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ARTICLE

REVIVING A CULTURE OF LIFE IN AMERICA

Mandi D. Campbell, Esq.[†]

I. INTRODUCTION

Since the founding of the United States, people have debated when life begins and what measures should be taken to protect the unborn. While some take the position that abortion should be safe, legal, and rare, others understand that the long-term psychological and physiological effects of abortions make them unsafe. Because laws are normative, individuals look to civil authorities for guidance in decision-making. An activity that government legalizes or subsidizes will not be rare. Thus, while citizens influence the laws that govern them, those laws also influence the people.

Public sentiment about abortion parallels what the civil authorities allow. In turn, civil authorities follow the guidance of the United States Supreme Court. For public sentiment to change, laws that implicitly and explicitly discourage abortion, protect women and unborn children, and challenge Supreme Court precedent must educate people to revive a culture of life. Many states are currently engaged in this effort. For example, some states refuse to allow public funds and facilities to be used for abortion.¹ Others, through fetal homicide and wrongful death laws, impose criminal and civil penalties for killing unborn persons.² For the protection of expectant mothers, states require physicians performing abortions to provide information about the risks of abortion and abortion alternatives.³ A few states have rules addressing where surgical abortions can be performed and how abortifacients can be administered.⁴ For the protection of minors, some states require parental consent or notification for a minor to obtain an

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1. *See infra* notes 40-42.
2. *See infra* notes 44-50.
3. *See infra* notes 53, 55.
4. *See infra* notes 56, 59-61.

abortion.⁵ To protect the unborn, some states prohibit abortion when the child in utero can feel pain. Others pursue initiatives to recognize that life begins at fertilization or proscribe abortion after the unborn child has a heartbeat.⁶

I. POLITICS AND CULTURE: ARE THE PEOPLE THE INFLUENCED OR THE INFLUENCERS?

A. *The Inception of the Abortion Debate*

At its founding, the United States adopted British law that outlawed abortion after quickening.⁷ In 1821, Connecticut became the first state to enact a criminal abortion statute.⁸ Physicians also launched a campaign to criminalize abortion and “secured a resolution from the American Medical Association (“AMA”) condemning abortion as an ‘unwarranted destruction of human life.’”⁹ Due to the AMA’s efforts between 1850 and 1880, forty states enacted statutes that made it a crime to abort an unborn person at any stage of gestation.¹⁰ “By 1910, every state had anti-abortion laws, except Kentucky whose courts judicially declared abortions to be illegal. In 1967, forty-nine states and the District of Columbia classified the crime of abortion as a felony.”¹¹

Despite that progress, many states began to conform to the liberal abortion provisions contained in the 1955 draft of the Model Penal Code.¹² This conformity, however, was limited to situations in which the life of the mother was at stake.¹³ In 1961, for example, Illinois became the first of a

5. See *infra* note 62.

6. See *infra* notes 68, 73, 79.

7. JEAN REITH SCHROEDEL, *IS THE FETUS A PERSON?: A COMPARISON OF POLICIES ACROSS THE FIFTY STATES* 32 (2000).

8. *Id.* (referencing a statute that made it illegal to prescribe an abortifacient after the unborn child’s quickening).

9. Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 286 (1992).

10. SCHROEDEL, *supra* note 7, at 29.

11. J. Lewis & Jon O. Shimabukuro, *Abortion Law Development: A Brief Overview*, ALMANAC OF POL’Y ISSUES (Jan. 28, 2001), http://www.policyalmanac.org/culture/archive/crs_abortion_overview.shtml.

12. Linda Jeffrey & Ronald D. Ray, *A History of the American Law Institute’s Model Penal Code: The Kinsey Reports’ Influence on “Science-based” Legal Reform 1923-2007*, RSVPAmerica Campaign 14 (2007), http://www.drjudithreisman.com/archives/monograph_opt.pdf.

13. *Id.* at 101.

string of states to carve out an exception to its pro-life laws allowing abortions if necessary to save the life of the mother.¹⁴ Although the Model Penal Code was based on flawed research from the Kinsey Institute, the liberalization trend still continued.¹⁵

B. *The Supreme Court Devalues Life*

The Model Penal Code prepared the country for *Roe v. Wade*.¹⁶ In *Roe v. Wade*, the Supreme Court stated that the Model Penal Code provided the framework for “a trend toward liberalization of abortion statutes . . . [in] about one-third of the States . . .”¹⁷ *Roe v. Wade* turned the life issue on its head, normalizing what was once perceived to be a very great wrong, thereby creating cognitive dissonance between what people knew in their hearts to be true and what the government condoned and even subsidized.

