Approved: February 22, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Tony Powell at 1:30 p.m. on February 1, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Joann Freeborn, Excused
Representative Broderick Henderson, Excused

Committee staff present: Theresa Kiernan, Revisor of Statutes
Mary Galligan, Legislative Research
Russell Mills, Legislative Research
Winnie Crapson, Committee Secretary

Conferees appearing before the committee:

Proponents

Steven Graber, Attorney, Hutchinson
Representative Kay O'Connor
Karyl Graves, Wee Life, Inc.
Elmer Feldkamp, Right to Life
Dr. Patrick Herrick, Olathe
Cleta Renyer, Right to Life

Opponents

Dr. John Swomley, Americans for Religions Liberty
Barbara Duke, American Association of University Women
Dr. Charles Baughman

Written Testimony

Charles Rice, Proponent
Herbert Titus, Proponent
The Rev. George Gardner, Kansas Religious Leaders for Choice, Opponent
Carla Norcott-Mahany, Planned Parenthood of Kansas & Mid Missouri, Opponent
Janet Stamper, Kansas National Organization for Women, Opponent

Others attending: See attached list.

Chairman Powell opened the hearing on

HR 6006, Attorney general directed to determine constitutionality and to establish that upon conception there is life.

Steven Graber distributed copies brief for Writ of Certiorari to the U. S. Supreme Court in *Tilson v. City of Wichita*, 253 Kan. 285 (1993) (Attachment #1), presenting the same issues involved in this resolution..

Representative O'Connor presented written testimony in support of **HR 6006** (Attachment #2). She stated it does not matter how the Attorney General rules, there will be a challenge and the debate will begin and it will be many years before a final ruling comes down. She this is an issue of civil rights.

Karyl Graves, representing Wee Life, Inc., presented written testimony in support of **HR 6006** (Attachment #3). She believes it is essential to have the fullest understanding possible of medically established facts of pre-natal development and reviewed information on human life in the womb from conception to the final stage at birth.

Elmer Feldkamp, President of Right to Life of Kansas, presented written testimony in support of the resolution (Attachment #4). A videotape was shown as part of his testimony. Mr. Feldkamp read from an article in the Topeka Capital-Journal July 8, 1996. He noted **HR 6006** is based upon Section 1 of the Kansas Bill of Rights and the Due Process and Equal Protection Clauses of the United States Constitution and that reliance on the U. S. Constitution and U.S. Supreme cases places this Resolution under the jurisdiction of the federal courts.

Dr. Patrick Herrick presented an outline of his testimony in support of **HR 6006** (Attachment #5). He reviewed definitions of terms with reference to the human species.

Carla Renyer, Legislative Director of Right to Life of Kansas, presented written testimony (Attachment #6) indicating Right to Life of Kansas had devoted six years to developing **HR 6006,** urging its passage.

John Swomley, President of Americans for Religious Liberty, presented testimony challenging constitutional and biological assertions in **HR 6006** (Attachment #7).

Barbara Duke, President, Kansas Choice Alliance, presented testimony in opposition (Attachment #8). She stated the lawsuit demanded by **HR 6006** would be lengthy and expensive and that it represents a dangerous extension of state power.

Charles Baughman, Professor Emeritus of St. Paul's School of Theology, made a presentation on "The Beginning of Life in the Bible" (Attachment #9).

Chairman Powell reported distribution of written testimony from:

Charles Rice, Professor of Law, Notre Dame Law School, Proponent (Attachment #10)
Herbert Titus, Proponent (Attachment #11)
The Rev. George Gardner, Kansas Religious Leaders for Choice, Opponent (Attachment #12)
Carla Norcott-Mahany, Planned Parenthood Kansas & Mid Missouri, Opponent (Attachment #13)
Janet Stamper, Kansas National Organization for Women, Opponent (Attachment #14)

Chairman Powell announced the hearing on **HR 6006** closed.

Chairman Powell stated the Governor has requested introduction of a bill on the resale of firearms. Without objection the bill will be introduced. [See HB 2868 introduced February 7.]

Representative Weiland requested a bill be introduced to create the Kansas Indian Advisory Commission. Without objection the bill will be introduced. [See HB 2845 introduced February 2.]

The meeting adjourned at 2:55 p.m. The next scheduled meeting is February 2, 2000

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

COMMITTEE GUEST LIST

DATE: Feb. 1, 2000

NAME	REPRESENTING
John M Swonsly	Americans For Religious Liberty Planned Parenthood
Charles W Baughman	Planned Parenthood
Leeann Mallick	Right To Life of Ks
Elmer Feldkamp	Right To Life of Ks
Marilyn Mallick	Right To Life of Ks
Don + Marily Hanlen	Right To Life of Ks.
"Reg" Margaret McClary	Right to Life + K for Life
Kathy Reiter	
Barbara Simmons	
Cleta Renyer	Right to Life of Ks.
Paul Magathan	" " " "
Catherine A. Wahlmeier	" " " "
Audrey Feldkamp	Right To Life of Kansas Inc.
Denise Wheaton	Rt. to Life + Kansans for Life
Robert A. Wahlmeier	
Mary Ellen Trauwch	Miami Co. Right to Life
Betty Monroe	RT TO LIFE (West Sedg Co.)
Margaret M. Mann	Treasurer RTL-West Sedg Co.
Julie A. Mann	RTLK West Sedgwick County

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

COMMITTEE GUEST LIST

DATE: Feb. 1, 2000

NAME	REPRESENTING
Fr John Pilsner	St. Lawrence Catholic Campus Center
Janet K. Stamper	KANSAS NOW
Marvin E. Sinks	Topeka
JOHN TOPLIKAR	OLATHE
Robbie Kramer	Herington
DOUGLAS M. PECHMAN	RIGHT TO LIFE, INC

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ELIZABETH A. TILSON,

Petitioner,

CITY OF WICHITA, KANSAS
MUNICIPAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF KANSAS

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Elizabeth Ann Tilson, respectfully prays that a petition for a writ of certiorari issue to review the judgment and opinion of the Kansas Supreme Court, entered on June 28, 1993.

OPINIONS BELOW

The opinion of the Kansas Supreme Court (set forth at pages A-1 to A-17 of the Appendix to this Petition) is reported at 253 Kan. 285, __P. 2d.__ (1993). The district court opinion is unreported but is set forth at pages D-1 to D-23 of the Appendix.

JURISDICTION

The June 28, 1993 Opinion of the Kansas Supreme Court ruled as a matter of U.S. Constitutional law, abortion is a legal

REYNOLDS, FORKER, BERKLEY, SUTER, ROSE & GRABER
✦ ATTORNEYS AND COUNSELORS AT LAW ✦

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act and therefore cannot be a harm to be prevented by the common law doctrine of justification.

This Court has jurisdiction pursuant to 28 U.S.C. 1257, as further detailed by Rule 10.1(c) of Rules of the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Roe v Wade, 410 U.S. 113, *93* S. Ct. 705 (1973 Fourteenth Amendment to the Constitution of the United States , Section 1.

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

STATEMENT OF THE CASE

1.

The *Roe* Court expressly and purposely did not address the issue of when human life begins.[1]

On August 3, 1991, the petitioner, Elizabeth A. Tilson, was arrested for trespassing at the Wichita Family Planning Clinic located at 3013 East Central in Wichita, Kansas. Petitioner's sole purpose for being in the property was to rescue unborn human beings from being harmed and to rescue the mothers, fathers, grandparents and siblings from the harms resulting from induced abortion.

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[1] Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. *We need not resolve the difficult question of when life begins. Roe v. wade*, 410 U.S. 113, 159 (1973).

Petitioner takes great care to distinguish her rescue activities as being vastly different than "protest" against abortion. Her express intent at all times was to "rescue" the lives of human babies and their families from the traumatic and detrimental affects of abortion. (G-2) Her efforts were successful. One young girl scheduled for an abortion on August 3, 1991 did, after seeing the ongoing rescue, change her mind and give birth to her baby. (G-4,5)

THIS LAW SUIT

On November 13, 1991, petitioner was found guilty of criminal trespass in Wichita Municipal Court and appealed her conviction to the Sedgwick County District Court. (D-1)

A pretrial conference requested by Petitioner was held on January 14, 1992. Petitioner requested the Trial Court to resolve the unanswered question of when human life begins, and determine when that life is legally cognizable. The resolution of these two questions was a condition precedent to Petitioner's offering the common law justification defense. (F-1) On January 21, 1992, the court agreed to hear the evidence. (E-1)

At trial, petitioner claimed her non-violent, non-damaging rescue was justified because "abortion takes the life of an unborn baby I wanted to prevent the detrimental effect that happens to the woman, the father of the baby, the grandparents and brothers and sisters" when an abortion is performed. (G-2)

THE DISTRICT COURT'S OPINION

On July 20, 1992, the Trial Court found petitioner's evidence relevant and admissable and ruled that human life begins at conception and continues on for an average life span unless interrupted by trauma or disease. (D-21) Further, the Trial Court said petitioner was justified in trespassing because she went on the property for the purpose of saving a human life. The Trial Court found that abortion takes a human life. (D-21)

The Trial Court held that what petitioner believed intuitively and from her years of independent study of the issues, was not only reasonable but substantiated by the international scientific community: that is, life for the human baby begins at conception and such baby is viable from that point on. (D-21)

THE KANSAS SUPREME COURT'S OPINION

The City of Wichita filed a timely appeal to the Kansas Supreme Court. After analyzing many of the cases on the issue the Kansas Court on June 28, 1993, opined that the necessity defense was not applicable to rescue cases *because the abortion right is a constitutionally protected right and therefore cannot be a legal harm which if prevented would justify a non-violent, non-damaging*, simple trespass on to personal property. (emphasis supplied throughout unless otherwise indicated)(A-11, 16) The Kansas Supreme Court decided the issue in direct response to Mrs. Tilson's pretrial conference request that the evidence as to when life begins be admitted and a determination be made as to when human life has legal cognizance. In arriving at its conclusion the Kansas Supreme Court said, "When the objective sought is to prevent by criminal activity a lawful, constitutional right, the defense of necessity is inapplicable, and evidence of when life begins is irrelevant and should not have been admitted." (A-16)

Petitioner's purpose was to rescue life and save the mother and others from harm.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD RESOLVE THE ISSUE OF WHEN LIFE BEGINS.

First, in *Roe's* language is established one of the greatest vacuums ever formulated in jurisprudence. It has not gone unnoticed.

This vacuum has been the subject of critical comments by foreign courts. In elevating "liberty" above humanity or "life", one court said the Court had diminished life which is the,"... compelling basis of the dignity of man and... the pre-condition for all basic constitutional rights."[2]

Scholars, take exception to the "life vacuum".

