

## MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on February 10, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Mike Peterson- excused  
Representative Louis Ruiz- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Carol Doel, Committee Assistant

Conferees appearing before the committee:

Rep. Lance Kinzer,  
Michael Schuttloffel, Director Kansas Catholic conference  
Michelle Armesto-Berge, Concerned Citizen  
Kathy Ostroski, Legislative Director Kansans for Life  
Julie Burkhart, Women's Healthcare Services  
Holly Weatherford, Planned Parenthood,

Others attending:

See attached list.

The Chair opened the floor for introduction of proposed legislation. There was none.

Chairman Neufeld opened the floor for the hearing on **HB 2206 -Amendments to late term and partial birth abortion law.**

Jason Long, Assistant Revisor, Office of the Revisor of Statutes addressed the committee with an overview of **HB 2206.** (Attachment 1)

Testifying as a proponent to **HB 2206** was Rep. Lance Kinzer who opined that the bill includes a number of provisions designed to strengthen enforcement of existing late term and partial birth abortion laws. It expands the relevant information that must be provided to women who are considering abortion. Rep. Kinzer further related that **HB 2206** will go a great distance toward advancing meaningful enforcement of Kansas; substantive law regarding late term and partial birth abortion and as such restoring respect for the rule of law in Kansas. (Attachment 2)

Director Kansas Catholic Conference, Michael Schuttloffel, addressed the committee in support of **HB 2206.** Mr. Schuttloffel related that the Catholic Church is confident that by empowering women with full and scientifically factual information, and by encouraging respect for the law and the sanctity of human life, America will one day 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 the pursuit of happiness. (Attachment 3)

Michelle Armesto-Berge presented testimony favoring the passage of **HB 2206.** Ms. Armesto-Berge related here experiences of being coerced into abortion and the way in which she feels passage of **HB 2206** would close many loop-holes and prevent other women from the devastating damages which she experienced. (Attachment 4)

Next to appear before the committee as a proponent of **HB 2206** was Kathy Ostrowski, Legislative Director of Kansans for Life who related that **HB 2206** contained seven provisions necessary for cleaning up the scandal of Kansas abortion law-breaking. (Attachment 5) Also included in Ms. Ostrowski's testimony was a chart labeled *Kansas Late Term Abortions* (Attachment 6), and an article entitled *Does Tiller Perform Late-Term Viable Abortions Only for Dire Medical Cases?* (Attachment 7)

CONTINUATION SHEET

Minutes of the House Federal And State Affairs Committee at 1:30 p.m. on February 10, 2009, in Room 143-N of the Capitol.

With no other proponents for **HB 2206**, The Chair recognized Julie Burkhart representing ProKan Do to voice her opposition. Ms. Burkhart related the opinion that **HB 2206** seeks to put certain political and moral beliefs before a physician's best medical judgment, as well as denying women full and comprehensive access to health care. Six objection to **HB 2206** were presented in Ms. Burkhart's testimony. (Attachment 8)

Kansas Public Affairs Manager of Planned Parenthood of Kansas & Mid Missouri, Holly Weatherford, J.D., presented testimony in opposition to **HB 2206**. Ms. Weatherford, gave the opinion that **HB 2206** removes all exceptions to the Kansas so-called "partial-birth abortion" law and inserts a definition that is so vaguely written that it could be interpreted to ban a broad range of abortion procedures. Planned Parenthood urges the committee and the Kansas Legislature to respect physicians' medical decision-making and protect the doctor-patient relationship. In closing, Ms. Weatherford, stated that **HB 2206** only seeks to place more unnecessary burdens on abortion providers and women seeking abortion care and does nothing to actually prevent unintended pregnancy or reduce the number of abortions in Kansas. (Attachment 9) Also submitted for committee review was a copy of Current Status of Kansas Law on Reproductive Health Care. (Attachment 10), and a worksheet from the Kansas Department of Health and Environment. (Attachment 11)

Written testimony in support of **HB 2206** was submitted by Judy Smith, State Director of Concerned Women for America of Kansas. (Attachment 12)

Mike Heim, Office of the Revisor, provided a report from a Special Committee on Federal and State Affairs on late term abortions. (Attachment 13)

With no other person wishing to address **HB 2206**, the Chair closed the hearing.

Chairman Neufeld announced the next meeting would be February 11, 2009 with a hearing on **HB 2076 - Woman's-right-to-know act**, and **HB 2166 - Health exceptions to the prohibition of late-term and partial birth abortions**.

With no further business before the committee, the Chairman adjourned the meeting at 3:10 p.m.

House Federal and State Affairs  
Guest list

Date July 10, 2009

Name

Organization

Michael Schuttlofel

Kansas Catholic Conf.

Joe Mosimann

Hein Law Firm

Holly Weatherford

PPKM

Julie Burdick

Burke Craft

Shirley Kostas

PPKM

Ian Saad

KDHI

**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES  
**JAMES A. WILSON III**, ATTORNEY  
FIRST ASSISTANT REVISOR  
**GORDON L. SELF**, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

**Briefing on House Bill 2206**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

February 10, 2009

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House bill 2206 makes several amendments to the laws regarding late-term abortions. K.S.A. 65-445 requires that certain information be reported to the department of health and environment (KDHE) by physicians who performs abortions. The bill amends K.S.A. 65-445 in two ways. Subsection (b) is amended to require that physicians include the specific medical diagnosis and condition constituting the need for a late-term abortion in their reports on performed abortions. Also, a new subsection (f) is added granting KDHE the authority to adopt rules and regulations to implement the new reporting requirements. KDHE would also be required to include in its annual report the information that is required to be reported pursuant to this section to the extent permissible under patient confidentiality laws.

The bill amends K.S.A. 65-2836 to include violations of K.S.A. 65-6703 as grounds for disciplinary action against the physician.

In section 3 of the bill, on page 7, K.S.A. 65-6701 is amended to change the definition of “viable” to match what is currently in K.S.A. 65-6703. Current law has a definition of “viable” in K.S.A. 65-6701 which is applicable to all of the abortion statutes except K.S.A. 65-6703, which has its own definition of “viable.” The primary difference between the two definitions is that the definition in K.S.A. 65-6701 refers to the fetus’ capability of sustaining survival outside the uterus, while the definition in K.S.A. 65-6703 refers to a reasonable probability that the life of the child can continue indefinitely outside the uterus. The bill replaces the definition in K.S.A. 65-6701 with the definition currently found in K.S.A. 65-6703 and strikes the definition in K.S.A. 65-6703. Thus, the current definition in K.S.A. 65-6703 would become the applicable definition to all the statutes under the act.



Section 4 of the bill makes several amendments to K.S.A. 65-6703 regarding when a late-term abortion may be performed. First, in subsection (a) the referring physician would be required to be a licensed physician in this state. This is not a current requirement. Also, both physicians would be required to provide a written determination as to the need for the late-term abortion.

Second, a new subsection (b) is added that would require that at least 30 minutes prior to the abortion procedure the woman be given the written documented referral and the written determination certifying that: (1) the fetus is nonviable and the medical basis for such determination; (2) the abortion is necessary to preserve the life of the woman and the medical basis for such determination; or (3) the abortion is necessary to prevent substantial and irreversible impairment to a major bodily function and the medical basis of such determination. This requirement is waived in the event of a medical emergency, as defined in K.S.A. 65-6701(e).

Third, the bill amends subsection (c) to require certain information be included in the physician's reports that are required under K.S.A. 65-445. The new information to be provided includes the medical reasons for the determination of the gestational age of the fetus, the medical basis for the determination of nonviability of the fetus, the specific medical diagnosis supporting the determination that the abortion is necessary to preserve the life of the woman, or prevent substantial and irreversible impairment to a major bodily function, and the name of the referring physician. Also, new subsection (d) is added granting KDHE the authority to adopt rules and regulations necessary to implement the new reporting requirements.

Fourth, new subsection (g) is added to provide a private cause of action against an individual who violates the provisions of K.S.A. 65-6703. Plaintiffs could include the woman who receives the abortion, the father of the unborn child if the father is married to the woman at the time of the abortion, and the parents or guardians of the woman if she is a minor at the time of the abortion. Relief provided under the new subsection includes compensatory damages, statutory damages set at three times the cost of the abortion and reasonable attorney fees. New subsection (h) is also added to provide for who can prosecute criminal violations of the statute.

In section 5 of the bill K.S.A. 65-6709 is amended to require that at least 24 hours prior to the abortion procedure the physician must inform the woman in writing that the abortion "will terminate the life of a whole, separate, unique, living human being."

K.S.A. 65-6721 provides for when a partial birth abortion may be performed. The bill amends K.S.A. 65-6721 so that it conforms to the federal law concerning partial birth abortions (18 U.S.C.A. 1531). Currently K.S.A. 65-6721 allows partial birth abortions to be performed to preserve the life of the woman, or to prevent substantial and irreversible impairment to a major bodily function. The bill would make partial birth abortions legal only when necessary to save the life of the woman when her life is endangered due to physical disorder, illness or injury. The bill also redefines "partial birth abortion" in accordance with the federal definition. Under the

bill the physician's report on such abortions would have to include the medical basis, including the specific medical diagnosis, supporting the determination that a partial birth abortion was necessary. KDHE is also granted authority to adopt rules and regulations similar to those for late-term abortions regarding the implementation of the new reporting requirements under this section. The bill also amends K.S.A. 65-6721 to grant a private cause of action against a person violating the section. This private cause of action provision is almost identical to that set forth in section 4 for late-term abortion violations.

