Case 2: Drinking for Two

The New York City Commission on Human Rights released guidelines on May 6, 2016, that state, "Any policy that singles out pregnant individuals is unlawful." Thus, bars and restaurants cannot refuse to serve alcohol to women solely on the basis of pregnancy or perceived pregnancy.

Other jurisdictions treat the issue of alcohol use by pregnant women differently. According to ProPublica, pregnant women who use alcohol may be charged with child abuse in at least eighteen states. Wisconsin, for example, has prosecuted women who admit to their doctors that they used alcohol while pregnant. These women were charged with violating 1997 Wisconsin Act 292 that protects “unborn children who are at substantial risk of serious physical injury due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages…”

Several states have adopted fetal rights laws. Some of these statutes provide special protection for pregnant women, by imposing harsher penalties for violence against them, for example. Other fetal rights laws focus particularly on the unborn child by granting legal status to the fetus. Even if the intent of the law is to protect both mother and child, these very laws have been used against women who drink during pregnancy.

A number of concerns have been raised about the rights of pregnant women and the health of their fetuses. Society’s interest in protecting the health of the unborn has led some to question an expectant mother’s right to engage in activities potentially harmful to the fetus. People disagree about where to draw the line between the health of the fetus and the rights of the mother. Some would like to prohibit pregnant women from extreme activities such as white-water rafting, bungee jumping, and scuba diving. Others argue that expectant mothers should not even exercise vigorously or eat brie cheese.

Some object to judging or sanctioning the behavior of pregnant women because it infantilizes and devalues them. They claim that passing laws that criminalize otherwise legal behavior, only because of the condition of pregnancy, discriminates specifically against women in a way that endangers their civil and human rights. They further contend that such restrictions give equal or greater consideration to the rights and interests of the fetus over those of the mother.

There are compelling moral and social interests in protecting the health of unborn children. There seems to be little consensus, however, on the appropriate means to do so, particularly when the rights of the mother appear to compromise the health of the fetus.

Case from the 2017 International Ethics Bowl on February 26, 2017 in Dallas Texas

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