



MITCHELL | HAMLINE

School of Law

January 11, 2023

Representative Ginny Klevorn  
Chair, State and Local Government Finance and Policy Committee

Re: HF1

Madam Chair and members of the Committee,

Thank you for the opportunity to provide testimony on the Protect Reproductive Options (PRO) Act (HF1). I am a Professor of Law at Mitchell Hamline School of Law and a Visiting Professor at Saint Louis University School of Law. I teach and research reproductive law, and I support the PRO Act.

The Minnesota House of Representatives has a historic opportunity to protect reproductive freedom for all Minnesotans this legislative session. As we saw last year at the federal level with *Dobbs v. Jackson Women's Health Organization*<sup>1</sup> and in Iowa with *Planned Parenthood of the Heartland v. Reynolds*,<sup>2</sup> key judgments from high courts may be overturned when court membership changes, even when millions of people rely on those judgments in planning their lives. The PRO Act would clearly codify the legal right of Minnesotans to autonomously and individually determine their own reproductive destinies. As such, it would help protect Minnesotans' reproductive freedoms from the possible future reversal of *Doe v. Gomez*, the decision that protects abortion rights here in Minnesota, by a differently-constituted Minnesota Supreme Court.<sup>3</sup>

Especially relevant to this committee, subd. 5 of the PRO Act would unambiguously prohibit municipalities from attempting to pass ordinances like the one that the Prinsburg city council briefly considered late last year.<sup>4</sup> While neither unconstitutional ordinances<sup>5</sup> nor those that exceed municipal authority may stand,<sup>6</sup> the PRO Act would further protect the reproductive

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<sup>1</sup> 142 U.S. 2228, 2284(2022) (overruling the right to an abortion as given in *Roe* and *Casey*).

<sup>2</sup> 975 N.W.2d 710, 740,744(Iowa 2022) (holding that neither the due process nor the equal protection clauses of the Iowa constitution provide fundamental protection for abortion)

<sup>3</sup> 542 N.W.2d 17, 27,31(Minn. 1995) (holding that the right to privacy under the Minnesota constitution protects a woman's right to terminate her pregnancy, and that the state may not interfere in that decision).

<sup>4</sup> John Reinan, *Small Minnesota Town May Become Focus of Abortion Fight*, STAR TRIBUNE (Nov. 22, 2022), <https://www.startribune.com/tiny-minnesota-town-may-become-the-focus-of-abortion-fight/600228900/>.

<sup>5</sup> *See, e.g.*, *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017) (holding that even ordinances adopted by a home rule municipality cannot be "inconsistent with the Federal or State Constitution or state statute") (internal citations omitted).

<sup>6</sup> *See, e.g.*, *Harstad v. City of Woodbury*, 916 N.W.2d 540, 545 (Minn. 2018) (statutory municipality "has no inherent powers beyond those expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred").

freedom of Minnesotans from municipalities that might wish to curtail it by clarifying that municipalities may not restrict such freedom beyond what is found in the PRO Act.

All Minnesotans will benefit from the PRO Act's protection of reproductive freedoms. Thank you for considering it. I hope you pass the PRO Act with all due speed

Sincerely yours,

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