

2013 HOUSE HUMAN SERVICES

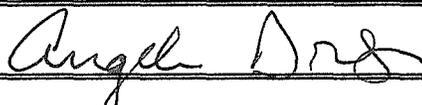
HB 1456

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1456
January 30, 2013
Job 18039

Conference Committee



Explanation or reason for introduction of bill/resolution:

Limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians; and to provide a penalty.

Minutes:

Testimony 1,2,3,4,5,6,7,8,9,10

Chairman Weisz called the hearing on HB 1456 to order.

Rep. Bette Grande: Introduced and sponsored the bill (See Testimony #1) and also provided a short video.

Rep. Mooney: As a ND policy maker, how does this reconcile with relation to the U.S. Supreme Court and a woman's constitutional rights that were established?

Rep. Grande: The compelling interest stated in the case of Roe Casey gives you the three major points that they went on and the potential life would outweigh in these aspects.

Rep. Mooney: We're speaking about a heartbeat, but are we speaking about spontaneous or about viability?

Rep. Grande: The Supreme Court stated that you are to look for the potential viability.

Rep. Mooney: At six weeks, is that viable?

Rep. Grande: It has the potential viability, as was stated in Roe Casey.

Rep. Mooney: If we're going to make policy in ND, how does that relate back to federal courts?

Rep. Grande: Federal court in Roe Casey stated to look for the potential viability, the potential life. This shows us the potential life.

Rep. Mooney: It shows spontaneous, but I'm not seeing viability.

Rep. Grande: Rep. Toman is one of the sponsors but didn't want to speak.

Janne Myrdal, State Director for Concerned Women for America of ND testified in support of the bill (See Testimony #2). Every Wednesday, twenty-five terminations of pregnancy happen in Fargo.

18:27 **Rep. Mooney:** Do we know what conditions were behind the twenty-five every Wednesday?

Myrdal: No.

Rep. Mooney: Part of the language of the bill refers to an emergency as an exception. Who quantifies what that emergency is?

Myrdal: There are more qualified than me on the legal questions.

20:42 **David Prentice, Ph.D., Senior Fellow for Life Sciences with the Family Research Council** testified in support of the bill (See Testimony #3).

Rep. Mooney: What is the earliest age that a fetus can survive on its own without its mother?

Prentice: Most times, it is around twenty weeks in terms of being detached from the placenta.

Rep. Fehr: What does the term standard medical practice refer to?

Prentice: It is a moving target in terms of what is current best practice. Current best practice is actually vaginal ultrasound or Doppler ultrasound.

25:10 **Anna Higgins, Director of the Center for Human Dignity at the Family Research Council** testified in support of the bill (See Testimony #4).

30:37 **Rep. Mooney:** How would you foresee the enforcement of section 1?

Higgins: I would assume this would fall under routine practice for doctors when they are doing reporting of any other procedure. I don't know what the procedures are under the code. It requires a note in the medical records.

Rep. Mooney: If a doctor determines there is a medical emergency, makes the notation, and performs the abortion, can someone else later interpret his definition of an emergency. How does the doctor protect him/herself along with the woman?

Higgins: I don't know how it will work in ND. Typically there will be one or two doctors presented as expert witnesses at a trial. A lot of deference is given to the doctor's testimony. As long as you have another doctor to say that it was standard medical practice is typically how it's done.

33:22 **Christopher Dobson, Executive Director of the North Dakota Catholic Conference** testified in support of the bill (See Testimony #5).

Rep. Mooney: If we were to decide that the first detectable heartbeat was at six weeks, we wouldn't we be encouraging women to make a much more rash decision before that marker and encouraging them to receive an abortion prior to any possibility of a heartbeat?

Dobson: The Abortion Control Act already has provisions to allow some time for reflection. It would still have to be the same waiting period.

Rep. Mooney: What is the waiting period?

Dobson: It is 24 hours.

Rep. Mooney: If a woman knows there is a law stating that she can't have an abortion after six weeks and six days, wouldn't she make sure she is in there by five weeks?

Dobson: We would need to look at the existence of post-liability statutes.

37:13 **Tom Freier, North Dakota Family Alliance** testified in support of the bill (See Testimony #6).

41:10-41:55 **Paul Maloney, North Dakota Right to Life** testified in support of the bill. This bill is simple, check for the pulse. We have a tradition of protecting human life when there is a heartbeat.

42:17-50:13 **Doug VanderMeulen, Pastor of Community Baptist Church** testified in support of the bill. This is a difficult issue. I'm not pro-life, I'm pro-image. The image of God is inherent to every individual. The life of the unborn and the life of the mother are at stake. In 1994, the U.S. National Cancer Institute published results that said that women who have an abortion are at 50% greater risk for breast cancer by the age of 45. The American Journal of Obstetrics and Gynecology reported in 2004 that the death rate of women after giving birth was 28 out of 100,000. The death rate of women after an induced abortion goes to 83 out of 100,000.

50:15 **Rep. Mooney:** What are your feelings on separation of church and State?

VanderMeulen: I believe in separation of church and State but not in the divorce of church and State. There is no separation between church and State.

Chairman: Is there any opposition to HB 1456?

51:47 **Rene Stromme, Executive Director of ND Women's Network** testified in opposition of the bill (See Testimony #7), and handed in Testimony from Tim Stanley from Planned Parenthood (See Testimony #8), and handed in testimony from Rebecca Matthews (See Testimony #9) of which she gave a general overview but read the last two paragraphs verbatim.

56:00 **Rep. Damschen:** What if we don't interfere with the decision to have an abortion, but just carry out our obligation as leaders in a republic where we are charged with the responsibility of protecting the rights of the individual, how do we shirk that responsibility for an unborn child?

Stromme: Asked for clarification on the question. Are you asking to consider these complications and difficult decisions as an individual, does that mean that you're shirking your responsibility?

Rep. Damschen: If we don't interfere with that directly, but indirectly we probably do when we carry out our responsibility to protect the individual rights of anyone living in this republic.

Stromme: There are ways we could come together and pursue a reduction in elective abortions. Banning them is not reaching those goals. More effective would be a focus on support for families, support for children, access to birth control, reductions in poverty rates, and reductions in unplanned pregnancies.

Rep. Damschen: If we address those issues by eliminating life, should we start at the beginning or end of life? Are we going to make decisions on who is viable, whether they are valuable to society, or whether someone wants them around or the inconvenience?

Stromme: It is a deeply philosophical discussion. Not everyone will come to the same conclusion and same decision.

Rep. Mooney: How many other states currently have statutes that are more restrictive than Roe vs. Wade?

Stromme: The states have a myriad of restrictions. Roe v. Wade is the ceiling.

Rep. Mooney: How about specifically with relation to heartbeat?

Stromme: The heartbeat legislation has been introduced in two states and rejected as unconstitutional.

Rep. Kiefert: You are for an abortion where there is a heartbeat?

Stromme: I am for not having government restrictions on reproductive health decisions.

Rep. Kiefert: Is there ever a point in your eyes where it is wrong?

Stromme: They are such individual decisions that I choose to not place judgment. I would rather be here to ask for support in other areas that may mitigate the occurrence of abortion.

1:02:35-1:08:09 **Tammi Kromenaker, Director of Red River Women's Clinic** testified in opposition to the bill (See Testimony #10).

Rep. Mooney: If this were to pass, would women in ND not receive abortions? Or would they go elsewhere?

Kromenaker: Women of means have always had the ability to travel elsewhere when abortion is not available. This bill would make abortion unavailable for the most vulnerable women in our society who don't have the option to travel elsewhere.

Rep. Kiefert: Is there every a time where you see it as wrong at three months, six months, nine months, a year?

Kromenaker: I don't think this is the place to debate value or place limits. Certainly I do not think that after a child is born that it is ok to end that life. I would encourage this legislature to find ways to reduce pregnancies.

Rep. Damschen: Where does the difference happen between taking the life of a three week old child or an unborn child? Where does life become less or more important?

Kromenaker: I don't think this issue will ever be resolved. You and I have different opinions and I'm not trying to convince you of my opinion. I think this legislature and this committee needs to focus on what the U.S. Supreme Court has put forth in that no state can ban abortion prior to viability. I believe that this law would set ND for lengthy and expensive legal battles.

Rep. Damschen: To earlier testimony that talked about the Supreme Court basically saying that although women have a right to the privacy of the decision, it probably comes second to the duty of our government to protect life. It doesn't take us off the hook for making laws that protect life. I believe it begins at conception. When do you think life begins and ends?

Kromenaker: Talking about definitions and defining when life begins and ends is going to get us nowhere. The U.S. Supreme Court has never wavered from their position despite numerous opportunities to do so. The court has emphasized that viability is necessarily a flexible term and that states cannot place viability, which essentially is a medical concept, at a specific point in the gestational period.

Rep. Fehr: You used the term practical solutions in reference to reducing abortions. What are practical solutions?

Kromenaker: One way to reduce unintended pregnancy is to give women better options on birth control and sex education. There are a few states that use a federal waiver program. Because of the location of our clinic, we are able to use the Minnesota Family Planning Program which is a part state, part federal waiver program where we can get women who may not qualify for medical assistance onto this program where they are given birth control at no cost. We also emphasize L.A.R.K. methods, Long Acting Reversible Contraceptives, which the most effective methods of birth control. I believe in the importance of education for everyone regarding preparing for adult responsibilities and parenting responsibilities.

Rep. Fehr: Is there data that says this makes a difference in terms of unwanted pregnancies and abortion rates?

Kromenaker: Yes. These federal waiver programs have been shown to reduce unintended pregnancies, abortions, and sexually transmitted infection rates in states where these programs have been enacted.

Chairman Weisz closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1456
February 5, 2013
Job 18326

Conference Committee



Explanation or reason for introduction of bill/resolution:

Limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians; and to provide a penalty.

Minutes:

Testimony 1

Chairman Weisz called the committee to order.

Rep. Fehr: Introduced an amendment (See Attachment #1).

Chairman: Motion by Rep. Fehr.

Rep. Porter: Second.

Chairman: Motion is carried.

Rep. Looyen: I move a Do Pass as amended.

Rep. Kiefert: Second.

Rep. Fehr: I fully expect this bill to be challenged. I fully expect this to cost our taxpayers a million plus dollars. I fully expect that passing this will not save any lives because it will be overturned. There will be legal action on it immediately. I fully believe it will be overturned immediately. It is not a gray area in regards to challenging the Supreme Court. There is no question that this one will be challenged.

Rep. Mooney: I fully believe that every bill that is passed with relation to abortion will end up in federal court. We will spend millions of our money for that cause and it will be for nothing.

Rep. Porter: I disagree. There is always the threat of lawsuits and costing the taxpayers. The law is on our books from 2001 or 2003 as a ban on partial birth abortion and we haven't been sued for that.

Rep. Fehr: This bill takes abortion from week 22 down to week 6. This is so substantial I don't think there is any question that they will challenge this one.

Rep. Damschen: This one seems like it would have as good a chance as any in court. The heartbeat issue might be something we can stand on. Anybody that takes us to court runs the risk as well.

Yes: 10

No: 2

Absent: 1

Carried by: Rep. Kiefert

Chairman Weisz closed.

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
Amendment to: HB 1456

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

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

The bill prohibits abortions except in medical emergencies once an unborn child has a detectable heartbeat. It provides disciplinary action if a physician performs an abortion for any other reason.

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

This bill prohibits abortions after an unborn child has a detectable heartbeat except in medical emergencies. There is no fiscal impact.

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

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

Not applicable

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

Not applicable

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

Not applicable

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/07/2013

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Bill/Resolution No.: HB 1456

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

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$300,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$300,000	\$0	\$0	\$0

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

The bill prohibits abortions except in medical emergencies once an unborn child has a detectable heartbeat. It provides disciplinary action if a physician performs an abortion for any other reason.

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

This bill prohibits abortions after an unborn child has a detectable heartbeat except in medical emergencies. If this bill, when it becomes law, is challenged and the challenging party prevails, will require reimbursement of attorney costs and expenses for the party and would require the Office of Attorney General to litigate this issue.

