

AN EDUCATIONAL MEMO FROM THE SOUTHEAST LAW INSTITUTE

To: Southeast Law Institute Supporters
From: A. Eric Johnston
Date: January, 2000
Re: A New Pro-Life Strategy, While Continuing with the Old.

Since the *Webster* decision in 1989, there has been a concentrated effort to regulate abortion through state laws. This was reinforced by the *Casey* decision in 1992. At the same time, there continued to be hope for an absolute abolition of abortion, not just regulation, by (i) getting a pro-life majority on the U. S. Supreme Court to reverse *Roe v. Wade*, or (ii) passing a Human Life Amendment which would abolish abortion by making unborn children persons within the meaning of the Constitution.

It is obvious the strategy of changing the Supreme Court is not working. It has been twenty-seven years since *Roe v. Wade* was decided and we have not accomplished that goal. In fact, Bill Clinton has put two justices on the Supreme Court, Ginsburg and Breyer, both of whom are pro-abortion.

During this same time, efforts to get a Human Life Amendment have not fared well. This requires, at least, a pro-life President and a pro-life majority Senate. Neither of these appear probable.

Clark D. Forsythe, President of Americans United for Life, one of the premiere national pro-life organizations, recently suggested in a *National Review* article that a "federalism amendment" giving abortion regulation to the states is the best approach. His suggestion has two parts. First, the United States Constitution would be amended to say something to the effect that:

"A right to abortion is not secured by this Constitution. The Congress and the several states shall have the concurrent power to restrict and prohibit abortions: provided, that a law of the state which is more restrictive than a law of Congress shall govern."

Congress and the states might be more likely to pass such an amendment because it does not directly resolve the abortion issue. It returns the matter to the states under the concept of federalism to determine how each would handle abortion. Congress could also legislate. There would be no constitutional right to abortion.

Second, before this can occur, there must be a cultural change. Abortion is seen as a "necessary evil" with which we must live. There are many myths about the danger of back street abortions which will need to be debunked. A recent Gallup survey shows that seventy-seven percent of Americans view abortion as the taking of human life, if not murder. Yet, elected officials fail to speak out on the issue.

It will take several years to develop this strategy, if it is accepted. In the meantime, states continue to carry out the state regulatory part to the extent permitted by the U.S. Supreme Court. A federalism amendment would let states do as they please, including abolish abortion. Presently, we do not have that right, but we can regulate within certain limits.

Alabama has few laws regulating abortion. The Alabama Pro-Life Coalition, Inc. (APLC) is introducing regulatory legislation again this year. This includes the Woman's Right to Know legislation patterned on the Pennsylvania law which requires the mother be given a great deal of scientific information about her pregnancy and baby, alternatives to pregnancy, and even be shown an ultrasound of her baby.

Another bill is to be introduced which will amend the existing parental consent law. It removes a number of loopholes which have permitted minor girls to get abortions without parental consent or without it actually being in their best interests. Importantly, it would require the Attorney General's Office to appear as an advocate for the unborn child in any judicial-bypass proceeding where a minor girl seeks to get permission for an abortion without her parents' consent.

APLC is also sponsoring a bill which will prohibit physician assisted suicide. This is the taking of life at the other end of the spectrum.

The Southeast Law Institute is committed to the sanctity of life. We will continue to render aid and support in the judicial and legislative arenas. We will monitor the "federalism amendment" idea and keep you informed.

*This statement is for educational purposes only. It is not intended to provide legal advice.
We hope if you have questions or know of those who do, you will contact us and we can assist through
referral to one of our cooperating attorneys.*