Approved: March 5, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice Chairperson Keith Schraad at 10:12 a.m. on February 24, 1997 in Room

514-S of the Capitol.

All members were present except: Senator Harris (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Larry Wright, Franklin Co. Atty.
Senator Robert Tyson
Senator Tim Huelskamp
Cleta Renyer, Right to Life of Kansas
Elmer Feldkamp, Right to Life of Kansas
Jan Messerli, Representing self
Peggy Jarman, ProChoice Action League

Others attending: See attached list

SB 319 - Injury to a pregnant woman resulting in the death of fetus

Conferee Wright testified as a proponent of **SB 319**. He stated that the bill amendment will clarify the definition of "miscarriage" used in K.S.A 21-3440 and 21-3441 and that the proposed definition does not make a substantive change in the statute but attempts to eliminate a potential loophole in the current language which defines the prohibited conduct. He stated that the interpretation of the current definition by a certain judge in a case he was trying rendered him powerless to utilize the statute to it's full intent, a case where the fetus of a pregnant woman who was killed as a result of an automobile accident, died, but because the miscarriage includes ....."resulting in the complete expulsion or extraction from a pregnant woman"...the law did not apply since the fetus was not expulsed in this case. (attachment 1)

Conferee Tyson testified as a proponent of **SB 319.** He cited three cases of incidents in which the mother and the fetus have both been killed at a time near the mother's delivery date and stated that the surviving family had no recourse, under present law, because there had been no miscarriage as currently defined by the statute. (attachment 2)

Written testimony in favor of **SB 319** was submitted by Judy Smith. (attachment 3)

No action was taken at this time on **SB 319**.

SR 1815 - AG directed to determine constitutionality of abortion and to establish that upon conception there is life

Conferee Huelskamp testified as a proponent of **SR 1815**. He outlined the basic intent of this Resolution, the content of which is summarized as follows: Attorney General directed to determine the constitutionality of abortion and to establish that upon conception there is life. He stated that from 1970 to the present time abortion has been legalized in all 50 states, but a fundamental question has never been answered - whether the preborn child is or is not a human person whose life is to be protected by law? Medical, biological, genetic and scientific evidence now answers that question; human life begins at conception. He called for freeing the Courts so they may make their decisions with the latest biological, medical and genetic facts. (attachment 4)

Conferee Renyer testified as a proponent of **SR 1815**. She reiterated much of the content of Conferee Huelskamp's testimony with regard to allowing the courts the ability to use the latest scientific data when determining when human life begins. She stated that SR 1815 is a significant piece of legislation which could ultimately reverse Roe v. Wade. (attachment 5)

Conferee Feldkamp testified as a proponent of **SR 1815**. He distributed a printed copy of The Kansas Human Life Resolution to the committee (attachment 6). He stated he was sorry that potential proponent, Dr. Paddy Jim Baggot, an Omaha Genetic Specialist was unable to obtain a flight to Topeka to testify and he would attempt to present layman's evidence of when human life begins. He stated the purpose of the Resolution is an effort to require the Courts to review Roe v. Wade and to acknowledge that the personhood of each individual is established at conception and constitutionally, as a person, has rights. He reviewed the legal status of the abortion situation in the U.S. today presenting his analysis of several court cases and the ramifications of the decisions made in those cases. (attachment 7) Included in his written testimony were newspaper articles covering genetic data related to presented subject matter. (see The Topeka Capital-Journal, July 8, 1996 and Spetember 24, 1992)

Written testimony in favor of **SR 1815** was submitted by David Payne, Exec. Dir. Kansas Family Research Institute. (attachment 8)

Conferee Messerli testified as an opponent of **SR 1815**. She opposed the resolution stating she was not present to argue about when life begins but rather to point out misleading and false language in the Resolution stating that it is based on opinion and innuendo rather than fact. She dissected the Resolution in an attempt to prove her point. (attachment 9)

Written testimony opposing **SR 1815** was submitted by Peggy Jarman, ProChoice Action League (attachment 10); Wendy McFarland, ACLU (attachment 11) and Planned Parenthood (attachment 12).

Written testimony in favor of **SR 1815** was submitted by Judy Smith (attachment 13)

No action was taken on **SR 1815** at this time.

The Vice-Chair adjourned the meeting at 11:00 a.m.

The next scheduled meeting is Tuesday, February 25, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/24/97 p.1

NAME	REPRESENTING
Elmer Feldkamp	Right To Life of Kansas
Cleta Reneer	" " " "
Helen Wallace	RTLK
Betty Stuart	RTLK
Barbara Lee	RTLK
Virginia A. Werth	RTLK
Ruth A. Walker	RTLK
Reynelda Mainini	RTLK
Barbara Sowls	KSC
Julie Meyer	KSC
Jeanne Gawdun	KFL
Jana Gruder	NOW
Monica Neff	APK
Jan Meyers	Citizen
Peggy Jarman	PCAL
Helen Foster	RTLK
Jo Ann Brady	RTLK
Anna Marie Walker	RTLK
Ted F Palmer	Citizen

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/24/10 p. 2

NAME	REPRESENTING
Ruth Thimesch	RTLK
Lillian Palsmeier	RTLK
Mark Palsmeier	RTLK
Maria Becker	Right to Life of KS.
Charles Becker	" " " " "
Nancy Lindberg	AG.
Kelly Tyler	AG
Bruce Dimmitt	Independent
Trudy Aron	Com Dept of Corrections
Kelly Kultala	City of Overland Park
Barbara Row	Olathe KS
Sen. Tim Huelskamp	
R Myers	Cap Journal
Martin Hawver	Hawver's Capitol Report
Steve Zinn	AG

Lawrence M. Wright
County Attorney

Bryan M. Hastert
Deputy County Attorney

Brett W. Berry
Assistant County Attorney

Telephone
(913) 242-2927

Fax
(913) 242-2960

Franklin County Attorney

COURTS BUILDING
OTTAWA, KANSAS 66067

MEMORANDUM FOR : Senate Judiciary Committee
February 24, 1997

REFERENCE : Senate Bill No. 319

Mr. Chairman:

Senate Bill 319 proposes to amend K.S.A. 21-3440, Injury to a Pregnant Woman, and 21-3441, Injury to a Pregnant Woman by Vehicle, to clarify the definition of "miscarriage" used in both statutes. The proposed definition does not make any substantive change to the statute; rather, it attempts to eliminate a potential loophole in the current language which defines the prohibited conduct.

The definition of miscarriage used in both of the current statutes is the same and was inserted in the waning moments of the legislature, drawing language from a statutory definition of miscarriage used in another jurisdiction. The pertinent portion of the definition reads: "…'miscarriage' means the interruption of the normal development of the fetus, other than by live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception."

While the current definition is workable in its present form, it should be realized that this definition is the standard one for miscarriage. On the other hand, it appears that the legislature intended to criminalize not only those actions which result in miscarriages, but also to encompass those acts which result in the death of a fetus *in vitro*. Hence, there is a potential problem in situations whereby the fetus dies as a result of injuries to the pregnant woman, but is not "expelled" or "extracted" as contemplated by the current statute.

I am aware of two instances, both involving the death of a fetus as a result of an automobile accident, wherein the fetus was dead at the scene of the accident; however, in neither case was the fetus expulsed, as in a normal miscarriage, and in one case the fetus was not extracted. The language of the amendment before the Committee would include those situations within the definitions of the statutes.

Very sincerely,

Lawrence M. Wright

Senate Judiciary
attachment 1
2/24/97

STATE OF KANSAS

ROBERT TYSON
SENATOR, TWELFTH DISTRICT
Home Address: ROUTE 1, BOX 229
PARKER, KANSAS 66072
(913) 898-6035
Office: STATE CAPITOL BUILDING—143-N
TOPEKA, KANSAS 66612-1504
(913) 296-7380
1-800-432-3924

TOPEKA

KANSAS SENATE

COUNTIES
ANDERSON, BOURBON,
FRANKLIN, LINN & MIAMI

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND TOURISM
JOINT COMMITTEE ON PENSIONS,
INVESTMENTS & BENEFITS

Testimony of
Robert Tyson, Senator
Before the Senate Judiciary Committee
RE: SB 319

Chairman Harris and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in support of SB 319. My testimony is very short as the expertise and experience resides with the County Attorneys in the counties involved, Franklin & Miami.

We have experienced at least three cases of incidences in which the mother and the fetus have both been killed at a time near the mother's delivery date. There appears to be no recourse, under present law, for the surviving family to address this in court, as their has been no miscarriage.

Senate Judiciary
Attachment 2
2/24/97

Judy Smith
12105 Pawnee Lane
Leawood KS 66209
Fax 913-491-1380
Home Phone 913-491-8673

February 21, 1997

Senator Mike Harris
Senate Judiciary Committee
Kansas Senate
Topeka Kansas

Dear Senator Harris:

An injury to a pregnant woman offers a potential injury or death to the child in utero. This fact should be reflected in Kansas law. When that injury, death, or miscarriage of the fetus occurs in commission of a felony or misdemeanor, that injury or death should be covered by the Kansas criminal code. According to Black's Law Dictionary, the definition of a child is an unborn or recently born human being, and defines a fetus as being an unborn child. That child is a human being by every standard according to modern technology and should be afforded the full protection of the Kansas law. Concerned Women for America recognizes that life does begin at conception and urges that protection for the unborn child as stated in SB 319.

Sincerely,

Judy Smith

Judy Smith

Senate Judiciary
attachment 3
2-24-97

S Jud 2/24/97 Att # 4

STATE OF KANSAS

Tim Huelskamp
Senator, 38th District
P.O. Box 379
Fowler, KS 67844
(316) 646-5413 www.huelskamp.org

State Capitol-143-N
Topeka, KS 66612-1504
(913) 296-7359 (800) 432-3924

TOPEKA

KANSAS SENATE

Committee Assignments

ELECTIONS AND LOCAL GOVERNMENT
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND TOURISM
JOINT COMMITTEE ON CHILDREN AND FAMILIES

February 24, 1997

Mr. Chairman and members of the Judiciary Committee:

Thank you for the opportunity to testify today for Senate Resolution 1815. Although other witnesses are better able to answer specific technical, legal and scientific questions, I wish only to outline the basic intent of this Resolution.

