SB 124

<TARGET><BILL>SB 124</BILL><SUBJECT>SB 124</SUBJECT><COMM>SHSS30</COMM></TARGET>

ALASKA STATE LEGISLATURE

1500 W Benson Blvd.
Anchorage AK 99503
907-269-0181

State Capitol
Juneau AK 99801-1182
907-465-4843
800-892-4843

North to the Future

Senator Cathy Giessel

Senate District N

Sponsor Statement

Senate Bill 124 Born Alive

Great strides have been made in modern medicine, and more babies born prematurely are surviving these early deliveries. With these medical advancements, all babies should be afforded the same degree of chance and care.

Senate Bill 124 requires that a physician use the method of terminating a pregnancy that gives the baby the best possibility of survival outside the mother's womb. The physician will exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as would be rendered to a child born alive in the course of a natural birth.

This approach provides another option to parents, if they do not wish to keep the child after birth. The child can be surrendered, and it will be considered a child in need of aid.

I ask for your support of Senate Bill 124.

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North to the Future

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Sectional Analysis

Senate Bill 124 Born Alive

Section 1: Amends AS 18.16.010 by adding new subsections to provide for a physician to use the method of terminating the pregnancy that best provides for the unborn child to survive outside the mother's womb. It requires health practitioners present at the procedure to exercise the same degree of professional practice and diligence to preserve the life of the viable child born as would be provided to a child born through the course of natural birth. Provides definitions for "alive," "clinical judgment," "fertilization," and "fetal age."

Section 2: Amends AS 18.16 by adding a new section that would allow a parent of a child born alive during the process of an abortion to surrender the child to a physician or employee of the hospital. The person to whom the child had been surrendered will notify the Department of Health and Social Services as required under AS 47.10.013(d).

Section 3: Amends AS 47.10.011 and adds a provision in the Child in Need of Aid (CINA) statue to include a child born alive during the termination of a pregnancy whose parent is unwilling or unable to care for the infant.

Section 4: Adds an applicability provision that states that AS 18.16.010(k)-(m), added by Sec. 1, AS 18.16.012, added by Sec. 2, and AS 47.10.011, as amended by Sec. 3 apply to abortions performed or induced on or after the effective dates of those sections.

Section 5: Provides for an immediate effective date for this Act.

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/16/18

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 2/19/18

Health and Social Services Committee considered SENATE BILL NO. 124

SB 124 ABORTION PROCEDURES; CHILD SURRENDER

"An Act relating to the duties of physicians and health care practitioners when performing or inducing abortions; providing that a child removed from a pregnant woman's womb alive after an abortion may be surrendered and found to be a child in need of aid; and providing for an effective date."

and recommends:

[ ] be **replaced** with **CS** _____ (_____) *[ ] Same Title [ ] New Title*

[ ] adopt **previous CS** _____ (_____) *[ ] Same Title [ ] New Title*

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS	✓			1

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Begich		✓		
	VanImhof			✓	
	Micciche			✓	
	Giessel	✓			
CHAIR: Wilson	Wilson			✓	

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: SB 124
Fiscal Note Number:
() Publish Date:

Identifier: SB124-DHSS-HCMS-2-6-18
Title: ABORTION PROCEDURES; CHILD SURRENDER
Sponsor: GIESSEL
Requester: Senate HSS

Department: Department of Health and Social Services
Appropriation: Medicaid Services
Allocation: Health Care Medicaid Services
OMB Component Number: 2077

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019 Appropriation Requested	Included in Governor's FY2019 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2019**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits	1,176.4		1,849.5	2,298.3	2,747.0	3,195.8	3,644.5
Miscellaneous							
Total Operating	**1,176.4**	**0.0**	**1,849.5**	**2,298.3**	**2,747.0**	**3,195.8**	**3,644.5**
Fund Source (Operating Only)							
1002 Fed Rcpts (Fed)	588.2		924.8	1,149.2	1,373.5	1,597.9	1,822.3
1003 G/F Match (UGF)	588.2		924.7	1,149.1	1,373.5	1,597.9	1,822.2
Total	**1,176.4**	**0.0**	**1,849.5**	**2,298.3**	**2,747.0**	**3,195.8**	**3,644.5**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By: Margaret Brodie, Director Phone: (907)334-2520
Division: Health Care Services Date: 01/17/2018 04:38 PM
Approved By: Shawnda O'Brien, Asst. Commissioner Date: 01/30/18
Agency: Health and Social Services

FISCAL NOTE ANALYSIS

STATE OF ALASKA **BILL NO.** SB124
2018 LEGISLATIVE SESSION

Analysis

This bill instructs a physician performing or inducing an abortion in the state of Alaska to use the method of terminating the pregnancy that provides the best opportunity for the fetus to survive after removal from the womb. This is contingent upon the physician's judgment that the method of terminating the pregnancy does not present a serious risk to the life or health of the pregnant woman.

This requires that any health care practitioner present at the abortion utilize the same measures to preserve the life and health of the fetus believed to exhibit signs of life - defined as spontaneous respiratory or cardiac function or pulsation of the umbilical cord, as provided to a child of the same fetal age delivered alive in the course of a natural birth. This requirement would include the use of neonatal intensive care unit (NICU) and related professional services, which results in a total estimated NICU cost per child of $3.4 a day. An estimated stay of up to 20 weeks (or full-term) results in an estimated total NICU and professional services cost for a single infant of $476.0. Using data from the 2016 Induced Termination of Pregnancy (IOPT) report, the Division of Health Care Services (HCS) estimates that two children per year would fall into the gestational (GA) age category of between 18 and 21 weeks.

Daily NICU Cost	Days (20 Weeks)	NICU Total	Potential Live Births	Estimated Total Annual Cost
$ 3.4	140	$ 476.0	2	$ 952.0

According to MMIS claims data, the annual cost of care for a disabled child (including those not requiring neonatal intensive care) ranges from $0.4 to $1,743.7 with an average cost per child of $112.1. The estimated total annual costs rise by two children yearly, reflecting an increase in the number of potentially disabled children requiring care.

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
Number Children	2	4	6	8	10	12
Annual Cost	$ 224.4	$ 897.5	$1,346.3	$1,795.0	$2,243.8	$2,692.5

State of Alaska
Department of Health and Social Services

2016 Alaska Induced Termination of Pregnancy Statistics

Division of Public Health
Health Analytics and Vital Records Section
February 2017

2016 Alaska Induced Termination of Pregnancy Statistics

Bill Walker
Governor
State of Alaska

Valerie Davidson
Commissioner
Department of Health and Social Services

Jay C. Butler, M.D.
Chief Medical Officer and Director
Division of Public Health

Department of Health and Social Services
Division of Public Health
Health Analytics and Vital Records Section
P.O. Box 110675
Juneau, AK 99811-0675
(907) 465-3391
www.vitalrecords.alaska.gov

Introduction

2016 Alaska Induced Termination of Pregnancy Statistics is prepared by the Health Analytics and Vital Records Section of the Alaska Department of Health and Social Services. This report contains information about induced terminations that occurred in Alaska during calendar year 2016.

Why is induced termination reporting important? Induced termination data can be used to:

- Monitor trends in the number, rate, and ratio of induced terminations.
- Assess changes in the types of procedures used to end a pregnancy and the gestational age (in weeks) when induced terminations are performed.
- Calculate pregnancy rates.
- Identify the characteristics of women who may be at risk for unintended pregnancy.
- Evaluate the effectiveness of family planning programs and programs to prevent unintended pregnancy.

Unintended pregnancy refers to pregnancies that are unwanted, or when the mother wanted to be pregnant at a later date. Intended pregnancies are those that are wanted sooner, or at the time they occurred. Women who were not sure how they felt about their pregnancy are included in the *intended* category. In Alaska, 26.5 percent of all pregnancies that resulted in a live birth were unintended during 2014.[1] In the U.S., it is estimated that 49 percent of pregnancies are unintended, with 43% of these pregnancies ended by an induced termination.[2] Reducing the number of unintended pregnancies would thus likely reduce the number of induced terminations.

Alaska has generally followed recent national trends in birth rates. From 2006 to 2015, the latest year for which complete birth data are available, the fertility rate in Alaska increased 0.1 percent, while the teen birth rate declined 28.8 percent. However, birth rates are based only on the number of live births and may change as a result of the rate at which women become pregnant, the rate at which pregnancies are ended in an induced termination, or a combination of both. Induced termination reporting can provide a better understanding of which factors are driving the birth rate in Alaska.

Data Reporting Issues

The information in this report is based on induced termination of pregnancy reports received by the Section as of February 2, 2017. A copy of the form used to report induced termination of pregnancies is located in Appendix B. Definitions of the terms used in this report are located in Appendix A. In this report, the term induced termination of pregnancy is used synonymously with induced termination.

In Alaska, reports of induced terminations are mandated by Alaska Statute 18.50.245. Hospitals, clinics, or other institutions where an induced termination is performed, are required to submit

[1] Alaska Pregnancy Risk Assessment Monitoring System (PRAMS), Department of Health and Social Services, Division of Public Health, 2014 Data.

[2] Lawrence B. Finer, Mia R. Zolna, Unintended pregnancy in the United States: Incidence and disparities, 2006, *Contraception,* 2011, 84(5): 478–485.

a report to the Section. The report cannot contain the name of the patient, but must contain information similar to the United States Standard Report of Induced Termination of Pregnancy, as published by the National Center for Health Statistics. Reports of induced terminations are strictly confidential and are destroyed after preparing the annual report.

Alaska statutes also require that any reports produced from induced termination of pregnancy forms may only be presented in aggregate form, so that specific individuals may not be identified. Furthermore, the report may not identify, or provide information that can be used to identify the name of the physician who performed the induced termination, the name of the facility where the induced termination took place, or the name of the municipality or community in which the induced termination occurred. Because of the reporting guidelines outlined in state statutes, induced termination statistics by borough or census area are not available for publication.

This report contains information on induced terminations that occurred within Alaska; however, some Alaska women may obtain induced terminations out of state. For example, 124 Alaska women obtained induced terminations in Washington State during 2015, the latest year for which complete data are available.[3] It is unknown how many Alaska women obtained induced terminations in states other than Washington due to limitations in other states' reporting. Because the out of state occurrence data are incomplete, they are not included in this report.

Pregnancy rates are based on the total number of live births, induced terminations, and fetal deaths per 1,000 women of childbearing age. Currently, population estimates for 2016 are not yet available, so pregnancy rates are not calculated. Additionally, as 2016 birth data are preliminary, pregnancy rates are not calculated. The induced termination information for 2016, however, is final. Information on pregnancy rates, induced termination rates, and induced termination ratios is posted on the Section's web site: http://dhss.alaska.gov/dph/VitalStats/Pages/default.aspx.

In 2005, Alaska law and regulations were amended to change the reporting requirements for induced terminations of pregnancy and to add a section relating to informed consent when conducting induced terminations. The changes to state law require the Department of Health and Social Services to maintain a web site containing information on fetal development, induced termination, pregnancy, and family planning. The web site also has resources associated with pregnancy-related social and health services in Alaska. The informed consent web site is located at http://dhss.alaska.gov/dph/wcfh/Pages/informedconsent/default.aspx. The Section is also required to monitor whether the unidentified patient requested and received a written copy of the information required to be maintained on the Internet. These regulations took effect on midnight August 21, 2005.

[3] Center for Health Statistics, Washington State Department of Health. Table 8 - Induced Abortions Occurring Within Washington State by Select Indicators, 2015.

Executive Summary

- A total of 1,260 induced terminations were reported in Alaska in 2016, with Alaska residents accounting for 98.7 percent of the induced terminations that occurred in Alaska. This is a decrease of 5.5 percent from the 1,334 induced terminations reported in 2015.
- In Alaska, 66.1 percent of women who obtained an induced termination in 2016 reported they had no previous induced terminations. 12.4 percent of women reported that they had two or more previous induced terminations.
- 41 percent of the women who obtained induced terminations in 2016 were less than 25 years of age. In 2013, the most recent year for which national data are available, 44.5 percent of women in the U.S. who obtained an induced termination were less than 25 years of age.[4]
- Young teens (age 15 to 17 years) accounted for 4.4 percent of all induced terminations in Alaska during 2016, an increase of 41.9 percent from 2015.
- Teens (age 15 to 19 years) received 11.7 percent of the induced terminations in 2016. In 2013, 11.7 percent of women in the U.S. who obtained an induced termination were 19 or under.[4]
- In Alaska, 78.7 percent of women (excluding unknown responses) who obtained an induced termination in 2016 were unmarried. In 2013, 85.2 percent of women in the U.S. who obtained an induced termination were unmarried.[4]
- In 2016, 54 percent of women who obtained an induced termination in Alaska reported they had one or more previous live births. In 2013, 59.7 percent of women in the U.S. who obtained an induced termination reported they had one or more previous live births.[4]
- Nearly all (99.5 percent) induced terminations in Alaska were performed at 13 weeks or less gestational age. In 2013, 91.6 percent of induced terminations performed in the U.S. involved pregnancies of 13 weeks or less gestational age.[4]
- Suction curettage was the most commonly performed termination procedure in Alaska at 66.9 percent, while Mifepristone (RU-486) was second at 26.1 percent. Curettage (suction curettage, sharp curettage, and dilation and evacuation) procedures were used in 76.5 percent of induced terminations performed in the U.S. in 2013.[4]
- 42.5 percent of all women who obtained induced terminations in Alaska during 2016 reported that they used their own financial resources as the source of payment; 44.1 percent reported that Medicaid was the source of payment.
- In 2016, three induced termination reports in Alaska indicated that the pregnancy was terminated due to the detection of a congenital anomaly.
- Most women (95.1 percent; 97.7 percent excluding unknowns) who underwent an induced termination in 2016 did not request a copy of the information contained in the informed consent website. However, 24.7 percent (25.4 percent excluding unknowns) did report receiving a copy of the information contained in the informed consent website.

[4] Centers for Disease Control and Prevention. Abortion Surveillance - United States, 2013, November 25, 2016. MMWR SS Vol.65/No.12

Table 1a: Numbers of Induced Terminations by Residency of Woman, 2012-2016

Residence State	2012	2013	2014	2015	2016
Alaska	1,563	1,361	1,480	1,323	1,243
Other State	13	10	15	7	8
Not Stated	56	79	23	4	9
Total	1,632	1,450	1,518	1,334	1,260

Table 1b: Percentages of Induced Terminations by Residency of Woman, 2012-2016

Residence State	2012	2013	2014	2015	2016
Alaska	95.8	93.9	97.5	99.2	98.7
Other State	0.8	0.7	1.0	0.5	0.6
Not Stated	3.4	5.4	1.5	0.3	0.7
Total	100	100	100	100	100

Table 2a: Numbers of Induced Terminations by Race of Woman, 2012-2016

Race	2012	2013	2014	2015	2016
Asian/PI	113	95	140	115	99
Black	120	87	116	102	98
AI/AN	338	238	282	249	230
White	911	824	819	810	782
Other/Not Stated	150	206	161	58	51
Total	1,632	1,450	1,518	1,334	1,260

Table 2b: Percentages of Induced Terminations by Race of Woman, 2012-2016

Race	2012	2013	2014	2015	2016
Asian/PI	6.9	6.6	9.2	8.6	7.9
Black	7.4	6.0	7.6	7.6	7.8
AI/AN	20.7	16.4	18.6	18.7	18.3
White	55.8	56.8	54.0	60.7	62.1
Other/Not Stated	9.2	14.2	10.6	4.3	4.0
Total	100	100	100	100	100

Table 3a: Numbers of Induced Terminations by Age Group of Woman, 2012-2016

Age Group	2012	2013	2014	2015	2016
Under 15	7	9	6	4	4
15-19	244	189	199	152	147
15-17	62	68	54	42	56
18-19	182	121	145	110	91
20-24	570	464	494	445	366
25-29	399	384	406	361	354
30-34	205	215	242	206	230
35-39	143	105	115	121	118
40-44	42	38	55	39	39
45 and over	2	4	1	6	2
Not Stated	20	42	0	0	0
Total	1,632	1,450	1,518	1,334	1,260

Table 3b: Percentages of Induced Terminations by Age Group of Woman, 2012-2016

Age Group	2012	2013	2014	2015	2016
Under 15	0.4	0.6	0.4	0.3	0.3
15-19	15.0	13.0	13.1	11.4	11.7
15-17	3.8	4.7	3.6	3.1	4.4
18-19	11.2	8.3	9.6	8.2	7.2
20-24	34.9	32.0	32.5	33.4	29.0
25-29	24.4	26.5	26.7	27.1	28.1
30-34	12.6	14.8	15.9	15.4	18.3
35-39	8.8	7.2	7.6	9.1	9.4
40-44	2.6	2.6	3.6	2.9	3.1
45 and over	0.1	0.3	0.1	0.4	0.2
Not Stated	1.2	2.9	0	0	0
Total	100	100	100	100	100

Table 4a: Numbers of Induced Terminations by Education of Woman, 2012-2016

Education	2012	2013	2014	2015	2016
Less than 12 years	203	184	136	121	128
12 years	222	127	565	546	512
13 or more years	616	556	551	552	523
Unknown	591	583	266	115	97
Total	1,632	1,450	1,518	1,334	1,260

Table 4b: Percentages of Induced Terminations by Education of Woman, 2012-2016

Education	2012	2013	2014	2015	2016
Less than 12 years	12.4	12.7	9.0	9.1	10.2
12 years	13.6	8.8	37.2	40.9	40.6
13 or more years	37.7	38.3	36.3	41.4	41.5
Unknown	36.2	40.2	17.5	8.6	7.7
Total	100	100	100	100	100

Table 5a: Numbers of Induced Terminations By Previous Live Birth, 2012-2016

Previous Live Birth	2012	2013	2014	2015	2016
0	715	606	667	597	530
1	317	306	350	292	262
2	272	223	266	217	237
3	127	110	120	103	121
4	56	42	41	52	58
5 or more	45	45	52	55	52
Not Stated	100	118	22	17	0
Total	1,632	1,450	1,518	1,334	1,260

Table 5b: Percentages of Induced Terminations by Previous Live Birth, 2012-2016

Previous Live Birth	2012	2013	2014	2015	2016
0	43.8	41.8	43.9	44.8	42.1
1	19.4	21.1	23.1	21.9	20.8
2	16.7	15.4	17.5	16.3	18.8
3	7.8	7.6	7.9	7.7	9.6
4	3.4	2.9	2.7	3.9	4.6
5 or more	2.8	3.1	3.4	4.1	4.1
Not Stated	6.1	8.1	1.4	1.3	0
Total	100	100	100	100	100

Table 6a: Number of Induced Terminations By Previous Induced Terminations, 2012-2016

Previous Induced Termination	2012	2013	2014	2015	2016
0	967	913	1,050	886	833
1	375	286	288	291	271
2	131	124	114	100	94
3	37	36	48	42	39
4	19	16	7	6	13
5 or more	11	14	3	6	10
Not Stated	92	61	8	3	0
Total	1,632	1,450	1,518	1,334	1,260

Table 6b: Percentages of Induced Terminations by Previous Induced Terminations, 2012-2016

Previous Induced Termination	2012	2013	2014	2015	2016
0	59.3	63.0	69.2	66.4	66.1
1	23.0	19.7	19.0	21.8	21.5
2	8.0	8.6	7.5	7.5	7.5
3	2.3	2.5	3.2	3.1	3.1
4	1.2	1.1	0.5	0.4	1.0
5 or more	0.7	1.0	0.2	0.4	0.8
Not Stated	5.6	4.2	0.5	0.2	0
Total	100	100	100	100	100

Table 7a: Number of Induced Terminations By Marital Status of Woman, 2012-2016

Marital Status	2012	2013	2014	2015	2016
Married	268	248	250	247	242
Unmarried	1,304	1,117	1,091	1,075	992
Unknown/Not Stated	60	85	177	12	26
Total	1,632	1,450	1,518	1,334	1,260

Table 7b: Percentages of Induced Terminations by Marital Status of Woman, 2012-2016

Marital Status	2012	2013	2014	2015	2016
Married	16.4	17.1	16.5	18.5	19.2
Unmarried	79.9	77.0	71.9	80.6	78.7
Unknown/Not Stated	3.7	5.9	11.7	0.9	2.1
Total	100	100	100	100	100

Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2012-2016

Estimated Gestation	2012	2013	2014	2015	2016
1-4	20	32	17	15	16
5-8	919	863	919	873	819
9-12	507	390	400	366	354
13-16	98	86	116	75	65
17-20	0	1	44	2	2
21-24	0	0	15	1	0
Not Stated	88	78	6	2	4
Total	1,632	1,450	1,518	1,334	1,260

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2012-2016

Estimated Gestation	2012	2013	2014	2015	2016
1-4	1.2	2.2	1.1	1.1	1.3
5-8	56.3	59.5	60.5	65.4	65.0
9-12	31.1	26.9	26.4	27.4	28.1
13-16	6.0	5.9	7.6	5.6	5.2
17-20	0.0	0.1	2.9	0.1	0.2
21-24	0.0	0.0	1.0	0.1	0.0
Not Stated	5.4	5.4	0.4	0.1	0.3
Total	100	100	100	100	100

Table 9: Number of Induced Terminations by Race and Age: Alaska Occurrence, 2016

Race	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Asian/PI	0	1	12	28	25	14	13	5	1	0	99
Black	0	5	2	38	28	19	3	3	0	0	98
AI/AN	2	17	16	57	70	37	25	6	0	0	230
White	1	32	58	227	218	147	75	24	0	0	782
Other/Not Stated	1	1	3	16	13	13	2	1	1	0	51
Total	4	56	91	366	354	230	118	39	2	0	1,260

Table 10: Induced Terminations by Age and Percentage by Race: Alaska Occurrence, 2016

Race	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Asian/PI	0.0	1.0	12.1	28.3	25.3	14.1	13.1	5.1	1.0	0.0	100.0
Black	0.0	5.1	2.0	38.8	28.6	19.4	3.1	3.1	0.0	0.0	100.0
AI/AN	0.9	7.4	7.0	24.8	30.4	16.1	10.9	2.6	0.0	0.0	100.0
White	0.1	4.1	7.4	29.0	27.9	18.8	9.6	3.1	0.0	0.0	100.0
Other/Not Stated	2.0	2.0	5.9	31.4	25.5	25.5	3.9	2.0	2.0	0.0	100.0
Total	0.3	4.4	7.2	29.0	28.1	18.3	9.4	3.1	0.2	0.0	100.0

Table 11: Induced Terminations by Race and Percentage by Age: Alaska Occurrence, 2016

Race	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Asian/PI	0.0	1.8	13.2	7.7	7.1	6.1	11.0	12.8	50.0	0.0	7.9
Black	0.0	8.9	2.2	10.4	7.9	8.3	2.5	7.7	0.0	0.0	7.8
AI/AN	50.0	30.4	17.6	15.6	19.8	16.1	21.2	15.4	0.0	0.0	18.3
White	25.0	57.1	63.7	62.0	61.6	63.9	63.6	61.5	0.0	0.0	62.1
Other/Not Stated	25.0	1.8	3.3	4.4	3.7	5.7	1.7	2.6	50.0	0.0	4.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	0.0	100.0

Table 12: Number of Induced Terminations by Marital Status and Age: Alaska Occurrence, 2016

