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School of Law

January 10, 2023

Representative Tina Liebling
Chair, Health Finance and Policy Committee

Re: HF91

Madam Chair and members of the Committee:

Thank you for the opportunity to provide testimony on HF91. I am a Professor of Law at Mitchell Hamline School of Law and a Visiting Professor at Saint Louis University School of Law. I teach and research reproductive law, and I support HF91.

It is especially important for Minnesotans to be able to tell easily and reliably what conduct involving abortion is lawful or unlawful under Minnesota law, now that their federal right to an abortion has been overturned.

Presently, that is not possible. Witness, for example, the need for *MinnPost* to run an article earlier this year on whether Minnesota law limits abortions based on viability.¹ Presently, there is no clarity on that matter, among many others, given how many unenforceable, unconstitutional statutes remain on the books. Even organizations like the Guttmacher Institute have mistaken the law in Minnesota.² When respected organizations devoted to researching and writing on reproductive law and policy get Minnesota law wrong, you know ordinary Minnesotans couldn't be expected to get it right.

If ordinary Minnesotans couldn't possibly get it right with the plethora of unenforceable abortion laws still on the books, then health care providers may not, either. Health care providers tend to be exceptionally risk-averse when it comes to the law.³ As a result, they may refuse to provide legal health care to Minnesotans, not for sound medical reasons or out of conscience but simply because they mistakenly think the care is illegal under present law. Who could blame them, given that the law is still on the books?

¹ Walker Orenstein & Greta Kaul, *Does Minnesota Law Have a 'Viability' Threshold Limiting Abortion? Well, That Depends*, MINNPOST (July 12, 2022), <https://www.minnpost.com/health/2022/07/does-minnesota-law-have-a-viability-threshold-limiting-abortion-well-that-depends/>.

² See, e.g., Guttmacher Institute, *An Overview of Abortion Laws* (Jan. 1, 2023), <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws> (claiming, inter alia, that abortions are prohibited in Minnesota at viability except where the pregnant person's life or health are at risk).

³ See, e.g., Laura Hermer & Howard Brody, *Defensive Medicine, Cost Containment, and Reform*, 25 J. GEN. INTERNAL MED. 470 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2855004/>.

It is not good for unconstitutional, unenforceable laws to nevertheless remain on the books. People may decide their own reproductive destinies under the Minnesota Constitution, and abortion is just health care that should be treated like any other. The legislature would further these matters by enacting HF91.

Sincerely yours,
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Professor of Law
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