

2009 HOUSE HUMAN SERVICES

HB 1572

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1572

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 10, 2009

Recorder Job Number: 9064

Committee Clerk Signature

*Ticky Crabtree*

Minutes:

**Chairman Weisz called hearing to order on HB 1572.**

**Rep. Ruby from District 49 sponsored and introduced bill:** The purpose of this bill is recognize every human being as a person, protected and granted the rights of the constitution of the U.S. Each person including in the womb has its own separate DNA. This language establishes personhood for this person.

**Chairman Weisz:** Question on Section 2, explain "one or more its members (inaudible) defend this act. Could you explain the rationale behind that?"

**Rep. Ruby:** I'll defer that.

**Rep. Conrad:** Checked with some of the assembly members who have been here for a number of years and they have never seen this before. Did you come up with it? (Inaudible).

**Rep. Ruby:** No, legislative assembly will appoint one or more members. From my standpoint this is the language someone else will have to come up and explain what the intent to that is. There are provisions under Roe vs Wade stated that if it is ever determined that the fetus is a natural human being then the justification to allow abortion will be challenged or in jeopardy. That is what this is trying to do.

**Rep. Conrad:** Attorney General Stenehjem (inaudible) constitutions represent us. Why do we (inaudible). Why are we doing this?

**Rep. Ruby:** It's about the only way to get around or not have the Attorney General, but this establishes the legislative assembly would have power to recognize we are going to defend this code. Someone else will probably get up and give a much clearer answer to this language. It's my intention and understanding that if this is challenged on a national level, the state of ND will be defending the law that we passed and that would be the Attorney General defending that.

**Daniel Woodard, lobbyist for ND Life League:** Testified in support. **See Testimony #1.**

On Section 2 of the bill. I was wondering about that myself and went to Legislative Council and talked to John about that. A legislator would just help the Attorney General establish the legislative intent behind this bill. He'd be working alongside the Attorney General. Bill will bring ND law in compliance with science. Concerning prosecution of the mother who has an abortion, the state can give the mother immunity from the law.

**Steve Cates, a consulting physicist, representing himself:** Testified in support. **See Testimony #2.**

**Rep. Conrad:** If this law is established, if someone gets an IUD are they a murderer?

**Steve Cates:** A medical person needs to answer that question. Based on absolute unquestionable scientific evidence (inaudible) person (inaudible). We can talk about ifs and go absolutely no where. Making public policy based on fact or as good a facts at our disposal is always best. And this is irrefutable fact.

**Glory Kramlich from Minot:** Testified in support. **See Testimony #3.**

**Tim Lindgren, State Director for ND Life League:** Testified in support. **See Testimony #4.**

**Bill Schuh, representing himself:** Testified in support. Told story of the birth of his child.

Told of the March of Dimes Commercial and how the mother sang to her child every time the child moved in her womb. The definition of a human life strictly on the bases of intent to kill or not to kill is thoroughly irrational and should be an unacceptable criteria This bill is attempting to do is place an objective criterium on personhood. One that is scientifically based and one that can be supported and defended on a first (inaudible) bases.

**Rep. Conrad:** Trying to put this bill together with the one we heard yesterday. Is this going to affect our laws on murder?

**Bill Schuh:** This bill from your comments seems to me is entirely consistent with that bill. This bill has no ramifications of capital punishment. This bill defines a human being and places that out there as measuring rod for the legislature and the courts whenever they are dealing with anything that has (inaudible).

**Rep. Conrad:** Is that an instrument of murder?

**Bill Schuh:** Again, the bill defines a human being and in the case you are giving, (inaudible). The consequences of that to take that life or not would have to face that criterium.

**Nadia Smetana, practicing nurse:** Testified in support of bill. **See Testimony #5.**

**Kirk Wald from Dickinson:** Testified to answer Rep. Conrad's questions. The question about the IUD and the pill. I work for a major pharmaceutical company and they manufacture and distribute contraceptives and IUDs. The mechanism on an IUD is unknown is put on the package. Best science can't figure it out. Same can be said about the "morning after" pill and birth control pill. By definition that mechanism of action is to prevent conception in the first place. It is to prevent the release of an egg so if conception never takes place in either case of the traditional pill or the IUD, then the point is mute. You have an opportunity to do something momentous here to reconcile conflicts in the century code right now.

How can a woman be prosecuted for using drugs while pregnant when under the conflicts of the century code. You have an opportunity to do that. It is either a person or not. If it's not a person, how could she be prosecuted, yet because it is a non-person under the law she can have an abortion and there would be no penalty. You can lead the nation by reconciling the conflicts within our own century code and then to bring our law in alignment with established irrefutable scientist that Mr. Cates stated so well. We can align this ahead of time proactively. I think that would solve a lot of problems and save a lot of money.

**Rep. Conrad:** States Attorney and he decided under his (inaudible) definition and (inaudible) IUD (inaudible) of that organism therefore (inaudible) organism so the state (inaudible) prosecutes a woman (inaudible) IUD. I don't think that's what people want.

**Kirk Wald:** I would think the State's Attorney in your scenario would have a tremendous up hill road to hoe because the burden of proof is always on the state. If the best medical science in the FDA can't determine mechanism of action or when exactly life begins, he'd have a very tough road to hoe and don't think he's waste his time or bother to prosecute.

**Rep. Conrad:** The taxpayers of that county would be required to pay for that prosecution.

**Kirk Wald:** An elected position like that, a man who values public service and staying with that line of work, probably wouldn't waste his time pursuing that. And the numbers of a county have to carry the burden of any type of defense of any law whether it be a (inaudible) etc. My personal opinion, I don't think (inaudible) will be much of a problem.

**Rep. Nathe:** Does the IUD stop implantation or fertilization?

**Kirk Wald:** They don't know.

**Julie Leffrig from Oliver Co.:** Testified in support. Why not ND? We have a chance to do this. This is for the future of our children besides the unborn. Be not afraid to sit down with Planned

Parenthood and say, these are our concerns. Be not afraid to let ND be the first state to establish that this is a person when we know for a matter of fact that it is.

**Margaret Knopik from Dickinson:** Testified in support. Told of story of sister-in-law having cancer and pregnant. Abortion was not an option for her. She ended up on a ventilator. Dr. wanted to take her off the ventilator. Her sister-in-law said she'd do anything for her child. She did die along with her child. If your child ever came to you and said, "Mom and dad, was there ever a time when I wasn't a person?" How would you answer?

**Tim Stanley from Planned Parenthood:** Testified in opposition: This bill would involve the state in a legal battle.

**Rep. Conrad:** How much cost to SD to defend the law they have down there.

**Tim Stanley:** I don't have any information first hand and also under advice of counsel to not talk specifically about cases in litigation in SD.

**Rene Stromme from ND Women's Network:** Testified in opposition. Birth control at risk with this bill.

**Chairman Weisz closed the hearing.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1572

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9192

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz:** Let's look at 1572. We have amendments presented by sponsor.

**Rep. Conrad:** The reason for this bill is to go to court. Utah has same bill and spent 5 million dollars in court costs. Let's SD do the court cases.

**Rep. Holman:** Did we do the amendments?

**Chairman Weisz:** We haven't done anything yet. Anyone want to make a motion?

**Rep. Damschen:** I wanted to point out that the groups Rep. Conrad sighted didn't testify in opposition.

**Rep. Damschen:** Move the amendment.

**Rep. Nathe:** Second.

**Rep. Conklin:** Did they through that whole section out then?

**Chairman Weisz:** It's down just to the amendment in Section 1. All the new language is gone in that bill on pages 1, 2, 3, 4, part of 5 and a little on 6.

**Voice Vote:** 13 yeas, 0 no, 0 absent.

**Motion Carried.**

**Chairman Weisz:** Now have an amended bill.

**Rep. Holman:** On Section 2 trying to sort through the ramifications of the wording. The intent appears to be bringing the possibility of (inaudible) dealing with it. Will it be done by Legislature Council instead of the State of ND?

**Chairman Weisz:** The testimony that was presented to the committee said that wasn't the case. I had the same question myself. The language seems to be ambiguous at best. The Legislature is defending that action through the AG's office if it goes to court. Legislature would defend it publically. Someone would be appointed by the Legislature to defend this act.

**Rep. Uglem:** We had a bill 2 or 4 years ago that a woman would be guilty of murder having an abortion. Looks like this one does the same thing. It may not be the intention of the bill, but that's what it does. I can't support the bill.

**Rep. Potter:** Section 2, about language, has the legislature been (inaudible) any action with the attorney general or does anybody know of that happening or why?

**Chairman Weisz:** I guess that's what we have already said. I'm not aware that there has ever been legislation that would direct the legislature to be proactive.

**Rep. Conklin: Motion for a DO NOT PASS as amended.**

**Rep. Conklin: Second.**

**Rep. Holman:** I support a do not pass because of cost to ND in court cases.

**Chairman Weisz:** Two sessions ago the AG's office was estimating \$2 million depending on what they had to defend.

**Rep. Damschen:** I don't deny this might cost us money, but the point I would bring up, it isn't the only, and Rep. Hofstad can probably remember the figures, but the AG's office put thousands of dollars initiated by landowners in Devils Lake area. We are not going to be immune to expenses brought on by lawsuits.

**Rep. Kilichowski:** What bothers me is giving a felony charge of murder...



**Chairman Weisz:** That is out of this bill.

**Rep. Porter:** Every law that we pass here can be construed as unconstitutional by any person, but as far as funding law suits, it is not uncommon for the Legislature to do that. There was funding back to the Public Service Commission to file suit against Burlington Northern Santa Fe for their rates. That's over a million dollars that sits there in hope that there is a case against BN. Not an uncommon practice for the Legislature to do this.

**Rep. Uglem:** As far as the murder being amended out, in my view, this puts it into existing law. Doesn't matter that we amended it out. Anybody that has an abortion would be guilty of murder in existing law because of this definition.

**Roll Call Vote for a DO NOT PASS: 7 yes, 6 no, 0 absent.**

**MOTION CARRIED FOR A DO NOT PASS.**

**BILL CARRIER: Rep. Conrad.**

VR  
2/11/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1572

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide legislative intent as it relates to references to individual, person, or human being."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. References to Individual, person, or human being -**  
**Legislative Intent.** For purposes of interpretation of the constitution and laws of North Dakota, it is the intent of the legislative assembly that an individual, a person, when the context indicates that a reference to an individual is intended, or a human being includes any organism with the genome of homo sapiens.

**SECTION 2. STATE TO DEFEND CHALLENGE.** The legislative assembly, by concurrent resolution, may appoint one or more of its members, as a matter of right and in the legislative member's official capacity, to intervene to defend this Act in any case in which this Act's constitutionality is challenged."

Renumber accordingly

Date: 2-11-09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1572

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. Damscher Seconded By Rep. Pathe

[illegible]

Total (Yes) 13 No 0

**Absent**

**Bill Carrier**

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

on a needments

Date: 2-11-09  
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1572

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. Conklin Seconded By Rep. Conrad

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 FRANTSGOV		✓	REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD		✓	REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE		✓			
REP. TODD PORTER		✓			
REP. GERRY UGLEM	✓				

Total (Yes) 7 No 6

Absent \_\_\_\_\_

Bill Carrier Rep. Conrad

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

MOTION Carried  
on DO NOT Pass

**REPORT OF STANDING COMMITTEE**

**HB 1572: Human Services Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1572 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide legislative intent as it relates to references to individual, person, or human being."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. References to individual, person, or human being - Legislative Intent.** For purposes of interpretation of the constitution and laws of North Dakota, it is the intent of the legislative assembly that an individual, a person, when the context indicates that a reference to an individual is intended, or a human being includes any organism with the genome of homo sapiens.

**SECTION 2. STATE TO DEFEND CHALLENGE.** The legislative assembly, by concurrent resolution, may appoint one or more of its members, as a matter of right and in the legislative member's official capacity, to intervene to defend this Act in any case in which this Act's constitutionality is challenged."

Renumber accordingly

2009 SENATE JUDICIARY

HB 1572

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1572

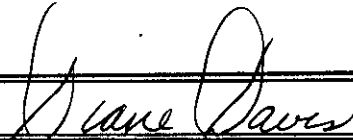
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 11017

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relates to references to individual , person, or human being.**

**Representative Dan Ruby** – Introduces the bill, see written testimony.

**Senator Nething** - Asks if there is someone who will explain the bill.

**Rep. Ruby** – Responds there are some presenters here with scientifically background and one on a constitutional level.

**Senator Nething** – Asks him about the bill, it says this bill defines person in the ND

Constitution and what we have in front of us is a legislative act. It is his understanding the only way to amend the constitution is by the people of this state.

**Rep. Ruby** – States, there is only one page to the bill.

**Senator Nething** – Asks him how this defines person in the constitution.

**Rep. Ruby** – Responds, it puts this definition, personhood in the definition statute, section one of our Century Code. He says this was Legislative Council's suggestion that this applied to our laws and constitution, this was all that was needed.

**Senator Nething** – Notes on section two, that he wants the Legislature to appoint one of its members to represent and defend the act. Asks if he is aware of any other provision where the Legislature is called in to a special session to name legal counsel from its membership?

**Rep. Ruby** – Replied, he doesn't know if it would be a special session or could be done now.

If it was an appointment he would gladly volunteer. Said he fully expects the Attorney General would defend the laws in this state, this would just ensure that the intent we have placed would be followed in the defense of this act. That is the main intent.

**Senator Fiebiger** – States, that we need to look not only of the intention of a bill sponsored but also the unintentional consequences for the people of our state when it becomes law. He has concerns for women that need emergency care in their pregnancy, who would decides what happens with that.

**Rep. Ruby** – Responds, any portion of the pregnancy where the mother is at risk is a necessity. They will treat the mother if it is life threatening. If the pregnancy is further along the doctors would try to save both.

**Senator Fiebiger** – Says there is nothing in the bill for exceptions.

**Rep. Ruby** – Says it isn't specifically written out because it is not really included. He expects the treatment of patients involved is first and foremost. The treatment of the mother is just as important and takes no priority or reduced level than that of the baby. If you know that baby can't survive you create the patient that is most likely to survive.

**Senator Schneider** – Asks if he has spoken with the Attorney General about section two and how that would work in practice.

**Rep. Ruby** – Replies, yes, he said the Attorney General wanted to make sure it wasn't an issue of separation of powers. He says the Attorney General will defend the state's laws.

**Rep. Ruby** said there are firms across the country who will do this pro-bono.

**Senator Schneider** – Asks if the member of the Legislature that could potentially be appointed to defend this action, would that individual have to be a lawyer.

**Rep. Ruby** – Replies, he doesn't think so.



**Senator Olafson** – Mentions his concern is this would tie the hands of medical professionals who are trying to help in women's reproductive health. Where in this bill does it provide for protection for those individual as they make difficult decisions.

**Rep. Ruby** – He says this bill doesn't put the baby's life higher than that of the mother. He goes on to explain treating both patients.

**Senator Olafson** – States, legislative intent is a key issue as it relates to medical treatment. Your intent is to give equal status, how do medical professionals decide who to treat. Aren't medical professionals in an impossible situation because both have equal status and protection under the law.

**Rep. Ruby** – Responds, if there are going to put the life of the child over the mother aren't they jeopardizing both lives anyway.

**Senator Nething** – Asks if it wouldn't be better to put legislative intent in writing so any court would understand what is meant by the language in this bill.

**Rep. Ruby** – Responds if there are any unintended consequences that come up we have the ability to change that. He asks if states can make decisions dealing with life and the provisions of our law that could possibly conflict with life in all areas.

**Senator Nething** – Says, legislation should be as clear as possible and he doesn't think this is being accomplished here. His concern is one person stating what he thinks the intent to be does not speak for the Legislature. That is just that person's opinion. That is why the Legislature enacts intent to clarify that. He said we must be as specific as we can to make sure that everyone understands what we're doing. That is a benefit to the public.

**Rep. Ruby** – He understands if it's clear you don't need to go back and look for legislative intent. He thinks some people are purposely looking for consequences that will answer more reflections.

**Senator Fiebiger** – Asks why a woman of child bearing age stay in ND and who is going to care for them, would any physician have interest in providing care to the women of our state with this many issues up in the air. People could go to Minnesota or Montana and not have to worry about this confusion.

**Rep. Ruby** – Says we could ask the women who go through this but thinks the women would be happy to live in a state that protects the children. The decision that changes Roe v Wade wouldn't automatically make abortion illegal across the country it would just give states the right to decide it for themselves. He doesn't believe this would put them at risk with their physician at all.

**Senator Nodland** – Expresses his support of this bill. He said this is one of the most important decisions this Legislature will ever make.

**Gualberto Garcia Jones** – Legal expert in constitutional law – See written testimony.

**Senator Fiebiger** – Questions an ectopic pregnancy.

**Garcia Jones** – He said this creates a situation where the doctor has to make a difficult decision, the doctor is usually performing a procedure not intended to act as abortion.

**Senator Fiebiger** – Says according to the definition aren't they ending a human life? He asked if they would they face potential criminal charges under this definition.

**Garcia Jones** – Responds, as legislators you will still have the ability to address these issues just as they were before Roe v Wade.

**Senator Schneider** – Asks for Mr. Garcia Jones thoughts on whether this potential law would be subject to or present undue burden.

**Garcia Jones** – Responds, that certain members of the court would. Other members have stated openly that they don't believe that abortion is anywhere in the 14<sup>th</sup> amendment. They look at the 14<sup>th</sup> amendment like we look at this bill in that the word abortion isn't in there.

**Maria Lancaster** – See written testimony.

**Steve Cates** – ND Family Alliance - Introduces his niece, Mckensie White, they show a short slide show of when Mckensie was born at 24 weeks. She asks when a human starts and asks for protection of all.

**Austin Emnith** – 12 years old. Relates an essay he wrote about his birth and adoption.

**David Alan Harbinger** – States his support and said to protect the weakest.

**Steve Cates** – ND Family Alliance – See written testimony.

**Tim Lindgren** – ND Life League – In support of the bill. See written testimony.

## **Opposition**

**Stephanie Dahl** – Physician at MeritCare in Fargo – see written testimony.

**Senator Olafson** – Asks how many patient lives she saves every year in her medical practice.

**Dahl** – Said she can say how many babies were born from IBF, about 100.

**Senator Olafson** – Asks her if they destroy any embryos that may be viable.

**Dahl** – No, she relates the amount they would implant and what happens to the ones they do not use.

**Senator Olafson** – Asks her if embryos could live for centuries.

**Dahl** – Yes.

**Senator Fiebiger** – Asks her opinion on how this bill would affect medical professionals from conducting business for the women of our state.

**Dahl** – Says it is a very big concern, especially knowing you may end up in court because of it..

**Steffen Christensen** – Physician in Fargo – See written testimony.

**Verle Reinicke** – Retired clergy person – see written testimony.

**Christine Hogan** – ND Women's Network – see written testimony.

**Senator Olafson** – Asks her interpretation of the bill and if this bill were put into law where would be the protection for medical professionals who would be trying to help people through difficult medical decisions.

**Hogan** – Replies, she doesn't see it in the bill.

**Sarah Borgen** – Prochoice – Says the money should be used for sex education.

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

**Connie Hildebrand** – American Association of University Women – see written testimony.

**Shan Anne Tangey** - Minot State University Professor – Relates her story about an injury she sustained. She feels she may have not been treated properly if she had been pregnant.

**Austin Langly** - Relates the story of his sister who was pregnant and lost the baby. He would miss his sister if she hadn't been helped.

**Jan Brooks** – Minot – opposes

**Ruth Kim** – Licensed social worker in ND – States this bill hurts those it aims to help. The women will stop going to the doctor if they think they may be charged with a crime. Supports true choices.

**Senator Nething** closes the hearing HB1572.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1572

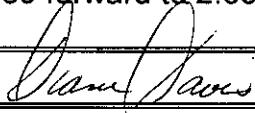
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 4/1/09

Recorder Job Number: 11589 forward to 2:55

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Olafson moves do not pass

Senator Nelson seconds

Discussion – none

Vote – 5 yes – 1 absent

Senator Olafson will carry

Roll Call Vote #: 1

Roll Call Vote #: 7

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

11B1572

**Senate      JUDICIARY**

Committee

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

### Action Taken



## Do Pass

☒

**Do Not Pass**



**Amended**

**Motion Made By**

Sen Rhyson

### Seconded By

See Nelson

[illegible]

Total (Yes) 5 (N)

Absent

## Floor Assignment

Sen Olofin

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

**REPORT OF STANDING COMMITTEE**

**HB 1572, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1572 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1572



## Questions and Answers for HB 1572

### **Can't only a federal personhood amendment do what this legislation is trying to do?**

No. If a state recognizes preborn personhood, then so would the 14th Amendment of the US Constitution, which guarantees that all persons with state-level rights will also have federal-level rights. Therefore, all we need is for half of the North Dakota legislature and the Governor to pass a law establishing that the North Dakota Constitution recognizes constitutional personhood for all human beings from their biological beginning. The legislature has plenary authority to pass legislation to enforce the state constitution in this way.

### **Why a law about preborn personhood?**

- Because abortion supporters should have to answer the question: Is an eight and a half month old baby a person?
- Because currently, corporations are treated as persons but not preborn humans.
- Because Roe v. Wade itself indicates that if personhood is established, the right to an abortion collapses because the baby would be protected by the 14th amendment.

### **Why should I support HB 1572 The Personhood of Children Act of North Dakota?**

The Personhood of Children Act is the only legislation this year that will stop abortion dead in its tracks. By stating in unequivocal terms that a baby is a person from the moment of their biological beginning, North Dakota would be taking back its authority to pass laws that are necessary and proper for maintaining a society rooted in ordered liberty.

Legislating from the bench will only come to an end when legislators are willing to discharge their duties and enact legislation that reflects a proper understanding of science and our fundamental moral beliefs. Until legislators take action on these fundamental issues, the Supreme Court will fill the space left by the States and impose the views of a few elite and unelected judges upon every citizen.

The Personhood of Children Act aims for victory — one that will not sacrifice any of our young.

