



February 18, 2008

## An Open Response to the Catholic Bishops of Georgia:

The members of the Board of Georgia Right to Life have been proud of our long and cordial relationship with the Archdiocese of Atlanta and the Roman Catholic Bishops and clergy of Georgia. We have been stalwart allies in the long fight to protect the sanctity of life from the moment of conception until death. We are disappointed, however, with the refusal of the Bishops to support the passage of HR 536, the Human Life Amendment. The Archdiocese of Atlanta and the Bishops have issued several public statements in which they have confirmed their refusal of support, and repeated their conclusion, as a matter of legal effect, that the Human Life Amendment does not provide a "realistic opportunity for ending or reducing abortion." We at Georgia Right to Life strongly disagree with this conclusion, and because of the enormous influence of the Bishops, not only with Catholics, but with people of all faiths, we are compelled to offer this open response to the public communications that have been offered by the Archdiocese of Atlanta and the Bishops of Georgia.

At the outset, it is abundantly clear that the Bishops of Georgia are not refusing their support on theological grounds. How could they? The sponsors of the Human Life Amendment, the members and staff of Georgia Right to Life, and all others who are driven by conscience to protect the sanctity of life are acting strictly in accordance with the teachings of the Church. This is born out in the Archdiocese's statement, *Reflections on Georgia House Resolution 536*, that was recently distributed on Catholic Day at the State Capitol. In *Reflections*, the Archdiocese stated:

It is important to clarify that the church has no disagreement with the moral principles contained in the proposal, namely that the right to life is conferred upon every human being from the very moment of his or her existence. The personhood of every human from the moment of conception is central to Church teaching on the sanctity of human life.

Instead, the real basis for refusal of support is revealed through a series of three public statements issued by the Bishops of Georgia. The first was published as *Statement of the Catholic Bishops of Georgia Regarding Georgia House Resolution 536*, dated January 8, 2008, and included the following recondite statement:

[We] have come to the conclusion that the approach taken by HR 536 to amend the state constitution does not provide a realistic opportunity for ending or reducing abortion. With admiration and respect for those who crafted this legislation, we do not support for the passage of HR 536.

The next public statement from the Bishops was a “clarification” in response to a letter to the editor of the *Georgia Bulletin* in which a resident of the Archdiocese had asked for a further explanation of the Bishops’ prior statement. The response was published on January 31 in the *Georgia Bulletin*:

With expert legal advice in constitutional law and with careful consideration of the goal, potential impact and implications of HR 536, as well as the current make-up of the U.S. Supreme Court, the Bishops of Georgia are not supporting the passage of the state human life amendment. A state human life amendment (HLA) is not an effective means to achieve the goal of the legislation to gain full legal recognition of the right to life of the unborn child and bring an end to all abortion.

This “clarification” was followed by a short discussion of various legal issues and anticipated legal consequences that had been considered by the Bishops in deciding to withhold support for the Human Life Amendment.

The third public statement by the Bishops, *Reflections on Georgia House Resolution 536*, was distributed throughout the Georgia House of Representatives in opposition to the Human Life Amendment. In *Reflections*, the Archdiocese of Atlanta essentially restated the justifications for the Bishops’ refusal to support the Human Life Amendment as previously published in the *Georgia Bulletin*, but with more expansive statements of the current law relating to abortion and predictions of dire legal consequences if the Human life Amendment is incorporated into the Georgia Constitution. And in the closing paragraph of *Reflections*, the Archdiocese went on to state:

Finally, dramatic changes to law and public policy do not occur through chance but through careful and detailed planning. Unfortunately, we do not see sufficient analysis or planning to suggest that the stated goals of HR 536 can be achieved or that dangers can be avoided.

