

House Judiciary 2/17/11

Re: HB 574 – Constitutional referendum to specify no right to abortion or its public funding

Mr. Chairman and members of the committee, my name is Rebecca Mastee. I represent the Montana Catholic Conference and speak on behalf of the two Roman Catholic Bishops of Montana.

We thank Rep. Warburton for her leadership in carrying this Constitutional Referendum, to which I've supplied a friendly amendment that better suits the intent of the bill and which reads:

Nothing in this constitution grants or secures a right to abortion or the public funding of abortion.

This language is similar to what is found in the Rhode Island Constitution (Art. I, § 2), and says there is no state constitutional right to abortion. It is important to note, however, that with this amendment, abortion would remain legal under federal law.

Without this bill, legislative efforts to regulate abortion, in order to protect women and children, will continue to be stifled and challenged as unconstitutional. Since the Constitution is the people's document. They are entitled to alter it as needed,¹ which is what this bill provides – an opportunity to correct an overreaching Supreme Court opinion. This is a necessary and appropriate response to the 1999 MT Supreme Court Armstrong² decision, where the MT Constitution was interpreted to have an expansive "right" to abortion.

Other states have taken similar measures to modify their Constitutions in response to the courts. FL recently amended its Constitution, after the FL Supreme Court struck down a statute requiring parental notification prior to abortion. TN is currently in the process of amending its Constitution in response to an unwarranted expansion of abortion rights by its Supreme Court.

Now is the time for the people of Montana to speak and declare what rights they intended their Constitution to provide. Since this Constitution was approved in 1972, prior to the legalization of abortion by *Roe v Wade*³ in 1973, the people could not have considered the ramifications of a court interpreting an expanded right to abortion. Now, though, the people are entitled to amend their Constitution to correct the courts' interpretation. This is to ensure the Constitution reflects their will.

To do so, this proposed amendment impacts only the Montana Constitution. This will not change federal law. It will not make abortion illegal. Rather, it makes the Montana Constitution abortion

¹ Montana Constitution, Art.II, Sec. 2 (1972). The Montana Constitution's self-government provision provides that the people "may alter... the constitution... whenever they deem it necessary."

² *Armstrong v. State*, 296 Mont. 361 (1999).

³ *Roe v. Wade*, 410 U.S. 113 (1973).

neutral. The intent is not to prohibit anything, but rather to allow regulations of abortion and its funding to be enforceable, when considered in light of federal law.

When MT abortion cases have been challenged under federal law, the prolife measures being challenged were considered constitutional. Both the *Armstrong*⁴ and *Wicklund*⁵ cases started in federal court, and made their way to the United States Supreme Court. After having the statutes they were challenging upheld by the high Court, both cases were then challenged in state court.

It was in state court that the statutes were then struck down:

The Montana Supreme Court's *Armstrong v. State* decision expanded the Montana Constitution's privacy provision to include an almost limitless right to "procreative autonomy" and abortion.⁶

The judge in the *Wicklund* case, which challenged a parental notification statute, arrived at a similar conclusion when declaring the statute unconstitutional at the district court level.

These are just two examples where Montana attempts to regulate abortion, in ways allowed under federal law, are struck down at the state level.

Yet, it is the people who enacted these regulatory measures, through their elected officials. The people want the regulation of abortion.

This amendment will allow the people of Montana to voice their will by overturning abortion precedent and reclaiming their rightful authority to regulate abortion and its funding, within federal constitutional limits.

I want to reiterate what this amendment does not do. Abortion and its funding will not be outlawed or banned under this amendment. This amendment merely allows the Montana legislature to regulate abortion, to the extent allowed by federal law. It will not make abortion illegal. Rather, this amendment will make the Montana Constitution abortion neutral. When neutral on this issue, the Montana Constitution is placed on the same plane as federal law. Many legislative proposals that help women and children are constitutional under federal law, and with this amendment will become enforceable, constitutional measures under state law.

Finally, this amendment will restore balance to the Constitution of Montana, by allowing the people, acting through their elected legislators, to enact reasonable regulations on abortion and its funding that are fully consistent with the US Constitution, as interpreted by the US Supreme Court.

We support this restoration of balance and encourage you to do the same.

⁴ *Mazurek v. Armstrong*, 520 U.S. 968 (1997).

⁵ See *Lambert v Wicklund*, 117 S. Ct. 1169 (1997), and *Wicklund v. State*, 1999 Mont. Dist. LEXIS 1116 (1999).

⁶ *Armstrong v. State*, 296 Mont. 361 (1999).

HOUSE BILL NO. 574
INTRODUCED BY W. WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE MONTANA CONSTITUTION DOES NOT GRANT OR SECURE A RIGHT TO ABORTION AND THAT THE MONTANA CONSTITUTION PROHIBITS THE PUBLIC FUNDING OF ABORTION ~~OR THE PUBLIC FUNDING OF ABORTION.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Article II of The Constitution of the State of Montana is amended by adding a new section 36 that reads:

Section 36. No right to abortion or public funding for abortion. (1) Nothing in this constitution grants or secures a right to abortion ~~or the public funding of abortion.~~

~~(2) Public funds may not be used to pay for abortion.~~

NEW SECTION. **Section 2. Two-thirds vote required.** Because [section 1] is a legislative proposal to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

NEW SECTION. **Section 3. Effective date.** If approved by the electorate, [this act] is effective January 1, 2013.

NEW SECTION. **Section 4. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

FOR ~~prohibiting the public funding of abortion and clarifying that there is no state constitutional right to abortion or the public funding of abortion.~~

AGAINST ~~prohibiting the public funding of abortion and clarifying that there is no state constitutional right to abortion or the public funding of abortion.~~

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