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

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

Not applicable

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

This bill would require an estimated \$300,000 general fund appropriation to defend if challenged. If the challenging party prevails, the state would need to reimburse the party for attorney's fees and other costs. In addition, the Office of Attorney General estimates there would be legal defense work completed by this office and would likely result in additional costs for depositions, travel, expert witness fees, etc.

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

The Office of Attorney General anticipates a \$300,000 general fund appropriation would be needed to defend this bill if challenged.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/05/2013

13.0304.02002
Title.03000

Adopted by the Human Services Committee

February 5, 2013

VR
2/5/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 2, line 5, replace "or" with an underscored comma

Page 2, line 7, after "woman" insert ", or to save the life of an unborn child"

Renumber accordingly

Date: 2-5-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1456

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Fehr Seconded By Rep. PORTER

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Change wording
and insert
new language*

*Voice Vote
Motion carried*

Date: 2-5-13
 Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1456

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Looyzen Seconded By Rep. Kiefert

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY	✓	✓
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA	✓	✓
REP. ANDERSON	✓		REP. OVERSEN		✓
REP. DAMSCHEN	✓				
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING	✓				
REP. LOOYSEN	✓				
REP. PORTER	✓				
REP. SILBERNAGEL	A				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. Kiefert

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

REPORT OF STANDING COMMITTEE

HB 1456: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1456 was placed on the Sixth order on the calendar.

Page 2, line 5, replace "or" with an underscored comma

Page 2, line 7, after "woman" insert ". or to save the life of an unborn child"

Renumber accordingly

2013 SENATE JUDICIARY

HB 1456

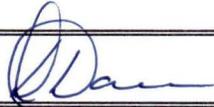
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1456
3/12/2013
Job #19771

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians.

Senator David Hogue - Chairman

Representative Betty Grande - Introduces the bill and shows a video from National Geographic. See written testimony (1)

Anna Higgins - Director of the Center for Human Dignity, Family Research Council - See written testimony (2)

David A. Prentice, Ph.D. - Life Sciences, Family Research Council - See written testimony (3)

Tom Freier - ND Family Alliance - See written testimony. (4)

Stacey Pfliger - ND Catholic Conference - See written testimony (5)

John Boustad - Pastor - In support - Explains his views and says there is a soul and spirit behind every pre-born baby.

Steve Cates - In support, gives a hand-out. (6)

Beth Brown - Hands in testimony for Yanne Myrdal (7)

Pastor Douglas VanderMeulen - Community Baptist Church, Fargo, ND - See written testimony (8)

Opposition

Dr. Ted Kliman - Retired pediatrician, Fargo, ND - He is here to speak against all the bills that involve the violation and interference with doctor patient relationship. He speaks of the septic abortions that came in once a week before the Roe v Wade. He would not like to see the return to those days.

Katrina Lang - Attorney in ND - See written testimony (9)

Janelle Moos - ND Council on Abused Women's Services - See written testimony (10)

Courtney Schaff - Student at NDSU - Opposes the bill.

Tammi Kromenaker - Director of Red River Women's Clinic - See written testimony (11)

Jessie VanCamp - Attorney in Family Law - Believes 1456 is unconstitutional and will hurt women in the state. She said this will be an extreme cost to ND taxpayers to defend this bill. She goes on to say that even the general counsel for the National Right to Life committee has stated bills like these are futile and certain to be stricken down. She urges a do not pass.

Carel Two Eagle - See written testimony (12)

Neutral - none

Close the hearing

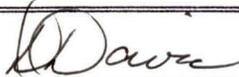
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1456
3/13/2013
Job #19830

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Sitte moves a do pass
Senator Berry seconded

Discussion

Senator Lyson said he will not vote for this since it moves down to six weeks the time you may have an abortion. Senator Sitte shares a personal story to which Senator Lyson replies we all have stories but this bill goes right into the courts. Senator Berry says this bill differs from the other abortion bills we have had in that this has the states interest in potential life. He believes this is key and this bill should go forward. Senator Grabinger agrees with Senator Lyson and wonders where the information goes and likens it to a scarlet letter. Senator Berry explains medical records and states they are kept in your own file. Senator Lyson believes this will need an appropriation for litigation. Senator Hogue says he supports the bill and he takes the position that he does not recognize the fiscal note because every bill passed has the ability to be challenged in court. He states these are tough issues that make you squirm in your chair but you have to decide where you are at on those fundamental issues.

Vote - 4 yes, 3 no
Motion passes

Senator Berry will carry

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
 Amendment to: HB 1456

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

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

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

Not applicable

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

Not applicable

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

Not applicable

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/07/2013

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
 Bill/Resolution No.: HB 1456

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

Not applicable

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

Not applicable

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

Not applicable

Name: Kathy Roll
Agency: Office of Attorney General
Telephone: 701-328-3622
Date Prepared: 02/07/2013

Date: 3-13-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1456**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By S Sitte Seconded By S Berry

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 4 No 3

Absent _____

Floor Assignment S Berry

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

REPORT OF STANDING COMMITTEE

HB 1456, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1456 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1456

HB 1456 Testimony – Rep. Bette Grande (Jan. 30, 2013)

Thank you Mr. Chairman and Members of the Committee,

The Bill in front of you today is about the life of the unborn child and the heart that beats within.

[HB 1456 Bill Text]

Over the last 40 years advancements in medicine and technology have let us look into the mother’s womb at the miracle of life. We see and hear the beating heart.

We have learned that the baby’s heart beats at around five to six weeks from conception.

This video is compelling testimony of life itself.

North Dakota has a long history of defending life. Twelve years before we became a state we had an abortion statute in the territory that prohibited abortion except when the life of the mother was threatened. Our State Constitution says that one of our inalienable rights is protecting life.

Just months before the Roe v Wade decision, the citizens of ND voted down an initiative that would have weakened those anti-abortion statutes that had been on the books since 1877 and the voters defeated that measure by a 3 to 1 margin.

We have a long and proud history of defending life and that is a legitimate state interest in North Dakota.

And, that is why Heartbeat is Constitutional.

In Roe v Wade the US Supreme Court found three basic and compelling Rights under the Constitution.

- 1) The recognition of the right of a woman to choose to terminate the pregnancy on privacy grounds
- 2) The confirmation of the right of the State protect the life & health of the mother and
- 3) The fact that the State has a legitimate interest from the *outset* of the pregnancy to protect the life – *or potential life* - of the baby

In 1973 the Court struggled with the questions of life and potential life because the answer to that question is vital when comparing the women’s right to an abortion with the state’s legitimate interest in the life of the unborn baby.

Today - forty years later - advancements in medicine and technology give us amazing proof of life in the womb. The development of a baby over the weeks and months is powerful proof of life. None more powerful than the beating heart.

This Heartbeat Bill acknowledges the women's right to privacy, protects the life and health of the mother, and defends the state's legitimate interest in the life of the unborn baby.

So at this point in the debate it is time we stop insulting the intelligence of women and mothers.

We are talking about life – the beating heart - and the State of North Dakota has a legitimate and compelling interest in defending that life.

Janne Myrdal
State Director



#2

January 2013

Mr. Chairman and members of the committee, my name is Janne Myrdal, and I am the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation. We are here today on behalf of our North Dakota members in support of HB1456.

Much has been touted using the word "science" in defending abortion rights; however, our challenge to you today is to vote with solid science not against it. A detectable human heartbeat in the early period of gestation proves to us all, as we all already know, that abortion silences a beating heart. The choice before each and every lawmaker here today then becomes simple; do we vote to protect human life or do we not. Medical science clearly shows that life begins at conception. Consider the following:

At 18 days of gestation, the baby's heart begins occasional pulsation.

At 20 days, the foundation for the entire nervous system exists.

At 21 days, the heart begins to beat regularly.

At 30 days, the eyes, ears, mouth, kidneys and liver exist.

At 42 days, brain waves are reliably present and reflexes exist.

At 45 days, teeth buds are present; skeleton is complete; movement begins.

At 56 days, all body systems are present; he reacts to pain.

At 9-10 weeks, he squints, retracts his tongue, and will bend his fingers around an object.

At 11-12 weeks, all body systems work; his arms and legs move; he swallows, sucks thumb, inhales and exhales amniotic fluid, and has fingernails.

At 14 weeks, the auditory sense is present.

At 16 weeks, eyelashes are present; he can grasp, swim, kick and turn.

At 18 weeks, his vocal cords work; he can cry.

At 20 weeks, hair appears; he weighs about one pound and is about 12 inches long.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

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E-mail: director@northdakota.cwfa.org Website: <http://nd.cwfa.org>



The legislation before us today could not be more scientific in its nature. The fact that a heartbeat proves that life is evident should be of no discussion here, nor in any court in the future for that matter. To deny such is indeed to deny scientific facts at their very core. The matter before us today then is not whether a detectable heart bill is life or not, but whether such life deserves protection under the law. CWA of North Dakota says yes it does.

HB1456 primarily does three things.

First, it requires the abortionist to check to see if the unborn baby the pregnant woman is carrying has a heartbeat. Second, if the child has been found to have a heartbeat, it requires the abortionist to let the mother know this. Third, all elective abortions of babies with heartbeats are prohibited.

The question that many ask about this legislation is this: "Is it constitutionally illegitimate?"

Abortion supporters often tout rhetoric about a woman's "constitutional right" to abortion. But constitutional scholars have a hard time taking *Roe v. Wade* seriously. Abortion supporter John Hart Ely, former dean of Stanford Law School, admits that the *Roe* decision "is not constitutional law." The Court reasoned: A "right to privacy" exists in the Constitution, therefore, this right is broad enough to "encompass a woman's decision whether or not to terminate her pregnancy." But nowhere does the Constitution mention a "right to privacy."

"With Americans believing so dearly in a right to be left alone, it may surprise many people that the Constitution does not include the word 'privacy' and offers no explicit mention of it," wrote Joan Biskupic, a columnist who covers the U.S. Supreme Court for *The Washington Post*. "When Justice Harry A. Blackmun, the author of *Roe*, invoked such a right to strike down laws banning abortion, he was relying on no specific wording in the Bill of Rights or in any previous court decision."

In addition, abortion affects the baby—an unwilling third party—which brings us back to the Court's inability to tackle the controversial issue of defining the beginning of life.

Michael McConnell, a professor of Constitutional Law at the University of Utah, writes:

The court can deny such protection to fetuses only if it presupposes they are not persons. ... One can make a pretty convincing argument, however, that fetuses are persons. They are alive; their species is *Homo sapiens*. They are not simply an appendage of the mother; they have a separate and unique chromosomal structure. Surely, before beings with all the biological characteristics of humans are stripped of their rights as "persons" under the law, we are entitled to an explanation of why they fall short. For the court to say it cannot "resolve the difficult question of when life begins" is not an explanation.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

Janne Myrdal
State Director



It is clear that science has already given us a yardstick to determine if someone is alive--a beating heart. HB1456 applies that measurement evenly. HB1456 calls for an end to discrimination due to the size of a human being and its location. It calls for the protection of every human being with a beating heart--no matter their age.

“Our Founding Fathers created a nation based on life, liberty and the pursuit of happiness. “Switch the order of these three fundamental human rights—putting happiness before liberty or liberty before life—and you end up with moral chaos and social anarchy” (Steve Forbes). Americans must ask, Do we wish to leave the abortion mentality to future generations? Is our country better off because of *Roe*? Today America stands at a crossroad. The choice is clear. God extolled the Israelites, “I have set before you life and death, blessing and cursing; therefore, choose life, that both you and your descendants may live” (Deuteronomy 30:19, NKJV). The time has come to choose life—for the unborn and also for our entire society. The time has come to face the fact about the unborn child. The time has come to vote in favor of a beating human heart. If we were to choose between what I thought would pass the courts, what would be more politically convenient or what would not be controversial and life, we would choose life any day. We urge you to do the same.

We urge you to vote a Do Pass on HB1456.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

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#3

Written Testimony of David A. Prentice, Ph.D.
Senior Fellow for Life Sciences, Family Research Council

Human Services Committee, North Dakota House
January 2013

To the Distinguished Chair, Ranking Member and Honored Members of the Committee.

