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PUBLIC HEARING

before

ASSEMBLY CORRECTIONS, HEALTH AND HUMAN SERVICES COMMITTEE

on

LEGISLATION TO REGULATE THE DISPOSAL OF HUMAN FETUSES

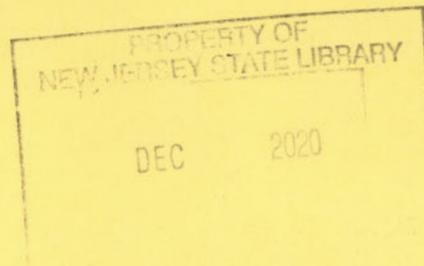
Held:
October 4, 1984
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman George J. Otlowski, Chairman
Assemblyman Paul Cuprowski
Assemblyman Nicholas R. Felice

ALSO PRESENT:

David Price, Research Assistant
Office of Legislative Services
Aide, Assembly Corrections, Health
and Human Services Committee



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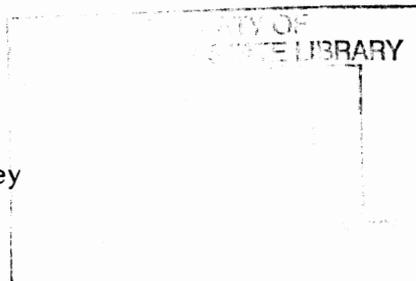


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ASSEMBLY, No. 2584

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Assemblymen ROCCO, SHUSTED, HENDRICKSON, HAINES,
CUPROWSKI and DORIA

AN ACT concerning the disposal of fetal tissue and supplementing
chapter 6 of Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Fetal tissue" means the remains of any fetus of less than 20
3 weeks' uterogestation resulting from a fetal death.

4 b. "Interment" means the lawful disposition of human tissue or
5 fetal tissue by burial, entombment, cremation or inurnment.

1 2. Except as provided by the "Uniform Anatomical Gift Act,"
2 P. L. 1969, c. 161 (C. 26:6-57 et seq.), fetal tissue shall be disposed
3 of by interment. Incineration shall not be an acceptable method
4 of disposal of fetal tissue.

1 3. The method of interment of fetal tissue shall be within the
2-3 discretion of the woman from whom the fetal tissue is being
4 expelled. The woman shall, on a form prescribed and furnished
5 by the Department of Health, indicate the method of interment
6 to be used. A copy of the form shall be maintained on file at the
7 facility or hospital where the fetal tissue is expelled.

1 4. Pursuant to the "Administrative Procedure Act," P. L. 1968,
2 c. 410 (C. 52:14B-1 et seq.), the State Commissioner of Health
3 may adopt rules and regulations to implement the provisions of
4 this act, including the form required by this act. The form shall
5 indicate the alternative methods of interment and note approxi-
6 mate costs thereof.

1 5. Any person who disposes of fetal tissue in violation of the
2 provisions of this act is guilty of a crime of the fourth degree.

1 6. This act shall take effect immediately.

STATEMENT

Current State law does not contain a definition of the way in which the remains of human fetuses of less than 20 weeks' uterogestation are to be disposed of.

This bill would require that the remains of any fetus of less than 20 weeks' uterogestation shall be disposed of by interment.

A person who disposed of fetal tissue in violation of these requirements would be guilty of a crime of the fourth degree, which is punishable by a fine of up to \$7,500.00, imprisonment for up to 18 months, or both.

ASSEMBLY, No. 2477

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 20, 1984

By Assemblymen HENDRICKSON, ROCCO, HARDWICK,
SCHUBER, MUZIANI and PALAIA

AN ACT concerning the disposal of human tissue and fetal tissue
and supplementing chapter 6 of Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Fetal tissue" means the remains of any fetus of less than
3 20 weeks' uterogestation resulting from a fetal death.

4 b. "Human tissue" means any human organ or appendage.

5 c. "Interment" means the lawful disposition of human tissue or
6 fetal tissue by burial, entombment, cremation, or inurnment.

1 2. Except as provided by the "Uniform Anatomical Gift Act,"
2 P. L. 1969, c. 161 (C. 26:6-57 et seq.), fetal tissue and human tissue
3 not disposed of by interment shall be incinerated pursuant to regu-
4 lations that shall be adopted by the Department of Health.

1 3. Any person who engages in the disposal of human tissue or
2 fetal tissue by incineration shall be licensed by the department,
3 which shall adopt regulations establishing the standards to be met
4 by licensees to insure that the health and safety of the public are
5 protected.

1 4. Pursuant to the "Administrative Procedure Act," P. L. 1968,
2 c. 410 (C. 52:14B-1 et seq.), the State Commissioner of Health
3 shall adopt regulations to implement the provisions of this act.

1 5. Any person who violates any provision of this act is guilty of
2 a crime of the fourth degree.

1 6. This act shall take effect immediately.

STATEMENT

In a recent case in Ocean county, sanitation workers discovered that a homeowner was disposing of human fetuses along with his household trash.

Because current State law does not define the way in which the remains of fetuses of less than 20 weeks' uterogestation are to be disposed of, no criminal charges could be filed against the homeowner in Ocean county.

This bill would require that the remains of any fetus of less than 20 weeks' uterogestation as well as any tissue removed from the human body that is not disposed of by interment shall be disposed of by incineration.

The bill further requires any person who engages in the disposal of human tissue or fetal tissue by incineration to be licensed by the Department of Health.

Finally, the bill makes it a crime of the fourth degree to dispose of human tissue or fetal tissue without a license or in violation of the requirements of the bill. A crime of the fourth degree is punishable by a fine of up to \$7,500.00, imprisonment for up to 18 months, or both.

SENATE, No. 2150

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Senator JACKMAN

(Without Reference)

AN ACT concerning the disposal of fetal tissue and supplementing
chapter 6 of Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

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3 20 weeks' uterogestation resulting from a fetal death.

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5 fetal tissue by burial, entombment, cremation or inurnment.

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3 of by interment. Incineration shall not be an acceptable method of
4 disposal of fetal tissue.

1 3. The method of interment of fetal tissue shall be within the
2 discretion of the woman from whom the fetal tissue is being ex-
3 pelled. The woman shall, on a form prescribed and furnished by
4 the Department of Health, indicate the method of interment to be
5 used. A copy of the form shall be maintained on file at the facility
6 or hospital where the fetal tissue is expelled.

1 4. Pursuant to the "Administrative Procedure Act," P. L. 1968,
2 c. 410 (C. 52:14B-1 et seq.), the State Commissioner of Health may
3 adopt rules and regulations to implement the provisions of this
4 act, including the form required by this act. The form shall indicate
5 the alternative methods of interment and note approximate costs
6 thereof.

1 5. Any person who disposes of fetal tissue in violation of the
2 provisions of this act is guilty of a crime of the fourth degree.

1 6. This act shall take effect immediately.

STATEMENT

Current State law does not contain a definition of the way in which the remains of human fetuses of less than 20 weeks' uterogestation are to be disposed of.

This bill would require that the remains of any fetus of less than 20 weeks' uterogestation shall be disposed of by interment.

A person who disposed of fetal tissue in violation of these requirements would be guilty of a crime of the fourth degree, which is punishable by a fine of up to \$7,500.00, imprisonment for up to 18 months, or both.

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Senators CONNORS, RUSSO and JACKMAN

(Without Reference)

AN ACT concerning the disposal of human tissue and fetal tissue
and supplementing chapter 6 of Title 26 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Fetal tissue" means the remains of any fetus of less than
3 20 weeks' uterogestation resulting from a fetal death.

4 b. "Human tissue" means any human organ or appendage.

5 c. "Interment" means the lawful disposition of human tissue
6 or fetal tissue by burial, entombment, cremation, or inurnment.

1 2. Except as provided by the "Uniform Anatomical Gift Act,"
2 P. L. 1969, c. 161 (C. 26:6-57 et seq.), fetal tissue and human tissue
3 not disposed of by interment shall be incinerated pursuant to regu-
4 lations that shall be adopted by the Department of Health.

1 3. Any person who engages in the disposal of human tissue or
2 fetal tissue by incineration shall be licensed by the department,
3 which shall adopt regulations establishing the standards to be met
4 by licensees to ensure that the health and safety of the public are
5 protected.

1 4. Pursuant to the "Administrative Procedure Act," P. L. 1968,
2 c. 410 (C. 52:14B-1 et seq.), the State Commissioner of Health
3 shall adopt regulations to implement the provisions of this act.

1 5. Any person who violates any provision of this act is guilty
2 of a crime of the fourth degree.

1 6. This act shall take effect immediately.

STATEMENT

In a recent case in Ocean county, sanitation workers discovered that a homeowner was disposing of human fetuses along with his household trash.

Because current State law does not define the way in which the remains of fetuses of less than 20 weeks' uterogestation are to be disposed of, no criminal charges could be filed against the homeowner in Ocean county.

This bill would require that the remains of any fetus of less than 20 weeks' uterogestation as well as any tissue removed from the human body that is not disposed of by interment shall be disposed of by incineration.

The bill further requires any person who engages in the disposal of human tissue or fetal tissue by incineration to be licensed by the Department of Health.

Finally, the bill makes it a crime of the fourth degree to dispose of human tissue or fetal tissue without a license or in violation of the requirements of the bill. A crime of the fourth degree is punishable by a fine of up to \$7,500.00, imprisonment for up to 18 months, or both.

ASSEMBLY RESOLUTION No. 25

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1984

By Assemblymen ROCCO, KOSCO, MARKERT, DORIA,
RILEY, MARSELLA and BRYANT

AN ASSEMBLY RESOLUTION expressing the sense of this House that existing Department of Health regulations concerning the disposal of nonviable human fetuses after abortion must be strictly enforced.

1 WHEREAS, The Department of Health has adopted rules and
2 regulations concerning the disposal of nonviable human fetuses
3 after abortion; and

4 WHEREAS, The purpose of these regulations was to insure that
5 nonviable human fetuses were disposed of in a dignified manner,
6 either through cremation or interment; and

7 WHEREAS, Allegations have been made that in some instances
8 these remains are being flushed down toilets or thrown out with
9 other garbage; and

10 WHEREAS, This activity is clearly in contravention of the existing
11 regulations, not to mention contemporary standards of human
12 decency; now, therefore,

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey:*

1 1. It is the sense of this House that the existing Department
2 of Health regulations concerning the disposal of nonviable human
3 fetuses must be strictly enforced.

1 2. A copy of this resolution, signed by the Speaker of the
2 General Assembly and attested by the Clerk, shall be transmitted
3 forthwith to the Commissioner of the Department of Health.

STATEMENT

This resolution expresses the sense of the General Assembly that existing Department of Health regulations concerning the disposal of nonviable human fetuses after abortion must be strictly enforced.

ASSEMBLYMAN GEORGE J. OTLOWSKI (Chairman): Good morning. Before we start, I would like to introduce the people who are sitting up here with me. On my extreme right is Assemblyman Paul Cuprowski, Vice Chairman of this Committee. Then we have Chris Simon, a member of the staff, David Price, who is the Aide to this Committee, and John Kohler, another staff member. My name is George Otlowski; I am the Chairman of this Committee.

Now, before we call on the first person to make a presentation, I would just like to go over this list so that it is part of the record. As I said, I introduced the people up here. We are going to hear from Assemblyman John Rocco first. We will then go to Assemblyman John Hendrickson, and then to Senator Leonard Connors. From there on, we will continue with the different witnesses down the line. I hope we can conclude this hearing, conclude the testimony, by 12:45. That will give everyone an opportunity to get back to their regular business.

I am going to lay down some very simple ground rules which I hope will be fair. I am going to ask everyone to submit eight copies of their statement, if they have prepared a written statement, so we can make them available to the proper people, and also to the press. I am going to determine during the course of the hearing, and this will depend upon time-- If a statement is a long written statement, obviously it is not going to be read. We are going to ask people to summarize long statements, and the fact that a statement is submitted will speak for itself. There will be a number of people, of course, who will be making extemporaneous presentations. Again, the time limit of those presentations will depend upon what is being presented and how relevant it is to the hearing. As I indicated, I am going to try to be as fair and as liberal as possible, but we are going to keep the clock in mind at all times. I just want everyone to know this so they can be governed by the basic rules.

What we are doing today is dealing with a very, very sensitive issue, in my opinion. The purpose of this hearing is to examine the ways in which our State can regulate the disposal of all human fetuses and fetal remains in a humane and dignified manner, so

that we will never have a repeat of the incident which occurred this past summer in Long Beach Township. That upset the people in that area, upset the officials, upset many members of the Legislature, and, as a matter of fact, many other people. In my opinion, I think there has to be a better way, a more dignified way of dealing with this issue, and that is what the Committee is here to explore.

A number of bills have been prepared, and we will be hearing about them. One of the bills we are going to hear developed is sponsored by Assemblyman John Rocco, and we will be with him in just one moment. This Committee looks forward to hearing testimony today on bills which have been introduced in both houses. I refer specifically to Assembly Bill 2584 sponsored by Assemblyman Rocco, Assembly Bill 2477 sponsored by Assemblyman Hendrickson, Senate Bill 2150 sponsored by Senator Jackman, and Senate Bill 2172 sponsored by Senator Connors. These bills provide for the careful and dignified treatment of human fetuses regardless of their stage of development.

As I pointed out, we discovered this past summer what happened in Long Beach. That was not only very upsetting, but it even struck at the social conscience of many people. What we hope this hearing will do is develop this so that bills will come which will deal with this subject. I think that everyone here is aware of the fact that we are dealing with a very, very sensitive subject, and we intend to deal with it as a very sensitive subject.

The Committee hopes that the testimony presented today will provide a better perspective on the problems involved in this important policy area and will help us to better see all of the dimensions of the subject. The Committee hopes to hear from everyone who has come to speak today. As I pointed out, I am going to adhere to the ground rules that I have laid down, but at the same time, I want to give everyone an opportunity to speak their piece.

Before I call upon you, Assemblyman Rocco, I just want to ask the Vice Chairman if he has anything to say. Assemblyman Paul Cuprowski?

ASSEMBLYMAN CUPROWSKI: Mr. Chairman, I think you have covered everything very well. I am very anxious to receive the

testimony this morning and to hopefully resolve a very serious problem in the State of New Jersey. I commend the Assemblymen and others who are interested in this particular subject for trying to come up with a very meaningful way to dispose of human fetuses in a very humane manner. Thank you very much, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Thank you very much, Assemblyman Cuprowski. Assemblyman John Rocco, I think the Vice Chairman indicated that we not only want to commend you, but all of the others who have submitted legislation. As a matter of fact, you were one of the people who legally took leadership in this. I don't know whether or not the incident I mentioned took place in your district. Was it in your district?