The abortion debate has raged for decades. If you recall, in 1970 Kansas became one of the first states to permit abortion on demand. This was followed, of course, by the 1973 U.S. Supreme Court decisions, *Roe v. Wade* and *Doe v. Bolton,* legalizing abortion on demand in all 50 states.

While these Court decisions sought to end the abortion debate, they did not clear up the one fundamental question--**whether the preborn child is or is not a human person whose life is to be protected by law**? The Court skirted this issue, refused to rule on it, or said they were not able to decide. Since then, Court decision after Court decision has ruled on abortion regulations, and time after time, had no opportunity to address this key life question.

Since 1973, however, there have been enormous advances in medical technologies, as other conferees will discuss. Consequently, the real question that underlies the abortion battle can now be conclusively answered. **The medical, biological, and scientific evidence are clear; human life begins at conception.** Thus, from that moment, the preborn child is entitled to all the rights accorded all human persons in this state and country. Therefore, abortion violates Section one of the bill of rights of the Kansas Constitution and the due process and equal protection clauses of the fifth and fourteenth amendments to the U.S. Constitution.

I recognize that many people, including members of this Committee, disagree with me and other pro-lifers. However, if we are to rise above the emotion and hysteria surrounding this heated question, it is time to focus upon medical fact. I challenge any advocate of abortion to argue against science, against the reality that human life begins at conception. Instead, we need to move the Courts and the country beyond this diversionary tactic questioning the existence of human life. Rather, let us focus on the more proper question -- whether a civilized society can tolerate and promote the taking of innocent human life through abortion.

Whether you are pro-life, pro-abortion or somewhere in between, I hope you can agree that the Courts deserve to make their decisions with the latest biological, medical and genetic facts in hand. Thus, I ask for your support of Senate Resolution 1815. Thank you.

Senate Judiciary
Attachment 4
2-24-97

RIGHT TO LIFE OF KANSAS, INC.

214 S.W. 6th St., Suite 208, Topeka, KS 66603-3719 - Phone: 913-233-8601

SENATE JUDICIARY COMMITTEE
SR 1815
February 24, 1997

Chairman Harris and members of the Judiciary Committee, I want to thank you for hearing Senate Resolution 1815 or as Right to Life of Kansas members call it, the Kansas Human Life Resolution. I want to introduce myself. I am Cleta Renyer, Legislative Director of Right to Life of Kansas, which is the only no-exceptions pro-life organization in the state. We are afiliated nationally with American Life League of Virginia.

The Kansas Human Life Resolution, SR 1815, could be the most important piece of legislation that you will hold hearings on for a long time. It could be the beginning of a chain of events that would eventually overturn Roe v. Wade, the infamous Supreme Court decision in 1973. God willing it will be.

January 22 of this year was the 24th Anniversary date of that decision. Since that time the killing of preborn babies has escalated to above the 33 million mark. That fact alone is terrible, but add to it the fact that the mother, [illegible] in cooperation with a doctor, takes the life of her own

AMERICAN LIFE LEAGUE, INC.

Affiliated with American Life League

Senate Judiciary
Attachment 5
2-24-97

child. Yet, she is lead to believe it is her right. No one has the right to take the life of another person unless in war and self-defense. That right was put in the Constitution of the United States, Bill of Rights, and also in the Kansas Bill of Rights (copy attached). Most of all it is a God given right, His commandment is, "Thou shall not kill."

The disagreement over these last 24 years has been the fact of when life begins. In the Roe v. Wade decision, the Supreme Court indicated that if the unborn child is a person, the State could not allow abortion, even to save the life of the mother. In fact, the majority opinion deciding Roe v. Wade agreed if the personhood of the unborn child is established, the appellates (pro-abortion) case collapes, for the fetus right to life is then guaranted specifically by the Fourteenth Amendment.

That is why this piece of legislation is so important. It would require the Attoney General to bring before the courts the irrefutable biological and scientific evidence, much of it newly discovered technology, such as DNA concerning preborn life and when life begins. This was not avalaible in 1973 so the judges can be excused for their horrendous decision on that fact only. *Please listen with an open mind and heart to the testimony for the sake of the babies.*

§ 2. University lands. That seventy-two sections of land shall be granted to the state for the erection and maintenance of a state university.

Research and Practice Aids:

Public Lands ⇐ 51 et seq.
C.J.S. Public Lands § 87 et seq.

§ 3. Lands for public buildings. That thirty-six sections shall be granted to the state for the erection of public buildings.

Research and Practice Aids:

Public Lands ⇐ 62 et seq.
C.J.S. Public Lands § 141 et seq.

§ 4. Lands for benevolent institutions. That seventy-two sections shall be granted to the state for the erection and maintenance of charitable and benevolent institutions.

Research and Practice Aids:

Public Lands ⇐ 62 et seq.
C.J.S. Public Lands § 141 et seq.

§ 5. Salt springs and mines. That all salt springs, not exceeding twelve in number, with six sections of land adjacent to each, together with all mines, with the lands necessary for their full use, shall be granted to the state for works of public improvement.

Research and Practice Aids:

Public Lands ⇐ 62 et seq.
C.J.S. Public Lands § 141 et seq.

§ 6. Proceeds to schools. That five per-centum of the proceeds of the public lands in Kansas, disposed of after the admission of the state into the union, shall be paid to the state for a fund, the income of which shall be used for the support of common schools.

Research and Practice Aids:

Public Lands ⇐ 51 et seq.
C.J.S. Public Lands § 87 et seq.

§ 7. School lands. That the five hundred thousand acres of land to which the state is entitled under the act of congress entitled "An act to appropriate the proceeds of the sales of public lands and grant preemption rights," approved September 4th, 1841, shall be granted to the state for the support of common schools.

Research and Practice Aids:

Public Lands ⇐ 51 et seq.
C.J.S. Public Lands § 87 et seq.

§ 8. Selection of lands. That the lands hereinbefore mentioned shall be selected in such manner as may be prescribed by law; such selections to be subject to the approval of the commissioner of the general land office of the United States.

Research and Practice Aids:

Public Lands ⇐ 51 et seq.
C.J.S. Public Lands § 87 et seq.

PREAMBLE

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the state of Kansas, with the following boundaries, to wit: Beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence running west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of north latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning.

BILL OF RIGHTS

§ 1. Equal rights. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 47.

Research and Practice Aids:

Constitutional Law ⇐ 82 et seq.
Hatcher's Digest, Constitutional Law §§ 19, 22 to 28, 37 to 73.
C.J.S. Constitutional Law § 199 et seq.
Am. Jur. 2d Constitutional Law §§ 329 to 331, 356 to 360.

Law Review and Bar Journal References:

Concerning equal protection prohibiting a state from cancelling voter registration for failure to vote, 21 K.L.R. 224, 235 (1973).
The 1973 Kansas School District Equalization Act by James L. McNish, 22 K.L.R. 229, 235 (1974).
"Automobile Guest Statutes—The Recent Cases," James M. Armstrong, 23 K.L.R. 93, 95 (1974).
Governmental immunity statutes and first Brown decision (Brown v. Wichita State University, 217 K. 279), Nancy Scherer, 15 W.L.J. 155, 157 (1976).
"Governmental Immunity: Despotic Mantle or Creature of Necessity," Philip A. Harley and Bruce Wasinger, 16 W.L.J. 13, 22, 40 (1976).
"Constitutional Law: Governmental Immunity Statute

5-3

att 6

Be it resolved....

The Courts Must Acknowledge and Affirm:

"A Person's
A Person
No Matter
How Small"

—Horton Hears A Who
Dr. Seuss

THE KANSAS HUMAN LIFE RESOLUTION

Senate Judiciary
Attachment 6
2-24-97

Right To Life of Kansas, Inc. 214 SW 6th Ave, Ste 208, Topeka, KS 66603-3719

For more information contact:

RTLK

Right To Life of Kansas, Inc.
214 SW 6th Ave., Suite 208
Topeka, KS 66603-3719

Elmer L. Feldkamp
President

Off. (913) 233-8601
FAX (913) 233-8641
Res. (913) 336-6666
FAX (913) 336-6706

P.O. Box 1
Baileyville, KS 66404
e-mail: feldkamp@parod.com

or

RTLK

Right To Life of Kansas, Inc.
214 SW 6th Ave., Suite 208
Topeka, KS 66603-3719

Cleta Renyer
Legislative Director

Off. (913) 233-8601
FAX (913) 233-8641
Res. (913) 284-2697
FAX (913) 284-2697

RR 2 Box 94
Sabetha, KS 66534

The importance of

Acknowledging Personhood

One basic question must be answered before the abortion controversy can be settled. **Is the unborn child a person, and, if so, what value is to be placed on it's life?**

The Declaration of Independence asserted that **"We are endowed by our creator with certain unalienable rights,"** and that **"among these are life**, liberty and the pursuit of happiness." The Declaration rested on the assumption that there exists "the laws of nature and nature's God." Our system of law is rooted in and legitimized by that fundamental recognition of higher authority.

Those "rights", enumerated in the Declaration, some say, have no power in law because they were not specifically included in the U.S. Constitution when it was adopted in 1787. But, they were incorporated into the first ten amendments, the Bill of Rights, ratified in December, 1791.

The U.S. Supreme Court confirms this when they wrote, "**The very purpose of a Bill of Rights** was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as **legal principles to be applied by the courts**. **One's right to life**, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights **may not be submitted to vote**; they depend on the outcome of no election." *West Virginia State Board of Education v. Barnette* 319 US 624, 638 (1943). *(emphasis added)* Indeed, the Fifth Amendment contains these words, "No person shall be...deprived of life...without due process of law..." And with the ratification of the Fourteenth Amendment in July, 1886, "all persons" are also guaranteed "the equal protection of the laws."

