Testimony of Courtney Turner Milbank[1]
Before the Indiana Senate Rules Committee
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INTRODUCTION

I am Courtney Turner Milbank, General Counsel for Indiana Right to Life, Inc. and an attorney with The Bopp Law Firm, PC, a firm that specializes in constitutional law, and that represents numerous pro-life groups, including Indiana Right to Life and the National Right to Life Committee, Inc. in Washington, D.C.

I thank you for the opportunity to testify before this Committee in light of the recent decision by the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization* and the introduction of Senate Bill 1 ("**SB 1**"). My testimony today consists of three parts: Part I will focus on the legal landscape surrounding *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey* and how those decisions took power away from the states, versus *Dobbs*, which allocated that power back to the states; Part II will detail what legislation pro-life groups recommend to restore legal protection to unborn children, including important prohibitions and enforcement mechanisms; and Part III will detail problems with, and necessary amendments for, SB 1.

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I. The Legal Landscape After *Dobbs* Allocates Power Back to the States

A. *Roe* and *Casey* Decisions

Roe and *Casey* imposed several severe restrictions on the ability of states to regulate abortion. *Roe* claimed that the Constitution implicitly conferred a right to abortion. Without explaining how the rules it established "could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source," it instituted an elaborate trimester-based framework for when States could enact abortion restrictions and when they could not, culminating in the ruling that States generally could not "protect fetal life prior to 'viability.'" *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, 2022 WL 2276808, at *27 (U.S. June 24, 2022). Specifically, *Roe* prohibited States from enacting restrictions on abortion during the first trimester, while allowing States to regulate abortion during the second trimester, but only if the regulation was "reasonably related" to the health of the mother. *Roe v. Wade*, 410 U.S. 113, 164 (1973). Thus, it was only in "the stage subsequent to viability," which in 1973 roughly coincided with the beginning of the third trimester, that *Roe* permitted States to fully regulate abortion, except where necessary to preserve "the life or health of the mother." *Id*. at 164–165.

Casey reaffirmed this central holding of *Roe*, all the while rejecting most of *Roe*'s reasoning, and replacing *Roe*'s trimester framework with an "undue burden" test. *See generally Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992). The decision, however, "provided no clear guidance about the difference between a 'due' and an 'undue' burden."

Dobbs, 2022 WL 2276808 at *6.

Thus, prior to the decision in *Dobbs*, in order for any State abortion law to be Constitutional, the State was required to prove that its abortion laws did not impose an "undue burden" on women. Indiana has passed numerous regulations on abortion under the *Roe* and *Casey* framework, all attempting to protect unborn life and maternal health to the extent allowed by these decisions.

B. *Dobbs* Decision

On June 24, 2022, the United States Supreme Court announced its landmark decision in *Dobbs*. *Dobbs* made several significant rulings: (**1**) it overturned *Roe* and *Casey*, which had found a right to abortion in the U.S. Constitution; (**2**) it held that with no federal constitutional right to abortion, regulation of abortion now returns to the states; and (**3**) it explicitly provided that the standard of review applicable to abortion laws is rational-basis review.

First, the Supreme Court considered the critical question of whether the Constitution, properly understood, confers a right to an abortion. In evaluating this question, the Supreme Court first made clear that the Constitution makes no *express* reference to abortion. Instead, "defenders of *Roe* and *Casey* [ ] chiefly rely [on] the Due Process Clause of the Fourteenth Amendment" as the constitutional provision which implicitly guarantees the right to an abortion. *Id*. at *7. However, the Supreme Court held that, while the Fourteenth Amendment guarantees some implicit or unmentioned rights, that "right[] must be 'deeply rooted in this Nation's history

and tradition' and 'implicit in the concept of ordered liberty.'" *Id.* (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). Because abortion does not fall within this category,[2] it cannot be considered an implicit constitutional right. *Id.* at *7. Thus, the Supreme Court ultimately determined that no constitutional right to abortion exists in the Constitution and that both *Roe* and *Casey* must, therefor, be overruled.[3]

Second, the Supreme Court held that, with no constitutional right to abortion, the authority to regulate abortions returns to the states. *See, e.g.*, *id.* at *22 ("we thus return the power to weigh [the] arguments to the people and to their elected representatives"); *id*. at *36 ("Our decision returns the issue of abortion to those legislative bodies[.]"), *id*. at *38 ("We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortions must be returned to the people and their elected

[2]*See id*. at *9–*22 for the Court's detailed and thorough analysis on whether the right to an abortion was deeply rooted in the Nation's history or implicit in the concept of ordered society, determining that it was not. In doing so, the Court highlighted, *inter alia*, that "[b]y the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy," (*id*. at *12) and that "until the day *Roe* was decided . . . a substantial majority . . . still prohibited abortion at all stages except to save the life of the mother[]" (*id*. at *16).

