

**H.R. 490, THE HEARTBEAT PROTECTION ACT  
OF 2017**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
AND CIVIL JUSTICE  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTEENTH CONGRESS  
FIRST SESSION

NOVEMBER 1, 2017

**Serial No. 115-44**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2018

COMMITTEE ON THE JUDICIARY

BOB GOODLATTE, Virginia, *Chairman*

F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, JR., Michigan
LAMAR SMITH, Texas	JERROLD NADLER, New York
STEVE CHABOT, Ohio	ZOE LOFGREN, California
DARRELL E. ISSA, California	SHEILA JACKSON LEE, Texas
STEVE KING, Iowa	STEVE COHEN, Tennessee
TRENT FRANKS, Arizona	HENRY C. "HANK" JOHNSON, JR., Georgia
LOUIE GOHMERT, Texas	THEODORE E. DEUTCH, Florida
JIM JORDAN, Ohio	LUIS V. GUTIÉRREZ, Illinois
TED POE, Texas	KAREN BASS, California
JASON CHAFFETZ, Utah	CEDRIC L. RICHMOND, Louisiana
TOM MARINO, Pennsylvania	HAKEEM S. JEFFRIES, New York
TREY GOWDY, South Carolina	DAVID CICILLINE, Rhode Island
RAÚL LABRADOR, Idaho	ERIC SWALWELL, California
BLAKE FARENTHOLD, Texas	TED LIEU, California
DOUG COLLINS, Georgia	JAMIE RASKIN, Maryland
RON DeSANTIS, Florida	PRAMILA JAYAPAL, Washington
KEN BUCK, Colorado	BRAD SCHNEIDER, Illinois
JOHN RATCLIFFE, Texas	
MARTHA ROBY, Alabama	
MATT GAETZ, Florida	
MIKE JOHNSON, Louisiana	
ANDY BIGGS, Arizona	

SHELLEY HUSBAND, *Chief of Staff and General Counsel*  
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

---

SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

STEVE KING, Iowa, *Chairman*  
RON DeSANTIS, Florida, *Vice-Chairman*

TRENT FRANKS, Arizona	STEVE COHEN, Tennessee
LOUIE GOHMERT, Texas	JAMIE RASKIN, Maryland
TREY GOWDY, South Carolina	JERROLD NADLER, New York

# CONTENTS

NOVEMBER 1, 2017

## OPENING STATEMENTS

	Page
The Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice .....	1
The Honorable Steve Cohen, Tennessee, Ranking Member, Subcommittee on the Constitution and Civil Justice .....	3
The Honorable Bob Goodlatte, Virginia, Chairman, Committee on the Judiciary .....	5

## WITNESSES

Priscilla Smith, Clinical Lecturer in Law, Reproductive Rights and Justice Project Oral Statement .....	6
David F. Forte, Professor of Law, Cleveland State University Oral Statement .....	8
Dr. Kathi Aultman, M.D. Fellow, American College of Obstetricians and Gynecologists Oral Statement .....	9
Star Parker, Founder and President, Center for Urban Renewal and Education (CURE) Oral Statement .....	11

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letters Submitted by the Honorable Steve Cohen, Tennessee, Ranking Member, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at:

*<https://docs.house.gov/meetings/JU/JU10/20171101/106562/HHRG-115-JU10-20171101-SD004.pdf>*

Letters Submitted by the Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at:

*<https://docs.house.gov/meetings/JU/JU10/20171101/106562/HHRG-115-JU10-20171101-SD003.pdf>*



**H.R. 490, THE HEARTBEAT PROTECTION ACT  
OF 2017**

**WEDNESDAY, NOVEMBER 1, 2017**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The committee met, pursuant to call, at 11:30 a.m., in Room 2337, Rayburn House Office Building, Hon. Steve King [chairman of the subcommittee] presiding.

Present: Representatives King, Goodlatte, Franks, Gohmert, Handel, Johnson of Louisiana, Cohen, Raskin, and Jayapal.

Staff Present: Paul Taylor, Majority Counsel; Jake Glancy, Clerk; James Park, Minority Chief Counsel, Subcommittee on the Constitution; Matthew Morgan, Minority Professional Staff; and Veronica Eligan, Minority Professional Staff.

Mr. KING. Okay, the Subcommittee on the Constitution and Civil Justice will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time. We welcome everyone to today's hearing on the H.R. 490, the Heartbeat Protection Act of 2017, and I now recognize myself for an opening statement.

It pains my soul to think of the countless babies killed since abortion on demand became commonplace in the unconstitutional decision of *Roe v. Wade*. While individuals across our Nation have elected multiple pro-life majorities and presidents, we have had minimal success in protecting the unborn. We are decades past the time to defend the sanctity of human life.

It is important that Congress passes such a strong pro-life bill now because President Trump will hopefully appoint one or two more justices to the Supreme Court, making this a profound moment in the pro-life movement. President Trump is actively changing the makeup of our judicial system with strong conservative nominees who would hear arguments about this bill while it is being challenged on the way to the Supreme Court. Even Democratic Presidents from a party that supports abortion on demand have made clear that unborn children are human beings.

Under the Carter administration, the publication from the Department of Health and Human Services contained the following language, and I quote, "With the passage of time, the human organism grows from a single cell to a fully developed adult. Life begins

when a male sperm unites with a female egg. The new life created by this union starts as a single cell in relation to the total lifespan of the individual, the early developmental years are short and serve as the foundation for the remainder of one's lifespan. The needs of a child in the support of this growth in development begin before birth and continue throughout the growth years, until maturity is reached."

The Obama administration included unborn children in its analysis of the maltreatment of children. In its 2012 annual report, the Department of Health and Human Services includes figures for abuse against unborn children, which is of course entirely appropriate, given their uniquely vulnerable nature. It is time for the law to codified what we know to be.

Earlier this year, I introduced H.R. 490, the Heartbeat Protection Act, which would require would-be abortionists to determine whether an unborn child had a detectable heartbeat, to inform the mother of such heartbeat, and to refrain from aborting an unborn child whose heartbeat was detected. To put it simply, if the heartbeat is detected, the baby is protected. The bill includes an exception for instances in which an abortion is required to save the life of the mother. Some will argue that Federal legislation that recognizes the fact an unborn child is a human being at least as soon as a heartbeat is detected violates the Supreme Court's 1973 decision in *Roe v. Wade*, but few support the analysis the bare majority of the Supreme Court uses to justify its decision.

Liberal Professor Laurence Tribe of Harvard Law School wrote, and I quote, "One of the most curious things about *Roe* is that behind its own verbal smokescreen the subsidy of judgment on which it rests is nowhere to be found." Ruth Bader Ginsburg, now a justice on the Supreme Court, wrote in a law review article in 1985, "*Roe*, I believe, would have been more acceptable as a judicial decision if it had not gone beyond a ruling on the extreme statute before the court. Heavyhanded judicial intervention was difficult to justify and appears to have provoked, not resolved, the conflict." Boy, was she right.

The constitutionality of this bill is evident because Congress clearly has authority and an obligation under its Article I powers to pass laws that uphold the 14th Amendment, under which Section One mandates, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." This equal protection clause demands that the government provide equal protection to all Americans' lives, liberty, and property, including the life and liberty of Americans living in their mother's wombs.

The 14th Amendment codifies the language of our Declaration of Independence. Thomas Jefferson set up prioritized rights in our declaration with this more familiar language: "We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." In both cases, life is the paramount right and cannot be taken without due process. Liberty is a right secondary to life; no one, in exercising

their right to liberty, has a legitimate constitutional or moral claim to take the life of another.

The question before us, since America has held the right to life as a sacred right from God, endowed by our Creator, the question before us is not “Can the lives of innocent babies be taken in exercising the right to the liberty of the mother?” But rather, “At what instant does life begin?” Science cannot precisely pinpoint the instant of conception, but the ultrasound proves beyond any doubt that life is present every time there is a heartbeat. The promises of our Founding Fathers must be restored to the voiceless and most vulnerable. Liberty can never again become the excuse to take the life of another.

