

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: SLI Supporters
Date: June 2013
From: A. Eric Johnston
Re: The Women's Health and Safety Act

In 1973, the U.S. Supreme Court in the case of *Roe v. Wade* legalized abortion on demand. Since that time, we have been engaged in dual efforts to reverse that decision and forbid abortion by finding the unborn child to be a person within the meaning of the Constitution, while seeking regulation of abortion so as to minimize the harm to women and children. Though we have not given up on the former, we have made significant progress in requiring a proper standard of healthcare for women in the abortion context. The Women's Health and Safety Act is one such law.

SLI has been working with the Alabama Pro-Life Coalition and others for several years to protect women's healthcare in abortion clinics. We have been involved in numerous cases since the 1980's dealing with the failures of abortion clinics to protect the women to whom they owe, at least, a duty to protect their health and lives. With this experience, we know of the many cases of injury and death that have resulted in abortion clinics, including in Alabama. Consequently, it is necessary that we do all we can to protect these women.

Abortion clinics are notorious for having circuit riding doctors come into the state, perform many abortions in a short period of time, and then leave the state. There is no follow up care and there is no traditional physician-patient relationship. Abortion clinics operate purely for profit. Under these circumstances, it is the obligation of the state to intervene.

This substandard care is no better demonstrated than by the recent problems at the New Woman abortion clinic in Birmingham, Alabama. Last year, two injured women were removed by emergency personnel for injuries. The clinic did not have appropriate medical personnel and facility to treat those women and the building was configured in such a way that it was difficult for emergency personnel to remove the women for transport to the hospital. The Alabama Department of Public Health ("ADPH") closed the clinic. However, the clinic reopened as a "physician's office." ADPH filed a lawsuit to close the offices and it is now being litigated in the Circuit Court of Jefferson County, Alabama.

This was brought to the attention of legislative committees last year and again this year. As a result, the Women's Health and Safety Act (HB57 sponsored by Representative Mary Sue McClurkin) was supported by the House Republican Caucus and ultimately was passed and signed into law by Governor Bentley on April 9, 2013. It is expected to go into effect July 1, 2013. The Act is extensive in its proper regulation of abortion clinics and includes among its many provisions the following:

- Only physicians may perform abortions, they must remain on the premises until the last patient is discharged and must have staff privileges at a local hospital. A RN must be on duty at all times.
- Only a physician may prescribe an abortifacient and must examine the patient in person, not over the internet.
- Physicians performing abortion procedures must meet the rules of office-surgery of the Alabama State Board of Medical Examiners.
- Clinics will be classified as ambulatory healthcare occupancy in order to meet all fire and safety codes.
- There is a criminal penalty for not reporting certain minor pregnancies related to statutory rape.
- Other criminal penalties and civil damage actions are permitted for violation of the Act.

During committee testimony and floor debate, it was threatened that lawsuits would be filed if this Act passed. Abortion clinics said the real goal of the Act was to put them out of business. One of the reasons was that they could not comply with the fire and safety codes. The Act does not create an undue burden under the *Planned Parenthood v. Casey* (1992) guidelines on the so called right to abortion. We are confident the Act will meet constitutional standards. If abortion clinics cannot provide a safe environment for their patients, like other medical offices provide, then they should close.

If clinics do not want to meet the fire and safety code or other requirements, they may decide to do like All Woman's and claim that they are a "physician's office." Current law is that if a facility does 30 or more abortions a month in any two months of a year or holds itself out as or advertises as an abortion clinic, then it is an abortion clinic and subject to regulation. That standard was upheld in *Tucker v. State Department of Public Health*, 650 So. 2d 910 (Ala. Civ. App. 1994). The abortion clinics may claim they are doing fewer than 30 abortions. That claim is not likely to prevail. It becomes therefore very important to protect the regulations created by the Act so that abortion clinics will not carry on their beastly practices in a substandard way. All healthcare professionals are expected to meet a certain standard of care. That is the goal of the Act.