Marital Status	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Married	0	0	5	39	65	72	41	20	0	0	242
Unmarried	4	51	86	320	285	150	75	19	2	0	992
Unknown/Not Stated	0	5	0	7	4	8	2	0	0	0	26
Total	4	56	91	366	354	230	118	39	2	0	1,260

Table 13: Induced Terminations by Age and Percentage by Marital Status Alaska Occurrence, 2016

Marital Status	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Married	0.0	0.0	2.1	16.1	26.9	29.8	16.9	8.3	0.0	0.0	100.0
Unmarried	0.4	5.1	8.7	32.3	28.7	15.1	7.6	1.9	0.2	0.0	100.0
Unknown/Not Stated	0.0	19.2	0.0	26.9	15.4	30.8	7.7	0.0	0.0	0.0	100.0
Total	0.3	4.4	7.2	29.0	28.1	18.3	9.4	3.1	0.2	0.0	100.0

Table 14: Induced Terminations by Marital Status and Percentage by Age: Alaska Occurrence, 2016

Marital Status	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Married	0.0	0.0	5.5	10.7	18.4	31.3	34.7	51.3	0.0	0.0	19.2
Unmarried	100.0	91.1	94.5	87.4	80.5	65.2	63.6	48.7	100.0	0.0	78.7
Unknown/Not Stated	0.0	8.9	0.0	1.9	1.1	3.5	1.7	0.0	0.0	0.0	2.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	0.0	100.0

Table 15: Number of Induced Terminations by Type of Procedure and Weeks of Gestation: Alaska Occurrence, 2016

Type of Procedure	1-4	5-8	9-12	13-16	17-20	21-24	Not Stated	Total
Dilation and Evacuation (D&E)	0	2	46	34	0	0	0	82
Methotrexate	0	0	0	0	0	0	0	0
Mifepristine (RU-486)	8	278	40	2	0	0	1	329
Sharp Curettage	0	0	0	0	0	0	0	0
Suction Curettage	8	534	268	29	1	0	3	843
Other	0	5	0	0	1	0	0	6
Total	16	819	354	65	2	0	4	1,260

Table 16: Induced Terminations by Type of Procedure and Percentage by Weeks of Gestation: Alaska Occurrence, 2016

Type of Procedure	1-4	5-8	9-12	13-16	17-20	21-24	Not Stated	Total
Dilation and Evacuation (D&E)	0.0	0.2	13.0	52.3	0.0	0.0	0.0	6.5
Methotrexate	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Mifepristine (RU-486)	50.0	33.9	11.3	3.1	0.0	0.0	25.0	26.1
Sharp Curettage	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Suction Curettage	50.0	65.2	75.7	44.6	50.0	0.0	75.0	66.9
Other	0.0	0.6	0.0	0.0	50.0	0.0	0.0	0.5
Total	100.0	100.0	100.0	100.0	100.0	0.0	100.0	100.0

Table 17: Induced Terminations by Weeks of Gestation and Percentage by Type of Procedure: Alaska Occurrence, 2016

Type of Procedure	1-4	5-8	9-12	13-16	17-20	21-24	Not Stated	Total
Dilation and Evacuation (D&E)	0.0	2.4	56.1	41.5	0.0	0.0	0.0	100.0
Methotrexate	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Mifepristine (RU-486)	2.4	84.5	12.2	0.6	0.0	0.0	0.3	100.0
Sharp Curettage	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Suction Curettage	0.9	63.3	31.8	3.4	0.1	0.0	0.4	100.0
Other	0.0	83.3	0.0	0.0	16.7	0.0	0.0	100.0
Total	1.3	65.0	28.1	5.2	0.2	0.0	0.3	100.0

Table 18: Number of Induced Terminations by Method of Payment and Age: Alaska Occurrence, 2016

Payment Type	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Cash	1	22	39	164	128	110	49	22	2	0	537
Insurance	0	3	4	24	31	15	17	3	0	0	97
Medicaid	3	28	45	155	175	97	42	11	0	0	556
Multiple Payment Sources	0	3	3	22	20	7	10	3	0	0	68
Other/Not Stated	0	0	0	1	0	1	0	0	0	0	2
Total	4	56	91	366	354	229	118	39	2	0	1,259

Table 19: Induced Terminations by Method of Payment and Percentage by Age: Alaska Occurrence, 2016

Payment Type	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Cash	25.0	39.3	42.9	44.8	36.2	47.8	41.5	56.4	100.0	0.0	42.6
Insurance	0.0	5.4	4.4	6.6	8.8	6.5	14.4	7.7	0.0	0.0	7.7
Medicaid	75.0	50.0	49.5	42.3	49.4	42.2	35.6	28.2	0.0	0.0	44.1
Multiple Payment Sources	0.0	5.4	3.3	6.0	5.6	3.0	8.5	7.7	0.0	0.0	5.4
Other/Not Stated	0.0	0.0	0.0	0.3	0.0	0.4	0.0	0.0	0.0	0.0	0.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	0.0	100.0

Table 20: Induced Terminations by Age and Percentage by Method of Payment: Alaska Occurrence, 2016

Payment Type	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated	Total
Cash	0.2	4.1	7.3	30.5	23.8	20.5	9.1	4.1	0.4	0.0	100.0
Insurance	0.0	3.1	4.1	24.7	32.0	15.5	17.5	3.1	0.0	0.0	100.0
Medicaid	0.5	5.0	8.1	27.9	31.5	17.4	7.6	2.0	0.0	0.0	100.0
Multiple Payment Sources	0.0	4.4	4.4	32.4	29.4	10.3	14.7	4.4	0.0	0.0	100.0
Other/Not Stated	0.0	0.0	0.0	50.0	0.0	50.0	0.0	0.0	0.0	0.0	100.0
Total	0.3	4.4	7.2	29.1	28.1	18.2	9.4	3.1	0.2	0.0	100.0

Table 21: Number of Induced Terminations by Method of Payment and Race: Alaska Occurrence, 2016

Payment Type	Asian/PI	Black	AI/AN	White	Other/Not Stated	Total
Cash	50	47	47	367	26	537
Insurance	10	4	9	71	3	97
Medicaid	32	43	165	296	20	556
Multiple Payment Sources	7	4	8	47	2	68
Other/Not Stated	0	0	1	1	0	2
Total	99	98	230	781	51	1,259

Table 22: Induced Terminations by Method of Payment and Percentage by Race: Alaska Occurrence, 2016

Payment Type	Asian/PI	Black	AI/AN	White	Other/Not Stated	Total
Cash	50.5	48.0	20.4	46.9	51.0	42.6
Insurance	10.1	4.1	3.9	9.1	5.9	7.7
Medicaid	32.3	43.9	71.7	37.9	39.2	44.1
Multiple Payment Sources	7.1	4.1	3.5	6.0	3.9	5.4
Other/Not Stated	0.0	0.0	0.4	0.1	0.0	0.2
Total	100.0	100.0	100.0	100.0	100.0	100.0

Table 23: Induced Terminations by Race and Percentage by Method of Payment: Alaska Occurrence, 2016

Payment Type	Asian/PI	Black	AI/AN	White	Other/Not Stated	Total
Cash	9.3	8.8	8.8	68.3	4.8	100.0
Insurance	10.3	4.1	9.3	73.2	3.1	100.0
Medicaid	5.8	7.7	29.7	53.2	3.6	100.0
Multiple Payment Sources	10.3	5.9	11.8	69.1	2.9	100.0
Other/Not Stated	0.0	0.0	50.0	50.0	0.0	100.0
Total	7.9	7.8	18.3	62.0	4.1	100.0

Table 24: Number of Induced Terminations by Method of Payment and Marital Status: Alaska Occurrence, 2016

Payment Type	Married	Unmarried	Unknown/Not Stated	Total
Cash	133	392	12	537
Insurance	27	69	1	97
Medicaid	63	480	13	556
Multiple Payment Sources	19	49	0	68
Other/Not Stated	0	2	0	2
Total	242	991	26	1,259

Table 25: Induced Terminations by Method of Payment and Percentage by Marital Status: Alaska Occurrence, 2016

Payment Type	Married	Unmarried	Unknown/Not Stated	Total
Cash	55.0	39.5	46.2	42.6
Insurance	11.2	7.0	3.8	7.7
Medicaid	26.0	48.4	50.0	44.1
Multiple Payment Sources	7.9	4.9	0.0	5.4
Other/Not Stated	0.0	0.2	0.0	0.2
Total	100.0	100.0	100.0	100.0

Table 26: Induced Terminations by Marital Status and Percentage by Method of Payment: Alaska Occurrence, 2016

Payment Type	Married	Unmarried	Unknown/Not Stated	Total
Cash	24.8	73.0	2.2	100.0
Insurance	27.8	71.1	1.0	100.0
Medicaid	11.3	86.3	2.3	100.0
Multiple Payment Sources	27.9	72.1	0.0	100.0
Other/Not Stated	0.0	100.0	0.0	100.0
Total	19.2	78.7	2.1	100.0

Appendix A: Definitions

Gestational Age - The number of weeks between the first day of the last menstrual period and the date of delivery or the end of the pregnancy. This report uses the physician's estimate of gestational age.

Induced Termination of Pregnancy - The purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus, and which does not result in a live birth.

Induced Termination Procedures:

Dilation and Evacuation (D&E) - a procedure that is generally used after 12 weeks of gestation and is usually done on an outpatient basis. Dilation and Evacuation may involve a combination of vacuum aspiration, dilation and curettage (D&C), and the use of surgical instruments (such as forceps).

Hysterectomy - a surgical procedure in which the uterus is removed either with the fetus inside or after the fetus has been removed. It is rarely performed in association with an induced termination, and then only when a pathological condition of the uterus (such as fibroid tumors) or an emergency warrants its removal.

Hysterotomy - a surgical procedure that involves surgical entry into the uterus (as in a cesarean section) and the removal of a fetus that is too small to survive, even with extraordinary life support measures. Hysterotomy is rarely performed and then only if other induced termination procedures fail.

Mifepristone (also known as RU-486) - usually used along with a prostaglandin for ending pregnancies of up to 49 days gestation. The administration of mifepristone causes the placenta to detach from the uterine wall. A second drug (misoprostol) is given two days later to induce uterine contractions, expelling the products of conception.

Methotrexate - interferes with the vitamin folic acid and kills rapidly growing cells. It is also used for the nonsurgical treatment of ectopic pregnancies (when fertilized eggs grow outside the uterus). Methotrexate is administered by injection and is followed 5 to 7 days later with misoprostol to stimulate uterine contractions.

Saline/Prostaglandin (Intrauterine Instillation) - rarely used procedures that involve either withdrawing a portion of amniotic fluid from the uterine cavity by a needle inserted through the abdominal wall and replacing this fluid with a concentrated salt solution (known as saline instillation) or injecting a prostaglandin (a substance with hormone-like activity) into the amniotic sac (known as intra-uterine prostaglandin instillation). Both processes induce labor, resulting in the expulsion of the fetus.

Sharp Curettage (Dilation and Curettage, D&C) - requires the dilation (temporary widening) of the cervix (the uterine opening). The fetal and placental tissues are then scraped out with a curette, which resembles a small spoon.

Suction Curettage (Vacuum Aspiration) - a frequently performed procedure that is generally used in the first 12 weeks of gestation (the first trimester). This procedure is done on an outpatient basis and may be done in a physician's office or a clinic.

After the cervix is dilated, a flexible cannula (a small, hollow tube) is inserted into the uterus through the cervix. The tube is attached to a pump, which is used to evacuate the uterine contents through the cannula.

Spontaneous Abortion - The loss of a fetus during pregnancy due to natural causes.

Appendix B: Sample of Induced Termination of Pregnancy Report Form

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPORT OF INDUCED TERMINATION OF PREGNANCY

PLEASE TYPE OR PRINT

1) PATIENT'S AGE	2)DATE OF PREGNANCY TERMINATION (MM/DD/YY) _____/_____/_____	3) CITY WHERE TERMINATION OF PREGANCY OCCURRED

4) PATIENT'S ETHNICITY

- ☐ NON-HISPANIC
- ☐ MEXICAN
- ☐ PUERTO RICAN
- ☐ CUBAN
- ☐ CENTRAL OR SOUTH AMERICAN
- ☐ OTHER OR UNKNOWN HISPANIC

5) PATIENT'S RACE

- ☐ WHITE
- ☐ AFRICAN AMERICAN (BLACK)
- ☐ NATIVE ALASKAN OR AMERICAN INDIAN
- ☐ ASIAN
- ☐ NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER
- ☐ OTHER (SPECIFY) _____

6) CITY AND STATE WHERE PATIENT RESIDES

7) MARRIED
- ☐ YES
- ☐ NO

8) EDUCATION (SPECIFY THE HIGHEST GRADE COMPLETED)

ELEMENTARY/SECONDARY (0-12)	COLLEGE (1-4 OR 5+)

PREVIOUS PREGNANCIES (COMPLETE EACH SECTION. DO NOT LEAVE BLANK.)

9) NUMBER OF PREVIOUS LIVE BIRTHS

9A) NOW LIVING	9B) NOW DEAD
NUMBER _____	NUMBER _____
☐ NONE	☐ NONE

10) NUMBER OF PREVIOUS SPONTANEOUS ABORTIONS

NUMBER _____ ☐ NONE

11) NUMBER OF PREVIOUS INDUCED TERMINATIONS OF PREGNANCIES (DO NOT INCLUDE THIS TERMINATION)

NUMBER _____ ☐ NONE

12) PHYSICIAN'S ESTIMATE OF GESTATION

COMPLETED WEEKS _____

13) DATE LAST NORMAL MENSES BEGAN (MM/DD/YY)

_____/_____/_____

14) METHOD OF PAYMENT

- ☐ MEDICAID
- ☐ INSURANCE
- ☐ OTHER (SPECIFY) _____

15) PRIMARY PROCEDURE USED TO TERMINATE PREGNANCY (CHECK **ONE** ONLY)

- 15A) ☐ SUCTION CURETTAGE
- 15B) ☐ DILATION AND EVACUATION
- 15C) ☐ SHARP CURETTAGE
- 15D) ☐ SALINE
- 15E) ☐ PROSTAGLANDIN
- 15F) ☐ HYSTERECTOMY
- 15G) ☐ HYSTEROTOMY
- 15H) ☐ MIFEPRISTONE
- 15I) ☐ METHOTREXATE
- 15J) ☐ OTHER (SPECIFY) _____

16) WAS THIS TERMINATION ELECTED DUE TO THE DETECTION OF A CONGENITAL ANOMALY?

YES ☐ NO ☐

16B) TYPE OF CONGENITAL ANOMALY

CHROMOSOMAL ANOMALY	YES ☐	NO ☐
NEURAL TUBE DEFECT	YES ☐	NO ☐
HEART ANOMALY	YES ☐	NO ☐
VENTRAL WALL DEFECT	YES ☐	NO ☐
OTHER	YES ☐	NO ☐

(SPECIFY) _____

☐ YES ☐ NO PATIENT REQUESTED A COPY OF THE INFORMATION REQUIRED TO BE MAINTAINED ON THE INTERNET UNDER AS 18.05.032

☐ YES ☐ NO PATIENT RECEIVED A WRITTEN COPY OF THE INFORMATION REQUIRED TO BE MAINTAINED ON THE INTERNET UNDER AS 18.05.032

06-1566 (July 2005)

The New York Times https://nyti.ms/1H1UEvX

HEALTH

Premature Babies May Survive at 22 Weeks if Treated, Study Finds

By PAM BELLUCK MAY 6, 2015

A small number of very premature babies are surviving earlier outside the womb than doctors once thought possible, a new study has documented, raising questions about how aggressively they should be treated and posing implications for the debate about abortion.

The study, of thousands of premature births, found that a tiny minority of babies born at 22 weeks who were medically treated survived with few health problems, although the vast majority died or suffered serious health issues. Leading medical groups had already been discussing whether to lower the consensus on the age of viability, now cited by most medical experts as 24 weeks.

The Supreme Court has said that states must allow abortion if a fetus is not viable outside the womb, and changing that standard could therefore raise questions about when abortion is legal.

For most parents and doctors, the new study will intensify the agonizing choices faced about how intensively to treat such infants.

The study, one of the largest and most systematic examinations of care for very premature infants, found that hospitals with sophisticated neonatal units varied

widely in their approach to 22-week-olds, ranging from a few that offer no active medical treatment to a handful that assertively treat most cases with measures like ventilation, intubation and surfactant to improve the functioning of babies' lungs.

"It confirms that if you don't do anything, these babies will not make it, and if you do something, some of them will make it," said Dr. David Burchfield, the chief of neonatology at the University of Florida, who was not involved in the research. "Many who have survived have survived with severe handicaps."

Results of the study, published Wednesday in The New England Journal of Medicine, are likely to influence a discussion taking place among professional medical associations about how to counsel parents and when to offer treatment to such tiny babies.

Such groups have already been discussing whether it is reasonable to offer parents active medical treatment for babies born at 23 weeks. Some hospitals already do so. A 2014 summary of a workshop that involved the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics said that "in general, those born at 23 weeks of gestation should be considered potentially viable" because more than a quarter of such babies survive when treated intensively. The report said nothing helps babies born at less than 22 weeks to survive.

But babies born at 22 to 23 weeks are a question mark, their chances for survival slim but varying by things like birth weight and whether the mother received treatment before delivery with corticosteroids that can help a baby's lungs and brain.

About 18,000 very premature babies are born annually in the United States, with about 5,000 at 22 or 23 weeks.

The study, involving nearly 5,000 babies born between 22 and 27 weeks gestation, found that 22-week-old babies did not survive without medical intervention. In the 78 cases where active treatment was given, 18 survived, and by the time they were young toddlers, seven of those did not have moderate or severe impairments. Six had serious problems such as blindness, deafness or severe cerebral palsy.

Of the 755 born at 23 weeks, treatment was given to 542. About a third of those survived, and about half of the survivors had no significant problems.

Dr. Carl T. D'Angio, director of neonatal clinical research at the University of Rochester Medical Center, who was not involved in the study, said that his center decided several years ago to offer active treatment to 23-week-old babies, and that many sophisticated neonatal units are doing the same. At 22 weeks and five days into pregnancy, Rochester offers corticosteroids to mothers in danger of delivering early, hoping the drugs can have 48 hours to work before delivery at the 23-week mark. But for 22-week-olds, he said, "we don't have enough to offer the babies to really offer them a reasonable chance of survival."

As techniques for keeping babies alive improve, parents face wrenching choices that are sometimes based on whether the estimated age is 22 weeks and one day or six days. The study found that hospitals tend to "round up," with babies closer to 23 weeks more likely to receive treatment.

But the authors and other experts also noted that gestational age is an educated guess, based on women's recollection of their last menstrual period and estimated fetal size. Other factors, including prenatal care and the fact that girls are often a week more mature than boys, should also influence decisions, experts say.

"It's very difficult to say to a mother, 'If you deliver today, I'm going to do nothing, but if you deliver tomorrow, I'm going to do everything,' " said Dr. Neil Marlow, a neonatologist at University College London.

The study, which evaluated cases from 2006 to 2011 at 24 hospitals in a neonatal network supported by the National Institute of Child Health and Human Development, found that four of the hospitals intervened for no 22-week-olds, five intervened for all 22-week-olds and the rest varied. In all, about a fifth of the 357 babies that age were treated. The reasons could include family preferences and hospital policy, the authors wrote.

"We can't really say whether the differences revolve around differences in values, that for some physicians or parents the risk of impairment might outweigh the decision for treatment," said Matthew Rysavy, a medical student at the

University of Iowa, who led the study with Dr. Edward Bell, a pediatrics professor there. At Iowa, Dr. Bell said, treatment is offered to most 22-week-olds, and he considers 22 weeks a new marker of viability.

"That's what we think, but this is a pretty controversial area," Dr. Bell said. "I guess we would say that these babies deserve a chance."

Dr. Jeffrey M. Perlman, medical director of neonatal intensive care at NewYork-Presbyterian Hospital Weill Cornell Medical Center, takes a different view. He said it was important to consider that long months in neonatal units can be "like riding an obstacle course or flying in a plane with bad turbulence, and each of these down spirals can have an impact on the brain."

At his hospital, "we go after the 24-weekers," he said. "If it's 23, we will talk to the family and explain to them that for us it's an unknown pathway. At 22 weeks, in my opinion, the outcomes are so dismal that I don't recommend any interventions."

Dr. Bell pointed to success stories, including Chrissy Hutchinson, 32, of Manchester, Iowa. Her water broke in 2010 when she was 21 weeks and six days pregnant. The first hospital she went to "said there really was no chance of survival, and if the baby was born not breathing that they weren't going to resuscitate or anything," she said.

The Hutchinsons called the University of Iowa, and there, at 22 weeks and one day, Alexis was delivered, weighing 1.1 pounds. Alexis was treated and stayed in neonatal intensive care for almost five months. Now, Ms. Hutchinson, a pharmacy technician, said, aside from being more vulnerable to respiratory viruses, Alexis is a healthy 5-year-old.

Some of the study's results suggest that among 22-week-olds who are treated, experiences like the Hutchinsons' would be exceedingly rare because Ms. Hutchinson delivered so close to 22 weeks and did not have time for corticosteroids beforehand.

Danielle Pickering, 32, and her husband Clayton, a Baptist minister in Newton, Iowa, chose treatment when she was hospitalized in July 2012 at 22 weeks. "We

figured he was our baby, and he was what the Lord had given us, and we would just do everything we could," said Ms. Pickering. She received corticosteroids and delivered Micah four days later. He spent more than four months in intensive care, had heart surgery, and was "one of the sickest babies" there.

Now "he is a spunky almost 3-year-old," who has chronic lung disease and a slight speech delay, said Ms. Pickering, who is now 33 weeks into a healthy second pregnancy. After Micah, she said, "I feel like this baby that I'm about to have — this will be a piece of cake."

Correction: May 6, 2015

An earlier version of a picture caption with this article misstated the surname of a girl who was born prematurely. She is Alexis Hutchinson, not Richardson.

A version of this article appears in print on May 7, 2015, on Page A1 of the New York edition with the headline: Preterm Babies Can Be Viable at Earlier Birth.

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State Policies on Later Abortions

Background

In its landmark 1973 abortion cases, the U.S. Supreme Court held that a woman's right to an abortion is not absolute and that states may restrict or ban abortions after fetal viability, provided that their policies meet certain requirements. In these and subsequent decisions, the Court has held that

- even after fetal viability, states may not prohibit abortions "necessary to preserve the life or health" of the woman;
- "health" in this context includes physical and mental health;
- only the physician, in the course of evaluating the specific circumstances of an individual case, can define what constitutes "health" and when a fetus is viable; and
- states may not require additional physicians to confirm the attending physician's judgment that the woman's life or health is at risk in cases of medical emergency.

Although the vast majority of states restrict later-term abortions, many of these restrictions have been struck down. Most often, courts have voided the limitations because they do not contain a health exception; contain an unacceptably narrow health exception; or do not permit a physician to determine viability in each individual case, but rather rely on a rigid construct based on specific weeks of gestation or trimester.

Nonetheless, statutes conflicting with the Supreme Court's requirements remain on the books in some states. For example, the law in Michigan permits a postviability abortion only if the woman's life is endangered and laws in several other states ban abortion at a specific point in gestation. Most recently, several states have enacted laws that ban abortion at 20 weeks' postfertilization—well before viability—based on the spurious assertion that a fetus can feel pain at that point. Dating a pregnancy from fertilization goes against convention. When discussing pregnancy, medical professionals customarily date a pregnancy from the first day of the woman's last menstrual period, because that is the date most women can pinpoint. Fertilization commonly takes place two weeks after the first day of a woman's last menstrual period. Accordingly, a pregnancy of normal gestational length is considered to last approximately 40 weeks from the beginning of a woman's last menstrual period—or 38 weeks' postfertilization.