Finally, the bill repeals K.S.A. 65-6713 which grants civil liability immunity to physicians complying with the act. This change in current law is made in conjunction with the new private causes of action provided in the bill.

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COMMITTEE ASSIGNMENTS  
CHAIR: JUDICIARY  
MEMBER: CORRECTIONS  
& JUVENILE JUSTICE

HOUSE OF REPRESENTATIVES

February 9, 2009

TESTIMONY REGARDING HB 2206

At its best the pro-life movement in the United States has stood for the bedrock principles of human dignity, compassion and the rule of law. The intent of this legislation is to advance each of these important values. All Kansans have a right to expect that existing laws limiting late term abortions in Kansas will be followed and enforced. Kansans also have an interest in making sure the language of our partial birth abortion ban is written in a fashion that is indisputably enforceable. Furthermore, women should have the right to accurate medical information when making a decision regarding abortion.

The bill before you today includes a number of provisions designed to strengthen enforcement of existing late term and partial birth abortion laws. And expands the relevant information that must be provided to women who are considering abortion. Key provisions include:

1. Clarifies existing late term abortion requirements by clearly setting forth the obligation to specify the medical diagnosis and condition constituting a "substantial and irreversible impairment."
2. Directs the Board of Healing Arts to revoke the license of any physician convicted of a violation of K.S.A. 65-6703, absent a 2/3 vote to the contrary by the board. The bill could be improved by an amendment to include a similar provision for K.S.A. 65-6721 (partial birth).
3. Clarifies the definition of viability (current law defines the term differently in K.S.A. 65-6701 & 65-6703).
4. Requires that at least 30 minutes prior to the abortion, a woman seeking a late term abortion be provided with a copy of the referring physician's referral, and a copy of the abortion provider's written determination regarding fetal viability, and/or the reason and basis (including the specific medical diagnosis) justifying the abortion under Kansas law.
5. Grants standing to a woman, her husband or the parents of a minor, to bring a civil action for damage against any person who performs an abortion in violation of Kansas late term or partial birth abortion law.
6. Establishes that prosecution for violation of Kansas late term abortion law can be brought by the Attorney General, the District or County Attorney where the violation occurred, or where any acts or effects constituting or requisite to the consummation of the offense occurred.
7. Requires that prior to the performance of an abortion a woman be informed that "the abortion will terminate the life of a whole, separate, unique, living human being." (This language is law in South Dakota and was upheld by 8th circuit approved last year in case of Planned Parenthood v. Rounds).
8. Updates Kansas' existing partial birth abortion ban by conforming it to the language of the federal ban upheld by the U.S. Supreme Court in Gonzales v. Carhart.

In considering any change in current Kansas abortion law it is important to first understand current Kansas law. Under Kansas law an unborn child is viable if it is reasonably probable "that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-support measures." K.S.A. 65-6703. Under Kansas law an unborn child who an abortion provider has determined to be viable can not be aborted unless, two doctors determine that an abortion is necessary to preserve the life of the mother or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. K.S.A 65-6703(b)(4).

Kansas law further requires that a physician who aborts a viable unborn child must report the reasons and basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman. K.S.A 65-6703(b)(4).

I think its crucial in analyzing this statue to recognize the way in which the substantive requirements and reporting requirements found in the statute interrelate. These various requirements work hand in hand to create a clear and systematic approach to the implementation of our Kansas post viability abortion law.

If we look at K.S.A. 65-6703(4) we can see these steps quite clearly: 1) a determination is made as to gestational age; 2) if that age is 22 weeks or more a determination is made as to viability; 3) if the unborn baby is viable two doctors licensed to practice in Kansas then must determine if an abortion is necessary to preserve the mothers life, or to prevent substantial and irreversible impairment of a major bodily function of the mother; 4) if such a determination is made and an abortion takes place the doctor who performed the abortion must them report certain information; in particular the doctor who performed the abortion must report, 5) the determinations he made; 6) the reasons for such determinations; 7) the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function; 8) this information is provided to the Secretary of Health and Environment under K.S.A. 65-445; 9) Pursuant to K.S.A. 65-445 the Secretary of Health and Environment may disclose all information reported to it to the Board of Healing Arts and the Attorney General, who may use said information for "the purposes of a disciplinary action or criminal proceeding."

In order for our post viability abortion law to function effectively each of these steps must be properly followed and administer. Unfortunately, I believe the evidence suggests that our law is neither being followed by abortion providers not is it being properly implemented by the executive branch agencies charged with carrying out the law.

To understand why I believe this is the case its helpful to start by looking at the last 5 years of available post viability abortion data from the Kansas Department of Health and Environment. From these records we know that over that time 1,379 viable unborn children (as determined by the abortion provider) were aborted in Kansas . According to KDHE's statistics none of those abortions were performed to prevent the death of the mother. (KDHE Abortion Reporting Statistics, 2003 – 2007). That means that in order to be lawful all 1,379 such abortions over the last 5 years must have been performed because 2 doctors determined "that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman."

Unfortunately it is at this point that the KDHE statistics become much less than helpful in getting at the truth because rather than report, as the law requires, the reasons and basis for such determination, the statistics provided merely restate the statutory language offering no clue as to the actual medical diagnosis used by the abortion doctor to justify the abortion of these viable unborn children.

But in any event I think is important to consider what the available evidence suggests about the reality of illegal late term abortion in Kansas . We can for example look to the initial complaint filed in December of 2006 against George Tiller for violation of the current Kansas late term abortion law. Among the charges are 15 instances from 2003 where the justification for aborting a viable unborn child included things such as, anxiety and depressed mood, single episode depression, acute stress, and even "no established diagnosis." Recall that Kansas law allows such abortions only where there is a showing of substantial and irreversible impairment of a major bodily function.

Now again, these initial charges against Dr. Tiller have often been treated dismissively because they were brought by a person who lost an election. But I would ask you to remove personalities from the equation and look at the fact that both Judge John Anderson and Judge Eric Yost reviewed evidence related to these charges and found probable cause that crimes had been committed. Much has been made of the fact that a finding of probable cause is not the same as a finding of proof beyond a reasonable doubt. This is most certainly true. But neither is a probable cause finding a simple statesman that some over zealous prosecutor is suspicious that a crime might have been committed. Under Kansas law, as consistently reiterated by the Kansas Supreme Court:

"Probable cause is the reasonable belief that a specific crime has been committed and that the defendant committed the crime. Probable cause exists where the facts and circumstances/ within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to/ warrant a man of reasonable caution in the belief that an offense has been or is being committed."(State v. Ramirez, 278 Kan. 402, 2004).

This is the legal standard that two separate judges found to have been satisfied. Those charges were dismissed by a third judge who had not reviewed any evidence in the case. They were dismissed on the pretext that the Attorney General, the chief law enforcement officer of the State, lacked the authority to bring the charges. This despite that fact that K.S.A. 65-445 specifically requires abortion records gathered by KDHE to be provided to the Attorney General for the specific purpose of bringing criminal proceedings. K.S.A. 65-446 (c).

But the salient question now is not what has been done in the past, but what happens next. Since those initial charges were filed against Dr. Tiller in Dec. of 2006 new information has now come into public view that sheds further light on the reason that two judges have independently found probable cause to believe that George Tiller is performing illegal abortions on viable unborn children. In particular, we now have an understanding of the opinions of an expert who was retained to testify in the original case against Dr. Tiller. This expert, Dr. Paul McHugh is a man of impeccable credentials and reputation within his field, here served 26 years as the Psychiatrist in Chief at Johns Hopkins Hospital and is currently the University Distinguished Services Professor of Psychiatry at that same institution. Dr. McHugh reviewed the medical records forming the basis for the initial charges against Dr. Tiller. As is clear from a review of those charges, the alleged "substantial and irreversible impairments" relied upon by Dr. Tiller are claimed to be psychological in nature.

Dr. McHugh, one of our nation's most preeminent psychologists, has reviewed that claim and determined, in an opinion as definitive as any I have ever heard, that none of the files he reviewed provide a showing of "substantial and irreversible impairment." Dr. McHugh's complete remarks in this regard are widely available and I believe this Committee has already heard at least some of what he had to say.

My take on Dr. McHugh's remarks are that they are a stunning indictment if the failure to properly follow and implement our post viability abortion law. His comments add tremendous credence to the fear that illegal abortions are being performed in Kansas on viable unborn children capable of living outside their mother's wombs. We also now know, as already noted, that the Attorney General's office also believes that Dr. Tiller has been operating in violation of K.S.A 65-6703. In particular the requirement of a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion.

While I commend the Attorney General's office for enforcing this portion of the law, I would like to add a note of concern as well. On June 28, 2007 when then Attorney General Morrison announced these 19 charges which are currently still pending against Dr. Tiller, he also provided an indication of how his office



will interpret K.S.A. 65-6703 going forward. In particular he expressed his opinion that K.S.A. 65-6703 does not require that the doctors who determine that an abortion is necessary to prevent substantial and irreversible impairment of a major bodily function of the mother have a good faith basis for their belief. To quote Attorney General Morrison, "It doesn't matter if I think their reason was good or bad. It doesn't matter if I think he's a good doctor or a bad doctor. All that matters under Kansas law is that they sign off on that determination." In short this interpretation of Kansas law would say that two doctor's can lie about the existence of a substantial an irresistible impairment and still lawfully perform an abortion on a viable unborn child. It appears that AG Six has adopted this same interpretation.

I would posit that this interpretation, while facially plausible if one were to simply read two or three lines of the statue, is an absurd interpretation when the statue is read as a whole with due attention given to the interaction between the provisions various parts.