Ultimately, the Court determined that "[t]he inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973." *Id*. at *17.

[3]The Supreme Court also engaged in an extended analysis of whether the doctrine of *stare decisis* compels continued acceptance of these precedents, *id.* at *24–*38, ultimately determining that "the traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*," *id*. at *37.

representatives."); *id*. at *43 ("The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.").

Third, the Supreme Court made clear that given the complete overruling of *Roe* and *Casey*, state abortion laws will no longer be subject to heightened scrutiny or the undue burden test of *Casey*. From now on, any law regulating abortion will be subject to the most deferential and lowest standard of review: "rational-basis review." *Id*. at *42. This means that "[a] law regulating abortion . . . is entitled to a 'strong presumption of validity'" and "[i]t must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests." *Id*. at *42 (citations omitted).[4]

The Court applied rational-basis review to Mississippi's 15-week restriction and upheld it. This shows how rational-basis review works. First, the Court listed the applicable legitimate interests:

> These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157-158; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability. *See id*., at 156-157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728-731 (identifying similar interests).

Id. Then the Court held that these interests justify the 15 week ban:

[4]This is the same low standard applicable to other health and welfare laws. *Id*.

> These legitimate interests justify Mississippi's Gestational Age Act. Except "in a medical emergency or in the case of a severe fetal abnormality," the statute prohibits abortion "if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." Miss. Code Ann. §41–41–191(4)(b). The Mississippi Legislature's findings recount the stages of "human prenatal development" and assert the State's interest in "protecting the life of the unborn." §2(b)(I). The legislature also found that abortions performed after 15 weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure "for nontherapeutic or elective reasons [to be] a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8); *see also Gonzales*, 550 U. S., at 135–143 (describing such procedures). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents' constitutional challenge must fail.

Id.

Consequently (absent *state* constitutional restrictions), states may enact abortion regulations up to and including prohibiting abortion, except abortions necessary to save the life of the mother, and they would be constitutional.[5] Of course, any lesser restrictions would also be upheld.

II. Elements of a Pro-life Abortion Bill

Now that *Roe* and *Casey* have been overturned, the Indiana General Assembly is in session to consider new abortion laws to protect unborn life by limiting and prohibiting abortion and this Committee hearing is called to determine whether SB 1 is adequate and appropriate to do that. If not, the Committee should consider changes to the bill.

The pro-life movement, and specifically Indiana Right to Life and the National Right to

[5]State laws will be subject to Due Process attack, if their wording is unconstitutionally vague.

Life Committee, that The Bopp Law Firm represents, have vast experience in fashioning legislatures with appropriate and constitutionally defensible wording to protect unborn life. Based on our experience, there are two major parts to legislation necessary to protect unborn life. First is the substantive part: which abortions will be prohibited by the law and which abortions will be allowed and under what conditions. SB 1 currently has exceptions for the life of the mother and for rape or incest, but such exceptions must be appropriately worded and contain adequate safeguards, which will be examined below.

The second part is an effective enforcement regime. Traditionally, abortion laws relied on criminal enforcement to make pro-life laws effective in protecting unborn life. However, current realities require a much more robust enforcement regime than just reliance on criminal penalties.

In the current environment, criminal penalties have three substantial drawbacks. First, progressive prosecutors have been elected in several counties in almost every state, who regularly refuse to enforce laws that do not meet their social-justice agenda. These include a wide variety of laws, such as immigration laws, drug laws, sex-crime laws, minor criminal offenses, and offenses against property.[6] Abortion-rights advocates are already conspiring on how abortion-on-demand can be protected in States that will adopt pro-life laws.[7] A key part of that strategy is for pro-abortion prosecutors to refuse to enforce pro-life laws post-*Roe*. In fact, several prosecutors

[6]https://www.usnews.com/news/politics/articles/2021-10-19/district-attorneys-refuse-to-prosecute-some-gop-led-laws.

