

APLC

ALABAMA PRO-LIFE COALITION, INC.

To: Interested Persons

Date: May 2023

From: A. Eric Johnston

RE: The FDA, Abortifacients, Mother Murderer's and Abortion Politics

The Alabama Human Life Protection Act prohibits drug induced abortions. How can these be stopped when the drugs are ordered via internet from outside the country? Will the Food and Drug Administration preempt Alabama's law and require/permit drugs to "legally" be sent via mail to all 50 states? Is prosecution of the mother for murder the only way to stop this? Will Republicans drop the ball and let abortionists win the war?

Alabama has the strongest abortion prohibition law in the nation. Chemical abortions are prohibited, but the law can be skirted by women since abortifacients can be ordered over the internet from India and China, countries beyond the jurisdiction of Alabama laws. The FDA proposes to make the drugs available in all 50 states via a telephone call or the internet without a doctor examination, regardless of the state's laws prohibiting this. There are at least three lawsuits considering the FDA issues and these are conditions precedent to be resolved before out of country drugs can be addressed. We are confident those illegal sources can be stopped. But, Biden intends to require these drugs be sold legally in all 50 states. A Texas lawsuit found the FDA did not follow administrative requirements to change its rules, essentially removing physician visits and allowing mail order. Even if this finding is upheld, the drugs will still be available. The issue must be resolved by SCOTUS.

Legal precedent of courts substituting their judgment for agencies with rule making authority will be an impediment. This will be particularly true of an agency like the FDA, which is given significant authority to regulate drugs and presumably has more knowledge than judges.

Medical/regulatory issues aside, the real issue is does *Dobbs* mean what it says when it ruled abortion regulation is up to each state. If that is true, *Dobbs* should preempt the FDA and permit the drugs to be sent only to those states that allow some abortions. That then returns Alabama to its effort to stop out of country shipment of the drugs. Once the FDA issue is resolved, Alabama can then move forward with a statute to stop this. We are not prescient, so we do not know what SCOTUS will do with the Biden FDA initiative, but we are hopefully and guardedly confident that *Dobbs* and not Biden will prevail.

Abortion is an incredibly complex and multi-faceted issue. While proliferers agree life begins at conception, that cannot be proven as fact in a courtroom prosecution. For that reason, we use the standard of proving an unborn child exists by virtue of the fertilized egg being implanted in the uterine wall. While proliferers agree the taking of the unborn child's life by abortion is murder, the issue is clouded by 50 years of abortion rights and approximately one half of the states allowing abortion. What about protecting women? Almost three generations of women have been taught that abortion is legal. Now, not being lawyers or politicians, and abortions being legal in other places, many will be confused and must be educated and given support. Pregnancy Resource Centers are valuable resources for this. That is why APLC supports a \$10,000,000 tax credit bill (HB208) for contributions to PRCs.

There are those who want to amend the murder statute to require prosecuting mothers for aborting their children. An obviously Levitical stance and one with which we sympathize for the benefit of the children. However, for many of the reasons mentioned above, the issue is not so simple and easily resolved. APLC, along with other national prolife organizations, have always viewed women as much the victim of abortion as the children. That is why we have supported many laws through the decades to improve women's healthcare and help them avoid abortion, and that is why we exempt them from prosecution under AHLPA. The law recognizes mitigating circumstances and we as Christians must also. We must try to resolve this the right way.

There will be an unintended result if mothers are criminalized. Prosecuting mothers for murder would alienate some of the prolife conservative base of Republicans (few Democrats are prolife), resulting in a loss of elections. With liberals in control, even moderate abortion regulations will cease, and abortion will once again be more universal than we would hope. Putting mothers in prison will result in the loss of more children. Abortion is a major political issue. Republicans are already losing on this issue. After 50 years of *Roe*, sanctity of life is not automatic. Republicans must take seriously the abortion issue and win it. Major media will criticize prolife protections. The Democrats really want taxpayer funded nine-month abortions. Education of the humanity of the unborn child and assistance to women to avoid abortion must be undertaken.

Many conservatives are saying that Republicans who push abortion limits will lose races. The weak success of Republicans in the last mid-term election is blamed by some to be the abortion issue. Many predicted abortion would not be an issue, but rather the economy. However, abortion remains a hotly contested dominating issue. The overlap of the legal/political/medical/practical worlds makes this an incredibly complex issue.

APLC's efforts in Alabama have always been calculated, reasonable, and timely. We have never pushed fruitless efforts. After thirty-three years, our goal remains to stop abortion. It has no light switch to simply do that. We must all work patiently together through complicated issues and long cumbersome processes.