### **What are the chances of this bill becoming law?**

Furthermore, the makeup of the Supreme Court is more pro-life than ever since Roe v Wade in 1973. Medical technology now shows us preborn babies sucking their thumbs and smiling on 4D ultrasounds. One has to ask: if we don't outlaw abortion now, then when? Even if you believe there is no chance of the government passing HB 1572, wouldn't it be great to lift the veil of silence on abortion and hold hearings and a vote on personhood, where the strongest case could be made for those who can't speak for themselves?

### **What about the life of the mother?**

The answer here is nuanced. Thanks to modern medicine, abortion is never necessary to protect women's lives. However, where life-saving treatment of a mother unfortunately results in the death of a preborn child, these treatments are legally and morally not considered abortion.

### **What about cases of rape and incest?**

It makes no sense to think all preborn children are persons, except for certain babies. There was a study of raped women who got pregnant. It turns out that half gave birth and the other half aborted. About 85% of the women who aborted regretted the abortion, whereas none of the women who gave birth had regrets. Moreover, raped women who abort are more likely to commit suicide than those who give birth. If anything, rape/incest are precisely reasons to give birth.

### **Would this legislation ban embryonic stem cell research?**

Scientists have absolutely no need to kill children to obtain their embryonic stem cells. Scientists already discovered a way of creating pluripotent cells using umbilical stem cells.

**Would the Personhood of Children Act outlaw the Pill?**

No. This legislation puts off the question of the Pill until conclusive evidence is presented that the Pill is abortifacient. If something is truly contraceptive, then it is not abortifacient. It's currently too hard to say whether or not the Pill is abortifacient. An organization which supports the legality of abortion, the American Society of Reproductive Medicine, says that the Pill IS abortifacient. Whereas Planned Parenthood, which also supports the legality of abortion, says that it is NOT abortifacient. We should note that Louisiana bans some abortifacient drugs, and their law has not been found unconstitutional.

**Would this legislation require the mother to be penalized for abortion?**

No. If the ND legislature wanted to immunize a woman from criminal prosecution for participating in an abortion, then that would be the prerogative of the legislature. This would not conflict with preborn personhood legislation.

**Would this legislation ban in vitro fertilization?**

No. The ND legislature could pass a law similar to Louisiana's current law, which bans the killing of frozen human embryos, but still allows women ready access to in vitro fertilization. Even Germany and Italy have similar laws that limit the number of humans in embryonic form who can be artificially implanted at a time.

**Why do some organizations oppose this bill?**

Some groups believe that despite the dismal record of trying to overturn *Roe v. Wade* through gradualism, there is a chance now to change the heart and minds of more people. Some groups believe in appeasing the evil of abortion through the introduction of legislation which actually acknowledges the right to kill through abortion but tries to minimize the harm that abortion is causing. While trying to minimize evil is a laudable objective, it is high time that we look in the mirror and see that the supporters of abortion have not been moved an inch by gradual approaches to ending abortion. If they're not giving an inch, then why are we? Furthermore, the Court "allows" states to enact marginal restrictions on surgical abortions, but those abortions are becoming obsolete because of early abortifacient drugs and devices.

Why not personhood? How can one be steadfast and still oppose such sensible strategies? Some groups admit that *Roe v. Wade* is so weak that it might even be overturned by a law such as requiring ultrasound to be shown before abortion. What they're arguing is not that preborn personhood legislation is too weak, but that it's too strong. Why not pass a strong law? It seems that Justice Kennedy does not want to overturn *Roe v. Wade* using anything less than the best.

**Justice Kennedy doesn't want anything less than the best?**

In *Webster v. Reproductive Health Services*, Justice Kennedy indicated that were the question properly before him, he would overrule *Roe v. Wade* by holding that the state had a compelling interest in fetal life from the moment of conception. There is no better compelling interest that a state has in human life than recognition of their personhood from conception.

Even if Justices Kennedy, Roberts, Alito, Scalia, and Thomas don't use HB 1572 The Personhood of Children Act to recognize that the 14<sup>th</sup> Amendment recognizes preborn personhood in all 50 states, they could certainly recognize HB 1572's legislative intent to prohibit abortion, and use that to overturn *Roe v. Wade* and kick abortion's legality back to each state.

**Couldn't Justice Ginsburg use this legislation to increase the right of abortion?**

No. That's baloney. She herself recently admitted that the Court was legally wrong to declare a broad right to abortion in *Roe v. Wade*. The Court, she said, was mistaken to take the issue away from state legislatures. She said, "I never questioned the judgment that (abortion) has to be a woman's choice, but the court should not have done it at all."

Even if she tried, Justice Kennedy would never join her. He only joins her when her decisions decrease, not increase, the right of abortion. He is still open to a moment at conception law. He may retire at anytime. Passing HB 1572 would give him a strong incentive to stay on the Court.

### **How would the US Supreme Court handle this bill?**

Frankly, nobody knows for sure. And anybody who says absolutely one way or the other really doesn't know what they're talking about. Sarah Weddington had no idea whether or not she would succeed at the US Supreme Court. She actually thought that there was a pro-life Court majority against her. But she filed a lawsuit anyway, and won 7-2 in *Roe v Wade*. Any time that you want to overturn precedent, you can never really be certain whether or not you'll succeed at overturning that precedent. But you never know until you try.

But we do know the truth is on our side. Apart from *Roe v Wade*, the Court has never once differentiated between "person" and "human being," nor has it ever excluded a human being from the due process protections of the Fourteenth Amendment.

The word "person" has been given a very liberal construction by the Supreme Court to include all human beings, be they minors, prisoners, aliens, enemies of the state, and even corporations, labor unions, and ships at sea, which have had more human rights than "partially-born" babies.

If we wouldn't fear dying in order to save a child's life, then we certainly shouldn't fear winning at the risk of losing. Whatever happened to leading the culture and doing right? Whatever happened to liberty? Perhaps North Dakota should just ignore *Roe v Wade*. A lot of states ignore unconstitutional Supreme Court rulings. If the President enforces those Court rulings, then that is a reason to vote him/her out of office. Every individual has the right to interpret the Constitution.

When the 9<sup>th</sup> Circuit Appellate Court ruled that the Pledge of Allegiance was unconstitutional, the Ohio state legislature passed a law requiring that the Pledge of Allegiance be said in every public school. THAT is a great response to federal judicial tyranny.

Given the current political landscape, the current time may in fact be the best chance now with this Supreme Court of any other chance that it may be given in this generation or the next to rule on preborn personhood and abortion. But in order to achieve this result, the Court must be given the chance. Without the chance to rule, no ruling can be forthcoming, and it is simply impossible to predict that a future Court would be less hostile to human life than the present Court.

### **Could this legislation actually overturn *Roe v. Wade*?**

Yes. Few people realize *Roe v. Wade* shows us the way to its own downfall.

It was not anyone in the pro-life movement, but rather United States Supreme Court Justice Harry Blackmun who wrote the key passage in the *Roe v. Wade* decision.

"If personhood is established, the case for legalized abortion collapses, for the fetus' right to life would be guaranteed by the 14th Amendment." (*Roe v. Wade*, Majority Decision, Section IX)

The pro-life movement keeps trying to make believe that it can work within the framework of *Roe v. Wade*, gradually chipping away at abortion. At the same time, the number of victims of abortion keeps climbing and well-intentioned laws are struck down time after time by the monolith of *Roe*. The Personhood of Children Act faces the reality that the wall of abortion is still intact.

*Roe v. Wade* itself offers us the key to bring down abortion, that key is personhood, and North Dakota has ample room under our Constitution to define it to include the preborn.

### **Won't this legislation cost North Dakota a lot of money if it loses?**

Every state attorney general loses a lot of cases over unimportant laws. Each loss can cost millions of dollars. The Personhood of Children Act is important, but it should simply be another case as far as the state attorney general is concerned.

Furthermore, Nebraska passed a partial-birth abortion (PBA) ban, which was struck down by the USSC. Should Nebraska not have tried to pass the PBA ban considering most people figured that it was going to be struck down by the USSC? Of course they should've tried to pass it. It was the right thing to do. Should Congress have tried to pass the federal PBA ban knowing that the Court would most certainly strike it down? Of course Congress should've tried to pass it. And you know what happened? The Court upheld the federal PBA ban. You never know until you try.

**Are there any prominent supporters of legislation which recognizes preborn children as constitutional persons?**

The National Republican Party platform has stated since 1980: "The unborn child has a fundamental individual right to life which cannot be infringed... We endorse legislation to make it clear that the 14th Amendment's protections apply to unborn children".

Members of Congress who support legislation like The Personhood of Children Act include:  
**115 current US House members and 15 Senators.**

**Recent supporters of preborn personhood legislation include:**

John McCain, US Senator and former Republican Nominee for President  
Dick Cheney, former US Vice President  
Dennis Hastert, former US Speaker of the House  
Newt Gingrich, former US Speaker of the House  
John Boehner, former US House Majority leader and current US House Minority Leader  
Trent Lott, former US Senator and former US Senate Majority Whip  
Mel Martinez, US Senator and former Chairman of the National Republican Party  
Richard Burr, US Senator and former Chairman of the Republican Platform Committee

**This is not legislation that only Republicans support. People from all parties have supported "personhood" legislation.**

Harry Reid, US Senate Majority Leader  
Byron Dorgan, US Senator, Democratic Policy Committee Chairman  
Ray LaHood, US Secretary of Transportation (appointed by President Obama)  
James Oberstar, US House Transportation Committee Chairman  
Collin Peterson, US House Agriculture Committee Chairman  
John Murtha, US House Appropriations Defense Subcommittee Chairman

**Why should I help? I'm busy.**

If you can really see that abortion kills children, then you would do everything you effectively could to stop it. You know where and when the killing is taking place. Why are you tolerating this?

Look at a 4-D Sonogram, then an abortion photo, and try to convince yourself that abortion does not lead to the death of a growing child.

Don't worry about the scare tactics from the supporters of abortion. Remember that when the slaves were freed and their constitutional personhood was recognized, not every effect of their personhood was immediately addressed. Congress and the States are still addressing the effects of personhood even after more than one hundred years.

**What can I do to help?**

You can make all the difference.

The most important thing you can do is to let as many people as possible know about this bill, in addition to voting for it.

- Please work to end abortion. Anyone can help stop the killing of children and help encourage women to give birth.
- Volunteer at a pregnancy help center.
- Take care of pregnant widows in your home.
- Adopt a child.
- The opportunities are endless.

If you have any questions, please email Daniel Woodard at [ndlifeleague@yahoo.com](mailto:ndlifeleague@yahoo.com) or call him at 1-701-793-2011.

part of #1

**S.3111**

**Title:** A bill to implement equal protection under the 14th article of amendment to the Constitution for the right of life of each born and preborn human person.

**Sponsor:** Sen Wicker, Roger F. [MS] (introduced 6/11/2008) Cosponsors (12)

**Latest Major Action:** 6/11/2008 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

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**COSPONSORS(12), ALPHABETICAL** [followed by Cosponsors withdrawn]: (Sort: by date)

Sen Allard, Wayne [CO] -  
6/16/2008

Sen Bunning, Jim [KY] -  
6/11/2008

Sen Coburn, Tom [OK] -  
6/16/2008

~~Sen Enzi, Michael B.~~ [WY] -  
6/11/2008

Sen Martinez, Mel [FL] -  
6/11/2008

Sen Vitter, David [LA] -  
6/11/2008

Sen Brownback, Sam [KS] -  
6/11/2008

Sen Burr, Richard [NC] - 6/11/2008

Sen DeMint, Jim [SC] - 6/11/2008

Sen Inhofe, James M. [OK] -  
6/11/2008

~~Sen Thune, John~~ [SD] - 6/11/2008

Sen Voinovich, George V. [OH] -  
6/11/2008

**H.R.618**

**Title:** To implement equal protection under the 14th article of amendment to the Constitution for the right to life of each born and preborn human person.

**Sponsor:** Rep Hunter, Duncan [CA-52] (introduced 1/22/2007) **Cosponsors** (113)

**Latest Major Action:** 3/1/2007 Referred to House subcommittee. Status: Referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

**COSPONSORS(113), ALPHABETICAL** [followed by Cosponsors withdrawn]:

Rep Aderholt, Robert B. [AL-4] - 5/17/2007  
Rep Alexander, Rodney [LA-5] - 1/22/2007  
Rep Bachus, Spencer [AL-6] - 5/7/2008  
Rep Barton, Joe [TX-6] - 3/11/2008  
Rep Boozman, John [AR-3] - 1/22/2007  
Rep Broun, Paul C. [GA-10] - 9/19/2007  
Rep Camp, Dave [MI-4] - 11/5/2007  
Rep Carter, John R. [TX-31] - 1/22/2007  
Rep Cole, Tom [OK-4] - 2/5/2007  
Rep Cubin, Barbara [WY-1] - 1/22/2007  
Rep Davis, Geoff [KY-4] - 1/22/2007  
Rep Davis, Lincoln [TN-4] - 1/22/2007  
Rep Doolittle, John T. [CA-4] - 1/22/2007  
Rep English, Phil [PA-3] - 4/16/2008  
Rep Fallin, Mary [OK-5] - 1/15/2008  
Rep Forbes, J. Randy [VA-4] - 1/22/2007  
Rep Fortuno, Luis G. [PR] - 1/22/2007  
Rep Franks, Trent [AZ-2] - 1/22/2007  
Rep Gillmor, Paul E. [OH-5] - 1/22/2007  
Rep Gohmert, Louie [TX-1] - 2/16/2007  
Rep Goodlatte, Bob [VA-6] - 1/22/2007  
Rep Hall, Ralph M. [TX-4] - 1/22/2007  
Rep Hayes, Robin [NC-8] - 1/22/2007  
Rep Herger, Wally [CA-2] - 1/22/2007  
Rep Inglis, Bob [SC-4] - 1/22/2007  
Rep Johnson, Timothy V. [IL-15] - 1/22/2007  
Rep Jordan, Jim [OH-4] - 1/22/2007  
Rep Kingston, Jack [GA-1] - 1/31/2007  
Rep Knollenberg, Joe [MI-9] - 10/3/2007  
Rep Akin, W. Todd [MO-2] - 1/22/2007  
Rep Bachmann, Michele [MN-6] - 1/31/2007  
Rep Bartlett, Roscoe G. [MD-6] - 1/22/2007  
Rep Bishop, Rob [UT-1] - 1/22/2007  
Rep Boustany, Charles W., Jr. [LA-7] - 1/22/2007  
Rep Burton, Dan [IN-5] - 4/17/2007  
Rep Cannon, Chris [UT-3] - 1/22/2007  
Rep Chabot, Steve [OH-1] - 1/22/2007  
Rep Conaway, K. Michael [TX-11] - 1/22/2007  
Rep Davis, David [TN-1] - 1/22/2007  
Rep Davis, Jo Ann [VA-1] - 1/22/2007  
Rep Deal, Nathan [GA-9] - 3/9/2007  
Rep Ehlers, Vernon J. [MI-3] - 5/19/2008  
Rep Everett, Terry [AL-2] - 10/10/2007  
Rep Feeney, Tom [FL-24] - 9/26/2007  
Rep Fortenberry, Jeff [NE-1] - 11/1/2007  
Rep Foxx, Virginia [NC-5] - 1/22/2007  
Rep Garrett, Scott [NJ-5] - 10/15/2007  
Rep Gingrey, Phil [GA-11] - 1/22/2007  
Rep Goode, Virgil H., Jr. [VA-5] - 1/22/2007  
Rep Graves, Sam [MO-6] - 1/22/2008  
Rep Hastert, J. Dennis [IL-14] - 11/9/2007  
Rep Hensarling, Jeb [TX-5] - 1/22/2007  
Rep Hoekstra, Peter [MI-2] - 1/22/2007  
Rep Johnson, Sam [TX-3] - 1/22/2007  
Rep Jones, Walter B., Jr. [NC-3] - 6/12/2007  
Rep King, Steve [IA-5] - 1/31/2007  
Rep Kline, John [MN-2] - 1/22/2007  
Rep LaHood, Ray [IL-18] - 1/22/2007

Rep Lamborn, Doug [CO-5] - 1/22/2007  
Rep Latta, Robert E. [OH-5] - 9/17/2008  
Rep Linder, John [GA-7] - 2/27/2007  
Rep Manzullo, Donald A. [IL-16] - 1/22/2007  
Rep McCaul, Michael T. [TX-10] - 1/22/2007  
Rep McHenry, Patrick T. [NC-10] - 1/22/2007  
Rep McMorris Rodgers, Cathy [WA-5] - 1/22/2007  
Rep Miller, Candice S. [MI-10] - 2/16/2007  
Rep Miller, Jeff [FL-1] - 5/1/2007  
Rep Musgrave, Marilyn N. [CO-4] - 1/22/2007  
Rep Neugebauer, Randy [TX-19] - 10/10/2007  
Rep Pearce, Stevan [NM-2] - 12/6/2007  
 DEL Rep Peterson, Collin C. [MN-7] - 11/15/2007  
Rep Pickering, Charles W. "Chip" [MS-3] - 1/22/2007  
Rep Poe, Ted [TX-2] - 6/15/2007  
Rep Renzi, Rick [AZ-1] - 1/22/2007  
Rep Rogers, Mike D. [AL-3] - 10/17/2007  
Rep Roskam, Peter J. [IL-6] - 12/10/2007  
Rep Sali, Bill [ID-1] - 1/22/2007  
Rep Schmidt, Jean [OH-2] - 4/19/2007  
Rep Shadegg, John B. [AZ-3] - 1/22/2007  
Rep Smith, Adrian [NE-3] - 1/22/2007  
Rep Souder, Mark E. [IN-3] - 1/22/2007  
Rep Tancredo, Thomas G. [CO-6] - 1/22/2007  
Rep Tiahrt, Todd [KS-4] - 1/22/2007  
Rep Wamp, Zach [TN-3] - 1/22/2007  
Rep Wicker, Roger F. [MS-1] - 10/16/2007  
Rep Wittman, Robert J. [VA-1] - 1/22/2008  
Rep Latham, Tom [IA-4] - 1/22/2008  
Rep Lewis, Ron [KY-2] - 1/22/2007  
Rep Lucas, Frank D. [OK-3] - 11/9/2007  
Rep Marchant, Kenny [TX-24] - 9/8/2008  
Rep McCotter, Thaddeus G. [MI-11] - 1/22/2007  
Rep McKeon, Howard P. "Buck" [CA-25] - 1/22/2007  
Rep Mica, John L. [FL-7] - 2/16/2007  
Rep Miller, Gary G. [CA-42] - 1/22/2007  
Rep Murphy, Tim [PA-18] - 5/7/2007  
Rep Myrick, Sue Wilkins [NC-9] - 1/22/2007  
Rep Norwood, Charles W. [GA-10] - 1/22/2007  
Rep Pence, Mike [IN-6] - 2/7/2008  
Rep Petri, Thomas E. [WI-6] - 4/10/2008  
Rep Pitts, Joseph R. [PA-16] - 1/22/2007  
Rep Price, Tom [GA-6] - 1/31/2007  
Rep Rogers, Harold [KY-5] - 1/22/2007  
Rep Rogers, Mike J. [MI-8] - 2/6/2008  
Rep Ryan, Paul [WI-1] - 2/13/2008  
Rep Scalise, Steve [LA-1] - 6/17/2008  
Rep Sessions, Pete [TX-32] - 1/22/2007  
Rep Shimkus, John [IL-19] - 2/7/2008  
Rep Smith, Christopher H. [NJ-4] - 1/22/2007  
Rep Sullivan, John [OK-1] - 10/4/2007  
Rep Terry, Lee [NE-2] - 1/22/2007  
Rep Walberg, Timothy [MI-7] - 1/22/2007  
Rep Westmoreland, Lynn A. [GA-3] - 1/22/2007  
Rep Wilson, Joe [SC-2] - 1/22/2007

## HB 1572: Humanity Determined By Science

Support #2

Testimony offered by Steve Cates

We live in a modern world that requires mastery and application of established science. If you do not properly apply the laws of thermodynamics, the concepts of fluid dynamics, the Bernoulli equation, and a long list of other exactly defined properties and physical laws to the design of an aircraft that machine will fail. Examples of a society that depends on proper scientific application are legion including thorough analysis and testing of medicines, rigorous testing of medical devices before market, testing all operational aspects of new automobiles, why you can hardly erect a porta-potty without an environmental impact study. Our society depends on accurate application of proven science. We ignore scientific fact and method at our peril.

Medical science is changing at an exponential rate. In early 1996 the vast majority of people in the world thought cloning was science fiction. On July 5th of that year a mammary gland cell from a sheep was used in a process called nuclear transfer to create a sheep named in honor of an American entertainer of notable mammary geometry. Dolly the sheep lived six years and produced six offspring. The unthinkable becomes reality. Science progresses exponentially and will not be ignored.

There is currently an entire branch of scientific research named Ectogenesis that is in pursuit of the artificial uterus. Dr. Hung-Ching Liu of Cornell, in 2002 took cultured cells and created an artificial uterus into which human embryos were successfully implanted and lived up to the legal limit of in vitro fertilization law of six days before the experiment was ended. Dr. Liu has been able to implant mouse embryos into an artificial womb where they have grown for 17 days which is roughly 85 percent of the gestation period of a mouse. Apparently, blood vessel development in late term was inadequate and the embryos shrivel and die in late term such that this difficulty is currently being addressed. Many, many experts in the field expect that an artificial uterus for human use will exist by 2015 at the latest. The unthinkable becomes reality. Science progresses exponentially and will not be ignored.

When those in opposition to this bill begin to dissemble and double talk to distract from the scientifically irrefutable evidence asserted by leading experts in their fields, please ask them to cite a single text book or peer reviewed scientific journal article that proves that human life is not a continuum beginning at the instant that human being is an organism with the genome of Homo Sapiens. There are none. Ask the opponents of this bill where in the literature of the Human Genome Project is any indication that a human being is any more or less a human being at any instant of the continuum that is natural life. There is none.





On October 24, 2006 Amillia Sonja Taylor was born approximately 21 weeks after her life began. She weighed less than 10 ounces. She is currently the most premature surviving infant on record. Today she is a vibrant, giggly child, and .....she has a spirit.....and apparently had a spirit at her very premature birth. Science progresses exponentially and will not be ignored.