That concludes my opening statement, and I now recognize the gentleman from Tennessee, Ranking Member Mr. Cohen, for his statement.

Mr. COHEN. Thank you, Mr. Chair. Before we get into this subject, which is a serious and important subject, I want to recognize somebody who is here today. When I was a child I was befriended by one of the great baseball players of all time who justly should be in the Hall of Fame, Minnie Minoso, and his son Charlie Rice-Minoso, in front, is here today, and I want to recognize him. Today is the last day of the baseball season, and a great baseball player’s son is with us. Thank you, Charlie.

A woman’s constitutional right to choose to terminate a pre-viability pregnancy—which the Supreme Court established in *Roe v. Wade*, 1973, and which it has consistently reaffirmed, including as recently as last year—is a fundamental pillar of women’s equality. The *Roe* decision was a watershed moment not only for the protection of women’s right to choose, but for all Americans who believe that they should be free of unwarranted government interference in their most personal life decisions. H.R. 490 is a direct attack on that right.

It is a sure sign of House Republicans’ misplaced priorities and their failing agenda when they turn yet again to attacking women’s right to choose. Just a few weeks ago, the House passed a blatantly unconstitutional bill that would ban abortions after 20 weeks of gestation. It will go nowhere in the Senate. All the arguments against that bill apply with equal or even greater force against this bill, H.R. 490. This bill bans all abortions where a fetal heartbeat is detectable, which means as a practical matter it would ban abortion after just 6 weeks of gestation. This is patently unconstitutional.

*Roe* and the line of decisions following it have all made clear that prior to the point of a fetus’s viability a pregnant woman has an undeniable constitutional right to choose to terminate a pregnancy. Viability does not begin until around 24 weeks of gestation, not 6. Therefore, by banning pre-viability abortions after as early as a 6-week gestation, this bill would substantially narrow the window within which a woman may exercise her constitutional right to terminate a pregnancy, flies in the face of *Roe*’s central holding, and in essence, flies in the face of the Constitution and the laws of this country.

In short, H.R. 490 can only be upheld as constitutional if *Roe* were overturned, which is clearly the ultimate intention of the bill’s

fine supporters. Probably they want something at the moment of conception. In addition to threatening women's equality and rights, H.R. 490 threatens women's health. The bill has no exception to its abortion ban for procedures needed to protect a woman's health and has only limited exception to save a woman's life only when it is threatened by a physical condition.

The American Congress of Obstetricians and Gynecologists say, "Safe, legal abortion is a necessary component of women's healthcare," and many health-related factors determine whether a woman chooses to terminate a pregnancy, including illness during pregnancy. The American Congress of Obstetricians and Gynecologists further notes the chilling effect that H.R. 490's criminal penalties would have on physicians and expressed concern that "physicians who act in the best interest of their patients by providing medically necessary care will face criminal sanctions."

And I should mention here that I have received a statement today from the college concerning the testimony of Dr. Aultman, and they say while Dr. Aultman is a member of the American College of Obstetricians and Gynecologists—a fellow, I believe—she has no official position with the college and her appearance before the House Judiciary Subcommittee on the Constitution and Civil Justice is not on behalf of the organization. Her testimony does not represent ACOG's views or policies.

ACOG submitted a statement for the record opposing H.R. 490: "The bill violates the Constitution and is gross political interference in the practice of medicine, prohibiting physicians from providing legal, necessary care to their patients. ACOG urges the House to reject this bill," as I believe do every other medical group who has taken a position on the bill, a legitimate, large medical group.

The lack of a health exception potentially places women's health at a grave risk and the life exception specifically does not include life-threatening psychological or emotional conditions, including suicidal thoughts, and does not even cover severe threats to a woman's health. Politicians are not doctors. Some may be, but most are not, and our job here is to be politicians, not doctors. And supporters of bills like H.R. 490 should stop trying to use politics to interfere in the practice of medicine.

Finally, this bill has a lack of any exception for rape or incest, demonstrating a complete lack of sensitivity regarding these horrible crimes. According to the study of the American Journal of Obstetrics and Gynecology, more than 32,000 pregnancies result from rape each year and rape-related pregnancies occur with significant frequency, yet H.R. 490 would further victimize rape and incest victims by forcing them to carry such pregnancies to term. For these reasons, H.R. 490 is wrong on both constitutional and moral grounds. It undermines women's equality and their dignity as human beings.

I strongly oppose the bill and would ask without objection to enter into the record written testimony and letters opposing this bill from the American Congress of Obstetricians and Gynecologists, a letter from the American Academy of Family Physicians, a letter from Planned Parenthood, and a letter signed by 29 faith-based organizations and civil reproductive rights groups opposing this particular law. And it ranges from Methodists and

Presbyterians and you name it; written testimony of NARAL opposing it as well. Without objection—

Mr. KING. Hearing no objections, so ordered.

[The information follows:]

Letters and Statements Submitted by Mr. Cohen of Tennessee. This material is available at the Committee and can be accessed on the committee repository at: <https://docs.house.gov/meetings/JU/JU10/20171101/106562/HHRG-115-JU10-20171101-SD004.pdf>

Mr. COHEN. I yield back the balance of my time.

[The prepared statement of Mr. Cohen follows:]

Mr. KING. The chair thanks the gentleman for his presentation this morning and now recognizes the chairman of the full committee, Mr. Goodlatte, for his opening statement.

Chairman GOODLATTE. Well, thank you very much, Mr. Chairman. Thank you for holding this hearing. Thank you for introducing the heartbeat legislation.

Since the Supreme Court's decision in *Roe v. Wade*, medical knowledge regarding the development of unborn babies and their capacities at various stages of growth has advanced dramatically. Today, we even see stunningly detailed images of unborn children commonly celebrated on social media. Congress has the power and the responsibility to acknowledge the significance of these profound developments through the enactment of pro-life legislation.

Last month, the House passed the Pain-Capable Unborn Child Protection Act, which is supported by the President and is now pending in the Senate. That legislation prohibits abortions after 20 weeks of pregnancy post-fertilization, the point at which scientific evidence shows the unborn can experience great suffering. I support other pro-life measures as well, including the bill to be discussed at this hearing, which limits abortions at an earlier stage of an unborn child's development, and I look forward to hearing from all of our witnesses today. Thank you, Mr. Chairman.

Mr. KING. The chairman of the full committee yields back his time. Does the ranking member of the full committee have a statement to introduce?

Mr. COHEN. Apparently so. Statement from Mr. Conyers, ranking member.

Mr. KING. Mr. Conyers's, your ranking member, statement will be introduced into the record without objection.

Mr. KING. Thank you, Mr. Cohen. And now I would like to introduce our witnesses.

Our first witness is Professor Priscilla Smith, a clinical lecturer in law at Yale Law School and former witness before this committee, and welcome. And our second witness is Professor David Forte, professor of law at Cleveland State University and also a witness before this committee in the past. And our third witness is Dr. Kathi Aultman, a board-certified OB/GYN and associate scholar at the Charlotte Lozier Institute, experienced as well. And our final witness is Star Parker, the founder and president of the Center for Urban Renewal and Education, known as CURE, who has also testified before this Congress in the past.

So, I need to remind you, although I do not need to, the light switch will switch from yellow to green, indicating that you have

1 minute to conclude your testimony. When the light turns red it indicates that the 5 minutes have expired. And we will ask you to be respectful to that, but we will also ask you to conclude your thoughts, and any balance of your written testimony will be introduced in the record regardless.

And so, before I recognize the witnesses, it is tradition of the subcommittee that they be sworn in, so please stand to be sworn. And raise your right hand, please. Thank you. Do you swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing about the truth, so help you God?

