



Written by [Dave Bohon](#) on April 17, 2010

Nebraska Abortion Law Challenges Roe v. Wade

Nebraska Governor Dave Heineman put his signature to an historic bill April 13 banning abortions of pre-born babies beyond 20 weeks from conception. The enactment of the legislation makes Nebraska the first state with a law directly challenging the 1973 Roe v. Wade Supreme Court decision legalizing abortion.



The Abortion Pain Prevention Act (L.B. 1103), which had near unanimous support of the state's one-house legislature, was advanced on the strong evidence that a pre-born baby's brain develops the sensory capacity for pain at around 21 weeks. "I feel the state has a legitimate and substantial interest in protecting the life of an unborn child at 20 weeks," said the bill's sponsor, State Senator Mike Flood.

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Dr. Kanwaljeet Anand of the University of Arkansas Medical Center noted that extensive studies have determined that pre-born babies are "very likely" to show extreme sensitivity to pain during 20 to 30 weeks after conception. "This is based on multiple lines of evidence," he said, "— not just the lack of descending inhibitory fibers, but also the number of receptors in the skin, the level of expression of various chemicals, neurotransmitters, receptors, and things like that."

Dr. Jean Wright, an anesthesiologist specializing in pediatric critical care, testified to Congress that "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."

Similarly, Dr. Richard T.F. Schmidt, past president of the American College of Obstetricians and Gynecologists, noted, "It can be clearly demonstrated that fetuses seek to evade certain stimuli in a manner which an infant or an adult would be interpreted as a reaction to pain."

In addition to banning abortions beyond 20 weeks, the new law closes a loop hole that would allow a woman to cite her mental health as a reason for having an abortion past the cut-off. Striking the "mental health" exception represents a huge blow to Nebraska's most notorious abortionist, LeRoy Carhart, who reportedly performs abortions at 22 weeks and later if medical or mental justification can be found. Abortion opponents expressed their hope that the new law would force Carhart to close up shop in Nebraska.

Pro-abortion activists have said they will challenge the new law as unconstitutional, with Nancy Northup of the Center for Reproductive Rights predicting, "It absolutely cannot survive a challenge



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without a change to three decades of court rulings.”

For their part, national pro-life leaders expressed their hopes that passage of the state bill would lead to a new Supreme Court challenge to *Roe v. Wade*. Mary Spaulding Balch, a state legislative attorney for National Right to Life, told the *Omaha World-Herald* that her organization would welcome any Supreme Court challenge that would equate into protecting unborn children. She noted that the new Nebraska law, which moves abortion away from the original viability standard, may provide the needed incentive. “What I would like to bring to the attention of the court is, there is another line,” Balch said. “This new knowledge is something the court has not looked at before and should look at.”

National Right to Life noted that, like the partial-birth abortion ban instituted under President George W. Bush, the Nebraska fetal pain abortion ban has the power to draw diverse pro-life groups together. “The genius of this measure, as was the case with the ban on partial-birth abortion, is that a legislator need not be a card-carrying member of our movement or even sympathetic,” National Right to Life noted in a prepared statement. “All that is required, in this instance, is a willingness to acknowledge the scientifically conclusive fact that unborn children are capable of experiencing pain, certainly by 20 weeks after fertilization.”

In addition to signing L.B. 1103, Governor Heineman affixed his signature to another bill, L.B. 594, requiring a woman seeking an abortion to complete a screening process for mental health and other problems that could arise following the procedure. “Women are suffering from avoidable physical and psychological complications that may have been prevented or minimized had they received adequate pre-abortion screening and counseling,” said State Senator Cap Dierks, who introduced the bill. “Women deserve better. LB 594 will ensure that women receive the appropriate standard of care.”

A number of studies from different quarters demonstrate that women who have had abortions suffer higher levels of both physical and mental health problems. A study in New Zealand that tracked several hundred women from birth to 25 years of age found that those who had abortions suffered from higher rates of suicidal behaviors, depression, drug and alcohol abuse, and other emotional problems.

Similarly, a five-year study in Canada found that women who had abortions made greater use of medical and psychiatric services than did women of the same age who had not had abortions, with 25 percent of post-abortion women reporting visits to mental health professionals, compared to only three percent of the control group.

Photo: Gov. Dave Heineman



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