



An Aversion to Life:

How North Carolina has Neglected the Unborn

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ESSE QUAM VIDERI. “TO BE, RATHER THAN TO SEEM.” EVERY SCHOOL CHILD LEARNS OUR STATE MOTTO WHEN STUDYING NORTH CAROLINA HISTORY. THE NATION LOOKS AT NORTH CAROLINA AS ONE OF THE MOST PRO-LIFE STATES IN THE COUNTRY. AFTER ALL, FOR ALMOST 30 YEARS THE NATION WATCHED AS NORTH CAROLINA VOTERS RETURNED JESSE HELMS, A LION IN THE PRO-LIFE MOVEMENT, TO THE UNITED STATES SENATE. YET IN REALITY, WE HOLD THE DISTINCTION OF HAVING A STATE LEGISLATURE THAT—WELL BEFORE *ROE V. WADE*—ABANDONED THE UNBORN, AND SINCE THAT INFAMOUS COURT DECISION, HAS RARELY GIVEN IT A SECOND THOUGHT.

For 37 years, pro-life Americans have marched on Washington, prayed, pleaded, petitioned, and fought to restore to American law the inalienable right to life for the unborn. It is important to note, however, that if the *Roe* decision vanished tomorrow, abortion would not be eliminated or outlawed in the United States. State abortion laws would be reactivated. Surprisingly, under current North

Carolina law (now inactive due to *Roe*) nothing would change for most, if not all, of the Old North State’s unborn children. The slaughter would continue unabated.

Abortion History in America and North Carolina

To understand where we need to go, we need to examine where we have been. The history of abortion in America serves as a striking 20th Century example of historical deconstruction. Many proponents continue to trumpet that abortion was a legal, frequent and morally accepted part of American life from English colonial days into the 20th Century. Adding insult to injury, in 1973, Justice Blackmun, in *Roe v. Wade*, used the latter argument to justify the wholesale legalization of abortion.

Since the *Roe v. Wade* decision, several historians have stepped forward to set the record straight. (1) Abortion was illegal under Anglo-American common law and later, by statute.¹ (2) Abortions did occur in America from colonial times to the present, but were never viewed as morally acceptable in

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mainstream society, and were made legally permissible in a handful of states only shortly before the *Roe* decision.²

The Common Law. According to John Keown, Chair of the Rose Kennedy Center for Christian Ethics at Georgetown University, as early as the mid-thirteenth century, the common law punished abortion after fetal formation as homicide. Furthermore, through the mid-1600s abortion continued to be criminalized. By the early 19th Century, the common law prohibited abortion “after quickening.”³ According to Professor Joseph Dellapenna, Professor of Law at Villanova University, this distinction was due to an uncertainty of pregnancy, but certainly not a retreat from the commitment to protect all human life from conception.⁴ Maryland is believed to be the first colony where the common law abortion laws were upheld. In 1652, while it could not be proven that the defendant caused the death of the infant, a jury returned with a conviction of an “intention to abort.”⁵

During colonial times and until 1881, North Carolina followed the common law banning abortion. While the State Supreme Court upheld a lower court’s conviction of an “intention to cause an abortion” after “quickening,” it stated in dicta that it agreed with a Pennsylvania court’s decision holding that a crime is committed at any stage of a woman’s pregnancy, not only after “quickening.”⁶

Written Into Law. The 19th Century ushered in a trend in state legislatures toward tightening the common law, both in England and in the United States.⁷ In 1821, Connecticut became the first state to legislatively ban abortion.⁸ By 1850, according to *World* magazine editor-in-chief Marvin Olasky, at least 13 states had passed laws outlawing abortion at any stage of pregnancy.⁹ Three others banned abortion only after “quickening.” By the late 1860s, 30 of the 37 states restricted abortions by statute, 20 banning it at all stages of pregnancy. North Caro-

lina did not act until 1881. To underscore the belief that the unborn were considered human life, eight states—Arkansas, Florida, Michigan, Minnesota, Missouri, New York, Oregon and Wisconsin—defined abortion as “manslaughter.”¹⁰ By 1900, every state in the Union had outlawed abortion.¹¹

In 1881, the North Carolina legislature followed the trend toward tightening anti-abortion laws in two ways. It statutorily outlawed abortion at any stage of fetal development, and it raised the level of punishment from a misdemeanor to a felony.¹²

