



National Advocates
for Pregnant Women

N A P W

April 1, 2019

Governor Brian Kemp
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, Georgia 30334

Re: Opposition to HB 481, Which Will Repeal Women's Rights

Governor Kemp,

Thank you for the opportunity to express National Advocates for Pregnant Women's strong opposition to House Bill 481, titled the "Living Infants Fairness and Equality Act." In fact, this legislation should be known as the Repeal Pregnant Women's Rights Act.

National Advocates for Pregnant Women (NAPW) is a non-profit organization that works to secure the human and civil rights, health and welfare of pregnant and parenting women. NAPW submits this testimony in opposition to HB 481 as an unprecedented and radical proposal that is dangerous to the lives and health of all women who are pregnant or might become pregnant.

This harmful bill seeks to amend various sections of the Official Code of Georgia Annotated (O.C.G.A.)¹ relating to "persons and their rights", including adding fertilized eggs, embryos and fetuses in the definition of persons. It also repeals women's access to comprehensive healthcare by limiting abortion to the moment alleged fetal cardiac activity is detected (before a woman may even know she is pregnant), requires women who have already made an informed but often difficult decision about their pregnancy to listen to an alleged presence of a heartbeat, improperly requires medical professionals to speculate as to the actual existence of a heartbeat, and otherwise effectively repeals a woman's constitutional rights to privacy and equal protection of the laws.

According to the legislation, "the purpose of this amendment is to expand the class of human beings who currently enjoy inalienable rights, equal protection, and due process of the law under the constitution of the state of Georgia." This legislation would treat fertilized eggs, embryos and fetuses as if they are physically and legally independent of the women who carry them. It does

¹ In full text, the proposed amendments to individual sections and titles are as follows: Chapter 2 of Title 1 of the O.C.G.A., relating to persons and their rights; to amend Article 5 of Chapter 12 of Title 16 of the O.C.G.A., relating to abortion; to amend Chapter 9A of Title 31 of the O.C.G.A., relating to the "Woman's Right to Know Act;" to amend Chapter 9B of Title 31 of the O.C.G.A., relating to physician's obligation in performance of abortions; to amend Chapter 7 of Title 19 of the O.C.G.A., relating to parent and child relationship generally; to provide an effective date; to repeal conflicting laws; and for other purposes.

not acknowledge, much less address the extraordinary impact this amendment would have on the lives and health of all pregnant women – whether they experience a pregnancy loss, seek to end a pregnancy, or plan to go to term and give birth.

Numerous well-documented cases make clear that if fertilized eggs, embryos, and fetuses are viewed as having separate and equal rights to persons already born, then pregnant women will be deprived of their own fundamental constitutional rights including the right to life and liberty. Experiences from Georgia and around the country support this very real possibility and illustrate how the proposed amendments would effectively remove pregnant women from the protections of the state constitution and numerous state laws (including those protecting doctor-patient confidentiality), and expose women to prosecution under every Georgia criminal law that uses the term “human being,” “person,” or “child.”

This bill would give state actors the power to use the criminal law, the civil child welfare law, the civil commitment law power and others to control, detain, arrest, and monitor a woman from the moment she has a fertilized egg inside her body, whether or not she knows she is pregnant or is in fact pregnant. (Pregnancy is medically recognized to exist or occur once a fertilized egg is implanted in the uterus, not at fertilization.)

House Bill 481 will harm women who need fertility treatments, who experience stillbirth or miscarriage, who have or seek an abortion, who refuse cesarean surgery if a doctor recommends it, and who do almost anything during pregnancy that is thought to risk harm to a fertilized egg, embryo or fetus. There are a number of examples to establish the ways in which all women’s rights are repealed when states enact personhood rights for a fetus, embryo or fertilized egg. For example:

- In Georgia Kenlissia Jones was arrested and held without bond on the charge of “malice murder,” based on the allegation that her alleged use of a legal, often used medication, allegedly in an effort to have an abortion, caused a fetal demise. Ms. Jones’s arrest, jailing, and prolonged ordeal before charges were dismissed demonstrates that it is not just the right to abortion that is at stake but the right to be free from improperly being caught up in a criminal justice system that is harsh, often dysfunctional, and overwhelmingly unable to secure justice for low-income people and people of color. She was deprived of her rights to liberty and privacy.
- In Washington, D.C. Angela Carder was forced to undergo cesarean surgery to protect the claimed rights of the fetus inside of her, despite her clear refusal and the danger the surgery would pose to her own life. Ms. Carder died as a result of the surgery and the fetus did not survive; she was deprived of her right to life.
- In Georgia, a court authorized state police to take Jessie Mae Jefferson, an African-American mother of three in her thirty-sixth week of pregnancy into custody so that she could be forced to undergo cesarean surgery allegedly for the benefit of her fetus. As it turned out, she went into hiding and she (as she had predicted) was able to deliver vaginally without major, unnecessary surgery. She was denied her rights to physical

liberty, bodily integrity, medical decision-making, privacy, and potentially her right to life.

- Georgia criminal law was used against Ms. Jackson, who was beaten and lost her pregnancy. She was then arrested for having been pregnant and used drugs. She was denied her right to liberty.
- In Florida, a pregnant woman was kept prisoner in a hospital and forced to undergo major surgery because doctors believed that doing so would advance the independent and equal rights of her fetus. She nevertheless experienced a stillbirth. By claiming to protect the rights of preborn humans this woman was cruelly deprived of her rights to liberty, bodily integrity, medical decision-making and privacy in all of its constitutionally protected forms.
- Rinat Dray, a pregnant woman in New York, was forced into cesarean surgery that damaged her bladder based on claims of state (or medical) power to protect separate rights for the preborn. The claim of equal and separate rights for the preborn has also been used to justify arresting women who seek to have a home birth or birth with a midwife.
- In New Jersey, V.M. refused to authorize cesarean surgery. Although she had a successful vaginal birth, New Jersey hospital workers reported her to child welfare authorities alleging medical neglect of her unborn child. This report led to the removal of the newborn from her parents' custody. As a result, V.M. and her husband and child were deprived of their fundamental liberty interests in family life.
- In Florida, when doctors at a hospital learned that Laura Pemberton was attempting to have a home birth, fetal personhood arguments became the basis for sending a sheriff to her home. She was taken into custody, forcibly restrained while in active labor, adjudicated without legal representation and forced to undergo cesarean surgery, depriving her of her rights to liberty, privacy, bodily integrity, medical decision-making, and due process of law.
- When a woman in Iowa was five months pregnant and fell down a flight of stairs, she assumed that she had a right to privacy in her medical information. Hospital staff, however, reported her to the police and she was arrested—deprived of her liberty—for the crime of “attempted fetal homicide.”

Proponents of HB 481 are suggesting that their goal is simply continuing an American tradition of expanding membership in the population of constitutional persons. In fact, in the guise of adding one group to the Georgia constitutional population, it will do something unprecedented in U.S. history: subtract another group -- women.

When formerly enslaved people were added to the constitutional population, this did not in any way diminish the constitutional rights or personhood of any other people in the United States. Although slaveholders lost significant power to enslave and exploit other human beings, they did

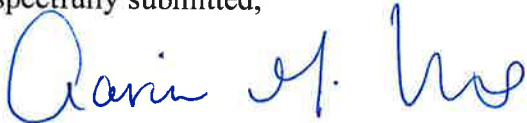
not lose anything in terms of their own status as constitutional persons under the law. Similarly, when women of all races were added to the population of constitutional persons, through the 19th amendment giving women the right to vote, neither the constitutional rights nor the personhood of men was diminished. While men lost significant power over their wives and daughters as well as advantages in the worlds of work, education, and civic life, they did not lose their status as a full constitutional person under the law.

In contrast, efforts to legally treat fertilized eggs, embryos, and fetuses as having an entirely independent and “equal” constitutional status would not merely add a new group to the constitutional population: it would effectively remove pregnant women from their status as persons under the Georgia Constitution.

Passing HB 481 will result in a new regime of separate and unequal in Georgia. Pregnant women could be sued, subject to child welfare interventions, or arrested if they engaged in activities at work and at home that might be thought to create a risk to the life of a “preborn human.” This amendment would make activities that are legal for all other people, such as smoking cigarettes, drinking alcohol, and taking certain medications criminal only for pregnant women. Passage of HB 481 would ensure that in jobs, education, and civic life, pregnant women will, once again, be unequal to men.

We urge you to vote “no” to the repeal of women’s rights in Georgia.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Aarin M. Williams". The signature is written in a cursive, flowing style.

National Advocates for Pregnant Women
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