ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10833 HOUSE JUDICIARY

Attachment B

"Abortion in the U.S.," *Fact Sheet*, The Henry K. Kaiser Family Foundation. January 2003, *www.kff.org/womenshealth/326902-index.cfm*

THE HENRY J. KAISER FAMILY FOUNDATION

Facts Fact Sheet

January 2003

Abortion in the U.S.

Overall, about one quarter of all pregnancies in the United States now end in abortion. About half (49%) of the approximately 5 million pregnancies occurring each year are unintended and, of these, roughly one in two are terminated by abortion.[1] While abortion remains one of the most common surgical procedures in this country, abortion rates have been on the decline.

In 2000, the Alan Guttmacher Institute (AGI) estimates that a total of 1.31 million U.S. pregnancies ended in abortion – down from an all-time annual high of 1.61 million in 1990.[2] The most recent national data available from the Centers for Disease Control and Prevention (CDC) indicate that, between 1992 and 1997, the number of abortions performed each year nationwide dropped from 1.5 million to about 1.2 million (see Abortion Statistics box for differences in these data sets).[3]

A number of possible factors have been cited to explain the recent trends, including the aging of the population, greater acceptance of unwed childbearing, more effective use of contraception (including the back-up birth control method "emergency contraception"),[4] shifts in attitudes, laws restricting abortion access, and a decrease in the number of abortion providers.

Incidence and Trends

- According to AGI, the 2000 abortion rate (the number of abortions per 1,000 women aged 15-44) was 21.3, reflecting a five percent (5%) decline since 1996.2 The CDC estimates that the national abortion rate decreased from 26 per 1,000 in 1992 to 20 per 1,000 in 1997.[1]
- In 2000, the annual abortion ratio (the proportion of pregnancies that end in abortion) was 24.5.[2]
- It is estimated that 39 million abortions have been performed since the procedure was legalized in 1973,4 and that at least one in three women in the U.S. will have an abortion by age 45.[5]
- Abortion rates vary significantly throughout the world. The most recent estimates – from 1996 – range from a low of 6.5 in the Netherlands to a high of 77.7 in Cuba. While the U.S. abortion rate has historically been higher than that in many western European countries, the 2000 rate of 21.3 is now within the range of other developed nations such as Sweden (18.7) and Australia (22.2).[2,6]

Methods

- There are two general abortion types available to U.S. women: surgical and non-surgical or "medical" abortions.
- Most abortions (94-99%) performed in the U.S. are surgical.[3,7] The most common surgical methods include vacuum aspiration, dilation and curettage (D&C), and dilation and evacuation (D&E).8 A much less common surgical method used for later abortions is dilation and extraction (D&X), a D&E variant.
- In September 2000, the Food and Drug Administration (FDA) approved mifepristone, the first drug specifically designed for use as a method of medical abortion. Medical abortions can also be initiated through the "off-label" use of a drug called methotrexate, which has been approved by the FDA for other purposes.
- During the first six months of 2001, one-third of all abortion providers reported performing at least one early medical abortion. Among abortions that took place outside of hospitals, six percent (6%, or about 35,300) were medical abortions. Seventy-two percent (72%) of these abortions used mifepristone.[3]
- The U.S. distributor of mifepristone estimates that a total of 130,000 women have obtained an abortion using mifepristone in the two years since FDA approval.[9]

Safety and Effectiveness

- The overall failure rate for surgical abortion is about one percent (1%); the overall failure rate for medical abortion—those not successfully completed in a given period of time—is five percent (5%).[8]
- The risk of death associated with abortion between 1993 and 1997 was 0.6 per 100,000 abortions, making it one of the safest surgical procedures in the U.S.10 (The risk of maternal death from childbirth is 6.7 per 100,000 deliveries.) The risk of a major complication is also less than one percent (1%).[8]

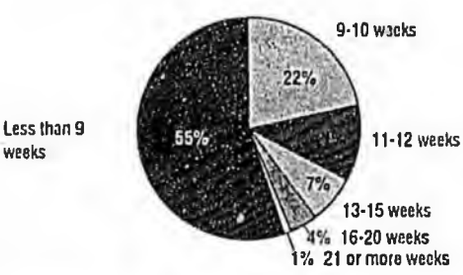
Timing

- Eighty-nine percent (89%) of abortions are performed in the first twelve weeks of pregnancy; nearly 56 percent are performed within the first eight weeks of pregnancy. Just one percent (1%) of all abortions occur at twenty-one weeks or later (see Chart 1).[11]

Chart 1

WHEN WOMEN HAVE ABORTIONS

Eighty-eight percent of abortions occur in the first 12 weeks of pregnancy



Source: The Alan Guttmacher Institute, calculations based on CDC data, 1998.

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Abortion Patients

- About 19 percent of women having abortions in the U.S. are teens; 33 percent are between the ages of 20 and 24; and 48 percent are aged 25 and older. Approximately 83 percent are unmarried and 41 percent are white. About 61 percent have given birth before.[12]

- Fifty-four percent (54%) of women who had an abortion in 2000 said that they used contraception in the month that they conceived.[4]

- From 1994-2000, abortion rates declined by 27 percent among adolescents aged 15-19, while rates among low-income women (those living below 100 percent of the federal poverty line) increased by 25 percent.[4]

Abortion Sites and Providers

- Clinics made up 46 percent of abortion providers in 2000, followed by hospitals (33%) and physicians (21%).[2]

- Most abortions in the U.S. are performed in independent clinics that specialize in abortion services. In 2000, 93 percent of reported abortions were performed in clinics, five percent (5%) took place in hospitals, and two percent (2%) were performed in the private offices of physicians.[2]

- Eighty-seven percent (87%) of all U.S. counties have no abortion provider, and 34 percent of women of reproductive age (15-44) live in these counties.[2]

- Older ob/gyns are more likely than their younger colleagues to have performed an abortion in the past five years: 39 percent of ob/gyns 65 and older report doing so, as compared with 20 percent of those under 40. Overall, 58 percent of ob/gyns who performed an abortion in the past five years are 50 or older.[13]

- Seventy percent (70%) of residency programs in obstetrics and gynecology offered training in first-trimester abortion in 1991-1992. The proportion that included abortion as a standard part of residency training had declined from 25 percent to 12 percent since 1985.[14]

- A majority (56%) of non-hospital abortion providers reported experiencing one or more forms of harassment in 2000. Among providers performing more than 400 abortions annually, 82 percent said they experienced one or more forms of harassment.[15]

Abortion Costs and Coverage

- The costs of an abortion will vary depending on factors such as location, timing, and type of procedure. In 2000, an average self-paying client was charged $372 for a surgical abortion at 10 weeks and $470 for a medical abortion performed in a non-hospital setting.[15]

- Nationwide, 26 percent of women seeking abortions receive abortion services that are billed directly to public or private insurance.[15]

- Thirty-one percent (31%) of Americans with employer-based health insurance are covered for abortion services.[16]

- About one in five women (18%) in the U.S. aged 17-44 are uninsured.17 The majority of states make funding for abortions available through Medicaid only in very limited circumstances such as rape, incest, or a threat to the life of the woman.

