Fetal Endangerment: A Challenge For Criminal Law

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I. Introduction

¶1 Prenatal drug use has developed into a perplexing problem in our society. According to an American Medical Journal Report, over 8 percent of babies are born addicted to cocaine each year.[1] The effects on the fetus of cocaine use by pregnant women, and later the newborn, can be severe. On average, cocaine-exposed babies have lower birth rates, shorter body lengths at birth, and smaller head circumferences than normal infants.[2] There is also a greater risk for prenatal strokes and seizures, premature births, retarded fetal growth, and organ malformation.[3] With these harmful effects becoming more apparent, the public has looked to the state to impose some form of intervention to address or alleviate the problem.

¶2 A well-known South Carolina criminal case regarding the prosecution and conviction of a pregnant defendant will be discussed as one example of how a state chose to address the problem of prenatal drug use.[4] The criminal case and statute will be analyzed and compared to other cases with similar law and facts in different jurisdictions. These laws raise constitutional concerns regarding separation of powers, potential Due Process violations, and Fourteenth Amendment issues of vagueness and notice.

¶3 The choice of criminalizing prenatal drug use will also be discussed from a public policy perspective. Some points addressed include the effectiveness of criminalization and whether there are more effective alternatives, as well as the negative effects of these laws, such as purposefully avoiding prenatal care to escape prosecution. The potential "slippery slope" ramifications will be analyzed as well. For example, using the rationale in the South Carolina case, not only illegal activities but also legal ones such as smoking, alcohol consumption and inadequate diet may be prosecuted. Finally, a potpourri of topics ranging from the Equal Protection Clause, race, socioeconomic status, and political climates will be considered. In concluding, predictions will be made regarding the impact of the South Carolina case upon future cases.

II. Case Law

¶4 Thus far, no state has specifically criminalized prenatal drug use. In light of this, prosecutors from many states have utilized existing statutes to get at the problem indirectly. Typically, they have employed a creative interpretation of child abuse statutes. Due to the lack of legislative intent, most of these efforts have failed. In the ground breaking case of Whitner v. South Carolina,[5]however, the court interpreted prenatal drug use as a form of child abuse.

¶5 Twenty-eight year old Cornelia Whitner was charged with criminal child neglect under South Carolina Code section 20-7-50 for apparently ingesting crack cocaine during the third trimester of her pregnancy.[6] This charge was substantiated after cocaine metabolites were detected in her child's system upon birth. Whitner chose to plead guilty to the criminal child neglect charge in hopes of being admitted to a residential treatment program. At the time

of her plea, Whitner was drug-free and already in drug counseling. In addition, her son showed no harmful side effects from cocaine exposure.[7]

¶6 Pickens County Circuit Court Judge, Frank Eppes, was not receptive to Whitner's desire for treatment and sentenced her to eight years in prison. Whitner remained incarcerated for two years before she petitioned for post-conviction relief to the Court of Appeals. Her petition put forward two claims, both of which were related to the fact that a fetus was not a "child" under the child neglect statute. Her first claim stated that the circuit court lacked subject matter jurisdiction to accept her guilty plea because the offense of abusing a fetus did not exist. Her second claim, ineffective assistance of counsel, was based on her lawyer's failure to advise her that the child endangerment statute might not apply to prenatal drug use. The court granted Whitner's petition on both grounds and the state appealed to the Supreme Court of South Carolina.

¶7 The Supreme Court held that its primary duty was to determine the legislature's intent in enacting the child endangerment statute. The court stated that intent was to be derived from statutory language when "a statute is complete, plain, and unambiguous."[8] Without questioning whether this particular statute was unambiguous, the court then asserted it also must consider "the work and its meaning in conjunction with the purpose of the whole statute and the policy of law."[9] Finally, the court stated that there is a basic presumption that the legislature, when enacting a statute, is aware of earlier laws and how the courts have construed them. Based on these rules of statutory construction, the court set out to determine the intended meaning of the word "child" in the child endangerment statute.

