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ROLL NUMBER

DESCRIPTION

2400

2007 SENATE HUMAN SERVICES

SB 2400

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2400

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-6-07

Recorder Job Number: 2916

Committee Clerk Signature *Mary K Monson*

Minutes:

Chairman Senator J. Lee opened the hearing on SB 2400 relating to the state policy on abortion and childbirth.

Senator Terry Wanzek (District 29) introduced SB 2400. (Attachment #1)

Senator Dever referring to the laws on the books regarding when a pregnant mother is murdered and the perpetrator is charged with two crimes, asked how they address the notion that the child is human.

Senator Wanzek replied that he had just read an article where an individual was charged with the death of an unborn child when the mother did not die as a result of the incident. He thought there were some federal efforts to address that.

Representative Ralph Metcalf (District #24) testified in support of SB 2400.

Representative Karen Karls (District #35) testified in support of SB 2400. It says that children in the womb should be given the same protection we have as citizens of this state and nation.

Tom Freier (ND Family Alliance) testified in support of SB 2400. (Attachment #2)

Senator Dever asked if he could respond to the question he had asked Sen. Wanzek earlier.

Mr. Freier distributed some background material (Attachment #3) and referred him to page 8 that said in Chapter 12 there are parts of our century code that talk about the unborn child and the protection thereof.

Senator J. Lee asked why we need this.

Mr. Freier responded that the purpose of this bill is to bring the discussion back to the very basics of what this discussion has always been about. That is, when does life begin and when should it be protected.

Senator Warner said there has been a movement on the national level to deny citizenship to children of illegal immigrants born in this county. Would this repudiate that sort of movement?

Mr. Freier said what really needs to happen is to debate the issue of when life begins and when that person is an individual and then look at those individual areas that might have an influence on that. The first thing is to determine when that life begins and when that basic right is given to that person.

(Meter 17:45) Discussion followed about citizenship, where they are born, and the need for passports.

Mr. Freier emphasized what needs to be considered is what the premise of the bill is and what they are trying to accomplish and that is to extend those rights to the unborn. Then, other questions that come up can be dealt with individually on their own merits.

Senator Pomeroy asked if this bill would outlaw the morning after pill.

Mr. Freier said that goes back, once again, to the individual questions. He doesn't think this bill has the premise to outlaw anything.

Steve Cates (meter 23:55) testified in support of SB 2400. He said that research is readily available. Any nursing textbook that you pick up is going to speak of the human life as a gapless continuum.

Current technology allows for premature children to survive after 22 weeks post creation.

Senator J. Lee asked what he saw as additional needs for the citizenship designation and protecting children born or unborn as compared to the statute we currently have.

Mr. Cates said they are not fully protected. There is a mechanism to destroy an unborn human being. They are not officially designated in the law as human beings.

Bill Schuh (meter 31:30) testified in support of SB 2400 as a private citizen. He made three points. 1. There is a real logical disconnect in how the unborn is viewed.

2. Another problem is that there are a number of statements that we don't know exactly when life begins, but as parents, we know.

3. There are new procedures that are supposedly less invasive than amniocentesis where they can identify downs syndrome earlier. He's heard estimates of as many as 85% of downs children are expected to be killed because of this.

Chris Dodson (ND Catholic Conference) (meter 35:10) said that it is an odd thing to work for the Catholic Church on this issue and he has never invoked a religious doctrine on behalf of protecting unborn lives. It's the other side that raises a matter of philosophy and religion. It is a scientific issue, a factual issue, a matter of logic, and therefore, it is a legitimate function of legislative bodies to determine when life begins. This bill establishes that in the parameters of ND law an unborn child is a human being. There is no act that it would actually prohibit. He sees it as a guide for interpretation of state law where there are questions or ambiguities with regard to what is a human being.

(Meter 37:54) He had some concerns with the bill as written. He thought the intent could be maintained with a few changes. 1. It needs to be removed from the chapter that it was put in.

2. If there are any questions regarding the language prohibiting age discrimination, it probably doesn't need to be there.
3. The questions regarding citizenship can be taken care of. Citizenship is really a function of the federal government.

