

CIVITAS INSTITUTE

Legislative Recap

2007 GENERAL ASSEMBLY

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Life and Family Issues Recap

Legislators Weaken Protections for Elderly, Reject Fetal Homicide Bill

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Civitas' polling has consistently found that a majority (54 percent) of North Carolinians are pro-life; even more (76 percent) support a state amendment clarifying that marriage is a union between one man and one woman. Nevertheless, the General Assembly not only passed legislation that will make it easier to euthanize elderly and other vulnerable populations, it again refused to consider an amendment to protect the institution of marriage. Several other pro-life measures, including a fetal homicide bill, were also ignored during the 2007 session. The General Assembly, however, did come very close to passing an embryonic stem cell research bill, as well as legislation that would have recognized homosexuals as a protected class.

LEGISLATION THAT PASSED

Advance Directives/Health Care POA (HB 634/SB 1046)

Status: HB 634 presented to Governor Easley on July 31, 2007

Cost: No fiscal note

Sponsored by Senator Fletcher Hartsell Jr. (R-Cabarrus), this legislation amended current state law to make it easier to end the life of persons with advanced dementia, as well as unconscious persons diagnosed with an "incurable" condition. Under previous law, advance directives permitted a healthcare agent to withhold or discontinue "life-sustaining procedures," such as mechanical ventilation, dialysis, antibiotics, and artificial nutrition and hydration. HB 634 amended this language to permit the denial of "life-prolonging measures," defined as measures that "serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function." The new law likewise contains a revised Health Care Power of Attorney form that can be used to authorize the withholding or withdrawing of "life-prolonging measures."

HB 634 also expands the circumstances under which an attending physician may choose to deny "life-prolonging measures." Previous law permitted the removal of life-sustaining procedures, unless otherwise directed, in cases of a terminal and incurable state or a persistent vegetative state. The new legislation expands the circumstances in which care may be withheld or withdrawn to cases where the individual "has an incurable or irreversible condition that will result in ... death within a relatively short period of time"; or if the patient is unconscious, with a high degree of medical certainty that consciousness will not return; or if the patient suffers from "advanced dementia or any other condition resulting in the substantial loss of cognitive ability."

Along with the standard "Do Not Resuscitate" (DNR) order, HB 634 also permits the use of a "Medical Order for Scope of Treatment" (MOST). The MOST form is an adaptation of the POLST (Physician Order for Life Sustaining Treatment) form being pushed by the Center for Ethics in Health Care at Oregon Health & Science University. The center is a long-time advocate of physician-assisted suicide, or euthanasia.

What is perhaps most disturbing is that the recommended advanced directive (living will) form permits only two options regarding the denial of care. The first option states that the attending physician "may withhold or withdraw life-prolonging measures"; the second option states that the physician "shall withhold or withdraw life-prolonging measures." Once SB 1046 reached the House, Representative Skip Stam (R-Wake) offered an amendment, with the support of Verla Insko (D-Orange), that would have expanded these options by allowing that: 1) a physician "may not" withhold life-prolonging measures; and 2) a physician "shall not" withhold such care.

Representative Stam's amendment was included in the fifth edition of SB 1046, which was placed on the House calendar but later withdrawn without a vote and re-referred to committee. After SB 1046 was amended, Senator Hartsell stripped

the language from a bill (HB 634, "Renunciation Amendments") that had already passed the House and inserted his own (pre-amendment) language from SB 1046. The Senate then passed Hartsell's bill, which went to the House for concurrence, bypassing the committee process in the House altogether. The House concurred in the Senate version and sent the bill to the governor's desk.

Schools Provide Info. on Cervical Cancer (SB 260/HB 938/S.L. 2007-59)

Status: Signed by Governor Easley on May 31, 2007

Cost: No fiscal note

This law requires that schools, including charter schools, private schools and home schools, provide parents of children in grades 5-12 with "information about cervical cancer, cervical dysplasia, human papillomavirus (HPV), and the vaccines available to prevent these diseases." The bill does not specify who is to pay for the creation, production and distribution of this information. Merck (which has a plant in Durham) is currently the sole vendor of the HPV vaccine in the United States, but GlaxoSmithKline (with headquarters in Research Triangle Park) is also trying to obtain FDA approval for its HPV shot. Merck's HPV vaccine has an average cost of \$450 for a six-month cycle of injections; Merck has agreed to supply the vaccine to the CDC at a cost of \$288.