The upshot of all of this is that while we have a comprehensive statute intended to govern the performance of abortions on viable unborn babies that statues effectiveness is being undermined by the refusal of executive branch agencies to properly implement and enforce its provisions. This failure undermines a fundamental principle of American government, that we are a nation of laws and not of men.

The most famous exposition of this principle was drafted by John Adams for the constitution of the Commonwealth of Massachusetts in justification of the principle of separation of powers:

*In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.*

- Massachusetts Constitution, Part The First, art. XXX (1780)

While the legislative branch can pass laws were are powerless to implement them. For that we must rely upon the diligence of the executive branch. This is the case because as Harvey Mansfield, the William R. Kenan Professor of Government at Harvard, recently noted in another context

"the law does not know how to make itself obeyed. Law assumes obedience, and as such seems oblivious to resistance to the law by the "governed," as if it were enough to require criminals to turn themselves in. No, the law must be "enforced," as we say. There must be police, and the rulers over the police must use energy (Alexander Hamilton's term) in addition to reason."

If passed HB 2206 will go a great distance toward advancing meaningful enforcement of Kansas' substantive law regarding late term and partial birth abortion and as such restoring respect for the rule of law in Kansas.

**House Committee on Federal and State Affairs**

Tuesday, February 10, 2009

1:30 PM

**Testimony in Support of HB 2206**

Michael Schuttloffel

Executive Director, Kansas Catholic Conference

Mr. Chairmen and members of the committee, my name is Michael Schuttloffel and I am the executive director of the Kansas Catholic Conference. The Kansas Catholic Conference is the public policy arm of the Catholic Church in the state of Kansas. It is my privilege to appear before you on behalf of Kansas's four bishops and over 400,000 Catholics.

It will come as a surprise to no one here that the Catholic Church strongly supports this legislation. The Catholic Church stands in defense of the unborn because we see in them brothers and sisters, fellow members of the human family. They are the most vulnerable among us. What does come as a surprise is the fact that this legislation is even necessary.

With respect to late term abortion, the people of Kansas have spoken and spoken clearly. Kansas has one of the country's strictest late term abortion laws, yet somehow Kansas is the late term abortion capital of the country, if not the Western Hemisphere.

The people of Kansas, through their elected officials, have decided that late term abortions should only be legally permissible in the most dire of circumstances. Yet every person in this room knows full well that late term abortions are being provided in this state to essentially anyone who wants one for any reason.

The will of the people and the law of the land are being defied as a matter of routine.

Virtually every piece of Pro-Life legislation now proposed in Kansas is an attempt to ensure that the laws already on the books are respected. Even when a bill attempts to break new ground, it is in service of either the letter or the spirit of already existing Kansas law. This bill is no exception.

House Bill 2206's most potent language would require an abortionist to inform the mother that "the abortion will terminate the life of a whole, separate, unique, living human being." This language, which has been upheld as constitutional by the 8<sup>th</sup> Circuit Court, does nothing more than state the obvious.

My wife and I recently had the pleasure of viewing the sonogram of our unborn child. What we both plainly saw can only be described as human. Our baby has eyes, a mouth, arms and legs. The child has its own fingerprints.

More important than all that, the child has its own blood – and it is of course human blood. The child has its own unique brainwaves. It has had a heartbeat for months now. It has its own

House Fed & State Affairs

Date: 2-10-09

Attachment 3

unique DNA – human DNA. Folks, I'm not a doctor, but I'm here to tell you: when two dogs procreate, a monkey doesn't result. When two giraffes get together, we don't see a bird materialize. Ladies and gentlemen, when two human beings create offspring, that offspring is human.

And when that human offspring is alive, its heart is beating, its brain is functioning, and it's viable, what in the world are we doing trying to conceal these facts from a woman? Is that deception somehow in her service? I think not.

By supporting this bill, we seek to empower women with information. Women should be fully informed about any medical procedure. We cannot, in the name of women's rights, dismiss the right of women to be informed. We cannot dismiss the right of women to make an informed decision rather than an uninformed decision she may well come to profoundly regret. We cannot tolerate practices which seek to deceive women, to railroad women into a quick decision, in the name of the almighty dollar.

Yet this is precisely what occurs when abortionists tell women that their baby is just a piece of tissue and that they will feel better when it's all over.

The Catholic Church grieves that abortion is even possible. But while it is, we are confident that by empowering women with full and scientifically factual information, and by encouraging respect for the law and for the sanctity of human life, America will one day 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 the pursuit of Happiness. And foremost among these is life.

Thank you very much for listening to my testimony.

**Feb. 10, 2009**

**Federal / State Affairs Committee of the Kansas House**

**Proponent HB 2206, Michelle Armesto-Berge**

Good afternoon chairman Neufeld and members of this committee. Thank you for allowing me to address you today in support of improving late-term abortion enforcement in this state. As I understand House Bill 2206, it will close many loopholes and will prevent other women from the devastating damages I have experienced.

Approximately six years ago I was approaching high school graduation in Kansas, but had a secret from my parents. Although I didn't physically show it very much, I was about 25 weeks pregnant. I was madly in love with my fiancé Pedro (now my husband) and intended to move into his parents' home and start our life together with our baby.

My extended family was coming to celebrate my graduation and my plan was to tell my parents when I had the advantage of other relatives there to help support my plan. Unfortunately, a week before that, my mom discovered my pregnancy and found Dr. Tiller's ads on the internet.

**COERCED BY TILLER & MY FAMILY**

I told her abortion was murder and that I wouldn't do it. But they isolated me from outside influences, including Pedro, and put me on the phone with Dr. Tiller's counselor, who spent twenty minutes convincing me to abort the baby and go to college. My mother also mentioned how my dad was wanting to kill everyone of my fiancé's family members. I was told that I would be kicked out of my family if we did not get to Dr. Tiller's for the next cycle of abortions beginning in two days. At this point I became numb and just went through the motions.

**RUSHED THROUGH THE MILL**

At Tiller's, I joined a group of 3 other teens and one older woman, all who looked 6 - 8 months pregnant. Through conversation, I learned they were all there because of unreliable boyfriends or ambitious parents, like mine, who thought that abortion would solve a problem. Not one of them, myself included, was facing a dire threat to their health.

After our group watched a video on "Dr. Tiller's legacy", a nurse took me into a room and prepared me for an ultrasound. When I tried to view the screen, the nurse turned it away. I went next to another room where a female doctor injected my unborn child with poison.

House Fed & State Affairs

Date: 2-10-09

Attachment 4

## **MEDICAL RIGHTS VIOLATED**

Only AFTER these procedures was my blood sample taken and medical questionnaire filled out. Only AFTER my child was killed, was I given a consent form. Then I was sent to a hotel in preparation to deliver my dead child.

On the second day, I met with Dr. Tiller, but it was only for a very few minutes and the subject was mostly how he would have had his children do the same thing if they were in my shoes.

Meanwhile, Pedro had suspected I had been whisked away to Wichita for an abortion, and after searching many hotel lots, found our car. But it was too late— our baby was dead. Pedro left after my mother had called the police, because there was nothing he could do.

On the third day, I was made to sit on a toilet at Tiller's facility as my labor peaked. I resented this position and yelled at the nurse and remember distinctly the horrible sight of my dead baby on the floor to the left of the toilet. That image still haunts me regularly, and has hit even harder during the birthing of my 3 other children.

I was rushed home with a lot of bleeding and cramping but Tiller's clinic never did any follow up care, or even a call. I suffered a lot, but Pedro and I did get married and are happy together raising a family.

Years later, when the news media started covering Tiller controversies, I read that late abortions had to have strict medical reasons and the opinion of a second doctor. I started thinking how that did NOT match my experience. I sent for my medical file and found that Tiller had listed my pregnancy as non-viable and had dated it earlier than I knew it to be.

## **AGENCIES CONTACTED**

I contacted an attorney, but time had run out under the statute of limitations. In September 2007, I testified to your special interim committee and then I filed a complaint with the state Board of Healing Arts. I have been interviewed there thoroughly, but I must say the interviewers reacted as if they supported Tiller and not my situation. They have seen all my paperwork and yet, 17 months later, nothing has been done.

In addition, my attempt to work with Nola Foulston, Sedgwick D.A., was infuriating. Even though I was an emancipated married woman, Foulston notified my parents, who discounted my account of their coercion. I had hoped the Wichita grand jury would interview me, but they didn't.



## **HOW I WAS VICTIMIZED**

I am angry that the Kansas abortion law was not followed in my case. I was forced to abort, but if Tiller and his staff had obeyed the law, I might have escaped the hell of that experience.

~ I should have had proper counseling, reinforcing what my heart told me, that this was a whole unique human being, instead of pushing literature from a group called "Catholics for a Free Choice" defending abortion.

~ Tiller's staff should have properly noted my baby's true gestational age, and I would have had to wait for a second physician referral. During that time, Pedro would have found me.

~ Tiller's staff should have honestly admitted my child was viable and I had no physical life-threatening or impairing condition, and sent me home.

~ I should have had a proper physical exam and doctor consultation 30 minutes prior to the procedure, not a PR video about Tiller.

## **THE EFFECT OF HB 2206:**

~ Dr. Tiller would be more careful to follow the law if he knew he would lose his license.

~ Women in a situation like mine, would see a second physician not financially in cahoots with Tiller, who would detect that they are coerced and not in any health danger.

~ Women in a situation like mine, would receive a written notice signed by both doctors and be able to sue for damages.

