

2013 SENATE JUDICIARY

SB 2368

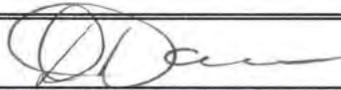
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2368
2/6/2013
Job #18427

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to limitations on and penalties for performing or inducing an abortion or attempts to perform or induce an abortion and to grounds for disciplinary action for physicians

Senator David Hogue - Chairman

Senator Joe Miller - District 10 - Introduces the bill and explains it is a ban on abortions performed after 20 weeks.

Senator Grabinger - Questions the facts in the bill.

Senator Miller - Explains that is currently in code and is not part of his new bill. This bill will establish our belief.

Senator Nelson - Asks why does the totality of a woman's health not count

Paul Maloney - Executive Director for ND Right to Life - See written testimony (1)

Senator Lyson - Asks if this is just a bill for the child and not for the mother or family. He asks where it says in the bill the mother or the family have a say.

Maloney - Replies they don't.

Stacie Fliieger - ND Catholic Conference - See written testimony (2)
Opposition

Steve Cates- Shows a video on his iPad to the committee about a 17 week pregnancy. (3)

Renae Stromme - Women's Network - This bill has no effect on elective abortions; this will impact the most dire of circumstances. Hands in testimony for Shari Orser (4)
Neutral

Close the hearing

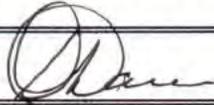
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2368
2/12/2013
Job #18817

Conference Committee

Committee Clerk Signature



Minutes:

Senator David Hogue - Chairman

Committee work

Senator Hogue passes out an amendment from Senator Miller. Committee discusses the amount of bills coming out on this subject. Senator Hogue comments that this bill will be taken up in committee work this afternoon.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2368
2/12/2013
Job #18825

Conference Committee

Committee Clerk Signature	
---------------------------	---

Minutes:

--

Senator David Hogue - Chairman

Committee work

Committee asks that someone go through the amendment for them. Senator Lyson says he would like to read the amendment before discussing. They will come back to this bill later.

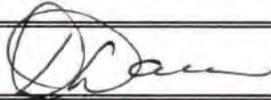
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2368
2/13/2013
Job #18913

Conference Committee

Committee Clerk Signature



Minutes:

Senator David Hogue - Chairman

Committee asks Christopher Doddsen to review the amendments for 2368. He said it gets rid of anything not needed. Mr. Doddsen said his changes were made to simplify the bill. Senator Nelson asks about Senator Miller's intent for the bill. Mr. Doddsen replies the explanation is on page 6. The committee discusses post-fertilization and testing for pregnancies. Senator Berry explains the science of determining pregnancy. Senator Grabinger questions why they used "probable" and Senator Armstrong reads it as meaning "a good faith medical attempt".

Senator Sitte moves the Miller amendment 13.0738.02001
Senator Berry seconded

Vote - 7 yes, 0 no
Motion passes

Senator Armstrong moves Armstrong Amendment
Senator Berry seconded

Discussion

Senator Armstrong said he was surprised there wasn't a cap as to when these can be done. Senator Grabinger believes this amendment would be in disagreement with the amendment just passed because that it setting the time at probable fertilization time. Senator Berry says this amendment is about purpose and this puts in our state code our compelling interest and the ability to feel pain is a compelling interest to us. This is just one, there can be others. Senator Nelson says they do not do abortions after 20 weeks in this state and in the chart it shows they don't have any after 16 or 17 weeks. She wonders if this is a solution to a problem we are not having at this time. Senator Berry says this is putting into place good public policy. Senator Grabinger says we can't legislate everything.

Vote - 5 yes, 2 no
Motion passes

Senate Judiciary Committee

SB2368

2/13/2013

Page 2

Senator Berry moves a do pass as amended on the bill
Senator Sitte seconded

Vote - 5 yes, 2 no

Senator Berry will carry

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
 Bill/Resolution No.: SB 2368

- 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).*

This bill prohibits abortions, except for medical emergencies, at the probable post fertilization age of 20 or more weeks. The physician shall perform the abortion in a manner to provide the best opportunity for the unborn child to survive.

- 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.*

Sections 2, 3, 4 and 6 could potentially have a fiscal impact. If this bill is passed and legally challenged and the challenging party prevails in a lawsuit, the state would need to reimburse the party for attorney's fees and costs. At this time, the Office of Attorney General estimates the general fund cost for this purpose could be \$300,000, which represents costs and attorney's fees that could be awarded to the challenging party if they prevail, as well as Office of Attorney General expenses in defending the bill (deposition costs, travel costs, expert witness fees, etc.).

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: 02/08/2013

February 13, 2013

JS
2-13-13
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

- Page 1, line 1, remove "to provide a legislative declaration;"
- Page 1, line 1, replace "four" with "a"
- Page 1, line 1, replace "sections" with "section"
- Page 1, line 2, remove "and a new subsection to section 43-17-31"
- Page 1, line 3, remove "or inducing"
- Page 1, line 3, remove "or attempts to"
- Page 1, line 4, remove "perform or induce an abortion and to grounds for disciplinary action for physicians"
- Page 1, line 5, after "sections" insert "14-02.1-01,"
- Page 1, line 5, after "14-02.1-02" insert a comma
- Page 1, line 6, remove "; and to provide a penalty"
- Page 1, remove lines 8 through 24
- Page 2, replace lines 1 through 29 with:

"SECTION 1. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

~~The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.~~
The purpose of this section is to protect the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.

- Page 3, line 17, remove "Attempt to perform or induce an abortion" means an act, or an omission of a
- Page 3, remove lines 18 through 20
- Page 3, line 21, remove "5."
- Page 3, line 28, remove the overstrike over "5."
- Page 3, line 28, remove "6."
- Page 3, line 29, replace "7." with "6."
- Page 4, line 1, replace "8." with "7."
- Page 4, line 4, replace "9." with "8."
- Page 4, line 7, replace "10." with "9."

- Page 5, line 13, replace "11." with "10."
- Page 5, line 23, replace "12." with "11."
- Page 5, line 26, replace "13." with "12."
- Page 5, line 26, remove "the fusion"
- Page 5, line 27, replace "of a human spermatozoon with the human ovum" with "fertilization"
- Page 5, line 28, replace "14." with "13."
- Page 6, line 1, replace "15." with "14."
- Page 6, line 4, replace "16." with "15."
- Page 6, line 7, replace "17." with "16."
- Page 6, line 8, replace "18." with "17."
- Page 6, line 12, after "age" insert "**- Abortion of unborn child of twenty or more weeks postfertilization age prohibited**"
- Page 6, line 22, remove "A physician who fails to comply with the requirements of subsection 1 is subject to"
- Page 6, remove lines 23 through 26
- Page 6, line 27, replace "1. A" with "Except in the case of a medical emergency, a"
- Page 6, line 31, remove ", unless, in reasonable medical"
- Page 7, remove lines 1 through 18
- Page 7, line 19, remove "function"
- Page 7, line 30, remove the overstrike over "A#"
- Page 7, line 30, remove "In addition, all"
- Page 8, remove lines 9 through 31
- Page 9, replace lines 1 through 13 with:
 - (a) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.
 - (b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed.
- Page 9, line 24, remove "or the address"
- Page 9, line 24, remove "whose pregnancy was terminated, except"
- Page 9, remove line 25
- Page 9, line 26, remove "enable matching the report to the patient's medical records"

3013

Page 10, line 11, after the period insert "If a determination of probable postfertilization age was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the abortion compliance report must state the basis of the determination that a medical emergency existed."

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 3

Renumber accordingly

Date: 2/13/12
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

Senate JUDICIARY Committee

Check here for Conference Committee 13.6738.02001
Legislative Council Amendment Number Miller amendment

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) 7 No 0

Absent pass

Floor Assignment _____

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

Date: 2/13/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number Armstrong Amendment

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

Motion Made By S. Armstrong Seconded By S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman 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) 5 No 2

Absent _____

Floor Assignment pass

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

Date: 2-13-13
 Roll Call Vote #: 3

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2368**

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 Berry Seconded By S Sitte

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) 5 No 2

Absent _____

Floor Assignment S. Berry

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

REPORT OF STANDING COMMITTEE

SB 2368: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to provide a legislative declaration;"

Page 1, line 1, replace "four" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, remove "and a new subsection to section 43-17-31"

Page 1, line 3, remove "or inducing"

Page 1, line 3, remove "or attempts to"

Page 1, line 4, remove "perform or induce an abortion and to grounds for disciplinary action for physicians"

Page 1, line 5, after "sections" insert "14-02.1-01,"

Page 1, line 5, after "14-02.1-02" insert a comma

Page 1, line 6, remove "; and to provide a penalty"

Page 1, remove lines 8 through 24

Page 2, replace lines 1 through 29 with:

"SECTION 1. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

~~The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.~~
The purpose of this section is to protect the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.

Page 3, line 17, remove "Attempt to perform or induce an abortion" means an act, or an omission of a

Page 3, remove lines 18 through 20

Page 3, line 21, remove 5.

Page 3, line 28, remove the overstrike over 5.

Page 3, line 28, remove 6.

Page 3, line 29, replace 7. with 6.

Page 4, line 1, replace 8. with 7.

Page 4, line 4, replace 9. with 8.

Page 4, line 7, replace 10. with 9.

Page 5, line 13, replace "11." with "10."

Page 5, line 23, replace "12." with "11."

Page 5, line 26, replace "13." with "12."

Page 5, line 26, remove "the fusion"

Page 5, line 27, replace "of a human spermatozoon with the human ovum" with "fertilization"

Page 5, line 28, replace "14." with "13."

Page 6, line 1, replace "15." with "14."

Page 6, line 4, replace "16." with "15."

Page 6, line 7, replace "17." with "16."

Page 6, line 8, replace "18." with "17."

Page 6, line 12, after "age" insert "**-Abortion of unborn child of twenty or more weeks postfertilization age prohibited**"

Page 6, line 22, remove "A physician who fails to comply with the requirements of subsection 1 is subject to"

Page 6, remove lines 23 through 26

Page 6, line 27, replace "1. A" with "Except in the case of a medical emergency, a"

Page 6, line 31, remove ", unless, in reasonable medical"

Page 7, remove lines 1 through 18

Page 7, line 19, remove "function"

Page 7, line 30, remove the overstrike over "A"

Page 7, line 30, remove "In addition, all"

Page 8, remove lines 9 through 31

Page 9, replace lines 1 through 13 with:

"(a) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.

(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed."

Page 9, line 24, remove "or the address"

Page 9, line 24, remove "whose pregnancy was terminated, except"

Page 9, remove line 25

Page 9, line 26, remove "enable matching the report to the patient's medical records"

Page 10, line 11, after the period insert "If a determination of probable postfertilization age was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the abortion compliance report must state the basis of the determination that a medical emergency existed."

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 3

Renumber accordingly

2013 HOUSE HUMAN SERVICES

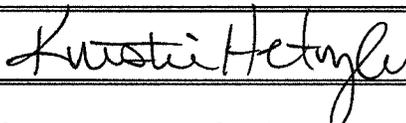
SB 2368

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

SB 2368
March 13, 2013
Job 19843

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to limitations on and penalties for performing an abortion.

Minutes:

Testimony 1,2,3,4,5,6

Chairman Weisz: Opened the hearing on SB 2368.

David A. Prentice: A cell biologist working for a think tank in Washington, DC testified in support of the bill. (See Testimony #1)

Anna Higgins: 5:18 Director of Center for Human Dignity at the Family Research Council testified in support of the bill. (See Testimony #2)

Rep. Mooney: 10:00 Is it a fetus or child "in your opinion"?

Higgins: It is my opinion that it is a child.

Rep. Mooney: But the medical terminology is still fetus, correct?

Higgins: Yes, but I disagree.

Paul Maloney: Director of Right to Life stands in support of this bill.

Beth Brown: Delivering the testimony of Janne Myrdal. (See Testimony #3)

Christopher Dobson: 12:45 Director of ND Catholic Conference testified in support of the bill. (See Testimony #4) 14:00 There was a mistake in the amendments that were put into the bill.