The Bill of Rights in the Kansas Constitution, adopted July 29, 1859, includes that same declaration of basic rights of the people that may not be denied or infringed upon by the state or any local government. After nearly 140 years it remains the basic law of the state.

The highest duty of government, then, is to protect the lives of all persons, all human beings. But, a government can exercise it's duty to protect human life only if some branch of that government can determine what human life is. When the individual under consideration is an unborn child, the basic question becomes, **"When does the life of each human being begin?"**

U.S. Supreme Court Justice Stevens wrote in a concurring opinion in the 1986 *Thornburgh* case, "There is a fundamental and well-recognized difference

between a fetus and a human being. Indeed, **if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of State legislatures."** *Thornburgh v. American College of Obstetrics* 476 US 747 (1986). Justice Stevens was wrong in a very deadly way, for **if an unborn child is not human, what is she, what is he?** But at least he was logical in defending his support for the majority opinion in *Roe v. Wade.*

In the *Roe v. Wade* decision, the Supreme Court indicated that if the unborn child is a person, the State could not allow abortion, even to save the life of the mother. In fact, in the majority opinion deciding *Roe v. Wade,* they said, "If the personhood of the unborn child is established, the appellates [pro-abortion] case collapses, for the fetus' right to life is then guaranteed specifically by the [Fourteenth] Amendment."

The second part of the 'basic question' is thus answered; the pre-born girl or pre-born boy is guaranteed the same protection under the constitution as you or I.

As Notre Dame law professor Charles Rice points out, "This is so, because the common law does not permit a person to kill an innocent non-aggressor, even to save his own life." He continues, "For example, if two people in the middle of the ocean are on a raft that can only hold one person, the law does not permit one to throw the other overboard even to save his own life. Otherwise might would make right." (see *Regina v. Dudley and Stephens,* 14 Q.B.D, 273, 15 Cox C.C. 624, 1884; and *U.S. v. Holmes,* 2G Fed Cases 360 {No. 15, 383} C.C.E.D, Pa., 1842)

It may be true that, out of ignorance, many people still believe there is a difference between a fetus and a human being. But, during other shameful periods of our history, a lot of people thought there was a **difference between Afro-Americans and citizens** of the U.S., including, even, Chief Justice Taney. Many believed there was a **fundamental difference between men and women** and for many years denied women the right to vote.

Just because we used to have slavery doesn't mean we should continue to have slavery; just because women were denied the right to vote and many other rights doesn't mean we should continue to do so. And, just because, out of ignorance, some people don't understand fetology and human development and accept and practice abortion doesn't mean we should continue to do so.

While the court answered the second part of the question, the justices avoided answering the first part by stating, **"at this point in the development of man's knowledge, [we are] not in a position to speculate as to the answer."** Instead of assuming the justices were only feigning or pretending ignorance, perhaps we should look at it from their perspective. Keep in mind that none of the justices, not even those considered to be pro-life, have ever acknowledged that the child is a "person" before "live birth."

On oral reargument of *Roe*, the Texas attorney was asked to justify the States position that a "person" exists "from conception." One justice stated, in effect, that if the attorney could do that he could "sit down, you've won your case." The attorney began by citing the well known stages of human development, beginning with the seventh day following conception. The justice quickly interrupted and later presented as a question, **"I want you to give me a medical, recognizable medical writing of any kind that says that at the time of conception the fetus is a person."** Regrettably, the attorney could not give a satisfactory answer. This gave the court an opportunity to refer to the Texas law as "adopting one theory of life."

In researching this subject, we find that the justices may not have been wrong in reaching this assumption. Testifying before a court in Tennessee on August 10, 1989, the late Dr. Jerome Lejuene, world renowned French geneticist, told the court that ten years previously, that is 1979, he would have said **"I believe"** that a totally unique individual is present at conception. This belief, he stated, was **based on** "inference" or **"theory."** He then told the court, **"Now I would say I know it. That's a small difference."** Going from "inference" or "theory" to "demonstration," **"For a scientist it makes a lot of difference,"** Dr. Lejuene said.

And so it does also to the courts, sometimes referred to as the "trier of facts." **It is imperative that the now known facts be presented to the courts.**

The whole purpose of The Human Life Resolution is to give the courts an opportunity to review their abortion decisions by presenting the "facts" of human development to them rather than "theories."

The federal appeals court in Denver, **Dec. 23, 1996**, struck down as unconstitutional a Utah law that **supposedly banned** abortion after 20 weeks of pregnancy. The law **allowed abortions to save the woman's life, prevent damage to her health or to prevent the birth of a defective child**. Once again the courts show their total disregard for the preborn baby and **shows the futility of pro-life attempts to regulate or restrict abortions**. What the abortionist removes from the woman's body is **either a person** entitled to protection under the law **or it is not a person** -- and everyone knows the issue is not about the removal of an abdominal tumor.

"If, to please the people, we offer what we ourselves disbelieve, how can we afterwards defend our work? It is our task to raise a standard to which the wise and honest may repair, recognizing that the event is in the hands of God."

George Washington, 1787

The Kansas Human Life Resolution

A RESOLUTION requiring the Attorney General to bring action to determine the constitutionality of Kansas statutes and/or administrative and/or executive orders, including, but not limited to, K.S.A. 65-6701, 65-6702, 65-6703, 65-6704, 65-6705 and 65-6706, that allow the termination, or the use of state funds or facilities in the termination, of the lives of innocent human beings including the unborn.

WHEREAS, Section One of the Bill of Rights of the Constitution of Kansas states that "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." The right to life, logically enumerated first, is the basic, most fundamental right without which all others are meaningless; and

WHEREAS, The U.S. Supreme Court has acknowledged that those same rights, declared also in the Declaration of Independence, are so basic and fundamental that they "may not be subjected to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 638 (1943); and

WHEREAS, The term 'men' is accepted to include adult males, women, and children, in other words, all human beings; and

WHEREAS, All medical and scientific evidence increasingly acknowledges and affirms that children before birth share all the basic attributes of human personality--that they in fact are persons; the unborn child is considered a person for purposes of qualifying for medical care under the federal Medicaid program; modern medicine treats unborn children as patients; through ultrasound imaging and other techniques we can see the child's amazing development; by using DNA profiling, before birth, indeed, even before the new being is implanted in her mother's womb, we can be absolutely sure we are monitoring the same individual from conception/fertilization through the various stages of growth; and

WHEREAS, The U.S. Supreme Court itself noted, the decision in *Roe v. Wade*, 410 U.S. 113, 159 (1973) rested upon an earlier state of medical technology; the Court further acknowledged in *Roe v. Wade*, 410 U.S. 113, 156, 157 (1973) that "If this suggestion of personhood is established, the appellants case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the [Fourteenth] Amendment..."; the law of the land today must recognize all of the medical evidence and scientific facts; and

WHEREAS, The legislature of the state of Kansas has acknowledged, even as recently as 1994, that a human being exists before birth by requiring the postponement of the execution of a pregnant convict "until the child is born." *K.S.A 22-4009 (b)*; and

WHEREAS, The Kansas Supreme Court acknowledged in *Smith v. Deppish*, 248 Kan. 217, 231 (1991) that "we humans create human offspring by transferring our DNA to our children" and that this is done "during reproduction..," also known biologically as fertilization and/or conception. The Court further acknowledged in *Smith v. Deppish*, 248 Kan. 217, 232 (1991) that "each persons" DNA can be "individualized"; and

WHEREAS, The United States Supreme Court has ruled that entities that "are humans, live, and have their being" cannot be "non-persons," stating further, "They are clearly "persons" within the meaning of the Equal protection Clause of the Fourteenth Amendment." *Levy v. Louisiana,* 391 U.S. 68, 70 (1968); and

WHEREAS, A controversy now exists when the pregnancy of a woman constitutes the presence of a second person in order to qualify for medicaid while at the same time allowing such funds to be expended for the purpose of terminating the lives of preborn human beings by the procedure commonly referred to as induced abortion. Through the use of matching funds in, and the administration of, the medicaid program, and the use of state facilities in the termination of the lives of innocent human beings, the state has

become a direct party in violating Section 1 of the Bill of Rights of the Constitution of Kansas and the due process and equal protection clause of the Fifth and Fourteenth Amendments to United States Constitution. *Slaughterhouse Cases*, 83 U.S. 37, 80 (1872); *Strauder v. West Virginia* (1879); Yick Wo v. Hopkins 118 U.S. 356, 357, 370 (1886); *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 721-726 (1961) *Brown v. Topeka Board of Education* 387 U.S. 483, 490, 496 (1954); and

WHEREAS, The U.S. Supreme Court holds that "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts". *West Virginia State Board of Education v. Barnette, I319 U.S. 624, 638 (1943);* and

WHEREAS, One of those "legal principles", the court says, is "one's right to life" which "may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943); and*

WHEREAS, This matter involves issues of law which have never been resolved by the courts of the State of Kansas except to the extent questions have been raised in the Kansas Supreme Court by *City of Wichita vs. Elizabeth A. Tilson*, 253 Kan. 285 (1991): Now, therefore,

Be it resolved by the (House of Representatives)(or)(Senate) of the State of Kansas: That, based on undeniable medical, biological, and scientific facts, we do hereby acknowledge and affirm that the unborn children in the State of Kansas have an equal and inalienable right to life from conception and that allowing the termination of the lives of innocent human beings even before birth violates Section One of the Bill of Rights of the Kansas Constitution and the due process and equal protection clause of the Fifth and Fourteenth Amendments to the U.S. Constitution; and

Be it further resolved: That because state legislatures have been effectively restrained from exercising any authority to resolve this issue, we call upon the courts to apply the legal principle of the right to life to all living human beings; and

Be it further resolved: That in accordance with K.S.A. 75-702, the Attorney General of the State of Kansas is hereby required to seek final solution of this issue in the Supreme Court of the state of Kansas and such other courts as may be warranted; the attorney general is further directed to bring action in mandamus and quo warranto against the governor as chief executive officer of the state and the director of the Department of Social and Rehabilitation Services as administrative officer of the Medicaid program in Kansas for the granting of a prospective permanent injunction barring the defendants from expending state funds for the purpose of paying for the termination of the lives of innocent human beings, whether in utero or ex utero; and the Attorney General is further directed and ordered to plead to the court that upon conception there is life, that this life is that of a human being and to further plead to the court to acknowledge and affirm that this human being is an "individual", a "man", a "person" under the Constitution of the State of Kansas and the Constitution of the United States of America. The most recent medical, biological, and scientific facts and developments, especially those concerning the beginning of life and the incontestable reliance on DNA profiling as a positive means of identification, must be presented to the court in support of the above mentioned plea.

