

MEMORANDUM

TO: Senator Tom Dempsey and Honorable Members of the
Senate Financial, Governmental Organizations and Elections Committee

FROM: Pam Fichter, President
James S. Cole, General Counsel

DATE: March 3, 2008

RE: SB 1139 – The Uniform Anatomical Gift Act

The Revised Uniform Anatomical Gift Act (Revised UAGA) was promulgated in 2006 by the organization known as the National Conference of Commissioners on Uniform State Laws. SB 1139 represents a Missouri version of the Revised UAGA. Before this year's session of the Legislature opened, Missouri Right to Life participated in discussions with the organ procurement agencies who support this bill, and we expressed concerns about several provisions. Some of those concerns were addressed in SB 1139, but not all. We ask that one substantial flaw in the bill be corrected, so that the bill will not allow a document to be signed before an abortion to donate the organs and tissue of a soon-to-be-aborted infant for research, education, or transplantation.

The flaw that needs correction comes about because of the way the bill uses the terms, “donor” and “decedent,” in referring to the individual from whom parts, organs or tissue will be taken. In SB 1139, if a donation is agreed to after the individual is already dead, then the individual is called a “decedent.” (Sections 194.210.2(5) and 194.245.) If a donation is agreed to before the individual is dead (to take effect afterward) then the individual is called a “donor.” (Sections 194.210.2(8) and 194.220.)

It is important to note that when it comes to children who are still alive, who are too young to understand what it means to donate their organs, SB 1139 still refers to them as “donors.” This is both confusing and unusual, because third persons—their parents—are making the decision to donate, not the children themselves. In fact, this is something that the law has not even allowed until now. Current law does not allow parents, indeed any third parties, to make gifts of other individuals' bodies and body parts before the other individuals' deaths. Sec. 194.220, RSMo. Moreover, current law does not allow those under the age of 18 to agree to donate their own organs ahead of time. Section

194.220, RSMo. In short, under current law, it is simply not possible to make a binding donation of children's organs before their deaths.

SB 1139 would change this rule to allow parents to make gifts in advance of organs or tissues to be taken from the bodies of their children. The key language, found in new section 194.220.2(3), reads as follows:

2. . . . [A]n anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education . . . by:

(3) A parent of the donor, if the donor is an unemancipated minor; . . .

Under this language, a parent may make an advance gift of a minor's body or part thereof. Neither here, nor elsewhere in the bill, is there anything to keep such an advance gift from being made when the minor has not yet been born.

One section of SB 1139 does protect the unborn from being the subject of organ donations that are agreed to after they have died (but not before). That protection is found in the definition of "decedent," section 194.210.2(5), which contains the sentence, "The term includes a stillborn infant but does not include an unborn child as defined in section 1.205 or 188.015, RSMo, if the child has not died of natural causes." That is fine, but not enough. Before the unborn child is dead, he or she is a "donor" under SB 1139, not a "decedent." In contrast to the definition of "decedent," the definition of "donor" does not contain a sentence that protects an unborn child. Section 194.210.2(8). Without that protection, if the mother wants to agree to donate an unborn child's organs or tissue ahead of time, before the child is dead, the language of 194.220 just quoted above allows it. Thus, the unborn's organs and tissues can be donated by the mother right before an abortion under the language of SB 1139.

The ability to obtain an agreement for such a donation could be used by the staff of an abortion clinic to persuade a doubtful woman to go forward with an abortion, especially if the pregnancy is several weeks along, when many organs are already formed. If a woman's circumstances lead her to consider an abortion, but she hesitates to destroy her baby, an abortion clinic might soothe her by saying she could make some good come out of it by donating the baby's organs for cures for other people. The death of her baby would have "meaning," in other words. She could sign the permission to take her unborn's tissue and organs at the same time as she signs the consent form for the abortion.

How terrible and perverse it would be to make it easier to choose abortion by encouraging the thought that unborn babies' organs could be used for others! Yet that is what SB 1139 allows.

It is easy to cure the problem that has just been described, and more than one way is possible. For example, at the end of the definition of "donor," this phrase can be added: "provided, that 'donor' does not include an unborn child as defined in sections 1.205 or 188.015, RSMo." Another way to protect the unborn would be to attach the

exception to the section that gives parents the right to agree in advance to organ donations from the bodies of their children. There are probably other places where the protection could be added. Just one sentence, or even a part of a sentence, would suffice.

Missouri Right to Life sincerely asks this committee to add protective language for unborn children so that no one can donate their organs either before or after an abortion. Until this protection is provided for unborn children in this bill, Missouri Right to Life stands in opposition to SB 1139.