1999 SENATE HUMAN SERVICES

SB 2418

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2418

Senate Human Services Committee

❑ Conference Committee

Hearing Date FEBRUARY 2, 1999

Tape Number	Side A	Side B	Meter #
1	A		3,500
2/10/99 3	X		
Committee Clerk Signature	Carol Kolodejchuk		

Minutes:

The hearing was opened on SB2418.

SENATOR PETE NAADEN, sponsor, introduced bill. We need to protect the unborn child. I have reservations about the misdemeanor of the mother. There are 1 million abortions and this should be rectified. SENATOR DEMERS asked if we in conflict with constitutional law.

SENATOR NAADEN: We're in conflict with the decision of the Supreme Court; I don't think it was based on constitution law for the protection for the life of the child. I think the decision of Roe v. Wade was unconstitutional. SENATOR DEMERS: Are you willing to pay a great deal of money because obviously this will end up in court? SENATOR NAADEN: I am not prepared to do that. The Attorney General has funds to do this.

REPRESENTATIVE BOEHM, Sponsor , supports bill. On every issue there are opposing views, not good people and bad people. There is no reason for abortion when so many couples

want to adopt. We must establish when the fact of life really begins. This bill is not perfect, but need some amendments.

REPRESENTATIVE GORDER, sponsor, supports bill. I want to go on record as supporting human life. There are things that have to be looked at. If there are parts that are unconstitutional and are deleted, the parts that remain will still make a good bill. I feel bad that this great country has allowed abortion to go on for so long. I respect human life.

SENATOR MUTCH, sponsor, supports bill. I have always been pro-life and I believe that is the way to go.

DOUG BAHR, Attorney General's office, provided information and likely consequences if this bill passes (see attached testimony).

TOM LINDGREN, ND Life League, supports bill with written testimony. An amendment may alleviate the unconstitutionality.

DR SPENCER BERRY, Dr. from Fargo, supports bill. Emotions sometimes blur or becomes cloudy. Three things to establish 1. Life - animate/inanimate, organic/inorganic, living/non living. 2. Human Life - Living 3. Uniqueness - D&N identification.

SUSAN BEEHLER, citizen, supports bill with written testimony.

PETER CRARY, Attorney from Fargo, supports bill. This is a rescue for unborn children. We should stand up and say, You're wrong, to the constitution. Represented all of the pro-life cases in Fargo.

PATRICIA ARMSTRONG, mother of 6 going on 7, asking the committee to vote for what you believe is right. Her three year old daughter also made a statement.

BRITTANY JENSEN, 17 years old and adopted supports bill. I am thankful everyday for my life. Look past an easy decision. Look at what is right; morally correct.

KIMBERLY VERVILLE, 17 year old junior of Shiloh Christian, supports bill. 1. Shame 2. Can't afford a baby. Look at the right things; life starts at conception. Murder is wrong; if ND would be willing to stand up and say we don't want abortion, it might start the spark to ignite the bonfire!

LUKE ARMSTRONG, young man studied about Jews being killed for no reason. Today there is a different kind of Holocaust. A mother can kill her own child and then deny it by saying it wasn't alive; but if the baby wasn't alive would I be here today?

JOSH LAWRENCE, young man supports bill with written testimony.

KAREN PROUT, attorney, supports bill. The word God appears in all the oaths of offices, money, and murder is wrong. Roe v. Wade was unconstitutional. ND needs to stand up.

Opposition to SB2418.

CAROL GASS, Red River Women's Clinic, opposes this bill with written testimony.

JOY JOHNSTON, citizen, opposes this bill with written testimony.

SALLY OREMLAND, American Association of University Women in ND, opposes bill.

SHERRY NORTHMORE, attorney, opposes bill. Rights to contraception and rights to bear children are very personal choices to made by a legislative body. Our state dollars can be used to better advantage than to chase after the constitution.

JANE SUMMERS, citizen, opposes bill. She read testimony from SANDRA DONALDSON, who also opposes the bill.

ALLAN KOLANSKY supports bill.

Written testimony was passed out toe the committee by DICK DEVER, citizen; TIM LINGREN; CHIRSTOPHER DODSON.

The hearing was closed on SB2418.

The discussion on SB2418 was resumed on 2/10/99. SENATOR NAADEN presented some amendments. SENATOR NAADEN didn't want to involve the mother at all; however, the penalties are extremely severe. AA Felony is Maximum penalty. If you don't amend it here, I will try to amend it on the floor. Discussion continued among the committee members and some of the experiences of rape and incest and that is not even mentioned or anything that addresses the issue. We already have an abortion bill on the books. We are interfering with the medical field. It is not my right to tell that young girl to have that baby even though it was incest. SENATOR LEE moved a DO NOT PASS. SENATOR DEMERS seconded it. Roll call vote carried 6-0-0. SENATOR MUTZENBERGER will carry the bill.

Prepared by the Legislative Council staff for
Representative Boehm
February 8, 1999

PROPOSED AMENDMENTS TO SENATE BILL NO. 2418

Page 1, line 3, replace "; to repeal chapter 14-02.1 of the North Dakota Century Code," with a period

Page 1, remove line 4

Page 1, line 8, replace "A" with "Except for the mother of the preborn child, a" and replace "B" with "AA"

Page 1, line 9, after the period insert "A mother who intentionally destroys or terminates the life of her preborn child is guilty of a class A misdemeanor."