Abortion Statistics: Methods and Most Current Data

The most reliable national abortion data come from the Centers for Disease Control and Prevention (CDC), a federal agency, and The Alan Guttmacher Institute (AGI), a private health research organization. The CDC collects data annually, from state health departments, and analysis is available within two to three years. AGI surveys all known abortion providers roughly every four to five years. The most recent national CDC data is from 1997; AGI's is from 2000-2001.

AGI estimates – which are generally higher – have historically been considered more reflective of national abortion statistics. This is largely because the CDC is subject to the reporting limitations of state health departments. Not every state gathers abortion data. Those that do may collect it differently, and differ in how complete their reporting is, how they calculate gestational age, and how they categorize different abortion methods. The CDC also recently changed the way that it calculates abortion data overall. Starting with 1998, the agency no longer takes into account the four states – Alaska, California, New Hampshire, and Oklahoma – that do not report abortion statistics. As a result, nationwide data is not available from the CDC after 1997.

References

[1] CDC, Abortion surveillance: preliminary analysis—United States, 1996. MMWR, 1998, 47:1025-1028, 1035. While CDC abortion data is available through 1998, the most recent secondary analyses – which provide more details of trends – are based on 1996 figures.
[2] Finer L and Henshaw SK, Abortion Incidence and services in the United States in 2000, Perspectives on Sexual and Reproductive Health, 2002, 35:6-15. The term "abortion provider" is a place where abortions are performed; it includes hospitals, clinics, and doctors' offices. "Providers" in this context are different from "physicians."
[3] CDC, Abortion surveillance: preliminary analysis—United States, 1997. MMWR, 2000, 48, No. 51 and 52.
[4] Jones RK, Darroch JE and Henshaw SK, Contraceptive use among U.S. women having abortions in 2000-2001, Perspectives on Sexual and Reproductive Health, 2002, 34: 294-301.
[5] Alan Guttmacher Institute, unpublished calculations.
[6] Alan Guttmacher Institute, Sharing Responsibility: Women, Society and Abortion Worldwide. New York: AGI, 1999.
[7] CDC, Abortion Surveillance—United States, 1998. MMWR, 2002, 51(SS03):1-32.
[8] Hatcher RA et al., Contraceptive Technology, 17th edition, New York: Ardent Media, Inc, 1998.
[9] Danco Laboratories, Dear Colleague letter, January 10, 2003.
[10] National Center for Health Statistics. Vital Statistics of the United States, 1991. Washington D.C.: US Public Health Service, 1991, p.2.
[11] Alan Guttmacher Institute (AGI) calculations using CDC data, published in AGI, Abortion Fact Sheet, 2003.
[12] Jones RK et al., Patterns in the socioeconomic characteristics of women obtaining abortions in 2000-2001, Perspectives on Sexual and Reproductive Health, 2002, 34: 226-35.
[13] Kaiser Family Foundation. 1995 Survey of Obstetrician/Gynecologists on Contraception and Unplanned Pregnancy, Attitudes and Practices with Regard to Abortion, Menlo Park, CA: Henry J. Kaiser Family Foundation, June 1995.
[14] MacKay HT and McKay AP, Abortion training in obstetric and gynecology residency programs in the United States, 1991-1992, Family Planning Perspectives, 1995, 27: 112-115.
[15] Henshaw SK and Finer L, The accessibility of abortion services in the United States, 2001, Perspectives on Sexual and Reproductive Health, 2003, 35:16-24.
[16] Kaiser Family Foundation and Health Research and Educational Trust, Survey of Employer-Sponsored Health Benefits 2001, Menlo Park, CA: Henry J. Kaiser Family Foundation, 2001.
[17] Kaiser Family Foundation estimate based on Urban Institute analyses of the March 2000 Current Population Survey, U.S. Bureau of the Census.

Additional copies of this publication (#3269-02) are available on the Kaiser Family Foundation's website at www.kff.org or by calling the Foundation's Publication Request Line at 1-800-656-4533.

Attachment C

U.S. Supreme Court Decisions Concerning Reproductive Rights,
1965-2003, NARAL Pro-Choice America,
www.prochoiceamerica.org/facts/scotus_decsions_choice.cfm

NARAL
Pro-Choice America Foundation

U.S. Supreme Court Decisions Concerning Reproductive Rights 1965-2003

Griswold v. Connecticut, 381 U.S. 479 (1965)	By a vote of 7-2, the Supreme Court invalidated a Connecticut statute that prohibited the use of contraceptives, holding that the statute violated the constitutional right to marital privacy.
Eisenstadt v. Baird, 405 U.S. 438 (1972)	By a vote of 6-1, the Court invalidated a law prohibiting the distribution of contraceptives to unmarried people, holding that the constitutional right to privacy extends to the reproductive decisions of both married and unmarried people.
Roe v. Wade, 410 U.S. 113 (1973)	By a vote of 7-2, the Court invalidated a Texas law prohibiting abortions not necessary to save the woman's life. The Court held that the fundamental right to privacy extends to a woman's decision whether or not to have an abortion and that any governmental interference with that right is subject to strict judicial scrutiny. The Court recognized two compelling state interests sufficient to justify restrictions on a woman's right to choose. States may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to promote women's health. After the point of fetal viability -- approximately 24 to 28 weeks -- a state may, to protect the potential life of the fetus, prohibit abortions not necessary to preserve the woman's life or health.
Doe v. Bolton, 410 U.S. 179 (1973)	Decided with *Roe v. Wade.* By a vote of 7-2, the Court invalidated provisions of a Georgia law that required that: (1) any abortion be performed in a hospital; (2) a woman secure the approval of three physicians and a hospital committee before obtaining an abortion; and (3) a woman seeking to obtain an abortion be a resident of the state.
Bigelow v. Virginia, 421 U.S. 809 (1975)	By a vote of 7-2, the Court invalidated the application of a Virginia statute that prohibited the advertisement of abortion services.

Connecticut v. Menillo, 423 U.S. 9 (1975)	The Court unanimously upheld the use of a Connecticut statute that prohibited the performance of abortion to prosecute a non-physician.
Bellotti v. Baird (I), 428 U.S. 132 (1976)	The Court unanimously ruled that the district court should have abstained from deciding the constitutionality of a Massachusetts statute requiring parental consent until the state court had interpreted the statute. The Court noted, however, that a state may, in some circumstances, require a minor woman to obtain parental consent before obtaining an abortion.
Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)	By a vote of 6-3, the Court invalidated provisions of a Missouri statute that: (1) required a married woman to obtain the consent of her husband prior to obtaining an abortion; (2) required a physician to preserve the life and health of the fetus at every stage of pregnancy; and (3) prohibited the use of saline amniocentesis as a method of abortion. By a vote of 5-4, the Court struck down a requirement that an unmarried minor woman obtain the written consent of one parent before obtaining an abortion because the statute provided no alternative to parental consent such as judicial waiver of the consent requirement. The Court upheld provisions that: (1) required facilities to keep confidential records, available only for statistical purposes to public health officials, intended to preserve maternal health and life by increasing medical knowledge and to monitor whether abortions are performed in accordance with the law; (2) required that a woman sign a consent form prior to an abortion; and (3) defined "viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems."
Maher v. Roe, 432 U.S. 464 (1977)	By a vote of 6-3, the Court upheld a Connecticut prohibition of the use of public funds for abortions, except those "medically necessary," even though the state provides funding for childbirth.
Beal v. Doe, 432 U.S. 438 (1977)	Decided with *Maher v. Roe.* By a vote of 6-3, the Court upheld a Pennsylvania regulation that prohibited the use of public funds for abortions not "medically necessary."
Poelker v. Doe, 432 U.S. 519 (1977)	By a vote of 6-3, *per curiam,* the Court upheld the refusal of a public hospital to provide publicly funded abortions when there was no threat to the health or life of the woman.

