

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

To: Interested Persons
Date: June 2020
From: A. Eric Johnston
Re: Is Elective Abortion an Essential Service?

The ubiquity and seriousness of the coronavirus pandemic does not need any explanation. “Social distancing” has become the norm and it is likely that into the future our daily habits and interaction with others will change permanently. However, the intensity of the spread of the coronavirus resulted in various degrees of lockdown, shelter in place and other government orders. The purpose of these was to slow the spread of the virus.

On March 19, 2020, Governor Kay Ivey and Dr. Scott Harris, the state health officer, issued a statewide health order to aid in Alabama’s efforts to contain the spread of the coronavirus and the resulting COVID-19. Included in that order was that “All elective dental and medical procedures shall be delayed, effective immediately.” However, we were informed that the state abortion clinics continued to operate with full schedules for abortion procedures and were accommodating women from other states. Unfortunately, on March 25, 2020, Dr. Harris determined that the operations of abortion clinics were essential services and therefore would continue.

On March 26, 2020, we wrote a letter on behalf of the Alabama Pro-Life Coalition, Inc. We pointed out that abortion clinics offer substandard care. It is because of these well-known facts that we authored and supported the Woman’s Right to Know Act and the Women’s Health and Safety Act, among other laws. The purpose of these laws was to require abortion clinics to treat their clients as patients and provide at least a minimum standard of care that would be expected in one’s regular physician’s office.

Additionally, there was and continues to be a shortage of medical supplies and a great burden on healthcare workers to deal with the coronavirus. Elective abortions would continue to drain the availability of medical supplies and potentially place additional burdens on hospitals and other healthcare providers, which could be avoided.

The simple fact is that most abortions are done well prior to the post-viability abortion prohibition cutoff of about 20 to 24 weeks. The vast majority of abortions are completely elective and not done for the life or health of the mother. Therefore, most abortions remain “elective” until shortly before the post-viability cutoff. The medical fact is that if a woman had an actual physician/patient relationship, the physician could determine if in fact there was an emergency due to a life or health issue, or could delay the abortion during the elective period and perhaps only performing abortions shortly before the viability cutoff. These considerations are not complicated and any OBGYN physician would be able to make proper decisions, rather than have the circuit riding or the one stop visit abortionists doing the procedures.

We also reminded the Governor and the state health officer of Alabama’s public policy to protect the lives of unborn children, including Article 1, § 36.06 protecting unborn children in Alabama by all its laws, and the Human Life Protection Act passed in 2019. We asked that elective abortions not be classified as essential services.

Not long after that, Dr. Harris changed his position to prohibit the elective abortions. As expected, the ACLU, always there to aid in the taking of the lives of unborn children, filed a lawsuit before federal Judge Myron Thompson, who always by random selections gets abortion related cases. Of course, Judge Thompson immediately issued a temporary restraining order permitting the abortions to continue and then about a week later after a hearing of evidence, issued a preliminary injunction permitting the abortions to continue. Following that, Attorney General Steve Marshall’s office made an appeal to the Eleventh Circuit Court of Appeals to review Judge Thompson’s order. On April 23, 2020, a three-judge panel composed of Obama appointees upheld Thompson’s order.

At the same time, the Fifth Circuit Court of Appeals and later the Eighth Circuit Court of Appeals upheld orders prohibiting elective abortion procedures for the states in those circuits. There were similar orders in eight states at this time. Unfortunately, Alabama suffered from abortion minded judges. The issue for Alabama was rendered moot on April 28, 2020, when Governor Ivey and the ADPH issued new orders, including resumption of elective surgeries.

Our goal has always been to protect the lives of unborn children. While elective abortions remain legal prior to viability, that does not mean that abortion should be an elevated constitutional right that takes precedence over even an international health emergency. The actions of the abortion clinics and their ACLU comrades simply shows their vicious and uncaring policies endangering the health of others in the process of arrogantly acting as if nothing matters but the taking of the life of the unborn child. We do not know where the pandemic will take us, but we do know that in every aspect of our lives we must exercise reason and show our concern for others.

We again wrote Governor Ivey and Dr. Harris, as well as, Attorney General Steve Marshall, commending them for their efforts to protect the sanctity of life and observe proper healthcare procedures for all of us. If you have the opportunity, please express your gratitude to them. We will continue our work to protect life, regardless of when the issue arises.

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