I am a cell biologist, currently working for a think tank in Washington, D.C. and as an adjunct professor at a local university. Previously I spent 20 years as Professor of Life Sciences at Indiana State University and Adjunct Professor of Medical & Molecular Genetics at Indiana University School of Medicine, and I have done federally-funded laboratory research, lectured, and advised on these subjects extensively, in the U.S. and internationally.

This bill deals with the use of observable and objective scientific information regarding the normal development of every human being.

The reliable scientific information documents that each human life begins at conception.

“Zygote. This cell results from the union of an oocyte and a sperm during fertilization. A zygote is the beginning of a new human being (i.e., an embryo).”¹

“The development of a human begins with fertilization, a process by which the *spermatozoon* from the male and the oocyte from the female unite to give rise to a new organism, the *zygote*.”²

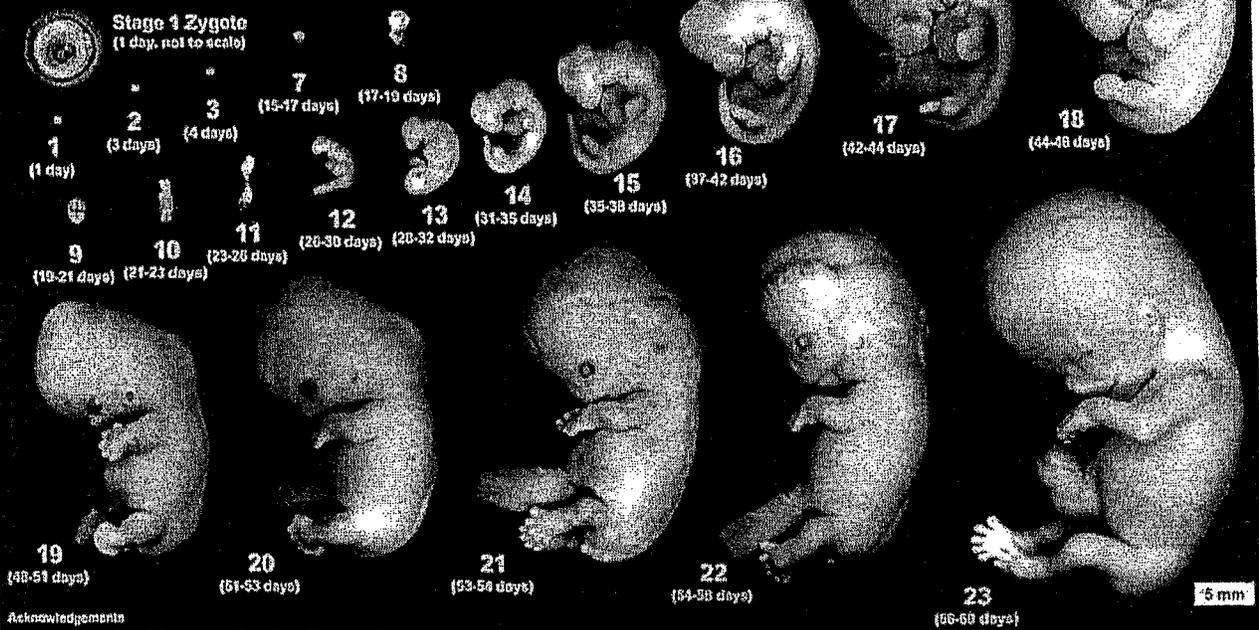
During normal development there are distinct, observable, objective signs of continued development of the young human. One of the easiest in terms of non-invasive detection is the heartbeat.

¹ Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*. 7th edition. Philadelphia: Saunders 2003, p. 2.

² Sadler, T.W. *Langman's Medical Embryology*. 7th edition. Baltimore: Williams & Wilkins 1995, p. 3.

Carnegie Stages of Human Development

Dr Mark Hill, Cell Biology Lab, School of Medical Sciences (Anatomy), UNSW



Acknowledgements
 Special thanks to Dr S. J. DiMarzo and Prof. Kohji Shiohara for allowing reproduction of their research images and material from the Kyoto Collection and Ms E. Hill for image preparation.
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Week 1-4

Neural tube forms - It will develop into the nervous system (Brain, spinal cord, hair, and skin). This is the foundation for thought, senses, feeling.

Week Five: embryo

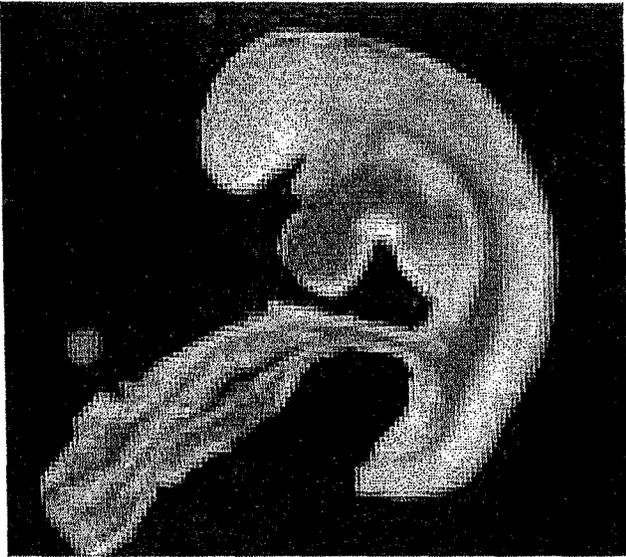
First heartbeats begin – recognizable by ultrasound.

Umbilical cord develops – It has the responsibility of pumping in oxygen, removing waste, and supplying the necessary nutrients for the baby

Blood is now pumping - All four heart chambers are now functioning

Most other organs begin to develop - The lungs start to appear, along with the brain.

Arm and leg buds appear



Six week old human

The developing human heart begins beating at approximately 23 days (since conception). Doppler instrument can begin detection of the beating heart almost this early, but usually detection by vaginal ultrasound or Doppler instrument can detect the heartbeat at around 5 ½ to 6 ½ weeks; this is usually a very good time to detect a fetal heart beat by vaginal ultrasound.

Generally from 6 ½ -7 weeks is the time when a heartbeat can be detected and viability is most commonly assessed. A normal heartbeat at 6-7 weeks would be 90-110 beats per minute. By week 21, the heart can be heard with a standard stethoscope

The presence of the developing heartbeat is an assuring sign of the health of the pregnancy. Once a heartbeat is detected, the chance of the pregnancy continuing ranges from 70-90% dependent on what type of ultrasound is used.

The detection of a developing human heartbeat is a scientifically valid method, and to deny that this is not a developing, living human being at this stage of life is an unscientific assessment of the objective scientific facts.

Sixty-Third Legislative Assembly of North Dakota
Human Services Committee
Testimony of Anna Higgins, J.D.
Director of the Center for Human Dignity, Family Research Council
January 30, 2013

Mr. Chairman and honorable members of the committee, thank you for giving me the opportunity to testify before you today about the critical human rights issue of abortion.

My name is Anna Higgins. I am the Director of the Center for Human Dignity at the Family Research Council, a Christian public policy organization that since 1983 has promoted and defended human life, religious liberty and family values in the United States. We represent more than 1.5 million people from Evangelical, Catholic, and other Christian denominations around the country. I speak today as a representative of Americans who oppose the destruction of human life in the womb. Fundamentally, we believe that life begins at conception and that this life is worthy of respect and equality under the law.

The purpose of this testimony is to highlight the federal judicial history of abortion law and the legality of the provisions of the North Dakota heartbeat bill.

First of all, *Roe* is not a Constitutional right. The Supreme Court in *Roe* held that the right to an abortion is part of an implied right to privacy. Neither privacy nor abortion are mentioned in the Constitution. The court also set up a trimester framework in *Roe* in order to limit states from regulating abortion in the first trimester, saying the states interest only became compelling after the first trimester.

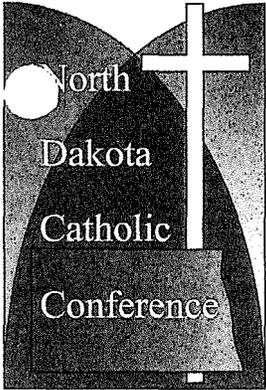
What *Roe* failed to consider; however, was addressed by the Court in *Planned Parenthood v. Casey*, that states have a substantial interest in protecting the lives of its citizens.

Planned Parenthood v. Casey affirmed a woman's right to choose abortion prior to viability; however, the Court ruled that the trimester framework in *Roe* misconceived the interest of the woman. The Court noted that the right to choose an abortion prior to viability is not a right to be completely insulated from others in her choice.

The Court in *Casey* then noted that a state has a substantial interest in protecting potential life of the fetus and the health of the mother from the outset of pregnancy (all nine months). The Court then set forth a new standard for state regulation called the undue burden test. The undue burden test states that a state regulation must not have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. Under this standard the Court has upheld myriad of state regulations such as informed consent, 24 hour waiting periods, parental notification and clinic regulations. It is also interesting to note that although the *Casey* Court declined to overturn *Roe* on the basis of state decisis, it abandoned all reference to privacy

and fundamental right language used in *Roe* and rather focused on the liberty language of the 14th amendment – the very language under which the rights of the unborn can and should be upheld.

As has been determined in *Casey*, North Dakota has a substantial interest in protecting potential life throughout all nine months of pregnancy. The detection of a heartbeat during a doctor's visit when a woman is pregnant or believes she may be pregnant is a routine practice. It is; therefore, not an undue burden to require that a doctor and woman participate in a non-invasive routine medical practice.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: House Human Services Committee
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1456 - Abortion After Detectable Heartbeat
Date: January 30, 2013

The North Dakota Catholic Conference supports House Bill 1456.

House Bill 1456 reflects a basic truth: “The respect given to an individual human person must always be first and must govern every law and action so that the person’s life and dignity is always and everywhere protected and defended.” (Bishop David D. Kagan, October 19, 2012.)

Certainly, HB 1456 would prohibit only abortions where the heartbeat of the unborn child is detected and it does raise some new legal questions. But the questions are not with merit. Currently, the US Supreme Court only allows states to protect unborn life after the point of viability, which is when an unborn child can survive outside the womb. The Supreme Court chose viability because it understood viability to be a significant marker of human development. Close reflection, however, reveals that viability is not a measure of human development. It is really only a measure of the medical technology available to a newborn, and as technology improves, viability changes. Viability as a marker is inherently suspect and unjust because it is dependent upon time, place, and circumstance.

A heartbeat, however, is a marker that actually reflects the development of the unborn child. It is wrong that the courts will only allow states to protect some unborn children and not all of them. However, if the courts insist on only allowing protections for unborn children that are developed to a certain extent, the existence of a heartbeat provides a better basis than viability.

We urge **Do Pass** recommendation on House Bill 1456.

North Dakota Family Alliance

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

House Human Services Committee
HB 1456
January 30, 2013



Mr. Chairman and members of the House Human Services Committee, I am Tom Freier with the North Dakota Family Alliance, and I am here to support HB 1456.

The purpose of HB 1456 is quite simple, prohibiting an abortion if the unborn child the pregnant woman is carrying has a detectable heartbeat.

We all know the significance of a beating heart. We may have witnessed the loss of a loved one being cared for in a hospital, one moment hearing the presence of the heartbeat via the heart monitoring machine, the next moment experiencing the deafening silence of a heart beating no more. The heartbeat offers an undeniable truth about life.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. Life. Life. The Declaration of Independence doesn't stop there; it goes on "That to secure these rights, governments are instituted among men".

The government is to secure these rights, the right of life.

HB 1456 secures life, protects life. Just as we protect life, a living being, until that heart stops beating, we must afford that same protection when that heartbeat becomes detectable in the unborn.

This issue of abortion may become complex at times, and obviously has for many years—as we have witnessed the discussion and debate. But the issue becomes very simple, if we go back to a very foundational truth—that we as a people, as a government, are to secure and protect the right of life.

Mr. Chairman, I urge the committee to support HB 1456 with a Do Pass recommendation.