Page 1, line 10, remove "natural"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 4

Renumber accordingly

Date: 2/8/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2418

Senate HUMAN SERVICES COMMITTEE Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen Lee Seconded By Sen DeMers

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total 6 (yes) 0 (no)

Absent 0

Floor Assignment Sen Mutzenberger

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

REPORT OF STANDING COMMITTEE

SB 2418: Human Services Committee (Sen. Thane, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2418 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2418

GOOD MORNING CHAIRMAN SENATOR THANE AND MEMBERS OF THE COMMITTEE:

I AM IN SUPPORT OF SB 2418 EVEN THOUGH IT MIGHT RUN THE RISK OF BEING FOUND UNCONSTITUTIONAL. I BELIEVE OUR FOUNDING FATHERS WOULD BE DISGUSTED THAT WE DESTROY HUMAN LIFE AND DO IT BY HIDING BEHIND THE CONSTITUTION, BUT THEN OUR FOUNDING FATHERS WERE FATHERS AND THEY WOULD HAVE NO CHOICE BECAUSE THEY ARE MEN AND ABORTION IS NOT ABOUT A MAN'S CHOICE, MEN HAVE NO CHOICE ABOUT ABORTION.
SOMETHING OF THIS IMPORTANCE I BELEIVE THE PEOPLE SHOULD HAVE BEEN ALLOWED TO VOTE ON WE HAD NO CHOICE IN OUR STATE ON THE MATTER AND NOW THE WOMAN INVOLVED IN THIS LANDMARK DECISION HAS REMORSE OVER THE COURTS DECESION.
MY LITTLE GIRL, MAYBE 4 OR 5 AT THE TIME, AFTER SEEING SOMETHING ON THE NEWS ABOUT ABORTION SAID "MOMMY WHAT IS ABORTION?"
I TOLD HER IT IS WHEN A DOCTOR TAKES THE BABY OUT OF THE TUMMY BEFORE IT IS READY TO BE BORN. SHE SAID "WHY WOULD THEY DO THAT ,THAT WOULD ILL THE BABY." I WAS DUMBFOUNDED AT HER AGE THAT SHE GRASPED THE ESSENCE OF LIFE. SHE GAVE ME A HUG AND SAID I AM GLAD YOU DIDN'T DO THAT TO ME.
I REMEMBER WHEN ABORTION FIRST BECAME LEGAL IT GAVE WOMEN IN MY CASE TEENAGERS A CHANCE TO HID THE SHAME THEY FELT OF HAVING PREMARTIAL SEX. IN MY HIGH SCHOOL I REMEMBER SO MANY YOUNG WOMEN DENIED THEY WERE HAVING SEX, SO THEY WOULD HAVE UNPROTECTED SEX, AFTER ALL THEY DIDN'T NEED BIRTH CONTROL BECAUSE THEY WERE NOT HAVING SEX. **DENIAL DENIAL DENIAL** WHEN THEY WOULD BECOME PREGNANT THEY WOULD DENY THAT TOO. SOME OF THEM WOULD DENY IT SO LONG THAT NOONE SUSPECTED IT UNTIL THEY WERE ABOUT TO HAVE THE BABY. OTHERS WOULD WANT "IT" REMOVED SO THEIR PARENTS WOULD NOT FIND OUT, THEY WERE HAVING SEX. GIRLS WOULD TRAVEL AT THAT TIME TO JAMESTOWN FOR THE ABORTION. ABORTIONS ARE STILL SECRETIVE I BELEIVE MAINLY DONE OUT OF THE SHAME AND DENIAL OF THE CONSEQUENCES ATTACHED TO HAVING SEX.
EVEN THOUGH ABORTION IS LEGAL WOMEN STILL FEEL THAT SAME SHAME AND DENIAL, WOMEN DO NOT OPENLY DISCUSS HAVING A ABORTION LIKE THEY DO AY HAVING SOME ENDOMETRIS REMOVED. IT IS STILL SECRETIVE . THE DENIAL IS WHAT HAS KEPT ABORTION IN OUR COUNTRY. WOMEN DENY THEY ARE PREGNANT WITH HUMAN LIFE,THE FIRST FEW MONTHS OF PREGRENANCY A WOMEN DOES NOT WALK AROUND SAYING I HAVE FETAL TISSUE,**NO** SHE SAYS I AM GOING TO HAVE A BABY, THAT IS IF SHE IS NOT PLANNING ABORTION, IF SHE IS CONTEMPLATING AN ABORTION VERY FEW PEOPLE WILL KNOW OF THE PREGANANCY. IF THIS SUCH

THE RIGHT CHOICE WHY ALL THE SILENCE.
DENIAL IS WHAT HAS KEPT ABORTION IN OUR COUNTRY. WOMEN DENY THEY ARE PREGNANT WITH HUMAN LIFE AND THE REST OF US KEEP THEIR SECRET.
IT IS SO EASY TO DESTROY SOMETHING YOU CAN'T SEE. MY DAD TOLD ME THAT ON THE FARM WHEN HE WAS GROWING UP THAT TO CONTROL PET POPULATION THEY WOULD TAKE THE PUPPIES AND PUT THEM IN A GUNNE SACK AND TOSS THEM IN A CREEK.TODAY THE VET CAN REMOVE THE PUPPIES. I KNOW IT SURE WOULD BE ALOT EASIER EMOTIONALLY TO HAVE THE VET REMOVE THEM THEN FOR ME TO HAVE TO HEAR THEIR WHIMPERS AND SEE THE INNOCENCE IN THEIR EYES. BOTH HAVE THE SAME POPULATION CONTROL EFFECT ONE JUST ISN'T AS UNCOMFORTABLE TO DO. ISN'T IT IRONIC BACK THEN ABORTION WAS PROBABLY THOUGHT AS OUTRAGEOUS AND NOW PEOPLE WOULD SHUTTER IN THEIR BOOTS THINKING HOW COULD YOU DO THAT TO PUPPIES.IT IS EASIER TO DESTROY WHAT YOU CAN'T SEE.