ASSEMBLYMAN JOHN A. ROCCO: No, it wasn't, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Well, in any event, Assemblyman, we are ready for you.

ASSEMBLYMAN ROCCO: Thank you, Mr. Chairman. I would like to -- as I did when you heard Assembly Resolution No. 25 -- commend and thank the Chairman and members of the Committee for releasing the Resolution from Committee which would ask the Department of Health to be persistent in the regulations which are presently in effect, and in any new regulations which may come forward as we go ahead with these hearings.

Today we are dealing with the question of the disposal of human fetuses, the manner in which that is done, the human dignity aspect, and the whole works. The humane aspect of it is very critical. It seems, from the research I have done over the past two years on this issue, that there are more rules and regulations governing the disposal of a dog or a cat than we have for the disposal of a human fetus. Certainly, we in the Legislature want that changed. Part of what I am going to do today is show that the Legislature was involved back in 1982 when this issue first came to my attention through some constituents, and through a case in California where there was an inhumane disposal of a human fetus. We have followed through since then.

I have a letter from the Department of Health dating back to 1982, indicating to us that there were no regulations in the area we are discussing today. To give you a brief summary of what has occurred since then, Tom Musick, Assistant Counsel to the Office of Legislative Services, found at that time that there were regulations. The regulations asked that all nonviable fetuses be handled in a dignified manner and disposed of through cremation or interment. This was a regulation passed in 1974. Based on that information, we introduced the Resolution which was passed out of your Committee, since we felt there were regulations to govern the disposal of human fetuses at that time.

However, on March 6, 1983, the Department of Health published its intentions to drop the regulations from the books in the New Jersey Register and, of course, that did occur. The reason stated was that there was a statute, N.J.S.A. 26:6-49, which would suffice. Further research in checking that statute indicated that it had referred to nonviable human fetuses which were over 20 weeks of gestation. Therefore, the dropping of the regulations eliminated any guidelines for the disposal of nonviable human fetuses less than 20 weeks of gestation, thus creating the loophole for the situation which occurred in Ocean County. That is just a little bit of background research over the past several years since I have been involved in this area.

I should tell you, however, that I was not notified, and legislators were not aware that the dropping of this regulation had occurred in the Department of Health. We were shocked, of course, when the prosecutor in Ocean County had no statutes or legal stance to cover the situation which occurred in that particular County. It was upsetting, to say the least. When we heard about it, I think there were 60 or so human fetuses which had been disposed of in a manner similar to the disposal of any trash or garbage in the County. It was overly inhumane and undignified and, unfortunately, prosecutors there were unable to obtain any criminal penalties against the person who perpetrated this act.

Of course, we then moved ahead, as did the legislators from Ocean County, to develop legislation that would close that loophole.

That is basically why we are here today. Our bill, Mr. Chairman, would deal with the human fetus, meaning the remains of any fetus resulting from a fetal death. I am going to ask for several amendments, along with Senator Jackman, who will have a similar bill in the Senate. He has agreed to the amendments that I am going to present to you. The words "of less than 20 weeks' uterogestation" will be taken out and, therefore, fetal tissue will mean the remains of any fetus resulting from a fetal death. We are doing this because we want the fourth-degree criminal penalties, a \$7,500 fine and imprisonment, to cover any situation in the disposal of any human fetus in an undignified manner.

So, that is the reason for taking this out, to stiffen the penalties and make it a criminal offense for breaking this particular statute. Interment will mean the lawful disposal of human tissue or fetal tissue by burial, because some people have mentioned incineration to me. So, the definition here is very, very precise. It is burial, interment, cremation, or inurnment. Now, if you look at Section 2 of the bill -- and they give some exceptions that I will not get into -- it says: "Fetal tissue shall be disposed of by interment," which is the definition given above. It specifically speaks to incineration, because incineration is used in the disposal of much of the trash and garbage, and we want to clearly make certain that no one will misconstrue what we mean here. So we specify that: "Incineration shall not be an acceptable method of disposal of fetal tissue." The incineration aspect is not acceptable. Cremation is acceptable, but incineration is not acceptable. It is clearly defined for anyone who may have even a possibility of misunderstanding. "The method of interment of fetal tissue shall be within the discretion of the woman from whom the fetal tissue is being expelled." Some have requested that we include the father, but oftentimes that information is not available. Also, it would be almost impossible to enforce that type of proviso.

There is a form required. "The woman shall, on a form prescribed and furnished by the Department of Health, indicate the method of interment to be used." So, the mother would select the means

by which the human fetus would be disposed, whether interment, burial, entombment, cremation, or enurnment, whichever she so decides. That form would be provided by the Department of Health, and, "A copy of the form shall be maintained on file at the facility or hospital where the fetal tissue is expelled." So, it would be on record how the interment occurred.

We asked the Commissioner of Health to adopt rules and regulations to implement the provisions of this act, including the form required by this act. Item 5 says: "Any person who disposes of fetal tissue in violation of the provisions of this act is guilty of a crime of the fourth degree," which is \$7,500 and imprisonment. It asks that this act take effect immediately.

The other factors I would like to put before the Committee-- I will have amendments for you, Mr. Chairman. I believe that interment should occur in New Jersey. We understand there is a great deal of fetal remains crossing state lines, and we know that Federal legislation would require trying to control that. I am asking in the bill that interment occur in the State of New Jersey, which would protect, at least in the State of New Jersey, the human fetus from being shipped to other states for whatever purpose.

I also believe that a time factor should be required in the bill. If we do not put a time factor in, then a fetus could certainly sit for an excessive period of time. I think it would be to the health and benefit of society at large to include a time factor in there, and we will have the necessary amendments for that.

I know there will be arguments by some on various aspects of this. I would like to keep it tight as we have structured it. I do not want it to be human tissue. I think it is important that it remain with the present terminology. I think the disposal methods should be checked clearly with everyone involved. If we change it to human tissue, then there can be legal maneuvering with some of the U.S. Supreme Court decisions, so we want to stipulate basically that this is not a human at this point. If the wording was changed to "human tissue," Mr. Chairman, that would really be a means of getting around the U.S. Supreme Court.

I do not believe this is a pro-abortion/anti-abortion issue. I think any human being would want to see a human fetus disposed of in a dignified manner. I have had many pro-abortion people tell me they are very much in favor of the bill in terms of the means of disposal.

We may be questioned about the form. Would the signing of the form by the woman cause too traumatic a situation? I feel that the appropriate time for the form to be signed would be during the counseling which occurs prior to the abortion decision being made by the woman. Once the decision to have an abortion has occurred, it would not be nearly as traumatic to decide how the fetal tissue was going to be disposed of.

I know you are going to hear these arguments. I am just trying to give you some of my rationale and some of the research and work we have done in terms of why we would like to keep the bill tight and pretty much the way it is at this point.

Mr. Chairman, I would appreciate it if the Committee would do that for us.

ASSEMBLYMAN OTLOWSKI: Assemblyman Rocco, thank you very, very much. I think your presentation was concise and well-done. I think you have brought the whole thing into perspective.

In the course of your research, and in the course of making a study of this question, aside from the legal problems, what methods do hospitals and clinics now use by law in the disposal of human limbs? What are the requirements for that? Are the hospitals responsible for disposing of them?

ASSEMBLYMAN ROCCO: Yes.

ASSEMBLYMAN CUPROWSKI: Mr. Chairman, it is my understanding that the limbs and so forth are normally taken care of through incineration in most cases. I believe that is the situation in Hudson County.

ASSEMBLYMAN OTLOWSKI: In the hospitals?

ASSEMBLYMAN CUPROWSKI: That is correct. It is also my understanding that fetuses have been disposed of by this method, as are other parts of the body. I believe the Department of Health is represented here today, and they certainly could confirm that. But, that is my understanding. Do you agree with that, John?

ASSEMBLYMAN ROCCO: Yes. From what I have been able to gather, that seems to be the method the hospitals prefer.

ASSEMBLYMAN OTLOWSKI: You do agree with what has just been said, that that is the method which is being used?

ASSEMBLYMAN ROCCO: I believe that is the method. Of course, we will be able to check it out with the Department of Health.

ASSEMBLYMAN OTLOWSKI: What about the 20-week period? What are you doing with the amendment?

ASSEMBLYMAN ROCCO: The amendment would eliminate the 20-week-and-under provision, so that the stiffer penalties could reflect on all human fetuses. Then we could put that fourth-degree penalty in for the \$7,500 fine and the imprisonment.

ASSEMBLYMAN OTLOWSKI: Assemblyman Cuprowski, do you have any questions you would like to ask?

ASSEMBLYMAN CUPROWSKI: The only question I would like to ask the Assemblyman is about the definition of incineration. I can understand very well your concern and our concern that incineration shall not be an acceptable method of disposal of fetal tissue. Obviously, people think of incineration as disposing of normal garbage which goes down into an incinerator. I believe that is exactly what you are trying to prevent. That is what happened in one particular county.

I think maybe -- as explained by various people in the medical field -- the method of incineration for limbs and fetus tissue at the present time may not coincide with the definition of incineration for garbage. Maybe there should be a clear distinction between the two when we are talking about garbage incineration versus fetus tissue incineration or the incineration of limbs.

ASSEMBLYMAN ROCCO: We could possibly redefine cremation to include the means by which the hospitals handle this.

ASSEMBLYMAN CUPROWSKI: From a medical point of view, their definition of incineration may not necessarily be our definition of incineration. I would like to hear from the medical experts on that.

ASSEMBLYMAN ROCCO: I agree with you, Paul. I think we can clear that up as much as possible and eliminate a major problem, which

is the conceptual development of incineration, including trash and garbage. If there is a way for that definition to be tightened up even more, I think that would be very helpful to prosecutors as they look at the statute.

ASSEMBLYMAN CUPROWSKI: Very good; thank you, John.

ASSEMBLYMAN OTLOWSKI: Okay, thank you very much.

ASSEMBLYMAN ROCCO: Mr. Chairman, once again, I can only thank you and your Committee very much for being so swift in moving on this issue. It is so critical, and we would hate to see another situation such as we saw with our law enforcement people who were unable to prosecute.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.

ASSEMBLYMAN CUPROWSKI: Thank you, John.

ASSEMBLYMAN OTLOWSKI: May we have Assemblyman Hendrickson, please? Assemblyman Hendrickson, your bill is A-2477. You are going to outline your bill now for the benefit of the Committee, is that correct?

ASSEMBLYMAN JOHN T. HENDRICKSON, JR.: I will make a brief statement and then answer questions, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: In your brief statement, will you please also outline your bill for us, you know, in broad terms, so we can get an idea of what your bill intends to do?

ASSEMBLYMAN HENDRICKSON: Sure.

ASSEMBLYMAN OTLOWSKI: Thank you.

ASSEMBLYMAN HENDRICKSON: Thank you, Mr. Chairman and Committee members, for allowing me to testify here today. I appreciate it very much and, if I may, I will read from my statement.

Gentlemen, a short time ago, there was a degrading, inhuman, and immoral act committed by a resident living in my district. This act specifically was the disposal of human fetus remains alleged to me to be in excess of 50 fetus remains, disposed of in a garbage receptacle at curb-side. My hesitation here is because it was such an immoral act that it is just incomprehensible to me that it happened.

As legislators, I believe we have a responsibility to correct inhuman acts such as this disposal of human fetuses in such a manner.

It is my understanding that there is a void, to say the least, in the present law. I, along with my fellow legislators, have proposed Assembly Bill 2477 to correct this void. I respectfully request that A-2477 be released from the Assembly Corrections, Health and Human Services Committee so that it can be voted on as expeditiously as possible and signed by the Governor.

Gentlemen, we can no longer allow acts of this type to be committed against society, and I believe that together we can remedy the situation. I am the Assembly sponsor of S-2172, which is Senator Connors' bill. I have heard some of the questions, and in this bill disposal is by incineration as the hospitals do. I have been sitting on a hospital board in Ocean County for many years. Parts of the human anatomy that have to be taken are disposed of by incineration in our hospital, and in many other hospitals at this time.

I believe the word "incineration" makes us cringe a little, and yet cremation is on the other side. Our bill says incineration, but it is actually cremation of the fetus by a licensed practitioner.

ASSEMBLYMAN OTLOWSKI: Your bill would make it permissible to have incineration, say, in a hospital incinerator?

ASSEMBLYMAN HENDRICKSON: That is correct, or by a licensed-- See, some of our mortuaries are licensed now for cremation. Persons of that type would be allowed to dispose of fetal remains.

ASSEMBLYMAN OTLOWSKI: Your bill then would permit incineration by a hospital or by a licensed facility?

ASSEMBLYMAN HENDRICKSON: Absolutely.

ASSEMBLYMAN OTLOWSKI: And the bill would confine it to those particular areas?

ASSEMBLYMAN HENDRICKSON: Let me read what the bill says: "Any person who engages in the disposal of human tissue or fetal tissue by incineration shall be licensed by the Health Department, which shall adopt regulations establishing the standards to be met by licensees to insure that the health and safety of the public are protected."

ASSEMBLYMAN OTLOWSKI: Okay, that clears it up. Assemblyman Cuprowski, do you have any questions?

ASSEMBLYMAN CUPROWSKI: Yes, I do have a question. Regarding the licensing procedure, maybe you could define that a little bit more for me. Exactly who will be licensed with your particular bill -- individuals, facilities, or hospitals?

ASSEMBLYMAN HENDRICKSON: The people at the Health Department are the professionals. They have dealt with this issue for a long time. I do not believe we should chastise the New Jersey Department of Health for such a thing. I don't think anyone could have anticipated such an incomprehensible act as was perpetrated. What we are saying now to correct that mistake, if you will, is that we should allow the Department of Health, people who have been working with these problems over the years, to set up that criteria within the Department itself. That is specifically what the bill says.

ASSEMBLYMAN OTLOWSKI: Assemblyman, would your bill provide the latitude for other means of dignified disposal? Supposing someone wanted to dispose of a human fetus in another manner, for example, by having a funeral director take it to a cemetery? Would your bill permit that?

ASSEMBLYMAN HENDRICKSON: Yes. Mr. Chairman, permit me to read Section 1, Paragraph c.: "'Interment' means the lawful disposition of human tissue or fetal tissue by burial, entombment, cremation, or inurnment." So, it allows the--

ASSEMBLYMAN OTLOWSKI: (interrupting) It has that latitude?

ASSEMBLYMAN HENDRICKSON: Yes.

ASSEMBLYMAN OTLOWSKI: Okay. Assemblyman Cuprowski?