In the name of privacy, the Supreme Court provided a legal pretext to kill the defenseless unborn.¹⁸ The scope for regulation was narrow. After the first trimester, abortion could be regulated “in ways that are reasonably related to maternal health.”¹⁹ Abortion could be proscribed “after viability . . . except when it is necessary to preserve the life or health of the mother.”²⁰ States could “proscribe any abortion by a person who is not a physician” as defined by the state.²¹

Thus, the Supreme Court stripped the states of the power to regulate conduct that the states had been regulating since the mid-nineteenth century and proscribing since the Civil War.²² Yet, the Declaration of Independence—which should be read in parallel with the Constitution—places great importance on the government’s duty to protect life.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

14. *Id.*

15. Judith Reisman, *Sex Abused: Kinsey’s Lies Shaped American Law, So Now What?*, SALVO MAG. (2010), <http://www.salvomag.com/new/articles/salvo12/12reisman.php> (arguing that the Kinsey Institute conducted unethical and illegal studies using subjects and samples that were selected to prove, rather than test, a hypothesis—causing many to call the Institute’s work junk science).

16. *Roe v. Wade*, 410 U.S. 113 (1973).

17. *Id.* at 140.

18. *Id.* at 152.

19. *Id.* at 164.

20. *Id.* at 129.

21. *Id.* at 164-65.

22. Lewis & Shimabukuro, *supra* note 11.

unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.²³

Thus, at its core, one purpose of government is to defend life and protect the people.²⁴ The protection of life is such an integral duty of government that the Founding Fathers encouraged citizens to revolt when the government is destructive of it.²⁵

The Model Penal Code, which was based on faulty premises from Alfred Kinsey's research, influenced the minority of states that liberalized abortion laws prior to *Roe v. Wade*. Because liberalization in these few states influenced the Supreme Court, the impact was felt in every state. Once the Supreme Court declared abortion a permissible procedure and forbade the states from proscribing all elective abortions, the public began to accept this behavior. Because laws are normative, the number of legal abortions more than doubled between 1973 and 1990.²⁶ Nevertheless, as knowledge about abortion has increased, the number of abortions has declined.²⁷ Fewer abortions were performed in 2009 than in 1977.²⁸

C. *The Culture and Its Implications Today*

Although the Supreme Court held that abortion is permissible and women now have the right to kill their unborn children, people are becoming more educated and are beginning to conform their views regarding abortion to what is written on their hearts. The recent decline in the number of abortions follows public sentiment. Gallup polls show that

23. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

24. *See id.*

25. *Id.*

26. Raymond J. Adamek, *Incidence of Induced Abortion in the United States*, OHIO RIGHT TO LIFE (Jan. 17, 2010), <http://righttolifeofnortheastohio.com/neortl/sites/default/files/Incidence>.

27. *Id.*

28. *Id.*

the public generally disfavors abortion except in certain circumstances,²⁹ such as when the life of the mother is in danger or when the baby is conceived by rape or incest.³⁰ When asked whether it should be illegal for a woman to have an abortion because her family could not afford to raise the child, 61% of those polled said that abortion for financial reasons should be illegal.³¹

Public sentiment about abortion, while increasingly negative, still closely parallels the Supreme Court's decision in *Roe v. Wade*, which virtually prohibits regulation prior to the second trimester and provides for gradually more regulation as the pregnancy progresses.³² A 2011 Gallup poll showed that while 35% believe that abortion should be illegal during the first three months of pregnancy, 71% believe it should be illegal in the second three months, and 86% believe abortion should be illegal after six months gestation.³³ If people understood that an unborn person was the same, whether at two months gestation, eight months gestation, or newly born, public sentiment against abortions at early stages of development might also rise to the high level of disapproval seen at the later stages of development.

The more people learn about unborn life through sonograms and ultrasounds, the more they tend to disapprove of abortion. Conversely, individuals that are less affluent or poorly educated proportionately tend to have more abortions.³⁴

Most people know someone who has had an abortion. In fact, according to the Guttmacher Institute, "at current rates, one in 10 women will have an abortion by age 20, one in four by age 30 and three in 10 by age 45."³⁵

While education is advancing, so must legislation. Because laws are normative, civil authorities must convey their disapproval of abortion through laws that discourage the practice, make abortion less accessible, and ultimately outlaw killing the unborn.

