



In North Dakota, It's 'No' to Government Spending, Unless You're Fighting Against Abortion Rights

By Sofia Resnick and Sharona Couttes
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Fiscal conservatives are now criticizing a double standard, where the lawmakers backing these bills are more regularly seen opposing other instances of what they call government interference, and decrying so-called “big spending.” ([WikiMedia Commons](#))

North Dakota legislators turned 2013 into a carnival of anti-choice activity, with the introduction of [six bills](#) and [one constitutional amendment](#) all seeking to wind back access to abortion services in the state.

Like their counterparts [in many anti-choice state legislatures](#), the North Dakotan lawmakers behind these bills were undeterred by the fact that most of them would be challenged, and likely defeated, in the courts.

“I fully expect this bill to be challenged,” said Rep. Alan Fehr (R-Dickinson) last February, during a [House Human Services Committee debate](#) on a [bill](#), which—had it not been blocked in court—would have banned abortion at the first detection of a fetal heartbeat. As Fehr noted, the proposed legislation would bring down the deadline from when a woman could access a legal abortion from 22 weeks to six, before many women even know they are pregnant.

“I fully expect this to cost our taxpayers a million-plus dollars. I fully expect that passing this will not save any lives because it will be overturned,” said Fehr, who nevertheless voted for this bill, as well as the other successful anti-choice measures, most of which were crafted by national anti-choice groups that have been using state houses in a strategic attempt to overthrow *Roe v. Wade*. “It is not a gray area in regards to challenging the Supreme Court.”

[Documents](#) obtained by *RH Reality Check* through public records requests confirm Fehr’s predictions about heavy financial hits to North Dakota taxpayers. Between January 2011 and December 2013, the state spent nearly \$230,000 on litigation, with a sizable chunk going to a private law firm tasked with defending these controversial laws. In May 2013, the state [set aside \\$400,000](#) to defend anticipated challenges to this new crop of anti-choice bills, at the attorney general’s request.

North Dakota is far from alone in spending large sums to defend anti-choice laws. But what makes the state unusual is that fiscal conservatives are now criticizing a double standard, where the lawmakers backing these bills are more regularly seen opposing other instances of what they call government interference, and decrying so-called big spending.

“With these bills we know we’re going to go to court; they’re all going to go to court,” said moderate Republican Rep. Kathy Hawken of Fargo last February, during a [house debate](#) over the bill banning abortions sought because of the fetus’ anticipated sex or fetal abnormality. “If they are found to be unconstitutional, we not only get to pay our share but the other share, as well,” she said, referring to legal fees.

Yet, Hawken points out that while her colleagues are willing to pass unconstitutional legislation that will likely cost taxpayers hundreds of thousands of dollars in legal fees, they have consistently opposed spending on prenatal health care and early childhood education.

“Prenatal care is like trying to pull teeth,” said Hawken, who identifies as “pro-life,” during a phone interview with *RH Reality Check*. She said she has faced regular hurdles in increasing prenatal health-care coverage for minors. “We did finally last session put a little bit of money into child care, but we still don’t do pre-K,” she said. “So, my comment has been that the bills are pro-birth, but they are not pro-life, because we don’t look at anything before the baby comes or after they get here.”

To be sure, it is the role of state attorneys general to defend laws passed by the state legislators, and from the vantage point of politicians, they are taking a moral stance.

Trevor Burrus—who researches constitutional law issues at the free-market and limited-government-supporting Cato Institute in Washington, D.C.—told *RH Reality Check* in a phone interview that lawmakers like Bette Grande (R-Fargo) are not at fault for, as he put it, “voting their consciences.” Burrus, who noted that he is “agnostic on the question of abortion,” also said he did not believe Grande’s heartbeat bill was clearly unconstitutional—even though the law bans abortions long before viability, which the Supreme Court has [repeatedly said](#) states cannot do.

Burrus said he does not see that as an inconsistency between voting for anti-choice measures while voting down spending more on social programs that benefit pregnant mothers and young children.

“Conservatives can be pro-life for one reason and not believe in increased social programs that they think degrades the family and encourages out-of-wedlock children,” he said.

But the links between these lawmakers, the bills they propose, and big outside groups, has rankled some North Dakotans.

At least two of the bills that passed in 2011 and 2013—forcing providers to use an [outdated](#) protocol approved by the Food and Drug Administration and banning abortion sought because of the fetus’ anticipated sex or genetic abnormality—were based on model legislation written by the

Beltway nonprofit Americans United for Life (AUL), whose primary goal is to filter anti-choice laws throughout the United States, with the stated goal of sparking a review of *Roe v. Wade* by the U.S. Supreme Court.

Grande sponsored the AUL-modeled bills, as well as a bill that banned abortion at the first detection of a heartbeat. This latter bill referenced a similar [Ohio bill](#) (which never passed), according to Kylah Aull, a manager of library and records for the North Dakota Legislative Council. Similar legislation has been [blocked in Arkansas](#).

Grande also happens to be one of two state chairs for the Washington, D.C.-based [American Legislative Exchange Council](#) (ALEC), which purports to advocate for limited government.

