



Written by [Michael Tennant](#) on January 25, 2016

Kansas Court Upholds Injunction Against Law Banning “Dismemberment” Abortions

On Friday, the 43rd anniversary of the U.S. Supreme Court’s calamitous *Roe v. Wade* decision, an evenly divided Kansas appeals court upheld a lower court’s injunction against a 2015 state law banning what Kansans for Life [describes](#) as “a gruesome method of abortion in which a well-developed, living, unborn child is torn apart piece by piece with sharp metal tools.”

In fact, the court not only held that the law should be put on hold while a lawsuit challenging it makes its way through the justice system but also declared, following the lower court’s line of reasoning, that the Kansas constitution actually guarantees a right to abortion.

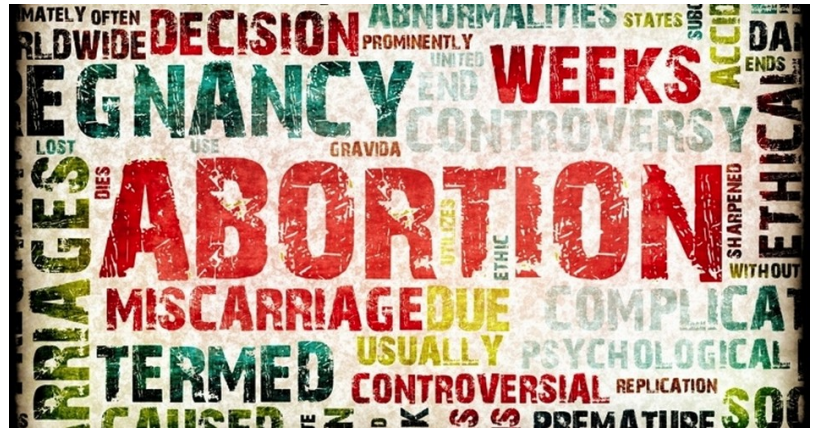
“The rights of Kansas women in 2016 are not limited to those specifically intended by the men who drafted our state’s constitution in 1859,” Judge Steven Leben declared in the opinion offered by the seven judges who sided with the lower court.

According to the [Associated Press](#), “The law at the center of the case prohibits doctors from using forceps or similar instruments on a live fetus to remove it from the womb in pieces. Such instruments are commonly used in dilation and evacuation procedures, which the New York-based Center for Reproductive Rights has said is the safest and most common abortion procedure in the U.S. in the second trimester.”

Safest for whom? Certainly not the baby who, “in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb,” U.S. Supreme Court Justice Anthony Kennedy observed in his dissenting opinion in *Stenberg v. Carhart* (2000). “The fetus can be alive at the beginning of the dismemberment process and can survive for a time while its limbs are being torn off.” Kennedy later added, in *Gonzales v. Carhart* (2007), which upheld the partial-birth abortion ban, that such abortions are “laden with the power to devalue human life.”

“Dismemberment abortion kills a baby by tearing her apart limb from limb,” the National Right to Life Committee’s director of state legislation, Mary Spaulding Balch, told [LifeNews.com](#). “Before the first trimester ends, the unborn child has a beating heart, brain waves, and every organ system in place. Dismemberment abortions occur after the baby has reached these milestones.”

The Center for Reproductive Rights filed a lawsuit challenging the law on behalf of Drs. Herbert Hodes and Traci Nausser, a father-and-daughter team of abortionists in the Kansas City suburb of Overland Park. “Their lawsuit,” reported the AP, “cites only rights granted in the Kansas Constitution, meaning the case will be handled in the state court system.”





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This would appear to be a calculated move on the abortionists' part. As Kansans for Life pointed out, the law, based on a model created by the National Right to Life Committee, "was designed to pass muster with the U.S. Supreme Court; abortion attorneys apparently recognized that fact, thus choosing to file suit in state court, seeking the creation of a state right to abortion."

Last June, Shawnee District Court Judge Larry Hendricks issued an injunction barring implementation of the law while the suit is in progress. (The suit has not yet gone to trial.) Hendricks ruled that vague wording in the state constitution's bill of rights about government's providing "equal protection" of citizens' "natural rights" was sufficient to conjure up a right to an abortion — even one of a particularly grisly nature. In addition, he said the law imposed an unconstitutional burden on women seeking abortions.

The state appealed, and in an unusual move, all 14 judges of the Kansas Court of Appeals, rather than the usual subset of three, were empaneled to hear the appeal. Judicial officials told the AP they believe the last time that occurred was 1989.

The judges split evenly, which means the lower court's ruling stands. The judges siding with Hendricks essentially echoed his opinion. The others "wrote that abortion places a pregnant woman's liberty interest at odds with the unborn child's right to life, and that balancing those interests is a question of public policy," recounted the AP. "They also said the Kansas Legislature was 'free to restrict abortion procedures to the extent it finds it appropriate — as long as the legislative act does not violate our federal Constitution.'"

Major pro-life organizations believe the law is valid under the U.S. Constitution, or at least the Supreme Court's tortured interpretation of it. The court, after all, found that partial-birth abortions could be banned, so why not the equally brutal dilation-and-evacuation abortions? Furthermore, blogged Kansans for Life legislative director Kathy Ostrowski, "Hendricks misstated federal jurisprudence on abortion, and ignored the key 2007 U.S. Supreme Court *Gonzales* ruling, which said: 'Casey [the 1992 Supreme Court decision] does not allow a doctor to choose the abortion method he or she might prefer ... [and physicians] are not entitled to ignore regulations that direct them to use reasonable alternative procedures.'"

Pro-abortion forces, naturally, hailed the appeals court's decision.

Center for Reproductive Rights president Nancy Northrup told the [New York Times](#) the ruling is "a landmark victory for Kansas women" that says they "have the right to safely and legally end a pregnancy under their state Constitution, free from political interference."

Laura McQuade, president and CEO of Planned Parenthood Advocates of Kansas and Mid-Missouri, told the AP that if the decision stands, it would "immensely strengthen protection" of abortion rights when challenging laws that restrict abortion in the Sunflower State. "At the top of that list is a pending legal challenge to [a] 2011 law, also temporarily blocked by the courts, that includes requiring abortion providers to have admitting privileges at a local hospital," wrote the news agency.

Pro-lifers were equally vehement in their dissent from the ruling.

"I can't understate how horrific this is, and how problematic some litigation might be, under a ruling that the state has a right to abortion," Ostrowski told the AP. Although she wrote that she is "confident this law will eventually be upheld," Ostrowski told the news agency it might be necessary to amend the Kansas constitution to clarify that it doesn't grant a right to abortion.



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Kansas Governor Sam Brownback, a Republican who signed the law in question, told the AP, “The court’s failure to protect the basic human rights and dignity of the unborn is counter to Kansans’ sense of justice. Seven judges have chosen to create law based upon their own preferences rather than apply the law justly and fairly.”

Kansas Attorney General Derek Schmidt said the state would quickly appeal to the Kansas Supreme Court; Brownback called on the court to overturn the decision.



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