Rep. Porter: 15:00 How do we put the number of abortion bills we past together?

Dobson: A good question and I don't have an answer to that.

Chairman Weisz: I had the same question. You had different dates on the different bills.

Dobson: This has to be a question that the attorney general will have to answer and how to enforce it.

Chairman Weisz: Which one should be the final?

Dobson: I don't know what the answer is at this time.

Hannah Hersch: 18:09 Testified in support of the bill. (See Testimony #5)

John Boustead: 21:10 Supported the bill. (See Testimony #6)

Rep. Oversen: If you want us to make legislative decision on a religious belief, should it be all religious beliefs, why just one?

Boustead: Our constitution has been framed with the idea of God and we have a creator. Christianity and the Holy Bible was the law of faith and religion in the land at the time.

Rep. Mooney: We accept many other religions and they have a right to those their own belief, is that not correct?

Boustead: You have to go back to the original intent of the writers of the Constitution.

Handed in testimony by Janelle Moos in opposition to SB 2368. (See Testimony #7)

Handed in testimony by Maria Wanchic in support of SB 2368. (See Testimony #8)

Chairman Weisz: Closed hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2368
March 18, 2013
20084

Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to limitations on and penalties for performing an abortion.

Minutes:

Chairman Weisz: Let's look at SB 2368. Rep. Kiefert do you have some amendments?
(See **Attachment #1**)

Rep. Porter: This is an amendment that is in direct response to the university system accepting the grant dollars from planned parenthood. After the legislative assembly last session turned those grant monies down, there was a ruling from the Attorney General's office that said they could legally accept those grant dollars. In Section 5 in the new language, Number 3 talks about or institutions under the control of the state board of higher ed. and then Sub b under 3 is to contract with or provide financial support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions. On Page 2 it talks about the use of those grant dollars that in previous legislative sessions we said no and it reiterates and talks about those and says no again.

Chairman Weisz: I agree that is what it appears to be.

Rep. Looyen: I would move the amendment.

Rep. Silbernagel: Second.

Rep. Mooney: How did we go from restricting abortions to now restricting education as well?

Rep. Kiefert: I believe the intent of the amendment was to keep the state funds from being used by abortion providers.

Rep. Laning: I think I understand the intent too, but, quite frankly, I hate to do it twice in one year, but I think I agree with Rep. Mooney. I feel there are other instances of not necessarily the death of the woman but definitely her health, and things seem really restrictive here.

Rep. Fehr: Is it part of this or the whole amendment you don't like, Rep. Laning?

Rep. Laning: I'm concerned of the health of the woman and the education should not be restricted.

Rep. Silbernagel: Item 3 does specify that unless an abortion is necessary to prevent the death of the woman, I would view that as an exemption from counseling in those cases.

Rep. Mooney: Does that negate the fiscal note?

Chairman Weisz: The fiscal note was initially zero.

Rep. Mooney: In regards to the death of a woman, I've had two close calls with pregnancies and I wouldn't want my doctor to first go consult with legal counsel to find out whether or not he was performing an appropriate procedure.

Chairman Weisz: We are just talking about state funds being used. It wouldn't have anything to do with your communication with your doctor.

Rep. Kiefert: The only education they are addressing is Section 3a.

Rep. Oversen: I will be voting against this bill.

Chairman Weisz: Number 3 says you can't fund.

VOICE VOTE: MOTION CARRIED.

Rep. Porter: During the testimony it was brought to our attention that there was an amendment that was required and that would be the following: Page 1, Lines 9-11 through the word sick to remove overstrike. Page 1, Line 11 starting with the underlined language to remove from this section and move it to Page 4, Line 28 in Section 3.

Rep. Porter: I move the amendment.

Vice-Chair Hofstad: Second.

Rep. Oversen: Looking at the part that we are removing the overstrike from, the second sentence. Do we always put into century code what we believe the state's tradition is?

Rep. Weisz: No, we don't always.

VOICE VOTE: MOTION CARRIED.

Rep. Oversen: I have a question about the first amendment we passed. We are now inserting the language institution under the control of the state board of higher education. That is completely new to this section? She was told that was correct? How does this affect research?

Chairman Weisz: Under 1 and 2 it seems to define that the funds can't be used by any person or private agency which provides or encourages abortions. I don't see where it is that they can use the funds for research.

Rep. Oversen: Thinking back to testimony on one of the previous bills when we had a mother who had twin to twin transfusion complications, if we are looking at this in that matter in that her doctor may very well have said to save the life of one of the twins, she may have to abort the other, that doctor would then be promoting the idea of abortion to save a life. Then we couldn't be providing funding to a hospital that employs that physician?

Rep. Porter: I think Rep. Oversen is reading too far into it.

Chairman Weisz: Section 1 refers to family planning.

Rep. Oversen: Unless the abortion is necessary to prevent the death of a woman, no funds of the state may be used to pay for or provide financial assistance to an organization performing, inducing, referring for, or counseling in favor of, abortions.

Rep. Porter: The funds that this amendment is addressing has nothing to do with healthcare facilities or physicians. It only has to do with higher education. Higher ed. circumvented the legislature and took the funds any way.

Rep. Mooney: Am I incorrect that UND is classified as a teaching hospital?

Chairman Weisz: It isn't a hospital. They are a medical school.

Rep. Oversen: Section 3 says no funds at the state or any agency, county, municipality, school district, and no federal funds may be used to contract with the...It is both state and federal. They are not separated with what they are applying to.

Chairman Weisz: There is because of the comma, and a and b are broken down after the comma for and no federal funds passing through the state may be used to pay for or contract with.

Rep. Porter: The key here is a lot of that language is existing state law except for the contracting part. It just is clarifying because of the _ by the higher ed.

Rep. Looyen: I move a Do pass as amended on this bill.

Rep. Kiefert: Second.

Rep. Muscha: I have a real problem with this because I view myself as being very pro life. To me it really muddies the water, and it makes it more difficult for me to go home and explain why I vote against something. I have a real problem too with the education because as a parent and grandparent, if you don't teach your children the truth of things and then help them see both sides, how can they make good decisions for themselves?

Maybe what I read was totally on the whole NDSU issue, but if I remember right a lot of it was directed for "at risk" young people.

Rep. Kiefert: As far as education, it is talking about not using funds to pay for the performance or promoting the performance of an abortion.

Rep. Oversen: The grant was for NDSU to contract with planned parenthood to provide education to "at risk" young women and maybe men about prevention of unplanned pregnancies.

Rep. Kiefert: They are going to have a one sided view of it. They are the ones providing the abortion so I have a hard time understanding that one point of view of it.

Rep. Oversen: It is evidence based practices showing known to prevent unplanned pregnancies, not referring for counseling in favor of abortions.

Rep. Damschen: This language doesn't really talk about anything but what has been stated by several people here on both sides of the issue.

Chairman Weisz: The language would prohibit exactly what Rep. Oversen said, not because of what was in the program but because of who the entity was.

Rep. Fehr: If they were able to take the money and contract with a different entity that does not counsel in favor of abortion, they could perhaps continue?

Chairman Weisz: That would be my understanding.

Rep. Damschen: If an organization that taught everything else except counseling for an abortion, they could contract with them?

Chairman Weisz: That would be my understanding.

ROLL CALL VOTE: **DO PASS AS AMENDED, 10 y 3 n 0 absent.**

Bill Carrier: **Rep. Silbernagel**

FISCAL NOTE
Requested by Legislative Council
02/14/2013

Amendment to: SB 2368

- 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 amendments exclude the fact declarations, criminal & civil penalties for performing abortions, and providing the best survival chance for the baby when an abortion is performed.

- 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.*

With the amendment changes, if this bill becomes law and is legally challenged, and the challenging party prevails, the state would likely be ordered to reimburse that party for attorney's fees and costs which could be approximately \$60,000 from the general fund.

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: 02/15/2013

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
 Bill/Resolution No.: SB 2368

- 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).*

This bill prohibits abortions, except for medical emergencies, at the probable post fertilization age of 20 or more weeks. The physician shall perform the abortion in a manner to provide the best opportunity for the unborn child to survive.

- 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.*

Sections 2, 3, 4 and 6 could potentially have a fiscal impact. If this bill is passed and legally challenged and the challenging party prevails in a lawsuit, the state would need to reimburse the party for attorney's fees and costs. At this time, the Office of Attorney General estimates the general fund cost for this purpose could be \$300,000, which represents costs and attorney's fees that could be awarded to the challenging party if they prevail, as well as Office of Attorney General expenses in defending the bill (deposition costs, travel costs, expert witness fees, etc.).

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: 02/08/2013

March 18, 2013

1 ✓
3/18/13
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 1, line 2, after the semicolon insert "and"

Page 1, line 3, remove "14-02.1-01,"

Page 1, line 3, remove "and"

Page 1, line 3, after "14-02.1-07" insert ", 14-02.3-01, and 14-02.3-02"

Page 1, line 4, replace "and" with a comma

Page 1, line 4, after "requirements" insert ", and the use of public funds for abortions and family planning"

Page 1, remove lines 6 through 13

Page 4, line 29, after "**prohibited**" insert "**for the purpose of protecting the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain**"

Page 7, after line 26, insert:

"SECTION 4. AMENDMENT. Section 14-02.3-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.
2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.
3. ~~No~~Unless an abortion is necessary to prevent the death of the woman, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used to pay:
 - a. Pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman; or

2082

- b. Contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions.

SECTION 5. AMENDMENT. Section 14-02.3-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-02. Use of public funds for family planning - Use for the performance, referral, and encouragement of abortion prohibited.

~~No~~Except as required by federal law, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used as:

1. As family planning funds by any person or public or private agency which performs, refers, or encourages abortion; or
2. To contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions."

Renumber accordingly

Date: 3-18-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0738.03001

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

Motion Made By Rep. Looyesen Seconded By Rep. Silbernagel

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: 03001 amendment

*VOICE VOTE
motion carried*

Date: 3-18-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____ *another (and)*

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

Motion Made By Rep. Porter Seconded By Rep. Hofstad

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: Will vote

Motion Carried
Page 1, line 9-11 through word seek to remove overstrike
Page 1 line 11 starting with the underlined language to remove from this section & language at the end of line 28 in section 2

Date: 3-18-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

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. Looyesen 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	✓	✓			

Total (Yes) 10 No 3

Absent _____

Floor Assignment Rep. Silbernagel

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

REPORT OF STANDING COMMITTEE

SB 2368, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "and"

Page 1, line 3, remove "14-02.1-01,"

Page 1, line 3, remove "and"

Page 1, line 3, after "14-02.1-07" insert ", 14-02.3-01, and 14-02.3-02"

Page 1, line 4, replace "and" with a comma

Page 1, line 4, after "requirements" insert ", and the use of public funds for abortions and family planning"

Page 1, remove lines 6 through 13

Page 4, line 29, after "**prohibited**" insert "**, for the purpose of protecting the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain**"

Page 7, after line 26, insert:

"SECTION 4. AMENDMENT. Section 14-02.3-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.
2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.
3. ~~No~~Unless an abortion is necessary to prevent the death of the woman, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used to ~~pay;~~
 - a. Pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman; or
 - b. Contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions.

SECTION 5. AMENDMENT. Section 14-02.3-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-02. Use of public funds for family planning - Use for the performance, referral, and encouragement of abortion prohibited.

~~No~~Except as required by federal law, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used as:

1. As family planning funds by any person or public or private agency which performs, refers, or encourages abortion; or
2. To contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions."

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2368

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2368
4/2/2013
No Recording

Conference Committee

Committee Clerk Signature



Minutes:

Conference Committee vote

Conference Committee on SB2368

In attendance:

Senators Berry, Lyson, Grabinger
Representatives Weisz, Silbernagel, Oversen

Chairman Berry opens the conference committee

Senator Grabinger remarks that he doesn't like the bill and will definitely not accept the amendments put on by the House. Senator Lyson said he agrees with Senator Grabinger and will not accept the amendments.

