

# Controversial Bill Won't Affect Abortion

SUNDAY, 22 JANUARY 2012 08:07 RITA DUNAWAY



## January 2012 Times Dispatch

The 2012 Session of Virginia's General Assembly will begin, quite literally, with controversy. Del. Bob Marshall's House Bill 1 has already created a heated ideological debate by recognizing that life begins at conception and declaring that unborn children and their parents have protectable legal interests.

The philosophical impetus for the bill is obvious to anyone familiar with Marshall's record as a champion of the pro-life movement in Virginia, but many critics are way off base with their allegations that the law would dramatically change abortion law in the commonwealth. In fact, the only practical, immediate effect of the law would be to create a civil cause of action for the wrongful death of an unborn child. In other words, it would enable the natural parents of an unborn child to sue a third party for damages if he or she wrongfully causes the death of their unborn baby.

This cause of action already exists in the majority of states, and it is a natural complement to Virginia's fetal-homicide law. As our laws stand now, while the commonwealth can prosecute a person for homicide for wrongfully taking the life of an unborn child, the baby's parents have no civil legal recourse if the baby is not "born alive." Marshall's bill would correct this statutory incongruence.

Predictably, those who support abortion rights have taken aim at the measure, employing a tried-and-true fear-mongering tactic. By raising a host of allegedly unanswerable questions, they suggest that the bill's passage would result in a parade of horrors. Would the law mean that abortionists and their patients are prosecuted for murder? Would miscarriages be treated as involuntary manslaughter? Would oral contraception become illegal? But these "unanswerable questions" all have an answer, and the answer is: of course not.

**Exhibit A:** An identical law has been on the books in Missouri for more than 25 years, and none of these "sky-is-falling" predictions have come true there. The law was left standing by the U.S. Supreme Court in a 1989 decision, *Webster v. Reproductive Health Services*. Marshall purposefully chose the language of HB1 to avoid any question of its challenging *Roe v. Wade* and because the identical law in Missouri had the desired effect of creating the wrongful-death cause of action for pre-born babies.

**Exhibit B:** This isn't a criminal law. It will have *no* effect on the practice of abortion, which is currently governed by specific statutes describing how and when abortion is legal in the commonwealth. In any situation where a pregnant woman chooses to end the life of her child, these statutes will continue to govern that decision.

Opponents of HB1 have jumped to the conclusion that the bill represents an attempt by Marshall to achieve by legislative fiat the same goals of the "personhood" movement in

states such as Colorado and Mississippi. But Marshall's bill enjoys a legal history and Supreme Court-reviewed pedigree that make these accusations absurd. While the pro-life movement in Virginia may certainly hope to see an end to abortion in the commonwealth someday, that will have to be effected, if ever, by clear, specific legislative action to revise and/or replace existing statutes concerning abortion. It is simply not the goal of HB1.

Moreover, many pro-lifers understand that it is preferable for any desired abortion ban to be in the form of legislation that can address the very issues being raised as alleged "unintended consequences" of HB1 — issues such as how to treat oral contraception, in vitro fertilization, and situations where the mother faces medical complications.

But this bill does not affect abortion, and thus it necessarily reserves those important, difficult questions for another day.

What the law *would* do is to provide a legal remedy for parents whose beloved unborn baby is killed by the negligent or criminal act of a third party. Does anyone out there really think that is a bad idea?

Admittedly, many *will* think it is a bad idea to codify, for purposes of Virginia law, the fact that unborn children are human beings. But the only genuine objections to this must be argued on the basis of moral principles. Undoubtedly, critics of the measure recognize that when we call unborn children what they are — human beings — we must then face the ultimate question of how and why our laws can justly sanction their destruction.

This is an uncomfortable question, and it isn't surprising that those who favor abortion rights would prefer to avoid it. But let's focus on that, the real issue, rather than being sidetracked by fear-mongering hyperbole.



Rita M. Dunaway is a staff attorney at The Rutherford Institute. Contact her at [rita.dunaway@gmail.com](mailto:rita.dunaway@gmail.com) or (434) 978-3888