



National Advocates
for Pregnant Women

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DO PREGNANT WOMEN HAVE RIGHTS?

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Imagine a law declaring that upon becoming pregnant a woman loses her right to bodily integrity, life and liberty. Such a law would undoubtedly result in strong opposition across party lines. But in fact such laws are being passed -- though rather than presented as an attack on women's fundamental rights, they are advanced as fetal rights measures such as the Unborn Victims of Violence Act recently signed into law by President Bush. Increasingly, fetal rights are being used to undermine the legal status of pregnant women.

In America, both constitutional and common law recognizes the rights of all adults to informed consent and bodily integrity. While individuals may be required to submit to immunizations to protect the public health in general, our courts are not permitted to balance the health interests of one person against those of another. In 1978 Robert McFall, suffering from a rare bone marrow disease sought a court order to force his cousin David Shimp, the only compatible donor, to submit to a transplant. The court declined explaining: "For our law to compel the Defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual and would impose a rule which would know no limits." Forcibly restraining someone to make them submit to surgery for the benefit of another would "raise the specter of the swastika and the Inquisition, reminiscent of the horrors this portends."

In the name of fetal rights however, pregnant women are being forcibly restrained. In 1984, for example, a Nigerian woman pregnant and hospitalized in Chicago was forced to have a C-section. She refused the surgery because she planned to return to Nigeria where she would be unable to access C-sections for future births. The hospital obtained a court order and forced her to undergo the procedure. Hospital staff tied her down with leather wrist and ankle cuffs while she screamed for help.

Another hospital obtained a court order to force a pregnant woman to undergo a blood transfusion. Doctors "yelled at and forcibly restrained, overpowered and sedated" the woman in order to carry out the order.

In Washington, DC, doctors sought a court order to force Ayesha Madyun to have a C-section. The doctors asserted that the fetus faced a 50-75 percent chance of infection if not delivered surgically. The court, apparently viewing the pregnant woman as having no more rights than a slab of meat, said, "[a]ll that stood between the Madyun fetus and its independent existence, separate from its mother, was put simply, a doctor's scalpel." With that, the court granted the order and the scalpel sliced through Ms. Madyun's flesh, the muscles of her abdominal wall, and her uterus. When the procedure was done, there was no evidence of infection.

All of these women were denied the right to bodily integrity and physical liberty and their fetuses were granted more rights than any legal person under law.

Angela Carder at 27 years old and 25 weeks pregnant became critically ill. She, her family and her attending physicians all agreed on treatment designed to keep her alive for as long as possible. The hospital however called an emergency hearing to determine the rights of the fetus. Despite testimony that a Cesarean section could kill Ms. Carder, the court ordered the surgery because the fetus had independent legal rights. As a result, Ms. Carder not only lost her right to informed consent and bodily integrity; she lost her life. The surgery resulted in the death of both Angela and her fetus.

While courts since the Carder case have uniformly held that such interventions are inappropriate and leading medical groups oppose such actions, legislators are forging ahead with a wide range of fetal rights legislation. Thirty-one states now have fetal homicide laws. Recently, Utah relying on such a law charged a woman for murder because she delayed having a C-section causing, they alleged, the stillbirth of one of her twins. This pregnant woman was not only deprived of the constitutional rights all other medical patients have -- the right to consider a medical recommendation and the right to refuse surgery -- she is deemed a criminal for exercising those rights.

In another case, lawyers asserted that without the Caesarean "almost assuredly the baby will be born dead or brain damaged" and that "if not for the mother's primitive [religious] beliefs," the fetus would have been delivered rather than "kept prisoner in a mother's womb." The court refused to grant the order, and the mother gave birth to a healthy baby. Fetal rights, however, provided the legal argument to override her religious beliefs and to treat her as a jail cell -- a building, not a person.

The court in the McFall case condemned Mr. Shimp's refusal to help his cousin as "morally indefensible." While people may be justified in moral condemnation of some pregnant women, they are not justified in denying them civil rights that other adults enjoy. The overwhelming majority of pregnant women do all they can to protect the health of their fetuses. In many of the reported cases, the doctors' dire predictions turned out to be wrong. Performing unnecessary surgery and deterring women from trusting their doctors does nothing to promote fetal well being.

To oppose the recognition of fetal personhood as a matter of law is not to deny the value of potential life as matter of religious belief, emotional conviction or personal experience. Rather, it is to recognize that such a legal construct effectively removes pregnant women from the protections of the constitution and civil law.

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