Senator Lyson moves the House recede from their amendment
Senator Grabinger seconded

Senator Berry called for discussion, there was none.

Vote called for the House to recede from the amendments

S. Berry - yes

S. Lyson - yes

S. Grabinger - yes

Rep. Weisz - yes

Rep. Silbernagel - yes

Rep. Oversen - yes

6 yes, 0 no - motion passes

Senator Berry will carry for the Senate

Representative Weisz will carry for the House

FISCAL NOTE
Requested by Legislative Council
03/20/2013

Amendment to: SB 2368

- 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 amendments disallow any state or federal funds to be used to perform an abortion other than the imminent death of the mother and disallow state or federal funds to be used to contract with abortion entities performing, referring for or counseling for abortions.

- 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.*

If this bill becomes law and is legally challenged, and the challenging party prevails, the state would likely be ordered to reimburse that party for attorney's fees and costs which could be approximately \$60,000 from the general fund.

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: 03/21/2013

FISCAL NOTE
Requested by Legislative Council
02/14/2013

Amendment to: SB 2368

- 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 amendments exclude the fact declarations, criminal & civil penalties for performing abortions, and providing the best survival chance for the baby when an abortion is performed.

- 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.*

With the amendment changes, if this bill becomes law and is legally challenged, and the challenging party prevails, the state would likely be ordered to reimburse that party for attorney's fees and costs which could be approximately \$60,000 from the general fund.

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: 02/15/2013

FISCAL NOTE
Requested by Legislative Council
02/04/2013

Revised
 Bill/Resolution No.: SB 2368

- 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).*

This bill prohibits abortions, except for medical emergencies, at the probable post fertilization age of 20 or more weeks. The physician shall perform the abortion in a manner to provide the best opportunity for the unborn child to survive.

- 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.*

Sections 2, 3, 4 and 6 could potentially have a fiscal impact. If this bill is passed and legally challenged and the challenging party prevails in a lawsuit, the state would need to reimburse the party for attorney's fees and costs. At this time, the Office of Attorney General estimates the general fund cost for this purpose could be \$300,000, which represents costs and attorney's fees that could be awarded to the challenging party if they prevail, as well as Office of Attorney General expenses in defending the bill (deposition costs, travel costs, expert witness fees, etc.).

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: 02/08/2013

Date 4/2/13

Roll Call Vote # 1

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2368 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: S. Lyson Seconded by: S. Grabinger

Senators	AY		Yes	No	Representatives	AY		Yes	No
S. Berry-Chair	X		X		R. Weisz	X		X	
S. Lyson	X		X		P. Silbernagel	X		X	
J. Grabinger	X		X		K. Oversen	X		X	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier S. Berry House Carrier Rep. Weisz

LC Number _____ of amendment

LC Number _____ of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2368, as engrossed: Your conference committee (Sens. Berry, Lyson, Grabinger and Reps. Weisz, Silbernagel, Oversen) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 861-862 and place SB 2368 on the Seventh order.

Engrossed SB 2368 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2368



Mr. Chairman and members of the committee, my name is Paul Maloney. I serve as Executive Director for North Dakota Right to Life and I appreciate the opportunity to testify on legislation to protect unborn children who are capable of feeling pain.

Do unborn children feel pain? Here are some facts about which there is no informed medical dispute:

1) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than 16 weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks.

2) By 8 weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.

3) Application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

4) For fetal surgery, anesthesia is routinely administered to the unborn child and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without such anesthesia. The subduing or elimination of this stress response is crucially important because of its impact on unborn children's survival rates and its long-term effect on their development.

So what *is* in dispute? Unborn pain deniers maintain that to experience pain nerves must connect the brain's thalamus to its cortex, and that this does not occur until the 29th or 30th week. Yet children born with hydranencephaly – lacking virtually all of the cerebral cortex – nevertheless react to painful stimuli, as do animals whose cortex has been removed or disconnected. A groundbreaking 2007 article by Bjorn Merker in the scientific journal *Behavioral and Brain Sciences* entitled "Consciousness without a cerebral cortex" concluded, "the evidence surveyed here gives no support for . . . the assumption that 'awareness' . . . is an exclusively cortical function and cannot exist without it."

Claims that the unborn are in a coma-like sleep state that prevents their experiencing pain are belied by the experience of doctors performing fetal surgery, who have found that the unborn will recoil and thrash about in

reaction unless they are first sedated – just like newborns.

Unborn pain deniers resort to the “argument from authority,” citing statements from impressive-sounding organizations dismissive of the idea that the unborn feel pain. The American College of Obstetricians and Gynecologists, many of whose members perform abortions, has long advocated legal abortion and laments “the lack of public funding for abortion services, and the decrease in abortion providers.” The Royal College of Obstetricians and Gynecologists’ March 2010 document “Fetal Awareness” was written by a “working group” chaired by an abortion provider who has been a vocal advocate of expanding availability of abortion in Britain. The lead author of an oft-cited 2005 *Journal of the American Medical Association* article was not even a doctor, but a medical student who had worked as a lawyer for NARAL, the pro-abortion political advocacy organization, and one of her co-authors directed the largest abortion clinic in San Francisco. Their assertions must not be mistaken for neutral evaluations of the scientific evidence.

U.S. Supreme Court Justice Anthony Kennedy has described the gruesome nature of the most common abortion procedure used in the second trimester, dilation and evacuation, in terms that make clear that its dismemberment technique would be extremely painful: “[F]riction causes the fetus to tear apart. For example, a leg might be ripped off the fetus” “The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb.”

In the words of Justice Kennedy, writing for the US. Supreme Court when it upheld the partial birth abortion ban in *Gonzales v. Carhart*,¹ “The law need not give abortion doctors unfettered choice in the course of their medical practice” As Kennedy earlier wrote, “permitting an abortionist to perform [an abortion] whenever he believe it will best preserve the health of the woman . . . awards each physician a veto power of the State’s judgment that the procedures should not be performed.” And Justice Kennedy has emphasized that the controlling U.S. Supreme Court opinion “does not give precedence to the views of a single physician or a group of physicians regarding the relative safety of a particular procedure.”²

In conclusion, Mr. Chairman, whatever their views on abortion in general, surely most citizens of North Dakota should be able to agree that, in the absence of a genuine physical health threat to the mother, unborn children should be protected from abortion after 20 weeks, when substantial medical evidence shows they are capable of experiencing pain.

1. 550 U.S. 124, 162-64 (2007).

2. *Stenberg v. Carhart*, 530 U.S. 914, 964-70 (2000) (Kennedy, J., dissenting).



Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

To: Senate Judiciary Committee
Subject: SB 2368 Abortion After Ability to Feel Pain
Date: February 6, 2013

The North Dakota Catholic Conference supports Senate Bill 2368.

Senate Bill 2368 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.)

Senate Bill 2368 would prohibit only abortions where after twenty weeks -- the time we know the unborn child can feel pain. 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 really a measure of human development. It is 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.

The ability to feel pain, 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 ability to feel pain provides a better basis than viability.

We urge **Do Pass** recommendation on Senate Bill 2368.

Testimony In Opposition to SB 2368

National Geographic In the Womb Special

<http://www.youtube.com/watch?v=GofikTw6gGk>

- 17 Weeks Gestational Age - 8:04 -> 8:43 "grasping and wrestling"
- 6:20 -> 7:51 "gradually perfected"
- 5:17 -> 5:43 "beats a minute"
- 4:07 -> 4:55 "bones hardening"
- 12 Weeks Gestational Age - 3:50 -> 4:00 "supply of eggs"
- 1:07 -> 1:30 "dangle above the ground"
- 11 Weeks Gestational Age - 0:09 -> 1:02 "like a trampoline"

4:30 minutes total elapsed time of video clips

Inflict pain is inhuman but feeling is undoubtedly human

Economic of North Dakota Abortions 101

Gestational Age (GA)	6 >10 wks	11 wks	12 wks	13 wks	14 15 wks	16 17 wks	18 20 wks	≥21 wks
US CDC Abortions by GA	80.0%	5.1%	3.9%	2.8%	3.4%	1.9%	1.8%	1.3%
RR Women's Clinic Rate	\$ 550	\$550	\$ 600	\$ 600	\$ 850	NA	NA	NA
CDC Rate As Percent of 2011 ND Abortions (1247)	997	64	49	35	42			
RR Women's Clinic in Income/Potential Loss	\$ 548,350	\$ 35,000	\$ 29,000	\$ 21,000	\$ 35,700			

Potential economic loss to ND business: \$ 120,000.00

Senate Judiciary Committee

Senate Bill 2368

February 6, 2013

Chairman Hogue and members of the Committee, my name is Shari Orser, and I am a board-certified OB-Gyn. I am testifying as an individual and not as a member of an organization. I am testifying against SB 2368. This bill addresses several areas that cause concern. It opposes abortions after 20 weeks. Most commonly abortion is allowed until fetal viability. **The American College of Obstetricians and Gynecologists in their statement of policy says:**

“Termination of pregnancy before viability is a medical matter between the patient and physician” and continues to affirm the legal right of a woman to obtain an abortion prior to viability. To further quote the statement “viability” is the capacity of the fetus to exist outside the mother’s uterus. Whether or not this capacity exists is a medical determination, may vary with each pregnancy and is a matter for the judgment of the responsible attending physician.

Only a small percentage – less than 2% of abortions are done after 20 weeks and before viability. They are done for two main reasons. The first is for genetic abnormalities or fetal conditions incompatible with life and this includes Trisomy 18 and Trisomy 13, Potter’s Syndrome which is failure of the kidneys to develop leading to failure of the lungs to develop, failure of all the vertebral bodies to close leaving the entire spine open, anencephaly, and a few other rare abnormalities. Many times these abnormalities are not identified until about 20 weeks of gestation when the anatomic survey ultrasound is done. Thus the termination cannot be done before 20 weeks. Obviously this is a very painful decision for a family to make but no one should be forced to

bear the risks of pregnancy when they know they will not have a child at the end.

The second main reason is the unfortunate situation in which the patient experiences rupture of membranes before viability. There is only a small chance of maintaining the pregnancy until viability and an even smaller chance of a healthy baby. There is a risk of infection to the mother or other complications that could interfere with her future fertility. This should be treated as a spontaneous, incomplete abortion or miscarriage and labor induced, but this would be a crime if this bill passes.

Another concern is that the idea of fetal pain is presented as fact when in actuality there is a great deal of uncertainty about this in legitimate medical literature. The latest information in *Up-To-Date*, a widely used medical reference that uses the most current medical literature states - "Pain perception requires peripheral sensory neural tissue that senses painful stimuli, cortical pathways that transmit pain signals to the brain and development of higher cortical functions that can interpret the pain signals. The gestational age at which neural maturation is sufficiently developed to allow the fetus to perceive pain has not been established. A systematic multidisciplinary review of available evidence has concluded that fetal pain perception is unlikely before the third trimester."

An article from 2008 states - "There is no accurate evidence concerning pain sensations in this early period. Cortical processes occur only after thalamocortical connections and pathways have been completed at the 26th gestational week."

(4)

Another article from 2012 concludes - "Most studies disclose the possibility of fetal pain in the third trimester of gestation. The evidence becomes weaker before this date."

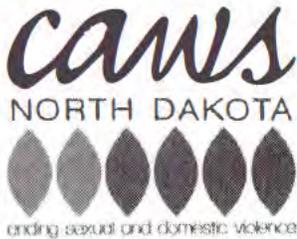
If experts cannot decide when or if fetuses can feel pain, how can this bill state it as a fact? The bill also refers to fetal surgeons using anesthesia and states it is to prevent fetal pain. In fact, anesthesia is only used in open operations and is used for uterine relaxation and fetal immobilization to make surgery easier.

It is wrong to criminalize a legitimate medical procedure. I'd like to end with another quote from the ACOG position statement - "The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous."

I urge a "do not pass" on this bill.

Thank you.

2368 added
Later



525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
www.ndcaws.org • facebook.com/NDCAWS • [Twitter @NDCAWS](https://twitter.com/NDCAWS)

Testimony on SB 2368
Senate Judiciary Committee
February 6, 2013

Chair Hogue and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of CAWS North Dakota in opposition to SB 2368.