> "As time passes, not only does the *Roe* decision appear to be collapsing from within, but the opinions of leading constitutional law writers, many of them not opposed to abortion in principle, have been marshaled against it. Archibald Cox, Alexander Bickel, John Hart Ely, Harry Wellington, Richard Epstein and Paul Freund have all been highly critical." Mary Ann Glendon, *Abortion and Divorce in Western Law* 44 (1987).

The Court itself has had no little disunity on the matter.

> The judiciary is otherwise left to the embarrassing and defensive position of justifying its misadventures under increasingly indiscriminate standards. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 814 (O'Connor, J., dissenting): "No legal rule or doctrine is safe from ad hoc nullification by this court when an occasion for its application arises in a case involving the regulation of abortion....[T]he Court strains to discover 'the anti-abortion character of the statute'...and invents an unprecedented canon of construction under which 'in cases involving abortion, a permissible reading of the statute is to be avoided at all costs.'" Unfortunately, the plight of the lower courts since the landmark

[2] Decision of the Federal Constitutional Court of the Federal Republic of Germany, translated in Jonas & Gorby, *West German Abortion Decision: A Contrast to Roe v. Wade, With Commentaries*, 9 J. Mar. J. Prac. & Proc. 551, (1976)

> decision of *Roe v. Wade* has been repeatedly to defend it. After nineteen years, and even more revisits to the subject by the Court, the people remain confused and increasingly polarized. But with each new decision, it becomes increasingly obvious that any "limits" *Roe* purports to impose on abortion are, in reality, shallow rhetoric for "abortion on demand," *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U. S. 747, 782-784 (1986) (Burger, C. J., dissenting). Even more obvious is the fact that *Roe* is "clearly on a collision course with itself," *City of Akron v. Akron Center for Reproductive Health*, 462 U. S. 416, 458 (1983) (O'Connor, J. dissenting)

It was not only the petitioner who was vindicated by the evidence at trial below.

> "...the termination of a pregnancy typically involves the destruction of another entity: the fetus...the fetus is an entity that bears in its cells all the genetic information that characterizes a member of the species *homo sapiens* and distinguishes an individual member of that species from all others, and second, that there is no nonarbitrary line separating a fetus from a child or, indeed, an adult human being. Given that the continued existence and development-that is to say, the life-of such an entity are so directly at stake in the woman's decision whether or not to terminate her pregnancy, that decision must be recognized as *sui generis*, different...
>
> Aware that in *Roe* it essentially created something out of nothing and that there are many in this country who hold that decision to be basically illegitimate, the Court responds defensively...I do not share the warped point of view of the majority, nor can I follow

> the tortuous path the majority treads in proceeding to strike down the statute before us. I dissent." (White J. Dissenting) *Thornburgh v American College of Obstetrics*, 106 S.Ct. 2169 (1986).

The jurisprudential vacuum created by the *Roe* Court in not dealing with the issue of when life begins has the irreconcilable affect of denying both the personhood and humanity of the unborn child. This vacuum was grounded on the proposition that medical science could not provide an answer to the question of when life begins. *Roe*, p.159. The answer is now available and is provided in petitioner's medical scientific evidence. We emphasize, the *Roe* Court based its abortion ruling on the issue of personhood and did not alter the principle of the common law that the destruction of property may be justified in order to save human life and health. It is this vacuum that has polarized and divided our body politic.[3]

The Court has indicated its willingness to fill in the vast vacuum when the time should be right. The *Roe* Court, the Court since, and the many lower courts across the land have deferred to science and medicine to come to grips with the issues of abortion.

Second, it is clear that the Court invites even solicits the very medical scientific evidence petitioner produced at trial. The Court has realized and come to depend on the growth of medical technology to supply answers to the issues of abortion

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[3] In all fairness, the *Roe* Court did not have a record to consider. *Roe* was an injunctive action tried on a declaratory basis and no trial record was made. No scientific evidence was taken at trial and thus none was available on appeal. The Court was wise to leave the door open to modern medical scientific enlightenment. Indeed, the Court has altered its *Roe* framework in the light of the advance of medical science. *Casey*, p. 2818.

so that the doctrines of abortion will grow along a "rational continuum" of medical fact.[4]

[4] *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739 (1973). p. 190-1 "A state is not to be reproached, however, for a past judgmental *determination made in the light if then-existing medical knowledge*...That argument denies the State the right to *readjust its views* and emphasis in the light of the advanced knowledge and techniques of the day."

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 96 S.Ct. 2831 (1979).p. 63-4 "As noted above, we recognized in Roe that *viability was a matter of medical judgment*, skill, and technical ability, and we preserved the flexibility of the term. Section 2(2) does the same....In any event, we agree with the District Court that *it is not the proper function of the legislature or the courts to place viability, which is a medical concept,at a specific point in the gestation period.*"

Akron v. Akron Center for Reproductive Health Services, 462, U.S. 416, 103 S.Ct. 2481 (1983). p. 430 Footnote 11 "We note that the medical evidence suggests that until..."

p.454 Footnote 1 "Based on the Court's review of the contemporary medical literature..."

p. 454 "As the Court indicates today, the Stat's compelling interest in maternal changes as medical technology changes..."

p. 456 "...the State must continuously and conscientiously study medical and scientific literature..."

Webster v. Reproductive Health Services,

492 U.S. 490, 109 S.Ct. 3040 (1989).

...*Colautti* that 'neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus.' 439 U.S. at 388-89, 99 S.Ct. at 682.

Planned Parenthood of Southeastern Pennsylvania v. Casey 112 S.Ct. 2791 (1992).p. 2858 "In *Colautti v. Franklin*, 439 U.S. 379, 99 S.Ct. 675, 58 L.Ed. 2d 596 (1979), ...In the process, we made clear that the trimester framework incorporated only one definition of viability—ours—as we forbade States from deciding that a certain objective indicator—'be it weeks of gestation or fetal weight or any other single factor'—should govern the definition of viability."

It is the unrebutted testimony of petitioner's experts that:

A. IN MEDICAL SCIENCE THERE IS NO DOUBT THAT HUMAN LIFE BEGINS AT CONCEPTION.

"... a new life starts at the moment all of the information necessary and sufficient to distinguish every personality of the new person is gathered inside the same... zona pellucida... (I-5)

"... life has been seen to begin under a microscope at the moment that the whole information was gathered and this whole information was there at the moment of conception which is demonstrated in our species by penetration of the sperm." (I-7)

At conception and the exchange of the D.N.A. information the baby is a human being." (I-8)

"You can see this particular sperm penetrate... into the cytoplasm of the ovum and at that point, the union of the genetic material from the father, which is represented by the sperm, and the genetic material which is in the ovum, a new human life is created." (J-14)

"The [process] is known as either fertilization or conception and it is, biologically speaking, the point where human life begins individual human life begins." (J-15)

"... based upon the principles of scientific investigation and there is absolutely no question that human life begins at the moment when those two, the sperm and the egg join in the process called human conception." (J-34)

"There is a spark or ignition of that life that begins at only one point and that is the point of conception. There is no other point where it begins." (J-39)

B. THE JUST CONCEIVED HUMAN BABY IS COMPLETE AND NOTHING IS ADDED TO HIM OR HER EXCEPT NUTRIENTS AND A NURTURING ENVIRONMENT, JUST AS FOR ADULTS.

The baby, in utero, is compared to a tiny astronaut in a space capsule. The mother and her body provide a nurturing environment and nutrients for the tiny human being until it can survive outside the womb. However, the human being is distinct and separate from the mother who is giving the nurturing environment and the nutrients. (I-13)

C. THE JUST CONCEIVED BABY IS NOT A MERE APPENDAGE, PART OR EXTENSION OF HIS OR HER MOTHER.

"They are proving that [the baby] does not belong to a given body, [the baby] belongs to herself." (I-16)

We can clearly demonstrate the early human being is not a part of the body of the mother but a different body, a somebody, a body of a new human being different from any already existing.

"... the growth and development of the baby itself is under the direct control of the child. (J-17)

D. THE BABY IS UNIQUE BOTH WITH REFERENCE SPECIFICALLY TO THE PARENTS AND UNIVERSALLY TO ALL OTHER HUMAN BEINGS.

"Molecularly speaking... it was discovered about four or five years ago... with a special probe... recognize part of the genetic makeup of a person. Technology is complicated, but the result is very obvious; it looks very much like the bar code that we have in a supermarket. That is difference bands of different widths

are differently spaced and this bar code is specific for its human being." (I-20)

"The code... technology, it is able to recognize that specific bar code in one cell taken from an early embryo of eight cells... that without exception... if the father is not the biological father, we can detect it... " (I-20)

E. THE BABY IS IRREPLACEABLE. THAT IS, THE BABY WILL NEVER BE DUPLICATED IN ITS MAKEUP. ITS CHARACTERISTICS HAVE NEVER BEFORE EXISTED AND ITS GIFTS, ABILITIES, AND COMPOSITION WILL NEVER AGAIN BE REPEATED.

"[The baby] "cannot even be duplicated... it is, itself, a new life and a new individual." (I-6)

"And those [finger] prints [discernable at 2 months] will not change for 80 or 90 years..." (I-16)

"Every human being is unique and irreplaceable". (I-20)

"... no other human being now living would have exactly the same bar code." (I-21)

"... each individual is irreplaceable, it's because this particular individual which has been conceived is some person... that no other one will later exactly reproduce what he was... on any... conception everyone is irreplaceable." (I-22)

"When the sperm enters the ovum... the nuclear material from the father joins that of the mother and a new human being with... 46 chromosomes is created... those chromosomes will be the same for... that individual's life and they are a unique fingerprint,

almost of that individual's existence.(J-15) This human being is the only one of its kind ever." (J-16)

F. THE BABY IS ON A CONTINUUM OF DEVELOPMENT OR MATURATION FROM THE MOMENT OF CONCEPTION TO APPROXIMATELY AGE 20 TO 22.

Interruption of the fertilization process is not interruption of a pregnancy but interruption of a life. (I-11)

The maturing process or developmental process for a human being continues from conception through ages 20-22 years.