ASSEMBLYMAN CUPROWSKI: My only concern is that I am still not quite sure exactly who would be licensed. Are you saying the Department of Health would determine exactly who should be licensed?

ASSEMBLYMAN HENDRICKSON: That is correct. I believe the Department of Health now has that for our funeral directors.

ASSEMBLYMAN OTLOWSKI: By way of regulation?

ASSEMBLYMAN HENDRICKSON: That is correct. They can do this if they appeal to the Department for a crematory. I believe that if there is a need, the Health Department will look that over.

ASSEMBLYMAN OTLOWSKI: Are you saying that your bill provides the means and the instrument for regulations to come out of the Health Department?

ASSEMBLYMAN HENDRICKSON: That is correct, for them to set up the recommendations on the disposal, as they have been doing over the years with the disposal of human remains.

ASSEMBLYMAN CUPROWSKI: I would be very interested in hearing what those regulations might be, because you have the bureaucratic setup and, unfortunately, sometimes that--

ASSEMBLYMAN OTLOWSKI: (interrupting) I would suggest, Assemblyman Cuprowski, that it might be well for you, on another occasion, to talk to Assemblyman Hendrickson and to get some of the specifics from the Health Department on that very subject, so you could have the kind of handle you evidently want on this. Frankly, I think it is worth exploring. Would you do that?

ASSEMBLYMAN CUPROWSKI: Yes, I would.

ASSEMBLYMAN HENDRICKSON: Mr. Chairman, I have also been in contact with the New Jersey Funeral Directors' Association. They are very interested in the disposal of the tissue and the fetus. In fact, it has been inferred -- nothing in writing -- that funeral directors will dispose of fetal remains at no charge, as they now remove eyes in some permissive ways at no charge. Eye re-creation for transplants is what they are actually doing. They are doing that now at no charge. The Association will have to speak for itself, but from my contact with them, this would be available.

ASSEMBLYMAN OTLOWSKI: Is there anyone here from the Association who is going to testify today?

ASSEMBLYMAN HENDRICKSON: I believe there are some people here, but I don't know if they are going to testify.

ASSEMBLYMAN OTLOWSKI: Assemblyman, I just want to make sure that we accommodate the Vice Chairman of this Committee. When you have the opportunity, will you both sit down and talk about the licensing, how the Health Department will implement that, and the kind of scope it will have, so that Assemblyman Cuprowski will feel satisfied in his own mind about the direction this bill will take? Will you do that?

ASSEMBLYMAN HENDRICKSON: I certainly will, Mr. Chairman. In fact, I will be presumptuous and say that Senator Connors and I will be very happy to answer any questions Assemblyman Cuprowski may have. I would also like to add, Mr. Chairman, if I may, that hopefully we will not get into the abortion issue. We have a big problem here, and I feel the problem will remain if we do not correct it legislatively, regardless of the intensity of--

ASSEMBLYMAN OTLOWSKI: (interrupting) I hope I can sit on the lid of Pandora's box. We are going to try to keep this in perspective and in the area you are expressing.

ASSEMBLYMAN HENDRICKSON: Really, all we are trying to do is correct the void legislatively.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.

ASSEMBLYMAN HENDRICKSON: Thank you very much for the opportunity.

ASSEMBLYMAN OTLOWSKI: May we have Senator Connors?

SENATOR LEONARD T. CONNORS, JR.: Good morning, Mr. Chairman and members of the Committee. It is a pleasure to be here with you this morning.

ASSEMBLYMAN OTLOWSKI: It is good to have you.

SENATOR CONNORS: I appreciate your taking the time to listen to me on the subject of my bill. Before I start, as you know, my name is Senator Leonard T. Connors, Jr. I have the dubious distinction of being the closest legislator living in the area of the Long Beach Township act that was committed where fetal tissue was placed in a garbage can. As you perhaps know, this fetal tissue, while it was the first time the trash men had uncovered it and called it to the attention of the authorities, there had been several other occasions where they saw the same type of disposal containers in that very person's trash.

As I said, I appreciate your giving me the opportunity to discuss my bill, S-2172, with you this morning. Senate Bill 2172 is a bill that would require the remains of any fetus of less than 20 weeks' uterogestation, as well as any tissue removed from a human body that is not disposed of by interment -- and that is the key word, Mr. Chairman,

from the standpoint that it embraces cremation, inurnment, burial, etc. -- to be disposed of by incineration. In other words, if it is not disposed of by interment, it is disposed of by incineration.

In my district, the Ninth District in Ocean County, jars of aborted fetuses were uncovered in a garbage pile at the residence of one of the people of Long Beach Township. The police were notified, as well as the Ocean County prosecutor, only to find that there were no laws or regulations which prevented this method of disposal. It has been reported that this method of disposal has been used by this individual for some time. Further, there are other facilities in our State which have openly admitted that the garbage can is being used as the place to dispose of human fetuses. It has also been reported that fetuses from as far away as Atlanta, Georgia have been shipped to New Jersey to persons or companies for disposal in the same manner.

As Senator for the Ninth District, I immediately had prepared, through Legislative Services, Senate Bill 2172, which would impose criminal sanctions on anyone who breaks the new law. In the instance of Long Beach Township, the person disposing of these fetuses actually had a company that had contracted for the facilities needed for the services of disposal. For that reason, S-2172 requires that: "Any person who engages in the disposal of human tissue or fetal tissue by incineration shall be licensed by the Department of Health, which shall adopt regulations establishing the standards to be met by licensees to ensure that the health and safety of the public are protected."

I have included in Senate Bill 2172 the definition of "human tissue" as meaning any human organ or appendage. While I understand that hospitals are presently permitted to dispose of human tissue through incineration, I felt it was necessary that should they engage a contractor for the disposal of human tissue, that contractor be licensed and follow the regulations adopted by the State Commissioner of Health that would implement the provisions of this act. In my view, it is not unreasonable to assume that a contractor could bring human tissue into the State from another state for disposal. It should be regulated in accordance with the licensing procedure as outlined in S-2172.

I know of your deep concern about the news story that broke on August 1, 1984 regarding the fetuses that were disposed of in the garbage in Long Beach Township. I feel that you can well understand how the people in my district felt about this horror occurring so close to home. For that reason, I respectfully request that you allow my bill, S-2172, with whatever amendments you may deem necessary, to be the bill that will put an end to the present practices of disposal.

ASSEMBLYMAN OTLOWSKI: Senator, thank you very, very much for your presentation and for giving us the benefit of your knowledge. I just want to point something out to you that you mentioned in your presentation. This Committee attaches so much importance to this question that we have called this special hearing so we can deal with it in a special manner and give it the kind of attention we feel it deserves and, as a matter of fact, to give it the kind of expeditious release that a bill such as this deserves. I just want you to know that, and I want you to feel comfortable about the fact that this is getting every single consideration that this Committee can give it.

SENATOR CONNORS: I thank you for that, sir.

ASSEMBLYMAN OTLOWSKI: We are going to act on this very quickly. Embracing the concepts that are being presented here, I am positive I speak for the other Committee members about that. Again, I commend you and all the other legislators who have made these bills available to us. Assemblyman Cuprowski?

ASSEMBLYMAN CUPROWSKI: I concur with the Chairman. Thank you very much, Senator.

ASSEMBLYMAN OTLOWSKI: Senator, thank you very, very much.

SENATOR CONNORS: Assemblymen, I appreciate your time. Thank you.

ASSEMBLYMAN OTLOWSKI: Senator Jackman? Does Senator Jackman have anyone here to represent him for the purpose of his bill and for the purpose of this hearing? (negative response) Senator Jackman does not have anyone here, so we are going to hear from the Deputy Commissioner of Health, Dr. Allen Koplin. Good morning, Doctor.

DR. ALLEN N. KOPLIN: Good morning, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: You're speaking for the Commissioner?

DR. KOPLIN: Yes.

ASSEMBLYMAN OTLOWSKI: Good. Doctor, please give us your name and the Department you are representing so the reporters can get it for the record.

DR. KOPLIN: I am Dr. Allen N. Koplin, Deputy Commissioner, New Jersey Department of Health, and I am representing the Department.

ASSEMBLYMAN OTLOWSKI: On the question of these bills which are being submitted, and on the question we are discussing today, do the Department and the Commissioner have any contribution to make to this hearing this morning, Doctor?

DR. KOPLIN: Yes, sir. Let me state, first of all, that we came prepared to make suggestions to remedy this tragic situation and to prevent similar occurrences of what we recently saw happen. Since being here and listening to the testimony of the previous legislators, I think the bills have been amended, or at least the Rocco bill has been amended, to the extent that some of the principles and ideas we have been proposing may be solved.

There are two problems we came to address. I think that one of them has certainly been effectively handled in the legislation that has been suggested here. But, let me mention those problems and explain further what I mean. The first problem we have all agreed on, and that is that humane handling of fetal remains is essential. I think we are getting very close to a methodology for doing that. The other problem -- and I want to emphasize it is more particularly a concern of the Department of Health -- is that when tissue of a fetal nature is removed or extruded, it is very important to know if there is any pathology existing in that tissue signifying some problem with the woman. Therefore, we think it is quite important, in every case, that tissue be submitted to a pathologist, just as you would submit tissue from an operation for review. That would tell you, for example, if there was infection or if there was a ^{possibility} / of a rare type of tumor that can occur in a placenta. It could also tell you something else. You could get an idea of whether or not all of the product of a pregnancy was removed. One of the complications of abortion, whether it is spontaneous or not spontaneous, is that something may be retained in the individual that can cause infection. Pathologists have a way of

knowing if what has been received is complete or incomplete; it is a complete placenta or it isn't a complete placenta.

So, I would recommend that in this legislation-- I discussed this for a few minutes with Assemblyman Rocco on the way in, and he seems to have no objection to this being added, for example, to his bill. I have not had an opportunity to discuss this with the sponsors of the other bills. There should be something that would require that the tissue would go to a pathologist, wherever it is removed. It should be reviewed in that manner and the information should be given to the physician and the patient as to what has been found, as is the practice in many other situations. That would satisfy us that if there were any disease possibilities, the mother would know about it, in terms of future pregnancies, for example. Was there anything found that may have some significance, and that sort of thing. That is now done in all good hospitals for all tissue, and it should be done with fetal tissue as well. It is not required, especially under 20 weeks.

There is no control over what happens in a physician's office or a freestanding abortion clinic. Under our proposal, and I believe under Assemblyman Rocco's bill, if this pathology requirement were inserted, tissue that emanated from some other source than a hospital would have to be reviewed by some pathologist somewhere, and that would, again, give us the disease possibility that the individual could be advised about.

Once you do this-- Remember, we are trying to keep fetuses out of the stream of garbage disposal. I think we all agree with that, and I am going after the humane part of this. Once you have put it into the hands of the health system in a hospital, you can then go to the next step and say it is required in the law that the remains be interred, as we have said, or cremated, or inurned. I don't know any reason why a garbage disposer would be involved at all, if all of those things take place once it is removed from the free outside world to a hospital setting. In other words, what I am proposing is keeping it within the confines of the health system, as is all tissue, and then requiring that the health system follow certain requirements -- which are already in effect, by the way -- under hospital licensure, over 20

weeks, not under 20 weeks. We propose that regulations be written so that this can be accomplished by the hospitals.

We were going to recommend -- and we may still have to depending upon the progress of this legislation -- that the Board of Medical Examiners look at this problem, since they are the only ones who have had much to say about a medical practice outside of a licensed ambulatory clinic, which we license. We do not license abortion clinics; we do not license private physicians' offices. The Board of Medical Examiners has that responsibility. They could prepare regulations to accomplish some of these purposes. However, I think it is possible to amend and adjust Senate Bill 2150 to do the things that I have just suggested.

Now, the other bill, S-2172, may become unnecessary if we have the first bill addressing the pathology system and the hospital system. I don't want to ever see a fetus in the hands of a garbage disposer in any way. That is what I am arguing for in terms of hospitals being involved. Pathology is a way to accomplish that as sort of a by-product, plus acquiring the disease information I was talking about. That is the essence of our feeling.

ASSEMBLYMAN OTLOWSKI: I am happy to hear you being so emphatic about this particular point. I think that is very important.

DR. KOPLIN: We had a proposal that would accomplish this, but I think with proper amendment, there will be no need to inflict another proposal on anyone. I think you will have solved this problem. The only remaining problem we have is the one that Assemblyman Cuprowski raised, and that is, we have some objection to S-2150 if incineration is prevented. But, the definition of incineration versus cremation is really the key question. I think the word "incineration" conjures up garbage disposal and the incineration of garbage. However, hospitals do incineration of tissue all the time. You were correct about things that are removed in a hospital other than fetuses being incinerated, Assemblyman Cuprowski. There should be some way that regulations could be adopted -- and I have also discussed this with Assemblyman Rocco a few minutes ago -- to define cremation that could be done, for example, by a hospital. If people

prefer, it could be done by a funeral home. I would like to see this in the hands of the hospitals and then in the hands of the funeral homes. That's it.

ASSEMBLYMAN OTLOWSKI: Doctor, thank you very, very much. Assemblyman Cuprowski?

ASSEMBLYMAN CUPROWSKI: Yes. Doctor, first of all, I appreciate your being here this morning to give us your input on this very important subject. In a letter I received in response to my letter to Dr. Goldstein, he made a reference that: "The proposed amendments will require that licensed ambulatory care facilities performing abortions be responsible for sending on the fetuses." How do you define ambulatory care facilities as being licensed?

DR. KOPLIN: Well, certain groups of physicians who come together and meet certain requirements of the regulations are licensed by us. It is not required, however, that every out-patient facility be licensed. This is a problem, especially with abortion clinics, because they are defined by law, by court action, and so forth, as medical offices. In other words, there is a distinction between what we license -- which are not very many, I must say -- and what are not licenseable. This is based on a definition which has come down through the courts. We are excluded from licensing physicians' offices, physicians' practices, so there are just a few ambulatory facilities. Generally speaking, they are facilities which ought to be licensed for a lot of good reasons, and which we have some authority over. We are prepared, by the way, to amend the regulations for those facilities to require proper cremation and interment as well. They are already required to follow through to the pathologist. We have very little control over the large world of physicians' offices out there.

I think I am right -- but you can correct me, sir -- that with what Assemblyman Rocco is suggesting about under 20 weeks as an amendment, that would certainly bring in all of the abortion clinics, wouldn't it, so we would not need the Board of Medical Examiners to go after those.

ASSEMBLYMAN CUPROWSKI: That is correct.

DR. KOPLIN: I hope I have answered your question.