In 1999 at Vanderbilt University Medical Center an infant named Samuel Armas was operated upon to execute a spina bifida corrective surgical procedure. The operation was in utero approximately 21 weeks after his life began. According to the photographer hired by USA Today to document the event, "Samuel thrusts his tiny hand out of the surgical opening of his mother's uterus. As the doctor lifts his hand, Samuel reacts to the touch and squeezes the doctor's finger. As if testing for strength, the doctor shakes the tiny fist. Samuel held firm. At that moment, I took this "Fetal Hand Grasp" photo." Samuel is shown here with his mother, alive and vibrant. He has a spirit...and apparently did when he grasped the doctor's finger. Science progresses exponentially and will not be ignored.





“Spirit” as defined by Merriam Webster as “an animating or vital principle held to give life to physical organisms” has been widely agreed upon by societies and peoples throughout recorded history. While we may conjecture about the “soul” or “spirituality” of non-human organisms, it is firmly established that the human species is spiritual and a majority of the human population believes that humans have a spirit.

At one time every person we know, every person who was ever born was the size of a child 12 weeks after creation. You were this size once. You were 2.5 inches long, you weighed almost an ounce, you had finger and toe nails and earlobes. Your arms, hands, fingers, legs, feet and toes were fully formed. Your eyes were almost fully developed. Almost all of your differentiated organs and tissues existed. You had finger and foot prints. Your heart was beating and could be heard. Obviously Amillia had a spirit at 21 weeks of age and Samuel likely did as well. Did they have a spirit at 20 weeks? 19 weeks? 18 weeks? Did they have a spirit at 12 weeks? Did you? Do you know for certain that you did or did not?

Dr. Landrum Shettles, sometimes called the “Father of In Vitro Fertilization” notes, “Conception confers life and makes that life one of a kind.”

Dr. Hymie Gordon, Chairman, Department of Genetics at the Mayo Clinic, added: “By all the criteria of modern molecular biology, life is present from the moment of conception.”

Dr. Richard V. Jaynes: “To say that the beginning of human life cannot be determined scientifically is utterly ridiculous.”

“Father of Modern Genetics” Dr. Jerome Lejeune testified that “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 opinion ... it is plain experimental evidence.”

A thought exercise:

Suppose at some future date in vitro fertilization resulted in two identical twins. One twin is planted into her mother. The other twin takes hold in an artificial uterus. Both twins survive and expire in their beds over ninety years after their creation. Is the twin who passes through the cervix a human being? Is the twin who was never inside her mother not a human being? Though posed as a thought exercise, it is as unthinkable as cloning was, and thus highly likely to be an eventuality. Science progresses exponentially and will not be ignored.

It seems axiomatic that whenever public policy decisions are made that by far the safest, most accurate, most correct path to follow would always be that which is based on the best possible scientific evidence. Sadly this is not always the case. Periodically public policy questions are addressed based on emotion and/or dogma regardless of undeniable variance with fact. Always, truth prevails and ignoring facts is eventually unsustainable.

We are on the verge of medical technologies that none of us can even conceive of, and therefore faced with ethical dilemmas of unknown scope. There can be no doubt that many, many ethical questions unknowable now, that hinge upon fundamental questions of humanity will be required of someone, someday. You can put this off for now so that it will be sorted out in nearly infinite duration, and through prohibitively expensive legal morass of suites, judgments, trials, and possibly, ultimately, by unelected judges that you and your constituents will have no influence over whatsoever.

You will face much legislation that is complex and is based on premises unknown or unknowable. It seems rare that you are simply asked to place into law rigorously established unambiguous fact. As representatives of your constituents you have been entrusted with the duty to design and implement our future society. You have here an historic opportunity to assert your legally vested authority to play a part in laying the foundations of humanity, based on the irrefutable scientific evidence. Will you recognize truth of humanity or ignore science at the peril of society and to the detriment of the world that your progeny will inherit from you?

#3 GLORY Kramlich

HB 1572

For every 25 North Dakota babies aborted, in five years, one teacher is not needed.

Since 1973, approximately 70,000 North Dakota people, under age 35, are not here to enjoy life, liberty, and the pursuit of happiness.

Those 52.5 million people are not here to help with our labor force to be our plumbers, our carpenters, our doctors, our farmers.

52.5 million people are not here to drive our economy back to health.

Our country has suffered from the loss of 52.5 million of our people in that there is a shortage of workers in nearly every profession.

Our beloved country is recognizing the unborn, if advertently, by convicting Scott Peterson of not only the murder of his wife, but also that of his unborn son.

Prenatal medicine is saving the lives of many preborn babies by correcting heart defects before birth and returning the babies to the womb to come to full term babies.

Homefront began with men and women of North Dakota concerned about the education of our young, the important and distinct differences between men and women, and the protection of North Dakota babies from conception to natural death.

My husband Gary and I are the parents of eight children, ages 39 to 22, three daughters and five sons, the youngest of whom is developmentally delayed to age two. We have been blessed to raise them in the finest state in the union, North Dakota.

HB 1572 gives all of our North Dakota people the protection of our laws to all homo sapiens. If you have the genome of a homo sapiens, you're as persons, from conception to natural death.

Thus concern for women and men to have the information

baby receives  
first

needed to make informed decisions on these medications was not given by the makers of birth control medications.

=====

Unborn children are continuing to inherit before birth, thus recognizing those unborn children as persons and heirs.

While in nurses' training pharmacology, I became concerned with the action of several medications, such as birth control substances, which in fact did not prevent the union of the sperm and the egg, but because of irritation of the uterine wall did not allow implantation of the fertilized egg. The warnings were not complete.

Due to a blood clot in the arm of a friend who had taken birth control medications in her thirties, I found she had been told it was a plaque in her arm from those birth control pills. I became concerned for women and strokes and blood clots later in life in women who had not known of this danger.

I became aware of sterile young men, sons of women who at an earlier time had been given high doses of birth control substances. These mothers had not known of the possible consequences.

The limiting of the appellate jurisdiction of the Supreme Court was never attempted, which is the only provision in the United States Constitution allowing any check on the Supreme Court and its decisions.

The fact of the child always receiving what it needs from the mother through the placenta indicates the adaptation that nature has in place to protect and nurture the unborn, whether it is an unborn baby or an unborn kitten.

*Geoff Lamie  
Mint, WA 98703*

#4

**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,

It is my honor as State Director of North Dakota Life League (NDLL), representing over 4500 pro-life individuals and families throughout the state of North Dakota, to ask for a "YES" vote on HB 1572 and Rep. Dan Ruby's amendment.

As a husband and father of a family with six children, I speak on their behalf as well, and simply ask you to recognize in this statute that all members of the human family be considered persons in the state of ND.

As director of NDLL I have had the opportunity to study this issue from many different related angles. When my wife first confronted me with the fact of abortion occurring in ND, I watched a video of the unborn baby on ultrasound. To be honest, it didn't hit me like some, as I had been conditioned to accept through television and movies the brutalities we have become so accustomed to in our society. I was no longer shocked by the intentional dismemberment of a person.

However, through further study as a protestant (I later converted to the Catholic faith), I read the Bible and was amazed by many pro-life passages in the scriptures such as: "Before I formed you in the women, I knew you; I set before thee life or death, choose life that you and your descendents might live, or Be fruitful and multiply... etc., etc."

I began my work slowly and gradually began discovering the many ways and methods that were being used against life in its beginning stages and on up until birth. There were at least six different methods of surgical abortion beginning as early as at four to six weeks gestation and extending to procedures designed to intentionally abort right up until birth and even partially born babies. I then discovered other methods designed to abort babies at even earlier stages through chemical and mechanical devices at the tender young ages of just 7 to 10 days after fertilization or conception occurred.

In order to more fully understand just how these babies were being killed, what was causing them to be killed and why people weren't as outraged as I, I began visualizing and drawing my own pictures of what that new human being looked like at the moment fertilization occurred. Through further study I discovered the advancements in science and technology and the fact that even at the very moment a new human life begins, dna (a term now commonly understood by many) was present which contained the blue print of who that individual was for example: the color of their hair and eyes, whether it was a boy or a girl, how tall or short they would be, their intellectual capacities and interests, their skills, etc. All designed in cooperation with their Creator, the Master Designer of each of us.

As you will hear in other testimony, science and technology with the recognition of dna and the genome project, is beyond the personality traits of individual persons, but are already developing and working on treatment of children even in their earliest stages of life.

Clearly, it is time that we as a society recognize all person of the human family as persons. It is a crime that cries to heaven for our intervention. We have some 1500 children killed each year in ND as a result of society's failure to simply recognize in law what almost all persons, admitting or not, recognize. That is the fact that human beings from their biological beginning are persons. That is precisely and exactly what HB 1572 does.

We have controlled abortion, restricted abortion, shown video of the preborn children in the womb and abortion, lobbied Congresses from ND to Washington, DC, picketed and established major crisis pregnancy centers counseling 100's of 1000's, if not millions, of pregnant women, supported pregnant women through the birth of their children and beyond. Still, hundreds of babies are aborted each year in ND and millions nationally. What it takes is this legislature along with our neighbors SD, Montana, MN, among other states such as Kentucky, South Carolina, Colorado and others' to pass legislation such as this to challenge the US Supreme Court to recognize these children residing in the womb of their mothers as "persons".

This bill which began as a four page statute with definitions of biological stages of life in medical terminology, with legislative intent and findings of fact, with examples of currently known violations of human beings prior to birth and penalties other than abortion, with reference to abortion and penalties, has been pared down to a simple statement of who is considered a person under the ND constitution.

As a father of six of God's beautiful children and as a director of NDLL, I am asking for a "YES" vote on Rep. Ruby's amendment to HB 1572 and then a "YES" vote on the amended HB 1572. I sincerely appreciate this opportunity to speak to you. Thank you.

RIGHT TO LIFE

page # 1

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**RESOLUTION NUMBER 28: RIGHT TO LIFE**

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WHEREAS: The founding fathers of our great nation dealt thoughtfully with the issue of life when they included the following statements in our country's Declaration of Independence: "We are endowed by our Creator with certain inalienable rights, among these are the right to life, liberty and the pursuit of happiness;" and

WHEREAS: Our Constitution, in the Fifth and Fourteenth Amendments, reaffirms these rights with the following guarantee: "Nor shall any person be deprived of life, liberty, or property, without due process of law;" and

WHEREAS: The National Republican Platforms of 1984, 1988, 1992, 1996, 2000 and 2004 stated in part:

"The unborn child has a fundamental right to life which cannot be infringed;"

THEREFORE BE IT RESOLVED: That the North Dakota Republican Party reaffirms its long-standing support of the Declaration of Independence, the Constitution of the United States in the Fifth and Fourteenth Amendments, and the National Republican Party Platforms, with respect to human rights and reaffirms its historic support for the sanctity of human life and opposes the unjust taking of life from conception to natural death; and

BE IT FURTHER RESOLVED: That the North Dakota Republican Party supports an immediate ban on abortion in North Dakota and will not let the threat of litigation or other challenges to the ban keep us from doing the right thing.

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**RESOLUTION NUMBER 29: APPOINTMENT OF JUDGES WHO SUPPORT THE RIGHT TO LIFE**

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The North Dakota Republican Party supports the nomination and confirmation of judges who interpret the Constitution according to the original intent or its authors.



#5

**HB 1572**

**Nadia Smetana**  
**8481 32 Ave NW**  
**Lansford, ND 58750**

Mr/Madame Chairman, and members of the committee, my name is Nadia Smetana from Lansford, ND. I am speaking in favor of HB No. 1572. I do not represent any group.

When I mentioned to a few friends that I wanted to testify in favor of a bill that seeks to ban abortion in ND, I encountered a lot of pessimism regarding the chances of such a bill being passed. Many seem to think that any bill that seeks to ban abortion has a slim to none chance of success.

My testimony will contrast the probable top ten reasons for voting against HB 1572 with the reasons to support HB 1572. Of course, all of these arguments could be made in greater detail but I will briefly summarize. I believe the reasons to support are much more compelling.

Number	Probable Reasons for Voting Against HB1572	Compelling Reasons to Support HB 1572 ☺ ☺ ☺ ☺ ☺ ☺ ☺
10	The world is over-populated and abortion can help with that.	We do not suffer from over-population in ND. Many of our towns and schools are suffering due to the dropping population. Each week in ND, approximately 23 children are aborted, enough to fill a classroom. The United States is barely at replacement level with it's fertility rate of 2.1.
9	The supreme court has decided the issue and nothing can be done to change it until Roe v. Wade is overturned.	The supreme court does not always get things right. They had also decided that slavery was legal. There are many similarities between the status of the fetus and the status of African slaves prior to the Civil War. Slaves were considered a commodity to do with whatever the vested interests of the day decided. When we tolerate and promote abortion, how is that any different than the slave traders and owners who put their own convenience and economic welfare above the sanctity and value of human life.

	<p>If this ban is passed, it would certainly be challenged in court and would be too expensive to defend.</p> <p>Some pro-life groups may not support this bill. They believe that a more incremental approach is the way to go.</p>	<p>Doing the right thing is often costly. What better use could their be for some of the surplus dollars in our treasury? Slavery was abolished at great cost in human lives, yet we would certainly agree it was worth the cost.</p> <p>It would be nice if all of the pro-lifers were united in their strategy. The incremental change would be like having to get a permit to own slaves or only being able to own a few slaves. The lack of unity should not prevent lawmakers from doing the right thing.</p>
8	An abortion ban would violate the separation of church and state	<p>Much of civil law is based on divine law. This argument assumes that the only reason for opposing abortion has to do with religious faith. Abortion is also a violation of natural law. The is illustrated in the writings of psychiatrist Dr. Philip Ney. He found that the principal reason for the emotional suffering women undergo after abortion is because it is against our human nature to destroy our own offspring.</p>
7	A woman should not be forced to bring an unwanted child into the world..	<p>There are un-intended pregnancies but there is no such thing as an unwanted child - there are only unwanted people. There is nothing wrong with an unwanted child, no reason why he/she should be destroyed. We are all aware of the many infertile couples who would be happy to adopt a child who is unwanted by the birth parents. Many think that if unwanted children were aborted, there would be less child abuse. Dr. Philip Ney has concluded that abortion is linked to child abuse. He found that "maternal bonding instincts are weakened by the deliberate denial of maternal attraction which must take place in an abortion." After all, if it is acceptable to abuse one's offspring before birth, why not after birth as well?</p>
6	Legal abortion benefits women by making abortion safe.	<p>Abortion advocates have long insisted that abortion is healthier for women than childbirth. Many studies examining the effects of abortion have proven otherwise. Women who have abortions often face physical problems, including impaired fertility, future fetal loss and ectopic pregnancies. By extending their scope beyond the narrow time frame that is examined by most post-abortion studies, a 1997 government-funded study from Finland</p>

showed that women who abort are four times more likely to die within a year than women who give birth. Kevin Sherlock and other researchers have demonstrated widespread under-reporting of abortion-related deaths. Even though most abortion-related deaths are not officially reported as such, legal abortion is reported to be the fifth leading cause of maternal death in the U.S. Teenagers, who account for about 30 percent of all abortions, have a higher risk of immediate abortion related complications and of long-term reproductive damage.

It prevents the many deaths that used to result from back-alley abortions.

The number of maternal abortion-related deaths due to criminal abortions before legalization has been widely estimated to be between 5,000-10,000 per year. A study of actual records done by Leon Parrish Fox put the number closer to 125 per year.

5 Women must be able to have abortions in order to be mentally healthy.

Dr. Philip Ney cites research that says that 10-13% of women report emotional distress immediately following abortions. He also says that 35% need help later on dealing with the consequences. Since over 40% of women will abort a child at some point during their childbearing years, the mental health of many women are adversely affected. This gives rise to the assertion that abortion is not a necessary right, but has instead served to hurt women more than it has benefited them.

According to Garfunkel, et al, a teenage girl is 10 times more likely to attempt suicide if she's had an abortion in the last six months.

Until recently, the large number of men suffering from abortion has been ignored. Wayne Brauning, the founder of Men's Abortion Recovery Ministries reports that a man's abortion experience can be described as a horrendous and heartbreaking experience, whether they opposed or supported the decision.

Evidence indicates that abortion can negatively affect future children who find out that their sibling was aborted.

This ban is indefensible unless it makes an exception for rape and incest.

Rape and incest are often cited as legitimate reasons for abortion. When South Dakota passed an abortion ban, it was thought that if they made an exception for rape and incest, it would receive more support. This did not turn out to be the case. This exception violates the main point of banning abortion. The unborn child of a rape or incest victim is no less human than any other unborn child.

4 Women must be able to have abortions in order to use their minds to their full potential and have economic stability. Women must not be forced to have children that they cannot afford.

We need only to look at the mental health effects of abortion on women to see that it does not empower women. Even if it did, we are in a sad state when bearing children is considered an obstacle to women reaching their full potential. Children and motherhood are not valued in our society as much as they should be. Not being able to afford a child is a poor justification for abortion. Economic status can change throughout a child's lifetime. If a toddler begins to tax the family budget, can we kill the child?

3 Abortion is not the destruction of a human life. The fetus perhaps a potential person, but is not a person.

Both sides in the abortion debate agree that something is killed during an abortion procedure. The disagreement may come when we ask, what is it that we are killing? Only when we determine what it is, can we make the decision if we have the right to kill it. The fetus is not like a cancerous tumor that must be removed before it sucks the life out of the person. The fetus has to be human because it has a human mother and father, but it is not part of the mother's body. It is separate and distinct and has been so from the time of conception. It can be a different gender than the mother, have a different blood type, has its own genetic code. It has its own blood that never mixes with the mother's. It is not a potential human but a human with great potential. Granted, it is totally dependent on the mother but so is a newborn child. The embryo or fetus is tiny, but when does size determine how human we are. Level of development and location do not determine humanity. A human person is defined by who they are, not by what they do.

2

It's the women's body, it is her choice. The government should stay out of the bedroom and out of a woman's womb! Abortion is a private choice between a woman and her doctor. This is a free country and women must have the ability to make a choice of what to do with her own body.

Just because something is done in private, does not make it right. We do not allow parents to abuse their children if it is done in private. The freedom we enjoy in our country is based on laws. These laws place limits on our choices. The stated purpose of the laws in the U.S. Constitution is to "secure the blessings of liberty to ourselves and our posterity" The Declaration of Independence reminds us that our laws are based on "certain unalienable rights, ...life, Liberty, and the pursuit of happiness..." Unalienable means that they cannot be surrendered. When our laws allow us to "choose" to take away the life of unborn human beings, it is not liberty, it is license.

1

I am personally opposed to abortion but I have no right to impose my beliefs on someone else

This would be like saying we oppose slavery ourselves and would never own any, but we have no right to impose these beliefs on anyone else.

Martin Luther King Jr. said, "The greatest sin of our time is not the few who destroyed, but the majority who sat idly by."

Theodore Roosevelt said, "Never will I sit motionless while directly or indirectly apology is made for the murder of the helpless."

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to the parent and child relationship generally, so as to provide for a short title; to provide for definitions; to provide that it shall be unlawful for any person or entity to intentionally or knowingly create or attempt to create an in vitro human embryo by any means other than fertilization of a human egg by a human sperm; to provide for standards for physicians and facilities performing in vitro fertilizations; to provide for judicial standards; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Ethical Treatment of Human Embryos Act."

SECTION 2.

Chapter 7 of Title 19 of the Official Code of Georgia Annotated, related to the parent and child relationship generally, is amended by adding a new article to read as follows:

"ARTICLE 4

19-7-60

(a) For purposes of this Article, the term:

(1) **'Department'** means the state Department of Health.

(2) **'Gamete Donor'** means an individual from whose body gametes were obtained, or an individual from whose body cells or tissues were obtained for the purpose of creating gametes or human embryos, whether for valuable consideration or not.

(3) **'Gamete'** means an egg (oocyte) or sperm.

(4) **'Human embryo'** means an organism with a human or predominately human genetic constitution from the single-celled stage to approximately eight weeks development that is derived by fertilization (whether in vitro or in utero), parthenogenesis, cloning (also known as somatic cell nuclear transfer), or any other means from one or more human gametes or human diploid cells.

(5) **'In vitro'** means outside the human body.

(6) **'In vitro fertilization'** means the formation of a human embryo outside the human body by union of human egg(s) with human sperm.

(7) **'In vitro human embryo'** means a human embryo created outside the human body.

(8) **'Transfer'** means the placement of a human embryo into the body of a woman.

19-7-61.

(a) It shall be unlawful for any person or entity to intentionally or knowingly create or attempt to create an in vitro human embryo by any means other than fertilization of a human egg by a human sperm.

(b) The creation of an in vitro human embryo shall be solely for the purpose of initiating a human pregnancy by means of transfer to the uterus of a human female for the treatment of human infertility. No person or entity shall intentionally or knowingly transfer or attempt to transfer an embryo into a human uterus that is not the product of fertilization of a human egg by a human sperm.

19-7-62

(a) No person or entity shall give or receive valuable consideration, offer to give or receive valuable consideration, or advertise for the giving or receiving of valuable consideration for the provision of gametes or in vitro human embryos .

19-7-63

The in vitro human embryo shall be given an identification by the facility for use within the medical facility. Records shall be maintained that identify the gamete donors associated with the in vitro human embryo, and the confidentiality of such records shall be maintained as required by law.

19-7-64

(a) A living in vitro human embryo is a biological human being who is not the property of any person or entity. The fertility physician and the medical facility that employs the physician owe a high duty of care to the living in vitro human embryo. Any contractual provision identifying the living in vitro human embryo as the property of any party shall be null and void. The in vitro human embryo shall not be intentionally destroyed for any purpose by any person or entity or through the actions of such person or entity.

(b) An in vitro human embryo that fails to show any sign of life over a thirty-six hour period outside a state of cryopreservation shall be considered no longer living.

19-7-65.

Only medical facilities meeting the standards of the American Society for Reproductive Medicine and the American College of Obstetricians and Gynecologists shall cause the fertilization of an in vitro human embryo. A person who engages in the creation of in vitro human embryos shall be qualified as a medical doctor licensed to practice medicine in this state and must possess specialized training and skill in artificial reproductive technology in conformity with the standards established by the American Society for Reproductive Medicine or the American College of Obstetricians and Gynecologists.