Legislative Authority

Does the legislature have authority to require the attorney general to go to court to determine "personhood" of the unborn? K.S.A. 75-702, shown below, seems to us to be very clear in giving the legislature authority to give the attorney general direction in civil or criminal cases. In fact, the Kansas Supreme Court has ruled that direction under this law is mandatory. *The State, ex rel., v. Dawson,* 86 K. 180, 188, 193. 119 P.360. And the attorney general's office has acknowledged that she would be obliged to comply.

> **K.S.A. 75-702. Duties in action where state a party or interested; or when the constitutionality of a law is at issue.** The attorney general shall appear for the state, and prosecute and defend all actions and proceedings, civil or criminal, in which the state shall be interested or a party, and shall also, when required by the governor or either branch of the legislature, appear for the state and prosecute or defend, in any other court or before any officer, in any matter, civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas.

Other questions do arise, however, such as, "**The attorney general is pro-abortion**, she isn't going to do a proper job of representing the views of those who believe abortion is unconstitutional." Whether the present attorney general is **pro-abortion, pro-choice, or pro-life** is really immaterial, she would be "required" to present the most recent scientific "facts" to the court. "**Facts**" are "**facts**" no matter who presents them to the court.

In the *Dawson* case, mentioned above, the court held that "It is within the authority of the Governor to name the witness to be subpoenaed and examined." The court further stated, "The section of the statute under which the governor directed the prosecution to be instituted provides for a distinct proceeding quite unlike ordinary actions or proceedings where the examination of a witness is merely incidental. Here the examination of a witness constitutes the proceeding. It is instituted for that purpose." *The State, ex rel. v. Dawson,* 86 K. 180, 190. 119 P.360. K.S.A. 75-702 gives no greater nor lesser authority to the governor than to either house of the legislature.

The scientific facts concerning the beginning of life and DNA profiling can only be presented to the court by qualified experts in the fields of reproductive medicine and/or human genetics. The director of the National Center for the Treatment of Reproductive Disorders at Omaha, NE has previously been accepted as one such expert by a court in Kansas (*City of Wichita v. Tilson,* Eighteenth Judicial District Court). There certainly must also be well qualified experts in Kansas, especially at Kansas State University and the University of Kansas, especially the University of Kansas School of Medicine-Wichita. Other acceptable experts most surely could be found within the Kansas Bureau of Investigation's DNA Databank section. We believe that once those **"scientific facts"** are presented to the court **the facts will speak for themselves**.

Another question raised goes basically, "What if the attorney general does file a case and 'then' defends those whom the resolution asks to be required to perform their duties as required by the resolution?" Just such a scenario previously occurred in the state. In that case the state Senate passed a resolution directing the attorney general to require the secretary of state to take certain action. The attorney general did file a case, but then defended the secretary of state. A group of Senators and Representatives took the case before the court themselves. In answering the question concerning the legislators authority to do this, the court states, "The state being a party to the proceedings, we think the right of the parties to maintain the action is beyond question." (*Coleman v. Miller*, 146K. 390, 392.) There has been interest expressed by some legislators to pursue this route if faced with this situation.

Some have said that the Kansas Supreme Court has already stated that determining the personhood of the unborn is a legislative function, and that, therefore, the legislature has no authority to require the question to go to court. They quote from the 1989 case, *State of Kansas v. Willard Green,* and the 1988 *State v. Trudell* case in support of this position.

We see this as a total misreading of those two cases. In *Green* the court states, "This issue is controlled by our recent decision in *State v., Trudell,* 342 Kan. 29, 36-38, 755 P.2d 511 (1988). In *Trudell* we held that **a viable fetus is not a human being within the aggravated vehicular homicide statute, K.S.A. 21-3405a.** (emphasis added) Imposing criminal liability for the killing of a fetus is a legislative function." They state further, "The *Trudell* rational applies to this case."

And so we turn to the *Trudell* case. In that decision the court states, "As the district court in the instant case observed, if it is the desire of the people in Kansas to **give the same protection to a fetus as it gives to a human being,** it is the legislative branch which is the proper forum to resolve the issue." (emphasis added) And they go on to state, "The legislatures in several states have responded to judicial decisions on the issue in this case by enacting feticide statutes." An example they give is the California statute which reads, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." Cal. Penal Code 187(a)(West 1988 Supp.).

The legislature could as easily enact a law reading, "Murder is the unlawful killing of a human being, or a **dog**, with malice aforethought." Such a law might result in a person spending time in prison for killing a dog, but it certainly would not, indeed, could not, make the dog a human being. Because the preborn child, from fertilization, **is a human being** the legislature can only recognize it as such. They do this by adopting the proposed resolution. The legislature does have the authority to require the attorney general to present the facts, as outlined in the resolution, to the court and offer them an opportunity to apply the "legal principle" of everyone's "right to life."

Some would have us believe that the Kansas Supreme Court ruled, in the *Tilson* case, that the unborn child is not a person. Nothing could be farther from the truth. The court simply found a way to avoid even considering any of the information contained in the brief filed on Ann Tilson's behalf. How did they avoid it? They did so by simply stating, "the justification by necessity defense only applies when the **harm or evil** which a defendant seeks to prevent by his or her own **criminal conduct** is a **legal harm or evil** as opposed to a moral or ethical belief of the individual defendant." They state further, "There was **no evidence introduced**, and **no claim has been made** by the defendant, **that the abortions** performed by the clinic **were illegal**....", which gives them cause to state, "evidence of **when life begins is irrelevant**." Their whole rationale was predicated on the use of the term "abortion is legal," a term even many, if not most, pro-lifers themselves use.

Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law.
Associate Justice Clarence Thomas

Exceptions - needed ?? Life of mother?

A human being is in existence at fertilization, with value and dignity equal to any other born or preborn human being. No value distinction may be made in determining the worth and dignity of any human being.

There are apparently no situations where abortion is medically or psychiatrically necessary to save the life of the mother.[1] We must be careful, however, to distinguish cases such as the cancerous uterus or ectopic or tubular pregnancies. If a pregnant woman has a cancerous uterus and, to save her life, it is necessary to remove that uterus and the operation cannot be postponed until the baby it contains is able to survive outside the womb, then the uterus may be removed even though the removal results in the death of the unborn child. Similarly, when the fertilized ovum lodges in the fallopian tube and grows there, the damaged portion of the tube, containing the new human being, may be removed where it is clearly and imminently necessary to save the mother's life. Such operations are moral even under Catholic teaching.[2] Morally, they are considered indirect abortions and are justified since they do not involve the **intentional** killing of the unborn child. Legally, they are not considered abortions at all. There has never been a prosecution even attempted in this country based on the removal of such condition. All available ordinary means and reasonable efforts shall be used to preserve and protect both the mother and her unborn child.

Homicide is the crime of one human being killing another innocent human being. Abortion is the homicide of a born human being killing a preborn human being in existence at fertilization. The degree of homicide, e.g., murder, manslaughter, negligent homicide, etc., depends on the "state of mind" of the killer, and never on personal characteristics of the killed victim, such as size, age, health, economic, official, or social status. As with any homicide, when the homicide of abortion is done with malice aforethought, it is murder.

Anyone participating in abortion is subject to the penalties for committing the crime of homicide according to the laws of the State of Kansas. We learn from the Supreme Court and its infamous *Roe v. Wade* decision, that the State law of homicide will not meet the test of due process or equal protection under the Constitution if a defendant who kills a preborn human being in existence at fertilization is treated differently than a defendant who kills an innocent born human being.[3]

Anyone charged with the crime of killing a preborn child has the same defenses available as any defendant charged with homicide, including the highly tenable defense of emotional and physical duress, which renders the defendant incapable of forming criminal intent. **Self-defense** is not a defense for the crime of abortion because the innocent preborn child is not an "unjust aggressor."

1.As quoted in "No Exception: A Pro-life Imperative" by Charles E. Rice. (David C. Wilson, "The Abortion Problem in the General Hospital," in Harold Rosen, *Abortion in America* 1967); see discussion in Kenneth D. Whitehead, *Respectable Killing: the New Abortion Imperative* 1972), 93; and Frederick L. Good, *Marriage, Morals & Medical Ethics* (1951), 148-149.)

2.*Ethical and Religious Directives for Catholic Health Facilities* (National Conference of Catholic Bishops, 1971), paras. 10-17.

3.*Roe v. Wade,* footnote 54. *When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists. The exception contained in Art 1196 [Texas Code], for an abortion procured or attempted by medical advice for the purpose of saving the life of the mother, is typical. But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendments command?*

Birth Control - Resolutions Effect??