Senator J. Lee asked Mr. Dodson if he would consider giving recommendations for appropriate amendments.

Mr. Dodson said he could do that.

Connie Hildebrand testified in opposition to SB 2400. (Attachment #4)

Amy Fast (ND Chapter of the National Association of Social Workers) testified in opposition to SB 2400. (Attachment #5)

Senator Dever said that part of the problem with the abortion debate in this country is that on the pro life side of things the focus is on the child. On the pro choice, it's on the woman. When you talk about self determination you're talking about the woman. What about the child?

Ms. Fast deferred to Ms. Hildebrand who replied: There is a big difference in their views on who has a choice. Their position is the woman has choices. They continue to reiterate that position.

Senator Dever asked then if their position was that the child does not have a choice.

Ms. Hildebrand said their position is that the woman has choices.

Betty Mills (League of Women Voters) testified in opposition to SB 2400. (Attachment #6)

Senator Dever was confused that the League of Women Voters, if non partisan and non political, take a position.

Ms. Mills said they do not take sides with a particular party. They do take positions on policy not issues.

Muriel Peterson (American Association of University Women) testified in opposition to SB 2400. (Attachment #7)

Renee Stromme (ND Women's Network) testified in opposition to SB 2400. (Attachment #8)

Tim Stanley (Planned Parenthood) testified in opposition to SB 2400. (Attachment #9)

Senator Dever pointed out the Mr. Stanley said in his testimony that this bill could be interpreted to grant the fetus the right to life. When is it a life?

Mr. Stanley replied that is what it appears the bill is not defining. (Meter 60:00)

Senator Dever said his son was born 9 weeks premature and asked Mr. Stanley if he was a life.

Mr. Stanley said that was not for him to judge.

Senator Warner gave an example of a pregnancy that was terminated because of a defect (Meter 60:30) and asked if this bill would prohibit that kind of action.

Mr. Stanley said that was a good question and thought it is the possible long term ramifications of this bill that could prevent that kind of termination.

Herbert Wilson testified in a neutral position on SB 2400. (Attachment #10)

Melanie Heitkamp spoke in a neutral position on her own behalf. She urged the committee to consider that there is a direct correlation to abortions and the rate of poverty.

The hearing on SB 2400 was closed.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2400

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-07-07

Recorder Job Number: 3020, 3069

Committee Clerk Signature

*Mary K Monson*

Minutes:

Chairman Senator J. Lee brought the committee to order to discuss SB 2400 and the amendments by Chris Dodson.

Mr. Dodson distributed the amendments he had drawn up. (Attachment #11) He explained that it hog houses the bill and puts it in the definition section of the code. Normally, in the ND century code a definition only applies within that chapter unless it states otherwise. But there is one chapter in the code that applies to definitions throughout the code. (Meter 2:20)

It accomplishes the same purpose, that the state recognizes a human being is a born or unborn. It doesn't prohibit anything. This would be an interpretive guide.

Senator J. Lee asked if no area of current law in ND would be changed with this definition being included.

Mr. Dodson couldn't answer.

Senator J. Lee was trying to find out if, by including the definition in this section, it would restrict abortion in areas currently not restricted by state law or that it's going to change any of the criminal penalties that are currently in place that might affect this particular situation more so than others. What changes would this bring?

Mr. Dodson said his legal view is that it wouldn't change anything. (Meter 5:00)



Senator J. Lee asked about unintended consequences.

Mr. Dodson (Meter 5:58) said it does two things. 1. It recognizes the humanity of the unborn child. It provides that as a general statement rather than just about a specific act.  
2. It provides a guide for interpretation that the legislature intends that an individual include unborn child as much as possible.

Senator J. Lee recognized Tim Stanley (Planned Parenthood) for comments on the amendments.

Mr. Stanley asked for time to have counsel look at the amendment to see what the unintended consequences would be.

Senator J. Lee asked for an interpretation as soon as possible.

Senator Erbele asked if the Family Alliance could comment on the amendment.

Tom Freier (Family Alliance) said they feel the intent is there.

Chairman Senator J. Lee recessed committee work.

**Job #3069**

Chairman Senator J. Lee brought the committee back to order for discussion on SB 2400. She reported that she sent a message to legislative council asking about the effect of amending the definition of individual. Her main concern was what other areas would be affected.

