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CRIMES AND OFFENSES Offenses Against Public Health and Morals

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CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Amend Title 16 of the Official Code of Georgia Annotated, Relating to Crimes and Offenses, so as to Specify Certain Acts That Constitute Criminal Abortion; Provide for Criminal Punishment and Civil Remedies for Criminal Abortion; Provide for Witness Testimony and Evidence; Provide for Notification of Certain Investigations; Provide for Definitions; Provide for Prohibitions on the Circumstances Under Which an Abortion may be Performed; Revise the Definition of the Term "Racketeering Activity" to Include Certain Conduct Relating to Criminal Abortion; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTION:	O.C.G.A. §§ 16-12-140, -141 (amended), 16-14-3 (amended)
BILL NUMBER:	SB 529
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have prohibited an abortion provider from performing an abortion: with the intent to prevent a child from being born based on the color, race, or gender of the unborn child; when the abortion provider knows that the mother is seeking the abortion based on the color, race, or gender of the unborn child; or when the abortion provider knows that the mother was unlawfully coerced into having the abortion. A violator of the bill's provisions would have been subject to criminal and civil penalties.
EFFECTIVE DATE:	N/A

History

The number of abortions in the United States rose dramatically after the legalization of abortion in 1973, but abortion rates have steadily declined since 1981.[1] At first glance, this statistic seems encouraging—the decline has been attributed to lower rates of unplanned pregnancies, greater acceptance of pregnancies out of wedlock, and state abortion laws mandating waiting periods and parental consent.[2] However, despite the overall decline in abortion, there are still disturbing statistics regarding the rate of minorities having abortions, the rate of women who feel coerced into having abortions, and the rate of abortions based on the sex of the unborn child.[3]

The national rate of abortion for African-American women is almost five times that of Caucasian women.[4] In 2006, of the 846,181 abortions reported in the United States,[5] over 30,000 of those abortions occurred in Georgia.[6] During that year, 57% of abortions in Georgia were performed on African-American women, compared to only 38% performed on Caucasian women.[7] This statistic is startling when compared to the fact that only 29% of Georgia's population is African-American, while 65% of Georgia's population is Caucasian.[8]

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1. Roe v. Wade, 410 U.S. 57, 153 (1973) (holding constitutional right of privacy broad enough to include woman's right to abortion). The number of abortions per 1,000 women increased from 16.3 in 1973 to 29.3 in 1981, but between 1981 and 2005, the number of abortions per 1,000 women dropped from 29.3 to 19.4. GUTTMACHER INSTITUTE, IN BRIEF, FACTS ON INDUCED ABORTION IN THE UNITED STATES 1 (2008), http://www.guttmacher.org/pubs/fb_induced_abortion.pdf. [hereinafter GUTTMACHER ABORTION BRIEF].

2. Centers for Disease Control and Prevention, *Department of Health and Human Services Morbidity and Mortality Weekly Report, Abortion Surveillance–United States, 2006*, Nov. 29, 2009 at 1, 7, http://www.cdc.gov/mmwr/pdf/ss/ss5808.pdf [hereinafter CDC].

3. Video Recording of Senate Proceedings, Mar. 26, 2010 at 3 hr., 51 min., 50 sec. (remarks by Sen. Chip Pearson (R-51st)), http://mediam1.gpb.org/ga/leg/2010/ga-leg-senate_032610_AM.wmv [hereinafter Senate Video].

4. GUTTMACHER INSTITUTE, POLICY REVIEW, ABORTION AND WOMEN OF COLOR: THE BIGGER PICTURE 3 (2008), http://www.guttmacher.org/pubs/gpr/11/3/gpr110302.pdf. [hereinafter GUTTMACHER POLICY REVIEW].

5. CDC, *supra* note 2, at 1.

6. *Id*. at 22.

7. *Id*. *See also* Senate Video, *supra* note 3, at 3 hr., 51 min., 50 sec. (remarks by Sen. Chip Pearson (R-51st)).

8. U.S. CENSUS BUREAU, CENSUS 2000 REDISTRICTING DATA SUMMARY FILE, http://factfinder.census.gov/servlet/GCTTable?_bm=n&_lang=en&mt_name=DEC_2000_PL_U_GCTPL_ST2&format=ST-2&_box_head_nbr=GCT-PL&ds_name=DEC_2000_PL_U&geo_id=04000US13.

However, this is not unexpected considering the national rate of unintended pregnancies among African-American women is almost three times that of Caucasian women.[9]

Additionally, according to a report by the Elliot Institute, an anti-abortion non-profit group, 64% of abortions performed in the United States involve some form of coercion, including pressure from husbands, parents, and doctors.[10] The report includes stories of women being blackmailed, beaten, or even killed for resisting abortion.[11] The Elliot Institute claims that the effects of coercion are devastating, reporting that 65% of women suffer symptoms of post-traumatic stress disorder, and the suicide rate among women who have abortions is more than six times that of women who give birth.[12]

Another study, supporting the claim that sex-selection abortions occur in the United States, reported significant increases in the male to female ratios of second and third children born in the United States to parents of Chinese, Korean and Asian Indian descent, with sons outnumbering daughters by 50% for the third child.[13] Supporters of legislation prohibiting abortions based on the gender or race of the unborn child or abortions involving coercion of the mother rely on these statistics to support their position.[14]

Currently, there are several restrictions on performing abortions in Georgia. The "Women's Right to Know Act" prohibits an abortion provider from performing an abortion without first obtaining the voluntary and informed consent by the woman having an abortion.[15]

Under the "Parental Notification Act," abortions performed on minors under the age of eighteen are prohibited without parental notification unless a medical emergency exists, and a violator is

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9. GUTTMACHER POLICY REVIEW, *supra* note 4.

10. ELLIOT INSTITUTE, FORCED ABORTION IN AMERICA, A SPECIAL REPORT 2 (n.d.), http://www.afterabortion.org/petition/Forced_Abortions.pdf.

11. *Id*.

12. *Id*.

13. The male to female sex ratio of U.S.-born children of Chinese, Korean and Asian Indian descent was 1.17:1 for the second child and as high as 1.51:1 for the third child, if the previous children were girls, compared to the male to female ratio of 1.05:1 for Caucasians. *See generally* Douglas Almond & Lena Edlund, *Son-biased Sex Ratios in the 2000 United States Census*, 105 PROC. NAT'L ACAD. SCI. 15 (2008), *available at* www.pnas.org/cgi/doi/10.1073/pnas.0800703105.