As long as the issue is the killing of unborn babies, clearly presented as such, the anti-life forces know that ultimately the American people will choose life. But many people are favorable to contraception. And the pro-abortionists try to frame the issue of the restoration of personhood as though it would outlaw contraception as well as abortion. **The restoration of personhood would not in any way outlaw contraception**. Abortion is the taking of existing human life while contraception is the prevention of life. All personhood would do is provide that **the unborn child has the same right to live as his elder brother or his grandmother.**

It is clear that the intrauterine device (IUD) and many birth control pills act more as abortifacients than contraceptives. Restoration of personhood would permit a state legislature to control such abortifacients in the only practical way, through the licensing procedure. It would be impossible, though, to prosecute for abortion in such cases, since it would be impossible to prove that the pregnancy had actually occured and had been terminated by the device or pill. Also to be considered in any homicide or manslaughter is intent and\or mental state of the person using such device or pill. Where a device or pill has no other use than to terminate life the legislature could prohibit its manufacture and sale. Where a device or pill has alternate, non-abortive functions, its prescription by the medical profession could be subject to appropriate regulation.

This is an important matter, because the abortion of the near future is going to be by pill or other do-it-yourself means. Already we see the testing, nationally, of the French drug RU-486 and here in Kansas a combination of the drugs methotrexate and misoprostol is being used by abortionists for no other purpose than to kill a young human being. George Tiller, Wichita, reports "a success rate of more than 90 percent." (The Wichita Eagle, Sep. 1, 1995, pg 1D) There is a tendency by some to seek a "quick fix" by conceding the legitimacy of early abortions. This would be a fatal mistake. If we concentrate only on surgical abortions at later stages of pregnancy, we risk sanctioning a wholesale slaughter of persons at their earliest stages of life.

There is also the scare tactic of claiming that if personhood were established the government would be required to investigate every case of "miscarriage" or spontaneous abortion and that the woman would then be subject to criminal prosecution. This claim ignores the fact that we have in our Constitution a Fourth Amendment which prohibits "unreasonable searches and seizures." Establishing personhood would not abolish the right of privacy.

Morally, abortion is murder even at its earliest stages because it is the directly intended taking of human life without justification. But in legal terms, it is up to the legislature to determine the classification and degrees of crimes. Once personhood for the unborn is established the legislature would have flexibility in determining how abortion would be punished. The irreducible minimum is that the unborn child would no longer be a non-person whose killing would be unpunished by the law.

Source of information: Much of the above is excerpted from "*The Human Life Amendment -- What It Will Really Do*" by Dr. Charles E. Rice, Professor of Law, University of Notre Dame and published by American Life League, Stafford, VA.

A ology of events leading to—

Acknowledging Personhood

July 4, 1776 — A group of stalwart patriots sign the **Declaration of Independence** setting down the **ground rules** for establishing a new nation, with its **primary authority being "the laws of nature and nature's God."** "Governments are instituted," they wrote, **to secure the self-evident truths "That all men are created equal,** that they are endowed by their Creator with certain **unalienable rights**, that among these are life...."

Sep. 17, 1787 — To ensure **"a more perfect Union,"** representatives of the original states adopted the Constitution of the United States of America. Some did so relunctantly and only with the assurance that amendments were forthcoming that would more adequately ensure the **basic "self-evident truths"** embodied in the Declaration of Independence.

Dec. 15, 1791 — The first 10 amendments were ratified and form what is known as the **"Bill of Rights."** The Fifth Amendment ensures that **"No person shall be...deprived of life**...without due process of law." Apparently believing that it was "self-evident", they **did not 'define' "person."** Because black people were considered by many to be "not persons in the full sense" and because the Fifth Amendment was binding only on the federal government and not the states, slavery was allowed to be practiced freely among the individual states.

Dec. 6, 1865 — **The Thirteenth Amendment** to the constitution was ratified which **forbids "slavery" and "involuntary servitude"** in "any place subject to the jurisdiction" of the United States. The Amendment did not, however, define "person" nor did it establish the former slaves, or black people in general, as "citizens" of the United States.

July 9, 1868 — **The Fourteenth Amendment** was ratified which **defines "citizens"** as "persons born or naturalized in the United States" and extended to the **states the authority and responsibility** to ensure the basic rights by stating **"nor shall any State deprive any person of life,** liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws."** But, again, "personhood" was not defined or acknowledged.

Jun. 14, 1943 — The U.S. Supreme Court writes, **"The very purpose of a Bill of Rights was** to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and **to establish** them as **legal principles to be applied by the courts**. **One's right to life**, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights **may not be submitted to vote**; they depend on the outcome of no election," *West Virgnia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943). (emphasis added) Personhood was not addressed and has yet to be acknowledged.

May 20, 1968 — **For the first time**, in a case involving five illegitimate children, **the court sets the basic guidelines for establishing personhood**. They write, "We start from the premise that illegitimate children are not "non-persons." They are **humans, live, and have their being**. They are **clearly "persons"** within the meaning of the Equal Protection Clause of the Fourteenth Amendment." (emphasis added) *Levy v. Louisiana,* 391 U.S. 68, 70 (1968)

Jan. 22, 1973 — **The U.S. Supreme Court announces** to the world **that human children before being born alive are not persons** to be protected under the U.S. Constitution. In *Roe v. Wade,*410 U.S. 113 (1973) they also acknowledge that **"if this suggestion of personhood is established,** the appellants [pro-aborts] case, of course, collapses, for **the fetus' right to life is then gauranteed specifically by the [Fourteenth] Amendment..."** Perhaps with some justification, they claimed to not know when life begins, stating in *Roe*, "at this point in the development of man's knowledge, [we are] not in a position to speculate as to the answer." This brings us to —

??? ?? ???? — **Court acknowledges personhood** of all human beings from conception/fertilization**. What date will replace the question marks?** The legislators of the State of Kansas are in a unique position to ensure an answer. K.S.A. 75-702 gives the Kansas legislators an opportunity, unequaled in other states, to take action to require that **the now known facts** of each person's development be brought before the courts for final resolution. Modern science now proves, **beyond any doubt,** that **the individual human being at the one cell stage meets all the requirements,** as established in *Levy v. Louisiana*, **to be acknowledged a "person."** Not only do the **legislators have the authority**, but, by virtue of their oath of office to uphold the Constitutions, both of Kansas and the United States, which guarantee 'equal' protection, **they also have the responsibility to demand that "personhood" be acknowledged** and the right to life applied by the courts equally to all "persons."

"The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government."

Thomas Jefferson

SJC 2/24 #7

Right To Life of Kansas, Inc.

614 SW 6th Ave., Suite 208
Topeka, Kansas 66603

phone 913-233-8601
FAX 913-233-8641
February 24, 1997

Mr. Chairman and members of the Judiciary Committee;

I am Elmer Feldkamp, President of Right To Life of Kansas, which had it's beginning back in 1971, even before the *Roe v. Wade* abortion decision, making us the oldest and only non-discriminatory, total protection pro-life organization in the state. RTLK is an affiliate of American Life League, the nation's largest pro-life, pro-family organization.

It is generally accepted that Courts will not decide questions of a constitutional nature unless absolutely necessary to a decision of the case. As U.S. Supreme Court Justice O'Connor states in the 1989 *Webster v. Reproductive Health Services,* "When the constitutional invalidity of a state's abortion statute actually turns on the constitutional validity of *Roe v. Wade*, there will be time enough to reexamine *Roe*. And to do so carefully." None of the many cases before the Courts since 1973 has placed the real issue squarely before them. The proposal before you is an effort to require the Courts to review *Roe* and to acknowledge that the personhood of each individual is established at conception.

We begin with a review of the legal status of the abortion situation in the U. S. today. In the 1973 *Roe v. Wade* decision the Court tells us that preborn children are not persons entitled to any protection under the Fourteenth Amendment. Under that ruling the abortion procedure became just another medical or surgical procedure left to the wishes of the woman in consultation with her doctor.

After repeated attempts to limit the harm done by *Roe's* decriminalization of abortion, the 1992 *Planned Parenthood of Pennyslvania v Casey* decision is now the controlling document. As you can see in Attachment "A" in paragraphs we have marked 1, 2 and 3, the *Casey* decision is a total reaffirmation of the essential holdings of *Roe.* And in paragraph 7 the Court says that the essential holding of *Roe* forbids a state from interfering in any way with a woman's choice if it can be shown that continuing her pregnancy would threaten her health. This is such an elastic definition that can be, and is, stretched to include even the perceived "well-being" of the patient. Any abortionist denying a woman an abortion would create sufficient emotional and psychological trauma to warrant an abortion. In the last sentence of paragraph 11 the Court tells us very clearly that this decision is to be left solely to the medical judgement of the physician -- in this scenario the physician is the abortionist.

These essential holdings are based on what the justices refer to as the "factual

Senate Judiciary
Attachment 7
2-4-97

underpinnings" found by the *Roe* Court. The main factual underpinning of *Roe* is based on the Court's finding that the word person, as used in the Fourteenth Amendment, does not include the unborn. The *Roe* Court quotes at length from testimony given by various church leaders, scientists and medical personnell, concerning the beginning of each individual human life. Because there were differing opinions presented, the Court found justification in stating, "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."

Another of *Roe's* factual underpinnings was the Court's finding that a states interest in what they now term "potential life" only became compelling at viability, which the *Roe* Court states, "is usually placed at about seven months (28 weeks)." Interestingly, that factual underpinning has become a "factual assumption." The *Casey* Court states, "We have seen how time has overcome some of *Roe's* factual assumptions:....advances in neonatal care have advanced viability to a point somewhat earlier."

Just as man's knowledge concerning viability has grown since 1973 so has man's knowledge concerning the events surrounding the beginning of an individual human life. Dr. Baggot outlined the facts of the beginning of each individual in his testimony presented here earlier today. Being able to demonstrate those facts, as Dr. Baggot did this morning, were, at best, only dreams of even genetic researchers in 1973.

Those facts, deemed unknowable by the *Roe* Court, must now be presented to the Court for review.