Thank you for your attention to these matters. I am submitting written testimony to your committee tomorrow, in support of HB 2206, relating to coercion and informed consent.

Michelle Armesto-Berge  
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Topeka, KS 66604

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**Proponent, HB 2206  
House Fed/State Committee - Feb.10, 2009**

**Good afternoon Chairman Neufeld and members of this committee,**

As State Legislative Director for Kansans for Life, I was both an observer and participant in the 2007 Fed/State interim hearings on late term abortion. After a generous amount of time and energy was devoted to these hearings, Kansans for Life was disappointed that the final conclusion of the panel was merely a re-instruction to KDHE, as worded in last year's HB 2615 and this year's HB 2011, and as had already been vetoed by Gov. Sebelius as a budget proviso in May 2007.

Clearly, the KDHE testimony confirmed that they are not eager to screen or reject physician answers as to reasons abortions are performed on viable fetuses — they said even an Attorney General opinion would not change that. And we do not expect Gov. Sebelius to experience a change of heart in this arena, and order a shake-up at either the A.G.'s office or the health agency.

Thus, the dilemma remains how to command a state agency to carry out the intent of the 1998 late term abortion ban, noting that over 5,000 of these abortions have occurred instead of the intended scant few.(see attached chart)

HB 2206, largely composed of provisions of last year's CARA bill, goes a long way toward that goal. It does contain *[pages 1,2,8,9,10]* **language similar to HB 2011** to prod KDHE to follow the letter and the spirit of the reporting law, and to specify its rule-making authority. But **HB 2206 puts more arrows in the quiver, to be aimed at related enforcement failures.** Specifically:

- 1) institutes a sworn statement attesting that the 2 consulting practitioners are unaffiliated** *[page 1, line 40-43]* **both having Kansas medical license** (which is a 1998 KSBHA rule) *[page 8, line 5]* **and they provide the woman with a written medical diagnosis** *[spelled out at page 8, line 7-11]* at the already existing protocol of patient/physician interaction **30 minute-before-procedure** *[page 8, lines 15-38]*
- 2) requires the KDHE to receive the name of the referring physician** *[page 9, line 38 and page 10, line 6]* **and adds rule-making authority about the public report** *[page 2, lines 32-39]*
- 3) changes the optional license revocation by KSBHA to a mandatory consideration after conviction of illegal late-term abortion** *[page 3, lines 14-17]* **and allows civil remedies for the woman, her spouse and (if she's under 18) her parents or guardian** *[page 10, lines 37-43 and page 11, lines 1-6]*



- 4) removes a conflict in viability definitions between 65-6701 and 65-6703 [page 7, lines 36-43]
- 5) allows prosecution by A.G. or a D.A. in the county in which acts requisite to the crime occurred [page 11, lines 7-11]
- 6) adds a statement to information required 24 hours prior to abortion that “abortion will terminate the life of a whole, separate, unique, living human being” [page 12, lines 25-26]
- 7) revises the Partial Birth Abortion statute to reflect the federal ban upheld by the U.S. Supreme Court Gonzales decision, April 2007, including civil remedies [pages 13-14]

These are all necessary provisions for cleaning up the scandal of Kansas abortion law-breaking. To wit: In a 2001 self-promotional video, George Tiller lumps child abuse, homelessness, financial troubles and occupational issues, as “substantial and irreversible” reasons for abortion! (see attachment) In 2005, the LA Times boldly published women’s stories of how they obtained viable abortions at Tiller’s for Down syndrome and other non-lethal fetal conditions. The disciplinary counsel for our state Board of Healing Arts admitted in the 2007 interim hearing that they have been permitting viable abortion for suicidal thoughts and other reasons not allowed in K.S.A.65-6703.

You heard from Michelle Armesto-Berge-- another victim of this scandal. She didn’t even know what the law was until the statute of limitations was past. And she has not gotten justice from the health department, medical board, A.G. or Governor. The Sedgwick county district attorney dismissed her grievances as family squabbles. Does this committee care that she was coerced into an **illegal late term abortion, begun even before her blood work and consent form were completed? The D.A. doesn’t.**

And does this committee believe that there aren’t others similarly victimized? Michelle said that other teens that day were getting late-term abortions for non life-threatening reasons. Another provision of HB 2206 outlines civil remedies for families of victims of illegal abortion. Just as O.J. Simpson escaped jail but was successfully sued civilly, law-breaking abortionists should also be civilly liable to victims and their families.

In addition, the new majority on the state Supreme Court are not reassuring the public in this arena. Not only have they entertained EVERY motion that George Tiller and Planned Parenthood have thrown at them, and stolen 3 months time from a duly impaneled grand jury, they uniquely designated a district court judge into a special facilitator of abortion records and have silenced him when he found fraud. And Tiller-- awaiting trial for 19 charges-- and Planned Parenthood-- with 107 charges-- remain the cash cows of Kansas politics.

So, frankly, we dare not put all our hopes SOLELY into beefed-up instructions to a state health agency, as found in HB 2011. The U.S. Supreme Court created this abortion mess and they dictate the ground rules. Their last abortion decision, *Gonzales* in April 2007, reaffirmed that states have the right to **promote fetal life, protect the integrity of the medical profession and ensure that the abortion choice is informed.** HB 2206 follows that instruction and Kansans for Life recommends passage of HB 2206. Thank you.

Kathy Ostrowski  
Kansans for Life Legislative Director

**KANSAS LATE TERM ABORTIONS**

	<b>Number of Post-22 week Abortions</b>	<b>VIABLE Resident/Non-resident</b>	<b>NON-VIABLE Resident/Non-resident</b>
<b>1998</b>	Jan 1-June 30: <b>359*</b> July 1-Dec 31: <b>227</b>	(not collected) <b>0 / 91</b>	(not collected) <b>18 / 118</b>
<b>1999</b>	<b>574</b>	<b>9 / 293</b>	<b>53 / 219</b>
<b>2000</b>	<b>639</b>	<b>12 / 368</b>	<b>47 / 212</b>
<b>2001</b>	<b>635</b>	<b>10 / 385</b>	<b>40 / 200</b>
<b>2002</b>	<b>564</b>	<b>14 / 342</b>	<b>48 / 160</b>
<b>2003</b>	<b>491**</b>	<b>11 / 307</b>	<b>34 / 138</b>
<b>2004</b>	<b>518**</b>	<b>8 / 287</b>	<b>30 / 192</b>
<b>2005</b>	<b>414</b>	<b>5 / 235</b>	<b>29 / 145</b>
<b>2006</b>	<b>380</b>	<b>4 / 229</b>	<b>30 / 117</b>
<b>2007***</b>	<b>293</b>	<b>1 / 167</b>	<b>24 / 101</b>
<b>Totals</b>	<b>5,094</b>	<b>2,778</b>	<b>1,955</b>

\*New law in effect July 1, 1998 requiring additional information on abortions performed post-22 weeks.

\*\*One "not stated" whether fetus was viable.

\*\*\*2007 statistics reflect the 10th year running (since such statistics have been kept) that NONE of the post-22 week abortions in Kansas are reported as performed to prevent the *death* of the mother.

Data provided by Kansas Department of Health and Environment, <http://www.kdheks.gov/hci/absumm.html>

House Fed & State Affairs  
Date: 2-10-09

Attachment 6



# Does Tiller Perform Late-Term Viable Abortions Only for Dire Medical Cases?

## Late Abortion Care Elective

<http://www.dr-tiller.com/elect.htm>

### Abortion Counseling & Consultation | Procedure

At Women's Health Care Services, we specialize in "late" abortion care. We are able to perform elective abortions to the time in the pregnancy when the fetus is viable. Viability is not a set point in time. Viability is determined by the attending physician and is based on sonogram results, physical examination and last menstrual period date (if known). Our telephone counselors will ask you a number of medical questions to determine if you are eligible for an elective abortion. If you have visited another clinic or physician, we will ask for the results from a recent ultrasound.

Kansas law allows for post-viability abortion procedures when continuing the pregnancy is detrimental to the pregnant woman's health. Each person's circumstances are reviewed on a case-by-case basis. Please call so that we can discuss admission criteria with you.

Dr. George R. Tiller's website advertises "2nd Trimester Elective and 2nd/3rd Trimester Therapeutic Abortion Care". Use of "detrimental to pregnant woman's health" overstates the exceptions to the Kansas ban on post-viable abortions.

The phrase "case by case" is a routine medical phrase until re-examined in light of what former Tiller employee, Luhra (Tivis) Warren revealed:

*"I was required to falsify the medical records. But not just that, related to that, I was required to lie to the women over the phone. And the way*

*he'd explain it to me was, without coming right out and saying it, these are really third trimester abortions, but we're going to tell them they're only in the second trimester. They would say, well, I've already had a sonogram, and my bpd was 7.8 or 8.3 or whatever. He said, when they tell you that, don't turn them away as being too far along. **Tell them to come in, and we'll do our own sonogram, and it will show they're not that far along.** Tell them that sonogram reading is an art, not a science. He explained to me that the bpd is a measurement of the angle of the baby's head, where at that angle, the baby's head is roughly egg-shaped. The usual way that you measure the bpd is from the top of the egg to the bottom of the egg, which is at the widest point. But we measure it from side to side, at the narrowest point." (Celebrate Life Magazine Sept/Oct 1994)*

In his 2001 video entitled, "Philosophies & techniques of late term abortion services at Women's Health Care Services" Tiller addresses women headed to Wichita for abortions. (<http://www.dr-tiller.com/images/reasons.mp3>)

On camera, Tiller claims he has performed over 60,000 abortions and touts his "expertise and major interest in late terminations of pregnancy." He recites a long litany of **non-life-threatening and non-medical reasons** women come to his business:

"Your presence here this morning means that something is going dramatically wrong in your life. You may be here to end a pregnancy early because of fetal abnormality to save your unwell, unborn child from a lifetime of pain, suffering, disability, & hardship.