14. Senate Video, *supra* note 3, at 3 hr., 51 min., 50 sec. (remarks by Sen. Chip Pearson (R-51st)).

15. O.C.G.A. § 31-9A-3 (2009).

subject to civil and criminal penalties.[16] Additionally, abortions performed after the first trimester must be performed in a licensed facility by a licensed physician, and abortions performed after the second trimester are strictly prohibited unless the abortion is necessary to save the life or health of the woman.[17] These offenses are defined as criminal abortion, and violators are subject to both civil and criminal penalties, including imprisonment for up to ten years.[18] Partial-birth abortions are strictly prohibited in Georgia except in extreme cases where no other medical procedure is available to save the mother's life.[19] However, medical facilities and physicians may refuse to participate in any abortion on the basis of moral or religious grounds, and the refusal cannot be the basis of any claim for damages.[20]

Several states have considered legislation to restrict abortions that involve coercion or are performed on the basis of the race or gender of the unborn child. For example, a bill was introduced in Idaho that would make abortions performed based on the sex, color, or race of the fetus illegal.[21] Moreover, the Tennessee legislature just passed the "Freedom from Coercion Act," which requires abortion facilities to prominently post signs stating: "It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion."[22]

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16. O.C.G.A. §§ 15-11-112, -116, -117, -118 (2008).

17. O.C.G.A. § 16-12-141 (2007).

18. *Id.* § 16-12-140.

19. *Id.* § 16-12-144. Georgia law defines partial-birth abortion as a procedure involving the partial delivery of the living fetus before ending the life. O.C.G.A. § 16-12-144(2) (Supp. 2007).

20. O.C.G.A. § 16-12-142 (Supp. 2007).

21. Brian Murphy, *Idaho House Panel Introduced Bill to Ban Abortions Based on Sex, Race*, IDAHOSTATESMAN.COM, Mar. 18, 2010, http://www.idahostatesman.com/2010/03/18/1121950/idaho-house-panel-introduces-bill.html#ixzz0iYk5n0Pd; *Lawmakers in Idaho, Kansas Address Abortion, Provider 'Conscience' Bills*, MEDICAL NEWS TODAY, Mar. 23, 2010, http://www.medicalnewstoday.com/articles/183121.php. Idaho House Bill 693 was assigned to the State Affairs Committee on March 19, 2010, but never made it out of committee. *See* House Journal of the Idaho Legislature, Mar. 19, 2010, http://www.legislature.idaho.gov/sessioninfo/2010/Journals/hday68.pdf; IDAHO NONPROFIT CENTER, BILL TRACKER 2010, http://www.idahononprofits.org/PublicPolicy/BillTracker2010.aspx. Tennessee Senate Bill 3812 was passed by overwhelming majorities in both houses. Peter J. Smith, *Tennessee Legislature: Abortionists Must Warn Clients Against Coerced Abortion*, LIFESITENEWS.COM, Apr. 1, 2010, http://www.lifesitenews.com/ldn/2010/apr/10040107.html.

22. Steven Ertelt, *Tennessee Governor Phil Bredensen Gets Bill to Help Stop Forced Abortions,* LIFENEWS.COM, Apr. 6, 2010, http://www.lifenews.com/state4963.html.

The legal status of abortion in Georgia continues to be a hotly-debated issue.[23] The anti-abortion group, Georgia Right to Life,[24] recently began a campaign to stop what it claims is genocide by abortion clinics that target African-American women.[25] The group has put up billboards across Atlanta with messages such as: "Black children are an endangered species."[26] The group has also been very active at the Georgia Capitol, backing a bill introduced in the House earlier this year (and later withdrawn) that would prohibit abortions involving coercion and abortions based on the race or gender of the fetus.[27]

There is strong opposition to legislation regulating abortions based on the race or gender of the fetus.[28] Those opposing this type of legislation argue that measures designed to reduce the rate of unintended pregnancies through better access to health care and family planning resources are the legal and appropriate way to decrease the rate of abortion in the United States.[29] Planned Parenthood, a group that supports women's access to health care—including legal abortion—condemned the earlier bill introduced in the House as false and inflammatory, claiming the bill "falsely asserts that abortion providers throughout the state 'solicit' women of color for abortions based on sex and race selection."[30]

Senate Bill (SB) 529, based on the earlier House Bill (HB) 1155,[31] was introduced by Senator Chip Pearson (R-51st) on crossover day,

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23. *See generally* Jim Galloway, *The Topic of Race and the Next Fight Over Abortion*, AJC.COM, http://blogs.ajc.com/political-insider-jim-galloway/2010/03/13/the-topic-of-race-and-the-next-fight-over-abortion (Mar. 12, 2010, 3:00 EST).

24. Georgia Right to Life, http://grtl.org.

25. Catherine Davis, *Black Children Are an Endangered Species*, GRTL'S E-NEWS, Feb. 5, 2010, http://georgialife.wordpress.com/?p=399&preview=true.

26. Jim Galloway, *supra* note 23.

27. *Id*. HB 1155 passed the House Judiciary Non-Civil Committee but was withdrawn and recommitted by the House on March 11, 2010. HB 1155 (HCS), 2010 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1155, Apr. 29, 2010.

28. Jim Galloway, *supra* note 23.

29. Telephone Interview with Sen. Donzella James (D-35th) (Apr. 7, 2010) [hereinafter James Interview]; Jim Galloway, *supra* note 23.

30. Planned Parenthood, GA Legislative Update (Apr. 11, 2010), http://www.plannedparenthood.org/ppse/ga-legislative-update-32326.htm.