America’s resolute opposition to abortion began to weaken as the 19th Century closed. The American Medical Association, which had railed against abortion in the mid-1800s, began retreating from this position. Throughout the early to mid-1900s its silence was deafening. In 1967, the organization made an about-face by endorsing the American Law Institute’s (ALI) call to decriminalize abortions in cases of rape or “irremediable physical or mental harm to the mother or child.”¹³

North Carolina, protector of the unborn in the 19th Century, quickly reversed their position when the opportunity arose, and gained the distinction in 1967 of being one of the first states to legalize abortion, mirroring the ALI model.¹⁴ By the time of *Roe v. Wade*, North Carolina had distinguished itself as being one of only 18 states which had legalized abortion. After *Roe*, the state legislature quickly changed its law to reflect the “rights” guaranteed by the decision.¹⁵

Legislative Action Thwarting *Roe v. Wade*

In 1973, with the Supreme Court decisions legalizing abortion at all stages of development,¹⁶ pro-life legislators responded. At the federal level, pro-life initiatives have failed overwhelmingly. Over the past 37 years, Congress has produced only three victories in restraining *Roe v. Wade*’s assault on the unborn. Two of the three are directed at the funding of abortion: (1) The Hyde Amendment, effective in 1977, which restricts federal funding of abortion; and (2) Funding restrictions in the 2010 Health Care Reform Bill. The third, upheld in 2007 by the Supreme Court, federally bans the gruesome procedure known as “partial birth abortion.”¹⁷

Pro-life legislators at the state level have been far more successful in restricting abortion. According to a January 2010 report from the National Conference of State Legislatures, the majority of states:

- Require parental notification or consent preceding an abortion;
- Require a woman prior to an abortion to receive counseling that includes information on at least one of the following: evidence on the link between abortion and breast cancer, the ability of the fetus to feel pain, the mental

health consequences of abortion, or information on the availability of ultrasound;

- Require a waiting period between counseling and procurement of an abortion;
- Restrict public funding of abortion.¹⁸

Additionally, according to the Guttmacher Institute, 16 states have laws in effect which ban partial birth abortion (a procedure now banned by federal law). North Carolina has no such law.¹⁹

North Carolina's Failure

For the past 37 years, while the majority of state legislatures aggressively pursued limiting *Roe* and *Doe's* assault on the unborn, North Carolina legislators ignored almost every opportunity to restrict the killing of the unborn. Dozens of legislative restrictions have been introduced every legislative session. Yet, few, if any, even obtained a committee hearing. It appears that the Legislature as a whole has very little interest in abating abortions in North Carolina.

Abortion Funding. The General Assembly has enacted two restrictions on funding, one restriction on abortion, and a conscience clause regarding abortion. North Carolina state law mirrors the federal Hyde Amendment prohibiting Medicaid funding except in cases of rape, incest, or life endangerment of the mother.²⁰ The General Assembly continues to appropriate \$50,000 annually for the State Abortion Fund (with Hyde Restrictions), and abortions are still covered under the Teachers' and State Employees' Comprehensive Major Medical Plan. A recent outcry by some parents of UNC students being forced to buy university-sponsored insurance which provides abortion coverage shows more work needs to be done to insure that the public will not be forced directly or indirectly to pay for abortions.²¹

Parental Consent. In 1995, the General Assembly enacted a parental consent law.²² Unfortunately, that legislation did not require that the parent's signature be witnessed or notarized, thus significantly reducing the potential veracity of the alleged signature. A North Carolina Supreme Court decision upholding a forged signature as sufficient written consent under the statute, underscored this crippling weakness in the legislation.²³

Conscience Protections. Similar to 46 other states, North Carolina law allows doctors to refrain from performing abortions.²⁴ Additionally, similar to what is allowed in 44 other states, institutions in North Carolina can refrain from performing abortions.²⁵ Neither a pharmacist, a pharmacy, nor a medical institution, however, enjoy the same protection in North Carolina to refrain from dispensing abortifacient contraceptives.

Under current North Carolina law, if *Roe* were overturned, abortion would be legal for any reason during the first 20 weeks of pregnancy.²⁶ After the twentieth week, abortions are permitted if there is

“substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman.”²⁷ Even assuming this therapeutic restriction becomes effective, which is inconclusive, in reality, most abortions occur during the first trimester.²⁸ With only one weak restriction in place, most if not all North Carolina unborn babies would continue to be slaughtered with impunity even with the overturn of *Roe*.²⁹

What Can Be Done Now?

