

Current Abortion Law & Missouri Statutes

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I. Controlling Cases And Their Principles

The U. S. Supreme Court assumed control over abortion law on January 22, 1973, when it handed down its decisions in Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973). The rules promulgated by the Supreme Court in various decisions comprise the basic law on abortion throughout the United States. Each state may enact laws at the fringes which regulate certain aspects of abortion, but no state may outlaw abortions in any meaningful way. The following is a broad summary of the rules of the controlling Supreme Court cases. It is not intended to describe all the details of the Supreme Court's abortion jurisprudence.

A. Roe v. Wade

- Abortion is a Constitutional right founded on the concept of "privacy."
- The word "person," as used in the Constitution, does not include unborn human beings.
- The judiciary cannot say if the unborn are "persons" whom the law may protect, yet it is unconstitutional for the state legislatures and Congress to override the right to abortion by saying that they are.
- "Health" means whatever a doctor/abortionist wants it to mean. Doe v. Bolton. The concept of "health" includes a woman's age, family situation, emotional and physical state, and social circumstances, all as considered by the abortionist. Id.
- At all stages of a pregnancy, abortion can be regulated if the regulation enhances women's health. Abortion cannot be regulated in any way which does not enhance a woman's health. No abortion for health reasons can be forbidden. (For partial- birth abortions, Gonzales v. Carhart provided an exception, as described below.)
- In short, except for partial-birth abortion, abortion is legal from conception through birth if a doctor is willing to do the deed and say it was for a woman's health.

B. Planned Parenthood v. Casey

In 1992, the Court handed down its decision in Planned Parenthood v. Casey, 112 S.Ct. 2791 (1992). In that decision, the Court reaffirmed and expanded on the rules of Roe v. Wade as follows:

- Abortion is a Constitutional right founded on the concept of "liberty." (Although the foundation was somewhat altered, the broad scope of the right to abortion was not changed by Casey.) Only the woman has any rights in this context; the father of the child, grandparents, and the child himself or herself do not.
- Any regulation which is an "undue burden" on the right to abortion is unconstitutional and void.
- Certain regulations that formerly were not allowed under Roe were deemed constitutional under Casey, including a waiting period and required information to be given to women. However, a regulation requiring husbands to be notified of their wives' intent to obtain an abortion of their baby was ruled unconstitutional as an undue burden on the wives' right to abort.

C. Partial-Birth Abortion/Infanticide Bans

The basic rule is that if a doctor will say that an abortion is for "health," it is legal through all nine months of pregnancy. The 2007 decision on partial-birth abortions, Gonzales v. Carhart, 550 U.S. 124 (2007), provided the first exception to that rule since Roe v. Wade was decided in 1973: partial-birth abortions are not justified on the ground of "health." Otherwise, the general rule still holds.

Missouri enacted a ban on partial-birth abortion (which it termed "partial-birth infanticide") in 1999, after a grueling contest in the Legislature to override the Governor's veto. § 565.300, RSMo. (All statutory citations from this point forward are from the Revised Statutes of Missouri as last updated August, 2008.) Litigation by Planned Parenthood ensued, and the law was tied up in court until after the Gonzales ruling. Missouri's ban was allowed to take effect on August 14, 2007. (Reproductive Health Services of Planned Parenthood v. Nixon, U. S. Dist. Ct., W.D. Mo., case no. 2-99-4231-CV-C, order vacating temporary injunction and dismissing case.)

D. The Irrelevance Of Viability

Although Roe v. Wade and Planned Parenthood v. Casey contained much language dealing with the supposed significance of viability, in the end, the actual holdings left viability a meaningless concept. Under Roe and Doe, there was no more protection after viability than before it because the "health" exception applies post-viability as well as pre-viability. Casey did not change this principle of law. Although Casey's language can leave the impression that it was allowing states to regulate post-viability abortions more than pre-viability abortions, it did not in fact allow anything of the sort. When it came to post-viability abortions, Casey simply quoted with approval the principles of Roe and Doe described above. 112 S.Ct. at 2821. The health exception was preserved in its full scope, an exception which swallows the rule.

