Written Testimony of Kristine Burton Brown, J.D., in Support of Missouri H.B. 908

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Thank you, Members of the Committee. My name is Kristi Brown, and I am an attorney. I'm also an associate scholar for the Charlotte Lozier Institute, and am testifying in favor of HB 908 on CLI's behalf.

Sixteen states across the nation ban abortion at 22 weeks, as HB 908 would do. Eighteen ban abortion at viability, which is arguably also at 22 weeks. Nearly half of the states prohibit abortion at some point in the second or third trimester.

According to U.S. Supreme Court precedent, HB 908 is a constitutional regulation on abortion. In *Gonzales v. Carhart*, the Court recognized as legitimate and lawful the "State's interest in promoting respect for human life at all stages in the pregnancy." Prohibiting most abortions when the human fetus can feel pain is an appropriate measure of respect for human life. A federal Court of Appeals recognized in 2008 that a statement that abortion ends the life of a separate, unique, living human being is factually accurate. Since, as federal courts and federal laws have recognized, an unborn fetus is a living human being, banning the intentional causing of pain of such a human being is a legitimate and constitutional state interest.

Additionally, women deserve to have the information that abortions can cause pain to their unborn child that this bill provides. In 2007, in *Gonzales v. Carhart*, the U.S. Supreme Court recognized that "The State has an interest in ensuring so grave a choice is well informed." The Court also determined from testimony submitted in the case that doctors performing abortions admitted "that they do not describe to their patients what procedures entail in clear and precise terms." The Court continued: "It is, however, precisely this lack of information…that is of legitimate concern to the State. … It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know…"

In this age of modern science, the facts on modern viability standards, extensive available information on fetal development, and the facts on fetal pain, are all included in this information that some women "once did not know" prior to obtaining an abortion. It is well within the state's right to ensure that women and the public are informed on these facts, and it is also constitutional for the state to prohibit abortions based on medical knowledge.

In *Gonzales*, the Court stated: *"*It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of…abortions…. The State's interest in respect for

life is advanced by the dialogue that better informs the political and legal systems, the medical profession, expectant mothers, and society as a whole of the consequences that follow…"

While HB 908 is focused on the fetal pain that is present at 22 weeks gestation, there is an additional legal reason why HB 908 is constitutional, according to Supreme Court precedent. This reason is the "viability rule" originally created in *Roe v. Wade*. It basically stated that, prior to viability, a state could not prohibit a woman from making the decision to abort her child. However, after viability, the state had freedom to protect the child's life. The viability rule allows states to ban most abortions once the unborn human being reaches an age at which viability is possible. In *Colautti v. Franklin*, the U.S. Supreme Court explained that "viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support."

While *Roe v. Wade* recognized viability at 28 weeks and *Planned Parenthood v. Casey* recognized it at 23 or 24 weeks, modern medicine points to 22 weeks as an age at which a significant number of babies can survive. Even the *Washington Post* reported "That babies can survive at 22 weeks is not a new finding; it has been known for 15 years…"

A 2015 study in the New England Journal of Medicine reports that 25% of babies born at 22 weeks gestation would survive if "actively treated in a hospital."

Planned Parenthood v. Casey recognized that medical science is continually advancing and that viability would continue to move earlier and earlier. The Supreme Court has consistently recognized two things that are inherently important to HB 908: First, that the interest of children who can survive outside the womb with medical care can be recognized and protected by the state and, second, that states have a legitimate interest in respecting human life – something that fetal pain bills like HB 908 effectively do.