



FROM THE DESK OF

TROY NEWMAN

PRESIDENT, OPERATION RESCUE

April 26, 2007

Attorney General Paul Morrison
Memorial Hall, 2nd Floor
120 SW 10th Street
Topeka, KS 66612

Dear Attorney General Morrison,

Last week, the United States Supreme Court issued a ruling in the *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood* cases that fundamentally changed the long-held view that health exceptions must be applied to laws restricting abortion in order for them to be considered constitutional. Today, that is no longer the case.

Justice Anthony M. Kennedy, in his majority opinion, stated that the lack of a health exception in laws regulating abortions does not create an undue burden on women seeking abortions. This is now the new standard to which the laws must be measured.

As you are aware, Kansas has a law, K.S.A. 65-6703, which bans post-viability abortions with exceptions for the life of the mother and if “a continuation of a pregnancy poses a substantial and irreversible risk to a major bodily function of the pregnant woman.”

However, on March 21, 2000, then Attorney General Carla Stovall issued Attorney General Opinion 2000-20 wherein she states in part:

In summary, the United States Supreme Court has found that a state statute prohibiting post-viability abortion does not have to specifically contain the words “mental health” in its maternal health exception to be considered constitutional; statutes not containing these words have been construed to nonetheless include mental health within the scope of “health generally. In our opinion, the term “bodily function” as used in K.S.A. 1999 Supp. 65-6703, would be interpreted by the courts to include an exception for risks to maternal mental health, as well as physical health, as long as such risk is substantial and irreversible.

That opinion, inserting a mental health exception into a law where it clearly did not exist on its face, has been used as the standard for interpreting K.S.A. 65-6703. However, in light of last week’s Supreme Court decision, that interpretation is now without basis in current law. The reason given by Stovall for forcibly interjecting the concept of a “mental health” exception into K.S.A. 65-6703 was to bring the law into compliance with previous Supreme Court rulings. This is no longer necessary or valid in light of the Court’s latest ruling in *Gonzales v. Carhart et. al.* In fact, such an addition to the meaning of the statute is now unconstitutional.

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Therefore, we respectfully request that your office immediately enforce K.S.A. 65-6703 on its face without the previously presumed exception for "mental health."

We ask for an immediate investigation into the abortion business of George R. Tiller for violating K.S.A. 65-6703 from April 18, 2007, when the new law went into effect, until present.

We are also asking for a separate investigation into all abortions done by LeRoy Carhart at Tiller's abortion facility located at 5107 E. Kellogg in Wichita, KS, from April 18, 2007 until present, for possible violations of the Partial Birth Abortion Ban Act of 2003, which is now the law of the land. As a plaintiff on *Gonzales v. Carhart*, it is imperative to insure that he is following the law with which he has so adamantly disagreed.

Enforcement of the laws is a top priority of the Attorney General's office. The law is clear. Please enforce K.S.A. 65-6703 on its face in compliance with the new constitutional paradigm. The lives of viable babies unconstitutionally and illegally killed by ignoring this statute cannot be brought back, therefore urgency is requested.

Awaiting your reply,

Troy Newman
President
Operation Rescue

CC: Alberto Gonzales, U.S. Attorney General
Office of United States Attorney, Wichita, KS
Governor Kathleen Sebelius
Larry Buening, Kansas State Board of Healing Arts
Melvin Neufeld, Speaker, Kansas State House of Representatives
Stephen Morris, President, Kansas State Senate