"Individual human life is a continuum. It starts at conception and ends at death. Death, of course, can be at any point along the line for a whole variety of different kinds or reasons." (J-37)

G. THE BABY IS VIABLE FROM CONCEPTION THROUGH AN AVERAGE LIFE SPAN UNLESS TRAUMA OR DISEASE INTERRUPTS THE BABY'S LIFE.

Viability means the capability of living. The human being at conception is capable of living. The ability of the baby to live outside a womb is referred to as extracorpal viability. (J-35)

Experiments on babies in utero as early as 11/9 weeks have shown babies will move back from an amniocentesis needle. They feel it. They are able to hear at 11/9 weeks. In one experiment, a baby was touched with a needle several times, then a buzzer was sounded prior to touching the child with a needle. Later all the experimenter had to do was sound the buzzer and the baby would jump. (L-17-18)

H. ABORTION IS INDUCED TRAUMA TO THE POINT OF DEATH OF THE BABY.

"...there are no abortions performed where it is not the intent to kill a human being either in utero or out of the utero" (J-36)

The effect of abortion on the child inside the mother's womb is to kill the child.

I. THE BABY CAN BE TRANSFERRED FROM THE MOTHER'S WOMB TO ANOTHER WOMB.

"...can be transferred to the womb of any woman who's at the right time, inside her so that the transfer of an embryo from in virtro fertilization... a foster mother has been made." (I-13,14)

The human being inside its womb can be transplanted without difficulty. (I-13)

The baby can be conceived by normal intercourse then the tubes washed out and the tiny baby injected in the womb or another mother, or would-be-mother, who is not the biological mother but the uterine mother of this mother and this baby will survive. (I-15)

J. THE BABY IS AN INDEPENDENT INDIVIDUAL.

The demonstration that a child can live outside the womb of the mother is proof that its own life is totally different than the life of the mother. (I-12, 13)

"This new life can live at least up to the third month in-utero, up to the time the baby is sucking her thumb, without communication with the blood of the mother inside the placenta. (I-15)

K. THE BABY DOES NOT NEED A WOMB IN WHICH TO GROW AND DEVELOP.

"It is even possible that a child can survive outside the womb. It can attach itself to the abdomen and grow itself. What is absolutely necessary is a shelter and nurture and nutrients." (I-12)

L. THE JUST CONCEIVED BABY IS COMPLETELY HUMAN AND CAN BE NOTHING ELSE.

The baby in the womb is not a thing but a human being. It by its own venture grows and defines itself.

This human being is so small it would fit in your fist but you could distinguish the head the arms the legs be able to determine the sex of the child and with a magnifying glass, could see the palm prints. With a good microscope the fingerprints and the beginnings of the eye lens can be seen. A fortune teller could predict the future by the clarity of the palm prints. A policeman could take identity from the fingerprints. (I-16)

M. ABORTION HAS SERIOUS DETRIMENTAL AFFECTS TO MOTHERS, FATHERS, SIBLINGS, AND OTHER FAMILY MEMBERS.

During his clinical experience, hundreds of women presented with one problem or another that related back to an induced abortion. These problems were not found only in the mothers but also in men who had participated in abortion by either objecting to the abortion which objection was not adhered to by the mother or coerced or encouraged a woman into getting an abortion. (K-4)

He has consulted with Dr. C. Everett Koop, regarding the report to the American people on the psychological health risk of induced abortions. Because of politics the report did not get published. Instead a letter was submitted to president Reagan on January 9, 1989. It called for a one hundred million dollar perspective study on the prolonged affects of induced abortion.

There has never been a large scale study although this is the most common surgical procedure in America with approximately 26 million procedures done to date.

The bottom line is that abortion cannot be concluded to be psychologically safe. (K-6,7,8)

In talking of the harms of abortion, we are talking about the psychological after effect. The harm is manifold. (K-11)

An abortion counselor is often biased and has a conflict of interest. (K-16,17,18) There is an informational deficit Dr. Rue concludes:

> "And, therefore, they [the patients] are at risk of psychological traumatization." (K-19)

Men are also victims and suffer in the abortion process. Some men suffer grievously. Dr. Rue has treated women whose boyfriends committed suicide after being tortured for several years with fetal nightmares and flashbacks about an unborn child demanding his father rescue him from abortion. These individuals decompensated and ultimately took their own life." (K-23,24)

A woman who is in adolescence and elects abortion then affects parents and surviving grandparents. They, too, if they coerced the abortion or felt in some way responsible have guilt feelings and depression. Subsequent children of mothers who have elected to abort one of their siblings and often the children will have great fear and distrust of the parent feeling that the parent is murderous or dangerous. They have a sense of dread that at some point when they do something wrong, they too will be eliminated from the family picture. (K-24)

> "[Abortion] impacts every relationship that the woman has of significance in her life" (K-25)

N. TRAUMA FROM ABORTION FOR MOST IS GREATER THAN ANXIETY FROM LIVE BIRTH OR ADOPTION.

The largest study ever done in the world, the study in Denmark, in 1981, Dr. Henry David found... women who made their decisions in secrecy had *four times higher rate of admission to psychiatric hospitals* if they elected abortion than if they elected delivery. It is clear that the individual runs a higher risk of psychological harm and traumatization from induced abortion than from other delivery options such as live birth or adoption. (K-34,35)

O. THE RECENT ADVANCES IN MEDICAL SCIENCE LEAVE NO DOUBT OF THE ABOVE FACTS A-O:

> "We knew *since now around three years*, scientists have made a discovery in this country and England, (in this country by Holiday and Swain and in England made by Surani) that conception is more complicated than we were believing and teaching it five years ago." (I-9, 10)

> "If only the amount of information coming from the father was present, everything underlined on the male way, there would be no human being. There would be life and the same would divide; it would make vesicles and finally some flesh looking placenta. Nothing itself, no human." (I-9)

Conversely, if there was not true conception at the beginning, a true fertilization, but there were only chromosomes from the mother's side for example in a virgin who has had some sudden growth of one of the oviums or ovary and it makes what we call a dermoid cyst inside the ovary. It grows; it's life and this life is human, but no baby. (I-10)

> "What is peculiar, inside that tumor, you can find teeth, skin, hairs, some nerves. That is, so to speak, spare parts, but no baby. Nobody is there; only a bunch of spare parts." (I-10)
>
> "There is in the very near future another possibility of transplanting, *this is a new discovery just a few months old.* (I-14)
>
> "That means the autonomy of the... early life is much bigger than we were believing... and I would honestly recognize that *one year ago* I would not have spoken those words because I did not know it. (I-16)

I'm not saying that a human, the tiny one which grows inside a womb is a human because I feel that, but because I know it. *Maybe 15 years ago there could be doubt* by some people in some places *but now with what we know* about the information of matter, about the specificity of mankind compared to its closest cousin which is the chimpanzee we are obligated to say, to recognize after fertilization, *after conception that this tiny being, is already a human being, it's not a fertilization or an opinion, it's not a metaphysical contention. It's a fact of plain experimental evidentiary truth.* (I-19)

With this technology it is now possible to record and photograph the live real time reproductive developmental process on film from prior to conception through live birth. These processes have been recorded on video tape. (J-7)

There is work going on already with chemical fluids which would allow for the embryo or fetus to live [outside the womb] throughout the entire process of development. (J-37)

II. PETITIONER'S EVIDENCE IS NOT ONLY RELEVANT BUT EMBRACES THE GREAT ISSUES OF ABORTION.

Petitioner's evidence intimately embraces and impacts the great issues of abortion as espoused in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, ___ U.S. ___, 112 S. Ct. 2791 (1992).

A. THE ASSUMPTIONS OF CHOICE AND VIABILITY.

...*Roe's* essential holding, the holding we affirm, has three parts. First...the right of the woman to choose to have and abortion before viability and to obtain it without undue interference from the State.

Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger a woman's life or health. And third is the principle that the State has legitimate interests from the outset of pregnancy in protecting the health of the woman and the life of the fetus that may become a child. *Casey*, p. 2804.

About the right to choose, the Court said further, "The woman retains ultimate control over her destiny and *her body*...." *Casey*, p. 2816.[5]

No one denies that it is the woman who is pregnant. But the assumption that abortion merely changes the woman's condition from being pregnant to not being pregnant is clearly contradicted by petitioner's evidence.[6] Moreover, the assumption that abortion is only exercising control over mother's body would seem in error. Because life begins at conception and is a

---

[5] "The woman's right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*." *Casey*, p. 2817.

[6] It is the unequivocal evidence of Dr. Lejeune that abortion is not merely terminating a pregnancy but rather the terminating the life of a human being. (I-11)

unique separate, complete human individual, the woman is not exercising control over her body but is exercising the decision of life and death over another human being. There are consequences to her body but that does not make the baby in her womb a part of her body.

Petitioner's evidence is clear the baby human being is not merely the "product of conception" or a cellular mass tissue appendage of the mother such as the vermiform appendix or tonsils.

Casey talks in terms of reproductive choice. (Casey, p. 2807) Petitioner's evidence is otherwise. There is no "reproductive choice" to make once there is conception. The woman has already reproduced. The baby is leaving the womb. The only choice is the condition in which the baby will leave the womb. Will the baby leave in the natural course of events or will it leave under preemptive conditions which can include trauma induced death. According to Dr. McMillian every abortion process is a process of interruptive trauma which is fatal to the child. (L-17)

B. WHEN LIFE BEGINS IS NOT A MATTER OF PERSONAL BELIEF.

> At the heart of the [14th Amendment] liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the *mystery of human life*. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the State....
>
> [Abortion] is an act fraught with consequences for the woman, for the performers of the procedure, (which some deem nothing short of an act of violence against innocent human life) for the spouse, family and society...and, *depending on one's beliefs*, for the life or potential life that is aborted. *Casey*, p. 2807.

The assumption here is that the beginning of human life is a mystery not known and not knowable. Therefore it is relegated to the sphere of mystery and personal belief. One can believe what one cannot prove. Petitioner's evidence proves that this assumption is no longer valid. It gives us a front row seat in the "House of Origins" and we now not only see the full production of *Homo Sapiens In Utero*, but we 'see' the prelude, in living color. There is no mystery. It is not "potential life", it is life; human life, from conception. It is not up to us to believe or not believe. (I-19)

Dr. Hilger's endoscope shows us not only the living viable sperm uniting with the egg but goes even further back in the process and we see with the naked eye the entire event from ovulation through live birth. We do not deny the existence of heavenly bodies because we can not see them with the naked eye when the technology of telescopes and interspacal travel by satellites tell us they exist.

C. VIABILITY CAN NO LONGER BE RESTRICTED TO ROE AND CASEY'S NARROW DEFINITION.

It is this concept of viability that is most impacted by Petitioner's evidence. The *Casey* Court says:

> Advances in neonatal care have advanced viability to an earlier point. But these facts go only to the scheme of time limits on the realization of competing interests...[but] have no bearing on the validity of *Roe's* central holding, that *viability marks the earliest point at which the state's interest in fetal life is constitutional adequate to justify a ban...on abortion.*
>
> The soundness or unsoundness of that constitutional judgment in no sense turns on whether viability occurs at 28...or 23 to 24 weeks...or at some moment even ...earlier in pregnancy.... *whenever it may occur, the*

> *attainment of viability may continue to serve as the critical fact,* just as it has done since *Roe* was decided....2811-2812. (emphasis supplied).
>
> Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. *We must justify the lines we draw.* And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point on viability,...but this is an *imprecision* within tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter. *Casey*, p. 2817.