ABORTION HAS DESENSITIZED OUR YOUTH. IT DOES NOT SURPRISE ME WHEN I HEAR OF A TEENAGER AT A PROM HAVING A BABY THEN DISCARDING IT. WE AS A SOCIETY HAVE TOLD HER DESTROYING LIFE IS OKAY; BUT WE LIVE BY A DOUBLE STANDARD SOCIETY SAYS THE BABY'S LIFE MUST BE TERMINATED BY A DOCTOR IN A STERILE ENVIRONMENT,THE DOCTOR EXTRACTING IT AND DISCARDING IT. THESE YOUNG WOMEN WERE IN THE DENIAL STAGE TOO LONG,NOW THAT A BABY IS KILLED AND THE PUBLIC CAN SEE IT , THE PUBLIC CRYS IN OUTRAGE.
WHY HAVEN'T CRIED OUT SOONER FOR THE BABIES THAT CAN'T BE SEEN

DENIAL DENIAL DENIAL.
PLEAE PASS SB 2418
OUR YOUTH, OUR BABIES IN OUR SOCIETY DO HAVE VALUE LET'S STOP DESTROYING OUR MOST PRECIOUS GIFT, OUR FUTURE, OUR FUTURE LEADERS
AND ON A LIGHTER NOTE FUTURE TAXPAYERS.

SUSAN BEEHLER 702 14TH ST NW MANDAN ND 58554
663-4728

PERSONAL TESTIMONY BEFORE THE N.D. SENATE HUMAN SERVICES COMMITTEE SENATE BILL # 2418 BY DICK DEVER FEBRUARY 2, 1999

Mr. Chairman, members of the committee, my name is Dick Dever. I am a resident of Bismarck.

I am here this morning to share with you my most memorable Christmas. It was Christmas Eve in 1980. My wife, Pam, and I were living in Billings, Montana with our 21 month old son, Justin. We were expecting our second child -- for Easter. Adam decided to come for Christmas.

We went to the hospital at about 4:00 in the afternoon. Adam was born at two minutes before midnight. In the interim, our emotions ran the full gamut.

The doctor came in and visited with us. In his best, solemn, bedside manner, he told us that he would expect the baby would weigh about three pounds. He said that if there were any difficulties, we would fly him to Denver for critical care.

I remember feeling the need to protect my wife from the very real possibility that the outcome might be disastrous. We were not expecting this child for another nine weeks. We hadn't prepared a nursery. We hadn't considered any names. It wasn't time yet. I felt the need for both of us to detach ourselves emotionally. That feeling lasted only -- until -- we laid eyes on him. Our resistance was melted by the love that we felt for him immediately.

It is my understanding that, in some areas of our country, we could have decided, even at that stage of the pregnancy, to have an abortion -- to eliminate the possibility of a negative outcome.

Let me correct that. It is my understanding that, in some areas of our country, my wife could have decided to have an abortion. Some people believe that men do not have any right to say anything about this decision.

I'm here to tell you this morning, that until men begin to stand up to their God-given responsibilities toward women, we will continue to see a breakdown in the family and a decay in the morality of our society.

One of the difficulties of the abortion issue is that the opposing sides focus differently on the issue. Pro-lifers focus on the life of the baby. Pro-abortionists focus on the right of a woman to choose. Let me point out to you that the pro-life position is not exclusive of

the interests of the woman. The pro-abortion position, on the other hand, is exclusive of the life of the baby. The result of every successful abortion is a dead baby.

In my view the whole issue of abortion comes down to one question – is it a human life? Or, is it not?. If you believe that it is not - that is, if you believe the pro-abortionist view that it is simply a piece of human flesh -- a part of the woman's body, then they are right - nobody has a right to limit the woman's right to choose what to do with her body.

If, on the other hand, you believe, as I do, that it is a human life, nobody has a right to take that life, except to save the life of the mother.

As I conclude my comments, I would welcome any questions you might have, but first I would like to ask you one.

When Adam was born, nine weeks early, I can tell you absolutely, positively, no two ways about it, without question, he was every bit as much a living breathing human being as he is today, (perhaps even more so since he's a teenager now). Can any of you tell me when his life began?

Thank you.

TESTIMONY OF DOUGLAS A. BAHR
SENATE BILL NO. 2418

Senate Human Services Committee
February 2, 1999

Chairman Thane, members of the Senate Human Services Committee, I am Doug Bahr, Acting Solicitor General with the North Dakota Attorney General's Office. I am here today on behalf of the Attorney General's Office to provide you with some information about the likely consequences of passage of Senate Bill 2418.

