**S.B. 23 Testimony – The Heartbeat Bill**

**Senate Health, Human Services and Medicaid Committee**

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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 proponent testimony on Senate Bill 23, known as the Heartbeat Bill.

The Viability Standard is Flawed

In the more than four decades since *Roe v. Wade* was decided, our country has vigorously debated the legal conditions under which an abortion should be permitted. As my Senator Kristina Roegner recently stated to this Committee, that discussion has revolved around whether the concept of viability (meaning the baby’s ability to survive outside the womb) should remain the standard. A thorough review of the law and medical journals today compels us to answer that question by stating clearly and unapologetically, no.

Courts across America now recognize that there are a number of inherent difficulties in applying the standard of viability. The call for the United States Supreme Court to reexamine the viability rule is not only coming from the faith and medical communities, it is coming from our nation’s lower federal courts. The U.S. Court of Appeals, Eighth Circuit recently declared, “[a]lthough controlling Supreme Court precedent dictates the outcome in this case, good reasons exist for the Court to reevaluate its jurisprudence.” *MKB Mgmt. Corp, v. Stenehjem*, 795 F.3d 768 (8th Cir. 2015). The court listed several reasons why the Supreme Court should reexamine of reject the viability line established in *Casey*, including the following:

“[T]he Court’s viability standard has proven unsatisfactory because it gives too little consideration to the substantial state interest in potential life throughout pregnancy.”

Another court has observed, “[b]y taking this decision away from the states, the Court has also removed the states’ ability to account for ‘advances in medical and scientific technology [that] have greatly expanded our knowledge of prenatal life,’” *Hamilton v. Scott*, 97 So. 3d 728, 742 (Ala. 2012) (Parker, J., concurring specially).

Another very simple but difficult challenge is the straightforward application of the word. Defining “viability” is largely dependent on factors entirely independent from the development of the unborn baby. The "viability" standard is frankly unknowable because physicians can and do disagree about an unborn baby’s viability at any particular moment. In short, viability is an ever-moving target as medicine improves outcomes.

The Better, More Reliable Standard of the Human Heartbeat

Given the subjective weakness in medicine and the erosion of the law as to the viability standard, a new far superior standard has emerged: the heartbeat.

S.B. 23, the Heartbeat Bill, affirms what people have understood for generations: a fetus with a heartbeat is a living human person. It is a bright-line test, not subject to the progress of science (or lack thereof) and the uncertainty of outside factors. It is easy to understand. It is objective. It is even more reliable. From a scientific perspective, there is no clearer marker of life.

As discussed previously, detecting a heartbeat is much more easily determined than the Court’s notion of viability. Based upon my research, viability is a prediction based on a measurement and probabilities. A physician does not typically determine viability by the actual condition of the baby. Instead, he or she makes a calculated guess of the child’s gestational age and, based on the varying opinions as to when viability actually occurs along with the margin of error in calculating gestational age, a physician reaches an estimation of an infant’s chances of survival. The presence of a detectable heartbeat eliminates all of the uncertainty. It is not subject to the best guess of anyone. Either there is cardiac activity or there is not.

As to being more scientifically reliable, the heartbeat is a far better standard. Medical studies tell us that a naturally conceived child with a detected heartbeat has approximately a 95% chance of surviving until full term birth. While useful in certain circumstances, the “best guess” estimates of physicians are not as strong a predictor of life.

As for the law, the underpinnings of *Roe v. Wade* are greatly eroded. The Supreme Court has affirmed laws more protective of the unborn without needing to revisit its wobbly precedents.

For example, as noted by Professor David Forte, “in *Masurek v. Armstrong*, 520 U.S. 968 (1997), the Court seemed to indicate that the purpose prong of the undue burden standard alone could not invalidate an abortion restriction. \*\*\* In *Ayotte v. Planned Parenthood of Northern New England*, 540 U.S. 320 (2006), the Court declared that the lower courts should not, in ordinary circumstances, strike down abortion regulations ‘on their face,’ as had been the previous practice, but only if *in their application*, the laws constitute an undue burden.” In *Gonzales v. Carhart*, 550 U.S. 124 (2007), the Supreme Court upheld the federal partial birth abortion statute.

Indeed, both our culture and science have changed since *Roe* was decided. The law itself is greatly curtailed. The United States Supreme Court needs to revisit the question and apply today’s facts and law. The Court has not been presented with recent evidence of the more definite and reliable heartbeat standard as a predictor of survival for an unborn child. I think we can all agree that a Constitutional standard ought not be moveable from year to year but be objective and stable.

I would like to thank the individuals and pro-life organizations, from whom you have and will receive compelling proponent testimony. Finally, I want to thank this committee in advance for your thoughtful consideration of this legislation before you today.

On behalf of Ohio Right to Life, I ask that you vote in favor of Senate Bill 23.