These public statements by the Bishops barely lift the veil, but they point to five motivating determinants for their conclusion that the Human Life Amendment would not be an “effective means” to end abortion: 1) the Bishops’ reliance on expert legal advice; 2) the Bishops’ concern over the potential impact and implications of the Human Life Amendment; 3) the Bishops’ concerns about the current make-up of the Supreme Court; 4) the Bishops’ concern that the time is not right; and 5) the Bishops’ concern that the supporters and sponsors of HR 536 are acting on chance, without careful and detailed planning. Each of these motivating determinants is worth examining in some detail.

### ***The Expert Legal Advice***

The Bishops’ January 31 “clarification” demonstrates on its face a failure to understand the underlying legal purpose of the Human Life Amendment. Despite the Bishops’ statement, the Human Life Amendment is not about establishing when human life begins. The abortionists lost that battle long ago, as medical science has clearly established that human life begins at the moment of fertilization, and ends at death. Even the most ardent supporters of abortion cannot advance a credible scientific or medical argument to the contrary. What the Human Life Amendment does do is provide a platform for a future attack the constitutional core of *Roe v. Wade*, in which the Supreme Court held

that human life in its unborn state was not a “person” within the meaning of the Fourteenth Amendment of the federal Constitution, and therefore not entitled to the most fundamental protection: the right to life. The Bishops were clearly misguided on this basic point. *The Human Life Amendment is not fundamentally about establishing when life begins; it is about extending to the unborn the legal status of constitutional “persons” with a constitutionally protected right to life.*

Every person who advocates for life issues, including the Bishops themselves, should understand and appreciate that Georgia Right to Life and the sponsors of the Human Life Amendment, like the Bishops of Georgia, have also consulted with and received the advice of several respected constitutional law experts and scholars, most notably those at the Thomas More Law Center, which is a not-for-profit public interest law firm “dedicated to the defense and promotion of the religious freedom of Christians, time-honored family values, and the sanctity of human life.” The expert legal advice that we have received is quite different from that reported as the advice the Bishops received from their legal advisors. From the tone and content of the Bishops’ “clarification” and as published in the *Reflections*, the legal advice to the Bishops appears to restate the views of Messrs. Bopp and Coleson of the firm of Bopp, Coleston & Bostrom, which serves as general counsel to the National Right to Life Association (NRLA), all of whom are undoubtedly hostile to efforts to pass the Human Life Amendment and similar state constitutional amendments.

Messrs. Bopp and Coleson have set out the reasons for their opposition in detail in an informational memorandum, which has been published by Georgia Right to Life on the webpage, <http://personhood.net>. All Georgians who have an interest in the legal debate should read this memorandum, along with the accompanying response by Robert J. Muise, Esq. of the Thomas More Law Center. Mr. Muise is highly critical of the Bopp and Coleson memorandum, stating that, “The errors of the [Bopp & Coleson] positions are many – and sometimes quite glaring.” Mr. Muise takes each of the Bopp & Coleson objections, including those repeated by the Bishops, and offers a compelling counter view, which was summed up by Richard Thompson, President & Chief Counsel of the Thomas More Law Center, as follows:

The Human Life Amendment provides Georgia with the best legal means of overturning the central holding of *Roe v Wade*. At the very least, it ensures that Georgia immediately becomes a pro-life state the moment the shackles of *Roe* are broken. For too long the pro-life movement has been dominated by a strategy of “wait”-- too fearful of losing to risk winning. The adoption of this amendment will place Georgia at the forefront of the battle to restore the sanctity of innocent human life. I applaud Georgia’s pro-life citizens and their elected representatives for having the courage of their convictions.

Other advocates for the Human Life Amendment, including other highly regarded constitutional experts and legal scholars, have reached similar conclusions. One of our country’s most renowned constitutional scholars, Charles E. Rice, Professor of Law Emeritus, Notre Dame University, had this to say about the Human Life Amendment:

You and the members of Georgia Right to Life deserve the appreciation of all supporters of the right to life for your forthright presentation of the simple truth of this issue. H.R. 536 is an important step forward in the effort to restore legal

protection for the right to life of all human beings. And the time is right for such an initiative. The increased public concern about abortion, in light of advancing knowledge, makes this an appropriate time to present to the newly configured Supreme Court a clear and measured enactment, such as H.R. 536, to invite the Court to address the issue. There is nothing to lose and everything to gain by offering such a straightforward presentation of the issue for the consideration of the Supreme Court.