Dedicated To Strengthening Families

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

#7

House Human Services Committee

HB 1456

January 27, 2013

30

Chairman Weisz and members of the committee, my name is Renee Stromme. I am Executive Director of the North Dakota Women's Network. We are a membership organization working to improve the lives of North Dakota women. It is the position of the North Dakota Women's Network that reproductive choices for women must be ensured.

Abortion is a deeply personal and sometimes complex decision that must be left to a woman, her family, and her faith, with the counsel of her doctor or health care provider.

- Decisions about pregnancy are not for the government to make.

This bill could have devastating consequences when a woman is experiencing medical complications.

- When a woman is experiencing a complicated pregnancy, it is important that a woman and her doctor have every medical option available.
- Specific disorders such as anencephalic (no brain) syndrome are fatal and permit no normal development. There may be a heartbeat present but no possibility for survival without the brain. The decision to carry out or terminate a difficult pregnancy belongs to the pregnant woman without interference from the government.
- HB 1456 interferes in medical decisions that may require medical interventions.

Last week I testified in opposition to 1305. Being the only person to stand in committee in opposition, my testimony appeared in the media. I received many contacts from individuals thanking me for that testimony and lending support. One person in particular contacted me and said she was ready to share her story. She suffered a pregnancy inflicted with Twin to Twin Transfusion Syndrome. I want to refer you to her testimony as further evidence that government should not interfere in these private medical decisions.

NDWN is asking for a do-not-pass recommendation on House Bill 1456. Thank you for allowing my testimony.

Renee Stromme
Executive Director
North Dakota Women's Network
1120 College Dr, Suite 100
Bismarck, ND 58503
701-223-6985
renee@ndwomen.org

[Type text]



#8

House Human Services Committee
HB 1456
January 30, 2013

Chairman Weisz and Members of the Committee, my name is Tim Stanley and I am here on behalf of Planned Parenthood Minnesota, North Dakota, South Dakota to testify in opposition to HB 1456. As drafted, HB 1456 would ban virtually all safe abortions in North Dakota, even when a woman has been the victim of rape, incest or if her health is in danger.

Planned Parenthood's commitment is to provide high quality, affordable health care in a compassionate setting where every patient's privacy and dignity are respected. It's who we are, and it's what we do every day—no matter what. For almost a hundred years, women and families have trusted Planned Parenthood to provide them with a wide range of health care services and accurate, nonjudgmental health information and community education in the heart of the Midwest.

Planned Parenthood Minnesota, North Dakota, South Dakota (PPMNS) serves more than 60,000 patients annually who count on Planned Parenthood health centers for life-saving cancer screenings, birth control, breast health services, STI testing and treatment, health education and well-woman exams. No one does more to prevent the need for abortion and keep women healthy than Planned Parenthood.

While we work every day through health care, education and advocacy to prevent unintended pregnancy and reduce the need for abortion, we recognize decisions about pregnancy are personal. They can be complicated. They can be very difficult. And for many people, it's not a black and white issue. But when it comes down to it, we just don't know a woman's specific situation. We're not in her shoes.

Ultimately, decisions about whether to choose adoption, end a pregnancy, or raise a child must be left to a woman, her family, and her faith, with the counsel of her doctor or health care provider.

There's no question this bill is an unconstitutional overreach into complicated decisions that are not ours to make for anyone else. Every other state that has considered such a proposal – including most recently Ohio and Wyoming – have come to the same conclusion

It is important that abortion remains a safe and legal medical procedure in North Dakota for a woman to consider if and when she needs it. Please vote "do not pass" on HB 1456.

Planned Parenthood Minnesota, North Dakota, South Dakota - 624 Main Ave. Suite 9 Fargo, ND 58103

Testimony from
Rebecca Matthews

House Bill 1456

January 30, 2013

Rebecca Matthews
#9

Chairman Weisz and members of the House Human Services committee, I am Rebecca Matthews from Bismarck. I am here to oppose this legislation because these very difficult decisions should only be for a family to make in consultation with their doctor, not for politicians.

At 16 weeks pregnant I found out our hopes of having our third child turned into having our third and fourth child. They were identical twin girls. That was the last good news of our pregnancy. Immediately we were watched for twin to twin transfusion syndrome (TTTS). This is a syndrome where the twins share a placenta and share blood flow. At a little over 18 weeks it was critical we needed to address the TTTS. We chose to fly to Cincinnati OH for evaluation and possible laser surgery to address the shared blood supply between our twins. Before leaving Bismarck my husband and I named our twins Anna and Emily. At the Fetal Care Center in Ohio we received extensive assessments of both girls. TTTS was not our greatest worry. Emily was much smaller and only had a small percentage of the placenta and a vementus cord insertion. Anna was much bigger and had a larger percentage of the placenta. Anna had mild to moderate pulmonary valve stenosis of her heart. Emily had changes in blood flow to her brain. They then gave us our treatment options:

1. To go on bed rest with weekly visits to a MFM (a doctor that specializes in high risk pregnancies) in Minneapolis to monitor Anna's heart, Emily's blood flow, and to watch for progression of TTTS. TTTS has a "Mortality rates approach 80-100 percent if left untreated, especially when it presents prior than 20 weeks gestation" From Fetal Care Center information.
2. We could go ahead with the laser procedure to cut the shared blood vessels to hopefully protect Anna if Emily died. Due to our issue being more of a placental share issue then a clear cut TTTS they were unsure the morbidity/mortality of this procedure for our twins.
3. We could have a fetoscopic cord coagulations. This would end Emily's life that was already affected by her inability to get adequate blood supply. On the other hand it would protect Anna. Because of the shared blood vessels in the placenta if Emily died it could end Anna's life or cause major neurological deficits. We could revisit this option at our future appointments in Minneapolis if Emily's blood flow changed. The doctors told us we would have warning of her demise to make this decision.

The team provided us with all the medical information, answered our questions, and gave us a number to reach them if we had more questions. Then they told my husband and I what I hold most dear. To go back to our hotel and talk about what treatment option WE wanted. We could not believe our choices were to have premature babies with health issues, one baby with neurological issues, or saving only one twin.

My husband and I decided with the medical information and our backgrounds as an Occupational Therapist and a Nurse Anesthetist we would take a wait and see approach. When and if Emily had blood flow changes we would terminate to save Anna. Prior to leaving the Fetal Care center we had another ultrasound and an amniocentesis and nothing had changed. We flew home with a planned trip to Minneapolis in a week.

I remember returning home so afraid of what bed rest, micro-preemies, and the babies needing to be in Minneapolis would do to our then 4 and 6 year old. How were we going to afford all the trips and medical care even before they were born? With me being a stay at home mom who would do my job of caring for my kids? I was scared of all the health complications that may be ahead. Would they need to come home on oxygen? Would they have cerebral palsy? Would they need a feeding tube?

My husband and I prepared for our first trip to Minneapolis.

I never made my first appointment to Minneapolis. 4 days after returning home and not feeling the babies move I called my OB. On June 19' 2007 I found out my girls no longer had heart beats. I was induced and delivered my still born babies Anna and Emily on June 21' 2007, days shy from 21 weeks gestation.

My husband and I made the best decision we could with the medical information we had at the time. It was OUR decision to make. I do not know if our decision would be the same now, five years later. All I know is that no decision is right or wrong, but is different given the medical information and the family's decisions.

I wish we lived in a perfect world where pregnancies were always happy and healthy. We do not live in that world. These medical decisions are for families to decide with consultation with their medical team, not for government to make. If we lived in a perfect world Anna and Emily would have been healthy and thriving at 21 weeks gestation but in this imperfect world we lived the nightmare of losing our precious twins.

Tammi Kromenaker -Testimony against HB 1456

Chairman Weisz, members of the Human Services Committee, thank you for the opportunity to present testimony in opposition of House Bill 1456. My name is Tammi Kromenaker and I am the Director of Red River Women's Clinic.

Red River Women's Clinic is the only abortion provider in the state of ND and has provided safe abortion care services to women in North Dakota for almost 15 years. We are members in good standing of the National Abortion Federation and maintain the highest quality standards for our practice. Red River Women's Clinic mission is to not only provide medically safe reproductive health services, but to also provide those services in an emotionally supportive environment.

Red River Women's clinic provides abortion services to women from a broad range of backgrounds. Each year, approximately sixty percent of our patients are already mothers, with at least one child at home. These women have personal experiences and understanding of pregnancy and parenting and are making careful, considered decisions about what is best for themselves and their families. In addition, most of our patients get abortions very early in pregnancy. As I've described, many women, including many mothers, in the state from all different backgrounds have sought services at the clinic at one time in their lives. Our clinic provides safe, legal services in a supportive environment.

HB 1456 would ban abortion from the time that a heartbeat can be detected, which is between 6 and 8 weeks from the last menstrual period. In many cases, women are not even aware that they are pregnant at 6 weeks from their last menstrual period and certainly a woman who has just realized she is pregnant has not had time to consider her options, including adoption, parenting a child, or terminating the pregnancy. By choosing such an early point in pregnancy, this bill amounts to an absolute ban on abortion in the state of North Dakota.

Banning abortion would mean forcing every pregnant woman in North Dakota to carry to term, regardless of her individual circumstances, medical needs, or wishes. Each week at our clinic we see a variety of women seeking abortion who have given careful consideration to their decision. For example, a few weeks ago we had a mother of 5 children who was advised by her physician to not have any more children after her last difficult birth. Her husband had a vasectomy, so they thought they were safe from unintended pregnancy. His vasectomy failed and she became pregnant. Her decision was difficult, as she stated she personally was against abortion, but simply could not take the risk to her life and possibly die from continuing the pregnancy and leave her husband without a wife or to leave her 5 children without their mother. Last week we had a 27 year old woman in who had been raped – her words when she discovered she was pregnant were, "I felt helpless, depressed and disgusted". She then went

on to say that “I want to move forward from the horrible act that was done to me.” These are real women we see each week at our clinic. They have real stories and real lives. They should have the right to decide for themselves if continuing a pregnancy is right in their circumstances.

By the age of forty-five, approximately one in three women in this country will have had an abortion.¹ Women seek abortions for many reasons: some choose to terminate unwanted pregnancies, some seek abortions to protect their own health, and some seek abortions because of a serious fetal anomaly.

Abortion is a deeply personal and often complex decision for a woman to make. This is not a decision for the legislature to make for individual women -- nobody knows a woman’s specific situation—we’re not in her shoes. Whether a woman chooses to carry an unintended pregnancy to term and parent a child or chooses adoption, or chooses abortion, that decision is hers to make, with her family, her physician, and those in her life whom she trusts the most.

Abortion is also a constitutionally protected medical service – the United States Constitution and the North Dakota Constitution both protect the right to privacy, including the right to decide when and whether to have children. State and federal courts in North Dakota, across the country, and the Supreme Court, have upheld that right time and again. More specifically, the Supreme Court has held that **no state may ban abortion prior to the point of viability, which is in the medical community is generally thought to occur no earlier than 24 weeks after a woman’s last menstrual period.**

Although one of the safest medical procedures available, abortion is regulated extremely strictly North Dakota, as the existing ND Abortion Control Act is one of the most restrictive in the nation. In fact, the legislature amended the North Dakota Control Act again in 2011, in HB 1297, adding further restrictions to the provision of services. Many of the restrictions on abortion imposed by the legislature in North Dakota, while burdensome and troubling for patients and providers, are constitutional. However, as many of you may know, courts have found that some of the restrictions that have been enacted by this legislative body have crossed that constitutional line. HB 1456 is clearly and absolutely unconstitutional – it bans abortion almost as soon as pregnancy begins, far before the Supreme Court has held that a state may do so.

This bill would seriously harm women in North Dakota who need to have all of their medical options available when confronting an unintended pregnancy. It is neither this legislature’s

¹ Guttmacher Institute, An Overview of Abortion in the United States, <http://www.guttmacher.org/media/presskits/2008/01/12/abortionoverview.html> (last visited April 18, 2012).

right nor its place to make that decision for each individual woman facing her own circumstances. I urge you to vote no on House Bill 1456.

I appreciate you giving me the opportunity to testify today and I would be happy to take any questions from the committee.