[7]https://slate.com/news-and-politics/2022/05/red-state-abortion-access-post-roe.html.

across the county have already vowed to not enforce abortion laws, including Marion County's prosecutor.[8] And the reality is that most abortion clinics have already moved to large urban centers and college towns where these pro-abortion prosecutors are likely to be elected. If a state relies only on criminal penalties, these counties will be sanctuaries for abortion-on-demand. As a result, to effectively enforce pro-life laws, a wide variety of enforcement measures will need to be adopted to supplement criminal enforcement, including civil remedies, and criminal enforcement by State officials.

Second, as we realized in our Nation's efforts to combat organized crime, prosecuting individual members of an organized criminal enterprise has limited effectiveness. The whole criminal enterprise needs to be dealt with to effectively prevent criminal activity, so RICO-style laws were adopted to provide effective remedies against the whole criminal enterprise.[9] Unfortunately, much of the abortion industry is likely to reemerge and perform unlawful abortions, sheltered by pro-abortion prosecutors and public officials.[10] This unlawful abortion industry will be well-funded and well-organized, operating as an unlawful abortion enterprise

[8]After *Roe* and *Casey* were overturned, 90 Prosecuting Attorneys from 31 States declared that they would never prosecute individuals performing abortions. https://fairandjustprosecution.org/wp-content/uploads/2022/06/FJP-Post-Dobbs-Abortion-Joint-Statement.pdf. Marion County Indiana Prosecutor Ryan Mears signed this declaration of non-enforcement.

[9]https://www.justia.com/criminal/docs/rico/.

[10]https://www.bloomberg.com/news/articles/2022-06-24/from-washington-d-c-to-seattle-cities-establish-abortion-sanctuaries.

that will need to be stopped to prevent unlawful abortions from occurring.[11]

In addition, the abortion industry can be expected to also exploit the Biden administration's action allowing mail order abortion inducing drugs to flood a state with these drugs for the performance of illegal abortions. States have some, but limited, authority to prevent this and appropriate laws to deal with trafficking in illegal abortion inducing drugs will be necessary.

Finally, the abortion industry can be expected to exploit existing State laws on telehealth and the proximity of States with less protective laws to circumvent pro-life laws in a particular State. New laws will be needed to prevent existing telehealth laws from being exploited for unlawful abortions and to prevent trafficking of minors for unlawful abortions.

Our specific recommendations follow.

A. Substantive Part: Abortions, Except to Prevent the Death of the Pregnant Woman; Conspiring to Cause, Aiding or Abetting Unlawful Abortions; Trafficking in Abortion Inducing Drugs; and Unlawful Abortion Trafficking of a Minor Prohibited

We recommend prohibitions on (**1**) performing an abortion with limited exceptions with adequate safeguards, (**2**) conspiring to cause, or aiding or abetting, unlawful abortions, (**3**) trafficking in abortion inducing drugs, and (**4**) unlawful abortion trafficking of a minor, all enforced by criminal penalties.

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[11]This does not refer to pro-abortion advocacy groups, whose advocacy for abortion rights is protected by the First Amendment. This refers to entities that will be performing unlawful abortions.

(1) Abortions Prohibited, with Limited Exceptions with Adequate Safeguards

We recommend that a person who causes an abortion is subject to criminal penalties, subject to an affirmative defense by a physician that the abortion was necessary to prevent the death of the pregnant woman, with appropriate safeguards to protect the life of the unborn child.

In addition, we recommend that if a rape and incest exception is included, against Indiana Right to Life's policy position that abortion is only necessary to prevent the death of the pregnant woman, that appropriate safeguards to protect the life of the unborn child, including that documentation be presented to the attending physician that demonstrates that the crime has been reported to law enforcement and that the physician report any incest to child protective services.

The law should explicitly state that such criminal penalties shall not apply to a pregnant woman seeking or procuring an abortion.

(2) Prohibition on Conspiring to Cause, or Aiding or Abetting, Unlawful Abortions

To ensure that all parties participating in an unlawful abortion are subject to enforcement, we recommend that the above criminal penalties for performing an unlawful abortion should be extended to anyone, except for the pregnant woman, who (a) conspires to cause an unlawful abortion or (b) aids or abets an unlawful abortion.

Aiding or abetting an unlawful abortion should include, but not be limited to: (1) giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortions or means to obtain an unlawful abortion; (3) hosting or maintaining a

website, or providing internet service, regarding how to obtain an unlawful abortion; (4) offering or providing unlawful "abortion doula" services; and (5) providing referrals to an unlawful abortion provider. The penalties for such conspiracy, and for such aiding or abetting, would be subject to the affirmative defense for a physician to perform a life-saving abortion.