Highlights

- 43 states prohibit some abortions after a certain point in pregnancy.
  - 17 states impose prohibitions at fetal viability.
  - 2 states impose prohibitions in the third trimester.
  - 24 states impose prohibitions after a certain number of weeks; 17 of these states ban abortion at about 20 weeks post-fertilization or its equivalent of 22 weeks after the woman's last menstrual period on the grounds that the fetus can feel pain at that point in gestation.
- The circumstances under which later abortions are permitted vary from state to state.
  - 19 states permit later abortions to preserve the life or health of the woman.
  - 20 states unconstitutionally ban later abortions, except those performed to save the life or physical health of the woman.
  - 4 states unconstitutionally limit later abortions to those performed to save the life of the woman.
- Some states require the involvement of a second physician when a later-term abortion is performed.

- 14 states require that a second physician attend the procedure to treat a fetus if it is born alive in all or some circumstances.
- 9 states unconstitutionally require that a second physician certify that the abortion is medically necessary in all or some circumstances.

Later Abortion Policies

STATE	STATE RESTRICTIONS ON LATER ABORTION		EXCEPTIONS			WHEN A LATER ABORTION IS PERFORMED A SECOND PHYSICIAN MUST:	
	Limit On Abortion After Viability	Limit On Abortion At A Specific Gestational Age	Life And Health	Life And Physical Health	Life	Attend	Approve
Alabama		20 Weeks Postfertilization*		X[Ψ]		Postviability	Postviability
Arizona	X	▼	X[Ψ]			Postviability	
Arkansas		20 Weeks Postfertilization*		X[†,Ψ]		Postviability	
California	X		X				
Connecticut	X		X				
Delaware	X		X[‡]				▼
Florida		24 Weeks LMP		X[Ψ]			X
Georgia		20 Weeks Postfertilization*		X[‡,Ψ]			
Hawaii	X		X				
Idaho	X	▼			X		Postviability
Illinois	X		X			X	
Indiana		20 Weeks Postfertilization*		X[Ψ]		X	
Iowa		20 Weeks Postfertilization*		X[Ψ]			
Kansas		22 Weeks LMP*		X[Ψ]			Postviability
Kentucky		20 Weeks Postfertilization*		X[Ψ]			
Louisiana		20 Weeks Postfertilization*		X[‡,Ψ]		Postviability	
Maine	X		X				
Maryland	X		X[‡]				
Massachusetts		24 Weeks Post-Implantation	X				
Michigan	X				X		
Minnesota	X		X			20 Weeks	
Mississippi		20 Weeks LMP*		X[‡,Ψ]			
Missouri	X			X[Ψ]		X	
Montana	X		X[Ψ]				X
Nebraska		20 Weeks Postfertilization*		X[Ψ]			
Nevada		24 Weeks Postfertilization	X				
New York		24 Weeks Postfertilization[£]			X[£]	X	
North Carolina		20 Weeks LMP	X				
North Dakota		20 Weeks Postfertilization*		X		X	
Ohio		20 Weeks Postfertilization*		X[Ψ]		X	X
Oklahoma		20 Weeks Postfertilization*		X[Ψ]		Postviability	
Pennsylvania		24 Weeks LMP	X[Ψ]			X	X
Rhode Island		24 Weeks LMP			X		

South Carolina		20 Weeks Postfertilization*		X‡,Ψ			X
South Dakota		20 Weeks Postfertilization*		X			
Tennessee	X			XΨ		X	X
Texas		20 Weeks Postfertilization*		X‡,Ψ			
Utah	X		X†,‡,Ψ				
Virginia		3rd Trimester LMP	X				X
Washington	X		X				
West Virginia		22 Weeks LMP*		X‡,Ψ			
Wisconsin		20 Weeks Postfertilization*	XΨ				
Wyoming	X		X				
TOTAL	**17**	**26**	**19**	**20**	**4**	**14**	**10**

LMP- Calculates The Beginning Of Pregnancy From The Woman's Last Menstrual Period. States That Do Not Explicitly Enumerate The Manner In Which Gestational Age Should Be Determined Are Labeled As "LMP" In Keeping With Standard Medical Practice.
Postfertilization- Calculates The Beginning Of Pregnancy From The Date Of Conception; 20 Weeks Postfertilization Is Equivalent To 22 Weeks LMP.
Post-Implantation- Calculates The Beginning Of Pregnancy From The Date Of Implantation; 24 Weeks Implantation Is Equivalent To 27 Weeks LMP.

▼ Enforcement Permanently Enjoined By A Court Order; Policy Not In Effect

* Based On The Assertion That The Fetus Can Feel Pain At 18 Or 20 Weeks Postfertilization.

† Also Permitted In Case Of Rape Or Incest.

‡ Also Permitted In Case Of Fetal Abnormality; In Delaware, Georgia, Louisiana, Mississippi, Texas, South Carolina, Utah And West Virginia The Law Applies To A Lethal Abnormality.

Ψ The Exception Permits Abortions When The Woman Suffers From A Condition That Risks "Substantial And Irreversible Impairment Of A Major Bodily Function."

£ A 2016 New York Attorney General Opinion Determined That The State's Law Conflicts With U.S. Supreme Court Rulings On Abortion, And That Abortion Care Is Permissible Under The U.S. Constitution To Protect A Woman's Health, Or When The Fetus Is Not Viable.

Source URL: https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions

Letters of Support for SB 124
As of 2/16/18

From: Virginia Kristiansen
Date: February 13, 2018 at 9:01:03 PM AKST
To: <sen.cathy.giessel@akleg.gov>
Subject: Re: SB 124

On Feb 13, 2018, at 8:58 PM, Virginia Kristiansen wrote:

I was saddened to read a letter to the editor on 2-12-18 in our Anchorage newspaper being upset with you for providing an option for the mother aborting a child who survived this growling abortion procedure to live. How sad! Thank you for giving a mother a chance to choose life for their child. Imagine how many people before abortion was legal in this country would t be around if their mothers had the right to abort them! Personally, I believe God is in the mix and does not make junk. Thank you for all your efforts in supporting SB 124. Who gave us the right to kill innocent life?
Virginia Kristiansen

From: Brian K Michels
Date: February 14, 2018 at 6:09:28 AM AKST
To: "sen.cathy.giessel@akleg.gov" <sen.cathy.giessel@akleg.gov>
Subject: SB 124

Thank you for this bill and giving the unborn people another chance to live..

From: <nathankimford@gci.net>
Date: February 18, 2018 at 10:27:28 PM AKST
To: <sen.cathy.giessel@akleg.gov>
Subject: Support for Senate Bill 124

Dear Senator Giessel:

Thank you for pursuing protection for the fetus aborted alive through Senate Bill 124. This is absolutely the humane and decent act in response to a physician or health care provider determining that a fetus has "spontaneous respiratory or cardiac function or pulsation of the umbilical cord." The call to act in favor of aiding the life of this innocent, pre-mature baby needs to be written into law so that the medical provider is supported by law in such an action. The situation of an abortion resulting in a live birth can be disconcerting for all involved, as it is an unexpected outcome. The act of abortion is meant to end the life of the fetus, and when it doesn't, it can create an emotional and conflicted response from the medical staff. Having a plan in place—basically the opposite of a DNR (Do Not Resuscitate)—gives everyone confidence in what action to take. This makes complete, logical sense, and is helpful in creating a standard for the abortion medical community of supporting life in a live fetus as the result of an intended abortion.
Additionally, provision has been made in SB 124 for the care coordination aspects of the situation in order to cover the responsibility of providing for the child in need of aid. I am so grateful to see that this element of care has been thought through and included in the bill.

In my job I get to see many ultrasounds with young fetuses moving their tiny arms and legs, their little hearts beating, and their developing nervous system forming very early on in a pregnancy. It is always a thrilling moment to be able to see life in the womb, and to see how intricate and active the fetus is...as early as 7 or 8 weeks. Even though some mothers feel they are not able to have the child at a particular time in their lives, there are others who would welcome the chance to adopt and to care for that child. Provision for the care of the child in need of aid is an important part of SB 124, and it is written well.

Please fight for this bill and challenge each voting member of the senate to watch an ultrasound for themselves (online...see video links below) to see what is going on inside the womb prior to an abortion at 22 weeks, which is the age of viability outside the womb. I attached a few photos of ultrasounds from a 22-week pregnancy. These show what a baby in the womb looks like at the age of viability when women are still going through with abortions and the baby is old enough to survive outside the womb with appropriate medical assistance. The pictures and videos speak for themselves.

https://www.youtube.com/watch?v=dhImN3xv5Zg (51 second video)
https://www.youtube.com/watch?v=ajoR1c88Mqk (approx. 5 minute video)

Thank you so much for your important work. I hope all our Alaska legislators and senators will give time and careful thought to this matter, as they hold the power of life and death in their vote.

Sincerely,

Kimberly E. Ford
3232 Naomi Ave.
Wasilla, AK 99654

nathankimford@gci.net


MARTIN, DONNA *
370937 GA=22w5d
M6C/OB
19.2cm / 1.3 / 26Hz
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TIb 0.2
North Texas Perinatal Rm 3
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Senator Cathy Giessel,

February 18, 2018

This morning I heard about the bill you are supporting and I want you to know I am fully standing behind you in support of Senate Bill 124. In this day and age I believe every chance should be given to a child to survive. Senate Bill 124 requires that a physician use the method of terminating a pregnancy that gives the baby the best possibility of survival outside the mother's womb. The physician will exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as would be rendered to a child born alive in the course of a natural birth.

I lead a Women's Ministry at Church on the Rock and I have seen first hand the devastation that abortion can have on the heart and life of the mother, even though she chose it. To have a second option, to surrender the child, would greatly ease the mental anguish some of these women live with.

I also want to speak to issue of the children and the question, "Will they grow to be happy, adjusted adults and are they worth saving?" My husband and I have been able to walk down this road a ways and answer some of these questions ourselves. We became foster parents 8 years ago and were blessed to receive 3 baby girls in 2 short years, one at a time. Each one came from a hard place and had physical and emotional challenges. But as we have loved on these girls, adopted them and fought for their wholeness we have seen them progressively heal and become beautiful pictures of what nurture and love and can do. They are sensitive and caring girls, now 7, 6 and 5 years old who are daily growing and healing. I believe these children are highly valuable and worth fighting for and giving a chance at life and love.

If you would like to speak to me more I am available to meet. Thank you again for submitting this bill, my heart and prayers are with you!

Sincerely,
Kitri Walker

Women's Ministry Director (907) 299-4888
Church on the Rock Wasilla
P.O. Box 874693
Wasilla, AK 99687-4693

Jody Simpson

From: Ann Rappoport <agrappoport@gmail.com>
Sent: Sunday, February 18, 2018 7:17 PM
To: Sen. David Wilson; Sen. Cathy Giessel; Sen. Natasha Von Imhof; Sen. Tom Begich; Sen. Peter Micciche
Cc: Rep. Jennifer Johnston
Subject: Please vote NO on SB 124 now!!

Dear Senate House and Social Services Committee –

I am sorry I am unable to testify in person about SB 124, a bill that would require physicians who induce or perform abortions to attempt to birth an unborn child so it can be put up for adoption. I am currently out of state visiting my son, but want you to know my views on this misguided bill.

I hope you saw the excellent February 5th editorial in the Anchorage Daily News: https://www.adn.com/opinions/2018/02/05/abhor-all-abortion-then-step-up-for-all-children/ where Sherry Lewis so wisely called out the full, unspoken consequences of those working to abolish legal access to abortions! Her comments document why Senator Giesssel's proposed SB 124 is such a bad idea. Sherry asked whether those working so vehemently to prevent abortions are also so enthusiastically speaking up to adopt the babies who would instead need to be adopted. These babies would likely need hundreds of thousands of dollars in medical and social services care throughout their lives. That will be the expected fate of fetuses forced into an early birth, or who are born addicted to drugs through a drug addicted mother, who are born with Fetal Alcohol Syndrome and subsequent learning, social, and emotional challenges, or those which may be brought up in an abusive, violent, or unloving atmosphere. Our Legislature has already significantly cut funding for health and social services – passing this bill would result in a huge unfunded mandate.

SB 124 offers no process for funding the likely tremendous costs of care for an early birth, or subsequent care and education for babies who may be drug or alcohol damaged. Nor is there any concern for the poor woman who would be forced to go through this trauma, after making a tremendously difficult decision to pursue an abortion.

Why is the Legislature considering a bill that will push the government into a woman's body and her most personal decision? Our State Constitution protects an individual's right to privacy, so the Legislature has no business altering a woman's decision that has resulted from an accident, a mistake, or is the result of an act of violence or other abuse. Your Committee time, and the time of the Legislature as a whole would be much better spent balancing our State budget, fully funding education for all our children, and addressing overall public safety, rather than on the personal issues of a few women. Shame on you if you vote to approve this bill. Please vote **no** on SB 124 now, and do not consider passing anything similar!

Sincerely, Ann Rappoport

17053 Aries Court
Anchorage, AK 99516
907-230-3187

February 19, 2018

The Honorable David Wilson, Chair
Senate Health & Social Services Committee
Alaska State Senate
State Capitol
Juneau, AK 99801
by email: Senator.David.Wilson@akleg.gov

Re: Protecting Women's Health: ACLU of Alaska Opposition to SB 124

Dear Chair Wilson, Vice-Chair von Imhof, and Members of the Senate Health & Social Services Committee:

The ACLU of Alaska opposes Senate Bill 124. The mission of the bill is simple: to chip away at a woman's right to control her body by forcing her to undergo a dangerous medical procedure risking her fertility and even her life. SB 124 also may be an unconstitutional infringement on a woman's fundamental right to privacy.

The ACLU of Alaska has successfully litigated unconstitutional laws targeting women's reproductive rights for several decades. Most recently, the ACLU of Alaska, Planned Parenthood, and the Center for Reproductive Rights successfully challenged longstanding restrictions that forced women seeking to terminate pregnancy after the first trimester to travel out of state. The ACLU of Alaska and its partners also successfully sued to have the courts declare a law prohibiting minor women from obtaining an abortion without consent of a parent or guardian unconstitutional. As a result of this litigation, the State of Alaska paid $1 million in attorney fees.[1]

SB 124 may force women to undergo dangerous medical procedures when several safe outpatient alternatives are available.[2] The Alaska Supreme Court has made clear that reproductive rights, including the right to abortion, are fundamental rights.[3] The State may not infringe on the fundament privacy right to make

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[1] Nathaniel Herz, "Alaska to pay $1 million in legal fees after losing abortion-related lawsuit,"

[2] "Abortion (Termination of Pregnancy)," *Harvard Health Publishing, Harvard Medical School*, https://www.health.harvard.edu/womens-health/abortion-termination-of-pregnancy-.

[3] *Planned Parenthood of the Great Northwest v. State* ("PPGNW"), 375 P.3d 1122, 1137-38 (Alaska 2016), *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997).

reproductive decisions except "when necessary to further a compelling state interest and only if no less restrictive means exist to advance the interest."[4]

In fact, the United States Supreme Court recognized that abortion is "safer in terms of minor and serious complications [] than many common medical procedures" that typically are performed in outpatient settings, including colonoscopies and liposuction.[5] The Court even recognized that second trimester abortions can be safely performed in an outpatient clinic.[6] But the medical procedures that this bill would require women to undergo are not nearly as safe as the alternatives. And the United States Supreme Court has already overturned abortion regulations that adversely impact maternal health.[7] By compelling women to undergo dangerous medical procedures, this bill places an undue burden on women, which is unconstitutional, because it is "likely to prevent a significant number of women from obtaining an abortion."[8]

It is also unenforceable. SB 124 does not specify the gestation period to which it applies, nor does it specify how physicians and patients should comply with the law. Even if it were not vague, the United States Supreme Court has stated that the "State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient."[9]

We appreciate the opportunity to share our concerns about SB 124 with the Senate Health & Social Services Committee. We hope our testimony proves valuable to Members contemplating the bill's constitutional deficiencies. Because of these deficiencies, we oppose this bill and urge the Committee to vote Do Not Pass.

Sincerely,

Melissa H. Goldstein
Legal Fellow

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[4] *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001).

[5] *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2302, 2315 (2016).

[6] *See City of Akron v. Akron Center for Reproductive Health*,462 U.S. at 434-35.

[7] *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 78-79 (1976).

[8] *Planned Parenthood v. Casey*, 505 U.S. 878, 893 (1993).

[9] *Roe v. Wade*, 410 U.S. 113, 150 (1973).

c: Vice Chair Natasha von Imhof, Senator.Natasha.vonImhof@akleg.gov
Senator Mia Costello, Senator.Mia.Costello@akleg.gov
Senator Cathy Giessel, Senator.Cathy.Giessel@akleg.gov
Senator Peter Micciche, Senator.Peter.Micciche@akleg.gov
Senator Tom Begich, Senator.Tom.Begich@akleg.gov

Baby delivered at 27 weeks

Born Alive

SB 124

Senator Cathy Giessel

A Baby Born Alive

- When performing or inducing an abortion the physician shall use the method that provides the **best opportunity for the unborn child to survive.**

Baby born at twenty-one weeks.

A Baby Born Alive

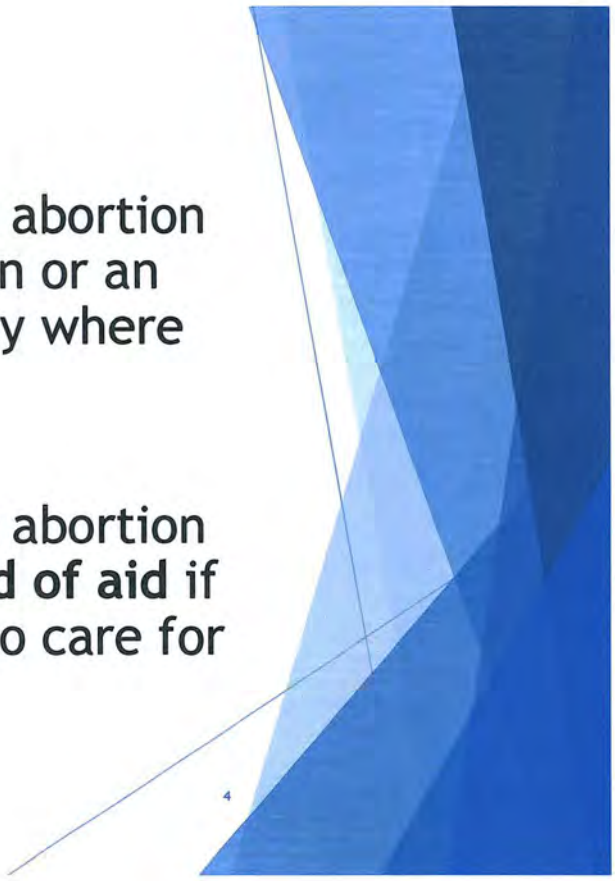
- A child born alive as a result of an abortion shall receive the same degree of **professional skill, care and diligence** to preserve the life and health of the child as a child born in the course of natural birth at the same fetal age.

Baby born at twenty-one weeks.

Child in Need of Aid

- A child born alive as a result of an abortion may **be surrendered** to a physician or an employee of the hospital or facility where the abortion is performed.

- A child born alive as a result of an abortion is considered to be a **child in need of aid** if the parent is unwilling or unable to care for the child.

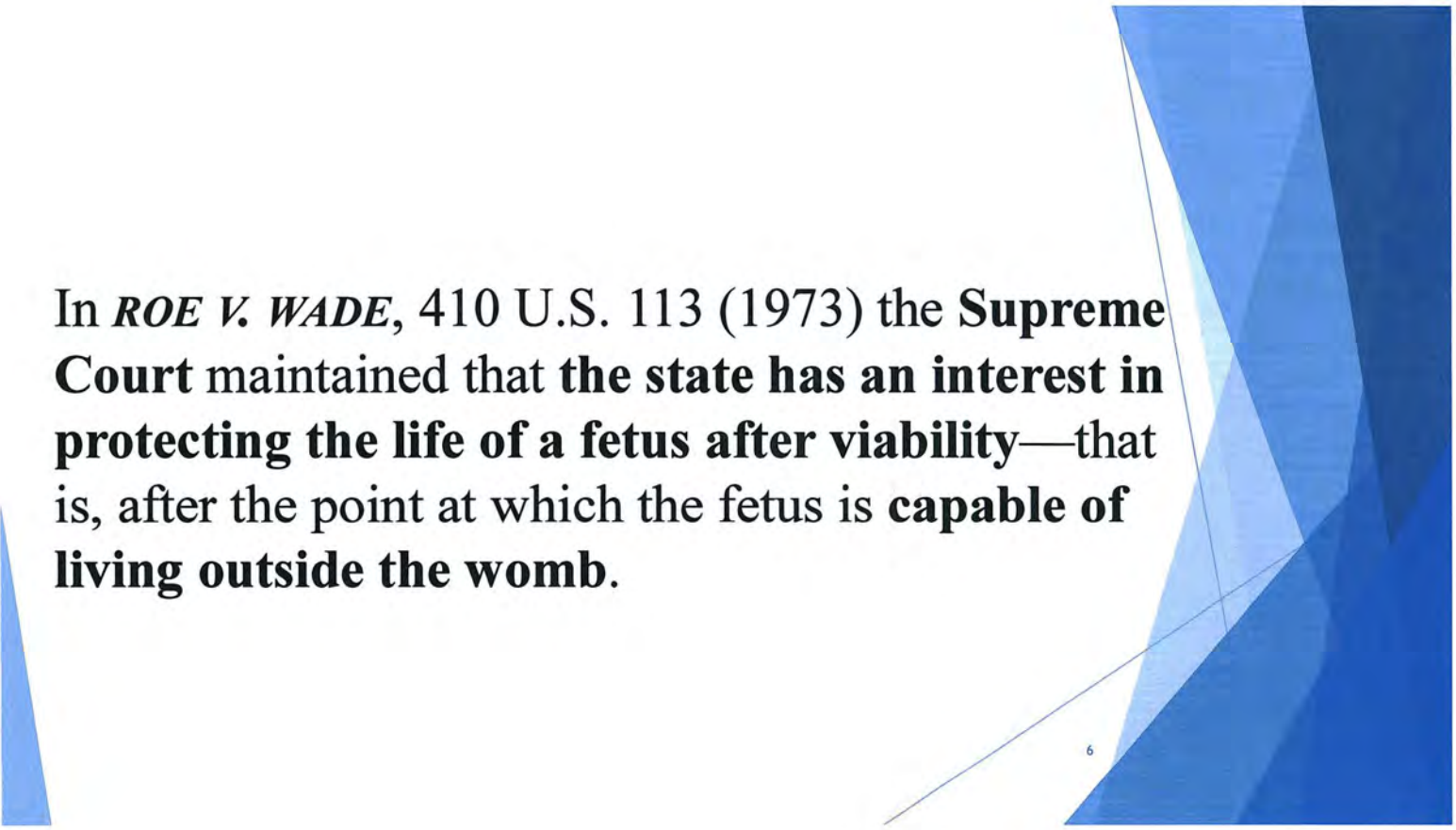


Applicability/Effective Date

- This bill applies to all abortions performed or induced after the effective date.
- This bill take effect immediately.