13.0304.02001
Title.

Prepared by the Legislative Council staff for
Representative Fehr
February 1, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 2, line 5, replace "or" with an underscored comma

Page 2, line 7, after "woman" insert ", or to save the life of an unborn child"

Renumber accordingly

Rep. Bette Grande

Heartbeat

The Heartbeat Bill is very simple, everyone understands what a beating heart means, it means life. The Heartbeat Bill prohibits an abortion when the baby's heartbeat is present, except to protect the life or health of the mother. A heartbeat is accepted by everyone as a sign of life and a baby's heartbeat gives compelling testimony from the womb.

The Heartbeat Bill does not state that life begins at the detection of a heartbeat or at any specific time during pregnancy. The Heartbeat Bill is not intended to overthrow Roe v Wade as many opponents claim. The Heartbeat Bill is drafted to fit within the legal framework established by the US Supreme Court. However, it recognizes the 40 years of advancements in medicine, science and technology. Information that the Supreme Court acknowledged it was lacking in 1973 when Roe v Wade was decided. The Court's opinion was based on human knowledge as it had developed up to 1973. This Heartbeat Bill merely assumes that our knowledge of the development in the womb did not stop advancing in 1973.

First, we should dispel the notion that this Bill should be defeated because of the cost of litigation. Whether this Bill is challenged in court is entirely up to the abortion industry. Given the lucrative nature of abortion it is likely that any statute that reduces the number of customers will be challenged by the industry. But, I simply cannot accept the idea that we will not fight for the truth just because the opposition has deep pockets. Not when it comes to life.

Constitutionality

I apologize up front for the length of this piece. I have had many requests to lay out the constitutional framework for the Heartbeat Bill, but, as I said in my earlier piece on life, there is a great deal of confusion and misinformation about the Supreme Court's abortion decisions. Pro-abortion groups have done a very good job of "education" to the point that very few of us understand the legal framework involved.

Roe v Wade

Most understand that this US Supreme Court Opinion found a constitutionally protected right to privacy that includes the ability for a women to abort her baby. But, there is much more to this opinion than that. The Court also acknowledged two other legitimate rights or duties. One is the right of the state to protect the life and health of the mother and the other is the duty of the state to protect the life, or potential life, of the unborn baby. The Court ruled that a state has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.

Despite what you may have heard, the Court clearly stated that the right to privacy is not absolute. In fact, the right to privacy must be balanced against the two important state interests. The Court said "it is reasonable and appropriate for a State to decide that at

some point in time another interest, that of the health of the mother or that of potential human life becomes significantly involved.”

The woman’s right to privacy was a key finding in Roe, but we have ignored the interest of the state, especially regarding the unborn. What has been lost for the past 40 years is the question - At what point does the state’s legitimate and compelling interest in protecting the life of the child become stronger than the women’s right to privacy?

Viability

The Roe opinion is 30+ pages long and the Court only gave a couple paragraphs to the issue of viability. When considering the question of when life begins the Court stated “... the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”

The Court noted that the beliefs as to when life begins “...have tended to focus either upon conception, upon live birth, or at the interim point at which a fetus becomes ‘viable’”.

In 1973 the Court determined that the point during a pregnancy when the state’s important and legitimate interest in potential life becomes compelling was viability. A lot has changed since 1973 and with advancements in technology we now see the development of the baby and hear the heartbeat.

Viability as the compelling point has not been accepted by pro-abortion groups who have worked in the years since Roe to extend the practice of abortion past viability to birth. With the Heartbeat Bill we acknowledge the Court’s belief that man’s knowledge and understanding of human development continues to advance.

Potential Life

The Court’s use of the term potential life is key. The Court was very clear throughout the Roe opinion that a state has an important and legitimate interest – in fact a duty - to protect potential life. The Court stated “Logically, of course, a legitimate state interest in this area need not stand or fall on the acceptance or belief that life begins at conception or at some other point prior to live birth. In assessing the State’s interest, recognition may be given to the less rigid claim that as long as *potential* life is involved, the State may assert interests beyond the protection of the pregnant women alone.” (emphasis US Supreme Court)

When discussing the legitimate interests of the state the Court said “At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of factors that govern the abortion decision.”

Planned Parenthood v. Casey

The Supreme Court narrowly upheld certain aspects of the Roe decision in the 1992 Casey decision. But, the Court also eliminated the trimester standard from Roe showing

1

that Roe may be modified as science and medicine advance showing that Roe can and will be changed as new understanding develops.

The Court obviously struggled with the question of viability and when discussing the legitimate state interest in protecting potential life the Court said "The weight to be given this state interest, not the strength of the women's interest, was the difficult question faced in Roe." Despite that statement the Court majority did not specifically review viability in light of scientific advancements as of 1992, but instead relied on the legal precedent of the Roe opinion.

When discussing Roe the Casey Court said "Even on the assumption that the central holding of Roe was in error, that error would go only to the strength of the state interest in fetal protection, not to the recognition afforded by the Constitution to the women's liberty."

In other words, the Court acknowledged that the strength of a state's interest in protecting potential life is the key factor in the abortion debate. But the viability standard developed in 1973 has not been reviewed despite 40 years of scientific knowledge.

Today

Under Roe and subsequent decisions there is no question that North Dakota has a legitimate interest, even a duty, to protect potential life. The key question today is how much weight do we give to that state duty? Our understanding of potential life today is much greater than it was in 1973, the impact of 40 years of advancements in medicine and technology cannot be ignored. The images and the heartbeat from the womb provide strong and overwhelming evidence of, at the very least, potential life.

(2)

Sixty-Third Legislative Assembly of North Dakota
House Bill No. 1456
Testimony of Anna Higgins, J.D.
Director of the Center for Human Dignity, Family Research Council
March 13, 2013

Mr. Chairman and honorable members of the committee, thank you for giving me the opportunity to testify before you today about the critical human rights issue of abortion.

My name is Anna Higgins. I am the Director of the Center for Human Dignity at the Family Research Council, a Christian public policy organization that since 1983 has promoted and defended human life, religious liberty and family values in the United States. We represent more than 1.5 million people from Evangelical, Catholic, and other Christian denominations around the country. I speak today as a representative of Americans who oppose the destruction of human life in the womb. Fundamentally, we believe that life begins at conception and that this life is worthy of respect and equality under the law.

Heartbeat as a Biological Marker of Life

The moral and biological truth highlighted by this bill is the fact that the abortion decision necessarily involves two separate and unique persons- the mother and the child. The marker used to identify the distinct life of the child is the universally accepted biological proof of life- the heartbeat. Just as absence of the heartbeat is used to determine death of a human being, the detection of the heartbeat in the womb is used to unequivocally identify the presence of a life. Most medical professionals are able to detect a heartbeat in a pre-born child at 6 to 7 weeks after conception, although the heart begins beating at 3-4 weeks after conception.

Viability standard

While the Supreme Court in *Planned Parenthood v. Casey* upheld the right of a woman to procure an abortion on a non viable fetus, it abandoned the *Roe* trimester framework and the fundamental right language. This decision gave the states more substantial leeway to enact abortion regulation. The Court in *Casey* then noted that a state has an interest in protecting potential life of the fetus and the health of the mother from the outset of pregnancy (all nine months). The Court then set forth a new standard for state regulation called the undue burden test. The undue burden test states that a state regulation must not have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.

The viability standard expressed in *Roe* has been criticized as arbitrary and confusing.¹ In retaining what was called the “essential holding” of *Roe*, the right of a woman to obtain an abortion of a pre-viable fetus without undue interference from the state, the Court failed to distinguish between what they considered the essential holding and the portion of the holding it threw out, the “arbitrary” trimester framework. The decision was so confusing that it caused Justice Scalia to note, “I must . . . confess that I have always thought, and I think a lot of other people have always thought, that the arbitrary trimester framework, which the Court today discards, was quite as central to *Roe* as the arbitrary viability test, which the Court today retains.”²

The “viability” standard is particularly arbitrary since the actual viability of the unborn child is continually evolving with new medical technology. When *Roe* was decided, an unborn child was

¹ See e.g. *Hamilton v. Scott* (J. Parker, special concurrence)

² *Planned Parenthood v. Casey*, 505 U.S. 833, 993. (Scalia, J., concurring in the judgment in part and dissenting in part).

“viable,” *i.e.*, capable of living outside of his or her mother, at twenty-eight weeks of gestation.

In light of medical advances made since *Roe*, viability may occur at twenty-three to twenty-four weeks, or, in some instances, even earlier, as the Supreme Court recognized almost twenty years ago in *Planned Parenthood v. Casey*.³

Another confusing aspect of this standard is that it is subject to a wide variety of definitions.

Whereas an unborn child at 12 weeks, for example, is unable to survive outside the womb and is thus considered non-viable, a fully developed infant is widely considered viable even though he has no chance of surviving to adulthood without constant care and assistance. The only difference between the two children is age and location. There are many other examples of persons that could be considered non-viable, such as a person with severe disabilities, a person in a coma, or even someone who requires kidney dialysis to survive. Thus, it becomes an unreasonable position to discriminate against a person simply because he is unable to survive in a certain environment.

States are slowly abandoning the viability standard in areas of law outside abortion regulation because they recognize the standard as arbitrary. As described by the Supreme Court of South Dakota, “‘Viability’ as a developmental turning point was embraced in abortion cases to balance the privacy rights of a mother against her unborn child. For any other purpose, viability is purely an arbitrary milestone from which to reckon a child’s legal existence.”⁴ Many states have

³ *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992) (noting that viability may occur at twenty-three to twenty-four weeks); See <http://www.endroe.org/roeanalysis.aspx>.

⁴ *Wiersma v. Mable Leaf Farms*, 543 N.W. 2d 787, 792 (S.D. 1996).

abandoned the viability standard, particularly in the area of homicide law. Two-thirds of states recognize fetal homicide, and half of those states recognize it regardless of viability.⁵

Rights Under Roe:

To be clear, *Roe* is not a Constitutional right. The Supreme Court in *Roe* held that the right to an abortion is part of an implied right to privacy. Neither privacy nor abortion are mentioned in the Constitution. The court also set up a trimester framework in *Roe* in order to limit states from regulating abortion in the first trimester, saying the states interest only became compelling after the first trimester.

What *Roe* failed to consider; however, was addressed by the Court in *Planned Parenthood v. Casey*, that states have a substantial interest in protecting the lives of all citizens, including the pre-born.

Planned Parenthood v. Casey affirmed a woman’s right to choose abortion prior to viability; however, the Court ruled that the trimester framework in *Roe* misconceived the interest of the woman. The Court noted that the right to choose an abortion prior to viability is not a right to be completely insulated from others in her choice.

Under this standard the Court has upheld myriad of state regulations such as informed consent, 24 hour waiting periods, parental notification and clinic regulations. It is also interesting to note that although the *Casey* Court declined to overturn *Roe* on the basis of stare decisis, it abandoned all reference to privacy and fundamental right language used in *Roe*.

⁵ Paul Benjamin Linton, “The Legal Status of the Unborn Child Under State Law,” St. Thomas Journal of Law & Public Policy, Vol. 6:1 2011, at 143.

As has been determined in *Casey*, North Dakota has a substantial interest in protecting potential life throughout all nine months of pregnancy. The detection of a heartbeat during a doctor's visit when a woman is pregnant or believes she may be pregnant is a routine practice. It should; therefore, not be considered an undue burden to require that a doctor and woman participate in a routine medical practice.

Written Testimony of David A. Prentice, Ph.D.
Senior Fellow for Life Sciences, Family Research Council
Adjunct Professor of Molecular Genetics, John Paul II Institute, Catholic University of America
Founding Member, Do No Harm: The Coalition of Americans for Research Ethics

Judiciary Committee, North Dakota Senate
March 2013

To the Distinguished Chair, Ranking Member and Honored Members of the Committee.