ASSEMBLYMAN CUPROWSKI: I believe you have. You make a distinction, but I believe you clarified that. I have one other question, and I think it is a very important question for the Department of Health in any regulations that may perhaps require changes within the Department of Health. Obviously, this may be a part of the net result of the legislation. If the Department of Health is required to change regulations to help to solve this particular problem, how long might that take? The reason I ask that, to be very frank with you, is that I am aware of regulations that have been pending to regulate ambulances, for example, for about three years, and which are finally getting off the dime.

DR. KOPLIN: Which regulations?

ASSEMBLYMAN CUPROWSKI: I'm talking about Regulation G, which I understand had some movement within the past month. Of course, we are not here to discuss that, but the point is, if the Department of Health is required and authorized to change the regulations, how long a period of time will it take for the Department to act on these regulation changes?

DR. KOPLIN: We are proposing to go to the regulatory body we depend upon -- the Health Care Administration Board -- in November, with regulations for the hospitals which do not have any regulations affecting fetuses under 20 weeks. We are going to the Health Care Administration Board on October 11, which is in just a few days, with regulations for the ambulatory care clinics I mentioned earlier.

ASSEMBLYMAN CUPROWSKI: But, they originated three years ago; that is my point. I just want to make sure that we do not have a similar situation here.

DR. KOPLIN: No, no. We hope they will approve these regulations. Naturally, they have to make their decision, but we have reason to believe--

ASSEMBLYMAN OTLOWSKI: (interrupting) Excuse me, Doctor. I would like to get into this, but I don't want to get into the nitty-gritty of regulations. One of the things -- I don't know whether you heard this -- I asked Assemblyman Cuprowski was if he would meet with the sponsors to discuss some of the questions he had in mind about

regulations. Frankly, I think that if he would include you in that discussion, we could avoid getting into that in great detail here. All right, Doctor?

DR. KOPLIN: I would appreciate it if he would include me, but I promise you it is not going to be three years.

ASSEMBLYMAN OTLOWSKI: Doctor, thank you very, very much. We appreciate the contribution you have made. Is Dr. Marwan Sadat here? (negative response) Is there anyone here from the Department of Environmental Protection? (negative response) Is Mr. Paul Rilatt here from the New Jersey State Funeral Directors' Association? (affirmative response) For the purpose of the record, would you tell us your name, sir?

THOMAS LEACH: My name is Tom Leach; I am the Legislative Consultant for the New Jersey State Funeral Directors' Association. I simply want to introduce Mr. Paul Rilatt, who is the President-Elect of the State Association. He has the Executive Director and the current President with him. He has a short statement, and then they will answer questions as resource people on the issue.

ASSEMBLYMAN OTLOWSKI: Thank you very much. For the record, Mr. Rilatt, will you please give us your name so that our reporter can pick it up? Also, please give us the name of the organization you are representing.

PAUL R. RILATT, JR.: Thank you, Mr. Chairman and distinguished members of this legislative panel. My name is Paul Rilatt. I am a licensed funeral director in the State of New Jersey. I operate the Rilatt Funeral Home at 400 Clements Bridge Road, Barrington, New Jersey. I am also the President-Elect of the New Jersey State Funeral Directors' Association. With me today, on my left is Mr. Richard Dennison, our State President, and on my right, Mr. C. Stewart Hausmann, Executive Director of the Association.

First, permit us to commend you and your colleagues for addressing an issue which has come upon us with great suddenness and with no prior experience. It has raised emotions associated with the whole debate over abortions. These emotions, no doubt, will be expressed here today.

However, we are not here to engage in moral judgments as funeral directors or as concerned human beings. We feel for the grief which, no doubt, must be borne by the young women who seek abortions. We also have a deep concern for the proper disposal of human tissue, which many of our citizens believe constitutes aborted life.

Our function is to help you to try to solve a very disturbing problem. We have done so before. Back in 1975, then Assemblyman James Bornheimer sponsored a bill, eventually passed, which allows funeral directors to remove eyes for corneal transplants. Since then, hundreds of funeral directors have voluntarily been trained to enucleate eyes, and thousands of New Jerseyans can now see because of our efforts.

Likewise, we are here today as your professional, licensed resource to serve the public, as we are doing in the field of sight preservation. We are already licensed and registered by the State of New Jersey.

We share your concern for the dignity of all human life. We share your concern for the dignified disposal of all deceased human life, which includes fetal tissue under consideration today.

No solution should be insensitive to the trauma felt by the women involved, nor should any solutions violate the fundamental wishes of those who have given forethought to the dignified disposal of tissue nurtured within their bodies.

No solution should set up an unnecessary governmental mechanism, if a mechanism already exists to remedy the situation. We believe that a mechanism does exist.

We believe the Department of Health has ample authority to require that all fetal remains aborted in a hospital or a licensed clinic facility be handled by the institution, if it has the proper cremation facilities.

If such facilities are not available, or if the mother has other wishes, the State should require that the institution contract with a funeral director licensed by the State and regulated by the New Jersey State Board of Mortuary Science.

Any facility established to process aborted human fetuses for profit should be able to build into its cost of operation the small

amount necessary to pay for the dignified disposal of these helpless creatures.

That, ladies and gentlemen, is a simple answer to your problem. Thank you very much.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.
Assemblyman Cuprowski?

ASSEMBLYMAN CUPROWSKI: Yes, I do have a question, thank you. First, I would like to mention the additional cost involved. In my opinion, we have to recognize that we can't avoid the possibility of a lot of these cases being paid for by Medicaid in the State. How much cost would be involved, if you were to place an estimate on the cost for burial?

MR. RILATT: Right now, the cost involved for a funeral home to take care of the burial of a child, a baby who is either born dead or who dies shortly after he is born, is \$50. This is given to us by social services.

ASSEMBLYMAN CUPROWSKI: Fifty dollars would be a fair estimate?

MR. RILATT: Yes, that would be a fair estimate.

ASSEMBLYMAN CUPROWSKI: Thank you.

C. STEWART HAUSMANN: I am Stewart Hausmann, Executive Director of the State Association. I just want to add one thing, and perhaps correct a couple of errors that have been perpetuated this morning during the hearing regarding the funeral service. First, this problem did not exist, of course, when all of the fetal tissue was extracted in hospitals and disposed of by hospitals in facilities that most hospitals have. It is only since the advent of the smaller clinics performing abortions and so forth where proper equipment has not been available and some other disposal mechanism had to be found. I suppose that is how the gentleman down in Central Jersey was contracted to dispose of the remains. The question of material coming in from outside the State is an additional problem, and, of course, it exacerbates the basic problem.

The New Jersey State Funeral Directors' Association and the licensees who are members of that Association are regulated under rules

promulgated by the Department of Health, as well as those promulgated by the New Jersey State Board of Mortuary Science. The New Jersey State Board of Mortuary Science is not within the Department of Health; that should be understood. We are among the 21 professional boards regulated by the Division of Consumer Affairs. However, we do labor under regulations that are promulgated by both Departments, or rather the Division and the Department. We are prepared, of course, to follow the regulations. We feel we are already an established profession and we are already licensed, and with the proper regulations and the existing hospital facilities, the material that is produced outside established hospitals should be disposed of through the licensed personnel who already exist in New Jersey.

ASSEMBLYMAN OTLOWSKI: Thank you very much.

RICHARD DENNISON: Mr. Chairman, may I say something? My name is Richard Dennison; I am President of the New Jersey State Funeral Directors' Association. I would like to allude to just one thing that I think has failed to be mentioned today when Assemblyman Cuprowski asked about the cost involved. Mr. Rilatt mentioned in his prepared statement that since 1975 many funeral directors have willingly given of their services to enucleate eyes from deceased persons so that many people who had lost their vision could see again. With regard to the cost figure that was given, we would be willing-- We are so concerned about this, about these little unborn fetuses that are disposed of, we want to see that they are disposed of in a dignified manner. A price of \$50 was given as being fair. Inasmuch as many of us now donate our services to give people sight through the enucleation of eyes, many of us, I am sure, would also be willing to do this at no cost at all, if it came to that. We are that concerned. We do not want to put a price tag on this, nor say we are in it for profit. We want to make that clear today.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much, gentlemen.

MR. DENNISON: Thank you.

ASSEMBLYMAN OTLOWSKI: May we have Ms. Rita Martin? May we have your name and the organization you represent for the record?

RITA MARTIN: My name is Rita Martin; I am Vice President and Legislative Director for Citizens Concerned for Life in New Jersey, which is a statewide pro-life group.

ASSEMBLYMAN OTLOWSKI: Excuse me. I said from the outset -- although I gave the undertaker the last ride -- that rather than having people read their statements after they have submitted them to us, we would like them to just summarize. Could you summarize extemporaneously so that we could get the benefit of your statement and, also, the benefit of the time? We have your statement for the record.

MS. MARTIN: Surely. I want to go on record as saying that the finding of the babies in Loveladies horrified everyone, of course. We are very thankful that some of the New Jersey legislators have responded to this.

Both of the Assembly bills, A-2477 and A-2584, offer solutions to the problem. However, we would refine Assemblyman Rocco's bill, A-2584, to be more satisfactory, for the simple reason that it stresses that incineration is not a proper method of disposal. It offers the mother the options of all of the historically acceptable methods of caring for the remains, including cremation, which, in effect, comes to the same thing, but it is a much more dignified way of handling the remains. We think these babies have suffered sufficiently with the pain of the abortion, and they certainly deserve to be handled in a more dignified way.

In my testimony I go into cases where things like this have happened in other states.

ASSEMBLYMAN OTLOWSKI: Do you want to make reference to that?

MS. MARTIN: Well, okay. In Florida, a couple of years back, they had an instance where neighborhood dogs got into the garbage collection, the plastic bags, tore them apart, and the people in the area woke up the next morning to find fetal remains all over their lawns. This was quite traumatic for those people. In Wisconsin, some children came upon a bag of babies who were set out for garbage and they started to play with them. Someone asked them what they were playing with, and they very honestly answered, "Little babies." It is

just that they were left there for anyone to find to do with as they wished.

When you come to incineration, one of the reasons we oppose it is because we know that in other places -- Wichita, Kansas, for instance -- babies were being incinerated along with pathological waste, dog and cat remains, and other animal remains from the dog pound, which was just next door. There was no special care or thought given to the fact that these were human fetuses.

ASSEMBLYMAN OTLOWSKI: Excuse me, but if special care and thought were given to incineration at hospitals -- as was mentioned here today in the testimony -- if there were regulations and even licensure for incineration, would your objection still stand?

MS. MARTIN: I believe so. Now, if you are talking about incineration at hospitals--

ASSEMBLYMAN OTLOWSKI: I am talking about incineration at hospitals, or at other licensees which would be strictly regulated.

MS. MARTIN: Well, I don't think that even licensure of an incinerator operator would solve the problem, because the licensure might stop abuses right at the incinerator site, but it wouldn't change the attitude that that baby had been treated as garbage from the time it left the abortion facility until it got to the incinerator. It may have even been picked up by a garbage hauling truck or something. It does not treat with dignity the human fetal tissue we are talking about here. The onus of compliance is on the incinerator operator at that point. I think the onus of compliance has to start immediately after the abortion, because you are dealing with human tissue and it should be given the dignity it deserves.

ASSEMBLYMAN OTLOWSKI: Thank you.

MS. MARTIN: We have two adjustments in Assemblyman Rocco's bill I would just like to mention. The bill defines fetal tissue as the remains of any fetus of less than 20 weeks' uterogestation. We would hope that could be changed to "at any time of uterogestation," and I believe the Assemblyman has said he will make that change.

ASSEMBLYMAN OTLOWSKI: Yes, he is willing to make that change.

MS. MARTIN: The other thing is, we would like to see the phrase "fetal tissue" changed to "human tissue" or "human fetal tissue," because it really speaks more to what we are dealing with. It asserts that it is part of the human race.

ASSEMBLYMAN OTLOWSKI: Assemblyman Cuprowski, do you have any questions?

ASSEMBLYMAN CUPROWSKI: No, thank you. I appreciate Ms. Martin's interest in coming down.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. May we have the Reverend F. Sanford Cutler? Reverend, will you please give us your name and the organization you represent so we will have it for the record?

REVEREND FREDERICK SANFORD CUTLER: I'm sorry, I was not aware that you needed eight copies of my statement. I did bring two copies.

ASSEMBLYMAN OTLOWSKI: You may set a precedent; we may settle for two copies from here on in. May I have the two copies?

REV. CUTLER: I can make sure that additional copies are made available to you. My name is Frederick Sanford Cutler, and I represent the New Jersey Religious Coalition for Abortion Rights.

ASSEMBLYMAN OTLOWSKI: Reverend, as far as your written statement is concerned, can we just skip that and go on with extemporaneous testimony summarizing the written statement?

REV. CUTLER: Yes, I think so. The major reason I am here is because we in the Religious Coalition are very much upset by Assembly Bill 2584 and Senate Bill 2150 for two basic reasons. We feel by requiring fetal tissue to be disposed of in a different manner than all other human tissue that this would essentially overrule the basic point made in Roe vs. Wade that there is no consensus as to when we are dealing with a human person.

Even more serious is the provision that would require a woman who has opted for an abortion to sign a form indicating how the fetal tissue about to be removed is to be interred. This is a not very subtle method of putting additional psychological pressure on a woman, and is also clearly unconstitutional according to the Supreme Court's decision in the Akron case.

Senate Bill 2172 and Assembly Bill 2477 seem less objectionable since they provide for incineration as a lawful method of disposing of all human tissue, including fetal tissue. The distinction between fetal tissue and human tissue in Section 1, Subsections a. and b., is somewhat bothersome and unnecessary, since the law apparently would not distinguish between the method used to dispose of them.

The basic premise here is that in a pluralistic society, such as ours, to take one group's definition of personhood and enact that into law is a violation of the consciences of all of the rest of us.

ASSEMBLYMAN OTLOWSKI: Excuse me. I am merely asking this question because I want to bring something into focus for myself. You have no compunction at all about the way fetuses are being disposed of, about them being found in garbage, or being lumped together with garbage? You have no compunction about that?

REV. CUTLER: We agree that all human tissue -- anything that is involved with the human body -- should be treated with respect. However, we object to the singling out of fetal tissue. I mean, if these were legs that were found, that would be equally repulsive. But, to single out fetal tissue above all other types of human tissue is, in our judgment, unfair.

ASSEMBLYMAN OTLOWSKI: All right, I see the point you are making.

REV. CUTLER: It is unfair, and probably unconstitutional.

ASSEMBLYMAN OTLOWSKI: Is there anything else you wish to add, Reverend?

REV. CUTLER: No, I think that is basically what I wanted to say. We have some problems with the other bill that contains this distinction between fetal tissue and human tissue. It is not clear how that would work out in practice.

