



S.B. 23

Sponsor Testimony

State Senator Kristina D. Roegner

27th Senate District

Senate Health, Human Services and Medicaid Committee

Wednesday, February 13, 2019

Chairman Burke, Vice-Chair Huffman, Ranking Member Antonio, and Members of the Senate Health, Human Services, and Medicaid Committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 23, known as the Heartbeat Bill. This legislation generally prohibits an abortion of an unborn human individual with a detectable heartbeat and creates Joint Legislative Committee on Adoption Promotion and Support. This bill is identical to the version that was passed by both the Ohio House of Representatives and the Ohio Senate at the end of the 132nd General Assembly.

Ever since *Roe v. Wade* was decided about 46 years ago, there has been an ongoing debate about the conditions in which an abortion should be permitted. Most often, that discussion has revolved around the concept of viability as that standard and is one of the primary principles enshrined in court precedent. To quote *Roe* directly,

With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb.

It is not surprising; therefore, that there has been substantial discussion about what exactly constitutes a viable fetus.

Cambridge Dictionary defines viability as the “ability to continue to exist or develop as a living being.” Merriam-Webster uses a different definition, stating that viability is “the capability of a fetus to survive outside the uterus.” There are a number of inherent difficulties in applying this second definition of viability. One of the primary challenges in defining “viability” in this manner is the fact that it is largely dependent on outside factors that are entirely separate from the actual development of the unborn baby. GH Breborowicz of the Department of Perinatology and Gynecology University School of Medical Sciences Poznan, Poland wrote this about viability in 2001.

Viability exists as a function of biomedical and technological capacities, which are different in different parts of the world. As a consequence, there is, at the present time, no worldwide, uniform gestational age that defines viability. Viability is not an intrinsic property of the fetus because viability should be understood in terms of both biological and technological factors. It is only in virtue of both factors that a viable fetus can exist ex utero and thus later achieve independent moral status.¹

If viability is a function of the capacities of modern medicine, we can conclude that the point of viability may very well not only differ significantly throughout different portions of the world, based on the ability of doctors and medicine in each region to preserve the health of a premature baby, but it also can vary on the development of modern medical technology over time. Certainly babies that are born extremely prematurely today and saved through our medical technological advances might never have survived had they been born 50 years ago.

However, if we recognize that viability is in part dependent on our biomedical and technological capacities, that these capacities do not exist uniformly

¹ <https://www.ncbi.nlm.nih.gov/pubmed/11753511>

throughout the world, and believe that unborn fetuses are deserving of the legal protection of the state ONLY at the point in which they are viable, we are left with an entirely untenable conclusion. That conclusion is that unborn babies across the world or in different eras of history become deserving of the legal protection at different periods of their development, depending on their access to certain technologies and medical alternatives. This conclusion, of course, is ludicrous as human life is not more valuable based on where or in what decade you are born. So - we need a new standard.

The detection of a fetal heartbeat is a logical, reasonable, and sensible alternative. It is an objective standard that can be applied uniformly. While our ability to detect a fetal heartbeat through a given test may change, the presence of that heartbeat will not, regardless of changes in modern science. An unborn infant either has a beating heart, or that baby does not. Furthermore, recent medical research has determined that once a fetus possesses cardiac activity, its chances of surviving to full term are between 95-98%.²

Most importantly, the presence of a heartbeat is a universally recognized indicator of life. In frantic efforts to save a life we often hear: “Can you find a pulse?” or “is the heart still beating?” It is reasonable and appropriate for the state to utilize the same principle for detecting life in human beings inside the womb as it applies to those outside of the womb.

One of the objections to this legislation in the past has been the concept of a “woman’s right to choose.” Our country was founded on the philosophy of individual freedom – that each person deserves the right to make his or her own life choices. Yet, freedoms come with limitations. For example: each Ohioan has a right to care for his or her children as he or she sees fit, However, when a person abuses that right and seriously endangers the well-being of their child through wantonly reckless or irresponsible behavior, the state can and should intervene to protect the child.

² [A. Brigham et al., A Longitudinal Study of Pregnancy Outcome Following Idiopathic Recurrent Miscarriage, 14 Human Reprod 2868,2868-71 (1999)]

This same principle applies in cases of abortion. Government should not intervene in prenatal decision-making, but it is absolutely justified to do so when that child's life is endangered. This is actually the political philosophy most Americans already have. We believe that government exists to safeguard individual rights like privacy, but that its chief end is to protect the most vulnerable. As Thomas Jefferson said, "The care of human life and not their destruction is the first and only legitimate object of good government."

If government exists to protect the weak and vulnerable, then the point at which government should begin extending that protection should be objective, clear, and universally applicable, not some vague function of our technological ability to preserve life. The presence of a fetal heartbeat is a common-sense, reasonable, enforceable point to utilize.

From a technical standpoint, the bill penalizes the doctor for unlawfully conducting an abortion on a fetus after detection of a fetal heartbeat as a fifth degree felony.³ The legislation does provide for exceptions if the physician is performing a medical procedure designed to prevent the death of the pregnant woman or prevent a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman, or otherwise induces or performs an abortion in a case of medical emergency.⁴ The physician is also not liable for commission of the offense if he or she has performed an examination to detect the presence of a fetal heartbeat and the method used does not detect the fetal heartbeat.⁵

There is not an exception for rape and incest in this bill, just as there has not been a rape and incest exception in any piece of pro-life legislation passed by this General Assembly as far as I can recall. While rape and incest are dreadful situations, no other laws allow for the state to treat one person differently than another based on the way in which that person was conceived. Equal

³ Section 2919.193(A), 2919.195(A)

⁴ Section 2919.193(B), 2919.195(B),

⁵ Section 2919.195(C)

protection under the law is a core principle of our nation and this bill should certainly not undermine that fundamental philosophy. Though we feel deeply for victims of these crimes, good laws should still apply the same rules to all people, regardless of how they were conceived.

On the civil liability front, the bill requires a woman to be awarded court costs and reasonable attorney fees if she prevails in a civil action for the wrongful death of her unborn child.⁶ Counterbalancing this provision to protect defendants from frivolous lawsuits, the bill also provides that a defendant shall receive reasonable attorney fees if the action was frivolous and adversely affected the defendant.⁷ To promote the alternative of adoption, the bill establishes the Joint Legislative Committee on Adoption Promotion and Support, composed of three House of Representatives members and three Senate members, and instructs the committee to study any matter that it considers relevant to the adoption process in Ohio.⁸

I would be remiss if I did not take a moment to thank those who have so valiantly carried this legislation in prior General Assemblies. Representative Lynn Wachtman, Representative Ron Hood and Representative Christina Hagan all are champions for life and heroically advanced this legislation. I am merely picking up this torch in the final stretch of what is turning into a 9 year legislative marathon.

I would like to also thank the individuals and pro-life organizations, too numerous to list here, but from whom, I am quite certain, you will receive compelling proponent testimony.

Finally I want to thank this committee in advance for your thoughtful consideration of this legislation before you today. I would be happy to answer any questions at this time.

⁶ Section 2919.199

⁷ Section 2919.199(D)

⁸ Section 2919.1910