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. SB 2368, from our perspective, would ban access to abortion for rape and incest victims. 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 SB 2368.

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). It's difficult to determine with certainty the outcome of the approximate 25,000 rape-related pregnancies that occur in the US, but one

study indicated that 26% of women pregnant through rape underwent abortions. Of the 73% of women who carried their pregnancies to term, 36% placed their infants up for adoption and 64% raised their children they conceived through rape (Reardon et al 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.

I urge a DO NOT PASS on SB 2368.

Thank You.

February 8, 2013

2/13 ①

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

- Page 1, line 1, remove "to provide a legislative declaration;"
- Page 1, line 1, replace "four" with "a"
- Page 1, line 1, replace "sections" with "section"
- Page 1, line 2, remove "and a new subsection to section 43-17-31"
- Page 1, line 3, remove "or inducing"
- Page 1, line 3, remove "or attempts to"
- Page 1, line 4, remove "perform or induce an abortion and to grounds for disciplinary action for physicians"
- Page 1, line 4, after the semicolon insert "and"
- Page 1, line 6, remove "; and to provide a penalty"
- Page 1, remove lines 8 through 24
- Page 2, remove lines 1 through 29
- Page 3, line 17, remove "Attempt to perform or induce an abortion" means an act, or an omission of a
- Page 3, remove lines 18 through 20
- Page 3, line 21, remove "5."
- Page 3, line 28, remove the overstrike over "5."
- Page 3, line 28, remove "6."
- Page 3, line 29, replace "7." with "6."
- Page 4, line 1, replace "8." with "7."
- Page 4, line 4, replace "9." with "8."
- Page 4, line 7, replace "10." with "9."
- Page 5, line 13, replace "11." with "10."
- Page 5, line 23, replace "12." with "11."
- Page 5, line 26, replace "13." with "12."
- Page 5, line 26, remove "the fusion"
- Page 5, line 27, replace "of a human spermatozoon with the human ovum" with "fertilization"
- Page 5, line 28, replace "14." with "13."
- Page 6, line 1, replace "15." with "14."

Page 6, line 4, replace "16." with "15."

Page 6, line 7, replace "17." with "16."

Page 6, line 8, replace "18." with "17."

Page 6, line 12, after "age" insert "**- Abortion of unborn child of twenty or more weeks postfertilization age prohibited**"

Page 6, line 22, remove "A physician who fails to comply with the requirements of subsection 1 is subject to"

Page 6, remove lines 23 through 26

Page 6, line 27, replace "1. A" with "Except in the case of a medical emergency, a"

Page 6, line 31, remove ", unless, in reasonable medical"

Page 7, remove lines 1 through 18

Page 7, line 19, remove "function"

Page 7, line 30, remove the overstrike over "All"

Page 7, line 30, remove "In addition, all"

Page 8, remove lines 9 through 31

Page 9, replace lines 1 through 13 with:

"(a) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed.

(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed."

Page 9, line 24, remove "or the address"

Page 9, line 24, remove "whose pregnancy was terminated, except"

Page 9, remove line 25

Page 9, line 26, remove "enable matching the report to the patient's medical records"

Page 10, line 11, after the period insert "If a determination of probable postfertilization age was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the abortion compliance report must state the basis of the determination that a medical emergency existed."

Page 11, remove lines 1 through 31

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 3

Renumber accordingly

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2368

Introduced by

Senators Miller, Campbell, Schaible

Representatives B. Koppelman, Larson, Rohr

1 A BILL for an Act ~~to provide a legislative declaration;~~ to create and enact ~~four~~ new
 2 ~~sections~~section to chapter 14-02.1 and a new subsection to section ~~43-17-31~~ of the North
 3 Dakota Century Code, relating to limitations on and penalties for performing ~~or inducing~~ an
 4 abortion ~~or attempts to perform or induce an abortion and to grounds for disciplinary action for~~
 5 ~~physicians;~~ and to amend and reenact sections 14-02.1-02 and 14-02.1-07 of the North Dakota
 6 Century Code, relating to definitions and reporting requirements; ~~and to provide a penalty.~~

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

8 ~~SECTION 1.~~

9 ~~Declaration of facts.~~

10 ~~1. The legislative assembly declares that:~~

11 ~~a. Pain receptors (nociceptors) are present throughout an unborn child's entire body~~
 12 ~~and nerves link these receptors to the brain's thalamus and subcortical plate by~~
 13 ~~no later than twenty weeks;~~

14 ~~b. By eight weeks after fertilization, an unborn child reacts to touch and after twenty~~
 15 ~~weeks, the unborn child reacts to stimuli that would be recognized as painful if~~
 16 ~~applied to an adult human, for example, by recoiling;~~

17 ~~c. In an unborn child, application of painful stimuli is associated with significant~~
 18 ~~increases in stress hormones known as the stress response;~~

19 ~~d. Subjection to painful stimuli is associated with long-term harmful~~
 20 ~~neurodevelopmental effects, such as altered pain sensitivity and, possibly,~~
 21 ~~emotional, behavioral, and learning disabilities later in life;~~

22 ~~e. For the purposes of surgery on unborn children, fetal anesthesia is routinely~~
 23 ~~administered and is associated with a decrease in stress hormones compared to~~
 24 ~~when painful stimuli are applied without anesthesia;~~

- 1 ~~f. The position, asserted by some medical experts, that an unborn child is~~
2 ~~incapable of experiencing pain until a point later in pregnancy than twenty weeks~~
3 ~~after fertilization predominately rests on the assumption that the ability to~~
4 ~~experience pain depends on the cerebral cortex and requires nerve connections~~
5 ~~between the thalamus and the cortex; however, recent medical research and~~
6 ~~analysis, especially since 2007, provides strong evidence for the conclusion that~~
7 ~~a functioning cortex is not necessary to experience pain;~~
- 8 ~~g. Substantial evidence indicates that children born missing the bulk of the cerebral~~
9 ~~cortex, those with hydranencephaly, nevertheless experience pain;~~
- 10 ~~h. In adults, stimulation or ablation of the cerebral cortex does not alter pain~~
11 ~~perception, while stimulation or ablation of the thalamus does;~~
- 12 ~~i. Substantial evidence indicates that structures used for pain processing in early~~
13 ~~development differ from those of adults, using different neural elements available~~
14 ~~at specific times during development, such as the subcortical plate, to fulfill the~~
15 ~~role of pain processing;~~
- 16 ~~j. The position, asserted by some medical experts, that the unborn child remains in~~
17 ~~a coma-like sleep state that precludes the unborn child experiencing pain is~~
18 ~~inconsistent with the documented reaction of unborn children to painful stimuli~~
19 ~~and with the experience of fetal surgeons who have found it necessary to sedate~~
20 ~~the unborn child with anesthesia to prevent the unborn child from thrashing about~~
21 ~~in reaction to invasive surgery; and that,~~
- 22 ~~k. Consequently, there is substantial medical evidence that an unborn child is~~
23 ~~capable of experiencing pain by twenty weeks after fertilization.~~
- 24 ~~2. The legislative assembly declares there is a compelling state interest in protecting~~
25 ~~the lives of unborn children from the stage at which substantial medical evidence~~
26 ~~indicates that unborn children are capable of feeling pain and this compelling state~~
27 ~~interest is in addition to North Dakota's compelling state interest in protecting the lives~~
28 ~~of unborn children from the stage of viability, and neither state interest is intended to~~
29 ~~replace the other.~~

30 **SECTION 1. AMENDMENT.** Section 14-02.1-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **14-02.1-02. Definitions.**

2 As used in this chapter:

3 1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or
4 any other substance, device, or means with the intent to terminate the clinically
5 diagnosable intrauterine pregnancy of a woman, including the elimination of one or
6 more unborn children in a multifetal pregnancy, with knowledge that the termination by
7 those means will with reasonable likelihood cause the death of the unborn child. Such
8 use, prescription, or means is not an abortion if done with the intent to:

- 9 a. Save the life or preserve the health of the unborn child;
10 b. Remove a dead unborn child caused by spontaneous abortion; or
11 c. Treat a woman for an ectopic pregnancy.

12 2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any
13 other place or facility in which abortions are performed or prescribed, other than a
14 hospital.

15 3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed
16 or dispensed with the intent of causing an abortion.

17 4. ~~"Attempt to perform or induce an abortion" means an act, or an omission of a~~
18 ~~statutorily required act, that, under the circumstances as the actor believes them to be,~~
19 ~~constitutes a substantial step in a course of conduct planned to culminate in the~~
20 ~~performance or induction of an abortion in this state in violation of this chapter.~~

21 ~~5.~~ "Drug label" means the pamphlet accompanying an abortion-inducing drug which
22 outlines the protocol tested and authorized by the federal food and drug administration
23 and agreed upon by the drug company applying for the federal food and drug
24 administration authorization of that drug. Also known as "final printing labeling
25 instructions", drug label is the federal food and drug administration document that
26 delineates how a drug is to be used according to the federal food and drug
27 administration approval.

28 ~~5.6.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.

29 ~~7.6.~~ "Hospital" means an institution licensed by the state department of health under
30 chapter 23-16 and any hospital operated by the United States or this state.

- 1 | ~~6-8:7.~~ "Human being" means an individual living member of the species of homo sapiens,
2 | including the unborn human being during the entire embryonic and fetal ages from
3 | fertilization to full gestation.
- 4 | ~~7-9:8.~~ "Infant born alive" means a born child which exhibits either heartbeat, spontaneous
5 | respiratory activity, spontaneous movement of voluntary muscles or pulsation of the
6 | umbilical cord if still attached to the child.
- 7 | ~~8-10:9.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom
8 | the abortion is to be performed or induced provided that:
- 9 | a. The woman is told the following by the physician who is to perform the abortion,
10 | by the referring physician, or by the physician's agent, at least twenty-four hours
11 | before the abortion:
- 12 | (1) The name of the physician who will perform the abortion;
13 | (2) The abortion will terminate the life of a whole, separate, unique, living
14 | human being;
15 | (3) The particular medical risks associated with the particular abortion
16 | procedure to be employed including, when medically accurate, the risks of
17 | infection, hemorrhage, danger to subsequent pregnancies, and infertility;
18 | (4) The probable gestational age of the unborn child at the time the abortion is
19 | to be performed; and
20 | (5) The medical risks associated with carrying her child to term.
- 21 | b. The woman is informed, by the physician or the physician's agent, at least
22 | twenty-four hours before the abortion:
- 23 | (1) That medical assistance benefits may be available for prenatal care,
24 | childbirth, and neonatal care and that more detailed information on the
25 | availability of that assistance is contained in the printed materials given to
26 | her as described in section 14-02.1-02.1;
27 | (2) That the printed materials given to her and described in section
28 | 14-02.1-02.1 describe the unborn child and list agencies that offer
29 | alternatives to abortion;
30 | (3) That the father is liable to assist in the support of her child, even in
31 | instances in which the father has offered to pay for the abortion; and

1 (4) That she is free to withhold or withdraw her consent to the abortion at any
2 time without affecting her right to future care or treatment and without the
3 loss of any state or federally funded benefits to which she might otherwise
4 be entitled.

5 c. The woman certifies in writing, prior to the abortion, that the information
6 described in subdivisions a and b has been furnished to her.

7 d. Before the performance of the abortion, the physician who is to perform or induce
8 the abortion or the physician's agent receives a copy of the written certification
9 prescribed by subdivision c.

10 e. The physician has not received or obtained payment for a service provided to a
11 patient who has inquired about an abortion or has scheduled an abortion before
12 the twenty-four-hour period required by this section.

13 | ~~9-11-10.~~ "Medical emergency" means a condition that, in reasonable medical judgment, so
14 complicates the medical condition of the pregnant woman that it necessitates an
15 immediate abortion of her pregnancy without first determining postfertilization age to
16 avert her death or for which the ~~twenty-four-hour delay~~ necessary to determine
17 postfertilization age will create serious risk of substantial and irreversible physical
18 impairment of a major bodily function, not including psychological or emotional
19 conditions. A condition may not be deemed a medical emergency if based on a claim
20 or diagnosis that the woman will engage in conduct that ~~would~~ she intends to result in
21 her death or in substantial and irreversible physical impairment of a major bodily
22 function.