¶8 The *Whitner* court first recognized that under South Carolina law, viable fetuses have often been considered persons holding certain legal rights and privileges. The three decisions that guided the majority include Hall v. Murphy,[10] Fowler v. Woodward,[11] and State v. Horne.[12] In *Hall*, the Supreme Court of South Carolina permitted the application of the wrongful death statute to the death of an infant who had sustained prenatal injuries by reasoning that a viable fetus did have a life separate from that of its mother. Using the same reasoning, the *Fowler* court expanded this doctrine for fetuses that had died in utero. In *Horne*, this rationale was further expanded to a criminal statute when the court upheld a voluntary manslaughter conviction without a specific law against feticide. The *Horne* court held that it would be "grossly inconsistent to construe a viable fetus as a 'person' for purposes of imposing civil liability while refusing to give it a similar classification in the criminal context."[13] Using *Horne* and the past civil decisions in its rationale, the *Whitner* majority decided that it would be absurd and inconsistent to not recognize the viable fetus as a person pursuant to the child abuse statute.

¶9 The court then concluded that the state's broad policy of protecting children leads to the same interpretation. "When coupled with the comprehensive remedial purposes of the Code, this language supports the inference that the legislature intended to include viable fetuses within the same scope of the Code's protection."[14] The majority reasoned that since the consequences of abuse or neglect taking place after birth "often pale in comparison to those resulting from abuse suffered by the viable fetus before birth," the policy of child protection is best served by the court's liberal reading of the law.[15]

¶10 After concluding that a viable fetus is a child, the majority addressed Whitner's arguments. Her first argument concerned the number of bills recently proposed in the legislature dealing with prenatal drug use. She claimed these bills indicated that the legislature was unaware that 20-7-50 addressed prenatal drug use. The court rejected this argument by noting that subsequent acts by the legislature "cast no light on the intent of

the legislature which enacted the statute being construed."[16] Instead, "this court will look first to the language of the statute to discern legislative intent, because language itself is the best guide to legislative intent."[17]

¶11 Whitner next claimed that interpreting the statute to include viable fetuses would lead to ridiculous results. "Every action by a pregnant woman that endangers or is likely to endanger a fetus whether legal or illegal, would constitute unlawful neglect under the statute."[18] In response, the majority acknowledged that a number of legal actions might become illegal if they were to endanger the child. However, the court declined to address this potential "parade of horribles." Whitner's case was the only one they were called upon to decide, and since it is public knowledge that cocaine use can cause serious harm to the viable fetus, there was no question that Whitner endangered her child.

¶12 The court refused to follow other state court decisions that have not recognized a fetus as a child under endangerment statutes. These decisions were deemed inapplicable since they were supported by entirely different bodies of case law. Only Massachusetts deserved examination because it had recognized the rights of fetuses in civil and criminal homicide contexts. However, the *Whitner* court noted that "the rationale underlying our body of law for the protection of the viable fetus is radically different from that underlying the law of Massachusetts."[19]

¶13 In Pellegrini v. State,[20] the Massachusetts Superior Court refused to conclude that a statute prohibiting the delivery of cocaine to a minor could be used to prosecute prenatal drug use. This decision was based on case law in which viable fetuses were only accorded rights to protect the special parent-child relationship. In contrast, South Carolina's earlier recognition of fetal rights was based upon "the meaning of person as understood in the light of existing medical knowledge, rather than based on any policy of protecting the relationship between the mother and child."[21] Furthermore, the decision in *Horne* recognizing the crime of feticide, "also rested on the State's—not the mother's—interest in vindicating the life of the viable fetus."[22] The *Whitner* majority held that if only the mother's interest mattered, "there would be no basis for prosecuting a mother who kills her viable fetus by stabbing it, by shooting it, or by other such means, yet a third party could be prosecuted for the very same acts."[23]

¶14 Finally, the court examined Whitner's argument that the majority's reading of the child neglect statute was unconstitutional because it failed to provide fair notice and violated her right of reproductive privacy. The court countered the fair notice claim by reiterating that "the plain meaning of 'child' as used in the statute includes a viable fetus" and that "it is common knowledge that use of cocaine during pregnancy can harm the viable unborn child."[24]

¶15 Whitner also argued that the United States Supreme Court decision in Cleveland Board of Education v. LaFleur[25] protects women from measures penalizing them for choosing to carry their pregnancies to term. In *LaFleur*, a school system's policy required that every pregnant schoolteacher take maternity leave without pay, starting four or five months before the expected birth. It then mandated that the woman could not return to work "until the beginning of the next regular school semester which follows the date when her child attains the age of three months."[26] The Supreme Court found that "by acting to penalize the pregnant teacher for deciding to bear a child, overly restrictive maternity leave regulations can constitute a heavy burden on the exercise of these protected freedoms."[27] Whitner contended that the possibility of imprisonment constituted a far greater burden on her right to reproductive freedom than in the case of LaFleur's unpaid maternity leave. The

majority, however, found that Whitner's case fundamentally differed from *LaFleur*. Based on Roe v. Wade[28] and Planned Parenthood v. Casey,[29] the majority determined that the State has a compelling interest in the life of the fetus.