If Senate Bill 2418 is enacted into law, there is no doubt that its constitutionality will be challenged in the courts. In the view of the Attorney General's Office, a court reviewing Senate Bill 2418 would likely hold the bill unconstitutional. Our concern with the constitutionality of Senate Bill 2418 is based on a long line of decisions of the United States Supreme Court. In June 1992, in a case entitled Planned Parenthood v. Casey, 112 S. Ct. 2791 (1992), the United States Supreme Court refused to overturn Roe v. Wade, which, as I am sure you know, established a woman's right of choice in the abortion context. Based on Casey, the current constitutional law is that states may regulate abortions but only if such regulations do not impose an "undue burden" on a woman's right to obtain an abortion. In Casey Justice O'Connor stated the undue burden test as follows: "An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus obtains viability." 112. S. Ct. at 2821.

The Pennsylvania statute at issue in Casey was not a prohibition statute like Senate Bill 2418; it was very similar to North Dakota's current abortion informed consent law. Although in Casey the Supreme Court upheld the informed consent provisions of the Pennsylvania law, it struck down a spousal notification requirement. The Court held that a spousal notification requirement is unconstitutional because "[i]t does not merely make abortions a little more difficult or expensive to obtain; for many women, it will impose a substantial obstacle." 112. S. Ct. at 2829.

In our opinion, Senate Bill 2418 would not meet constitutional muster under Casey's undue burden test. This bill does not merely make abortions a little more difficult or expensive to obtain; it makes it a felony in North Dakota to intentionally destroy or terminate the life of a preborn child. This prohibition places a substantial obstacle in the path of women seeking an abortion before a fetus obtains viability. Justice O'Connor wrote in Casey, "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." 112. S. Ct. at 2821. Senate Bill 2418 effectively prohibits a woman from making that decision.

Since Casey, the courts have uniformly applied the "undue burden" test when addressing the constitutionality of statutes restricting access to abortions. For example, in 1997 the United States Supreme Court issued a decision in Mazurek v. Armstrong, 117 S. Ct. 1865 (1997), which involved a challenge to a statute restricting

the performance of abortions except by licensed physicians. The Court again applied the "undue burden" test.

Since 1992 courts have also uniformly found statutes that prohibit abortions before viability to be unconstitutional. For example, in 1992 a federal district court in Utah held an abortion prohibition bill unconstitutional. Jane L. v. Bangerter, 809 F.Supp. 865 (D. Utah 1992). The Utah statute, unlike Senate Bill 2418, contained exceptions for reported rape and incest and threats to the life or health of the pregnant woman. It also had an exception for instances in which the fetus was likely to be born with grave defects. The federal court held that, despite these exceptions, the Utah statute's prohibition on abortions before 21 weeks gestation was unconstitutional under the Supreme Court's decision in Casey.

The Supreme Court's action in refusing to hear an appeal in an abortion case arising out of Guam provides further support for the argument that Senate Bill 2418 would be found unconstitutional. The Guam abortion statute prohibited all abortions except in cases in which continued pregnancy would endanger the life or health of the pregnant woman. See Guam Soc'y of Obstetricians and Gynecologists v. Ada, 776 F. Supp. 1422, 1424 (Guam 1990), aff'd, 962 F.2d 1366 (9th Cir. 1992), cert. denied, 113 S. Ct. 633 (1992).

The federal district court in Guam held that the Guam statute was unconstitutional under Roe v. Wade. 776 F. Supp. 1423. The Ninth Circuit Court of Appeals agreed, finding that the law would violate both Roe v. Wade itself and Justice O'Connor's "undue burden" test. 962 F.2d at 1373.

In November 1992 the United States Supreme Court denied certiorari in the Guam case, declining to review the ninth Circuit's decision. 113 S. Ct. 633. The general rule is that the Supreme Court's denial of certiorari is not to be given any precedential value. In this particular case, however, the Supreme Court's denial of cert. generally has been seen as sending a signal that the "undue burden" test is here to stay. The cert. denial in the Guam case is also seen as further evidence that prohibition statutes like the Guam statute (and Senate Bill 2418) will not survive constitutional scrutiny.

Based upon current law, it will be difficult to make a good faith argument that SB 2418 is constitutional. Under both the state and federal rules of civil procedure, when an attorney signs a pleading the attorney is certifying that the attorney believes the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. There appear to be two ways to defend Senate Bill 2418--directly challenge Roe v. Wade and its progeny or argue criminalizing abortions in North Dakota does not place a substantial obstacle in the path of woman seeking abortions. In Casey the Supreme Court rejected the opportunity to reverse Roe v.

Wade, and nothing indicates the Court's position has changed. Although the second argument is factual, the previously mentioned cases indicate criminalizing abortion would impose a substantial obstacle in the path of a woman seeking an abortion.

As previously mentioned, if Senate Bill 2418 becomes law, we anticipate that there will be a lawsuit challenging the constitutionality of the bill. It is difficult to estimate the cost of a lawsuit defending Senate Bill 2418. If the statute is found unconstitutional, it is likely the state will be required to pay the plaintiff's attorney's fees and costs. Although normally each side must pay its own attorneys fees in a lawsuit, I am sure a lawsuit challenging SB 2418 would be brought pursuant to the federal civil rights act, and the state would be required to pay all attorneys fees and costs to a prevailing plaintiff. Depending on the amount of fact discovery required and to what level the case was appealed, I estimate the costs of the lawsuit would be in the range of $75,000 to $200,000.

I suggest that if the committee recommends a do pass on the bill, that a fiscal note be requested and a contingent appropriation for the defense of the bill be included.

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Federal Civil Rights Acts - be a State cost.

