



Written by [Bruce Walker](#) on February 25, 2010

## Nebraska's Fetal Pain Bill

The Nebraska Legislature is considering legislation that would ban abortions performed at least 20 weeks into the pregnancy of a mother. The proposal, Legislative Bill 1103, sponsored by Mike Flood, Speaker of Nebraska's nonpartisan unicameral legislature, would prohibit such late-term abortions on the grounds of fetal pain.



Mary Balch, legislative director of the National Right to Life Committee, reports that if Nebraska passes this bill into law, it would be the first state in the union to do so. Six states — Arkansas, Oklahoma, Louisiana, Minnesota, Georgia, and Utah — do have laws requiring that a pregnant mother considering abortion be advised that the procedure could cause pain to the fetus.

Medical opinion is divided on the question of how much pain a preborn baby feels and when the baby begins to feel pain. There is no doubt that the more developed the fetus, the more pain he or she will feel. Although doctors have different opinions of how much pain fetuses feel in the womb, advances in medical technology now allow surgical procedures to be performed on very small fetuses and, when surgery is performed, anesthesia is administered to the preborn patient.

Legislative Bill 1103 provides exceptions to the ban when the abortion is deemed necessary to save the life of the mother or to prevent serious injury or disability to the mother. (The language seems intended to prevent the traditional "psychological harm" which historically has been used to permit abortions in the pre-*Roe v. Wade* period.)

The bill may also raise an issue about the nature of the fetus. Pro-life supporters generally believe that the fetus is an unborn child and, consequently, that an abortion is a form of homicide.

Does the preborn child (or, to proponents of abortion, the fetus or "viable fetal mass") have rights *at least equal* to those of animals? Apparently not in the eyes of many abortion advocates. Laws against cruelty to animals have long had broad support, particularly when the animal is a higher life form that can feel pain. This support has typically included those partisans of abortion rights who are horrified at mistreatment of animals. Although the debate in the Nebraska Legislature has not yet turned on this point, when the underlying issue is the infliction of pain to living creatures, it is certainly possible that this sort of argument may be made.

The threshold for granting rights to non-human creatures has been advancing steadily over the last few decades. Species are protected, if endangered with extinction. Many jurisdictions have law enforcement officers whose principal duty is the investigation and prosecution of animal neglect or abuse cases. The Nebraska bill, if it becomes law, may offer up a new conversation on the issue of



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abortion.

Then there is the question of torture, which is a violation of the Eighth Amendment. If an anesthetic is required before performing surgery, then can abortion be considered torture, specifically torturing an unborn child to death?

Laws against cruelty to animals, for example, are state laws. Shouldn't preborn human babies deserve at least the same protection from Nebraska and other states. Yet even if such protection were extended to preborn human babies, why should the law stop there? Human beings, after all, are not animals, regardless of whether they are still in the womb. Nevertheless, Nebraska's Fetal Pain Act would reduce the number of abortions performed in that state.



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