31. HB 1155 (HCS), 2010 Ga. Gen. Assem. SB 529, as introduced, was identical to HB 1155, with one exception. A clause in subsection (a) of section 2 of HB 1155, stating that the exceptions in subsection (a) did not apply to abortions that were necessary to save the life of the mother, was not in SB 529, as introduced. SB 529, as introduced, 2010 Ga. Gen. Assem.

in a last-minute attempt to keep the legislation alive.[32] This bill was introduced to prohibit the practice of performing abortions on the basis of the race, color, or gender of the fetus and prohibit abortions where coercion is present.[33] It was partly based upon a federal bill (HR 1822) introduced last year by Congressman Trent Franks of Arizona.[34] Although different in language, the intent of both the bills is the same.[35]

Bill Tracking of SB 529

Consideration and Passage by the Senate

Senators Chip Pearson (R-51st), Don Thomas (R-54th), Renee Unterman (R-45th), Chip Rogers (R-21st), Tommie Williams (R-19th), and David Shafer (R-48th), respectively, sponsored SB 529.[36] On March 18, 2010, the Senate first read SB 529, and Lieutenant Governor Casey Cagle (R) assigned it to the Senate Special Judiciary Committee.[37]

The bill, as introduced, specified four acts that would constitute criminal abortion by the person performing the abortion.[38] First, a person commits criminal abortion when the abortion is performed "[w]ith the intent to prevent the unborn child from being born based upon the race, color, or gender of the unborn child, or the race or color of either parent of that child."[39] Second, a person commits criminal abortion when the abortion is performed "[w]ith the knowledge that the pregnant woman is seeking the abortion based upon the race, color, or gender of the unborn child or the race or color

32. SB 529 was read for the first time on March 18, 2010, in the Senate. State of Georgia Final Composite Status Sheet, SB 529, Apr. 29, 2010.

33. SB 529, as introduced, 2010 Ga. Gen. Assem. *See also* Senate Video, *supra* note 3, at 3 hr., 51 min., 50 sec. (remarks by Sen. Chip Pearson (R-51st)).

34. Telephone Interview with Daniel Becker, President, Georgia Right to Life (June 9, 2010) [hereinafter Becker Interview]; Mike Griffin, H.B. 1155 "Prenatal Non-Discrimination Act" (PreNDA), GRTL'S E-NEWS, Feb. 10, 2010, http://georgialife.wordpress.com/2010/02/15/h-b-1155-"prenatal-non-discrimination-act"-prenda.

35. Mike Griffin, *supra* note 34. *Compare* SB 529 (SCS), 2010 Ga. Gen. Assem. *with* HR 1822, 111th Cong. (1st Sess. 2009).

36. Ga. Gen. Assem., SB 529, Bill Tracking, http://www.legis.ga.gov/legis/2009_10/sum/sb529.htm.

37. State of Georgia Final Composition Status Sheet, SB 529, Apr. 29, 2010.

38. *See* SB 529, as introduced, 2010 Ga. Gen. Assem.

39. *Id.* § 1, p. 1, ln. 15–16.

of either parent of that child."[40] Third, a person commits criminal abortion when the abortion is performed "[w]ith the knowledge that the pregnant woman is seeking the abortion as a result of coercion."[41] Fourth, a person commits criminal abortion when the abortion is performed in violation of existing abortion laws.[42] Note, however, that in this fourth situation, the person would only be guilty of a misdemeanor.[43]

The bill, as introduced, expressly excluded liability for the woman on whom the abortion is performed.[44] Instead, the bill provided a cause of action for the woman on whom the criminal abortion is performed to collect all damages available under Georgia tort law.[45] The bill also extended the existing right to recover for the homicide of a child[46] to the death of an unborn child resulting from criminal abortion.[47]

The bill, as introduced, further referenced the feticide section of the Code[48] for definition of the term "unborn child."[49] The bill also required immediate notification to the Georgia Composite Medical Board of any investigation of criminal abortion.[50] The bill likewise subjected the Code section to all laws governing the confidentiality of a patient's personal medical information.[51]

The Senate Special Judiciary Committee provided a substitute bill.[52] In the substitute bill, a person is only guilty of criminal abortion based on his knowledge of the specified improper motives for obtaining the abortion when that person has "actual knowledge" of those reasons.[53] Moreover, according to the substitute bill, abortion

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40. *Id.* § 1, p. 1, ln. 17–18.
41. *Id.* § 1, p. 2, ln. 19–20.
42. *Id.* § 1, p. 2, ln. 21–22.
43. *Id.* § 1, p. 2, ln. 25–26.
44. SB 529, as introduced, § 1, p. 2, ln. 35–37, 2010 Ga. Gen. Assem.
45. *Id.* § 1, p. 2, ln. 27–29.
46. *See* O.C.G.A. § 51-4-4 (2000) (granting a cause of action to a parent for wrongful death of their child); O.C.G.A. § 19-7-1 (2000) (defining parental power for purposes of wrongful death recovery).
47. SB 529, as introduced, § 1, p. 2, ln. 30–32, 2010 Ga. Gen. Assem.
48. *See* O.C.G.A. § 16-5-80 (2007) (defining "unborn child" as "a member of the species homo sapiens at any stage of development who is carried in the womb").
49. SB 529, as introduced, § 1, p. 2, ln. 33–34, 2010 Ga. Gen. Assem.
50. *Id.* § 1, p. 2, ln. 38–39.
51. *Id.* § 1, p. 2, ln. 40–41.
52. *Compare* SB 529 (SCS), 2010 Ga. Gen. Assem. *with* SB 529, as introduced, 2010 Ga. Gen. Assem.
53. SB 529 (SCS), § 1, p. 1, ln. 21, 2010 Ga. Gen. Assem.

providers can shield themselves from liability by confirming through direct inquiry that the abortion is not being sought for the specified improper motives and obtaining written certification of those facts.[54] This written certification, however, would not limit the ability of the person signing the certification to testify or introduce contrary evidence.[55] The substitute bill also provided a definition for "unborn child" and "unlawful coercion."[56] Finally, the substitute bill limited the scope of criminal abortions to exclude those necessary to save the life of the mother.[57] The Senate Special Judiciary Committee favorably reported the Senate Committee Substitute on March 22, 2010.[58]

On March 26, 2010, the bill was read for a third time in the Senate.[59] Three amendments were proposed on the Senate floor.[60] The first amendment, offered by Senator Vincent Fort (D-39th), would have added a new Code section that illegalized racial profiling by law enforcement.[61] As this amendment was unrelated to abortion, however, it was ruled not germane by the Senate Chairman under Senate Rule 7-1.2.[62]

The second amendment, offered by Senator Horacena Tate (D-38th), did not pass.[63] This amendment would have made knowingly or recklessly interfering with a lawful abortion or knowingly

54. *Id.* § 1, p. 2, ln. 30–36.

55. *Id.* § 1, p. 2, ln. 46–48.

56. *Id.* § 1, p. 2, ln. 54–57 (defining "unborn child" as "a member of the species Homo sapiens at any stage of development who is carried in the womb" and "unlawful coercion" as to "compel another person by committing, attempting to commit, or threatening to commit any violation of local, state, or federal law or any tort"). There was debate about the difference between lawful and unlawful coercion. Senate Video, *supra* note 3, at 4 hr., 3 min. (remarks by Sen. Jones (D-10th)). Under current law, however, one can only be found liable for coercion when it involves indigent and elderly patients, public officers and employees, and housing. O.C.G.A. §§ 8-3-222 (2004), 31-8-119 (2009), 45-11-10 (2002), 45-20-54 (2002).