To see how abortionists view the matter, it is instructive to consider what the author of the standard textbook on abortion procedures, Dr. Warren Hern of Colorado, said in 1997: "I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health." (The Record, Bergen County, N.J., May 14, 1997) (emphasis supplied). With a willing doctor, therefore, no post-viability abortion may be prevented by a state.

II. Particular Applications Of Abortion Law

Under the Supreme Court decisions, certain regulations have been permitted over the years so long as they have not substantially impeded access to abortions. The reader should keep in mind that they are allowed by the Supreme Court, but they are not in effect unless the state legislature has enacted them. Other regulations have not been allowed by the federal courts. The following description concentrates on Missouri laws that are now on the books. Although the list may seem lengthy, the reader should keep in mind that the general rule of abortion jurisprudence remains unaffected by these laws: if a doctor is willing to perform the abortion for a woman's "health," however the doctor chooses to define it, then unless it is a partial-birth abortion, it is legal through all nine months of pregnancy. (See Part I above.)

The incumbent President, Barack Obama, has vowed to sign legislation that in past years was called the "Freedom of Choice Act" (FOCA). To date, no bill containing the provisions of past years' FOCA has been filed. Other bills, including health care reform bills, contain certain provisions that are akin to certain provisions of FOCA. If enacted, any such provisions could nullify many of the Missouri laws described below, because federal law always trumps conflicting state laws under the U. S. Constitution, and Missouri's regulations would probably be construed as conflicting with federal statutes that did not contain such regulations.

A. Permission Of Parents Of A Minor Before An Abortion Is Performed

1. Permission And Judicial Bypass. The permission of at least one parent (or legal guardian) may be required for a minor to obtain an abortion, except that there must be an alternative allowing the minor to go to court (“judicial bypass”) if she does not want to obtain such consent. Planned Parenthood v. Ashcroft, 462 U.S. 476 (1983). Parental consent is required by §188.028, RSMo. (All citations are to the Revised Statutes of Missouri effective as of August 27, 2008.)

2. No Notice Of Judicial Bypass. The state cannot require that the woman's parents be notified of the court hearing at which the abortion will be at issue. Ashcroft, 462 U.S. at 491 n.17.

- If someone assists a minor to evade the requirements of consent or bypass under §188.028, he or she is liable for damages in a lawsuit by the minor's parents or legal guardians. §188.250.

B. Notice To The Baby's Father Before An Abortion Is Performed

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1. No Permission Of Husband. The State cannot require a husband's permission before a wife has an abortion. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).

2. No Notice To Husband. The State may not even require simple notice to a husband before a wife has an abortion. According to the Supreme Court, the incidence of spouse abuse makes such notice dangerous and thus too substantial a burden on obtaining an abortion to be constitutional. Planned Parenthood v. Casey, 112 S.Ct. 2791, 2826-2832 (1992).

3. Unmarried Fathers. Unmarried fathers, of course, have no more standing in regard to the abortion of their children than married fathers have.

C. Providing Information To Women Before Abortion

The state may require that certain information be offered to women about the development of the unborn baby, the alternatives to abortion, and the health consequences of abortion and carrying the child to term. Casey, 112 S.Ct. at 2822-2826 (1992). It may also require that the abortion may not occur for at least 24 hours after required information has been offered to a woman. Id. Missouri enacted such requirements in 2003. §188.039. The Missouri Supreme Court has found that these requirements comply with the U. S. Constitution, albeit with a somewhat restrictive reading in order to avoid violation of the First Amendment. Reproductive Health Services v. Nixon, 185 S.W.3d 685 (Mo. 2006).

D. Health And Miscellaneous Regulations

1. State May Require Physicians, But Missouri Has Enacted an Exception. The state may require that abortions be performed by physicians and not by obstetrical nurses or other non-doctors. Roe v. Wade, 410 U.S. 113 (1973); Mazurek v. Armstrong, 117 S. Ct. 1865 (1997). Missouri did so for many years in §188.020, but an exception was inadvertently enacted by the Legislature in 2007, when anyone holding a “ministerial certification” or “tocological certification” was allowed to perform pregnancy-related services in this state. See § 376.1753. “Tocology” is an outmoded term for midwifery. Unfortunately, in the 1800's, before abortion was completely outlawed in the United States, “tocology” included performing abortions. The new language was added to a long health-care bill by one legislator in a conference committee late in the session, and most legislators did not realize it had been slipped into the bill. The language was purposely opaque and confusing. (“Notwithstanding any law to the contrary, any person who holds current ministerial or tocological certification by an organization accredited by the National Organization for Competency Assurance (NOCA) may provide services as defined in 42 U.S.C. 1396r-6(b)(4)(E)(ii)(I).”) The services