29. *Abortion*, GALLUP (Jan. 27, 2012, 3:15 PM), <http://www.gallup.com/poll/1576/abortion.aspx#2>.

30. *Id.*

31. *Id.*

32. *Roe v. Wade*, 410 U.S. 113, 164-65 (1973).

33. *Abortion*, *supra* note 29.

34. Mary A. Castle, *Abortion in the United States' Bible Belt: Organizing for Power and Empowerment*, 8 REPROD. HEALTH 1 (2011), <http://www.reproductive-health-journal.com/content/8/1/1>.

35. *Facts on Induced Abortion in the United States*, GUTTMACHER INST. (Aug. 2011), http://www.guttmacher.org/pubs/fb_induced_abortion.html#4.

III. LEGISLATORS STRATEGICALLY LEGISLATE AND WAIT FOR THE CULTURE TO CATCH UP

In 1992, the Supreme Court clarified *Roe v. Wade* by stating that “before viability, the State’s interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman’s effective right to elect the procedure.”³⁶ The Court, however, also confirmed “the State’s power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman’s life or health.”³⁷ The pro-life movement has tirelessly sought, in many different ways, to protect unborn persons at the earliest possible point of gestation. In 2011, having introduced more than 1,100 provisions, state legislators passed a record ninety-two restrictions on abortion,³⁸ including: prohibition of public funding; unborn child pain-awareness laws; parental consent for minors to have abortions; requirements that physicians inform patients of alternatives and provide the opportunity to see a sonogram; and to receive abortions at sterile facilities. Fetal homicide laws protect the unborn. Laws that proscribe abortion after the detection of a heartbeat and declare that the term *person* in state law includes the unborn from the moment of fertilization also protect unborn persons.³⁹

A. *Removal of Public Subsidies for Abortions*

For some time, states have sent mixed messages by discouraging abortion while simultaneously funding it. This trend, however, is gradually changing. Colorado, Kentucky, Michigan, Missouri, and South Dakota have successfully outlawed public funding of abortion, except when the life of the mother is at risk.⁴⁰ Other states limit public funding of abortions but allow

36. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992).

37. *Id.*

38. Cheryl Wetzstein, *State Abortion Curbs Rose in 2011*, WASH. TIMES (Jan. 8, 2012), <http://www.washingtontimes.com/news/2012/jan/8/state-abortion-curbs-rose-in-11/>.

39. See *infra* notes 40-43, 46-50, 55, 56, 58, 59, 65, 71, 77, 81.

40. See COLO. REV. STAT. ANN. § 25.5-3-106 (West 2011) (proscribing public funds unless the life of the mother is at risk); KY. REV. STAT. ANN. §§ 311.715, 311.800 (West 2011) (proscribing public funds and facilities unless the life of the mother is at risk); MICH. COMP. LAWS ANN. § 400.109a (West 2011) (proscribing public funds unless the life of the mother is at risk); MO. ANN. STAT. § 188.205 (West 2011) (proscribing public funds unless the life of the mother is at risk); S.D. CODIFIED LAWS § 28-6-4.5 (2011) (proscribing public funds unless the life of the mother is at risk).

for broader exceptions.⁴¹ Additionally, Arizona, Kentucky, Louisiana, Missouri, Oklahoma, Pennsylvania, and Utah prohibit the use of public facilities for abortions.⁴² Missouri and Oklahoma also prohibit public employees from taking part in abortion in most circumstances.⁴³

B. Fetal Homicide Laws and Wrongful Death Actions

Laws criminalizing the murder of unborn persons highlight an inconsistency in how civil authorities treat and value life. When the mother wants the child, killing the child is homicide and punishable, but when the mother does not want the child, abortion is a permissible killing. The

41. See FLA. CONST. art. 1, § 28 (proscribing public funds from being used for abortions except for instances of rape or incest, or when the life or health of the mother is at risk); ARIZ. REV. STAT. ANN. § 35-196.02 (2011) (proscribing public funds or insurance for abortions except when the life or important bodily function of the mother is at risk); LA. REV. STAT. ANN. § 40:1299.34.5 (2011) (proscribing public funds or facilities from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk); OHIO REV. CODE ANN. § 5101.55 (West 2011) (proscribing public funds from being used for abortions except for cases of rape or incest, or when the life or health of the mother is at risk); OKLA. STAT. ANN. tit. 63, § 1-741.1 (West 2011) (proscribing public funds, facilities, or employees from being used for abortions except for cases of rape or incest, or when the life or health of the mother is at risk); 18 PA. CONS. STAT. ANN. § 3215 (West 2011) (proscribing public facilities or funds from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk); UTAH CODE ANN. § 76-7-331 (West 2011) (proscribing public funds or facilities from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk).

