



Much has been made about the recent arrests of late abortionists Stephen Brigham and Nicola Riley on charges of murder. However, few analysts have properly understood how these charges have come about and what aspect of Maryland law allows the Cecil County State's Attorney's Office to prosecute.

First and foremost, despite what some media outlets have reported, abortions late in pregnancy are LEGAL in the state of Maryland. According to Maryland Law, Health-General §20-209 the State is explicitly prohibited from interfering with a woman's decision to have an abortion prior to the fetus achieving viability, OR at ANY time during the pregnancy if the abortion is considered "necessary to protecting the life or health of the woman."

The issue with this piece of Maryland law is the term "health". Without a specific definition for health, it includes all forms of health- physical and mental. Unfortunately, in *Doe v. Bolton*, the companion case to *Roe v. Wade*, mental health was defined as "depriving a woman of her preferred lifestyle" and requiring her to "endure the discomforts of pregnancy." This definition requires abortion on demand because if a woman is pregnant, and would rather not be, she inevitably would have her preferred lifestyle deprived if not allowed an abortion. Likewise, if a woman is pregnant, regardless of her desire to be pregnant, she will have to endure the discomforts of pregnancy. Therefore, she has an ultimate right to abortion under U.S. law. It is not a state prohibition on late abortions which leads to this indictment.

The issue is Criminal Law §2-103-- Maryland's fetal homicide law. This law was specifically crafted to NOT impact abortion in any way. In fact, in a law with sections (a) through (h), sections (d), (e), (f), and (g) were added as amendments by pro-abortion groups in 2005 as a safeguard to ensure the law would have no impact on abortion whatsoever. And despite these criminal charges, the law and court precedent are unanimous in the law's inapplicability to abortion.

So why is this prosecution permissible? There is still debate over whether the charges will hold. But the justification the Cecil County State's Attorney will use is the wording of section (e). It reads, "Inapplicable to medical professionals providing lawful care. -- Nothing in this section subjects a physician or other licensed medical professional to liability for fetal death which that occurs in the course of administering lawful medical care." The issue at hand is that abortionists Stephen Brigham and Nicola Riley were NOT administering lawful medical care in Maryland not because abortions of any gestational age are illegal in Maryland, but because Stephen Brigham was practicing medicine without a medical license and Dr. Riley, while licensed, was assisting an unlicensed person practicing medicine illegally. Therefore, Cecil County argues section (e) does not grant immunity in this instance and a prosecution for intentionally causing the death of a viable fetus in accordance with the law's requirements is justified.

Regardless of the outcome for this case, it is important to note the following: Criminal Law §2-103 is not designed to prosecute abortionists, even if they abort viable unborn children. Such abortions are legal in Maryland and it is an area of law which we must work to change into the future to respect all innocent human life. Second, Criminal Law §2-103 is woefully inadequate for it's intended purpose: protecting pregnant women from violence and allowing family's facing terrible tragedy to seek justice in the criminal justice system. This is because there has been only one successful prosecution since 2005 (when the bill went into effect) despite numerous examples of violence against pregnant women, and about 86% of murders of pregnant women in Maryland occur prior to the historical measures of viability in Maryland, preventing prosecution. Maryland Right to Life has advocated correcting this loophole for violent criminals in the past and will continue to do so into the future.