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S. 988 TESTIMONY BEFORE THE SENATE MEDICAL AFFAIRS SUBCOMMITTEE

The League of Women Voters of South Carolina opposes this bill as a violation of our right to privacy and of our freedom of religion.

The national position of the League of Women Voters with respect to reproductive choice is as follows:

The League of Women Voters believes public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices.

Justice Ruth Bader Ginsburg famously said that “The decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity. ... When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.”¹

Two-thirds of American people agree. A Fox News poll published September 23, 2021, found that 65% percent of Americans favor keeping Roe v. Wade, which gives the personal freedom and bodily autonomy of women substantial legal weight up until the time a fetus is viable outside the uterus.²

The privacy right on which Roe v. Wade was written is now in question and it is possible that the Supreme Court will overturn the ruling. However, privacy is not the only constitutional right protected through the protections offered by Roe v. Wade. When coercion by the state is in question, laws must be built on a foundation of generally shared secular moral principles, not the particular beliefs of specific religious traditions. A law that would require that all act in accordance with a specific theology is a violation of the Establishment and Free Exercise clauses of both the First Amendment to the U. S. Constitution and Article 1, Section 2, of the South Carolina Constitution of 1895 as Amended. This case has been made in detail by constitutional scholars, including in the volume “Abortion Rights as Religious Freedom.”³

Some abortion opponents claim that their position is grounded in science and reflects a legitimate secular purpose in treating fertilized eggs and non-viable fetuses as persons. This is not true. Science tells us that, like other life forms, human beings have a continuous life cycle. The reproductive process ends with equal certainty when that cycle is broken at any point, including by male masturbation or even celibacy. Attaching moral meaning to any stage of that life cycle is the business of ethics and religion, not science.

Not only is it not grounded in science, S. 988 also lacks a foundation in generally shared moral principles in our pluralistic society. It is built on the beliefs of particular religious traditions, especially evangelical Christianity and Roman Catholicism. Even other major religious traditions in our state and nation are not in agreement with the premises and mandate of this bill. For example, the Episcopal Church explicitly opposes the use of abortion as birth control or for “mere convenience” but also opposes any federal or state action that would abridge or

¹ Louise Melling, “For Justice Ginsburg, abortion was about equality;” ACLU News & Commentary, September 23, 2020. <https://www.aclu.org/news/reproductive-freedom/for-justice-ginsburg-abortion-was-about-equality/>

² Victoria Balara, “Fox New Poll: A record 65 percent favor keeping Roe v. Wade.” <https://www.foxnews.com/politics/fox-news-poll-record-65-percent-favor-keeping-roe-v-wade>

³ Peter S. Wenz, *Abortion Rights as Religious Freedom*, Temple University Press, 1992.

deny the right of individuals to reach informed decisions about continuation of their pregnancies and to act upon them as their conscience dictates.⁴ Many other Christian denominations share this view. Beyond Christianity, the Rabbi and theologian Rachel Mikva notes that most foundational Jewish texts assert that a fetus does not attain the status of personhood until birth, until the first breath.⁵ The many people in our state and nation who do not identify with any religious group also have varying moral beliefs around this issue.

We can step back from abortion and take a broader moral perspective. The supporters of S. 988 are effectively asserting that people have an obligation to give up bodily autonomy when their body is necessary to sustain another (whether one considers a fertilized egg a “person” or not). However, when we look at other applications of that broad principle, we again find no consensus in our society in favor of government coercion. As in an abortion prohibition, mandatory organ donation would require loss of bodily autonomy and personal freedom to maintain another organism, in the case of organ donation the lives of living sentient persons. However, there is no ethical consensus in our society in support of mandatory organ donation. The National Institutes of Health (NIH) recognize this in their discussion of donation of organs from deceased individuals.⁶ The NIH documents that even for the dead, ethical consensus in our society supports great respect for bodily autonomy and personal dignity that outweighs a mandate for organ donation, even if needed to sustain someone’s life.

Even those religious groups that lobby energetically to impose their anti-abortion beliefs on all of us do not support mandatory organ donation because they value personal bodily autonomy. Pope Benedict XVI in “A Gift for Life. Considerations on Organ Donation” affirmed that for organ donation to be morally acceptable there must be free, informed consent from the donor, without coercion.⁷ The U.S. Conference of Catholic Bishops has instructed Catholic health care facilities similarly.⁸ “And so, what of the woman who does not wish to “donate” the use of her body to a fertilized egg or fetus? Rape is not freely given consent, incest is not consent, and sexual intercourse using a contraceptive that fails is not consent to carry a fetus to term.”⁹

Thus, if there is a generally accepted secular moral principle around abortion in our society, it is that the freedom and bodily autonomy of the individual must be protected, along with the rights of the viable fetus. S. 988 would follow particular religious teachings to treat abortion of non-viable fetuses as murder, with corresponding penalties. This bill must be rejected.

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⁴ General Convention, *Journal of the General Convention of...The Episcopal Church, New Orleans, 1982* (New York: General Convention, 1983), p. C-156.

⁵ Rachel Mikva, Associate Professor of Jewish Studies, Chicago Theological Seminary. “When does life begin? There’s more than one religious view.” *The Conversation*, September 7, 2021.

<https://theconversation.com/when-does-life-begin-theres-more-than-one-religious-view-167241>

⁶ Arthur L. Caplan, PhD, “Finding a solution to the organ shortage,” *CMAJ* 188(16): 1182-1183, November 1, 2016, National Institutes of Health; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5088084/>

⁷ Learning More About Organ & Tissue Donation,”

https://www.giftoflife.on.ca/resources/pdf/Catholic_Brochure.pdf

⁸ United States Conference of Catholic Bishops, “Ethical and Religious Directives for Catholic Health Services, Fifth Edition, November 17, 2009, <https://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.

⁹ Some religious denominations would argue that the situations are different because of the concept of complementarity, defining the role of women specifically as obligatory child bearers. Those who believe this are free to act accordingly but should not expect those who do not to comply.