(Meter 00:55) Jennifer Clark, legislative council, responded with an e-mail. (Attachment #12)

Senator J. Lee recognized the good intentions of the amendment but still had concerns about changes in the citizenship section. She felt it was important to have more information about the change in that section.

Senator J. Lee asked what the goal of the bill is.

Senator Erbele replied that as ND we want to recognize the person of the unborn. (Meter 4:45)

Senator J. Lee asked if, by doing that, he is expecting that it will provide some rights that are not currently in law.

Senator Erbele said that according to Mr. Dodson it is an interpretive guide and as they move forward, if the question comes up, they can say this unborn child is an individual.

Senator Dever said the previous bill is an example. If a woman chooses to get care from a midwife, her choice to do that is one thing, but there needs to be concern about the outcome for the child.

Senator J. Lee asked Mr. Dodson to make a comment on the information from Jennifer Clark on how it affects other parts of the code.

Mr. Dodson said this would only be a definition guide (meter 10:00). Wherever an individual is defined specifically that section would control that definition. It's where there would be ambiguities and it would make sense is where the definition would be controlling or, at least, be guiding as how to interpret a particular statute.

Senator J. Lee asked if there is anything here that would change the circumstances if there was a change in the federal law.

Mr. Dodson answered that the only situation he could imagine is if the legislature had a prohibition on abortion in the code that used that definition, that term individual (Meter 13:00).

Senator J. Lee asked what the positive outcome would be of adopting this bill as amended.

Mr. Dodson said one positive thing is it would state that intent that has already be done on the limitations abortion chapter and the abortion control act that ND wants to recognize the unborn child to the extent possible by law. (Meter 15:00)

Senator J. Lee recognized Mr. Stanley.

(Meter 15:40) Mr. Stanley said that talking to legislative council they were able to confirm what Ms. Clark said about changing of the definition of "individual". The breath of that change would be just too incalculable at this point.

The basic argument is that the council feels the amendment does nothing to address the basic concerns of the bill.

They also believe that this would make women potentially vulnerable to prosecution for their behavior during pregnancy.

Additionally, the definitional problem is still not addressed. It just changes the problem from what is a pre born to what is unborn. There still is no definition to that. It leaves it wide open for court's interpretation.

Senator J. Lee asked if there was anyone who had something to add to the discussion.

Mr. Freier responded that their interest was: 1. Wherever that definition would fit best is what they would like to see. 2. The intent really is to designate that right to the unborn. That is what the original bill was attempting to do.

Senator J. Lee asked about the goal.

Mr. Freier said the goal is to give that status to the unborn.

Senator J. Lee adjourned the meeting.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2400

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-13-07

Recorder Job Number: 3445

Committee Clerk Signature

*Mary K. Monson*

Minutes:

Chairman Senator J. Lee opened SB 2400 for discussion and presentation of amendments.

Tom Freier addressed his amendment (Attachment #13). When they started this process there was one basic idea they wanted to bring forward. This amendment may come closer to bringing out the intent of the bill.

Senator Dever said it certainly appears to him to make it less onerous.

Senator J. Lee said her concern continues to be that, based on what the proponents of the bill have said, their intent is not to change anything in current law. This bill is going to create some confusion. Regardless of what one's position might be about the abortion law, she didn't think they should be passing bills that don't do anything. Her concern is about unintended consequences with whatever they might change in the section.

Senator Erbele, addressing Mr. Freier, said they moved this from section 1 of the definitions because they felt there was unintended consequences in there. He asked what makes this section better, what they call the abortion control act. Does it enhance anything?

Mr. Freier replied that the other definition area was the area that would mean that definition would comply to the entire century code. This chapter speaks only to abortion. Some of the

definitions in there do address how the words in that chapter are to be used because of that definition. This would be further defining and clarifying.

Senator Heckaman said she would contend that unborn is already there.

Mr. Freier said the word is used there but not necessarily defined.

Senator Erbele asked if there are any unintended consequences that could arise with it being here.

Mr. Freier didn't believe so (meter 8:50).

