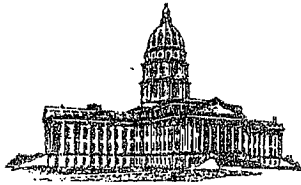


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Testimony by Senator Mary Pilcher-Cook, Senate Judiciary
 In support of **SB 142** concerning civil actions related to abortion
 Monday, February 18, 2013

Thank you Chairman King and committee members for hearing this very important subject that involves the life and dignity of the human person.

Current Kansas law makes a distinction between wrongful life cases, which are not allowed, and wrongful birth cases, which are allowed. SB 142, if passed into law, would prohibit wrongful birth as a cause of action.

In 1986, the Kansas Supreme Court rejected wrongful life as a cause of action in *Bruggeman v. Schimke*, 239 Kan. 295, on the basis that a child does not suffer an injury by being born. SB 142 preserves this ruling which stated, "It has long been a fundamental principle of our law that human life is precious. Whether the person is in perfect health, in ill health, or has or does not have impairments or disabilities, the person's life is valuable, precious and worth of protection. A legal right not to be born – to be dead, rather than to be alive with deformities – is a theory completely contradictory to our law."

This is good law, recognizing the value and dignity of each human life.

In contrast, in 1990 the Kansas Supreme Court recognized wrongful birth as a cause of action in *Arch v. U.S.* 247 Kan 276. The decision had several flaws:

1. It used an old, pre-1998 abortion statute that included broad "physical emotion defect" language; therefore the ruling did not reflect current abortion statutes.
2. It used basic medical malpractice elements, but completely bypassed the dubious question of awarding damages where the plaintiff's parents incurred no physical injury.
3. The decision is difficult to reconcile with the core finding of *Bruggeman v. Schimke*, which rules the birth of a child, rather than his or her death, does not constitute injury.

Senate Judiciary Committee

Date: 2-18

Attachment: 8

The Michigan Court of Appeals denied a wrongful birth claim stating, "If one accepts the premise that the birth of 'defective' child should have been prevented, then it is but a short step to accepting the premise that the birth of classes of 'defective' children should be similarly prevented, not just for the benefit of the parents but also for the benefit of society as a whole. This is the operating principle of eugenics."

A North Carolina court recognized the limitation of the judicial system on the subject stating, "The General Assembly of North Carolina... is better suited than this Court to address the issues raised by this case. Only that body can provide an appropriate forum for a full and open debate of all the issues arising from the related theories of "wrongful" birth and "wrongful" life. Unlike courts of law, the General Assembly can address all of the issues at one time and do so without being required to attempt to squeeze its results into the mold of conventional tort concepts which clearly do not fit."

Nine other states have outlawed wrongful birth claims.

Every living human being in Kansas should be recognized in our laws as having inestimable worth, with intrinsic value and be given the utmost dignity possible. If we do not give that recognition in our laws, we are treating human beings as property, to be disposed of at will.

If human value is based upon characteristics or abilities, the decision of who is protected and who is not becomes a subjective decision by whoever is in control. There can be no objective standard, and *everyone becomes vulnerable*.

Whether we allow a wrongful birth cause of action in our state will establish how we view ourselves and each other. Please support SB 142.