23 | ~~40-12-11.~~ "Physician" means an individual who is licensed to practice medicine or osteopathy
24 under chapter 43-17 or a physician who practices in the armed services of the United
25 States or in the employ of the United States.

26 | ~~11-13-12.~~ "Postfertilization age" means the age of the unborn child as calculated from ~~the fusion~~
27 of a human spermatozoon with the human ovum fertilization.

28 | ~~14-13.~~ "Probable gestational age of the unborn child" means what, in reasonable medical
29 judgment, will with reasonable probability be the gestational age of the unborn child at
30 the time the abortion is planned to be performed.

1 ~~15.14.~~ "Probable postfertilization age of the unborn child" means what, in reasonable medical
2 judgment, will with reasonable probability be the postfertilization age of the unborn
3 child at the time the abortion is planned to be performed or induced.

4 ~~12.16.15.~~ "Reasonable medical judgment" means a medical judgment that would be
5 made by a reasonably prudent physician, knowledgeable about the case and the
6 treatment possibilities with respect to the medical conditions involved.

7 ~~13.17.16.~~ "Unborn child" means the offspring of human beings from conception until birth.

8 ~~14.18.17.~~ "Viable" means the ability of an unborn child to live outside the mother's womb,
9 albeit with artificial aid.

10 **SECTION 2.** A new section to chapter 14-02.1 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Determination of postfertilization age - Abortion of unborn child of twenty or more**
13 **weeks postfertilization age prohibited.**

14 1. Except in the case of a medical emergency, an abortion may not be performed or
15 induced or be attempted to be performed or induced unless the physician performing
16 or inducing the abortion has first made a determination of the probable postfertilization
17 age of the unborn child or relied upon such a determination made by another
18 physician. In making the determination, the physician shall make those inquiries of the
19 woman and perform or cause to be performed the medical examinations and tests as
20 a reasonably prudent physician, knowledgeable about the case and the medical
21 conditions involved, would consider necessary to perform in making an accurate
22 diagnosis with respect to postfertilization age.

23 2. A physician who fails to comply with the requirements of subsection 1 is subject to
24 disciplinary action under section 43-17-31.

25 ~~SECTION 4.~~ A new section to chapter 14-02.1 of the North Dakota Century Code is created
26 and enacted as follows:

27 ~~**Abortion of unborn child of twenty or more weeks postfertilization age prohibited.**~~

28 ~~1. Except in the case of a medical emergency, a person may not perform or induce or~~
29 ~~attempt to perform or induce an abortion upon a woman when it has been determined,~~
30 ~~by the physician performing or inducing or attempting to perform or induce the abortion~~
31 ~~or by another physician upon whose determination that physician relies, that the~~

1 probable postfertilization age of the woman's unborn child is twenty or more weeks;
2 ~~unless, in reasonable medical judgment, the woman has a condition that so~~
3 ~~complicates her medical condition as to necessitate the abortion of her pregnancy to~~
4 ~~avert her death or to avert serious risk of substantial and irreversible physical~~
5 ~~impairment of a major bodily function, not including psychological or emotional~~
6 ~~conditions. Such greater risk may not be deemed to exist if it is based on a claim or~~
7 ~~diagnosis that the woman will engage in conduct that she intends to result in her~~
8 ~~health or in substantial and irreversible physical impairment of a major bodily function.~~

9 ~~2. If an abortion upon a woman whose unborn child has been determined to have a~~
10 ~~probable postfertilization age of twenty or more weeks is not prohibited by~~
11 ~~subsection 1, the physician shall terminate the pregnancy in the manner which, in~~
12 ~~reasonable medical judgment, provides the best opportunity for the unborn child to~~
13 ~~survive, unless, in reasonable medical judgment, termination of the pregnancy in that~~
14 ~~manner would pose a greater risk either of the death of the pregnant woman or of the~~
15 ~~substantial and irreversible physical impairment of a major bodily function, not~~
16 ~~including psychological or emotional conditions, of the woman than would other~~
17 ~~available methods. Such greater risk may not be deemed to exist if it is based on a~~
18 ~~claim or diagnosis that the woman will engage in conduct that she intends to result in~~
19 ~~her death or in substantial and irreversible physical impairment of a major bodily~~
20 ~~function.~~

21 **SECTION 3. AMENDMENT.** Section 14-02.1-07 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **14-02.1-07. Records required - Reporting of practice of abortion.**

24 1. Records:

- 25 a. All abortion facilities and hospitals in which abortions are performed shall keep
26 records, including admission and discharge notes, histories, results of tests and
27 examinations, nurses' worksheets, social service records, and progress notes,
28 and shall further keep a copy of all written certifications provided for in this
29 chapter as well as a copy of the constructive notice forms, consent forms, court
30 orders, abortion data reports, adverse event reports, abortion compliance reports,

- 1 and complication reports. ~~All~~In addition, all abortion facilities shall keep the
2 following records of the:
- 3 (1) The number of women who availed themselves of the opportunity to receive
4 and view an ultrasound image of their unborn children pursuant to section
5 14-02.1-04, and the number who did not; and of each of those numbers, the
6 number who, to the best of the reporting abortion facility's information and
7 belief, went on to obtain the abortion. Records must be maintained in the
8 permanent files of the hospital or abortion facility for a period of not less
9 than seven years.
- 10 (2) Postfertilization age:
- 11 ~~(a) If a determination of probable postfertilization age was made, whether~~
12 ~~ultrasound was employed in making the determination, and the week~~
13 ~~of probable postfertilization age determined.~~
- 14 ~~(b) If a determination of probable postfertilization age was not made, the~~
15 ~~basis of the determination that a medical emergency existed.~~
- 16 ~~(3) Method of abortion and which of the following was employed:~~
- 17 ~~(a) Medication abortion, such as mifepristone/misoprostol or~~
18 ~~methorexate/misoprostol.~~
- 19 ~~(b) Manual vacuum aspiration.~~
- 20 ~~(c) Electrical vacuum aspiration.~~
- 21 ~~(d) Dilation and evacuation.~~
- 22 ~~(e) Combined induction abortion and dilation and evacuation.~~
- 23 ~~(f) Induction abortion with prostaglandins.~~
- 24 ~~(g) Induction abortion with intra-amniotic instillation such as saline or~~
25 ~~urea.~~
- 26 ~~(h) Induction abortion, other.~~
- 27 ~~(i) Intact dilation and extraction.~~
- 28 ~~(j) Other method, which must be specified.~~
- 29 ~~(4) Whether an intra-fetal injection was used in an attempt to induce fetal~~
30 ~~demise, such as intra-fetal potassium chloride or dogoxin.~~
- 31 ~~(5) Age and race of the patient.~~

1 ~~(6) If the probable postfertilization age was determined to be twenty or more~~
2 ~~weeks, the basis of the determination that the pregnant woman has a~~
3 ~~condition that so complicated her medical condition as to necessitate the~~
4 ~~abortion of her pregnancy to aver her death or to avert serious risk of~~
5 ~~substantial and irreversible physical impairment of a major bodily function,~~
6 ~~not including psychological or emotional conditions.~~

7 ~~(7) If the probable postfertilization age was determined to be twenty or more~~
8 ~~weeks, whether the method of abortion used was one that, in reasonable~~
9 ~~medical judgment, provided the best opportunity for the unborn child to~~
10 ~~survive and, if such a method was not used, the basis of the determination~~
11 ~~that termination of the pregnancy in that manner would pose a greater risk~~
12 ~~either of the death of the pregnant woman or of the substantial and~~
13 ~~irreversible physical impairment of a major bodily function, not including~~
14 ~~psychological or emotional conditions, of the woman than would other~~
15 ~~available methods.~~

16 ~~(a) If a determination of probable postfertilization age was not made, the~~
17 ~~basis of the determination that a medical emergency existed.~~

18 ~~(b) If the probable postfertilization age was determined to be twenty or~~
19 ~~more weeks and an abortion was performed, the basis of the~~
20 ~~determination that a medical emergency existed.~~

21 b. The medical records of abortion facilities and hospitals in which abortions are
22 performed and all information contained therein must remain confidential and
23 may be used by the state department of health only for gathering statistical data
24 and ensuring compliance with the provisions of this chapter.

25 c. Records must be maintained in the permanent files of the hospital or abortion
26 facility for a period of not less than seven years.

27 2. Reporting:

28 a. An individual abortion compliance report and an individual abortion data report for
29 each abortion performed upon a woman must be completed by her attending
30 physician. The abortion data report must be confidential and may not contain the
31 name or the address of the woman whose pregnancy was terminated, except

- 1 ~~that each report must contain a unique medical record identifying number to~~
2 ~~enable matching the report to the patient's medical records.~~ The abortion data
3 report must include the data called for in the United States standard report of
4 induced termination of pregnancy as recommended by the national center for
5 health statistics.
- 6 b. All abortion compliance reports must be signed by the attending physician within
7 twenty-four hours and submitted to the state department of health within ten
8 business days from the date of the abortion. All abortion data and complication
9 reports must be signed by the attending physician and submitted to the state
10 department of health within thirty days from the date of the abortion. If a
11 physician provides an abortion-inducing drug to another for the purpose of
12 inducing an abortion and the physician knows that the individual experiences
13 during or after the use an adverse event, the physician shall provide a written
14 report of the adverse event within thirty days of the event to the state department
15 of health and the federal food and drug administration via the medwatch reporting
16 system. For purposes of this section, "adverse event" is defined based upon the
17 federal food and drug administration criteria given in the medwatch reporting
18 system. If a determination of probable postfertilization age was not made, the
19 abortion compliance report must state the basis of the determination that a
20 medical emergency existed. If the probable postfertilization age was determined
21 to be twenty or more weeks and an abortion was performed, the abortion
22 compliance report must state the basis of the determination that a medical
23 emergency existed.
- 24 c. A copy of the abortion report, any complication report, and any adverse event
25 report must be made a part of the medical record of the patient at the facility or
26 hospital in which the abortion was performed. In cases when post-abortion
27 complications are discovered, diagnosed, or treated by physicians not associated
28 with the facility or hospital where the abortion was performed, the state
29 department of health shall forward a copy of the report to that facility or hospital
30 to be made a part of the patient's permanent record.

- 1 d. The state department of health is responsible for collecting all abortion
2 compliance reports, abortion data reports, complication reports, and adverse
3 event reports and collating and evaluating all data gathered from these reports
4 and shall annually publish a statistical report based on data from abortions
5 performed in the previous calendar year. All abortion compliance reports received
6 by the state department of health are public records. Except for disclosure to a
7 law enforcement officer or state agency, the department may not disclose an
8 abortion compliance report without first removing any individually identifiable
9 health information and any other demographic information, including race, marital
10 status, number of previous live births, and education regarding the woman upon
11 whom the abortion was performed.
- 12 e. The state department of health shall report to the attorney general any apparent
13 violation of this chapter.