57. SB 529 (SCS), § 2, p. 3, ln. 68–72, 2010 Ga. Gen. Assem.

58. State of Georgia Final Composition Status Sheet, SB 529, Apr. 29, 2010.

59. *Id.*

60. Senate Video, *supra* note 3, at 3 hr., 50 min., 36 sec.

61. *See* Failed Senate Floor Amendment to SB 529, introduced by Sen. Vincent Fort (D-39th), Mar. 26, 2010; Senate Video, *supra* note 3, at 5 hr., 6 min. (remarks by Senator Fort (D-39th)).

62. Senate Video, *supra* note 3, at 6 hr., 24 min., 56 sec. (remarks by Lt. Gov. Casey Cagle) (indicating that the amendment was not germane).

63. *Id.* at 6 hr, 25 min., 18 sec. (indicating that the amendment did not pass).

impeding a woman's access to an abortion facility felony criminal interference.[64]

The third amendment, also offered by Senator Horacena Tate (D-38th), did not pass.[65] This amendment would have made harassing or threatening a person with the intent to prevent, delay, or dissuade a woman from having a lawful abortion felony criminal harassment.[66]

On March 26, 2010, the Senate approved the bill by substitute by a vote of 33 to 14.[67]

Consideration by the House

The House of Representatives read the bill for the first time on March 30, 2010, and for the second time the following day.[68] Speaker of the House David Ralston (R-7th) assigned the bill to the House Judiciary Committee.[69] In committee, Representative Ed Setzler (R-35th), along with Jonathan Crumly, attorney for Georgia Right to Life, advocated for the bill by describing examples where women were forced to have abortions or were subjected to violence for refusing to have an abortion.[70]

Chairman Wendell Willard (R-49th) invited members of the public to speak in favor or in opposition to the bill. In response, five physicians testified that the bill would have detrimental effects on medical care.[71] The committee also heard comments on the

64. *See* Failed Senate Floor Amendment to SB 529, introduced by Sen. Horacena Tate (D-38th), Mar. 26, 2010; Senate Video, *supra* note 3, at 6 hr., 11 min. (remarks by Senator Tate (D-38th)).

65. Senate Video, *supra* note 3, at 6 hr., 27 min., 18 sec. (remarks by Lt. Gov. Casey Cagle) (indicating that the amendment did not pass).

66. *See* Failed Senate Floor Amendment to SB 529, introduced by Sen. Horacena Tate (D-38th), Mar. 26, 2010; Senate Video, *supra* note 3, at 6 hr., 15 min., 43 sec. (remarks by Senator Henson (D-41st)).

67. Georgia Senate Voting Record, SB 529 (Mar. 26, 2010); *see also* State of Georgia Final Composition Status Sheet, SB 529, Apr. 29, 2010.

68. State of Georgia Final Composition Status Sheet, SB 529, Apr. 29, 2010.

69. *Id.*

70. *See* Video Recording of House Judicial Committee Proceedings, Apr. 19, 2010 at 1 hr., 11 min. (remarks by Rep. Ed Setzler (R-35th)), http://media.legis.ga.gov/hav/09_10/2010/committees/judi/judi041310EDITED.wmvsenate_032610_AM.wmv [hereinafter House Committee Video].

71. Dr. Andy Toledo testified that the potential for criminal liability under the bill would make physicians fearful that their words would be misconstrued and thus apprehensive to give appropriate service to their patients, which would ultimately violate the doctor-patient relationship. House Committee Video, *supra* note 70, at 1 hr., 40 min., 8 sec (remarks by Dr. Andy Toledo, Legislative Director, Georgia OBGYN Society). Likewise, Dr. Jacqueline Fincher and Dr. Harry Struthers both

constitutionality of the bill from constitutional law professors.[72] In support of the bill, Susan Swanson, director of Augusta Care Pregnancy Center, testified that she has counseled hundreds of young women, many of whom were coerced to have an abortion by their families.[73] Ms. Swanson then introduced a young woman named Alice who testified that she was forced by her parents to have an abortion when she was fourteen years old because the baby was bi-racial.[74]

The House Judiciary Committee favorably reported the Senate Committee Substitute on April 21, 2010.[75] Nevertheless, the bill did not make it to the House floor for a vote. Speaker Ralston proposed a substitute bill that dropped the criminal penalties against physicians and gave exceptions for abortions sought in cases of rape or incest.[76] When negotiations between Speaker Ralston and the bill's sponsors

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argued that the bill puts the doctor-patient relationship in great jeopardy because physicians and patients must feel free to be honest with each other. *Id.* at 2 hr., 9 min., 48 sec. (remarks by Dr. Jacqueline Fincher, American College of Physicians); *see also id.* at 2 hr., 14 min., 57 sec. (remarks by Dr. Harry Struthers, Georgia Academy of Family Physicians). Additionally, Dr. James Smeltzer testified that the bill "contemplates a problem that doesn't exist" because doctors are not willingly performing abortions on women whose consent is being compelled, as there is already a remedy under existing law when a doctor enters a woman's body without effective consent, i.e., battery and sexual assault. *Id.* at 1 hr., 46 min., 8 sec. (remarks by Dr. James Smeltzer). Both Dr. Smeltzer and Dr. Kevin Gomez were concerned that patients could misconstrue their attempts to provide necessary information as attempts to direct them to have an abortion. *Id.* at 2 hr., 5 min., 46 sec. (remarks by Dr. Kevin Gomez, perinatologist).

72. Professor Kathleen Birch testified that requiring a doctor to determine a woman's motive for seeking an abortion would place an undue burden on the woman's right to choose. House Committee Video, *supra* note 70, at 1 hr., 51 min., 21 sec. (remarks by Kathleen Birch, Professor of Law, John Marshall Law School). Professor Randy Beck, however, testified that the outcome of a constitutional challenge is not a foregone conclusion due to a significant movement by the Supreme Court to permit greater state regulation of abortion. *Id.* at 1 hr., 58 min., 34 sec. (remarks by Randy Beck, Professor of Law, University of Georgia School of Law).