Baby born at 23 weeks, 4 days

In ***ROE V. WADE***, 410 U.S. 113 (1973) the **Supreme Court** maintained that **the state has an interest in protecting the life of a fetus after viability**—that is, after the point at which the fetus is **capable of living outside the womb**.



Roe v. Wade 410 U.S. 113 (1973)

"With respect to the State's important and legitimate interest in potential life, **the "compelling" point is at viability**.

This is so because the fetus then presumably has the **capability of meaningful life outside the mother's womb**."

Roe v. Wade 410 U.S. 113 (1973)

"State regulation **protective of fetal life after viability thus has both logical and biological justifications**.

If the State is interested in protecting fetal life after viability, **it may go so far as to proscribe (forbid, especially by law) abortion** during that period, except when it is necessary to preserve the life or health of the mother."

***Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 63 (1976), 410 U. S., at 160, 163**

Court upholds <u>viability definition</u>.

In *Roe,* we **used the term "viable,"** properly we thought, to signify the point at which **the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid,"** and presumably capable of "meaningful life outside the mother's womb,".

***Whitner v. State of South Carolina, 328 S.C. 1, 7-8 (S.C.*1997)**

Facing the issue of when a fetus is entitled to protection, the court held that **a viable fetus was a "person" for the purposes of the Children's Code**.


WEEK 9:
SUCKS THUMB
AND YAWNS
WEEK 6:
BRAIN WAVES
DETECTED
WEEK 8:
EYELIDS
FORM
WEEK 3:
HEART BEGINS
TO BEAT
WEEK 5:
VITAL ORGANS
FORM
THE BEAUTY OF
LIFE
LIVEACTION.ORG

Fetal development 14 weeks after conception

Finger Pads -2nd and 3rd months of pregnancy.
3rd and 4th months - the buckling and folding of this skin layer is partially responsible for the unique stresses in fingertip pads.

Ridges, the faint lines on fingertips that are the **foundation of finger prints start developing around this time.**

Fetal development 23 weeks after conception

By six months of age fingerprints and footprints are fully developed.

Three main patterns have developed from the ridges (arches, loops, whorls). These patterns on the fingertips, palms and soles are used to grasp things.

Fetal development 27 weeks after conception

Baby's **eyelids can partially open and eyelashes** have formed.

The central nervous system can direct **rhythmic breathing movements and control body temperature.**

Fetal development 31 weeks after conception

Baby's **eyes can open wide.**

Red blood cells are forming in your baby's bone marrow.

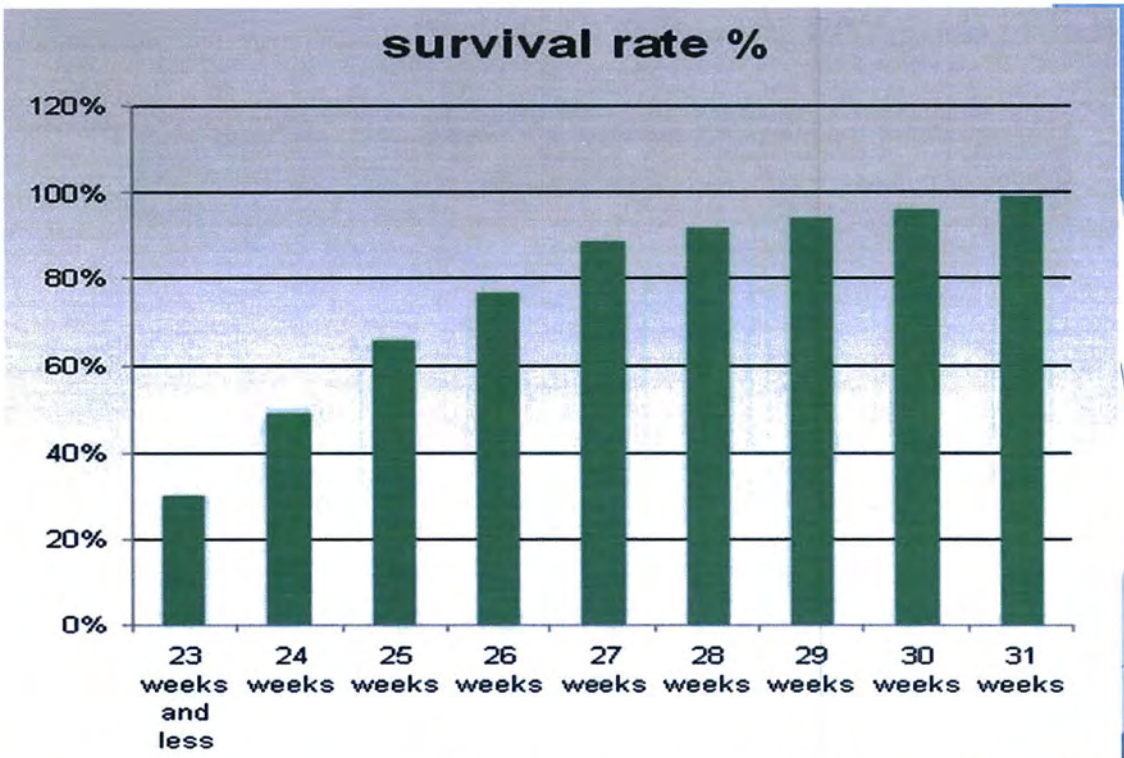
Baby's **toenails** are visible.

A Baby Born Alive

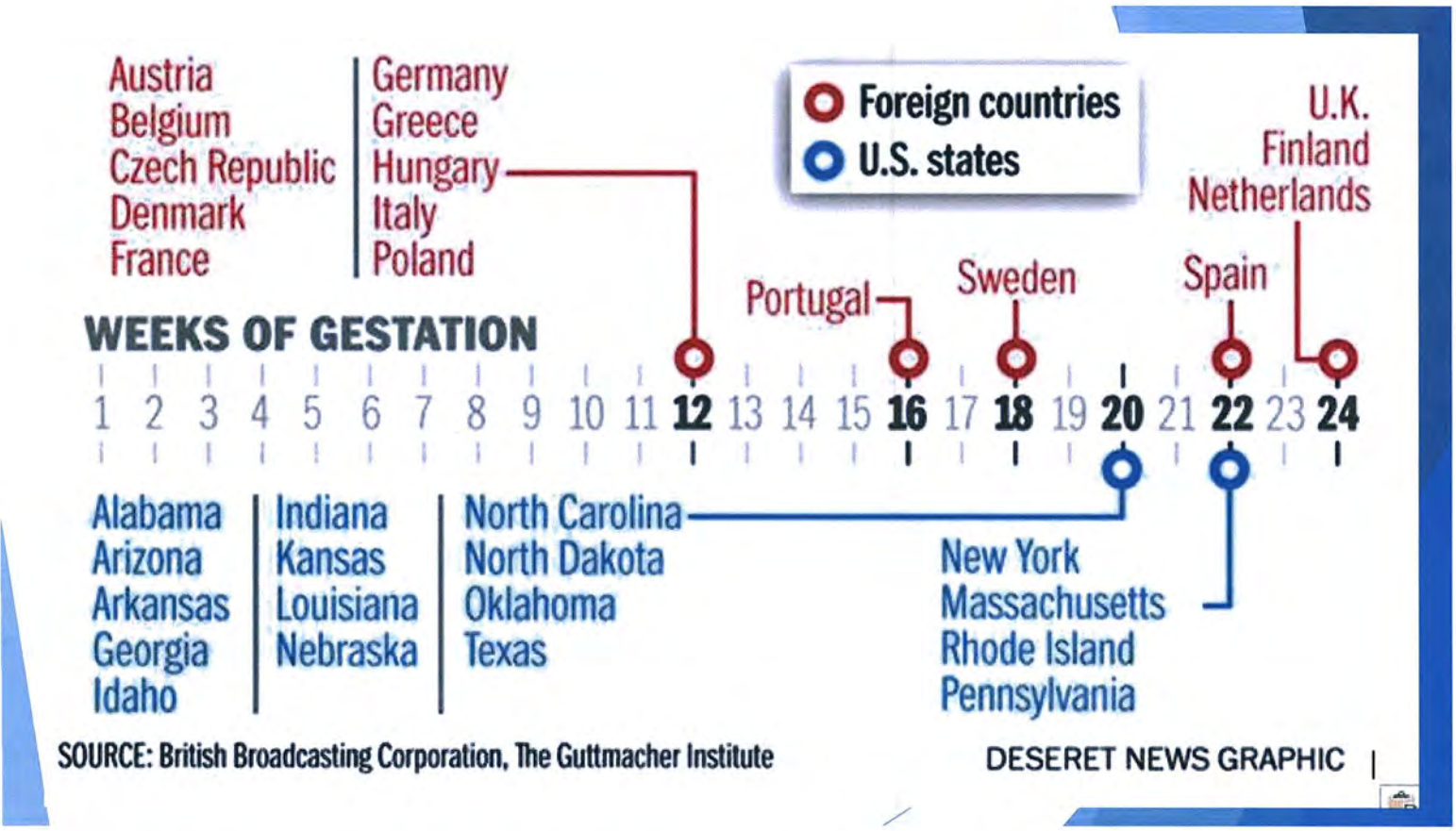
- **Best opportunity for the unborn child to survive.**

- A child born alive as a result of an abortion shall receive the same degree of **professional skill, care and diligence** to preserve the life and health of the child as a child born in the course of natural birth at the same fetal age.

Baby born at twenty-one weeks.



http://www.lilaussieprems.com.au/survival-rate-for-premature-babies/



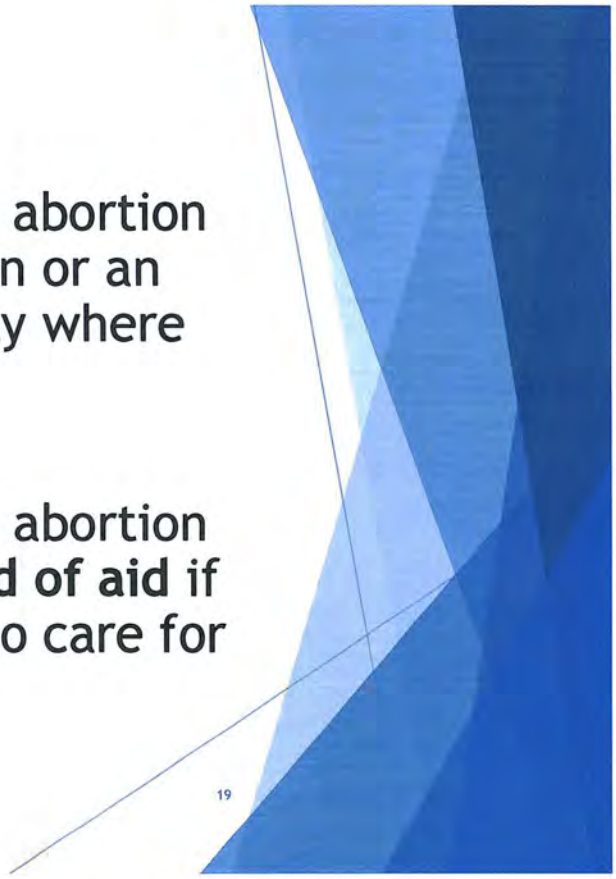
SOURCE: British Broadcasting Corporation, The Guttmacher Institute

DESERET NEWS GRAPHIC

Child in Need of Aid

- A child born alive as a result of an abortion may **be surrendered** to a physician or an employee of the hospital or facility where the abortion is performed.

- A child born alive as a result of an abortion is considered to be a **child in need of aid** if the parent is unwilling or unable to care for the child.



Applicability/Effective Date

- This bill applies to all abortions performed or induced after the effective date.
- This bill take effect immediately.

Baby born at 23 weeks, 4 days

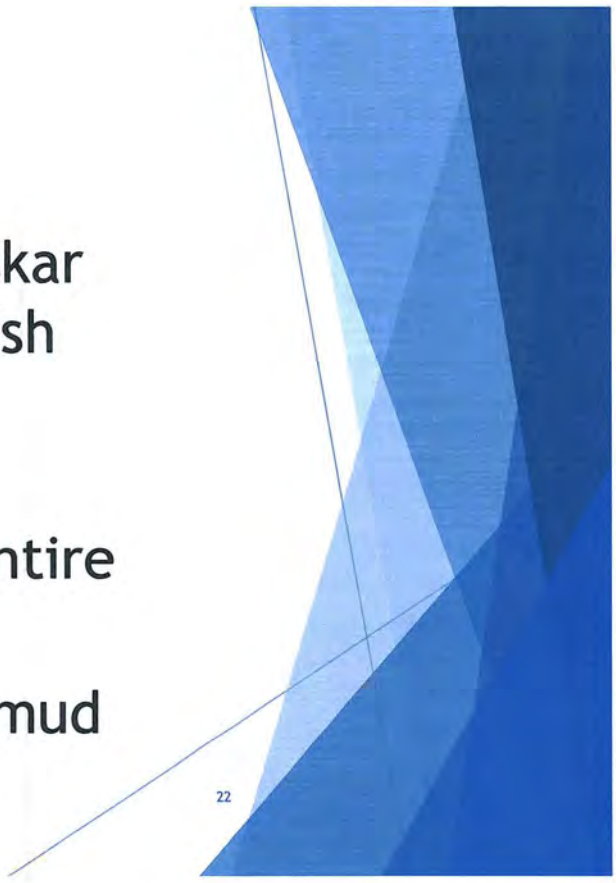
Nina Centofanti, 2½ weeks old

Nina Centofanti, today

Schindler's List

- Inscribed in a ring, given to Oskar Schindler at reunion with Jewish people whose lives he saved.
- "...whoever saves a life, it is considered as if he saved an entire world."

The Talmud



Margot Schlesinger and family. | Facebook

Baby delivered at 27 weeks

Born Alive

SB 124

Senator Cathy Giessel

February 19, 2018

Senate Health and Social Services Committee

RE: SB 124, Abortion Procedures; Child Surrender

Dear Senate Health and Social Services Committee Members,

The Alaska Right To Life Committee Opposes Passage of SB 124

The Alaska Right To Life Committee is urging all Senate Health and Social Services Committee Members to oppose and vote against advancing SB 124 from the Health and Social Services Committee. Please consider:

Opposition to abortion

Every abortion procedure kills an innocent, living pre-born human being – a person. Therefore, The Alaska Right To Life Committee opposes all abortion – the killing of innocent pre-born babies – from the moment of conception to birth.

The Alaska Right To Life Committee also advocates for the protection of all innocent human life from the point of conception to natural death.

Moreover, since every person is created in the image of God, it follows that every person has intrinsic worth and value, and is deserving of the right to life and the legal protections guaranteed in the constitution from the point of conception to natural death.

Furthermore, the right to life isn't a merely religious principle, but it is also firmly rooted in biology, embryology, philosophy, and historical law. Consider:

1. From the point of conception, a new human life is formed, with DNA unique to the newly conceived life, separate from both mother and father, though conceived from the union of paternal and maternal genetic material that are united when the sperm penetrates the oocyte, thereby creating the new life.
2. Because the newly conceived life – pre-born baby – has a human father and a human mother, the pre-born baby is also human – a person.

THE ALASKA RIGHT TO LIFE COMMITTEE
1220 E STREET, SUITE 207 | ANCHORAGE, AK 99501
(907) 276-1912 | ALASKARIGHTTOLIFE.ORG

3. Because the pre-born baby is human – a person – from the point of conception, the humanity of the pre-born baby cannot be separated from her rights as a person, and therefore from the State's duty to protect the pre-born baby from conception to natural death.

Therefore, every abortion procedure is morally abhorrent and must be opposed by legislation that does not place any conditions on, nor regulate in any way, the perpetuation of any abortion procedure.

Opposition to SB 124

SB 124 fails to meaningfully oppose any abortion procedure, but clearly states that, after determining the pre-born baby to be aborted is under 20 weeks' gestation, the abortionist may kill the baby in the most efficient and profitable manner allowed by American College of Obstetricians and Gynecologists.

But the most profound and immediate concern isn't based on hard core abolitionist rhetoric as would be expected, but it sadly stems from the faulty pro-abortion logic that is used in crafting SB 124. Put simply, SB 124 creates two classes of pre-born babies in Alaska:

1. Pre-born babies with constitutional rights affirmed – and the protections logically follow
2. Pre-born babies with constitutional rights withheld – and the logically following protections also withheld.

SB 124 and Roe vs Wade Oral Arguments and Ruling

Sadly, SB 124 is based on the same logic that Sarah Weddington used when she argued for Roe in the 1973 Roe vs Wade Supreme Court Case when she asserted several times that, "a fetus has no constitutional rights." Ms. Weddington went on to confirm that if pre-born babies do have constitutional rights, then abortion would be tantamount to infanticide.

Likewise, here in SB 124, we see that pre-born babies that have grown beyond the 20th week of gestation, that can survive outside of the womb are somehow persons in the eyes of the law, possessing constitutional rights and protections, and therefore must be provided the same medical care and treatment as a baby that is born naturally at the same gestational age or level of development.

To kill these babies would be tantamount to infanticide based on SB 124's flawed logic that the ability to survive outside of the womb after 20 weeks' gestation somehow confers the constitutional right to life that has, up to this point, been withheld until birth.

However, the pre-born baby that is targeted for abortion prior to the 20th week of gestation, that cannot survive outside of the womb continues to be stripped of her constitutional rights and no protections are provided to her. She is left to die in the manner her killer deems to be the most efficient.

Clearly, the constitutional right to life is withheld from pre-born babies in both the oral arguments and eventual Roe v Wade ruling, and the text of SB 124. The only meaningful difference presented in SB 124 is that the bill's sponsor appears to move the "peg" on which constitutional rights are hung from birth – as argued and ruled in Roe v Wade – to the point of viability as determined by an abortionist, and only after the abortionist has been forced to convert the abortion procedure to a premature – though unnaturally forced – birth.

The resulting protections afforded pre-born babies is the same under Roe v Wade and SB 124: constitutional rights to life and the following legal protections are withheld, both of which are desperately needed by the pre-born baby at risk of being killed by an abortionist.

Ultimately, were SB 124 to become law, it would simply create a race to the abortion mill before the 20 week gestation mark, or it would simply send those women who delayed their abortion decision until after 20 weeks' gestation out of state for their abortions.

Moreover, Alaska Induced Termination Of Pregnancy reports show that, over the past five years, only one pre-born baby over 20 weeks' gestation was killed in the state of Alaska, in contrast with 7,194 babies under 20 weeks' gestation having been killed in the same period.

Not only is SB 124 flawed in its application of constitutional law, it misses the mark of providing any meaningful protections to pre-born babies at risk of being killed by an abortionist when over 99.9% of the babies killed by abortionists die before the 20th week of gestation.

SB 124 also fails to provide adequate protection to pre-born babies beyond the 20 weeks' gestation mark, as noted by infamous abortionist Warren Hern, who claims to perform abortions as late as the 34th week of gestation. Hern asserts that, "The fetus cannot be delivered "alive" in my procedure... because I begin by giving the fetus an injection that stops its heart immediately. I treat the woman's cervix to cause it to open during the next

two days. On the third day, under anesthesia, the membranes are ruptured, allowing the amniotic fluid to escape. Medicine is given to make the uterus contract, and the dead fetus is delivered or removed with forceps. Many variations of this sequence are possible, depending on the woman's medical

condition and surgical indications." In procedures not requiring fetal injection, Dr. Hern reports that while performing another abortion, "...Because of the two days of prior treatment, the amniotic membranes were visible and bulging. I ruptured the membranes and released the fluid to reduce the risk of amniotic fluid embolism. Then I inserted my forceps into the uterus and applied them to the head of the fetus, which was still alive, since fetal injection is not done at that stage of pregnancy. I closed the forceps, crushing the skull of the fetus, and withdrew the forceps. The fetus, now dead, slid out more or less intact."

Dr. Hern's article points out that women seeking abortions – at any stage of pregnancy are contracting with abortionists to kill their babies. Should the terms of their agreement change based on gestational age as SB 124 would affect, the then required premature birthing procedure would likely send the pregnant woman outside of Alaska, as is already the case for roughly 10% of Alaska's women seeking abortions.

SB 124 is so fundamentally flawed that even if it were dramatically amended, it could not possibly be rehabilitated to be made useful for the protection of pre-born babies that are at risk of abortion at any gestational age or level of development, and its passage from the Senate Health and Social Services Committee must therefore be opposed.

Finally, as alluded to in the challenges above, SB 124 attempts to apply the constitutional rights guaranteed to 'born persons' by the currently flawed understanding of the 14th Amendment to pre-born babies whose birth will be prematurely forced should an abortion be pursued beyond the 20th week of gestation.

In light of these considerations and the sincere desire of the majority of Alaskans that the practice of killing pre-born babies come to a swift and permanent end, The Alaska Right To Life Committee urges the Senate Health and Social Services Committee members to oppose SB 124's passage.

For LIFE,

Patrick

Patrick Martin
The Alaska Right To Life Committee

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Did I Violate the Partial-Birth Abortion Ban?

A doctor ponders a new era of prosecution

By Warren M. Hern

As the misleadingly titled "Partial-Birth Abortion Ban" makes its way to the president's desk, anti-abortion groups are celebrating their public relations victory. But beneath the hoopla, the bill's medical consequences remain murky. Exactly which procedures will be banned, and which doctors prosecuted? Will the anti-abortion lobby be happier with the alternative methods to which doctors will resort? If not, which methods and doctors will be targeted next? Will this ban have a chilling effect on related procedures? If so, will it prevent abortions—or births?

I ask these questions because I am a potential target of this legislation. Almost exactly 30 years ago, shortly after *Roe v. Wade*, I started performing abortions on a full-time basis in Boulder, Colo., at the state's first free-standing nonprofit abortion clinic, where I was the founding medical director. In my private practice, I perform many abortions as late as the 26th week of pregnancy, and some as late as the 34th week.

I don't know the answers to the questions I've posed above, and neither does Congress. No physician expert on late abortion has ever testified in person before a congressional committee. No peer-reviewed articles or case reports have ever been published describing anything such as "partial-birth" abortion, "Intact D&E" (for "dilation and extraction"), or any of its synonyms. There have been no descriptions of its complication rates and no published studies comparing its complication rates with those of any other method of late abortion.

What I do know is that the political exploitation of this issue is confusing and frightening my patients. Recently, I received a call from a woman whose physician had discovered catastrophic genetic and developmental defects in the fetus she is carrying. The pregnancy was profoundly desired, and the diagnosis was devastating for her and her husband. She called me with great anxiety to find out whether passage of the "partial-birth" ban by the Senate would mean that she could not come to my office for help because my work would be illegal. She was also horrified by the images that she had seen and the terminology she had heard in the congressional debates.

I reassured her that I do not perform the "partial-birth" procedure and that there is no likelihood that the ban's passage would close my office and keep me from seeing her. The fetus cannot be delivered "alive" in my procedure—as the ban stipulates in defining prohibited procedures—because I begin by giving the fetus an injection that stops its heart immediately. I treat the woman's cervix to cause it to open during the next two days. On the third day, under anesthesia, the membranes are ruptured, allowing the amniotic fluid to escape. Medicine is given to make the uterus contract, and the dead fetus is delivered or removed with forceps. Many variations of this sequence are possible, depending on the woman's medical condition and surgical indications.