14 ~~3. By July first of each year, the state department of health shall issue a public report~~
15 ~~providing statistics for the previous calendar year compiled from all of the reports~~
16 ~~covering that year submitted in accordance with this section for each of the items~~
17 ~~listed in subsection 1. Each report must also provide the statistics for all previous~~
18 ~~calendar years during which this section was in effect, adjusted to reflect any~~
19 ~~additional information from late or corrected reports. The state department of health~~
20 ~~shall take all steps necessary to ensure that none of the information included in the~~
21 ~~public reports could reasonably lead to the identification of any pregnant woman upon~~
22 ~~whom an abortion was performed, induced, or attempted.~~

23 ~~SECTION 6. A new section to chapter 14-02.1 of the North Dakota Century Code is created~~
24 ~~and enacted as follows:~~

25 ~~Criminal and civil penalties.~~

26 ~~1. Any person who intentionally or recklessly performs or induces or attempts to perform~~
27 ~~or induce an abortion in violation of section 2 or 3 of this Act is guilty of a class C~~
28 ~~felony. A penalty may not be assessed against the woman upon whom the abortion is~~
29 ~~performed or induced or attempted to be performed or induced.~~

30 ~~2. Any woman upon whom an abortion has been performed or induced in violation of~~
31 ~~section 2 or 3 of this Act, or the father of the unborn child who was the subject of that~~

1 ~~abortion, may maintain an action against the person who performed or induced the~~
2 ~~abortion in intentional or reckless violation of section 2 or 3 of this Act for actual and~~
3 ~~exemplary damages. Any woman upon whom an abortion has been attempted in~~
4 ~~violation of section 2 or 3 of this Act may maintain an action against the person who~~
5 ~~attempted to perform or induce the abortion in an intentional or reckless violation of~~
6 ~~section 2 or 3 of this Act for actual and exemplary damages.~~

7 ~~3. A cause of action for injunctive relief against any person who has intentionally or~~
8 ~~recklessly violated section 2 or 3 of this Act may be maintained by the woman upon~~
9 ~~whom an abortion was performed or induced or attempted to be performed or induced~~
10 ~~in violation of section 2 or 3 of this Act; by any person who is the spouse, parent,~~
11 ~~sibling, or guardian of, or a current or former licensed health care provider of, the~~
12 ~~woman upon whom an abortion has been performed or induced or attempted to be~~
13 ~~performed or induced in violation of section 2 or 3 of this Act; by a state's attorney with~~
14 ~~appropriate jurisdiction; or by the attorney general. The injunction must prevent the~~
15 ~~abortion provider from performing or inducing or attempting to perform or induce~~
16 ~~further abortions in violation of section 2 or 3 of this Act.~~

17 ~~4. If judgment is rendered in favor of the plaintiff in an action provided for under this~~
18 ~~section, the court also shall render judgment for reasonable attorney's fees in favor of~~
19 ~~the plaintiff against the defendant.~~

20 ~~5. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's~~
21 ~~suit was frivolous and brought in bad faith, the court also shall render judgment for~~
22 ~~reasonable attorney's fees in favor of the defendant against the plaintiff.~~

23 ~~6. Damages and attorney's fees may not be assessed against the woman upon whom an~~
24 ~~abortion was performed or induced or attempted to be performed except in~~
25 ~~accordance with subsection 5.~~

26 ~~SECTION 7. A new section to chapter 14-02.1 of the North Dakota Century Code is created~~
27 ~~and enacted as follows:~~

28 ~~**Protection of privacy in court proceedings.**~~

29 ~~In every civil or criminal proceeding or action brought under section 5 of this Act for a~~
30 ~~violation of section 2 or 3 of this Act, the court shall rule whether the anonymity of any woman~~
31 ~~upon whom an abortion has been performed or induced or attempted to be performed or~~

1 ~~induced may be preserved from public disclosure if she does not give her consent to such~~
2 ~~disclosure. The court, upon motion or sua sponte, shall make the ruling and, upon determining~~
3 ~~that her anonymity should be preserved, shall issue orders to the parties, witnesses, and~~
4 ~~counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms~~
5 ~~or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each~~
6 ~~order must be accompanied by specific written findings explaining why the anonymity of the~~
7 ~~woman should be preserved from public disclosure, why the order is essential to that end, how~~
8 ~~the order is narrowly tailored to serve that interest, and why no reasonable less restrictive~~
9 ~~alternative exists. In the absence of written consent of the woman upon whom an abortion has~~
10 ~~been performed or induced or attempted to be performed or induced, anyone, other than a~~
11 ~~public official, who brings an action under subsections 2 or 3 of section 5 of this Act shall do so~~
12 ~~under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or~~
13 ~~of witnesses from the defendant or from attorneys for the defendant.~~

14 ~~— SECTION 8. A new subsection to section 43-17-31 of the North Dakota Century Code is~~
15 ~~created and enacted as follows:~~

16 ~~— The failure to comply with the requirements of subsection 1 of section 2 of this Act.~~

Armstrong (2)
2/13

Amendment No.

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2368

Page 1, line 8 insert:

SECTION 1. PURPOSE. The purpose of this section is to protect the state's compelling interest in the unborn human life from the time the unborn child is capable of feeling pain.

Renumber accordingly

#1

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

Human Services Committee, North Dakota House
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 undergraduate and graduate students, as well as medical and nursing students.

I am testifying in **SUPPORT of SB 2368**, the Pain Capable Unborn Child Protection Act.

Peer-reviewed scientific studies have shown that unborn children as young as 20 weeks after fertilization can experience pain.¹ Dr. Kanwaljeet Anand published a ground breaking review of pain studies in the *New England Journal of Medicine* the 1987. Dr. Anand found that the studies showed the pain receptor nerves are present throughout the developing human body by 20 weeks gestation (18 weeks after fertilization). He also found that neonates and fetuses could feel pain as early as 20 weeks because the cortex, which begins development at 8 weeks, has a full complement of neurons at 20 weeks. His review included *in utero* studies measuring the brain electrical activity (EEG) of unborn babies.

You may hear testimony that disputes the early development of pain-capable sensation, instead quoting a study from 2005 that claims pain sensation does not develop until 29-30 weeks gestation.² The study, which was widely publicized, was published by physicians with ties to the abortion lobby. The 2005 paper ignored studies demonstrating that premature babies feel pain as early as 20 weeks.

If the claims of the 2005 paper were true, it would have delegitimized the long-standing practice of using pain medication for premature babies born at 23-24 weeks. However, it is routine medical procedure to use anesthesia for unborn children as well as premature infants undergoing surgery, including additional doses of anesthetics administered directly to the developing human fetus to supplement general anesthesia and to provide postoperative relief.³ The doctors who do these prenatal and neonatal surgeries understand very well that these young human beings do experience pain, and that it is humane medical practice to relieve pain in their patients.

¹ Anand KJS and Hickey PR, Pain and Its Effects in the Human Neonate and Fetus, *N Engl J Med* 317, 132, 1987

² Lee SJ et al., Fetal Pain: A Systematic Multidisciplinary Review of the Evidence, *JAMA* 294, 947, 2005

³ See, e.g., Ramirez MV, Anesthesia for fetal surgery, *Colombian Journal of Anesthesiology* 40, 268, 2012; Adzick NS et al., A Randomized Trial of Prenatal versus Postnatal Repair of Myelomeningocele, *New England J Med* 364, 993, 2011; Schwarz U and Galinkin JL, Anesthesia for fetal surgery, *Semin Pediatr Surg* 12, 196, 2003

In 2006, two independent studies disputed the biased review article, and offered evidence that premature babies experience pain at a higher brain level much earlier than 30 weeks.⁴ Both studies involved brain scans measuring blood flow in the sensory part of the brain. Brain scans were performed to measure their response to painful stimuli in the cortex, the higher portion of the brain which processes pain sensation in adults. They found that there was a “clear cortical response”. The authors concluded that “noxious information is transmitted to the preterm infant cortex from 25 weeks, highlighting the potential for both higher-level pain processing and pain-induced plasticity in the human brain from a very early age.” Looking at the results of the studies, Dr. Ruth Grunau, a paediatric psychologist at the University of British Columbia, said:

“We would seem to be holding an extraordinary standard if we didn’t infer pain from all those measures.”⁵

A more recent study validates these earlier studies in terms of how pain is usually measured in contrast to feeling pain.⁶ The study’s authors found that infants showed cortical responses indicating pain, but often did not show response to pain as measured by typical pain scoring methods used in the clinical setting. This indicates that observers may often not recognize or underestimate infant pain. The authors went on to note that:

“While painful stimulation generally evokes parallel cortical and behavioral responses in infants, pain may be processed at the cortical level without producing detectable behavioral changes.”

A new study just published also validates the earlier studies regarding potential for pain processing in the human fetal brain. Scientists at Wayne State University used magnetic resonance imaging (MRI) to show study the brains of healthy human fetuses within the womb, from 24-39 weeks gestation. They found that functional connections existed as early as 24 weeks gestation, and that the healthy human fetal brain has functional connections between the brain hemispheres as well as regional connections within brain hemispheres.⁷

The published scientific evidence indicates that the developing human being (the human fetus) can experience pain as early as 20 weeks in the womb.

I urge a DO PASS on SB 2368.

⁴ Slater R et al., Cortical Pain Response in Human Infants, *J Neuroscience* 25, 3662, 2006; Bartocci M et al., Pain Activates Cortical Areas in the Preterm Newborn Brain, *Pain* 122, 109, 2006

⁵ Qui J, Does it hurt?, *Nature* 444, 143, 2006

⁶ Slater R et al., How Well Do Clinical Pain Assessment Tools Reflect Pain in Infants?, *PLOS Medicine* 5, e129, 2008

⁷ Thomason ME et al., Cross-Hemispheric Functional Connectivity in the Human Fetal Brain, *Sci. Transl. Med.* 5, 173ra24, 2013

2

Sixty-Third Legislative Assembly of North Dakota
Engrossed Senate Bill NO. 2368
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. 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 support the sanctity of all human life, no matter the stage of development. Fundamentally, we believe that life begins at conception and that this life is worthy of respect and equality under the law.

Fetal Pain in General:

The introduction of various forms of Unborn Fetal Pain Bills on both federal and state levels demonstrates the fact that the issue of fetal pain has become a major concern. Just as modern science has given us a glimpse into the womb; it has also revealed the fact that an unborn child can feel pain. The most common forms of abortion are now thought to cause excruciating pain for the unborn child and this pain can be felt as early as thirteen and a half weeks, although the consensus is that the unborn child can feel pain at least by 20 weeks.

Fetal Development up to week 20:

About six days after fertilization, the embryo is implanted into the uterus and at about 22 days, blood is circulating and heartbeat can be detected on ultrasound. At six weeks after conception, a baby has electrical brain activity and eyes, eyelids, nose, mouth, and tongue are formed and at six to seven weeks electrical brain activity can be detected. By eight weeks, the baby, now called a fetus, has all the organs found in any newborn infant. By ten weeks the child can grasp, stretch and kick.¹ At twelve weeks the child moves in response to external stimuli and has eye-brows and hair.² At fourteen weeks babies show a variety of facial expressions like smiles and frowns, “often in response to external stimuli.”³ By twenty weeks the baby’s sense are heightened and neurological connections are increasingly complex; his hearing becomes very clear and he takes an interest in sounds outside the womb.⁴

Unborn Child Feels Pain:

Pain is “a perceptive response to potential or actual tissue damage.”⁵ “That a fetus can feel pain should not be a difficult concept to comprehend. Most of us have had the opportunity to hold an infant in our arms and see its response to touch. We have seen and heard a very young child’s objection to the irritation of diaper rash, to pangs of hunger, and to the careless poke of a sibling. We know the response of the newborn to the

¹ Cathy Cleaver Ruse, Esq. and Rob Schwarzwald, *The Best Pro-Life Arguments for Secular Audiences*, Family Research Council <http://www.frc.org/brochure/the-best-pro-life-arguments-for-secular-audiences:7-8>, and Ashley Morrow Fragoso, *Fetal Pain, Can Unborn Children Feel Pain in the Womb?* Family Research Council (2010) <http://downloads.frc.org/EF/EF10H06.pdf> : 1-3.

² Ashley Morrow Fragoso, *Fetal Pain, Can Unborn Children Feel Pain in the Womb?* Family Research Council (2010) <http://downloads.frc.org/EF/EF10H06.pdf> : p 2

³ Id.

⁴ Id at 3.