House Fed & State Affairs

Date: 2-10-09

Attachment 7



On the other hand, you may be here because of some of your own issues of survival. You may have issues of domestic violence: rape, incest, spouse abuse, or child abuse.

You may have issues of your own health. You may have some serious disease process: cancer, lymphoma, diabetes, high blood pressure, heart disease, or any one of a number of the other medical problems that can afflict women of child bearing age.

You may have some issues of age yourself. You may be 9, 10, 11, 12, 13, 14, 15 years of age. On the other hand, you may be at the end of the other spectrum of fertility. You may be 40, 45, 50, 55, or even 60 years of age.

There may be some issues of poverty such as homelessness. You may have some occupational issues. You may have some financial issues.

But, for whatever reason that you are here, we find that there are many reasons why women find that continuing the pregnancy will cause substantial and irreversible impairment of their physical health, their mental health, their emotional health, their family health, age of the patient, safety and well-being... for whatever reason that you are here, welcome to Wichita, and thank you for the opportunity to be helpful to you.”

---

The above situations legally acceptable for abortions on **non-viable** babies are intermixed by Tiller with the legal language of very limited medical conditions for which post-viability abortions are legally available under K.S.A. 65-6703, (b) 4:

*...(when) the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is **necessary to preserve the life of the pregnant woman** or that a continuation of the pregnancy will cause a **substantial and irreversible impairment of a major bodily function of the pregnant woman**...*

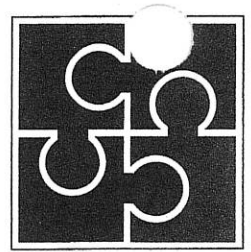
**After the unborn is viable, abortions are NOT ALLOWED in Kansas** for fetal abnormality, inconvenient maternal age, poverty, family stress, manageable medical situations, etc. If Tiller is using such illegal maternal diagnoses for post-viable abortions, that would explain **why he fails to provide the reasons and basis for maternal diagnoses in KDHE reports**, also required by law.

The Tiller video explains the details of intrauterine fetal demise over a 3-day time frame -- the procedures used in late-term abortions -- with Tiller substituting “premature delivery of a stillborn” for the actual terms “late-term abortion.”

Tiller’s website & video—and Ms. Warren’s testimony—are disturbing indications **Tiller may be fudging fetal & maternal determinations** and violating Kansas law, which is based on a ‘prudent physician standard’ to assess gestational age & viability and to diagnose a life-threatening medical situation of the mother.

10 February 2009

Chairman Melvin Neufeld  
House Federal and State Affairs Committee  
300 SW 10<sup>th</sup> St. Suite 161 W  
Topeka, KS 66612



ProKanDo

[www.prokando.org](http://www.prokando.org)

Dear Chairman Neufeld and Committee Members:

I want to thank you for this opportunity to testify today as an opponent to House Bill 2206.

My name is Julie Burkhart and I am the lobbyist for ProKanDo and for Women's Health Care Services; the former being a pro-woman advocacy organization and the latter being a reproductive health care facility.

Over the past few years, we have seen bills, such as these, that seek to further regulate physicians' practices and to further obstruct access for women and their families who are in need of critical health services.

I stand before you today to voice my opposition to this bill, as it seeks to put certain political and moral beliefs before a physician's best medical judgment, as well as denying women full and comprehensive access to health care.

My objections are as follows:

1. The bill seeks to single out and target one abortion provider in the state due to his specialty practice of late termination of pregnancy. This is part of an ongoing campaign by anti-choice activists to close the doors of Women's Health Care Services.
2. This appears to be a continuation of former Attorney General Phill Kline's quest for personal and sensitive information regarding women's medical care. Hence, another attempt by the government to put its nose under the tent of the medical profession, which second guesses the judgment of the physician.
3. The bill attempts to narrowly define and limit the physician's best medical judgment so there is less room for autonomous medical decision making on behalf of patients.
4. The bill undermines the rights that women have to make their own health care decisions. The bill would give the spouse of the woman and the parents or custodial guardians of a minor the right to file for injunctive relief. This would undercut women's independent decision making.

Julie Burkhart  
*Chair*

Lyndsay Stauble  
*Treasurer*

*Protecting Women's Rights at the State Level*

5. This bill raises serious legal questions and could result in costly litigation that would burden Kansas taxpayers in an already difficult economic climate.
6. HB 2206 seeks to shame women into continuing a pregnancy that may not be the best decision for them. We must not forget that women have the intellectual capacity to make sound decisions about their health care, in conjunction with a qualified medical provider.

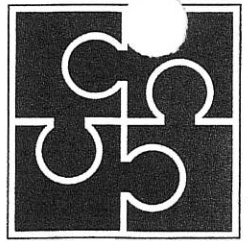
I urge the Committee to reflect upon these objections to House Bill 2206. I urge the Committee to reflect upon the various reproductive health needs that women face on a daily basis.

We must honor the differing belief systems that we all have. We must honor the tried and true doctrine of medical practice and the patient relationship. We must honor women and their families, and their ability and right to make autonomous decisions regarding their health. We must trust women to make these difficult and challenging decisions – after all, these are the very women who give life and who are our mothers and grandmothers.

I urge you to reject HB 2206. Once again, thank you for allowing me to present testimony before the Committee today.

Most Sincerely,

  
Julie Burkhart



**ProKanDo**

[www.prokando.org](http://www.prokando.org)

Julie Burkhart  
*Chair*

Lyndsay Stauble  
*Treasurer*



**Written Testimony of Holly Weatherford, J.D.**

**Kansas Public Affairs Manager of**

**Planned Parenthood of Kansas & Mid-Missouri,**

**in opposition to House Bill No. 2011 and House Bill No. 2206**

**before the**

**House Federal and State Affairs Committee**

**of the Kansas Legislature**

**February 10, 2009**

House Fed & State Affairs

Date: 2-10-09

Attachment 9

Good afternoon. My name is Holly Weatherford and I am the Kansas Public Affairs Manager for Planned Parenthood of Kansas and Mid-Missouri. Thank you for this opportunity to present testimony on our opposition to HB 2011 and HB 2206. In Kansas, Planned Parenthood maintains family planning health and education centers in Wichita, Hays, Lawrence and Overland Park. One of our most important goals is to help men and women make responsible choices that prevent unintended pregnancies. More than ninety percent of our patients come to our agency for family planning and other preventive health services. At our Comprehensive Health facility in Overland Park, we also provide safe and legal abortion care for women in their first and second trimesters of pregnancy.

Proponents of HB 2011 and HB 2206 would have you believe that abortions are dangerous and that physicians who provide abortion care operate under veils of deceit and dishonesty. They claim they simply want to improve the safety of abortion services in Kansas by enacting various restrictions to a woman's ability to access such services when in fact they seek to chip away at a woman's ability to access safe and legal abortion care piece by piece.

These two bills are unnecessary to track abortions performed in Kansas or to properly keep track of medical statistics and also provide an unnecessary cost to Kansas on the heels of a growing budget deficit. Physicians in Kansas are already required to report the number of pregnancies lawfully terminated during an identified period of time. Additionally, on question 13a and 13b of the *Report of Induced Termination of Pregnancy*, physicians are already required to report the type of procedure used. Additionally, questions 14 through 16c are required for procedures performed at 22 weeks or more and include reasons and basis for determinations.

These additional reporting requirements are also unclear. By providing criminal penalties, civil actions and loss of medical license for violating sections of Kansas abortion law while failing to provide clear standards for those who apply and enforce it, the law creates a trap for physicians trying to make a good faith effort to follow the law. The result is that physicians are uncomfortable performing abortions beginning at 22 weeks of pregnancy for fear that they will be taken before the Board of Healing Arts, their records subpoenaed, and referred for prosecution based on someone else's interpretation of the standards for exercising professional judgment in



determining viability. This is not only a violation of the physician's right to due process; it also, in the chilling effect it has on a woman's ability to obtain constitutionally protected pre-viability abortions, creates an undue burden on that right.

Speaking more specifically to the civil causes of action contained in this bill, Planned Parenthood does not oppose an individual's right to seek civil damages for negligent medical care. Planned Parenthood does oppose an additional and separate civil cause of action for the violation of a statute. The goal of anti-choice hardliners is to make abortion illegal, and until then, impossible through physical and legal harassment. These provisions do just that by exhausting the financial resources of abortion providers, which in turn restrict access to safe and legal abortion services.

The amendment to K.S.A. 65-6709, or Woman's-Right-To-Know Act, is troubling. This amendment would require the physician to inform the woman that "the abortion will terminate the life of a whole, separate, unique, living human being". In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the United States Supreme Court upheld a state law requiring that certain information be provided to the patient 24 hours prior to her abortion by her attending or referring physician. The Court also held that compelling the provision of information designed to discourage abortion is permissible so long as the information is truthful, not misleading, and reasonably related to the practice of medicine. The Court has never reconsidered its holding in *Casey* that the state-mandated information must be truthful, not misleading, and reasonably related to the practice of medicine. This issue, however, is currently being played out in the U.S. Court of Appeals for the Eighth Circuit. In 2005, Planned Parenthood Minnesota, North Dakota, South Dakota (PPMNS) challenged a South Dakota law that would require a doctor to tell a woman seeking an abortion that the procedure "will terminate the life of a whole, separate, unique, living human being" and that "by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated." On April 11, 2007, the entire eleven-judge panel of the Eighth Circuit heard oral arguments in its review of a decision by a three-judge panel of that court which had found that PPMNS was likely to succeed in its claim that the law violated physicians' First Amendment free speech rights. The full court has not yet ruled.