defined in the cited federal statute are pregnancy-related services. The new authorization for tocological practice was granted “notwithstanding any law to the contrary.” This means that the statute limiting abortions to physicians, §188.020, became subordinate to the law allowing midwives to perform pregnancy-related services, §376.1753, and abortion is one such service.

Note that those who hold “ministerial certification” may also perform such services. No one knows what that means. It will probably be exploited by the wrong people.

Immediately after the end of the 2007 session, Missouri Right to Life requested that the pro-life Governor in office at the time of this travesty veto it or call a special session of the Legislature to correct it. The Governor's chief of staff responded that the statute was not a problem because it incorporated only Medicaid-reimbursable services, which were protected by the Hyde Amendment. That response was erroneous. Nothing in the enactment or the federal statute that it referred to limited the services described in the federal statute to Medicaid-reimbursable services. The Missouri State Medical Association attacked the law in court, but the Supreme Court of Missouri ruled the MSMA lacked “standing” to make the attack. Missouri State Medical Ass'n v. State, 256 S.W.3d 85 (Mo. banc 2008). The exception is now in force.

2. Requirements For Abortionists To Satisfy. Abortionists must maintain malpractice insurance of at least \$500,000.00 in amount. §188.043. They must have clinical privileges at a hospital that provides obstetrical or gynecological care within thirty miles of where the abortion is performed. §188.080.

3. State May Not Require Hospitals. The state may not require that all abortions in the second trimester be performed in a hospital. Planned Parenthood v. Ashcroft, 462 U.S. 476 (1983). The state may not require that all abortions performed after the gestational age of 16 weeks be performed in a hospital. Reproductive Health Services v. Webster, 851 F.2d 1071, 1073-74 (8th Cir. 1988). (This portion of the Court of Appeals' decision was not appealed to the Supreme Court. Webster v. Reproductive Health Services, 109 S. Ct. 3040, 3044 (1989).)

4. State May Require Licensed Clinics & Minimum Standards. The state may require that abortion clinics be licensed and meet minimum reasonable health regulations. Simopoulos v. Virginia, 462 U.S. 506 (1983). (Note that the Virginia statute defined “hospital” to include outpatient clinics, which distinguished it from the Missouri statute condemned in the Ashcroft decision.) The abortion statutes of Missouri (chapter 188, RSMo.) include such requirements as (1) written consent to be obtained for the abortion, §188.027; (2) testing for viability of the infant if he or she appears to be 20 weeks in development or older; (3) abortionist to complete abortion report for each one performed, §188.051.1; (4) complication report required for all post-abortion care by a physician, §188.051.2; (5) state department of health to collect such reports and to publish annual statistical report on abortions, §188.051.5; and (6) submission of tissue to pathologist to confirm abortion, §188.047.

- Aborting Viable Children. The state cannot stop the abortions of viable children if they are done to promote women's health, as noted above. The state cannot even require that the abortionist use a method best designed to allow for the baby's survival because that may impinge on a woman's health. Colautti v. Franklin, 439 U.S. 379 (1979).

6. Surgical Center Regulations. Missouri law was amended in 2007 to provide that all clinics must comply with very detailed ambulatory surgical center (ASC) regulations that used to apply only to abortion clinics which derived more than 50% of their revenue from abortions. H.B. 1055 (2007); see §§197.200-.280; 19 CSR 30-30.050-070. One abortion clinic in Springfield closed because of the new law. However, Planned Parenthood in St. Louis, Kansas City, and Columbia, and Women's Care Gynecology, Inc. in Bridgeton, a suburb of St. Louis, filed a federal lawsuit against enforcement of the 2007 law. Federal Judge Ortrie Smith has ruled that application of ASC