Testimony in support of SB 2418

By Tim Lindgren
State Director, North Dakota Life League

I am testifying in support of SB 2418.

This bill will outlaw all abortions in the state of North Dakota while at the same time provide for equal protection under law for women who are pregnant with child and for their preborn children.

I would like to address a concern that some have expressed in regards to this bill. Immediately, I would like to refer you to a possible amendment which may alleviate some concerns over the fact that a mother under extreme duress or with extenuating circumstance could possibly be charged with committing a felony. I am not opposed to an amendment that reduced the charge to a misdemeanor for a mother committing an abortion of her own preborn child.

Nonetheless, it is constitutionally and legally important to maintain some criminal penalty in order to be consistent with the truth that a preborn child is a unique person separate and distinct from his mother. One cannot allow a person – even while under severe stress – to kill another human being. To eliminate all penalty would violate the equal protection of the 5th and 14th Articles of the Bill of Rights as well as the stated right to life of individuals in the North Dakota Constitution.

SB 2418 is a new approach to providing protection for preborn children, for their mothers, families and all of society.

The Roe v. Wade decision which struck down North Dakota laws protecting preborn children was based three basic legal theories. One was that the right to privacy superseded the right to life. Two, was that there was no legal precedent to establish that the word person in the US Constitution includes preborn children. Three, was that there was insufficient evidence to determine the personhood of preborn children.

Justice Blackman, who wrote the Roe decision, pointed out that the Texas statute itself was at odds with its own claim that preborn human beings were equal to born human beings by allowing an exception for the life of the mother. Blackman also said that if personhood could ever be established the arguments in support of the Roe v. Wade decision would fall apart.

This bill has eliminated the exceptions which make it consistent with the equal protection of the fifth and fourteenth amendment which says that no person shall be deprived of life without due process of law. Advances in medical technology today confirm that life begins at fertilization and that each life is unique and clearly identifiable. This bill addresses the legal arguments of the Roe v. Wade decision.

Roe said that medically safe abortion poses no significant health risks to the mother. Numerous studies since Roe have proved that assumption false. There are evidences of numerous physical complications and psychological and emotional side effects. There is at least one study which states that post-abortion trauma is greater for women than post-rape syndrome. Divorce and child abuse are evidence of the undermining effects of abortion upon our society.

It is time for a new strategy, one based squarely on principle that the taking of innocent life is never tified. This bill seizes the moral and constitutional high ground and has a realistic chance to succeed. I invite

the Committee to vote "do pass" on this bill. It will be for the good of preborn children, the women of our state, families and the common good of all the member of our society, born and preborn.

Joy P. Johnston
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Opposing Testimony for SB 2418
Senate Human Services Committee
February 2, 1999

Mr. Chairman, members of the Senate Human Services Committee:

My name is Joy Johnston. I am representing myself.

Before I begin my testimony, I would like to ensure the committee understands that the testimony brought before you is my opinion. I work for an organization that spends a lot of time at the legislature. Many of you may know me from that connection. However, the organization I normally represent does not have the issue of reproductive rights in its mission. Therefore, the testimony I am providing is neither endorsed nor representative of my employer. I have taken personal time to present this testimony. I hope the committee understands this and does not associate my personal testimony and its contents with my employer.

I can honestly tell you that other lobbyist colleagues have strongly discouraged me from providing this personal testimony. In their opinion, the nature and emotion of the issue may cause some people to not be able to separate business from personal opinions. My colleagues believe my testifying in a personal capacity will negatively impact my job. I hope not.

I provide testimony in opposition to SB 2418.

My testimony is divided into three parts: the scope of SB 2418, the US Constitutional authority to oppose SB 2418 and the North Dakota authority to oppose SB 2418.

Scope of 2418

SB 2418 is an attempt to prohibit a woman from seeking an abortion. However, the terminology of SB 2418 goes far beyond the traditional term that to most of us means abortion. The definition of "preborn child" under section 1 of the bill includes the time from fertilization to natural birth. The result of SB 2418 would be to outlaw several types of commonly used, FDA approved, legal methods of contraceptives. Those include oral contraceptives, more commonly known as birth control pills, the Depo Provera injection and Norplant implants.

How so?

Birth control pills are the most frequently used reversible method of birth control used by women in the US today. Today's birth control pills combine synthetic estrogen with synthetic progesterone. The Pill prevents conception by inhibiting development of an egg in the ovary. The pituitary gland controls the hormone (FSH) that stimulates egg development. The birth control pill elevates the level of estrogen in a woman's body. If the estrogen level is elevated, the pituitary gland will not release the FSH. Without FSH, the ovary should remain inactive and an egg should not develop. It is the second hormone in the birth control pill that SB 2418 would outlaw. If an egg does develop, the synthetic progesterone or progestin in the Pill acts as a backup measure to prevent pregnancy. It thickens cervical fluid, slowing the mobility of the egg and the sperm. Progestin also prevents the complete development of the uterine lining so a fertilized egg cannot implant.

Some women also are prescribed progestin-only pills.

The FDA approved the Depo Provera injection in 1992. It is marketed as a progestin-only hormonal contraceptive. Its effectiveness is 14 weeks. Injections are given every three months. It inhibits egg maturity. And the progestin also prevents egg implantation in the uterus.