Carey v. Population Services, 431 U.S. 678 (1977)	By a vote of 7-2, the Court invalidated a New York law prohibiting the sale or distribution of contraceptives to minors.
Colautti v. Franklin, 439 U.S. 379 (1979)	By a vote of 6-3, the Court invalidated as unconstitutionally vague a Pennsylvania statute that required a physician, under threat of criminal penalties, to use the method and "degree of care" most likely to preserve the life and health of the fetus if the physician determined the fetus was viable or had "sufficient reason to believe that the fetus may be viable."
Bellotti v. Baird (II), 443 U.S. 622 (1979)	By a vote of 8-1, the Court invalidated a Massachusetts law that required a minor to obtain the consent of both parents before obtaining an abortion. Four Justices reasoned that the procedure for judicial waiver was unconstitutional because it required parental consultation in every case before the minor woman was permitted to go to court to demonstrate that she was mature enough to make her own decision or that an abortion was in her best interests. Four other Justices considered the statute unconstitutional because it provided an absolute veto over a minor woman's abortion decision to a third-party, whether a parent or a judge.
Harris v. McRae, 448 U.S. 297 (1980)	By a vote of 5-4, the Court upheld the Hyde amendment, which prohibits the use of federal funds for abortions not necessary to preserve the woman's life. The Court also held that states that participate in the Medicaid program are not required by Title XIX of the Social Security Act to fund medically necessary abortions for which federal funds are unavailable under the Hyde amendment.
Williams v. Zbaraz, 448 U.S. 358 (1980)	Decided with *Harris v. McRae.* By a vote of 5-4, the Court upheld an Illinois statute prohibiting the use of state funds for abortions not necessary to save the woman's life.
H.L. v. Matheson, 450 U.S. 398 (1981)	By a vote of 6-3, the Court upheld as not invalid on its face a Utah statute requiring a physician to notify a minor woman's parent before performing an abortion, but the Court did not decide whether the statute would be unconstitutional as applied to a mature minor because the plaintiff had not alleged that she was mature.
City of Akron v. Akron Center for Reproductive Health [Akron I],	By a vote of 6-3, the Court invalidated those provisions of a city ordinance that: (1) required physicians to give their patients anti-abortion information, including telling them that "the unborn child is a human life from the moment of conception;" (2) required a 24-hour

462 U.S. 416 (1983)	waiting period following these lectures; (3) mandated that all abortions after the first trimester be performed in a hospital; (4) required parental consent for a minor woman to obtain an abortion, without providing a procedure for waiver of the consent requirement; and (5) required physicians to dispose of fetal remains in an unspecified "humane and sanitary manner."
Planned Parenthood Association of Kansas City, Mo. v. Ashcroft, 462 U.S. 476 (1983)	Decided with *Akron Center*. By a vote of 6-3, the Court invalidated a provision of a Missouri statute that required all second-trimester abortions to be performed in a hospital. By a vote of 5-4, the Court upheld requirements that: (1) a second physician be present during a post-viability abortion; (2) a minor woman obtain either parental consent or a judicial waiver; and (3) a pathology report be made for each abortion.
Simopoulos v. Virginia, 462 U.S. 506 (1983)	By a vote of 8-1, the Court affirmed the criminal conviction of a physician for performing a second-trimester abortion outside a licensed hospital, noting that Virginia's definition of "hospital" differed from Missouri's and Akron's in that it included "outpatient hospitals," and was therefore broad enough to include any adequately equipped clinic. Thus, the Court held that the Virginia restriction on abortions after the first trimester was necessary to promote the health of women obtaining abortions.
Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986)	By a vote of 5-4, the Court invalidated provisions of Pennsylvania statute that required: (1) physicians to secure "informed consent" by providing anti-abortion information, including the availability of State-supplied printed materials describing the characteristics of the fetus and listing alternatives to abortion; (2) the reporting of detailed information available to the public for copying, including identification of the performing and referring physicians and personal information about the woman obtaining an abortion; (3) a physician performing a post-viability abortion to use that "degree of care" required to preserve the life and health of any unborn child intended to be born and to use the method of abortion most likely to preserve the life of the fetus, unless it would present a significantly greater medical risk to the woman's life or health; and (4) the presence of a second physician at abortions when viability is possible without providing an exception for a medical emergency.
Webster v. Reproductive Health Services,	By a vote of 5-4, the Court upheld provisions of a Missouri statute prohibiting the use of public facilities or public personnel to perform abortions and requiring a physician to make determinations and

492 U.S. 490 (1989)	perform tests concerning gestational age, weight and lung maturity when he or she has reason to believe a woman to be 20 weeks or more pregnant. For the first time in the sixteen years since *Roe v. Wade*, only a minority of the Justices on the Court -- four Justices -- voted to reaffirm *Roe*.
Hodgson v. Minnesota, 497 U.S. 417 (1990)	By a vote of 5-4, the Court invalidated as having no rational basis a Minnesota law requiring notification of both parents without a procedure for judicial waiver of the notice requirement. However, by a vote of 5-4, the Court upheld another provision that required two-parent notification but included a procedure for judicial waiver, as well as a 48-hour waiting period for minors.
Ohio v. Akron Center for Reproductive Health [Akron II], 497 U.S. 502 (1990)	By a vote of 6-3, the Court upheld an Ohio statute that required a minor woman to notify one parent or obtain a judicial waiver, rejecting a facial challenge alleging that the burdensome judicial procedure did not fulfill the constitutional requirement of a meaningful bypass procedure.
Rust v. Sullivan, 500 U.S. 173 (1991)	By a vote of 5-4, the Court upheld federal regulations prohibiting health care professionals at family planning clinics that receive Title X funds from counseling or referring women regarding abortion, or even informing a pregnant patient that abortion is a legal option.
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)	By a vote of 5-4, the Court "retained and once again reaffirmed" the "essential holding" of *Roe v. Wade*. The 5-4 majority also struck down a spousal notification provision of Pennsylvania's Abortion Control Act. However, by a vote of 7-2, the Court upheld provisions of the Act that required (1) physicians to provide patients with anti-abortion information, including pictures of fetuses at various stages of development, to discourage women from obtaining abortions; (2) a mandatory 24-hour delay following these lectures; and (3) a one-parent consent requirement for minors with a judicial bypass. By a vote of 8-1 (Blackmun was the sole dissenter), the Court upheld a provision that required the filing of reports, available for public inspection and copying, including the name and location of any facility performing abortions that receives any state funds. Most significantly, the three-justice plurality opinion (authored by O'Connor, Kennedy, and Souter), abandoned *Roe*'s trimester framework and the strict scrutiny standard of review applied to fundamental rights, implementing the less protective "undue burden" standard of review for pre-viability abortions. The plurality explicitly overruled portions of *Akron* and *Thornburgh* that had limited states' ability to restrict the right to choose, deeming them "inconsistent with

Roe's statement that the State has a legitimate interest in promoting the life or potential life of the unborn."