regulations to chemical abortions (so-called "medical abortions" using mifepristone) would be unconstitutional, because the regulations were simply not made to safeguard procedures using pills instead of surgery. However, in order to avoid a tedious trial on which of the multifarious regulations would be reasonable to apply and which would not be, he ended up giving the parties over a year to negotiate toward a settlement. The settlement efforts were unsuccessful, and now the discovery phase of the litigation is under way. As of this writing, the trial on the merits is set approximately one year in the future, August 23, 2010. Planned Parenthood of Kansas & Mid-Missouri v. Drummond, case no. 07-4164 (U. S. District Court, W.D. Mo., order of May 27, 2009).

- An abortionist, like other medical personnel, is now required to report to the proper authorities any case in which he or she has prima facie evidence of a minor suffering statutory rape, forcible rape, sexual assault, or incest. §188.023.

E. Public Facilities And Funding

1. Government Funding Not Required By Federal Constitution. The federal constitution does not compel government to fund abortions through Medicaid or any other program. Harris v. McRae, 448 U.S. 297 (1980); Beal v. Doe, 432 U.S. 438 (1977); Maier v. Roe, 432 U.S. 464 (1977).

2. Some State Constitutions Require Government Funding—The Threat Of An ERA. The courts of some states which have "right to privacy" or "ERA" (Equal Rights Amendment) language in their state constitutions have ruled that the state constitutions therefore require the state to fund abortions. The New Mexico Supreme Court construed its state ERA in this way. New Mexico Right to Choose/NARAL v. Johnson, 975 P.2d 841 (N.M. 1998), cert. denied, 119 S.Ct. 1256 (1999). Missouri has no such language in its state constitution, but strong efforts are under way to ratify the federal ERA. It is believed a federal ERA would not only require funding of abortions but would also strike down most other regulations on abortion, if not all.

3. Hyde Amendment, Medicaid. The "Hyde Amendment" long has been an annual restriction in Medicaid appropriations that prohibited the use of federal money to pay for abortions except in the following circumstances:

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Stricter state restrictions on funding of abortion, such as §208.152(14), RSMo., cannot be enforced, because federal law trumps any conflicting state laws.

4. Extension Of Hyde Amendment. In late 1998, the Hyde Amendment was extended to Medicare+ Choice programs, and the above-quoted language covers that program as well as the Medicaid program.

5. Child Health Insurance Program. In 1997, the federal government enacted a program of subsidizing state insurance programs for children's health, commonly referred to as "SCHIP" programs. Funding of abortion in such programs was barred, with exceptions for the mother's life, rape, and incest.

6. Missouri Has Refused To Provide State Resources For Abortions. In 1986, Missouri enacted abortion statutes which forbade the state to support abortions in the following ways under §§188.200-.215, RSMo.:

- No state money, employees in the course of their employment, or facilities are to be used for abortions except abortions performed to save a woman's life.
- No state money, employees in the course of their employment, or facilities are to be used "for the purpose of encouraging or counseling a woman to have an abortion not necessary to save her life."

The first type of restriction, addressed to preventing state assistance for abortions themselves, is constitutional. Webster v. Reproductive Health Services, 109 S. Ct. 3040 (1989).

7. Refusing To Fund Abortion Counseling Is A Dead Letter In Missouri. The second type of restriction, addressed to "encouraging and counseling," is a dead letter. In the Reproductive Health Services lawsuit against enforcement of these statutes, the federal court of appeals found that the second type of restriction was "an unconstitutional infringement of the woman's fourteenth amendment right to choose an abortion after receiving the medical information necessary to exercise the right knowingly and intelligently." Reproductive Health Services v. Webster, 851 F.2d 1071, 1079 (8th Cir. 1988). The Attorney General did not appeal the decision as it related to the use of state employees in the course of their employment and state facilities to encourage or counsel a woman to have an abortion. Webster v. Reproductive Health Services, 109 S. Ct. 3040, 3044 (1989). In regard to the use of state funds for encouraging and counseling for an abortion, the Attorney General stated that the statute "was not directed at the conduct of any physician or health care provider, private or public," but "is directed solely at those persons responsible for expending public funds." Id. In other words, the statute does not govern contractors or state workers in the field; it concerns only the officials who write checks. In light of this authoritative interpretation, Reproductive Health dropped its claims about the unconstitutionality of the provision from further consideration. Webster, 109 S. Ct. 3053. The final result of the Attorney General's interpretation is that §188.205 cannot be enforced against anyone who uses state funds for encouraging or counseling for abortions.

