

Nebraska Right to Life

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State Affiliate to
the National Right
to Life Committee

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Nebraska Pushes the Envelope

With Passage of Abortion Ban Based on Unborn Child's Capability to Feel Pain

Reprinted from *National Right to Life News*, April/May 2010

By Dave Andrusko

Combining years of planning, enthusiastic grassroots support, the backing of key legislators, and the invaluable help of National Right to Life, Nebraska has passed the landmark "Pain-Capable Unborn Child Protection Act." Pro-life Gov. Dave Heineman signed LB 1103 into law on April 13 following passage by the Unicameral Nebraska legislature on a vote of 44-5.

NRLC State Legislative Director Mary Spaulding Balch summarized the thrust of the law in just nine words: "You don't kill unborn children capable of feeling pain." The law, basing its

conclusion on an enormous body of medical research, sets the demarcation at which the unborn child can feel pain at 20 weeks.

The law does not go into effect until October 15th. Pro-abortion organizations such as the Center for Reproductive Rights, have grumbled about possibly challenging the law in court. If such lawsuit were brought, it might be on behalf of, or in addition to, LeRoy Carhart, who specializes in second and third trimester abortions. Carhart was a party to two abortion cases that were decided by the United States Supreme Court.

LB 1103 bans abortion except in cases of medical emergency (to prevent the death of the mother or to prevent severe and long lasting physical damage to a major bodily organ), or to increase the probability of a live birth.

Balch noted the unintentional (and ugly) irony of a quote from Nancy Northrup, president of the Center for Reproductive Rights. Northrup told the Associated Press, "Courts have been chipping away at

abortion rights...this would be like taking a huge hacksaw to the rights."

"You don't need coursework in fetal anatomy to know that babies this mature will suffer excruciating pain as they are being torn apart," Balch said. "People who know nothing about abortion 'get it.'"

Asked what are some of the key issues LB 1103 will raise in court, Balch listed two.

This law (1) "acknowledges that states have an interest in unborn children and an interest in protecting them," she said. (2) The law also "closes a major loophole in state laws."

In the 37 years since the Supreme Court's *Roe v. Wade* decision, technological improvements in fetal care have moved the point of viability back from the third trimester to 22-24 weeks. But alongside those breakthroughs "there's been an avalanche of new information about the unborn child, including demonstrating that she is pain-capable at 20 weeks," Balch told NRL News.

"Viability is one line," Balch said. "The state of Nebraska is saying there is another one: the point at which an unborn child is pain-sensitive."

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**"You
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Nebraska Right to Life Executive Director Julie Schmit-Albin thanks Governor Dave Heineman (l) and Speaker Mike Flood (r) after the Governor and Speaker spoke at the Governor's Bill Signing & Press Conference for LB 1103.

Nebraska Passes Pain-Capable Unborn Child Protection Act

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And there was plenty of expert testimony made available to legislators, said Julie Schmit-Albin, Executive Director of Nebraska Right to Life. "Experts from specialists in anesthesiology and maternal/fetal health testified that the unborn child feels pain by 20 weeks gestation at LB 1103's committee hearing on February 25th, she said.

"What we didn't know in 1973 when Roe v. Wade was foisted upon the nation we know now because of such technological advances as in-utero surgery and 4-D ultrasound," said Schmit-Albin.

Opponents repeated the tired misnomer that there is no medical evidence that unborn children can experience pain at 20 weeks. In fact, there is much.

What few people know is that the pain the unborn child experiences could even be worse! (See Glover and Fisk, Fetal pain: implications for research and practice, British Journal of Obstetrics

and Gynaecology; September 1999, Vol.106, pp. 881-886.) For more evidence that the unborn child is pain-capable, go to www.doctorsonfetalpain.com.

Balch explained that pro-abortionists count on media ignorance regarding what the Supreme Court has actually said. "The Justices have never addressed the issue of an unborn child's pain," Balch said. "If/when they do it would be a case of 'first impression,' as lawyers put it."

She added, "We look forward to debating that in other state legislatures and in the courts."

Balch praised the work of the Nebraska Legislature and particularly Speaker of the Legislature Mike Flood, who introduced the measure. "The bill, and unborn children, could not have had a better advocate," she said.

Balch offered high praise for Schmit-Albin. "Julie did a wonderful



Mary Spaulding Balch with Dr. Ferdinand Salvacion and Dr. Tom Grissom, two of the expert testifiers for LB 1103, both anesthesiologists, at the LB 1103 press conference.

job of shepherding the bill through the Legislature," Balch said.