42. See ARIZ. REV. STAT. ANN. § 15-1630 (2011) (proscribing abortions at public educational facilities unless the life of the mother is at risk); KY. REV. STAT. ANN. §§ 311.715, 311.800 (West 2011) (proscribing public funds and facilities from being used for abortions except for when the life of the mother is at risk); LA. REV. STAT. ANN. § 40:1299.34.5 (2011) (proscribing public funds or facilities from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk); MO. ANN. STAT. § 188.215 (West 2011) (proscribing public facilities from being used for abortions except for when the life of the mother is at risk); OKLA. STAT. ANN. tit. 63, § 1-741.1 (West 2011) (proscribing public funds, facilities, or employees from being used for abortions except for cases of rape or incest, or when the life or health of the mother is at risk); 18 PA. CONS. STAT. ANN. § 3215 (West 2011) (proscribing public facilities or funds from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk); UTAH CODE ANN. § 76-7-331 (West 2011) (proscribing public funds or facilities from being used for abortions except for cases of rape or incest, or when the life of the mother is at risk).

43. See MO. ANN. STAT. § 188.210 (West 2011) (prohibiting public employees from participating in abortions unless the life of the mother is at risk); OKLA. STAT. ANN. tit. 63, § 1-741.1 (West 2011) (prohibiting public funds, facilities, or employees from being used to facilitate abortions except in cases of rape or incest, or when the life or health of the mother is at risk).

mother's sentiment toward an unborn person should not provide the basis upon which civil authorities provide for the safety and protection of the unborn.

While abortion is legal in every state, the federal government and thirty-six states have legislation that treats the killing of an unborn child as homicide.⁴⁴ These laws are crafted in a variety of ways. For example, twenty-six states⁴⁵ define the killing of an unborn child at any stage of gestation as homicide.⁴⁶ California defines the killing of an unborn child after the embryonic stage as homicide, and Arizona defines the killing of an unborn child after twelve weeks of gestation as homicide.⁴⁷ Four states—Florida, Nevada, Rhode Island, and Washington—define the killing of an unborn child after quickening, when there is discernible movement within the womb, as homicide.⁴⁸ Three states—Maryland, Massachusetts, and Tennessee—define the killing of an unborn child after viability as homicide.⁴⁹ New York defines the killing of an unborn child after twenty-four weeks of gestation as homicide.⁵⁰

In all of these states, when the mother wants her child and intends to carry the child to full term but is unable to because an individual commits a crime against her, resulting in the death of the child, the state may charge her assailant with homicide. Thus, in these cases, life is valued, and the person who kills the child is subject to both criminal and civil sanctions for his crime. The irony of these laws is that the unborn person is considered a person for purposes of criminal homicide statutes, unless the mother consents to the killing of the child.

Multiple states not only recognize an unborn person as a person at all stages of gestation for fetal homicide laws, but also recognize wrongful death actions for unborn persons prior to viability.⁵¹ This means that a

44. Denise M. Burke, *Crimes Against the Unborn Child Act*, AMS. UNITED FOR LIFE 6 (2011), http://www.aul.org/wp-content/uploads/2010/12/Crimes-Against-the-Unborn-Child-Act-2011-LG-3_.pdf.

45. Alabama, Alaska, Arizona, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

46. See Burke, *supra* note 44, at 6.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. See ALA. CODE § 26-23A-10 (2011) (failing to comply with the Woman's Right to Know Act shall "[p]rovide a basis for recovery for the woman for the wrongful death of the

parent can recover civil damages when his or her unborn child is killed. Even more states recognize such actions at quickening or later stages of gestation.⁵²