The state could, if it wished, enact new restrictions on the use of state funds for this purpose, because two years after the Webster decision, the Supreme Court ruled that such restrictions were constitutional. Rust v. Sullivan, 111 S.Ct. 1759 (1991). In view of Rust, the state may surely restrict the state facilities and employees from encouraging and counseling for abortions, too. To date, the General Assembly has not enacted another general set of restrictions on the use of state funds for abortions.

8. Refusing To Give Family Planning Contracts To Abortionists. Once the government funds a health program, the cases indicate that the government cannot disqualify an organization from participating in the program on the ground that the organization advocates or performs abortions. Babbitt v. Planned Parenthood, 479 U.S. 925 (1986), affirming Planned Parenthood v. Arizona, 789 F.2d 1348 (9th Cir. 1986); Planned Parenthood v. Minnesota, 612 F.2d 359 (8th Cir. 1980); Planned Parenthood v. Kivlahan, Amended Order (W.D. Mo. June 27, 1996).

However, a statute which provides that an abortion-performing organization may not receive public family planning money directly, but only through a subsidiary or affiliate which does not share a corporate name, the same employees, funding sources, or expenses, will survive constitutional scrutiny. Planned Parenthood of Mid-Missouri and Eastern Kansas v. Dempsey, 167 F.3d 458 (8th Cir. 1999). If written correctly, such a law will tie up the public's money so that the abortion organization does not benefit from it, even indirectly. The pro-abortion administrations of Governors Carnahan and Holden, assisted by Attorney General Jay Nixon, evaded the restrictions by means of tortuous interpretations of their terms. The General Assembly finally axed state family planning subsidies altogether in 2003.

9. Refusal To Allow Abortionists To Supply Certain Instruction In Schools . Missouri forbids public school districts and charter schools, and their personnel, from providing abortion services (which include encouraging a patient to have an abortion or referring a patient for an abortion, which is not necessary to save the life of the mother) and from permitting any provider of abortion services to offer any course materials or instruction relating to human sexuality or sexually transmitted diseases. §170.015.7 & .8.

10. Exception for Inmates. When the Missouri Department of Corrections changed its policy in 2005 and thereafter refused to provide medical releases for female inmates who wanted abortions, the federal courts ruled that Missouri violated the inmates' rights. Incarceration does not cut off completely all constitutional rights of inmates, although the rights may be limited in the interests of proper prison administration. In the circumstances presented, the interests of the State in proper prison administration were deemed insufficient to outweigh the woman inmate's right to obtain an elective abortion. (For example, releases for pre-natal sonograms were provided by the State, so the overall cost and clerical burden of granting releases would not be reduced by refusing releases for abortions.) Roe v. Crawford, 514 F.3d 789 (8th Cir. 2008). The State was not ordered to pay for the abortion, but to allow the inmate a medical release. It was implied that if the State intends to keep an inmate under guard (as it must), then the cost of transportation is on the State.

F. Conscience Clauses In Missouri Law

1. Protection From Discrimination In Employment. No one may be discriminated against in employment or applications for employment because of a refusal to participate in an abortion, unless an employer cannot accommodate an employee's refusal "without undue hardship on the conduct of that particular business or enterprise," or "when participation is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." §188.105, RSMo. Since "abortion" is defined as "intentional" destruction of an embryo or fetus in his or her mother's womb or the "intentional" termination of the pregnancy of a mother in §188.010(1), the conscience protection statute, §188.105, does not protect an employee of a pharmacy from repercussions if the employee refuses to dispense a "morning after" pill (e.g., "Plan B"). The reason? "Morning after" pills are often abortifacients, but not always, so one cannot prove that there was an "intentional" destruction of an embryo or "intentional" termination of pregnancy.