19-7-66

In the interest of reducing the risk of complications for both the mother and the transferred in vitro human embryos, including the risk of preterm birth associated with higher-order multiple gestations, a person or entity performing in vitro fertilization shall not create or transfer more than three in vitro human embryos during any one treatment cycle as defined by Paragraph 19-7-67.

19-7-67

Where a woman is to receive treatment using her own or donated embryos, whether fresh or previously cryopreserved:

(a) where the woman is aged under 40 at the time of transfer the medical facility should not transfer more than two embryos in any treatment cycle, regardless of the procedure used;

(b) where the woman is aged 40 or over at the time of transfer the medical facility should not transfer more than three embryos in any treatment cycle, regardless of the procedure used.



(c) Where a woman is to receive treatment using donated eggs or embryos, or using embryos created with donated eggs, the centre should not transfer more than two eggs or two embryos in any treatment cycle, regardless of the woman's age at the time of transfer and regardless of the procedure used.

19-7-68

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

19-7-69

All facilities providing assisted reproductive technologies must, at least 24 hours prior to obtaining a signed contract for services, provide patients with informed consent as required by law, and obtain a signed disclosure form before services commence. In addition to medical risks and information on outcome and success rates, the informed consent materials shall state in plain language the parental rights and duties of the gamete donors, as well as their legal rights and duties regarding the disposition of in vitro human embryos that were not transferred due to death, divorce, abandonment or dispute over the custody of the in vitro human embryo. *[Recommend enacting a separate informed consent for ART bill outlining risks and outcome rates.]*

19-7-70

Nothing in this Act shall be construed to affect conduct relating to abortion as provided in Chapter 12 of Title 16 of the Official Code of Georgia Annotated; provided, however, that nothing in this Act shall be construed or implied to recognize any independent right to abortion under the laws of this State.

19-7-71

Notwithstanding any other provision of this Act to the contrary, nothing in this Act shall be construed to create or recognize any independent right to engage in the practice of in vitro fertilization or to create in vitro human embryos by any means.

19-7-72 Penalties.

A. Civil Penalty. Any person or entity that violates any provision of this Article and derives a pecuniary gain from such violation shall be fined [insert amount] or twice the amount of gross gain, or any amount intermediate between the foregoing, at the discretion of the court [as is just].

B. Unprofessional Conduct. Any violation of this Act shall constitute unprofessional conduct pursuant to [insert appropriate state statutes/regulations for 1) medical doctors/surgeons and 2) osteopathic doctors] and shall result in sanctions increasing in severity from censure to temporary suspension of license to permanent revocation of license.

C. Trade, Occupation, or Profession. Any violation of this Act may be the basis for denying an application for, denying an application for the renewal of, or revoking any license, permit, certificate, or any other form of permission required to practice or engage in a trade, occupation, or profession.

D. Facility Licensing. Any violation of this Act by an individual in the employ and under the auspices of a licensed health care facility to which the management of said facility consents, knows, or should know may be the basis for denying an application for, denying an application for the renewal of, temporarily suspending, or permanently revoking any operational license, permit, certificate, or any other form of permission required to operate a medical or health care facility.

19-7-73

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person, entity or circumstance, shall be construed so as give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons or entities not similarly situated or to other, dissimilar circumstances.

19-7-74

The General Assembly, by joint resolution, may appoint one or more of its members who sponsored or co-sponsored this Act, as a matter of right and in his or her official capacity, to intervene to defend this law in any case in which its constitutionality is challenged.

#### SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

*Attachment 1*  
*HB 1572*

House Bill 1572  
Representative Dan Ruby  
Senate Judiciary Committee  
March 16, 2009

Mr. Chairman and members of the committee, House Bill 1572 is a bill that could result in affecting a change in direction dealing with the rights of states to govern important issues for themselves. Some would say that this bill would do nothing and is a waste of time and money. I disagree. I believe the level of opposition to this piece of legislation should tell you otherwise.

House Bill 1572 simply defines when human life begins. But more importantly it applies the protections of our existing laws to babies who are irrefutably distinguishable from the mothers carrying them. You might ask how I can say that this life is a person since it isn't able to live independent of the mother and therefore can't breathe on its own or survive outside the womb. A baby outside the womb won't live long without the dependence of someone else either. Is it not a life? The elderly person placed on a ventilator in a hospital or nursing home is not breathing on their own either. Are they not a life? So when does life begin? It begins when an egg is fertilized and begins growing and only quits developing when the life is terminated. This can happen naturally, as with miscarriages, or through intervention as with abortion. One thing that isn't refutable is that development is life until it dies.

Why is this so important to establish? Because if this bill becomes law in North Dakota and is upheld by the Supreme Court it will re-establish state sovereignty relative to defining "person" and allowing states to again define how they choose to protect persons. The question Justice Blackmun posed in the January 22, 1973 Roe v. Wade decision, relative to not knowing when life begins has since been answered. Science now recognizes that at the moment of conception a unique individual has been created and is alive. Viable, no but alive and unique – yes – thus at the moment of conception there is a unique person.

Roe v. Wade was a Texas case involving the state's law proscribing abortion. Texas argued there was a state interest in protecting human life thus its laws proscribing abortion were valid and proper. The turning issue of Roe, according to Blackmun was whether we were dealing with a life question or a liberty (i.e. privacy) question. Although Blackmun stated in his opinion, "The Constitution does not explicitly mention any right of privacy". He went on to create one for purposes of the opinion.

In addressing the life issue he said, "Some of the argument for this justification {laws against abortion} rests on the theory that a new human life is present from the moment of conception. The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail." Thus, if the answer to the question were that we were dealing with life it would trump the liberty right (i.e. the newly created privacy interest), and states would have a right to regulate.

Blackmun writes, "The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. On the other hand, the appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment. The Constitution does not define "person" in so many words.

What HB 1572 does is define person in the North Dakota constitution. The question would then be directed back to the court to determine whether or not – since the U.S. Constitution does not define "person" it then is left to the states to do so.

If this were the decision then each state would be able to define "person" and provide protection to persons as they see fit. In short what abortion proponents are terrified by is that they would potentially have to battle for legalizing abortion state by state. Their fight to keep abortion – cheap, legal, and unlimited would have increased by a factor of 50. And it may be even worse than that. States may determine the only exception permitting abortion would be the life of the mother. We all know that with medical advances as they have, this circumstance would truly be rare.

The Montana legislature, this week passed a similar bill putting this issue before the people of their state. States want their sovereignty and it appears this may well be how it is re-established. State's rights as well as the lives to millions hang in the balance.

Mr. Chairman and members of the committee there are cases where babies are partially removed from the womb, provided surgical treatment and then returned to the womb receiving no protections under the constitution. There are babies that have the audacity to survive an attempted abortion and are left to die because for some reason we, in this country, don't recognize them as people. What is so magical about the birth canal or cutting the cord that until the baby passes through the birth canal or is delivered c-section and separated by cutting the cord, that they are now recognized as people? I contend to you that they are a human life, a person, long before the delivery and science backs me up.

Mr. Chairman and members of the committee, I respectfully ask for a do pass recommendation on House Bill 1572 and I would stand for questions.

Testimony of Gualberto Garcia Jones

HB 1572, before North Dakota Senate Judiciary Committee, March 16, 2009

Mr. Chairman and Members of the Committee:

My name is Gualberto Garcia Jones, and I am a legal expert in the area of constitutional law. I attended law school at the George Washington University Law School in Washington, D.C., and served as Director of Legislative Analysis for the American Life League for several years. I am here to testify in favor of HB 1572.

The central question you want answered today is what will be the result if HB 1572 is challenged in court.

If you pass HB 1572 as currently written, it will most likely get challenged through the courts all the way to the United States Supreme Court. The issue it will raise is not whether there is a right to abortion; rather, the issue is to what extent does the Tenth Amendment allow the states to govern themselves?

HB 1572 presents a broad statement of principle, namely that all human beings are persons with rights. Through HB 1572, the people of North Dakota will be able to assert their power to regulate all the thorny issues related to the beginning and end of life. In order to regain that power, however, the maze of constitutional abortion law MUST be averted. *Roe v. Wade* and *Planned Parenthood v. Casey* are like swampy bogs where pro-life legislation goes to die. Entering it is legally speaking, a suicide mission.

The genius of HB 1572 is that it does not say the words *abortion*, or *fertilized eggs*, or *human embryonic stem cell research*, or any other hot button issue. Instead, it asserts the fundamental right of a state to govern itself by stating something as simple as "a human being is and must always be a person."

It seems too simple to be effective. After all isn't it obvious that all human beings are also human persons? Most of us think so, but a small group of Ivy Leaguers in black

robes don't. You see there is a fundamental difference between the words "human being" and "person." Human being is defined by science; a legal person is defined by the law. That distinction is important because you in this room make the law, not the U.S. Supreme Court, not the unelected judges. You write the law, so you should be able to decide who is a person. HB 1572 simply states that in North Dakota there will be no second class human beings; each human being will be a person.

Today, you must weigh the amendments that are proposed very carefully. The constitutional strength of HB 1572 lies in the fact that it avoids getting bogged down in the endless debate about abortion. I ask you not to make this about abortion. Almost every approach to address abortion directly has been tried and has failed. Do not waste your valuable time passing a watered-down feel-good anthem against abortion that will die in the collective memory as soon as it is born.

Be bold and have courage. Pass HB 1572 as written, and North Dakota will be issuing an emancipation proclamation against judicial tyranny. This is a fight you can win; it is a fight that is much less divisive than abortion, and it is a fight that has friends and allies in high places, not to mention the Tenth Amendment and U.S. Supreme Court precedent to back it up.

As a legal expert on abortion, I can't emphasize this enough: if you amend this bill to try to make it comport to the standards of *Roe* or *Casey* or *Webster* or any of the other abortion cases, you will lose. However, if you keep the bill as it is written, as a bill that extends the rights of a human person to all human beings, then the courts will have to apply the standard the U.S. Supreme Court set out in *Pruneyard Shopping Center v. Robbins*. There, the court recognized "the authority of the State to exercise its police power and its sovereignty right to adopt in its own Constitution individual liberties more expansive than those granted in the Federal Constitution."

As it is written now, HB 1572 grants basic civil rights and states rights to all human beings.

To state that all human beings are also legal persons is neither a pie-in-the-sky belief, nor is it unworkable. Numerous and broad-ranging precedents support the central notion of HB 1572.

In the area of criminal law, the personhood of all human beings, including the unborn child, was recognized by the U.S. Supreme Court in *Union Pacific Railroad Co. v. Botsford*, 141 U.S. 250 (1891). In *Botsford*, the U.S. Supreme Court recognized the common law principle that where a woman carrying an unborn child was sentenced to death for any crime, she could avoid the death penalty in order to guard against the unintentional taking of the life of her unborn child. Of course, many states, such as North Dakota, also have fetal homicide laws that recognize the personhood of the unborn child in the limited situation where an unauthorized aggressor kills the unborn child.

In the area of tort law, the states have consistently recognized the unborn as possessing vested rights in wrongful death cases. Take for example, the case of *Cooper v. Blank*, a case decided in Louisiana courts in 1923. There the court ruled that a child in the womb is a separate entity, and “a right of action survives to it for injuries inflicted to its father during its gestation.”

In the area of property law, there was a case only four years prior to *Roe v. Wade*, called *Wagner v. Finch* where the Fifth Circuit Court of Appeals interpreted the term *child* within the Social Security Act to include unborn children.

The cases involving inheritance law are abundant and crystal clear. In the United States, when a person leaves property to his children and dies while his child is in the womb, that child has the same rights as the other born children.

All of these cases recognize that in some aspects it is common, accepted, and workable to treat human beings, whether born or unborn, as legal persons with rights. HB 1572 fills an important need; it reinforces that ALL human beings are legal persons protected by law in ALL situations.



In his dissent to the majority opinion in *Planned Parenthood v. Casey*, U.S. Supreme Court Justice Antonin Scalia said of the court's abortion jurisprudence, "We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining."

HB 1572 will extend an invitation to the U.S. Supreme Court to get out of the area of legislating what is properly a state concern. This bill asserts North Dakota's sovereign right as a state to determine fundamental questions in the way the founding fathers intended: healthy and strenuous debate. I urge you to recommend DO PASS on this important piece of legislation.



*North Dakota*  
**FAMILY  
ALLIANCE**

DEDICATED TO STRENGTHENING FAMILIES

*Attachment 2  
HB 1572*

*A Trusted Voice*

*Tom D Freier*  
EXECUTIVE DIRECTOR

**Senate Judiciary Committee  
March 16<sup>th</sup>, 2009  
HB 1572**

**Mr. Chairman, and members of the Senate Judiciary Committee, my name is Tom Freier, the Executive Director of the North Dakota Family Alliance. The North Dakota Family Alliance supports HB 1572.**

**Steve Cates, NDFA Board President, will testify on behalf of the North Dakota Family Alliance.**

**Please support HB 1572 with a Do Pass.**



## Jeff and Maria Lancaster's Embryo Adoption Story

*Attached 3  
#B 1572*

The Lancaster Family

4445 382<sup>nd</sup> 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 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 months 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](http://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.

# Resources

Embryo Adoption Services of Cedar Park

[www.adoptanembryo.net](http://www.adoptanembryo.net)  
email: [adoptanembryo@aol.com](mailto:adoptanembryo@aol.com)

[www.embryoadooption.org](http://www.embryoadooption.org)

This specific web site is a public service publication sponsored by the Dept. of Health and Bush Administration.

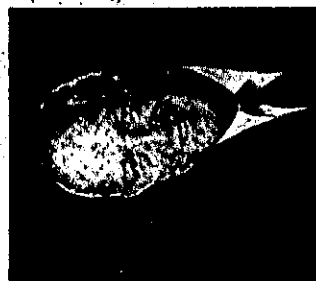


## Embryo Adoption Services of Cedar Park

16300 112th Ave. N.E.

Bothell, WA 98011

Church Office 425-488-3600



Dr. Joseph B. Fuiten  
Senior Pastor, President EASCP



Jeff and Maria Lancaster

Maria D. Lancaster  
Executive Director, EASCP

Embryo Program 425-214-4512  
[www.adoptanembryo.net](http://www.adoptanembryo.net)

Hope for ma...



## Embryo Adoption Services of Cedar Park



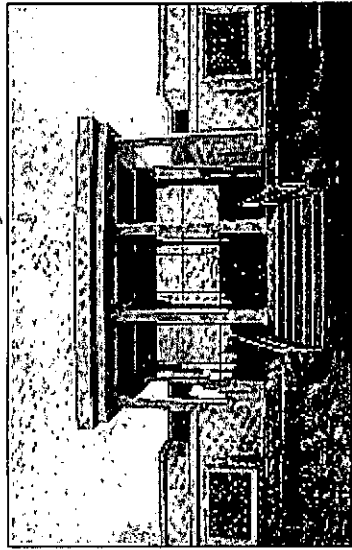
A Ministry Of Cedar Park Church  
Dr. Joseph B. Fuiten, Senior Pastor

# Embryo

## BASIC Q'S

# Services of Cedar Park

## Adoption



Chapel of the Resurrection at Cedar Park Church

*Dedicated to bringing  
families together for  
Life.....*

*Embryo adoption can be a  
solution for couples with  
infertility problems*

*Embryo adoption is an answer  
for families that have remaining  
embryos in the freezer after  
fertility treatments*

EMBRYO ADOPTION IS  
VERY AFFORDABLE

EMBRYO ADOPTION IS A  
WONDERFUL OPTION FOR  
COUPLES THAT CAN'T  
CONCEIVE ON THEIR OWN

EMBRYO ADOPTION GETS A  
PERSON OUT OF THE FREEZER!



*"I knew you before you were  
yet formed in your mother's  
womb" Psalm 139:13*

*...Because Life begins,  
at conception!*

[www.adoptanembryo.net](http://www.adoptanembryo.net)

425-214-4512

ADOPTANEMBRYO@AOL.COM

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

Honorable Chairman David Nething and members of the Senate Judiciary Committee,

My name is Tim Lindgren. I am state director of North Dakota Life League (NDLL). NDLL represents over 4500 pro-life individuals and families throughout the state, many of whom signed petitions in favor of a state personhood bill.

House Bill 1572 recognizes all human beings – from their biological beginning to their natural end – as “legal Persons”.

Rep. Dan Ruby drafted and introduced HB 1572 in the House of Representatives as a four page bill. The first paragraph you see in the current version of HB 1572, Section I, are the principles contained in the original draft. Section 1 is what your pro-life constituents are looking for. I have been working on pro-life legislation in the last six legislative sessions. I can tell you from visiting with our pro-life supporters from across the state that this bill has generated more enthusiasm and optimism than any other bill we have worked on.

HB 1572 is defensible to the public. This bill recognizes in law what almost all people recognize aside from the law, that is, that each one of us is a person, regardless of our age, our size or our health.

HB 1572 is legally defensible. Highly respected legal organizations are willing to donate their time and effort to defend this bill in the courts if necessary. The public support is behind you. One nationally recognized constitutional official who argues cases before the US Supreme Court calls this group of justices the most pro-life since the Roe v. Wade decision.

Some have argued that this bill goes too far. Some say this bill does not go far enough. This bill is just right. It is clean and easy to read. It reflects the values of this state.

North Dakota Life League urges a “YES” vote on HB 1572, as is. I sincerely appreciate this opportunity to speak to you. Thank you.

**ND senate testimony- March 16, 2009**

My name is Stephanie Dahl and I have been a physician at MeritCare in Fargo for 3 years. I would like to give you a little information on my background so you understand my training and my credentials to testify on this bill.

I graduated from University of North Dakota School of Medicine with an M.D. degree after 5 years of undergraduate work at NDSU. My residency in Obstetrics and Gynecology was at St. Joseph Mercy Hospital in conjunction with the University of Michigan and I completed a Reproductive Endocrinology and Infertility fellowship at the University of Cincinnati in Ohio. This is a total of 19 years of training and experience. 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.

**1. Molar pregnancies:**

This bill denotes that anything that contains the genome of Homo sapiens is a person. This is not true. A molar pregnancy has the genome of a Homo sapiens and even has normal chromosomes but will not result in a living person. But, this abnormal pregnancy can often risk the life of the mother. Molar pregnancies can be a dangerous condition and even the surgery to treat them can be risky to the life of the mother. The molar pregnancy can spread like a cancer to the lungs, liver, and brain. I have had several patients with molar pregnancies including one woman with 3 young children who had brain and liver involvement. She required many months in the hospital undergoing chemotherapy and brain radiation.

Young women can develop tumors in the ovary known as teratomas. These are tumors that contain the human genome as well as easily recognized growing tissue of a human. Teeth, bone, cartilage, hair, and fat can all be found in the tumors and these tumors can become cancerous. I would not consider a teratoma, a tumor of the ovary, a person but under this bill it would be considered a person. Proponents of this bill like to say these conditions are rare. The truth is neither of these conditions are rare they are actually quite common. Molar pregnancies and teratomas contain the genome of Homo Sapiens but I think that everyone in the room would agree that this abnormal tissue that can even become cancerous is not a person.

References:

Berek JS. Novak's Gynecology. Thirteenth Edition. 2002.

Speroff and Fritz. Clinical Gynecologic Endocrinology and Infertility. Seventh Edition. 2005

## **II. Ectopic pregnancies:**

The sponsor of the Bill states that House bill 1572 will not make the treatment of ectopic pregnancies illegal. But, ectopic pregnancies are fertilized eggs that have implanted and are now growing and developing fetuses. In other words, they contain the genome of Homo Sapien. In fact, it is not unusual to see a fetus with a heartbeat in the fallopian tube on ultrasound. As the pregnancy continues to grow, the tube ruptures and can lead to massive bleeding in the abdomen and death for the mother. My question is... if this bill is passed, how will the law distinguish the fertilized egg that has implanted normally in the uterus or abnormally in a fallopian tube? Will there be a government official who will review all the records of ectopic pregnancies before treatment can begin. Please keep in mind that ectopic pregnancies can present with acute abdominal hemorrhage. The woman may need immediate surgery. In fact, ectopic pregnancies were considered a fatal complication of pregnancy for centuries.

Mortality rates for women who with ectopic pregnancies in the 1800s to mid 1900s were 67% with no treatment and 83% for women who were unlucky enough to undergo surgery. Just over one hundred years later, it is rare for women in ND to die from an ectopic pregnancy. This is a great success story for modern medicine especially considering the relatively common nature of this condition with an incidence as frequent as 1 in 80.

Ectopic pregnancies can be treated with methotrexate, a form of chemotherapy, or surgery. Both treatment options stop the growth of the pregnancy essentially killing the fetus in order to save the life of the mother. This is especially devastating for infertility patients because they have been waiting for years to get pregnant and now have damaged tubes which decreases their chance of getting pregnant again. If House Bill 1752 passes do we tell patients to just hope they are in the 33% of patients who don't die without treatment? Or do we send them to Minnesota or Montana where they can get actual medical care?

### References:

Speroff and Fritz. Clinical Gynecologic Endocrinology and Infertility. Seventh Edition. 2005

Page et al. Human Reproduction. Essentials of Reproductive and Perinatal Medicine, Third Edition. 1981

## **III. Miscarriage:**

After a fertilized egg has implanted it often does not result in a healthy baby. Spontaneous miscarriage rates range between 14-45% and 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 even include the number of eggs that fertilize but do not implant in the uterus.

An incomplete miscarriage occurs when the cervix is dilated with bleeding 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 1572 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 fertility patient and was trying for years to have a baby. She required multiple units of blood and a D&C to save her life. The fetus still had a heartbeat but the cervix was dilated and she was hemorrhaging. There was no way to prevent the miscarriage. This bill however could have delayed the necessary surgery to stop the bleeding and save the mother. Do you think a physician would be less willing to step in and perform surgery to save the mother if the physician knows that he or she may be faced with charges for ending the life of a "person"?

Reference:

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

#### **IV. Intrauterine Devices:**

Intrauterine devices for the treatment of medical problems may be prevented by passage of ND House Bill 1572. Numerous studies of IUDs have shown that the primary mechanism of action is to prevent fertilization of the egg. However, in some instances the IUD may prevent implantation of a fertilized egg. This bill could affect women who are using the IUD not to prevent pregnancy but to treat medical problems.