When opponents pushed to weaken the bill, Balch said, "Julie pushed back." She was determined not to have a bill "that was amended into meaninglessness," Balch added, "and as a result Julie helped produce a groundbreaking bill."

Nebraska Right to Life Press Release Upon Passage of LB 1103:

Nebraska Plows New Ground With Abortion Ban Based on When Unborn Babies Feel Pain

4/13/10

The Nebraska Legislature may have changed the course of the nation's abortion debate with its 44 to 5 passage today of LB 1103, the Pain Capable Unborn Child Protection Act, said Julie Schmit-Albin, Executive Director of Nebraska Right to Life (the state affiliate to the National Right to Life Committee.)

"The Nebraska Legislature took a bold step today which should ratchet up the abortion debate across America," said Schmit-Albin. "LB 1103 bans abortion at 20 weeks gestation based on medical documentation that unborn babies are capable of feeling pain at that point and beyond. What we didn't know in 1973 when Roe v. Wade was foisted upon the nation; we know now through the technological advances of in-utero surgery and 4-D ultrasound. Nebraska has a compelling interest in protecting unborn babies who feel pain at this gestation because we have a late term abortionist, LeRoy Carhart, performing abortions through at least 24 weeks here."

Expert testimony regarding the unborn feeling pain by at least 20 weeks gestation was presented by four physicians at LB 1103's committee hearing on February 25th. The doctors were specialists in anesthesiology and maternal/fetal health. A constitutional law expert also testified on behalf of LB 1103. An exception is allowed under the law for a medical emergency for the pregnant woman to avert death or avert a substantial and irreversible impairment of a major bodily function, said Schmit-Albin.

"Speaker of the Legislature Mike Flood, like many Nebraskans, was very troubled when he heard that Carhart wanted to become the go-to late term abortionist of the Midwest after George Tiller's death last summer," said Schmit-Albin. "Carhart moonlighted with Tiller for ten years in Wichita, Kansas. Speaker Flood was in a position to do something to ensure that Nebraska does not become the late term abortion capital of the Midwest and we thank him for his diligence and leadership in introducing and prioritizing LB 1103."

"For years LeRoy Carhart has thumbed his nose at Nebraska's outdated post viability statute which contains a health exception you could drive a Mack truck through," said Schmit-Albin. "LB 1103 creates a case of first impression for the courts to acknowledge the capability to feel pain as a compelling state interest to protect those unborn babies from an excruciatingly painful death. The more narrowly defined medical emergency exception with an objective standard should go a long way towards closing the loopholes in current Nebraska statute."

For daily updates from Nebraska Right to Life about this and other issues, search Facebook under: Nebraska Right to Life: State Affiliate to National Right to Life. For a transcript of an interview with LeRoy Carhart from June, 2009 where he discusses his abortion business in Nebraska and Kansas, go to www.nerighttolife.org and search under Press Releases/Newsletter Archives, July, 2009.

Results of NRL PAC Endorsements: Primary Election 2010

Nebraska Right to Life Political Action Committee (NRL PAC) did very well with its endorsements of pro-life candidates in the Primary Election said Denise Ashby, NRL PAC Director.

“NRL PAC endorsed 39 candidates in 31 races with a total of 32 endorsed candidates winning and going on to the General Election,” said Ashby.

“Twenty-four of those races were contested with 25 of the NRL PAC candidates prevailing,” Ashby said.

60,000 NRL PAC Voter Guides showing candidate endorsements and responses to the NRL PAC survey, were distributed in the two weeks prior to the Primary, mostly through literature drops in church parking lots and some through mailings into targeted districts, said Ashby.



Left: The first of 60,000 Voter Guides is delivered to the NRL office and mail house to prepare for shipping to lit drop volunteers and to be mailed into targeted districts. Right: NRL PAC volunteers lit drop Voter Guides on cars at Blessed Sacrament Catholic Church in Lincoln May 2nd.

Pro-Life Efforts Prove Successful

Nebraska Right to Life (NRL) thanks pro-life Nebraskans for your efforts in passing historic state legislation. Petitions were circulated, trips were made to Lincoln for the Walk for Life and Pro-Life Legislative Day, calls were made to state senators, letters were written to newspapers.

In the end, Nebraska Right to Life’s priority bill LB 1103, the Pain Capable Unborn Child Protection Act, was passed on a 44 to 5 final vote by the Nebraska Legislature on April 13th. We worked closely with Speaker Mike Flood of Dist. 19 (Norfolk), and Mary Spaulding Balch, J.D. State Legislative Director for National Right to Life, to introduce and guide to passage this groundbreaking legislation.