ASSEMBLYMAN OTLOWSKI: All right, I think you have made your position clear, and I can understand that. Thank you for making your position known to us. Thank you very, very much.

May we have John Tomicki? John, will you please give us your name and the organization you represent?

JOHN TOMICKI: My name is John Tomicki; I am Vice President of New Jersey Right to Life, which is another statewide pro-life organization which has over 31,000 members. I have no prepared statement; I will just speak extemporaneously about this issue.

I would like to note for the record that it was not us who opened up Pandora's box as to the abortion question in a misinterpretation of Roe vs. Wade.

ASSEMBLYMAN OTLOWSKI: That is a separate issue, as far as I am concerned, and I want to keep it separate for the moment. Of course, it is inevitable that that is going to spill over sometime. When it does spill over, I am not going to come running with a mop right away. The fact of the matter is, I think we should keep this in perspective, and that is what we want to do here.

MR. TOMICKI: We came here to testify on the issue under discussion today.

ASSEMBLYMAN OTLOWSKI: Right.

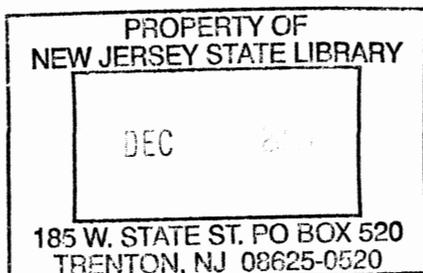
MR. TOMICKI: Regarding the background, we all know what has occurred within our State. As Ms. Martin testified -- and I'm sure she probably has it in her written testimony -- there was an event that occurred in Kansas. When we get to the difference between the bills, we obviously support Assemblyman Rocco's and Senator Jackman's bill. We are not prepared to support -- in their current form -- Assemblyman Hendrickson's bill and Senator Connors' bill.

I do not doubt the good intentions of all four legislators, but we are much more comfortable with the Rocco bill. We will address the specific changes the Assemblyman mentioned this morning.

When you get down to the word "incineration"-- I have some pictures, which you can see from there, of what occurred in Wichita. (witness holds up pictures) These were sent to me by the photographer. They show that human fetal tissue was being burned in a municipal incinerator.

ASSEMBLYMAN OTLOWSKI: Are you going to submit these pictures for the record?

MR. TOMICKI: No, these are my only copies. I just want to show them to the Committee. I am quoting today from an article by



Patrick Buchanan talking about the status of what happens to human fetuses. "They were burned, along with dogs and cats, in Kansas City. The head of the OB/GYN Department of the D.C. General Hospital sold the product of late-term elective abortions for \$68,000 and used the money to buy a television set and refreshments for visiting professors. A company which sells biological supplies advertises for sales of 'embedments of human embryos ranging from three to four months in age.'"

I wish to compliment this Committee and the Chairman for moving this legislation so quickly into a public hearing so we can address what has occurred in our State. I think it would shock the conscience of a majority of the citizens of this State.

I would like to read something. This is not testimony; it is a letter that was put out to the public by Mayor Thomas Dunn of Elizabeth, who said: "To add to the disgust of this sad state of affairs" -- and he was referencing what had occurred in Loveladies -- "police officials on T.V. said they could take no action against the person responsible 'because there are no laws on the books to cover such things.' Would you believe this? Are there no laws governing the way our hospitals dispose of human tissue, bodies, or limbs? There must be."

We have heard testimony this morning about what the existing state of law is, but, obviously, further law is necessary with a complete clarification of what will happen to the human fetal tissue. Therefore, New Jersey Right to Life supports the Rocco/Jackman bill with the changes that have been made. Assemblyman Rocco said he would drop out the 20 weeks' of uterogestation. In Paragraph 3, we would like the Committee to reflect upon, where the word "woman" is used, whether we should use the words "mother and father." Two people were involved in the process. Shouldn't they both give their prior approval for the method of interment as described by the statute?

As we discussed with Assemblyman Rocco this morning, we also support the fact that all interments be done within the State of New Jersey. Although the Executive Board of the New Jersey Right to Life has not addressed the pathology question, I think it is a proper

question which must be raised. We would probably -- at least I would -- support the concept of a prompt pathology report being done, and then a time period be set forth in a further amendment to the bill to allow for the pathology within a short period of time and then a proper interment, also within a short period of time, so that we do not get something dragged out 30, 60, or 90 days.

ASSEMBLYMAN OTLOWSKI: Excuse me. In my own mind, for the moment, I don't know whether the pathology question belongs with this question. The pathology question, in my opinion, is very important. I think it is a very important question we have to deal with, but I am just wondering if we have to deal with that separately, in separate legislation or by separate regulation, as was suggested by the Medical Board. In any event, it is something that is very important, but how we are going to deal with that I don't know at the moment.

MR. TOMICKI: The pathology question, as it has been raised today in testimony-- I would not be uncomfortable with that, but I would not like to see it hold back the legislation which has to be addressed because of what you are suggesting. We would also support that all interments, as described by the statute, be done within the State of New Jersey, so we could avoid the other problem and stay on top on a constitutional basis.

Also, at the end of the first sentence of Paragraph 3, I believe we would recommend that this consent form be signed prior to the abortion procedure being performed. I think you would have to put in a time period. I believe it would be very traumatic for a woman afterward. As was testified to this morning, that question should be addressed during the counseling period that goes on in many of the health care facilities. The bill should be amended so that the consent form is signed prior to the abortion procedure.

I have nothing more to add at this stage.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.
Assemblyman Cuprowski?

ASSEMBLYMAN CUPROWSKI: I think that was very well said, and I certainly appreciate your input and your recommended changes in the bill. Thank you.

ASSEMBLYMAN OTLOWSKI: Again, thank you, Mr. Tomicki. If you want to submit copies of your recommendations for the record, we will be glad to hold it open.

MR. TOMICKI: We will be happy to.

ASSEMBLYMAN OTLOWSKI: I will hold the record open, and if you will submit them, we will mark them as an exhibit of the hearing.

MR. TOMICKI: They will be mailed out tomorrow.

ASSEMBLYMAN OTLOWSKI: Good, thank you. May we have Ms. Ann Levine? Please give us your name and the organization you represent? And, you are going to do us the favor of summarizing your written testimony.

ANN E. LEVINE: Right. My name is Ann Levine; I am Executive Director of Family Planning Advocates of New Jersey. We represent the planned parenthood affiliates and other family planning agencies in this State, as well as other organizations and individuals who support progressive family planning policies. The agencies I represent serve over 100,000 women primarily for family planning services in the State. We also do a lot of pregnancy testing, counseling, and referrals.

As this Committee has discovered, there does not seem to be very much in the way of law or statute regarding the disposal of either human tissue or fetal remains that would operate to avoid the offense to public sensibilities which occurred down in the shore area. However, we cannot support the solution to the problem proposed in Assembly Bill 2584, Assemblyman Rocco's bill. We believe that Assembly Bill 2477 is more reasonable, although it, too, may be an over-reaction. With some of the testimony heard today about possible amendments and so forth-- Of course, this statement was written before we knew about any potential amendments.

I want to point out clearly that A-2584 seems to impose a view of fetal personhood on women who do not share that view who may be undergoing spontaneous or induced abortions by requiring the interment of the remains. Similar legislation has been declared to be unconstitutional in the case of the Louisiana statute.

ASSEMBLYMAN OTLOWSKI: Excuse me. Just for my own information-- I get confused by numbers; the only number I remember is the number I had as a water boy when I was 14 years old.

MS. LEVINE: If it will help, I will refer to them as the Rocco bill--

ASSEMBLYMAN OTLOWSKI: (interrupting) Are you talking about the Rocco bill?

MS. LEVINE: Yes.

ASSEMBLYMAN OTLOWSKI: And, in your opinion--

MS. LEVINE: (interrupting) I will quote from the court decision in the Louisiana case: "because it requires that fetal remains be treated with the same dignity as the remains of a person, and thereby unduly burdens the right of a woman to obtain an abortion."

ASSEMBLYMAN OTLOWSKI: What court said that?

MS. LEVINE: The Eastern District Louisiana Court in 1980, I believe. The citation and further quotes are in the appendages to my testimony, so you will have that on file.

ASSEMBLYMAN OTLOWSKI: All right, thank you.

MS. LEVINE: Being required to fill out a form choosing a method of interment would clearly be an emotional burden to the women. I must add, I have talked to numerous women, many of whom you may know or whom you may see in the corridors of the Legislature, who have had miscarriages. They feel that that kind of a requirement would be a real outrage. Additionally, there is no provision for confidentiality--

ASSEMBLYMAN OTLOWSKI: (interrupting) Excuse me. In the event of miscarriages -- in those cases the hospital disposes of the--

MS. LEVINE: (interrupting) You would be requiring -- under the language of the Rocco bill -- women to fill out some sort of form choosing a method of interment.

ASSEMBLYMAN OTLOWSKI: In the event of miscarriages, the Rocco bill--

MS. LEVINE: (interrupting) It does, at least anything before 20 weeks. It doesn't say whether induced or spontaneous abortion.

ASSEMBLYMAN OTLOWSKI: With miscarriages, I haven't heard any problems about the way hospitals dispose of those fetuses.

MS. LEVINE: I am not terribly familiar with hospital procedure. I think there has been a lot of discussion of incineration on site at hospitals today. We would not object to that, but what this is requiring is interment through some sort of funeral process.

ASSEMBLYMAN OTLOWSKI: I guess what is repulsive, and what has shocked the consciences of many of the legislators, is that fetal matter is treated worse than garbage. This is what is shocking.

MS. LEVINE: We do not object to regulations that would prevent that kind of thing, you know, the dignified disposal of human tissue, or fetal remains. However, what we are saying is, the Rocco bill is going to run into constitutional problems because of its imposition of the emotional burden on the woman of having to choose a method of disposal of something she may not regard as a human being, even though I well understand that many people do. Additionally, there is no provision for confidentiality regarding the forms that would have to be filled out.

ASSEMBLYMAN OTLOWSKI: How would you correct the constitutional question in the Rocco bill?

MS. LEVINE: I would recommend that you proceed no further with the Rocco bill at all.

ASSEMBLYMAN OTLOWSKI: How would you correct the constitutional question you raise, or don't you think there is a constitutional question in the other bills?

MS. LEVINE: It does not seem to be the same kind of problem in the other bills because you are allowing for the same method of disposal for all human tissue.

ASSEMBLYMAN OTLOWSKI: All right, I understand.

MS. LEVINE: A person would have the choice of choosing interment.

ASSEMBLYMAN OTLOWSKI: I understand where you are coming from.

MS. LEVINE: Again, the Rocco bill calls for forms, but there are clearly additional costs here. While I appreciate the offer of the funeral directors to cover these costs, somehow I don't think that would work out quite as well in practice as it sounded here. Assembly Bill 2477 is--

ASSEMBLYMAN OTLOWSKI: (interrupting) Whose bill is A-2477?

MS. LEVINE: That is the Hendrickson/Connors bill. It requires licensure of persons disposing of such material. It was not clear to us when reading the bill whether or not they are contemplating a whole new category of licensure. Presently, hospitals, some clinics, and clinical laboratories are licensed in this State. Would they need a separate license as a disposer of tissue with this proposed legislation?

ASSEMBLYMAN OTLOWSKI: I think this is one of the things that Assemblyman Cuprowski is raising. As a matter of fact, I have asked him to meet with the people from the Health Department to bring that into perspective and make it a little clearer.

MS. LEVINE: We think it is possible--

ASSEMBLYMAN OTLOWSKI: (interrupting) Incidentally, Assemblyman Cuprowski has promised -- for the record -- that he is going to do that.

ASSEMBLYMAN CUPROWSKI: Yes, I have, Mr. Chairman, at your request.

MS. LEVINE: At any rate, the point we want to make is that simple amendments to present licensure standards could probably suffice. For all the reasons that Dr. Koplin pointed out, we would also like to make the point that good medical practice should require that fetal remains be examined by a pathologist. What is apparently needed at this point are regulations concerning the disposal of tissue after the path exam by the clinical laboratory, which may well have a suitable incineration facility on site.

ASSEMBLYMAN OTLOWSKI: What are your feelings about the pathological examination and testing?

MS. LEVINE: I feel that is good medical practice.

ASSEMBLYMAN OTLOWSKI: That is good medical practice?

MS. LEVINE: Yes. There may be some genetic defects discovered that would have an impact on future childbearing. As I said, I think Dr. Koplin outlined that very well.

So, mainly those are our major points. It is my understanding that a number of licensed clinics send their specimens

out of State. That may well be a problem, particularly if there is a very great cost differential between in-State and out-of-State.

ASSEMBLYMAN OTLOWSKI: Are you saying it should be a Health Department obligation?

MS. LEVINE: I beg your pardon?

ASSEMBLYMAN OTLOWSKI: Are you saying it should be a Health Department obligation by regulation, that the Health Department should do the pathological tests?

MS. LEVINE: No, I am not saying the Health Department should do that; I don't think they have the facilities to do that. However, there are laboratories in this State and there are others out of State. There may be a cost differential involved. I am not familiar with that. Again, if you run into very great additional costs, you may run into problems with constitutionality.

ASSEMBLYMAN OTLOWSKI: As a matter of fact, I hope -- as I said -- that Assemblyman Cuprowski is going to go into that in some detail with the sponsors of the bills and with the State Health Department, so we can get a clearer picture of that.

MS. LEVINE: That is all I have to say.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. May we have Ms. Linda Dennis? Linda, please do us a favor and summarize your statement. Will you give us your name and the name of the organization you represent for the record?

LINDA DENNIS: I am Linda Dennis, and I represent the National Organization for Women of New Jersey. I chair the Reproductive Freedom Task Force; that is why I am here today.

NOW - NJ opposes this legislation from a somewhat different standpoint than the people who have testified before me. We feel that this legislation places the onus of responsibility on the women involved for their medical care, rather than on the medical practice, where we feel it belongs. There are several instances in the bill I would like to discuss which we feel are unfair to women.

The first one has been discussed by Ann Levine, and that is miscarriage. We feel that after a woman survives this medical emergency, which is a very traumatic experience for her, having to

decide and indicate what type of disposal to be used for the product of conception would just add to her trauma.

I would also like to say that many, many women begin, and some even complete their miscarriages, in their homes. Many of them dispose of the tissue without knowing what it is or what to do about it. They are frightened; they are unsure as to what is happening to them. If a woman did inadvertently dispose of fetal tissue at home without knowing exactly how to go about it, according to Section 4 she would be guilty of a fourth-degree crime.

