Written Testimony of Walter M. Weber,[1] Senior Counsel,
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re: SB 841, the Dismemberment bill
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The Dismemberment Bill is constitutional under the U.S. Constitution.

In *Gonzales v. Carhart* (2007), the U.S. Supreme Court ruled that its past precedent "confirms the State's interest in promoting respect for human life at all stages of the pregnancy". As Justice Kennedy wrote in dissent in *Stenberg v. Carhart* (2000), a dissent subsequently vindicated in *Gonzales*, "States also have an interest in forbidding medical procedures which, in the State's reasonable determination, might cause the medical profession or society as a whole to become insensitive, even disdainful, to life, including life in the human fetus."

A procedure that deliberately takes the life of a live human being, heart pounding away in his or her mother's womb, by tearing that human being limb from limb, is plainly a procedure that fosters insensitivity to, and disdain for, the life in the womb. Indeed, such a killing is the embodiment of disdain for human life.

Attached is a memorandum from Mary Spaulding Balch, JD, of National Right to Life. This memo, focusing on *Gonzales v. Carhart*, explains why a dismemberment bill would be constitutional under the federal Constitution. While this memo dates from January 2015, it remains accurate. There has been only one Supreme Court abortion case since then, namely, last year's *Whole Woman's Health v. Hellertedt* (*WWH*). That decision does not affect the analysis in the Balch memo, as *WWH* did not repudiate anything in *Gonzales*; indeed, the author of *Gonzales*, Justice Anthony Kennedy, joined the decision in *WWH*. Moreover, *WWH* is consistent with *Gonzales* and the Balch memo for at least the following six reasons.

First, *WWH* dealt with laws and regulations aimed primarily at furthering the health of women seeking abortions. The Dismemberment Bill aims primarily at other interests, including the protection of unborn children against barbarity, and the protection of the medical profession.

Second, nowhere did the *WWH* decision claim that states are forbidden from regulating abortion as a special case. Justice Ginsburg, in her separate concurrence, alluded to the phrase coined by

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abortion advocates, “Targeted Regulation of Abortion Provider” or “TRAP” laws. The *WWH* majority did not embrace this notion. After all, as the Supreme Court has previously and repeatedly recognized, “Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.” *Harris v. McRae* (1980).

Third, nowhere did the *WWH* Court claim to abandon the partly strict, partly deferential “undue burden” test from *Planned Parenthood v. Casey* (1992). Again, it would have been remarkable for the Court to have done so, as Justice Kennedy fully joined the lead opinions in both *Casey* and *WWH*.

Fourth, nowhere did the *WWH* opinion impugn the state’s motives. While the Court concluded that the challenged regulations were ultimately unjustified, the Court did not accuse the state of having some sinister purpose. Nor did the opinion reflect any hostility to pro-life efforts to stem the abortion tide.

Fifth, the *WWH* Court implicitly approved of the goal of eliminating shady practices and practitioners from the abortion field. The *WWH* Court frankly acknowledged the “Kermit Gosnell scandal” in which a Philadelphia abortionist ran a truly horrible, unsanitary, predatory operation for years before finally being exposed, prosecuted, and convicted. “Gosnell’s behavior was terribly wrong,” the Court declared, recognizing that states have a valid interest in deterring such “deplorable crimes.” The Court specifically pointed to Texas’s “requirement that [abortion] facilities be inspected at least annually” as one remedy to the Gosnells of the world.

Sixth, the Court faulted Texas, not for regulating abortion, but for adding extra layers of regulation that did not seem, to the Court, actually to enhance women’s health. For example, the Court struck down the requirement that every abortionist have admitting privileges at a local hospital, noting that Texas already had legal requirements that abortionists were to “have admitting privileges or have a working arrangement with a physician(s) who has admitting privileges at a local hospital in order to ensure the necessary back up for medical complications.” The plain implication is that Texas should have been content with its preexisting requirements. Here, of course, the state has no preexisting ban on dismembering unborn humans. The proponents of this bill are therefore seeking to outlaw a horrific and inhuman abortion method that presumably would not be permitted to be practiced even on animals, yet which is legal in this state.

In short, for the reasons stated in the Balch memo and in this testimony, the proposed bill is valid under the U.S. Constitution.