MINNESOTA CATHOLIC CONFERENCE

Written Testimony in Opposition to S.F. 1
Senate Judiciary and Public Safety Committee
January 18, 2023

The Minnesota Catholic Conference writes in opposition to S.F. 1 (McEwen). Beyond its denial of the humanity and rights of fetal life at any state, and its endangerment of women in its attempt to block any reasonable regulation of abortion, we ask this committee to vote "no" because it will open a pandora's box of novel legal decisions related to complex bioethical decisions that are properly within the realm of legislative consideration and not the courts.

Minnesota statutes fulfill one of three functions: they command, prohibit, or authorize. Minnesota statutes do not include general statements of policy. Apart from subdivision five, however, it is unclear into which category this legislation falls, as it reads more like a statement of policy and contains no enforcement mechanism. That could be a problem of drafting that needs to be addressed. The more likely conclusion is that this legislation is designed to be a policy directive to Minnesota courts (a command) to protect this broader right of reproductive freedom in a whole variety of contexts, only some of which are enumerated.

Under the proposed the language, "[r]eproductive health care includes, *but is not limited to*, contraception; sterilization; preconception care; maternity care; abortion care; family planning and fertility services; and counseling regarding reproductive health care." (Subd. 2, Lines 1.8-1.13).

In general, access to such services is widely available and not in any jeopardy. But in some novel cases, the intersection of science, new technology, and ethics has led to debates about the use of certain practices and whether they are ethical means of overcoming fertility. The language of the bill seems to instruct courts to give people (not just women), access to any and all forms of "reproductive healthcare" regardless of the ethics or wisdom of those technologies or procedures, precisely because the litigant wants it. The language could be read to give courts the legislative direction needed to recognize the validity of surrogacy contracts, among other things, even though that decision should be made by the Legislature as a matter of public policy.

Another potential impact of this legislation is that the broader community, including private actors and medical professionals, not just the state, could be forbidden from acting in any way that puts limitations on the individual's desire to access such "reproductive healthcare." In a whole host of novel bioethical matters that continue to emerge, courts will be compelled to side with "reproductive freedom." In the absence of specific statutory exemptions, medical professionals may be required to perform any and all procedures, and pharmacists, for example, must dispense the relevant pharmaceuticals, irrespective of conscience rights or religious liberty. One set of values and rights—reproductive freedom—is elevated to the status of a fundamental right and could trump other rights, enumerated or otherwise.

In conclusion, if the Legislature is inclined to move forward with this expansive statute, it may wish to take a pause and clarify what is *not included* as "reproductive healthcare" and create some specific exclusions, as well as limit the open-ended language. The potential drafting problems and unintended consequences of the bill should give legislators pause.

Respectfully submitted,

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