

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: Interested Persons
Date: June 2019
From: A. Eric Johnston
Re: HB314 – The Alabama Human Life Protection Act

Alabama has passed the strongest abortion law in the nation. The ACLU and others have already filed a lawsuit to enjoin it. Passing the law was the first step and now we move to the second step of defending it and hopefully reversing *Roe v. Wade* (1973). Our goal is to protect the lives of unborn children, but to do that, we must overturn this court decision that claimed the unborn child is not a person entitled to protection under the U.S. Constitution.

SLI drafted the law for the Alabama Pro-Life Coalition. APLC voted unanimously to support the effort. We then worked with the Medical Association of the State of Alabama and the Alabama Hospital Association for language that would prohibit unintended or collateral problems for healthcare providers. Having accomplished this, we asked the very capable and committed Representative Terri Collins to sponsor the bill in the Alabama House. With the able assistance of Representative Rich Wingo, Senator Greg Reed and Senator Clyde Chambliss, who led the charge in the Senate, the bill passed and was sent to the Governor who signed it the next day. We were blessed by God's grace to have passed this law quickly through the legislative process and without amendments that would have killed the bill.

The law is based on the affirmation that the unborn child is a person within the meaning of law. Last November, Alabama voters approved Amendment 2 to the Alabama Constitution that the unborn child is entitled to the protection of all Alabama's laws. This conflicts with the *Roe* decision and its interpretation of the U.S. Constitution, so we proceed now to the second step of the process and that is defense of the law in the federal court system.

The new law is not at all complicated. It simply holds that performance or attempted performance of an abortion is a Class A felony or Class B felony, respectively. When we were questioned why the penalty was so strong, the simple answer is that if the unborn child is a person, just as you and me, then the penalty for killing that person should be the same. A Class A felony has a minimum sentence of ten years in prison with multiple offenses up to 99 years.

A rape and incest exception would have killed the legislation. There were even some Republican Senators who supported this. We are all sympathetic to victims of rape and incest. Victims need emotional, medical, financial, counseling, and other assistance to help them recover. They do not need to compound their grief, stress and guilt with another criminal act, abortion. Emotional arguments are compelling. However, to be consistent with the objectives of this law, we cannot say that a person conceived in one manner on the one hand is protected by law, but another is not. Regardless of how a person is conceived, through agreement, by accident, rape, incest, or even artificial insemination, the product of conception is a person. If we had included this exception in the law, it would be inconsistent and difficult to argue before the courts. The law includes exceptions for serious health risks to the mother, *viz.*, death, major physical health and suicide risks, with safeguards against abuse.

Another question that arose was why not use the "heartbeat law" approach. A number of states have passed laws saying that if the heartbeat can be detected, maybe eight or ten weeks, the abortion cannot be performed. Alabama had a version of that bill previously. We decided to define the unborn at an earlier stage. We used the existing definition from our homicide code, that a person includes the unborn child from "in utero regardless of viability." This is a difference of saving six to eight lives of unborn children. The Alabama law does not attempt to argue life begins at conception. This is more of a philosophical issue in which most of us believe, but it is not something that the prosecuting attorney can prove if an abortion is performed. When we say "in utero" it means that the fertilized egg is implanted in the uterine wall. It is after that has occurred that an abortion would be performed.

The Alabama law has caused great consternation from women's rights advocates. They claim that it violates the woman's right to abortion and invades her privacy or liberty interests to control her own body. This is pitted against the rights of the unborn. If that is the contest, then the unborn must win. However, we must be sympathetic to the needs of women who are involved in difficult situations. Undoing 46 years of abortion freedom is difficult. The pro-life community expects to step up to make provision for those women through nonprofit organizations, such as the pregnancy care centers, and ask the government to provide funding for necessary programs, particularly for the poor. We are not talking about welfare programs. We are talking about dealing with the needs and the realities that have been caused by the very corrosive and destructive right to abortion to which many have come accustomed.

We are gratified by this victory. We look forward now to the State Attorney General, Steve Marshall, defending the law. He is a capable and committed advocate for the right to life. We believe he will do a good job. We will report more on this issue. It will take several years to process through the courts.