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Abortion Law In North Carolina – May 26, 2019

Before Twenty Weeks

Under current North Carolina law, a mother can authorize a licensed doctor to end the life of her unborn child up until the 20th week of pregnancy for any reason, except where an abortion would be performed due to the sex of the unborn child.

After Twenty Weeks

From 1973 through 2015, after 20 weeks, state law had essentially allowed abortion up until the time of birth. Under G.S. 14-45.1(b) abortions were allowed for "health reasons," but under *Doe v Bolton* (1973), infra, "health" was interpreted to mean virtually anything, including social and psychological health.

Effective January 1, 2016 an amendment prohibited abortion after 20 weeks of pregnancy except to avert the death of the mother or to avoid a "serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions." As a result, reported post 20 week abortions in NC dropped to 1 per year.

Planned Parenthood challenged this 20-week limitation in federal court. Effective May 26, 2019 Judge O'Steen of the Federal District Court in *Bryant v. Woodall* has enjoined this 2016 law. After 20 weeks an abortion may be performed at any time that the abortionist decides in her own subjective opinion that the child would not live if delivered at that moment. This is committing a lamb to a wolf to be devoured or "quasi agnum committere lupo, ad devorandum." Hence the urgent need for protection for those children who might survive an abortion.

Consider a few facts:

While the unborn child's life remains unprotected for the time he or she is in the womb, the child's right to property is rigorously protected.

- Since 1809, the property of a parent dying without a will vests in the unborn child;
- Since 1839, an unborn child takes property by will;
- Since 1853, an unborn child takes property under a passive trust;
- Since 1854, an unborn child takes real estate by deed;
- Since 1860, an unborn child may be the beneficiary of an active trust.
- The property rights of unborn children are protected in lawsuits through the appointment of a guardian ad litem by the Court. Ironically this guardian cannot take any action to preserve the life of the unborn child.

The government spends billions each year on perinatal care for the poor so children will grow up strong and healthy. The government safeguards children from exposure to dangerous environmental hazards. However, if an environmental danger will injure unborn children, an employer cannot shield women who could become pregnant from that danger. *International v. Johnson*, 499 US 187 (1991) (lead exposure - Title VII).

In 1859, its Committee on Criminal Abortion recommended to the American Medical Association a resolution, unanimously adopted, condemning the act of abortion at every period of gestation except as necessary for preserving the life of either mother or child. The stated reason for the resolution was the increasing frequency "of such unwarrantable destruction of human life." *American Medical Association, Minutes of the Annual Meeting, 1859*, 10 The American Medical Gazette 409 (1859). While the AMA led the way for prolife measures on scientific grounds, it is now proabortion.

North Carolina did not have an abortion statute in 1859 because common law (imported from England as of 1776, G.S. §4-1) made abortion a crime. Judge Ashe held that abortion was a misdemeanor at common law: "It has been said that it is not an indictable offense . . . unless the mother is quick with child, though such a distinction is neither in accordance with the results of medical experience or with the principles of the common law." *STATE v. SLAGLE*, 82 NC 653, 655 (1880). In the second hearing of the case, *STATE v. SLAGLE*, 83 NC 630 (1880), Chief Justice Smith said: "The moment the womb is instinct with life and gestation has begun, the crime may be perpetrated." Id. at 632.

In response to *Slagle*, G.S. §14-44 and §14-45, each enacted in 1881, raised the crime of abortion from a misdemeanor to a felony (currently Class H and I). These two statutes apply if someone other than a licensed doctor attempts to perform an abortion on a woman. In *Connecticut v. Menillo*, 423 U.S. 9 (1976), the U.S. Supreme Court determined that a right founded on "privacy" exists in the presence of a phalanx of employees and other patients at an abortion clinic – but does not exist when a woman performs an abortion on herself in her own home.

In 1973 the U.S. Supreme Court legalized all abortions performed by a doctor, setting aside the laws of all 50 states. The combination of *Roe v. Wade*, 410 US 113 (1973), *Doe v. Bolton*, 410 US 179 (1973) and subsequently *Planned Parenthood v. Casey*, 505 US 833 (1992) meant that this "right" existed up until birth. Two dozen states have tried to limit this "right" to the first 20 weeks (or earlier) of pregnancy, but legal challenges are pending. G.S. §14-45.1, enacted in 1973 in response to *Roe v. Wade*, appears to limit the "right" to abortion to 20 weeks of pregnancy, but that limit was not enforceable until 2016. *Colautti v Franklin*, 439 US 379 (1979). Effective May 26, 2019 it will no longer be effective. *Bryant v. Woodall* (MDNC, March 25, 2019).

While the 2016 amendment was in effect, post-20 week abortions performed in North Carolina were drastically reduced. But 99% of abortions are committed before 20 weeks.

Conclusion: All of the rights of an unborn child are protected by the law of North Carolina, UNLESS the child's mother tells a doctor to terminate all of the child's rights, to life itself. Federal courts tell us that this is such a private matter that the State may not intervene, at least for as long as the abortionist decides that the child is too young to survive.

Does the unborn child have a right to protection against the government paying for his or her demise? Yes, by federal and state statute:

- The "Hyde Amendment" (prohibiting Medicaid abortion funding except to save the life of the mother and in cases of rape or incest) does not appear in the United States Code, but is reenacted by Congress in appropriations laws. Similar limitations apply to other federal programs.

- In *Rosie J. v. N.C. Department of Human Resources*, 347 NC 247, 491 S.E.2d 535 (1997) the N.C. Supreme Court held that there was no state constitutional right to state funded abortions. "Rosie J.", Raleigh Women's Health Organization (abortion clinic), and Dr. John Marks (abortionist), claimed that tax paid abortion was guaranteed under Article I, Section 1 "life, liberty" clause, Article I, Section 19, "law of the land" and "equal protection" clause and Article XI, Section 4. ("Beneficent provision for the poor, the unfortunate and the orphan is one of the first duties of a civilized and a Christian state"). The Supreme Court did not agree that these provisions of the state constitution guarantee publicly funded abortions.

- State laws passed in 2011 and 2013 prohibit local government funding of abortion and prohibit abortion coverage in health insurance policies sold on the federal Affordable Care Act exchange to North Carolinians (except to save the life of the mother and in cases of rape or incest).

Sincerely,

Paul Stam

A comprehensive version of this opinion appears at www.paulstam.info, under Articles for 2015, "Legal Rights of Unborn Children in North Carolina" with full citations to authority.