Senator J. Lee said there is some ambivalence possible and there will be people who say by making this change we are setting the stage to ban all abortion in ND, whether that is the intention or not. She had great reservations in her own mind about trying to do something different and creating any kind of foggy areas beyond what might already be there. She didn't see where they were doing anything really concrete, clear, and positive.

Mr. Freier said, in his mind, he believes it is a clarification as opposed to making it more vague.

Senator Dever asked if the purpose has the force of law (meter 14:00).

Senator Warner said his understanding is that the purpose sections are for clarity and when there is ambiguity in the law the courts look to the purpose section. The purpose is perfectly clear here. The ambiguity they are creating would be in the law section. He didn't think they would gain anything by amending this. He didn't think they would add anything to the clarity of the purpose, only obscure the law further.

Senator Dever said then what they are looking to do in the amendments is already defined in the purpose and it's only that the courts would lean in that direction.

Senator Warner said that would be his opinion.

Senator J. Lee asked Mr. Mullen, legislative council, if the purpose section statute has the force of law (meter 15:30).

(Meter 15:30) Mr. Mullen said the legislative council has a general policy in their legislative drafting manual urging people who draft legislation not to put a purpose into statutes. A purpose can have some affect in guiding an agency on how a law should be construed and applied. It can have some affect on courts as to how they would apply a statute.

Senator J. Lee asked the committee if they wanted to act on this amendment.

(Meter 17:20) There was discussion on who drafted the amendment, the clarity of what they are trying to do, and the ability to defend what is put into law.

Senator J. Lee said the Attorney General's office didn't see any clarity with what they were trying to do.

Senator J. Lee recessed the committee.

(Meter 21:54) Senator J. Lee brought the committee back to order.

Senator Erbele reported that he spoke to legislative council about this. They said if the committee goes ahead with this, this is definitely the place to put it because it doesn't create any unintended consequences that they could think of. Looking to the purpose it is fairly defined. (Meter 23:03) They did caution against using the word "means"

Senator J. Lee reported that she talked to the AG office and found that there is no definition for human or human being any place in any section of code. The concern there was that a word was being used in a definition which does not exist anyplace else in statute. That creates an issue.

Senator Erbele moved the amendment but change "means" to "is".

Senator Dever seconded the motion.

Senator J. Lee reminded the committee that when they look at amendments on a bill about which they have some concern they are supposed to, if an amendment is considered, make the bill better by amending it.

Senator Warner said to him this just reiterates what is already in the purpose section.

Senator J. Lee asked if he thought the amendment enhances the bill because it takes it out of the citizenship debate or not. Do they prefer the amendment or do they prefer the bill as it was originally. Which one is better in the event it passes?

Roll call vote 3-3-0. Amendment fails.

The non amended bill was in front of the committee.

Senator Pomeroy moved a Do Not Pass on SB 2400.

Senator Warner seconded the motion.

Roll call vote 4-2-0. Motion carried. Carrier is Senator J. Lee.

Date: 2-13-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2400

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken amendment

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman		✓
Senator Robert Erbele, V. Chair	✓		Senator Jim Pomeroy		✓
Senator Dick Dever	✓		Senator John M. Warner		✓

Total (Yes) 3 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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

*Failed*



Date: 2-13-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2400

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Sen. Pomeroy Seconded By Sen. Warner

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair		✓	Senator Jim Pomeroy	✓	
Senator Dick Dever		✓	Senator John M. Warner	✓	

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator J. Lee

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

**REPORT OF STANDING COMMITTEE (410)**  
February 13, 2007 12:03 p.m.

**Module No: SR-30-3045**  
**Carrier: J. Lee**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2400: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2400 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

SB 2400

Madam Chairman and members of the Human Service Committee, my name is Terry Wanzek, Senator from district 29, from Jamestown. I am here today to present to you SB 2400. I agreed to present the bill on behalf of the ND Family Alliance.

As I near my fiftieth birthday, March 28<sup>th</sup>, I have become more introspective in the acknowledgment of the finality of Life. The gift of Life can be so beloved, so treasured, so dear, so cherished yet so short and so vulnerable. As I grow older I only become more reverent and more respectful for Life. I can think of nothing more precious and more valuable! I consider it the greatest gift ever given to man by his creator.