Norplant is a long-lasting hormonal implant available in the US since 1994. Norplant are 6 match-sized capsules containing the same synthetic progestin and estrogen present in some birth control pills. The capsules are implanted in a woman's arm. Like the other contraceptives mentioned above it too inhibits ovulation, thickens and decreases cervical fluid and causes endometrial thinning to prevent implantation. Norplant is effective for 5-years and can be removed any time prior to reestablish fertility.

US Constitutional Authority

Banning the use of contraceptives and abortion is not legal in the United States. In Eisenstadt v. Baird 405 U.S. 438 (1972), the Supreme Court found "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Contraception is legal.

Furthermore in Roe v. Wade, 410 U.S. 113 (1973) the Supreme Court declared "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

The Court did not find the right absolute. The State has a legitimate "compelling" interest in preserving the life and health of a pregnant woman. The "compelling" point for the state is in the second trimester of the pregnancy. The Court stated, "This means, on the other hand, that, for the period of pregnancy prior to the "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the

State, that, in his medical judgement, the patient's pregnancy should be terminated. If that decision is reached, the judgement may be effectuated by an abortion free of interference by the State."

In the second trimester of a woman's pregnancy, the State, may "regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." North Dakota, for example, requires abortions to be conducted by a physician and after the first twelve weeks in a hospital. (NDCC 14-02.1-04 sections 1 and 2.) As recently as 1992, in Planned Parenthood v. Casey, 505 US 833 (1992), the US Supreme Court reaffirmed Roe v. Wade but defined the types of regulations the State may impose during the second trimester. The Casey test is that the government cannot pass laws that "have the purpose or effect in placing a substantial obstacle in the path of a woman seeking an abortion."

In the third trimester of pregnancy, the State may shift its "compelling" interest to the preservation of the "potential life." In fact, the Court allows the State to "proscribe abortion during that period, except when necessary to preserve the life or health of the mother." North Dakota has done so in section 3 of NDCC 14-02.1-04.

SB 2418 prohibits abortion from "fertilization to natural birth." The bill exceeds the time where the state may proscribe an abortion.

ND Constitutional Authority

The proponents of SB 2418 are asking the North Dakota Legislature to pass a law that violates the Constitution of the United States. Article I, Section 23 of the North Dakota Constitution states, "The state of North Dakota is an inseparable part of the American union and the Constitution of the United States is the supreme law of the land." SB 2418 violates the Fourteenth and Ninth Amendments of the Constitution of United States.

In conclusion, to pass SB 2418, it would also require the legislative assembly to violate the oath of office it members took as prescribed in Article XI, Section 4 of the North Dakota Constitution. You, the legislators, agreed to support both the Constitutions of the United States and of the State of North Dakota. SB 2418 asks you to violate your oath.

I urge the Human Service Committee to uphold the law of the United States, North Dakota and its citizens by recommending a "do not pass" for SB 2418.

Thank you for the opportunity to provide testimony.

Sources

Our Bodies Ourselves for the New Century, Simon and Shuster, 1998 edition.
Chapter 13 by Susan Bell, Lauren Wise, Susannah Cooper-Doyle, Judy Norsigian

Planned Parenthood website: www.plannedparenthood.org

Eisenstadt v. Baird, 405 U.S. 438 (1972)

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

Amendment 14, Article 1, US Constitution (ratified 1868)

Amendment 9, US Constitution (ratified 1798)

Article 1, Section 3, North Dakota Constitution (1889)

Article XI, Section 4, North Dakota Constitution (1889)

Testimony before the Senate Human Services Committee
February 2, 1999
Re: SB 2418

Mr. Chairman, members of the committee, my name is Carol Gass and I am representing the Red River Women's Clinic, a facility providing family planning and abortion services.

North Dakota has a very inclusive Abortion Control Act (14-02.1). It includes:

* informed consent provisions
* waiting periods
* parental consent notification
* restrictions on where an abortion may be performed
* criminal penalties for noncompliance with the Abortion Control Act
* reporting requirements to the state health department
* provisions to protect a viable fetus
* proper disposal requirements for a nonviable fetus
* more penalties for violating a rule or regulation of the Abortion Control Act.

We have sections, subsections, subdivisions, sentences and clauses - then we have more penalties.

North Dakota has in effect at this time some of the most restrictive laws regulating abortions in this country.

Then, along comes Section 3 of SB 2418 which repeals the Abortion Control Act.

Apparently the initiators of this bill feel that if it is passed there will be a court challenge. And Sections 1 and 2 will be found unconstitutional. If they did not feel that way, they would not have included Section 4.

Section 1 of SB 2418 bans all abortions and criminalizes the procedure. The term "preborn child" is just substitute language for fetus. Whatever term is used, neither has acquired personhood in the law.

Section 2 again bans all abortions and subjects a physician to license revocation. Line 17 designates the "life of the mother and the life of the preborn child" as having equal status.

On January 22, 1973 Roe v. Wade and Doe v. Bolton were decided by the U.S. Supreme Court. They remain the law of the land.

Roe established that:

1. Abortion is encompassed within the right to privacy.
2. Restrictions on abortion must be narrowly tailored to serve compelling state interest.
3. Before viability, the state's interest in fetal life is not compelling.
4. Even after viability, when the state's interest in fetal life becomes compelling, the state must allow abortions necessary to protect a woman's life or health.
5. The state's interest in maternal health becomes compelling at the end of the first trimester of pregnancy.
6. A fetus is not a "person" under the Fourteenth Amendment, nor may the state justify restrictions on abortion based on one theory of when life begins.