I am a cell biologist, currently working for a think tank in Washington, D.C. and as an adjunct professor at a local university. Previously I spent 20 years as Professor of Life Sciences at Indiana State University and Adjunct Professor of Medical & Molecular Genetics at Indiana University School of Medicine. Prior to that I was a faculty member in the Department of Obstetrics, Gynecology and Reproductive Sciences, University of Texas Medical School at Houston. I have done federally-funded laboratory research, lectured, and advised on these subjects extensively, in the U.S. and internationally. I've taught embryology, developmental biology, molecular biology and biochemistry for over 30 years to medical and nursing students, as well as undergraduate and graduate students.

I am testifying in SUPPORT of HB 1456, the "Heartbeat Bill".

This bill deals with the use of observable and objective scientific information regarding the normal development of every human being.

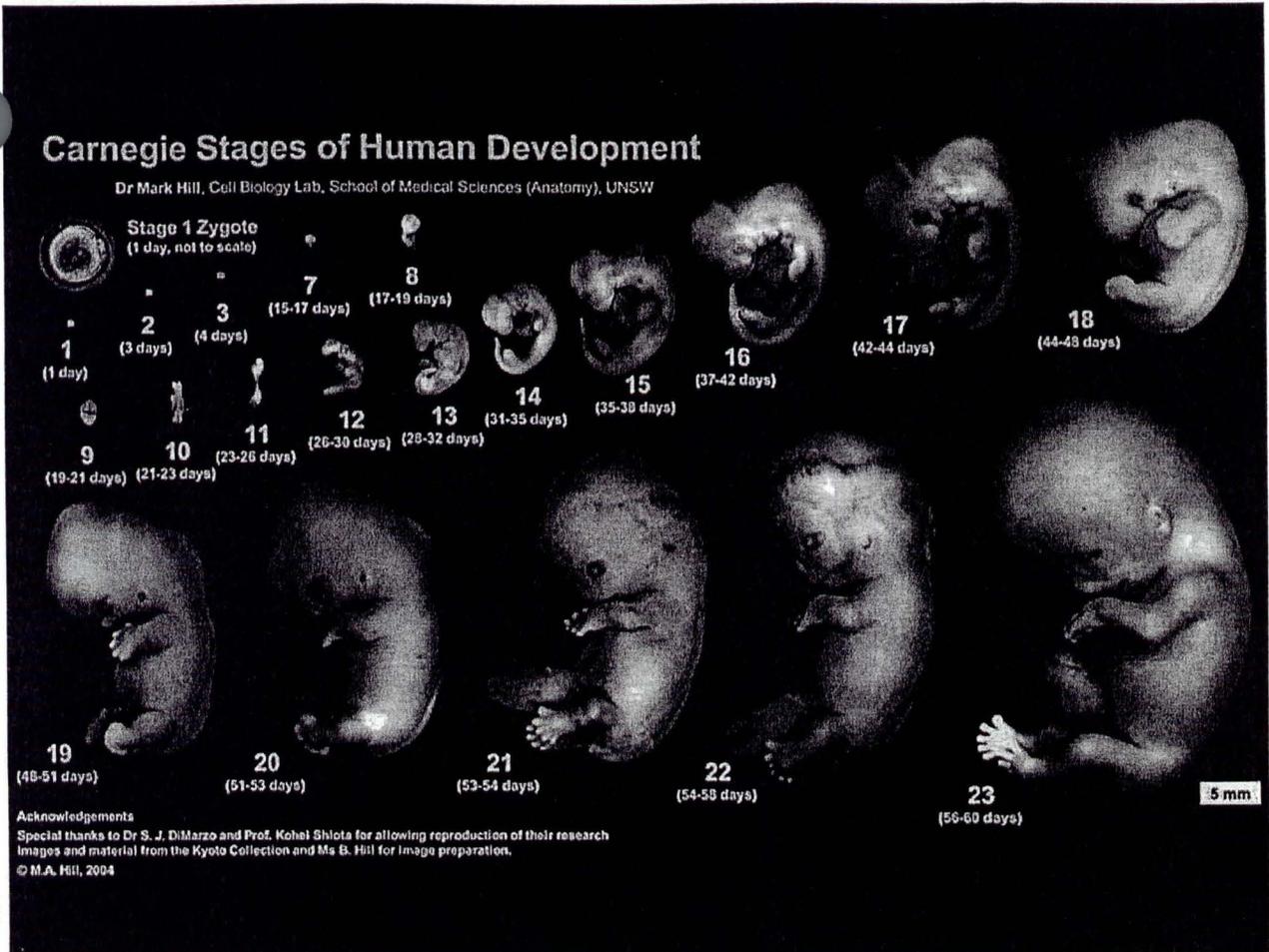
The reliable scientific information documents that each human life begins at conception.

"Zygote. This cell results from the union of an oocyte and a sperm during fertilization. A zygote is the beginning of a new human being (i.e., an embryo)."¹

"The development of a human begins with fertilization, a process by which the *spermatozoon* from the male and the oocyte from the female unite to give rise to a new organism, the *zygote*."²

During normal development there are distinct, observable, objective signs of continued development of the young human. One of the simplest and most straight-forward signs of the presence of life in terms of non-invasive detection is the demonstration of a heartbeat.

1 Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*. 7th edition. Philadelphia: Saunders 2003, p. 2.
2 Sadler, T.W. *Langman's Medical Embryology*. 7th edition. Baltimore: Williams & Wilkins 1995, p. 3.



The chart above shows the developmental continuum seen in normal human development, from conception through approximately 8 weeks, as Carnegie stages of development (the most widely accepted scientific staging of early human development.)³ Human development is a continuum with the life of the organism beginning at the zygote stage, as noted before.

The human heart forms and starts to beat at approximately 23-26 days post-conception (Carnegie stage 10-11).⁴

3 See, e.g., http://php.med.unsw.edu.au/embryology/index.php?title=Carnegie_Stage_Comparison

4 See, e.g., <http://www.visembryo.com/baby/10.html> and http://php.med.unsw.edu.au/embryology/index.php?title=Carnegie_stage_11 ; and Carlson BM, Patten's Foundations of Embryology, Sixth Edn., McGraw-Hill, Inc. (NY), 1996; p. 631.

4 week old human



Six week old human



The developing human heart begins beating at approximately 23-26 days post-conception. Doppler instrument can begin detection of the beating heart almost this early, but usually detection by transvaginal ultrasound or Doppler instrument can detect the heartbeat at around 5 ½ to 6 ½ weeks; this is usually a very good time to detect a fetal heart beat by vaginal ultrasound.⁵ “Transvaginal sonography (TVS) is the procedure of choice in evaluating the viability of embryos early in pregnancy.”⁶

Normally from 6-7 weeks is the time when a heartbeat is detected and viability is most commonly assessed. A normal heartbeat at 6-7 weeks would be 90-110 beats per minute.⁷ By week 12 the heartbeat can be detected by abdominal ultrasound.⁸ By week 21, the heart can be heard with a standard stethoscope.

The presence of the developing heartbeat is an assuring sign of the health of the pregnancy, and of the viability of a developing baby and chances of live birth. Once a heartbeat is detected, the chance of the pregnancy continuing ranges from 70-90% dependent on what type of ultrasound detection is used.⁹

The detection of a developing human heartbeat is a scientifically valid method for demonstrating the health and life of a developing human. Any statement that this is not a developing, living human being at this stage of life is an unscientific assessment, devoid of objective scientific facts.

This bill would provide necessary, distinct protections for developing human beings, based on objective verifiable criteria that identifies the existence of a human life. Thank you for the opportunity to contribute to the discussion on this important issue.

5 See, e.g., <http://radiopaedia.org/articles/fetal-heart-beat>

6 Bree RL *et al.* Transvaginal sonography in the evaluation of normal early pregnancy: correlation with HCG level, *Am J Roentgenology* 153, 75, 1989

7 See, e.g., <http://radiopaedia.org/articles/fetal-heart-rate>

8 Woo J, *Obstetric Ultrasound: A Comprehensive Guide*, <http://www.ob-ultrasound.net/>

9 Hyer JS *et al.*, Predictive value of the presence of an embryonic heartbeat for live birth: comparison of women with and without recurrent pregnancy loss, *Fertil. Steril.* 82, 1369, 2004

Senate Judiciary Committee

HB 1456

March 12, 2013

Mr. Chairman and members of the Senate Judiciary Committee, I am Tom Freier with the North Dakota Family Alliance, and I am here to support HB 1456.

The purpose of HB 1456 is quite simple, prohibiting an abortion if the unborn child the pregnant woman is carrying has a detectable heartbeat.

We all know the significance of a beating heart. We may have witnessed the loss of a loved one being cared for in a hospital, one moment hearing the presence of the heartbeat via the heart monitoring machine, the next moment experiencing the deafening silence of a heart beating no more. The heartbeat offers an undeniable truth about life.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness. Life. Life. The Declaration of Independence doesn't stop there; it goes on "That to secure these rights, governments are instituted among men".

The government is to secure these rights, the right of life.

HB 1456 secures life, protects life. Just as we protect life, a living being, until that heart stops beating, we must afford that same protection when that heartbeat becomes detectable in the unborn.

This issue of abortion may become complex at times, and obviously has for many years—as we have witnessed the discussion and debate. But the issue becomes very simple, if we go back to a very foundational truth—that we as a people, as a government, are to secure and protect the right of life.

Mr. Chairman, I urge the committee to support HB 1456 with a Do Pass recommendation.

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To: Senate Judiciary
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1456 - Abortion After Detectable Heartbeat
Date: March 12, 2013

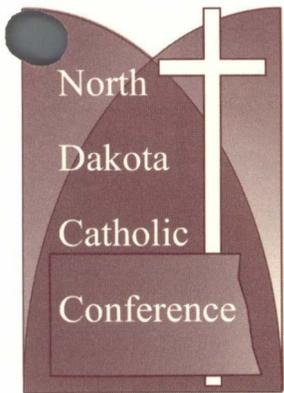
The North Dakota Catholic Conference supports House Bill 1456.

House Bill 1456 reflects a basic truth: “The respect given to an individual human person must always be first and must govern every law and action so that the person’s life and dignity is always and everywhere protected and defended.” (Bishop David D. Kagan, October 19, 2012.)

Certainly, HB 1456 would prohibit only abortions where the heartbeat of the unborn child is detected and it does raise some new legal questions. But the questions are not with merit. Currently, the US Supreme Court only allows states to protect unborn life after the point of viability, which is when an unborn child can survive outside the womb. The Supreme Court chose viability because it understood viability to be a significant marker of human development. Close reflection, however, reveals that viability is not a measure of human development. It is really only a measure of the medical technology available to a newborn, and as technology improves, viability changes. Viability as a marker is inherently suspect and unjust because it is dependent upon time, place, and circumstance.