In the *Casey* decision, the Court gives cursory review to several cases subsequently overturned by a later Court. One of those, *Plessy v. Ferguson* was overturned by the 1954 *Brown v. Board of Education* decision. In commenting on that decision, the *Casey* Court writes, "we must recognize that the *Plessy* Court's explanation for it's decision was so clearly at odds with the facts apparent to the Court in 1954 that the decision to reexamine *Plessy* was on this ground alone not only justified but required."

The explanation given by the *Roe* Court concerning the beginning of life is even more at odds with the now known scientific facts of human reproduction. There can certainly be no more convincing justifiction to review *Roe* than the now known, irrefutable facts of the beginning of each individual person.

The state cannot, of course, unilaterly prevent abortions from being performed in the state until the U.S. Supreme Court changes it's position on what the U.S. Constitution requires, since the U.S. Constitution takes precedence over the state's constitution. But the Federal government does not and cannot require the state to pay for terminating the lives of preborn human beings as the state now does under the Medicaid program. It is

the height of hypocrisy to consider an unborn child a person, a member of the household, in order to qualify for medical care and then allow those funds to be used to pay an abortionist to kill that same person. Of course, we are told by the U.S. Supreme Court that when the woman decides she no longer wants to be a mother her unborn child somehow magically becomes a non-person with absolutely no rights. We don't, and I certainly hope we never do, allow the mother of a six month old or a two year old to make such a decision.

And the state cannot, under Section 1 of the Bill of Rights, allow use of it's property for killing unborn babies at any stage of pregnancy as is being allowed at the University of Kansas Medical Center at Kansas City. The Bill of Rights guarantees equal rights, and thus equal protection, to all "men", all members of mankind.

Then we have some of the tiniest of the human family being "arrested" on the campus of the University of Kansas Medical Center-Wichita after growing for 8 to 9 days. (See Attachment 'B') If this tiny human being is not alive how can she grow? This pre-implantation diagnosis procedure is used because the baby can be checked for genetic defects at the 8 cell stage, "rather than when a pregnancy is 14 to 16 weeks along and the parents are more emotionally invested in it." For this man and woman to be "parents" there must certainly be a human baby, a human being, involved. The procedure is promoted as compassionately helping couples have a healthy child. There is certainly nothing wrong with trying to ensure healthy, happy children, but this process reminds me of Hitler's desire to develop a master race. Even though it's being done using a more technologically advanced procedure it is just as abhorrent as the gas chambers and slave labor camps of the NAZI regime. Innocent human beings are being disposed of using state facilities. This is grossly unacceptable.

A refusal by State authorities to consider these facts can only be deemed a total disregard of their oath of office wherein they pledged to uphold and enforce the State's most basic law - the Constitution itself.

On behalf of all the members of the pro-life community, and especially on behalf of those babies yet unborn, I urge you to give favorable consideration to SR 1815. It's an opportunity to place the now known facts of the beginning of life before the Courts for review and for the Courts acknowledgement that preborn babies are human beings, that they are, in fact, persons entitled to equal protection under the Constitution.

Below are excerpts from the "Casey" decision. Citations are given for convenient verification of it's accuracy.

Planned Parenthood v. Casey
505 U.S. 833 (1992) 112 S.Ct. 2791 (1992)
O'CONNOR, KENNEDY, SOUTER, JJ., lead opinion

1 **.....we have concluded that the essential holding of Roe should be reaffirmed.**
([505 U.S. 871] [112 S.Ct. 2817])

2 (d) **Our adoption of the undue burden analysis does not disturb the central holding of Roe v. Wade, and we reaffirm that holding.** Regardless of whether exceptions are made for particular circumstances, **a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.** ([505 U.S. 879] [112 S.Ct. 2821])

3 (e) **We also reaffirm Roe's holding that, subsequent to viability, the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.** Roe v. Wade, 410 U.S. at 164-165. ([505 U.S. 879] [112 S.Ct. 2821])

4 These principles control our assessment of the Pennsylvania statute, and we now turn to the issue of the validity of its challenged provisions. ([505 U.S. 879] [112 S.Ct. 2821])

5 The Court of Appeals applied what it believed to be the undue burden standard, and upheld each of the provisions except for the husband notification requirement. **We agree generally with this conclusion, but refine the undue burden analysis in accordance with the principles articulated above.** We now consider the separate statutory sections at issue.
([505 U.S. 879] [112 S.Ct. 2821-2822])

6 Because it is central to the operation of various other requirements, we begin with the statute's definition of medical emergency. Under the statute, **a medical emergency is [t]hat condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function**. 18 Pa.Cons.Stat. § 3203 (1990).
([505 U.S. 879] [112 S.Ct. 2822]

7 Petitioners argue that the definition is too narrow..... If the contention were correct, we would be required to invalidate the restrictive operation of the provision, for **the essential holding of Roe forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health.** 410 U.S. at 164. See also Harris v. McRae, 448 U.S. at 316. ([505 U.S. 880] [112 S.Ct. 2822])

8 .....While the definition could be interpreted in an unconstitutional manner, the Court of Appeals.....stated: **we read the medical emergency exception as intended by the Pennsylvania legislature to assure that compliance with its abortion regulations would not in any way pose a significant threat to the life or health of a woman.** We.... conclude that, as construed by the Court of Appeals, the medical emergency definition imposes no undue burden on a woman's abortion right.
([505 U.S. 880] [112 S.Ct. 2822])

9 We next consider the informed consent requirement. 18 Pa. Cons.Stat.Ann. § 3205. **Except in a medical emergency,** the statute requires that at least 24 hours before performing an abortion a physician inform the woman of the nature of the procedure, the health risks of the abortion and of childbirth,..... [505 U.S. 881] [112 S.Ct. 2822]

10 **It cannot be questioned that psychological well-being is a facet of health.**
[505 U.S. 882] [112 S.Ct. 2823]

11 **.....As a preliminary matter, it is worth noting that the statute now before us does not require a physician to comply with the informed consent provisions if he or she can demonstrate by a preponderance of the evidene that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.** 18 Pa. Cons.Stat. § 3205 (1990). In this respect, **the statute does not prevent the physician from exercising his or her medical judgment.**
[505 U.S. 883,884] [112 S.Ct. 2824]

(emphasis added)

The above excerpts are direct quotes from the *Casey* decision.

Paragraphs 1, 2 and 3 state very specifically that the Court in deciding *Casey* meant to uphold and "reaffirm" the "essential holding of Roe."

"The esential holding of *Roe* as stated in paragraph 7, "forbids a State from interfering...if continuing her pregnancy would constitute a threat to her health."

The words in paragraph 10 make sure "psychological well-being" is included as "health."

All of this means the door is still wide open in allowing abortion for any reason or no reason, especially when we consider (paragraph 11) that it is left solely to the physician's (abortionist's) "medical judgment."

In paragraph 6 is stated, in it's entirety, the "medical emergency" defined in *Casey* .This is the same language used in much of the legislation proposed in Kansas, such as the "Woman's Right to Know Bills." We believe it is morally wrong to promote such legislation under the guise of stopping "some abortion" when it's proponents know, or at least should know, it will do no such thing! It's time all pro-lifers tell the truth — not even one abortion can be legally prohibited until the "personhood" of the preborn child is established. We must have total protection for all human beings. No other position is acceptable or workable.

SUPPORT THE KANSAS HUMAN LIFE RESOLUTION

Right To Life of Kansas, Inc. 214 SW 6th Ave., Ste 208 Topeka, KS 66603 phone 913-233-8601

#8

KANSAS FAMILY RESEARCH INSTITUTE

Senate Judiciary Committee
February 24, 1997
Proponent Testimony Re: SR 1815
Submitted by: David Payne, Executive Director

Thank you for the opportunity to submit written testimony in support of SR 1815. I regret that I am unable to speak to the committee in person about this important resolution.

Kansas Family Research Institute urges your support for the Human Life Resolution for the following reasons:

- The Human Life Resolution may be the most expeditious vehicle available in Kansas to address fundamental issues regarding abortion. Other measures currently on the table aimed at broadening restrictions on abortion may be beneficial in reducing the number of abortions, but do not get at the fundamental question that is at the heart of the abortion debate—when does human life begin? It is time to let the courts review this all-important question.

- Only one chamber is required to pass the resolution to direct the Kansas Attorney General to proceed, and passage of the resolution would not require the governor's signature. Passing a bill would, of course, require the approval of both houses and the governor. The Kansas Senate has the unique opportunity to take the lead in asking our courts to resolve one of the most difficult issues of our time.

- Notwithstanding the objections of some who fear that a poorly argued case could do more harm than good, we believe that the attorney general will, as required by the resolution, direct that the facts be presented to the Court. Furthermore, any outcome in the Kansas Supreme Court will most certainly be appealed to the U.S. Supreme Court. We believe that fair-minded legislators will see the wisdom of giving the courts an opportunity to address this issue.

For those who consider themselves "pro-life", we realize that there are inherent risks in pursuing this course. However, we are reminded that little if any progress has been made in reducing the number of abortions in Kansas through any other legal or legislative means to date. We tend to agree with many pro-life supporters that at this juncture it can not hurt to try this approach.

Our support for the Human Life Resolution does not diminish our support for the Woman's Right to Know Act or any other legislative remedies that will help prevent unwanted pregnancies or reduce abortions in Kansas. Thank you for your consideration of these thoughts.

2250 N. Rock Road • Suite 118-224 • Wichita, KS 67226 • (316)722-3444 • FAX (316) 722 3944

Senate Judiciary
Attachment 8
2-24-97

S. Jud. 2/24 #9

February 24, 1997

Senator Harris and members of the Committee:

My name is Jan Messerli. I am in my final year of law school at Washburn University. I have also been an instructor at Washburn in the Speech Communications department for the past four years. I teach courses in public speaking and argumentation. I am moved to testify for the first time today because of the serious misuse of facts in Senate Resolution No. 1815. While we may disagree on when life begins, I do not believe anyone -neither those for or against abortion- should be excused when they intentionally mislead and take information out of context. I learned in my first year of college how to use quotes within the context of an article and how to cite sources correctly. I was always taught that to cite material incorrectly is plagiarism and would result in a failing grade. I am here to testify that this resolution deserves an F and should not leave this committee.