¶16 The court then stated, "we do not think any fundamental right of Whitner's—or any right at all, for that matter—is implicated under the present scenario."[30] The use of crack cocaine is not a protected fundamental right; therefore, the court saw no reason to attach an additional criminal penalty to an already illegal act due to its effect on the fetus. In addition, the defendants in *LaFleur* were prevented from exercising a freedom they would have enjoyed but for their pregnancies. In contrast, Whitner had no right to use cocaine, so the child abuse and endangerment statute as applied to her did not restrict Whitner's freedom in any way that it was not already restricted. As a result, the state was free to enact any penalties it saw fit to prevent an already illegal act from endangering the life and health of another. "Section 20-7-50 does not burden Whitner's right to carry her pregnancy to term or any other privacy right;" therefore, there was "no violation of the Due Process Clause of the Fourteenth Amendment."[31] For the foregoing reasons, the majority upheld the conviction.

¶17 To give a contrasting view, cases from other jurisdictions are described below. These cases are similar in facts and law to *Whitner*, yet the courts held to the contrary. As these cases are reviewed, aspects or issues will be revealed that were not addressed by the *Whitner* court.

¶18 In a 1992 New York circuit court case, People v. Morabito,[32] the court decided that a fetus does not constitute a child under a statute meant to prohibit child abuse. Defendant Melissa Morabito smoked crack-cocaine, resulting in the premature birth of a child with cocaine in its blood system. Morabito was prosecuted under section 260.10 of the New York State Penal Law which prohibits the endangerment of a child. This law reads, "a person is guilty of endangering the welfare of a child when he knowingly acts in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health."[33] The court dismissed the charges against Morabito, interpreting the language of 260.10 as applicable only to a child in being and not a fetus. It reasoned that the legislature did not intend to include a fetus within its definition of a child and it would have explicitly done so had it wanted the law to protect fetuses: "To hold otherwise would deny the Defendant of her Constitutional right to due process as guaranteed by both Federal and State Constitutions."[34]

¶19 In Ohio v. Gray,[35] Tammy Gray was charged with child endangerment for giving birth to a child that was allegedly addicted to cocaine. The Ohio Supreme Court decided that a parent could not be prosecuted for child endangerment for substance abuse occurring before the birth of the child. The court reasoned that the interpretation of a child abuse statute to include the in utero transfer of cocaine to the fetus is an "inappropriate exercise of judicial power and second, that due process principles prevent this court from applying the statute to the circumstances of this case."[36]

¶20 Similarly, in Ohio v. Tina Andrews,[37] the court deemed impermissible the utilization of a child abuse statute for prosecuting prenatal drug exposure. The court observed that if the statute in its present form were to be applied to cases in which a pregnant woman carrying a viable fetus does some act that results in harm to that fetus or to a child born alive, "it could include prosecution for failure to get prenatal care and excessive ingestion of alcohol as well as illegal drug use."[38] It then concluded, "[c]ourts have no authority to create

crimes. It is therefore up to the legislature to criminalize the ingestion of cocaine during pregnancy when such ingestion results in harm to the subsequently born child."[39]

III. Constitutional Issues

¶21 The issue of prenatal drug use and its prosecution prompts numerous constitutional issues. To insure that no one individual or group could obtain excessive power, the framers of the Constitution established three distinct, yet interdependent branches of government. The legislature exercises primary responsibility for defining criminal conduct and for devising rules of criminal responsibility. Therefore, the legislative branch is considered the appropriate lawmaking body, not the judiciary. The *Whitner* decision may be considered an act of judicial activism, because it usurped the power of the legislature to decide what conduct is criminal.[40] When interpreting a statute, a court must ascertain the intent of the legislature from the language itself when it is complete, plain and unambiguous.

