

## Courts

### Legal Actions Across Our State and Nation

compiled by:  
**Alysse  
 ElHage,  
 M.A.**

*How to reduce abortion continues to be a hot topic in North Carolina. In 2011, there were a number of lawsuits filed that were related to the issue of abortion and/or defending unborn life. Four important lawsuits—two of which involve recently passed legislation by the North Carolina General Assembly—are detailed here, along with the latest on the ongoing battle over public prayer in Forsyth County, which could ultimately be decided by the U.S. Supreme Court. The decisions and bills referenced in this piece are current as of the mid-December publication date.*

#### Judge Halts “Choose Life” Plates

Even though over 300 applications for the “Choose Life” specialty license plates have been submitted by North Carolina motorists to the State Department of Motor Vehicles (DMV) as required by law, the DMV is currently prohibited from producing the plates, due to a federal judge’s ruling in late November. United States District Judge James Fox issued a preliminary injunction on November 28 that bars the State from producing the “Choose Life” specialty license plates during an ongoing lawsuit brought forth by abortion advocates.<sup>1</sup> In a lawsuit filed in September challenging the constitutionality of the “Choose Life” plates, the American Civil Liberties Union of North Carolina Legal Foundation, (ACLU-NCLF) argues that the General Assembly violated the First Amendment when it authorized a “Choose Life” license plate

without also authorizing a plate supporting abortion.<sup>2</sup> The ACLU-NCLF asked the court to issue a preliminary injunction to prevent the issuance of the specialty plates until the case is decided, and Judge Fox granted that request.

The lawsuit filed by the ACLU-NCLF alleges that the State is “engaging in viewpoint discrimination” by not also producing a pro-abortion plate. It centers on the General Assembly’s rejection this summer of several proposed amendments to **HB 289—Authorize Special Plates** (the bill that authorized a “Choose Life” plate), which would have added specialty plates with the words, “Trust Women, Respect Choice” or “Respect Choice” to the license plates available for motorists to purchase.

To date, 30 states, including North Carolina, have approved “Choose Life” specialty license plates. North Carolina’s plate was finally approved by the General Assembly as one of several specialty plates approved in HB 289, after nine years of legislative inaction on similar measures.

#### Pro-Life Demonstrations Allowed

A group of pro-life advocates in Jacksonville, North Carolina, will be allowed to resume praying and picketing in front of the city’s only abortion clinic, while city attorneys modify a public ordinance that the city had previously used to prohibit them from doing so.<sup>3</sup> The city’s decision to voluntarily modify the ordinance is part of an agreement reached in November 2011 between city attorneys and the Thomas More Society, a Christian legal group that is representing the pro-life citizens in a lawsuit that challenges Jacksonville’s current “Parade and Public Assembly Ordinance” as unconstitutional. On November 21, after a hearing in the case, U.S. District Judge Terrence W. Boyle issued a preliminary injunction that prohibits the city from using its current ordinance against the pro-life citizens, and allows the citizens to resume their peaceful demonstrations outside the abortion clinic until city attorneys can draft a new ordinance.<sup>4</sup>

The city of Jacksonville had previously used the ordinance to forbid a group of pro-life citizens led by Dr. Bartolo Spano from peacefully protesting and praying at the front entrance to the Crist Clinic for Women, Jacksonville’s sole abortion clinic. City police ordered the group to move their demonstration to another location a considerable distance away from the abortion clinic. In a motion filed in the U.S. District Court for the Eastern



District of North Carolina on November 1, the Thomas More Society argued that the city of Jacksonville's ordinance:

chills the constitutionally protected speech of anyone wishing to communicate political or religious beliefs in the City's public places. It is unconstitutional on its face because it does not exempt small groups from its reach, does not afford 'ample alternatives for communication,' and does not contain 'narrow, objective, and definite' standards to guide the licensing authority.

## College Challenges Contraceptive Mandate

Belmont Abbey, a small Catholic college near Charlotte, North Carolina, is suing the federal government, challenging a mandate in the healthcare reform law that forces the college to pay for contraceptive drugs that may cause abortions as part of its group insurance plan. Belmont Abbey College has retained the services of The Beckett Fund for Religious Liberty, which filed the complaint against the U.S. Department of Health and Human Services (HHS) on November 10.<sup>5</sup> The complaint in *Belmont Abbey College v. Department of Health and Human Services* specifically challenges an August 2011 mandate issued by HHS that requires public and private group health plans to include:

[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity.<sup>6</sup>

It notes that FDA approved contraceptives include drugs, such as Plan B and Ella, that Belmont Abbey as a Catholic institution considers to be abortifacients. The complaint argues that the mandate violates Belmont Abbey's First Amendment rights to freedom of religion and speech, and that it is "illegal because it was imposed ...without prior notice or sufficient time for public comment."

