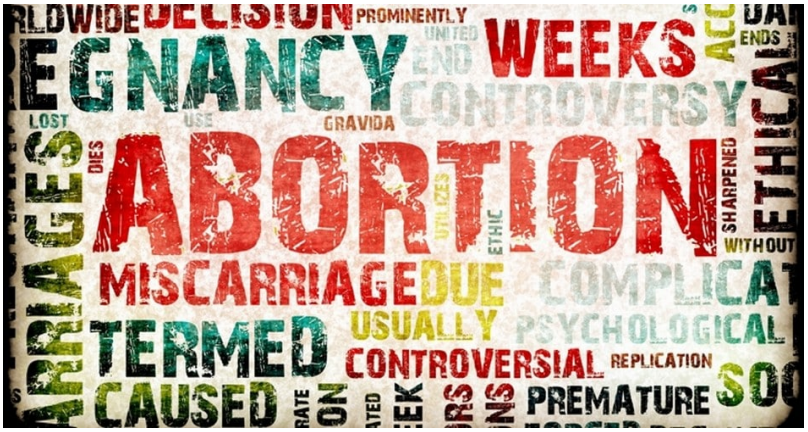
Written by **Bob Adelmann** on May 15, 2019

Alabama Targets Roe v. Wade With Its Complete Abortion Ban Bill



The bill that just passed the Alabama State Senate banning almost all abortions in the Yellowhammer State was designed specifically to challenge the Supreme Court's 1973 *Roe v. Wade* ruling. The bill — House Bill 314, the "Human Life Protection Act" — declares that a fetus is a human being with all inherent rights, and that a provider performing an abortion that ends that life could be sentenced to life in prison. There are no exceptions for rape or incest; the only one is when "an abortion is necessary in order to prevent a serious health risk" to the mother.

The bill's sponsor, Representative Terri Collins, called the bill a "direct attack" on *Roe v. Wade*, adding, "The heart of this bill is to confront a decision that was made by the court in 1973 that said the baby in the womb is not a person. This bill addresses that one issue. Is that baby in the womb a person? I believe our law says it is."

The ACLU of Alabama, along with the National ACLU and Planned Parenthood, is preparing a lawsuit to challenge the bill even though it has yet to be signed into law by Governor Kay Ivey. She is expected to sign it, but even if she doesn't, the strong majorities in both houses that passed the bill would be more than sufficient to override her veto.

The legislation was drafted by Eric Johnston, head of the Alabama Pro-Life Coalition. Johnston has been leading the pro-life movement for 30 years and sees that the stars are aligning in Alabama for such a bill. Previous attempts to curtail or restrict abortion in the state have just nibbled around the edges. For example, legislators in the past have imposed a 48-hour waiting period before performing an abortion; they have mandated that a pregnant woman receive counseling before undergoing the procedure; and they have required minors to receive consent from a parent or a legal guardian before having an abortion.

Said Johnston of the new bill, "Why not go all the way?"

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The bill comes after the passage of the "fetal heartbeat" bills in Kentucky, Mississippi, Ohio, and Georgia, which ban abortions after a fetal heartbeat can first be detected, around the sixth week of a pregnancy. It comes after the appointment of two conservative judges to the Supreme Court by the Trump administration. It also comes after voters in Alabama approved an amendment to the state's constitution in 2018 declaring that the "public policy of this state is to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life."

If those stars remain aligned, the ACLU will succeed in having a lower court rule the law

unconstitutional, setting the stage for an appeal to the Supreme Court.

Supreme Court Justice Harry Blackmun wrote the majority opinion in *Roe v. Wade*, noting that:

> The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.
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> In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, *Stanley v. Georgia*, (1969); in the Fourth and Fifth Amendments, *Terry v. Ohio*, (1968), *Katz v. United States*, (1967), *Boyd v. United States*, (1886), … and in the penumbras of the Bill of Rights, *Griswold v. Connecticut*, in the Ninth Amendment, or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment.

Blackmun then concluded:

> This right of privacy, whether it is founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

Blackmun then rolled out a litany of reasons to support a decision by a pregnant woman to terminate her pregnancy prior to term:

> The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and Direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future.
>
> Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it.
>
> In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

John Hart Ely, whom the *New York Times* considered to be a constitutional scholar "of dazzling originality and wide influence" in its obituary in 2003, called the ruling "frightening":

> What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution, the framers' thinking respecting the specific problem at issue, [or] any general value derivable from the provisions they included.…

Blackmun likely rues the day when he closed his opinion with this:

> On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree.

Despite his disagreement, since that majority opinion was rendered in January of 1973, more than 60 million babies have been aborted in America. That's nearly 20 percent of the country's present population. Or, to put it another way, the war waged on preborn infants by *Roe v. Wade* since 1973 has

claimed forty-four times the number killed in all the wars of the United States from 1775 to the present.

It's long past time for this horror to end.

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