

## **House Federal and State Affairs Committee**

### **Testimony Opposing HCR 5004 National Advocates for Pregnant Women Thursday, March 21, 2019**

Chairman Barker and Members of the Committee,

Thank you for the opportunity to express National Advocates for Pregnant Women's opposition to HCR 5004 today. This measure would repeal women's rights.



National Advocates for Pregnant Women (NAPW) is a non-profit organization that works to secure the human and civil rights, health and welfare of pregnant and parenting women. NAPW submits this testimony in opposition to HCR 5004 as an unprecedented and radical proposal that is dangerous to the lives and health of all women who are pregnant or might become pregnant.

House Concurrent Resolution No. 5004 seeks to amend Section 1 of the bill of rights of the Kansas Constitution to "guarantee the inalienable rights, equal protection and due process of law of every human being from the beginning of the biological development of that human being, including fertilization." In terms disguised as "equal rights for human beings from the beginning of the biological development," what this legislation would actually do is remove a class of persons – pregnant women – from the protection of the Kansas Constitution.

According to the legislation, "the purpose of this amendment is to expand the class of human beings who currently enjoy inalienable rights, equal protection, and due process of the law under the constitution of the state of Kansas." This legislation would treat fertilized eggs, embryos and fetuses as if they are physically and legally independent of the women who carry them. It does not acknowledge, much less address the extraordinary impact this amendment would have on the lives and health of all pregnant women – whether they experience a pregnancy loss, seek to end a pregnancy, or planned to go to term and give birth.

Numerous well-documented cases make clear that if fertilized eggs, embryos, and fetuses are viewed as having separate and equal rights to persons already born, then pregnant women will be deprived of their fundamental constitutional rights including the right to life and liberty. Experiences from around the country support this very real possibility and illustrate how the proposed amendment would effectively remove pregnant women from the protections of every state law (including doctor-patient confidentiality) and expose women to prosecution under every Kansas criminal law that uses the term "human being" or "child."

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This amendment would give state actors the power to use the criminal law, the civil child welfare law, the civil commitment law power and others to control, detain, arrest, and monitor a woman from the moment she has a fertilized egg inside her body, whether or not she knows she is pregnant or is in fact pregnant (pregnancy occurs when a fertilized egg is implanted in the uterus).

HCR 5004 will hurt women who need fertility treatment, who experience stillbirth or miscarriage, who have or want an abortion, who refuse cesarean surgery if a doctor recommends it, and who do almost anything during pregnancy that is thought to risk harm to a fertilized egg, embryo or fetus.

- In Washington D.C. Angela Carder was forced to undergo cesarean surgery to protect the claimed equal rights of the fetus inside of her, despite her clear refusal and the danger the surgery would pose to her own life. Ms. Carder died as a result of the surgery and the fetus did not survive; she was deprived of her right to life.
- In Florida, a pregnant woman was kept prisoner in a hospital and forced to undergo major surgery because doctors believed that doing so would advance the independent and equal rights of her fetus. She nevertheless experienced a stillbirth. By claiming to protect the rights of preborn humans this woman was cruelly deprived of her rights to liberty, bodily integrity, medical decision-making and privacy in all of its constitutionally protected forms.

Although courts in both of those cases eventually held that these deprivations of life and liberty were wrong, HCR 5004 would allow Kansas doctors, police officers, and husbands among others to take similar actions whenever they disagreed with the pregnant woman.

Other examples from across the country include:

- Rinat Dray, a pregnant woman in New York, was forced into cesarean surgery that damaged her bladder based on claims of state (or medical) power to protect separate rights for the preborn. The claim of equal and separate rights for the preborn has also been used to justify arresting women who seek to have a home birth or birth with a midwife.
- In New Jersey, V.M. refused to authorize cesarean surgery. Although she had a successful vaginal birth, New Jersey hospital workers reported her to child welfare authorities alleging medical neglect of her unborn child. This report led to the removal of the newborn from her parents' custody. As a result, V.M. and her husband and child were deprived of their fundamental liberty interests in family life.

- In Florida, when doctors at a hospital learned that Laura Pemberton was attempting to have a home birth, fetal separatist arguments became the basis for sending a sheriff to her home. She was taken into custody, forcibly restrained while in active labor, adjudicated without legal representation and forced to undergo cesarean surgery, depriving her of her rights to liberty, privacy, bodily integrity, medical decision-making, and due process of law.
- When a woman in Iowa was five months pregnant and fell down a flight of stairs, she assumed that she had a right to privacy in her medical information. Hospital staff, however, reported her to the police and she was arrested—deprived of her liberty—for the crime of “attempted fetal homicide.”

Supporters of HCR 5004 assert that they are doing something positive and merely adopting “individual liberties in the constitution of the state of Kansas [that are] more expansive than those conferred by the constitution of the United States.” The proponents of this law are suggesting that their goal is simply continuing an American tradition of expanding membership in the population of constitutional persons.

But, in fact, in the guise of adding one group to the Kansas constitutional population, it will do something unprecedented in U.S. history: subtract another group.

When formerly enslaved people were added to the constitutional population, this did not in any way diminish the constitutional rights or personhood of any other people in the United States. Although slaveholders lost significant power to enslave and exploit other human beings, they did not lose anything in terms of their own status as constitutional persons under the law.

Similarly, when women of all races were added to the population of constitutional persons, through the 19th amendment giving women the right to vote and Supreme Court cases prohibiting discrimination on the basis of sex, neither the constitutional rights nor the personhood of men was diminished. While men lost significant power over their wives and daughters as well as advantages in the worlds of work, education, and civic life, they did not lose their status as full constitutional persons under the law.

In contrast, and as the examples above demonstrate, efforts to legally treat fertilized eggs, embryos, and fetuses as having an entirely independent and “equal” constitutional status would not merely add a new group to the constitutional population: it would effectively remove pregnant women from their status as persons under the Kansas Constitution.

Passing HCR 5004 will result in a new regime of separate and unequal. Pregnant women could be sued, subject to child welfare interventions, or arrested if they engaged in activities at work and at home that might be thought to create a risk to the life of a “preborn human.” This amendment would make activities that are legal for all other people, such as smoking cigarettes, drinking alcohol, and taking certain medications criminal for pregnant women. Adopting HCR 5004 will ensure that in jobs, education, and civic life, pregnant women will, once again, be unequal to men.

When African-Americans and women of all races were added to the constitutional population those individuals were empowered. Adding fertilized eggs to the Kansas Constitution will not free eggs, embryos or fetuses nor will it empower them. Rather, it will empower police officers, prosecutors, judges, child protection workers, husbands and neighbors—to advance their beliefs about what is right for the “pre-born” by controlling the pregnant women who carry, nurture, and sustain them.

Finally, the provision in HCR 5004 that would explain to voters that "A vote against this proposition would not amend the constitution, in which case the current federally mandated legal status of preborn humans would remain that of a class of human beings that can intentionally be killed" should be understood as an attack on the integrity, status, and personhood of women. Presumably this statement references legal abortion. The people who have abortions are overwhelmingly mothers and this statement maligns and defames them as murderers. It also makes clear that if HCR 5004 is adopted it is intended to permit the arrest, prosecution, and conviction of women who end their pregnancies as murderers who would likely await trial in jail. The word “intentionally” offers no protection. As we have seen in cases in the United States and around the world, women who experienced miscarriages and stillbirths cannot be distinguished from those who have had abortions and many have been arrested, charged with felonies, separated from their children and incarcerated for years.

We urge you to vote “no.”

Respectfully submitted,

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