The complaint explains that:

the government issued an administrative rule ('the Mandate') that runs roughshod over Belmont Abbey College's religious beliefs, and the beliefs of millions of other Americans by forcing them to pay for contraception, sterilization, abortion, and related education and counseling. The government's Mandate unconstitutionally coerces Belmont Abbey College to violate its deeply-held religious beliefs under threat of heavy fines and penalties. The Mandate also forces Belmont Abbey College to fund government-dictated speech that is directly at odds with its own speech and religious teachings.

In the complaint, Belmont Abbey acknowledges that HHS allows an exemption from the mandate for certain religious organizations, but notes that this exemption is too narrow to cover most religious organizations, including religious colleges and universities, because it:

excludes only certain religious employers whose purpose is to instill religious values and that employ and serve only individuals of their same faith.

## Informed Consent Law Defended

The North Carolina Attorney General's office filed a motion in federal court on November 9, asking that a lawsuit challenging the state's newly-enacted Women's Right to Know Act (WRTK Act) be dismissed due to the plaintiffs' lack of "legal standing to sue over the constitutional rights of abortion patients."<sup>7</sup> The lawsuit, which was brought forth by the American Civil Liberties Union of North Carolina Legal Foundation, Planned Parenthood of Central N.C., and the Center for Reproductive Rights, was filed September 29 in the U.S. District Court for the Middle District of North Carolina. In the lawsuit, the groups argue that the WRTK Act's 24-hour waiting period and requirement that abortion providers perform, display, and describe an ultrasound of the baby violate the rights of health care providers and women. More specifically, they contend that the Woman's Right to Know Act:

threatens irreparable injury to Plaintiffs and their patients and violates their rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution to due process, free speech, privacy, liberty, bodily integrity, and freedom from unreasonable searches and seizures.<sup>8</sup>

In October, a federal district court judge ruled that a portion of the Act not take effect as sched-

**Belmont Abbey acknowledges that HHS allows an exemption from the mandate for certain religious organizations, but notes that this exemption is too narrow to cover most religious organizations**

uled. U.S. District Judge Catherine Eagles issued a preliminary injunction, prohibiting enforcement of the portion of the law that would require an ultrasound and the presentation of certain information relating to the ultrasound to a woman before she could procure an abortion.<sup>9</sup> Judge Eagles did not rule on the merits of the case, but rather, issued the preliminary injunction to prevent the specified portion of the law from going into effect on October 26, 2011 because she found that those bringing the lawsuit “are likely to succeed on the merits of the First Amendment challenge” to the law. She went on to explain that they had “demonstrated that the Act likely poses a direct threat to their fundamental constitutional rights” and “that they would be irreparably harmed.” For these reasons, Judge Eagles enjoined the State from enforcing section 90-21.85 of the Act. The other portions of the Act, including the 24-hour waiting period and the requirement that women be provided with extensive information related to medical risks, the age of the child, and the availability of other resources, went into effect as scheduled on October 26, 2011.

In related news, two national pro-life groups are seeking to help defend the informed consent law on behalf of a group of North Carolina physicians, post-abortive women, and pregnancy resource centers. On November 8, the Alliance Defense Fund (ADF) and the Jubilee Campaign’s Law of Life Project filed a motion to intervene in the lawsuit challenging the WRTK Act.<sup>10</sup> Those seeking to join the suit include Dr. John Thorp, an obstetrics and gynecology professor at UNC-Chapel Hill; Dr. Gregory J. Brannon, an obstetrician in Cary, who serves as the medical director for Hand of Hope Pregnancy Center in Fuquay-Varina; and Dr. Martin J. McCaffrey, a UNC-CH professor of pediatrics who counsels women about high-risk pregnancies (with the three doctors filing “on behalf of themselves, individually, as licensed health care providers, and their patients”). Additionally, the Asheville Pregnancy Support Services and the Pregnancy Resource Center of Charlotte are seeking to join the defense of the Act, along with four women, who filed “on behalf of themselves, individually, as mothers, parents and former abortion patients.”

In his declaration to the court, Dr. Thorp clearly summarized one of the primary arguments the parties are giving in support of the informed consent law, when he wrote:

Providing for and obtaining a woman’s full, voluntary and informed consent prior to any medical intervention is the standard of care throughout medicine.” He continued, “Informed consent is integral in all medical practice. It respects the patient’s right to know and to be fully informed and thus protects against unwanted medical intervention.”<sup>11</sup>



## Forsyth County Petitions U.S. Supreme Court

Attorneys representing the Forsyth County Board of Commissioners have filed a petition with the United States Supreme Court, asking it to reverse a federal appeals’ court ruling that found the county’s public prayer policy unconstitutional because it allows prayers to specific deities.<sup>12</sup> Forsyth County is represented pro bono in the important religious freedom lawsuit—*Joyner v. Forsyth County*—by the Alliance Defense Fund (ADF). The case involves a legal challenge to the county’s public invocation policy that was brought in 2007 by the American Civil Liberties Union (ACLU) and Americans United for the Separation of Church and State on behalf of several Winston-Salem residents, who claim that the prayer policy violates the Establishment Clause of the U.S. Constitution.

