Written by **Bruce Walker** on June 7, 2010

State Legislatures Take Up Abortion Issues

State governments are reasserting their constitutional right to regulate abortion. Eleven states this year have passed laws which either restricts or controls abortion, this activity represents a high water mark for state legislative action on this issue.

Governor Barbour of Mississippi signed into law a measure which would keep new insurance exchanges created by Obamacare from funding abortions. Oklahoma enacted a law, by overriding a gubernatorial veto, which would require a list of questions to be answered by any women seeking an abortion. Arizona banned abortion coverage in state employee health plans. Nebraska, as noted in an earlier article, banned abortions in the last twenty weeks on the grounds that the fetus can feel pain.

The Supreme Court, nearly everyone agrees, will ultimately determine the constitutionality of these laws. Why the regulation of abortion should be a federal constitutional issue, however, is another sign of how far our nation has strayed from the initial clear language of our Constitution. Nearly all governmental authority over the lives of citizens was left to state governments. The Bill of Rights, in the Tenth Amendment, makes the residual powers of the state governments even clearer.

Is abortion murder? Is it a criminal act short of murder or homicide? Is it tortuous, but not criminal? Is it legal, both criminally and civilly? Until *Roe v Wade*, each state made its own interpretation of the legal consequences of abortion. The decision did not, as so many say, make abortion legal: abortion was legal in any state in which the legislature by state statute made it legal. The idea that state governments have no power to regulate abortion is patently absurd. What if an unqualified, unlicensed ex-convict offered to perform abortions cheaply and fast? Do state licensure laws affect every medical professional except those performing abortions? Can states pass laws which grant women the right to sue doctors who have performed abortions without informing the patient of the long term psychological and medical hazards of the procedure?

We have long relegated to state governments — not the federal government — the right to enact laws which define self-defense, justifiable homicide, manslaughter, and murder. State law also determines what is consensual sex and what is rape. State statutes create presumptions regarding which person should have custody of children, except when the child is unborn and the mother, apparently, has absolute custodial rights. This trust in state government is well founded. No state has ever legalized homicide (although any state could) or decriminalized rape (although, again, states could do that.) By the same token, state laws regarding abortion were often measured, serious, thoughtful, and humane. What person would not feel compassion for a woman bearing a child of rape or a child conceived of incest? How often, in old movies, did a hard-case pregnancy end with the death of the infant or the

death of the mother, and this was presented as evidence of the difficult moral problems of life and of medicine.

Returning questions related to medicine (including federal healthcare) and abortion procedures back to the states by aggressive actions by state governments may portent many things, including, perhaps, a return to limited federal power.

Photo: South Dakota Gov. Mike Rounds on March 6, 2006, as he prepares to sign a bill in Pierre, S.D., banning nearly all abortions in his state: AP Images