Four Justices (Rehnquist, Scalia, Thomas, and White) voted to uphold all the challenged provisions and overturn *Roe* completely, stating that it was wrongly decided and the Constitution does not protect the right to choose. Only two Justices (Blackmun and Stevens) voted to continue to protect the right to choose as a fundamental right under *Roe* by subjecting state restrictions to strict scrutiny.

Bray v. Alexandria Women's Health Clinic,
506 U.S. 263 (1993)

By a vote of 5-4, the Court held that a federal civil rights law, known as the "Ku Klux Klan" Act, 42 U.S.C. § 1985(3), does not protect women from anti-choice blockaders obstructing access to reproductive health clinics. The Court held that anti-choice blockades do not constitute sex-based discrimination for the purpose of the statute.

National Organization for Women v. Scheidler [Scheidler I],
510 U.S. 249 (1994)

By a vote of 9-0, the Court held that claims under the Racketeer Influenced and Corrupt Organizations (RICO) act do not require proof of an economic motive, and that NOW and a group of women's health centers could pursue their civil suit against Joseph Scheidler, the Pro-Life Action League (PLAL) and others.

Madsen v. Women's Health Center,
512 U.S. 753 (1994)

By a vote of 5-4 the Court upheld provisions of a Florida injunction that: (1) created a 36-foot buffer zone outside the entrance to a reproductive health clinic; and (2) prohibited anti-choice protesters from making noise that could be heard by patients inside the clinic during the hours in which surgical procedures were performed. The Court noted that such injunctions burden "no more speech than necessary to serve a significant government interest." The court invalidated provisions creating a 300-foot "no approach" zone around the clinic, a ban on signs and images visible to people inside the clinic, and a 300-foot ban on picketing outside the residences of clinic employees.

Schenck v. Pro-Choice Network,
519 U.S. 357 (1997)

By a vote of 8-1, the Court invalidated the provision in a New York injunction that created a 15-foot "floating" buffer zone around any person or vehicle seeking access to or leaving a clinic. The Court held that the "floating" buffer zones "burden more speech than necessary to serve the relevant government interests." The Court limited this holding to the facts of this case and noted that it did not address "whether the governmental interests involved would ever justify some sort of zone of separation between individuals entering the clinics and protestors, as measured by the distance between the two." By a vote of 6-3, the Court upheld a provision creating a 15-foot "fixed" buffer zone outside of clinic doorways, driveways, and parking lot entrances. The

Court also upheld a "cease and desist" provision that permits two "sidewalk counselors" to approach a person inside the "fixed" buffer zones unless and until the person indicates a desire for the counselor to withdraw; the "sidewalk counselor" must then retreat 15 feet from the person he/she had been counseling and remain outside of the buffer zone.

Lambert v. Wicklund
520 U.S. 292 (1997)

In a *per curiam* opinion, the Court upheld the judicial bypass provision of a Montana statute requiring one-parent notification before a minor may have an abortion. The Court held that a judicial bypass procedure requiring a minor to show that parental notification is not in her best interest is equivalent to a judicial bypass procedure requiring a minor to show that abortion without parental notification is in her best interest.

Mazurek v. Armstrong,
520 U.S. 968 (1997)

By a vote of 6-3, the Court reversed a lower court ruling that would have permitted health care providers to move forward with their challenge to a Montana law banning the performance of abortion by licensed physician assistants working under the supervision of a doctor. Without full briefing or oral argument, the Court found that, in general, physician-only requirements are constitutional. As the Court's first application of the "undue burden" standard since *Planned Parenthood of Southeastern Pennsylvania v. Casey,* this decision indicates that the standard is less protective than it initially appeared and that regardless of a law's intended effect, the Court will not invalidate state restrictions on abortion before viability unless the actual effect is to create a substantial obstacle on women obtaining an abortion.

Stenberg v. Carhart,
530 U.S. 914 (2000)

By a vote of 5-4, the Court invalidated a Nebraska law that prohibited so-called "partial birth" abortion unless the procedure is necessary to save the life of the woman. First, the Court held that the Nebraska law is unconstitutional because it lacks any exception to protect women's health, noting that "[s]ince the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to a previability regulation." The Court also clarified that the health exception must protect women against health risks caused by the pregnancy as well as health risks caused by a regulation that forces women to choose a less medically appropriate procedure. Second, the Court found that the Nebraska law imposed an undue burden on women because it was written so broadly that it would affect not only dilation and extraction (D&X) procedures, but also dilation and evacuation (D&E) procedures, the most common form of previability second trimester abortions. The Court reasoned that

physicians who used the D&E procedure would fear prosecution, conviction, and imprisonment, resulting in an undue burden upon a woman's right to choose.

Hill v. Colorado, 530 U.S. 703 (2000)

By a vote of 6-3, the Court upheld the constitutionality of the zone of separation provision in Colorado's clinic protection statute. The provision prohibits a person from knowingly approaching within eight feet of another person without consent, for the purpose of passing a leaflet or handbill, displaying a sign, or engaging in oral protest, education, or counseling. This restriction applies within a 100-foot radius from clinic entrances. The Court reasoned that states have a legitimate interest in protecting the health and safety of their citizens, and that this interest "may justify a special focus on unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests." The Court held that the Colorado statute is content neutral because it only regulates where the speech can occur. In addition, the statute was not adopted because of any disagreement with the message or viewpoint of any speech. Further, Colorado's interests in protecting clinic access and privacy, and providing clear guidelines for law enforcement officers, are not related to the content of the demonstrators' speech. The Court also held that the zone of separation provision is a valid time, place, and manner regulation because it is narrowly tailored to serve the State's significant and legitimate governmental interests and leaves open ample alternative channels for communication. Such channels include communicating at normal conversational distance, displaying signs, and distributing leaflets near the path of oncoming pedestrians.

Ferguson v. City of Charleston, 532 U.S. 67 (2001)

By a vote of 6-3, the Court held that the Medical University of South Carolina's policy of testing pregnant women for cocaine is unconstitutional under the Fourth Amendment in the absence of consent. The Court recognized that the purpose of the policy was to obtain evidence for criminal prosecution, not to help pregnant women or their fetuses. The Court also noted that punitive programs that punish pregnant women for drug use during pregnancy can actually harm the women and children they purport to protect.