73. House Committee Video, *supra* note 70, at 2 hr., 25 min., 57 sec. (remarks by Susan Swanson, Director, Augusta Care Pregnancy Center). Responding to the physician testimony, Ms. Swanson distinguished doctors' offices from standing abortion clinics. *Id.* According to Ms. Swanson, doctors at these clinics perform more than fifty abortions per day, and as a result, the patients never get a chance to see the doctor. *Id*.

74. House Committee Video, *supra* note 70, at 2 hr., 28 min., 23 sec. (remarks by Alice). According to Alice, her parents told her that they would kick her out of the home if she did not have the abortion. *Id.* She further testified that she was not adequately counseled when she went to the abortion clinic. *Id.* In fact, she did not speak to the doctor, or even see him, until she was lying down on the table and receiving the medicine. *Id.* Moreover, when she turned to the nurse and told her that she "didn't want to do this," the nurse just patted her on the back and told her that she was doing the right thing. *Id.*

75. State of Georgia Final Composition Status Sheet, SB 529, Apr. 29, 2010.

76. Jim Galloway, *The New House Speaker and his Confrontation with Georgia Right to Life*, AJC.COM, http://blogs.ajc.com/political-insider-jim-galloway/2010/05/01/the-new-house-speaker-and-his-confrontation-with-georgia-right-to-life (May 1, 2010, 3:01 EST).

failed, neither the original bill nor Speaker Ralston's substitute bill made it to the House floor for a vote.[77]

The Bill

The bill, if passed, would have amended Chapters 12 and 14 of Title 16 to criminalize acts constituting criminal abortion.[78]

Section 1 of the bill would have revised subsection (b) of Code section 16-12-140 and added several new subsections which list the specific acts that constitute criminal abortion, the punishment for committing criminal abortion, and defenses that may be raised by the physician who performed the abortion.[79]

Subsection (b) of the bill specifies four acts that constitute criminal abortion by the person performing the abortion.[80] Under paragraph (1), a person commits criminal abortion when the abortion is performed with actual knowledge that the mother was unlawfully coerced.[81] Under paragraphs (2) and (3), a person commits criminal abortion when the abortion is performed with the intent to prevent a child from being born based on the parent's race or color, or the unborn child's race, color, or gender; or with actual knowledge that the mother's intent is to prevent the child from being born based on the unborn child's race, color, or gender.[82] Finally, a person commits criminal abortion under paragraph (4) when the abortion is performed in violation of other existing abortion laws involving parental consent for minors, when and where abortions may be performed, voluntary and informed consent procedures, and abortions performed in medical emergencies.[83]

Subsections (c), (e), (f), and (g) of the bill provide for criminal punishment and civil remedies.[84] Under subsection (c), a person convicted of criminal abortion is subject to imprisonment of up to ten years—with one exception; someone convicted of performing an

77. *Id.*
78. *See* SB 529 (SCS), 2010 Ga. Gen. Assem.
79. *Id.* § 1, p. 1–2, ln. 10–57.
80. *Id.* § 1, p. 1, ln. 14–25.
81. *Id.* § 1, p. 1, ln. 16–17.
82. *Id.* § 1, p. 1, ln. 18–23.
83. *Id.* § 1, p. 1, ln. 24–25.
84. SB 529 (SCS), § 1, p. 2, ln. 26–29, 37–45.

abortion in violation of paragraph (4) of subsection (b) is guilty of a misdemeanor.[85] Subsection (g) exempts the mother from criminal or civil liability under the bill.[86] Subsection (e) provides a cause of action for the mother, allowing her to collect all damages available under Georgia tort law.[87] Finally, subsection (f) extends the existing right to recover for the homicide of a child[88] to the death of an unborn child resulting from criminal abortion.[89]

Subsections (d) and (h) of the bill provide the performing physician with a defense to criminal abortion.[90] Under subsection (d), the physician performing the abortion will not be criminally liable for violations of paragraphs (1) and (3) of subsection (b) if the physician personally confirms, and obtains written confirmation from the mother, that the mother was not coerced and the abortion was not sought with the intent to prevent a child from being born based on the unborn child's race, color, or gender, or the race or color of either parent.[91] However, subsection (h) weakens the protection provided under subjection (d) because the written statement does not limit or prevent the person who signed the statement from testifying or introducing contrary evidence.[92]

Subsection (i) requires immediate notification to the Georgia Composite Medical Board of any investigation of criminal abortion.[93] Subsection (j) subjects the code to existing laws governing the confidentiality of medical records.[94] Subsection (k) provides a definition for "unborn child" and "unlawful coercion."[95]

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85. *Id.* § 1, p. 2, ln. 26–29.
86. *Id.* § 1, p. 2, ln. 43–45.
87. *Id.* § 1, p. 2, ln. 37–39.
88. *See* O.C.G.A. § 51-4-4 (2000); O.C.G.A. § 19-7-1 (2000).
89. SB 529 (SCS), § 1, p. 2, ln. 40–42, 2010 Ga. Gen. Assem.
90. *Id.* § 1, p. 2, ln. 30–36, 46–48.
91. *Id.* § 1, p. 2, ln. 30–36.
92. *Id.* § 1, p. 2, ln. 46–48.
93. *Id.* § 1, p. 2, ln. 49–50.
94. *Id.* § 1, p. 2, ln. 51–52.
95. SB 529 (SCS), § 1, p. 2, ln. 54–57, 2010 Ga. Gen. Assem. (defining "unborn child" as "a member of the species Homo sapiens at any stage of development who is carried in the womb" and "unlawful coercion" as to "compel another person by committing, attempting to commit, or threatening to commit any violation of local, state, or federal law or any tort").