On the same day I got that call, I received a call from another woman who hoped to become pregnant but wanted to be reassured that, in spite of passage of the "partial-birth" ban, she would still be able to terminate the pregnancy if a serious genetic defect were discovered at, say, 20 weeks of pregnancy. Because of her history, she has an especially high risk of such a scenario. Without reassurance, she would avoid pregnancy entirely. Again, I reassured her that I would be here for her if she needs me.

But what if the people enforcing the "partial-birth" ban decide for some reason—because they doubt that my injection worked, for example—that it covers what I do? Or what if other doctors decide to follow the same procedure of causing fetal death by injection some time—even a day or two—before the extraction is performed? If the intact delivery of the living fetus (the "birth" imagery) is what bothers lawmakers, will they ban this method as well? Depending on the doctor, the alternative to intact extraction could be dismemberment of the fetus in the uterus, which may be more dangerous for the woman and no less troubling to look at. Is that what Congress wants? Who gets to decide what is safer for the woman: the expert physician or Congress?

Earlier this year, I began an abortion on a young woman who was 17 weeks pregnant. Because of the two days of prior treatment, the amniotic membranes were visible and bulging. I ruptured the membranes and released the fluid to reduce the risk of amniotic fluid embolism. Then I inserted my forceps into the uterus and applied them to the head of the fetus, which was still alive, since fetal injection is not done at that stage of pregnancy. I closed the forceps, crushing the skull of the fetus, and withdrew the forceps. The fetus, now dead, slid out more or less intact. With the next pass of the forceps, I grasped the placenta, and it came out in one piece. Within a few seconds, I had completed my routine exploration of the uterus and sharp curettage. The blood loss would just fill a tablespoon. The patient, who was awake, hardly felt the operation. She was relieved, grateful, and safe. She wants to have children in the future.

Did I do a "partial-birth" abortion? Will John Ashcroft prosecute me? Stay tuned.

Alaska ITOP Report 2012 to 2016

21-24 Week Gestational Age Analysis

	2012	2013	2014	2015	2016	Total
Total Abortions	1,632	1,450	1,518	1,334	1,260	**7,194**
21-24 Weeks Gestation	0	0	0	**1**	0	**1**
% of Abortions Affected By SB 124	**0%**	**0%**	**0%**	**0.075%**	**0%**	**0.014%**

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Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2008-2012

Estimated Gestation	2012	2011	2010	2009	2008
1-4	20	15	22	30	39
5-8	916	976	1,001	1,154	954
9-12	507	515	570	622	623
13-16	98	79	95	112	120
17-20	0	3	0	3	0
21-24	0	1	0	0	0
Not Stated	88	38	27	17	23
Total	1,629	1,627	1,715	1,938	1,759

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2008-2012

Estimated Gestation	2012	2011	2010	2009	2008
1-4	1.2	0.9	1.3	1.5	2.2
5-8	56.2	60.0	58.4	59.5	54.2
9-12	31.1	31.7	33.2	32.1	35.4
13-16	6.0	4.9	5.5	5.8	6.8
17-20	0.0	0.2	0.0	0.2	0.0
21-24	0.0	0.1	0.0	0.0	0.0
Not Stated	5.4	2.3	1.6	0.9	1.3
Total	100	100	100	100	100

Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2009-2013

Estimated Gestation	2013	2012	2011	2010	2009
1-4	32	20	15	22	30
5-8	863	919	976	1,001	1,154
9-12	390	507	514	571	622
13-16	86	98	79	95	112
17-20	1	0	3	0	3
21-24	0	0	1	0	0
Not Stated	78	88	38	27	17
Total	1,450	1,632	1,626	1,716	1,938

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2009-2013

Estimated Gestation	2013	2012	2011	2010	2009
1-4	2.2	1.2	0.9	1.3	1.5
5-8	59.5	56.3	60.0	58.3	59.5
9-12	26.9	31.1	31.6	33.3	32.1
13-16	5.9	6.0	4.9	5.5	5.8
17-20	0.1	0.0	0.2	0.0	0.2
21-24	0.0	0.0	0.1	0.0	0.0
Not Stated	5.4	5.4	2.3	1.6	0.9
Total	100	100	100	100	100

Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2010-2014

Estimated Gestation	2014	2013	2012	2011	2010
1-4	17	32	20	15	22
5-8	887	863	919	976	1,001
9-12	370	390	507	514	571
13-16	78	86	98	79	95
17-20	3	1	0	3	0
21-24	0	0	0	1	0
Not Stated	6	78	88	38	27
Total	1,361	1,450	1,632	1,626	1,716

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2010-2014

Estimated Gestation	2014	2013	2012	2011	2010
1-4	1.2	2.2	1.2	0.9	1.3
5-8	65.2	59.5	56.3	60.0	58.3
9-12	27.2	26.9	31.1	31.6	33.3
13-16	5.7	5.9	6.0	4.9	5.5
17-20	0.2	0.1	0.0	0.2	0.0
21-24	0.0	0.0	0.0	0.1	0.0
Not Stated	0.4	5.4	5.4	2.3	1.6
Total	100	100	100	100	100

Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2011-2015

Estimated Gestation	2015	2014	2013	2012	2011
1-4	15	17	32	20	15
5-8	873	919	863	919	976
9-12	366	400	390	507	514
13-16	75	116	86	98	79
17-20	2	44	1	0	3
21-24	1	15	0	0	1
Not Stated	2	6	78	88	38
Total	1,334	1,518	1,450	1,632	1,626

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2011-2015

Estimated Gestation	2015	2014	2013	2012	2011
1-4	1.1	1.1	2.2	1.2	0.9
5-8	65.4	60.5	59.5	56.3	60.0
9-12	27.4	26.4	26.9	31.1	31.6
13-16	5.6	7.6	5.9	6.0	4.9
17-20	0.1	2.9	0.1	0.0	0.2
21-24	0.1	1.0	0.0	0.0	0.1
Not Stated	0.1	0.4	5.4	5.4	2.3
Total	100	100	100	100	100

Table 8a: Numbers of Induced Terminations by Weeks of Estimated Gestation, 2012-2016

Estimated Gestation	2012	2013	2014	2015	2016
1-4	20	32	17	15	16
5-8	919	863	919	873	819
9-12	507	390	400	366	354
13-16	98	86	116	75	65
17-20	0	1	44	2	2
21-24	0	0	15	1	0
Not Stated	88	78	6	2	4
Total	1,632	1,450	1,518	1,334	1,260

The Alaska Right To Life Committee Note:

Please notice that in Table 8a an error is made showing that in 15 abortions were performed in the 21-24 week range of gestational age in 2014.

The number reported on the 2014 ITOP Report shows ZERO, (0) abortions performed in 2014 within the 21-24 week gestational age range.

Given the disparity is not addressed in either 2015 or 2016 ITOP reports indicates an error in 2015 was duplicated in the 2016 report, and without correction, the trending number of abortions in the 21-24 weeks of gestation should be used.

Table 8b: Percentages of Induced Terminations by Weeks of Estimated Gestation, 2012-2016

Estimated Gestation	2012	2013	2014	2015	2016
1-4	1.2	2.2	1.1	1.1	1.3
5-8	56.3	59.5	60.5	65.4	65.0
9-12	31.1	26.9	26.4	27.4	28.1
13-16	6.0	5.9	7.6	5.6	5.2
17-20	0.0	0.1	2.9	0.1	0.2
21-24	0.0	0.0	1.0	0.1	0.0
Not Stated	5.4	5.4	0.4	0.1	0.3
Total	100	100	100	100	100

Roe v. Wade, 410 U.S. 113 (1973)

Syllabus | Case

U.S. Supreme Court

Roe v. Wade, 410 U.S. 113 (1973)

Roe v. Wade

No. 70-18

Argued December 13, 1971

Reargued October 11, 1972

Decided January 22, 1973

410 U.S. 113

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This Texas federal appeal and its Georgia companion, *Doe v. Bolton, post*, p. 179, present constitutional challenges to state criminal abortion legislation. The Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century. The Georgia statutes, in contrast, have a modern cast, and are a legislative product that, to an extent at least, obviously reflects the influences of recent attitudinal change, of advancing medical knowledge and techniques, and of new thinking about an old issue.

We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the

deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

In addition, population growth, pollution, poverty, and racial overtones tend to complicate and not to simplify the problem.

Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection. We seek earnestly to do this, and, because we do, we

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have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries. We bear in mind, too, Mr. Justice Holmes' admonition in his now-vindicated dissent in *Lochner v. New York*, 198 U. S. 45, 76 (1905):

"[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

I

The Texas statutes that concern us here are Arts. 1191-1194 and 1196 of the State's Penal Code. [Footnote 1] These make it a crime to "procure an abortion," as therein

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defined, or to attempt one, except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the States. [Footnote 2]

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Texas first enacted a criminal abortion statute in 1854. Texas Laws 1854, c. 49, § 1, set forth in 3 H. Gammel, Laws of Texas 1502 (1898). This was soon modified into language

that has remained substantially unchanged to the present time. *See* Texas Penal Code of 1857, c. 7, Arts. 531-536; G. Paschal, Laws of Texas, Arts. 2192-2197 (1866); Texas Rev.Stat., c. 8, Arts. 536-541 (1879); Texas Rev.Crim.Stat., Arts. 1071-1076 (1911). The final article in each of these compilations provided the same exception, as does the present Article 1196, for an abortion by "medical advice for the purpose of saving the life of the mother." [Footnote 3]

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II

Jane Roe, [Footnote 4] a single woman who was residing in Dallas County, Texas, instituted this federal action in March 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes.

Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint, Roe purported to sue "on behalf of herself and all other women" similarly situated.

James Hubert Hallford, a licensed physician, sought and was granted leave to intervene in Roe's action. In his complaint, he alleged that he had been arrested previously for violations of the Texas abortion statutes, and

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that two such prosecutions were pending against him. He described conditions of patients who came to him seeking abortions, and he claimed that for many cases he, as a physician, was unable to determine whether they fell within or outside the exception recognized by Article 1196. He alleged that, as a consequence, the statutes were vague and uncertain, in violation of the Fourteenth Amendment, and that they violated his

own and his patients' rights to privacy in the doctor-patient relationship and his own right to practice medicine, rights he claimed were guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

John and Mary Doe, [Footnote 5] a married couple, filed a companion complaint to that of Roe. They also named the District Attorney as defendant, claimed like constitutional deprivations, and sought declaratory and injunctive relief. The Does alleged that they were a childless couple; that Mrs. Doe was suffering from a "neural-chemical" disorder; that her physician had "advised her to avoid pregnancy until such time as her condition has materially improved" (although a pregnancy at the present time would not present "a serious risk" to her life); that, pursuant to medical advice, she had discontinued use of birth control pills; and that, if she should become pregnant, she would want to terminate the pregnancy by an abortion performed by a competent, licensed physician under safe, clinical conditions. By an amendment to their complaint, the Does purported to sue "on behalf of themselves and all couples similarly situated."

The two actions were consolidated and heard together by a duly convened three-judge district court. The suits thus presented the situations of the pregnant single woman, the childless couple, with the wife not pregnant,

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and the licensed practicing physician, all joining in the attack on the Texas criminal abortion statutes. Upon the filing of affidavits, motions were made for dismissal and for summary judgment. The court held that Roe and members of her class, and Dr. Hallford, had standing to sue and presented justiciable controversies, but that the Does had failed to allege facts sufficient to state a present controversy, and did not have standing. It concluded that, with respect to the requests for a declaratory judgment, abstention was not warranted. On the merits, the District Court held that the

"fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment, through the Fourteenth Amendment,"

and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs' Ninth Amendment rights. The court then held that abstention was warranted with respect to the requests for an injunction. It therefore dismissed the Does'

complaint, declared the abortion statutes void, and dismissed the application for injunctive relief. 314 F.Supp. 1217, 1225 (ND Tex.1970).

The plaintiffs Roe and Doe and the intervenor Hallford, pursuant to 28 U.S.C. § 1253, have appealed to this Court from that part of the District Court's judgment denying the injunction. The defendant District Attorney has purported to cross-appeal, pursuant to the same statute, from the court's grant of declaratory relief to Roe and Hallford. Both sides also have taken protective appeals to the United States Court of Appeals for the Fifth Circuit. That court ordered the appeals held in abeyance pending decision here. We postponed decision on jurisdiction to the hearing on the merits. 402 U.S. 941 (1971)

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It might have been preferable if the defendant, pursuant to our Rule 20, had presented to us a petition for certiorari before judgment in the Court of Appeals with respect to the granting of the plaintiffs' prayer for declaratory relief. Our decisions in *Mitchell v. Donovan*, 398 U. S. 427 (1970), and *Gunn v. University Committee*, 399 U. S. 383 (1970), are to the effect that § 1253 does not authorize an appeal to this Court from the grant or denial of declaratory relief alone. We conclude, nevertheless, that those decisions do not foreclose our review of both the injunctive and the declaratory aspects of a case of this kind when it is properly here, as this one is, on appeal under 1253 from specific denial of injunctive relief, and the arguments as to both aspects are necessarily identical. *See Carter v. Jury Comm'n*, 396 U. S. 320 (1970); *Florida Lime Growers v. Jacobsen*, 362 U. S. 73, 80-81 (1960). It would be destructive of time and energy for all concerned were we to rule otherwise. *Cf. Doe v. Bolton, post*, p. 179.

IV

We are next confronted with issues of justiciability, standing, and abstention. Have Roe and the Does established that "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U. S. 186, 204 (1962), that insures that

"the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution,"

Flast v. Cohen, 392 U. S. 83, 101 (1968), and *Sierra Club v. Morton*, 405 U. S. 727, 732 (1972)? And what effect did the pendency of criminal abortion charges against Dr.

Hallford in state court have upon the propriety of the federal court's granting relief to him as a plaintiff-intervenor?

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A. *Jane Roe*. Despite the use of the pseudonym, no suggestion is made that Roe is a fictitious person. For purposes of her case, we accept as true, and as established, her existence; her pregnant state, as of the inception of her suit in March 1970 and as late as May 21 of that year when she filed an alias affidavit with the District Court; and her inability to obtain a legal abortion in Texas.

Viewing Roe's case as of the time of its filing and thereafter until as late a May, there can be little dispute that it then presented a case or controversy and that, wholly apart from the class aspects, she, as a pregnant single woman thwarted by the Texas criminal abortion laws, had standing to challenge those statutes. *Abele v. Markle*, 452 F.2d 1121, 1125 (CA2 1971); *Crossen v. Breckenridge*, 446 F.2d 833, 838-839 (CA6 1971); *Poe v. Menghini*, 339 F.Supp. 986, 990-991 (Kan.1972). *See Truax v. Raich*, 239 U. S. 33 (1915). Indeed, we do not read the appellee's brief as really asserting anything to the contrary. The "logical nexus between the status asserted and the claim sought to be adjudicated," *Flast v. Cohen*, 392 U.S. at 102, and the necessary degree of contentiousness, *Golden v. Zwickler*, 394 U. S. 103 (1969), are both present.

The appellee notes, however, that the record does not disclose that Roe was pregnant at the time of the District Court hearing on May 22, 1970, [Footnote 6] or on the following June 17 when the court's opinion and judgment were filed. And he suggests that Roe's case must now be moot because she and all other members of her class are no longer subject to any 1970 pregnancy.

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The usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950); *Golden v. Zwickler, supra; SEC v. Medical Committee for Human Rights*, 404 U. S. 403 (1972).

But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be

effectively denied. Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC*, 219 U. S. 498, 515 (1911). *See Moore v. Ogilvie*, 394 U. S. 814, 816 (1969); *Carroll v. Princess Anne*, 393 U. S. 175, 178-179 (1968); *United States v. W. T. Grant Co.*, 345 U. S. 629, 632-633 (1953).

We, therefore, agree with the District Court that Jane Roe had standing to undertake this litigation, that she presented a justiciable controversy, and that the termination of her 1970 pregnancy has not rendered her case moot.

B. *Dr. Hallford.* The doctor's position is different. He entered Roe's litigation as a plaintiff-intervenor, alleging in his complaint that he:

"[I]n the past has been arrested for violating the Texas Abortion Laws and at the present time stands charged by indictment with violating said laws in the Criminal District Court of Dallas County, Texas to-wit: (1) The State of Texas vs.

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James H. Hallford, No. C-69-5307-IH, and (2) The State of Texas vs. James H. Hallford, No. C-692524-H. In both cases, the defendant is charged with abortion. . . ."

In his application for leave to intervene, the doctor made like representations as to the abortion charges pending in the state court. These representations were also repeated in the affidavit he executed and filed in support of his motion for summary judgment.

Dr. Hallford is, therefore, in the position of seeking, in a federal court, declaratory and injunctive relief with respect to the same statutes under which he stands charged in criminal prosecutions simultaneously pending in state court. Although he stated that he has been arrested in the past for violating the State's abortion laws, he makes no allegation of any substantial and immediate threat to any federally protected right that cannot be asserted in his defense against the state prosecutions. Neither is there any allegation of harassment or bad faith prosecution. In order to escape the rule articulated in the cases cited in the next paragraph of this opinion that, absent harassment and bad faith, a defendant in a pending state criminal case cannot affirmatively challenge in federal court the statutes under which the State is prosecuting him, Dr. Hallford seeks to

distinguish his status as a present state defendant from his status as a "potential future defendant," and to assert only the latter for standing purposes here.

We see no merit in that distinction. Our decision in *Samuels v. Mackell*, 401 U. S. 66 (1971), compels the conclusion that the District Court erred when it granted declaratory relief to Dr. Hallford instead of refraining from so doing. The court, of course, was correct in refusing to grant injunctive relief to the doctor. The reasons supportive of that action, however, are those expressed in *Samuels v. Mackell, supra*, and in *Younger v.*

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Harris, 401 U. S. 37 (1971); *Boyle v. Landry*, 401 U. S. 77 (1971); *Perez v. Ledesma*, 401 U. S. 82 (1971); and *Byrne v. Karaleis*, 401 U. S. 216 (1971). *See also Dombrowski v. Pfister*, 380 U. S. 479 (1965). We note, in passing, that *Younger* and its companion cases were decided after the three-judge District Court decision in this case.

Dr. Hallford's complaint in intervention, therefore, is to be dismissed. [Footnote 7] He is remitted to his defenses in the state criminal proceedings against him. We reverse the judgment of the District Court insofar as it granted Dr. Hallford relief and failed to dismiss his complaint in intervention.

C. *The Does.* In view of our ruling as to Roe's standing in her case, the issue of the Does' standing in their case has little significance. The claims they assert are essentially the same as those of Roe, and they attack the same statutes. Nevertheless, we briefly note the Does' posture.

Their pleadings present them as a childless married couple, the woman not being pregnant, who have no desire to have children at this time because of their having received medical advice that Mrs. Doe should avoid pregnancy, and for "other highly personal reasons." But they "fear . . . they may face the prospect of becoming

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parents." And if pregnancy ensues, they "would want to terminate" it by an abortion. They assert an inability to obtain an abortion legally in Texas and, consequently, the prospect of obtaining an illegal abortion there or of going outside Texas to some place where the procedure could be obtained legally and competently.

We thus have as plaintiffs a married couple who have, as their asserted immediate and present injury, only an alleged "detrimental effect upon [their] marital happiness" because they are forced to "the choice of refraining from normal sexual relations or of endangering Mary Doe's health through a possible pregnancy." Their claim is that, sometime in the future, Mrs. Doe might become pregnant because of possible failure of contraceptive measures, and, at that time in the future, she might want an abortion that might then be illegal under the Texas statutes.

This very phrasing of the Does' position reveals its speculative character. Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unpreparedness for parenthood, and possible future impairment of health. Any one or more of these several possibilities may not take place, and all may not combine. In the Does' estimation, these possibilities might have some real or imagined impact upon their marital happiness. But we are not prepared to say that the bare allegation of so indirect an injury is sufficient to present an actual case or controversy. *Younger v. Harris*, 401 U.S. at 41-42; *Golden v. Zwickler*, 394 U.S. at 109-110; *Abele v. Markle*, 452 F.2d at 1124-1125; *Crossen v. Breckenridge*, 446 F.2d at 839. The Does' claim falls far short of those resolved otherwise in the cases that the Does urge upon us, namely, *Investment Co. Institute v. Camp*, 401 U. S. 617 (1971); *Data Processing Service v. Camp*, 397 U. S. 150 (1970);

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and *Epperson v. Arkansas*, 393 U. S. 97 (1968). *See also Truax v. Raich*, 239 U. S. 33 (1915).

The Does therefore are not appropriate plaintiffs in this litigation. Their complaint was properly dismissed by the District Court, and we affirm that dismissal.

V

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras, *see Griswold v. Connecticut*, 381 U. S. 479 (1965); *Eisenstadt v. Baird*, 405 U. S. 438

(1972); *id.* at 460 (WHITE, J., concurring in result); or among those rights reserved to the people by the Ninth Amendment, *Griswold v. Connecticut*, 381 U.S. at 486 (Goldberg, J., concurring). Before addressing this claim, we feel it desirable briefly to survey, in several aspects, the history of abortion, for such insight as that history may afford us, and then to examine the state purposes and interests behind the criminal abortion laws.

VI

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century.

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1. *Ancient attitudes.* These are not capable of precise determination. We are told that, at the time of the Persian Empire, abortifacients were known, and that criminal abortions were severely punished. [Footnote 8] We are also told, however, that abortion was practiced in Greek times as well as in the Roman Era, [Footnote 9] and that "it was resorted to without scruple." [Footnote 10] The Ephesian, Soranos, often described as the greatest of the ancient gynecologists, appears to have been generally opposed to Rome's prevailing free-abortion practices. He found it necessary to think first of the life of the mother, and he resorted to abortion when, upon this standard, he felt the procedure advisable. [Footnote 11] Greek and Roman law afforded little protection to the unborn. If abortion was prosecuted in some places, it seems to have been based on a concept of a violation of the father's right to his offspring. Ancient religion did not bar abortion. [Footnote 12]

2. *The Hippocratic Oath.* What then of the famous Oath that has stood so long as the ethical guide of the medical profession and that bears the name of the great Greek (460(?)-377(?) B. C.), who has been described

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as the Father of Medicine, the "wisest and the greatest practitioner of his art," and the "most important and most complete medical personality of antiquity," who dominated the medical schools of his time, and who typified the sum of the medical knowledge of the past? [Footnote 13] The Oath varies somewhat according to the particular translation, but in any translation the content is clear:

"I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner, I will not give to a woman a pessary to produce abortion, [Footnote 14]"

or

"I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy. [Footnote 15]"

Although the Oath is not mentioned in any of the principal briefs in this case or in *Doe v. Bolton, post,* p. 179, it represents the apex of the development of strict ethical concepts in medicine, and its influence endures to this day. Why did not the authority of Hippocrates dissuade abortion practice in his time and that of Rome? The late Dr. Edelstein provides us with a theory: [Footnote 16] The Oath was not uncontested even in Hippocrates' day; only the Pythagorean school of philosophers frowned upon the related act of suicide. Most Greek thinkers, on the other hand, commended abortion, at least prior to viability. *See* Plato, Republic, V, 461; Aristotle, Politics, VII, 1335b 25. For the Pythagoreans, however, it was a matter of dogma. For them, the embryo was animate from the moment of conception, and abortion meant destruction of a living being. The abortion clause of the Oath, therefore, "echoes Pythagorean doctrines,"

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and "[i]n no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity." [Footnote 17]

Dr. Edelstein then concludes that the Oath originated in a group representing only a small segment of Greek opinion, and that it certainly was not accepted by all ancient physicians. He points out that medical writings down to Galen (A.D. 130-200) "give evidence of the violation of almost every one of its injunctions." [Footnote 18] But with the end of antiquity, a decided change took place. Resistance against suicide and against abortion became common. The Oath came to be popular. The emerging teachings of Christianity were in agreement with the Pythagorean ethic. The Oath "became the nucleus of all medical ethics," and "was applauded as the embodiment of truth." Thus,

suggests Dr. Edelstein, it is "a Pythagorean manifesto, and not the expression of an absolute standard of medical conduct." [Footnote 19]

This, it seems to us, is a satisfactory and acceptable explanation of the Hippocratic Oath's apparent rigidity. It enables us to understand, in historical context, a long-accepted and revered statement of medical ethics.

