‘Wrongful Birth’ Lawsuits Set Dangerous Precedent

A Texas legislator is offering a bill to end ‘wrongful birth’ lawsuits, when parents sue their doctors because their children are born with disabilities.

Ask any woman who’s had a baby, and they’ll likely tell you that obstetrics is not an exact science. While advancements in prenatal care for both mother and child have made tremendous medical and technological strides, some things – like calculating an exact due date or pinpointing the trigger that sends a woman into labor – are still a guessing game. My eldest was originally due around mid-February, 2007. Then late February. By March 1, 2007, I was a bloated, waddling, uncomfortable mess with an induction date set for the week of March
12. He would be born 9 days later, March 10, 2007, via emergency C-section, after several hours of labor that began stressing his little body. He was born happy and healthy, if not slightly overcooked.

Some parents, unfortunately, do not have as good an outcome. Their babies are born with genetic or developmental conditions that range from mild and fixable (e.g. cleft palate) to severe – cognitive and physical disabilities. Many genetic and developmental abnormalities may be detected with prenatal screening; and with genetic testing and prenatal screening, we are giving parents a glimpse into the health and well-being of their future children. But remember the part about obstetrics not being an exact science? It applies to genetic testing as well. Which is why the pro-life and pro-abortion community are focused on a case out of Texas, where the state Senate is poised to vote on Senate Bill 25, which would prevent parents from suing their doctors for ‘wrongful birth’ in the event their baby is born with a disability.

**At the center of the case is Dortha Briggs and her daughter, Lesli.** Almost 50 years ago, Briggs was pregnant and contracted rubella. The disease crossed the placenta and Lesli was born with the virus having damaged her bone cells, nerve cells, skin cells; Lesli was left blind, deaf, and severely brain-damaged. Lesli, who has lived in a group home since she was 31, has had more than 20 operations in her relatively short life, and can only communicate with her mother via touch.

When Lesli was born, Briggs sued her doctor, claiming if he had properly diagnosed the rubella, she would have had an abortion. The Texas Supreme Court ruled in her favor, a stunning decision that set precedent just two years after the passage of *Roe v. Wade*.

**This year, Texas state senator Brandon Creighton introduced legislation** that would undo the ruling spurred by Brigg’s lawsuit. Creighton says the decades-old ruling “sends the message that there are wrongful births. There are no wrongful births.”

Critics of the bill say it gives doctors license to lie and “impose...religious beliefs”
on a woman if the doctor thinks an unfavorable prenatal diagnosis would lead a woman to have an abortion. This claim, on its face, is absurd. There is nothing now, even in the presence of the court’s 1975 ruling, that would stop a doctor from lying to a patient about a prenatal diagnosis. Doctors have an ethical obligation to be honest with their patients... how would a law prohibiting the abortion of a disabled child change that ethical standard? It wouldn’t.

And given that many women report tremendous pressure to abort their children when faced with difficult prenatal diagnoses, it’s almost downright laughable. In parts of Europe, the abortion rate for babies diagnosed with Downs Syndrome is nearing 100%. Yet studies and reports show that prenatal screenings are not without errors. This story, from NBC, is just one example. Parents Zachary Diamond and Angie Nunes were told by their doctor that a blood test was 99% accurate in predicting their unborn son had Trisomy 18 – a genetic abnormality that’s almost always fatal. After having another screening and 16-week ultrasound, Diamond and Nunes were told Nunes was carrying a healthy baby. Their son, Solomon, was born healthy.

The story notes that some of the most popular prenatal screening tests can be wrong up to 50% of the time. One company reported a 6.2% abortion rate based on its screenings. Researchers at the University of Washington note that noninvasive blood tests may be skewed by extra DNA on the mother’s own chromosomes. Medical errors are the third leading cause of death in the United States, according to researchers.

Yet it’s likely that hundreds, if not thousands, of women had abortions based on faulty genetic screenings, when there’s a 50-50 chance the test on which those women based that decision is wrong.

Not only do we have to contend with the very real fact that prenatal screenings aren’t always accurate, but we have to face and confront the mentality behind such “wrongful birth” lawsuits, and the dangers that mentality poses to anyone with a disability.
“Wrongful birth” lawsuits essentially say that persons with disabilities are not human beings, but burdens, things to be disposed of because they inconvenience others.

No parent wants their child to be disabled. It is a devastating, life-altering event that takes all the plans you had of a healthy child and throws them out the window. It requires tremendous sacrifice and hard work to care for a disabled child – sometimes for the rest of your life. Children with Downs Syndrome can grow up to be happy and healthy, independent adults. Trisomy 18 or other genetic abnormalities – like the rubella that disabled Lesli – can lead to permanent disabilities that require far greater care. Other conditions are treatable, and curable, but require significant medical intervention.

But let’s say you have a healthy baby and, when that child is 10, she gets into an accident that leaves her disabled. Doctors do their best to treat your child, yet she’s left with some mental and physical disabilities resulting from her accident. “Wrongful birth” lawsuits set the precedent that we can say this child is also just as disposable as the unborn child with an unfavorable prenatal diagnosis. That we can sue the doctor for giving us a disabled child.

We already see that in the UK, where parents are fighting to treat their son who doctors say is “extremely unwell” – courts are now hearing whether or not life support for the child will be discontinued despite the parents raising money to come to the US for treatment. There is also an uptick in support for legal assisted suicide, something the disabled and their advocates fear. Writing at LifeNews.com, Stephanie Woodward (who was born with a physical disability) says, “Legalized assisted suicide has a disproportionate impact on disabled people. While everyone else receives suicide prevention, people with disabilities and certain illnesses and old people will receive a fast pass because our lives are viewed as less worthy.”

Abortion statistics based on genetic screening, and the push for laws that allow assisted suicide solely based on physical disabilities (that aren’t terminal or in conjunction with other illnesses), back up Woodward’s claims.
Texas is right to use caution and protect the lives of the unborn, especially those with disabilities. They deserve dignity and respect, just as any human being does, and we should not gamble lives on genetic screenings that still have flaws. We do not want to live in a world where our physical and mental disabilities determine our worth or our right to live.