The North Carolina Legislature should do the following:

- Enact a “trigger law” prohibiting abortion at all stages of pregnancy in the event that *Roe v. Wade* is overturned. A trigger law is a law that simply states: “This currently unconstitutional statute will take effect when it becomes constitutional.” They are rare, but not new, and with respect to abortion, their numbers have increased in recent years. According to one study, since 2005, four states—Louisiana, Mississippi, South Dakota, North Dakota—have enacted trigger laws that would ban abortion in the event *Roe v. Wade* were overturned.³⁰
- Require pre-abortion counseling by a doctor on fetal pain, the emotional consequences of abortion, the opportunity to view an ultrasound, and research showing any link between abortion and breast cancer. To date, 18 states mandate that women be given counseling before an abortion; six require the presentation



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of evidence linking abortion and breast cancer; 10 states require the presentation of information on fetal pain; seven states require information on the long-term health consequences of abortion on women; and nine states require the presentation of information on the availability of ultrasound.³¹ (A few states that attempted to require that the ultrasound be shown to the woman seeking abortion have been met with court challenges.)³²

- Require a 24-hour waiting period between the counseling and the abortion. Twenty-four states require a woman seeking an abortion to wait a period of time, usually 24 hours, between the counseling and the abortion.³³
- Restrict coverage of abortion in insurance plans. According to the Guttmacher Institute, five states have laws restricting insurance coverage of abortion in all private insurance plans written in the state, including those offered through the health care exchange programs tied to the federal health care reform law. Five states restrict abortion coverage in plans offered through the insurance exchanges and 13 states prohibit abortion coverage for insurance policies for public employees.³⁴
- Provide “conscience clause” protections to pharmacists, and employees of pharmacies and medical institutions who object to dispensing abortifacient drugs on moral, ethical, or religious grounds. A Guttmacher study indicates that five states have laws providing conscience clause protections for pharmacists, one state for pharmacies and nine states for institutions.³⁵
- Require written parental consent of both parents, requiring a witness and notary signatures. The veracity of the parents’ signature must be insured.
- Eliminate the N.C. State Abortion Fund.

The Numbers

No one can deny that the rate of abortion exploded in this country after the *Roe v. Wade* decision. In 1972, there were 586,760 abortions performed in the U.S. at a rate of 13 per 1000 women. After *Roe*, according to the Guttmacher Institute, the numbers exploded, peaking at 1,608,620 in a single year. Since 1991, abortions have declined

steadily.³⁶ The numbers, however, are staggering. According to National Right to Life, between 1973 and 2005, 49,551,703 abortions were performed in the U.S.³⁷ According to the State Center for Health Statistics, 948,035 of those abortions occurred in North Carolina.³⁸

Mounting evidence indicates that restrictions are reducing abortions. According to Michael New, an Assistant Professor at the University of Alabama and a Fellow at the Witherspoon Institute, studies in Massachusetts and Texas clearly show the decline in abortions were due to parental consent laws.³⁹

Nationwide, few would argue that restrictions on abortion funding have reduced abortions.⁴⁰ According to one study, initiatives in Mississippi redefining what qualifies as an abortion clinic, requiring parental consent by both parents, and personal counseling prior to an abortion, followed by a 24 hour waiting period for all women seeking abortion, reduced abortions by over 56 percent.⁴¹

Conclusion

The Holocaust. Tiananmen Square. 9/11. We all reel in horror at these innocent takings of human life. Our sense of right and wrong is not based on surrounding circumstances or public opinion. Certain things are right and certain things are wrong—always. Philosophers and theologians call it “moral absolutism.”⁴²

A recent poll shows most Americans do not believe in moral absolutism. They believe that circumstances determine whether an action is right or wrong. Yet without a fixed standard, neither deserved punishment nor gracious mercy can exist. In effect, there can be no justice. Without justice, there can be no freedom.

“*To Be Rather Than to Seem.*” The North Carolina Legislature enacted those words as our State motto in 1893, just 12 years after legislatively banning all abortion. Those words meant something to our forefather legislators and the citizenry over which they governed. Those words of Cicero, which encapsulate the essence of character and honesty, can be as meaningful today as they were then. If our members of the General Assembly want to *be* seekers of equality and justice for all, rather than ones who *seem to be*, they will act now to protect the lives of our most innocent, the unborn. ❖

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