Petitioner's evidence is directly on point. There is no longer any "*imprecision*". What once may have seemed arbitrary and elusive is now a scientific fact pinpointed at the time of conception. (I-7)

Obviously, the Court does not assume there will never be a change in this fact. The viability doctrine can still stand and, "viability may continue to serve as the critical fact...." but it is now neither "imprecise" nor equivocal. Viability is a reality at conception. (J-35)

We must now ask, what has viability as defined as 'the ability to live outside the womb' to do with humanness? Whether one is a human being or not is defined as what one is not what one can do. Just because the baby lives in the womb does not change its nature. The baby is still a human being just as is the teenager who can not live outside his home, clad only in a bathing suit at Point Barrow, Alaska in January. Such a teenager is still a human being.

D. HARM TO THE MOTHER IS NOW KNOWN TO BE MUCH GREATER THAN PREVIOUSLY THOUGHT.

> The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear....Her suffering is too intimate and personal for the State to insist, *without more*, upon its own view of the woman's role.... *Casey*, p. 2807.

Now, there is more. The harm to the mother is clearly shown to be of greater potential if she has an abortion, especially an abortion in secret. (K-35) Additionally, there is harm to the father, siblings, grandparents, and most of all to the mother herself if she is inadequately informed. (K-23,24) Dr. Rue is absolute that the information mothers receive in America today, is woefully inadequate. (K-19) Anxiety? Physical constraints? Since the baby is a human being, what of her anxiety as the amniocentesis needle is thrust into her bedroom and jabs her body? What of the baby as it is drowning in its own living room being filled with saline solution? What of the burning sensation that overwhelms the baby both inside and out? What about the baby suffering burns until she has congestive heart failure or experiences the convulsions of the violent contractions of induced abortion crushing its little head and skull until it dies? These scenario are now relevant and material since we now scientifically speak of the death of a human being. (L-6,15)

The medical scientific facts tell us the human being in all its dignity and essence exists from conception. The "individual" does have a right to make "personal decisions" and to enjoy "personal dignity and autonomy". Medical science now tells us someone else needs to be included in the equation; the human being in the womb.

III. WITH SO MUCH MEDICAL SCIENTIFIC EVIDENCE COMMONLY AVAILABLE, ADDRESSING THE ISSUE OF WHEN LIFE BEGINS IS NECESSARY FOR THE INTEGRITY OF THE COURT AND THE LEGAL SYSTEM TO BE SECURED.

If it was true in the past that,"...we acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding." *Casey*, p. 2803. As the Court has said, "Liberty finds no refuge in a jurisprudence of doubt." *Casey*, p. 2803

"The Constitution serves human values...." *Casey*, p. 2809. If there is a class of humans not only being denied service but being denied existence, the Constitution serves no one.

The vacuum of when life begins was left subject to the development of medical science. Once medical science made a determination of when life begins, *stare decisis* demands that such evidence comes into the record. *Stare decisis* demands this because the Court has deferred to medical science's answering the difficult question of when life begins. Such evidence is then relevant.

CHANGED FACTS AND CIRCUMSTANCES

The history of advancing the constitutional ideal is based on the facts available to the Court at the time a decision is made. In analyzing the *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578 (1937), decision of the Court which overruled *Lochner v. New York*, 198 U.S., 25 S.Ct. 539 (1905). The Court made this point.[7]

We have here then as great or greater sociological issue than in *Parrish*. In discussing *Brown v. Board of Education*,

[7] The facts upon which the earlier case had premised a constitutional resolution of social controversy had proved to be untrue, and history's demonstration of their untruth not only justified but required the new choice of constitutional principle that *West Coast Hotel* announced. *Casey* p. 2812.

347 U.S. 483, 74 S.Ct. 686 (1954) and *West Coast Hotel's* overruling of previous decisions, the *Casey* Court makes the change of fact observations for each case.[8]

It is clear there is no longer any doubt in medical science as to when human life begins. It is not a metaphysical question. (I-19) We have changed circumstances.

The Court has in the past applied new facts to abortion and accordingly modified the constitutional doctrine to be consistent with those new facts.

> We have seen how time has overtaken some of *Roe's* factual assumptions: advances in maternal health care allow for abortions safe to the mother later in pregnancy than is true in 1973, (cites omitted) and advances in neonatal care have advanced viability to a point somewhat earlier. *Casey*, p. 2811.

Defendant's evidence has much to say about maternal health, safety of abortion, the concept of neonatal life, viability and other of the great issues and assumptions of abortion as expressed in *Casey*.

If due process of law ever meant anything, it means that no one human being can have the unchecked power of life and death over another human being.

---

[8] Each case rested on facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. Each was comprehensible as the Court's response to facts that the country could understand, or had come to understand already, but which the Court of an earlier day, as its own declarations disclosed, had not been able to perceive....[that is] application of constitutional principle to facts as they had not been seen by the Court before. In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as response to the Court's constitutional duty. *Casey*, p. 2813

The Court in *Casey* says state action must be limited so the woman's right to choose is not impaired. The right to choose what? The right appears to be the right to choose between live birth and abortion. And, what is abortion? Petitioner's evidence is clear that abortion is not just the mere terminating of a pregnancy it is the terminating of a human life. It is the interruption of the natural human developmental process by fatal trauma. This truth is what motivated Petitioner. It is this taking of a human life in addition to the psychological trauma to the mother and others petitioner sought to prevent.

The Court has never suggest that the unbridled unaccountable decision of life and death be given one human being over another human being. This would be unprecedented in Western Civilization jurisprudence since *Magna Carta*. Due process of law has been required. The possible exception being the treatment of black Americans prior to the Emancipation Proclamation.

Given the exploding quantum of medical scientific advancement since *Roe*, it has become critical and essential to determine when life begins for the human being because otherwise we not only violate precedent but exceed the tolerable limits of law and constitutional power. What was not necessary in *Roe's* time is now demanded if the courts are to maintain legitimacy.

In not unprecedented wisdom, the *Roe* Court left open the possibility that the ultimate relevant truth was yet to be discovered.

SUMMARY

When the Founding Fathers wrote, "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and pursuit of Happiness", the focus word, the operative word was and is "truths". The constitutional ideal is to discern truth. In our pilgrimage as human

beings we progress. When that progress reveals to us truth it then becomes incumbent upon us to respond to that truth and to weave it into the fabric of society so that it impacts society in a way consistent with the foundation of society. To do otherwise is to destroy the constitutional ideal, to destroy the legitimacy and credibility of the system and to turn our system into a government of men rather than of law built on fact.

Whatever may have been the facts at the time of *Roe*, they are no longer the facts. Not only is the resolution of the beginning of human life knowable but it is known with absolute certainty.

It has been said the *Roe* vacuum in jurisprudence rivals the decision in the *Dred Scott Case. Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). Left unattended, given the evidence of medical science Petitioner produced at trial, we stand to repeat an unthinkable part of our past. We dare not tread that still unhealed path again.

As it is:

> "...institutions are undermined, law enforcement is jeopardized, and the gap between the law and the moral order produces increasing conflict and social turmoil. Judge Ruth Bader Ginsburg, a supporter of the abortion right, has suggested that, ...*Roe* ventured too far in the change it ordered....Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict." Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C.L. Rev. 375, 381, 385 (1985).

Even worse, to ignore petitioner's medical scientific evidence is to embrace the reality that our society built on individual liberty may go down in history as perpetrating one of the greatest genocides known to man. This Court casts the final vote on that reality.

CONCLUSION

It is respectfully submitted that Petitioner's petition for certiorari should be granted and that the issues raised therein should be addressed by the Justices of this Court.

Respectfully submitted,

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TESTIMONY ON HR 6006

Mr. Chairman & Members of the Committee:

I am here today to testify in support of HR 6006 commonly referred to as the Human Life Resolution.

Some pro-lifers have opposed this resolution stating their concerns that the current A.G. is not friendly to this issue. I respectfully disagree with my friends.

It doesn't matter how the A. G. rules, there will be a challenge and the debate will then begin. I suspect that it may be years before a "final" ruling comes down.

The issue of abortion has always been for me an issue of civil rights. Slaves, Indians, Jews, and others over the centuries, have been declared non-persons and have been denied their basic civil right to life. The fact that this has happened and even lasted for a period of many years, does not subtract from the basic issue of denial of a person's civil rights. Unborn children need their day in court! Let the debate begin!

We have legal definitions of death. Should we not have a legal definition of life? Since life can end (death), certainly we should try to discover when life begins. Does it begin at fertilization, conception, implantation, when brain waives can be detected, when there is a heart beat, when a body part is outside the womb, when the baby takes its first breath, at the end of the 1st trimester, or maybe by the 2nd or 3rd trimester?

Will this change our legal position on petri-dish children, abortifacient drugs, selling baby body parts, deformed unborn children, children conceived by rape or incest, or even "unwanted" pregnancies? Probably.

This will not change our legal position on abortion to save the life of the mother. Of course, there has never been a moral or legal prohibition of abortion to save the life of the mother or the baby.

In the case of a tubal pregnancy the baby cannot be saved, but the mother can and should be saved. In the case of an auto accident where the pregnant mother is brain-dead, every effort should be made to bring the baby to a safe delivery. Every effort should be made to save both lives-mother and baby-if at all possible.

For all those many who have participated in an abortion over the past several years, this resolution will not condemn, only clarify. There has been much agony, pain, and confusion for many individuals. Culpability or blame is a variable that must leave all on both sides of this issue in a state of great sadness.

But the truth does set us free. The debate that will ensue because of the Human Life Resolution will undoubtedly take years. Many innocent lives will be touched in the meantime and the pain and sadness will continue.

Please give thoughtful attention to the expert testimony you will hear today. Keep an open mind and with a gentle heart agree to let the debate begin.

Support HR 6006.

Sincerely,

Kay O'Connor

Representative Kay O'Connor
14th District

KO/jd

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WEE LIFE, INCORPORATED

Mr. Chairman, members of the committee, my name is Karyl Graves, lobbyist for Wee Life, Incorporated. Founded in 1998, Wee Life, Incorporated is a not-for-profit organization dedicated to restoring full legal protection to the pre-born under the United States Constitution.