3. *The common law.* It is undisputed that, at common law, abortion performed before "quickening" -- the first recognizable movement of the fetus *in utero*, appearing usually from the 16th to the 18th week of pregnancy [Footnote 20] -- was not an indictable offense. [Footnote 21] The absence

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of a common law crime for pre-quickening abortion appears to have developed from a confluence of earlier philosophical, theological, and civil and canon law concepts of when life begins. These disciplines variously approached the question in terms of the point at which the embryo or fetus became "formed" or recognizably human, or in terms of when a "person" came into being, that is, infused with a "soul" or "animated." A loose consensus evolved in early English law that these events occurred at some point between conception and live birth. [Footnote 22] This was "mediate animation." Although

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Christian theology and the canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century, there was otherwise little agreement about the precise time of formation or animation. There was agreement, however, that, prior to this point, the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide. Due to continued uncertainty about the precise time when animation occurred, to the lack of any empirical basis for the 40-80-day view, and perhaps to Aquinas' definition of movement as one of the two first principles of life, Bracton focused upon quickening as the critical point. The significance of quickening was echoed by later common law scholars, and found its way into the received common law in this country.

Whether abortion of a quick fetus was a felony at common law, or even a lesser crime, is still disputed. Bracton, writing early in the 13th century, thought it homicide. [Footnote 23] But the later and predominant view, following the great common law scholars, has been that it was, at most, a lesser offense. In a frequently cited

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passage, Coke took the position that abortion of a woman "quick with childe" is "a great misprision, and no murder." [Footnote 24] Blackstone followed, saying that, while abortion after quickening had once been considered manslaughter (though not murder), "modern law" took a less severe view. [Footnote 25] A recent review of the common law precedents argues, however, that those precedents contradict Coke, and that even post-quickening abortion was never established as a common law crime. [Footnote 26] This is of some importance, because, while most American courts ruled, in holding or dictum, that abortion of an unquickened fetus was not criminal under their received common law, [Footnote 27] others followed Coke in stating that abortion

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of a quick fetus was a "misprision," a term they translated to mean "misdemeanor." [Footnote 28] That their reliance on Coke on this aspect of the law was uncritical and, apparently in all the reported cases, dictum (due probably to the paucity of common law prosecutions for post-quickening abortion), makes it now appear doubtful that abortion was ever firmly established as a common law crime even with respect to the destruction of a quick fetus.

4. *The English statutory law.* England's first criminal abortion statute, Lord Ellenborough's Act, 43 Geo. 3, c. 58, came in 1803. It made abortion of a quick fetus, § 1, a capital crime, but, in § 2, it provided lesser penalties for the felony of abortion before quickening, and thus preserved the "quickening" distinction. This contrast was continued in the general revision of 1828, 9 Geo. 4, c. 31, § 13. It disappeared, however, together with the death penalty, in 1837, 7 Will. 4 & 1 Vict., c. 85. § 6, and did not reappear in the Offenses Against the Person Act of 1861, 24 & 25 Vict., c. 100, § 59, that formed the core of English anti-abortion law until the liberalizing reforms of 1967. In 1929, the Infant Life (Preservation) Act, 19 & 20 Geo. 5, c. 34, came into being. Its emphasis was upon the destruction of "the life of a child capable of being born alive." It made a willful act performed with the necessary intent a felony. It contained a proviso that one was not to be

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found guilty of the offense

"unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother."

A seemingly notable development in the English law was the case of *Rex v. Bourne*, [1939] 1 K.B. 687. This case apparently answered in the affirmative the question whether an abortion necessary to preserve the life of the pregnant woman was excepted from the criminal penalties of the 1861 Act. In his instructions to the jury, Judge Macnaghten referred to the 1929 Act, and observed that that Act related to "the case where a child is killed by a willful act at the time when it is being delivered in the ordinary course of nature." *Id.* at 691. He concluded that the 1861 Act's use of the word "unlawfully," imported the same meaning expressed by the specific proviso in the 1929 Act, even though there was no mention of preserving the mother's life in the 1861 Act. He then construed the phrase "preserving the life of the mother" broadly, that is, "in a reasonable sense," to include a serious and permanent threat to the mother's health, and instructed the jury to acquit Dr. Bourne if it found he had acted in a good faith belief that the abortion was necessary for this purpose. *Id.* at 693-694. The jury did acquit.

Recently, Parliament enacted a new abortion law. This is the Abortion Act of 1967, 15 & 16 Eliz. 2, c. 87. The Act permits a licensed physician to perform an abortion where two other licensed physicians agree (a)

"that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated,"

or (b)

"that there is a substantial risk that, if the child were born it would suffer from such physical or mental abnormalities as

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to be seriously handicapped."

The Act also provides that, in making this determination, "account may be taken of the pregnant woman's actual or reasonably foreseeable environment." It also permits a physician, without the concurrence of others, to terminate a pregnancy where he is of the good faith opinion that the abortion "is immediately necessary to save the life or to

prevent grave permanent injury to the physical or mental health of the pregnant woman."

5. *The American law.* In this country, the law in effect in all but a few States until mid-19th century was the preexisting English common law. Connecticut, the first State to enact abortion legislation, adopted in 1821 that part of Lord Ellenborough's Act that related to a woman "quick with child." [Footnote 29] The death penalty was not imposed. Abortion before quickening was made a crime in that State only in 1860. [Footnote 30] In 1828, New York enacted legislation [Footnote 31] that, in two respects, was to serve as a model for early anti-abortion statutes. First, while barring destruction of an unquickened fetus as well as a quick fetus, it made the former only a misdemeanor, but the latter second-degree manslaughter. Second, it incorporated a concept of therapeutic abortion by providing that an abortion was excused if it

"shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose."

By 1840, when Texas had received the common law, [Footnote 32] only eight American States

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had statutes dealing with abortion. [Footnote 33] It was not until after the War Between the States that legislation began generally to replace the common law. Most of these initial statutes dealt severely with abortion after quickening, but were lenient with it before quickening. Most punished attempts equally with completed abortions. While many statutes included the exception for an abortion thought by one or more physicians to be necessary to save the mother's life, that provision soon disappeared, and the typical law required that the procedure actually be necessary for that purpose. Gradually, in the middle and late 19th century, the quickening distinction disappeared from the statutory law of most States and the degree of the offense and the penalties were increased. By the end of the 1950's, a large majority of the jurisdictions banned abortion, however and whenever performed, unless done to save or preserve the life of the mother. [Footnote 34] The exceptions, Alabama and the District of Columbia, permitted abortion to preserve the mother's health. [Footnote 35] Three States permitted abortions that were not "unlawfully" performed or that were not "without lawful justification," leaving interpretation of those standards to the courts. [Footnote 36] In

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the past several years, however, a trend toward liberalization of abortion statutes has resulted in adoption, by about one-third of the States, of less stringent laws, most of them patterned after the ALI Model Penal Code, § 230.3, [Footnote 37] set forth as Appendix B to the opinion in *Doe v. Bolton, post*, p. 205.

It is thus apparent that, at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early stage of pregnancy, and very possibly without such a limitation, the opportunity

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to make this choice was present in this country well into the 19th century. Even later, the law continued for some time to treat less punitively an abortion procured in early pregnancy.

6. *The position of the American Medical Association*. The anti-abortion mood prevalent in this country in the late 19th century was shared by the medical profession. Indeed, the attitude of the profession may have played a significant role in the enactment of stringent criminal abortion legislation during that period.

An AMA Committee on Criminal Abortion was appointed in May, 1857. It presented its report, 12 Trans. of the Am.Med.Assn. 778 (1859), to the Twelfth Annual Meeting. That report observed that the Committee had been appointed to investigate criminal abortion "with a view to its general suppression." It deplored abortion and its frequency and it listed three causes of "this general demoralization":

"The first of these causes is a widespread popular ignorance of the true character of the crime -- a belief, even among mothers themselves, that the foetus is not alive till after the period of quickening."

"The second of the agents alluded to is the fact that the profession themselves are frequently supposed careless of foetal life. . . ."

"The third reason of the frightful extent of this crime is found in the grave defects of our laws, both common and statute, as regards the independent and actual existence of the child before birth, as a living being. These errors, which are sufficient in most instances to prevent conviction, are based, and only based, upon mistaken and exploded medical dogmas. With strange inconsistency, the law fully acknowledges the foetus *in utero* and its inherent rights, for civil purposes; while personally and as criminally affected, it fails to recognize it,

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and to its life as yet denies all protection."

Id. at 776. The Committee then offered, and the Association adopted, resolutions protesting "against such unwarrantable destruction of human life," calling upon state legislatures to revise their abortion laws, and requesting the cooperation of state medical societies "in pressing the subject." *Id.* at 28, 78.

In 1871, a long and vivid report was submitted by the Committee on Criminal Abortion. It ended with the observation,

"We had to deal with human life. In a matter of less importance, we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less."

22 Trans. of the Am.Med.Assn. 268 (1871). It proffered resolutions, adopted by the Association, *id.* at 38-39, recommending, among other things, that it

"be unlawful and unprofessional for any physician to induce abortion or premature labor without the concurrent opinion of at least one respectable consulting physician, and then always with a view to the safety of the child -- if that be possible,"

and calling

"the attention of the clergy of all denominations to the perverted views of morality entertained by a large class of females -- aye, and men also, on this important question."

Except for periodic condemnation of the criminal abortionist, no further formal AMA action took place until 1967. In that year, the Committee on Human Reproduction urged the adoption of a stated policy of opposition to induced abortion except when there is "documented medical evidence" of a threat to the health or life of the mother, or that the

child "may be born with incapacitating physical deformity or mental deficiency," or that a pregnancy "resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the

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patient," two other physicians "chosen because of their recognized professional competence have examined the patient and have concurred in writing," and the procedure "is performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals." The providing of medical information by physicians to state legislatures in their consideration of legislation regarding therapeutic abortion was "to be considered consistent with the principles of ethics of the American Medical Association." This recommendation was adopted by the House of Delegates. Proceedings of the AMA House of Delegates 40-51 (June 1967).

In 1970, after the introduction of a variety of proposed resolutions and of a report from its Board of Trustees, a reference committee noted "polarization of the medical profession on this controversial issue"; division among those who had testified; a difference of opinion among AMA councils and.committees; "the remarkable shift in testimony" in six months, felt to be influenced "by the rapid changes in state laws and by the judicial decisions which tend to make abortion more freely available; " and a feeling "that this trend will continue." On June 25, 1970, the House of Delegates adopted preambles and most of the resolutions proposed by the reference committee. The preambles emphasized "the best interests of the patient," "sound clinical judgment," and "informed patient consent," in contrast to "mere acquiescence to the patient's demand." The resolutions asserted that abortion is a medical procedure that should be performed by a licensed physician in an accredited hospital only after consultation with two other physicians and in conformity with state law, and that no party to the procedure should be required to violate personally held moral principles. [Footnote 38] Proceedings

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of the AMA House of Delegates 220 (June 1970). The AMA Judicial Council rendered a complementary opinion. [Footnote 39]

7. *The position of the American Public Health Association.* In October, 1970, the Executive Board of the APHA adopted Standards for Abortion Services. These were five in number:

"a. Rapid and simple abortion referral must be readily available through state and local public

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health departments, medical societies, or other nonprofit organizations."

"b. An important function of counseling should be to simplify and expedite the provision of abortion services; it should not delay the obtaining of these services."

"c. Psychiatric consultation should not be mandatory. As in the case of other specialized medical services, psychiatric consultation should be sought for definite indications, and not on a routine basis."

"d. A wide range of individuals from appropriately trained, sympathetic volunteers to highly skilled physicians may qualify as abortion counselors."

"e. Contraception and/or sterilization should be discussed with each abortion patient."

"Recommended Standards for Abortion Services, 61 Am.J.Pub.Health 396 (1971). Among factors pertinent to life and health risks associated with abortion were three that 'are recognized as important': "

"a. the skill of the physician,"

"b. the environment in which the abortion is performed, and above all"

"c. the duration of pregnancy, as determined by uterine size and confirmed by menstrual history."

Id. at 397.

It was said that "a well equipped hospital" offers more protection

"to cope with unforeseen difficulties than an office or clinic without such resources. . . . The factor of gestational age is of overriding importance."

Thus, it was recommended that abortions in the second trimester and early abortions in the presence of existing medical complications be performed in hospitals as inpatient procedures. For pregnancies in the first trimester,

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abortion in the hospital with or without overnight stay "is probably the safest practice." An abortion in an extramural facility, however, is an acceptable alternative "provided arrangements exist in advance to admit patients promptly if unforeseen complications develop." Standards for an abortion facility were listed. It was said that, at present, abortions should be performed by physicians or osteopaths who are licensed to practice and who have "adequate training." *Id.* at 398.

8. *The position of the American Bar Association.* At its meeting in February, 1972, the ABA House of Delegates approved, with 17 opposing votes, the Uniform Abortion Act that had been drafted and approved the preceding August by the Conference of Commissioners on Uniform State Laws. 58 A.B.A.J. 380 (1972). We set forth the Act in full in the margin. [Footnote 40] The

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Opinion of the Court Conference has appended an enlightening Prefatory Note. [Footnote 41]

VII

Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence.

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It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. [Footnote 42] The appellants and *amici* contend, moreover, that this is not a proper state purpose, at all and suggest that, if it were, the Texas statutes are overbroad in protecting it, since the law fails to distinguish between married and unwed mothers.

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. [Footnote 43] This was particularly true prior to the

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development of antisepsis. Antiseptic techniques, of course, were based on discoveries by Lister, Pasteur, and others first announced in 1867, but were not generally accepted and employed until about the turn of the century. Abortion mortality was high. Even after 1900, and perhaps until as late as the development of antibiotics in the 1940's, standard modern techniques such as dilation and curettage were not nearly so safe as they are today. Thus, it has been argued that a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy.

Modern medical techniques have altered this situation. Appellants and various *amici* refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of the first trimester, although not without its risk, is now relatively safe. Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or lower than the rates for normal childbirth. [Footnote 44] Consequently, any interest of the State in protecting the woman from an inherently hazardous procedure, except when it would be equally dangerous for her to forgo it, has largely disappeared. Of course, important state interests in the areas of health and medical standards do remain.

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The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise. The prevalence of high mortality rates at illegal "abortion mills" strengthens, rather than weakens, the State's interest in regulating the conditions under which abortions are performed. Moreover, the risk to the woman increases as her pregnancy continues. Thus, the State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

The third reason is the State's interest -- some phrase it in terms of duty -- in protecting prenatal life. Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception. [Footnote 45] The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only

when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least potential life is involved, the State may assert interests beyond the protection of the pregnant woman alone.

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Parties challenging state abortion laws have sharply disputed in some courts the contention that a purpose of these laws, when enacted, was to protect prenatal life. [Footnote 46] Pointing to the absence of legislative history to support the contention, they claim that most state laws were designed solely to protect the woman. Because medical advances have lessened this concern, at least with respect to abortion in early pregnancy, they argue that with respect to such abortions the laws can no longer be justified by any state interest. There is some scholarly support for this view of original purpose. [Footnote 47] The few state courts called upon to interpret their laws in the late 19th and early 20th centuries did focus on the State's interest in protecting the woman's health, rather than in preserving the embryo and fetus. [Footnote 48] Proponents of this view point out that in many States, including Texas, [Footnote 49] by statute or judicial interpretation, the pregnant woman herself could not be prosecuted for self-abortion or for cooperating in an abortion performed upon her by another. [Footnote 50] They claim that adoption of the "quickening" distinction through received common

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law and state statutes tacitly recognizes the greater health hazards inherent in late abortion and impliedly repudiates the theory that life begins at conception.

It is with these interests, and the eight to be attached to them, that this case is concerned.

VIII

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford*, 141 U. S. 250,

251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, *Stanley v. Georgia*, 394 U. S. 557, 564 (1969); in the Fourth and Fifth Amendments, *Terry v. Ohio*, 392 U. S. 1, 8-9 (1968), *Katz v. United States*, 389 U. S. 347, 350 (1967), *Boyd v. United States*, 116 U. S. 616 (1886), *see Olmstead v. United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, *Griswold v. Connecticut*, 381 U.S. at 484-485; in the Ninth Amendment, *id.* at 486 (Goldberg, J., concurring); or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, *see Meyer v. Nebraska*, 262 U. S. 390, 399 (1923). These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U. S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia*, 388 U. S. 1, 12 (1967); procreation, *Skinner v. Oklahoma*, 316 U. S. 535, 541-542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S. at 453-454; *id.* at 460, 463-465

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(WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); and childrearing and education, *Pierce v. Society of Sisters*, 268 U. S. 510, 535 (1925), *Meyer v. Nebraska, supra.*

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

On the basis of elements such as these, appellant and some *amici* argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The

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Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some *amici* that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. *Jacobson v. Massachusetts*, 197 U. S. 11 (1905) (vaccination); *Buck v. Bell*, 274 U. S. 200 (1927) (sterilization).

We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation.

We note that those federal and state courts that have recently considered abortion law challenges have reached the same conclusion. A majority, in addition to the District Court in the present case, have held state laws unconstitutional, at least in part, because of vagueness or because of overbreadth and abridgment of rights. *Abele v. Markle*, 342 F.Supp. 800 (Conn.1972), *appeal docketed*, No. 72-56; *Abele v. Markle*, 351 F.Supp. 224 (Conn.1972), *appeal docketed*, No. 72-730; *Doe v. Bolton*, 319 F.Supp. 1048 (ND Ga.1970), *appeal decided today, post*, p. 179; *Doe v. Scott*, 321 F.Supp. 1385 (ND Ill.1971), *appeal docketed*, No. 70-105; *Poe v. Menghini*, 339 F.Supp. 986 (Kan.1972); *YWCA v. Kuler*, 342 F.Supp. 1048 (NJ 1972); *Babbitz v. McCann*,

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310 F.Supp. 293 (ED Wis.1970), *appeal dismissed*, 400 U. S. 1 (1970); *People v. Belous*, 71 Cal.2d 954, 458 P.2d 194 (1969), *cert. denied*, 397 U.S. 915 (1970); *State v. Barquet*, 262 So.2d 431 (Fla.1972).

Others have sustained state statutes. *Crossen v. Attorney General*, 344 F.Supp. 587 (ED Ky.1972), *appeal docketed*, No. 72-256; *Rosen v. Louisiana State Board of Medical Examiners*, 318 F.Supp. 1217 (ED La.1970), *appeal docketed*, No. 70-42; *Corkey v. Edwards*, 322 F.Supp. 1248 (WDNC 1971), *appeal docketed*, No. 71-92; *Steinberg v. Brown*, 321 F.Supp. 741 (ND Ohio 1970); *Doe v. Rampton* (Utah 1971), *appeal docketed*, No. 71-5666; *Cheaney v. State*, ____ Ind. ____, 285 N.E.2d 265 (1972); *Spears v. State*, 257 So.2d 876 (Miss. 1972); *State v. Munson*, 86 S.D. 663, 201 N.W.2d 123 (1972), *appeal docketed*, No. 72-631.

Although the results are divided, most of these courts have agreed that the right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute, and is subject to some limitations; and that, at some point, the state interests as to protection of health, medical standards, and prenatal life, become dominant. We agree with this approach.

Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," *Kramer v. Union Free School District*, 395 U. S. 621, 627 (1969); *Shapiro v. Thompson*, 394 U. S. 618, 634 (1969), *Sherbert v. Verner*, 374 U. S. 398, 406 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. *Griswold v. Connecticut*, 381 U.S. at 485; *Aptheker v. Secretary of State*, 378 U. S. 500, 508 (1964); *Cantwell v. Connecticut*, 310 U. S. 296, 307-308 (1940); *see*

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Eisenstadt v. Baird, 405 U.S. at 460, 463-464 (WHITE, J., concurring in result).

In the recent abortion cases cited above, courts have recognized these principles. Those striking down state laws have generally scrutinized the State's interests in protecting health and potential life, and have concluded that neither interest justified broad limitations on the reasons for which a physician and his pregnant patient might decide that she should have an abortion in the early stages of pregnancy. Courts sustaining state laws have held that the State's determinations to protect health or prenatal life are dominant and constitutionally justifiable.

IX

The District Court held that the appellee failed to meet his burden of demonstrating that the Texas statute's infringement upon Roe's rights was necessary to support a compelling state interest, and that, although the appellee presented "several compelling justifications for state presence in the area of abortions," the statutes outstripped these justifications and swept "far beyond any areas of compelling state interest." 314 F.Supp. at 1222-1223. Appellant and appellee both contest that holding. Appellant, as has been indicated, claims an absolute right that bars any state imposition of criminal penalties in the area. Appellee argues that the State's determination to recognize and protect prenatal life from and after conception constitutes a compelling state interest. As noted above, we do not agree fully with either formulation.

A. The appellee and certain *amici* argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses,

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for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. [Footnote 51] On the other hand, the appellee conceded on reargument [Footnote 52] that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment.

The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution: in the listing of qualifications for Representatives and Senators, Art. I, § 2, cl. 2, and § 3, cl. 3; in the Apportionment Clause, Art. I, § 2, cl. 3; [Footnote 53] in the Migration and Importation provision, Art. I, § 9, cl. 1; in the Emolument Clause, Art. I, § 9, cl. 8; in the Electors provisions, Art. II, § 1, cl. 2, and the superseded cl. 3; in the provision outlining qualifications for the office of President, Art. II, § 1, cl. 5; in the Extradition provisions, Art. IV, § 2, cl. 2, and the superseded Fugitive Slave Clause 3; and in the Fifth, Twelfth, and Twenty-second Amendments, as well as in §§ 2 and 3 of the Fourteenth Amendment. But in nearly all these instances, the use of

the word is such that it has application only post-natally. None indicates, with any assurance, that it has any possible pre-natal application. [Footnote 54]

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All this, together with our observation, *supra*, that, throughout the major portion of the 19th century, prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. [Footnote 55] This is in accord with the results reached in those few cases where the issue has been squarely presented. *McGarvey v. Magee-Womens Hospital*, 340 F.Supp. 751 (WD Pa.1972); *Byrn v. New York City Health & Hospitals Corp.*, 31 N.Y.2d 194, 286 N.E.2d 887 (1972), *appeal docketed*, No. 72-434; *Abele v. Markle*, 351 F.Supp. 224 (Conn.1972), *appeal docketed*, No. 72-730. *Cf. Cheaney v. State*, ___ Ind. at ___, 285 N.E.2d at 270; *Montana v. Rogers*, 278 F.2d 68, 72 (CA7 1960), *aff'd sub nom. Montana v. Kennedy*, 366 U. S. 308 (1961); *Keeler v. Superior Court*, 2 Cal.3d 619, 470 P.2d 617 (1970); *State v. Dickinson*, 28

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Ohio St.2d 65, 275 N.E.2d 599 (1971). Indeed, our decision in *United States v. Vuitch*, 402 U. S. 62 (1971), inferentially is to the same effect, for we there would not have indulged in statutory interpretation favorable to abortion in specified circumstances if the necessary consequence was the termination of life entitled to Fourteenth Amendment protection.

