

August 29, 2016 – Guam’s Abortion Laws

A key question for us on Guam is whether our current abortion laws meet the terms and conditions set down by the U.S. Supreme Court in cases such as *Roe v. Wade* and the recent decision of *Whole Woman’s Health v. Hellerstedt*. My guess is that they do, but the road to compliance has been bumpy, to say the least.

In 1978, the Guam Legislature enacted a criminal law that regulated abortions. The apparent goal was to bring Guam’s abortion laws into compliance with the *Roe v. Wade* decision. Tracking the Supreme Court’s trimester approach to regulating abortions, the law provided that an abortion on Guam could be performed within the first 13 weeks of pregnancy. Between the 14th to 26th weeks, an abortion was permitted if the unborn child faced a “grave physical or mental defect,” or if the pregnancy resulted from rape or incest. The law also permitted an abortion at any time during the pregnancy if there was substantial risk to the mother’s health.

In early March 1990, the Guam Legislature unanimously passed a new abortion Bill introduced by Senator Elizabeth Arriola. On March 19th, Governor Joseph Ada signed the bill into law. It replaced Guam’s former statute with the nation’s most restrictive abortion law. The law prohibited abortions at all stages of pregnancy, except when the mother’s life was at risk. The law also prohibited anyone from encouraging an abortion or giving out information about the process.

Janet Benshoof, who was the director of the American Civil Liberty Union’s Reproductive Freedom Project, had traveled to Guam to lobby Governor Ada in opposition to the pending abortion bill. Addressing the Guam Press Club the day after Ada signed the bill into law, Benshoof told the audience that “Women who are pregnant, seeking an abortion, should leave the island. I encourage them to go to Honolulu.” She was immediately arrested for “soliciting” women to get an abortion and faced a \$1,000 fine and a year in jail. The event propelled Guam into the national spotlight.

A few days later, Benshoof filed suit in the Guam District Court asserting that Guam’s abortion law was unconstitutional. In a classic twist of fate, Benshoof’s lead counsel was Attorney Anita Arriola, Senator Elizabeth Arriola’ daughter! The national press had a heyday covering this mother versus daughter drama.

Ultimately, the District Court found the Guam law unconstitutional. The Ninth Circuit backed this decision, also finding the law infringed on a woman’s right of personal privacy. The Supreme Court refused to hear the case, thus reinstating Guam’s former abortion law.

Subsequent Guam laws require doctors to provide women considering an abortion with a lengthy checklist of information, including available alternatives, and to delay the abortion for at least 24 hours after giving out this information.

Doctors are required to maintain and submit detailed abortion reports to Vital Statistics. The procedure known as partial-birth abortion is prohibited, and minors are required to obtain parental permission before pursuing an abortion. In addition, no person or non-profit entity can be forced to assist in administering an abortion.

Based on the decisions we've reviewed over the last several weeks, I believe that none of these laws would be considered an "undue burden" on a woman's right to seek an abortion, and all would probably pass judicial scrutiny.