

In Opposition to H.F. 91
MN House of Representatives Judiciary Committee
2023-2024 Regular Session
January 24, 2023

Rep. Jamie Becker-Finn, Chair
Rep. Cedrick Frazier, Vice Chair

Prepared Testimony of Professor Teresa Stanton Collett*

Good morning, Madame Chair, Madame Vice Chair, Members of the Committee, and other distinguished guests. I am pleased to have been given the opportunity to testify in opposition to proposed repeal of virtually all state regulation of abortion, H.F. 91.

My testimony represents my professional knowledge and opinion as both a practicing lawyer and a professor of law at the University of St. Thomas School of Law, where I direct the school's ProLife Center. I regularly teach Property Law, Constitutional Litigation, and bioethics. I am an elected member of the American Law Institute and have testified before committees of the U.S. Senate and House of Representatives, as well as before legislative committees in several states. I am currently representing a group of Minnesota mothers in *Doe v. Minnesota*, seeking to uphold the state laws requiring parental notification prior to performance of an abortion on a minor, informed consent laws guaranteeing girls and women receive relevant information regarding childbearing and abortion, reflection periods, and requiring abortions be performed by physicians only. An experienced appellate advocate, I have represented numerous government officials in amicus briefs to the United States Supreme Court. My testimony today represents my own views and is not intended to represent the views of my employer, the University of St. Thomas School of Law, or any other organization or person.

In the brief time allowed to testify before this committee, and the extensive nature of H.F. 91, my written testimony addresses some, but not all, troubling aspects of this bill. In specific I wish to address the proposed repeal of § 145.412, subd 1(1)(the Physician-Only Law); § 144.343, subs. 2–6 (the Two-Parent Notification Law); and § 145.4242(a)-(c)(the Informed Consent Law and the Adult Reflection Period).

- 1. The Ramsey County District Court judgment, *Doe v. Minnesota*, regarding the constitutionality of a variety of abortion statutes is currently on appeal before the Minnesota Court of Appeals and the district court has taken under advisement a pre-final judgment motion to intervene.**

In testimony before this committee on H.F. 1, several abortion activists suggested that many of the laws H.F. 91 seeks to repeal had been determined to be unconstitutional by a Minnesota court. These statements refer to a Ramsey County District Court decision

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issued this past summer. *Doe v. State*, 2022 WL 2662998 (July 11, 2022). To characterize the witnesses' statements in the most charitable fashion possible, they are incomplete. Attached is a copy of the first 5 pages of the court docket downloaded from Minnesota Court Records Online at 9:00 a.m. on January 23, 2023, showing that the case is still open, the court is considering a motion to intervene (Docket Index No. 429) and an appeal challenging the decision is pending before the Minnesota Court of Appeals (Docket Index No. 410).

The simple fact is that the preliminary judgment of the district court was based on a failure of the Minnesota Attorney General and other government defendants to provide even the most obvious evidence disproving a large number of claims by Plaintiffs. *See Doe v. Minnesota*, 2022 WL 2662998 (July 11, 2022) at *30, 45, and 53. To repeal the statutes at issue in *Doe v. Minnesota*, based on claims that these statutes have been determinatively found to be unconstitutional is to encourage presentation of such incomplete and thus inaccurate legal claims by activists in future legislative deliberations, and to undermine the ability of legislators to fully assess the impact of proposed legislation.

2. Minors and adults differ significantly in their capacity to make reasoned decisions. State and federal constitutional law, recognizing this fact has endorsed parental guidance to minors, affirming the natural and constitutional right of parents to direct the medical care of their minor children.

Parents have a recognized right to direct the care and upbringing of their minor daughters, a right recognized by the U.S. Supreme Court as “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v Granville*, 530 U.S. 57, 65 (2000). Minnesota law also recognizes this constitutional right, *Soohee v. Johnson*, 731 N.W.2d 815, 821 (2007), and requires any infringement of the right to be justified by a compelling state interest and the government action must be narrowly tailored to further that interest. *Id.* at 823. This constitutional right of parental involvement includes the right to direct the health care of their daughters. *Parham v. J.R.*, 442 US 584, 603 (1979). Accord *Justice v Marvel, LLC*, 965 NW2d 335, 341-42 (Minn Ct App 2021).