C. Protecting Women

Understanding that an unborn person is just that, a person, is invaluable in helping a woman determine to choose life. While research varies greatly, studies indicate that between 60% and 98% of abortion-minded women change their minds about having an abortion after viewing a sonogram.⁵³ Understanding this, and the negative physiological and psychological effects that women endure after having abortions, has encouraged twenty-three states to require physicians to offer mothers the opportunity to view an ultrasound prior to obtaining an abortion.⁵⁴ Many states also require

child, whether or not the unborn child was viable at the time the abortion was performed or was born alive”); 740 ILL. COMP. STAT. ANN. 180/2.2 (West 2010) (providing in pertinent part: “The state of gestation or development of a human being when an injury is caused, when an injury takes effect, or at death, shall not foreclose maintenance of any cause of action under the law of this State arising from the death of a human being caused by wrongful act, neglect or default.”); LA. CIV. CODE ANN. art. 26 (2011) (“An unborn child shall be considered as a natural person for whatever relates to its interests from the moment of conception. If the child is born dead, it shall be considered never to have existed as a person, except for purposes of actions resulting from its wrongful death.”); MO. ANN. STAT. § 1.205 (West 2011) (“1. The general assembly of this state finds that: (1) The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child. 2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.”); S.D. CODIFIED LAWS § 21-5-1 (2011) (“Liability for wrongful death where damages for injury could have been recovered—Unborn child.”); *Mack v. Carmack*, 2011 WL 3963006 (Ala. Sept. 9, 2011) (holding that under Alabama Wrongful Death Act, as amended, cause of action existed on behalf of unborn previable fetus); *Pino v. United States*, 183 P.3d 1001, 1004 (Okla. 2008) (stating that the death of one referenced in the relevant statute refers to a nonviable fetus); *Farley v. Sartin*, 466 S.E.2d 522, 533-34 (W. Va. 1995) (stating that a person, as referenced in West Virginia’s wrongful death statute, includes a nonviable unborn child).

52. See Burke, *supra* note 44.

53. Jeanne Monahan, *Ultrasound Policy*, FAMILY RESEARCH COUNCIL, <http://www.frc.org/onepagere/ultrasound-policy> (last visited Feb.17, 2012).

54. *Woman’s Right to Know: States that Offer Ultrasound Option*, NAT’L RIGHT TO LIFE COMM. (July 28, 2011), <http://www.nrlc.org/WRTK/UltrasoundLaws/>

physicians to provide women with certain information about abortion procedures, such as the health risks involved. They may also require the physician to inform expectant mothers of alternatives to abortion, such as adoption and the availability of services that help women through their unexpected pregnancies.⁵⁵ Prior to the abortion, expectant mothers are generally required to sign a form stating that they have been provided the required information and consent to the abortion.⁵⁶ In Alabama, Arizona, Indiana, Kansas, Louisiana, Michigan, North Dakota, Ohio, Pennsylvania, South Dakota, Virginia, West Virginia, and Wisconsin, after receiving the information as required by law, expectant mothers must wait between eighteen and seventy-two hours before having an abortion.⁵⁷

Because of the health risks associated with abortions, two states—Kansas and Indiana—require physicians who perform abortions to have hospital privileges allowing them to admit patients.⁵⁸ Five states—Arkansas, Kansas, Pennsylvania, Utah, and Virginia—now require physicians who perform surgical abortions to meet state hospital regulations and to permit

StateUltrasoundLaws.pdf.

55. ALA. CODE § 26-23A-4 (2011); ARIZ. REV. STAT. ANN. § 36-2153 (2011); FLA. STAT. ANN. § 390.0111 (West 2011); IND. CODE ANN. § 16-34-2-1.1 (West 2011); KAN. STAT. ANN. § 65-6079 (West 2011); LA. REV. STAT. ANN. § 40:1299.35.6 (2011); ME. REV. STAT. ANN. tit. 22 § 1599-A (2011); MICH. COMP. LAWS ANN. § 333.17015 (West 2011); MO. ANN. STAT. § 188.039 (West 2011); N.D. CENT. CODE ANN. § 14-02-1-02 (West 2011); OHIO REV. CODE ANN. § 2317.56 (West 2011); 18 PA. STAT. ANN. § 3205 (West 2011); R.I. GEN. LAWS ANN. § 23-4.7-5 (West 2011); S.D. CODIFIED LAWS § 34-23A-56 (2011); TENN. CODE ANN. § 39-15-202 (2011); VA. CODE ANN. § 18.2-76 (2011); W. VA. CODE ANN. § 16-2I-2 (West 2011); WIS. STAT. ANN. § 253.10 (West 2011).