This conclusion, however, does not of itself fully answer the contentions raised by Texas, and we pass on to other considerations.

B. The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. *See* Dorland's Illustrated Medical Dictionary 478-479, 547 (24th ed.1965). The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt and Griswold, Stanley, Loving, Skinner, and Pierce and Meyer were respectively concerned. As we have intimated above, it is reasonable and appropriate for a State to decide that, at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's

privacy is no longer sole and any right of privacy she possesses must be measured accordingly.

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

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It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live' birth. This was the belief of the Stoics. [Footnote 56] It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. [Footnote 57] It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family. [Footnote 58] As we have noted, the common law found greater significance in quickening. Physician and their scientific colleagues have regarded that event with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes "viable," that is, potentially able to live outside the mother's womb, albeit with artificial aid. [Footnote 59] Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. [Footnote 60] The Aristotelian theory of "mediate animation," that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those in the Church who would recognize the existence of life from

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the moment of conception. [Footnote 61] The latter is now, of course, the official belief of the Catholic Church. As one brief *amicus* discloses, this is a view strongly held by many non-Catholics as well, and by many physicians. Substantial problems for precise definition of this view are posed, however, by new embryological data that purport to

indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs. [Footnote 62]

In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth, or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. For example, the traditional rule of tort law denied recovery for prenatal injuries even though the child was born alive. [Footnote 63] That rule has been changed in almost every jurisdiction. In most States, recovery is said to be permitted only if the fetus was viable, or at least quick, when the injuries were sustained, though few

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courts have squarely so held. [Footnote 64] In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries. [Footnote 65] Such an action, however, would appear to be one to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. Similarly, unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians *ad litem*. [Footnote 66] Perfection of the interests involved, again, has generally been contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense.

X

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still *another* important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches

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term and, at a point during pregnancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact, referred to above at 149, that, until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion

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during that period, except when it is necessary to preserve the life or health of the mother.

Measured against these standards, Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore, cannot survive the constitutional attack made upon it here.

This conclusion makes it unnecessary for us to consider the additional challenge to the Texas statute asserted on grounds of vagueness. *See United States v. Vuitch*, 402 U.S. at 67-72.

XI

To summarize and to repeat:

1. A state criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life

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may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

2. The State may define the term "physician," as it has been employed in the preceding paragraphs of this Part XI of this opinion, to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined.

In *Doe v. Bolton, post*, p. 179, procedural requirements contained in one of the modern abortion statutes are considered. That opinion and this one, of course, are to be read together. [Footnote 67]

This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day. The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important

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state interests provide compelling justifications for intervention. Up to those points, the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intra-professional, are available.

XII

Our conclusion that Art. 1196 is unconstitutional means, of course, that the Texas abortion statutes, as a unit, must fall. The exception of Art. 1196 cannot be struck down separately, for then the State would be left with a statute proscribing all abortion procedures no matter how medically urgent the case.

Although the District Court granted appellant Roe declaratory relief, it stopped short of issuing an injunction against enforcement of the Texas statutes. The Court has recognized that different considerations enter into a federal court's decision as to declaratory relief, on the one hand, and injunctive relief, on the other. *Zwickler v. Koota*, 389 U. S. 241, 252-255 (1967); *Dombrowski v. Pfister*, 380 U. S. 479 (1965). We are not dealing with a statute that, on its face, appears to abridge free expression, an area of particular concern under *Dombrowski* and refined in *Younger v. Harris*, 401 U.S. at 50.

We find it unnecessary to decide whether the District Court erred in withholding injunctive relief, for we assume the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes of that State are unconstitutional.

The judgment of the District Court as to intervenor Hallford is reversed, and Dr. Hallford's complaint in intervention is dismissed. In all other respects, the judgment

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of the District Court is affirmed. Costs are allowed to the appellee.

It is so ordered.

[For concurring opinion of MR. CHIEF JUSTICE BURGER, *see post*, p. 207.]

[For concurring opinion of MR. JUSTICE DOUGLAS, *see post*, p. 209.]

[For dissenting opinion of MR. JUSTICE WHITE, *see post*, p. 221.]

MR. JUSTICE STEWART, concurring.

In 1963, this Court, in *Ferguson v. Skrupa*, 372 U. S. 726, purported to sound the death knell for the doctrine of substantive due process, a doctrine under which many state laws had in the past been held to violate the Fourteenth Amendment. As Mr. Justice Black's opinion for the Court in *Skrupa* put it:

"We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."

Id. at 730. [Footnote 1]

Barely two years later, in *Griswold v. Connecticut*, 381 U. S. 479, the Court held a Connecticut birth control law unconstitutional. In view of what had been so recently said in *Skrupa*, the Court's opinion in *Griswold* understandably did its best to avoid reliance on the Due Process Clause of the Fourteenth Amendment as the ground for decision. Yet the Connecticut law did not violate any provision of the Bill of Rights, nor any other specific provision of the Constitution. [Footnote 2] So it was clear

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to me then, and it is equally clear to me now, that the *Griswold* decision can be rationally understood only as a holding that the Connecticut statute substantively invaded the "liberty" that is protected by the Due Process Clause of the Fourteenth Amendment. [Footnote 3] As so understood, *Griswold* stands as one in a long line of

pre-*Skrupa* cases decided under the doctrine of substantive due process, and I now accept it as such.

"In a Constitution for a free people, there can be no doubt that the meaning of *liberty' must be broad indeed." Board of Regents v. Roth, 408 U. S. 564, 572. The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the "liberty" protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights. See Schware v. Board of Bar Examiners, 353 U. S. 232, 238-239; Pierce v. Society of Sisters, 268 U. S. 510, 534-535; Meyer v. Nebraska, 262 U. S. 390, 399-400. Cf. Shapiro v. Thompson, 394 U. S. 618, 629-630; United States v. Guest, 383 U. S. 745, 757-758; Carrington v. Rash, 380 U. S. 89, 96; Aptheker v. Secretary of State, 378 U. S. 500, 505; Kent v. Dulles, 357 U. S. 116, 127; Bolling v. Sharpe, 347 U. S. 497, 499-500; Truax v. Raich, 239 U. S. 33, 41.*

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As Mr. Justice Harlan once wrote:

"[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment."

Poe v. Ullman, 367 U. S. 497, 543 (opinion dissenting from dismissal of appeal) (citations omitted). In the words of Mr. Justice Frankfurter,

"Great concepts like . . . 'liberty' . . . were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged."

National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U. S. 582, 646 (dissenting opinion).

Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. *Loving v. Virginia*, 388 U. S. 1, 12; *Griswold v. Connecticut, supra; Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra. See also Prince v. Massachusetts*, 321 U. S. 158, 166; *Skinner v. Oklahoma*, 316 U. S. 535, 541. As recently as last Term, in *Eisenstadt v. Baird*, 405 U. S. 438, 453, we recognized

"the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person

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as the decision whether to bear or beget a child."

That right necessarily includes the right of a woman to decide whether or not to terminate her pregnancy.

"Certainly the interests of a woman in giving of her physical and emotional self during pregnancy and the interests that will be affected throughout her life by the birth and raising of a child are of a far greater degree of significance and personal intimacy than the right to send a child to private school protected in *Pierce v. Society of Sisters*, 268 U. S. 510 (1925), or the right to teach a foreign language protected in *Meyer v. Nebraska*, 262 U. S. 390 (1923)."

Abele v. Markle, 351 F.Supp. 224, 227 (Conn.1972).

Clearly, therefore, the Court today is correct in holding that the right asserted by Jane Roe is embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment.

It is evident that the Texas abortion statute infringes that right directly. Indeed, it is difficult to imagine a more complete abridgment of a constitutional freedom than that worked by the inflexible criminal statute now in force in Texas. The question then becomes whether the state interests advanced to justify this abridgment can survive the "particularly careful scrutiny" that the Fourteenth Amendment here requires.

The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. These are legitimate objectives, amply sufficient to permit a State to regulate abortions as it does

other surgical procedures, and perhaps sufficient to permit a State to regulate abortions more stringently, or even to prohibit them in the late stages of pregnancy. But such legislation is not before us, and I think the Court today has thoroughly demonstrated that these state interests cannot constitutionally support the broad abridgment of personal

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liberty worked by the existing Texas law. Accordingly, I join the Court's opinion holding that that law is invalid under the Due Process Clause of the Fourteenth Amendment.

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship. While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with those parts of it that invalidate the Texas statute in question, and therefore dissent.

I

The Court's opinion decides that a State may impose virtually no restriction on the performance of abortions during the first trimester of pregnancy. Our previous decisions indicate that a necessary predicate for such an opinion is a plaintiff who was in her first trimester of pregnancy at some time during the pendency of her lawsuit. While a party may vindicate his own constitutional rights, he may not seek vindication for the rights of others. *Moose Lodge v. Irvis*, 407 U. S. 163 (1972); *Sierra, Club v. Morton*, 405 U. S. 727 (1972). The Court's statement of facts in this case makes clear, however, that the record in no way indicates the presence of such a plaintiff. We know only that plaintiff Roe at the time of filing her complaint was a pregnant woman; for aught that appears in this record, she may have been in her last trimester of pregnancy as of the date the complaint was filed.

Nothing in the Court's opinion indicates that Texas might not constitutionally apply its proscription of abortion as written to a woman in that stage of pregnancy. Nonetheless, the Court uses her complaint against the Texas statute as a fulcrum for deciding that States may

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impose virtually no restrictions on medical abortions performed during the first trimester of pregnancy. In deciding such a hypothetical lawsuit, the Court departs from the longstanding admonition that it should never "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U. S. 33, 39 (1885). *See also Ashwander v. TVA*, 297 U. S. 288, 345 (1936) (Brandeis, J., concurring).

II

Even if there were a plaintiff in this case capable of litigating the issue which the Court decides, I would reach a conclusion opposite to that reached by the Court. I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged, bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the Court has referred to as embodying a right to privacy. *Katz v. United States*, 389 U. S. 347 (1967).

If the Court means by the term "privacy" no more than that the claim of a person to be free from unwanted state regulation of consensual transactions may be a form of "liberty" protected by the Fourteenth Amendment, there is no doubt that similar claims have been upheld in our earlier decisions on the basis of that liberty. I agree with the statement of MR. JUSTICE STEWART in his concurring opinion that the "liberty," against deprivation of which without due process the Fourteenth

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Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective. *Williamson v. Lee Optical Co.*, 348 U. S. 483, 491 (1955). The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective

under the test stated in *Williamson, supra*. But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

The Court eschews the history of the Fourteenth Amendment in its reliance on the "compelling state interest" test. *See Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 179 (1972) (dissenting opinion). But the Court adds a new wrinkle to this test by transposing it from the legal considerations associated with the Equal Protection Clause of the Fourteenth Amendment to this case arising under the Due Process Clause of the Fourteenth Amendment. Unless I misapprehend the consequences of this transplanting of the "compelling state interest test," the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it.

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While the Court's opinion quotes from the dissent of Mr. Justice Holmes in *Lochner v. New York*, 198 U. S. 45, 74 (1905), the result it reaches is more closely attuned to the majority opinion of Mr. Justice Peckham in that case. As in *Lochner* and similar cases applying substantive due process standards to economic and social welfare legislation, the adoption of the compelling state interest standard will inevitably require this Court to examine the legislative policies and pass on the wisdom of these policies in the very process of deciding whether a particular state interest put forward may or may not be "compelling." The decision here to break pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment.

The fact that a majority of the States reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental," *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934). Even today, when society's views on abortion are changing, the very existence of the debate is evidence that the "right" to an abortion is not so universally accepted as the appellant would have us believe.

To reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment. As early as 1821, the first state law dealing directly with abortion was enacted by the Connecticut Legislature. Conn.Stat., Tit. 22, §§ 14, 16. By the time of the adoption of the Fourteenth

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Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. [Footnote 1] While many States have amended or updated

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their laws, 21 of the laws on the books in 1868 remain in effect today. [Footnote 3-2] Indeed, the Texas statute struck down today was, as the majority notes, first enacted in 1857,

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and "has remained substantially unchanged to the present time." *Ante* at 119.

There apparently was no question concerning the validity of this provision or of any of the other state statutes when the Fourteenth Amendment was adopted. The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.

III

Even if one were to agree that the case that the Court decides were here, and that the enunciation of the substantive constitutional law in the Court's opinion were proper, the actual disposition of the case by the Court is still difficult to justify. The Texas statute is struck down *in toto*, even though the Court apparently concedes that, at later periods of pregnancy Texas might impose these self-same statutory limitations on abortion. My understanding of past practice is that a statute found

[178]

to be invalid as applied to a particular plaintiff, but not unconstitutional as a whole, is not simply "struck down" but is, instead, declared unconstitutional as applied to the fact situation before the Court. *Yick Wo v. Hopkins*, 118 U. S. 356 (1886); *Street v. New York*, 394 U. S. 576 (1969).

For all of the foregoing reasons, I respectfully dissent.

Footnotes

[Footnote 1]

"Article 1191. Abortion"

"If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused."

"Art. 1192. Furnishing the means"

"Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice."

"Art. 1193. Attempt at abortion"

"If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars."

"Art. 1194. Murder in producing abortion"

"If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder."

"Art. 1196. By medical advice"

"Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother."

The foregoing Articles, together with Art. 1195, compose Chapter 9 of Title 15 of the Penal Code. Article 1195, not attacked here, reads:

"Art. 1195. Destroying unborn child"

"Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years."

[Footnote 2]

Ariz.Rev.Stat.Ann. § 13-211 (1956); Conn.Pub. Act No. 1 (May 1972 special session) (in 4 Conn.Leg.Serv. 677 (1972)), and Conn.Gen.Stat.Rev. §§ 53-29, 53-30 (1968) (or unborn child); Idaho Code § 18-601 (1948); Ill.Rev.Stat., c. 38, § 23-1 (1971); Ind.Code § 35-1-58-1 (1971); Iowa Code § 701.1 (1971); Ky.Rev.Stat. § 436.020 (1962); La.Rev.Stat. § 37: 1285(6) (1964) (loss of medical license) (*but see* § 14:87 (Supp. 1972) containing no exception for the life of the mother under the criminal statute); Me.Rev.Stat. Ann, Tit. 17, § 51 (1964); Mass.Gen.Laws Ann., c. 272, § 19 (1970) (using the term "unlawfully," construed to exclude an abortion to save the mother's life, *Kudish v. Bd. of Registration*, 356 Mass. 98, 248 N.E.2d 264 (1969)); Mich.Comp.Laws § 750.14 (1948); Minn.Stat. § 617.18 (1971); Mo.Rev.Stat. § 559.100 (1969); Mont.Rev.Codes Ann. § 94-401 (1969); Neb.Rev.Stat. § 28-405 (1964); Nev.Rev.Stat. § 200.220 (1967); N.H.Rev.Stat.Ann. § 585: 13 (1955); N.J.Stat.Ann. § 2A:87-1 (1969) ("without lawful justification"); N.D.Cent.Code §§ 12-25-01, 12-25-02 (1960); Ohio Rev.Code Ann. § 2901.16 (1953); Okla.Stat.Ann., Tit. 21, § 861 (1972-1973 Supp.); Pa.Stat.Ann., Tit. 18, §§ 4718, 4719 (1963) ("unlawful"); R.I.Gen.Laws Ann. § 11-3-1 (1969); S.D.Comp.Laws Ann. § 22-17-1 (1967); Tenn.Code Ann. §§ 39-301, 39-302 (1956); Utah Code Ann. §§ 76-2-1, 76-2-2 (1953); Vt.Stat.Ann., Tit. 13, § 101 (1958); W.Va.Code Ann. § 61-2-8 (1966); Wis.Stat. § 940.04 (1969); Wyo.Stat.Ann. §§ 6-77, 6-78 (1957).

[Footnote 3]

Long ago, a suggestion was made that the Texas statutes were unconstitutionally vague because of definitional deficiencies. The Texas Court of Criminal Appeals disposed of that suggestion peremptorily, saying only,

"It is also insisted in the motion in arrest of judgment that the statute is unconstitutional and void in that it does not sufficiently define or describe the offense of abortion. We do not concur in respect to this question."

Jackson v. State, 55 Tex.Cr.R. 79, 89, 115 S.W. 262, 268 (1908). The same court recently has held again that the State's abortion statutes are not unconstitutionally vague or overbroad. *Thompson v. State* (Ct.Crim.App. Tex.1971), *appeal docketed*, No. 71-1200. The court held that "the State of Texas has a compelling interest to protect fetal life"; that Art. 1191 "is designed to protect fetal life"; that the Texas homicide statutes, particularly Art. 1205 of the Penal Code, are intended to protect a person "in existence by actual birth," and thereby implicitly recognize other human life that is not "in existence by actual birth"; that the definition of human life is for the legislature and not the courts; that Art. 1196 "is more definite than the District of Columbia statute upheld in *[402 U. S.] Vuitch*" (402 U.S. 62); and that the Texas statute "is not vague and indefinite or overbroad." A physician's abortion conviction was affirmed.

In *Thompson*, n. 2, the court observed that any issue as to the burden of proof under the exemption of Art. 1196 "is not before us." *But see Veevers v. State*, 172 Tex.Cr.R. 162, 168-169, 354 S.W.2d 161, 166-167 (1962). *Cf. United States v. Vuitch*, 402 U. S. 62, 69-71 (1971).

[Footnote 4]

The name is a pseudonym.

[Footnote 5]

These names are pseudonyms.

[Footnote 6]

The appellee twice states in his brief that the hearing before the District Court was held on July 22, 1970. Brief for Appellee 13. The docket entries,App. 2, and the transcript, App. 76, reveal this to be an error. The July date appears to be the time of the reporter's transcription. *See* App. 77.

[Footnote 7]

We need not consider what different result, if any, would follow if Dr. Hallford's intervention were on behalf of a class. His complaint in intervention does not purport to

assert a class suit, and makes no reference to any class apart from an allegation that he "and others similarly situated" must necessarily guess at the meaning of Art. 1196. His application for leave to intervene goes somewhat further, for it asserts that plaintiff Roe does not adequately protect the interest of the doctor "and the class of people who are physicians . . . [and] the class of people who are . . . patients. . . ." The leave application, however, is not the complaint. Despite the District Court's statement to the contrary, 314 F.Supp. at 1225, we fail to perceive the essentials of a class suit in the Hallford complaint.

[Footnote 8]

A. Castiglioni, A History of Medicine 84 (2d ed.1947), E. Krumbhaar, translator and editor (hereinafter Castiglioni).

[Footnote 9]

J. Ricci, The Genealogy of Gynaecology 52, 84, 113, 149 (2d ed.1950) (hereinafter Ricci); L. Lader, Abortion 75-77 (1966) (hereinafter Lader), K. Niswander, Medical Abortion Practices in the United States, in Abortion and the Law 37, 38-40 (D. Smith ed.1967); G. Williams, The Sanctity of Life and the Criminal Law 148 (1957) (hereinafter Williams); J. Noonan, An Almost Absolute Value in History, in The Morality of Abortion 1, 3-7 (J. Noonan ed.1970) (hereinafter Noonan); Quay, Justifiable Abortion -- Medical and Legal Foundations (pt. 2), 49 Geo.L.J. 395, 40622 (1961) (hereinafter Quay).

[Footnote 10]

L. Edelstein, The Hippocratic Oath 10 (1943) (hereinafter Edelstein). *But see* Castiglioni 227.

[Footnote 11]

Edelstein 12; Ricci 113-114, 118-119; Noonan 5.

[Footnote 12]

Edelstein 13-14

[Footnote 13]

Castiglioni 148.

[Footnote 14]

Id. at 154.

[Footnote 15]

Edelstein 3.

[Footnote 16]

Id. at 12, 15-18.

[Footnote 17]

Id. at 18; Lader 76.

[Footnote 18]

Edelstein 63.

[Footnote 19]

Id. at 64.

[Footnote 20]

Dorand's Illustrated Medical Dictionary 1261 (24th ed.1965).

[Footnote 21]

E. Coke, Institutes III *50; 1 W. Hawkins, Pleas of the Crown, c. 31, § 16 (4th ed. 1762); 1 W. Blackstone, Commentaries *129-130; M. Hale, Pleas of the Crown 433 (1st Amer. ed. 1847). For discussions of the role of the quickening concept in English common law, *see* Lader 78; Noonan 223-226; Means, The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality (pt. 1), 14 N.Y.L.F. 411, 418-428 (1968) (hereinafter Means I); Stern, Abortion: Reform and the Law, 59 J.Crim.L.C. & P.S. 84 (1968) (hereinafter Stern); Quay 430-432; Williams 152.

[Footnote 22]

Early philosophers believed that the embryo or fetus did not become formed and begin to live until at least 40 days after conception for a male and 80 to 90 days for a female.

See, for example, Aristotle, Hist.Anim. 7.3.583b; Gen.Anim. 2.3.736, 2.5.741; Hippocrates, Lib. de Nat.Puer., No. 10. Aristotle's thinking derived from his three-stage theory of life: vegetable, animal, rational. The vegetable stage was reached at conception, the animal at "animation," and the rational soon after live birth. This theory, together with the 40/80 day view, came to be accepted by early Christian thinkers.

The theological debate was reflected in the writings of St. Augustine, who made a distinction between *embryo inanimatus*, not yet endowed with a soul, and *embryo animatus*. He may have drawn upon Exodus 21:22. At one point, however, he expressed the view that human powers cannot determine the point during fetal development at which the critical change occurs. *See* Augustine, De Origine Animae 4.4 (Pub.Law 44.527). *See also* W. Reany, The Creation of the Human Soul, c. 2 and 83-86 (1932); Huser, The Crime of Abortion in Canon Law 15 (Catholic Univ. of America, Canon Law Studies No. 162, Washington, D.C.1942).

Galen, in three treatises related to embryology, accepted the thinking of Aristotle and his followers. Quay 426-427. Later, Augustine on abortion was incorporated by Gratian into the Decretum, published about 1140. Decretum Magistri Gratiani 2.32.2.7 to 2.32.2.10, in 1 Corpus Juris Canonici 1122, 1123 (A. Friedburg, 2d ed. 1879). This Decretal and the Decretals that followed were recognized as the definitive body of canon law until the new Code of 1917.

For discussions of the canon law treatment, *see* Means I, pp. 411-412; Noonan 20-26; Quay 426-430; *see also* J. Noonan, Contraception: A History of Its Treatment by the Catholic Theologians and Canonists 18-29 (1965).

[Footnote 23]

Bracton took the position that abortion by blow or poison was homicide "if the foetus be already formed and animated, and particularly if it be animated." 2 H. Bracton, De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879), or, as a later translation puts it, "if the foetus is already formed or quickened, especially if it is quickened," 2 H. Bracton, On the Laws and Customs of England 341 (S. Thorne ed.1968). *See* Quay 431; *see also* 2 Fleta 661 (Book 1, c. 23) (Selden Society ed.1955).