(3) Prohibition on Trafficking in Abortion Inducing Drugs

We recommend that the selling or distributing of abortion inducing drugs, when a person knows, or has reason to believe, that the recipient to whom the person sells or distributes an abortifacient intends to use it to cause an unlawful abortion in Indiana, be prohibited.

(4) Prohibition on Unlawful Abortion Trafficking of a Minor

Finally, we recommend that a person who recruits, harbors, or transports a pregnant minor with the intent to deprive the pregnant minor's parent of knowledge of, and to procure, an unlawful abortion commits unlawful abortion trafficking of a minor, a Level 3 Felony.

(5) Attorney General Criminal Enforcement Authority

To ensure that prosecutions for unlawful abortions occur throughout the State, we recommend that, in addition to the prosecutorial authority granted to local Prosecuting Attorneys to enforce the State's criminal code, the Attorney General be granted the authority to prosecute any criminal violations of the abortion law either concurrently with Prosecuting Attorneys or, under certain circumstances.

B. Medical Licensing Board Enforcement

In addition to the criminal penalties provided above, we recommend requiring the State's

medical licensing board to revoke the license of a physician to practice medicine in the State if the Board determines that the physician has violated any provision of the act and to suspend the license of a physician if the Board determines that the physician has failed to make any of the required certifications or reports.

C. Civil Actions for Violating the Abortion Law

In addition to criminal penalties and medical license revocation, civil remedies will be critical to ensure that unborn lives are protected from unlawful abortions.

(1) Civil Remedies to Enforce the Abortion Law

To further ensure meaningful enforcement against the performance of unlawful abortions, we recommend establishing civil remedies to be brought by appropriate state or local officials and by persons related to the pregnant woman. This would permit a civil action against a person or entity that violates any provision of the abortion law for injunctive relief sufficient to prevent future violations; for compensatory damages if the plaintiff has suffered actual injury or harm from the defendant's conduct; for punitive damages, payable to the not-for-profit organization of the plaintiff's choice that provides services to pregnant women; and for costs and reasonable attorney fees.

(2) Wrongful Death of an Unborn Child

We recommend that a civil action for Wrongful Death of an unborn child be available to the woman upon whom an unlawful abortion has been performed, the father of the unborn child, and the parents of a minor upon whom the unlawful abortion was performed, permitting recovery

of compensatory and punitive damages, and court costs and reasonable attorney fees.

D. Criminal Penalties for and Civil Remedies Against the Unlawful Abortion Industry

In order to further stem unlawful abortion, we additionally recommend that States deploy laws that would penalize the illegal abortion industry, including abortion clinics that perform illegal abortions. Therefore, we recommend both criminal penalties and civil remedies against a person who receives proceeds from a pattern (two or more instances) of violating the provisions of the abortion law and uses such proceeds to establish or to operate an entity to perform unlawful abortions. Such knowing or intentional conduct should be subject to a Level 5 Felony, as well as civil enforcement actions.

E. Physician Reporting Requirements

We recommend that a physician who performs an abortion be required to provide a report to the appropriate state agency, including requiring the physician to certify the facts on the basis of which the physician made the determination that the abortion was necessary to prevent the death of the pregnant woman. Failure to do so should constitute a Class A misdemeanor.

III. Analysis and Recommendations Regarding Senate Bill 1

A. General Summary of SB 1: a Wolf in Sheep's Clothing

In general, SB 1 is an abject failure in achieving the pro-life movement's goal of extending substantial protection to innocent unborn life now that that authority has been returned to Indiana by the U.S. Supreme Court's overturning of *Roe* and *Casey* in *Dobbs*, as explained in Part I. While billed as prohibiting abortion except to save the mother's life and for rape or incest,

SB 1 utterly fails to limit abortions to even the exceptions that it purports to find acceptable, due to numerous and pervasive legal flaws and omissions. If adopted, SB 1 would result in the continuation of abortion on demand throughout pregnancy in Indiana. As a result, IRTL opposes the adoption of SB 1.

The total ineffectiveness of SB 1 to protect unborn life is, in part, the inevitable result of its formulation process. IRTL knows of no local, state, or national prolife organization or any expert pro-life lawyer that the Senate Republicans consulted, but instead, SB 1 was drafted based on the advice of abortion rights advocates, using their suggested language, as Senator Bray explained in his Wednesday press conference, from groups such as ACOG, the American College of Obstetricians and Gynecologists, which is one of the foremost pro-abortion advocacy groups in the nation, whose goal is "to defend and expand access to abortion at all levels."[12] Of course, ACOG's goal is not to help formulate effective pro-life laws but to undermine and to gut them.