There are many beneficial effects of the progesterone containing IUDs. Menstrual blood flow is decreased by 90% which makes it a very effective treatment for menorrhagia (prolonged, heavy menstrual cycles) and dysmenorrhea (painful menstrual cycles). The progesterone IUD can often allow patients to avoid invasive surgery including hysterectomy. The progesterone IUD can be used to treat endometrial hyperplasia which is a precancerous condition of the uterus and can prevent uterine cancer from developing. It can also be used after uterine surgery to prevent adhesions (scar tissue) from developing inside the uterus.

If House Bill 1572 were passed, would it be necessary to ensure she is not preventing a fertilized egg from implanting? Would these women first undergo a tubal ligation? That would certainly increase the patient's risks of surgery and increase the medical costs. An even better solution may be to require her husband to have a vasectomy?

I have a patient from North Dakota with a long history of miscarriages. We found that she has a precancerous condition of her uterus but she would still like to have children. We have been treating her with medications and although her condition has improved, it has not resolved. I sent her to the Mayo clinic to meet with the cancer specialists and they recommend that we place an IUD for 6 months to treat the condition as a last resort before hysterectomy. I would hate to tell this patient that the state of North Dakota passed a bill that may not allow us to place an IUD to treat her precancerous condition.

References:

Speroff L, Fritz MA. Clinical Gynecologic Endocrinology and Infertility. Seventh Edition. 2005

Sivin I. Stud Fam Plan 20:355, 1989

Ortiz et al., Contraception 36:37, 1987.

Ammala et al., Fertil Steril 63:773, 1995.

Alveraz et al., Fertil Steril 49:768, 1988.

Andersson. British Journal of Obstetrics Gynaecol 97:690, 1990.

Baldszi et al., Contraception 67:87, 2003.

Hidalgo et al., Contraception 65:129, 2003.

**V. Cancers in pregnancy:**

Cervical cancer, leukemia, lymphoma, breast cancer, thyroid cancer, melanoma, ovarian cancer, and brain cancer can all affect pregnant women. Chemotherapy and radiation act to kill rapidly growing cells and pregnancy tissue is especially sensitive to the treatment effects. House Bill 1572 may impact the ability of a physician to treat pregnant women with cancer. The physician may be injuring the fetus in order to treat the pregnant women. Of course, chemotherapy and radiation can be delayed until after the baby is born but will that may affect the survival of the woman.

Reference:

Creasy, Resnik. Maternal-Fetal Medicine. 4<sup>th</sup> Edition. 1999.

**In closing, I am a physician and I have devoted my career and my life to helping North Dakota couples from all across the state have a baby. We have patients that drive from**

every corner of the state including Beach, Williston, Hettinger, Crosby, Cavalier, Fort Yates, Washburn, Lisbon, Minot, and Bismarck to name a few. I rejoice with every patient that is pregnant and I wish there were some way to prevent every molar pregnancy, ectopic pregnancy and incomplete miscarriage. My favorite part of this job is holding the babies in my arms when patients bring them in to see me. I hope that every woman who doesn't want their pregnancy would consider adoption because I have so many patients who would love to adopt a baby. However, I do not support House Bill 1572. 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 I hope that you would vote against it.

Thank you for your time.

Stephanie Dahl

North Dakota Senate testimony: March 16, 2009

My name is Steffen Christensen and I have practiced in North Dakota for over thirty years. I was born and raised in North Dakota, graduated from the University of North Dakota School Of Medicine when it was a two year school, then completed my Medical Degree at the University of Iowa. Following training in Obstetrics and Gynecology I return to Fargo and practiced for fifteen years. I completed a fellowship in Reproductive Endocrinology and Infertility and returned to North Dakota to start an IVF center. For the last fifteen years I have been the medical director of North Dakota's only Fertility Center with an In Vitro Fertilization program.

At our center in Fargo, we see hundreds of infertility patients a year. We average approximately 150 in vitro fertilization cycles a year and have excellent success rates that are well above the national average for 2008. We have helped hundreds of families from across ND, Minnesota, South Dakota, Montana and Canada have babies. At our satellite office in Bismarck we see patients from all over western North Dakota. HB 1572 has the potential to impact the treatment of those patients and I would like to address the following concerns:

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

Direct manipulation of oocytes (eggs) and sperm outside the human body is termed Assisted Reproductive Technologies. In vitro fertilization (IVF) is a form of ART, which has been used since 1978 and has revolutionized fertility treatment and allowed couples who would otherwise be rendered sterile to have biologic children. This is a complicated process that involves multiple medications, careful monitoring of the patient, egg retrieval and fertilization of the eggs in the laboratory. Resulting embryos are either transferred into the uterus or cryopreserved for future attempts at pregnancy. Even with the transfer of 2-3 healthy appearing embryos only 40-50% of IVF cycles result in pregnancy and 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, 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. Over 2 million healthy babies have been born from in vitro fertilization including hundreds of babies across the state of North Dakota. It is now estimated the 1-percent of the births in the United States are a result of In Vitro Fertilization.

House bill 1572 has the potential to impact IVF procedures because the eggs are fertilized outside the body. Our embryologist evaluates the embryos and determines which have the best chance of successful pregnancy. Studies have shown 20-60% of human embryos demonstrate abnormal fertilization and/or abnormal chromosomes. It is generally recommended not to place embryos that have obvious abnormalities into the uterus. If House Bill 1572 is passed, who will be responsible for the abnormal embryos that now have personhood status? Will there be a government representative present at every IVF procedure to confirm that the eggs fertilized abnormally?

Another concern about this bill is the ability to impact embryos cryopreservation for future pregnancies. If a fertilized egg were 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? What about the physicians, nurses, embryologists, and lab technicians who currently work in North Dakota. Do you think they want to remain in a state where they could be incriminated for their work to help families have babies? Will we be able to recruit trained professionals to work in this state?

At our center, we follow the guidelines from the American Society of Reproductive Medicine and normally transfer 2 or 3 embryos. Would this bill require physicians to transfer all of the embryos from a cycle? This can range from 2-25 embryos in a cycle. This would certainly bring attention to our state. Another option cited by patients is to only fertilize the number of eggs that we want to transfer. This is a short cited solution that would decrease the patient's chance of success in that cycle because such a high number of embryos fertilized abnormally. This would substantially increase the financial burden of IVF for families and insurance companies. Would the state be willing to make up the costs to the patients who don't conceive?

I would like to relate one story, out of the hundreds of patients who undergo IVF at our center every year. They parents had a baby girl who grew progressively weaker and did not make her normal milestones. She died at 8 months of age after numerous medical tests and hospitalizations the parents found that they were both

progressively weaker and did not make her normal milestones. She died at 8 months of age after numerous medical tests and hospitalizations the parents found that they were both carriers for a deadly muscular dystrophy gene. They decided to try to have another baby because they only had a 25% chance of this horrible disease from affecting their next child. Unfortunately, the second daughter died at 15 months from the same disease. Their babies' deaths could not be prevented by modern medicine. However, with in vitro fertilization, we have the ability to test the embryos for this deadly disease and prevent the parents from living through this nightmare again. What about the right's of this family to have a healthy baby?

In closing, this bill will give person status to every fertilized egg. However, as scientists we know that not every egg we retrieve will fertilize. Only about 40% of fertilized eggs will ever continue to develop into a zygote and then an embryo. Not all embryos that are transferred in to the uterus will implant and not all implantations will result in a normal child nine months later. In other words, not every fertilized egg is a person. Some fertilized eggs have the potential to develop into a person, but many do not.

#### References:

Steptoe 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.

I do not support House Bill 1572. This bill will interfere with our ability to help our patients achieve their dream of having a baby. Please consider the wide-ranging consequences of this bill and recommend that it not be passed. Thank you for your time.

Respectfully,

Steffen Christensen

Testimony HB 1572  
Senate Judiciary Committee  
March 15, 2009

Verle Reinicke  
1224 N 1<sup>st</sup> St.  
Bismarck, ND 58501

Mr. Chairman and members of the Senate Judiciary Committee, my name is Verle Reinicke, and I am here to speak in opposition to HB 1572. I am a retired clergy person with the Evangelical Lutheran Church in America, having spent all of my years as a pastor of the church in western North Dakota.

The proponent of this bill seeks, by the definition contained in it, to cover a multitude of sins, as it were. He perceives that the sins connected with abortion would be reined in by the comprehensiveness of this definition, a definition so definitive that no one would ever be able to obtain an abortion ever again.

That's a preposterous idea. The attempt to create that kind of air-tight dragnet that would end all abortion activity by making it a crime is ridiculous.

Sin is proper to mention here because there is a strong religious component to this bill. What is troubling, at this point, is that this legislation would become normative the law in North Dakota. It is the supposition that the position represented here is really the only one and the right one. Nothing else is to be considered.

This does not take into consideration that there is not unanimity among the people of North Dakota on this issue. Making this the law of the state would bind those who, on equally defensible religious grounds, do not want to have to live with the dictates of this measure. It is simply not as black and white, as clear, as this bill would suggest.

We now live in a much more pluralistic, more diverse, differentiated society. There are more and more religious voices speaking and asking a place in our common conversation and life in the public square. Not all of those religious voices speak in the same way about this issue. It is not the case of one definition fits all. This bill's author may think that we need not consider other and diverse religious voices. We do that at our peril.

Consider Judaism. First, a recurring Jewish joke on the net about when life begins. "There's a big controversy on when life begins in Judaism. In Jewish tradition, the fetus is not considered viable until after it graduates from medical school" (the-humor-store.net Jewish view on when life begins).

There are scriptural and Talmudic considerations. Dr. Fred Rosner, Director of Medicine at the Mt. Sinai Hospital in Queens, NY, and Professor of Medicine at the Mt. Sinai School of Medicine quotes Rabbi Gamaliel in the Talmud, the Jewish commentary on the scriptures. He says, "Rabban Simeon ben Gamliel said: Any human being who lives thirty days is not a *nephel* [abortus] because it is stated: 'And those that are to be redeemed of them from a month old shalt thou redeem (Num. 18:16),' since prior to thirty days it is not certain that he will survive" ([www.myjewishlearning.com/beliefs/Issues/Bioethics/Abortion/Fetus\\_in\\_Jewish\\_Law/Beginning\\_of\\_Life.shtml](http://www.myjewishlearning.com/beliefs/Issues/Bioethics/Abortion/Fetus_in_Jewish_Law/Beginning_of_Life.shtml)). In this case, life begins 30 days after birth.

In an *amicus* brief as part of a Supreme Court decision (Webster v. Reproductive Health Services, October, 1988), a Jewish group, Agudath Israel, wants to be supportive of a "reconsideration of *Roe v. Wade*," but it says that there may be a conflict because under sinaitic law, if the mother's life is endangered, abortion is allowed ([www.jlaw.com/Briefs/webster4.html](http://www.jlaw.com/Briefs/webster4.html)).

Muslim scholars believe that life begins in the 4<sup>th</sup> lunar month after <sup>conception</sup>birth. The Prophet himself (Mohammed) said: "The creation of each one of you is brought in the womb of his mother for forty days as a germ cell. Then for a similar period, he is an embryonic lump (hanging like a leech, known as '*alaghah*' in Arabic). For another forty days, he is a *mudghah* (like a chewed-up substance: shape of a four-week-old embryo); then an angel is sent and he (the angel) blows in him the *ruh* (soul). After this, the angel is ordered to write down four words. He is told to write down the child's [future] livelihood, his life duration, and whether he is to be miserable or happy. (Al-Bukhari)"

And this Muslim language is very close to Genesis 2:7, where it says that God takes stuff he (sic) made and breathes into it the breath of life, and it becomes a living being. Life happens when the first breath is taken because for Jewish thinking (and Christian thinking too for that matter) life is a body-soul (breath) unity, and it isn't until that unity occurs that life begins. However, the Bible also says of Jeremiah, for instance, that God knew him before he was formed in the womb. The Bible does not present only one image as to when life begins.

There are many Christian groups in the United States, and not all of them agree on this issue. There some who are categorically opposed to abortion and asserting that life begins: Roman Catholics, Lutheran Church-Missouri Synod, Presbyterian Church in America, Orthodox, Independent Bible Churches and Evangelical church bodies. Some are pro-life but allow conditional abortions: Southern Baptist Convention, Presbyterian Church USA, Episcopal, Evangelical Lutheran Church in America. Methodists support the notion of choice, and the United Church of Christ supports the legalization of abortion.



I have attached the social statement from my own Evangelical Lutheran Church in America from 1991 for your information. It lays out a nuanced position but recognizes that there is wide disagreement within the church body as a whole: not all agree or accept. Nevertheless, the statement stands trying to provide counsel to its members on this issue.

The issue to which this HB 1572 speaks is too fraught with differences to think it can be solved by this definition and frankly not a very good one. Its language is convoluted and very unclear to me.

The Noble Experiment of the 18<sup>th</sup> Amendment to the Constitution prohibiting alcohol use was an attempt to make us a better and more moral people. It happened largely under the influence of religious groups and persons. It failed. I hope that we in North Dakota do not try to do a like kind of thing to which this bill points.

Thank you.

*This social teaching statement was adopted by a more than two-thirds majority vote at the second biennial Churchwide Assembly of the Evangelical Lutheran Church in America, meeting in Orlando, Florida, August 28 - September 4, 1991.*

## **I. Our Unity and Diversity in Christ**

### **A. The Basis of Our Unity**

We in the Evangelical Lutheran Church in America are united with all human beings and the whole creation because God has created us and all that exists.

We are united in Christ with all Christians in the one, holy, catholic, and apostolic Church.

As Lutherans we are united in our confession that we are justified by grace through faith in Jesus Christ. We believe that the Bible is the authoritative source and norm for Christian faith and life.

### **B. The Gift of Our Diversity**

Because we are united in Christ through faith, we have both the freedom and the obligation to engage in serious deliberation on moral matters.

Induced abortion, the act of intentionally terminating a developing life in the womb, is one of the issues about which members of the Evangelical Lutheran Church in America have serious differences. These differences are also found within society.

Differences hold promise or peril. Our differences are deep and potentially divisive. However, they are also a gift that can lead us into constructive conversation about our faith and its implications for our life in the world.

### **C. Talking about Our Differences**

The topic of abortion evokes strong and varied convictions about the social order, the roles of women and men, human life and human responsibility, freedom and limits, sexual morality, and the significance of children in our lives. It involves powerful feelings that are based on different life experiences and interpretations of Christian faith and life in the world. If we are to take our differences seriously, we must learn how to talk about them in ways that do justice to our diversity.

The language used in discussing abortion should ignore neither the value of unborn life nor the value of the woman and her other relationships. It should neither obscure the moral seriousness of the decision faced by the woman nor hide the moral value of the newly conceived life. Nor is it helpful to use the language of "rights" in absolute ways that imply that no other significant moral claims intrude. A developing life in the womb does not have an absolute right to be born, nor does a pregnant woman have an absolute right to terminate a pregnancy. The concern for both the life of the woman and the developing life in her womb expresses a common commitment to life. This requires that we move beyond the usual "pro-life" versus "pro-choice" language in discussing abortion.

## **II. Convictions of our Faith**

Some basic faith convictions undergird our judgments on abortion:

Human beings, created in God's image as male and female (Genesis 1:27-28), are persons of intrinsic value and dignity. Human beings live in community, with responsibility and accountability to God, self, and others. Women, faced with unintended pregnancies, are called to be good stewards of life by making responsible decisions in light of these relationships. Women and men share equally in the responsibility and accountability for procreation, although it is women who are most intimately affected by decisions about abortion.

All of life is a mysterious, awesome gift of God. Biblical passages express the God-given mystery of creation (Psalm 139; Jeremiah 1:5; Isaiah 40:26ff; Luke 1:41; Acts 17:24-25). God creates life,

redeems it through Jesus Christ, and fulfills it in the coming of the reign of God. Personal human life is a part of this divine drama. God creates a human being through complex genetic, physiological, and relational developments. [2] Human life in all phases of its development is God-given and, therefore, has intrinsic value, worth, and dignity. Guided by God's Law, which orders and preserves life, human beings are called to respect and care for the life that God gives.

What God has created has become corrupted by sin. Sin is both a condition of alienation from God and the acts that issue from this condition. Human judgments, actions, organizations, and practices are marked by a distortion of God's will and purpose for life. Sin is evident in the many ways human lives are not given equal respect or treated with high value, but are subject to abuse, violence, and neglect by individuals, groups, and entire societies. We are caught up in a web of sin in which we both sin and are sinned against.

God calls us to repentance, renewal, and responsible living. We have "died to sin" through our Baptism into Christ and through him are raised to new life (Romans 6:2ff). We are forgiven and sustained through God's grace. Our faith is to be active in love and our freedom used for the benefit of one another. This is the fruit of the Spirit manifest in our lives. We are to do justice, love mercy, and walk humbly with our God (Micah 6:8).

As a community of forgiven sinners, justified by God's grace through faith in Jesus Christ, we are empowered so that we might do what is effective in serving the needs of the neighbor. Inspired by Jesus' own ministry, our love for neighbor embraces especially those who are most vulnerable, including both the pregnant woman and the life in her womb.

### **III. The Church as a Community Supportive of Life**

Because we believe that God is the creator of life, the number of induced abortions is a source of deep concern to this church. We mourn the loss of life that God has created.[A] The strong Christian presumption is to preserve and protect life. Abortion ought to be an option only of last resort. Therefore, as a church we seek to reduce the need to turn to abortion as the answer to unintended pregnancies.[B]

We also deplore the circumstances that lead a woman to consider abortion as the best option available to her. We are moved particularly by the anguish of women who face unwanted pregnancies alone. The panic and isolation of such pregnancies, even in the best of circumstances, can be traumatic. Poverty, lack of supportive relationships, immaturity, oppressive social realities, sexism, and racism can intensify her sense of powerlessness. The prospect of having and caring for a child can seem overwhelming.

We confess our sin as a community of faith.[C] We often have fallen short in respecting God's gift of life and in providing conditions more conducive for bringing new life into the world.

As a community of faith we seek to live out our support for life in all its dimensions. We are committed to supporting those who face problematic pregnancies in ways that effectively address their immediate as well as long-term needs. This can include financial, nutritional, medical, educational, social, and psychological, as well as spiritual support.

Our ministry of hospitality to all people ought to include women who have had abortions, women who are considering abortions, children, families, and those who bear and raise children under all kinds of circumstances. This should be reflected throughout congregational life and church policy. Congregations are encouraged to support day-care centers and nurseries in their facilities. Services and shelter should be provided, especially to enable young mothers and fathers to continue their education and care for their children. Members should also be encouraged to become foster and/or adoptive parents. By our policies and practices as a church we need to indicate that we are truly supportive of children through the long years after, and not only before, they are born.

Marriage is the appropriate context for sexual intercourse. This continues to be the position of this

church. We affirm that the goodness of sexual intercourse goes beyond its procreative purpose. [3] Whenever sexual intercourse occurs apart from the intent to conceive, the use of contraceptives is the responsibility of the man and of the woman.

Our congregations and church schools ought to provide sex education in the context of the Christian faith. Such education, beginning in the elementary years, needs to emphasize values such as responsibility, mutuality, and abstinence from sexual intercourse outside of marriage. Parents should also be prepared to teach sexual responsibility to their children in the home. It is especially important that young men and young women be taught to exercise their sexuality responsibly.

Because this church recognizes parenthood as a vocation that women and men share, we should encourage and educate males, from an early age, to assume more responsibility for raising children. Congregations should provide parenting classes and support groups for fathers and for mothers.

In keeping with our commitment to become communities that are truly life-affirming, this church challenges the following life-degrading attitudes that permeate the prevailing culture and may contribute to the high incidence of abortion: messages in the media and elsewhere that encourage irresponsible sexual activity; materialism, individualism, and excessive concern for self-interest; the desire for "perfect" children, and treating those who are not as if they were "disposable"; attitudes and practices that are inhospitable to children and to the women who bear them; low regard of human life, especially the lives of African-Americans, Hispanics, Asians, or Native Americans, and of many women and children who are poor.

Through these and other efforts, we as a church seek to reduce the need to turn to abortion as the answer to unintended pregnancies.

#### **IV. Guidance in Making Decisions Regarding Unintended Pregnancies**

We are called to be a compassionate community, praying and standing with those who struggle with decisions regarding unintended pregnancies. We encourage women and men to seek support and counsel from family members, pastors, professionals, and confidants whom they trust and respect. Church members must not only be aware of the moral complexity of the situation, but be able and willing to listen and walk with women and men through the process of decision-making, healing, and renewal, a process that may include feelings such as grief, guilt, relief, denial, regret, or anger. [D]

Pastors and other members of this church should be trained to provide counsel that is competent and respectful of the integrity of the woman, the man, and others who may be involved in these decisions. The professional expertise of the church's social ministry organizations should also be utilized. It is important that those who counsel persons faced with unintended pregnancies respect how deeply the woman's pregnancy involves her whole person--body, mind and spirit--in relation to all the commitments that comprise her stewardship of life. Counselors should seek to call forth her power to act responsibly after prayerful reflection upon all factors involved.

Regardless of the decisions, our pastoral response must be a gracious affirmation of the value of women's lives and assistance in dealing with ongoing implications of their decisions for their own well-being and their relationships.

##### **A. Continuing the Pregnancy**

Because of the Christian presumption to preserve and protect life, this church, in most circumstances, encourages women with unintended pregnancies to continue the pregnancy. Faith and trust in God's promises has the power to sustain people in the face of seemingly insurmountable obstacles. In each set of circumstances, there must also be a realistic assessment of what will be necessary to bear, nurture, and provide for children over the long-term, and what resources are available or need to be provided for this purpose. The needs of children are a constant. The parenting arrangements through which these needs are

met may vary. If it is not possible for both parents to raise the child, this might be done by one parent, by the extended family, or by foster or adoptive parents.

