GOSNELL AWARD: PROMINENT ABORTIONIST WORKS HARD TO PROVE “LEGAL” IS FAR FROM SAFE

Life Legal is assisting in two cases of medical malpractice against notorious late-term abortionist Leroy Carhart and his associates.

In both cases, the women found Carhart through his website, abortionclinics.org, which boasts of “specializing in 2nd and 3rd trimester abortion care.” Carhart, who is over 80 years old, operates two abortion mills—one in Nebraska, which prohibits abortion after 20 weeks, and one in Maryland, where abortion laws are much more lenient. While Maryland law restricts abortions after the age of viability, the law also includes a sweeping exception for cases where the physical or mental health of the mother is at risk.

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On May 11, 2020, Carhart employee and abortionist Elizabeth Swallow placed a young woman under anesthesia to complete a late-term abortion, even though the woman was not sufficiently dilated. The woman woke up and started screaming in pain and was immediately put under again. Swallow had unknowingly perforated the woman’s uterus, causing profuse bleeding.

Carhart was called in to assist, but was unable to help the woman. Eventually she had to be transferred to a hospital. By the time she arrived, her blood pressure was dangerously low and she was having trouble breathing. Physicians at the hospital discovered that the woman’s bowel had also been perforated, requiring the removal of about 1500cc (1.5 quarts) of blood. She had to have a complete hysterectomy.

Just over a week later, on May 20, 2020, another woman started bleeding heavily after Anh-Chi Dang Do, an associate of Carhart’s, started the abortion procedure. The woman was told her baby had Down syndrome and should be aborted. During the abortion, the woman complained about pain, but the abortion workers reassured her that the bleeding and pain were “normal.” Soon, however, the abortionist and his staff became covered in blood.

The lawsuits allege that Carhart and his staff not only committed medical malpractice, but failed to adequately inform both women of the profound risks inherent in late term abortions, including uterine puncture and rupture, excessive bleeding, and damage to internal organs.

Once again, Carhart was called in to assist and was unable to stop the bleeding. By the time the abortionists finally decided to call an ambulance, the woman was in critical condition, having suffered excessive blood loss. Physicians at the hospital discovered the baby’s head and upper body intact, with the arms and left leg having been ripped off by the abortionist. Because of the woman’s extensive injuries, she too had to undergo an emergency hysterectomy.

A board-certified OB-GYN who is serving as an expert witness in the case reported that the woman had an extremely dangerous condition that is known to cause fatal hemorrhaging. Carhart and his colleagues should have been able to detect this and warn the woman that an abortion was extremely risky under the circumstances. Instead, they took her money and happily proceeded to dismember her baby.

The expert also stated that the abortionists administered pain killers Versed and Fentanyl “in excessively high doses” and did not properly monitor the woman while she was sedated.

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malpractice, but failed to adequately inform both women of the profound risks inherent in late term abortions, including uterine puncture and rupture, excessive bleeding, and damage to internal organs.

You may be familiar with the name Leroy Carhart because of two U.S. Supreme Court cases that bear his name. In 1997, Carhart challenged Nebraska’s Partial Birth Abortion law, which prohibited abortionists from partially delivering a live baby and then killing the baby before completing the delivery of the now dead baby. In 2000, the Supreme Court held that the law was unconstitutional in part because it did not include an exception that would allow the barbaric procedure in cases where the mother’s health was in danger. The decision was written by recently retired Justice Stephen Breyer.

In response, Congress passed the federal Partial Birth Abortion Ban Act of 2003, which also did not include a “health of the mother” exception. The government in that case argued that the procedure was gruesome, inhuman, and never medically necessary.

In 2006, in an opinion written by former Justice Anthony Kennedy, the Court held that the Partial Birth Abortion Ban Act was constitutional and did not impose an undue burden on access to abortion even without a health of the mother exception. The Court cited numerous reports from abortionists who had performed partial birth abortions, including the graphic eyewitness testimony of a nurse:

“The baby’s little fingers were clasping and un-clasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby’s arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby’s brains out. Now the baby went completely limp.”

The baby was 26½ weeks gestation. He or she would have been over 13 inches long and weighed over two pounds.

Justice Kennedy concluded that partial birth abortion “is a procedure itself laden with the power to devalue human life.”