The language in this bill is similar to that contained in the South Dakota law and therefore could potentially be found to violate physicians' First Amendment free speech rights.

It is also important to note that throughout Kansas abortion law the term fetus is used, but in this bill, when information is being given to the woman the fetus is referred to as “human”. Current Kansas law already requires that patients receive relevant and accurate information prior to any medical procedure. Instead of informing and empowering women confronted with the decision whether to have an abortion, this bill uses misleading information and coercive tactics proving to be an unnecessary government intrusion on a woman’s relationship with her health care provider.

Finally, the amendments to K.S.A. 65-6721 appear to be in conflict with the United States Supreme Court’s decision in *Gonzales v. Carhart*, 550 U.S. 124 (2007), upholding the federal Partial-Birth Abortion Ban Act. Although the current federal law contains an extensive description of what constitutes a “partial-birth” abortion, it does not use medical terminology and fails to track the medical definition of the procedure it is claimed to target, an intact dilation and extraction or D&X. Therefore, the federal law could be interpreted to ban the most common abortion procedure performed throughout the second trimester, dilation and evacuation or D&E. Justice Anthony M. Kennedy, writing for the majority, clearly identifies D&X as the only procedure prohibited.

HB 2206 removes all exceptions to the Kansas so-called “partial-birth abortion” law, including the D&E procedure, and inserts a definition that is so vaguely written that it could be interpreted to ban a broad range of abortion procedures. An attempt to ban safe and legal abortion care exhibits no desire to protect the health and well-being of women. Eliminating access to safe abortions doesn’t eliminate access to unsafe alternatives. Planned Parenthood urges this Committee and the Kansas Legislature to respect physicians’ medical decision-making and protect the doctor-patient relationship.

In closing, Planned Parenthood asks this Committee to oppose HB 2011 and HB 2206 as they seek only to place more unnecessary burdens on abortion providers and women seeking abortion care and does nothing to actually prevent unintended pregnancy or reduce the number of abortions in Kansas.

## CURRENT STATUS OF KANSAS LAW ON REPRODUCTIVE HEALTH CARE

### KANSAS LAW

The following restrictions to abortion have been passed by the Kansas General Assembly, approved by the Governor and are currently enforced as law:

- **Mandatory information and physician requirements:** K.S.A. 65-6709 requires that women of all ages, except in medical emergencies, certify that they have received certain specific information from a health care provider at least 24 hours before an abortion is to be performed, including materials printed by the State concerning fetal development, abortion procedures and community resources; requires the physician who will perform the abortion to meet privately with the woman before any part of the procedure has taken place. 1997
- **Post-viability ban:** K.S.A. 65-6703 criminalizes post-viability abortions unless the abortion is performed by a physician with a documented referral from an independent physician who agrees that the abortion is necessary to preserve the life of the pregnant woman or that continuation of the pregnancy will cause substantial and irreversible impairment of a major bodily function; requires physicians performing abortions to: determine and document gestational age, and--for those fetuses of 22 weeks or more gestational age--determine and document whether the fetus is viable, and to report such determinations and the basis for same to the Secretary of Health and Environment along with other statistical information about all abortions performed required by K.S.A. 65-445. 1992, 1993, 1998
- **Abortion procedure ban:** K.S.A. 65-6721 criminalizes abortions performed using the intact dilation and extraction method after the fetus becomes viable unless the physician can document that: (1) the abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major physical or mental function of the pregnant woman. 1998
- **Data collection for bogus abortion-breast cancer link:** K.S.A. 65-1,172 allows confidential health data to be used for investigating the possible cancer risk related to having an abortion. 1997
- **State funds for crisis pregnancy centers, excluding Planned Parenthood:** K.A.R. 28-4-1400 establishes the Stan Clark Pregnancy Maintenance Initiative Grant Program, which awards grants to not-for-profits for services that enable women to carry their pregnancies to term. No organization that refers for, promotes or educates in favor of abortion may apply for the grant. 2005.
- **Parental notification:** K.S.A. 65-6705 provides criminal penalties for physicians who perform an abortion on a minor without first notifying one of her parents or guardians, or obtaining written documentation that such notice has been given, or without evidence that a court has waived the notification requirement; this section also specifies procedures for seeking a judicial waiver of the parental notification requirement. 1992, 1993
- **Mandatory counseling for minors:** K.S.A. 65-6704 specifies special counseling requirements for a minor seeking abortion and that she be accompanied to the counseling by an "interested" adult over the age of twenty-one not affiliated with the abortion provider. 1992
- **Insurance restriction for minors:** K.S.A. 38-2003 excludes abortion from health services covered

under the State children's insurance program, unless (1) the pregnancy is the result of an act of rape, aggravated indecent liberties with a child or incest; or (2) if necessary to save the life of the pregnant woman. 1998

- **Minor fetal tissue collection:** K.A.R. 16-10-3 requires physicians who perform abortion on minors under 14 years of age to collect, preserve and submit fetal tissue to the K.B.I for use as evidence in child rape prosecutions. The minor and her parents' names and addresses must also be reported to the K.B.I. 2005
- **Abortion conscience refusals:** K.S.A. 65-443 allows individuals to refuse to perform or participate in medical procedures that result in the termination of a pregnancy. 1969, 1975. K.S.A. 65-444 allows hospitals, hospital administrators or governing boards to prohibit the termination of pregnancies within their institutions. 1969, 1970
- **Pharmacist conscience refusals:** K.S.A. 65-1637 allows a pharmacist to refuse to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled. 1998
- **Sterilization conscience refusals:** K.S.A. 65-446 allows individuals to refuse to perform or participate in medical procedures that result in the sterilization of a person. 1971
- K.S.A. 65-447 allows hospitals, hospital administrators or governing boards to prohibit procedures resulting in sterilization within their institutions. 1971
- **Ban on use of State facilities for abortions:** K.S.A. 76-3308 prevents any medical facility, hospital or clinic owned, leased or operated by the University of Kansas Hospital Authority from performing an abortion, except in the event of a medical emergency. 1998
- **Application of certain crimes to an "unborn child":** K.S.A. 21-3452 defines "unborn child" as a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth. 2007
- **Miscellaneous restriction:** K.S.A. 65-6706 (a) prohibits a person from offering to pay for an abortion in exchange for the fetal organs or tissues; and (b) prohibits the sale of fetal organs or tissue. 2000

The following bills supporting contraception, abortion access and protections from violence against pregnant women were approved and are in effect.

- **Birth control protection:** K.S.A. 65-6702 (a) prevents the state and its subdivisions from prohibiting the use of contraceptives or the disposition of the products of in vitro fertilization prior to implantation. 1992
- **State jurisdiction over abortion:** K.S.A. 65-6702 (b) prohibits political subdivisions of the state from regulating or restricting abortion. 1992

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
Office of Health Care Information  
Curtis State Office Building, Suite 130  
1000 SW Jackson  
Topeka, Kansas 66612-1354  
785-296-8627

Report of Induced Termination of Pregnancy

State File Number

INSTRUCTIONS SEE HANDBOOK

1. Provider Identification Number				State File Number			
2. Patient ID Number		3. Age on Last Birthday		4. Married <input type="checkbox"/> Yes <input type="checkbox"/> No		5. Date of Pregnancy Termination Month: <input type="text"/> <input type="text"/> Day: <input type="text"/> <input type="text"/> Year: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
6a. Residence US State or Country		6b. County		6c. City or Town		6d. Inside City Limits <input type="checkbox"/> Yes <input type="checkbox"/> No	
7a. Hispanic Origin <i>(Check the box or boxes that best describes whether the individual is Spanish, Hispanic, or Latina, or not Spanish, Hispanic, or Latina)</i>		7b. Ancestry <i>(Enter the name of the country that best describes the heritage or origin of the individual)</i>		8. Race <i>(Check one or more races to indicate what the individual considers herself to be)</i>		9. Education <i>(specify only highest grade completed)</i>	
<input type="checkbox"/> Not Spanish, Hispanic, or Latina <input type="checkbox"/> Mexican, Mexican American, or Chicana <input type="checkbox"/> Puerto Rican <input type="checkbox"/> Cuban <input type="checkbox"/> Central American <input type="checkbox"/> South American <input type="checkbox"/> Other Spanish, Hispanic, or Latina (specify) _____ <input type="checkbox"/> Unknown				<input type="checkbox"/> White <input type="checkbox"/> Black or African American <input type="checkbox"/> American Indian or Alaska Native Principal Tribe(s) _____ <input type="checkbox"/> Asian Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Other Asian (specify) _____ <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Samoan <input type="checkbox"/> Other Pacific Islander (specify) _____ <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Unknown		<input type="checkbox"/> 8th grade or less <input type="checkbox"/> 9th-12th grade no diploma <input type="checkbox"/> High school graduate/GED <input type="checkbox"/> Some College - no degree <input type="checkbox"/> Associate degree <input type="checkbox"/> Bachelor's degree <input type="checkbox"/> Master's degree <input type="checkbox"/> Doctorate <input type="checkbox"/> Unknown	
10. Date Last Normal Menses Began Month: <input type="text"/> <input type="text"/> Day: <input type="text"/> <input type="text"/> Year: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		11. Clinical Estimate of Gestation (Weeks)		12. Previous Pregnancies <i>(Enter number or zero in every section)</i>			
				Live Births 12a. Now Living: <input type="text"/> 12b. Now Dead: <input type="text"/>		12c. Previous Induced Abortions: <input type="text"/> 12d. Spontaneous Terminations (Miscarriages, Fetal Deaths): <input type="text"/>	
<b>13 TERMINATION PROCEDURES</b>							
13a Procedure that terminated pregnancy <i>(Check only one)</i>				13b Additional procedures used for this termination, if any <i>(Check all that apply)</i>			
<input type="checkbox"/> Suction Curettage <input type="checkbox"/> Sharp Curettage <input type="checkbox"/> Dilatation & Evacuation <input type="checkbox"/> Medical Procedure I (Mifepristone) <input type="checkbox"/> Medical Procedure II (Methotrexate) <input type="checkbox"/> Intra-Uterine Prostaglandin Instillation <input type="checkbox"/> Hysterotomy <input type="checkbox"/> Hysterectomy <input type="checkbox"/> Digoxin/Induction <input type="checkbox"/> Partial Birth (2) <input type="checkbox"/> Other (Specify) _____				<input type="checkbox"/> Suction Curettage <input type="checkbox"/> Sharp Curettage <input type="checkbox"/> Dilatation & Evacuation <input type="checkbox"/> Medical Procedure I (Mifepristone) <input type="checkbox"/> Medical Procedure II (Methotrexate) <input type="checkbox"/> Intra-Uterine Prostaglandin Instillation <input type="checkbox"/> Hysterotomy <input type="checkbox"/> Hysterectomy <input type="checkbox"/> Digoxin/Induction <input type="checkbox"/> Partial Birth (2) <input type="checkbox"/> Other (Specify) _____			