Section 2 would have amended subsection (a) of Code Section 16-12-141 by limiting the scope of criminal abortions to exclude those necessary to save the life of the mother.[96]

Finally, Section 3 would have amended Chapter 14 of Title 16 to include criminal abortion in the definition of racketeering activities as defined by Code section 16-14-3.[97]

Analysis

As its name suggests, the bill would have created criminal and civil penalties for a physician who performed an abortion if the mother had disclosed that she sought the procedure due to coercion or due to objections to the race or gender of the fetus.[98] Furthermore, the bill also would have made such acts a racketeering activity subject to the RICO statute.[99] Abortion has always been a hot-button topic, but this bill was highly controversial due to its focus on race and its potential for other unintended consequences.[100]

The "Doctor Trap"

The bill provided that a physician could obtain a written waiver from the patient after a direct inquiry confirming that the abortion was not being sought due to coercion, or because of the unborn child's race or gender.[101] However, the bill provided a direct contradiction a few lines later, because despite the existence of a waiver, the testimony of a witness "shall not be limited or impaired by virtue of *any* document the witness signed in connection with this Code section."[102] Professor Lynn Hogue of Georgia State University

96. *Id.* § 2, p. 3, ln. 68–72.
97. *Id.* § 2, p. 3, ln. 74–78.
98. *Id.* § 1, p. 1, ln. 14–23. By holding the physician liable, the bill "unusually criminalizes the behavior of someone who didn't actually engage in criminal conduct . . . [instead of] the person who actually did the coercion." House Committee Video, *supra* note 70, at 2 hr., 24 min., 24 sec. (remarks by Sandra Michaels, Georgia Association of Criminal Defense Lawyers).
99. SB 529 (SCS), § 3, p. 3, ln. 74–78, 2010 Ga. Gen. Assem.
100. Jim Galloway, *supra* note 23.
101. SB 529 (SCS), § 1, p. 2, ln. 34–36, 2010 Ga. Gen. Assem.
102. *Id.* § 1, p. 2, ln. 46–48 (emphasis added). *See* Testimony from L. Lynn Hogue, Professor of Law, Georgia State University College of Law, prepared for Planned Parenthood of Georgia (Apr. 19, 2010) (on file with author) [hereinafter Hogue Testimony].

College of Law expressed concern over this "very unique rule of evidence" that is a "very cleverly constructed 'doctor trap' that will discourage doctors from providing abortion services any time race is an obvious concern."[103] Concern over this inherent contradiction was expressed during both the Senate and House Committee Hearings.[104] Senator Curt Thompson (R-5th), who is also an attorney, agreed with Professor Hogue's assessment in that the bill "says that you have to get a waiver but that waiver doesn't have any actual meaning," and thus has no force or effect.[105]

When asked, Senator Thompson could not answer why this provision was in the bill, even though it puts physicians in a tremendously difficult position.[106] Daniel Becker, president of Georgia Right to Life—the primary backer of SB 529's predecessor, HB 1155[107]—explained that "a lot of abortion clinics are shrouded in such secrecy and protection right now that our bill was an attempt to open that up to a more transparent process."[108] Currently, if a patient signs a waiver, testimony contradicting the waiver cannot get into court. By allowing people to contest the waiver in court, the bill "remove[d] one of the obstacles . . . to get true justice before your peers."[109] The proponents of the bill argued that the bill is not taking away the effect of a waiver because physicians can still use a waiver against a patient.[110] Patients would merely be allowed to testify unencumbered against the waiver.[111] It would become a "jury question at that point as to who is the more believable person in the scenario."[112]

This "doctor trap," however, had several unintended consequences. By removing the shield of the waiver, a physician no longer had

103. *Id.*
104. *See* Senate Video, *supra* note 3, at 4 hr., 48 min., 9 sec. (remarks by Sen. Nan Orrock (R-36th)); House Committee Video, *supra* note 70, at 1 hr., 45 min., 30 sec. (remarks by Dr. Andy Toledo).
105. Senate Video, *supra* note 3, at 4 hr., 48 min., 9 sec. (remarks by Sen. Curt Thompson (R-5th)).
106. *Id.* at 4 hr., 48 min., 9 sec. (remarks by Sen. Curt Thompson (R-5th)).
107. Jim Galloway, *supra* note 23 ("Georgia Right to Life—a primary backer of HB 1155—has become the most high-profile anti-abortion group at the [Georgia] Capitol, and the most persistent.").
108. Becker Interview, *supra* note 34.
109. *Id.*
110. House Committee Video, *supra* note 70, at 1 hr., 21 min., 9 sec. (remarks by Jonathan Crumly, Senior Partner, Manner Little Crumly & Chambliss, LLP).
111. *Id.*
112. *Id.*

protection against criminal or civil liability from a patient who signs a waiver but later surfaces with a different set of facts, evidence, or testimony that contradicts the signed waiver.[113] The waiver would be unable to insulate anyone involved in the procedure—even the nurses and anesthesiologists—from being sued for damages.[114] Medical malpractice insurance would skyrocket because the waiver would mean nothing.[115] In the alternative, with no way to protect themselves, physicians would be deterred from performing even legal abortions any time race was a concern.[116] Unfortunately, this would have only led to a lack of good doctors and good care for patients in Georgia.[117]

The lack of protection also meant that physicians would fear their words would be misconstrued and would become more defensive in their communications with their patients, potentially violating the doctor-patient relationship.[118] Patients would no longer be "totally honest and vulnerable with their physicians."[119] A violation of this relationship would jeopardize the physician's ability to fully disclose the risks, benefits, and potential complications of any procedure.[120]

Although they agreed the bill's intentions were good, several physicians testified that the bill was unnecessary because remedies already exist under laws criminalizing fraud, battery, and sexual assault.[121] Furthermore, it is already outside the standard of care for a

113. *Id.* at 1 hr., 56 min., 1 sec. (remarks by Kathleen Birch, Professor, John Marshall Law School) ("This bill leaves open substantial civil liabilities to the doctor. So there is no safe harbor provision."). *See* Senate Video, *supra* note 3, at 4 hr., 48 min., 9 sec. (remarks by Sen. Nan Orrock (R-36th)).

114. Senate Video, *supra* note 3, at 4 hr., 52 min., 39 sec. (remarks by Sen. Nan Orrock (R-36th)).

115. *Id.* at 4 hr., 53 min., 9 sec. (remarks by Sen. Nan Orrock (R-36th)); *id.* at 4 hr., 40 min., 30 sec. (remarks by Sen. Curt Thompson (D-5th)); *id.* at 4 hr. 56 min. 30 sec. (remarks by Sen. Curt Thompson (D-5th)) (noting in response that this bill would have an exponential effect on medical malpractice insurance).

116. Hogue Testimony, *supra* note 102. *See* House Committee Video, *supra* note 70, at 1 hr., 26 min., 9 sec. (remarks by Rep. Roger Bruce (R-64th)); *id.* at 1 hr., 40 min., 08 sec. (remarks by Dr. Andy Toledo).

117. *Id.*

118. *See supra* note 71 and accompanying text.

119. House Committee Video, *supra* note 70, at 2 hr., 9 min., 48 sec. (remarks by Dr. Jacqueline Fincher); *see also supra* note 71–72 and accompanying text.

