05-3093.)

² "The State's evidence suggests that the biological sense in which the embryo or fetus is whole, separate, unique and living should be clear in context to a physician, cf. *Gonzales*, 127 S. Ct. at 1627 ("[B]y common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb."), and *Planned Parenthood* submitted no evidence to oppose that conclusion." *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, (8th Cir. U.S. Court of Appeals Case No: 05-3093.)

³ "[T]he Act, when read in light of the nonmisleading statutory definition of "human being," does not require a physician to address whether the embryo or fetus is a "whole, separate, unique" "human life" in the metaphysical sense." *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, (8th Cir. U.S. Court of Appeals Case No: 05-3093.)

Beverly LaHaye
Chairman



Attachment 2
AB 1445

Same given
to House.

HB1445 Senate Judiciary Committee- March 16th, 2009

Good morning Mr. Chairman and Members of the Committee. My name is Janne Myrdal, and I am the state director for Concerned Women for America of North Dakota.

We urge you to support HB1445. We believe it is of vital importance to empower women in crisis pregnancies to make **an informed choice** about whether or not to end the life of their unborn child.

We believe offering a woman seeking an abortion the information stated in this bill is an act of compassion, empowering the woman with the information and scientific facts of the abortion procedure and its full consequences. It is well documented that uninformed choices have led countless post-abortion women to suffer devastating psychological, physical, spiritual, and emotional consequences for the rest of their lives. I have personally visited with many of these women during the 20 or so years of my work in Crisis Pregnancy Centers, and none of them has ever expressed the idea that they were given enough information as they sought an abortion. On the contrary, the whole procedure seemed shrouded in secrecy. It is a sad fact that these women may have altered their decision if complete information would have been given them before the abortion was performed.

It is standard medical practice to have people read and sign an informed consent form upon any surgical procedure, as well as has the procedure explained in detail so they are fully informed. Currently, abortionists are not allowing or volunteering the information listed clearly in HB1445 to women seeking their services. It is the only medical procedure done, where the person does not have the full scientific and medical informed consent applied. We believe that it is every woman's right to know that she is carrying a living, developing human being.

I would like to read a couple of brief quotes from the United States Supreme Court decisions regarding informed consent:

From *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976): **The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences."**

And from *Planned Parenthood v. Casey*, 505 U.S. 833, 822 (1992): **In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.**

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

Beverly LaHaye
Chairman



Whether you support a woman's right to choose or not, you should support her right to give a fully informed consent and thereby make a fully informed choice. Women have a right to have all the information the doctor has. There is no argument to be won here of government intrusion, nor undue duress, just good medical practice as is applied to any other procedure. **An uninformed choice is really no choice at all.** Again, I urge your support of this common sense and pro-woman bill.

Sincerely,

Janne Myrdal
State Director

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

PO Box 213, Park River, ND 58270
Phone: (701) 331-0946 E-mail: director@northdakota.cwla.org



North Dakota
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DEDICATED TO STRENGTHENING FAMILIES

A Trusted Voice

*Attachment 4
HB 1445*

Tom D Freier
EXECUTIVE DIRECTOR

Senate Judiciary Committee

HB 1445

February 16th, 2009

Mr. Chairman, and members of the Senate Judicial Committee, I am Tom Freier and represent the North Dakota Family Alliance, and am here to testify in favor of HB 1445.

The North Dakota Family Alliance works to protect the life of the unborn, and at the same time taking into account the well being of the mother. This bill addresses the best interests of both the pregnant woman and the baby.

If during a pregnancy, an abortion is being considered, the woman needs all the information available to make the most informed decision possible. Current law in the 'Abortion Control Act' defines 'informed consent' as voluntary consent to the abortion by the woman.

The nature of the medical procedure requires the physician or agent to disclose all the facts necessary for an informed decision to be made. This disclosure includes: the name of the physician, the medical risks, risks of infection, infertility, the probable gestation age of the unborn child, medical assistance benefits, obligations of the father, and information on alternatives to abortion.

The disclosure criteria in the 'Abortion Control Act' reflects the tenor of the existing code, and the importance of the information to be shared with the woman.

One important statement is missing from the provided list of information disclosed. It is the statement found in this legislation, HB 1445, 'the abortion will terminate the life of a whole, separate, unique, living human being'. The pregnant woman has a unique relationship with this separate, living human being, the unborn. If the decision is made to go forward with the abortion, that relationship will be severed and terminated, permanently.

It is this permanent termination of a relationship that carries with it an extremely high level of importance, which requires complete and full disclosure to make the most informed decision. And the language in this bill provides this necessary disclosure.

Thank you for your time, and please support HB 1445 with a 'Do Pass'.

Jeff and Maria Lancaster's Embryo Adoption Story

Attachment 5
#B 1445

The Lancaster Family

4445 382nd Ave SE, Snoqualmie, WA 98065

206-391-5042 cell adoptanembryo.net email

My daughter Elisha (5) I took the train from Seattle on Friday to be with you today. We hope our story can help the good people of North Dakota be informed as possible when deciding on matters concerning the issues of abortion and when the life of a human being begins.