Other legal experts with whom Georgia Right to Life has conferred, and who strongly endorse the Human Life Amendment as an effective legal means to reduce or end abortion include Johnathan Scruggs, Litigation Counsel, Alliance Defense Fund, Matthew D. Staver, Founder and Chairman, Liberty Counsel and Dean and Professor of Law, Liberty University School of Law. Even Professor Ronald Dworkin, who has used his enormous influence to further and justify abortion, has conceded that, "If a fetus is a constitutional person, then states not only *may* forbid abortion but, at least in some circumstances *must* do so." More compelling, Justice Blackmun, the author of the majority opinion in *Roe v. Wade*, admitted in the majority opinion itself that if the unborn were "constitutional persons" the case for abortion would "collapse."

### ***Potential Impact and Implications***

Based on the language of the statements in the *Georgia Bulletin* and in *Reflections*, the Bishops were apparently persuaded by their legal advisors that the passage of the Human Life Amendment could have unintended consequences that would be injurious to the right to life movement. Once again, the legal advice to the Bishops echoes the positions of Messrs. Bopp and Coleson as published on the Georgia Right to Life website. And again, we at Georgia Right to Life urge the Bishops to consider carefully the persuasive legal response of Mr. Muise of the Thomas More Institute. Mr. Muise is highly critical of the Bopp and Coleson analysis, which starts with the presumption that any case based on the Human Life Amendment will fail, and in the process, the Supreme Court will bolster its perceived constitutional underpinnings for a woman's "right" to abortion, by abandoning its substantive due process approach as set forth in *Roe v. Wade*, and deciding the matter under the Fourteenth Amendment, based on gender discrimination, which Messrs. Bopp and Coleson see as a true "sky is falling" issue. As Mr. Muise points out, however, this is truly a "remarkable position" that is punctuated with "hyperbole" and "stirring rhetoric." Mr. Muise concisely and convincingly rebuts the gender discrimination argument and emphatically rejects the "sky in falling" scare tactics of Messrs. Bopp and Coleson. Mr. Muise goes on persuasively to rebut each and every one of the other identified unintended consequences predicted by Messrs. Bopp and Coleson, many of which were adopted by the Archdiocese in *Reflections* as good and sufficient reasons to oppose the Human Life Amendment.

The Bopp and Coleson memorandum further discloses a peculiar and disturbing admission of why NRLA and its general counsel (Bopp and Coleson) so ardently oppose the Human Life Amendment. They draw a questionable analogy between prohibition and abortion, and then make the astonishing claim that, "...wise leaders recognized from the beginning that one of their foremost tasks was to keep abortion alive as an issue," and presumably, just as the Eighteenth Amendment ended prohibition and made it a "dead issue," a loss of a direct constitutional challenge to abortion would so enshrine the right to abortion that it could never be overturned, and the abortion movement, like the temperance movement, would accept the matter as a dead issue and die out. Based on

the Bishops statements in *Reflections*, they have apparently bought into this argument. We at Georgia Right to Life have not, and we emphatically disagree with the equation of abortion and the life movement to prohibition and the temperance movement. The comparison is wholly unwarranted and dangerous; it trivializes the right to life movement; and it ignores the evil reality that “keeping abortion alive” means killing unborn human beings.