Access to Information for Adult Adoptees (HB 445/ S.L. 2007-262)

Status: Signed by Governor Easley on July 23, 2007

Cost: Minimal fiscal impact, possible savings to court system

This law facilitates the exchange of identifying information between an adopted child (or his lineal descendants) and his biological parents by allowing an authorized representative from a licensed child placement agency to act as a confidential intermediary – without court appointment.

2007-2009 Budget (HB 1473/ S.L. 2007-323)

Status: Signed by Governor Easley on July 31, 2007

Cost: At least \$4.8 million for abortion and family planning services

As in past years, the FY2007-FY2009 budget appropriated a maximum of \$50,000 annually for the State Abortion Fund, which may be used only to pay for abortion in cases of rape, incest, or risk to the life of the mother. The DHHS budget also allocated \$4.1 million for family planning services and an additional \$85,710 for "teen pregnancy prevention initiatives." In addition, the budget provided \$275,000 in new funding for the Adolescent Pregnancy Prevention Coalition of North Carolina, as well as \$81,911 to create a new position to "provide leadership and direct the clinical activities" of the state's Family Planning and Reproductive Health Unit. The budget also included a new appropriation of \$200,000 in annual recurring funding for "family planning services" for uninsured women not eligible for Medicaid (i.e., illegal immigrants).

SELECT LEGISLATION THAT DID NOT PASS

Life Issues

Stem Cell Research Health & Wellness Act (HB 1837)*

Status: Passed the House; referred to Senate Committee on Health Care

Cost: No fiscal note, early drafts would have cost taxpayers \$10 million

As filed, this bill would have allocated \$10 million in grants to nonprofit organizations conducting stem cell research. After a controversial hearing – which included accusations that Appropriations Committee Chair Mickey Michaux (D-Durham) misreported vote totals on the bill – a stripped down version of HB 1837 eventually passed the House. Current language does not include state funding for embryonic stem cell research, but does prepare the way for such funding by establishing state guidelines for human embryonic stem cell research. The guidelines require that embryos used for research be donated from in vitro fertilization clinics. Donated embryos must be "in excess" of the clinical need of the donors and also have no chance of being implanted in a woman – raising the question as to why these "excess" embryos were created in the first place.

Unborn Victims of Violence (HB 263)

Status: Referred to House Judiciary I Committee

Cost: Minimal fiscal impact

The federal government and 35 states currently recognize fetal homicide as a crime. This legislation would have done the same for North Carolina by treating the murder or injury of a preborn child as a separate offense from the murder or injury of the mother. The bill stipulated that knowledge of the mother's pregnancy is not necessary for an offense to occur. *See also SB 295*

*Could be taken up again during the 2008 short session.

WRTK-Woman's Right to Know (HB 1552)

Status: Referred to House Committee on Rules, Calendar and Operations

Cost: No fiscal note

Thirty-two states currently require that counseling be given to a mother contemplating an abortion; twenty-four states require a mandatory waiting period between the counseling session and the actual abortion. North Carolina currently has no waiting period and does not have an informed consent law, but does require parental consent for minors. This law would have provided for informed consent regarding abortion, with a minimum 24-hour waiting period between the counseling session and the abortion. The bill would have required that the abortionist or referring doctor orally inform the mother of the name of the individual performing the abortion, the probable gestational age of the child, the risks associated with abortion, whether the abortionist is covered by malpractice insurance, and whether the abortionist has local hospital admitting privileges. The bill would have also required the mother to be informed of paternal responsibilities and medical and public assistance benefits. Finally, if the abortionist uses ultrasound equipment in performing the abortion, the mother would have the right to see an ultrasound image of her unborn child.