Thank you. You may be seated. Let the record reflect that all the witnesses responded in the affirmative. I now recognize Professor Smith for your testimony. Professor Smith? Is your microphone on?

**STATEMENTS OF PRISCILLA SMITH, CLINICAL LECTURER IN LAW, YALE UNIVERSITY; DAVID FORTE, PROFESSOR OF LAW, CLEVELAND STATE UNIVERSITY; DR. KATHI AULTMAN, ASSOCIATE SCHOLAR, CHARLOTTE LOZIER INSTITUTE; AND STAR PARKER, FOUNDER AND PRESIDENT, CENTER FOR URBAN RENEWAL AND EDUCATION (CURE)**

Ms. SMITH. How is that?

Mr. KING. Good.

**STATEMENT OF PRISCILLA SMITH**

Ms. SMITH. All right. Thank you, Mr. Chairman and members of the subcommittee. My name is Priscilla Smith. I am a scholar at Yale Law School, where I direct the program for the Study of Reproductive Justice. I am testifying today here in my personal capacity. I do not purport to represent any institutional views of Yale Law School, if there are any such views.

As my written testimony explains, and Mr. Forte's testimony does not dispute, this bill is blatantly unconstitutional. As everyone on this committee knows, it flies in the face of over 40 years of Supreme Court precedent holding that the right to liberty guaranteed to all Americans by the due process clause of the 14th Amendment applies equally to women and protects a woman's right to terminate her pregnancy prior to the viability of the fetus.

The court first announced this right in a seven-to-two decision in *Roe v. Wade*, but the court has repeatedly reaffirmed the abortion right time and time again in decisions joined by justices appointed by Republicans and Democrats alike. Indeed, a total of 15 justices, including nine Republican appointees, have voted to recognize that the Constitution protects the right to abortion, and only six justices have voted to deny the right. Over and over again, the Supreme Court has reaffirmed *Roe's* essential holding.

*Planned Parenthood v. Casey*, the Supreme Court's 1992 decision 25 years ago reaffirming the right, made clear that the court was striking a balance between protecting the woman's right to liberty, her right to choose abortion, and the ability of the State to express profound respect for the life of the unborn. The court achieved this balance, in a plurality opinion written by three Republican appointees, by setting limitations on the methods the State can use to regulate abortion to promote the potential life of the fetus. Those

limitations preserve the woman's liberty interest. But this bill, H.R. 490, upsets this balance dictating a woman's choice, violating her bodily integrity, and denying her dignity.

It is unconstitutional because it bans almost all abortions starting at approximately 5 and a half to 6 weeks of pregnancy, long before we are even approaching viability of the fetus, which is the time when the fetus is reasonably capable of survival outside the woman, of having an independent existence from the woman. It is also long before most women even know they are pregnant, before they have any symptoms of pregnancy, such as morning sickness. For example, in my two pregnancies, both of which I carried to term, I did not become sick until much later in the pregnancies.

H.R. 490 is also unconstitutional because it fails to make any exception for women's health, as we have heard, and limits the circumstances in which an abortion can be performed, even to save the woman's life, and all of this is before, long before, we approach viability of the fetus. My written testimony discusses the legal doctrine in more detail. But what has been discussed less is the impact on women of denying them the right to control when and in what circumstances they decide to bring a child into the world.

Women care enormously not only about whether to become a mother, but also about what kind of mother they could be. And most women feel an enormous responsibility for ensuring that any child that they do have will be raised in the best circumstances possible. Perhaps you are not all aware that approximately 60 percent of women obtaining abortions are already caring for at least one child.

Women have been obtaining abortions since the beginning of time. Before Roe, when abortions were illegal and often required terrifying trips to obtain abortions in unsafe conditions, an estimated 1.2 million women each year still resorted to illegal abortion in the U.S., as many as 5,000 of these women—already born, living, breathing, lungs working, hearts-beating women, many with children at home who depended on them—5,000 of them died each year as a result of illegal abortions, and many more were severely injured. This is the world we would return to if H.R. 490 went into effect and abortion went underground, which is what would happen.

Instead of spending your time on bills that are flatly unconstitutional, this Congress should spend its time trying to improve healthcare for women and infants, women who want to carry to term, and spend some time doing something about our dismal health indicators. If you want healthy babies and healthy pregnancies, this is what you would do.

The U.S. has the worst rate of maternal mortality in the developed world. American women are more than three times as likely as Canadian women to die in the maternal period—I see that my time is up, but I ask for just a few more minutes to finish my statement—and six times as likely to die as Scandinavian women, and nearly 60 percent of these deaths are preventable, according to the CDC. Infant mortality rates are even worse.

Thank you, Chairman. Thank you for the opportunity to testify here today.

Mr. KING. Thank you, Professor Smith. And now, I recognize Professor Forte for his 5-minute testimony. Professor?

**STATEMENT OF DAVID FORTE**

Mr. FORTE. Thank you, Mr. Chairman. Benjamin Franklin once said, "Nothing is as certain as death and taxes." He left one thing out, and that is birth after a heartbeat. Now, you can forgive him because, though he was a scientist, he did not know the data that we now know about that.

Since 1992 when Casey was decided, enormous studies have now shown that there is a virtual 95 to 98 percent chance of a child being born once the heartbeat begins within its embryo. That is a prediction that means that each one of us who have been born began our lives being born when our hearts began beating, and the question is, should we deny those children whose hearts have been begun beating the right to become full human beings the way we have?

Now, what about the Supreme Court? Is the Supreme Court immune from scientific evidence? The answer is no. Has it ever changed its mind because of new scientific evidence? The answer is yes. Take, for example, back in 1905. The court decided the case of *Lochner v. New York*, which held that there was a right of contract and that New York could not protect the health of bakers because it upset the right of contracts, and that bakers were not a class that deserved some kind of protection. A few years later a brilliant lawyer named Brandeis convinced the court that women needed special protection and he brought all kinds of scientific evidence to change the court's mind, and the court did in *Muller v. Oregon*.

Even in *Roe* and in *Casey*, you see the court changing its mind. The opinion in *Roe* is so lacking in any scientific basis that you could almost see the embarrassment of the plurality in *Casey* attempting to make it right. But where in *Roe* it said that abortion was to be a fundamental right that could only be compromised by a strict scrutiny test, in *Casey* it said an undue burden test.

Where in *Roe* there was a tripartite, three-semester system, in *Casey* there was a two system, with viability or not viability. Where in *Roe* it said that the State had an interest after viability in the fetus's eventual birth, subject to *Doe*, which meant no real protection whatsoever, in *Casey* the court said the State had an interest in the life of the fetus from the time of birth.

Now, the big line that the court had put into place in *Casey* is, as we said, viability, and it is a strange line. First of all, most doctors do not talk about viability in the way the court does. The court talks about viability as a fetus, which is "likely to have a meaningful life of its own." Well, everybody cannot have a meaningful life on their own unless they were related to somebody else in their relationships. The court also said that viability is when the fetus can survive on its own, but nobody can survive on its own. Everybody needs extrinsic help.

What do doctors, obstetricians say about viability? They say a viable fetus, a viable pregnancy, is one where the heart is beating, and it is likely, almost inevitably, to reach full term. That is what doctors say viability is, not what judges say viability is. Now, why

did the court say viability struck at that time, when the child could survive on its own? What does that have to do with it when it still needs help? Why does the court say in Casey that the woman has to carry the child to term when it can survive on its own?

The reason why, when you deconstruct its reasoning, it requires that the woman carry the child to term is that that is the best protection of the child to reach full term. States that have tried to pass laws which would have allowed abortion but with procedures that would have saved a child, the court struck down. "No, the woman must carry it till term." Well, we have a much better marker now. The marker is heartbeat.