1 If clinical estimate of gestational age is 22 weeks or more, complete reverse side of form  
2 If Partial Birth Procedure as defined by KSA 65-6721 is used, complete reverse side of form



Complete the following items only if the clinical estimate of gestational age is 22 weeks or more

Reasons for determining gestational age 22 weeks or more

15a Was fetus viable?  
 YES       NO

15b Reasons for the determination

Complete 16a-c only if 15a is yes

16a Was this abortion necessary to  
(Check all that apply)

Prevent patient's death  
 Prevent substantial and irreversible impairment of a major bodily function

16b Reasons for determination

16c Basis for determination

Complete the following items only if a partial birth procedure was performed

17a Was fetus viable?  
 YES       NO

17b Reasons for determination

Complete 18a-b only if 17a is yes

18a Was this abortion necessary to  
(Check all that apply)

Prevent patient's death  
 Prevent substantial and irreversible impairment of a major bodily function  
If so, was the impairment

Physical  
 Mental

18b Reasons for determination



February 10, 2009

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

I am Judy Smith, State Director of Concerned Women for America of Kansas. CWA of Kansas stands in support of HB 2206.

Terminating a post-viable baby's life is a serious thing and should be strenuously regulated. In spite of efforts to make sure that those who would end that life are subject to strict and stringent boundaries egregious allegations about the mechanism of reporting have abounded in recent years. The question of whether the continuance of a pregnancy would cause "irreversible harm" to the mother has been under scrutiny as well with non-specific diagnoses of "mental health" being the standard for harm to the mother. When one weighs what is at stake...a child's life...and a vague diagnosis of mental health which we now know is a single episode of depression or the deprivation of being able to ride in the rodeo, there is no way that justice is being served.

In addition questions as to whether or not the abortionist uses accepted obstetrical or neonatal standards to determine the gestational age of the fetus have also arisen. It only makes sense that the same standards applied to a child who has the expectation of birth should be applied to those who are under consideration for having their life snuffed out. In fact, even more stringent care should be applied in this case when one considers that the one performing the abortion is profiting from this procedure.

The woman has the right to have all information, including the documented referral and the performing physician's determination in a timely manner, so that she has time to fully understand and know the risks involved with this procedure.

Abortion, particularly late-term abortion is a risky procedure. Law-enforcement should be able to prosecute for criminal acts regarding abortion.

The recent lack of enforcement of duly-passed laws by the tasked agencies and elected officials in Kansas is shocking. This bill's intent is to give the Kansas Department of Health and Environment the specific rule-making authority to ensure that abortion providers are adhering to the law.

In a perfect world, no abortions would ever occur. Unfortunately Kansas has the dubious reputation of being a notorious late-term abortion destination. Most Kansas citizens abhor the idea of ending a life of a nearly-born child; the very least we can do is ensure that the laws restricting this procedure are followed.

Judy Smith, State Director

Concerned Women for America of Kansas

House Fed & State Affairs

Date: 2-10-09

Attachment 12

# Special Committee on Federal and State Affairs

Mike  
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## LATE TERM ABORTIONS

### CONCLUSIONS AND RECOMMENDATIONS

After extensive testimony, the Committee recommends that a bill be drafted giving Kansas Department of Health and Environment rule and regulation authority, specifically to modify late term abortion forms, including adding to the form a section for a specific clinical diagnosis and a reason and basis for that diagnosis.

**Proposed Legislation:** The Committee recommends the introduction of two bills.

### BACKGROUND

The Legislative Coordinating Council (LCC) asked that the Committee review the recent U.S. Supreme Court ruling on late term abortions as it related to Kansas law and receive a briefing from the Kansas Attorney General regarding Kansas abortion law. Review the proviso attached by the House to the Omnibus Appropriation Bill regarding late term abortions. Examine the original intent of the Kansas late term abortion statutes to determine if any additional clarifying language is necessary.

### COMMITTEE ACTIVITIES

#### Review of U.S. Supreme Court Ruling in *Gonzales v. Carhart*

Mike Leitch, Deputy Attorney General, State of Kansas Office of the Attorney General, explained to the Committee that the *Carhart* case was brought to challenge the constitutionality of the 2003 Federal Partial-Birth Abortion Ban Act. Dr. Carhart and others filed suit against the United States Attorney General seeking to strike down the law and to enjoin Attorney General Gonzales from enforcing it.

According to Mr. Leitch, the Federal Partial Birth Abortion Ban Act was limited and

well-defined and prohibited one specific type of abortion procedure. It prohibited a doctor from performing the procedure known as intact dilation and extraction or D and X. These procedures amount to a very small percentage of post-viability abortions. Most post-viability abortions are done with a procedure known as dilation and evacuation or D and E.

The federal statute provides that "(a) Any physician who...knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the *life* of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself..."

The Act had specific definitions:

The term "partial-birth abortion" was defined to mean "an abortion in which the person performing the abortion –

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother,

House Fed & State Affairs

Date: 2-10-09

breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus..."

In the Attorney General's opinion, this decision has little impact in Kansas. As Justice Scalia commonly writes, the meaning of cases is limited by the facts they presented. The facts in *Carhart* involved only a ban on partial birth abortion—one procedure where others were available.

In addition, the Deputy stated that there are two principal reasons why the decision has little impact on Kansas law. First, Kansas already prohibits partial birth abortions in KSA 65-6721. And while that section does contain an exception for the life and health of the mother, to the Attorney General's knowledge, no one in Kansas performs partial birth abortions. Thus, adopting legislation that eliminates the exception would not affect anything happening in Kansas.

#### **House Proviso; Role of Kansas Department of Health and Environment; and Kansas State Board of Healing Arts**

During the 2007 Session the Legislature added a proviso to Senate Bill No. 357 which reads as follows:

"Section 65. (a) On and after the effective date of this act, no expenditures shall be made from moneys appropriated from the state general fund or any special review fund for fiscal year 2008 for the department of health and environment division of health as authorized by chapter 142 or chapter 216 of the 2006 Session Laws of Kansas, by 2007 House Bill No. 2368, or by this or other appropriation act of the 2007 regular session of the legislature, except upon the

approval of the director of the budget acting after ascertaining that the department of health and environment has established and implemented procedures requiring each report by a physician pursuant to subsection (b)(4) of KSA 65-6703, and amendments thereto, to specify that diagnosis and either the condition necessitating abortion to preserve the life of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman which continuation of the pregnancy would case: (b) The terms used in this section shall have the meanings provided in KSA 65-6701, and amendments thereto."

The Governor line-item vetoed this section in its entirety and wrote in her veto message "...The questions required by this proviso are open-ended and request detailed information on a patient's medical condition. Rather than collecting sound data that is able to be properly analyzed and protected, this proviso is likely to have little substantive effect, yet opens up patients' private medical information to public viewing. This measure runs counter to Kansans' strong belief in the importance of medical privacy, and therefore I veto this proviso."

Representative Lance Kinzer, the author of the proviso, informed the Committee that Kansas Department of Health and Environment (KDHE) statistics are less than helpful in getting at whether the abortion was necessary because rather than report, as the law requires, the reasons and basis for such determination, the statistics provided merely restate the statutory language offering no clue as to the actual medical diagnosis used by the physician to justify the abortion. He went on to state that this was the reason that he offered the amendment to the bill; and it was his hope that with clearer reporting, the State would increase compliance with existing law and provide the Legislature with the information necessary to implement public policies to address the causes of and reduce the need for late term abortions. Representative Kinzer said he believes the Legislature should either amend KSA 65-445



to clearly requires a diagnosis or give KDHE more authority to adopt rules and regulations to adjust the forms. He stated that he had a hard time understanding how, if KDHE had sufficient authority under rules and regulations to create the form in the first place, why the Agency does not have sufficient regulatory authority to alter the form.