There is another aspect of this legislation we feel is unfair to women. The decision to have a pregnancy terminated is a very difficult one for every woman. No woman goes out and seeks an unplanned pregnancy. When she makes the decision as to what she is going to do about that pregnancy, she goes through a very long and difficult decision-making process. We feel that making her decide how the product of an unwanted conception should be disposed of is punitive to her, and insensitive to what she is going through.

Another problem we see is with the confidentiality factor. Many women who go through induced abortions do not want the fact known. They want to maintain confidentiality. With this legislation, there is no provision for the forms to be handled in a confidential manner.

We are concerned about the costs. We have heard that the costs would probably go up if a woman has to decide a different method of disposal than is currently being done in hospitals, facilities, and doctors' offices. We are concerned about the poor women who may have to take a longer period of time to acquire the money needed for payment. As she is going through the process of acquiring the money, she is also going through the pregnancy, and the time factor could make it imperative that she have a more expensive procedure. Then she would have to get more money, and also, a more extensive medical procedure.

NOW - NJ encourages the Board of Health to establish guidelines for the disposal of tissue, but all tissue, not just fetal tissue. We feel it is inappropriate and unjust to place the burden of responsibility on the women involved, and not on the medical profession, where we feel it belongs.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. May we go on to Connie Butcavage? Connie, are there three of you?

CONNIE BUTCAVAGE: Yes. I am just going to make a brief statement.

ASSEMBLYMAN OTLOWSKI: Are you going to speak for the three of you?

MS. BUTCAVAGE: No, I am going to defer to them, with your kind permission. With me are Marian Powers and Bea Johnson.

ASSEMBLYMAN OTLOWSKI: Please sit down and let's get all of that into the record. First, tell us your name and whom you represent.

MS. BUTCAVAGE: My name is Connie Butcavage; I am Legislative Director for the New Jersey Right to Life Committee. The Committee has long had such a bill on our legislative agenda. At this particular time I would like to--

ASSEMBLYMAN OTLOWSKI: (interrupting) What do you want to do with Marian and Bea?

MS. BUTCAVAGE: I would like them to testify, to take my time. I defer my time to them.

ASSEMBLYMAN OTLOWSKI: Oh, you want them to take your time? Are they here? Are they ready?

MS. BUTCAVAGE: Yes, they are.

ASSEMBLYMAN OTLOWSKI: Can we get them?

MS. BUTCAVAGE: Surely. Thank you.

ASSEMBLYMAN OTLOWSKI: Who are we getting first?

MARIAN POWERS: I am Marian Powers.

ASSEMBLYMAN OTLOWSKI: All right, Marian; come on in.

MS. POWERS: I apologize for having no prepared statement.

ASSEMBLYMAN OTLOWSKI: As a matter of fact, we want to thank you for not having a prepared statement. (laughter)

MS. POWERS: I am the attorney who represented the Ocean County Right to Life in the application before the Toms River Court. This is why they wanted me to come.

I would just like to comment on a few aspects of the bill. When you look up the word "fetus" in the dictionary, it is a generic term, and I think this has caused a lot of confusion. Fetus can apply to both animals and humans. Now, I know there is a lot of objection to

saying "human fetuses," but I see nothing wrong with saying "the fetuses of human beings." I think the fact that technically--

ASSEMBLYMAN OTLOWSKI: (interrupting) Technically, you would have to have the reference to human; otherwise, you would get into this whole area that you are talking about.

MS. POWERS: Right. Then, I'm sure the butchers and zoo keepers would be up in arms. A lot of people don't realize it, but fetus is a generic word. Also, I think a problem comes in with the words "incineration" and "cremation," because incineration is also a generic word. It means the process of reducing to ashes. The commonly-accepted definition of incineration is with rubbish. Cremation is associated with bodies. However, if you differentiate between the generic and the specific, I think you will eliminate this, and I think that in all the other amendments and recommendations that have been mentioned, cremation will refer to bodies. The confusion is because the generic encompasses both.

One thing I would like to point out is, everyone would like these fetuses to be properly disposed of. In our hearing before the Toms River Court, Mr. Peyser's attorney objected to the Ocean County Right to Life having custody of these fetuses. After we said we were only interested in a dignified burial, he withdrew his objection, and said it was the Ocean County Right to Life--

ASSEMBLYMAN OTLOWSKI: (interrupting) Wait a minute; excuse me. You picked up the fetuses in Ocean County?

MS. POWERS: Yes, we buried them.

ASSEMBLYMAN OTLOWSKI: Oh, and who was furious?

MS. POWERS: See, what happened was, the prosecutor had made an application to court to have these--

ASSEMBLYMAN OTLOWSKI: (interrupting) The prosecutor wasn't furious, was he?

MS. POWERS: No, he just wanted a court order to determine who would be the proper party to release these fetuses to. There were the Department of Health, the Department of Environmental Protection--

ASSEMBLYMAN OTLOWSKI: (interrupting) But, they were buried, and they remain buried?

MS. POWERS: Well, at the time of the hearing on September 21, they were in a funeral home, in a morgue. When the judge saw our form of order-- When Peyser's attorney saw the form of the order and that all we were interested in was a quiet, dignified disposition, he withdrew his objection. The custody was given to us, and we were permitted to have them buried.

ASSEMBLYMAN OTLOWSKI: By court order?

MS. POWERS: By court order. Today people have mentioned personhood. They have brought up constitutionality; that was never an issue in the Ocean County situation. All they were concerned about was disposing of the fetuses from human beings in a dignified way. There was no objection; no one objected to that. I think we have a consensus here, because persons who have been involved in the abortion business from the one extreme to the people in the pro-life business all agree that the fetuses should be handled in a dignified way. I do think we have a consensus.

I would just like to make one remark about Paragraph 4 of Assemblyman Rocco's bill. He said that the Commissioner "may" adopt rules. I would like to see the word "shall." In view of the fact that the Department of Health dropped their regulations before--

ASSEMBLYMAN OTLOWSKI: (interrupting) You would make it mandatory?

MS. POWERS: Right. The one other thing I wanted to bring out is that after the media found out that we were involved in a court proceeding, I had calls from out of state, particularly Connecticut. They were very concerned about what our procedures were down here because they wondered if Hartford, Connecticut was using New Jersey to circumvent their own laws. Of course, I had no answer for them. They wanted to know why the bodies would come from Georgia. I don't know why our laws are so different from any of the others. I think this is something that is ancillary to the problem today, and it should be taken care of.

I appreciate this Committee doing something so quickly on this issue.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much. I am not going to ask you any questions which ordinarily, you know, a lawyer would expect me to ask. I think you might give this some thought, and you may want to submit a memorandum to the Committee. There were some constitutional questions raised about these bills. If you or anyone else want to submit additional memoranda on the constitutional question, we will hold the record open until we receive them. All right?

MS. POWERS: Thank you.

ASSEMBLYMAN OTLOWSKI: Thank you very much. What happened to your partner, Bea Johnson? Ms. Johnson, are you ready?

BEA JOHNSON: I must also apologize; I don't have a written statement either.

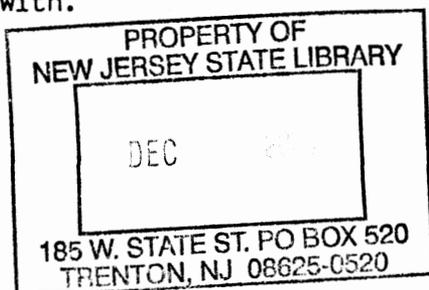
ASSEMBLYMAN OTLOWSKI: That's great. Ms. Johnson, just for the record, will you please give us your name so we can associate you with this group which is testifying.

MS. JOHNSON: My name is Bea Johnson; I am the President of the Ocean County Right to Life.

ASSEMBLYMAN OTLOWSKI: Right, and you're with Ms. Butcavage and Ms. Powers?

MS. JOHNSON: Right. I think Marian has already said much of what I had to say. We, the Ocean County Right to Life, obtained permission through a court order on September 21, 1984 to bury 100 unborn children who had been put out in the trash in Long Beach. We buried them on September 25 in a quiet, dignified manner. I will go briefly into what happened prior to obtaining the bodies of the children.

We had two objections to the release of the bodies to us. The first was from Mr. Peyser's attorney. He said he believed we wanted the bodies for demonstrative, photographic, or other purposes in furtherance of the goals of the Ocean County Right to Life Committee prior to burial. He said that these uses would be inconsistent with the proper disposition of evidential, pathological materials. This statement was made by the man who put them out in the garbage to begin with.



The second objection was made by the Ocean County Medical Examiner. He contended it was the responsibility of the County Medical Examiner to properly dispose of any unclaimed or unidentified bodies.

The first objection was withdrawn after our affidavit was submitted stating that we had no other purpose in mind other than burial.

ASSEMBLYMAN OTLOWSKI: Ms. Johnson, excuse me. I don't want to get into that area. I think the record will show what took place there; that is pretty clear. Frankly, I wish you would get off that and get into the basic elements of the bill. All right? I think that has been brought out already.

MS. JOHNSON: I don't understand what you mean, off of what?

ASSEMBLYMAN OTLOWSKI: You are developing the court procedure; I think that has been made clear enough.

MS. JOHNSON: All right. Well, as Marian has said, there are still unanswered questions. People have been asking why the bodies were shipped from out of state.

ASSEMBLYMAN OTLOWSKI: Let me ask you this question.

MS. JOHNSON: Yes.

ASSEMBLYMAN OTLOWSKI: In my own opinion, if I may be personal, I think you did a great thing, the way you acted about this. However, I have to stay on the bill. Are you saying you are in favor, or are you opposed to these bills? What is your position?

MS. JOHNSON: We are in favor of Assemblyman Rocco's bill.

ASSEMBLYMAN OTLOWSKI: You are in favor of it?

MS. JOHNSON: Yes.

ASSEMBLYMAN OTLOWSKI: Thank you very much.

MS. JOHNSON: Thank you.

ASSEMBLYMAN OTLOWSKI: May we have Mr. Bruce Freeman? Bruce, do you have written testimony?

BRUCE FREEMAN: Yes, I do. I believe there are eight copies here.

ASSEMBLYMAN OTLOWSKI: Please outline this for us.

MR. FREEMAN: Well, it is fairly short; I don't think I could be much briefer.

ASSEMBLYMAN OTLOWSKI: Oh, I think you could.

MR. FREEMAN: All right, I will make the attempt. My name is Bruce Freeman. I am a resident of Neptune, New Jersey, and I am on the Board of Directors of Right to Choose. Right to Choose is an organization dedicated to guaranteeing a woman's constitutional right to a safe and legal abortion.

Right to Choose believes that all human tissue should be handled and disposed of in a humane manner. We do not oppose regulations which would regulate humane disposal. For this reason, we do not oppose A-2477.

ASSEMBLYMAN OTLOWSKI: Whose bill is that?

MR. FREEMAN: That is Assemblyman Hendrickson's bill.

ASSEMBLYMAN OTLOWSKI: You favor Assemblyman Hendrickson's bill, but you are opposed to Assemblyman Rocco's bill?

MR. FREEMAN: I would rather say we have no opposition to Assemblyman Hendrickson's bill. We are not--

ASSEMBLYMAN OTLOWSKI: (interrupting) You have no opposition? Do you have opposition to Assemblyman Rocco's bill? Do you oppose Assemblyman Rocco's bill?

MR. FREEMAN: That is correct.

ASSEMBLYMAN OTLOWSKI: That is your position; that is the position of your organization.

MR. FREEMAN: Yes, it is.

ASSEMBLYMAN OTLOWSKI: All right. Is there anything else we should know about your position on Assemblyman Hendrickson's bill?

MR. FREEMAN: We believe this legislation could be best handled instead by the Department of Health. However, as I have said, we have no objection to the legislation.

ASSEMBLYMAN OTLOWSKI: But, your overall position is that this whole question could be handled best by the Department of Health?

MR. FREEMAN: Yes, that is correct.

ASSEMBLYMAN OTLOWSKI: All right, I think you have made your position clear, unless you have something else you want to add.

MR. FREEMAN: On Assemblyman Rocco's bill, we would like to just reiterate the points that have been made by certain other speakers here. The bill seeks to impose on women and the State the belief of

its sponsors that a fetus is a person. Also, it could be a traumatic experience for the woman, especially in cases of spontaneous abortion.

ASSEMBLYMAN OTLOWSKI: Excuse me. I just want to say this: I don't get the impression that any one of these bills makes that distinction you are talking about. As a matter of fact, I think the bills belabor the point that they are treating this as a human fetus. I think they make that clear. When you get into the issue you are talking about-- Now you are getting into a broader issue. I do not think it is the intention of the sponsors to deal with that in the two bills they are proposing. I just want the record to show that.

MR. FREEMAN: I'm not quite sure I understand what you mean. Do you mean they are not intended to deal with miscarrying?

ASSEMBLYMAN OTLOWSKI: No, I didn't say that. You were saying that this was a roundabout way -- at least that is the impression I got -- of getting into the abortion question. I'm saying that I think the sponsors took great care to deal with the human fetus as such. They are skirting, they want to get out of the other issue.

MR. FREEMAN: I can understand your point; however, the very distinction between fetal tissue and other human tissue makes it clear that there is a distinction being made here.

ASSEMBLYMAN OTLOWSKI: All right. That is your opinion, and you are voicing that opinion.

MR. FREEMAN: Yes. That pretty much sums up my testimony.

ASSEMBLYMAN OTLOWSKI: Thank you very much. We really appreciate your coming to testify.

MR. FREEMAN: Thank you.

ASSEMBLYMAN OTLOWSKI: May we have Ms. Ann Baker? Ann, will you please give us your name and the organization you represent?

ANN BAKER: My name is Ann Baker; I represent The 80% Majority Campaign, which does researching and organizing for abortion rights.

ASSEMBLYMAN OTLOWSKI: How did you arrive at the number 80%?

MS. BAKER: That is the usual figure that comes out in the polls of Americans who support legal abortion.

ASSEMBLYMAN OTLOWSKI: Okay, thank you.

MS. BAKER: Surely; thank you for asking.

ASSEMBLYMAN OTLOWSKI: I need that kind of a percentage from time to time. I usually settle for 78%. Do you want to go on now?

MS. BAKER: Yes. There are a number of problems with this legislation. To begin with, the definition of fetal tissue in Section 1. a. indicates that the twenty-first week of gestation is the end of the fetal period. As a matter of fact, it is not a live birth at the end of the fetal period. So, if a pregnancy were to continue to the thirty-ninth week of gestation and a live birth resulted, that whole entire period would be the fetal period, and that would be fetal tissue.