We would like to make clear that while we find the treatment of women by Leroy Carhart and his associates to be abhorrent, the purpose of the lawsuits against the abortion butcher is not to make abortion safer for women. Our goal is to finally put Carhart and his murderous ilk out of business.
As this issue of Lifeline went to print, we were still awaiting a decision from the Supreme Court in Jackson Women’s Health Organization v. Dobbs, the Supreme Court case that could curtail or overturn Roe v. Wade and Planned Parenthood v. Casey. The decision will allow states much greater leeway in passing laws to protect babies in the womb.

In the meantime, two generations of SCOTUS-dictated abortion on demand have coincided with, if not directly caused, radical changes in attitudes toward abortion. Just the thought of Roe being overturned has led several states to declare their commitment to an abortion license even broader than that required under Roe. In the past two years, New York, Virginia, New Jersey, and Massachusetts have passed laws prohibiting any meaningful restrictions on killing infants living in the womb, emerging from the womb, and arguably beyond.

Desperate to find new ways to make abortion more accessible and convenient in California, Governor Gavin Newsom, as well as other Democrat politicians, have declared their intention to make the state a “sanctuary” for abortion. Their plans include not only paying for abortions for women coming from out of state, but also paying for their travel and lodging.

But not all the momentum has favored abortion. Many state legislatures have become more pro-life in recent years and are anxious to pass life-saving laws.

Even if Roe is overturned, though, many pro-life legislatures will face another obstacle: their own state courts. In these states, including red states such as Alaska, Iowa, Kansas, Montana, and Mississippi, the state supreme court at some point in the past four decades decided that the right to abortion is independently protected by some provision in the state constitution, usually a right to “privacy,” but sometimes the equal protection clause or another provision. Whether those courts would affirm that stance today is another question.

To take one example, in 1989, the Florida supreme court decided that a 1980 amendment to the Florida state constitution guaranteeing to every person...
“the right to be let alone and free from governmental intrusion into the person’s private life.” encompassed a right to abortion. Unfortunately, unlike the tortured readings other state supreme courts have given to their constitutions, the Florida high court’s decision may very well have correctly recognized the intent of the voter-approved constitutional amendment, i.e., to enshrine in the Florida constitution a Roe v. Wade style right to abortion.

Reading this decision more than 30 years after it was written, I was struck by the court’s justification of using the “point” of viability as a demarcation and particularly its description of the fetus.

Until this point [of viability], the fetus is a highly specialized set of cells that is entirely dependent upon the mother for sustenance. No other member of society can provide this nourishment. The mother and fetus are so inextricably intertwined that their interests can be said to coincide.1

After decades of educational efforts by pro-life advocates, it is difficult to imagine anyone saying with a straight face that a fetus at six weeks, much less six months, is a “highly specialized set of cells.”

In a subsequent decision, the Florida supreme court went even further than the U.S. Supreme Court and struck down a parental notification law. In response, Floridians amended the state constitution to shift public opinion against abortion. That initiative will be on the ballot an amendment declaring that the state constitution does not guarantee a right to abortion. Voters will decide that issue in their primary election this coming August.

Pro-lifers in Kentucky are proactively seeking to prevent such judicial activism by adding a provision to their constitution stating that it does not guarantee a right to abortion. That initiative will be on the November ballot. If Kansas’s and Kentucky’s amendments pass, they will join four other states with similar provisions preventing judicial interference with anti-abortion legislation.

As these states show, the fall of Roe v. Wade will be a huge victory in the fight to end abortion, but not the end of the fight. Pro-lifers should be preparing for battles at the state level and increasing our efforts to shift public opinion against abortion.1

Any law that implicates the right of privacy is presumptively unconstitutional, and the burden falls on the State to prove both the existence of a compelling state interest and that the law serves that compelling state interest through the least restrictive means.2

Even the most minimal and commonsense regulation of abortion is unlikely to survive such an exacting test. Although the case was remanded for a trial (scheduled for April 2022), as a practical matter the Florida Supreme Court must reconsider its prior rulings or the voters must again amend the state constitution before real pro-life progress is possible.

To take another example, in 2018 the Iowa Supreme Court found a right to abortion in the due process and equal protection clauses of that state’s constitution. While denying that they were straying from their proper role, five activist judges struck down a 72-hour reflection period, pompously pronouncing:

Autonomy and dominion over one’s body go to the very heart of what it means to be free. At stake in this case is the right to shape, for oneself, without unwarranted governmental intrusion, one’s own identity, destiny, and place in the world. Nothing could be more fundamental to the notion of liberty. We therefore hold, under the Iowa Constitution, that implicit in the concept of ordered liberty is the ability to decide whether to continue or terminate a pregnancy.3

This past February, the court heard argument on a 24-hour reflection period statute. Legislators and the governor urged the court to overrule its 2018 precedent.