Scheidler v. National Organization for Women [Scheidler II], 537 U.S. 393 (2003)

By a vote of 8-1, the Court held that rights potentially violated by clinic protestors – women's right to seek medical services, clinic doctors' rights to perform their jobs, and clinics' rights to provide medical services and otherwise conduct their business – were not "property" that could be "obtained" within the meaning of the Hobbs Act (a federal anti-extortion statute). On that basis, the Court overturned a jury verdict against clinic protestors, in which jurors had found that the

protestors' had used improper means to obtain "property" belonging to the plaintiffs (clinics, and patients or prospective patients), and had therefore committed extortion. Because it voided the underlying offenses necessary to sustain a RICO violation in the case, the Court declined to reach the issue of whether the clinics could be entitled to injunctive relief under RICO, but it voided the injunction issued in the instant case.

January 1, 2004

Attachment D

Roe et al. v. Wade, 410 U.S. 113, 1973

LEXSEE 410 U.S. 113

ROE ET AL. v. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY

No. 70-18

SUPREME COURT OF THE UNITED STATES

410 U.S. 113; 93 S. Ct. 705; 35 L. Ed. 2d 147; 1973 U.S. LEXIS 159

December 13, 1971, Argued
January 22, 1973, Decided

SUBSEQUENT HISTORY:

Reargued October 11, 1972. Rehearing denied by *Roe v. Wade, 410 U.S. 959, 35 L. Ed. 2d 694, 93 S. Ct. 1409, 1973 U.S. LEXIS 3282 (1973)*
Related proceeding at *McCorvey v. Hill, 2003 U.S. Dist. LEXIS 12986* (N.D. Tex., June 19, 2003)

PRIOR HISTORY:

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. *Roe v. Wade, 314 F. Supp. 1217, 1970 U.S. Dist. LEXIS 11306* (N.D. Tex., 1970)

DISPOSITION:

314 F.Supp. 1217, affirmed in part and reversed in part.

LexisNexis (TM) HEADNOTES- Core Concepts:

SYLLABUS: A pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife's health. A three-judge District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justiciable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and overbroadly infringing those plaintiffs' Ninth and Fourteenth Amendment rights. The court ruled the Does' complaint not justiciable. Appellants directly appealed to this Court on the injunctive rulings, and appellee cross-appealed from the District Court's grant of declaratory relief to Roe and Hallford. *Held*:

1. While *28 U. S. C. § 1253* authorizes no direct appeal to this Court from the grant or denial of declaratory relief alone, review is not foreclosed when the case is properly before the Court on appeal from specific denial of injunctive relief and the arguments as to both injunctive and declaratory relief are necessarily identical. P. 123.

2. Roe has standing to sue; the Does and Hallford do not. Pp. 123–129.

(a) Contrary to appellee's contention, the natural termination of Roe's pregnancy did not moot her suit. Litigation involving pregnancy, which is "capable of repetition, yet evading review," is an exception to the usual federal rule that an actual controversy must exist at review stages and not simply when the action is initiated. Pp. 124–125.

(b) The District Court correctly refused injunctive, but erred in granting declaratory, relief to Hallford, who alleged no federally protected right not assertable as a defense against the good-faith state prosecutions pending against him. *Samuels v. Mackell, 401 U.S. 66.* Pp. 125–127.

(c) The Does' complaint, based as it is on contingencies, any one or more of which may not occur, is too speculative to present an actual case or controversy. Pp. 127–129.

3. State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legit-

imate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term. Pp. 147-164.

(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. Pp. 163, 164.

(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. Pp. 163, 164.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Pp. 163-164; 164-165.

4. The State may define the term "physician" 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. P. 165.

5. It is unnecessary to decide the injunctive relief issue since the Texas authorities will doubtless fully recognize the Court's ruling that the Texas criminal abortion statutes are unconstitutional. P. 166.

COUNSEL:

Sarah Weddington reargued the cause for appellants. With her on the briefs were Roy Lucas, Fred Bruner, Roy L. Merrill, Jr., and Norman Dorsen.

Robert C. Flowers, Assistant Attorney General of Texas, argued the cause for appellee on the reargument. Jay Floyd, Assistant Attorney General, argued the cause for appellee on the original argument. With them on the brief were Crawford C. Martin, Attorney General, Nola White, First Assistant Attorney General, Alfred Walker, Executive Assistant Attorney General, Henry Wade, and John B. Tolle. *

* Briefs of amici curiae were filed by Gary K. Nelson, Attorney General of Arizona, Robert K. Killian, Attorney General of Connecticut, Ed W. Hancock, Attorney General of Kentucky, Clarence A. H. Meyer, Attorney General of Nebraska, and Vernon B. Romney, Attorney General of Utah; by Joseph P. Witherspoon, Jr., for the Association of Texas Diocesan Attorneys; by Charles E. Rice for Americans United for Life; by Eugene J. McMahon for Women for the Unborn et al.; by Carol Ryan for the American College of Obstetricians and Gynecologists et al.; by Dennis J. Horan, Jerome A. Frazel, Jr., Thomas M. Crisham, and Dolores V. Horan for Certain Physicians, Professors and Fellows of the American College of Obstetrics and Gynecology; by Harriet F. Pilpel, Nancy F. Wechsler, and Frederic S. Nathan for Planned Parenthood Federation of America, Inc., et al.; by Alan F. Charles for the National Legal Program on Health Problems of the Poor et al.; by Martlie L. Thompson for State Communities Aid Assn.; by Alfred L. Scanlan, Martin J. Flynn, and Robert M. Byrn for the National Right to Life Committee; by Helen L. Buttenwieser for the American Ethical Union et al.; by Norma G. Zarky for the American Association of University Women et al.; by Nancy Stearns for New Women Lawyers et al.; by the California Committee to Legalize Abortion et al.; and by Robert E. Dunne for Robert L. Sassone.

JUDGES:

Blackmun, J., delivered the opinion of the Court, in which Burger, C. J., and Douglas, Brennan, Stewart, Marshall, and Powell, JJ., joined. Burger, C. J., post, p. 207, Douglas, J., post, p. 209, and Stewart, J., post, p. 167, filed concurring opinions. White, J., filed a dissenting opinion, in which Rehnquist, J., joined, post, p. 221. Rehnquist, J., filed a dissenting opinion, post, p. 171.

OPINIONBY:

BLACKMUN

OPINION: [*116] [***156] [**708] 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 **[**709]** to complicate and not to simplify the problem.

Our task, of course, is to resolve the issue by constitutional measurement, **[***157]** free of emotion and of predilection. We seek earnestly to do this, and, because we do, we **[*117]** 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. n1 These make it a crime to "procure an abortion," as therein **[*118]** 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. n2

n1 "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."

n2 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).

[*119] Texas [***158] [**710] 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." n3

n3 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 [*United States* v.] *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).*

[*120] II

Jane Roe, n4 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.

n4 The name is a pseudonym.

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.