There are several problems, however, which are more serious in Sections 2. and 3. As the previous witness brought up, there is no distinction made in this legislation between a spontaneous abortion -- a miscarriage -- and an induced abortion. What this then requires is that a woman who experiences a spontaneous abortion, wherever that may be, and whatever she may do in response to that at the time, whether she is hospitalized or whether she is in the lavatory down the hall, is then required to fill out this form and to take those measures required by this legislation to dispose of that fetal tissue. That is one serious problem with this bill. It does not make that distinction. On the other hand, if it did make the distinction, one would have to ask why you only wanted this requirement of women who chose an induced abortion, and would not require it of women who had spontaneous abortions. In other words, it seems to me that the requirement for filling out the form as to how the fetal tissue is going to be disposed of is, in fact, irrational.

Furthermore, a requirement has been struck down in the courts when it was contained in legislation that had been enacted into law and challenged. The court has usually found that--

ASSEMBLYMAN OTLOWSKI: (interrupting) What has the court struck down, so that the record is clear? What has the court struck down with reference to what we are talking about?

MS. BAKER: The requirement of filling out a form for the disposal of aborted fetal tissue. The court has held--

ASSEMBLYMAN OTLOWSKI: (interrupting) When you say the court struck that down -- again, for the record -- what court struck it down?

MS. BAKER: It was the Louisiana Federal District Court. The reason they did so was because that requirement unduly burdens the decision of a woman to have an abortion, to make that decision. If she has already gone through the steps of making that decision, has been counseled, and is going to have an abortion, and now she has to fill out a form that implies that this is a human person, that is a very disturbing experience. The court held that it unduly burdened her right to make that decision.

The last problem with the provision is, there is no protection of confidentiality. This form does not-- There is no indication of how the woman's privacy rights would be protected. As a consequence, that would probably also face a challenge -- a court challenge.

ASSEMBLYMAN OTLOWSKI: We will probably be challenged, or were challenged?

MS. BAKER: The confidentiality provision has always been challenged.

ASSEMBLYMAN OTLOWSKI: It has always been challenged?

MS. BAKER: Yes, sir.

ASSEMBLYMAN OTLOWSKI: So, you say that that challenge would apply to this legislation?

MS. BAKER: That's right.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.

MS. BAKER: You're quite welcome.

ASSEMBLYMAN OTLOWSKI: May we have Ellen Samuel? If Ellen keeps to the clock, she will make it known to everyone how good I am with the clock. Ellen, please tell us who you are.

ELLEN SAMUEL: Yes. My name is Ellen Samuel; I am the Administrator of a State-licensed, freestanding, ambulatory/surgical center, the type of facility that was spoken to by Dr. Koplin.

I have nothing written for you, so I will be extremely brief. Actually, since we at the surgical facility are the kind of agency, other than hospitals, which is intimately involved with the abortion question, I come here, in a sense, to volunteer to answer any questions that might be specifically addressed to an agency such as ours.

We were appalled, as was everyone else, by the incident in Loveladies. Perhaps this is a good opportunity for the Department of Health to become involved and pass the regulations all of us would support. As a licensed surgical facility, all tissue that is removed from a body, whether it be from an abortion or any other surgical procedure, goes to a pathologist.

ASSEMBLYMAN OTLOWSKI: Are you required to do that now?

MS. SAMUEL: Yes. It is a requirement for abortion tissue. It is not a requirement, but it is always a medical decision that all other tissue--

ASSEMBLYMAN OTLOWSKI: (interrupting) But, that medical decision is usually made automatically and is all-encompassing?

MS. SAMUEL: Absolutely; a benign lesion, a mole would be sent out to a pathologist, products from an endometrial biopsy would be sent to a pathologist, etc. So, we have no problem with a pathologist being involved. I think the only time that would create a problem is in an instance -- which has been mentioned -- when a woman miscarries at home. Certainly, no one -- I don't think -- intended to make anyone who has a medical emergency, a traumatic medical emergency totally beyond her control, criminally culpable for not following through in a matter prescribed by the Department of Health. I doubt that would be the goal.

So, certainly we have no problem, as a facility outside of a hospital, seeing the Department of Health promulgate the appropriate regulations asking for a pathologist. Should that be done, I would assume then if that were applied to office situations as well as licensed facilities and hospitals, that all these matters would wind up being taken care of either by the appropriate hospital body or laboratory body. They are both already licensed.

ASSEMBLYMAN OTLOWSKI: Do you have any position to express on the Rocco bill or the Hendrickson bill?

MS. SAMUEL: I would be opposed to the Rocco bill and probably mostly supportive of the Hendrickson bill, dependent upon language, etc. I will keep you to your time limit. That is all I have, but I will certainly try to answer any questions.

ASSEMBLYMAN OTLOWSKI: Thank you. We appreciate your testimony. You have been very helpful. I just want to say this while you are sitting there: This testimony will be reviewed by our staff people, and after it has been reviewed by our staff people, they will make certain pertinent facts known to the Committee to help us with the judgment we have to make on these bills. It may be, depending upon the situation, that the Committee may make certain recommendations about the bills, each bill itself, or may favor one of the bills. However, that remains to be seen. In the meantime, the Committee is going to put all of this together so we can review it. We will try to give our attention to the suggestions that were made to determine if they will become any part of amendments or changes in the bills.

I just want to say this: All of you have been very, very helpful to this Committee. Your testimony has been pertinent and relevant. As a matter of fact, I want to particularly commend you for your brevity. It is unusual for our committees to witness and be a part of the kind of brevity we have had here. For that I know we are all very grateful to you and we want to express our appreciation.

FROM AUDIENCE: Mr. Chairman?

ASSEMBLYMAN OTLOWSKI: Yes, ma'am. Please come up here and tell us who you are.

IRENE E. ALI: My name is Irene Ali.

ASSEMBLYMAN OTLOWSKI: Whom do you represent?

MS. ALI: I represent the Abortion Survival Committee. Sir, I do not mean to insult the Committee, but I would just like to thank you for the decency you have shown toward the disposal of fetuses. I realize the position the Committee is in is very illogical, because to divorce yourself from the abortion issue -- you really can't because the people who got up who were pro-abortion said to think of the woman's rights.

ASSEMBLYMAN OTLOWSKI: I knew something was going to happen to--

MS. ALI: Sir, what I am saying is this.

ASSEMBLYMAN OTLOWSKI: I'm only kidding. Please go on; I'm sorry. The only thing you are going to mess me up with is my time, but go ahead.

MS. ALI: Thank you. Those who have no respect for a human when he or she is in the process of being, certainly can have no respect for a human when he or she is dead. I would just like to say that they would put us on the level of being animals. There is within each one of us a spark of consciousness, whether you call it conscience, decency, or whatever. I would just like to thank the Committee. When your bill comes out, it will reflect upon your beliefs, whether you think the human species has regard for itself so that it will have enough decency and respect to give it an honorable burial, or whether it will be treated as garbage. Thank you.

ASSEMBLYMAN OTLOWSKI: Let me just say this: I think it was evident here throughout the whole hearing that everyone is concerned that the human fetus is not regarded as garbage. There might be all kinds of differences of opinions, as were expressed here, but I think it has been unanimous that no one wants to regard the human fetus as garbage. That in itself is repulsive; it is repelling; and, as a matter of fact, it is indecent to everything the human race is supposed to stand for.

MS. ALI: I thoroughly agree with you.

ASSEMBLYMAN OTLOWSKI: I think everyone has taken that position. I can understand your concern and the passion with which you came before this Committee. I can appreciate that passion because in many instances passion is needed for us to see the greater wisdom that is offered to us. So, while I made a crack that maybe I shouldn't have made -- you know, that you upset me -- you didn't. As a matter of fact, if anything, I am impressed with your passion. Thank you very, very much.

Assemblyman Cuprowski, are you ready to quit?

ASSEMBLYMAN CUPROWSKI: Yes, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: Do you want to say anything before we adjourn?

ASSEMBLYMAN CUPROWSKI: Very briefly. First of all, I want to commend you as Chairman for holding this particular hearing in the manner in which it was held. Secondly, I want to congratulate all of those who gave testimony here today. I think we are all going in the

same direction in trying to solve a problem. Certainly, as the speakers have indicated, this is not pro-abortion versus anti-abortion. That has nothing to do with this particular piece of legislation. The fact is, abortions are occurring in the State of New Jersey and throughout the United States, and as long as they are, I think we have an obligation, as legislators, to legislate in a very humane and dignified way, and that is what we are attempting to do.

ASSEMBLYMAN OTLOWSKI: Thank you, Assemblyman Cuprowski. Thank you everyone. This hearing stands adjourned.

(HEARING CONCLUDED)

APPENDIX

MEMBERS OF THE RELIGIOUS COALITION
FOR ABORTION RIGHTS

National Ministries	Council on Women and the Church
American Baptist Churches	Presbyterian Church (U.S.A.)
American Ethical Union	General Assembly Mission Board Presbyterian Church (U.S.A.)
National Service Conference American Ethical Union	The Program Agency Presbyterian Church (U.S.A.)
American Humanist Association	Union of American Hebrew Congregations
American Jewish Congress	Unitarian Universalist Association
B'nai B'rith Women	Unitarian Universalist Women's Federation
Catholics for a Free Choice	Board for Homeland Ministries United Church of Christ
Womaen's Caucus	Coordinating Center for Women United Church of Christ
Church of the Brethren	Office for Church in Society United Church of Christ
Division of Homeland Ministries Christian Church (Disciples of Christ)	Board of Church and Society United Methodist Church
Episcopal Urban Caucus	Women's Division Board of Global Ministries United Methodist Church
Episcopal Women's Caucus	United Synagogue of America
Federation of Reconstructionist Congregations and Havurot	Women's League for Conservative Judaism
National Council of Jewish Women	YWCA National Board
National Federation of Temple Sisterhoods	
North American Federation of Temple Youth	
Pioneer Women/NA'AMAT	
Committee on Women's Concerns Presbyterian Church (U.S.A.)	



RELIGIOUS COALITION FOR ABORTION RIGHTS
EDUCATIONAL FUND, INC.
100 Maryland Avenue, N.E.
Washington, DC 20002
(202) 543-7032

Family Planning Advocates of New Jersey

154 West State Street
Trenton, New Jersey 08608
(609) 393-8423

October 4, 1984

STATEMENT FOR Public Hearing by the Assembly Corrections Health, & Human Services Committee on legislative and regulatory issues related to disposal of nonviable human fetuses after abortion

Ann E. Levine, Executive Director

As this committee has no doubt discovered there is very little in N.J. law or regulations regarding the disposal of non-infected human tissue or fetal remains prior to 20 weeks gestation, that would operate to avoid or penalize the offense to public sensibilities that occurred recently in Long Branch. However, we cannot support the solution to this problem proposed in A.2584, and believe that A.2477, while seemingly more reasonable, may also be an over-reaction.

A 2584 seems to impose a view of fetal personhood on women undergoing either spontaneous or induced abortion, by requiring interment of the remains. Similar legislation has been declared to be unconstitutional in the case of a Louisiana statute (since repealed), "because it requires that fetal remains be treated with the same dignity as the remains of a person, and thereby unduly burdens the right of a woman to obtain an abortion."* Being required to fill out a form choosing a method of interment would clearly be an emotional burden to the woman. Additionally, there is no provision for confidentiality regarding these forms, and there is a clear recognition that such a requirement would impose additional costs, by requiring the Department of Health to include cost estimates of various methods of interment on the form. We would urge this committee not give further consideration to A.2584.

A.2477 treats fetal tissue the same as human tissue and requires incineration as the method of disposal, if interment is not chosen. It also requires licensure of persons disposing of such material.

It is not clear to us if a whole new category of licensure is being called for here. Presently, hospitals, clinics and clinical laboratories are licensed in this state. Would they need a separate license as a disposer of tissue under this proposed legislation if tissue is disposed of by incineration on site?

Would not some simple amendments to present licensure standards suffice here? Good medical practice requires that fetal remains be examined by a pathologist for public health and safety reasons, including concerns about the possibility of an ectopic pregnancy and/or some defect in the fetus that has implications for future childbearing. Present clinic regulations so require. What is apparently needed at this point are regulations regarding disposal of tissue by the clinical laboratory once the material has been studied. A whole separate licensure category and procedure, it seems, cannot help adding to costs of health care without any increase in the health and safety.

*Margaret S. v. Edwards, 488 F. Supp. 181 (E.D. La 1980)
see Memo attached re similar Arizona legislation

As drafted, House Bill 2309, which would require the remains of an "aborted unborn child" to be disposed of by cremation or interment, is unconstitutional. We ask that the following points be considered:

1. The United States Supreme Court has repeatedly held that a state may not restrict or burden a woman's right to terminate her pregnancy in the first trimester. Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed.2d 147 (1973). City of Akron v. Akron Center for Reproductive Health, Inc., 103 S. Ct. 2481 (1983) (reaffirming Roe). The Court has also repeatedly held that in the second trimester, abortion may not be proscribed, although a state may enact reasonable regulations which are designed to preserve and protect maternal health. House Bill 2309 attempts to place collateral burdens and to limit and influence a woman's abortion decision.

2. A fetal remains statute remarkably similar to House Bill 2309 was held unconstitutional by the federal court in Margaret S. v. Edwards, 488 F. Supp. 181 (E.D. La. 1980). There, as in House Bill 2309, the statute required interment or cremation for the remains of an "unborn child." In holding the statute unconstitutional, the court held as follows:

[T]his Court holds that [the Louisiana statute] is an unconstitutional exercise of the State's police power, because it requires that fetal remains be treated with the same dignity as the remains of a person, and thereby, unduly burdens the right of a woman to obtain an abortion.

Roe v. Wade prohibits the State from making the determination as to when life begins. . . . However, [the Louisiana statute] impermissibly raises the status of a fetus to that of a human being by using language equating fetal remains with human remains. . . .

Id. at 222 (citations omitted) (footnote omitted). As in Margaret S., House Bill 2309 is an attempt to place psychological and financial burdens on a woman's abortion decision. As drafted, House Bill 2309 is, therefore, clearly unconstitutional.

3. See also Planned Parenthood Association v. Fitzpatrick, 401 F. Supp. 554 (1975), aff'd sub. nom., Franklin v. Fitzpatrick, 428 U.S. 901 (1976), where the court made the following statement with respect to fetal burial:

A regulation that requires expensive burial may well invade the privacy of the pregnant woman and burden her decision concerning an abortion.

401 F. Supp. at 573.

OCT 03 1984

Did NOT PASS
PASSED House
DIED in
SENATE Comm.

State of Arizona
House of Representatives
Thirty-sixth Legislature
Second Regular Session
1984

HOUSE BILL 2309

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR DISPOSAL OF REMAINS OF ABORTED UNBORN CHILD; PRESCRIBING CRIMINAL VIOLATION AND CLASSIFICATION; PRESCRIBING DEFINITIONS, AND AMENDING TITLE 36, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2153.