As *RH Reality Check* [reported](#) in January, AUL has strong ties to powerful corporate interests that are, on the surface, more committed to free-market and corporate issues than aggressive social-conservative stances. Indeed, ALEC publicly disavows involvement with social issues.

“The American Legislative Exchange Council does not maintain any model policy on reproductive health and has no position on the issue,” said ALEC spokesperson Molly Fuhs. “ALEC does not work on social issues; rather, ALEC focuses on pro-growth economic policy.”

However, for years now, AUL been capitalizing on its regular access to ALEC’s conservative legislative members, such as purchasing an exhibitor’s booth at ALEC conferences and offering anti-choice model legislation to lawmakers. AUL declined to comment for this story.

Despite her prominence in an organization that advocates for limiting government’s power, Grande has actively pushed laws that, among many provisions, require the government to police women’s motivations for obtaining a legal abortion. Not only that, but Grande shrugged off protests that these laws would likely be litigated—at the taxpayers’ expense.

“First, we should dispel the notion that this Bill should be defeated because of the cost of litigation,” Grande said in [a written statement](#) concerning the heartbeat bill. “Whether this Bill is challenged in court is entirely up to the abortion industry.”

Other Republican lawmakers shared Grande’s cavalier attitude toward the prospects of litigation over these bills.

At a [House Human Services Committee hearing](#) on the so-called heartbeat bill last February, Rep. Todd Porter (R-Mandan) argued, “There is always the threat of lawsuits and costing the taxpayers.”

And Rep. Chuck Damschen (R-Hampden) added, “This one seems like it would have as good a chance as any in court. The heartbeat issue might be something we can stand on. Anybody that takes us to court runs the risk as well.”

Though Grande testified at length about the need for a bill preventing people from having an abortion if their child is expected to have genetic abnormalities and advocated for the rights of

people with disabilities, during the same legislative session she voted against a [bill](#) that would have appropriated some money to spend on services for North Dakotans with intellectual and developmental disabilities. That bill died in the house.

Grande declined to comment for this story.

In addition to the organizations that helped write these laws—Americans United for Life, the National Right to Life Committee, and Personhood USA—the hearings were stacked with testifiers from these and other national groups, such as the Family Research Council and Concerned Women of America.

Rep. Gail Mooney (D-Cummings), who regularly spoke out against these anti-choice bills during house committee and floor debates, says she is angered that outside groups are using North Dakota's legal system to push their political agenda.

“I take great offense to the fact that the national groups have now begun to target states as a ploy to be able to get something overturned that they have been unable to do and that in the meantime then they're going to be spending taxpayer dollars as opposed to their own private dollars,” Mooney said in a phone interview.

With the state prepared to spend at minimum several hundred thousand dollars fighting anti-choice laws—on top of the quarter million dollars the state has spent since 2011, part of which it has already been paid to Grand Forks, North Dakota-based Pearson Christensen & Clapp, PLLP, the private law firm contracted to fight these laws—state lawmakers like Mooney have called on the interest groups behind many of these laws to shift the burden of these costs off of taxpayers, and onto themselves.

The New York-based Center for Reproductive Rights initially challenged all but one of the 2011- and 2013-enacted laws on behalf of the Red River Women's Clinic in Fargo, the state's sole abortion clinic. The center did not challenge a [bill](#) crafted by the [National Right to Life Committee](#), which bans abortion at 20 weeks' gestation based on the [medically disproven assertion](#) that fetuses feel pain at 20 weeks. Though this bill bans pre-viability abortions in violation of federal law, the center did not file a lawsuit against it, because the state's abortion clinic does not perform abortions after 16 weeks and thus did not have legal standing to challenge the law. The center also dropped its challenge against the law banning so-called sex-selective and genetic-abnormality abortions, after [determining it did not apply to the abortion clinic's practice](#).

None of the other laws are in effect. The medication abortion restrictions bill was struck down by a district court but is currently pending appeal from the state supreme court. The so-called heartbeat bill has been [blocked](#). And the [bill](#) that would require abortion providers to have admitting privileges at a local hospital is currently facing settlement negotiations between the state and the Center for Reproductive Rights. However, recently a nearby hospital [granted the Red River Women's Clinic admitting privileges](#), making the clinic in compliance with the law and, likely, closer to a settlement.

Autumn Katz, a staff attorney with the Center for Reproductive Rights, said her organization will continue to challenge these laws.

“It would be great if they stopped trying to pass laws that are so blatantly unconstitutional and that we don’t have to run to court just to make sure that women continue to have access to safe and legal medical care,” Katz said. “But if that’s not the case, then the center is committed to ensuring that women in North Dakota continue to have such access. It would be unfortunate to have to keep litigating these same issues over and over again.”

Both Hawken, the moderate Republican, and Mooney, the Democrat, said they fully expect a new round of extreme anti-choice legislation when the legislature meets again in 2015. With even those who typically demand more limited government green-lighting costly litigation, there’s no telling what’s next.

“With this kind of social-activism legislation ... the point is getting it passed and the heck with what it costs,” Hawken said.