LB 1103’s passage came on the heels of passage of LB 594, the Women’s Health Protection Act. Nebraska Catholic Conference (NCC) deserves kudos for doing for LB 594 what NRL did for LB 1103. While NCC focused for two years to get LB 594 introduced and passed (by Senator Cap Dierks, Dist. 40 (Ewing)); NRL worked for the past session on LB 1103. This division of duties served the pro-life movement well by breaking the long standing, unwritten policy of pro-life Nebraska only getting one piece of major legislation passed in a session.

While our opponents have made noises about a legal challenge to both LB 1103 and LB 594, that remains to be seen. LB 594 goes into effect July 15th and LB 1103 goes into effect October 15th. Rest assured that NRL is in close contact with NRLC and Nebraska Attorney General Jon Bruning who has pledged to defend both laws, if challenged.



Pro-life citizen lobbyists wait in the Capitol Rotunda to speak to their senators.

FINAL FLOOR VOTE ON LB 1103 APRIL 13, 2010

Voting YES: 44

Adams, Dubas, Harms, Loudon, Rogert, Ashford, Fischer, Heidemann, McCoy, Schilz, Avery, Flood, Howard, Mello, Stuthman, Campbell, Fulton, Janssen, Nelson, Sullivan, Carlson, Gay, Karpisek, Nordquist, Utter, Christensen, Giese, Krist, Pahl, Wallman, Coash, Gloor, Langemeier, Pankonin, White, Cornett, Hadley, Lathrop, Pirsch, Wightman, Dierks, Hansen, Lautenbaugh, Price

Voting NO: 5:

Conrad, Cook, Council, Haar, McGill

Not Voting: 0

FINAL FLOOR VOTE ON LB 594, APRIL 12, 2010

Voting YES: 40

Adams, Flood, Heidemann, McCoy, Rogert, Carlson, Fulton, Janssen, Mello, Schilz, Christensen, Gay, Karpisek, Nelson, Stuthman, Coash, Giese, Krist, Nordquist, Sullivan, Cornett, Gloor, Langemeier, Pahl, Utter, Dierks, Hadley, Lathrop, Pankonin, Wallman, Dubas, Hansen, Lautenbaugh, Pirsch, White, Fischer, Harms, Loudon, Price, Wightman

Voting NO: 9

Ashford, Campbell, Cook, Haar, McGill, Avery, Conrad, Council, Howard

Not Voting: 0

Pro-Life Legislative Day Feb. 25

Nebraska Right to Life hosts Pro-Life Legislative Day to enable pro-lifers to be citizen lobbyists for a day. They are briefed on the pro-life bills, meet with their senators and present them with an info packet and can attend a hearing on a pro-life bill in the afternoon. This year's hearings centered on LB 1103 Pain Capable Unborn Child Protection Act and LB 1110, Prenatal Funding. We also held a Press Conference prior to the hearing on LB 1103 with the doctors and lawyers who testified for our side.



NRL Vice President Sandy Danek assists citizen lobbyists.



Dr. Tom Grissom takes his turn at the mic at the NRL press conference in support of LB 1103. Behind him are Professor Teresa Collett, left, and Dr. Anita Showalter, right.

The NRL press conference on LB 1103 was held the morning of the hearing on the bill, Feb. 25th, in conjunction with Pro-Life Legislative Day. It was well attended by the media.



Students sign in at Pro-Life Legislative Day.



Dr. Tom Grissom takes his turn at the mic at the NRL press conference in support of LB 1103. Behind him are Professor Teresa Collett, left, and Dr. Anita Showalter, right.



Those attending the Judiciary Committee hearing on LB 1103 had to go through a metal detector, not a common procedure for legislative hearings.

NRL Supports LB 1110: Prenatal Funding

NRL President Brenda Eller presented our testimony in support of LB 1110 at its hearing before the Health & Human Services Committee on Feb. 25th. Senator Cathy Campbell (Dist. 25) was the sponsor of LB 1110, a bill to provide prenatal services funding to unborn children of low income mother who were legal or illegal residents of the state. This is Senator Campbell's committee testimony for LB 1110

LB 1110 is intended to allow Nebraska to continue to offer prenatal services to unborn children of low-income women. The bill directs the Department of Health and Human Services to establish a separate state program under the targeted low-income child health option of CHIP. Program services shall be prenatal care and pregnancy-related services connected to the health of the unborn child.

The program is solely for the unborn children of mothers who are ineligible

for coverage under Medicaid. Children's eligibility for services will be determined using an income budgetary methodology of no greater than 185 percent of the federal poverty guideline. Services not included include dentistry, optometry, and other medical issues separate to the mother and unrelated to pregnancy.