2. Protection From Discrimination In Colleges & Hospitals. No one at a university, college or hospital may be discriminated against for refusal to participate in an abortion, and no fees may be exacted at any school to fund abortion if an individual gives written notice of an objection of conscience or belief. §188.110, RSMo.

3. Protections For Physicians, Nurses, Midwives, Hospitals. No physicians, registered nurses, practical nurses, midwives, or hospitals are required to treat or admit for treatment any woman for the purpose of abortion if contrary to their established policies or their "moral, ethical, or religious beliefs." §197.032.1, RSMo. There are no similar protections for pharmacists, and no protections for those who refuse to provide prescriptions that may often, but not always, act as abortifacients.

4. Protection From Discrimination In Public Benefits. No person or institution may be denied or discriminated against in state public benefits, assistance, or privileges, or in any public or private employment, "on the grounds that they refuse to undergo an abortion, to advise, consent to, assist in or perform an abortion." §197.032.2, RSMo.

- Lawsuits For Violations. Violation of these rules exposes the violator to liability for damages in a civil action. §§188.120, 197.032.3, RSMo. In addition, any violation of §§188.105-188.110 above results in trebling the damage award, plus the award of attorneys' fees and costs. §188.120, RSMo.

6. Federal Laws. Certain federal laws, applicable to institutions and programs that receive federal funds, contain overlapping provisions for the protection of conscience rights. The details are incapable of a short summary here.

G. Eugenics: Utilitarian Abuses Of Unborn Children

1. No Referrals For Abortions By Genetic Clinics. No genetic diagnostic and counseling clinic may refer for an abortion unless a physician certifies that the life of the mother is endangered. §191.320, RSMo.

2. Experimentation On Unborn Children. Missouri law forbids experimentation on a living unborn child or a child aborted alive, except as necessary to protect or preserve the life and health of the child. §188.037, RSMo. However, under the infamous Amendment 2 of 2006, now classified in the Missouri Constitution as Article III, §38(d), if unethical scientists desire to experiment on living unborn children for research or therapies that are in any way related to stem cells, then §188.037 can no longer protect the unborn children. The explanation is convoluted, because §38(d) is itself convoluted. A separate page on the Missouri Right to Life web site, "How Amendment 2 (Art. III, Sec. 38(d)) Cripples Missouri Laws Protecting the Unborn," contains an explanation.

3. No Abortions To Obtain Fetal Tissue. Missouri law provides that no abortion may be performed if the abortionist knows that the child was conceived for the purpose of providing organs or tissue for transplantation and that the abortion is intended to utilize the organs or tissue. §188.036.1, RSMo. Both the conception and the abortion have to have had the same purpose—providing organs or tissue for someone else. An abortion performed to obtain fetal tissue when the child was not conceived for that purpose is allowed under the statute. Moreover, although there has not been any court challenge to this statute, the statute may be unconstitutional under Roe v. Wade, where no reason for an abortion is needed except after viability, and after viability "health" trumps all.

This provision is also ineffective when it comes to performing abortions to obtain fetal tissue for stem cell research or stem cell therapies. See the separate web page called "How Amendment 2 (Art. III, Sec. 38(d)) Cripples Missouri Laws Protecting the Unborn."

4. Using Fetal Tissue For Transplantation. The Missouri statutes then turn from regulating the abortionist to those who would use parts of the baby's body. No one may utilize fetal organs or tissue for transplantation if the person knows that the abortion was procured for that purpose. §188.036.2, RSMo. After the adoption of §38(d) of Article III of the state constitution, this provision is not enforceable when it comes to using fetal tissue from aborted children for stem cell research or stem cell therapies. See the separate web page called "How Amendment 2 (Art. III, Sec. 38(d)) Cripples Missouri Laws Protecting the Unborn."

5. No Inducements To Abort For Fetal Tissue. No one shall offer any inducement to a woman or prospective father of an unborn child to conceive the child for use of its organs or tissue or to have an abortion for this purpose. §188.036.3 & .4, RSMo. Here, unlike the statute discussed in point 3 above, the prohibitions are "either/or"—if one offers such compensation either for the conception of the child, or else for the abortion of the child, one violates the statute. Moreover, no one may purchase or sell fetal tissue or organs resulting from an abortion. §188.036.5, RSMo. A recipient of fetal tissue may pay for the expenses of burial or other final disposition of the fetal remains and for a pathological examination, autopsy or postmortem examination of the fetal remains. Id.