Messrs. Bopp and Coleston have always been heroes in the right to life movement, and we at Georgia Right to Life admire and respect them for their long service to the cause of life. In fact, until recently, Mr. Bopp was a strong proponent for confronting *Roe v. Wade* with a constitutional case based on a Human Life Amendment. Mr. Bopp is the author of the seminal text on the subject, *RESTORING THE RIGHT TO LIFE; THE HUMAN LIFE AMENDMENT* (1984), and he continues to support a Human Life Amendment to the federal Constitution, as do the Bishops of Georgia. We regret that Mr. Bopp and the Bishops of Georgia do not agree that our efforts to establish the “personhood” of unborn children under our the Georgia Constitution will ultimately lead to the recognition of those same unborn children as “persons” under the federal Constitution. We and the legal advisors upon whom we have relied have a profoundly different view of the law and the potential for using the Human Life Amendment as the vehicle for overturning *Roe v. Wade*. We pray that we are right, and we hope that despite their opposition, the Bishops of Georgia will pray for our success.

### ***The Current Make-up of the Supreme Court***

Like Messrs. Bopp and Coleson, the Bishops have expressed serious concerns about the current make-up of the Supreme Court. Mr. Muise’s observations on this issue are instructive. He states, “As an initial matter, based on the current makeup of the Court it is *most* likely that if the Court were to reverse *Roe* it would do so by returning the issue to the states.” This is the constitutional punch that has been telegraphed by both Justices Scalia and Thomas, and in Mr. Muise’s judgment, it is the best argument to tip the scales with Justice Kennedy. Hopefully, President George Bush’s two appointees, Justice Alito and Chief Justice Roberts will sign on to the argument in favor of federalism and a constitutional recognition of the right of a state to extend to unborn children the most fundamental of all rights: the right to life. This would give the pro-life movement the five votes needed to overturn *Roe v. Wade*.

Given the current political landscape, the right to life movement may in fact have its *best chance now* with this Supreme Court of any other chance that it may be given in this generation or the next. But in order to achieve this result, *the Court must be given the chance*. Without the chance to rule, no ruling can be forthcoming, and it is simply impossible for the Bishops of Georgia to predict that a future Court would be less hostile to human life than the present Court.

Moreover, and extremely important for the right to life movement, briefs that clearly and unequivocally assert the right of the people of Georgia to define the universe of those entitled to the constitutional protection of the right to life would offer a powerful case, as would the argument that each human life that is accorded protection under state law as a legal “person” must be accorded legal protection as a “person” under the federal Constitution. The paramount right to protect, of course, is the right to life. And even if the case were lost, it could frame the legal and moral issues in such a way that the case would powerfully mold public opinion and ultimately impact the political landscape in a way that might make a federal constitutional amendment a real possibility. Moreover, it would provide a constitutional basis in Georgia for prohibition of abortion if *Roe v. Wade* were subsequently overturned on other grounds unrelated to the Human Life Amendment.

### ***The Time is Not Right***

Granted, as Messrs. Bopp and Coleson and the Bishops of Georgia assert, the most effective means to achieve the end of abortion in the United States would be through a federal constitutional amendment. At the present time, however, and despite the Bishops' promise of continuing support for a federal constitutional amendment, there is no realistic prospect for that happening. Even the Bopp and Coleson memorandum acknowledged this reality: "[P]rospects for ... [obtaining passage of a federal constitutional amendment] ... now or in the near future are *nonexistent* in light of current political realities." [emphasis added]

Judie Brown of the American Life League, who is a regular contributor to discussions of life issues, particularly at the Catholic website, [ewtn.org](http://ewtn.org), has characterized the Georgia Bishops' refusal of support as follows: "The Bishops who oppose state personhood amendments are simply adhering to the philosophy of the National Right to Life Committee which argues that 'the timing is not right.'" Does this mean that we should abandon our efforts? We loudly and unequivocally answer, "Absolutely not!" When will the timing be right? We count time on this issue not by the calendar, but by the loss of human lives. Every day abortion remains alive; it results in the killing of innocent life. We are already at 50 million killed; how many more lives can we condone killing in order to "keep the issue alive" until the time is right?

