

[J-43-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 111 MAP 2005 |
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| Appellee | : | Appeal from the Order of the Superior |
| | : | Court entered on January 14, 2005, |
| | : | reargument denied March 18, 2005, at No. |
| v. | : | 351 MDA 2004, affirming the Order of the |
| | : | Court of Common Pleas of Luzerne |
| | : | County, Criminal Division, entered on |
| MATTHEW BULLOCK, | : | November 17, 2003, at Nos. 893, 894 of |
| | : | 2003. |
| | : | |
| Appellant | : | |
| | : | ARGUED: October 18, 2006 |

CONCURRING OPINION

MR. JUSTICE BAER

DECIDED: December 27, 2006

I join the decision of the Majority in full. I write separately only to emphasize certain matters implicit in our decision which I believe are of particular importance and, thus, are worth reiteration.

As the Majority correctly observes, the United States Supreme Court, through Roe v. Wade, 410 U.S. 113 (1973), and its progeny, has clearly concluded that states have an important and legitimate interest in protecting fetal gestation from the outset of a pregnancy through the birth of a child. See generally Maj. Slip Op. at 9-10. The legislature was, therefore, within its prerogative in enacting the Crimes Against the Unborn Child Act (the "Act"), 18 Pa.C.S. §§ 2601-2609, in furtherance of that interest. In doing so, the legislature sought to criminalize certain acts that would result in the cessation of the gestational process. As aptly noted by the Majority, however, the legislature's effort in this regard, "does not purport to define the concept of personhood or establish when life as a human

being begins and ends; rather, it imposes criminal liability for the destruction of a human embryo or fetus that is biologically alive.” Maj. Slip Op. at 6 (citing State v. Merrill, 450 N.W.2d 318, 324 (Minn. 1990)) (“People are free to differ or abstain on the profound philosophical and moral questions of whether an embryo is a human being, or on whether or at what stage the embryo or fetus is ensouled or acquires ‘personhood.’ *These questions are entirely irrelevant to criminal liability under the statute.*” (emphasis added)).

Accordingly, I stress that, in my view, our decision today upholding the legislation in question should not, and cannot, be interpreted as an attempt in any way to define, generally, a fetus as a life-in-being or as endorsing the notion that the interruption of the reproductive process is the killing of human life. Roe and its progeny remain the law in this nation and any attempt, based upon the legislature’s choice of language in the Act, to undermine its constitutional imperative is unavailing