



## STATE OF NEBRASKA

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Attorney General

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June 5, 2013

The Honorable Bob Goodlatte  
Chairman, Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515-6216

The Honorable Trent Franks  
Chairman, Subcommittee on the  
Constitution and Civil Justice  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515-6216

Dear Chairman Goodlatte and Chairman Franks:

As Nebraska's chief law enforcement officer and pro-life father of two children, I, too, was appalled by the horrific facts of the Kermit Gosnell case and provide the following information concerning Nebraska laws with the intention of exploring all means available to prevent future tragic events of this nature.

I believe life begins at conception and have been a consistent and staunch supporter of strengthening pro-life measures in Nebraska. While serving in our Legislature, I sponsored a bill outlawing fetal homicide and voted to ban partial birth abortion. As Attorney General, I testified in support of a bill to create civil penalties for causing the death of an unborn child.

The prosecution of Gosnell for *murder* was appropriate and I am confident a prosecutor would be empowered under Nebraska law to take the same action in similar circumstances. Nebraska law treats the deliberate killing of newborns as homicide. There is no statute of limitation for murder in Nebraska and so long as the child was born and alive at the time of the killing, Nebraska law makes no distinction as to the stage of development of the victim. Neb. Rev. Stat. §§28-302, 29-110(5). In addition, the fetal homicide legislation I sponsored treats murder and manslaughter of an unborn child as murder and manslaughter under Nebraska law, albeit such crimes are inapplicable to medical procedures performed with the consent of the mother. Neb. Rev. Stat. §§28-388 et seq.

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Nebraska also requires the attending physician to employ all reasonable steps to preserve the life of a child born alive as the result of an abortion. Neb. Rev. Stat. § 28-331. To the extent a physician fails to employ all reasonable steps to preserve the life of a child born alive as the result of an abortion, such crime is a Class IV Felony subject to a three-year statute of limitation. Neb. Rev. Stat. §§28-332; 29-110(1).

Finally, in 2010, my office helped craft the Pain-Capable Unborn Child Protection Act, which was the first of its kind in the United States. Neb. Rev. Stat. §§ 28-3,102 to 28-3,111. The Pain-Capable Child Protection Act prohibits the performance or inducement of an abortion of an unborn child whose probable post-fertilization age is twenty or more weeks, except to avert the death "or serious risk of substantial and irreversible physical impairment of a major bodily function" of the mother or to preserve the life of the unborn child. Neb. Rev. Stat. § 28-3,106. Violation of the Pain-Capable Child Protection Act is a Class IV Felony.

Each of these laws is critical to the prosecution of those responsible in the event a horrific situation such as the Gosnell case was to occur in Nebraska. While at this time we are unaware of any prosecutions in Nebraska involving the killing of newborns during the performance of an abortion or the other statutory provisions outlined above, my office is fully prepared to prosecute these crimes to the greatest extent of the law.

Another important tool in the arsenal of protecting our children is the regulation of licenses for clinics, physicians and other personnel involved in providing abortion services. The Nebraska Legislature has designated the Nebraska Department of Health & Human Services as the agency responsible for licensing and regulating any violations relating to health care. Any violations of law that NDHHS finds are prosecuted by my office to the fullest extent authorized by the law. In fact, just this month we filed a licensing action against a nurse of an abortion provider in Nebraska.

While we believe the prosecution of these crimes falls primarily within the State of Nebraska's Tenth Amendment police powers, we welcome further discussion as to how Congress can assist the efforts of Nebraska and other states to ensure our children are never again exposed to tragedies such as those involving Kermit Gosnell. Thank you for your immediate attention to this matter.

Sincerely,



Jon Bruning  
Attorney General of Nebraska

Copy: The Honorable John Conyers, Jr., Ranking Member, Committee on the Judiciary  
The Honorable Mike Johanns, United States Senate  
The Honorable Deb Fischer, United States Senate  
The Honorable Lee Terry, United States House of Representatives  
The Honorable Jeff Fortenberry, United States House of Representatives  
The Honorable Adrian Smith, United States House of Representatives