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January 24, 2023

Members of the Judiciary Finance and Civil Law Committee  
State Office Building  
100 Rev. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

Re: Legislative Testimony and Legal Analysis HF 91

Madame Chair and Members of the Committee,

True North Legal is a non-profit legal organization that advocates for life, family, and religious freedom on behalf of all Minnesotans. We offer the following high-level analysis regarding significant legal and policy concerns relating to HF 91, the “how-to” manual for the most expansive abortion regime in the country — HF 1. With its radical overhaul of Minnesota’s abortion laws, HF 91 is out of step with majority of Minnesotans, and most Americans.<sup>1</sup>

HF 91 repeals and thus removes all protections for preborn children, *including those that extend to infants born alive*, and criminal penalties relating to the intentional death of a child resulting from an illegal abortion, while also eliminating all health and safety protections for women and young girls seeking an abortion in Minnesota. To say that this bill is reprehensible and inhumane is an understatement. Moreover, this bill significantly changes the statutes governing Minnesota’s Medical Assistance program regarding abortions in that taxpayers will now incur the cost of paying for women seeking abortion on demand, something opposed by 58% of Americans.<sup>2</sup>

HF 91 repeals Minn. Stat. § 145.423, known as the “Infants Born Alive Protection Act”<sup>3</sup> which simply and responsibly requires medical providers to ensure that any preborn child is provided critical medical care in a life and death situation, with proper oversight being assured through the reporting mechanism in the statute. Quite astoundingly, under HF 91, if a preborn child survives an abortion, the doctor providing the abortion has no legal duty to care for the child (who should be considered his/her patient) or report the child’s survival. *If HF 91 becomes law in Minnesota, cattle, pet horses, cats, dogs, birds, reptiles, and host of other animals in Minnesota will enjoy more legal protections than Minnesota’s vulnerable preborn children.*<sup>4</sup> That the legal penalties for animal cruelty in Minnesota range from misdemeanor up to felony, while there is no criminal penalty for leaving a preborn child to die on a cold metal table is incomprehensible.

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<sup>1</sup> According to recent poll numbers regarding Minnesotans attitude towards abortion, only 30% of Minnesotans, according to the most favorable polling, support abortion without restrictions. See <https://kstp.com/kstp-news/top-news/kstp-surveyusa-poll-abortion-issue-could-influence-voters-on-both-sides> (accessed January 11, 2023).

<sup>2</sup> <https://www.kofc.org/en/news-room/polls/american-abortion-opinions-remain-consistent.html> (accessed January 11, 2023).

<sup>3</sup> Minn. Stat. § 145.423 Subd. 1-5.

<sup>4</sup> Minn. Stat. §343.21-22; Minn. Stat. § 343.31; Minn. Stat. § 346.35 - 346.44; Minn. Stat. § 346.57.



The proposed bill also removes reporting requirements for omissions of critical medical care for infants born alive. This, despite the recent exposure of the Minnesota Department of Health's report of Induced Abortions in Minnesota, including data relating to five infants that were born alive. It is also suspected that at least two infants were denied proper medical care under the current statute.<sup>5</sup> This serves as further evidence that abortionists should not be held to a lower standard of accountability than other providers in the medical profession, as this bill would allow, but rather demonstrates the significant necessity for laws that hold Minnesota abortionists accountable to the same (and arguably more scrupulous) consumer health and safety protections.

Moreover, HF 91's repeal of nearly all statutes regarding the humanity of the unborn child will cause tremendous legal confusion. The proposed bill repeals all criminal liability for the death of a preborn child, regardless of gestation, when that death is caused by an abortion.<sup>6</sup> Under the proposed statutory framework, if a mother and her preborn child of 28 weeks gestation are killed in an accident by a drunk driver, the driver would face criminal charges for the death of both individuals. However, if the same mother decides that she wants to abort this same child, at the same gestational age, an act that would involve the voluntary and intentional, premeditated taking of an unborn child's life, such "choice" will be deemed perfectly acceptable. The bill as proposed presents the kind of confusion in the law that follows Justice Thomas' line of questioning in *Dobbs v. Jackson Women's Health Organization*, when he asked the plaintiff's counsel to reconcile a right to bodily autonomy and unquestionable criminal neglect and harm to a preborn child post-viability resulting from a drug overdose, stating, "I am trying to look at the issue of bodily autonomy and whether or not [a woman] has a right also to bodily autonomy in the case of ingesting an illegal substance and causing harm to a pre-viability fetus."<sup>7</sup> Those same concerns apply here. HF 91's removal of these protective statutes elicits confusion resulting from inconsistencies in the law – and is a catalyst to a Pandora's Box of exceptions to other criminal conduct against women and preborn children, setting dangerous precedent for future legislative policy and illegal criminal conduct.

HF 91 also repeals additional consumer protection laws regulating access, advertisement, and the sale of abortion inducing drugs.<sup>8</sup> Removing this language will likely increase the number of unregulated abortions in Minnesota among women and young girls, setting the stage for a dramatic increase of sexual activity among adolescents, including sex between minors and adults, fostering a variety of social problems including increased sexual assaults, unintended pregnancy, and coerced abortions.<sup>9</sup>

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<sup>5</sup> <https://www.health.state.mn.us/data/mchs/pubs/abrpt/docs/2021abrpt.pdf>; *Minnesota Report Reveals Five Babies Born Alive After Abortion in 2021* <https://www.liveaction.org/news/minnesota-babies-born-alive-abortion/> (accessed January 11, 2023).

