

ISSUES IN PERSPECTIVE

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The Strategy of the Pro-Life Movement

This June the US Supreme Court ended its year with a series of important decisions. Perhaps most important was the *Whole Women's Health v. Hellerstedt* decision (handed down on 27 June 2016) which tested the state of Texas's attempt to further regulate abortion clinic requirements. The Court ruled 5-3 that Texas cannot place restrictions on the delivery of abortion services that create an undue burden for women seeking an abortion. The Texas law required abortion providers to meet the same standards as ambulatory surgical centers and to upgrade their building, safety, parking, and staffing to meet the standards of a hospital room. The Court's decision deemed these requirements unnecessary and expensive as well as an attempt to limit abortion access rather than provide safety to women. The law was enforced in Texas beginning in October 2014, but its enforcement was suspended pending the outcome of this case. Texas had waived some or all of the surgical-center requirements for 336 of the 433 (78%) licensed ambulatory surgical centers in Texas, but had not waived any part of the surgical-center requirements for any of the abortion clinics in the state. The decision may impact similar restrictions on abortion access in other states. It has been called the most significant abortion rights case before the Supreme Court since *Planned Parenthood v. Casey* in 1992.

The Court struck down key provisions of the law—e.g., requiring doctors who perform abortions to have "admitting privileges" at a local hospital and requiring clinics to have costly hospital-grade facilities—as violating a woman's right to an abortion. Observing that these provisions do not offer medical benefits sufficient to justify the burdens upon access that each imposes, the majority concluded: "Each places a substantial obstacle in the path of women seeking a pre-viability abortion, each constitutes an undue burden on abortion access, and each violates the federal Constitution." The majority opinion struck down both provisions "facially", that is, the very words of the provisions are invalid, irrespective of how they might be implemented or applied. According to the ruling, the task of judging whether a law puts an unconstitutional burden on a woman's right to abortion rests with the courts and not the legislatures.

The importance of this case is that it more clearly defines what the 1992 Casey case meant by the "undue burden" standard when it declared that a state cannot place "a substantial obstacle in the path of a woman seeking an abortion." The Court ruled that the Texas law created an "undue burden." When the pro-life movement was founded in the 1970s, its singular focus was on the baby and its right to life. There was little initial focus on the woman. That strategy began to shift in the early 21st century as the pro-life movement also focused on the care, the protection and the needs of the mother as well as the life in her womb. Mary Ziegler, Professor

of Law at Florida State University, correctly argues that this [Texas] decision halts the momentum which had been building for a “promising strategy of focusing on women, and laws that legislators said protected women against dangerous conditions in abortion clinics.” But perhaps it is time for the pro-life movement to think through this strategy and refocus more intentionally on the life growing in the mother’s womb.

What would a strategy that focuses on the rights of the unborn child look like? Let me suggest a few thoughts:

1. A frontal assault on the legal and moral logic of *Roe v. Wade* (1973) is absolutely central. Associate Justice Harry Blackmun in 1973 wrote the majority opinion for the US Supreme Court in this case. Theologian Albert Mohler summarizes the opinion: “. . . [it] effectively declares an unborn child in the first three months of a woman’s pregnancy to be of no moral or legal consequence. Within the second trimester, there is the recognition of potential personhood. Within the last trimester, the state may intervene with restrictions on abortion, but with clear allowances for stated reasons of the woman’s health—which can include mental health.” It is legally and morally repugnant to argue that the life in the womb has no legal protection and no recognition as a life of value and worth.
2. We must consider life as a continuum: “Human development begins at fertilization, the process during which a male . . . sperm unites with a female [egg] to form a single cell called a *zygote*. This highly specialized, totipotent cell marked the beginning of each of us as a unique individual. [A *zygote* is defined] as the beginning of a new human being. Although most developmental changes occur during the embryonic and fetal periods, some important changes occur during later periods of development: infancy, childhood, adolescence, and adulthood. Although it is customary to divide human development into *prenatal* (before birth) and *postnatal* (after birth) periods, birth is merely a dramatic event during development resulting in a change in environment. *Development does not stop at birth.*” [Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*. 6th edition. Philadelphia: W.B. Saunders Company, 1998, pp. 2 and 18.] As a part of the strategy, I believe we should focus on the ethical value of the human embryo. And, since Psalm 139:16 declares the importance of the human embryo to God, it is important for Christians to declare that value as a part of this conversation. Thus, modern medicine affirms a proposition that is quite consistent with God’s Word—that life is a continuum. (For the Christian, the Bible teaches that life extends from conception on into eternity, for all human beings will live forever.) The DNA strands present at conception are species-specific and the beginning of a new and unique individual human.
3. Furthermore, the Bible also affirms consistently that humans are of infinite worth and value because they bear the image of God. Humans both resemble God and represent Him as stewards over His world. The life-as-continuum concept means that at all stages of development the human life is of value to God. Postmodern American culture has

utterly abandoned that belief and conviction. In terms of the value of human life, we are a culture firmly anchored in mid-air!

Permit me to conclude with a poignant comment by Joni Eareckson Tada: “If you truly believe in the value of life, you care about all of the weakest and most vulnerable members of society.” In today’s Postmodern, Post-Christian culture, the two most vulnerable segments of our population are the baby growing in a mother’s womb and the elderly, sick or suffering person who could be a candidate for physician-assisted suicide. As a culture, the devaluation of life is apparently the new national norm. An unborn baby is assigned no value or worth and can be dismembered with approval from the courts and from the national government in the name of science. We make available to those who are suffering the option of suicide—legitimate and clean—and call it “dignity.”

See www.albertmohler.com (17 November 2011); *Wikipedia* article, “*Whole Woman’s Health v. Hellerstedt*”; Mary Ziegler, “Where the Pro-Life Movement Goes Next,” *New York Times* (3 July 2016); and *Issues in Perspective* (17 December 2011 and 19 September 2015).