As any parent on this committee knows minors often make impulsive and poorly reasoned decisions.¹ Recognition of this truth is embedded throughout state and federal law. “Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office.” *Thompson v Oklahoma*, 487 US 815, 823 (1988). In Minnesota we have established a separate court system for juveniles who commit criminal acts, refused to enforce a wide variety of contracts entered into by minors, and afforded many other immunities from the general obligations and rights of adults.

¹ The 1986 American teen comedy film, *Ferris Bueller's Day Off* is based on this truth. A specific (and amusing) example of this is Ferris coercing his friend to join in the unauthorized use of the friend's father's Ferrari <https://youtu.be/AWZPg9hFgnc>

In considering the application of the death penalty to minors, another life and death decision subject to state and federal constitutional constraints, the U.S. Supreme Court has identified three critical differences between minors and adults. “First, as any parent knows and as the scientific and sociological studies . . . confirm ‘ [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.’” *Roper v. Simmons* citing *Johnson v. Texas*, 509 U.S. 350 at 367. “The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Roper v. Simmons* citing *Eddings v. Oklahoma*, 509 U.S. 350 at 369. The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Roper*, at 570. All of these considerations are present in cases involving a minor’s decision to continue or abort the life of the unborn child.

In the context of abortion cases the U.S. Supreme Court has identified several benefits from parental involvement. *Planned Parenthood v. Danforth* was the first of a series of United States Supreme Court cases dealing with parental involvement laws. 428 U.S. 52 (1976). In this opinion, Justice Stewart wrote, “There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child.” *Id.* at 91 (Stewart, J., concurring).

In *Planned Parenthood v. Casey* Justices O’Connor, Kennedy, and Souter observed that parental consent and notification laws “are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart.” 505 U.S. 833, 895 (1992) (plurality opinion).

The United States Supreme Court has identified three specific medical benefits from involving parents in the decisions of minors to obtain abortions. First, as the Court has observed, parental involvement is essential to insuring an accurate medical history. *H.L. v. Matheson*, 450 U.S. 398, 411 (1981) (footnotes omitted). Similarly, parents have a superior ability of parents to evaluate and select appropriate healthcare providers. *Bellotti v. Baird*, 443 U.S. 622, 641 n.21 (1979) (plurality opinion). The third medical benefit from parental involvement is the enhanced ability of parents to respond promptly to any signs of post-abortion complications *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 519 (1990).

While it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many complications is simply unknown. “The abortion reporting systems of some countries and states in the United States include entries about complications, but these systems are generally considered to underreport infections and other problems that appear some time after procedure was performed.” Stanley K. Henshaw, UNINTENDED PREGNANCY AND ABORTION: A PUBLIC HEALTH

PERSPECTIVE, IN A CLINICIAN’S GUIDE TO MEDICAL AND SURGICAL ABORTIONS, at 20 (Maureen Paul et al. eds., 1999). Absent parental notification, hemorrhaging may be mistaken for a heavy period and severe depression as typical teenage angst.

Notwithstanding the abortion industry’s mischaracterization of most parents as threats to their children’s well-being, members of this committee should weigh the constitutional recognition of parents’ natural role as advocates of their children’s best interests, and all of the medical benefits of parental involvement, when voting on whether to repeal the Minnesota parental notification and authorize minors to obtain a secret abortion.

3. The unique nature of abortion and the reasons women give for seeking abortions warrant the existing requirements of informed consent related to abortion.

Abortion is unique among all elective medical procedures or treatments. As a majority of the judges on the U.S. Court of Appeals for the Eighth Circuit have recognized, abortion ends the life of a “whole, separate, unique, living human being.” *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 735–36 (8th Cir. 2008) (*en banc*). *Accord Dobbs v Jackson Women's Health Org.*, 142 S Ct 2228, 2236 (2022). There is simply no other legal procedure or therapy in this state where the process is considered a failure if it does not result in the death of another human being. At a minimum, that fact alone justifies requiring women be informed of multiple aspects of the proposed course of action and time be given to assure their decisions are the product of careful consideration, free of uncertainty and coercion.

The reasons many women give for obtaining abortions are also not common in medical decision making. The most recent report of the Minnesota Health Department regarding induced abortions in the state indicates the vast majority of those obtaining abortions are doing so, not because the abortion is necessary for health reasons, the unborn child suffers from a fetal anomaly, or the pregnancy is the result of rape or incest. The vast majority of abortions in this state are performed because the mother “does not want children at this time” or for “economic reasons.” 2021 Induced Abortions in Minnesota, tbl. 16 at <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2021abrpt.pdf>. This later concern is partially addressed currently by the state requiring mothers be informed of fathers’ duty to provide financial support, regardless of whether he desires she continue or abort the pregnancy, and the availability of medical assistance to pay expenses for prenatal care, childbirth, and neonatal care. Minn. Stat. 145.4242 (a) (2).