¶22 In the dissent of the Pennsylvania Superior Court case, Commonwealth v. Mochan, it was stated that "[T]here is no reason for the legislature to enact any criminal laws if the courts delegate to themselves the power to apply such general principles as are here applied to whatever conduct may seem to the courts to be injurious to the public."[41] The South Carolina Supreme Court made an unforeseeable judicial enlargement of statute 20-7-50 thereby violating the separation of powers principle. In 20-7-50, the statute clearly uses the word "child" which under South Carolina Children's Code (20-7-30) means a person under the age eighteen. This appeared to operate like an Ex Post Facto violation since it was applied retroactively.

¶23 Article I of the United States Constitution expressly prohibits laws that violate the Ex Post Facto clause.[42] Simply stated, the state and the federal governments can neither pass retroactive criminal laws nor deprive one charged with a crime of any defense available when the crime was committed. They also cannot increase the punishment for the act after its commission. Here, the *Whitner* court altered the definition of a crime by expanding the meaning of 20-7-50, furthering its applicability to include fetuses. This issue of Ex Post Facto leads to whether Whitner's Due Process rights were violated.

¶24 The Fourteenth Amendment states that "no state shall make or enforce any law which shall . . . deprive any person of life, liberty, or property without due process of law."[43] Due process deals with the procedures to assure fairness and neutrality in actions taken by the government. There are two types of due process: Procedural Due Process and Substantive Due Process.

¶25 Under procedural due process, the first step is to determine if Whitner had a sufficient liberty or property interest to deserve due process protection. Obviously, she had a liberty interest—freedom from an eight-year imprisonment sentence. The second step is to determine whether the process used by the government to limit or deprive that interest was a fair process. One issue regarding if it was a fair process is whether the statute gave adequate warning.

¶26 A constitutionally vague statute is one that "fails to give a person of ordinary intelligence fair notice of what conduct is forbidden."[44] The smoking of crack is without hesitation understood to be illegal. Whitner did not argue this point, but her position is that the state failed to give her fair notice that she would possibly abuse a 'child.' The statute clearly states a 'child' and nowhere mentions 'fetus.' The majority disagreed with Whitner.

¶27 Substantive due process limits the state's power to regulate certain areas of human privacy. Laws infringing in these areas are subject to strict judicial scrutiny. Strict scrutiny is applied to laws that interfere with fundamental rights like procreation, voting and marriage. Under this standard, a state law is unconstitutional unless it is related to a compelling state interest, and is narrowly tailored to accomplish this interest. Whitner argues that prosecuting her use of crack-cocaine while pregnant unconstitutionally burdens her right of privacy: specifically, her right to carry her pregnancy to term. The Supreme Court of the United States held that the state has a compelling interest in the fetus in PlannedParenthood v. Casey[45] and Roe v. Wade.[46] For these reasons, the court ruled it did not violate the due process clause of the Fourteenth Amendment. It may be possible, however, that the *Whitner* court went beyond the scope of *Roe* and *Casey* by interpreting the prevention of prenatal drug use as a compelling interest.

IV. Public Policy Concerns

¶28 States possess a general "police power" to act for the welfare, morals, peace, safety, and health of its citizens.[47] However, this power must be balanced against public policy concerns. It was misguided for the South Carolina Court to convict a pregnant woman who ingests drugs when the fetus is viable. This means a pregnant woman can use drugs for the first twenty-four weeks of her pregnancy without criminal liability. Medical knowledge holds that this period is the most dangerous period for the fetus.[48] Therefore, this statute will not really prevent women from using drugs while pregnant. At best, it will prevent those from doing drugs when the fetus is viable.

¶29 The Whitner saga begs a question - namely, is criminalization the best and most effective way to deal with this alarming trend? The criminal justice system is reactive by design and therefore is probably the least effective means of curtailing drug use by expectant women. Perhaps this is a public health crisis best suited to be handled by the medical community. The public health system could offer less punitive measures such as treatment programs, counseling, and educational approaches. As of now, most pregnant addicts who seek treatment for their addictions are refused such treatment because of their expectant status.[49] Also, budgetary constraints have decreased the availability of treatment programs. Under decisions similar to *Whitner*, pregnant women may face up to ten years in prison.