In 2019, the Kansas Supreme Court struck down a state ban on partial birth abortion after discovering right to abortion in the state’s Bill of Rights, enacted in 1861. The Kansas legislature responded by voting with a two-thirds majority to place on the ballot an amendment declaring that the state constitution does not guarantee a right to abortion. Voters will decide that issue in their primary election this coming August.

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1 In re T.W., 551 So.2d 1186, 1193 (Fla. 1989)
2 North Florida Women’s Health & Counseling Services, Inc. v. State, 866 So.2d 612 (Fla. 2003)
3 Gainesville Woman Care, LLC v. State, 210 So.3d 1243, 1256 (Fla. 2017)
I was interviewed on several talk-radio programs and was asked what the sponsor was thinking. My most charitable thought was that he was unaware of the definition of “perinatal.”

That “defense” is now inoperative. A bill was just filed in the California Legislature that is even worse than the Maryland legislation.

First, it would seem to create a broad claim for “people who give birth” to choose not to be a parent that is not limited to not getting pregnant, or in the context of the overall bill, abortion. Somehow, this is called “reproductive justice” and given a racial tinge. From AB 2223 (my emphasis throughout):

SECTION 1. The Legislature finds and declares all of the following:

(a) Reproductive justice is a framework created by Black women in 1994 to address the intersectional and multifactored issues that women of color and their families face in society.

(b) Reproductive justice is the human right to control our bodies, sexuality, gender, work, and reproduction. That right can only be achieved when all people, particularly women and girls, have the complete economic, social, and political power and resources to make healthy decisions about their bodies, families, and communities in all areas of their lives. At the core of reproductive justice is the belief in the right to bodily autonomy, the right to have children, the right to not have children, and the right to parent the children we have with dignity and respect in safe and sustainable communities.

(c) A critical part of realizing reproductive justice for people in California is clarifying that there shall be no civil and criminal penalties for people’s actual, potential, or alleged pregnancy outcomes.

Okay. Let’s be careful. Perhaps that wording just applies to preborn babies or the right not to get pregnant at all.

Nope. It also applies to perinatal outcomes, as well as “postpartum care.”

The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care.

What is postpartum care? I looked it up and learned that it “encompasses management of the mother, newborn, and infant during the postpartal period. This period usually is considered to be the first few days after delivery, but technically it includes the six-week period after childbirth up to the mother’s postpartum check-up with her health care provider.”

Good grief.
Here is the key passage:

123467. (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability or penalty, or otherwise deprived of their rights, based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, including miscarriage, stillbirth, or abortion, or perinatal death.

In analyzing this, we have to assume that the bill means what it says: No “civil or criminal liability or penalty … based on their actions or omissions with respect to … perinatal outcomes.” Come to think of it, “actions” could be interpreted to mean active killing, couldn’t it?

As in the Maryland law, if a state actor seeks to bring an action against people who give birth or those who help them “based on their actions or omissions” with regard to “perinatal death,” that person or entity can be sued:

23469. (a) A party aggrieved by conduct or regulation in violation of this article may bring a civil action against an offending state actor in a federal district court or state superior court. A state claim brought in federal district court shall be a supplemental claim to a federal claim.

Nothing in this bill would limit the license granted to the context of a baby surviving an abortion, which would be horrible enough. Rather, the freedom granted from civil and criminal liability would seem to apply generally.

One blue-state bill that would allow a born baby to be neglected to death might be an anomaly. A second that does that—and perhaps could be interpreted to allow infanticide, also—is a pattern. The cultural Left is blazing new grounds of depravity.

[Wesley J. Smith (@forcedexit) is a senior fellow at the Discovery Institute’s Center on Human Exceptionalism and a consultant to the Patients Rights Council. This article was originally published by National Review (nationalreview.com/corner/now-a-california-bill-to-permit-infant-death-by-neglect) March 25, 2022, where links to web sources cited by the author may be clicked and followed. This article has been reproduced with kind permission of the author. Lifeline readers may be interested in Mr. Smith’s newest book War on Humans (waronhumans.com).]
CEOs Alexandra Snyder, Board Member Gellert Dornay, and Chief Legal Officer Katie Short address a crowd of pro-lifers in Napa, California. Life Legal mobilizes over 5,000 associated attorneys nationwide and is currently working on post-Roe legislative strategies, sophisticated communications channels to reach abortion-bound mothers, and the draft of California's insane infanticide bill, AB 2223.