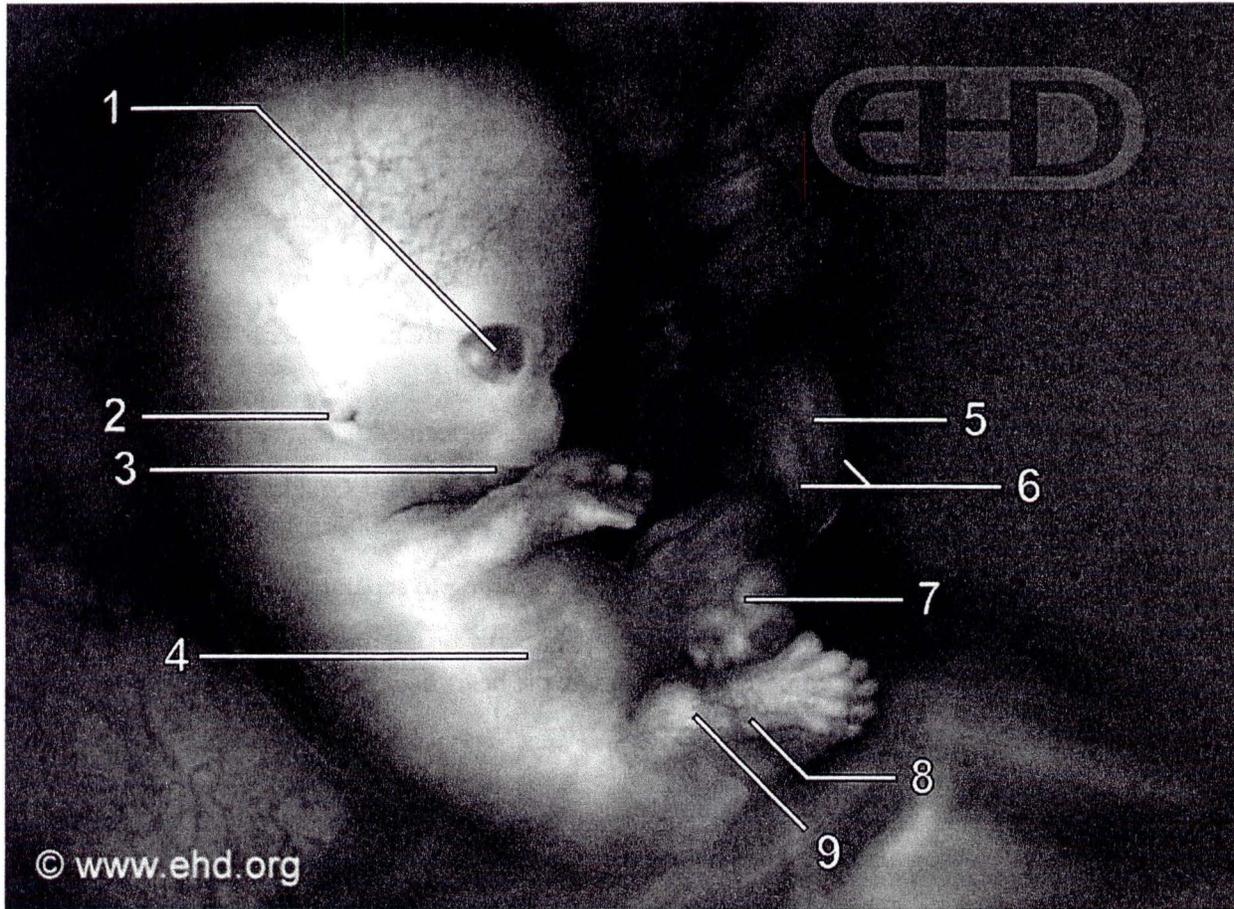
A heartbeat, however, is a marker that actually reflects the development of the unborn child. It is wrong that the courts will only allow states to protect some unborn children and not all of them. However, if the courts insist on only allowing protections for unborn children that are developed to a certain extent, the existence of a heartbeat provides a better basis than viability.

We urge **Do Pass** recommendation on House Bill 1456.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel



7 Week Old Child

- 1. pigmentation within the retina of the right eye
- 2. external portion of right ear
- 3. mouth
- 4. outline of ribs
- 5. umbilical vein within umbilical cord
- 6. umbilical arteries
- 7. loops of bowel in base of umbilical cord (a normal event called physiologic herniation)
- 8. right ankle
- 9. right knee

N-D

The permanent kidneys appear by 5 weeks.

By 6 weeks, the cerebral hemispheres are growing disproportionately faster than other sections of the brain.

The massive liver fills the abdomen adjacent to the beating heart.

The embryo begins to make spontaneous and reflexive movements. Such movement is necessary to promote normal neuromuscular development.

Primitive brainwaves have been recorded as early as 6 weeks and 2 days.

A touch to the mouth area causes the embryo to reflexively withdraw its head.

Blood cell formation is underway in the liver where lymphocytes are now present. This type of white blood cell is a key part of the developing immune system.

The diaphragm, the primary muscle used in breathing, is largely formed.

Nipples appear along the sides of the trunk shortly before reaching their final location on the front of the chest.

By 6 1/2 weeks, the elbows are distinct, the fingers are beginning to separate, and hand movement can be seen.

The 4-chambered heart is largely complete. On average, the heart now beats 167 times per minute.

The external ear is beginning to take shape.

Hiccups have been observed by 7 weeks.

Leg movements can now be seen, along with a startle response.

Bone formation, called ossification, begins within the clavicle, or collar bone, and the bones of the upper and lower jaw.

Electrical activity of the heart recorded at 7 1/2 weeks reveals a wave pattern similar to the adult's.



For Scale: Crown to Rump length = 1 inch



March 12, 2013

Mr. Chairman and members of the committee, my name is Janne Myrdal, and I am the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women’s organization in the nation. We are here today on behalf of our North Dakota members in support of HB1456.

Much has been touted using the word “science” in defending abortion rights; however, our challenge to you today is to vote with solid science not against it. A detectable human heartbeat in the early period of gestation proves to us all, as we all already know, that abortion silences a beating heart. The choice before each and every lawmaker here today then becomes simple; do we vote to protect human life or do we not. Medical science clearly shows that life begins at conception. Consider the following:

At 18 days of gestation, the baby’s heart begins occasional pulsation.

At 20 days, the foundation for the entire nervous system exists.

At 21 days, the heart begins to beat regularly.

At 30 days, the eyes, ears, mouth, kidneys and liver exist.

At 42 days, brain waves are reliably present and reflexes exist.

At 45 days, teeth buds are present; skeleton is complete; movement begins.

At 56 days, all body systems are present; he reacts to pain.

At 9-10 weeks, he squints, retracts his tongue, and will bend his fingers around an object.

At 11-12 weeks, all body systems work; his arms and legs move; he swallows, sucks thumb, inhales and exhales amniotic fluid, and has fingernails.

At 14 weeks, the auditory sense is present.

At 16 weeks, eyelashes are present; he can grasp, swim, kick and turn.

At 18 weeks, his vocal cords work; he can cry.

At 20 weeks, hair appears; he weighs about one pound and is about 12 inches long.



The legislation before us today could not be more scientific in its nature. The fact that a heartbeat proves that life is evident should be of no discussion here, nor in any court in the future for that matter. To deny such is indeed to deny scientific facts at their very core. The matter before us today then is not whether a detectable heart beat is life or not, but whether such life deserves protection under the law. CWA of North Dakota says yes it does.

HB1456 primarily does three things.

First, it requires the abortionist to check to see if the unborn baby the pregnant woman is carrying has a heartbeat. Second, if the child has been found to have a heartbeat, it requires the abortionist to let the mother know this. Third, all elective abortions of babies with heartbeats are prohibited.

The question that many ask about this legislation is this: "Is it constitutionally illegitimate?"

Abortion supporters often cite rhetoric about a woman's "constitutional right" to abortion. But constitutional scholars have a hard time taking *Roe v. Wade* seriously. Abortion supporter John Hart Ely, former dean of Stanford Law School, admits that the *Roe* decision "is not constitutional law." The Court reasoned: A "right to privacy" exists in the Constitution, therefore, this right is broad enough to "encompass a woman's decision whether or not to terminate her pregnancy." But nowhere does the Constitution mention a "right to privacy."

"With Americans believing so dearly in a right to be left alone, it may surprise many people that the Constitution does not include the word 'privacy' and offers no explicit mention of it," wrote Joan Biskupic, a columnist who covers the U.S. Supreme Court for *The Washington Post*. "When Justice Harry A. Blackmun, the author of *Roe*, invoked such a right to strike down laws banning abortion, he was relying on no specific wording in the Bill of Rights or in any previous court decision."

In addition, abortion affects the baby—an unwilling third party—which brings us back to the Court's inability to tackle the controversial issue of defining the beginning of life.

Michael McConnell, a professor of Constitutional Law at the University of Utah, writes:

The court can deny such protection to fetuses only if it presupposes they are not persons. ... One can make a pretty convincing argument, however, that fetuses are persons. They are alive; their species is *Homo sapiens*. They are not simply an appendage of the mother; they have a separate and unique chromosomal structure. Surely, before beings with all the biological characteristics of humans are stripped of their rights as "persons" under the law, we are entitled to an explanation of why they fall short. For the court to say it cannot "resolve the difficult question of when life begins" is not an explanation.

Janne Myrdal
State Director



It is clear that science has already given us a yardstick to determine if someone is alive--a beating heart. HB1456 applies that measurement evenly. HB1456 calls for an end to discrimination due to the size of a human being and its location. It calls for the protection of every human being with a beating heart--no matter their age.

“Our Founding Fathers created a nation based on life, liberty and the pursuit of happiness. “Switch the order of these three fundamental human rights—putting happiness before liberty or liberty before life—and you end up with moral chaos and social anarchy” (Steve Forbes). Americans must ask, Do we wish to leave the abortion mentality to future generations? Is our country better off because of *Roe*? Today America stands at a crossroad. The choice is clear. God extolled the Israelites, “I have set before you life and death, blessing and cursing; therefore, choose life, that both you and your descendants may live” (Deuteronomy 30:19, NKJV). The time has come to choose life—for the unborn and also for our entire society. The time has come to face the fact about the unborn child. The time has come to vote in favor of a beating human heart. If we were to choose between what I thought would pass the courts, what would be more politically convenient or what would not be controversial and life, we would choose life any day. We urge you to do the same.

We urge you to vote a Do Pass on HB1456.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

P.O. Box 213 Park River, ND 58270-0213 Phone: (701) 331-0946
E-mail: director@northdakota.cwfa.org Website: <http://nd.cwfa.org>

8

Hon. Chairman and committee members,

I would like to speak on behalf of HB 1456.

As legislators for North Dakota, you have an unprecedented opportunity to lead our state in the direction of a culture promoting and protecting life. In this particular legislative session, you have some of the most forward thinking legislation to consider. While HB 1426 is primarily meant to protect unborn babies, it will also have a positive impact on the quality of the life for women in North Dakota.

One of the unintended consequences of abortion is the negative impact that it has upon the life of the mother. Abortion can negatively affect a woman's physical and mental health. For example, the US National Cancer Institute's found that there is a 50% greater risk of breast cancer by age 45 for women who have had an abortion. The NCI published this in the November 2, 1994 issue, Journal of the National Cancer Institute (pp.1584-1592). The results were from their own study funded through the Fred Hutchinson Cancer Research Center.

Also, the American Journal of Obstetrics and Gynecology, reported that the mortality rate for women after the birth of a baby to be 28.2/100,000. This is almost 50% lower than after a spontaneous miscarriage (51.9/100,000) and almost 3 times lower after an induced abortion (83.1/100,000) (American Journal Obstetrics Gynecology, 2004; 190:422-427).

Finally, some studies have found the suicide rate for women after an abortion is three times greater than the general suicide rate and six times greater than for women who carry their children full term. A 1996 study found the suicide rate for women following a live birth is 5.9 per 100,000; following miscarriage 18.1; following abortion 34.7.

While it is true other studies have differing conclusions, no studies have been able to falsify the basic findings that abortion has a significant detrimental effect upon the life of the mother. The unintended consequences of abortion on the life of the mother is not a purely private matter. These negative effects of abortion on the mother reverberate through our communities in a variety of ways.

Please support HB1456. It is good for the state, good for our communities, good for our mothers, and especially good for our children.

Thank you.

Pastor Douglas VanderMeulen
Community Baptist Church
Fargo, ND

Testimony of Katrina Lang
To the Senate Judiciary Committee
Opposing House Bill 1456
March 12, 2013

Chairman Hogue, members of the committee, thank you for the opportunity to present testimony in opposition to House Bill 1456. My name is Katrina Lang and I am an attorney here in North Dakota. I graduated from University of North Dakota School of Law in 2005, and have been practicing in Fargo since then. I should also note that my law firm, Turman and Lang, has been local counsel in several cases relating to abortion in North Dakota, and is currently involved in the litigation relating to HB 1297 passed in 2011, representing Red River Women’s Clinic.

I am here today to testify in my capacity as a citizen of North Dakota and as a member of the North Dakota Bar, to urge the committee to reject HB 1456 because it is not only harmful policy but clearly unconstitutional. Although there are many serious health and policy problems with this bill, I am going to focus my remarks on the constitutional problem with the bill.

House Bill 1456 violates long and clearly-established constitutional precedent prohibiting states from banning abortion prior to viability. This bill bans abortions in this state beginning when a fetal heart beat can be detected, at approximately six weeks of pregnancy.

