

APLC

ALABAMA PRO-LIFE COALITION, INC.

To: Interested Persons
Date: December 2023
From: A. Eric Johnston

RE: Abortion Law Update

When *Roe v. Wade* was the law, the battle lines were clear. There were questions over the extent to which abortion could be regulated, but it could not be prohibited or significantly restricted. After the *Dobbs* decision on June 24, 2022, the legal and political landscape changed in many ways, some unexpected. That landscape is now diverse and uncertain. On the day *Dobbs* decided, the Alabama Human Life Protection Act went into effect. There have been no challenges to the law.

Currently, there is a lawsuit filed by abortion advocates against the Attorney General for saying that it is possible Alabama's criminal conspiracy laws could apply to persons who arrange to transport women out of state to get abortions in places where it remains legal. The AG is correct to let the courts sort that out. There are issues of state sovereignty and what it could do within its own borders, and the opportunities of other states and the right to travel under the U.S. Constitution. The Biden Department of Justice has inserted itself into many progressive issues that should be resolved by the states. Take the Alabama VCAP litigation as an example. The court in this abortion case can decide the issue without the intervention of the DOJ. The Plaintiff in this case and the DOJ are abortion advocates. We accept that the plaintiff may have standing to pursue the case, but the DOJ has no business involving itself in this case. There is no federal issue for the United States as a party. At this time, there is no official public policy for the U.S. on abortion. It may be Biden's policy, but it is not that of the country. *Dobbs* left the decision open to the states. That would not preclude congress from acting, but it has not. It is an individual issue for the extant parties in that case. We support the Alabama Attorney General in the state's public policy of respecting life.

Abortion was legal in Alabama until June 24, 2022. Abortion statistics from the Alabama Department of Public Health show abortions for the year dropped by maybe 25%. That number is dubious. However, we will not know for sure until we get the 2023 statistics, when the number of abortions should drop drastically. We will review those figures and request action by the Attorney General, if they appear unreasonable.

Last year APLC supported a tax credit bill for pregnancy resource centers. That bill, along with many other tax credit bills died due to opposition from leadership based on tax considerations and not the issue itself. We will need to take the temperature of the legislature next year to see if it would be a good time to reconsider that bill.

The most important thing that we plan, however, is to deal with the issue of chemical abortions. That is, persons ordering abortion pills from out of state and self-administering. Chemical abortions are making up about 50% of all abortions. As you know, the AHLPA does not criminalize the woman. You will also recall there was a bill last year to change the criminal law to charge mothers who have abortions with murder. The pro-life community has always seen woman as a victim, along with the unborn child. That view is not changed and criminalizing women in this very uncertain political atmosphere is not the best way to handle the problem. We have addressed this in detail in previous memos.

APLC has had a bill prepared that will prohibit internet providers and pay mechanisms from transacting this business. Most of the drugs are coming from China and India, countries beyond the legal reach of Alabama law. However, companies operating within the United States are subject to Alabama law and they are the mechanism by which this business is transacted. Our proposed bill will criminalize and punish that process, as well as permit injunctive relief. We will provide a analysis of that bill in the next Educational Update.

In closing, we must briefly examine another facet of the abortion landscape and that is the outcome of recent elections. Ohio passed a constitutional right to abortion by 56% – 44% margin. It was considered a red state. Kentucky elected it's incumbent governor by 53% - 43% margin over a republican AG. The main issue in that race was their respective abortion positions. There was a major effort in Virginia to flip the Virginia assembly from Democrat to Republican. Again, abortion was the controlling issue. The flip did not happen.

These were bellwether elections. They do not ineluctably predict the outcome of coming elections, but they are highly suggestive and very worrisome. Most news organizations are opining that abortion is a controlling issue in current elections. CNN coverage of election night was almost totally focused on the abortion issue. The Wallstreet Journal reported that anti-abortion groups are being outspent by 2-1. In Virginia, democratic candidates had more than 38,000 abortion related spots costing about 14.5 million dollars, whereas by contrast, abortion was barely mentioned in Republican ads. Republicans must learn to discuss this issue. We are seeing laws passed prohibiting abortion after six weeks and fifteen weeks. These are not extreme positions, although Donald Trump suggested the Florida six-week law was. With this uncertainty, Democrats are taking the lead. What is extreme and what Republicans must articulate is that abortion throughout pregnancy is inhuman.

Dobbs created a new landscape. It is ever changing, and the pro-life movement must adapt to it and respond both legally and politically in every way necessary. Please continue to pray for our efforts.