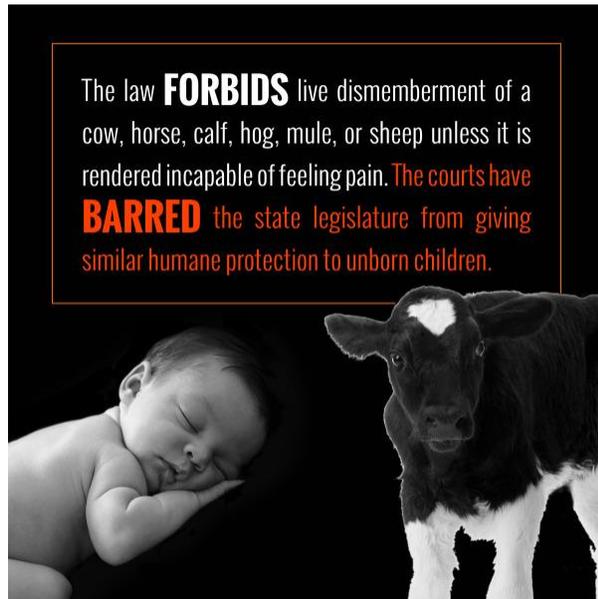


A Judge blocked enforcement of the Kansas live dismemberment abortion ban. We show on this page how many live dismemberment abortions they have allowed since the decision. A lawsuit was filed challenging the ban on live dismemberment abortion with a claim that our state constitution contains a right to abortion. The case is now before the Kansas Supreme Court, and has been pending there for nearly a year. This means the ban on live dismemberment abortion can not be enforced. This court decision represents a radical change in our Kansas public



January 30, 2018 by KFL

For 84 days the great state of Kansas led the nation by banning live dismemberment abortion. In dismemberment abortion the unborn child, *"dies just as a human adult or child would..."* writes Justice Anthony Kennedy in a U.S. Supreme Court opinion, *"It bleeds to death as it is torn limb from limb."* By the time an abortionist performs a dismemberment abortion, the unborn child has a beating heart and is making her own blood, often a different blood type than her mother. She has brain waves, legs, arms, eyelids, toes, and fingerprints. Every organ (including the kidneys, liver, brain) is in place, and even teeth and fingernails have developed. The unborn child can turn her head and even frown. She can kick, swim, and grasp objects placed in her hand. Using the dismemberment abortion procedure after 20 weeks means the unborn child feels the pain of being ripped apart during the abortion. This abortion method is, *"... 'brutal,' . . ., involving as it does the 'tear[ing] [a fetus] apart' and 'ripp[ing] off' its limbs"*, said Justice Ginsburg. In comparing this to partial birth abortion, Justice Ginsburg says, *"[T]he notion that either of these two equally gruesome procedures . . . is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational."*

The Kansas legislature voted to stop this madness. The House 98-26 overwhelmingly passed the "Unborn Child Protection from Dismemberment Abortion Act," after the Senate had passed the

measure, 31-9. The bill was signed by the Governor on April 7, 2015. We led the nation, for exactly 84 days.

Then on June 30<sup>th</sup>, 2015, the day before the bill would become law, a District Court Judge intervened. The abortionists had claimed the Kansas Constitution protects the right to an abortion. The District Court Judge agreed and issued a preliminary order stopping this law. The State of Kansas appealed this preliminary order and the dispute was moved to the Kansas Court of Appeals.

Past Kansas courts have ruled that certain sections of the Kansas Constitution give rights similar to the United States Constitution's 14<sup>th</sup> Amendment. It is from the 14<sup>th</sup> Amendment's due process clause that the U.S. Supreme Court implies a right to abortion. Therefore, the abortionists contended these parallel provisions in the Kansas Constitution must also include similar abortion rights. Kansans for Life disagreed.

KFL voiced this disagreement by filing an Amicus brief, otherwise known as a friend of the court brief. The Kansans for Life brief indicated that the U.S. Supreme Court should uphold the "Unborn Child Protection from Dismemberment Abortion Act". This law is constitutional under the federal law since it still allows other abortion alternatives. Remember this law banned the D&E abortion **only** when the unborn child is **living**. So when legislators voted against this bill, they were voting for the right to dismember a living child. Only 35 Kansas legislators voted for the right to dismember a living child. (You can find the full list of legislators who voted in favor of continuing Dismemberment [HERE](#).)