[***159] 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 [*121] 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 [**711] 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, n5 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."

n5 These names are pseudonyms.

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, **[*122]** 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 **[***160]** *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).* **[*123]** III

[*HR1]** 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* **[**712]** *(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? **[*124]**

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.

[***HR2A] [***HR3A] Viewing Roe's case as of the time of its filing and thereafter until as late as 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* [***161] *(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, n6 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.

> n6 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.

[*125]

[***HR4I] 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* [**713] *(1950); Golden v. Zwickler, supra; SEC v. Medical Committee for Human Rights, 404 U.S. 403 (1972).*

[***HR5A] 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).*

[***HR2B] [***HR3B] [***HR4B] [***HR5B] 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:

"In 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 [***162] State of Texas vs. [*126] James H. Hallford, No. C-69-5307-IH, and (2) The State of Texas vs. James H. Hallford, No. C-69-2524-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.

[***HR6] [***HR7] 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.* **[*127]** *Harris, 401 U.S. 37 (1971); Boyle v. Landry, 401 U.S. 77* **[**714]** *(1971); Perez v. Ledesma, 401 U.S. 82 (1971);* and *Byrne v. Karalexis, 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.

[*HR8]** Dr. Hallford's complaint in intervention, therefore, is to be dismissed. n7 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 **[***163]** and failed to dismiss his complaint in intervention.

> n7 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.

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 **[*128]** 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.

[*HR9]** 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* **[**715]** *(1970);* **[*129]** and *Epperson v. Arkansas, 393 U.S. 97 (1968).* See also *Truax v. Raich, 239 U.S. 33 (1915).*

[*HR10]** 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 **[***164]** 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 address-

ing 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.

[*130] 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. n8 We are also told, however, that abortion was practiced in Greek times as well as in the Roman Era, n9 and that "it was resorted to without scruple." n10 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. n11 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. n12

n8 A. Castiglioni, A History of Medicine 84 (2d ed. 1947), E. Krumbhaar, translator and editor (hereinafter Castiglioni).

n9 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, 406-422 (1961)* (hereinafter Quay).

n10 L. Edelstein, The Hippocratic Oath 10 (1943) (hereinafter Edelstein). But see Castiglioni 227.

n11 Edelstein 12; Ricci 113-114, 118-119; Noonan 5.

n12 Edelstein 13-14.

2. *The Hippocratic Oath.* What then of the famous Oath that has stood so **[**716]** 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 **[*131]** 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 **[***165]** sum of the medical knowledge of the past? n13 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," n14 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." n15

n13 Castiglioni 148.

n14 *Id.*, at 154.

n15 Edelstein 3.

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: n16 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," **[*132]** and "in no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity." n17

n16 *Id.*, at 12, 15-18.

n17 *Id.*, at 18; Lader 76.

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." n18 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." n19

n18 Edelstein 63.

n19 *Id.*, at 64.

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 n20 — was not an indictable offense. n21 The absence **[*133] [***166]** of a **[**717]** 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. n22 This was "mediate animation." Although **[*134]** 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.

n20 Dorland's Illustrated Medical Dictionary 1261 (24th ed. 1965).

n21 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.

n22 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).

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. n23 But [***167] the later and predominant [**718] view, following the great common-law scholars, has been that it was, at most, a lesser offense. In a frequently cited [*135] passage, Coke took the position that abortion of a woman "quick with child" is "a great misprision, and no murder." n24 Blackstone followed, saying that while abortion after quickening had once been considered manslaughter (though not murder), "modern law" took a less severe view. n25 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. n26 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, n27 others followed Coke in stating that abortion [*136] of a quick fetus was a "misprision," a term they translated to mean "misdemeanor." n28 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.

n23 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 60-61 (Book 1, c. 23) (Selden Society ed. 1955).

n24 E. Coke, Institutes III *50.

n25 1 W. Blackstone, Commentaries *129-130.

n26 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."

n27 *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).*

n28 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).*

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 [***168] 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 [**719] 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 [*137] 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 wilful 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 [*138] 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 pre-existing 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 [***169] woman "quick with child." n29 The death penalty was not imposed. Abortion before quickening was made a crime in that State only in 1860. n30 In 1828, New York enacted legislation n31 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, n32 only eight American States [*139] had [**720] statutes dealing with abortion. n33 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.

n29 Conn. Stat., Tit. 20, § 14 (1821).

n30 Conn. Pub. Acts, c. 71, § 1 (1860).

n31 N. Y. Rev. Stat., pt. 4, c. 1, Tit. 2, Art. 1, § 9, p. 661, and Tit. 6, § 21, p. 694 (1829).

n32 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).*

n33 The early statutes are discussed in Quay 435-438. See also Lader 85-88; Stern 85-88; and Means II 375-376.

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 penal-

ties 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. n34 The exceptions, Alabama and the District of Columbia, permitted abortion to preserve the mother's health. n35 Three States permitted abortions that were not "unlawfully" performed or that were not "without lawful justification," leaving interpretation of those standards to the courts. n36 In **[*140]** 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, n37 set forth as Appendix **[***170]** B to the opinion in *Doe* v. *Bolton*, *post*, p. 205.

n34 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.

n35 Ala. Code, Tit. 14, § 9 (1958); D. C. Code Ann. § 22-201 (1967).

n36 Mass. Gen. Laws Ann., c. 272, § 19 (1970); N. J. Stat. Ann. § 2A:87-1 (1969); Pa. Stat. Ann., Tit. 18, §§ 4718, 4719 (1963).

n37 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.

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, **[**721]** and very possibly without such a limitation, the opportunity **[*141]** 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. 73-78 (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 wide-spread 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, **[*142]** and to its life as yet denies all protection." *Id.*, at 75-76. **[***171]** 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. 258 (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 **[*143]** patient," two other physicians "chosen because of their recognized professional competence have examined the patient and have concurred in writing, **[**722]** " 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 **[***172]** 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. n38 Proceedings **[*144]** of the AMA House of Delegates 220 (June 1970). The AMA Judicial Council rendered a complementary opinion. n39

n38 "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).

n39 "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."

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 [*145] 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.

" [**723] 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

" [***173] 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, [*146] 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. n40 The [*147] Conference [**724] has appended [***174] an enlightening Prefatory Note. n41

n40 "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 — — — — — —."

n41 "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."

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.

[*148] 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. n42 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.

n42 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.

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. n43 This was particularly true prior to the [*149] 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.

n43 See C. Haagensen & W. Lloyd, A Hundred Years of Medicine 19 (1943).

[*HR11] [***HR12] [***HR13] [***HR14]** Modern **[**725]** 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 **[***175]** 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. n44 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. **[*150]** 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 aftercare, 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.

n44 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.

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. n45 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.

n45 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.