4. Non-physicians have neither the training nor experience to immediately respond to a variety of complications that can arise in the abortion process – particularly related to abortions at or after 16 weeks gestation.

After a pregnancy advances beyond ten weeks gestation, chemical or

“medication” abortions are not authorized by the U.S. Food and Drug Administration.² This means that post-ten-week abortions must be surgically performed. Advanced Practice Nurses (APRN) and Certified Nurse Midwives (CNM) do not have the training and surgical skills to perform surgical abortions. Unlike physicians, these practitioners are not sufficiently trained to manage severe bleeding complications that can arise during or after a surgical abortion. The repeal of the physician-only requirement endangers the safety of Minnesota pregnant girls and women who undergo post ten-week abortions. This is particularly true when a pregnancy has progressed past viability.

5. Authorizing post-viability abortions jeopardizes the health and safety of women and girls seeking abortions in this state.

Contrary to the claims of abortion activists, peer-reviewed research and state reports of women’s reasons for obtaining abortions establish that women seeking post-twenty-week abortions rarely do so for reasons of fetal anomaly or life endangerment. The most common reasons women obtain late-term abortions are (1) difficulty deciding whether to terminate the pregnancy, (2) financial barriers, and (3) late detection of the pregnancy.

All of these reasons support the laws requiring parental involvement, specialized informed consent and a period of reflection prior to performance for the abortion that would be repealed by this bill. See Minn. Stat. § 144.343, subds. 2–6 (the Two-Parent Notification Law); and § 145.4242(a)-(c)(the Informed Consent Law and the Adult Reflection Period).

These changes are particularly dangerous when considered in conjunction with bill’s repeal of our physician only law (§ 145.412, subd 1(1)). Nurses, midwives, and others simply do not have the medical training and skills to safely perform post-viability abortions.

The dilation and evacuation procedure (“D&E”) is the most common method of performing late term abortions. This method requires dilation of the woman’s cervix to the extent needed to insert surgical instruments for removing fetal body parts. In writing for the majority in *Gonzales v. Carhart*, 550 U.S. 124 (2007) Justice Kennedy described the process after dilation:

[T]he woman is placed under general anesthesia or conscious sedation. The doctor, often guided by ultrasound, inserts grasping forceps through the woman’s cervix and into the uterus to grab the fetus. The doctor grips a fetal part with the forceps and pulls it back through the cervix and vagina, continuing to pull even after meeting resistance from the cervix. The friction causes the fetus to tear apart. For example, a leg might be ripped off the fetus as it is pulled through the cervix and out of the woman. The process of evacuating the fetus piece by piece continues until it has

² <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>

been completely removed. A doctor may make 10 to 15 passes with the forceps to evacuate the fetus in its entirety, though sometimes removal is completed with fewer passes. Once the fetus has been evacuated, the placenta and any remaining fetal material are suctioned or scraped out of the uterus. The doctor examines the different parts to ensure the entire fetal body has been removed.

Id. at 136.

The abortion complication rate is 3%–6% at twelve to thirteen weeks gestation and increases to 50% and higher for abortions performed in the second and third trimester.

Based on reports of legal abortions performed between 1998 and 2010, abortions performed at eighteen weeks or later, the maternal mortality rate was 6.7 deaths per 100,000 abortion procedures, with the most common causes of death being hemorrhage and infection.

The maternal mortality risk of abortion at or after twenty-one weeks is more than 9 maternal deaths per 100,000 abortions, compared with about 7.5 maternal deaths per 100,000 live births as reported by the U.S. Centers for Disease Control.

Some abortion clinic advertising and consent forms warn women that childbirth is safer than undergoing an abortion after twenty-four weeks gestation. Few abortion providers will perform abortions after twenty (20) weeks because of the substantial risk of complications. REPORT OF THE GRAND JURY at 3, *In re County Grand Jury XXIII* (2011) (Misc. No. 0009901-2008) (In 2013, Dr. Gosnell was convicted of three counts of first-degree murder for severing the spinal cords of infants born alive during failed abortions, one count of involuntary manslaughter in the death of a patient who was overdosed by his untrained staff, and twenty-one counts of performing illegal abortions on women who were more than twenty-four weeks pregnant. *Commonwealth v. Gosnell*, No. CP-51-CR-0001667-2011, defendant sentenced (Pa. Ct. Com. Pl., Phila. County May 15, 2013).