In Doe, the Court defined "health" to include "all factors - physical, emotional, psychological, familial and the woman's age - relevant to the well-being of the patient."

In its entirety SB 2418 is overreaching and unconstitutional. If passed, and challenged in court, it would be costly for the state to defend.

This is what is called a bad bill. Please vote Do Not Pass.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

NORTH DAKOTA STATE DIVISION

My name is Sally Oremland and I represent 432 members of the American Association of University Women (AAUW) in North Dakota.

AAUW is opposed to SB 2418. The United State Supreme Court's 1973 ruling in Roe v. Wade legalized abortion for all women and found abortion to be a constitutionally protected "fundamental right." The Court determined that the right to privacy extends to the decision of a woman to terminate her pregnancy. Roe also held that before viability, states may not interfere with a woman's right to make her own decisions about abortion.

AAUW stands behind a woman's right to choose as articulated in the Roe decision. We support the right of every woman to safe, accessible, and comprehensive reproductive health care, and believe that decisions concerning reproductive health are personal ones that should be made without governmental interference. We trust that every woman has the ability to make her own choices concerning her reproductive life within the dictates of her own moral and religious beliefs.

Until threats to reproductive freedom end, AAUW's advocacy of a woman's right to safe, accessible, and comprehensive reproductive health care will remain an integral part of its efforts to gain equity and justice for all women.

Please vote no on this unconstitutional bill. Thank you.

Testimony on SB 2375 and SB 2418
1999 North Dakota Legislative Session

Sandra M. Donaldson
606 S. 4th Street, Grand Forks, North Dakota 58201

Chairman Thane and Members of the Committee on Human Services,

As a measure both of the complexity of the issue of abortion and of the depth of the intelligence of the citizens of our state and indeed our country, I would like to offer you an observation: polls show, people say, and reason affirms that the great majority of people are both pro choice and anti abortion. This is a paradox but not a contradiction.

In fact in a letter published in a recent edition of the Grand Forks Herald (31 January 1999), Bjorn J. Hall of Park River makes just this observation. He says "I am pro-choice but definitely not pro-abortion, as odd as that may sound." Howevermuch we may want all families to be loving and supportive, howevermuch we may want our children not to experiment with their emerging sexuality, and howevermuch we may want abortion to be a relic of our past -- that is not the case. And when women become pregnant without intending to be, what to do about it is up to them to decide -- we should not foreclose any procedure that is medically appropriate for an individual.

Another letter, this time from the Wall Street Journal of last summer (28 August 1998), has helped me grapple with the issue of intact dilation and extraction (D&X). "Dangerous legislation" is what Ralph W. Hale, Executive Vice President of the American College of Obstetricians and Gynecologists, called the bill before Congress at that time which was termed the "Partial-Birth Abortion Act." He said

> In certain circumstances, an intact D&X may be the most medically appropriate procedure to save the life or health of a woman, and only a doctor, in consultation with the patient and based on the individual circumstances, can make this decision. Moreover, this bill may inadvertently outlaw other obstetric and gynecologic techniques used in both abortion and non-abortion procedures that are critical to the lives and health of American women.

A similar bill and others seeking to deny women the right to their own determination about reproduction are or will soon come before you. I urge you to heed the softer voices of your constituencies who are saying that, yes, they would like to see abortions no longer performed, while at the same time they know that we have much to do to approach that ideal and, in the meanwhile, forcing women to bear children is not the answer.

Thank you.

Faxed testimony in support of S.B. 2418
as requested by Senator Russell Thane, Chairman, Senate Human Service Committee

By Tim Lindgren, State Director, North Dakota Life League

I submit this testimony by Fax in response to your personal request to do so at the hearing of SB 2418, February 2, 1999.

This testimony is submitted to clarify opposition testimony that SB 2418 would outlaw contraception. First of all it should be stated that this argument is used as propaganda by opponents of legal protection for preborn children.

Secondly, the word contraception is by its very definition the prevention of conception. The bill says nothing about banning conception rather it says that once conception or fertilization occurs, no person may destroy or terminate the life of the newly conceived human life.

Chairman Thane and the Senate Human Services Committee, I urge a do pass on this legislation. Thank you again for the opportunity to speak and submit this fax to you. I hope that a copy of this may be made for each of the Senate Human Service Committee members.

Denver

WSJ 8/28/98

Abortion Procedure Saves Women's Lives

Gene Tarne of the Physicians' Ad Hoc Coalition for Truth ("Partial-Birth Abortion Is 'Not Good Medicine'," Letters, Aug. 19) misrepresents the position of the American College of Obstetricians and Gynecologists (ACOG). Mr. Tarne intentionally misleads the reader into believing that since we refer to so-called "partial-birth abortion" legislation in our opposition statements that this somehow constitutes an acceptance of the phrase. It does not.

ACOG has consistently opposed the "Partial-Birth Abortion Ban Act," which we believe was intended to prohibit a procedure correctly referred to as intact dilation and extraction (D&X). In certain circumstances, an intact D&X may be the most medically appropriate procedure to save the life or health of a woman, and only a doctor, in consultation with the patient and based on the individual circumstances, can make this decision. Moreover, this bill may inadvertently outlaw other obstetric and gynecologic techniques used in both abortion and non-abortion procedures that are critical to the lives and health of American women.

Proponents of this legislation delude themselves. Continually repeating a politically coined term does not confer legitimacy—medical or otherwise—on that term or on dangerous legislation.