120. *See supra* note 71–72 and accompanying text; *see also* House Committee Video, *supra* note 70, at 2 hr., 5 min., 30 sec. (remarks by Dr. Kevin Gomez) (noting concern with the effect the bill would have on his practice that specializes in dealing with and counseling women with complicated pregnancies who could easily misconstrue information about problematic births due to birth defects).

121. *See supra* note 73–75 and accompanying text.

physician to perform a procedure if he believes the patient is requesting the procedure due to outside coercion.[122]

Even if the bill was necessary, its opponents contend that there is no way to enforce the bill as it was written.[123] Notably, Dr. Toledo and his colleagues dispute Representative Ed Setzler's (R-35th) suggestion that, since the 1990s, an unborn child's sex can be determined between six to ten weeks.[124] If sex cannot be determined within that time, then it cannot possibly be a factor when deciding to have an abortion within the first trimester.[125]

Constitutionality – Undue Burden

Laws regulating abortion, interracial reproduction, and racial classification have already been in place for many years. The constitutional standard for laws regulating abortion, as decided by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey* in 1992, is whether an undue burden is imposed on the woman seeking the abortion.[126] In the 1967 case of *Loving v. Virginia*, the Court held that an individual has a right to choose with whom they wish to enter into an intimate relationship, which informs the constitutionality of reproduction statutes dealing with race.[127] A few years later in 1969, the Court struck down an apparently benign

122. House Committee Video, *supra* note 70 at 2 hr., 13 min., 1 sec. (remarks by Dr. Jacqueline Fincher) (noting that no doctor would ever perform a procedure on a patient who was being coerced into receiving it as it would be "totally outside the standard of care"); *see also id.* at 1 hr., 29 min., 45 sec. (remarks by Jonathan Crumley) (presenting an affidavit from the medical director of the clinic who provided the third largest number of abortions in the state of Georgia in 2008 whose current standard of care is to never perform a procedure on a patient being coerced to undergo the procedure).

123. Senate Video, *supra* note 3, at 4 hr., 36 min., 30 sec. (remarks by Sen. Curt Thompson ((D-5th)). *See* James Interview, *supra* note 27.

124. House Committee Video, *supra* note 70, at 1 hr., 3 min., 30 sec. (remarks by Rep. Ed Setzler (R-35th)). *Compare id.* at 1 hr., 30 min., 30 sec. (remarks by Rep. Ed Setzler ((R-35th)) *with id.* at 1 hr., 40 min., 10 sec. (remarks by Dr. Andy Toledo) (commenting that Dr. Toledo and his perinatology colleagues do not know of a test that allows a physician to determine the sex of an unborn child at six to ten weeks).

125. House Committee Video, *supra* note 70, at 1 hr., 40 min., 10 sec. (remarks by Dr. Andy Toledo).

126. Hogue Testimony, *supra* note 102 (citing Planned Parenthood v. Casey, 500 U.S. 833, 877 (1992) (finding of an undue burden is shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus)).

127. The Supreme Court held Virginia's miscegenation statutes were unconstitutional. *See generally* Loving v. Virginia, 388 U.S. 1 (1967).

law in *Hunter v. Erickson*, finding that it incorporated an "explicitly racial classification" that in practice would place "special burdens on racial minorities."[128]

The purpose of SB 529 was to prevent a coerced woman from seeking an abortion that she does not want, or an abortion "based upon the race, color, or gender of the unborn child or the race or color of either parent of that child."[129] SB 529, however, would have "create[d] an invasion by the state into the intimate relationships of the family."[130] By regulating abortion on the basis of one's motive, SB 529 would impose an "undue burden" that falls heaviest on racial minorities, thus violating the standards set forth in *Planned Parenthood* and *Hunter*.[131] "It does so because it employs explicitly racial classifications that coupled with the clumsy 'doctor trap' will make constitutionally protected reproductive choice less available to African-Americans and other minorities."[132] To comply with SB 529 when terminating a pregnancy, a doctor would have to ask the patient the race and color of her partner.[133] If the couple is interracial, SB 529 would have required the doctor to inquire whether the reason for the abortion is due to the mixed race of the fetus.[134] In order to avoid the inquiry into their personal relationship, the interracial couple would have to choose between not terminating the pregnancy and not entering into the relationship.[135] Thus, SB 529 would place an undue burden on how interracial couples choose to develop their families and discourage individuals from exercising their rights recognized in *Loving v. Virginia*.[136] Furthermore, it is unlikely Caucasians would have been as targeted by the race element of the law as African-American and other minorities would have been.[137] As a result,

128. Hunter v. Erickson, 393 U.S. 385, 389, 391 (1969).
129. SB 529 (SCS), § 1, p. 1, ln. 18–20, 2010 Ga. Gen. Assem.
130. House Committee Video, *supra* note 70, at 1 hr., 51 min., 30 sec. (remarks by Kathleen Birch).
131. Hogue Testimony, *supra* note 102. *See also* Senate Video *supra* note 3, 4 hr., 41 min., 45 sec. (remarks by Sen. Curt Thompson (R-5th)) (stating SB 529 "is going to create an unconstitutional set of paperwork" that will single out minority women, making it harder for them to get healthcare and will not pass the *Planned Parenthood* standard).
132. *See* Hogue Testimony, *supra* note 102.
133. House Committee Video, *supra* note 70, at 1 hr., 51 min., 30 sec. (remarks by Kathleen Birch).
134. *Id.*
135. *Id.*
136. *Id.*
137. Hogue Testimony, *supra* note 102.

minorities are more likely to have been deterred from seeking abortions, and physicians who perform abortions may have been less willing to serve these communities for fear of prosecution, loss of licensure, or civil liability.[138]

Furthermore, SB 529 had no exemptions for rape or incest victims.[139] These victimized women would have been required to explain why they exercised their constitutional right to terminate a pregnancy during a time of vulnerability, while perhaps not even knowing the race of the fetus.[140] Seeking a woman's motive places an undue burden on the right to choose because it requires the woman to divulge information rather than receive information to help inform her decision, as required by Supreme Court precedent.[141]

However, the Supreme Court's jurisprudence over the last two decades shows a distinct and significant movement in the direction of permitting greater state regulation in the area of abortion.[142] Based on this trend, the current bench may see a law preventing abortions motivated by the race or gender of the fetus as a relatively minor restriction and may therefore deem such a law not to create an undue burden on abortion rights.[143]

The Fight

The fight for this bill was loud and passionate, garnering public support from well-known organizations as well as individuals who were fighting a personal battle.[144] On the other hand, some opponents

