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Washington, DC 20064

March 12, 2009

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103 South Third Street, Suite 10
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By email

Re: Proposed Amendments to Engrossed House Bill No. 1572

Dear Mr. Dodson:

Thank you for giving me the opportunity to review the proposed amendments to Engrossed House Bill No. 1572. As you know, I was asked to react informally to some of the reasons why the original version of Engrossed House Bill No. 1572 should be amended, and did so, but this is the first time that I have seen the proposed amendments themselves.

In my opinion, the language of the proposed rewrite of Engrossed House Bill No. 1572 is far superior to the language which appears in the current bill. This is so for several reasons:

1. The current bill is not a model of good legislative drafting. It contains a number of significant ambiguities that are best remedied now – before they spawn expensive and unnecessary state and federal court litigation designed to clarify and limit the reach of the statute.
2. By clarifying the meaning of the terms to be defined – “human being” and “unborn child” the North Dakota Legislature would make an important, and critically needed, statement affirming the inherent dignity of every member of the human family.
3. By adding a rule of construction that instructs the courts to “acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state,” the Legislature acknowledges its obligations under several provisions of the North Dakota Declaration of Rights:
 - a. Article I §1, cl. 1: “All individuals are *by nature* equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty ...” (emphasis added)
 - b. Article I §1, cl. 3: “All individuals are *by nature* equally free and independent and have certain inalienable rights, among which are ... pursuing and obtaining safety and happiness ...”

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- c. Article I §2, cl. 1: "... Government is instituted for the protection, security and benefit of the people, ..."
 - d. The equality principle embedded in Art. I §21; and
 - e. Art. I §22: "All laws of a general nature shall have a uniform operation."; and
 - f. Art. I §23: "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."
4. The Legislature's "Findings" and the "No Action Created" provision are equally important. Read together in light of the Declaration of Rights and its explicit acknowledgement that "the Constitution of the United States is the supreme law of the land," these provisions make it clear that this Engrossed House Bill No. 1572 is intended to operate within the existing parameters of federal constitutional law.
5. The proposed rewrite of Engrossed House Bill No. 1572 wisely omits language that would allow individual members of the Legislature "as a matter of right and in the legislative member's official capacity, to intervene to defend this law in any case in which its constitutionality is challenged."

In sum, rewriting Engrossed House Bill No. 1572 in the manner suggested is a very good idea. By clarifying the Legislature's intent on points of law that *Roe v. Wade* expressly leaves to the discretion of the states, the amended version of Engrossed House Bill No. 1572 fills several important gaps in the law. If enacted as proposed, the legislation is constitutional, and, for that reason, would not, in my view, be a very inviting "target" for a constitutional challenge.

Please let me know if you have any questions.

Sincerely,



Robert A. Destro
Professor of Law