I am not here to convince you to accept my interpretation of when life begins. I would not be so pompous as to believe that I have an absolute answer to an issue that has plagued religion for centuries. Rather, I will dissect this resolution paragraph by paragraph and show you that there is no proof anywhere. Each argument is an assertion, with no proof to back it up. In fact, when cases are cited, they are used in a misleading manner and taken out of context, which I find inexcusable.

The resolution is introduced in lines 10-22 on page one, which asks the Attorney General to proscribe abortion, an action that has been deemed legal by the Supreme Court in *Roe v. Wade*, and subsequently upheld in its most basic sense in every subsequent decision. Supporters of this resolution are asking you to ignore the decision of the United States Supreme Court, the highest court in the land. The only way to overturn a decision of the Supreme Court of the United States is through a Constitutional Amendment.

The resolution cites *West Virginia State Board of Education v. Barnette* on page 1, lines 23-27. The use of this citation is misleading, since it has never been cited in the context of abortion rights. In fact, this case was about whether school children could be forced to fully extend their right arms when saluting the flag during the pledge of allegiance. The controversy was based on a religious objection to the salute. The court noted that national unity should not be created through compulsion. It is ironic that the court fervently sought to protect freedom of religion, yet today's resolution is being used by a religious group to impose one comprehensive religion that determines when life begins. Those in favor of the resolution should note the court's advice, "compulsion is no way to achieve national unity". People cannot be forced to believe in one single view of morality or religion.

There are several arguments made in lines 30-39 on page 1. I would like to respond to each of these claims. First, the resolution asserts that medical and scientific evidence increasingly acknowledges and affirms that fetuses are persons. However, there is not one source to prove this assertion true. In fact, modern science disproves this assertion. "Dr. Dominick Purpura, dean of Albert Einstein Medical

Senate Judiciary
Attachment 9
2-24-97

School, has been studying human brain development since 1974 with his research on mental retardation. Dr. Purpura emphasizes that there are a minimum number of neurons and synaptic connections that are necessary before the qualities of 'humanness' and 'personhood' can be developed and that this capacity begins to occur in the middle of the last trimester. Thus, about twenty-eight to thirty weeks in utero is the minimal time for the beginning of this capacity. 'It cannot begin earlier' according to Dr. Purpura." (James W. Prescott, The Humanist, Sept/Oct. 1986). I can find as many experts to prove that a fetus is not a person as opponents can to prove that a fetus is a person. This issue will not be resolved today - or ever. Personhood is not an issue of medical fact, but it is an issue of culture, morals, and religion. You have no right to make that decision for me. Compulsion should not be used to create national unity.

Secondly, lines 30-39 assert that a fetus is considered a person for purposes of Medicaid. Again, this is a blatant assertion, supported by no evidence. No governmental assistance program distributes benefits to a fetus. A woman who is pregnant is allowed benefits under WIC, but those are for the health of the woman and the fetus. The state's interest lies in allowing WIC benefits to pregnant women to reduce the cost of health care to a child that is born unhealthy. Moreover, it is the income of the woman which determines eligibility and the benefits are distributed in the name of the woman. At no time is a fetus given benefits separate from the mother.

The third argument that lines 30-39 assert is that a fetus is treated as a separate patient in modern medicine. Again, there are no citations. In fact, women are prone to miscarriage during the first trimester of pregnancy. Many doctors encourage first time parents not to announce the news until the first trimester passes. Parents with children are told not to inform their children that mom is pregnant until the first trimester passes. Additionally, doctors vary in how they refer to the fetus. No doctor prepares a separate chart for the fetus; it is always included in the mother's chart. And certainly no doctor bills the fetus for prenatal care. The assumption is that the parents are responsible for any costs. The only time the doctor starts to humanize the fetus is when they are sure it is wanted by both parents, at which point they cling to the notion of potential human life rather than actual personhood.

The final argument in 30-39 is that we can chart a fetus's growth from conception through birth. However, this does not answer the question of personhood. We can also chart the growth of a butterfly from the caterpillar stage, and we can chart its DNA in the same way. This section is where the resolution is most frightening. To follow the author's logic would be to say that because development can be seen from the fertilization of an egg to the birth of the fetus, it must be a life. The resolution mixes the terms of life and person. It is my contention that a fetus is alive, the same way a fertilized egg laid by a chicken is alive or a blade of grass is alive, but life is not the same as being a person. Where abortion opponents might find it offensive that I support the abortion of an unwanted fetus, I find it sickening that you would equate something the size of the end of my thumb (a fetus at 12 weeks) as

being equal to me. Margaret Atwood wrote in her book "The Handmaid's Tale" of a society that forced women to have children, mandating they make their bodies perfect vessels. The authors of this resolution seek the same world - one where my health and well being would be sacrificed for a fetus.

Lines 40-43 on page one continued through line 4 on page two contend that *Roe v. Wade* established that if personhood can be established, the fetus shall have a right to life. Please note that nowhere in this resolution do the authors prove that our concept of fetal personhood has changed. That is an impossible claim to prove. Medical and scientific evidence can better assess when "life" begins, but that is a different question than when "personhood" begins. Personhood is a religious or moral argument, independent of the medical technology that exists. Additionally, the Court was strong about the right to abort in the first trimester. According to *Roe*, the government may not interfere with the woman's fundamental right of privacy in her decision to abort. The state's interest does not vest until the third trimester. The state may only interfere for the sake of the health of the mother in the second trimester. So, the only time at issue is the third trimester, which is already regulated.

Lines 5-8 on page two cite K.S.A. 22-4009(b) which allows the postponement of execution of a pregnant convict. This does not impute personhood to the fetus. While it is true that there are some statutes that protect the fetus, there are many more cases in law that deny the fetus status as a person. For example, in most jurisdictions, killing a fetus is not homicide. The fetus must be born alive and die shortly after to be considered a homicide victim. *Jeffrey L. Lenlow, 9 Am. J. L. and Med. 1, 4, 1983.* In recent years, state legislatures like Kansas have enacted specific statutes to protect fetuses in cases of vehicular manslaughter. This proves that the law does not recognize the fetus is a person, so it is forced to create separate laws to protect fetuses. The law does not equate the fetus to personhood in issues of decedent's estates either. A fetus cannot inherit, the child must be born before it has rights to property. *W. Blackstone, Commentaries, 26 C.J.S. Deeds §13 (1976).*

Lines 9-15 on page 2 use a Kansas case, *Smith v. Deppish*, to assert the claim that human offspring are created when DNA is passed at fertilization. However, *Deppish* was a criminal case that addressed the right to a speedy trial. The court also noted in *Deppish* that some DNA can be submitted as evidence. It is difficult to follow the author's point in this paragraph. Just because DNA is passed at fertilization and the court then said that each person's DNA can be personalized does not mean the two are linked. It is a logical fallacy to say that the court's statement meant they believed a fetus is a person. In fact, no one has ever denied that a fetus is comprised of its parents genetic make up--we dropped stork theory a long time ago. The resolution uses a red herring, a logical fallacy that attempts to divert your attention from the question of fetal personhood to technical issues such as DNA. Supporters count on the fact that you will be impressed by their use of DNA as evidence, even though it does not support a claim.

Lines 16-20 on page 2 of the resolution misleads you as to the meaning of *Levy v. Louisiana*. In *Levy*, the court held that illegitimate children can sue for wrongful death. The common law once proscribed illegitimate children from pursuing legal

actions in relation to their parents because the courts wanted to discourage illegitimate children. The *Levy* case held that illegitimate children as "persons" within the meaning of the Fourteenth amendment. This is another example of a case taken out of context in this resolution.

Lines 21-34 on page 2 assert that allowing the use of state facilities or funds is a violation of the Bill of Rights and the Due Process clause of the Constitution. This paragraph cited five cases, all of which I have studied in my Constitutional Law class. None of the cases cited support the argument asserted. They are cited incorrectly, leading you to believe that the use of state facilities violates Due Process. But they are only general Due Process cases, and they do not address the issue at hand, yet another misrepresented argument.

Lines 35-40 quote *West Virginia State Board of Education v. Barnette*, the pledge of allegiance case I discussed earlier. While the supporters of this resolution would have you believe that life should be protected and not subject to politics, the quote actually refers to holding religion outside of the reach of politics. Applied to the issue at hand, the court or legislature has no business determining religious questions, such as whether a fetus is a person. Therefore, one can conclude that the use of *Levy* proves opposite of what the authors of this resolution intended - religious questions such as the beginning of life should not be decided in Congress, legislatures, or courts.

Lines 41-43 quote the *West Virginia* case in terms of the right to life being absolute. This is another quote that is misleading. This begs the question of whether a fetus is a "life" that has Constitutional protections. It assumes that the fetus being a person is an absolute issue, capable of a yes or no answer.

Page 3, lines 2-5 attempt to justify the resolution by asserting that the abortion issue has never been determined in Kansas courts. The paragraph cited *City of Wichita v. Tilson, 253 Kan 285,* without explaining the decision. The Kansas Supreme Court decided in *Tilson* that necessity is not a defense to trespass. The case involved a protester who was arrested for blocking access to a clinic. She argued that the fact that "innocent lives were being killed inside" made her breaking the law a necessity. The Kansas Supreme Court noted that abortion is legal. They supported the decision made in *Roe v. Wade*, and denied Tilson the necessity defense.

Lines 6-13 on page three call for the passage of this resolution since there is "undeniable medical, biological and scientific facts" that support the notion that fetuses have a right to life. I challenge you to find that undeniable medical fact, here or in any article you may read. According to Marjorie Reilly Maguire, in "Symbiosis, Biology, and Personalization", "personhood is a concept that is incapable of empirical proof. It is not a biological judgment. It is a value judgment our society makes about a being . . . There is no biological moment in human development, from the separate sperm and ovum to the octogenarian, that automatically signals the beginning of personhood." (*Abortion Rights and Fetal Personhood, ed. Edd Doerr & James Prescott*).