¶30 This type of punishment may make women avoid prenatal care in order to prevent prosecution. Specifically, criminal penalties may further exacerbate the harm done to the fetus. For example, the California Medical Association has noted that it is inappropriate to criminally punish pregnant women because it is counterproductive to the public interest.[50] The woman may not get the necessary care resulting in greater risks to her and her baby. Punishment may also cause an increase in the number of illegal abortions. Justice Moore acknowledges this in his dissent in *Whitner*, by referring to the disparity in sentence length between the child abuse sentence of up to ten years and illegal abortion of only two years.

¶31 The "parade of horribles" as *Whitner* proclaimed is a distinct possibility. Both legal and illegal activities may be prosecuted using the *Whitner* rationale. The *Whitner* majority refused to acknowledge the potential legal ramifications of its decision. For example, harmful effects of cigarette smoke and alcohol on the fetus are widely known. Under *Whitner*, a person who smoked or drank while pregnant is chargeable for violation of statute 20-7-50. But what about other activities that may be harmful, such as lack of sleep, inadequate diet, obsessive use of caffeine products, taking prescription and over the counter

medications, physical duress, lack of physical fitness and so forth? This precedent could be disastrous, since multitudes of activities are eligible to be prosecuted.

¶32 Equal Protection is a constitutional argument, but is best suited to be discussed here. According to Lynn Paltrow, an attorney with the American Civil Liberties Union, "any bill limited to women violates the United States Constitution's Fourteenth Amendment guarantee of equal protection under the law."[51] Equal Protection is under the Fourteenth Amendment, which dictates that no state shall "deny to any person under its jurisdiction the equal protection of laws."[52] This argument is not valid since expectant mothers and fathers are not similarly situated. Women are the ones who carry the fetuses and therefore it is their actions, not the fathers', that affect them. However, medical evidence holds that the father's lifestyle also affects the health of the fetus. Before conception, the father's exposure to smoking and alcohol may lead to fetal defects.[53]

¶33 If the state wishes to combat prenatal drug use, it must do so on equal terms. Although all pregnant women are eligible under such a law, women from lower socioeconomic status backgrounds seem most susceptible to being prosecuted. This is because many women who come from poor backgrounds rely more on the State for a variety of services. Examples may include Medicaid and/or welfare. Historically, government efforts like the "war on drugs" have disproportionately impacted minority and poor residents.

¶34 Mainly due to political motivations in the last fifteen years, there has been an unprecedented increase in the widening of the criminal justice system. Politicians, in order to get re-elected, often take a strong stand against crime. This "get tough" attitude is personified by the *Whitner* decision. This decision gives the state of South Carolina another arrow in its quiver to prosecute.

V. Conclusion

¶35 Fetal drug abuse prosecutions will continue to grow. As of now, 200 women in 30 different states have been prosecuted for such prenatal conduct, but only Cornelia Whitner's has been upheld.[54] A current case in Wisconsin highlights prenatal criminalization. In People v. Zimmerman,[55] a mother was charged with intentional homicide and reckless conduct after giving birth to a child with a blood-alcohol content of .199. The *Whitner* case becomes more poignant as the United States Supreme Court will decide the case of Ferguson v. City of Charleston during the 2000-2001 session.[56] This case involved the Medical University of South Carolina that instituted a policy providing for the testing of the urine of pregnant women suspected of cocaine use and for the reporting of test results to law enforcement. Officials utilized the same law as they did with Whitner which stated a viable fetus was a person under South Carolina law and therefore a woman who ingested cocaine after the twenty-fourth week of pregnancy was guilty of the crime of distributing a controlled substance to a person under the age of eighteen. These cases underscore a main point that is often overlooked. These women are addicts who become pregnant, not pregnant women who decide to use drugs. Once this point is acknowledged, criminalization seems inappropriate.

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[1] *Report of the American Medical Association Board of Trustees, Legal Interventions During Pregnancy*, 264 J. American Medical Assoc. 2663 (Nov. 28, 1990).

[2] Ira J. Chasnoff et al., *Cocaine Use in Pregnancy*, 313 New Eng. J. Med. 665, 666-69 (1985).

[3] *See supra* n.1

[4] Whitner v. State, 492 S.E.2d 777 (S.C. 1997).

[5] *Id*.

[6] *Id*.