56. See statutes cited *supra* note 55.

57. ALA. CODE § 26-23A-4 (2011) (requiring a twenty-four hour minimum waiting period); ARIZ. REV. STAT. ANN. § 36-2153 (2011) (requiring a twenty-four hour minimum waiting period); IND. CODE ANN. § 16-34-2-1.1 (West 2011) (requiring an eighteen hour minimum waiting period); KAN. STAT. ANN. § 65-6079 (West 2011) (requiring a twenty-four hour minimum waiting period); LA. REV. STAT. ANN. § 40:1299.35.6 (2011) (requiring a twenty-four hour minimum waiting period); MICH. COMP. LAWS ANN. § 333.17015 (West 2011) (requiring a twenty-four hour minimum waiting period); N.D. CENT. CODE ANN. § 14-02.1-02 (West 2011) (requiring a twenty-four hour minimum waiting period); OHIO REV. CODE ANN. § 2317.56 (West 2011) (requiring a twenty-four hour minimum waiting period); 18 PA. STAT. ANN. § 3205 (West 2011) (requiring a twenty-four hour minimum waiting period); S.D. CODIFIED LAWS § 34-23A-56 (2011) (requiring a seventy-two hour minimum waiting period); VA. CODE ANN. § 18.2-76 (2011) (requiring a twenty-four hour minimum waiting period); W. VA. CODE ANN. § 16-2I-2 (West 2011) (requiring a twenty-four hour minimum waiting period); WIS. STAT. ANN. § 253.10 (West 2011) (requiring a twenty-four hour minimum waiting period).

58. *Monthly State Updates: Major Developments in 2011*, GUTTMACHER INST. (Dec. 31, 2011), <http://www.guttmacher.org/statecenter/updates/index.html>.

inspections.⁵⁹ This ensures the accessibility of emergency medical services for women when abortion procedures result in life-threatening medical situations for the mothers. Considering the psychological and physiological effects of abortions, including studies that show induced abortions increase breast cancer risk, it is in the best interest of the mother to carry the child to term.⁶⁰ In fact, one study showed that abortion is almost four times deadlier to the mother than child birth.⁶¹

Some states have regulated the use of telemedicine in the provision of abortion services. In Arizona, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Tennessee, the use of telecommunication methods, such as Skype, may no longer be used to administer abortifacients.⁶² States are tightening other restrictions on abortifacients as well. For example, in Kansas, when a physician administers a drug to induce an abortion, he must do so while the patient is in his physical presence and must make all reasonable efforts to physically examine the patient within twelve to eighteen days of her taking the drug.⁶³ Because of complications for women with ectopic pregnancies and pregnancies that are in later stages of development, Oklahoma also requires physicians to determine the gestational age of the unborn child and the intrauterine location of the pregnancy prior to administering abortifacients.⁶⁴ These laws protect women and encourage them to do what is best for them and their unborn children.

D. *Protecting Minors with Parental Notification and Consent Laws*

As important as it is to ensure expectant mothers are informed about the development and viability of the unborn children prior to choosing an abortion, it is also incredibly important for states to protect expectant

59. *Id.*

60. *Induced Abortion and Breast Cancer*, AM. ASS'N. OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, <http://www.aaplog.org/complications-of-induced-abortion/induced-abortion-and-breast-cancer/> (last visited Jan. 29, 2012); *Medical Groups Recognizing Link*, <http://www.abortionbreastcancer.com/medicalgroups/index.htm> (last visited Jan. 29, 2012) (listing groups that recognize the link between abortion and breast cancer).

61. *Abortion Deadlier for Women than Childbirth (Stakes, 1997)*, PHYSICIANS FOR LIFE.ORG (July 8, 2000), <http://www.physiciansforlife.org/content/view/92/26/>.

62. ARIZ. REV. STAT. ANN. § 36-3604 (2011); KAN. STAT. ANN. § 65-4a10 (West 2011); MO. CODE REGS. ANN. tit. 12 § 188.027 (2011); NEB. REV. STAT. § 28-335 (2011); N.D. CENT. CODE ANN. § 14-02.1-03.5 (West 2011); OKLA. STAT. ANN. tit. 63, § 1-729a (West 2011); S.D. CODIFIED LAWS § 34-23A-56 (2011); TENN. CODE ANN. § 63-6-241 (2011).