B. Effect of Formulation Process on SB 1

The pro-abortion groups and individuals consulted by the Senate used various strategies in proposing wording, or objecting to the addition of needed provisions, in order to undermine and gut any pro-life effect that SB 1 might have had. A detailed examination of SB 1 reveals that, at every turn, fatal flaws were incorporated into SB 1 setting up inevitable and likely successful

[12]*See* ACOG, Abortion is Essential Health Care, https://www.acog.org/advocacy/abortion-is-essential.

litigation, which would result in the whole law being struck down, and that needed safeguards or enforcement mechanisms were omitted. The result is that SB 1 fails to provide any meaningful protection to the unborn.

There are three provisions that illustrate this point. First, there are *no* criminal penalties under Section 14 of SB 1, except those imposed for partial birth abortions, D&E abortions, and abortions performed without the consent of the pregnant woman. There is also complete immunity under Section 19 for all other abortions. Taken together, these provisions impose no criminal penalties and complete immunity for all other abortions, including chemical abortions.

Second, Section 11 of SB 1 eliminates the legal requirement for the consent of pregnant woman for an abortion if it is necessary to save her life, so that a physician *can abort a woman's baby over her objection,* a shocking deprivation both of her right to consent to medical treatment and of the very life of the unborn child she is carrying.

Third, the combination of changes made by Section 2 and 7 of SB 1 explicitly recognize, and legalize and facilitate, *chemical abortion clinics flourishing* throughout Indiana by providing for "licences to existing and future [chemical] abortion clinics." If abortion was truly limited to the circumstances of the life of the mother or for rape or incest, abortions in Indiana would be rare, maybe a few hundred a year, and only performed by mainstream physicians in appropriate health care settings when justified by legitimate reasons. SB 1, however, contemplates thousands of chemical abortions a year, which would be necessary to sustain a network of "licenced" chemical abortion clinics throughout Indiana. SB 1 is not only pro-abortion by legalizing forced

abortion on a pregnant woman, but by authorizing abortion inducing drugs to flood Indiana and by facilitating their use through the operation of current and future chemical abortion clinics throughout the state.

Furthermore, SB 1 also turns a blind eye to the biggest enforcement problem facing protecting the unborn – the refusal of radical Democrat Prosecutors, such as Ryan Mears of Marion County, to prosecute illegal abortions under any new Indiana abortion law.[13] Without alternate means of enforcing any new Indiana abortion law, Indianapolis, and thus the State of Indiana, will have unlimited abortion on demand throughout pregnancy. Despite this well known problem, SB 1 does nothing.

Finally, pro-abortion groups are now in the catbird's seat. They can cynically condemn SB 1 for being a "pro-life" bill, while knowing it is not, thereby enhancing SB 1's chances of passage in Indiana's pro-life legislature, and simultaneously activating and infuriating their pro-abortion base. Their complicity in helping to write SB 1 is a cynical ploy that needs to be defeated by substituting pro-life legislation for SB 1.

C. Specific Recommendations for Major Revisions of, and Necessary Additions to, SB 1

SB 1 has major problems with nearly every provision that require numerous amendments, or just a total rewrite. Many of these problems are discussed, and proposed amendments are suggested, below:

[13]https://www.wfyi.org/news/articles/marion-county-prosecutor-wont-criminal-charges-seeking-abortion.

(1) SB 1 Contains No Criminal Penalties and Absolute Immunity for Many Abortions

Section 19 extends full immunity to a person if they performed an abortion at the "request" of the pregnant woman. This section does not provide a defense to the criminal penalties under Section 14. However, this further exacerbates the problem, because Section 14 only imposes criminal penalties for partial birth abortions, D&E abortions, and abortions performed without the consent of the mother (or her legal guardian, if a minor).

Taken together, these sections provide *no* criminal penalties and complete immunity from all other abortions, including surgical abortions not performed by a physician, surgical abortions not performed in the required facilities, chemical abortions, abortions performed under exceptions without necessary safeguards, and abortions accomplished via telehealth or telemedicine, etc. (Section 11(a)(1), (a)(2), (a)(3), (a)(6) and 1(d)).