Some dangers associated with abortions performed after twenty-four (24) weeks gestation are illustrated by the tragic case of Jamie Lee Morales. Described in Verena Dobnik, *Doctor in Badly Botched Abortion Is Tried for Manslaughter*, Associated Press (May 1, 2018) at <https://apnews.com/article/cf1d789e5fc142c982a91cbdbabd7467>.

Peer-reviewed research reveals additional associations between induced abortion and placenta previa, preterm birth, and mental health problems, including mood disorders, substance abuse, and suicide.

6. Implicitly authorizing post-viability abortions by repeal of the state post-viability ban converts the putative right to abortion into a right to kill – ending the life of a child who could survive and flourish if delivered.

Unborn children at the twenty-one-week mark are increasingly surviving premature birth and able to live outside the mother's womb; the twenty-one-week mark in gestation represents the most recent point of viability.³

While there are multiple factors that determine viability, gestational age and availability of proper staffing and equipment to support premature infants at birth in hospitals are two of the most important. Hospitals and their policies toward resuscitation directly impact survival.

At weeks twenty-five and twenty-six, the third trimester, the fetus has increased brain function and eye opening, and the lungs continue to grow. The fetus can grasp at things and progressively explore its surroundings.

Other than the physiologic changes that occur at birth in the circulatory and respiratory systems, there is no difference in the development of a baby in the womb at 25 weeks and one in the neonatal intensive care unit. A preborn baby at 28 weeks would be more developed than a 25-week-old that has been born.

From week thirty onward, the nervous system grows to completion as the muscles are more defined and more fat is stored under the skin. Hair forms on the head and the genital organs finish forming.

At week thirty-four, the fetus moves into position for birth, which is generally completed in weeks thirty-seven and thirty-eight.

It is inconceivable that a majority of Minnesotans support allowing this grisly, lethal practice in the state.

Conclusion

There are many additional deficiencies in this bill, but the time constraints of this hearing make it impossible to address them. Should the committee or individual legislators have questions or wish to discuss the additional deficiencies I perceive in the bill, I welcome the opportunity to discuss them individually or with a group.

Thank you for allowing me to present my opposition to this proposed legislation in person and to expand upon the reasons to reject H.F.1 through this written testimony.

³ E.g., Kaashif A. Ahmad et al., Two-Year Neurodevelopmental Outcome of an Infant Born at 21 Weeks' 4 Days' Gestation, 140 *Pediatrics*, Dec. 2017, e20170103, at 1–2, available at <https://pediatrics.aappublications.org/content/140/6/e20170103> [<https://perma.cc/D9UR-KHDU>].



**MINNESOTA
JUDICIAL BRANCH
MINNESOTA COURT RECORDS ONLINE (MCRO)**

Case Details (Register of Actions)

Search executed on 01/23/2023 08:55 AM

Case Information

Case Number: 62-CV-19-3868

Case Title: Dr. Jane Doe, Mary Moe, First Unitarian Society of Minneapolis vs State of Minnesota, Governor of Minnesota, Attorney General of Minnesota, Minnesota Commissioner of Health, MINNESOTA BOARD OF MEDICAL PRACTICE et. al.

Case Type: Civil Other/Misc.

Date Filed: 05/29/2019

Case Location: Ramsey County, Ramsey Civil

Judicial Officer: Gilligan, Thomas, Jr.

Case Status: Open

Case Flag: Protective Order Pursuant to Minn R Civ Pro 26.03

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Case Events

01/05/2023	Taken Under Advisement Judicial Officer: Gilligan, Thomas, Jr. Index #429	
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01/04/2023	Order-Other Judicial Officer: Gilligan, Thomas, Jr. Index #427	 2 pages
01/03/2023	Proposed Order or Document Index #426	 2 pages
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08/19/2022	Hearing Held Remote	
08/19/2022	Order-Other Judicial Officer: Gilligan, Thomas, Jr. Index #379	 2 pages
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08/18/2022	Memorandum Index #375	 12 pages
08/17/2022	Correspondence for Judicial Approval Index #374	 2 pages
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