Like millions of American families, my husband and I struggled with the pain of infertility. I did manage to get pregnant with out the help of doctors twice but both pregnancies ended in miscarriages. Our doctor told us we were "done", mostly because I have crossed over into the "40's". Then by a miracle at 46, I got pregnant. A few weeks later, we lost that child too. We were deeply disappointed, now all hope of ever having children evaporated.

Then one day not long after, my husband heard a radio interview on Doctor James Dobson's show with a woman, Marlene Strege that gave birth to a child, Hannah, by adopting another couples embryos. Jeff came home and told me about it and I called the adoption agency, Nightlight Christian Adoptions, in Fullerton, CA. The embryo adoption program is called the "Snowflake" Program.

We anxiously waited for the information to come in the mail. We filled out all the forms, wrote letters, sent pictures of our family, prayed, and waited to be matched with a family that wished for us to carry their son's sibling. It took some time and we learned patience.

We were matched with a family of very similar background and values. We knew right away that they were the family that would be part of our lives. They sent us pictures, and wrote us letters, so we could know more about them and the reasons they made the decision to donate their excess embryos to our family.

Finally, the day arrived, the frozen embryos were shipped fed ex across the nation to my doctor's office. Soon after that, 2, 8 cell embryos were transferred to my womb under the care of a fertility specialist. We waited for several days and to our great joy found out, I was pregnant! Nine moths later, I delivered a beautiful baby girl, Elisha.

Every frozen embryo is a human life! Every one has a destiny! Our hope and prayers are that more couples will learn of this wonderful gift, made possible by wonderful couples willing to share their joy and life with another family Embryo Adoption Service of Cedar Park to facilitate frozen embryos being adopted into a loving family. www.adoptanembryo.net It is one of the greatest gifts of love that there is. We are so grateful to the family that helped us bring Elisha into this world.

Every embryo is a unique human being, from the moment of conception. Eye color, hair, gender, all talents, gifts and destiny are fully created, just waiting to unfold. Thank you for giving me the opportunity to share my testimony today.



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Testimony House Bill 1445
Senate Judiciary Committee
March 16, 2008

Mr Chairman, members of the Judiciary Committee, my name is Tim Stanley and I am the Senior Director of Government and Public Affairs for Planned Parenthood Minnesota, North Dakota, South Dakota. Thank you for the opportunity to present testimony in opposition to House Bill 1445.

For more than 80 years, Planned Parenthood has worked in our region to make sure all people have the information and the means to decide freely and responsibly whether and when to have children. Planned Parenthood is committed to providing women with medically accurate scientific information about their reproductive health. Biased counseling measures such as House Bill 1445 are an example of the government forcing political ideology into the doctor patient relationship. Women depend on their doctors to provide them with accurate, scientific information that is in the best interest of their health and safety. HB 1445 will do nothing to protect women's health and well-being. Instead, this bill brings divisive politics into the doctor's office.

In short, HB 1445 is about interference, not information and we are hopeful that the committee will see the bill for what it is: government interference in personal decisions best left to women and their doctors.

Planned Parenthood believes strongly that decisions surrounding reproductive health care are best left to women, families and their doctors, and we oppose the existing anti-choice provisions in Section 14-02.1-02; moreover, I am here today to oppose the additions to North Dakota century code being proposed in House Bill 1445.

This bill, which proposes additions to an existing anti-choice statute, falls well short of what the women of North Dakota really need: common sense public policy solutions that help them plan healthier, brighter futures and give them access to the health care they need to do just that.

House Bill 1445 does nothing to prevent unintended pregnancies, reduce the need for abortion or advance women's health.

This bill doesn't help one woman prevent even one unintended pregnancy, nor does it do anything to reduce the need for abortion in North Dakota. It's time for some common sense public policy, not more government intrusion into personal decisions best left between women and their doctors.

Planned Parenthood is absolutely committed to giving women the information and services they need to stay safe and healthy and helping women avoid unintended pregnancy; it is the core of our mission. We devote significant resources to educating women about contraception and their contraceptive options. Family planning is no easy task. Indeed, a typical woman spends roughly five of her childbearing years trying to become pregnant or being pregnant, and an additional THIRTY years trying to AVOID pregnancyⁱ.

The overwhelming majority of women in this country attempt to control their fertility by using contraception. The CDC describes contraceptive use as "virtually universal among women of reproductive age."ⁱⁱ And 98% of sexually active American women have used a contraceptive method at some time.ⁱⁱⁱ

Rather than passing laws that do nothing to reduce the need for abortion, elected officials should stop playing politics and address the issues that lead to unintended pregnancy in the first place – such as insufficient access to family planning services. Only by focusing on preventing unintended pregnancy will the need for abortion in North Dakota be reduced.