That marker was not available to the court during Casey. We did not see the statistics; we did not see the reality of it. And so, if we have a law now that says that in order for the State to prefer childbirth—which the court says it can, remember? It did not say prefer the life of the fetus over the woman; it said prefer childbirth over abortion. There is no better marker than heartbeat, and that is what this bill will protect. Thank you, Chair.

Mr. KING. Thank you, Professor Forte. And now, the Chair will recognize Dr. Aultman.

#### **STATEMENT OF DR. KATHI AULTMAN**

Dr. AULTMAN. Chairman King and members of the subcommittee, thank you for inviting me to participate in this hearing today. When I entered medical school, I believed that the availability of abortion on demand was solely an issue of women's rights, and during my residency I moonlighted doing abortions.

Mr. KING. Could you get a little closer to the microphone, please?

Dr. AULTMAN. Is that better? Okay. As I examined the tissue after each procedure, I was fascinated by the tiny, perfectly formed limbs and organs, but because of my training and conditioning, a human fetus seemed no different than a chick embryo to me. I continued to do abortions without reservation, even while pregnant, but when I returned to the clinic after my delivery I was confronted with three situations that changed my thinking.

I had personally done three abortions on a girl scheduled that morning, but when I protested, the clinic staff said that I had no right to refuse her. I told them that was easy for them to say; I was the one that had to do the killing. The second case involved a woman who, when asked by her friend if she wanted to see the tissue, replied, "No, I just want to kill it." I felt like saying, "What did that baby ever do to you?" The third patient was a mother of four who felt she could not afford another child. She cried throughout her time at the clinic.

What struck me was the apathy of the first patient and the hostility of the second, contrasted with the sorrow and misery of the woman who knew what it was to have a child. I had finally made the connection between fetus and baby, and realized that the baby was the innocent victim in all of this. The fact that it was unwanted was no longer enough justification for me to kill it, and I could no longer do abortions.

My views also changed during my practice as I saw young women who did amazingly well after deciding to keep their unplanned pregnancies, in contrast to those who were struggling with

the emotional aftermath of abortion. That was not what I was expecting.

I do not believe a woman can remain unscathed after killing her child. At some point, usually after childbirth or the inability to get pregnant the realization of what they did hits them. In fact, it was not until after I had my first child that I regretted having my own abortion. I wish there had been a heartbeat bill back then, or that it had not been so terribly easy to get an abortion. I wish I had had more confidence in myself and my family. I believed the lie that if you are young and have an unplanned pregnancy it will ruin your life.

Our society has been subjected to extreme propaganda on this issue from pro-choice advocates for years. We have convinced our young women that an unwanted pregnancy is the worst thing that can happen to them and that their right to reproductive freedom is more important than their babies' right to life. We have sanitized our language to make abortion more palatable and talk about the fetus instead of the baby and terminating the pregnancy rather than killing the baby. We have moved farther away from the idea that life is precious and closer to the utilitarian attitudes that destroyed so many lives during the last century. More and more, we are embracing a culture of death that only values the strong and healthy.

I love to meet adults that I have delivered, but it is always bittersweet because I am reminded of all the people I will never meet because I aborted them. It also reminds me that I am a mass murderer. Because we cannot see who they will become, we feel justified in sacrificing babies in the womb for the people we can see.

I support the Heartbeat Protection Act because it uses the heartbeat, a very concrete sign of life that people can identify with, to define when the fetus should be protected. It will protect the lives of those who will not continue to be unless we do something. They will not be here to cure cancer, to write a beautiful symphony, or to wipe a child's tears. One just has to look at the "almost-were not" to get a glimmer of who they might become and how they might benefit society.

I think about my beautiful cousin whose Bangladeshi mother was raped by a Pakistani soldier. She survived her mother's abortion, was rescued by Mother Teresa's nuns, and was later adopted by my aunt and uncle. Perhaps we should ask those who were conceived through rape if others like them should be denied protection under such an act.

We know from a scientific standpoint that the baby in the womb is a human being and not just a blob of tissue. Birth changes nothing but the baby's environment. What justification do we have to deny them personhood and human rights until after their birth?

I want to thank those of you who have supported this bill for your vital efforts to protect those who have no voice and cannot protect themselves, and I thank you all for listening to me.

Mr. KING. Thank you, Dr. Aultman. I now recognize Ms. Parker for your testimony.

**STATEMENT OF STAR PARKER**

Ms. PARKER. Thank you. My name is Star Parker and I am the founder and president of the Center for Urban Renewal and Education, based here in Washington, D.C., and I want to thank you, Mr. Chairman for this opportunity to declare my support of H.R. 490, the Heartbeat Protection Act of 2017.

The abortion industry all across America, in particular in our most distressed communities, is preying on our Nation's most vulnerable, brutally dismembering their offspring, and yet there is no Federal protection that the woman considering an abortion receive full disclosure about the human being growing within her. Recently, a famous rapper named Nicki Minaj told Rolling Stone magazine that an abortion of her youth still haunts her, a heart-wrenching story being told many times over, thousands of times, distraught men and women in hundreds of communities all across our great country.

I was one such woman. When, years ago, lost in sexual recklessness, had four abortions without any counsel nor information from the abortion providers about the distinct humanity of the life that was growing within me. I heard all the propaganda of abortion peddlers in school and media, from community and political leaders, yet I heard nothing of the infant development in the womb, nor any information about their mortality.

Perhaps then, one might argue, that little was known about the development or mortality of an embryo or a fetus. Very few instruments were available to medically or scientifically detect heartbeat, but today, due to modern technology, this is not an argument that can be made, in particular with the advent of ultrasound, where we can now hear and measure a heartbeat within the womb.

There is a great need for the Heartbeat Protection Act of 2017, and to illustrate the humanity of the life in the womb and to express the great need for this particular bill, I want to share a sampling of stories I have heard over and over again in State after State about the impact of abortion on personal lives. In Texas, this man had deep regret of an abortion in his youth after discovering information on fetal development upon his wife's first pregnancy, and he ended up in counseling for depression. When he saw the heartbeat of their expectant offspring on sonogram, his heart rushed with panic over an abortion he had a decade earlier with his girlfriend.

In North Carolina, this couple talked themselves into an abortion for financial reasons and then could not look at each other again after thinking about fetal development, and thus ended their marriage. In Alaska, this pastor found out that his minor daughter had had an abortion without consent after she was in agonizing pain in that she was carrying twins and the abortionist had only killed one. The survivor of this botched abortion is now an adult and speaking out against abortion. And interestingly, and for the record, all three of these stories were told to me by men, two of which were African-American.

Let's imagine, if not only for a second, the millions of men and women all across our country that, with very limited medical and scientific information, go into an abortion clinic to yet still not receive information as simple as that the life growing within her

womb has a heartbeat. As a Committee on the Judiciary and Subcommittee on the Constitution and Civil Justice, I implore you to please consider my above testimony on behalf of the innocent life growing in the womb and the vulnerable men and women considering abortion.

But if you will also consider in your deliberations regarding H.R. 490 the last time in American history that we were faced with hard constitutional political questions on the civil conflict between humanity and convenience, personhood and property, justice and public opinion, slavery was, as abortion is, a crime against humanity. Like slavery, tensions were created in the public square and in law concerning who qualified for natural rights worthy of protection.

In the first 89 years of our Nation's existence, it was the black slave who sought freedom and equal protection under the law, and many attempts were made to heed their cry. In 1777, gradual abolitionist laws were passed in Northern States—Vermont, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Connecticut, New Jersey, New York. In 1807, Congress passed a law prohibiting the importation of slaves into the United States after January 1st, 1808. In 1831, emancipation was narrowly defeated in the Virginia congressional convention.

Today, it is the conceived person, living in the womb of its mother, that should be considered human with opportunity of equal protection under the law. It is ironic that while the 14th Amendment of the United States Constitution in 1868 humanized slaves, the United States Supreme Court of 1973 dehumanized the life of the being in utero, handing down a decision that wreaked in ethnic cleansing to once again allow a powerful few to determine exactly who had a right to humanity.

