Reflections on Georgia House Resolution 536

BACKGROUND

On January 8, 2008, Archbishop Wilton D. Gregory and Bishop J. Kevin Boland issued a statement regarding HR 536, a proposed human life amendment (HLA) to the Georgia constitution. While the church admires and respects those promoting this legislation, the bishops of Georgia declined to support its passage because it does not provide a realistic opportunity for ending or reducing abortion in Georgia. This document provides background and further explanation of the bishops' perspectives on the proposal.

PERSONHOOD KEY PART OF CHURCH TEACHING ON LIFE

It is important to clarify that the church has no disagreement with the moral principles contained in the proposal, namely that the right to life is conferred upon every human being from the very moment of his or her existence. The personhood of every human being from the moment of conception is central to Church teaching on the sanctity of human life. For example:

- Our late Pope John Paul II in his landmark encyclical *Evangelium Vitae*, opens with a discussion on "the incomparable worth of the human person" and refers to the dignity of the human person numerous times throughout the document.
- The Catholic Bishops of the United States, in their document *Living the Gospel of Life*, declare: *"We are daughters and sons of the one God who, outside and above us all, grants us the freedom, dignity and rights of personhood which no one else can take away*."
- The Catholic Church in Georgia has a long and rich history of working to advocate for legislation to protect human life.

LEGAL AND CONSTITUTIONAL CONCERNS

After a period of lengthy research and consultation with experts in constitutional law as applied to abortion, the bishops came to the disappointing conclusion that the proposal cannot achieve its stated legal goal of providing a direct challenge to the central holding of *Roe v. Wade*. Some key considerations on which the decision was based:

- The proposal changes the Georgia, and not the federal, constitution. However, abortion is legal in Georgia because the U.S. Supreme Court declared that the "right" to abortion is contained in the U.S. constitution. Thus, the federal constitution is the problem, not the state constitution. Changing the state constitution will not change the federal right to abortion declared by the U.S. Supreme Court in *Roe v. Wade*.
- The federal constitution always "trumps" the state constitution. Any State constitutional provision that contravenes a federal constitutional right is void.
- The United States Supreme Court has complete discretion in choosing the cases it wants to hear. The most recent annual statistics from the Court show over 8,000 cases submitted and approximately 100 accepted for consideration and decision.

- There is no indication that the court is ready to review, much less reverse, the constitutional right to abortion it established in 1973. The U.S. Supreme Court has had numerous opportunities to reverse itself on abortion in recent years, and has chosen not to do so.

POTENTIAL FOR SERIOUS NEGATIVE CONSEQUENCES

Adoption of the HLA will certainly result in one or more law suits against the State of Georgia and all state and federal courts will be required to apply Supreme Court precedent to void the HLA as it applies to abortion. Any such suit, whether it goes to the Supreme Court or not, carries the danger of causing more legislative and judicial damage than no opinion at all.

- Legal experts agree that the current Supreme Court would, at best, decline to hear the case, and at worst, use the opportunity to reaffirm the right to abortion yet another time. The more times the Supreme Court's abortion decisions are affirmed, the more difficult it becomes to obtain further hearings from the Court and to expect decisions to end abortion.
- The Eleventh (federal) Circuit Court of Appeals would be required to declare all or part of HR 536 void based on the precedent set by *Roe v. Wade* and other Supreme Court decisions. Such a ruling would be binding on all federal courts in Georgia, Alabama and Florida. This would discourage legislators in these states from considering similar legislation in the future.
- If HR 536 is declared unconstitutional as applied to abortion and the case terminated without being considered by the U.S. Supreme Court, which is the most likely outcome, the HLA will be void as applied to abortion in Georgia. A void provision does not legally exist, so if *Roe* were later overturned, the amendment would not spring back into existence and Georgia would have to begin the constitutional amendment process all over again.
- The Georgia Supreme Court has never ruled as to whether a "right" to abortion exists under the state constitution. Litigation following the HLA could result in the Georgia Supreme Court finding a "right to abortion" in the Georgia constitution. This would mean that the Georgia constitution would need to be amended before any meaningful pro-life legislation could be enacted, even after *Roe vs. Wade* and other pro-abortion decisions are reversed.

Finally, dramatic changes to law and public policy do not occur through chance but through careful and detailed planning. Unfortunately, we do not see sufficient analysis or planning to suggest that the stated goals of HR 536 can be achieved or that dangers can be avoided.