[Footnote 24]

E. Coke, Institutes III *50.

[Footnote 25]

1 W. Blackstone, Commentaries *129-130.

[Footnote 26]

Means, The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth Century Legislative Ashes of a Fourteenth Century Common Law Liberty?, 17 N.Y.L.F. 335 (1971) (hereinafter Means II). The author examines the two principal precedents cited marginally by Coke, both contrary to his dictum, and traces the treatment of these and other cases by earlier commentators. He concludes that Coke, who himself participated as an advocate in an abortion case in 1601, may have intentionally misstated the law. The author even suggests a reason: Coke's strong feelings against abortion, coupled with his determination to assert common law (secular) jurisdiction to assess penalties for an offense that traditionally had been an exclusively ecclesiastical or canon law crime. *See also* Lader 78-79, who notes that some scholars doubt that the common law ever was applied to abortion; that the English ecclesiastical courts seem to have lost interest in the problem after 1527; and that the preamble to the English legislation of 1803, 43 Geo. 3, c. 58, § 1, referred to in the text, *infra* at 136, states that "no adequate means have been hitherto provided for the prevention and punishment of such offenses."

[Footnote 27]

Commonwealth v. Bangs, 9 Mass. 387, 388 (1812); *Commonwealth v. Parker*, 50 Mass. (9 Metc.) 263, 265-266 (1845); *State v. Cooper*, 22 N.J.L. 52, 58 (1849); *Abrams v. Foshee*, 3 Iowa 274, 278-280 (1856); *Smith v. Gaffard*, 31 Ala. 45, 51 (1857); *Mitchell v. Commonwealth*, 78 Ky. 204, 210 (1879); *Eggart v. State*, 40 Fla. 527, 532, 25 So. 144, 145 (1898); *State v. Alcorn*, 7 Idaho 599, 606, 64 P. 1014, 1016 (1901); *Edwards v. State*, 79 Neb. 251, 252, 112 N.W. 611, 612 (1907); *Gray v. State*, 77 Tex.Cr.R. 221, 224, 178 S.W. 337, 338 (1915); *Miller v. Bennett*, 190 Va. 162, 169, 56 S.E.2d 217, 221 (1949). *Contra, Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *State v. Slagle*, 83 N.C. 630, 632 (1880).

[Footnote 28]

See Smith v. State, 33 Me. 48, 55 (1851); *Evans v. People*, 49 N.Y. 86, 88 (1872); *Lamb v. State*, 67 Md. 524, 533, 10 A. 208 (1887).

[Footnote 29]

Conn.Stat., Tit. 20, § 14 (1821).

[Footnote 30]

Conn.Pub. Acts, c. 71, § 1 (1860).

[Footnote 31]

N.Y.Rev.Stat., pt. 4, c. 1, Tit. 2, Art. 1, § 9, p. 661, and Tit. 6, § 21, p. 694 (1829).

[Footnote 32]

Act of Jan. 20, 1840, § 1, set forth in 2 H. Gammel, Laws of Texas 177-178 (1898); *see Grigsby v. Reib*, 105 Tex. 597, 600, 153 S.W. 1124, 1125 (1913).

[Footnote 33]

The early statutes are discussed in Quay 435-438. *See also* Lader 85-88; Stern 85-86; and Means II 37376.

[Footnote 34]

Criminal abortion statutes in effect in the States as of 1961, together with historical statutory development and important judicial interpretations of the state statutes, are cited and quoted in Quay 447-520. *See* Comment, A Survey of the Present Statutory and Case Law on Abortion: The Contradictions and the Problems, 1972 U.Ill.L.F. 177, 179, classifying the abortion statutes and listing 25 States as permitting abortion only if necessary to save or preserve the mother's life.

[Footnote 35]

Ala.Code, Tit. 14, § 9 (1958); D.C.Code Ann. § 22-201 (1967).

[Footnote 36]

Mass.Gen.Laws Ann., c. 272, § 19 (1970); N.J.Stat.Ann. § 2A: 87-1 (1969); Pa.Stat.Ann., Tit. 18, §§ 4718, 4719 (1963).

[Footnote 37]

Fourteen States have adopted some form of the ALI statute. *See* Ark.Stat.Ann. §§ 41-303 to 41-310 (Supp. 1971); Calif.Health & Safety Code §§ 25950-25955.5 (Supp. 1972); Colo.Rev.Stat.Ann. §§ 40-2-50 to 40-2-53 (Cum.Supp. 1967); Del.Code Ann., Tit. 24, §§ 1790-1793 (Supp. 1972); Florida Law of Apr. 13, 1972, c. 72-196, 1972 Fla.Sess.Law Serv., pp. 380-382; Ga.Code §§ 26-1201 to 26-1203 (1972); Kan.Stat.Ann. § 21-3407 (Supp. 1971); Md.Ann.Code, Art. 43, §§ 137-139 (1971); Miss.Code Ann. § 2223 (Supp. 1972); N.M.Stat.Ann. §§ 40A-5-1 to 40A-5-3 (1972); N.C.Gen.Stat. § 14-45.1 (Supp. 1971); Ore.Rev.Stat. §§ 435.405 to 435.495 (1971); S.C.Code Ann. §§ 16-82 to 16-89 (1962 and Supp. 1971); Va.Code Ann. §§ 18.1-62 to 18.1-62.3 (Supp. 1972). Mr. Justice Clark described some of these States as having "led the way." Religion, Morality, and Abortion: A Constitutional Appraisal, 2 Loyola U. (L.A.) L.Rev. 1, 11 (1969).

By the end of 1970, four other States had repealed criminal penalties for abortions performed in early pregnancy by a licensed physician, subject to stated procedural and health requirements. Alaska Stat. § 11.15.060 (1970); Haw.Rev.Stat. § 453-16 (Supp. 1971); N.Y.Penal Code § 125.05, subd. 3 (Supp. 1972-1973); Wash.Rev.Code §§ 9.02.060 to 9.02.080 (Supp. 1972). The precise status of criminal abortion laws in some States is made unclear by recent decisions in state and federal courts striking down existing state laws, in whole or in part.

[Footnote 38]

"Whereas, Abortion, like any other medical procedure, should not be performed when contrary to the best interests of the patient since good medical practice requires due consideration for the patient's welfare, and not mere acquiescence to the patient's demand; and"

"Whereas, The standards of sound clinical judgment, which, together with informed patient consent, should be determinative according to the merits of each individual case; therefore be it"

"RESOLVED, That abortion is a medical procedure and should be performed only by a duly licensed physician and surgeon in an accredited hospital acting only after consultation with two other physicians chosen because of their professional competency and in conformance with standards of good medical practice and the Medical Practice Act of his State; and be it further"

"RESOLVED, That no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgment. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles. In these circumstances, good medical practice requires only that the physician or other professional personnel withdraw from the case so long as the withdrawal is consistent with good medical practice."

Proceedings of the AMA House of Delegates 220 (June 1970).

[Footnote 39]

"The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion that is performed in accordance with good medical practice and under circumstances that do not violate the laws of the community in which he practices."

"In the matter of abortions, as of any other medical procedure, the Judicial Council becomes involved whenever there is alleged violation of the Principles of Medical Ethics as established by the House of Delegates."

[Footnote 40]

"*UNIFORM ABORTION ACT*"

"SECTION 1. [*Abortion Defined; When Authorized.*]"

"(a) 'Abortion' means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus."

"(b) An abortion may be performed in this state only if it is performed: "

"(1) by a physician licensed to practice medicine [or osteopathy] in this state or by a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this state, [and the abortion is performed] [in the physician's office or in a medical clinic, or] in a hospital approved by the [Department of Health] or operated by the United States, this state, or any department, agency, [or political subdivision of either;] or by a female upon herself upon the advice of the physician; and"

"(2) within [20] weeks after the commencement of the pregnancy [or after [20] weeks only if the physician has reasonable cause to believe (i) there is a substantial risk that

continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother, (ii) that the child would be born with grave physical or mental defect, or (iii) that the pregnancy resulted from rape or incest, or illicit intercourse with a girl under the age of 16 years]."

"SECTION 2. [*Penalty.*] Any person who performs or procures an abortion other than authorized by this Act is guilty of a [felony] and, upon conviction thereof, may be sentenced to pay a fine not exceeding [$1,000] or to imprisonment [in the state penitentiary] not exceeding [5 years], or both."

"SECTION 3. [*Uniformity of Interpretation.*] This Act shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it."

"SECTION 4. [*Short Title.*] This Act may be cited as the Uniform Abortion Act."

"SECTION 5. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."

"SECTION 6. [*Repeal.*] The following acts and parts of acts are repealed: "

"(1)"

"(2)"

"(3)"

"SECTION 7. [*Time of Taking Effect.*] This Act shall take effect _____."

[Footnote 41]

"This Act is based largely upon the New York abortion act following a review of the more recent laws on abortion in several states and upon recognition of a more liberal trend in laws on this subject. Recognition was given also to the several decisions in state and federal courts which show a further trend toward liberalization of abortion laws, especially during the first trimester of pregnancy."

"Recognizing that a number of problems appeared in New York, a shorter time period for 'unlimited' abortions was advisable. The time period was bracketed to permit the various states to insert a figure more in keeping with the different conditions that might exist among the states. Likewise, the language limiting the place or places in which abortions may be performed was also bracketed to account for different conditions among the states. In addition, limitations on abortions after the initial 'unlimited' period were placed in brackets so that individual states may adopt all or any of these reasons, or place further restrictions upon abortions after the initial period."

"This Act does not contain any provision relating to medical review committees or prohibitions against sanctions imposed upon medical personnel refusing to participate in abortions because of religious or other similar reasons, or the like. Such provisions, while related, do not directly pertain to when, where, or by whom abortions may be performed; however, the Act is not drafted to exclude such a provision by a state wishing to enact the same."

[Footnote 42]

See, for example, YWCA v. Kugler, 342 F.Supp. 1048, 1074 (N.J.1972); *Abele v. Markle*, 342 F.Supp. 800, 805-806 (Conn.1972) (Newman, J., concurring in result), *appeal docketed*, No. 72-56; *Walsingham v. State*, 250 So.2d 857, 863 (Ervin, J., concurring) (Fla.1971); *State v. Gedicke*, 43 N.J.L. 86, 90 (1881); Means II 381-382.

[Footnote 43]

See C. Haagensen & W. Lloyd, A Hundred Years of Medicine 19 (1943).

[Footnote 44]

Potts, Postconceptive Control of Fertility, 8 Int'l J. of G. & O. 957, 967 (1970) (England and Wales); Abortion Mortality, 20 Morbidity and Mortality 208, 209 (June 12, 1971) (U.S. Dept. of HEW, Public Health Service) (New York City); Tietze, United States: Therapeutic Abortions, 1963-1968, 59 Studies in Family Planning 5, 7 (1970); Tietze, Mortality with Contraception and Induced Abortion, 45 Studies in Family Planning 6 (1969) (Japan, Czechoslovakia, Hungary); Tietze Lehfeldt, Legal Abortion in Eastern Europe, 175 J.A.M.A. 1149, 1152 (April 1961). Other sources are discussed in Lader 17-23.

[Footnote 45]

See Brief of *Amicus* National Right to Life Committee; R. Drinan, The Inviolability of the Right to Be Born, in Abortion and the Law 107 (D. Smith ed.1967); Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U.C.L.A.L.Rev. 233 (1969); Noonan 1.

[Footnote 46]

See, e.g., Abele v. Markle, 342 F.Supp. 800 (Conn.1972), *appeal docketed*, No. 72-56.

[Footnote 47]

See discussions in Means I and Means II.

[Footnote 48]

See, e.g., State v. Murphy, 27 N.J.L. 112, 114 (1858).

[Footnote 49]

Watson v. State, 9 Tex.App. 237, 244-245 (1880); *Moore v. State*, 37 Tex. Cr.R. 552, 561, 40 S.W. 287, 290 (1897); *Shaw v. State*, 73 Tex.Cr.R. 337, 339, 165 S.W. 930, 931 (1914); *Fondren v. State*, 74 Tex.Cr.R. 552, 557, 169 S.W. 411, 414 (1914); *Gray v. State*, 77 Tex.Cr.R. 221, 229, 178 S.W. 337, 341 (1915). There is no immunity in Texas for the father who is not married to the mother. *Hammett v. State*, 84 Tex.Cr.R. 635, 209 S.W. 661 (1919); *Thompson v. State* (Ct.Crim.App. Tex.1971), *appeal docketed*, No. 71-1200.

[Footnote 50]

See Smith v. State, 33 Me. at 55; *In re Vince*, 2 N.J. 443, 450, 67 A.2d 141, 144 (1949). A short discussion of the modern law on this issue is contained in the Comment to the ALI's Model Penal Code § 207.11, at 158 and nn. 35-37 (Tent.Draft No. 9, 1959).

[Footnote 51]

Tr. of Oral Rearg. 20-21.

[Footnote 52]

Tr. of Oral Rearg. 24.

[Footnote 53]

We are not aware that in the taking of any census under this clause, a fetus has ever been counted.

[Footnote 54]

When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists. The exception contained in Art. 1196, for an abortion procured or attempted by medical advice for the purpose of saving the life of the mother, is typical. But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendment's command?

There are other inconsistencies between Fourteenth Amendment status and the typical abortion statute. It has already been pointed out, n 49, *supra*, that, in Texas, the woman is not a principal or an accomplice with respect to an abortion upon her. If the fetus is a person, why is the woman not a principal or an accomplice? Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different?

[Footnote 55]

Cf. the Wisconsin abortion statute, defining "unborn child" to mean "a human being from the time of conception until it is born alive," Wis.Stat. § 940.04(6) (1969), and the new Connecticut statute, Pub.Act No. 1 (May 1972 special session), declaring it to be the public policy of the State and the legislative intent "to protect and preserve human life from the moment of conception."

[Footnote 56]

Edelstein 16.

[Footnote 57]

Lader 97-99; D. Feldman, Birth Control in Jewish Law 251-294 (1968). For a stricter view, *see* I. Jakobovits, Jewish Views on Abortion, in Abortion and the Law 124 (D. Smith ed.1967).

[Footnote 58]

Amicus Brief for the American Ethical Union *et al.* For the position of the National Council of Churches and of other denominations, *see* Lader 99-101.

[Footnote 59]

Hellman & J. Pritchard, Williams Obstetrics 493 (14th ed.1971); Dorland's Illustrated Medical Dictionary 1689 (24th ed.1965).

[Footnote 60]

Hellman & Pritchard, *supra*, n 59, at 493.

[Footnote 61]

For discussions of the development of the Roman Catholic position, *see* D. Callahan, Abortion: Law, Choice, and Morality 409-447 (1970); Noonan 1.

[Footnote 62]

See Brodie, The New Biology and the Prenatal Child, 9 J.Family L. 391, 397 (1970); Gorney, The New Biology and the Future of Man, 15 U.C.L.A.L.Rev. 273 (1968); Note, Criminal Law -- Abortion -- The "Morning-After Pill" and Other Pre-Implantation Birth-Control Methods and the Law, 46 Ore.L.Rev. 211 (1967); G. Taylor, The Biological Time Bomb 32 (1968); A. Rosenfeld, The Second Genesis 138-139 (1969); Smith, Through a Test Tube Darkly: Artificial Insemination and the Law, 67 Mich.L.Rev. 127 (1968); Note, Artificial Insemination and the Law, 1968 U.Ill.L.F. 203.

[Footnote 63]

W. Prosser, The Law of Torts 335-338 (4th ed.1971); 2 F. Harper & F. James, The Law of Torts 1028-1031 (1956); Note, 63 Harv.L.Rev. 173 (1949).

[Footnote 64]

See cases cited in Prosser, *supra*, n 63, at 336-338; Annotation, Action for Death of Unborn Child, 15 A.L.R.3d 992 (1967).

[Footnote 65]

Prosser, *supra*, n. 63 at 338; Note, The Law and the Unborn Child: The Legal and Logical Inconsistencies, 46 Notre Dame Law. 349, 354-360 (1971).

[Footnote 66]

Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U.C.L.A.L.Rev. 233, 235-238 (1969); Note, 56 Iowa L.Rev. 994, 999-1000 (1971); Note, The Law and the Unborn Child, 46 Notre Dame Law. 349, 351-354 (1971).

[Footnote 67]

Neither in this opinion nor in *Doe v. Bolton, post*, p. 179, do we discuss the father's rights, if any exist in the constitutional context, in the abortion decision. No paternal right has been asserted in either of the cases, and the Texas and the Georgia statutes on their face take no cognizance of the father. We are aware that some statutes recognize the father under certain circumstances. North Carolina, for example, N.C.Gen.Stat. § 14-45.1 (Supp. 1971), requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age, 41 N.C.A.G. 489 (1971); if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional.

[Footnote 1]

Only Mr. Justice Harlan failed to join the Court's opinion, 372 U.S. at 733.

[Footnote 2]

There is no constitutional right of privacy, as such.

"[The Fourth] Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all. Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's General right to privacy -- his right to be let alone by other people -- is, like the protection of his property and of his very life, left largely to the law of the individual States."

Katz v. United States, 389 U. S. 347, 350-351 (footnotes omitted).

[Footnote 3]

This was also clear to Mr. Justice Black, 381 U.S. at 507 (dissenting opinion); to Mr. Justice Harlan, 381 U.S. at 499 (opinion concurring in the judgment); and to MR. JUSTICE WHITE, 381 U.S. at 502 (opinion concurring in the judgment). *See also* Mr. Justice Harlan's thorough and thoughtful opinion dissenting from dismissal of the appeal in *Poe v. Ullman*, 367 U. S. 497, 522

[Footnote 1]

Jurisdictions having enacted abortion laws prior to the adoption of the Fourteenth Amendment in 1868:

1. Alabama -- Ala. Acts, c. 6, § 2 (1840).

2. Arizona -- Howell Code, c. 10, § 45 (1865).

3. Arkansas -- Ark.Rev.Stat., c. 44, div. III, Art. II, § 6 (1838).

4. California -- Cal.Sess.Laws, c. 99, § 45, p. 233 (1849-1850).

5. Colorado (Terr.) -- Colo. Gen.Laws of Terr. of Colo. 1st Sess., § 42, pp 296-297 (1861).

6. Connecticut -- Conn.Stat., Tit. 20, §§ 14, 16 (1821). By 1868, this statute had been replaced by another abortion law. Conn.Pub. Acts, c. 71, §§ 1, 2, p. 65 (1860).

7. Florida -- Fla.Acts 1st Sess., c. 1637, subc. 3, §§ 10, 11, subc. 8, §§ 9, 10, 11 (1868), as amended, now Fla.Stat.Ann. §§ 782.09, 782.10, 797.01, 797.02, 782.16 (1965).

8. Georgia Pen.Code, 4th Div., § 20 (1833).

9. Kingdom of Hawaii -- Hawaii Pen.Code, c. 12, §§ 1, 2, 3 (1850).

10. Idaho (Terr.) -- Idaho (Terr.) Laws, Crimes and Punishments §§ 33, 34, 42, pp. 441, 443 (1863).

11. Illinois -- Ill.Rev. Criminal Code §§ 40, 41, 46, pp. 130, 131 (1827). By 1868, this statute had been replaced by a subsequent enactment. Ill.Pub.Laws §§ 1, 2, 3, p. 89 (1867).

12. Indiana -- Ind.Rev.Stat. §§ 1, 3, p. 224 (1838). By 1868, this statute had been superseded by a subsequent enactment. Ind.Laws, c. LXXXI, § 2 (1859).

13. Iowa (Terr.) -- Iowa (Terr.) Stat., 1st Legis., 1st Sess., § 18, p. 145 (1838). By 1868, this statute had been superseded by a subsequent enactment. Iowa (Terr.) Rev.Stat., c. 49, §§ 10, 13 (1843).

14. Kansas (Terr.) -- Kan. (Terr.) Stat., c. 48, §§ 9, 10, 39 (1855). By 1868, this statute had been superseded by a subsequent enactment. Kan. (Terr.) Laws, c. 28, §§ 9, 10, 37 (1859).

15. Louisiana -- La.Rev.Stat., Crimes and Offenses § 24, p. 138 (1856).

16. Maine -- Me.Rev.Stat., c. 160, §§ 11, 12, 13, 14 (1840).

17. Maryland -- Md.Laws, c. 179, § 2, p. 315 (1868).

18. Massachusetts -- Mass. Acts & Resolves, c. 27 (1845).

19. Michigan -- Mich.Rev.Stat., c. 153, §§ 32, 33, 34, p. 662 (1846).

20. Minnesota (Terr.) -- Minn. (Terr.) Rev.Stat., c. 100, § 10, 11, p. 493 (1851).

21. Mississippi -- Miss.Code, c. 64, §§ 8, 9, p. 958 (1848).

22. Missouri -- Mo.Rev.Stat., Art. II, §§ 9, 10, 36, pp. 168, 172 (1835).

23. Montana (Terr.) -- Mont. (Terr.) Laws, Criminal Practice Acts § 41, p. 184 (1864).

24. Nevada (Terr.) -- Nev. (Terr.) Laws, c. 28, § 42, p. 63 (1861).

25. New Hampshire -- N.H.Laws, c. 743, § 1, p. 708 (1848).

26. New Jersey -- N.J.Laws, p. 266 (1849).

27. New York -- N.Y.Rev.Stat., pt. 4, c. 1, Tit 2, §§ 8, 9, pp. 12-13 (1828). By 1868, this statute had been superseded. N.Y.Laws, c. 260, §§ 1, pp. 285-286 (1845); N.Y.Laws, c. 22, § 1, p. 19 (1846).

28. Ohio -- Ohio Gen.Stat. §§ 111(1), 112(2), p. 252 (1841).

29. Oregon -- Ore. Gen.Laws, Crim.Code, c. 43, § 509, p. 528 (1845-1864).

30. Pennsylvania -- Pa.Laws No. 374, §§ 87, 88, 89 (1860).

31. Texas -- Tex. Gen.Stat. Dig., c. VII, Arts. 531-536, p. 524 (Oldham & White 1859).

32. Vermont -- Vt. Acts No. 33, § 1 (1846). By 1868, this statute had been amended. Vt.Acts No. 57, §§ 1, 3 (1867).

33. Virginia -- Va.Acts, Tit. II, c. 3, § 9, p. 96 (1848).

34. Washington (Terr.) -- Wash. (Terr.) Stats., c. II, §§ 37, 38, p. 81 (1854).

35. West Virginia -- *See* Va. Acts., Tit. II, c. 3, § 9, p. 96 (1848); W.Va.Const., Art. XI, par. 8 (1863).

36. Wisconsin -- Wis.Rev.Stat., c. 133, §§ 10, 11 (1849). By 1868, this statute had been superseded. Wis.Rev.Stat., c. 164, §§ 10, 11; c. 169, §§ 58, 59 (1858).

[Footnote 2]

Abortion laws in effect in 1868 and still applicable as of August, 1970:

1. Arizona (1865).

2. Connecticut (1860).

3. Florida (1868).

4. Idaho (1863).

5. Indiana (1838).

6. Iowa (1843)

7. Maine (1840).

8. Massachusetts (1845).

9. Michigan (1846).

10. Minnesota (1851).

11. Missouri (1835).

12. Montana (1864).

13. Nevada (1861).

14. New Hampshire (1848).

15. New Jersey (1849).

16. Ohio (1841).

17. Pennsylvania (1860).

18. Texas (1859).

19. Vermont (1867).

20. West Virginia (1863).

21. Wisconsin (1858).