Wee Life, Incorporated vigorously supports House Resolution number 6006 and applaudes its sponsors whose intent it is to stop the termination of the life in the womb, who we believe to be an innocent human being.

On January 22, 1973, the United States Supreme Court announced that it had decided that a new personal liberty existed in the Constitution, one which would invalidate the status of the human being in the womb and would allow a pregnancy to be terminated on demand, at anytime up to the birth of a child.

Never before in American law had the human being in the womb been so exposed to destruction at the desire and will of the parent.

Vague as to the exact Constitutional provision, the Court put forth a doctrine on human life which had, somehow, until that time, and for some 212 years prior, escaped the notice of all those who had ever served in the United States Congress, declaring that an unborn human being was not protected under the United States Constitution. It is quite astounding that the Court would find such a low regard for human life, and while coming to such a callous decision, Wee Life alleges, exceeded its own Constitutional obligation and overstepped its own authority.

In consideration of the fact that medical and scientific technology was not in 1973, what it is today when we can see inside the uterus, it is understandable that little evidence was given on behalf of the developing human being in the womb when the United States Supreme Court was debating this most sensitive of issues. Rather, the Court focused on the right to reproduction, not on the human life in the womb.

Certainly, in deciding a question of such great magnitude, whether or not the life in the womb is a human being, it is essential to have the fullest understanding possible of the medically established facts of pre-natal development.

With the advanced bio-technology we have in the year 2000, which is far superior to anything that was available twenty seven years ago when the Supreme Court was handing down its decision on the unborn, we can examine human life in the womb from the exact point of conception to the final stage at birth.

It is medically agreed upon, today, that when human sperm fertilizes the egg, a new human life is formed, completely distinct in genetic character from either of its parents. This human life is not part of the mother's body, as is her kidney or her heart, but a distinct life unto itself.

Only one cell at conception, the new life already has its own unique identifying characteristics,

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laid down in the DNA which is present in that very first cell, and prescribes whether or not the human being is a he or a she, how tall he or she will be, what skin color he or she will have, what the hair and eye color will be. Each human being has set characteristics at conception that are unique to that individual only, never to be repeated in all of history.

By the twentieth day, the human life already has its own beating heart. Surely, it stands to reason that, if a human being is considered to be dead when the heart stops beating, why then at the other end of the spectrum, shouldn't a human being be considered to be alive when the heart starts beating?

At just one month, the heart is pumping quantities of blood through the circulatory system. Brain, spinal cord and nervous system are already established. By week five, brain waves can be detected and recorded and the brain begins to control movement of muscles and organs. By week eight, the stomach produces digestive juices and the kidneys begin to function. The human being responds to touch. At this time, everything is now present that will be found in a fully developed adult.

By nine weeks, the human life can squint, swallow, and move her tongue. At twelve weeks, the human child can now sleep, awaken, exercise her muscles by turning the head, curling the toes, and opening and closing the mouth. The palm will make a tight fist when stroked. Fingerprints, another unique identifying characteristic of a human being, have already formed and, except for size, will never change.

The majority of abortions are performed at this stage of pregnancy.

At thirteen weeks, the human sucks her thumb and will recoil from painful stimuli. Wee Life asserts that as soon as the pain mechanism is present in the unborn human child, possibly as early as fifty six days or less than two months after conception, that all known abortion procedures used will cause substantial pain to the child in the womb. Since 1973, there have been no laws in place that regulate the suffering of the aborted like those laws sparing pain to dying animals. It defies understanding that what society will do for animals, it fails to do for its own offspring. Certainly, this is another breach of the Constitution which protects from cruel and unusual punishment.

In the fourth month, the human child can hear outside the womb and responds to sound. During the fifth month there is a time of lengthening and straightening. Skin, hair and nails are growing. Sweat and oil glands are producing secretions. In the sixth month, the human child is capable of getting the hiccups and can hear the sound of its mother's heartbeat. Survival outside the womb is now possible.

D & X partial-birth abortions are normally performed at this stage of pregnancy or after.

It is ludicrous that sophisticated neo-natal units in hospitals across the country try to save the lives of premature babies, while an infant approximately the same age and size is having his or her life legally terminated at Dr. George Tiller's clinic in Wichita! One team of doctors is

spending considerable amounts of time, energy, and money to save a prematurely born four pound infant, while George Tiller and his team are working to destroy, with what can only be excruciating pain, an almost identical infant because the law does not protect the human child in the womb. Where is the logic behind permissive abortion?!

By the seventh month, the baby can utilize all four senses of vision, hearing, taste and touch, and is able to recoginize its mother's voice. In the final eighth and ninth months, antibodies build up. The heart is pumping three hundred gallons of blood per day! This is a time of fattening and rounding out, the human child is preparing for birth.

According to biological and medical fact, it is reasonable to conclude that there is no time between conception and birth at which point we can say that life in the womb is not human. By its very characteristics, the life in the womb is undoubtedly a human being!. To say otherwise is the height of hypocrisy!

Based on new modern day biological, medical and scientific fact, Wee Life contends that the United States Supreme Court wrongfully decided in 1973, that the pre-born are not human beings and are, therefore, not entitled to protection under the law.

Wee Life, Incorporated believes that the intrinsic worth and equal value of every human being, regardless of its stage or condition, should be accorded the fundamental right to life which is guaranteed to every person under the United States Constitution.

We, therefore, endorse House Resolution number 6006, in that it decrees that the biological existence of an unborn human being is sufficient enough evidence to affirm personhood and thus has the Constitutionally protected right to life.

Mr. Chair, members of the committee, thank you for the opportunity to speak in favor of this resolution.

(4)

Testimony of Elmer Feldkamp in favor of HR 6006
Feb. 1, 2000

Good afternoon. Thank you, Mr. Chairman and members of the Federal and State Affairs Committee for the opportunity to address you here today.

I am Elmer Feldkamp, President of Right To Life of Kansas, the states only total protection pro-life organization, organized in 1970.

We are not here today to consider which abortions can or should be prohibited, restricted or regulated. Rather, House Resolution 6006 is about the inalienable right to life of all human beings guaranteed by Section 1 of the Bill of Rights of the Kansas Constitution.

In Kansas today a disadvantaged young woman with a certificate from a doctor that she is pregnant is counted as two 'persons' for purposes of qualifying for medical care under the Medicaid program. Yet, several weeks later, if she is told her pregnancy is a threat to her life or she claims to be a victim of rape or incest, she can go to an abortionist and have her baby killed because under *Roe v. Wade* what was a 'person' is suddenly no longer a 'person.' And the killing is paid for with taxpayer dollars under the Medicaid program administered by the states own Social and Rehabilitation Services. This is not only hypocritical and ludicrous but places the state in the position of violating its own Constitution.

This must be changed, and it can be changed!

During oral arguments preceding the *Roe v. Wade* decision, Texas argued that life begins at conception. Justice Marshall asked for scientific data to support that position. The Texas attorney began explaining the development of the fetus from about seven days after conception. Justice Marshall quickly asked, "Well, how about six?" Regretfully, the attorney could only say, "We don't know." At that time, 1973, while almost everyone knew, or perhaps believed, that life begins at conception, it could not be scientifically demonstrated. This gave Justice Blackmun reason to state in *Roe*, "[t]he judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."[1]

With the tremendous advances in medical and scientific technology the courts need no longer speculate. Using endoscopes and ultrasound we can view the events leading to ovulation and the very moment of conception itself, the very moment a new human being comes into existence. We will show you a short segment of the video, LIVING

[1] *Roe v. Wade*, 410 U.S. 113, 159 (1973)

PROOF[2], produced and narrated by Dr. Thomas Hilgers, Director of the Pope Paul VI Institute for the Study of Human Reproduction.

- View video. -

As we see in the highlighted section #1 of the attachment to this testimony, the development of the new, tiny human being can also be observed even as he or she grows in a petri dish. And in section #2 we see that this is truly an individual human being with some of the DNA markers matching those of her mother while others match those of her father. This is truly a new unique human being. And then #3. By allowing this human being to be "arrested", killed, on state property is another terrible violation of our states constitution.

Yes, there has been a number of abortion related cases taken to court since 1973 with very little, if any, change in the protection allowed the babies. But none of them directly challenged *Roe's* holding of non-personhood. This allowed the Justices to say, as Justice O'Connor states bluntly. "Quite simply '[I]t is not the habit of the court to decide questions of constitutional nature unless absolutely necessary to a decision of the case."[3] But, Justice O'Connor goes on to say, "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."[4]

Those words stand in stark contrast to the words of Justice Harry Blackmun on January 23, 1973, one day after the release of the *Roe v. Wade* decision. At a gathering in Cedar Rapids, Iowa the author of *Roe* stated, "We did not take the time to put our feet on the window sill and try to resolve the difficult question of when life begins."[5] They did not even try! Because they did not even try over 40 million babies have been denied their constitutionally guaranteed inalienable right to life. Over 300 thousand of those were killed right here in Kansas. They didn't even try! Such a glaring admission of irresponsibility must not go unnoticed. Such admission of irresponsibility, alone, causes *Roe v. Wade* to beg for review. The road to that review can, and must, begin here today in this room. How many more babies must die before someone has the courage to try? There is no longer any reason to speculate. The answer is there in black and white with much of it even in full color.

On behalf of all the members of Right To Life of Kansas as well as those millions of babies waiting to be born, I ask you sincerely to pass HR 6006.

Thank you.

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[2] LIVING PROOF is produced and narrated by Thomas W. Hilgers, M.D., DIP.ABOG, Senior Medical Consultant, Obstetrics, Gynecology & Reproductive Medicine; Director , Pope Paul VI Institute, 6901 Mercy Road, Omaha, NE 68106-2604. A copy of LIVING PROOF may be obtained by contacting Elmer Feldkamp, Cleta Renyer or the RTLK office.

[3] *Webster v. Reproductive Health*, 493 U.S. 490, 526(1989)

[4] Id.

[5] The Wanderer, Feb. 27, 2000

5

Human Life Begins at Fertilization
Medical and Biological Documentation

Patrick Herrick, M.D., Ph.D.

Assumptions
1) Truth exists, and we can discover it.
2) Humanity of newborn.

Potential vs. Actual
"Potentiality....is a starting-point of change."[1]
"Location relative to something else is called potential."[2]

Potentials:
- Earning
- Using a spoon
- Praising God

The issue at hand is potential with respect to being human.
- First, identify the characteristics of the human species.
- Second, identify when they appear.

