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Testimony in Opposition to Senate Bill 398  
Senate Committee on Health, Human Services, Insurance, and Job Creation  
By Julaine K. Appling, CEO  
February 27, 2008

Thank you, Chairman Erpenbach and committee members, for the opportunity to testify on Senate Bill 398. My name is Julaine Appling, and I am presenting this testimony today as president of Wisconsin Family Action, the legislative action arm of Wisconsin Family Council.

Wisconsin Family Action is opposed to SB 398.

I must admit that I am somewhat baffled by the purpose of this bill. SB 398 would repeal Wisconsin statute 940.04—the statute criminalizing the abortion of an unborn child. However, since the 1973 US Supreme Court decision in *Roe v. Wade*, Wisconsin's abortion ban has been unenforceable. The current statutes are hurting absolutely no one—they cannot be enforced.

However, let's assume for a moment that this piece of legislation was actually relevant, that *Roe v. Wade* was overturned and that the decision to prohibit, regulate or allow abortion was back in the hands of the states. Where does statute 940.04 fit at that point? First, Article I, Section I of the Wisconsin Constitution guarantees life, liberty and the pursuit of happiness to all people. That makes it clear that it is perfectly appropriate for government to protect innocent life and punish those who take life, which is what Statute 940.04 stipulates. We're talking about unborn human life in this instance, and the state should absolutely give that life the benefit of the doubt.

If the above scenario became reality, Wisconsin is then in the position of giving the benefit of doubt to life—and has a means already in place that punishes those who knowingly perform procedures that destroy unborn human life.

Frankly, the burden of proof lies with the authors and proponents of this bill to prove that removing the statute in question is appropriate, to show somehow that it is not the state's responsibility to protect innocent, helpless life. I submit to you that it is *always* the state's duty to protect innocent, helpless life and that protecting life was the purpose of this statute. This abortion criminal code is an appropriate safeguard in the event that the decision to regulate abortion is returned to the states. In that case, Wisconsin would be one of just four states that has a criminal code for abortion on the books, ready to be enforced.

Lifting an unenforceable ban of this nature on the presumption that it might eventually become enforceable under a certain set of circumstances is illogical at best and irresponsible at worst. We have no idea what the circumstances might be that would possibly overturn the current federal sanction of abortion. In the event the federal sanction is overturned, instead of rushing to try to create new criminal code and regulations, having the debate and engaging what could likely be a protracted legislative process while babies were being killed, we would be prepared with Statute 940.04. Keeping the statute in place gives the benefit of doubt exactly where it should be given—to the unborn human lives.

It is also important to remember that the only reason this statute is not enforceable right now is not that the expressed will of the people of Wisconsin has changed, but rather that we had a 5-4 vote in the US Supreme Court that imposed this situation on all of us.

The testimony provided today by others will lay to rest the argument that this statute would result in women who abort their babies being thrown into prison. Other statutory provisions clearly prevent that.

As duly elected officials, I submit to you that it is your duty to protect life. Statute 940.04 protects the most vulnerable life of all—the unborn child. It is far more reasonable and responsible for this legislature to leave the statute in place, unenforceable though it may be right now, and in so doing give the benefit of the doubt and the presumption of innocence to the unborn children who might one day be affected by this statute.

For all of these reasons, Wisconsin Family Action is opposed to SB 398, and I urge this committee to honor established Wisconsin statute and err on the side of protecting the life of the innocent unborn. A vote against SB 398 would accomplish both.

Thank you.