

## **KS AG asks state Supreme Court to review appellate claim to abortion right**

Kansas Attorney General Derek Schmidt yesterday filed an appeal to the Kansas Supreme Court, asking for an expedited ruling on the whether the Kansas Constitution embodies a right to abortion.

A Jan. 22 split ruling from the Court of Appeals maintains a district court temporary injunction against the Kansas Unborn Child Protection from Dismemberment Act. However, the AG asserts that the 7-7 tie is really a 7-6-1 ruling denying any state constitutional right to abortion.

The appeal (ironically titled a “prayer” in legal jargon) argues that the heart of the Court of Appeals ruling is whether the state Bill of Rights mimics the due process protection of the federal Fourteenth Amendment that is the basis for *Roe v Wade*.

- seven appellate judges (in the dissent, penned by Chief Judge Thomas Malone) ruled that the state Bill of Rights does not provide “Roe” protection,
- six judges (in the ruling written by Judge Steve Leben) said it does, and
- one concurrence (judge G. Gordon Atcheson) said it doesn’t –but that abortion is protected in a stronger way than *Roe*.

Judge Atcheson wrote, “Article 1 provides a constitutional protection [for abortion] that has no direct analog in the federal Constitution... [it] effectuates self-determination consistent with an evolving and ever more enlightened understanding of humanity across both race and gender.”

He also wrote, “a woman's right of self-determination, as established in Article1, takes precedence [over a fetus] incapable of free-will or self-determination,” and “I cannot infer a particular legislative purpose or governmental interest advanced in Senate Bill 95 [the dismemberment ban].”

Truly the protection that Judge Atcheson wishes to be found in Kansas’ 1859 Bill of Rights is broader than *Roe* and –if agreed to by the Kansas Supreme Court—poses a threat to all existent pro-life laws in this state.

On the other hand, the six appellate judges who want a state right to be an extension of *Roe* implicitly would examine pro-life laws under the “undue burden” standard, which is a lower bar to state pro-life protective laws.

Because the appellate court really left all Kansas Courts adrift in confusion, A.G. Schmidt urges the Kansas Supreme Court to take up the issue; until it is resolved, it will continue to be raised in existent and future lawsuits.

At issue is a compelling constitutional question of first impression, that ultimately only the Kansas Supreme Court can resolve.