(2) Totally Ineffective Enforcement Mechanism with Lawless Pro-abortion Democrat Prosecutors Standing in the Way

SB 1 relies exclusively on criminal penalties and medical licencing for enforcement of SB 1. This is totally ineffective. As to criminal penalties, the Marion County Prosecutor has already announced that he will not prosecute anyone under a new prolife abortion law so that abortion on demand throughout pregnancy will flourish in Indianapolis and thus in Indiana. Furthermore, state licencing officials have proven to be totally ineffective in even enforcing Indiana's current modest abortion regulations and cannot be expected to be more effective in enforcing a pro-life law protecting the unborn. Thus, the Indiana Attorney General should be given criminal

enforcement power under this law, and authority to enforce Indiana's RICO law, against unlawful abortions and abortion clinics. Furthermore, the AG, Prosecutors, the pregnant woman and her family members should be given the authority to bring damage actions and to seek civil injunctions against unlawful abortions.

(3) Novel, Medically Inaccurate, and Unconstitutionally Vague Terminology in Key Phrases will Lead to SB 1's Enjoinment

SB 1 uses novel, medically inaccurate, and unconstitutionally vague terminology to define the key terms of "abortion," "fetus," "pregnancy," in Section 1, 3, and 4, and the life of the mother exception in Section 11. The likely result is a vagueness lawsuit that would enjoin the entire law. These definitions need to be corrected. Furthermore, a key element of a proper definition of abortion is missing, and needs to be added, that an abortion only occurs if the "woman is known to be pregnant," so that no contraceptives are implicated.

(4) No Adequate Safeguards for Rape or Incest Exception Leading to Abortion on Demand

The only "safeguard" for the rape or incest exemption in Section 11 is the requirement of a secret confidential affidavit to the physician that the pregnancy is the result of rape or incest. This results in a huge loophole where any woman or girl could easily falsely claim rape or incest with the result of abortion on demand throughout pregnancy. Instead, proper reporting to law enforcement and child protective services should be required. In addition to an effective verification that the pregnancy actually resulted for criminal activity and the increased prospect of holding the criminal in account, this requirement protects women and girls from being thrust,

unprotected, back into the hands of their abusers.

(5) SB 1 Authorizes Forced Abortion of Pregnant Women

SB 1, in Section 11, eliminates the requirement for the consent of pregnant woman for an abortion that is necessary to save her life so that a physician can abort a woman without her consent or even over her objection. This is a shocking denial of medical treatment choice for a pregnant woman and of the very life of her unborn baby, which should be eliminated.

(6) SB 1 Fails to Protect Parental Rights When Daughter Seeks an Abortion

SB 1 also does nothing about the violations of parental rights that can be expected to result by abusers and other trafficking minors to seek illegal abortions in other states without parental knowledge. This should be prohibited.

(7) SB 1 Authorizes and Facilitates Abortion Inducing Drugs Flooding Indiana

In Section 11, SB 1 repeals provisions regulating abortion inducing drugs in current law and does nothing to prevent Indiana from being flooded with such drugs for illegal abortions. Then, SB 1 authorizes, legalizes and legitimizes chemical abortion clinics being set up throughout the state to perform chemical abortions by continuing and enhancing Indiana's licencing of "existing and future (chemical) abortion clinics." *See* Sections 2 and 7.

The scheme created by SB 1, therefor, recognizes that chemical abortions will continue to flourish in Indiana and authorizes chemical abortion clinics to facilitate this. With the changes recommended above, and others, abortion will finally be rare in Indiana, maybe a few hundred a year, and only performed by mainstream physicians in appropriate health care settings when

justified by legitimate reasons. SB 1, however, contemplates thousands of chemical abortions a year, which would be necessary to sustain a network of chemical abortion clinics throughout Indiana.

SB 1 should be amended to exercise Indiana's limited authority to regulate the distribution of abortion inducing drugs by preventing their trafficking. Furthermore, with the changes we have recommended, there is no need for Indiana to licence "existing and future (chemical) abortion clinics."

D. SB 1 Should be Substantially Amended, or Replaced, to Provide Protection for the Unborn, Rather than, as Currently Written, Protecting Abortion on Demand

As demonstrated above, SB 1 is a wolf in sheep's clothing, protecting abortion on demand by defective language, lack of necessary safeguards, and lack of an effective enforcement mechanism, while parading as a pro-life measure. IRTL opposes SB 1 and urges the Senate to pass truly pro-life legislation to protect the unborn.

Thank you for this opportunity to testify.