[*151] 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. n46 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 **[***176]** 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. n47 The few state courts **[**726]** 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. n48 Proponents of this view point out that in many States, including Texas, n49 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. n50 They claim that adoption of the "quickening" distinction through received common **[*152]** law and state statutes tacitly recognizes the greater health hazards inherent in late abortion and impliedly repudiates the theory that life begins at conception.

n46 See, *e. g., Abele v. Markle, 342 F.Supp. 800 (Conn. 1972),* appeal docketed, No. 72-56.

n47 See discussions in Means I and Means II

n48 See, *e. g., State v. Murphy, 27 N. J. L. 112, 114 (1858).*

n49 *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.

n50 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).

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

VIII

[*HR15] [***HR16] [***HR17]** 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 **[***177]** 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* **[*153]** (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts, 321 U.S. 158, 166 (1944);* and child rearing and education, *Pierce v. Society of* **[**727]** *Sisters, 268 U.S. 510, 535 (1925), Meyer v. Nebraska, supra.*

[*HR18]** 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.

[*HR19] [***HR20] [***HR21] [***HR22A] [***HR23] [***HR24]** 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 **[*154]** 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 **[***178]** 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. Kugler, 342 F.Supp. 1048 (NJ 1972); Babbitz v. McCann,* **[*155]** *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* **[**728]** *(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.

[*HR25]** 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 **[*156]** *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 **[***179]** 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, **[*157]** for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. n51 On the other hand, the appellee conceded on reargument n52 that no case could be cited **[**729]** that holds that a fetus is a person within the meaning of the Fourteenth Amendment.

n51 Tr. of Oral Rearg. 20-21.

n52 Tr. of Oral Rearg. 24.

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; n53 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 postnatally. None indicates, with any assurance, that it has any possible pre-natal application. n54

n53 We are not aware that in the taking of any census under this clause, a fetus has ever been counted.

n54 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?

[*158] [***180]

[***HR26] 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. n55 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* [*159] *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 [**730] termination of life entitled to Fourteenth Amendment protection.

n55 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."

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

[***HR27] 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 [***181] 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.

[*160] 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. n56 It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. n57 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. n58 As we have noted, the common law found greater significance in quickening. Physicians 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. n59 Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. n60 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 [*161] the moment of conception. n61 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 [**731] 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. n62

n56 Edelstein 16.

n57 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).

n58 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.

n59 L. Hellman & J. Pritchard, Williams Obstetrics 493 (14th ed. 1971); Dorland's Illustrated Medical Dictionary 1689 (24th ed. 1965).

n60 Hellman & Pritchard, *supra*, n. 59, at 493.

n61 For discussions of the development of the Roman Catholic position, see D. Callahan, Abortion: Law, Choice, and Morality 409-447 (1970); Noonan 1.

n62 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.*

[***182] 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. n63 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 [*162] courts have squarely so held. n64 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. n65 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*. n66 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.

n63 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).*

n64 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).*

n65 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).*

n66 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).*

X

[*HR22B]** **[***HR28]** 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 **[*163]** term and, at a point during pregnancy, each becomes "compelling."

[*HR29]** **[***HR30A]** 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 **[**732]** 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 **[***183]** 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.

[*HR31A]** 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.

[*HR32A]** **[***HR33A]** 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 **[*164]** during that period, except when it is necessary to preserve the life or health of the mother.

[*HR34]** 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

[*HR30B]** **[***HR31B]** **[***HR32B]** **[***HR33B]** **[***HR35]** **[***HR36]** 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 preg-

nancy 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 [*165] may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation [***184] 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 [**733] 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. n67

> n67 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.

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 [*166] 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.*

[***185] 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 [*167] of the District Court is affirmed. Costs are allowed to the appellee.

[EDITOR'S NOTE: Additional opinions by Burger, Douglas, and White are published within *Doe v. Bolton, 410 U.S. 179.]*

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.]

CONCURBY:

STEWART

CONCUR:

[*193contd]**

[EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

MR. JUSTICE STEWART, concurring.

In 1963, this Court, in *Ferguson v. Skrupa, 372 U.S. 726,* **[**734]** 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.* n1

> n1 Only Mr. Justice Harlan failed to join the Court's opinion, *372 U.S., at 733.*

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. n2 So it was clear **[*168]** 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. n3 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.

> n2 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).
>
> n3 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.*

"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;* **[***194]** *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.*

[*169] As Mr. Justice Harlan once wrote: "The full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise **[**735]** 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 **[*170]** 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 **[***195]** 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 **[**736]** of personal **[*171]** 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.

DISSENTBY:

REHNQUIST

DISSENT:

[*196]** 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 **[***197]** 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 **[*172]** 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 **[*173]** Amendment protects, embraces more than the rights found in the Bill of Rights. But that **[**737]** 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* **[**98]** *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.

[*174] 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, **[***199]** the first state law dealing directly with abortion was enacted by the Connecticut Legislature. Conn. Stat., Tit. 20, §§ 14, 16. By the time of the adoption of the Fourteenth **[*175]** Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting **[**738]** abortion. n1 While many States have amended or updated **[*176]** their laws, 21 of the laws on the books in 1868 **[***200]** remain in effect today. n2 Indeed, the Texas statute **[**739]** struck down today was, as the majority notes, first enacted in 1857 **[*177]** and "has remained substantially unchanged to the present time." *Ante*, at 119.

n1 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 — Ga. 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, §§ 1-6, 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).

n2 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).

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.

REFERENCES: Return To Full Text Opinion
Validity, under Federal Constitution, of abortion laws

1 Am Jur 2d, Abortion 1-36; 32 Am Jur 2d, Federal Practice and Procedure 238; 42 Am Jur 2d, Injunctions 342-344

1 Am Jur Pl & Pr Forms (Rev), Abortion, Form Nos. 1-6

2 Am Jur Trials 171, Investigating Particular Crimes 64

US L Ed Digest, Abortion 1; Appeal and Error 327, 428, 1208, 1656, 1662; Constitutional Law 101, 521, 525, 526; Courts 762, 763; Declaratory Judgments 8; Rules of Court 3, 5; Statutes 26

ALR Digests, Abortion 1-3; Constitutional Law 145, 445, 452, 525, 715, 715.5, 751

L Ed Index to Anno, Abortion; Abstention Doctrine; Appeal and Error; Constitutional Law; Declaratory Judgments; Due Process of Law; Physicians and Surgeons; Police Power; Statutes

ALR Quick Index, Abortion; Appeal and Error; Constitutional Law; Declaratory Judgments; Due Process of Law; Physicians and Surgeons; Police Power; Statutes

Federal Quick Index, Abortion; Abstention Doctrine; Appeal and Error; Constitutional Law; Declaratory Judgments; Due Process of Law; Physicians and Surgeons; Police Power; Statutes

Annotation References:

Validity, under Federal Constitution, of abortion laws. *35 L Ed 2d 735.*

Attachment E

Planned Parenthood of Southeaster Pennsylvania, et al., Petitioners 91–744 v. Robert P. Casey, et al., 505 U.S. 833, 1992

LEXSEE 505 U.S. 833,AT 894

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, ET AL., PETITIONERS 91-744 v. ROBERT P. CASEY, ET AL., ETC. ROBERT P. CASEY, ET AL., ETC., PETITIONERS 91-902 v. PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA ET AL.

