



Anti-abortion measures pose a risk to all pregnant women, including those who want to be pregnant and those who go to term.

Anti-abortion ideology is not just used against abortion, it is also used to arrest women for their decisions about labor and birth and the outcomes of those decisions, and to justify forced medical interventions. The principle at the heart of this ideology is that fertilized eggs, embryos and fetuses have completely separate rights that may be protected through state control over pregnant women. In some cases, the argument is that refusing bed rest, cesarean surgery or hospitalization will result in fetal death and therefore is the same as having an abortion.

In Re A.C.

Based on the belief that he had an obligation to give a fetus a chance for life, a judge in Washington, D.C., ordered a critically ill 27-year-old woman who was 25 weeks pregnant to undergo cesarean surgery, which he understood might kill her.¹ Neither the woman nor her baby survived.

While an appellate court later found the forced surgery unlawful, it was too late for this family.

Burton v. State of Florida

A Florida hospital detained a woman who was 25 weeks pregnant to prevent her from going home while she was experiencing what appeared to be a miscarriage. She was held prisoner at the hospital and forced to undergo cesarean surgery. Neither the detention nor the surgery prevented the pregnancy loss, but they did keep this mother from caring for her two small children at home.²

While a state court later found the detention unlawful, the opinion suggested that if the hospital had taken her prisoner later in her pregnancy – after viability, its actions might have been permissible.

Pemberton v. Tallahassee Memorial Regional Medical Center

In another Florida case, a woman who had been in active labor at home attempting to have a vaginal birth after a previous delivery by cesarean surgery was picked up by a sheriff, strapped down in the back of an ambulance, taken to a hospital, and forced to have the surgery she did not need and did not want. When this mother later challenged what had happened, a court concluded that the woman's personal constitutional rights "clearly did not outweigh the interests of the State of Florida in preserving the life of the unborn child."³

Despite the medical claims that refusing cesarean surgery would result in uterine rupture and fetal death, this mother went on to give birth vaginally at least two more times, once with twins.

State of Utah v. Melissa Rowland

In Utah, a woman gave birth to twins; one was stillborn. Health care providers believed that the stillbirth was the result of the woman's decision to delay having a cesarean. She was arrested on charges of fetal homicide – a law promoted by organizations and activists who oppose abortion.⁴

Dray v. Staten Island University Hospital

In New York a woman sought a VBAC after two previous cesarean surgeries caused her significant pain and grueling postpartum recovery. Despite her repeated refusals to consent to unnecessary surgery, the hospital and doctors overrode her refusal and performed surgery anyway.⁵

Her suit for redress is still pending, but the trial court judge concluded that if her decisions “placed the fetus at risk” – she had no right to refuse surgery or anything else decided by her physicians. According to the trial court judge, forced surgery would be justifiable under some circumstances because at the time New York “recognize[d] an interest in the protection of a viable fetus by retaining the crimes of abortion and self-abortion. . .”⁶

In re Viable Fetus of H.R.

In Wisconsin, a woman was planning a homebirth with the care of a midwife but at 39 weeks sought an ultrasound to reassure her partner’s mother. The doctor who reviewed the ultrasound was concerned about that small size of the fetus despite a second ultrasound indicating that growth was normal. The doctor sought and won a court order based on Wisconsin law that allows civil commitment to protect a fetus. The court directed that “the viable fetus of H.R. be detained...by the Ashland County Sheriff’s Department to be transported to the Memorial Medical Center, Inc. Hospital for further testing and necessary medical treatment. Such detention will by necessity result in the detention of the unborn child’s mother.”⁷

In the Interest of A.S.

We were recently contacted about a case in South Carolina where a doctor sought and obtained an order for Emergency Protective Custody of a woman who refused a cesarean surgery based on the state’s child welfare laws extending to the fetus.⁸ She reportedly “agreed” to the surgery after the order, but her infant was still removed at birth by the Department of Social Services. This case reminds us of the countless cases where court intervention, through protective custody or child welfare, is threatened, in order to coerce consent. Coercion is supported by the theory that state control of pregnant women is justified to protect the separate rights of a fetus, a viewpoint pushed by anti-abortion activists.

Many of the women subjected to these deprivations of their fundamental rights are themselves opposed to abortion. Yet the legal arguments for prohibiting and recriminalizing abortion (that fertilized eggs, embryos, and fetuses are full rights bearing persons) were precisely the ones used against them. **These cases, individually and collectively, highlight what is so often missed when the focus is on attacking or defending abortion, namely that all pregnant women are at risk of losing a wide range of fundamental rights that are at the core of constitutional personhood in the United States.** For further reading on this subject, see A Woman’s Rights an eight-part series published in the New York Times in January, 2019.

¹ In re A.C., 573 A.2d 1235, D.C. App. 1990.

² Second Amended Initial Brief, Burton v. State of Florida, No. ID09-1858 (Fla District Court of Appeal First District. 2009) submitted by David H Abrams, Esq. (on file with National Advocates for Pregnant Women)

³ Pemberton v. Tallahassee Memorial Regional Medical, 66 F. Supp. 2d 1247 (N.D. Fla. 1999)

⁴ State of Utah v. Melissa Rowland (2004) (on file with National Advocates for Pregnant Women).

⁵ Dray v. Staten Island University Hospital et. al., Index No. 500510/14 New York.

⁶ *Id.* This judgement was made before New York State repealed its criminal abortion law in 2019.

⁷ *In re Viable Fetus of R.*, No. 96-JC-08 (Wis. Cir. Ct. Ashland County Feb. 26, 1996).

⁸ Order of Dismissal, In the Interest of A.S., on file with NAPW (South Carolina Cir. Ct. County of Charleston, November 6, 2018).