This church encourages and seeks to support adoption as a positive option to abortion. Because adoption is an increasingly more open process today, it generally is easier for birth parents to have a role in selecting the adoptive parents and in maintaining some contact with the child. These possibilities can be helpful in the grieving process that is likely to occur when birth parent(s) choose to place the child for adoption after having bonded with the child during pregnancy. Care needs to be taken in selecting adoption processes that do not exploit but safeguard the welfare of all parties involved. At the same time, we recognize that there are unintended pregnancies for which adoption is not an acceptable option.

We encourage and seek to make it possible for people of diverse cultural and racial backgrounds and with limited financial means to adopt children. We encourage those who contemplate adopting to consider adopting children with special needs. Mothers and fathers choosing to place their children for adoption should be affirmed and supported in view of society's prejudices against such decisions.

### **B. Ending a Pregnancy**

This church recognizes that there can be sound reasons for ending a pregnancy through induced abortion. The following provides guidance for those considering such a decision. We recognize that conscientious decisions need to be made in relation to difficult circumstances that vary greatly. What is determined to be a morally responsible decision in one situation may not be in another.

In reflecting ethically on what should be done in the case of an unintended pregnancy, consideration should be given to the status and condition of the life in the womb. We also need to consider the conditions under which the pregnancy occurred and the implications of the pregnancy for the woman's life.

An abortion is morally responsible in those cases in which continuation of a pregnancy presents a clear threat to the physical life of the woman.

A woman should not be morally obligated to carry the resulting pregnancy to term if the pregnancy occurs when both parties do not participate willingly in sexual intercourse.[E] This is especially true in cases of rape and incest. This can also be the case in some situations in which women are so dominated and oppressed that they have no choice regarding sexual intercourse and little access to contraceptives. Some conceptions occur under dehumanizing conditions that are contrary to God's purposes.

There are circumstances of extreme fetal abnormality, which will result in severe suffering and very early death of an infant. In such cases, after competent medical consultations, the parent(s) may responsibly choose to terminate the pregnancy. Whether they choose to continue or to end such pregnancies, this church supports the parent(s) with compassion, recognizing the struggle involved in the decision.

Although abortion raises significant moral issues at any stage of fetal development, the closer the life in the womb comes to full term the more serious such issues become.[F] When a child can survive outside a womb, it becomes possible for other people, and not only the mother, to nourish and care for the child. This church opposes ending intrauterine life when a fetus is developed enough to live outside a uterus with the aid of reasonable and necessary technology. If a pregnancy needs to be interrupted after this point, every reasonable and necessary effort should be made to support this life, unless there are lethal fetal abnormalities indicating that the prospective newborn will die very soon.

Our biblical and confessional commitments provide the basis for us to continue deliberating together on the moral issues related to these decisions. We have the responsibility to make the best possible decisions in light of the information available to us and our sense of accountability to God, neighbor, and self. In these decisions, we must ultimately rely on the grace of God.

### **V. Public Policy Issues Related to Abortion**

The purpose of law is to protect life and liberty, and to provide for the general welfare of society. One of the clearest ways in which a society both expresses its attitudes and values, and shapes them, is through law. Therefore, the church's position on abortion must include guidance for the political decisions whereby justice is sought in the community, from before the pregnancy to long afterward.

What is legal is not necessarily moral, and what is moral should not necessarily be enacted into law. Laws cannot enforce Christian love, but in principle and application they should be just. Christians as citizens and this church as an institution should join with others to advocate for and support just laws and to work to change those, which are unjust. In our attempts to influence the shaping of public policy, we should not disregard the rights of others, but work faithfully through the public processes by which justice is sought for all.

#### **A. Prevention of Unintended Pregnancies**

Prevention of unintended pregnancies is crucial in lessening the number of abortions. In addition to efforts within church and home, this church supports appropriate forms of sex education in schools, community pregnancy prevention programs, and parenting preparation classes. We recognize the need for contraceptives to be available, for voluntary sterilization to be considered, and for research and development of new forms of contraception.

#### **B. Support for Life after Birth**

Many women choose abortion in a desperate attempt to survive in a hostile social environment. In order to affirm the value of life and reduce the number of abortions, it is essential for us as a church to work to improve support for life in society.

Greater social responsibility for the care, welfare, and education of children and families is needed through such measures as access to quality, affordable health care, child care, and housing. Sufficient income support for families needs to be provided by employers, or, in the case of the unemployed, through government assistance. As a society we need to provide increased support for education, nutrition, and services that protect children from abuse and neglect.[G]

Because parenthood is a vocation that women and men share, this church supports public and private initiatives to provide adequate maternity and paternity leaves, greater flexibility in the work place, and efforts to correct the disparity between the incomes of men and women.

The law must hold both parents responsible for the financial support of their children.

#### **C. The Regulation of Abortion**

Members of this church hold different opinions about the role and extent of public law and regulation in relation to abortion. The spectrum of disagreement ranges from those who believe all abortions should be prohibited by law, except to save the life of the mother, to those who oppose any law seeking to regulate abortion, except to protect the health and safety of the woman. For some, the question of pregnancy and abortion is not a matter for governmental interference, but a matter of religious liberty and freedom of conscience protected by the First Amendment. For others, the law's function in protecting life needs to include the life in the womb. Some stress the limited ability of law to stop abortions, and contend that there is increased danger to women if abortions are made illegal. They maintain that regulation takes away a woman's freedom to choose abortion as well as her freedom to affirm life by choosing to bear the child. Still others see the need to work for laws that both protect life in the womb to a greater degree and protect women's freedom to choose abortion in certain circumstances.

The position of this church is that government has a legitimate role in regulating abortion. A major challenge is to formulate policy regarding abortion that will have sufficient consensus to be enforceable. Furthermore, any proposed regulation should contribute toward the intended goals without generating problems worse than those it seeks to address.

In the case of abortion, public policy has a double challenge. One is to be effective in protecting prenatal life. The other is to protect the dignity of women and their freedom to make responsible decisions in difficult situations. Pursuing those ends is particularly formidable because our society is so divided on this issue, and because women, people of color, and those of low income are so under-represented in legislative and judicial processes. In its advocacy regarding these issues, this church should exert every effort to see that the needs of those most directly affected, particularly the pregnant woman and the life in her womb, are seriously considered in the political process.

Laws should be enacted and enforced justly for the preservation and enhancement of life, and should avoid unduly encumbering or endangering the lives of women.

Because of our conviction that both the life of the woman and the life in her womb must be respected by law, this church opposes:

- the total lack of regulation of abortion;

- legislation that would outlaw abortion in all circumstances;

- laws that prevent access to information about all options available to women faced with unintended pregnancies;

- laws that deny access to safe and affordable services for morally justifiable abortions;

- mandatory or coerced abortion or sterilization;

- laws that prevent couples from practicing contraception;

- laws that are primarily intended to harass those contemplating or deciding for an abortion.

The position of this church is that, in cases where the life of the mother is threatened, where pregnancy results from rape or incest, or where the embryo or fetus has lethal abnormalities incompatible with life, abortion prior to viability should not be prohibited by law or by lack of public funding of abortions for low income women. On the other hand, this church supports legislation that prohibits abortions that are performed after the fetus is determined to be viable, except when the mother's life is threatened or when lethal abnormalities indicate the prospective newborn will die very soon.

Beyond these situations, this church neither supports nor opposes laws prohibiting abortion.

#### **D. Some Issues Requiring Further Deliberation**

It is the position of this church that further deliberation is needed on such questions as whether consultation with the spouse or partner should be required, whether and how parental consent should be required for a minor seeking an abortion, and whether public funds should be used to pay for abortions.

On the issue of public funding of abortions, two important values are in conflict--the concern for equity of access to legal medical services, and the concern that people's tax money not be used to pay for what some people consider profoundly wrong. While we strongly affirm family communication and support, the law should recognize that in some cases husband or partner involvement in the decision could be unwise or dangerous (e.g., if the relationship is broken or violent). If a law requires parental consent when the woman is a minor, it should specify other trusted adults as alternatives if parental involvement is inappropriate or unsafe.

It is through the public processes of our society that the common good is sought for all. This church encourages its members to participate in the public debate on abortion in a spirit of respect for those with whom they differ. Committed to a process of raising and deliberating the difficult and unresolved questions, this church encourages its members, informed by faith understandings and by their conscience, to decide and act on this issue in ways that are responsive to God and to the needs of the neighbor.

In conclusion, the church's role in society begins long before and extends far beyond legislative

regulation. It seeks to shape attitudes and values that affirm people in whatever circumstances they find themselves. Its pastoral care, compassionate outreach, and life-sustaining assistance are crucial in supporting those who bear children, as well as those who choose not to do so. Through these and other means the people of God seek to be truly supportive of life.

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Social teaching statements provide an analysis and interpretation of an issue, set forth basic theological and ethical perspectives related to it, and offer guidance for the corporate Evangelical Lutheran Church in America and its individual members. They also illustrate the implications of their teaching for the social practice of this church. In their use as teaching documents, their authority is persuasive, not coercive. (From "Social Statements in the Evangelical Lutheran Church in America", adopted by the 1989 Churchwide Assembly, which also specifies that an addendum "be added to those statements that elicit significant division in the Churchwide Assembly summarizing dissenting points of view.")

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#### **Addendum**

The following amendments (at the points indicated in the text) received significant support at the Churchwide Assembly but they did not receive the vote needed for approval:

[A] "... and oppose induced abortion as a method of birth control."

[B] "... and thereby the number of abortions."

[C] to expand the paragraph as follows: "We recognize that the violation or the taking of human life in any way is not in accord with God's ultimate will for creation and therefore sinful. We confess our sin as a community of faith. All who participate in this decision must be guided by the theological principles of tragic last option or greater good, which acknowledges that God has given to humankind the gift of discernment. We often have fallen short ...."

[D] to insert a new paragraph at this point: "The support given by members of this church will seek to witness to the scriptural norm that God is the creator and preserver of life. This church, and especially the pastors, will carry out its ministry with both God's Law and God's Gospel, and proclaim forgiveness and new life to all who are troubled and penitent."

[E] "A woman should not be morally obligated to carry the resulting pregnancy to term if the pregnancy occurs in cases of rape and incest."

[F] "Abortion is not acceptable later than the first trimester."

[G] "The Church must work vigorously to support state and national legislation to provide free prenatal and maternity care to women whose medical needs are not adequately met through medical insurance."

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**Endnotes:**

[1] The issue of abortion was addressed by the Lutheran Church in America in its social statement, *Sex, Marriage, and Family*; (1970) and in a 1978 clarifying minute. The American Lutheran Church addressed this issue in a series of statements in 1974, 1976, and 1980.

[2] Embryology provides insight into the complex mystery of God's creative activity. How we interpret and evaluate this data makes a difference in how we as Christians make decisions regarding abortion: The genetic material from the egg and sperm unite at the point of fertilization and form a unique, undifferentiated, loose cluster of cells. From 40-75 percent of these zygotes spontaneously fail to implant in the uterus. After implantation occurs at about two weeks after fertilization, the complex process of developmental differentiation begins, with a close symbiotic relationship between the embryo and the mother's body. At about the eighth week, the embryo becomes a fetus. Integrated brain functioning begins to emerge at about the tenth week, followed by the increasingly complex emergence of functional, behavioral, and eventually psychic individuality. The social aspect emerges through recognition by and relation with others, most dramatically as birth is approached. The fetus becomes viable when it is capable of surviving disconnected from the placenta. Depending upon technological supports, this can occur at 24 weeks if not earlier.

[3] These positions are represented in predecessor social statements of the American Lutheran Church and the Lutheran Church in America. Because a social statement on human sexuality is expected to be considered by this church in 1993, matters of sexuality are not dealt with at length in this statement.

Attestment 7  
HB 1572

House Bill 1572  
Testimony before the Senate Judiciary Committee  
March 16, 2009  
For North Dakota Women's Network  
By Christine Hogan

I am a local attorney and I've been engaged in private practice of law in this city for the better part of three decades. I also served for several years as executive director of the State Bar Association of North Dakota. It is my honor and a pleasure to stand before the members of this committee again.

But I am here today as a private citizen, as a member of my community, and as a lawyer who has an interest in justice, equality, fairness, and the rule of law.

I registered last Friday as a volunteer lobbyist for the NDWN because I learned that the WN was opposed to HB 1572. I am here today because I have grave concerns as a lawyer about the legal ramifications of HB 1572.

My concerns are not based on religion or ideology, but on the practical problems this bill will surely cause. My objections to this bill are pragmatic and they are based on long experience with legislation, Constitutional issues, trials, and appeals, including an appeal before the U.S. Supreme Court.

**1. The practical problem of interpretation**

My first reaction upon reading the language of this bill was the very practical problem of interpreting it. It's so poorly drafted that it is impossible to understand its meaning. In the front lines, where our doctors and nurses labor every day in our clinics, hospitals, and delivery rooms, there is a need to know very clearly what is legal and what isn't. What do these words in this bill mean? What exactly is an organism? It is defined as anything from an amoeba to a cell to a being with organs. How do we know when an organism is a person? What exactly is a genome?

I guess we all sort of know what Homo sapiens is, but do we know what does it *really* mean to be an "organism with the genome of homo sapiens?"

Do these words, that the proponents keep calling "irrefutable science," give any guidance to doctors and nurses working in the frontlines?

“Irrefutable science” and “irrefutable fact,” they say. But saying something doesn’t make it so. When construing or interpreting the language in statutes, appellate courts look first to ordinary usage and to the ordinary, accepted meaning of words. What is the ordinary meaning of genome? What is the ordinary meaning of organism? If there is no ordinary, commonly-accepted meaning, the court turns next to dictionary definitions. These particular words have so many different definitions; it could take years to sort them out. It can be argued based on dictionary definitions that every human cell has the *Homo sapiens* genome and is an organism.

Defining every human cell as a person would have unforeseen consequences we can’t begin to account for today. The proponents haven’t even tried to account for these consequences. There are too many uses of the word “person” in the Century Code to conduct a comprehensive analysis of all the legal impacts. But intention is subjective and it will ultimately fall to the courts to decide intent in the long term. In the mean time, there is no practical guidance in the language in this bill for our good folks working in the frontlines of reproductive medicine.

On the contrary, this bill, if it were to become law, would bring on chaos. No one could possibly know what is or isn’t legal. As a purely practical matter, who would be willing to accept the risk of guessing wrong? Would stem cell research be legal? What about the “morning after” pill? Would anyone be willing to risk her professional future to decide if a pregnant woman should be treated for cancer... when that treatment could endanger the life of her unborn child? Could you blame a young doctor for giving up her dream of becoming an obstetrician? Wouldn’t becoming a dermatologist be the safer choice? Will pregnant women even be able to find qualified doctors? Is this a consequence the drafters of 1572 foresaw?

## **2. The practical problem of unconstitutionality**

I have a real problem passing a bill that is so obviously unconstitutional. I’m not just talking about *Roe v Wade*. I’m talking about the 36 years of jurisprudence in the interim since that 1973 decision. Year after year, case after case, the Supreme Court has shaped the law. If you want “irrefutable” fact, you can look up the history of the Supreme Court case law post *Roe v Wade*. In these decisions, the Court has been fractured, divided, and, for sure, conflicted. But the Court has never deviated from the essential holdings of *Roe v Wade*; i.e.: the Constitution gives a woman total autonomy over her pregnancy under the right to privacy—guaranteed by the 14<sup>th</sup> Amendment—during the first trimester. And, after that, there are different levels of state interest in the second and third trimesters.

The court said in *Roe*—and has never backed away from this holding—that state laws that would place an undue burden on a woman’s rights or that would criminalize abortions without regard to the stage of pregnancy and other interests involved, would violate the Due Process clause of the Fourteenth Amendment. That is the law. And that is the irrefutable fact. Passing this bill is an exercise in futility. It is unquestionably unconstitutional.

### **3. The practical problem of wasting taxpayers' money**

There has been a great deal of rhetoric this session about avoiding wasteful government spending. Given the known unconstitutionality of this bill under long-established United States Supreme Court precedents, it makes no sense whatsoever to require this state to spend the amount of money it will take to defend this bill against a constitutional challenge. We've heard it could take \$5 million. Some say that's too low and it could take more. But the point is that no matter the cost, any such challenge is doomed to fail.

By law, the State Attorney General must defend lawfully-enacted statutes against constitutional challenge. I submit it would be fiscally irresponsible, bordering on recklessness, to pass a bill that cannot possibly withstand a challenge. To offer free or "discounted" lawyers to serve as assistant AGs is also offensive. The Attorney General is bound by law to act in good faith. He is bound by law to choose counsel he deems competent. He can not in good faith appoint individuals so driven by ideology or religious zeal that they would be willing to espouse arguments that have already been thoroughly reviewed and roundly rejected by the U.S. Supreme Court. The proponents' arguments have already been deemed not only unpersuasive, but they also have been held to be an unconstitutional infringement on the rights of a competent woman to make her own private decisions about her *own* right to life, health, and safety.

I can think of no greater abuse of government power than for our great state to commit its precious resources to such a futile endeavor. I urge a do not pass on HB 1572  
Thank you for your kind attention.

*Attachment 8*  
*HB 1572*

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

418 East 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)

Testimony on HB 1572  
Senate Judiciary Committee  
March 16, 2009

Chair Nething and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in opposition to HB 1572.

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 1572, 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 1572.

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 1572.

Thank You.

March 16, 2009



Chairman Nething and Members of the Senate Judiciary Committee:

My name is Connie Hildebrand. I speak as state and national public policy chair of the American Association of University Women. We are opposed to HB 1572. We ask it be defeated.

AAUW trusts every woman has the ability to make her own informed choices regarding her reproductive life within the dictates of her individual moral and religious beliefs. Further, AAUW believes these deeply personal decisions should be made without, I repeat, without governmental interference.

Elevating the legal status of a fetus under state or federal law, AAUW believes, would undermine the foundation of a woman's right to choose as set forth in Roe vs Wade, which holds that a fetus is not a person within the meaning of the 14<sup>th</sup> amendment.

As our country's premier women's organization committed to education and equity AAUW has other, major priorities to address. Yet, here we are in 2009, during Women's History Month ...

WHEN - Seventy percent of the poorest people living in the world today are .. women and girls.

WHEN – Women work two-thirds of the world's working hours, yet earn 10% of the income.

WHEN – Two-thirds of the adults, worldwide, who cannot read are .... Women

WHEN – Two-thirds of the children who do not attend school are ... Girls

WHEN – Every minute of every day a woman, somewhere, dies from complications due to pregnancy and childbirth ... and

WHEN – In many communities, women are still the legal property, or I might add emotional property, of their fathers or husbands

WHAT – Are You Doing?

*Advancing equity for women and girls through advocacy, education, and research.*

AND - Who Speaks For Women?

- Male Representative Ruby - Sole Sponsor of HB 1572 ?
- Catholic Male Bishops, who present amendments also unacceptable to women ?

Reproductive rights, reproductive freedom is tied to every other issue women have faced historically, and which we face today. Whether women can decide when and whether to have children is the single greatest economic issue for women, both Yesterday & Today. It is the single greatest educational issue, Yesterday & Today. It is the single greatest issue of employment and, in many cases, life expectancy. Yes, Yesterday & Today.

AAUW has been "around" close to one-hundred and thirty (130) years, since the late 1800's. We know women's history and we do not forget, because we helped create women's history.

We ask you to help women, as well as AAUW, get on with the business of creating women's future, at the very least in the state of North Dakota.

It's time to close the book on governmental interference in women's very personal reproductive decisions.

We have much more important work to do ... together.

Vote NO on HB 1572.

A handwritten signature in black ink that reads "Connie M. Hildebrand". The signature is written in a cursive, flowing style.

Connie M. Hildebrand  
AAUW National & State Public Policy Chair





March 16, 2009

Senator Nething and Members of the Senate Judiciary Committee:

My name is Carol Christianson. I am a lobbyist and member of the League of Women Voters Bismarck-Mandan, North Dakota. We speak in opposition to HB 1572.

The League establishes a variety of public policy positions at our national, biennial convention of duly elected representatives from throughout the United States. North Dakota is represented in those decisive votes, and is bound by the decision of that delegate body, as you are bound by the final results of this legislative session.

The League of Women Voters Public Policy Position on Reproductive Choice, as announced by our national board in January, 1983 is as follows:

*The League of Women Voters of the United States believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices.*

A copy of the League's study, review and updates on our position is attached for your examination.

Based on our support of the LWWUS pro-choice public policy position and a twenty-six year history of re-affirmation of this policy by our members at our biennial conventions, we request a committee vote of Do Not Pass on HB 1572.

Sincerely,

A handwritten signature in cursive script that reads "Carol Christianson". The signature is written in black ink and is positioned above the typed name.

Carol Christianson  
Lobbyist #353  
Bismarck-Mandan League of Women Voters

*It will be furnished to you by  
e-mail.*



September 24, 2008

Michael Leavitt, Secretary  
Department of Health and Human Services  
Office of Public Health and Science  
Attn: Brenda Destro  
Hubert Humphrey Building  
200 Independence Avenue SW Room 728E  
Washington, D.C. 20201

Re: Comments on Proposed Rule, "Provider Conscience Regulations"

Dear Secretary Leavitt:

On behalf of the League of Women Voters of the United States, I am submitting comments on the Proposed Rule published at 73 Fed. Reg. 50274. The League of Women Voters opposes this rule. We believe that there are adequate laws in place and that, in fact, the "Provider Conscience Regulations" will create problems.

The League of Women Voters has a long-standing interest in programs and policies that provide access to health care for all residents of the United States. Since 1992, when League members studied the issue of health care, we have worked for comprehensive health care coverage for all Americans. In addition, the League of Women Voters has a strong commitment to the concept that public policy in a pluralistic society must affirm the right of privacy of the individual to make reproductive choices.

The League of Women Voters is deeply concerned that this proposed regulation will have a negative impact on patient access to health care services and information, particularly in the area of reproductive health care.

It is our understanding that this regulation would expand the ability of health care providers to withhold medical treatment and counseling from patients based on religious or moral beliefs. We believe that there is a balance to be struck between an employee's right to religious liberty and a patient's access to health care services. Throughout the past thirty-five years, federal laws, including the Church Amendments, the Coats Amendment and the Weldon Amendment, have permitted individuals and institutions to refuse to provide abortion and sterilization services. In addition, under Title VII of the Civil Rights Act of 1964, employers have been required to make every effort to accommodate an employee's refusal to provide health care unless doing so would place an undue hardship on the employer. It is critical to maintain a balance between the individual employee's religious beliefs and the need for employers to ensure that patients have access to health care services and information. There is no evidence that the expansion is warranted, nor do we think it should be.

