Testimony of Janet (Folger) Porter
President of Faith2Action

March 17, 2015.

Chairman Derickson and members of the committee. I want to begin by thanking you, Representatives Hagan and Hood and the 50 co-sponsors of the Dr. Willke Heartbeat Bill to recognize the detectable human heartbeat—the universal indicator of life in every hospital in the civilized world. History will remember you as the heroes who called a nation to protect her children.

Twenty years ago I stood here as Legislative Director of Ohio Right to Life, lobbying to pass the nation's first ban on Partial Birth Abortion. And twenty years ago I heard all the same arguments we're hearing today. "We better not pass it because the court might say no." "It could hurt our other pro-life laws." "It's not the right time." "It could cost money."

I bring to this committee a historical perspective we didn't have back in 1995 when those same arguments were made. Yes, a district court struck down our ban on Partial Birth Abortion. But today we know the rest of the story. Our bill sparked THIRTY other states to follow Ohio's lead and eventually the Supreme Court took the Nebraska version of our law. They said no. Was it the end of the world? Was it all a big mistake? No. Why? Because we didn't give up. We kept asking, we kept on trying, and like the persistent widow of the Bible, we kept knocking on the door so that even an unjust judge could give us the justice we sought. And seven years later, in 2007, the Supreme Court took the Congressional version of our law and for the first time in history outlawed a brutal method of abortion.

That decision began here in Ohio, and as National and Ohio Right to Life founder Dr. Jack Willke testified in favor of the Heartbeat Bill that now bears his name, history can repeat. In addition to Arkansas and North Dakota which passed Heartbeat Laws, Heartbeat Bills have been introduced in **Kansas, Texas, Kentucky**, **Mississippi, Wyoming, Missouri, Oklahoma, South Dakota, Alabama, Michigan, and New York**.

But the lower court said no to Arkansas and North Dakota's Heartbeat Laws. *Of course.* Lower courts are bound by precedent. As we saw with the ban on Partial Birth Abortion, it will take the Supreme Court to expand the legal protection allowed by the states.

We must remember it is *Roe v. Wade* that is unconstitutional. You all swore to uphold the Constitution, not *Roe v. Wade*, when you took your oath of office. That Constitution's 14th Amendment states: "…nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Equal protection. That is what we seek. We are asking that the same medical yardstick science has given us to recognize human life—the heartbeat—be applied equally to every human being, regardless of their age. As Representative Christina Hagan said in her testimony, the Supreme Court has already made a shift in the Partial Birth Abortion case, *Gonzales v Carhart*. No longer are they referring to an unborn child with a beating heart as a "potential life" but rather as a "living fetus."

As Representative Ron Hood said in his testimony, "the current rationale of the Supreme Court is that states can intervene to protect human life if there is a likelihood of the child in the womb to survive to live birth." But the indicator they use now is viability. And viability is a lousy indicator. It is based on a *guess* of gestational age and that viability changes with the hospital in which one is born and the technology available. But, for the first time, we are presenting to the Supreme Court a *better* indicator for the child to survive to live birth (when the states can intervene to protect). That indicator is heartbeat.

As Constitutional Professor David Forte, a primary drafter of the bill, stated in his law review article entitled *Life, Heartbeat, Birth: A Medical Basis for Reform*,

"Recent medical research has determined that although the miscarriage rate for all pregnancies may be as high as 30%, once a fetus possesses cardiac activity, its chances of surviving to full term are between 95%-98% (absent the lethal intervention of an abortion). That extraordinary difference is the key in determining ultimate survivability."

> [S.A. Brigham et al., A Longitutinal Study of Pregnancy Outcome Following Idiopathic Recurrent Miscarriage, 14 HUMAN REPROD. 2868, 2868-71 (1999), available at http://humrep.oxfordjorunals.org/content/14/11/2868.long; Aimee Seungdamrong et al., *Fetal Cardiac Activity at 4 Weeks After In Vitro Fertilization Predicts Successful Completion of the First Trimester of Pregnancy*, 90 FERTILITY & STERILITY 1711, 1711-15 (2008), available at http://ac.els-cdn.com/S0015028207031615/1-s2.0-S0015028207131615-main.pdf?_tid=e66c946e-a6dd-11e2-9bc3-00000aacb35f&acdnat=1366148456_d84b6fde76e89e81480916852ad0bfc9.
>
> http://moritzlaw.osu.edu/students/groups/oslj/files/2013/05/13_Forte_Publisher.pdf]

We are not even asking the Supreme Court to reverse itself. We are merely presenting a better indicator of when the state's interest in protecting human life may occur. As Professor Forte wrote in his law review article, "while viability is uncertain and ambiguous, the point at which an independent fetal heart rate is detectable… is unambiguous and a strong predictor of survivability to term. It does

not require estimates by individual doctors, but can be objectively identified through relatively simple application of medical technologies…"

We are giving the Court an unambiguous, objectively identified indicator of survivability to allow the states to expand the legal protection allowed using their own current rationale. This has never been presented to the Court before.

But could the Heartbeat Bill hurt other pro-life laws? Section 2919.19 (lines 370-375) states: "It is furthermore the intent of the general assembly that the provisions of this section [and sections 2919.171and 2919.191 to 2919.1910 of the Revised Code] <u>are not to have the effect of repealing or limiting any other laws of this state</u>."

"It could cost money." The Dr. Willke Heartbeat Bill will protect upwards of 20,000 Ohio children each year. That's the equivalent of a stadium full of human beings. There is not a piece of legislation that will have a greater impact to save human lives in this state. What is the price of a human life? What is the price of 20,000 human lives? As Attorney General Mike DeWine told me, "That's why I'm here."

And, finally, for those who say, "It's not the right time?" After 42 years of abortion on demand, 56 million unborn children have been brutally and legally killed on our watch. The choice before us? Either we protect this stadium full of Ohio children whose hearts are beating or we quit calling ourselves pro-life.