Ultrasound Before an Abortion (HB 1782)

Status: Referred to Committee on Rules, Calendar and Operations of the House

Cost: No fiscal note

This bill would have required that an ultrasound be performed on any woman wishing to have an abortion. Before giving informed consent, the mother would be asked to review the images and be informed of the gestational age of her preborn baby. The bill also would have required that a woman contemplating an abortion be given a form that states: "You have the right to review printed materials prepared by the State of North Carolina that describe fetal development, list agencies that offer alternatives to abortion, and describe medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care." Under HB 1782, a woman considering an abortion would have at least one hour to review the ultrasound images and other written materials before going through with the abortion.

Choose Life Special Registration Plate (HB 932/SB 897)

Status: HB 932 referred to the House Transportation Committee; SB 897 referred to Finance Committee in the Senate

Cost: No fiscal note

Currently, 17 states offer "Choose Life" license plates, with 12 states using the proceeds to fund organizations that provide adoption assistance and counseling. This bill would have permitted the sale of such plates in North Carolina and donated a portion of the proceeds to a Crisis Pregnancy Fund that would support the efforts of nonprofit agencies that "provide pregnancy crisis services that are limited to counseling and meeting the physical needs of pregnant women who are committed to either raising their own children or placing their children for adoption."

No Abortion Coverage/State Health Plan (SB 480)

Status: Referred to Senate Committee on Health Care

Cost: No fiscal note, but could have slightly lowered insurance premiums paid by the state for state employees

This bill would have prohibited all coverage for abortion under the teacher's and state employee's comprehensive major medical plan. Currently, the state health plan covers medical or surgical abortions (both "therapeutic" and elective through 16 weeks). *See also HB 419*

Notarized Consent for Minor's Abortion (SB 481)

Status: Referred to Senate Committee on Health Care

Cost: No fiscal note

This legislation would have required that a parent or guardian giving consent for a minor to have an abortion sign the consent form at either the abortion facility or before a notary public. Furthermore, the physician performing the abortion would have been required to retain the signed consent form. Current state law only requires parental consent, subject to judicial bypass and other qualifications. *See also HB 420*

Parental Notification to Treat Minors (HB 103)

Status: House Committee on Health

Cost: No fiscal note

This bill would have permitted a physician to notify the parents of a minor treated for pregnancy, venereal disease, emotional disturbance, or alcohol or drug abuse.

Birth Certificate/Stillborn Infants (SB 46)

Status: Referred to Senate Health Care Committee

Cost: No fiscal note

This bill would have allowed either parent of a stillborn child to obtain a birth certificate for the child.

TANF Funds/Adolescent Pregnancy Prevention (SB 707)

Status: Referred to Senate Appropriations Committee

Cost: Redirects \$1.75 million in federal funds

This bill sought to appropriate \$1.75 million from the TANF Block Grant for Adolescent Pregnancy Prevention programs. The legislation did not specify whether the funds would be used for chastity education or for abortion and “family planning” services.

Prohibit Human Cloning (HB 572/SB 896)

Status: HB 572 referred to House Committee on Science and Technology; SB 896 referred to Senate Committee on Health Care

Cost: No fiscal note

This bill would have made it a Class H felony to clone or attempt to clone a human being.

MARRIAGE

Defense of Marriage (HB 493)*

Status: Referred to House Judiciary I

Cost: Between \$2.5 million and \$3.3 million to hold a November 2007 special election

This bill would authorize a November 6, 2007, statewide referendum aimed at amending the state constitution to clarify and protect the natural and traditional understanding of marriage. The proposed amendment would read: “Marriage is the union of one man and one woman at one time. This is the only marriage that shall be recognized as valid in this State. The uniting of two persons of the same sex or the uniting of more than two persons of any sex in a marriage, civil union, domestic partnership, or other similar relationship within or outside of this State shall not be valid or recognized in this State. This Constitution shall not be construed to require that marital status or the rights, privileges, benefits, or other legal incidents of marriage be conferred upon unmarried individuals or groups.”

Currently, 27 states have constitutional language aimed at protecting marriage; 41 states, including North Carolina, have passed statutory language in defense of marriage. Because this bill pertains to a proposed constitutional amendment, it may still be taken up during the 2008 short session.