Again, one must note that Art. III, §38(d) of the Missouri Constitution renders these prohibitions nugatory when it comes to procuring fetal tissue for stem cell research or stem cell therapies. See the

separate web page called "How Amendment 2 (Art. III,

Sec. 38(d)) Cripples Missouri Laws Protecting the Unborn."

H. Insurance And Medical Plan Coverage

Missouri law provides that all insurance policies, plans, and contracts require a separate rider and premium in order to cover abortions. §376.805, RSMo.

J. Status Of Unborn Outside Abortion Context

1. Unborn Are Persons With Protectable Interests. Missouri law states that to the extent the U. S. Constitution and interpretation thereof by the courts allow, an unborn child is a person from the moment of conception with protectable interests in life, health and well-being. Furthermore, Missouri law declares that parents have protectable interests in the lives, health and well-being of their unborn children. §1.205, RSMo.

2. Supreme Court Declined To Review Statute. Because there was no showing that the language of Missouri's statute impinged upon the right to abortion, the Supreme Court determined there was no need to consider its constitutionality in Webster v. Reproductive Health Services, 109 S. Ct. 3040 (1989). It is presumed to be constitutional.

3. Deaths Of Unborn Children May Impose Civil & Criminal Liability. On the strength of the statute, the Missouri state courts have declared that the killing of an unborn child, outside of the abortion context, can constitute criminal homicide. State v. Knapp, 843 S.W.2d 345 (Mo. banc 1992); State v. Holcomb, 956 S.W.2d 286 (Mo. App. 1997). In addition, the death of an unborn child, non-viable or viable, may give rise to a cause of action for wrongful death which may be pursued by the parents. Connor v. Monkem Co., Inc., 898 S.W.2d 89 (Mo. banc 1995).

4. IVF Babies And Amendment 2. Because §1.205 applies from the moment of "conception," it is broad enough to protect all babies who are created from in-vitro fertilization. The logic of the court decisions mentioned above would embrace a conclusion that discarding unwanted or extra IVF embryos would constitute a crime in Missouri and would leave the responsible persons liable for civil suits for wrongful death. This writer is unaware of any court cases that have tested these conclusions in Missouri.

Unfortunately, Amendment 2 of 2006, now Article III, §38(d) of the Missouri Constitution, affects IVF babies. The protection of §1.205 is lost when it comes to killing IVF babies for stem cell research and stem cell therapies. See the separate web page called "How Amendment 2 (Art. III, Sec. 38(d)) Cripples Missouri Laws Protecting the Unborn."

III. Needs For Future Legislation

There remain a number of laws that can be enacted by the Missouri Legislature to save unborn babies that would be constitutional under Roe v. Wade. They are needed, for even with the above regulations, over 11,000 lives are lost by abortion every year in this state, and many women are injured physically and psychologically as a result. Possible legislation is continually being reviewed for further regulation of abortion, human cloning, embryonic stem cell research, and end-of-life issues, so the following list is not comprehensive, by any means.

- Conscience protections for pharmacists and other health-care professionals are overdue.
- The 2007 law that allows midwives to perform abortions should be amended to end that authorization.

- The use of coercion upon women to obtain abortions should be outlawed.
- Abortionists should be required to offer ultrasound images of a woman's baby to the woman at least 24 hours before an abortion is performed.
- Abortion reporting requirements should be changed so that the public may be told what types of abortions are actually performed in Missouri. The categories are thirty years old and do not correspond with current techniques for performing abortions. For example, there is no category for partial-birth infanticides (Missouri's definition of partial-birth abortions), while the category of saline abortions seems to have fallen into disuse.
- Non-surgical abortions that do not comply with the FDA's protocols for administration of abortion drugs and follow-up monitoring should be forbidden.
- If federal law permits, informed consent materials should be required for the purchase of any drug that is known to have an abortifacient effect in some cases.
- Abortionists could be required to offer women who undergo abortions the opportunity to have anesthetics administered to a child who has developed enough to feel pain.

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