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 36, chapter 20, article 1, Arizona Revised
3 Statutes, is amended by adding section 36-2153, to read:
4 36-2153. Disposal of remains; violation;
5 classification; definitions
6 A. THE REMAINS OF AN ABORTED UNBORN CHILD SHALL BE DISPOSED OF BY
7 CREMATION OR INTERMENT.
8 B. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A CLASS
9 3 MISDEMEANOR.
10 C. AS USED IN THIS SECTION:
11 1. "ABORTED" MEANS RESULTING FROM THE INTENTIONAL DESTRUCTION OF
12 THE LIFE OF AN UNBORN CHILD IN THE MOTHER'S WOMB, THE INTENTIONAL
13 TERMINATION OF THE PREGNANCY OF THE MOTHER OR THE INTENTIONAL REMOVAL OF A
14 DEAD OR DYING UNBORN CHILD FROM THE MOTHER'S BODY.
15 2. "CREMATION" MEANS INCINERATION OF THE REMAINS OF AN UNBORN CHILD
16 IN A RECOGNIZED FACILITY ESTABLISHED SOLELY FOR THE PURPOSE OF CREMATING
17 DEAD BODIES OR UNBORN CHILDREN, OR BOTH.
18 3. "INTERMENT" MEANS DISPOSAL OF THE REMAINS OF AN UNBORN CHILD BY
19 BURIAL IN A CEMETERY AS DEFINED IN SECTION 32-2101.
20 4. "REMAINS" MEANS ALL PARTS OF THE BODY OF A DEAD UNBORN CHILD.
21 5. "UNBORN CHILD" MEANS THE UNBORN OFFSPRING OF A HUMAN AT ANY STAGE
22 OF ITS DEVELOPMENT.
23 Sec. 2. Emergency
24 To preserve the public peace, health and safety it is necessary that
25 this act become immediately operative. It is therefore declared to be an
26 emergency measure, to take effect as provided by law.



NOW - NJ

**NATIONAL ORGANIZATION FOR WOMEN
OF NEW JERSEY**

Task Force for Reproductive Freedom

Testimony on A.2584 given to: The Assembly Corrections, Health and Human
Services Committee
given by: Linda Dennis
date: October 4, 1984

The National Organization for Women of New Jersey, which I represent, has 7,000 members residing in all 21 counties of this State. I chair the NOW-NJ Reproductive Freedom Task Force. In my private life I am a registered nurse, OB/GYN Nurse Practitioner, with an additional degree in community health. I am, and have been for 9 years, employed by hospitals and out-patient facilities working in various aspects of women's health care, including abortion.

NOW-NJ opposes A.2584 for several reasons. As section 3 stipulates "the method of internment of fetal tissue shall be within the discretion of the woman from whom the fetal tissue is expelled," the issue of women experiencing spontaneous miscarriages is raised. After surviving this medical emergency, the woman would have to consider in what way the products of pregnancy would be disposed of and then complete a form describing her decision. If she were unaware of the legislation and inadvertently disposed of the fetal tissue without adhering to the law, she would be guilty of a fourth degree crime according to section 5.

The decision to have a pregnancy terminated is a difficult one. No woman seeks to have an unplanned pregnancy and when one occurs many factors are considered during the decision making process. A requirement having the woman indicate the method of internment for the products of an unwanted conception is punitive and insensitive.

Medical practitioners attempt to protect the confidentiality of care for their patients. This legislation has no provision for handling the proposed forms in a confidential manner.

Section 4 of this legislation requires the proposed form to indicate approximate costs of the methods of internment for fetal tissue. By legislating which methods of disposal are legal, the costs of an induced abortion will surely be increased. Higher costs will make abortion less accessible to poor women who may need a longer time to acquire the money for payment. This extension of time could then necessitate an even more expensive and extensive type of medical procedure.

NOW-NJ encourages the State Board of Health to develop standards and guidelines for the disposal of all tissue- not just fetal tissue. However it should be the responsibility of pathologists, hospitals, clinics, and facilities to dispose of tissue. It is inappropriate and unjust to place the burden of responsibility for this type of medical decision on the women involved.

Linda Dennis

30 Prospect Avenue
Pompton Plains, N.J. 07444
201-831-8843



Right to Choose

P.O. Box 343
East Brunswick, N.J. 08816
N.J. Affiliate of (NARAL)
National Abortion Rights Action League

• DEDICATED TO GUARANTEEING A WOMAN'S CONSTITUTIONAL RIGHT TO A SAFE AND LEGAL ABORTION •

Right to Choose believes that all human tissue should be handled and disposed of in a humane manner and we do not oppose regulations which would regulate humane disposal. For that reason we do not oppose A2477 but we feel that the proper agency to handle this issue is the Dept. of Health and not the legislature.

Right to Choose is opposed to A2584 for many reasons. This bill seeks to impose on women and the state the belief of its sponsors that a fetus is a person. By forcing a woman to sign a form choosing a method of interment, this legislation could cause psychological trauma for the woman. The bill is written in such a way as to include miscarriages (Spontaneous abortions) and since 25% of all pregnancies end in miscarriages many women in New Jersey would be affected. By prohibiting incineration to dispose of fetal tissue the bill would add to the cost of an abortion (spontaneous or induced) and why prohibit incineration for fetal tissue and not for other human tissue.

Right to Choose hopes the committee will not act rashly in response to an unfortunate incident and will allow the Dept. of Health to write well thought out and enforceable regulations which will not cause distress to anyone.

THE 80% MAJORITY CAMPAIGN

BOX 3298 ROOSEVELT, N.J. 08555 ANN BAKER, PRESIDENT

Good morning. My name is Ann Baker, and I am speaking for The 80% Majority Campaign, an organizing and research organization for abortion rights. I thank the members of this committee for providing the opportunity to testify on Assembly bill 2584.

There are a number of problems with this legislation.

To begin with the definition in Section 1a of fetal tissue is medically and scientifically inaccurate. The 21st week of gestation is not the end of the fetal period, as this definition implies. Live birth, usually at 39 weeks but sometimes as early as 24 weeks, marks the end of the fetal period. Viability simply does not occur at 20 weeks, and a premature birth at this developmental age could not be sustained even with intensive neo-natal care; it is really a late miscarriage.

Sections 2 and 3 present several problems. No distinction has been made between a woman who experiences a spontaneous abortion and a woman who undergoes an induced abortion. This bill would require interment in both cases, it should not be required in either case.

Between one-fourth and one-third of all pregnancies end in a spontaneous abortion. The 8 point difference is accounted for by the fact that a woman may not know that she has miscarried. Many women experience a spontaneous abortion during the first two months of pregnancy. Because of the lack of development of the embryo, many women imply may not realize that they have miscarried.

Equally, in a later miscarriage, a legal requirement for interment is inappropriate and insensitive. And if this is true of spontaneous abortion, it is equally true of an induced abortion, 91% of which occur in the first 12 weeks of pregnancy.

Provisions such as this have been included in legislation that was enacted into law and then challenged in the courts. It has never been upheld. The courts

Organizing Consultants for Abortion Rights

have ruled that this requirement unduly burdens a woman's decision to terminate a pregnancy by treating fetal tissue as though it were a human person.

Furthermore, there is no provision made in A2584 to protect the confidentiality of the woman required to sign the form. This is typical of legislation developed by those who oppose legal abortion, but who were silent about the evils of illegal abortion.

This legislation serves no state purpose and I urge the members of this committee not to release A2584.

the
Medical Care Center

Ellen Samuel, MSW, Administrator

~~AT WOODBRIDGE~~
1500 - Route 9 Woodbridge, New Jersey 07095
Tel. (201) 636-CARE

October 15, 1984

George Otlowski
Chairman
Assembly Correction, Health
and Human Services Committee
CN 042
State House Annex
Trenton, N.J. 08625

Dear Assemblyman Otlowski:

Thank you for allowing my testimony in opposition to A. 2584, to be heard at the public hearing concerning the disposal of human fetuses. I am sorry that I did not have a prepared text to leave with you and I appreciate the opportunity which you afforded me to speak extemporaneously.

As I explained, I am the administrator of a state licensed, non-hospital affiliated, free-standing ambulatory surgical center. We perform many surgical procedures including abortions. All tissue that is obtained during surgery is sent to a laboratory for pathology and then disposed of by the laboratory, in what I assume is an appropriate manner. As far as I am aware, only fetal tissue is mandated by regulation to be sent for pathology; all other tissue is sent, as a matter of medical discretion.

It may be possible that there is a loop-hole in the regulations and that there is nothing which speaks, in general, to the procedure for the disposal of any tissue which is surgically removed. Perhaps what is needed at this point are regulations which would apply to the disposal of all tissue from the laboratories where they are sent. I think it is an error to make the disposal of fetal tissue a separate category. All tissue removed from any human being should be treated with dignity and respect and disposed of in a manner which is appropriate: I believe incineration would be the most fitting.

I hope that the decision of the committee will be to recommend that the department of health promulgate regulations which will apply to all human tissue removed in any setting--hospital, surgical center and office--and therefore prevent incidents like that which occurred recently in Long Branch, N.J.

If there is any further information needed by the committee please feel free to contact me.

Sincerely,



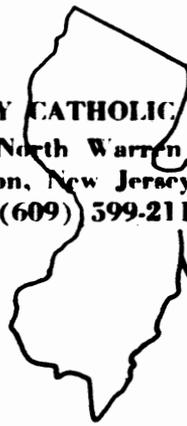
Ellen Samuel
Administrator

cc: Paul Cuprowski

llx

NEW JERSEY CATHOLIC CONFERENCE

211 North Warren Street
Trenton, New Jersey 08618
(609) 599-2110



Archdiocese of Newark
Diocese of Camden
Diocese of Metuchen
Diocese of Paterson
Diocese of Trenton
Eparchy of Passaic

Edward J. Leadem
Executive Director

September 28, 1984

TO: Members of Assembly, Corrections, Health and Human
Services Committee

FROM: Edward J. Leadem, Executive Director, Pro tem 

RE: LEGISLATIVE AND REGULATORY ISSUES RELATED TO THE
DISPOSAL OF NONVIABLE HUMAN FETUSES AFTER ABORTION

The New Jersey Catholic Conference applauds you, Mr. Chairman, and the Members of the Assembly Corrections, Health and Human Services Committee, for your vital interest in this most serious concern.

Certainly the disposal of human remains of less than 20 days uterogestation deserves the highest dignity for these are human - the highest order of life.

We would respectfully urge that any legislation in this area be drafted with the stated goal of affording the highest respect for our human species; that the actual words "human remains" be used rather than "fetal tissue" for we are truly dealing with human beings.

EJL/vwr



NATIONAL COUNCIL OF JEWISH WOMEN
EDUCATION . SOCIAL ACTION . SERVICE

October 4, 1984

NEW JERSEY STATE PUBLIC AFFAIRS COMMITTEE

STATEMENT OF THE NEW JERSEY STATE PUBLIC AFFAIRS COMMITTEE,
NATIONAL COUNCIL OF JEWISH WOMEN
TO THE
GENERAL ASSEMBLY CORRECTIONS, HEALTH AND HUMAN SERVICES COMMITTEE

SUBJECT: A. 2584 and A. 2477
Two ACTS concerning the disposal of fetal tissue and human tissue.

Mr. Chairman and members of the Committee, my name is Meryl Fogelson and I am writing as Chairwoman of the NJ-State Public Affairs Committee of the National Council of Jewish Women, a non-profit volunteer organization dedicated to advancing human welfare and the democratic way of life.

On behalf of the more than 9500 members, in 31 Sections, of NCJW in the State of New Jersey, I appreciate this opportunity to express our strenuous opposition to Assembly Bill 2584 and our concerns about Assembly Bill 2477, Acts regarding the disposal of fetal tissue.

Since its inception in 1893, NCJW has concerned itself with the strengthening of family life and the advancement of women through a coordinated program of education, service, advocacy and social action. Our volunteers have been involved in direct service projects including day care, shelters for battered spouses, Juvenile Justice, court programs, and women's support and counseling groups. Today I am writing not only for our New Jersey members, but also for the 100,000 NCJW members in over 200 Sections across the country.

Many of our 9500 member families in New Jersey read with considerable dismay about the unfortunate situation in Long Beach regarding improper disposal of fetal remains. As an organization committed to respect for human dignity, the National Council of Jewish Women would find disposal of any human tissue in this manner inappropriate and unacceptable.

The NJ State Public Affairs Committee recognizes the need to improve the rules and regulations governing such disposal. However, as pro-choice advocates, we oppose Assembly Bills 2584 and 2477 as solutions to this need.

ASSEMBLY BILL 2584

By mandating "that fetal tissue shall be disposed of by interment," and that "incineration shall not be an acceptable method of disposal of fetal tissue," the Sponsors would assign personhood to a fetus of less than 20 weeks.

Currently there is no consensus as to when the unborn becomes a person. It is a matter of religion and values, not absolute fact. To place in the Public Law one theological definition concerning the beginning of life compels every citizen to accept that doctrine, even when it conflicts with his or her own religious beliefs.

Furthermore, by requiring women to determine "the method of interment to be used," the Sponsors would set up a system which would be offensive to many and traumatic to some. As worded, it would apply to women experiencing spontaneous abortions as well as induced.

This bill is sponsored by persons whose religious and moral convictions are against abortion. The National Council of Jewish Women does not challenge the rights of these individuals to hold these convictions for themselves, for their families and for their churches. However, we believe that religious freedom mandates that other groups must not be denied the right to exercise their beliefs as well.

The NJ-State Public Affairs Committee accepts the medical view of fetal tissue of less than 20 weeks as an interrupted product of conception, to be considered in the same manner as any other form of human tissue and to be disposed of as any other normal pathology specimen.

ASSEMBLY BILL 2477

The NJ-State Public Affairs Committee of NCJW applauds the intent of A. 2477, "to ensure that the health and safety of the public are protected."

We recommend that the Act be amended to concern "the disposal of human tissue" only, and that all references to

"fetal tissue" be deleted.

In Conclusion, the NJ-State Public Affairs Committee strongly urges that regulations be formulated to ensure that the disposal of all human tissue be done in a manner guaranteed to protect the health and safety of the public. These regulations should not single out fetal tissue of less than 20 weeks as being different from any other human tissue.

On behalf of the more than 9500 members of NCJW in the State of New Jersey, I thank you for the opportunity to submit this Statement.

Respectfully submitted,



Meryl Fogelson, Chairwoman
NJ-State Public Affairs
National Council of Jewish
Women

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