⁵ Id.

doctor's slap just seconds after birth. Laymen and physicians alike interpret this response to be precisely what it is – a response to the sensation of pain. The baby crying just moments after birth surely had the same capacity to feel pain in the womb just a few moments prior to birth.”⁶

Dr. Kanwaljeet S. Anand of the University of Arkansas for Medical Sciences and the Pain Neurobiology Laboratory at Arkansas Children's Hospital Research Institute, testified that children of 20 weeks gestation (or even earlier) possess the ability to feel pain “and the pain perceived by a fetus is possibly more intense than that perceived by term newborns or older children.”⁷

Between seven and twelve weeks gestation the unborn child becomes sensitive to stimulation.⁸ The thalamus and cortex have begun to develop, but nerve pathways have not yet connected the cortex with the lower part of the brain.⁹ The brain stem is active at this point in development. At the beginning of the second trimester sensory receptors cover the body of the baby and the hippocampus becomes functional.¹⁰ At this point, babies respond to invasive procedures. “At 23 weeks, the nerves transport pain signals to the cortex are connected to the rest of the brain, and signals received through the thalamus can be processed in the cortex, allowing for a form of conscious perception...”¹¹

⁶ Vincent J. Collins, M.D., Steven R. Zielinski, M.D., Thomas J. Marzen, Esq., “Fetal Pain and Abortion: The Medical Evidence,” AMERICANS UNITED FOR LIFE, Legal Defense Fund Law and Medicine Series: 12)

⁷ Ibid at 4.

⁸ Ashley Morrow Fragoso, *Fetal Pain, Can Unborn Children Feel Pain in the Womb?* Family Research Council (2010) <http://downloads.frc.org/EF/EF10H06.pdf> : 6.

⁹ Ibid.

¹⁰ Ibid at 6-7.

¹¹ Ibid at 7.

In the article, “Fetal Pain and Abortion: The Medical Evidence,” Vincent J. Collins, M.D., Steven R. Zielinski, M.D., and Thomas J. Marzen, Esq. note, “The medical evidence plainly points to the existence of pain sensation in the human fetus, at least from the onset of the second trimester of pregnancy, and perhaps during the last weeks the first trimester.”¹²

Abortion Methods and Pain:

“Induced abortion will cause pain to a fetus with a functioning nervous system if the method-used stimulates the pain receptors, excites the neural pathways, and the impulse reaches the thalamus.”¹³ Dilatation and evacuation (D&E), abortion, abortion by saline amnio-infusion, and prostaglandin abortions are capable of stimulating pain receptors and exciting neural pathways.¹⁴ Because of the size of the fetus and the solid bone structure, D&E abortions are performed after 12 weeks gestation. “D&E involves the progressive dismemberment of the fetus prior to extraction in order to facilitate removal of the fetal parts from the uterus. The slicing and crushing involved in dismemberment of the fetus in D&E abortions would obviously excite pain receptors and stimulate the neural pathways...”

Saline amnio-infusion abortions are performed after the 14th week and involve the removal of amniotic fluid, which is replaced with highly concentrated saline. Over a

¹² Vincent J. Collins, M.D., Steven R. Zielinski, M.D., Thomas J. Marzen, Esq., “Fetal Pain and Abortion: The Medical Evidence,” AMERICANS UNITED FOR LIFE, Legal Defense Fund Law and Medicine Series: 12)

¹³ Id. at 11

¹⁴ Id.

period of approximately 48 hours the saline burns off the skin of the fetus as well as the mouth and esophagus since the baby inevitably swallows the saline.¹⁵ “By damaging the surface of the fetus in this fashion, saline would excite pain receptors and stimulate the neural pathways of a functioning central nervous system during the course of the abortion and until the fetus dies. It is well-known that the fetus reacts with aversive responses when saline is introduced into amniotic fluid. The aborting mother can feel her baby thrashing in the uterus during the approximately two hours it usually takes for the saline solution to kill the fetus.”¹⁶ Finally, “The method of abortion involving the introduction of prostaglandin into the mother’s system may bring about death of the fetus by constricting the circulation of the blood and/or impairing the heart function. Pain analogous to that of a person experiencing a heart attack can be assumed.”¹⁷

“We cannot measure the sum agony of these human beings. We can only know that it was real, hope that it was mercifully brief, and grieve because the ideology that so arrogantly asserts abortion as a “right” has subverted simple human compassion to such a degree that these young human beings continue to die with less concern for their pain that expressed for experimental rats.”¹⁸

There have been about 55 million legal abortions performed in the U.S. since 1973, many on pain-capable children. It is unimaginable that we would dismiss the possibility that these unborn children feel pain during abortion.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id at 12.

Additionally, approximately 92% of abortions are done for purely elective reasons – on healthy women and healthy children. Only 4% are performed for reasons of physical health of the mother and 3% for the health of the baby. About 0.5% of abortions are performed for reasons of rape or incest, another 0.5% in order to hide a pregnancy, and 1% due to pressure from family members.¹⁹

Pain Capable Acts and Undue Burden:

The *Casey* Court 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, thus, 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.

This test states that a regulation on abortion prior to viability 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, abortion record collection, and clinic regulations.

¹⁹ Lawrence B. Finer, "Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives, Perspectives on Sexual Health 37, no. 5 (2005): 113-14.

Over 90% of abortions are performed before 20 weeks gestation; thus, it is a very light burden indeed to require that a woman make a decision about abortion prior to 20 weeks.

20

Based on the evidence, if the prohibition of abortion after 20 weeks based on this evidence presents an undue burden, what then is not an undue burden? This is a commonsense measure that has wide, bipartisan support. A recent Marist poll showed that 83% of people favor significant abortion restrictions.²¹ Additionally, it is the responsibility of the State to ensure that all the health and lives of women and children are protected from the outset of pregnancy. This bill would not unduly burden a woman in choosing an abortion and would at the same time protect the unborn child from excruciating and unnecessary pain.

²⁰ “Abortion Surveillance- United States, 2009,” Centers for Disease Control and Prevention, “In 2009, most (64.0%) abortions were performed at ≤ 8 weeks’ gestation, and 91.7% were performed at ≤ 13 weeks’ gestation. Few abortions (7.0%) were performed at 14–20 weeks’ gestation, and even fewer (1.3%) were performed at ≥ 21 weeks’ gestation. From 2000 to 2009, the percentage of all abortions performed at ≤ 8 weeks’ gestation increased 12%, whereas the percentage performed at >13 weeks’ decreased 12%. Moreover, among abortions performed at ≤ 13 weeks’ gestation, the distribution shifted toward earlier gestational ages, with the percentage of these abortions performed at ≤ 6 weeks’ gestation increasing 47%.”

²¹ Marist Poll, “Abortion in America,” December 2012.

Beverly LaHaye
Chairman



3

March 13, 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 SB2368.

The fact that the human fetus feels pain introduces a whole new element and level to the moral discourse and public policy debate on abortion. As clearly heard by expert testimony here today, it is a proven scientific fact that the unborn child feels physical pain and suffers pain during an abortion procedure. We do not see the need to repeat or copy any of the facts that other testimony will present here, but allow us to state that it is indeed a tragic fact that it has taken science and society 40 long and sad years to catch up to what we all have known from the beginning of this debate, namely that the unborn child is indeed a human being capable of feeling excruciating pain during an abortion.

We once again have a choice set before us; we must choose to accept the proof and correct the injustice being perpetrated upon unborn children by passing this legislation.

CWA of North Dakota urge a "do pass" on SB2368 giving the unborn child the protection they are owed regardless of their gestational age.

CONCERNED WOMEN FOR AMERICA
OF NORTH DAKOTA

#4

To: House Human Services Committee
Subject: SB 2368 Abortion After Ability to Feel Pain
Date: March 13, 2013

The North Dakota Catholic Conference supports Senate Bill 2368.

Senate Bill 2368 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.)

Senate Bill 2368 would prohibit only abortions where after twenty weeks -- the time we know the unborn child can feel pain. 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 really a measure of human development. It is 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.

The ability to feel pain, 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 ability to feel pain provides a better basis than viability.

We urge **Do Pass** recommendation on Senate Bill 2368.



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

Christopher T. Dodson
Executive Director and
General Counsel

Hi, my name is Hannah Hersch. I come here this morning to talk to you on a subject that I feel very strongly about, human life. As a young Catholic, I feel that it is my duty to share my beliefs before you make a decision that affects women, their future children, and the state of North Dakota.

Not only do we, as a state, have to give rights to the woman, but also the baby. Every human has the right to life and an innocent child in the womb is no exception to that right. If a mother cannot care for her baby she has the choice and alternative to give her child up for adoption. Many couples are unable to have children and would be blessed to take in that child. Life is a gift not a choice. Abortion eliminates that God giving gift and in turn affects not only the unborn child, but also the mother.

Human life begins at conception and ends at natural death. The baby inside the mother's womb is not just a blob of tissues; it is in fact a human life. The baby's heart begins to beat by the time the mother even realizes she may be pregnant. The brain, spinal cord, heart, and other organs begin to form around week five of pregnancy. During the sixth week, the baby's facial features begin to appear and small buds soon become arms and legs. Surgical abortions start as early as seven weeks, by that time the child's head becomes developed and eye lenses begin to form. Most abortions are performed between the 7-12 week periods of pregnancy. At this time the baby's arms and legs grow longer, bones develop, red blood cells begin to form and fingernails and toes develop. A baby's face is recognizably human at the start of 12 weeks. As months progress the child grows rapidly and begins to move his or her extremities, which can be detected in ultrasounds. Also the baby can recognize the mother's voice and is able to detect light. During the third trimester

the bones are fully developed, the baby starts to practice breathing on his or her own, and starts to absorb the vitamins and minerals needed. So what about the child's rights? The innocent baby cannot defend itself from an abortion. The baby will never get a chance to experience life. The right to life is in our constitution. We must respect the dignity and importance of human life and recognize that abortion is an injustice to our state and our country. Throughout history, we have overcome slavery and the holocaust that disregarded the importance of life and now it is our chance to overcome the evil act of abortion. We must come together and vote for the right to all human life.

#6

I am Pastor John Boustead

I support Senate Bill 2303, 2305, 2368, also: SCR 4009

Today we carry convictions, either pro-life or pro-choice. But this topic of life at conception should not be lost in the scope of humanistic free thinking.

The unbridled human mind left to wander without the basis of Godly moral principals often leads man to destruction. Taking the life of a preborn baby is an example of this.

Mr. Chairman the debate on abortion is whether human life is endowed or, is it achieved. I submit with confidence all life including the preborn, is endowed by God and is a sacred gift. The Bible is clear about this.

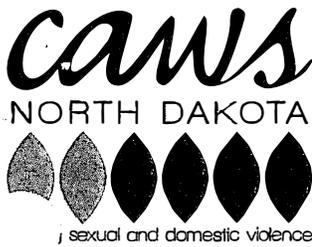
I leave only two quick verse and I will end:

Psalm 139:13-16, (NKJV)

"For You formed my inward parts; You covered me in my mother's womb. I will praise You, for I am fearfully and wonderfully made; marvelous are Your works and that my soul knows well. My frame was not hidden from You, when I was made in secret, and skillfully wrought in the lowest parts of the earth. Your eyes saw my substance, being yet unformed, and in Your book they all were written, the days fashioned for me, when as yet there were none of them" .

Jeremiah 1:4-5

I knew you even before you were conceived.
Jeremiah 1:4-5



Handwritten signature

#7

525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
www.ndcaws.org • facebook.com/NDCAWS • Twitter @NDCAWS

Testimony on SB 2368
House Human Services
March 13, 2013

Chair Weisz and Members of the Committee:

My name is Janelle Moos. I am speaking this morning on behalf of CAWS North Dakota in opposition to SB 2368.

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. SB 2368, from our perspective, would ban access to abortion for rape and incest victims. 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 SB 2368.

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). It's difficult to determine with certainty the outcome of the approximate 25,000 rape-related pregnancies that occur in the US, but one

study indicated that 26% of women pregnant through rape underwent abortions. Of the 73% of women who carried their pregnancies to term, 36% placed their infants up for adoption and 64% raised their children they conceived through rape (Reardon et al 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.

I urge a DO NOT PASS on SB 2368.

Thank You.

#8

3/13/2013

Maria Wanchic District 35

319 East Capitol Ave

Bismarck ND 58501

255-3161 or 390-2377

mwanchic@hotmail.com

Testimony in favor of SB2303, 2305, 2368, 4009

Mr. Chairman and honorable members of the committee:

My name is Maria Wanchic and I've lived here in the Bismarck/Mandan area my whole life. I am honored to be here today testifying in support of Senate Bill 2303, 2305, 2368 and 4009. My testimony will last about 10 minutes.