138. *Id.*
139. House Committee Video, *supra* note 70, at 1 hr., 53 min., 30 sec. (remarks by Kathleen Birch).
140. *Id.*
141. *Id.*
142. *Id.* at 2 hr., 3 min., 25 sec. (remarks by Randy Beck) (citing Gonzales v. Carheart, 550 U.S. 124 (2007) which upheld the federal partial birth abortion ban of 2003 even though the statute applied to some pre-viability abortions).
143. *Id.* at 2 hr., 3 min., 25 sec. (remarks by Randy Beck).
144. Representatives from NAACP Georgia, World Changers Ministries, Georgia Chapter of the Southern Christian Leadership Conference, and the King America Foundation all spoke in favor of the bill. *Id.* at 1 hr., 6 min. (remarks by Rep. Ed Setzler (R-35th)). Other organizations that supported the bill are: Georgia Right to Life, Alliance Defense Funds, American Center for Law and Justice, Liberty Counsel, Thomas Moore Law Center, and National Right to Life. Becker Interview, *supra* note 34. Senator Unterman also personally spoke in support of the bill. Senate Video, *supra* note 3, at 4 hr., 13 min., 15 sec. (remarks by Sen. Renee Unterman (R-45th)). Alice, a pregnant teenager from Augusta who

of the bill argued that SB 529 was subterfuge to get a step closer to outlawing abortion outright.[145] Others argued that instead of using suppressive measures, we should be taking preventive measures to lower abortion rates of black women by offering family planning, education, and public health services.[146] They also argued that SB 529 was created under the false assumption that abortion doctors target and solicit black women.[147] Black women have higher abortion rates than Caucasian women, not because of racial bias, gender bias, or coercion, but because there are more black women in poverty, and in poverty, one lacks access to health care, reproductive services, and means to raise a child.[148]

Turning Doctors into Lawyers

To stress the bill's necessity, supporters presented evidence that 64% of abortions involve some form of coercion.[149] However, instead of criminalizing the people who actually coerced the women, this bill criminalized the doctor who performed abortions with "actual knowledge" of such "unlawful coercions."[150] In doing so, the legislature created a very unusual situation that criminalizes the behavior of someone who did not actually engage in the criminal conduct.[151] Instead of charging the person who is actually perpetuating the unlawful coercion, the bill makes the doctor a party to the crime.[152]

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had previously received a coerced abortion, also spoke about her personal experiences. House Committee Video, *supra* note 70, at 2 hr., 25 min., 57 sec. (remarks by Alice).

145. Hogue Testimony, *supra* note 102; Senate Video, *supra* note 3, at 4 hr., 38 min. (remarks by Sen. Curt Thompson (R-5th)) ("We need to be honest with ourselves if what we are trying to do is launch a full-scale assault on *Roe v. Wade*.").

146. Senate Video, *supra* note 3, at 5 hr., 40 min., 15 sec. (remarks by Sen. Nan Orrock (R-36th)).

147. *Id.* at 4 hr., 31 min, 30 sec. (remarks by Sen. Donzella James (D-35th)).

148. *Id.* Senator James indicated that in Georgia, 32% of African-Americans live in poverty and are all uninsured. *Id*. Not only do they experience higher abortion rates, they also face higher rates of sexually transmitted infections, diabetes, and heart disease due to the lack of affordable health care. *Id.* at 5 hr., 40 min., 15 sec. (remarks by Sen. Nan Orrock (R-36th)).

149. Senate Video, *supra* note 3, at 3 hr., 51 min, 50 sec. (remarks by Sen. Chip Pearson (R-51st)).

150. SB 529 (SCS), § 1, p. 1, ln. 21, 2010 Ga. Gen. Assem.

151. House Committee Video, *supra* note 70, at 2 hr., 24 min., 24 sec. (remarks by Sandra Michaels, Georgia Association of Criminal Defense Lawyers).

152. *Id.* at 1 hr., 37 min., 40 sec. (remarks by Rep. Ed Setzler (R-35th)).

Furthermore, "unlawful coercion" is a "very subjective" term that is difficult to prove factually.[153] The bill provided a definition for "unlawful coercion," but it still required a doctor to make a legal determination about whether his patient has been compelled by another person's tort.[154]

Future Legislation

SB 529 was "a piece of model legislation . . . that will appear in other states over the course of the next several legislative cycles," such as Tennessee and Idaho.[155] Whether it will appear in Georgia during the next legislative session remains to be seen.[156] Despite deeming this bill to be "perfection personified," Georgia Right to Life, the main proponent of the bill, is turning its focus on the fight against the emerging biotech industry.[157] At the end of this legislative session, President Daniel Becker of Georgia Right to Life stated, "Abortion was a twentieth century problem that should've been solved in the twentieth century. We are moving our focus to the twenty-first century."[158]

However, Nebraska recently passed a law restricting abortions at and after twenty weeks of pregnancy.[159] This law was the first of its kind in the United States and has yet to be challenged.[160] Oklahoma also recently passed a law banning abortions based on the gender of the child, but it was quickly declared unconstitutional by an Oklahoma County judge.[161] The Oklahoma legislature is currently

153. Senate Video, *supra* note 3, at 4 hr., 44 min., 10 sec. (remarks by Sen. Curt Thompson (R-5th)).

154. SB 529 (SCS), § 1, p. 2, ln. 56–57, 2010 Ga. Gen. Assem. (defining "unlawful coercion" as to "compel another person by committing, attempting to commit, or threatening to commit any violation of local, state, or federal law or any tort").

155. Becker Interview, *supra* note 34; *see also supra* text accompanying notes 21–22.

156. Becker Interview, *supra* note 34.

157. *Id.*

158. *Id.*

159. *Nebraska to Limit Abortions Over Fetal Pain*, MSNBC, Apr. 13, 2010, http://www.msnbc.msn.com/id/36467308/.

160. *Id.*; *US: States Try New Tactics to Restrict Abortion*, PROGRESSIVE STATES NETWORK, July 19, 2010, http://www.progressivestates.org/node/25323.

161. Barbara Hoberock, *Judge Rules Oklahoma Abortion Law Unconstitutional*, TULSA WORLD, Feb. 19, 2010, http://www.tulsaworld.com/site/printerfriendlystory.aspx?articleid=20100219_14_0_OKLAHO398221.

reworking the bill for the next legislative session.[162] Perhaps the Georgia legislature will be similarly inspired by other states to renew the fight next year.

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162. *Id.*