As with slavery, while special interest groups put tremendous pressure on legislators and judges to dehumanize blacks so that they could protect slavery, today similar pressure is put on legislators and judges by the eugenics movement and other special interest groups regarding abortion. If the baby in utero is not a human being in the fullest sense of that term, then he or she has no natural right to life. However, if the opposite is true, then the humanity in the woman is entitled to the constitutional right to life.

Ignoring the advent of ultrasound and other medical devices that make it abundantly clear that the baby in utero is alive and indeed human is a disservice to women and to a society built on the constitutional rights that protect us all. I pray that this Heartbeat Protection Act of 2017 will unanimously pass this committee and eventually will be voted on the House floor. I have submitted to your committee a 2015 CURE policy report about the impact of abortion on the black community which will give you more specifics to support my testimony here today. Thank you.

Mr. KING. Thank you, Ms. Parker. I thank all the witnesses for your testimony this morning, and we will now transition into the questioning. And recognizing myself, I would point out first that in the front row is Mackenzie Miller in the red dress with a black sweater. Mackenzie is pregnant today and with little Lincoln Glenn Miller, who may be a musician one day. We do not know, that is who he is named after.

But very early this morning, the ultrasound that is seated to Mackenzie's left was conducted by Mandy Ross on the other side of the ultrasound, right next to Janet Porter. That is kind of our milestone here. And so, Mandy Ross preceded it with the procedure of the ultrasound, and we happen to have put that up on tape so you can see this in a compressed format.

I would ask if they would run the tape up here on your screen to the members' left and the witnesses' right. And you will see starting in this testimony it is searching for the heartbeat in the beginning of the ultrasound. There is the heartbeat. And a little bit you will see Lincoln begin to move. Now he is moving. There that little guy is. You can see his face and his hands. There is his arm and his face.

I wonder if Lincoln is going to move that arm and show us how active he can be. I am pretty sure McKenzie knows how active he is. There is a good shot at him. Looks like Rocky on the top of the steps. Move that arm, will you, Lincoln? Show us how busy you are and how you are exercising. Now, there you go. Suck your thumb? Okay. He had a little hiccup. "Oh, that thumb is good, but I cannot wait to be born and see what this world is like out here." There he is again. Is he talking to us?

Just watch Lincoln here. Now he is munching away on his hand. There that little guy is. I am partial to Lincoln myself. I like that name that says a lot about freedom and emancipation. I heard Star Parker's testimony about the emancipation of the slaves, and it is time to emancipate every little unborn baby, and I think——

Dr. AULTMAN. There is a wonderful view of his heart beating there.

Mr. KING. I think this transitions into an audio we have for a conclusion. And the theme of this bill is if a heartbeat is detected, the baby is protected. Lincoln Glen Miller and all little babies with heartbeats like that. Dr. Aultman, you had a comment.

Dr. AULTMAN. I just wanted to show everyone you could actually see the heart beating——

Mr. KING. Oh, yes.

Dr. AULTMAN [continuing]. While you were speaking.

Mr. KING. I missed that.

Dr. AULTMAN. Yeah.

Mr. KING. You can see the heartbeat pulse——

Dr. AULTMAN. Right, you can see it pulsing, which turns off when they put the sound on.

Mr. KING. You either have sound or video, and that is what we got, sound in video, but and it is in its turn. I would first turn to Professor Forte and say this bill that defines a heartbeat compared to the partial birth abortion ban, other pieces of pro-life legislation, you have seen, is there any legislation that is more distinct in its definitions that would go before a court to be precisely analyzed by a potential Supreme Court? Can you think of a legislation that is more precise than the heartbeat legislation?

Mr. FORTE. No, that is what is so attractive about it, to bring the issue directly to the Supreme Court. And apropos of that, and apropos of the film we just saw, according to the Attorneys Textbook of Medicine, third edition, 2015, in the seminal article of Coppola on Coppola, if heartbeat is detected at 6 or 7 weeks, there is a 95

percent chance that the child will reach term; if it is detected at 14 to 16 weeks, there is a 99 percent chance it will reach full term.

Now, both the partial birth abortion bills and the heartbeat bills had specific scientific definitions of what was, one, to be avoided and prohibited—namely, the partial birth abortion. And number two, what is to be protected, which is the child who has a beating heart. And the history of both those bills is interesting. Ohio passed the first partial birth abortion bill and it was struck down, but the States did not give up. Thirty States either introduced or passed heartbeat bills, kept knocking at the Supreme Court's door. It failed again in the Nebraska case, but then in the Gonzales case, when the Congress had passed the partial birth abortion bill, the Supreme Court by a five-to-four vote passed it, with Justice Kennedy having a very detailed, scientific explanation of what happens in a partial birth abortion. The same with heartbeat.

The heartbeat has been introduced into 17 States. It has been passed in three. The momentum is moving. It has gotten to such an extent that the eighth circuit, when it upheld the summary judgment of striking down the North Dakota heartbeat bill because it intruded on the area before what the court calls viability, the eighth circuit spent at least a third of its opinion telling the Supreme Court it is time to revisit its jurisprudence on viability. Now, when the lower courts begin telling the Supreme Court that they have been wrong, you know something is afoot.

Mr. KING. Thank you, Professor. I appreciate that. My time has expired, and I now recognize the gentleman from Tennessee for 5 minutes.

Mr. COHEN. Thank you, sir. Firstly, I would just like to mention that Dr. Aultman said something about the culture of death. Culture of death is taking 23 million people's healthcare away from them. That seems to be the main focus of this Congress. It is also taking a billion dollars from Medicaid, which is the main focus of the budget.

The chair talked about life, liberty, and the pursuit of happiness. I love Thomas Jefferson's philosophies in many ways, but he was a man of his time, and liberty did not include African-Americans who were slaves, which he had many, and liberty did not include women, who did not have a right to vote and were second class citizens. I would suggest that the importance of life is there, and if you believe in life you should believe in Medicaid, healthcare, nutrition for people who are here, utility payments for people who need it for safety, and preventing the eventuality of backroom abortions and where only the wealthy can afford to go to where they may be legal, making poor women even more poor.

I would like to ask Professor Smith a question. Professor Forte argued the Supreme Court should abandon fetal viability as a touchstone of its jurisprudence in favor of fetal heartbeat detection. Is this a compelling legal argument in light of the Supreme Court precedent, and does it make sense from a legal or medical standpoint?

Ms. SMITH. No, it does not, for a number of reasons. First of all, I would like to point out that the Court in Roe and in all the subsequent decisions could in fact have adopted heartbeat as a time at which to protect potential life. We did not have ultrasounds in 1973

of the quality we have today, but we had stethoscopes. And people could listen for heartbeats, and they did, and the court did not adopt that. Why did the court not adopt that? They did not adopt it because they were balancing the woman's own right to liberty of her own body, her own ability to make choices about her uterus and what was going to grow in her uterus.

And when they looked at that they said, "Well, there is a potential life there. There is something forming. At what point does the State have a right to tell the woman she needs to grow somebody else in her uterus? Well, we will decide that it is at the point at which that entity becomes independent of her and is not really a part of her anymore." When the fetus has an independent existence, it is a viable fetus, it can live outside the woman, and that is the point at which the court found it was appropriate to recognize there were two separate individuals.

Now, even at that point, the court said, post-viability, her health is paramount. Her health and her life are paramount, because something else is growing inside her. So, even after viability there was that protection for the woman and that should still exist today.

Mr. COHEN. Thank you very much. I would like to yield time to an outstanding member of the full committee who is the only woman on the panel here today and would ask the chairman with his liberality and the time that Professor Forte was testifying to give her the remainder of my time and a little extra, and I yield to Ms. Jayapal.