63. KAN. STAT. ANN. § 65-4a10 (West 2012).

64. OKLA. STAT. ANN. tit. 63, § 1-729a (West 2012).

mothers who are children themselves. Currently, only thirty-seven states require parental involvement in a minor's decision to have an abortion.⁶⁵ The thirteen states that currently do not have enforceable parental notification or consent laws are California, Connecticut, Hawaii, Illinois, Maine, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington.⁶⁶

Of the thirty-seven states that require parental involvement, twenty-six require parental consent prior to the abortion, and eleven require only parental notification, which merely requires that the parent have knowledge that an abortion is to occur.⁶⁷ Some states, like Georgia, require the parent to be notified at least twenty-four hours prior to the abortion and to be notified of the location where the abortion will take place.⁶⁸ Of the twenty-six states that require parental consent, only three require the consent of both parents.⁶⁹ Thus, the three states that provide the most protection for minors seeking abortions are Kansas, Mississippi, and North Dakota.⁷⁰

E. Protecting the Unborn

Pro-life groups and legislators routinely strive to address the abortion issue in ways they know the Court will approve of based on the *Roe* and *Casey* decisions. Nevertheless, states also influence the abortion issue by advocating for laws that challenge the Court's emphasis on privacy and the whims of pregnant women and by educating the public and influencing its perception of abortion. Three types of laws that challenge current Supreme Court precedent are unborn child pain awareness laws, personhood initiatives, and heartbeat bills.

1. Unborn Child Pain Awareness Laws

A few states, including Alabama, Kansas, Idaho, Indiana, Nebraska, and Oklahoma, have passed unborn child pain awareness laws, also called fetal pain awareness laws.⁷¹ These laws generally prohibit abortion past twenty

65. *State Policies in Brief: Parental Involvement in Minors' Abortions*, GUTTMACHER INST. (Jan. 1, 2012), http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf.

66. *Id.*

67. *Id.*

68. GA. CODE ANN. § 15-11-112 (West 2012).

69. *State Policies in Brief*, *supra* note 65.

70. *Id.*

71. J.D. Griffin, *Pro-Life Fetal Pain Legislation Enacted in Alabama*, SBA LIST (June 24, 2011), <http://www.sba-list.org/suzy-b-blog/pro-life-fetal-pain-legislation-enacted-alabama>.

weeks gestation, which is generally when unborn children begin to feel pain.⁷²

Unborn child pain awareness laws challenge the status quo set by the Supreme Court. The Court disfavors complete prohibitions on abortion prior to viability, and an unborn child is currently considered viable at twenty-three to twenty-four weeks gestation.⁷³ Thus, these laws generally protect children for an additional three to four weeks. These laws, however, serve an even greater purpose by educating individuals about the fact that the unborn children women carry during pregnancy have the capacity to feel pain, even prior to viability.

In addition, recent studies show that babies have the capacity to learn in the womb.⁷⁴ Research shows that as early as sixteen weeks gestation, unborn children begin developing an auditory perception of the world outside the womb.⁷⁵ These new medical discoveries contradict the idea that an unborn child is something less than a person. Unborn children, just like everyone else, deserve the protection of civil authorities. It is, therefore, important for legislators to pursue legislation highlighting these discoveries.

2. Personhood Initiatives

Alabama, Arkansas, California, Colorado, Florida, Georgia, Maryland, Michigan, Missouri, Mississippi, Montana, Nevada, North Dakota, South Carolina, and Virginia have all pursued some form of a personhood initiative, whether by law or state constitutional amendment, to define life as beginning at conception, fertilization, or its functional equivalent.⁷⁶ While the legal effect of a personhood amendment without enabling legislation or the effect of a judicial opinion is minimal, the importance of all pro-life legislation transcends its legal effects.

Half of the pro-life battle rests on the education of individuals and the encouragement of those individuals to vote for and do what is right. This requires discussion about an unpleasant topic and often requires admission of wrong-doing. One of the biggest hurdles for the pro-life movement to

72. *Id.*

73. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 860 (1992).

74. Adam Eshleman, *Probing Question: Can babies learn in utero?*, RESEARCHPENNSYLVANIA (Feb. 23, 2009), <http://www.rps.psu.edu/probing/inutero.html>.

75. *Id.*

76. See Keith Ashley, *Personhood Arkansas Refiles Pro-Life Amendment*, PERSONHOODUSA (Jan. 11, 2012, 3:17 PM), <http://www.personhoodusa.com/press-release/personhood-arkansas-refiles-pro-life-amendment>; see also Personhood Initiatives, PERSONHOOD.NET, <http://personhood.net/default.htm> (last visited Jan. 29, 2012).

overcome is an emotional one. More than fifty-three million babies have been legally aborted in the United States.⁷⁷ The pro-life movement is tasked with educating the women who had these abortions, their families, and their friends, and appealing to what is written on their hearts. The pro-life movement is tasked with teaching people that life begins when the sperm fertilizes the egg, not three, six, or nine months thereafter.