### ***Chance and Planning***

The inescapable message to be drawn from the closing paragraph of *Reflections*, is that the Bishops believe that the supporters and sponsors of HR 536 are acting on chance, carelessly and without planning. The sponsors and supporters HR 536 have been careful, responsible and thoughtful at all stages of this process. As discussed above, they have consulted with recognized constitutional experts; they understand fully the implications of their actions; and they have sought and obtained extensive advice from legislators, religious groups, and members of the scientific and medical community. Because they reached a conclusion with respect to the legal issues (serious though they may be) that is different from that of the Bishops of Georgia is no basis for an accusation (implied, if not expressly stated) that the proponents of HR 536 are loose cannons who don't understand the implications of their actions. Nothing could be further from the truth.

### ***Withholding Support vs. Obstruction***

Despite the Bishops' often repeated statements of "admiration" and "respect" for those who crafted HR 536 and a pledge of support of all legally feasible means for bringing about an end to legalized abortion, many of the faithful of the Archdiocese have been left wondering whether Catholics are being exhorted by their Bishops to refrain from proactive support of the Human Life Amendment. Certainly, the question was valid, although most reasonable people would not have read such a prohibition into the Bishops' early statements, although many did, and they resigned from the fight based on their belief that their shepherds in faith – the Bishops of Georgia – demanded it as a matter of obedience to their faith leadership.

It has now become clear that this more restrictive reading may be exactly what the Bishops of Georgia intended, at least with respect to the clergy and parish Pro-Life Committees of the Archdiocese. The Bishops have instructed the Priests for Life to withdraw altogether from the fight, not to support the legislative effort, and not to participate in any public demonstration of support. Furthermore, the Archdiocese has recently issued *Guidelines for Pro-Life Committees*, in which the Archdiocese requires that all "archdiocesan public policy efforts" relating to life issues be coordinated with and

approved by the Pro-Life Office of the Archdiocese. The Bishops should, at a minimum, make it known that lay Catholics of Georgia may make their own informed decisions about whether to support the Human Life Amendment. Many would certainly accept the teaching of the Bishops and stay out of the fight; others, however, would follow their consciences in a different direction, despite the Bishops' opposition.

### ***A Call for Reconsideration***

Granted, the Human Life Amendment may fail, and if it does, it will be due, at least in part, to the refusal by the Bishops of Georgia to support the warriors on the front line for the protection of the sanctity of life. As Sir Edmund Burke, observed, "[A]ll that is necessary for the triumph of evil is that good men do nothing." More importantly, the refusal of support from the Bishops is being used as a powerful tool by the pro-abortion lobby. Many legislators and members of the executive branch who otherwise express support for the efforts of the sponsors of HR 536, who proclaim themselves staunchly pro-life, and who would otherwise support the passage of the Human Life Amendment, use the Bishops' refusal of support as a salve to their own consciences in refusing to support HR 536. Even more damaging has been the Bishops' directive to clerical groups, such as Priests for Life and parish Pro-Life Committees, to withdraw from the field and not publicly express support the Human Life Amendment in any way. In doing this, the Bishops have moved from withholding support, to undermining actively the effort to put the issue of abortion to a constitutional referendum in Georgia. We at Georgia Right to Life therefore call on the Bishops of Georgia, in the name of Christ and the slaughtered innocents, give us your support! If not your support, then at least recognize publicly that lay Catholics of the Archdiocese are not bound to obedience on this issue, but after taking into account the teachings of the Bishops, may follow their own consciences.

All of us who are working for the passage of the Human Life Amendment recognize that we may not succeed this time, or even the next time, or the time after that. But we will not quit; we know that the Human Life Amendment frames the legal issues in a way that will increase public awareness of the injustice of current law and ultimately lead to an end to abortion. We know also that the Human Life Amendment will constitutionally test the power of the Supreme Court to substitute its own concepts of justice and morality for those of the people, and it will challenge the Court's power to impose upon us an ethic that permits the taking of the lives of those human beings who are the weakest and most defenseless among us. Even if we fail temporarily, we will have run the race, fought the good fight, and kept the faith. We reach out to all who believe in the sanctity of life to join us in our ministry.

Sincerely,



Daniel C. Becker

President