TESTIMONY OF MISSOURI RIGHT TO LIFE
IN SUPPORT OF SS SCS SB 65 – April 20, 2011

Missouri Right to Life supports banning abortion after 20 weeks of gestational age of the unborn child. Medical science has exponentially expanded our knowledge and understanding of fetal development. With the ability to save premature unborn children at earlier and earlier intervals, it is amazing how far neonatal medicine has come in such a short time. There was not a functioning Neonatal Intensive Care Unit (NICU) until 1965, and it was not until 1975 that the American Board of Pediatrics established board certification for neonatology as a specialty.

1981 marked the year of the world's first open fetal surgery, performed at the University of California. Once highly experimental, surgery on unborn children is now a frequent occurrence at several centers around the country (for example, to prevent twin blood transfer, to remove lung tumors and to clear blocked urinary tracts). Indeed, fetal surgery is likely to soon become standard care for some conditions such as spina bifida. Due to the ever-increasing resort to fetal surgery, physician observance of unborn children experiencing pain spurred the move to study the pain of the unborn child, and subsequently to regularly administer anaesthesia around 20 weeks gestation.

Congressional hearings on the issue of unborn children's pain have been held on the federal Unborn Pain Awareness Act.[1] Expert witnesses included Jean A. Wright, M.D., MBA, professor and pediatric chair of Mercer School of Medicine who testified "an unborn fetus after 20 weeks of gestation has all the prerequisite anatomy, physiology, hormones, neurotransmitters, and electrical current to close the loop and create the conditions needed to perceive pain. In a fashion similar to explaining the electrical wiring to a new house, we would explain that the circuit is complete from skin to brain and back. The hormones and EEGs and ultrasounds record the pain response, and our therapies with narcotics demonstrate our ability to adequately block them." Dr. Wright observed that if lawmakers would simply visit a neonatal ward and view the pain reactions of premature babies born at 23 weeks, "we wouldn't need to have this hearing."

Dr. K. J. S. Anand, professor of pediatrics, anesthesiology, pharmacology, neurobiology, and developmental sciences at the University of Arkansas for Medical Sciences College of Medicine told the subcommittee:[2] "Studies have demonstrated that certain stress hormones . . . increased significantly in fetuses given blood transfusions through a needle place, under ultrasound guidance, in the intra-hepatic vein . . . , whereas no consistent responses occurred in the fetuses transfused via a needle placed at the insertion of the umbilical cord (which is not innervated). The magnitude of the stress hormone responses was correlated with the duration of the painful stimulation. In addition, these hormonal

[1]Testimony available at http://commdocs.house.gov/committees/judiciary/hju24284.000/hju24284_0f.htm

[2] Testimony available at http://www.nrlc.org/abortion/fetal_pain/AnandPainReport.pdf

responses were reduced when ... a pain-relieving opiate drug ... was administered directly to the fetus."

Justice Kennedy himself has described the gruesome nature of the most common abortion technique used in the second trimester, dilation and evacuation or D & E, in terms that make clear that it would be extremely painful: "[F]riction causes the fetus to tear apart. For example, a leg might be ripped off the fetus . . . ." *Gonzales v. Carhart, 550 U.S. 124, 135 (2007)*. Contrasting the partial birth or "intact D&E" abortion, he wrote, "In an intact D&E procedure the doctor extracts the fetus in a way conducive to pulling out its entire body, instead of ripping it apart."*Id*. at 137; see also *id*. at 152. Justice Kennedy used even more graphic descriptions of D&E abortions in his dissent in Stenberg v. Carhart, 350 U.S. 914, 958-59 (Kennedy, J., dissenting), stating, "The fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb."

While some dispute the capacity of the 20 week unborn child to experience pain, Justice Kennedy's opinion for the Court in *Gonzales* makes clear that medical unanimity is not required in order for legislatures to make and act on determinations of medical fact. Kennedy's majority opinion acknowledged that

> There is documented medical disagreement whether the [Partial Birth Abortion Ban] Act's prohibition would ever impose significant health risks on women. ... The question becomes whether the Act can stand when this medical uncertainty persists. The Court's precedents instruct that the Act can survive this facial attack. The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty. [Citations omitted.] . . . The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community. . . . Medical uncertainly does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts. *Gonzales*, 550 U.S. at 162-64.

Abortionists have a financial interest in performing abortions, a "service" for which they are paid, and therefore an obvious incentive to find a child nonviable. It is in the interest of an abortionist never to find a child viable so that an abortion can proceed and the abortionist can be paid. We expect a judge that has a financial stake in a case to recuse himself.

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