Greg Crawford, Chief of Vital Statistics Data Analysis for the Kansas Department of Health and Environment, discussed the abortion reporting role of the Department. He stated that he thought that the Department has tried to enforce all of the laws the Legislature had given it, and said that of the 30 cases reviewed by the Legislative Division of Post Audit, the audit indicated that, based on the facts given them, the outcome seemed reasonable. He concluded by saying that one of the functions of KDHE is the collection and reporting of statistics and the other is the dissemination of information. He commented that in collecting the data, the Department makes no judgment on the information obtained from the form and the Department would have no opinion on what to put on the abortion reporting form.

It was pointed out that the partial birth abortion form has a box indicating a mental health exception, but does not have a mental health exception box for late term abortions. Mr. Crawford said he thought that the only thing the form recognizes is that it collects only the information that is required by statute as determined by Agency attorneys.

Ms. Susan Kang, Kansas Department of Health and Environment, stated that because KDHE does not administer or supervise abortions, the Agency has no position on late term abortions. She stated that KDHE's functions are narrow in scope, especially with respect to the collection of data that the Agency receives directly from physicians.

Mr. Larry Buening, Executive Director of the Kansas State Board of Healing Arts, stated that the Board's responsibility with regard to the state abortion laws involves both the Board's Investigation and Disciplinary Program and the Enforcement and Litigation Program. In conducting investigations, the Board's focus is whether any provision of the Healing Arts Act has been violated. KSA 65-2836(b) specifies that a license may be revoked, suspended or limited, or the licensee may be publicly or privately censured upon a finding that "(b) [T]he licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency."

Mr. Buening explained that the Board carries out its responsibility in the Investigation and Disciplinary Program by reviewing each complaint received. Each submission of adverse information received is considered to be a complaint. Every complaint that relates to an abortion or a practitioner who performed an abortion is assigned for investigation. If the complaint involves standard of care issues, the case is sent to a Review Committee. The Review Committees are created by statute (KSA 65-2840c) and are comprised of members who are in the same branch of the healing arts and who are not members of the Board. Even if the review committee recommends that the standard of care was met, a report of all cases is submitted to the Disciplinary Panel for its review and consideration.

In implementing KAR 100-25-2 and 100-25-3, the Board asked on both the 2006 and 2007 renewals whether licensees performed office-based surgery. All practitioners who responded in the affirmative have had their offices inspected for compliance with the rules and regulations.

Mr. Buening explained that when a reviewer gets into the mental health part of an abortion complaint, it becomes much more difficult for the Board or anybody to determine in a retrospective



review of the two physicians' opinions, whether they were proper. He stated the mental state of the individual is not going to be the same in a day, week, or month after the abortion was performed. He said he was not a physician, and he could not say when a person can question whether a mental health diagnosis was valid; every case must be determined on the individual facts and what the record reflects.

Ms. Shelly Wakeman of the Kansas State Board of Healing Arts explained that any Board investigation involving the care and treatment of a patient would look into the diagnosis that was made and the treatment provided, and determine whether or not the care and treatment met the standard. She said a psychiatrist is not the only physician who can treat a patient for mental health and stated that antidepressants are prescribed more by family practice doctors than by psychiatrists. She said any physician who seeks to practice psychiatry would be required to be competent in that area.

Ms. Wakeman further explained that any complaint made on a specific case of a fetus post 22 weeks would require a finding by the physician that the patient would suffer major bodily harm and would require the diagnosis to specify that bodily harm.

#### **Original Intent of the Kansas Late Term Abortion Statutes**

Mr. Tim Carmody, the former Chairman of the Conference Committee that adopted the abortion statute in 1998, explained that there were basically three parts to the bill:

- Prohibiting assisting suicide prohibition;
- Restricting late term abortion; and
- Banning on partial birth abortion.

Mr. Carmody stated that members of the Conference Committee and by extension, leaders of the Senate and House and Governor's Office, came to consensus on the following points:

- The law that was passed would not be seen or developed as a test case merely for the purpose of testing the limits through the courts. The law would not be limited, if it was limited at all, to simply a ban on partial birth abortion. The legislators and Governor recognized that was only one type of procedure and was not the sole basis of this law. The law would set viability as the dividing line between what could not be regulated and what might be regulated. So "viability" and not "late term" became the phrase used in statute.
- The only exceptions to an outright ban on post viable abortions would be those constitutionally required as exceptions, as the Conference Committee understood the court decision defined.

He observed that enforcement of the laws depends on the good faith efforts of the prosecutor, whether that be a district attorney, county attorney, or attorney general. He stated that it depends on the good faith of the physicians acting within the scope of their practice, and on the courts applying a reasonable interpretation consistent with legislative intent.

#### **Other Concerns Heard by the Committee**

Dr. Brian Russell, psychologist and attorney, expressed concern that mental diagnoses are being made without the proper skill and care to establish that the conditions diagnosed exist. He further stated that it was his concern that practitioners who are performing these procedures are doing so without exercising the proper skill and care to provide the follow-up mental health treatment that women who present in profoundly debilitating mental conditions are certain to need. He further stated that anxiety disorder, adjustment disorder, and single episodic depression were the most treatable conditions in psychology and psychiatry, and people recover from these conditions. In answer to a question, Dr. Russell explained that suicidal ideation is a

symptom that a person can experience. Usually, such a person would be psychotic, depressed, or both. Some people who are neither of those things, such as someone who is in the last stages of life, may consider killing themselves and they are neither psychotic nor depressed.

Ms. Jennifer Girox, stated her opinion that there has been a complete breakdown in the rule of law in Kansas in her estimation. She challenged Kansas to start erring on the side of life.

Ms. Mary Balch, Legislative Director, National Right to Life, recommended a change in statute that would allow the use of civil remedies for enforcement of Kansas law. Women upon whom an unlawful abortion was performed or attempted would be given standing to seek an injunction against future unlawful abortions by the same defendant, as would parents of minors upon whom an unlawful abortion was performed or attempted. Ms. Balch explained that, in her opinion, providing an objective, malpractice-type standard and enforcing it with civil remedies offer the best way to enforce of Kansas statutes.

Dr. John F. Evans, perinatologist, stated that there were two conditions when the College of Obstetrics and Gynecology allows termination beyond a 21- or 22-week cutoff, and they are if the baby's brain is not developing or if kidneys are absent. He also expressed concern about the 21-week cutoff and would like to have consideration given, not to the gestational age, but to the conditions that might necessitate medical intervention.

Mr. Troy Newman, President of Operation Rescue, stated that the law was adequate to protect women and their viable babies. However, he did urge the Committee to strengthen the ability of law enforcement to enforce the laws and create stiff punishments for those who disobey the law.

Ms. Wendy Wright, Concerned Women for America, noted that 98 percent of the third trimester abortions performed in Kansas are on out-of-state women. She also noted that Dr. George Tiller markets his late term abortion business nationally and internationally. Ms. Wright proposed that the Legislature make sure that current laws are being enforced, rather than adding to the law.

Dr. Ted Williams testified that the doctor performing the late term abortion must report the determinations, the reason for such determinations, and the basis for the determinations that an abortion is necessary to preserve the life of the pregnant woman or that the continuation of the pregnancy will "cause a substantial and irreversible impairment of a major bodily function of the pregnant women." It is his understanding that a specific diagnosis justifying the need for the abortion is not required on the form provided by KDHE. He stated that in his experience maternal mental illness rarely, if ever, would "cause substantial and irreversible impairment of a major bodily function" that would justify a late term abortion.

Ms. Michelle Arnesto Berg testified about her abortion experience at Dr. George Tiller's office and the lasting effects the decision has had on her life.

Ms. Jo An Van Metter stated her concerns about conversations and actions that diminish the right of women to make decisions about their reproductive health in consultation with their physicians. She stated that whatever the reasons for an abortion, those reasons will never satisfy those who oppose abortion. In addition, she stated that women have a constitutional right to make decisions involving their reproductive health. She noted that women have the right to late term abortions if life or health is threatened and that, as of now, health includes mental health. In conclusion she noted that the fetus is being protected until born, but a child has no guarantee of health insurance, sufficient

schooling, a home or adequate nutrition, all of which should represent a minimal standard of care for children.

Julie Burkhart, Chief Executive Officer of Pro Kan Do, noted the organization is pro-choice and believes the decision about any abortion should be left to a woman and her doctor. She reminded the Committee that privacy is not a "trump card" but is a constitutional right.

Kathy Ostrowski, Legislative Director for Kansans for Life, testified that Attorney General Paul Morrison denied that KSA 65-6703 requires a defensible reason and basis to be reported. She stated that legislation, including provisos, can cause KDHE to obtain valid information. She said that if valid, legal, medical reasons were reported, and practitioners truly faced loss of licenses, the number of viable baby abortions would be minimal, which was the original intent in 1998.

ADVD of an interview with Dr. Paul McHugh about his contract with former Attorney General Phill Kline to view some of the files which Mr. Kline had obtained about late term abortions performed in Kansas and give expert opinion about these files. In addition, Julie Burkhart provided a DVD of interviews of two women and their husbands who had experienced abortions in Kansas. Senator Hensley and Representative Kuether objected to the viewing of the DVDs because the Committee could not ask questions of the individuals giving testimony.

### CONCLUSIONS AND RECOMMENDATIONS

After extensive testimony, the Committee recommends that a bill be drafted giving Kansas Department of Health and Environment rule and regulation authority, specifically to modify late term abortion forms, including adding to the form a section for a specific clinical diagnosis and a reason and basis for that diagnosis.