[7] Carol Jean Sovinski, *The Criminalization of Maternal Substance Abuse: A Quick Fix to a Complex Problem*, 25 Pepp. Law Rev. 108 (1997).

[8] *Whitner*, 492 S.E.2d at 777.

[9] *Id*. at 779.

[10] Hall v. Murphy, 113 S.E.2d 790 (S.C. 1960).

[11] Fowler v. Woodward, 138 S.E.2d 42 (S.C. 1964).

[12] State v. Horne, 319 S.E.2d 703 (S.C. 1984).

[13] *Whitner*, 492 S.E.2d at 780.

[14] *Id*. at 781.

[15] *Id*. at 780.

[16] *Id*. at 781.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 783.

[20] Commonwealth v. Pellegrini, No. 87970, Slip op. (Mass. Super.Ct. Oct 15, 1990).

[21] *Whitner*, 492 S.E.2d at 783.

[22] *Id*.

[23] *Id*.

[24] *Id.* at 785.

[25] Cleveland Bd. of Ed. v. LaFleur, 414 U.S. 632 (1974).

[26] *Whitner*, 492 S.E.2d at 785.

[27] *Id.*

[28] Roe v. Wade, 410 U.S. 113 (1973).

[29] Planned Parenthood v. Casey, 505 U.S. 833 (1992).

[30] *Whitner*, 492 S.E.2d at 786.

[31] *Id*. at 788.

[32] People v. Morabito, 580 N.Y.S.2d 843, 847 (1992).

[33] McKinney's Consolidated Laws of New York, Book 39 Section 260.10 of Penal Law: Endangering the welfare of a child (Pocket Part 1998).

[34] *Morabito*, 580 N.Y.S.2d at 847.

[35] Ohio v. Gray, 584 N.E.2d 710 (Ohio 1992).

[36] *Morabito*, 580 N.Y.S.2d at 844.

[37] *See Morabito*, 580 N.Y.S.2d at 845.

[38] *Id*.

[39] *Id*.

[40] Patricia A. Sexton, *Imposing Criminal Sanctions on Pregnant Drug Abusers: Throwing the Baby out with the Bath Water*, 32 Washburn L.J. 413, 414 (1993).

[41] Commonwealth v. Mochan, 110 A.2d. 788, 791 (1955).

[42]U.S. Const. art. I, § 10(1).

[43]U.S. Const. amend. 14, § 1.

[44] Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (quoting United States v. Harriss, 347 U.S. 612, 617 (1954)).

[45] *Casey*, 505 U.S. 833 (1992).

[46] *Roe*, 410 U.S. 113 (1973).

[47] Engelsher v. Jacobs, 157 N.E.2d 626, 627 (N.Y. 1959).

[48] *Whitner*, 492 S.E.2d at 778.

[49] Patricia A. Sexton, *Imposing Criminal Sanctions on Pregnant Drug Abusers: Throwing the Baby out with the Bath Water*, 32 Washburn L.J. 413, 410-30 (1993).

[50] *See* Johnson v. State, 602 So.2d 1288 (Fla. 1992) (discussing the inappropriateness of criminalizing pre-natal drug use).

[51] Victoria J. Swenson & Cheryle Crabbe, *Pregnant Substance Abusers: a Problem that Won't Go Away*, 25 St. Mary's L.J. 623 (1994) (quoting testimony of Lynn Paltrow on behalf of the ACLU of Maryland before the Judiciary Committee of the Maryland House of Delegates (Mar. 13, 1991)).

[52]U.S. Const. amend. 14, § 1.

[53] Stephanie Stone, *Conduct During Pregnancy Harming Fetus may be Prosecuted, South Carolina High Court Holds*, West's Legal News (July 22, 1996).

[54] Marilyn Kaufus, Pregnancy *Negligence Not Prosecuted/law: taking speed and other drugs might be bad for the body, but in California it's typically not treated as a crime*. Orange County Reg., Aug 11, 1996.

[55] *See Drunken Fetus Charges Stay*, NAT'L L.J., Sept. 30, 1996.

[56] Ferguson v. City of Charleston, 186 F.3d.469 (4th Cir. 1999) (ruling in favor of the City of Charleston). The Supreme Court heard the arguments on October 4, 2000 and reversed and remanded on March 21, 2001. 2001 U.S. LEXIS 2460.