Characteristics of the Human Species
1) "Biological species are not an arbitrary construct of the human mind."[3]

Useless and illegitimate classification
- a) ostensibly by a defining quality, when actually by history or another cause.[4]

Outmoded classification
- a) by shape alone.[5]

Appropriate classification
- a) by causal agent.
- b) by common descent.[6]
- c) by biological characteristics...e.g. behavior, biochemistry, ecology.[7]

3) What are shared characteristics of newborns, unique to humans?
When do these appear?

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[1] Aristotle, *Metaphysics*, trans. W. D. Ross, ed. Jonathan Barnes (Princeton: Princeton University Press, 1984), 1046a5-10.
[2] Richard P. Feynman, Robert B. Leighton, and Matthew Sands, *The Feynman Lectures on Physics*, (Reading, MA: Addison-Wesley, 1963), p. I-4-4.
[3] Ernst Mayr and Peter D. Ashlock, *Principles of Systematic Zoology*, 2nd ed. (New York: McGraw-Hill, 1991), p. 23.
[4] Mayr and Ashlock, p. 115.
[5] Mayr and Ashlock, p. 24.
[6] Mayr and Ashlock, p. 115.
[7] Mayr and Ashlock, p. 52.

Newborn Biological Characteristics	Stages to Birth				
	Delivery	Viability	Quickening	Early Embryo	Fertilization
Physical Separation	1) Not specific to humans. 2) Some species live inside another. 3) Illegitimate (cf. p. 1).				
Ventilation		Internal combustion engine.			
Circulation				1) Other species. 2) A secondary function. 3) Not involved in descent.	
Gross Movement			Automobile.		
Nutrient Absorption				1-3) Cf. Circulation. 4) Fasting ≠ Non-human.	
Metabolism					✓
Transcription					✓
Replication					✓
Unique					✓

Life – the state of existence characterized by active metabolism.
Metabolism – tissue change; the sum of the chemical changes occurring in tissue.
Transcription – the transfer of genetic code information from one kind of nucleic acid to another.
Replication (autoreproduction) – the ability of a gene to bring about the synthesis of another molecule like itself from smaller molecules within the cell.[8]

"Striking differences resulting from…age….are deprived of their species status, regardless of the degree of morphological difference, as soon as they are found to be members of the same breeding population."[9]

"The species receives its reality from the historically evolved shared information in its gene pool."[10]

Classifying by behavior includes infectious agents: varicella and parvovirus B19 affect only humans, and are well known for their fetal effects.

[8] *Illustrated Stedman's Medical Dictionary*, 24th ed. (Baltimore: Williams and Wilkins, 1982).
[9] Mayr and Ashlock, p. 25.
[10] Mayr and Ashlock, p. 26.

Right to Life of Kansas, Inc.

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

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FAX (913) 233-8641

February 1, 2000

Mr. Chairman and members of the Federal and State Affairs Committee:

I am Cleta Renyer, Legislative Director of Right to Life of Kansas. We are the oldest and the only no exceptions pro-life group in the state of Kansas. I am truly grateful for the opportunity to testify in favor of House Resolution 6006. This piece of legislation is so important to our organization that we have devoted the last six years improving and promoting it. H.R. 6006 could be the vehicle that would challenge *Roe vs. Wade.*

Abortion is so very evil and is tearing apart the heart and soul of this once great country. It is a fact that every abortion has one victim, the pre-born baby, but in recent years more and more experts are talking about the hidden victim, the mothers. The *Roe vs. Wade* decision was based on lies and deception; it has cost 40 million babies their lives. *Roe vs. Wade* has also led a generation of young women to believe they have the right to kill their baby; **NO ONE** has the right to kill another human being.

In January 1998, I had the privilege of being part of the March for Life with three of my oldest grandchildren. On our day to sightsee, we visited the Holocaust Museum. There were a plethora of horrible pictures showing the people enclosed by unpenetrable walls in the concentration camps, the huge ovens used to cremate those that were not useful to them and even explanation on how the Nazis' would allow the Red Cross to inspect the camps making sure the Red Cross did not see any of the people being killed. After the tour, we began discussing the horror and death that we had seen and realized that we have much the same thing right here in Kansas. Instead of concentration camps, we have an abortion clinic with walls all around it, and a crematorium to burn the little babies bodies. It is hard to believe that in the late 1940's the United States of America condemned the Nazis for what they did to a race of people, a race they classified as non-persons, when today a similar form of persecution is fully accepted by so many Americans.

Bernard Nathanson was the most prominent abortionist in the early 1970's. He performed 5,000 abortions himself, assisted with 10,000, and oversaw 60,000 as a medical director of the world's largest abortion clinic. In addition, he helped form what is now known as the National Abortion and Reproductive Rights Action League (NARAL.) The introduction of ultrasound technology in the early 1970's prompted him to reconsider his position on when life begins. In the 1980's, he helped produce the ground breaking pro-life videos, *The Silent Scream* and *Eclipse of Reason*. These were the first films to include footage of unborn children in the womb. He now says that there are no medical indications or reasons for abortions--***none***.

Please take a few minutes to read the insert in my testimony about the rare operation that saved an unborn infant's life. The article is about the use of ultrasound to perform surgery on a child in the 16th week of pregnancy and the child's normal birth.

You will probably be hearing testimony from the opponents of this resolution make accusations that this resolution attempts to elevate the rights of a fertilized egg above those of an adult woman. This resolution only gives rights back to the pre-born child that were theirs until 1973 in the United States.

I would now like to compare the rights of animals in this country to the rights of the pre-born baby. The Endangered Species Act protects not only 170 species but also protects their unborn. Of the 170 species, three are amphibians, fifty-six are birds, seven are clams, two are snail; the remaining forty-two are plants. Anyone who violates a provision of the Endangered Species Act is subject to criminal prosecution and a maximum fine of $50,000 and a year in prison, or both.[1] Legally, the fertilized egg of an eagle has more rights than an unborn child. And in Wisconsin, stepping on a snail can land you in jail--with a $10,000 fine. But a woman can have her baby sliced and diced, for a price, right into the ninth month of pregnancy--all within the confines of the law.[2]

In an article titled, *How Abortion Divides Our Country*, by Charley Reese, he writes, "People should understand what abortion is: It is using death to solve a problem. This new life, a

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[1]Life in Oregon, 9-11, 1997.

[2]The Milwaukee Journal, February 21, 1992.

creature of God is inconvenient or to expensive or to troublesome. So terminate it."[3] It is time to turn the abortion debate around from saving *some* of the pre-born babies to saving **ALL** of them. The terms "wanted" and "women's choice" will no longer be factors in the abortion debate instead, a child's life will be taken into consideration. Please consider moving H.R. 6006 out of committee for a debate on the floor of the House of Representatives.

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[3]AFA Journal, 19-20, March, 1997

TESTIMONY ON KANSAS HOUSE RESOLUTION NO. 6006
February 1, 2000

My name is John M. Swomley. I am an ordained member of the Kansas East Conference of the United Methodist Church, Professor Emeritus of Christian Ethics at Saint Paul School of Theology, and President of Americans for Religious Liberty, a national organization in the Washington DC suburbs. In addition to degeees in religion I have a Ph.D. in political science, including Constitutional Law, and have taught Biomedical Ethics at summer schools in Kansas University Medical Center. I am here today to represent Planned Parenthood of Kansas and Americans for Religious Liberty.

The constitutional and biological assertions in House Resolution 6006 are totally in error, as I shall demonstrate in the following six points:

1. It is an attempt by one group of state legislators to define "personhood" contrary to the 14th Amendment, which gives no right of personhood to a fertilized egg. That Amendment says "All persons born or naturalized in the United States and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside."

2. The reference in this resolution to West Virginia State Board of Education v, Barnett is taken out of context and applied wrongly to a sectarian reference about a fertilized egg. The "classic definition of religious freedom" in that flag salute decision is this: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe

what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein."

3. The attempt to define personhood at fertilization is the position of one church applied only to contraception and abortion. And even that church has not defined a fertilized egg officially as a person. It cannot be baptized, or otherwise even discovered medically until after implantation in the uterus, which may take up to a week or more after fertilization.

4. None of the references to life, liberty and the pursuit of happiness in any American document such as the Declaratin of Independence or the Kansas Constitution can be construed as referring to an unborn fetus. The only place in the Federal Constitution referring to life is in the 14th Amendment where it says no "state shall deprive any person of life, liberty or property without due process of law."

In Colonial America and even after the Constitution was adopted, English Common Law was in effect. It permitted abortion before fetal movement or "quickening", which was generally detectable after about the 16th week of pregnancy. There were no laws with respect to abortion in the U.S. prior to 1821 in Connecticut, 1827 in Illinois, and 1830 in New York. A New Jersey case, State vs. Murphy explained the purpose of its 1849 statute. It said, "The design of the statute was not to prevent the procuring of abortions, so much as to guard the health and life of the mother against the consequences of such attempts. . . It is immaterial whether the fetus is destroyed or whether it has quickened or not...."

It is clear that the fetus was not what the Declaration of Independence had in mind when it referred to persons and their right to life, liberty and the pursuit of happiness.

5. It is incorrect to state (line 41) "all medical and scientific evidence acknowledges and affirms" that all the basic attributes of human personality. . . exist at fertilization." And in line 34 p. 2 it speaks of "undeniable medical and scientific facts."

Here is what Dr. Charles Gardner, who did his research at the University of Michigan Medical School's Department of Anatomy and Cell Biology, wrote:

"The 'biological' argument that a human being is created at fertilization . . . comes as a surprise to most embryologists. . . for it contradicts all that they have learned in the past few decades. '

Gardner noted that "in humans when two sibling [fertilized] embryos combine into one [as sometimes happens], the resultant person may be completely normal. If the two original [fertilized] embryos were determined to become particular individuals, such a thing could not happen. The embryos would recognize themselves to be different. . . and would not unite. But here the cells seem unaware of any distinction between themselves. . . The only explanation is that the individual is not fixed or determined at this stage [fertilization]"

Gardner further stated, "The information required to make an eye or a finger does not exist in the ferti-

lized egg. It exists in the positions and interactions of cells and molecules that will be formed at a later time."

Gardner concludes that "Fertilization, the injection of sperm DNA into the egg, is just one of the many small steps toward full human potential. It seems arbitrary to invest this biolological event with any special moral significance. . . It would be a great tragedy if, in ignorance of the process that is the embryo, state legislators pass laws restricting individual freedom of choice and press them upon the people. The embryo is not a child. It is not a baby. It is not yet a human being."

Michael Bennett, chair of the Department of Neuroscience, Albert Einstein College of Medicine, wrote: "Personhood goes with the brain and does not reside within the recipient body. . . There is none, not heart, kidney, lung or spleen, that we cannot do without or replace artificially. The brain is the essence of our existence. It cannot be transplanted."

