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A WOMAN'S RIGHTS: PART 6

Can a Corpse Give Birth?

BY THE EDITORIAL BOARD

Rarely will a woman who lost an unborn child be charged with murder. Yet the mere existence of criminal statutes aimed at forcing women to make decisions to protect their fetuses — even at the expense of their own health — has injected fear into maternity wards and operating rooms, complicating even routine health care decisions.

Sometimes doctors or nurses are overzealous. In Florida, a doctor told Lisa Epstein that he was sending law enforcement to her home if she didn't report immediately to the hospital for a C-section. In New Jersey, a woman known in court documents as V.M. lost custody of her newborn for years after refusing to have her baby delivered surgically. The baby was born vaginally — and in full health — but put in foster care.

Other times, in many states, doctors and nurses — the very people who are meant to help pregnant women — are required to report suspected drug use to the police. The threat of prison and losing custody of their children drives pregnant women who suffer from addiction or mental illness away from much-needed prenatal care and treatment.

Far more common, however, are laws that deny women the ability to make end-of-life decisions. Thanks to persuasive campaigns by anti-abortion activists, at least 31 states have enshrined this deprivation of basic rights into law.

In at least 12 of these states, so-called pregnancy-exclusion laws prohibit doctors from following a woman's wishes to remove life support from her own body even in the earliest stages of pregnancy. In 19 others, such laws deprive women of the ability to dictate their own end-of-life decisions once a fetus is viable, even overriding living wills. Five states mention the well-being of the pregnant woman, while others focus on the survival of the fetus, even if a woman is suffering tremendous pain.

These laws are relatively new — states began passing them only in the 1990s. They are a product of the anti-abortion movement's determination to establish the legal "personhood" of fetuses — and to make sure that their

rights supersede those of the women who are carrying them. In 1984, the conservative activist Paul Weyrich, the founding president of the Heritage Foundation, explained: "I believe that if you have to choose between new life and existing life, you should choose new life. The person who has had an opportunity to live at least has been given that gift by God and should make way for new life on earth."

This sentiment was radical among Mr. Weyrich's contemporaries, but less virulent strains of it have filtered into the American medical community to the point that women's rights — to health care, to consent, to parent — are stripped away in the name of protecting the unborn.

The laws also reflect what some see as a legal loophole in two Supreme Court decisions, *Roe v. Wade* and *Planned Parenthood v. Casey*. Both cases codified the fundamental right to abortion but also recognized that the states have an interest in the potential life of a fetus.

Yet when that woman is dying, and facing horrible pain, a state's demand that her body be kept functioning long enough to support her fetus can be cruel and arbitrary to her and her family, and often does not succeed in protecting the fetus. Such cases demonstrate the torturous extremes to which some opponents of abortion will go to deprive even dying women of the right to control their bodies.

In the fall of 2013, Marlise Muñoz was 14 weeks pregnant with her second child when she collapsed in her North Texas home. Her husband, Erick Muñoz, woke to the sound of their 15-month-old son, Mateo, crying and found his wife lying motionless, face down on the kitchen floor.

Ms. Muñoz had suffered a pulmonary embolism stemming from a blood clot. Her condition was grave. As her husband, who was a paramedic, told the makers of the recent documentary film "62 Days": "They showed us a CT of her brain. I'd seen enough to know how bad it was, even before the doctor actually told us she was brain-dead."

Why a dead woman was kept on life support against her wishes.

His wife, who was also a paramedic, had seen firsthand the realities of being kept alive on life-support. “Under no circumstance do I ever want to be on life-support,” her mother, Lynne Machado, recalled her saying. She even put a bright orange D.N.R. sticker on her paramedic name badge.

So when Ms. Muñoz’s heart would not keep beating on its own in Fort Worth’s John Peter Smith Hospital that November day, it was obvious to everyone — her relatives and her medical team — what the patient’s wishes were. Which made it all the more jarring when a doctor pulled the family aside and said, according to Ms. Machado, “We have to keep her connected.”

Though Ms. Machado said that her daughter’s doctors and nurses were sympathetic to the family, their hands were tied by the hospital’s legal team. “I’m a person of faith. I had been praying,” Ms. Machado said in an interview last month. “I had to be strong, for the doctors who were doing things they didn’t want to, for each other and for Mateo.”

Complicating the case was the fact that, as the hospital later admitted, Ms. Muñoz was brain-dead — clinically dead, in the eyes of the law — within two days of being in the hospital. If Marlise Muñoz was dead, how could the law still apply to her?

Larry Thompson, a lawyer for the hospital, maintained that the state’s end-of-life law did apply, noting that the Texas Penal Code’s definition of a human being had been updated in 2003 to include an “unborn child at every stage of gestation” — therefore, it could be criminal homicide to cause the death of a fetus.

Days passed. Then weeks.

Her family knew Ms. Muñoz was gone. But every day at least one relative visited her body, which began to deteriorate.

Those trips to the hospital started to involve driving past anti-abortion demonstrators imploring the family to think of the unborn child. Then came the death threats and hate mail.

“People would say, ‘How could you pull the plug on your daughter?’” said Ms. Machado. “You weren’t walking in my shoes. And we knew her wishes.”

Doctors eventually found that the fetus was likely nonviable, with severe deformities of the lower extremities and hydrocephalus, or fluid in the skull.

Mr. Muñoz sued the hospital to remove his wife’s body from life-support, and in late January 2014, the two parties went to court. Mr. Thompson, the hospital’s lawyer, argued, “There is a life involved and it is the life of an unborn child. ... I don’t want to minimize that [Mr. Muñoz’s pain], but what he has to do now is wait.”

Judge R.H. Wallace Jr. disagreed. He ordered the hospital to discontinue life-sustaining measures. A few days later, more than two months after the family’s nightmare began, doctors did disconnect Ms. Muñoz from life-support. Her family was by her side.

The Muñoz case illustrates what’s at stake when the distilled ideology of the anti-abortion movement makes its way into the laws of the land. Statutes that give fetuses more rights than the women who carry them are bound to lead to heartbreaking outcomes when applied in the real world, however infrequently.

Michele Bratcher Goodwin, a law professor at the University of California-Irvine and a bioethics expert, said that there are probably more cases of end-of-life wishes being ignored than are known. That’s in part because laws restricting bodily autonomy have historically targeted “women who are dispossessed and lack socio-economic clout,” said Ms. Goodwin. “If you don’t have social clout, you don’t know to go to the A.C.L.U.”

There have been some recent efforts to combat pregnancy-exclusion laws. A group of Idaho women have sued their state to challenge the constitutionality of its law. And Marlise’s Law, a bill that would amend the Texas Penal Code so pregnant women have the same rights as other people in determining their end-of-life wishes, has failed twice but is expected to come before the State Legislature again in 2019.

Ms. Machado and the rest of Marlise Muñoz’s family recently honored the fifth anniversary of her death — on Nov. 26, 2013, the day she was found motionless on the kitchen floor and taken to the hospital. “Someone asked, ‘When did you grieve?’ We couldn’t,” said Ms. Machado of the period just after her daughter was put on life-support. But now, she said, “I’ll grieve every day of my life.”