<sup>6</sup> HF 91 repeals existing criminal statutes regulating abortion, thus removing legal protections for preborn children from being the victims of criminal conduct. Minn. Stat. § 609.269.

<sup>7</sup> See Transcript of Oral Argument, *Dobbs v. Jackson Women's Health Org.* (19-1392) at 49-50, 141 S. Ct. 2619 (2021), Retrieved at [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2021/19-1392\\_4425.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/19-1392_4425.pdf).

<sup>8</sup> HF 91 repeals criminal consequences regarding the sale, access, and advertisement of drugs inducing an abortion. Minn. Stat. § 617.20; Minn. Stat. § 617.201; Minn. Stat. § 617.202; Minn. Stat. § 617.21; Minn. Stat. § 617.28; Minn. Stat. § 617.29.

<sup>9</sup> Due the swift nature of the committee schedules, it must be noted that there is not adequate time to provide the committee with the respective information relating to HF 91 while adhering to the rules regarding timely submission of testimony. I



As proposed, HF 91 disregards the value of human life, and ignores Minnesotan’s fundamental interest in protecting preborn children, women, and young girls.<sup>10</sup> As a result of *Roe* and *Casey*, we’ve had nearly fifty years to observe the abortion industry and a catalogue of studies indicating harms resulting from abortion. Unfettered access to abortion, at least, bears some relationship to deleterious social conditions across the country and unquestionably in Minnesota. As proponents of the bill have repeatedly stated, expanding unfettered access to abortion is their number one legislative priority – but it is certainly not a priority without grave consequences. More specifically, HF 91’s repeal of informed consent, which provides critical information to young women and girls prior to obtaining an abortion, will only perpetuate harm to women<sup>11</sup>, as will the repeal of many other protective health and safety regulations including but not limited to who can perform an abortion, where an abortion can be performed, and whether the parent/s of a minor child will be informed about their young daughter’s abortion. The proponents of this bill have significantly understated their claims that HF 91 and HF 1 simply codify *Doe v. Gomez*. HF 91 goes far beyond any interpretation of *Doe v. Gomez*—it cannot be stated that the Court’s interpretation of the constitutional right to abortion in Minnesota necessarily implies that all other health and safety regulations regarding abortion are unconstitutional.<sup>12</sup>

Under the proposed bill, Minnesotans will now pay for abortion on demand through the taxpayer funded Medical Assistance program. In *Doe v. Gomez* the Minnesota Supreme Court held, “...Contrary to the dissent’s allegations, this court’s decision will not permit any woman eligible for medical assistance to obtain an abortion on ‘on demand.’”<sup>13</sup> Whereas the current statute limits payment for abortions to very specific cases,<sup>14</sup> HF 91 is not only inconsistent with the Court’s holding in *Doe v. Gomez*, but is a much more expansive holding. Put simply, this bill does much more than codify the holding in *Doe v Gomez*, it likely broadens taxpayer funding of abortion in limited circumstances to taxpayer funded abortions “on demand.” Resultantly, this bill will usher in an increased number of abortions at an increased cost to the state and Minnesotans.

There is much more to be addressed regarding HF 91 and its impact on Minnesotans. However, the swift pace of the bill’s path forward does not provide enough time to adequately discuss or provide a comprehensive testimony addressing the implications of this bill. Suffice it to say, HF 91 will cause more harm than the good that proponents of this bill propose to remedy.<sup>15</sup>

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am willing to provide members of the committee with additional information on this topic at your request; *see also* Brief for Advancing American Freedom, et. al. as Amicus Curiae Supporting Petitioners, *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2619 (2021) (19-1392).

<sup>10</sup> *supra* note 1 (“only 30% of Minnesotans, according to the most favorable polling, support abortion without restrictions”).

<sup>11</sup> *Immediate Physical Complications of Induced Abortions*, [https://lozierinstitute.org/immediate-physical-complications-of-induced-abortion/#\\_ftn2](https://lozierinstitute.org/immediate-physical-complications-of-induced-abortion/#_ftn2) (accessed January 18, 2023); *Statement on Abortion Pill Lawsuit Filed by Alliance Defending Freedom*, <https://lozierinstitute.org/lozier-institute-statement-on-abortion-pill-lawsuit-filed-by-alliance-defending-freedom/>(accessed January 18, 2023).

<sup>12</sup> *Doe v. Gomez*, 542 N.W. 2d 17 (Minn. 1995).

<sup>13</sup> *Id.* at 32.

<sup>14</sup> See Minn. Stat. § 256B.0625 Subd. 3(a).

<sup>15</sup> Unfettered access to abortion bears significant correlation with deleterious societal impact on many facets of life, including the destabilization of the family. *See* George A. Akerlof, Janet L. Yellen & Michael L. Katz, *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 277, 281 (1996) (“By making the birth of the child the physical choice of the mother, the sexual revolution has made marriage and child support a social choice of



Under the shroud of “reproductive care” and elusive claims about access to abortion, the plain language of the bill leaves no question that the intent is not to “simply” codify *Doe v. Gomez* and the Court’s interpretation regarding a “fundamental right” to abortion in Minnesota. Rather, HF 91 serves as a springboard to fast track a host of other undebated, controversial laws and policies, without time for sufficient public notice or debate. As a result, HF 91 will invite inconsistency and confusion of the law, and will not be without severe legal and legislative consequences.

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the father.”); *see also* Helen Alvaré, *Abortion, Sexual Markets and the Law in PERSONS, MORAL WORTH AND EMBRYOS* 261 (Steven Napier ed., 2011).