

APLC

TO: Interested Persons
FROM: A. Eric Johnston, President
DATE: December 2022

RE: The Alabama Human Life Protection Act:

In 2019, the Alabama Legislation passed the Alabama Human Life Protection Act (AHLPA), prohibiting abortions in Alabama. Following the SCOTUS *Dobbs* decision on June 24, 2022, the regulation of abortion has returned to the states. Alabama's law went into effect the very same day. Since then, there have been many concerns raised by both well-intentioned, as well as misguided and ill-intentioned persons. The purpose of this memo is to explain why there should be no changes to the Alabama law. Here are the reasons for not doing so.

Alabama's first abortion prohibition statute was enacted in 1852 and as a result of the 1973 *Roe* decision, it was unconstitutional. The *Dobbs* opinion pointed out abortion is not mentioned in the U.S. Constitution and should remain with the states, the way it was historically since the 19th century. Alabama had never repealed its earlier law, but in 2019 the legislation passed the AHLPA to give better recognition to the unborn and to provide guidance to physicians.

We have heard concerns from persons in Alabama saying physicians are uncertain about what health care can be provided and that the law is vague, needs to be amended, and there will be court cases concerning it. All of this is not correct. The Biden Administration is the perpetrator of many of these frauds. It attempts to maintain federal control of abortion. For example, it says the FDA will require all fifty (50) states to permit the sale of abortion producing drugs. The Alabama law prohibits that. The recent SCOTUS case of *West Virginia vs. EPA* made it clear that federal agency actions cannot go beyond the authority Congress grants to them. There will be litigation and we expect Biden to lose. There is no amendment that can be made to our law that will affect this.

The AHLPA did not occur overnight. Since 1990, the APLC has been working with MASA (physicians) and ALAHA (hospitals) to provide proper medical definitions related to abortion which of course, is a medical procedure. All the definitions in the current law were written with their cooperation. MASA released an information sheet to its members outlining the law without any problems. The target of the law is not physicians acting in good faith. The provisions of the AHLPA, along with the Alabama Medical Liability Acts of 1987 and 1996, and related statutes, provide excellent protection to Alabama physicians, and other health care providers. All of the medical issues in the media, *viz.*, emergencies, impairment of a major bodily function, treating a miscarriage or ectopic pregnancy, life threats, etc., are exceptions in the AHLPA. Additionally, contraception, Plan B and *in vitro* fertilization are not affected.

When we worked through the 2019 Legislative Session, we said the bill had two purposes: (1) be written in a way to attack the unconstitutional basis of *Roe*, and (2) if *Roe* is reversed, we would have a very strong and complete law to protect the unborn and provide medical guidance. Some seem to think that the first reason is the only reason the law was drafted. That is an absolute *non sequitur*. A review of all proceedings, memoranda, and other materials from 2019 say otherwise.

In 2018, Alabama voters approved by a sixty per-cent (60 %) majority an Alabama Constitution Amendment recognizing the unborn child as a person entitled to protection of all of Alabama law and there are no exceptions. Some suggest there need to be amendments to the law to provide for rape and incest. While these are heinous crimes, there are no exceptions related to the circumstances that led to the pregnancy. Whether conceived consensually, accidentally, or otherwise, the unborn child is entitled to constitutional protection. Adding these exceptions to the statute would be unconstitutional.

According to the Guttmacher Institute, Planned Parenthood's research arm, only for 1% from rape and 0.5% from incest do women obtain an abortion. It is very traumatic for the woman to pursue a criminal prosecution. Only one in four do so. Most do not report these crimes. These exceptions are ripe for abuse and very difficult to identify by the physician. This would create great uncertainty for them and place them in jeopardy.

The Alabama law is absolutely the best law in the nation. It is based on our constitutional amendment, it is medically expertly worded, it has no troubling trigger provisions, and is simply a prohibition. Alabama's long history of prohibiting abortion supports the AHLPA. While it is possible the ingenious people on the other side might find ways to attack the law, it is unlikely. If they had legitimate grounds, they would likely have done so already. Compare litigation in other states. Any tinkering with the law as it now exists can result only in problems for the unborn and physicians. Unfortunately, it appears that well meaning persons may be the biggest threat to the law.

No doubt, legislators will have a few persons calling for changes to the law. Legislators and constituents must understand the constitutional and legal intricacies of the law as written. Every line in the law has a purpose. We will answer any questions. We must leave the law in its current form. We must turn our attention to providing support and services to women and families who may have an unexpected or problem pregnancy.