Ms. JAYAPAL. I thank the gentleman very much for yielding, and I appreciate the opportunity to be here. Let me be clear, as the only woman on this dais, that this bill is blatantly unconstitutional and that women have a constitutionally protected right to abortion. It is a fact that has been made clear by the Supreme Court in *Roe v. Wade* and subsequent court cases. And States that have tried to introduce similar 6-week abortion bans, such as in North Dakota and Arkansas, those laws were ruled unconstitutional. So, there is no reason to believe that this law would face a different fate in the Supreme Court.

And let me make it clear that seven in 10 Americans oppose overturning *Roe v. Wade* because they do understand that we as women have the right to determine how we are going to proceed with choices that we make about our own bodies. And I am deeply respectful of women who disagree with me about the choices that they would make. I think that is something that we as women need to recognize. There are some divergent opinions on this question, but the reality is that I have a right to determine what happens in my own body. And so, the bottom line is that this decision should be kept between a woman and her doctor.

And I wanted to ask, Professor Smith, you have made the case that this bill, if it were to be signed into law, would not stand up in the courts, and yet we continue to see these attempts being made. So, let me just clarify, Professor Smith. Do women have a constitutional right to an abortion?

Ms. SMITH. Absolutely.

Ms. JAYAPAL. And despite the nearly 400 attempts to strip away these rights, women will continue to have the constitutionally protected right to abortion?

Ms. SMITH. I certainly hope so. It is possible that at some point it could be overturned.

Ms. JAYAPAL. So, what do you see as the purpose of this bill that has no viability in the courts?

Ms. SMITH. I see it as an attempt to overturn the right to abortion and take that right away from women, and to tell women how we should control our own lives, and take the decision away from us and our families and our doctors.

Ms. JAYAPAL. And Ms. Aultman, I am struck by the fact that in your written testimony it contained no mention of the constitutional right of women to make their own decisions about their own bodies, and you further made a statement in your written testimony that, and I am quoting you, "We have shifted our priorities from basic human rights to women's rights." Do you not believe that women's rights are human rights?

Mr. KING. The gentlelady's time has expired. The witness will be allowed to answer the question. Please go ahead and answer the question.

Ms. SMITH. I think that was a question to Dr. Aultman.

Dr. AULTMAN. Yes. Ask your question one more time.

Ms. JAYAPAL. Do you believe that women's rights are human rights? Because in your written testimony you said, "We have shifted our priorities from basic human rights to women's rights." Do you not believe that women's rights are human rights?

Dr. AULTMAN. I think women have human rights, but I do not think that our right to convenience trumps a person's right to life. I do not believe that.

Ms. JAYAPAL. I yield back.

Mr. KING. The gentleman's time has expired. The chair will now recognize the gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman. You know, Mr. Chairman, I have heard a lot of testimony over the years in this committee, but I think I have never heard a more eloquent testimony than that little baby up on the screen. The heartbeat there should be able to speak to the hardest heart.

And you know, I am also a little bewildered when people tell me that the subject of today's hearing is somehow diminished, and it is not as important as all these other things that we do, and yet it goes to the very heart of who we are as a human family. And it also goes to the heart of who we are as Americans. You know, we once held certain truths to be self-evident, that we are all created and that is what makes us equal, and that we are endowed by our creator with the unalienable right to live, and that, to secure these rights, that is why governments exist. So, this goes to the heart of every reason that we are here in this place, so for someone to diminish it seems rather sad.

The questions I ask myself this morning are as follows. I mean, do the words of the Declaration of Independence still apply? Are we still a group that holds certain truths to be self-evident? Are these really little babies? That is a big one. Is there really a God? And what if these little helpless human beings really are his children? Those are questions to me that have great significance in my heart.

And so, my question for you, Ms. Smith today, is that, as you know, you have previously appeared before this committee on Sep-

tember 9, 2015, and during that hearing you said the following. You said, “I believe for a pre-viable fetus that D&E procedure is a very humane procedure.” Now, I want to read to you, if I can, how Supreme Court Justice Anthony Kennedy has described such a procedure, using the testimony of an abortionist named Carhart.

He said, “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. Dr. Carhart agreed that “when you pull out a piece of the fetus—let’s say, an arm or a leg—remove that, at the time just prior to removal of the portion of the fetus, the fetus is alive.” Dr. Carhart has observed fetal heartbeat via ultrasound with extensive parts of the fetus “removed” and testified that mere dismemberment of a limb does not always cause death, because he knows of a physician who removed the arm of a fetus only to have the fetus go on to be born as a living child with one arm. And at the conclusion of a D&E abortion, no intact fetus remains. In Dr. Carhart’s words, the abortionist is left with a tray full of pieces.

So, Ms. Smith—and I would like Dr. Aultman to answer the question afterwards as well—so, Ms. Smith, is it still your opinion that a D&E abortion is humane?

Ms. SMITH. A D&E abortion is not what we are talking about here. This is a bill that—

Mr. FRANKS. But that is my question.

Ms. SMITH [continuing]. Ban abortions at 6 weeks of pregnancy, when early medication—

Mr. FRANKS. But my question, Ms. Smith, and if you do not want to answer, I understand. I can move on.

Ms. SMITH. I am happy to answer the question as well, but—

Mr. FRANKS. You said—

Ms. SMITH [continuing]. I am just pointing out this bill—

Mr. FRANKS [continuing]. In your last testimony—

Ms. SMITH [continuing]. Has nothing to do with that.

Mr. FRANKS [continuing]. That it was humane, so I would ask you—

Ms. SMITH. It is—

Mr. FRANKS. Is it your opinion—

Ms. SMITH [continuing]. The safest—

Mr. FRANKS. Is it still your opinion that a D&E abortion is humane?

Ms. SMITH. It is the safest and most common procedure used in the second trimester.

Mr. FRANKS. But you will not answer the question and I fully—

Ms. SMITH. It is humane.

Mr. FRANKS [continuing]. Understand—

Ms. SMITH. I will use the word “humane”—

Mr. FRANKS. Let me just say, I am going to move on, but I—

Ms. SMITH [continuing]. Absolutely.

Mr. FRANKS [continuing]. Fully understand why you will not answer the question. I—

Ms. SMITH. No, I said it is a humane—

Mr. FRANKS [continuing]. Would ask only that you ask yourself—

Ms. SMITH [continuing]. Procedure.

Mr. FRANKS [continuing]. After this committee hearing why you would not answer the question.

Ms. SMITH. You are trying to relitigate—

Mr. FRANKS. Dr. Aultman, would you answer the question?

Ms. SMITH. I would like to answer the question that you posed to me.

Mr. FRANKS. I am going to move on, my lady.

Ms. SMITH. Okay.

Mr. FRANKS. Dr. Aultman, would you answer the question?

Mr. RASKIN. Mr. Chairman?

Mr. FRANKS. I tried.

Ms. SMITH. No, you did not.

Mr. RASKIN. I think she answered the question. You did not hear it, but she did answer.

Mr. KING. The gentleman—

Ms. SMITH. Thank you.

Dr. AULTMAN. It is not—

Mr. KING. The gentleman from Arizona controls the time.

Dr. AULTMAN. It is one of the most inhumane procedures I can imagine, and the only reason we have tolerated it is to allow women to have that convenience.

Mr. FRANKS. Well, can you explain the conflict that you personally came to feel when you were working to save some unborn children during some parts of the week, but then working to kill others at other times of the week? And what did you come to realize after that experience?

Dr. AULTMAN. When I was in my neonatal rotation I realized that the babies I was trying to save, some of them were the same gestation as babies I was aborting. It is amazing, though, how we can be so compartmentalized and so unthinking, because it really was not until later that I finally made that baby-fetus connection and realized what I was doing.

I never called someone in the womb a fetus unless I was going to abort it. Otherwise, it was a baby. And we have, you know, just for so long denied the rights of these little people that are people.