The League is equally concerned that the proposed "Provider Conscience Regulation" will impact the ability of women to obtain safe and effective birth control. An earlier draft of this regulation provided a definition of abortion that included commonly-accepted methods of birth control. The current proposed regulation does not include that definition, nor does it include any definition of abortion. The resulting ambiguity means that health providers could expand the definition of abortion beyond the consensus definition of the medical profession and existing federal policy to block birth control services, including information, referral and counseling. We are deeply concerned that this ambiguity could prevent patients from receiving needed services with no referrals and no options.

The League of Women Voters believes that the proposed "Provider Conscience Regulations" must be withdrawn. As currently drafted, the regulations raise a number of serious concerns about their possible impact on health care providers, programs and patients.

Sincerely yours,

Mary G. Wilson,  
President

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## **Address to crowd at the March for Women's Lives**

***by Kay J. Maxwell, President, League of Women Voters of the U.S.***

***April 25, 2004***

"Just over 80 years ago, our sisters descended on Washington and stood on this same ground, demanding the fundamental right to vote. We stand here today to demand another fundamental right. Individual liberties and the right of reproductive choice.

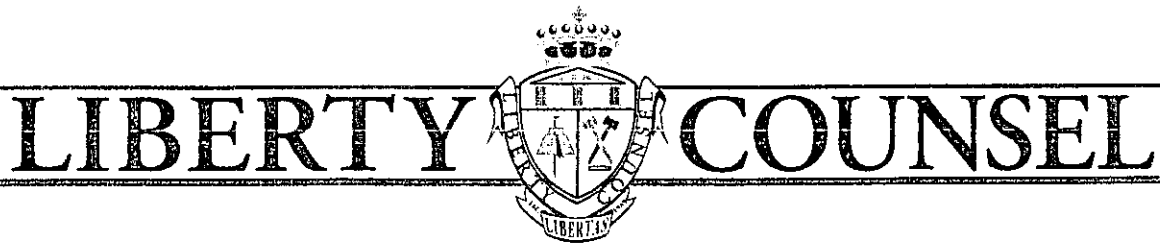
"The League of Women Voters was founded in 1920 on the principle that women, now armed with the vote, must be educated on the issues and should be active participants in their communities. Since the beginning, Leagues nationwide have opposed threats to basic constitutional rights and fought to secure equal rights and equal opportunity for all.

"At every level, we work on issues dealing with the right of privacy in reproductive choices, domestic and international family planning, and reproductive health care. Additionally, we have supported initiatives to decrease teen pregnancy and infant mortality. We have pressed for inclusion of reproductive services in health care reform packages and worked against proposals to inappropriately interfere with decisions that should be left to a woman and her doctor.

"Your presence here today demands attention. Your voices have been heard. Make your voice heard again this November. And encourage your sisters, brothers, mothers, fathers, daughters and sons to do the same. Make sure they get to the polls on Election Day

"I leave you with a charge this year: Get registered, get educated, get involved and vote."

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A NATIONWIDE PUBLIC INTEREST RELIGIOUS CIVIL LIBERTIES LAW FIRM

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Tel: 434-592-7000  
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liberty@LC.org

Reply to: Virginia

March 10, 2009

**Via Facsimile 701-328-2226 and Regular U.S. Mail**

The Honorable Attorney General Wayne Stenehjem  
North Dakota State Capital  
600 E Boulevard Ave  
Dept 125  
Bismarck, ND 58505

Dear Honorable Mr. Stenehjem:

Liberty Counsel is aware of Scientific Definition of Humanity House Bill 1572 that has recently passed in the North Dakota House of Representatives. If the Bill becomes law in substantially its current form, Liberty Counsel pledges to support and defend its constitutionality in the event it is challenged in court.

Liberty Counsel is a nonprofit litigation, education and policy organization dedicated to advancing religious freedom, the sanctity of human life and the traditional family. Established in 1989, Liberty Counsel is a nationwide organization with offices in Florida, Virginia, and Washington, D.C., and hundreds of affiliate attorneys across the Nation. Liberty Counsel provides pro bono legal assistance in the areas of religious liberty, the sanctity of human life and the traditional family. As Founder and Chairman of Liberty Counsel, I have argued in numerous state and federal courts across the country, including the United States Supreme Court, and am considered one of the premier constitutional litigators in the country.

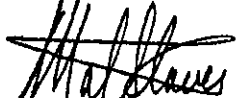
In my opinion, the current United States Supreme Court is the most pro-life group of justices since *Roe v. Wade* was decided. Moreover, President Obama and the Democrat Congressional leadership have vowed to make passage of the mis-named Freedom of Choice Act (FOCA) a priority for this year. FOCA would decimate virtually every existing state and federal restriction on abortion, from the beginning of pregnancy right up until birth.

Accordingly, the suggestion by some that the protection of human life could suffer a step backward if a Scientific Definition of Humanity bill such as HB1572 is enacted, is absurd in our view. The bill would not necessarily initiate a challenge to *Roe v. Wade*. Nonetheless, the passage

of this bill is a unique and historic opportunity to advance the cause of the protection of the unborn, and Liberty Counsel stands ready to support and defend its constitutionality.

Sincerely,

LIBERTY COUNSEL



Mathew D. Staver<sup>†</sup>

MDS:smc

**cc: Via Facsimile 701-328-3615 and Regular U.S. Mail**

The Honorable Senator Robert Stenehjem  
North Dakota Legislative Assembly  
600 E Boulevard Ave  
Bismarck, ND 58505

The Honorable Representative Al Carson  
North Dakota Legislative Assembly  
600 E Boulevard Ave  
Bismarck, ND 58505

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<sup>†</sup> Licensed in Florida and the District of Columbia

Senate Judiciary Committee.  
Dear Mr. King Chairman, Curtis also on this.  
Tom Fiebigler  
Mac Schneider  
Carolyn Nelson  
Stanley Lerner

Please vote yes for HB 1572 - unamended,  
You are privileged. Stand strong  
for the truth. Love all our precious  
innocent children. The future citizens  
of North Dakota. Thank you.

Sincerely,  
Elvira Ragstad  
13651 - 115 St. S.E.  
Bismarck, ND. 58504  
701-673-3340

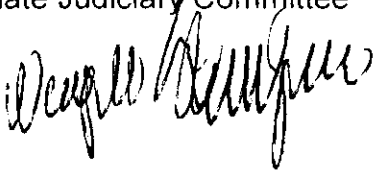


Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
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## MEMORANDUM

TO: Senator Dave Nething, Chairman, Senate Judiciary Committee  
COPY: Committee members  
FROM: Attorney General Wayne Stenehjem   
DATE: March 17, 2009  
RE: H.B. 1572

I reviewed Section 2 of Engrossed H.B. 1572, which provides, in relevant part:

The legislative assembly, by concurrent resolution, may appoint one or more of its members, as a matter of right and in the legislative member's official capacity, to intervene to defend this Act in any case in which this Act's constitutionality is challenged.

This section authorizes the legislature to delegate to a member of the legislature a duty that has been constitutionally and statutorily delegated to the Attorney General. You asked that I provide for you and your committee written comments on my position on Section 2 of the bill.

The Attorney General is a constitutional officer. N.D. Const. art. 5, § 2. He is the law officer of the state and the head of its legal department. State v. Heidt, 20 N.D. 357, 127 N.W. 72, 76 (1910). "As a general rule the attorney general has control of litigation involving the state and the procedure by which it is conducted." State v. Hagerty, 1998 ND 122, ¶ 25, 580 N.W.2d 139.

The powers and duties of the Attorney General are prescribed by legislative enactment as well as by the Constitution. By law, it is the duty of the Attorney General to appear for and represent the state before the supreme court in all cases in which the state is an interested party. N.D.C.C. § 54-12-01(1). The law requires the Attorney General to institute and prosecute all actions and proceedings which may be necessary in the execution of the duties of any state officer. N.D.C.C. § 54-12-01(2). In addition, the Attorney General shall appear and defend all actions and proceedings against any state officer in any of the courts of this state or of the United States. N.D.C.C. § 54-12-01(3). The law further provides that it is the duty of the Attorney General to defend the constitutionality of any enactment of the Legislative Assembly. N.D.C.C. § 32-23-11.

Although many of the Attorney General's powers and duties are expressly stated, "[n]ot every aspect of the powers of a constitutional officer like the Attorney General may be conveniently spelled out by statute, and the Legislature has not attempted to do so."



Memo to Senate Judiciary Committee H.B. 1572

March 17, 2009

2/2

Hagerty, 1998 ND 122, ¶ §26, 580 N.W.2d 139. In Hagerty, the supreme court explained that "the framers of the Constitution . . . reserved unto themselves the right to have the inherent functions theretofore pertaining to said offices discharged only by persons elected as therein provided." Hagerty, 1998 ND 122, ¶ 22, 580 N.W.2d 139 (citing *Ex parte Corliss*, 114 N.W. 962, 964 (1907)). "The clear implication of this language is that the legislature has no constitutional power to abridge the inherent powers of the attorney general despite the fact that the constitution provides that the 'duties of the . . . attorney general . . . shall be prescribed by law.'" Hagerty, 1998 ND 122, ¶ 22, 580 N.W.2d 139 (citation omitted).

The supreme court in Hagerty further explained that a constitutional officer, such as the Attorney General, has such additional powers as are necessary for the due and efficient exercise of the powers expressly granted, or as may be implied from the statute granting the express powers. Hagerty, 1998 ND 122, ¶ 23, 580 N.W.2d 139.

Section 2 of Engrossed H.B. 1572 presents a clearer conflict with the express and implied powers and duties of the Attorney General than Hagerty. The duty to defend the constitutionality of a legislative enactment is assigned by law to the Attorney General and may further be implied from his constitutional office. The legislature may not divest the Attorney General of this power.

Accordingly, I oppose Section 2 of Engrossed H.B. 1572 and respectfully request it be deleted from the bill.

Daniel Woodward #442  
North Dakota Life League

## **Frequently Asked Questions about HB 1572**

### **Can't only a federal personhood amendment do what this legislation is trying to do?**

No. If a state recognizes preborn personhood, then so would the 14th Amendment of the US Constitution, which guarantees that all persons with state-level rights will also have federal-level rights. Therefore, all we need is for half of the North Dakota legislature and the Governor to pass a law establishing the fact that the North Dakota Constitution already recognizes constitutional personhood for all human beings from their biological beginning. The legislature has plenary authority to pass legislation to enforce the state constitution in this way.

### **Why a law about preborn personhood?**

- Because abortion supporters should have to answer the question: Is an eight and a half month old baby a person?
- Because corporations are treated as persons but not preborn humans.
- Because Roe v. Wade itself indicates that if personhood is established, the right to an abortion collapses.

### **Why should I support HB 1572?**

The Personhood of Children Act is the only legislation this year that will stop abortion dead in its tracks. By stating in unequivocal terms that a baby is a person from the moment of their biological beginning, North Dakota would be taking back its authority to pass laws that are necessary and proper for maintaining a society rooted in ordered liberty.

Legislating from the bench will only come to an end when legislators are willing to discharge their duties and enact legislation that reflects a proper understanding of science and our fundamental moral beliefs. Until legislators take action on these fundamental issues, the Supreme Court will fill the space left by the States and impose the views of a few elite and unelected judges upon every citizen.

HB 1572 aims for victory — one that will not sacrifice any of our young.

### **What about the life and health of the mother?**

The answer here is nuanced. Thanks to modern medicine, abortion is never necessary to protect women's lives. However, where life-saving treatment of a mother unfortunately results in the death of a preborn child, these treatments are legally and morally not considered abortion.

Consider also that prior to 1973, prior to legal abortion, doctors were NOT being dragged into courts, scientific advancement was greatly progressing, and no women were prosecuted.

There are over 200 years of common law and state statutory laws that dealt with the real issues that arise from protecting all human life.

Abortion proponents want you to believe that before 1973 women were slaves and we lived in the dark ages. You know this is not true; most of you were alive before 1973. Do not let their scare tactics escape your critical judgment, and remember that abortion is a billion dollar business that offends the most basic principles of the majority of North Dakotans.

### **What are the chances of this bill becoming law?**

The North Dakota legislature and ND Governor Hoeven appear receptive to pro-life legislation. Furthermore, the makeup of the Supreme Court is more pro-life than ever since Roe v Wade in 1973. Medical technology now shows us preborn babies sucking their thumbs and smiling on 4D ultrasounds. One has to ask: if we don't outlaw abortion now, then when?

### **Would the HB 1572 outlaw the Pill?**

A court interpreting HB 1572 would defer to the legislature.

### **Would this legislation require the mother to be penalized for abortion?**

No. If the state legislature wanted to immunize a woman from criminal prosecution for participating in an abortion, then that would be the prerogative of the legislature. Charles Rice, Emeritus Professor of Law at Notre Dame University conducted an extensive search of all case law in the United States entire history, and was not able to find a single case where the mother was prosecuted. Two hundred and twenty two years of case law, ZERO PROSECUTIONS.

### **Would this legislation ban in vitro fertilization?**

No. The ND legislature could pass a law similar to Louisiana's current law, which bans the killing of frozen human embryos, but still allows women ready access to in vitro fertilization. Even Germany and Italy have similar laws that limit the number of humans in embryonic form who can be artificially implanted at a time. HB 1572 would simply impose an ethical standard for fertility clinics that respects all life.

### **Would this legislation ban embryonic stem cell research?**

Scientists have absolutely no need to kill children to obtain their embryonic stem cells. Scientists discovered a way of creating pluripotent cells using umbilical stem cells.

### **Why do some organizations oppose this bill?**

National organizations working through the state affiliates are attempting to institute a single strategy to defend life. While this goal is laudable, this type of national control flies in the face of a free and democratic concept of federalism and state sovereignty. National organizations should respect the citizens of North Dakota who overwhelmingly support a personhood approach. Legislators surely realize that North Dakotans are independent minded people and expect their representatives to represent their policy preferences not those of national interests.

### **How would the US Supreme Court handle this bill?**

In Webster v. Reproductive Health Services, Justice Kennedy indicated that were the question properly before him, he would overrule Roe v Wade by holding that the state had a compelling interest in fetal life from the moment of conception. There is no better compelling interest that a state has in human life than recognition of their personhood at conception..

Given the current political landscape, now is the best time to rule on preborn personhood and abortion. Five Supreme Court justices are pro-life: Justice Thomas, Justice Scalia, Justice Alito, Chief Justice Roberts, and Justice Kennedy. With a President who is certain to appoint pro-abortion justices, there is no better time than now.

### **Could this legislation actually overturn Roe v. Wade?**

Yes. Few people realize Roe v. Wade shows us the way to its own downfall. The key passage, written by the author of the majority opinion, Justice Harry Blackmun, states in unequivocal terms: *"If personhood is established, the case for legalized abortion collapses."* (Roe v. Wade, Majority Decision, Section IX)

Roe v. Wade itself offers us the key to bring down abortion, that key is personhood, and North Dakota has ample room under the Tenth Amendment and principles of federalism to define it to include the preborn.

### **Won't this legislation cost North Dakota a lot of money if it loses?**

Every state attorney general loses a lot of cases over rather unimportant laws. Each loss costs millions of dollars, but that is the cost of standing up for a state's sovereignty. Should our Attorney General defend the nickname of "The Fighting Sioux" but not defend an entire class of innocent and defenseless human beings?

Furthermore, Nebraska passed a partial-birth abortion (PBA) ban, which got struck down by the USSC. Should Nebraska not have tried to pass the PBA ban considering most people figured that it was going to be struck down by the USSC? Of course they should've tried to pass it. It was the right thing to do. Should Congress have tried to pass the federal PBA ban knowing that the Court would most certainly strike it down? Of course Congress should've tried to pass it. And you know what happened? The Court upheld the federal PBA ban. You never know until you try.

### **Are there any prominent supporters of legislation which recognizes preborn children as constitutional persons?**

Ronald Reagan wrote the Personhood Proclamation in 1988 where he states: "All medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality -- that they in fact are persons. Modern medicine treats unborn children as patients. Yet, as the Supreme Court itself has noted, the decision in Roe v. Wade rested upon an earlier state of medical technology. The law of the land in 1988 should recognize all of the medical evidence."

The **National Republican Party platform** has stated since 1980: "The unborn child has a fundamental individual right to life which cannot be infringed."

Members of Congress who support federal legislation like HB 1572 include:

**115 current US House members and 15 Senators.**

**Recent supporters of preborn personhood legislation include:**

John McCain, US Senator and former Republican Nominee for President

Dick Cheney, former US Vice President

Dennis Hastert, former US Speaker of the House

Newt Gingrich, former US Speaker of the House

John Boehner, former US House Majority leader and current US House Minority Leader

Trent Lott, former US Senator and former US Senate Majority Whip

Mel Martinez, US Senator and former Chairman of the National Republican Party

Richard Burr, US Senator and former Chairman of the Republican Platform Committee

**This is not legislation that only Republicans support. People from all parties have supported "personhood" legislation.**

Harry Reid, US Senate Majority Leader

Byron Dorgan, US Senator, Chairman of the Democratic Policy Committee

Ray LaHood, US Secretary of Transportation (appointed by President Obama)

James Oberstar, US House Transportation Committee Chairman

Collin Peterson, US House Agriculture Committee Chairman

John Murtha, US House Appropriations Defense Subcommittee Chairman

### **What about the Catholic Conference's "Amendment"?**

The Catholic Conference has publicly stated its desire to "amend" away the intended purpose of HB 1572. Christopher Dodson has stated that as "amended," HB 1572 would become a statement of legislative intent that will not be enforceable. With all due respect to Mr. Dodson, why is the Catholic Conference seeking a hog-house "amendment" of a bill that 51 North Dakota Representatives and countless citizens of North Dakota supported? The Catholic Conference has four good pro-life bills, why do they need to nullify Representative Ruby's HB 1572? And if the "amendments" are truly necessary in the opinion of the Catholic Conference why not propose them as a separate bill?

The "amendment" being proposed by the Catholic Conference shows a lack of respect to the 51 members of the North Dakota House of Representatives and to the independent minded people of North Dakota. The Catholic Conference did not confer with the 51 members of the house who passed HB 1572 through their chamber. No effort at compromise has been made in order to preserve the legislative intent of Representative Ruby's HB 1572. Instead, the Catholic Conference intends to effectively veto the will of the people in order to satisfy its policy preferences.

*Supreme Court Case Law Post Roe v. Wade*

1. *Roe v. Wade*, 410 U.S. 113 (1973).

**Does the Constitution embrace a woman's right to terminate her pregnancy by abortion?**

The Court held that a woman's right to an abortion fell within the right to privacy (recognized in *Griswold v. Connecticut*) protected by the Fourteenth Amendment. The decision gave a woman total autonomy over the pregnancy during the first trimester and defined different levels of state interest for the second and third trimesters.

2. *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983)

The Court affirmed its commitment to protecting a woman's reproductive rights by invalidating the provisions of Akron's ordinance. Generally, Justice Powell's opinion reiterates the Court's findings in *Roe* and reasons that certain provisions of the ordinance violated the Constitution because they were clearly intended to direct women away from choosing the abortion option. They were not implemented out of medical necessities. The fetal disposal clause was struck down because its language was too vague to determine conduct subject to criminal prosecution.

3. *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. \_\_\_\_ (2006)

Justice Sandra Day O'Connor, writing for the Court, held that the statute would be unconstitutional when applied to the very small percentage of minors for whom an emergency abortion would be necessary to avert serious damage to their health. The lower court's decision to invalidate the entire statute based on its unconstitutional results in this small percentage of cases, however, was unnecessary. Instead, O'Connor wrote, "in this case the lower courts can issue a declaratory judgment and an injunction prohibiting [only] the statute's unconstitutional application."

4. *Beal v. Doe*, 432 U.S. 438 (1977).

The Court held that states could exclude nontherapeutic abortions from coverage under their Medicaid programs. Justice Powell argued that in its provisions, Title XIX of the Social Security Act made no specific reference to abortion nor did it require states to fund every medical procedure which could possibly fall under its umbrella. Powell made clear however that the federal statute did give states the option to fund therapeutic abortions if they chose to do so.

5. *Bellotti v. Baird*, 443 U.S. 622 (1979).

**A Massachusetts law required minors to gain parental consent before having an abortion. However, if either or both of the parents refused, a judge of the superior court could allow a minor to have the procedure "for good cause shown." The Court found the statute unconstitutional for two reasons. First, it allowed judicial authorization for an abortion to be withheld from a minor who is mature and competent enough to make the decision independently. Second, it required parental notification in all cases (parents were required to be notified if their daughter initiated proceedings in superior**

court) without allowing the minor to seek an independent judicial assessment of her competence to decide the abortion issue.

6. *Harris v. McRae*, 448 U.S. 297 (1980),

The Court held that states participating in the Medicaid program were not obligated to fund medically necessary abortions under Title XIX. The Court found that a woman's freedom of choice did not carry with it "a constitutional entitlement to the financial resources to avail herself of the full range of protected choices." The Court ruled that because the Equal Protection Clause was not a source of substantive rights and because poverty did not qualify as a "suspect classification," the Hyde Amendment did not violate the Fifth Amendment. Finally, the Court held that the coincidence of the funding restrictions of the statute with tenets of the Roman Catholic Church did not constitute an establishment of religion.

7. *Hill v. Colorado*, 530 U.S. 703 (2000).

In a 6-3 opinion delivered by Justice John Paul Stevens, the Court held that the Colorado statute's restrictions on speech-related conduct are constitutional. The Court concluded that the statute "is not a regulation of speech. Rather, it is a regulation of the places where some speech may occur." "Although the statute prohibits speakers from approaching unwilling listeners, it does not require a standing speaker to move away from anyone passing by. Nor does it place any restriction on the content of any message that anyone may wish to communicate to anyone else, either inside or outside the regulated areas. It does, however, make it more difficult to give unwanted advice, particularly in the form of a handbill or leaflet, to persons entering or leaving medical facilities," Justice Stevens wrote for the Court. "The unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases." Justices Antonin Scalia, Clarence Thomas, and Anthony M. Kennedy dissented.