The pursuit of personhood legislation begins the conversation. This is especially true with regard to state constitutional amendments. When an individual has the opportunity to vote for a referendum on a topic, he is encouraged to have a better understanding of that topic. In the case of the personhood amendment, this causes individuals to consider whether they believe that life begins at conception, and if not, to determine when they believe life begins. These initiatives have not been successful, but this is primarily due to a failure to educate.⁷⁸ In past personhood debates, pro-abortion groups and individuals told people that the personhood amendments would make birth control and in-vitro fertilization illegal and engaged in other fear-mongering tactics that scared people away from choosing life.⁷⁹

Nevertheless, with the current legislative trend and the educational efforts that are underway, largely due to the platform that legislation offers, people will continue to become more pro-life and will eventually learn to base their opinions regarding abortion on objective matters, such as when life actually begins. The passage of a personhood amendment would also likely result in a legal battle that has the potential to overturn *Roe* and *Casey*. Heartbeat bills have a similar potential.

77. Luis Zaffirini, *Abortion's Death Toll: 53 Million U.S., 400 Million in China*, LIFE NEWS.COM (Sept. 26, 2011, 10:53 AM), <http://www.lifenews.com/2011/09/26/abortions-death-toll-53-million-u-s-400-million-in-china/>.

78. After drafting numerous memoranda regarding the legal implications of the Mississippi Personhood Amendment, assuaging fears only to have more concerns raised, it became clear to me that many in the medical community and the state at large were looking for reasons to reject the Amendment. In the end, the Personhood team, the pro-life cause, and thousands upon thousands of unborn babies lost the battle for personhood because of our inability to win the battle for the minds and emotions of Mississippi voters. Ultimately, the voters believed the unfounded accusations of the pro-abortionists and cast their votes based on their personal interests in birth control and in vitro fertilization, which the pro-abortionists alleged would be outlawed if life was defined as beginning at fertilization or its functional equivalent.

79. *Mississippi's "Personhood Amendment" fails at polls*, CBSNEWS.COM (Nov. 8, 2011, 11:29 PM), http://www.cbsnews.com/8301-250_162-57321126/mississippi-personhood-amendment-fails-at-polls/.

3. Heartbeat Bills

Some states, like Ohio, are currently reviewing measures that would protect women and their unborn children after a fetal heartbeat is detected.⁸⁰ In Ohio, the State House passed a bill that requires physicians intending to perform abortions to check for a fetal heartbeat and states, “no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected,” and doing so is “a felony of the fifth degree.”⁸¹

The heart normally begins to beat between four and six weeks gestation.⁸² The Ohio bill specifically references the detection of the heartbeat, rather than a set age of the unborn person, and it requires the physician to “determine if there is the presence of a fetal heartbeat” prior to performing an abortion.⁸³ Many of the findings in the bill reference the great likelihood of the survival of the unborn person after detection of a heartbeat.⁸⁴ Fetal heartbeat bills directly challenge *Casey* by outlawing abortion prior to viability, and if enacted, would provide strong protection for unborn children.

IV. CONCLUSION

For years, the politics of life followed the culture. Then, in 1973, the Supreme Court overrode the sanctity of human life in the interest of what it called a right to privacy.⁸⁵ Today, the pro-life community is working tirelessly to revive a culture of life in America by educating the public and enacting laws aimed at preserving the lives of expectant mothers and their unborn children.

80. H.B. 125, 129th Gen. Assemb., Reg. Sess. (Ohio 2011).

81. *Id.*

82. PETER M. DOUBILET, CAROL B. BENSON, & ROANNE WEISMAN, *YOUR DEVELOPING BABY: CONCEPTION TO BIRTH* 29 (2008); ROGER W. HARMS, *MAYO CLINIC, GUIDE TO A HEALTHY PREGNANCY* 58 (2004); GERALDINE LUX FLANAGAN, *BEGINNING LIFE* 40 (1996).

83. H.B. 125, 129th Gen. Assemb., Reg. Sess. (Ohio 2011).

84. *Id.*

85. *Roe v. Wade*, 410 U.S. 113, 140 (1973).