Waive Marriage License Fee (HB 518)

Status: Referred to House Appropriations Committee

Cost: No fiscal note, but estimated cost of \$150,000 annually to reimburse counties

This legislation would have waived the marriage license fee for couples who receive premarital counseling at least 15 days before applying for a license. The counseling may be provided by either a clergyman from a recognized religious denomination, a licensed marriage and family therapist, or a qualified mental health provider (QMHP). The counseling is to include recognition of the fact that marriage “is intended to be a lifelong commitment.”

HOMOSEXUALITY

School Violence Prevention Act (HB 1366)

Status: Passed the House; committee substitute passed Senate; House did not concur to substitute

Cost: No fiscal note

Sponsored by Representative Rick Glazier (D-Cumberland), the so-called bullying bill would have, for the first time in North Carolina law, recognized homosexuals as a protected class. The bill defined bullying as virtually “any physical act or any threatening communication” that causes fear of harm and “has the effect of substantially interfering with or impairing a student’s educational performance, opportunities, or benefits.” Such acts or modes of communication would have included any behavior “reasonably perceived as being motivated by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, gender identity or expression, physical appearance, sexual orientation, or mental, physical, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.” The bill, including those provisions establishing homosexuality as a protected class, passed the House. The Senate, however, removed all provisions related to protected classes. The House adjourned without taking further action, leading to speculation that the primary intent of the bill was not to discourage bullying but to give homosexuals special status under North Carolina law.

Nondiscrimination in State Employment (HB 1789)

Status: Referred to House Committee on State Personnel

Cost: No fiscal note

This legislation would have added sexual orientation and gender identity to the list of protected classes, making it illegal for all state and local political entities to discriminate on the basis of sexual orientation.

SEX EDUCATION/HPV VACCINE

Modify School Health Education Program (HB 879/SB 1182)

Status: HB 879 referred to House Education Committee; SB 1182 referred to Senate Committee on Education/Public Instruction

Cost: No fiscal note, but presumably costs arising from rewriting of curriculum

Sponsored by Representative Susan Fisher (D-Buncombe), this bill would have eliminated North Carolina's abstinence-until-marriage education law and replaced it with a so-called abstinence-based comprehensive sex education program. The new curriculum would have presumed sex outside of marriage and required teachers to "provide information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, emergency contraception." The new program would also have mandated that instructional materials do not "reflect or promote bias or judgment against any person on the basis of ... sexual orientation [or] gender identity" and "be appropriate for use with students of all ... sexual orientations."

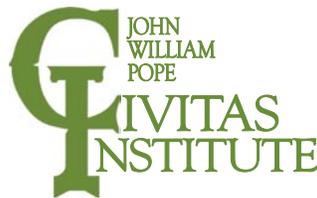
Immunization Changes-AB (HB 771/SB 710)*

Status: HB 771 referred to House Committee on Insurance; SB 710 referred to Senate Health Care Committee

Cost: No fiscal note, but likely more than \$35.9 million

Passage of this bill would result in state funding for such controversial vaccines as human papillomavirus (HPV), hepatitis A, and rotavirus. Currently, the state subsidizes the provision of all vaccines mandated by the state. This legislation would expand state subsidies for vaccines by requiring the state's Universal Childhood Immunization Program to provide free of charge any vaccine recommended by the CDC's Advisory Committee for Immunization Practices and covered by the federal Vaccines for Children (VFC) program. An annual assessment on health insurers would be used to help fund the program. In effect, the law would cede control over state vaccine policy to the federal government.

Current vaccines covered by the VFC program are: HPV, hepatitis A and B, *haemophilus influenzae* type b (Hib), influenza, meningococcal, MMR, pneumococcal disease, polio, rotavirus, Tdap, and varicella (chickenpox). Six of these immunizations are *not currently required* by North Carolina state law: HPV, hepatitis A, influenza, meningococcal, pneumococcal disease, and rotavirus. In October 2006, the North Carolina Public Health Task Force estimated that it would cost taxpayers \$35.9 million to provide universal coverage for the following vaccines: HPV, influenza, meningococcal, pneumococcal disease, and rotavirus.



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