For forty years, the U.S. Supreme Court has recognized that the rights to liberty and privacy as protected by the United States Constitution extend to individuals’ right to choose when and whether to have children.¹ Twenty years ago, Justice Sandra Day O’Connor wrote in *Planned Parenthood v. Casey*: “[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”²

¹ See *Carey v. Pop. Servs. Int’l*, 431 U.S. 678, 685 (1977); accord *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (joint opinion of O’Connor, Kennedy & Souter, JJ); *Roe v. Wade*, 410 U.S. 113, 163-64 (1973).

² *Casey*, 505 U.S. at 854.

The Supreme Court has repeatedly held that the Constitution prohibits a state from enacting a law that bans abortion prior to the point in pregnancy when a fetus is viable.³ As the Supreme Court has emphasized, “viability marks the earliest point at which the State’s interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions.”⁴ The Supreme Court has never wavered from this position, despite numerous opportunities to do so.⁵ HB 1456 directly conflicts with all U.S. Supreme Court precedent on abortion, banning abortion long before the state has the right to do so.

If the North Dakota legislature enacts this law, in direct contravention of the United States Constitution, it is likely to be challenged in court and struck down. The only result that can come of this committee and the North Dakota legislature enacting this law is costs to the taxpayers of this state in defending an unconstitutional law on the losing side of litigation. I urge you to give this bill a “do not pass” recommendation.

Thank you very much for the opportunity to address this committee. I would be happy to take any questions.

³ See *Roe*, 410 U.S. at 163-64; *Planned Parenthood of S.E. Pa.*, 505 U.S. at 860, 879.

⁴ *Planned Parenthood of S.E. Pa.*, 505 U.S. at 860, 870 (“We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy.”)

⁵ In *Gonzales v. Carhart*, the most recent Supreme Court case on abortion, the law at issue did not ban abortions in general or abortions at any particular point in pregnancy. 550 U.S. 124 (2007). Rather, it banned only *one abortion procedure*. Although the Supreme Court upheld that law, the Court emphasized that safe alternative abortion procedures were available at all times and in all cases and explained that its decision was fully consistent with past precedent. *Id.* at 163-64.



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Testimony on HB 1456
Senate Judiciary Committee
March 12, 2013

Chair Hogue and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in opposition to HB 1456.

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 1456, from our perspective, would ban abortion, even for rape and incest victims, upon detection of a heartbeat. 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 1456.

According to the National Victim Center and National Crime Victims Research and Treatment Center's study entitled Rape in America: A Report to the Nation (1992) "pregnancy from rape occurs with "significant frequency". Of the estimated 12% of adult women in the United States that have experienced at least one rape in their lifetime, 4.7% of these rapes resulted in pregnancy. Another study estimated that 25,000 pregnancies following the rape of adult women occur annually (Stewart & Trussell 2000).

I am not here today to tell you that all survivors should or even want to have abortions; but they should have a choice. 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 1456.

Thank You.



Tammi Kromenaker -Testimony against HB 1456

Chairman Hogue, members of the Senate Judiciary Committee, thank you for the opportunity to present testimony in opposition of House Bill 1456. My name is Tammi Kromenaker and I am the Director of Red River Women's Clinic.

Red River Women's Clinic is the only abortion provider in the state of ND and has provided safe abortion care services to women in North Dakota for almost 15 years. We are members in good standing of the National Abortion Federation and maintain the highest quality standards for our practice. Red River Women's Clinic mission is to not only provide medically safe reproductive health services, but to also provide those services in an emotionally supportive environment.

Red River Women's clinic provides abortion services to women from a broad range of backgrounds. Each year, approximately sixty percent of our patients are already mothers, with at least one child at home. These women have personal experiences and understanding of pregnancy and parenting and are making careful, considered decisions about what is best for themselves and their families. In addition, most of our patients get abortions very early in pregnancy. As I've described, many women, including many mothers, in the state from all different backgrounds have sought services at the clinic at one time in their lives. Our clinic provides safe, legal services in a supportive environment.

HB 1456 would ban abortion from the time that a heartbeat can be detected, which is between 6 and 8 weeks from the last menstrual period. In many cases, women are not even aware that they are pregnant at 6 weeks from their last menstrual period and certainly a woman who has just realized she is pregnant has not had time to consider her options, including adoption, parenting a child, or terminating the pregnancy. By choosing such an early point in pregnancy, this bill amounts to an absolute ban on abortion in the state of North Dakota.

Banning abortion would mean forcing every pregnant woman in North Dakota to carry to term, regardless of her individual circumstances, medical needs, or wishes. Each week at our clinic we see a variety of women seeking abortion who have given careful consideration to their decision. For example, a few weeks ago we had a mother of 5 children who was advised by her physician to not have any more children after her last difficult birth. Her husband had a vasectomy, so they thought they were safe from unintended pregnancy. His vasectomy failed and she became pregnant. Her decision was difficult, as she stated she personally was against abortion, but simply could not take the risk to her life and possibly die from continuing the pregnancy and leave her husband without a wife or to leave her 5 children without their mother. Just last month, we had a 27 year old woman in who had been raped – her words when she discovered she was pregnant were, "I felt helpless, depressed and disgusted". She

then went on to say that “I want to move forward from the horrible act that was done to me.” These are real women we see each week at our clinic. They have real stories and real lives. They should have the right to decide for themselves if continuing a pregnancy is right in their circumstances.

By the age of forty-five, approximately one in three women in this country will have had an abortion.¹ Women seek abortions for many reasons: some choose to terminate unwanted pregnancies, some seek abortions to protect their own health, and some seek abortions because of a serious fetal anomaly.

Abortion is a deeply personal and often complex decision for a woman to make. This is not a decision for the legislature to make for individual women -- nobody knows a woman’s specific situation—we’re not in her shoes. Whether a woman chooses to carry an unintended pregnancy to term and parent a child or chooses adoption, or chooses abortion, that decision is hers to make, with her family, her physician, and those in her life whom she trusts the most.

Abortion is also a constitutionally protected medical service – the United States Constitution and the North Dakota Constitution both protect the right to privacy, including the right to decide when and whether to have children. State and federal courts in North Dakota, across the country, and the Supreme Court, have upheld that right time and again. More specifically, the Supreme Court has held that **no state may ban abortion prior to the point of viability, which is in the medical community is generally thought to occur no earlier than 24 weeks after a woman’s last menstrual period.**

Although one of the safest medical procedures available, abortion is regulated extremely strictly North Dakota, as the existing ND Abortion Control Act is one of the most restrictive in the nation. In fact, the legislature amended the North Dakota Control Act again in 2011, in HB 1297, adding further restrictions to the provision of services. Many of the restrictions on abortion imposed by the legislature in North Dakota, while burdensome and troubling for patients and providers, are constitutional. However, as many of you may know, courts have found that some of the restrictions that have been enacted by this legislative body have crossed that constitutional line. HB 1456 is clearly and absolutely unconstitutional – it bans abortion almost as soon as pregnancy begins, far before the Supreme Court has held that a state may do so.

This bill would seriously harm women in North Dakota who need to have all of their medical options available when confronting an unintended pregnancy. It is neither this legislature’s

¹ Guttmacher Institute, An Overview of Abortion in the United States, <http://www.guttmacher.org/media/presskits/2008/01/12/abortionoverview.html> (last visited April 18, 2012).

right nor its place to make that decision for each individual woman facing her own circumstances. I urge you to vote no on House Bill 1456.

I appreciate you giving me the opportunity to testify today and I would be happy to take any questions from the committee.

Testimony of Rev. Carel Two-Eagle regarding HB 1305 and HB 1456 Before Senate Judiciary Committee on 03/12/2013; Senator Hogue, Chair

Hanh Mr. Chairman and members of the Committee. I spoke this morning without notes, so this is a synopsis of what I said, so you may have it in writing. Thank you for your forbearance.

In re HB 1305 – I head a non-denominational, non-sectarian, non-Christian Church. I am a Pipe Carrier, therefore I have a specific prayer, called an obaghi – a sacred commitment – which focuses my life and the Ch’annunpa (Holy Pipe) I Keep & Carry. I am the woman who Dances The Four Winds – a prayer to heal the Sacred Hoop, which we all know is seriously damaged.

People come to me for a wide variety of help, but in the matter of the Ch’annunpa, they come for spiritual help. I intercede for them with the spirits, and quite a number of people have come to me because they are the parents of genetically defective children. These ‘children’ are currently all adults, but they need care for their entire lives. The parents want me to ask the spirits to find *suitable* caretakers for the ‘children’, after the parents have died. 2 of these people are white; the rest are Native. There is very little drug or alcohol use in their backgrounds, so these defective ‘children’ just had unlucky genetic draws.

Also – every one of these people cannot function in an institutional setting. Schools have invariably thrown these children out (!). For these people, schools & other institutional settings are prisons and they cannot function in them.

One young man comes to mind who cannot talk. He communicates with gestures and by means of a computer. He is bright, in specific ways. But his frustration level is such that he cannot function alone. When his frustrations become overwhelming for him, he becomes violent. He is nearly 6 ft tall & in good physical condition. Currently, the only person who has ever been able to calm him is his father. What will happen to this young man when his father dies? He is one case of many in my experience - & that of others.

One of my sisters has a Masters in Intellectual Development & Special Education. She prays constantly to be able to work herself out of a job! Partly, because the people who have these people before her – she teaches at high school – do nothing with them. They treat their situation as a fancy babysitting job. When she was told she was getting an 18-year-old freshman who was not yet potty-trained, she drew a line. She said – to both the school & to me – “I have a Master’s degree in Special Education! I will not change diapers on an adult male & call it teaching! I will quit first.” That student went elsewhere - & my sister has had enough – she is looking for a job in some other field, after over 10 years in this one. She is universally seen as “excellent” at her work. She seems to be the only one.

During my Sun Dance, I gave over 800 pieces of my flesh to convince the Spirits of my seriousness in my obaghi. I'm sure none of you have done anything even remotely like that.

And I wonder – will any of you go out & change the diapers on adult males who are genetically defective? Particularly when they are 20.. or 30.. or 40 years of age? I doubt it.

In re HB 1456 – I had 2 pregnancies where the babies were deemed dead from the initial joining of the egg & the sperm. In the first case, the gynecologist told me this & then said, “You will go to 4 – 5 months, the tissue will become septic, and you will spontaneously abort.” I asked him if that didn't mean that my life was literally at risk & he said, “Yes. But that's a risk you take on when you spread your legs.” I was married at the time, and he knew it. A year later, he did not have his license to practice medicine – I did not take his attitude well, & I protected other women from such a vicious attitude. I'm proud of that.

But I prayed on the matter of 2 out of 2 being dead from the start & asked the Spirits “Why me? Why were they dead from the start? What am I supposed to learn from this?” They answered me, & quickly (!). They told me, “A woman's body functions like a factory. When an egg & sperm unite, it automatically makes another body. But that body does not become a live human unless or until a spirit/soul chooses to take up residence in it.”

None of you is qualified or trained to carry the responsibility for another person's soul. I am. It is a murderously difficult and wearing job. So I believe you should consider this carefully before you rush to pass bills such as these & the others that have come up on this subject, because you are spiritually responsible for the suffering you promote when you pass such a bill as these. That is not conjecture, that is fact.

Moreover, I believe that all such bills violate the 13th and 14th amendments to the US Constitution. The 13th amendment states that involuntary servitude is illegal; & believe me when I say that when you force people to birth such children, you sentence them to a lifetime of involuntary servitude.

The 14th amendment speaks about depriving citizens of life, liberty, and the pursuit of happiness. When you pass bills such as these, you definitely deprive the involved citizens of their choice of lives insofar as how they would live it, of their liberty because they are never free again to make any plan except around the 'child' you sentence them to birth, and of the pursuit of happiness – even something so small as owning a home is now beyond them, because of the cost of keeping such people alive once they've been forced onto their parents, and I'm sure there are more facets than these to consider.

Thank you for hearing me in a good way now. And for recommending DO NOT PASS on all bills such as these. Mitakuye oiasin – all (are) my relatives. And yours, too. You have a built-in responsibility to your relatives.