Mr. FRANKS. Mr. Chairman, I would just suggest that what we are doing these little babies is real, and America's eyes are beginning to open.

Mr. KING. The gentleman returns his time, and the chair would now recognize the gentleman from Maryland, Mr. Raskin.

Mr. RASKIN. Mr. Chairman, thank you very much. I want to start with Dr. Aultman, and I want to thank you for your candid testimony. You are the first witness I have ever seen on the Hill to declare, "I am a mass murderer," and that must not be an easy thing for you to say. Let me start with this. Does everyone who works in your field of OB/GYN, the doctors and nurses, agree with you on this question?

Dr. AULTMAN. No, there is a whole range of opinions.

Mr. RASKIN. Okay, let me ask you this. Your very powerful testimony, I think, depends on the emotional power of regret. Your testimony and your argument are suffused with regret, and you feel very strong regret about what you have done. It reminded me after the recent gun massacre in Las Vegas when one of the singers

there, Caleb Keeter, said he had regretted the position he had been taking on the Second Amendment.

And then I saw a number of people who expressed regret about having bought a gun that was then used in their house, either deliberately or accidentally, to kill someone in their house. Do you think that the existence of regret in those cases nullifies the underlying constitutional right that was being exercised by people who purchased guns?

Dr. AULTMAN. I am not a constitutional lawyer. I do not know how to answer that.

Mr. RASKIN. But you understand that your expression of regret and your declaration that you are a mass murderer, I think, is being used here at least to say that women should not have a constitutional right to choose, even in the case of rape, even in the case of incest, even in the case of the health of the mother being affected. And do you make exceptions for those things?

Dr. AULTMAN. I do not think my regret has to do with the basic right of a fetus to live, of a baby to live.

Mr. RASKIN. No, no, it is about the woman's exercise of her right as determined by the Supreme Court. We got that. You do regret participating in a medical procedure which has been constitutionally guaranteed by the Supreme Court for many decades, right?

Dr. AULTMAN. Yes, I do.

Mr. RASKIN. Okay, well, let's go to the question of rape. If I heard you right—but I just want to make sure we get it correct—you do not think that women should have a constitutional right to have an abortion if they have been raped and they become pregnant as a result.

Dr. AULTMAN. I do not think this bill needs that exception because it is not the fault of the baby that their father raped their mother.

Mr. RASKIN. And I appreciate your intellectual honesty because that follows totally from the position that is being advanced here, which is that it is just one life that counts; it is the fetus's life. So, it would be the same for a woman who is impregnated by virtue of incest and rape. Would you agree with that?

Dr. AULTMAN. Well, I think abortion has served to cover up multiple instances of not only incest and child abuse, but also sexual trafficking. And I think, again, it is sort of off-point and I am not saying—

Mr. RASKIN. Just to get to the point, you would agree that a woman should not have a right to choose an abortion even if she is the victim of rape and incest. Is that right?

Dr. AULTMAN. Correct.

Mr. RASKIN. Okay. And also, as I read the bill, and I just want to make sure because you are testifying for it, you would agree that a woman should not have a right to choose an abortion pre-viability, which is the Supreme Court's constitutional standard, even if it would affect her health. Not her life, because there is an exception for life, but her health.

In other words, she is going to end up a paraplegic, but still she would be compelled to take the pregnancy to term under this legislation, and you agree that is the right decision because of the point

you are making about the fundamental paramount interest of the fetus.

Dr. AULTMAN. I am not saying that the fetus has more of a right to life than the mother.

Mr. RASKIN. No——

Dr. AULTMAN. I am saying——

Mr. RASKIN [continuing]. I am talking about health here. Say, the woman is to end up a paraplegic, which is often the case with a series of different illnesses, but the woman under this legislation would be compelled to go to term with it, and I just want to make sure that is your position. Is that what your testimony is?

Dr. AULTMAN. My position is that the fetus's right to life does trump, in this bill, anything less than the life of the mother.

Mr. RASKIN. And I appreciate your——

Dr. AULTMAN. In each case——

Mr. RASKIN [continuing]. The candor of your testimony. I have so little time, forgive me. If we get a second round I will come back to you.

Professor Forte, can you think of any other cases when Congress has knowingly passed unconstitutional legislation?

Mr. FORTE. First of all, the bill that the physician's conduct will be excused if it was necessary to save the life of the mother whose life was——

Mr. RASKIN. Excuse me, that is not my question. That is not my question. I am asking you, can you think of any other cases where Congress has knowingly passed unconstitutional legislation?

Mr. FORTE. Yes, I can.

Mr. RASKIN. Can you just state them quickly, if you would?

Mr. FORTE. When Congress freed the slaves in the District of Columbia despite Dred Scott——

Mr. RASKIN. It was not unconstitutional. They were compensated in District of Columbia. Can you think of any others?

Mr. FORTE. It was unconstitutional by——

Mr. RASKIN. Can you think of any others?

Mr. FORTE [continuing]. Dred Scott. They also passed——

Mr. RASKIN. We will have to settle that later, but I——

Mr. FORTE. May I answer the question, Mr. Raskin?

Mr. RASKIN. Excuse me, I am following Mr. Franks' example. I am going to get to the point that I want. Can you think of any other examples?

Mr. FORTE. Yes, I will give you another one.

Mr. RASKIN. Please.

Mr. FORTE. Congress passed a law of voiding slavery in the territories under Lincoln after Dred Scott, intentionally going up against Dred Scott, and that is what Lincoln said. Lincoln said——

Mr. RASKIN. Okay——

Mr. FORTE [continuing]. Dred Scott—we need to——

Mr. RASKIN [continuing]. We will deal with that later. Ms. Smith, let me ask you—Professor Smith, let me ask you——

Mr. FORTE. Am I allowed to finish a sentence?

Mr. RASKIN. Look, most Americans accept *Roe v. Wade* and *Planned Parenthood v. Casey*, and think that this is fundamentally a woman's right to choose. As difficult as it is, as agonizing it is

in many cases, it has got to be a woman's right to choose. But most people also want to lower the incidence of abortion.

Now, we are at the lowest rate of abortion in America in several decades, I think because of the availability of birth control. Is there an agenda we could actually come across party lines together on to create a commonsense agenda to continue to lower the abortion rate and to make contraception available to American women and to promote education?

Ms. SMITH. I would hope so, Mr. Raskin.

Mr. KING. The gentleman's time has expired. The witness will be allowed to answer the question.

Ms. SMITH. Thank you. Yes, I would hope so. Certainly, the increased availability of low cost and most effective contraception under the Affordable Care Act has already had a significant impact and could continue to do so if it were not also under attack at this point. We could, as I said before, also protect women's health during pregnancy and provide infant childcare as well to protect the life of children at those places.

We can reduce the need for abortion by supporting women who are having abortions for economic circumstances for by giving them economic support, which many States do not do, and those are the States that have the highest rates of abortion. The States with the lowest rates of abortion provide those kinds of economic and medical supports to women, and increased access to contraception. Thank you.

Mr. KING. That concludes the witness's response. The chair will recognize the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. Professor Forte, you were starting to give a quote from Lincoln. I would love to hear you finish that quote.

Mr. FORTE. Yes, sir. If I may, there were two points I wanted to make. First of all—

Mr. GOHMERT. Please.

Mr. FORTE [continuing]. Mr. Raskin misstated the bill. The bill has a very serious exception for women whose health will be seriously impacted. Secondly, what Lincoln said about Dred Scott was that the courts should not dictate matters of fundamental policy that Congress can address, and he urged Congress over and over again to pass legislation so that the court would have a chance to overrule its precedent.

Martin Luther King kept pressing. He did not lie down and say, "Oh, Plessy v. Ferguson gives the States a constitutional right to separate people on the basis of race, therefore we cannot do anything about it." That was fundamental for 50 years; they were not going to do anything about it. No, those people understood what a wrong decision was, what the impact of separation was, and Congress, I think, now can understand and tell the Supreme Court what the impact of heartbeat and abortion is on real people in the womb.

