

**In Opposition to S.F. 70  
MN Health and Human Services Committee  
2023-2024 Regular Session  
January 18, 2023**

**Senator Melissa H. Wiklund, Chair  
Senator Alice Mann, 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, S.F. 70 (Maye Quade).

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 S.F. 70, my written testimony addresses some, but not all, points that cannot be covered in the 2 minutes allocated to each person testifying before this committee. In specific I wish to address the proposed repeal of § 145.412, subd 1(1)(the Physician-Only Law); § 144.343, subds. 2–6 (the Two-Parent Notification Law); and § 145.4242(a)-(c)(the Mandatory Disclosure Law, Physician Disclosure Law and Mandatory Delay Law).

- 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 the House Health Finance & Policy Committee on H.F. 91,

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the companion bill to S.F. 70, the testimony of several abortion activists suggested that several of the laws S.F. 70 seeks to repeal had been determined to be unconstitutional by a Minnesota court.<sup>1</sup> These statements refer to a Ramsey County District Court decision 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 court docket downloaded at 8:15 on January 17, 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.<sup>2</sup> 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

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<sup>1</sup> Testimony of Christy Hall, Senior Staff Attorney, Gender Justice, Nicole Chaisson, abortion provider and former co-chair of MN Cluster, Reproductive Health Access Network, and Eliza O'Brien, Clinic Manager at Whole Women's Health, before the Minnesota House Health Finance & Policy Committee Meeting Agenda, January 12, 2022, video available at <https://www.house.leg.state.mn.us/hjvid/93/896076>. *Doe v. State*, 2022 WL 2662998 (July 11, 2022).

<sup>2</sup> 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>

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.

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.<sup>3</sup> 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.

**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 S.F. 70 through this written testimony.

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<sup>3</sup> <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>



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

## Case Details (Register of Actions)

Search executed on 01/17/2023 08:15 PM

### 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

### Party Information

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**Case Events**

01/05/2023

Taken Under Advisement

Judicial Officer: Gilligan, Thomas, Jr.  
Index #429

01/05/2023

Hearing Held Remote

01/04/2023

Order-Other

Judicial Officer: Gilligan, Thomas, Jr.  
Index #428



2 pages

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

01/03/2023

Affidavit-Other

Index #425



3 pages

01/03/2023

Motion

Index #424



6 pages

01/03/2023

Correspondence for Judicial Approval

Index #423



1 page

12/30/2022

Order Granting Pro Hac Vice

Judicial Officer: Gilligan, Thomas, Jr.  
Index #422



1 page

12/29/2022

Memorandum

Index #421



15 pages

















12/29/2022

Memorandum

















Index #420



11 pages

12/29/2022	Proposed Order or Document Index #419	 1 page
12/29/2022	Correspondence for Judicial Approval Index #418	 2 pages
12/22/2022	Memorandum Index #417	 22 pages
12/22/2022	Affidavit of Attorney Index #416	 1 page
12/22/2022	Memorandum Index #415	 22 pages
11/14/2022	Memorandum Index #414	 20 pages
11/14/2022	Record Transmitted to Appellate Court	
11/11/2022	Notice of Motion and Motion Index #413	 3 pages
11/08/2022	Request for Trial Court Record-Appellate Court Index #412	 1 page
10/27/2022	Notice of Remote Hearing with Instructions Index #411	 2 pages
10/19/2022	Appellate Court Order Judicial Officer: Segal, Susan L Index #410	 6 pages
10/12/2022	Objection Index #409	 2 pages
10/12/2022	Objection Index #408	 1 page
10/11/2022	Notice of Withdrawal of Counsel Index #407	 2 pages
09/23/2022	Notice of Appeal Index #406	 2 pages
09/16/2022	Affidavit-Other Index #405	 185 pages
09/16/2022	Motion for Admission Pro Hac Vice Index #404	 2 pages



09/16/2022	Notice of Deficiency Index #403	 3 pages
09/15/2022	Court Reporter Certificate of Filing & Delivery-Appellate Crt Index #402	 2 pages
09/15/2022	Court Reporter Certificate as to Transcript-Appellate Court Index #401	 2 pages
09/12/2022	Motion for Admission Pro Hac Vice Index #400	 6 pages
09/12/2022	Affidavit-Other Index #399	 46 pages
09/12/2022	Affidavit-Other Index #398	 23 pages
09/12/2022	Affidavit-Other Index #397	 21 pages
09/12/2022	Affidavit-Other Index #396	 26 pages
09/12/2022	Affidavit-Other Index #395	 15 pages
09/12/2022	Affidavit-Other Index #394	 9 pages
09/12/2022	Affidavit-Other Index #393	 23 pages
09/12/2022	Affidavit-Other Index #392	 66 pages
09/12/2022	Affidavit-Other Index #391	 13 pages
09/12/2022	Affidavit-Other Index #390	 109 pages
09/12/2022	Affidavit-Other Index #389	 3 pages
09/12/2022	Answer Index #388	 40 pages