Lines 14-17 calls on courts to determine that fetuses have a right to life, however this has already been done. *Roe v. Wade* was decided more than 25 years ago, and it has continued to be upheld across the United States.

Lines 18-37 again cite the "undeniable medical evidence" and reiterate the DNA red herring. These issues have been addressed in earlier paragraphs.

Clearly, if nothing else, you can see there is no easy answer to this issue. To support a resolution such as this one, one that is based on opinion and innuendo rather than fact, would be an irresponsible thing to do.

I support your right not to have an abortion. I support your right to worship God. I support your right to believe that a fetus is a person. I even support your right to try to convince others not to have abortions. Why can't you support my rights as I support yours? My religion says that a fetus is not a person. Who is right? The only answer we can be certain of is that compulsion should not be the means to create national unity.

S Jud 2/24/97 att # 10

ProChoice Action League

P.O. Box 3622, Wichita, KS 67201
9517 E. Bluestem
Wichita, KS 67207

Phone 316-681-2121
Fax 316-681-2121
Email peggyjj@aol.com

Topeka - 357-8510

To: Members of the Senate Judiciary committee
From: Peggy Jarman, Lobbyist: ProChocie Action League
and Women's Health Care Services
Re: S.R. 1815

We vigorously oppose this resolution. It is extreme in its design and intent. The concept that a human child exists from the moment of conception or fertilization is as ludicrous as thinking that a fertilized egg is a chicken or an acorn is an oak tree. To demand that the Attorney General sue the Governor and dictate that she spend her time, the resources of her office, and energy to go through this charade is ridiculous. When life begins is a religious concept ranging in faiths from fertilization to first breath. It is inappropriate for the state to use its authority to even think about proscribing this concept whether through the courts or legislative action.

The state Medicaid program has for many years paid for abortions only to save the life of the woman. Within the last several years, the mandate from the federal government has been to also pay for abortions for poor women who were pregnant as a result of rape and incest. In a five year period, the state Medicaid program paid for five abortions. One to save a woman's life, three for women who had been viciously sexually assaulted, and one for a child, pregnant by a relative. Even if possible, how appropriate would it be to have stopped those abortions? The sponsors of this resolution obviously would answer totally appropriate. They will find very few to agree with them, even among people who call themselves pro-life. Even the fiscal conservatives, who are looking fervently for every tax cut possible, would be hard put to require the state to spend the money that would be necessary if this resolution passed. They would be hard put to think it an appropriate expenditure to stop an average of one abortion a year for a poor woman who would die without it or a poor little girl who would become a mother to her father's child.

And, what this resolution demands is not just that the state not pay for abortions for the poor, but that all abortions be stopped. Not just those abortions for poor women. But all abortions. And, all based on the theory that a fertilized egg is the same as a chicken.

The absurdity and inappropriateness of S.R. 1815 I hope is clear. Please defeat this strange request.

Senate Judiciary
Attachment 10
2-24-97

ProChoice Action League

P.O. Box 3622, Wichita, KS 67201
9517 E. Bluestem
Wichita, KS 67207

Phone 316-681-2121
Fax 316-681-2121
Email peggyjj@aol.com

Topeka - 357-8510

To: Members of the Senate Judiciary committee
From: Peggy Jarman, Lobbyist: ProChocie Action League
and Women's Health Care Services
Re: S.R. 1815

Addendum:

Had there been time for my testimony, I would have added the following note:

> The numbers I gave for the state paid Medicaid abortions were for 1989 - 1993 and were from memory. I updated those figures before the hearing and they are as follows: For the years 1992 - 1996, there were again a grand total of five (5) abortions paid for by the state. Three (3) were to save lives of women, one (1) for the victim of a rape, and one (1) for a victim of incest.

SJud 2/24/97 Att 11

ACLU

American Civil Liberites Union

Wendy McFarland - Lobbyist
(913) 575-5749

Testimony in Opposition to SR 1815 presented 2/24/97

Senate Resolution 1815 seeks to determine the constitutionality of both administrative and executive orders as well as Kansas statutes that allow the termination or the use of state funds or facilities in the termination of the lives of innocent human beings.

In determining the issue of constitutionality, it directs the Attorney General of Kansas to bring action against the Governor and the Secretary of Social and Rehabilitation Services.

The citings listed to support this effort are, in most cases, only vaguely germane with the exception of a few where portions of the decisions were taken from a context that does not necessarily support that which SR 1815 seeks to obtain.

Specifically, the citing from Roe v. Wade makes reference to the courts mere speculation of future medical technology and how it might, one day, allow the 14th Amendment to encompass the right of a fetus's 'life'. The resolution goes on to state that their request is based on undeniable medical, biological and scientific facts...yet offers none.

Roe v. Wade specifically held that the state's interest in protecting potential human life becomes compelling when the fetus becomes viable as "determined by a treating physician" not by the litigious mission the legislature would send the Attorney General on if this resolution is passed.

Apparent in this resolution is an attempt to give a fetus the legal status of personhood. Substantial problems for precise definition of this view are posed by new embryological data that purports to indicate that conception is a "process" over time, rather than an event.

The American Civil Liberties Union opposes this resolution and its plan to the use the office of the Attorney General to effect a new definition. The United States Supreme Court has already rejected the notion that the unborn are "persons" entitled to constitutional recognition.

Should you decide to direct the Kansas Attorney General to make the determination this resolution is seeking, might we urge that the same mission of litigation be applied in determining how the Constitutions of Kansas and the United States would guarantee life for those the State sentences to death by execution?

Senate Judiciary
Attachment 11
2-24-97

Planned Parenthood®
of Mid-Missouri and Eastern Kansas

Testimony in Opposition to SR 1815
February 24, 1997
Senate Judiciary Committee

Ladies and Gentlemen of the Committee:

I am writing in opposition to this resolution the ideas contained within it are clearly attempts to outlaw all abortions in the state of Kansas.

This resolution would force the Attorney General to sue the Governor if abortions are performed at KU Medical Center and public hospitals--even when paid for with the woman's own money. The state would not be able to use Medicaid funds to pay for abortions when a woman has been raped or if the pregnancy is the result of incest. This would result in the loss of matching Medicaid funds.

If this resolution passes, then logically the state should:

* assign each fertilized egg a social security number
* allow taxpayers to deduct fertilized eggs from their taxes
* reflect fertilized eggs on census reports
* prosecute disposal of fertilized eggs used in in vitro fertilization as murder
* allow divorced spouses to sue for custody of fertilized eggs at all stages of pregnancy
* outlaw all contraceptives that prevent implantation of fertilized eggs
* investigate all miscarriages to ensure that the actions of the pregnant woman did not cause the miscarriage

These are all things that sound silly and they should. Fertilized eggs are not human beings. If they were, then all of these things would already be done. You can see the havoc that according fertilized eggs full citizenship would create.

This resolution attempts to elevate the rights of a fertilized egg above those of an adult woman. Pregnancy is a unique situation. However, when the rights of a woman and the rights of a fetus come into conflict, the woman must always take precedence. The woman is already a member of society, of a family, is autonomous; a fertilized egg is not.

As unfortunate as the necessity is for safe legal abortion, it is less unfortunate than deadly illegal abortion. It is less unfortunate than a woman who is the unwilling mother and abuser of a child she did not want and can not support.

Please use reason when voting on this resolution. Think about the implications of according fertilized eggs the same rights and privileges of adult human beings. Think about the real life implications outlawing all abortions would have on women, families, and all of society. It is unconscionable that the state of Kansas would attempt to afford a fertilized egg more rights than to the woman who is carrying it.

1001 East 47th Street • Kansas City, Missouri 64110-1699 • 816/756-2277

Senate Judiciary
attachment 12
2-24-97

att. 13 SJud 2/24

Judy Smith
12105 Pawnee Lane
Leawood KS 66209
Fax 913-491-1380
Home Phone 913-491-8673

February 21, 1997

Senator Mike Harris
Senate Judiciary Committee
Kansas Senate
Topeka, KS

Dear Senator Harris:

The fact that the developing fetus is a human being has been implemented by the advance of modern technology such as sonography and in-utero camera technology. It is no longer an option to say that this developing baby is a "blob of cells" or a "parasite" in the woman's body. Modern technology now tells us that this child has a separate genetic code; it has its own blood type, fingerprints, brain, nervous system and internal organs. It feels its own pain, can be healthy while the mother is ill, be ill when the mother is healthy. It can be awake when she is asleep and asleep while she is awake. Furthermore, about half the time the baby is a different sex from the mother. Since it is impossible for a human body to be both male and female at the same time there are obviously two individuals in question.

The Supreme Court has ruled that there is a " right to privacy" in the liberty clause of the U.S. Constitution. However, all rights are limited; otherwise there would be anarchy. The implied right to privacy should not override the right to life. There is not a carte blanche right to privacy any more than there is a carte blanche right to speech, religion, or anything else. Not only are rights limited, they have value relative to each other. In every instance where they are mentioned jointly, the basic rights of Americans are listed in the same order: LIFE, LIBERTY and PROPERTY. We have always held that one person's right to property never exceeds another's right to liberty, and that one person's right to liberty never exceeds another's right to life. If there is a "right to privacy" in the Constitution then it must obviously assume its appropriate place in the ranking order of rights.

Concerned Women for America has always held that the developing child in a mother's womb is a unique and separate life from the moment of conception. As a unique and separate life, that child's right to life should be protected. The right to life should supersede all other rights. I would urge you to consider that right as you deliberate Senate Resolution 1815.

Sincerely,

Judy Smith

Judy Smith

Senate Judiciary
Attachment 13
2-24-97