The bill requires the department, within thirty days of LB 1110's passage, to seek approval from the Centers for Medicaid and Medicare —CMS — of a state plan amendment or waiver for the program.

For well over 20 years the practice in Nebraska has been to cover the cost of prenatal care of the unborn child of low-income women. It is important to note that CMS in its letter to the state of Nebraska on November 30 did not say this practice could not continue. What it did say was that Medicaid funding could not be used. In the same letter it did point out an alternate source of funding utilizing federal dollars with a

state match should the state choose to do so. Thus, this is clearly a policy issue.

I believe Nebraska's practice of funding prenatal care of the unborn child of low-income women should continue, including the unborn child of an undocumented mother. The child will be a U.S. citizen at its birth. Would we not want the child to be healthy? We certainly know the importance of prenatal care. Without it, significant problems can arise: premature birth, low birth weight, risk of health problems and disabilities throughout life, all of which expenses could potentially fall to the state to cover.

To me, it is unconscionable to think we would cast away this care. I would like to indicate to the committee that we will be bringing forth an amendment to address the issues and costs of labor and delivery because they would be handled under Medicaid, and we need to amend the bill to that point but we're not quite ready for that yet.

NRL News Sightings

Due to the heightened scrutiny by the mainstream and religious media on Nebraska these past many months, Nebraska Right to Life was quoted or interviewed by many regarding healthcare reform and Sen. Ben Nelson, the NU Regents' policy on ESCR, LeRoy Carhart and LB 1103.

An incomplete list includes: CNN, MSNBC, Fox Business News, the New York Times, Los Angeles Times, Washington Post, Politico, Associated Press National, National Public Radio, National Catholic Register, Focus On The Family Radio, Michelle Malkin, Greta Van Susteren, Jill Stanek, Janet Porter and of course the Omaha World-Herald, Lincoln Journal-Star and other Nebraska dailies/weeklies and radio programs on KFAB, KLIN and more.

Issues NRL & You Have Been Involved in Since Summer 2009

This has easily been one of the busiest 8 or 9 months for pro-life activity. It started last summer with the healthcare reform debate which reached its pinnacle of involvement by NRL in November and December with meetings with Sen. Ben Nelson last July, November and frequent contact with his office through December. Of course, the disappointing abandonment of Sen. Nelson regarding the pro-life language resulted in NRL PAC's statement that our ties with Sen. Nelson were cut and we would not entertain any circumstance where we could ever endorse him in the future.

While the healthcare debate raged on, the University of Nebraska Board of Regents embryonic stem cell policy issue was heating up at their October and November meetings. Again, there was the disappointing abandonment of principle by Regent Jim McClurg and again, another elected official whom NRL PAC will not support in the future. But NRL organized pickets of two Regents' meetings last Fall and presented testimony.

January brought the legislative session and the commitment by Speaker Mike Flood to making LB 1103 his priority bill. This was

a huge boost after the disappointments we had endured with Nelson and McClurg.

Two major events hosted by NRL, the Walk for Life on Jan. 30th and the Pro-Life Legislative Day on Feb. 25th, took a lot of organizing and volunteer help. We also hosted NRLC staffers Mary Spaulding Balch and Jonathan Rogers in January and February and Mary came again in March when LB 1103 hit floor debate.

The hearing for LB 1103 on Feb. 25th meant hosting a press conference for the doctors and constitutional law professor procured by NRLC for our testimony. While the Legislature was still going and the many meetings and negotiations that that entails, the Primary Election was upon us and we had to get NRL PAC surveys out to candidates.

The NRL Board met in January and March and revisited its PAC endorsement policy. The PAC Voter Guide lit drop had to be coordinated and shipped to volunteers across the state.

If it seems like you were busier than usual with pro-life action items these past months, you were!

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Nebraska Walk for Life Jan. 30

Thousands of pro-life Nebraskans turned out for the NRL-sponsored annual Walk for Life Jan. 30th. Participants gathered at the State Capitol for a brief program, followed by keynote speech from author Jane Hampton Cook at the UNL Student Union. NRL thanks pro-lifers for the great turn-out in defense of life.



Speakers line up on the west side of the State Capitol on Jan. 30th for the Nebraska Walk for Life.



The overflow crowd at the Student Union waits to hear author Jane Hampton Cook.



Students man the NRL booth at the Union.



NRLC had a presence at this year's Walk with their own booth and staffers who were in Lincoln for LB 1103.