6. This proposedd legislation has serious implications not only for abortion but for contraception. It would outlaw major methods of contraception that take effect after intercourse, such as the IUD and pills that prevent implantation, and would validate only barrier methods of contraception.

Moreover, it is unenforceable. A Catholic embryololgist trained in Roman Catholic theology, Robert Francouer, wrote that "legal pronouncements about personhood from the moment of conception could be translated into a Brave New World with pregnancy police to make certain that all fertile women have their monthly

pregnancy test, and all pregnancies are monitored to assure the Constitutional, God-given inalienable right of every fertilized egg to life, liberty and the pursuit of happiness." Will fertilized eggs be counted in the census? Will parents receive conception certificates instead of birth certificates?

Will the state issue death certificates for miscarriages and require embalming? Of course a fetus would be sent to prison if the pregnant woman commits a crime, or can the fetus keep a convicted felon out of prison because a right to life, liberty and the pursuit of happiness is guaranteed the fetus?

What about denominations that accept the Biblical definition of a human being as being born, and do not baptize miscarried embryos and fetuses?

The sectarian writers of this proposed legislation should take another look at what they have written. Do they really want to impose their religious beliefs on other faiths?

From an ethical standpoint, the implications of this resolu-tin are that the life of the fetus is more important than the life of the woman who carries it and more important than her born childen.

This resolution does not recognize the conflict of life with life. Some years ago at a meeting of the American Society of Christian Ethics a workshop was confronted with the case of a 3-year-old child and an 18-week fetus, both with a dread disease for which there was only one injection of medicine in Chicago. The Chicago airports had been shut down by a blizzard, preventing the doctors from obtaining more of the medicine.

We unanimously concluded that the child should get the injection. The moral difference is that the child is among us in a way that the fetus is not. The child's claim is based on relationship, rather than on a legal point of birth.

Although the Roman Catholic hierarchy strongly opposes intentional abortion, in practice it sometimes recognizes the priority of the woman over the fetus, as is evident in the following excerpt from a U.S. Catholic Conference publication.

> Operations, treatments and medications which do not directly intend termination of pregnancy but which have as their purpose the cure of a proportionately serious pathological condition of the mother, are permitted when they cannot be safely postponed until the fetus is viable, even though they may or will result in the death of the fetus.

Finally, this whole resolution is based on a propaganda term known as <u>prolepsis,</u> which Webster defines as "an anticipation; especially the describing of an event as taking place before it could have done so; the treating of a future event as if it had already happened." For example, describing an acorn as if it were already an oak tree or an egg as a chicken.

The most characteristic aspect of personhood is consciousness, that is dependent on a brain.

8

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Kansas

Testimony before the House Federal and State Affairs Committee:
Barbara M. Duke, State Board Member, Kansas AAUW; President, Kansas Choice Alliance (785-749-0786)

February 1, 2000

Chairman Powell and members of the House Federal and State Affairs Committee:

On behalf of Kansas AAUW and the other diverse organizations that make up the Kansas Choice Alliance, I thank you for this opportunity to speak in opposition to H.R. 6006 which directs the Kansas attorney general to file a lawsuit to determine that life begins at conception.

Proponents of this resolution strongly believe that human life begins at the moment a human egg is fertilized. And that is what is wrong with this resolution. Its argument is based on belief, not on scientific or medical fact. Imposing this particular religious view on others threatens not just women's reproductive freedom but the religious freedom that is America's founding value

Yes, the fertilized egg normally contains all the elements necessary for a human life to develop. But pregnancy and human development is a process rather than an absolute moment. It takes nine months of growth and development to produce a human infant ready to be born and recognized as a person. As a parent I could argue that it takes another 20 years or more to develop a fully human person.

There is a practical reason for defining personhood at birth. The moment of birth is known; the moment of fertilization is speculative. Former Supreme Court Justice Tom Clark asserted that "the law deals in reality, not obscurity; in the known rather than the unknown. When sperm meets egg life may eventually form, but quite often does not. The law does not deal in speculation."

The right-to-life movement regards every degree of human life as equal to the most complete development of human life, and values fetal life over the life of the woman upon whom the fetus is totally dependent. We believe there are moral considerations other than those of the life of the fetus and that the consequences of H.R. 6006 are far ranging.

The lawsuit demanded by H.R. 6006 would be lengthy and enormously expensive for the people of Kansas. It represents a dangerous extension of state power. We urge you to defeat it and turn your attention to improving programs and benefits for the existing children in our state.

Barbara Duke

House Fed. & State Affairs
Date 2/1/00
Attachment No. 8
Page 1 of 1

THE BEGINNING OF HUMAN LIFE IN THE BIBLE

by Charles W. Baughman

When does human life begin? In Genesis 2.7 we have the first detailed account of the creation of a human being by God: "Yahveh God (The LORD God) formed the man from the dust of the earth and breathed into his nostrils the breath of life and the man became a living *nefesh.*" We could translate *nefesh* here as either "breath" or "being". This indicates that life began for this human being when God breathed breath into him.

In Genesis 7.21-22: "And all flesh that moved on the earth perished, birds, cattle, wild animals, all swarming creatures that swarm upon the earth and all human beings. Everything which had the breath (Hebrew, *nishmat*) of life in its nostrils, all that were on dry land died. Genesis 6.17 and 7.15 contain the same idea. However, *ruach* ("breath" or "spirit") is used rather than *nishmat*. Again, breath is understood to be essential to life and when the breathing stops, life ends.

This understanding is found throughout the Hebrew Bible. For example, in Joshua 10.40, it is reported, "Joshua fought against the whole land, the hill country, the South, the lowlands, the mountain slopes, and all their kings. He did not leave a single survivor but exterminated everything that breathed." Here life and breathing are again equated. This same equation between life and breath is made again in Joshua 11.10 and 14.

In 1 Kings 17 Elijah is living with a widow in Zarephath, in Sidon. The son of the widow became ill and "his sickness was very severe, so much so that his breath left him." (1 Kings 17.17) Elijah said to the woman, "Give me your son." The prophet took the boy out of her bosom and carried him to the roof chamber, laid the child on his bed and cried out to Yahveh, "O Yahveh, have you even brought evil upon the widow with whom I am staying by killing her son?" Then the prophet stretched himself upon the child three times and cried to Yahveh, "O Yahveh, my God, let the breath (Hebrew, *nefesh*), of the boy enter into him again!" (17.19-21) Yahveh listened to Elijah's plea and caused the life force (or "breath") of the boy to enter him once more and he lived. (17.22)Once again we see the close connection between life and breath.

Genesis 35.18 provides further confirmation of the connection between life and breath. Rachel has given birth to Benjamin and is dying. " The New International Version translates this, "As she breathed her last, for she was dying." Jeremiah 15.9 states the idea vividly, "She who had borne seven languished; she breathed out her *nefesh.*"

One of the most graphic examples of the equation of life and breath in the Bible occurs in Ezekiel 37. Here Ezekiel sees a valley of dry bones. Finally, after being reformed into bodies they do not live until breath enters them. Psalm 104.29-30, again, illustrates breath brings life.

The Law in Exodus 21.22ff. further confirms that in the Bible a fetus is not considered to be a living human: "Whenever men struggle with each other and strike a pregnant woman so that she miscarries but there is no harm; he shall be severely fined according to that which the husband of the woman shall impose upon him and he shall pay as the judges decide. (23) If there is harm, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn

for burn, bruise for bruise, blow for blow." Here only harm to the woman is considered, since the aborted fetus would be dead. Thus, the fetus is not regarded as a human life.

I believe this look at when human life begins in the Bible demonstrates that, in the early life of Israel and even later Judaism, they believed that life entered the child when it was born and became a living, breathing being. While many religious people have claimed for a long time that human life begins at conception, only recently has this position been adopted by others, clearly it conflicts with the Biblical understanding.

NOTRE DAME LAW SCHOOL
NOTRE DAME, INDIANA 46556

January 19, 2000

Mr. Elmer Feldkamp
Right to Life of Kansas
214 S.W. 6th Ave.
Topeka, KS 66603

Dear Mr. Feldkamp:

Thank you for sending me a copy of the revised Kansas Human Life Resolution which is pending in the Kansas legislature. It requires the Kansas Attorney General to bring an action to determine the constitutionality of Kansas statues that allow abortion.

In Roe v. Wade the Supreme Court of the United States held that, whether or not the unborn child is a human being, he is not a person for purposes of the Fourteenth Amendment and therefore has no constitutional right to life protected against the state. In numerous cases since Roe, facts demonstrating the humanity of the unborn child have been presented to the Supreme Court, but the Court has declined to decide that question. Instead, the Court has rested on the basic holding of Roe, that, whether or not the unborn child is a human being he is a non-person.

Under Supreme Court precedents, a state can expand, but not contract, the protection given to a constitutional right by the Supreme Court. The Kansas Bill of Rights affirms that "[a]ll men" are possessed of the right to life. As I understand Kansas law, this term includes all human beings. If this and other provisions of Kansas law were interpreted so as to prevent legalized abortion, such would contract the right to abortion which the Supreme Court holds to be a "liberty" interest protected by the Fourteenth Amendment. If looked at in that way, such an application of Kansas law could be held to violate the United States Constitution as interpreted by the Supreme Court. On the other hand, the provisions of Kansas law protective of unborn human beings could be held not merely to restrict the abortion right, but to expand a right, the right to life, which Kansas law creates as a matter of state law in human beings.

The Resolution seeks an interpretation of Kansas law and the Kansas Bill of Rights rather than an interpretation of the United States Constitution. There is nothing in the decisions of the Supreme Court of the United States which conclusively forbids Kansas to define and protect the rights of the unborn child beyond the extent to which those rights are recognized and protected under the United States Constitution. This Resolution cannot be dismissed as a futile exercise. Rather, in my opinion, it is a much needed affirmation not only of the rights of the unborn child under Kansas law but also of the reserved power of the State of Kansas to define, as a matter of state law, the meaning and scope of the Kansas Bill of Rights.

It would be an important and useful initiative for the Attorney General to seek a judicial resolution of this issue. It would especially advance coherence in this area of the law if this effort were so framed as to invite the Supreme Court to resolve two questions, first, whether the unborn child is a human being and, second, whether all human beings are entitled to be treated by the Constitution of the United States as persons.

In conclusion, Human Life Resolution No. 6010 is, in my opinion, a desirable and sound measure.