Another realization, as I age, is the tremendous good fortune that I was born in the United States of America. I believe the second greatest gift any person can receive on this earth is Freedom! Our country's constitution is one that recognizes the value and worth of each human being and defends their inalienable right to pursue life, liberty and happiness. The course of history has proven Liberty's value with the blood that has been spilled in its defense.

This is a bill meant to highlight both North Dakota's respect for life and for freedom. The bill before you establishes that all citizens regardless of their order in

the continuum of life are granted the full rights of citizenship and protection within the law.

As we head into new times, we are faced with an ever increasing advancement of new technology. This new technology has allowed modern man to sustain and nurture life where it once was thought to be impossible. Regardless of your religious or moral standing on the issue of abortion, as a result of new technology, we will be faced with tough questions about the rights of persons in the pursuit of their lives, unborn and born. The law already presents some inconsistencies. In some parts of the law we provide protections for unborn children while dismissing protection for the unborn in other areas. It seems we already have made a conscious decision as a society to protect the unborn, however only when they are wanted. To be able to address any of these issues we ultimately have to determine at what point does the spark of life enter into each human being? Some of us contend that is at conception. Just like the grain of wheat when it breaks germination, it is the beginning stage in the journey of Life.

Madame Chairman and Senators this bill is attempting to establish that all citizens have equal protection under the law regardless of their stage in life. It states that all citizens should have an inalienable right to pursue life, liberty and happiness.



North Dakota  
**FAMILY  
ALLIANCE**

DEDICATED TO STRENGTHENING FAMILIES

*A Trusted Voice*

Tom D Freier  
EXECUTIVE DIRECTOR

Senate Human Services Committee  
SB 2400  
February 6, 2007

Senator Lee, and members of the Senate Human Services Committee, I am Tom Freier, and I represent the North Dakota Family Alliance. I am here in support of SB 2400.

First of all, thank you for hearing this bill dealing with this very sensitive and important issue.

Very simply, this bill would provide that the unalienable rights, that we all enjoy," of life, liberty, and the pursuit of happiness", would be available to the born and the unborn.

We believe that new human life begins at conception, and as such, deserves the same protection as you and I. This protection is due without regard for ethnicity, sex, physical health, condition of dependency, circumstances of creation, or age. Just as being an infant, adolescent, or adult should not temper our protection, the unborn deserves the same non-discriminatory rights.

During recent decades, science has given us a much clearer picture of the development of new human life. Advances in medicine have documented viability at a much earlier age, and is continuously and incrementally moving toward conception. At conception, his or her gender is determined. He or she has a heart beat at 5 weeks, brain functions at 8 weeks, and begins noticeable movement at 9 weeks. To arbitrarily set the age of viability, results in discriminatorily withholding protection based on few days or weeks of time.

A human being at an embryonic age and that human being at an adult age are naturally the same; the biological differences are due only to maturity. Medical research indicates that each human being is totally unique from the very beginning of his or her life at fertilization. The unique identity of this child has been cast, and deserves the rights of protection.

Our nation was founded both on the proposition that human life is a gift of immeasurable worth and the precept of equal rights for all human beings. The fact that the unborn child is a whole separate unique living being is not without significance as we debate this issue. Our intrinsic natural right to life is to be enjoyed by all, no matter how poor or rich, strong or weak, age of maturity, state of dependence, or whether born or unborn.



North Dakota  
**FAMILY  
ALLIANCE**

DEDICATED TO STRENGTHENING FAMILIES

*A Trusted Voice*

*Tom D Freier*  
EXECUTIVE DIRECTOR

I believe it to be the duty of the state of North Dakota, and in the best interests of the people of North Dakota, to protect each human being, both born and unborn. Please support SB 2400 with a Do Pass.

Thank you and I will stand for questions.

**The North Dakota Human Rights Bill**

**SB2400**

**Humanity of the Unborn as Demonstrated by Science  
and the  
Ethical Questions of Ambiguous Law**

**Research and Testimony in Support of SB2400  
The North Dakota Family Alliance  
Bismarck, North Dakota  
February 2007**