RALPH W. HALE, M.D.
Executive Vice President
American College of Obstetricians and Gynecologists
Washington

NORTH DAKOTA CATHOLIC CONFERENCE
NDCC

Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

Statement on Senate Bill 2418

The North Dakota Catholic Conference believes in the sanctity of all human life and works and prays for an end to all abortion in North Dakota. The quest to protect all human life must vigorously move forward. We must, however, never move backwards or risk losing important accomplishments in the cause of life. Senate Bill 2418, while its intentions are noble, weakens existing protection for unborn children and, in the worst case, risks losing all the accomplishments of the pro-life movement in North Dakota during the last two decades.

Even if the bill passed constitutional scrutiny, the bill repeals important provisions protecting human life and respecting the dignity of women victimized by abortions. Even if found constitutional, the bil':

- ***Significantly lowers the penalty for killing an unborn child.*** The bill eliminates distinctions between abortion and any other killing of an unborn child by making all intentional killing of an unborn child a Class B felony (maximum ten years imprisonment.) However, North Dakota' unborn homicide statute presently makes intentionally killing an unborn child a Class AA felony (N.D.C.C. § 12.1-17.1-02, life imprisonment with possible parole.) SB 2418, having passed later in time, would prevail, thereby lowering the penalty for killing an unborn child.

- ***Possibly criminalizes the mother who received the abortion.*** SB 2418 does not limit the class of potential offenders to exclude the mother receiving the abortion. From the perspective of the Catholic Church, a woman receiving an abortion is often a second victim, not a criminal.

- ***Repeals the crime of concealing the death of a newborn child.*** SB 2418 would repeal the crime of concealing the death of a child under two years of age (N.D.C.C. § 14-02.1-10). This is an important tool for state's attorneys to address deaths of children and helps protect human life.

- ***Repeals the requirement that the state provide information on services and agencies available to assist pregnant women.*** (N.D.C.C. § 14-02.1-02.1) Even in a society where all abortions are illegal women will face crisis pregnancies and deserve help.

- ***Repeals the state's obligation to provide printed materials on unborn development.*** (N.D.C.C. § 14-02.1-02.1) Even in a society where all abortions are illegal, the state should educate women about the humanity of the unborn child, if only to curtail the temptation to obtain an illegal abortion.

- ***Removes civil remedies for failing to follow the law.*** North Dakota Century Code section 14-02.1-03.2 provides civil remedies against

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persons failing to follow the law. SB 2418 repeals this section and the only action available under the new law would be criminal action.

- ***Removes protection of the woman's privacy.*** Under North Dakota Century Code section 14-02.1--03.3, the privacy of the woman involved can be protected in any proceeding. SB 2418 repeals that provision and does not provide any privacy in proceedings concerning violations of that law.

- ***Not prohibit Medicaid-funded abortions.*** Federal requirements that Medicaid fund abortions in cases of rape, incest, or the life of the mother preempt any state law.

While this list is not exhaustive, it demonstrates some ways SB 2418 would actually weaken protection for unborn children, even if the law were found constitutional.

If the law were found unconstitutional, we could risk losing even more. The bill repeals all of North Dakota's Abortion Control Act (Chapter 14-02.1). The bill provides an antiseverability clause intended to save the Abortion Control Act if any part of the bill was "declared unconstitutional." However, use of such a clause is unprecedented in North Dakota and may not work. Hoping it would work is taking a risk that puts in jeopardy two decades of work on pro-life legislation.

Moreover, on its face, the antiseverability clause does not address some very possible scenarios. The clause is only applicable sections 1 or 2 of the bill are "declared unconstitutional." If the sections were not given effect for any other reason, we would have no laws prohibiting or restricting abortions. For example, it is very likely that opponents of the law would immediately file a motion for a temporary injunction preventing enforcement of the new law pending a final resolution on the merits -- something that could take months, even years. A granting of such a motion is not a "declaration" that the law is unconstitutional. What laws would we have in such a case? Since the antiseverability clause only applies when the law is "declared unconstitutional," what is to prevent a court, at a plaintiff's request, from enjoining Sections 1 or 2, but not Section 3?

In conclusion, the North Dakota Catholic Conference cannot support Senate Bill 2418 as it is written. Even if found constitutional its provisions remove important pro-life policies in existing law. If found unconstitutional, we risk losing two decades of pro-life accomplishments.

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Josh Lawrence

Good Morning Mr. Chairmain and members of the ~~education~~ sen. commitee. I am here today to speak for [redacted] S.B. 2418. The only word you can use to describe abortion is evil. You see, even when that baby is only the size of ~~the~~ your thumbnail, it has a heartbeat, its alive. Because of this, how can you vote to allow people the right to murder young, inocent babies. This isn't ~~about~~ time to let action opinion or studies. Its time to do whats right. If people would have listened to opinion polls 80 years ago, women wouldn't have the right to vote today. As lawmakers of this great state, you are called upon today to do whats right, not whats ~~ac~~ to often accepted. 100 years ago, the rights of a minority were questioned. It took 4 yrs of brothers shedding blood, a Presidential proclamation, and a man who had a dream to take us to the place we are today. How many more inocent children will you silence today?

~~William Penn once said "Right Righ~~
~~"Choose what is right~~

William Penn once said "Wrong is wrong even if everyone is for it.
and right is right, even if everyone is ~~for~~ against it.
today, chose what is right.