I'd like to play a few short audio clips from the Roe vs Wade oral arguments. It's not my intention to construe the words of anyone in these clips but only to call attention to the number of times the question of the unborn as persons comes up. (you can listen to the entire audio clip at www.oyez.org)

(audio clip, tracks 1-7) [4]

Throughout the one hour of Roe vs. Wade oral arguments the question of personhood for the unborn is discussed over and over again. As Justice Potter Stewart says answering that question is "critical to this case". However, after the much anticipated ruling it was revealed that the Supreme Court would be silent on this critical question. In the final analysis, the Supreme Court contradicted itself, flipped a coin on the question of life and chose to make freedom of choice the law of the land completely wiping off the board decades of various state anti-abortion laws. [11]

Justices White and Rehnquist could not find a constitutional basis to allow for abortion on demand. Justice White wrote in his dissenting opinion:

"I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant women and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes." [5]

In the Supreme Court's view state laws against abortion infringed upon the 14th amendment right to personal liberty. The court had twisted the concept of personal liberty to mean private choices. But private choices are limited when they adversely affect other people or even the individual person. This would be the case with abortion because it's a decision to end the life of another person. States restrict personal liberty all the time in the cases of suicide, drug use, smoking, underage drinking, seat belts, and speed limits. Personal liberty is trumped by the protection of human life. (see note A)

Later on in his career, Justice White made repeated attempts to overrule Roe vs Wade. In describing the right to abortion on demand he wrote,

"In so denominating that liberty, the Court engages not in constitutional interpretation, but in the unrestrained imposition of its own extraconstitutional value preferences." [6]

In other words, the Supreme Court fashioned this new so called right based on a the whim of the age and personal preference, not on the constitution or even on any prior court cases. [7]

The Ninth Amendment

Another argument for abortion on demand used the 9th amendment by stating that abortion was an unenumerated right (or a right not specifically spelled out in the constitution) retained by the American people. Under the meaning of the ninth amendment the state laws had already set the precedence that abortion was NOT a right retained by the American people. When the civil war ended in 1865, 26 out of 36 states had already banned abortion. [8] By the year 1900 every state had anti-abortion laws in place. [9] The people had spoken. The 1973 ruling nullified the strict anti-abortion laws of 20 states who defended the unborn for over a century. [10]

During the mid 1800's as medical research discovered that life begins at conception rather than at quickening (which is when the mother first feels the fetus move), it became a firm resolution in the minds of medical professionals that unborn life must be preserved and defended. [11] The American Medical Association in a declaratory statement presented to Congress in 1857 used strong language against the increasing practice of abortion on demand. I quote:

“...this body, representing, as it does, the physicians of the land, publicly express its abhorrence of the unnatural and now rapidly increasing crime of abortion; that it avow its true nature, as no simple offence against public morality and decency, no mere misdemeanor...” [12]

The Declaration of Independence

The Declaration of Independence, the foundation of the constitution, asserts that we are created equal, not born equal and nothing has to be done or accomplished to attain the right to life. Simply to be in existence is enough. **By condoning abortion on demand, the Supreme Court condoned the civil right (or privileged right guaranteed by a government) to take a human right (or God-given right bestowed by the Creator) away from those who can not speak for themselves. The right to be born is a human right.**

The 14th Amendment

The 14th amendment elaborates on the declaration's basis of human rights for persons. Mrs. Weddington, the attorney who argued the case against Texas in Roe vs. Wade admitted that if a fetus was a person with constitutional rights then she would have a very difficult case. She reasoned that fetus' have no protection under the 14th amendment because they are not yet born as citizens of the United States.

This reasoning assumes that because a person does not become a citizen until after birth that they have no rights guaranteed by the Constitution. However the framers of our constitution used both the words, citizen and person in the 14th amendment to describe who's life specifically is protected . You do not need to be a citizen to have your right to life protected. (see note B) Legal and even illegal immigrants to the US still have the same basic protection under the constitution. [13] If you are a person (born or unborn) and if you are within the borders of the US then your right to life specifically is protected by the 14th amendment.

An Appeal to Objective, (Self-evident) Truths

Over the last 20 years I have become grateful to those individuals who were pro-choice who were calm and respectful enough to have good dialogues. And what I've learned from those conversations is this: although there are many out there who believe abortion to be a right, when it comes down to it, the vast majority believe abortion to be a necessary wrong-doing or a necessary evil. I have heard over and over again a laundry list of social issues that make abortion on demand necessary in their eyes.

But this is my point: death should never ever be the answer to any social problem. Abortion on demand is not the way to deal with unwanted human beings. When a society sees death as a solution to any issue then that society has lost its wisdom and when a society raises death on a pedestal as a constitutional right, under the guise of personal liberty, indeed it has lost its hope and when a people are pitted against their own future generation they are truly under some form of slavery.

George Washington said, liberty has an ordering to it. [14] We see this in the Declaration of Independence and the Constitution. Life is the first right mentioned, followed by liberty. Mr. Chairman, Committee Members, and fellow citizens, true freedom, true liberty, begins inside the heart of a person who chooses responsible citizenship which keeps the common good in mind and does not raise individual free will up as the highest moral good. Many in our current culture think free will is equal to freedom. Free will is only a tool that can be used for good and evil. A very very powerful tool that carries with it an awesome responsibility to act in truth and self-sacrifice. I think most North Dakota's understand this concept.

Through these pro-life bills we have a momentous opportunity to raise the dignity of the unborn to persons in North Dakota. We can become the first state in the nation to reclaim our true pro-life heritage. Although these bills are big step forward to ending abortion we also need to (both publicly and privately) always encourage an environment that supports family, community and personal responsibility.

Lastly I'd like to make an appeal to the same God that our founders constantly referred to. John Adams said,

"You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe."

The right to life is a human right which surpasses all jurisdictions and national boundaries. It is given by God himself. It is our very soul, bequeathed by the Creator, that raises the dignity of life to that of God himself. It is this sacred gift which warrants the right to live and experience life on earth. It is a God-given right for each and every human being to be born into this world and to live out their own unique story within it.

I ask you once again to vote a DO PASS on these historic bills. Thank you for your time and attention.

Notes

A. In the case of assisted suicide personal liberty has been given a higher status than protecting life. Only three states allow assisted suicide: Washington, Oregon, Montana. I also believe this to be unconstitutional.

B. The rights protected by the constitution of foreign nationals have been abused in my opinion since the attacks of 9/11. In the pre-9/11 days immigrants were given much more freedom than they do now.

References

[1] <http://www.onelook.com/> "person"

[2] <http://www.onelook.com/> “human being”

[3] <http://www.princeton.edu/~prolife/articles/embryoquotes2.html>

[4] http://www.oyez.org/cases/1970-1979/1971/1971_70_18#reargument

Track 1:

Justice Byron R. White: Well, what if-- would you lose your case if the fetus was a person?

Track 2:

Ms Weddington: If the state could show that the fetus was a person under the Fourteenth Amendment or under some other amendment or part of the constitution, then you would have the situation of trying-- you would have a state compelling interest which, in some instances, can outweigh a fundamental right.

Track 3:

Justice Harry A. Blackmun: Well, do I get from this then that your case depends primarily on the proposition that the fetus has no constitutional rights?

Track 4:

Justice Potter Stewart: ... if you're correct in your basic submission that an unborn fetus is a person, then a abortion law such as that which New York has is grossly unconstitutional, isn't it?

Mr. Flowers: That's right.

Yes, sir.

Justice Potter Stewart: Allowing the killing of people.

Mr. Flowers: Yes, sir.

Justice Potter Stewart: Of persons.

Track 5:

Justice Potter Stewart: Well, if it were established that an unborn fetus is a person within the protection of the Fourteenth Amendment, you would have almost an impossible case here, would you not?

Ms Weddington: I would have a very difficult case. [Laughter]

Justice Potter Stewart: You certainly would because you'd have the same kind of thing you'd have to say that this would be the equivalent to after the child was born.

Ms Weddington: That's right.

Justice Potter Stewart: If the mother thought that it bothered her health having the child around, she could have it killed.

Isn't that correct?

Ms Weddington: That's correct.

Track 6:

Justice Potter Stewart: How should we-- how should that question be decided?

Is it a legal question, a constitutional question, a medical question, a philosophical question, a religious question, what is it?

Track 7:

Justice Potter Stewart: And the basic constitutional question initially is whether or not an unborn fetus is a person, isn't it?

Mr. Flowers: Yes, and entirely to the constitutional perspective.

Justice Potter Stewart: It's critical to this case, is it not?

Mr. Flowers: Yes, sir, it is...

[5] Wikipedia "Roe v. Wade", http://en.wikipedia.org/wiki/Roe_vs._Wade

[6] <http://www.endroe.org/dissentswhite.aspx>

And again, the fact that many men and women of good will and high commitment to constitutional government place themselves on both sides of the abortion controversy strengthens my own conviction that the values animating the Constitution do not compel recognition of the abortion liberty as fundamental. In so denominating that liberty, the Court engages not in constitutional interpretation, but in the unrestrained imposition of its own extraconstitutional value preferences.

[7] http://scholar.google.com/scholar_case?case=7628572659420117309&hl=en&as_sdt=2&as_vis=1&oi=scholar

[8] https://bearspace.baylor.edu/Francis_Beckwith/www/Sites/RoeLiberty.pdf (pg. 52)

[9] http://en.wikipedia.org/wiki/Abortion_in_the_United_States

[10] <http://supreme.justia.com/cases/federal/us/410/113/case.html> (see footnote 3/2)

[10] <http://supreme.justia.com/cases/federal/us/410/113/case.html> (see footnote 3/2)

[11, 12] www.ama-assn.org, click on About AMA, click on Our History, click on AMA Digital Collection, [The Transactions of the American Medical Association](#), Author: American Medical Association, Publication Date: 1859, Page 76

[13] <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1302&context=facpub>

For more than a century, the Court has recognized that the Equal Protection Clause is "universal in [its] application, to all persons within the territorial jurisdiction, without regard to differences of ... nationality." The Court has repeatedly stated that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."

[14] <http://www.acton.org/pub/religion-liberty/volume-8-number-5/renewing-our-experiment-ordered-liberty>

The Founding Fathers, he noted, "asserted their claim to freedom and independence on the basis of certain 'self-evident' truths about the human person: truths which could be discerned in human nature, built into it by 'nature's God.' Thus, they meant to bring into being, not just an independent territory but a great experiment in what George Washington called 'ordered liberty': an experiment in which men and women would enjoy equality of rights and opportunities in the pursuit of happiness and in service to the common good."

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 1, line 3, remove "and"

Page 1, line 3, after "14-02.1-07" insert ", 14-02.3-01, and 14-02.3-02"

Page 1, line 4, replace "and" with a comma

Page 1, line 4, after "requirements" insert ", and the use of public funds for abortions and family planning"

Page 7, after line 26, insert:

"SECTION 5. AMENDMENT. Section 14-02.3-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-01. State policy on abortion and childbirth - Use of public funds restricted.

1. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.
2. An agency of this state may not produce, distribute, publish, disseminate, endorse, or approve materials of any type that, between normal childbirth and abortion, do not give preference, encouragement, and support to normal childbirth. An agency of the state may not fund, endorse, or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.
3. ~~No~~Unless an abortion is necessary to prevent the death of the woman, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used to ~~pay~~:
 - a. Pay for the performance, or for promoting the performance, of an abortion ~~unless the abortion is necessary to prevent the death of the woman; or~~
 - b. Contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions.

SECTION 6. AMENDMENT. Section 14-02.3-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.3-02. Use of public funds for family planning - Use for the performance, referral, and encouragement of abortion prohibited.

~~No~~Except as required by federal law, no funds of this state or any agency, county, municipality, school district, or any other subdivision thereof, or institution under the control of the state board of higher education, and no federal funds passing through the state treasury or a state agency may be used as:

1. As family planning funds by any person or public or private agency which performs, refers, or encourages abortion; or
2. To contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of, abortions."

Renumber accordingly