Thankfully, this was not the view of the overwhelming bi-partisan majority of Kansas legislators; nor was it the outlook of our state's founders.

We know this because the words in the Kansas Constitution, adopted in 1859, include the right to life: "Section 1. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." (Emphasis added).

At nearly the same time that Kansas adopted the above language, it also prohibited abortion by statute referring to the unborn as a "child". One such law from 1859 made it manslaughter in the second degree to give medicine, drugs or substance "...with intent thereby to destroy such child..."

The KFL brief concluded that the authors of the Kansas Constitution would have understood that the "right to life" included life within the womb. The so-called right to an abortion, the destruction of life in the womb, is not implied by the phrase "...rights, among which are life..."

Unfortunately on January 22, the anniversary of Roe vs. Wade, the Kansas Court of Appeals handed down a split decision with seven voting to affirm the District Court and seven voting to reverse. When an Appellate Court is equally divided, the trial court's ruling is affirmed. This means the lower court preliminary order stopping the enforcement of the law will continue at least until a full trial is held. The two groups of Judges could not have more divergent views on the Constitution.

The seven Judges who found the right to an abortion in the Kansas Constitution admitted that while it may be true that the framers of the Kansas Constitution did not intend to create a right to an abortion a constitution must "be adapted to the various crises of human affairs". As evidence of this view of the

constitution, they cite the recent U.S. Supreme Court in Obergefell where-in the right to same-sex marriage was read into the U.S. Constitution. They cite, with approval, the words used in a previous Kansas Supreme Court opinion that the actual words of the constitution "...must yield to the pressure of changed social conditions, more enlightened ideals ...and the general march of progress."

The other seven Judges disagreed concluding that in order to find a right to an abortion in the Kansas Constitution, one "...would go well beyond the apparent intent of its framers." These Judges stated that "In ascertaining the meaning of a constitution provision, the primary duty of the courts is to look to the intention of the makers and adopters of that provision." They reasoned "Clearly, the framers of the Kansas Constitution could not have consciously intended to create rights coextensive with the rights under the then nonexistent Fourteenth Amendment." The Judges pointed out that Article 14 provides a process for amendments to the Constitution, and that, "it should not be done by judicial decree." For 84 days the great State of Kansas led the nation. Now 7 judges in black robes decided that as a state we must have the right to dismember living boys and girls for "the general march of progress."

In a Republic, laws and public policy should not be made by unelected Judges. The people should make laws and public policy through their elected representatives, not unelected, unaccountable Judges.

The Court has basically amended the constitution by interpretation. There is a procedure to amend the Kansas Constitution which the people have used often. If the Judges want to amend our constitution to include a state right to abortion, they may do so properly but not by judicial decree.

How ironic. Our Kansas law forbids live dismemberment of a cow, horse, calf, hog, mule, or sheep unless it is rendered incapable of feeling pain. However, since the court in Kansas "discovered" the right to an abortion in the Kansas constitution, the state legislature may not afford similar humane protection to unborn humans.

We have passed 29 pro-life laws making Kansas the most pro-life state in the union. This new interpretation of the Kansas constitution threatens these laws. We have passed a law that bans live dismemberment abortion, stopped taxpayer funding of abortion, banned partial birth abortion, banned late-term abortion, promoted informed consent, and regulations that would improve the health and safety standards of facilities performing any abortion. We will support a constitutional amendment clarifying that our constitution does not block this type legislation.



Footnote Supporting material:

The protection against cruelty also extends to animals. See Kan. Stat. Ann. 21-6412 (2017). Kansas law recognizes the legality of killing farm animals, but restricts such killings to those conducted in accord with “normal or accepted practices of animal husbandry.” Kan. Stat. Ann. (2017). The practices of animal husbandry are subject to the Humane Methods of Slaughter Act, 7 U.S.C 1901 et seq. (2012), which requires that livestock be “rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.” Id. at 1902. Federal law forbids live dismemberment of a cow, horse, calf, hog, mule, or sheep unless it is rendered incapable of feeling pain.