Mr. GOHMERT. Well, professor, I would also add, talking to someone at the Supreme Court who was there for many years, this individual told me that in all the decades he had worked at the court he never saw the justices more completely shocked then they were

after the Roe v. Wade decision at the reaction of the American public. They were shocked.

They could not believe that there were that many people upset about their legalizing abortion, because apparently at all the cocktail parties they attended people said, "Oh, yes, certainly, a woman should be able to decide to kill what was in her," and they were just shocked. And one other was second on the list behind that shock.

But anyway, it appears that what often happens at the Supreme Court—and you can see it in the current decisions; you can see it in the decision on Obamacare—the decisions are made at the Supreme Court based on what a majority believe is political correctness, and apparently the White House got sufficient fear injected into the Supreme Court that if they struck down Obamacare, since the Republicans did not have a bill ready to go, that people would lose their insurance, and people would die, and it would be the Supreme Court's fault.

So, although we like to think that the Supreme Court is in ivory towers and they do nothing but look at the Constitution and make decisions that tell us what the Constitution actually says, it is very clear it is a place of political correctness run amuck far too often.

I would like to ask, though, Dr. Forte, are you familiar with Margaret Sanger?

Mr. FORTE. Yes.

Mr. GOHMERT. You know, they give a Margaret Sanger award still today, and I am amazed that people accept this idea of eugenics. Can you tell us the ultimate effect of the biggest supporter I know of, Margaret Sanger, of abortion and the eugenics that she forwarded?

Mr. FORTE. That tells us a lot, Congressman. It tells us, number one, that numbers of Supreme Court justices that may affirm this or that doctrine does not mean it is a true or false doctrine. In 1928, seven to one justices said that it was legitimate to sterilize a person because she was an inheritor of a gene that made her retarded. In the famous words in Buck v. Bell of Oliver Wendell Holmes, Junior, "Three generations of imbeciles are enough." And Buck v. Bell was cited by Justice Blackmun approvingly in Roe v. Wade.

Mr. GOHMERT. Right. Let me yield the rest of the gentleman from Louisiana, Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you, the gentleman from Texas. Ms. Smith, when I was in the Louisiana legislature I brought the bill to ban dismemberment abortions in my State, and I am curious, for a frame of reference today, do you believe that is a humane procedure as well?

Ms. SMITH. I am not familiar with the bill. I do not know what you are talking about when you say dismemberment—

Mr. JOHNSON of Louisiana. You know what dismemberment abortion is, right?

Ms. SMITH [continuing]. Abortion is.

Mr. JOHNSON of Louisiana. You know what a dismemberment abortion is?

Ms. SMITH. No, I know what a D&E abortion—

Mr. JOHNSON of Louisiana. Let me describe it for you.

Ms. SMITH [continuing]. If that is what you are referring to. Are you talking about a D&E abortion?

Mr. JOHNSON of Louisiana. No, I am talking about a dismemberment abortion, where they take a child's body limb from limb, rip the legs and arms off, and terminate life that way. Is that a humane procedure?

Ms. SMITH. I am not familiar with the bill or what you are talking about when you say a dismemberment abortion, but I can tell you that I do believe that surgical abortions in the second trimester are humane, and they are performed for women. They are the safest procedure that women can have in the second trimester, and women need abortions in the second trimester for many reasons.

Mr. JOHNSON of Louisiana. Last question. Due to advances in medical technology, the unborn are now being treated for disease, given blood transfusions, and even operated upon. In those cases, who is the patient?

Ms. SMITH. The patient in those cases is the woman and the fetus. And in those cases, it is amazing. There has been great medical advances so that fetuses can be—in wanted pregnancies, presumably—can be saved and changes can be made in the way they are developing in order to increase the health of the child when it is born, and that is tremendous.

Mr. JOHNSON of Louisiana. I am out of time.

Mr. KING. The gentleman's time has expired. What was that? What was that? We do have another member arriving here in a moment, but in this little pause that we have, then I would like to submit into the record a statement by Janet Porter, president of Faith2Action, the driving force behind this bill. A statement by Dr. Donna J. Harrison, executive director on behalf of the American Association of Pro-Life Obstetricians and Gynecologists. A statement by Jason Rapert, an Arkansas State senator. A statement by Rachelle Heidlebaugh, Faith2Action activist; and also the statement of the Center for Urban Renewal and Education's policy report entitled "The Effects of Abortion on the Black Community." I introduced all of those into the record. Without objection, so ordered.

[The information follows:]

Statements and Letters Submitted by Mr. King of Iowa. This material is available at the Committee and can be accessed on the committee repository at: <https://docs.house.gov/meetings/JU/JU10/20171101/106562/HHRG-115-JU10-20171101-SD003.pdf>.

Mr. KING. I did not actually finish my questions, and I recall some of the latitude that had been taken by the ranking member in the previous times, and so as we wait for the other member of the committee to arrive, I would say that my reflections are this.

That, Ms. Parker, you brought a comparison between slavery and abortion, and as far as I recall, that is the first of that type of testimony that I have seen before this committee or any committee. Is that an original thought on your part? Have you had others that indexed the same comparison? How did this come about?

Ms. PARKER. Others have looked at it as well, and in fact, when you put the Dred Scott decision next to the Roe v. Wade decision, they read almost verbatim.

I would like to also address something that was brought up earlier, if I may. When it comes to mixing the abortion issue with the challenges that we face in so many of our hard-hit communities, I feel it disingenuous that the issues of Medicaid would come up in other opportunities for us to readdress what is happened and broken down in our most distress zip codes, the way that Planned Parenthood specifically targets these particular zip codes with abortion.

Abortion is the leading cause of death in the black community today. Since *Roe v. Wade* was legalized, 20 million humans have been killed inside of the womb of black women. And then, on Halloween, Planned Parenthood tweets out that the black women are safest if they abort their child rather than bring it to term.

To the gentleman from Texas who brought up Margaret Sanger, the founder of Planned Parenthood, I think that is important that we put in record that the needs of those that are most vulnerable in society cannot be addressed with abortion. Abortion feeds a narrative that women are victims, that they have no control over their sexual impulses, and as a result of this narrative being forced down into our hardest-hit communities, we are seeing now recklessness in sexual activity and marriage has collapsed. In the '50s, 70 percent of black adults were married; today that number is 30 percent. This is causing a lot more social pathologies that have to be addressed through different types of legislation, not the Heartbeat Bill. The Heartbeat Bill is to protect the innocent.

Mr. COHEN. Mr. Chairman.

Mr. KING. The chair recognizes the gentleman from Tennessee, the ranking member.

Mr. COHEN. Thank you. Firstly, we are in filler time, waiting for somebody to come testify. I would ask that we allow Ms. Jayapal to do filler as well as well as the chair. And I would also like to say that I am not disingenuous about anything I say about Medicaid or Medicare or LIHEAP or SNAP programs, and to suggest I'm disingenuous shows your ignorance or your absolute inability to deal with congresspeople the way they should. I believe in those issues, and I think they are proper, and to say I am disingenuous is just wrong, and I expect an apology.

Mr. GOHMERT. I would ask for an apology from the gentleman from Tennessee calling our witness ignorant when it seems to me she has a whole lot more knowledge and wisdom—

Mr. COHEN. She is ignorant about me.

VOICE. Everybody is.

Mr. KING. You are both out of order—

Mr. COHEN. A fine admission on your part.

Mr. KING. Given the lack of civility before this committee, this concludes today's hearing. Thanks to all of our witnesses for attending. Without objection, all members will have 5 legislative days to submit additional written records for the witnesses or additional materials for the record. This hearing is now adjourned.

[Whereupon, at 12:51 p.m., the subcommittee adjourned.]