Sincerely,

Charles E. Rice
Professor of Law

CER/lp

Charles E. Rice is professor of law at the University of Notre Dame Law School and is co-editor of the *American Journal of Jurisprudence*. His areas of specialization are constitutional law and jurisprudence. Professor Rice was born in 1931, received the A.B. degree from the College of the Holy Cross in 1953, and the J.D. from New York University. He served in the Marine Corps, practiced law in New York City and taught at New York University and Fordham University before joining the Notre Dame faculty of law in 1969. Among his books are *Freedom of Association* (N.Y.University Press), *The Supreme Court and Public Prayer* (Fordham University Press), *The Vanishing Right to Life* (Doubleday), *Authority and Rebellion* (Doubleday), *No Exceptions: A Pro-Life Imperative* (Tyholland Press) and *Beyond Abortion: The Theory and Practice of the Secular State* (Franciscan Herald Press). He and his wife, Mary, have ten children and they reside in Mishawaka, Indiana.

Rice has also participated in the preparation of a number of Amicus Curiae briefs in various pro-life cases on appeal to the U.S. Supreme Court.

FORECAST FOUNDATION

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MEMORANDUM

TO: ELMER FELDKAMP

FROM: HERBERT W. TITUS

SUBJECT: THE KANSAS HUMAN LIFE RESOLUTION

DATE: MARCH 4, 1998

You have requested that I review the Kansas Human Life Resolution and furnish to you my opinion of its constitutionality and of its likelihood of success if challenged in court.

The current version of the Resolution is based both upon Section 1 of the Kansas Bill of Rights and the Due Process and Equal Protection Clauses of the United States Constitution. I recommend that all reliance upon the United States Constitution and on United States Supreme Court cases be deleted so that the Resolution is based solely upon Kansas State Constitution.

Reliance on the U.S. Constitution and upon U.S. Supreme Court cases places this Resolution under the jurisdiction of the federal courts. If reliance is placed solely on the Kansas State Constitution, then the Resolution is based upon an independent and adequate state ground, thereby removing it from federal jurisdiction.

It is well-settled that a state constitution can afford greater protection to individual liberties than afforded by the United States Constitution. See, e.g., *Prune Yard Shopping Center v. Robins,* 447 U.S. 74 (1980). Even when a state constitution contains language similar to that found in the United States Constitution, "state courts interpreting state constitutional provisions need not be bound by Supreme Court interpretations of like-worded federal provisions." L. TRIBE, AMERICAN CONSTITUTIONAL LAW 41, n. 56 (2d Ed. 1988). In order to take advantage of this doctrinal independence of state constitutional law, however, the state constitutional issue must be identified separately from any federal one, and must be resolved independently from federal law. See *Michigan v. Long,* 463 U.S. 1032 (1983); L. TRIBE, *supra,* at 162-66.

This doctrine is clearly applicable in the case of abortion. In *Roe v. Wade*, 410 U.S. 113 (1973), the United States Supreme Court ruled that the United States Constitution did not protect the life of a pre-born child because that child was not a person within the meaning of the Due Process Clause of the Fourteenth Amendment. While that ruling is beyond the power of states to alter, it does not prevent Kansas state officials, including legislatures and judges, to find that Section 1 of the State Bill of Rights protects the life of the unborn child, so long as that finding is not interwoven in anyway with rulings or other authoritative statements interpreting the United States Constitution.

Even Harvard Professor Laurence Tribe and the late liberal Supreme Court Justice William J. Brennan have endorsed this principle. See L. TRIBE, *supra*, at 166; Brennan, "State Constitutions and the Protection of Individual Rights," *90 Harvard Law Review* 489 (1977). And as Professor Tribe has pointed out other Supreme Court justices have "highlighted" in their opinions "[t]he ability of state courts to overcome judgments of the Supreme Court limiting the scope of federal constitutional rights by resort to their own constitutions...." L. TRIBE, *supra*, at 166, n. 27. See, e.g., *Connecticut v. Johnson*, 460 U.S. 73, 81, n. 9 (1983)(opinion of Blackmun, J.); *Id.* at 91 (Powell, J. dissenting); *Oregon v. Kennedy*, 456 U.S. 667, 680-81 (1982)(Brennan, J. concurring in the judgment); *South Dakota v. Opperman*, 428 U.S. 364 (1976)(Marshall dissenting).

Because the current Resolution does not rely solely upon the Kansas Bill of Rights, it will not, in all likelihood, succeed. Federal Courts will perceive it as a direct attack against the Supreme Court's decision in *Roe v. Wade*, and for that reason alone, will strike it down as invalid under the United States Constitution. While sole reliance on the Kansas Constitution does not guarantee success, it does provide a realistic opportunity to restore constitutional protection to the unalienable right to life to the unborn in that state, notwithstanding the claim of a federal constitutional right of a mother to abort her child. See *PruneYard, supra*.

Herbert W. Titus

Born in Baker, Oregon on October 17, 1937, Herbert W. Titus attended Baker public schools, graduating co-valedictorian of his class in 1955. In 1959 he graduated Phi Beta Kappa from the University of Oregon, where he served as student body president. In 1962 he graduated cum laude from the Harvard Law School.

After two years as a trial attorney with the U.S. Department of Justice, Titus served from 1964 to 1979 as a professor of law at the state universities of Oklahoma, Colorado, and Oregon. During this time he was active in various left-wing cases, opposing the war in Vietnam and supporting abortion and homosexual rights. As a cooperating attorney with the American Civil Liberties Union, Titus worked with attorneys and clients on a number of Constitutional cases.

In 1975, Titus was dramatically converted to Christ on the last weekend of July. In 1976-77, he studied with Dr. Francis Schaffer at L'Abri in Switzerland. In 1979, left his tenured position as professor of law at the University of Oregon, becoming a member of the charter faculty of a Christian law school at Oral Roberts University. After three years at ORU, Titus moved to Regent University, where he served for eleven years, first as the founding Dean of the School of Law.

In July 1993, Titus established *The Forecast*, a monthly journal on law and public policy. This unique journal is designed to provide a Biblical and Constitutional analysis to current issues. A Constitutional and common law scholar, Titus is an educator and author offering seminars, books, and monographs on law and public policy for both lawyers and non-lawyers alike.

An active member of the Oregon State Bar, Mr. Titus is a practicing attorney serving of Counsel to the Virginia Beach, Virginia law firm of Troy A. Titus, P.C. Specializing in Constitutional litigation and strategy, Mr. Titus serves several public interest organizations. He is the author of numerous articles and a book entitled *God, Man and Law: The Biblical Principles*.

In August, 1996, Mr. Titus was chosen at the National Convention of the U.S. Taxpayers Party in San Diego, California to serve as its Vice Presidential candidate.

He and his wife, Marilyn, reside in Chesapeake, Virginia. They have four children and nine grandchildren.

KANSAS RELIGIOUS LEADERS FOR CHOICE

TESTIMONY BEFORE
THE KANSAS LEGISLATURE'S
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
Representative Tony Powell, Chairman

February 2, 2000

FROM

The Reverend George T. Gardner, Senior Minister
College Hill United Methodist Church
2930 East First Street
Wichita, Kansas 67214
316-683-4643
and

Co-chair Kansas Religious Leaders for Choice
(Mailing Address same as above)

Chairman Powell, members of the Committee, I am submitting this testimony on behalf of Kansas Religious Leaders for Choice. You are bringing before your Committee what is know as the Human Life Amendment. This Amendment attempts to make a law for our Nation that would say human life begins at conception. Kansas Religious Leaders for Choice is opposed to this Amendment. We believe that this assertion is an attempt by certain religious groups to read their theology into the law of the land. Not every religious faith group in America supports the theological idea that life begins at conception. To place this theology of the Roman Catholic church and several Evangelical Protestant groups into the law is an infringement upon the religious and non-religious believers in American. Proponents of the Human Life Amendment have every right to believe as they choose. They do not have the right to make their PARTICULAR theology the law of the Land.

The beginning of human life is a mystery. Because of this mystery it is indeed sacred. The mystery of life has been analyzed by science, but science itself has not been able to conclude when life begins. Some scientists, believe that they know, but science as a discipline still holds that the beginning of life is a mystery. Dr. Leon Rosenberg, former Chairman of the Department of Human Genetics, Yale University Medical School, wrote in 1981

> "When does this potential for human life become actual? As a scientist, I must answer I do not know. Moreover, I have not been able to find a single piece of scientific evidence which helps me with that question.

Not surprisingly, a great deal has been spoken and

written on the subject. Some people argue, as you have heard, that life begins at conception. . . . I have no quarrel with anyone's ideas on this matter so long as it is clearly understood that they are personal beliefs based on personal judgments and not scientific truths."

Kansas Religious Leaders for Choice would affirm Dr. Rosenberg's statement. Every religious faith group has a definition about when life begins. This is their theological belief. However, since religious faith groups do not agree on this issue as to when life begins, to select one PARTICULAR theology would be at best an arbitrary definition of the beginning of life. This would be writing into American life a theological perception that not every American affirms or upholds.

I ask, on behalf of my organization , that the Human Life Amendment stay in your Committee and not be brought before the Kansas Legislature or the people of Kansas.

Respectfully submitted,

George T. Gardner, Co-Chair
Kansas Religious Leaders for Choice

Statement in Opposition to House Resolution 6006

House Committee on Federal and State Affairs

February 1, 2000

by Carla Norcott-Mahany
Kansas Public Affairs Director/Lobbyist
Planned Parenthood of Kansas and Mid-Missouri

The issue of fetal personhood has been debated many times before Kansas legislative committees over the years. The scientific 'findings' in the various 'whereas' sections of HR 6006 are no more valid than in the past, and its conclusions no more constitutional. It is, in fact, completely unconstitutional for a governmental entity to base any action – restriction or ban—against abortion based on a declaration that "life begins at conception." There is no legal evidence to the contrary.

Please give careful attention to the testimony presented today in opposition to HR 6006. Please oppose HR 6006. Thank you.

Statement in Opposition to HR 6006
on behalf of the Kansas National Organization for Women

Submitted to the House Federal and State Affairs Committee
on February 1, 2000

By Janet K. Stamper
Legislative Affairs

The Kansas National Organization for Women (KS NOW) is an established national organization with chapters in all 50 states. KS NOW's 1,200 members wish to go on record in strong opposition to HR 6006 on the basis that it seeks to severely impede a woman's right to choose a legal medical procedure, guaranteed by the U.S. Constitution in *Roe v. Wade.* In essence, KS NOW believes that HR 6006 is "requiring the attorney general to bring action to determine" that abortion is unconstitutional in Kansas.

KS NOW stands in opposition to this proposed amendment or any other legislation that seeks to diminish or damage the constitutional right(s) of women in the State of Kansas. KS NOW strongly encourages this Committee to vote against HR 6006.

Respectfully submitted.