The ADF petition asks the Supreme Court to review a July 2011 decision by a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit, which upheld a lower court ruling that found the policy unconstitutional, and enjoined the county from continuing to implement it as written. In the petition, which was filed on October 27, 2011, ADF argues on behalf of Forsyth County that the Fourth Circuit’s “decision distorts this Court’s precedent, imposes an unwieldy requirement that government police the language of prayers, and conflicts with the Eighth and Eleventh Circuits’ decisions holding that substantively identical policies do not violate the Constitution simply because invocations may include ‘sectarian’ references.”<sup>13</sup> Since 2008, federal courts in four other circuits have ruled on the question presented here. The Fourth Circuit conflicts with each one by demanding government regulation of indeterminately-defined ‘sectarian’ references in legislative prayer.” ❖

*Alyse ElHage, M.A. is associate director of research for the North Carolina Family Policy Council. For a footnoted version of this article, please visit [ncfamily.org](http://ncfamily.org).*

ENDNOTES:

- 1) “Judge Halts License Plates,” NCFPC Special Report, 11/30/11, as found at: <http://www.ncfamily.org/stories/111130s1.html>. See also: ACLU of NC, Press Release, “Federal Court Blocks Production of Discriminatory ‘Choose Life’ License Plate,” 11/28/11, as found at: <http://www.acluofnc.org/?q=federal-court-blocks-production-discriminatory-“choose-life”-license-plate>
- 2) ACLU of NC v. Conti, Verified Complaint, September 2011: <http://www.acluofnc.org/files/ACLU%20v.%20Conti%20-%20Verified%20Complaint.pdf>
- 3) “Abortion Clinic Demonstrations Allowed,” NCFPC Special Report, 11/28/11, as found at: <http://www.ncfamily.org/stories/111128s1.html>
- 4) Preliminary Injunction, Spano et.al., v. City of Jacksonville, 11/21/11, as found at: <http://www.scribd.com/doc/73399506/Jacksonville-Preliminary-Injunction>
- 5) “College Challenges Contraceptive Mandate,” NCFPC Special Report, 11/14/11, as found at: <http://ncfamily.org/stories/111114s1.html>
- 6) Complaint, Belmont Abbey College v. Department of Health and Human Services, 11/10/11: <http://www.becketfund.org/wp-content/uploads/2011/11/HHS-Complaint-Final11.10.11.pdf>
- 7) Raleigh News and Observer, “State Seeks Dismissal of Abortion Lawsuit,” Posted: 11/10/11, as found at: [http://projects.newsobserver.com/under\\_the\\_dome/state\\_seeks\\_dismissal\\_of\\_abortion\\_lawsuit#ixzz1dOv4wbiH](http://projects.newsobserver.com/under_the_dome/state_seeks_dismissal_of_abortion_lawsuit#ixzz1dOv4wbiH)
- 8) “Informed Consent Law Challenged,” NCFPC Special Report, 09/29/11, as found at: <http://ncfamily.org/stories/110930s1.html>. See also: Complaint: <http://www.acluofnorthcarolina.org/files/Complaint%20-%20filed%20copy.pdf>
- 9) Preliminary Injunction, Stuart v. Huff, 10/25/11: [http://www.wral.com/asset/news/state/nccapitol/2011/10/25/10298528/Woman\\_s\\_Right\\_to\\_Know\\_Act\\_preliminary\\_injunction.pdf](http://www.wral.com/asset/news/state/nccapitol/2011/10/25/10298528/Woman_s_Right_to_Know_Act_preliminary_injunction.pdf)
- 10) ADF Motion to Intervene in Stuart v. Huff: <http://www.adfmedia.org/files/HuffMTI.pdf>
- 11) “Declaration of John M. Thorp, MD, in Support of Proposed Defendant Intervenors’ Motion to Intervene” in Stuart v. Huff, 11/7/11, as found at: [http://www.lawoflifeproject.org/sites/default/files/pdf/NC/Decl/Thorp\\_MI\\_Decl.pdf](http://www.lawoflifeproject.org/sites/default/files/pdf/NC/Decl/Thorp_MI_Decl.pdf)
- 12) “ADF Attorneys Ask U.S. Supreme Court to Review Forsyth County Prayer Case,” ADF Press Release, 10/27/11, as found at: <http://www.adfmedia.org/News/PRDetail/4759>
- 13) Petition for Writ of Certiorari, Forsyth County v. Joyner, 10/27/11, as found at: <http://www.adfmedia.org/files/Forsyth-Petition.pdf>