8. *Hodgson v. Minnesota*, 497 U.S. 417 (1990),

Did the Minnesota abortion notification statute unconstitutionally restrict a minor's access to having an abortion? The Court found Section 2 of the statute unconstitutional because requiring notification of both parents, whether or not both wanted to know or had taken responsibility for raising the child, did not serve a legitimate state interest. The Court favored notification of only one parent and a 48 hour waiting period.

9. *Lambert v. Wicklund*, 520 U.S. 292 (1997),

Is a Montana statute authorizing the judicial bypass of parental notification as to a minor's abortion, under conditions including a showing that notification is not in best interests of minor, constitutional? Yes. The Court held that the Court of Appeals' ruling was in direct conflict with the Court's precedents to the effect that the allowance of a judicial bypass if a minor showed that parental notification was not in her best interests met the constitutional requirement that the minor be allowed to show that the desired abortion would be in her best interests.



10. *Leavitt v. Jane L.*, 518 U.S. 137 (1996),

The anonymous *Per Curiam* opinion held that the Utah Legislature had explicitly stated that each of the two abortion provisions was meant to stand independent of the other. The Court called the Tenth Circuit's interpretation of the Utah legislature's intent "questionable when considered in isolation" and "plainly error" when considered in light of the statutory text. In dissent, Justice Stevens argued that the case should not have been granted, because it dealt with an issue of Utah state law that was better left to the lower courts.

11. *Maier v. Roe*, 432 U.S. 464 (1977),

In a 6-to-3 decision, the Court held that the Connecticut law placed no obstacles in the pregnant woman's path to an abortion, and that it did not "impinge upon the fundamental right recognized in *Roe*." The Court noted that there was a distinction between direct state interference with a protected activity and "state encouragement of alternative activity consonant with legislative policy." Holding that financial need alone did not identify a suspect class under the Equal Protection Clause, the Court found that the law was "rationally related" to a legitimate state interest and survived scrutiny under the Fourteenth Amendment.

12. *Mazurek v. Armstrong*, 520 U.S. 968 (1997),

The Court held that its precedents repeatedly stated that the performance of abortions could be restricted to physicians, where there was no evidence of an unlawful motive on the part of the state legislature.

13. *National Organization for Women (NOW) v. Scheidler*, 510 U.S. 249 (1994), The National Organization for Women (NOW) sued a coalition of anti-abortion groups called the Pro-Life Action Network (PLAN) under the Racketeer Influenced and Corrupt Organizations (RICO) Act. N.O.W. alleged that Scheidler and other anti-abortion protesters were members in a nationwide conspiracy to obstruct women's access to abortion clinics through a pattern of racketeering activity including the actual or implied threat of violence. The unanimous Court held that organizations without an economic motive can detrimentally "affect interstate or foreign commerce," satisfying the RICO definition of a racketeering enterprise. An "enterprise" does not have to be an economic organization or a principally criminal organization to trigger the RICO act. Consequently, the Court reversed the appeals court decision which allowed the original case to proceed.

14. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992),

Can a state require women who want an abortion to obtain informed consent, wait 24 hours, and, if minors, obtain parental consent, without violating their right to abortions as guaranteed by *Roe v. Wade*? In a bitter, 5-to-4 decision, the Court again reaffirmed *Roe*, but it upheld most of the Pennsylvania provisions. For the first time, the justices imposed a new standard to determine the validity of laws restricting abortions.

The new standard asks whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." Under this standard, the only provision to fail the undue-burden test was the husband notification requirement.

15. *Poelker v. Doe*, 432 U.S. 519 (1977).

The Court held that St. Louis could enact a "policy choice" to refuse to provide publicly financed hospitals for nontherapeutic abortions even though it provided facilities for childbirth. Relying on its reasoning in *Maher v. Roe* (1977), the Court distinguished between a state interfering with a protected activity and simply encouraging an alternative activity. Since the state did not deny women the right to have an abortion, the law was consistent with the Constitution.

16. *Stenberg v. Carhart*, 530 U.S. 914 (2000)

Does the Nebraska statute, which makes the performance of a "partial birth abortions" a crime, violate the liberty protected by due process of the Fourteenth Amendment in the U.S. Constitution? Yes. In a complicated 5-4 decision delivered by Justice Stephen G. Breyer, the Court held that "Nebraska's statute criminalizing the performance of 'partial birth abortion[s]'" violates the U.S. Constitution, as interpreted in *Casey and Roe*. "The sharply divided Court struck down the statute because it placed an undue burden on a woman's right to have an abortion and did not allow for exception in cases of threatened health. 'All those who perform abortion procedures using that method must fear prosecution, conviction, and imprisonment,' that results in 'an undue burden upon a woman's right to make an abortion decision,'" wrote Justice Breyer for the Court.

17. *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989),

In a controversial and highly fractured decision, the Court held that none of the challenged provisions of the Missouri legislation were unconstitutional. First, the Court held that the preamble had not been applied in any concrete manner for the purposes of restricting abortions, and thus did not present a constitutional question. Second, the Court held that the Due Process Clause did not require states to enter into the business of abortion, and did not create an affirmative right to governmental aid in the pursuit of constitutional rights. Third, the Court found that no case or controversy existed in relation to the counseling provisions of the law. Finally, the Court upheld the viability testing requirements, arguing that the State's interest in protecting potential life could come into existence before the point of viability. The Court emphasized that it was not revisiting the essential portions of the holding in *Roe v. Wade*.

## CHAPTER 54-12 ATTORNEY GENERAL

### 54-12-01. Attorney general - Duties. The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.

15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 12 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

**54-12-01.1. Attorney general to prepare eminent domain pamphlets - Copy to landowner.** The attorney general, with the cooperation of appropriate state agencies, shall prepare pamphlets in readable format describing the eminent domain laws of this state. The pamphlets must include the reasons for condemnation, the procedures followed by condemnors as defined by section 32-15-01, how citizens may influence the condemnation process, and the rights of property owners and citizens affected by condemnation. The attorney general shall make copies of the pamphlets available to all condemnors who must be charged a price for the pamphlets sufficient to recover the costs of production. A condemnor shall present a copy of the pamphlet to a property owner prior to making an offer to purchase and initiating a condemnation action.

**54-12-01.2. Regulation of gaming schools.** The attorney general shall regulate schools offering training and methods of conducting games of chance and shall adopt any rules necessary.

**54-12-01.3. Judicial officers - Legal defense - Indemnification.** The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile court of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile court of this state for all reasonable costs, including attorney's fees, incurred by or awarded against the judicial officer in the action.

**54-12-01.4. Limitation of effect of certain opinions of attorney general.** Any opinion of the attorney general, or any other public official other than a court of competent jurisdiction, that sections 16.1-01-13, 16.1-01-13.1, and 16.1-01-14 are unconstitutional, is not binding on any other public official, and all other public officials are free to act in accordance with the wishes of the people of North Dakota as expressed in sections 16.1-01-13, 16.1-01-13.1, and 16.1-01-14.

**54-12-02. Attorney general may institute action in which state is a party.** The attorney general and the attorney general's assistants are authorized to institute and prosecute all cases in which the state is a party, whenever in their judgment it would be for the best interests of the state so to do.

**54-12-03. Attorney general may make investigation in county - How expenses paid.** The attorney general may make an investigation in any county in this state to the end that the laws of the state shall be enforced therein and all violators thereof brought to trial, when:

1. The attorney general deems it necessary for the successful enforcement of the laws of the state in such county;

2. Requested by a majority of the members of the board of county commissioners of the county; or
3. Petitioned by twenty-five taxpaying citizens of the county.

The necessary expenses incurred in making the investigation or in prosecuting any resulting case, as determined by the attorney general and not otherwise specifically provided by law, must be paid by the county out of the state's attorney's contingent fund. All such expenses paid from the state's attorney's contingent fund must be paid by the county treasurer upon the warrant of the county auditor. The warrant must be executed and delivered by the auditor in an amount and to the person designated therein upon the written order of the attorney general.

**54-12-04. Attorney general to investigate and prosecute criminal matters in counties on demand of district judge - How expenses paid.** Upon the written demand of a judge of the district court, with or without the consent and approval of the state's attorney of the county wherein such duties are to be performed, the attorney general, either personally or through the attorney general's assistants, shall be required to make a full and complete investigation of any criminal matter or complaint referred to in the demand. The attorney general shall take full charge of and shall conduct any criminal prosecution in any county within the district of said district judge to the same effect and with like power and authority as the duly elected state's attorney of that county. All expenses, including mileage as now provided by law for state officers, and disbursements for subsistence while performing those duties incurred by the attorney general, must be paid and allowed by the county in which the said duties were performed in the manner in which claims against the county are allowed and paid, after an itemized statement thereof has been approved by the judge who requested that the same be performed.

**54-12-04.1. Attorney general to make investigation on Indian reservation - Expenses.** The attorney general may make a full and complete investigation of any complaint alleging the deprivation of any constitutional, civil, or legal right of an individual residing on an Indian reservation upon the written request of the state's attorney of the county of residence of the aggrieved individual. The attorney general may conduct and take full charge of any criminal prosecution that results from the investigation. The necessary expenses incurred in making the investigation or in prosecuting any resulting case, as determined by the attorney general, must be allowed and paid by the county in which the investigation was requested in the same manner in which claims against the county are allowed and paid.

**54-12-04.2. Child sexual abuse investigation and prosecution.** The child sexual abuse investigation and prosecution team consists of an assistant attorney general and an agent of the state bureau of criminal investigation. On request of any state's attorney, the team shall assist, within the limits of legislative appropriation and available staff resources, with the investigation and prosecution of child sexual abuse cases.

**54-12-05. Biennial report.**

1. The attorney general shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must provide:
  - a. A summary of the types of actions prosecuted or defended by the attorney general on behalf of the state.
  - b. The aggregate cost of prosecuting or defending actions on behalf of the state.
  - c. The amount of fines and penalties collected.
2. The attorney general also shall direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses and shall suggest amendments and changes as in the attorney general's judgment are necessary to subserve the public interest.

**54-12-06. Assistant attorneys general - Attorney general may appoint.** The attorney general may appoint assistant attorneys general whose appointment must be in writing and filed in the office of the secretary of state.

**54-12-07. Salary of assistant attorneys general.** The salary of the assistant attorneys general must be within the amount appropriated for salaries by the legislative assembly and are payable in the same manner as other departmental payrolls.

**54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation.** After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. Workforce safety and insurance, the department of transportation, the state tax commissioner, the public service commission, the insurance commissioner, the board of higher education, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence or ethical standards. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of the appointment. Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

**54-12-08.1. Contingent fee arrangements.** The attorney general may not appoint or allow to be employed a special assistant attorney general in a civil case in which the amount in controversy exceeds one hundred fifty thousand dollars and the special assistant attorney general is compensated by a contingent fee arrangement, unless the contingent fee arrangement is approved by the emergency commission. A state governmental entity may not contract for legal services that are compensated by a contingent fee arrangement, unless the entity receives an appointment from the attorney general for a special assistant attorney general for each case in which there is a contingent fee arrangement. Any proceeding or information used by the emergency commission under this section is not subject to sections 44-04-18 and 44-04-19, unless made public by order of the emergency commission.

**54-12-09. Assistant attorney general for board of university and school lands - Appointment - Revocation - Oath.** The attorney general shall appoint an assistant attorney general to act under the direction and supervision of the attorney general as attorney for the board of university and school lands. The appointment is revocable at the pleasure of the attorney general. Such assistant attorney general upon appointment and before assuming the person's duties shall take the oath prescribed for civil officers.

**54-12-09.1. Salary of assistant attorney general for board of university and school lands.** Repealed by S.L. 1953, ch. 306, § 1.

**54-12-10. Assistant attorney general for board of university and school lands - Execution of certificates and documents.** All certificates and documents executed, signed, or certified to by the assistant attorney general appointed to act as attorney for the board of university and school lands, must be executed, signed, or certified to in substantially the following form:

\_\_\_\_\_  
Attorney General  
By \_\_\_\_\_  
Assistant Attorney General

**54-12-11. Salary of attorney general.** The annual salary of the attorney general is eighty-three thousand nine hundred ninety-one dollars through June 30, 2008, and eighty-seven thousand three hundred fifty-one dollars thereafter.

**54-12-12. Licensing department - Inspectors - Powers and duties.** Repealed by S.L. 1967, ch. 116, § 2.

**54-12-13. Special assistant attorneys general report of salaries and expenses.** All departments that pay salaries or expenses of special assistant attorneys general shall report all such expenditures monthly to the attorney general upon such forms as must be prescribed by the attorney general. And all such salaries and expenses must be approved by the attorney general.

**54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation.** The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law, and amounts received from a multijurisdictional drug task force as defined in section 54-12-26. The amount of deposits into the fund which do not come from legislative appropriation or from a multijurisdictional drug task force and are not payable to another governmental entity may not exceed two hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as

a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of the fund, and shall personally approve, in writing, all requests from the director of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund.

**54-12-14.1. Loans for law enforcement activities.** The attorney general may obtain unsecured loans from any financial institution in this state for the purpose of conducting the activities listed in subsection 1 of section 54-12-14. Any funds obtained under this section must be repaid at the end of each biennium and are not subject to appropriation limitations.

**54-12-15. Drug enforcement unit - Personnel - Duties.** A law enforcement unit to be designated as the drug enforcement unit is created under the attorney general. The drug enforcement unit must consist of a director and such other personnel as may be designated by the attorney general. It is the duty of the drug enforcement unit to enforce all of the provisions of chapter 19-03.1 and any other provision of law dealing with controlled substances. The board and other state and local agencies shall cooperate with the drug enforcement unit in the discharge of its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end the unit is authorized to:

1. Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.
2. Coordinate and cooperate in training programs on controlled substance law enforcement at the local and state levels.
3. Establish a centralized information system which will accept, catalog, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request.
4. Cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted.

**54-12-16. Powers of drug enforcement unit personnel.** For purposes of carrying out the provisions of section 54-12-15, and such other duties in the investigation, detection, apprehension, prosecution, or suppression of crime as may be assigned by the attorney general, any officer of the drug enforcement unit designated by the attorney general shall have all the powers conferred by law upon any peace officer of this state.

**54-12-17. Consumer protection and antitrust division.** A consumer protection and antitrust division is created under the attorney general. This division consists of a director and such other personnel as may be appointed by the attorney general. The division shall act to enforce the consumer fraud laws and act with regard to the use or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, and shall make full investigation of such activities and maintain adequate facilities for filing reports, examining persons and merchandise in regard thereto, and storing impounded books, records, accounts, papers, and samples of merchandise relating to same. The division shall cooperate with other governmental agencies, national, state, or local, and with all peace officers of the state



in regard thereto. The division also shall investigate antitrust violations and enforce antitrust laws.

**54-12-18. Special fund established - Continuing appropriation.** A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer protection division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws, all costs, expenses, attorney's fees, and civil penalties collected by the division regarding any consumer protection or antitrust matter, all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond, and all funds and fees collected by the gaming section for licensing tribal gaming and for the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer protection and antitrust division on behalf of specifically named consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees;
3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims;
4. To pay costs, expenses, and attorney's fees and salaries incurred in the operation of the consumer protection division; and
5. To pay the actual costs of background investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each biennium any moneys in the fund in excess of the amounts required for subsections 1, 2, 3, and 5 must be deposited in the general fund. The attorney general, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for use of the attorney general refund fund, particularly with respect to expenditures under subsection 4.

**54-12-19. Block house defined.** Repealed by S.L. 2007, ch. 75, § 4.

**54-12-20. Block house program.** Repealed by S.L. 2007, ch. 75, § 4.

**54-12-21. Recovery of funds - Limitations.** All funds recovered by the attorney general as a result of negotiated settlements or court proceedings must be deposited in a special fund in the state treasury and may be appropriated only by the legislative assembly, except when:

1. A specific fund or special account is otherwise designated by law; or
2. The options open to the attorney general leave no choice as to the disposition of the proceeds if the state is to recover funds in a multistate settlement.

**54-12-22. Accessibility of sexual offender and crimes against children registration information.** The attorney general shall provide to a law enforcement dispatch center access to registration information on individuals required to register under section 12.1-32-15 through any feasible electronic means that includes direct access to a computerized registration information data base. The attorney general shall provide the information in a form that is referenced by driver's license number or number plate characters. The department of transportation shall provide the necessary information to the attorney general in any feasible form requested by the attorney general. The attorney general may require the cooperation of the state radio broadcasting system to provide the access required by this section.

**54-12-23. Special operations team reimbursement fund - Continuing appropriation.**

The attorney general may establish a special operations team reimbursement fund of up to two hundred fifty thousand dollars consisting of federal funds and moneys obtained from cities and counties. The funds are appropriated as a standing and continuing appropriation to the attorney general for reimbursement to city and county governments that provide special operations team services to rural areas. The attorney general shall develop guidelines for the reimbursement of expenses to city and county governments providing special operations team services.

**54-12-24. State crime laboratory division.**

1. A state crime laboratory is created as a division of the office of the attorney general. This division consists of a director, the state toxicologist, and such other personnel as may be appointed by the attorney general. The state crime laboratory may establish and charge fees for services rendered. The state crime laboratory must be administratively separated from the bureau of criminal investigation. The director serves at the pleasure of the attorney general and is entitled to receive a salary set by the attorney general within the limits of legislative appropriation.
2. The state crime laboratory shall employ the services of a qualified toxicologist who must be the state toxicologist. The attorney general shall appoint the state toxicologist. The attorney general may appoint such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the attorney general to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein as determined by the director of the state crime laboratory.
3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

**54-12-25. Attorney general may provide counsel to boards of health.** The attorney general, upon the request of a board of health established under chapter 23-35, may provide legal counsel or a written legal opinion to the board of health. The attorney general may enter an agreement with a board of health for reimbursement of expenses incurred by the attorney general in providing legal counsel to the board of health.

**54-12-26. Attorney general multijurisdictional drug task force grant fund - Continuing appropriation.**

1. The attorney general may establish a multijurisdictional drug task force grant fund. The fund consists of funds appropriated by the legislative assembly. The funds are appropriated as a standing and continuing appropriation to the attorney general for the purpose of defraying the expenses and operating costs incurred by a multijurisdictional drug task force. The attorney general shall develop guidelines for the qualifications for receipt of grant funds, the disbursement of grant funds, and the necessary accounting procedures for the use of grant funds. In this section, "multijurisdictional drug task force" means a law enforcement task force:
  - a. Organized and created in this state by a written mutual aid or joint powers agreement;

- b. Comprised of persons who are employed by, or acting under the authority of, different governmental entities, including federal, state, county, or municipal governments, or any combination of these agencies; and
  - c. Operated and established to enhance and facilitate interagency coordination, acquisition of intelligence information, and investigations of controlled substance and other drug-related crimes.
2. If the attorney general receives federal funds in excess of the year 2006 level of Byrne grant funding that may be used to defray the expenses and operating costs incurred by a multijurisdictional drug task force during the 2007-09 biennium, the attorney general may seek emergency commission approval to receive and spend the additional federal funds but may not spend moneys from the funds appropriated by the legislative assembly to the extent of the additional federal funds received for this purpose for the biennium beginning July 1, 2007, and ending June 30, 2009.

From: metusdeus [metusdeus@yahoo.com]  
Sent: Tuesday, March 24, 2009 8:19 AM  
To: NDLA, S JUD  
Subject: please pass attachment out to committee members  
Attachments: Reproductive Rights Issues.doc

## **HB 1572: Reproductive Rights Issues**

### **Would HB 1572 penalize the mother for abortion?**

No. If the state legislature wanted to immunize a woman from criminal prosecution for participating in an abortion, then that would be the prerogative of the legislature. Charles Rice, Emeritus Professor of Law at Notre Dame University conducted an extensive search of all case law in United States history and was not able to find a single case where the mother was prosecuted. In 222 years of case law, ZERO PROSECUTIONS.

### **Would HB 1572 outlaw contraception?**

No. Contraception is the prevention of life, not the taking of it. HB 1572 would not restrict contraception in any way. Using the pill or an IUD cannot be treated as murder, since murder requires intent and a dead body. With the pill or an IUD, the intent is contraceptive and there is no body.

### **What about the life and health of the mother?**

Where life-saving treatment of a mother results in the death of an unborn child, treatments are legally and morally not considered abortion. So ectopic pregnancy, miscarriage and other cases would not be of concern. Prior to 1973, prior to legal abortion, doctors were NOT being dragged into courts.

### **Would this legislation ban *in vitro* fertilization?**

No. Perhaps the North Dakota Legislature could pass a law similar to Louisiana's current law, which bans the killing of frozen human embryos but still allows women ready access to *in vitro* fertilization. HB 1572 would simply set an ethical standard for fertility clinics that respects all life.

### **Would this legislation ban embryonic stem cell research?**

Yes. Scientists have absolutely no need to kill children to obtain their stem cells. Scientists discovered a way of creating pluripotent cells using umbilical stem cells.

### **Would HB 1572 challenge *Roe v Wade*?**

Yes. HB 1572 would be a direct challenge to the fundamental holding in *Roe v. Wade*. Justice Harry Blackmun, author of the majority opinion, stated in unequivocal terms: "*If personhood is established, the case for legalized abortion collapses.*" (*Roe v. Wade, Majority Decision, Section IX*) The makeup of the Supreme Court is more pro-life than ever. Medical technology now shows unborn babies sucking their thumbs and smiling on 4D ultrasounds. One has to ask: if we don't outlaw abortion now, then when?

### **Under HB 1572, wouldn't the unborn child have to be counted in the census, be considered a dependent for tax purposes, etc.?**

No. HB 1572 recognizes preborn children as persons, not citizens. HB 1572 would require only that the unborn child be treated as a person with respect to his right to life. It was with respect to that right to life that the Supreme Court denied his personhood. The state already recognizes the unborn as persons in fetal homicide, insurance, and inheritance.

**Other questions? Contact Rep. Dan Ruby**