No. 91-744

SUPREME COURT OF THE UNITED STATES

505 U.S. 833; 112 S. Ct. 2791; 120 L. Ed. 2d 674; 1992 U.S. LEXIS 4751; 60 U.S.L.W. 4795; 92 Daily Journal DAR 8982; 6 Fla. L. Weekly Fed. S 663

April 22, 1992, Argued
June 29, 1992, Decided *

*** Together with No. 91-902, Casey, Governor of Pennsylvania, et al. v. Planned Parenthood of Southeastern Pennsylvania et al., also on certiorari to the same court.**

SUBSEQUENT HISTORY:

As Amended July 2, 1992.

PRIOR HISTORY: ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

DISPOSITION: *947 F. 2d 682:* No. 91-902, affirmed; No. 91-744, affirmed in part, reversed in part, and remanded.

LexisNexis (TM) HEADNOTES- Core Concepts:

SYLLABUS: At issue are five provisions of the Pennsylvania Abortion Control Act of 1982: § 3205, which requires that a woman seeking an abortion give her informed consent prior to the procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed; § 3206, which mandates the informed consent of one parent for a minor to obtain an abortion, but provides a judicial bypass procedure; § 3209, which commands that, unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband; § 3203, which defines a "medical emergency" that will excuse compliance with the foregoing requirements; and §§ 3207(b), 3214(a), and 3214(f), which impose certain reporting requirements on facilities providing abortion services. Before any of the provisions took effect, the petitioners, five abortion clinics and a physician representing himself and a class of doctors who provide abortion services, brought this suit seeking a declaratory judgment that each of the provisions was unconstitutional on its face, as well as injunctive relief. The District Court held all the provisions unconstitutional and permanently enjoined their enforcement. The Court of Appeals affirmed in part and reversed in part, striking down the husband notification provision but upholding the others.

Held: The judgment in No. 91-902 is affirmed; the judgment in No. 91-744 is affirmed in part and reversed in part, and the case is remanded.

JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER delivered the opinion of the Court with respect to Parts I, II, and III, concluding that consideration of the fundamental constitutional question resolved by *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705,* principles of institutional integrity, and the rule of *stare decisis* require that *Roe's* essential holding be retained and reaffirmed as to each of its three parts: (1) a recognition of a woman's right to choose to have an abortion before fetal viability and to obtain it without undue interference from the State, whose previability interests are not strong enough to support an abortion prohibition or the imposition of substantial obstacles to the woman's effective right to elect the procedure; (2) a confirmation of the State's power to restrict abortions after viability, if the law contains exceptions for pregnancies endangering a woman's life or health; and (3) the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. Pp. 844-869.

(a) A reexamination of the principles that define the woman's rights and the State's authority regarding abortions is required by the doubt this Court's subsequent decisions have cast upon the meaning and reach of *Roe's* central holding, by the fact that THE CHIEF JUSTICE would overrule *Roe*, and by the necessity that state and federal courts and legislatures have adequate guidance on the subject. Pp. 844-845.

(b) *Roe* determined that a woman's decision to terminate her pregnancy is a "liberty" protected against state interference by the substantive component of the Due Process Clause of the Fourteenth Amendment. Neither the Bill of Rights nor the specific practices of States at the time of the Fourteenth Amendment's adoption marks the outer limits of the substantive sphere of such "liberty." Rather, the adjudication of substantive due process claims may require this Court to exercise its reasoned judgment in determining the boundaries between the individual's liberty and the demands of organized society. The Court's decisions have afforded constitutional protection to personal decisions relating to marriage, see, *e. g., Loving v. Virginia, 388 U.S. 1, 18 L. Ed. 2d 1010, 87 S. Ct. 1817,* procreation, *Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 86 L. Ed. 1655, 62 S. Ct. 1110,* family relationships, *Prince v. Massachusetts, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438,* child rearing and education, *Pierce v. Society of Sisters, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571,* and contraception, *Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678,* and have recognized the right of the individual to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child, *Eisenstadt v. Baird, 405 U.S. 438, 453, 31 L. Ed. 2d 349, 92 S. Ct. 1029. Roe's* central holding properly invoked the reasoning and tradition of these precedents. Pp. 846-853.

(c) Application of the doctrine of *stare decisis* confirms that *Roe's* essential holding should be reaffirmed. In reexamining that holding, the Court's judgment is informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling the holding with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling. Pp. 854-855.

(d) Although *Roe* has engendered opposition, it has in no sense proven unworkable, representing as it does a simple limitation beyond which a state law is unenforceable. P. 855.

(e) The *Roe* rule's limitation on state power could not be repudiated without serious inequity to people who, for two decades of economic and social developments, have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain costs of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed. Pp. 855-856.

(f) No evolution of legal principle has left *Roe*'s central rule a doctrinal anachronism discounted by society. If *Roe* is placed among the cases exemplified by *Griswold, supra,* it is clearly in no jeopardy, since subsequent constitutional developments have neither disturbed, nor do they threaten to diminish, the liberty recognized in such cases. Similarly, if *Roe* is seen as stating a rule of personal autonomy and bodily integrity, akin to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection, this Court's post-*Roe* decisions accord with *Roe's* view that a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims. See, *e. g., Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841.* Finally, if *Roe* is classified as *sui generis*, there clearly has been no erosion of its central determination. It was expressly reaffirmed in *Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (Akron I),* and *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 90 L. Ed. 2d 779, 106 S. Ct. 2169;* and, in *Webster v. Reproductive Health Services, 492 U.S. 490, 106 L. Ed. 2d 410, 109 S. Ct. 3040,* a majority either voted to reaffirm or declined to address the constitutional validity of *Roe's* central holding. Pp. 857-859.

(g) No change in *Roe's* factual underpinning has left its central holding obsolete, and none supports an argument for its overruling. Although subsequent maternal health care advances allow for later abortions safe to the pregnant woman, and post-*Roe* neonatal care developments have advanced viability to a point somewhat earlier, these facts go only to the scheme of time limits on the realization of competing interests. Thus, any later divergences from the factual premises of *Roe* have no bearing on the validity of its central holding, that viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions. The soundness or unsoundness of that constitutional judgment in no sense turns on when

viability occurs. Whenever it may occur, its attainment will continue to serve as the critical fact. P. 860.

(h) A comparison between *Roe* and two decisional lines of comparable significance — the line identified with *Lochner v. New York, 198 U.S. 45, 49 L. Ed. 937, 25 S. Ct. 539,* and the line that began with *Plessy v. Ferguson, 163 U.S. 537, 41 L. Ed. 256, 16 S. Ct. 1138* — confirms the result reached here. Those lines were overruled — by, respectively, *West Coast Hotel Co. v. Parrish, 300 U.S. 379, 81 L. Ed. 703, 57 S. Ct. 578,* and *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686* — on the basis of facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. The overruling decisions were comprehensible to the Nation, and defensible, as the Court's responses to changed circumstances. In contrast, because neither the factual underpinnings of *Roe's* central holding nor this Court's understanding of it has changed (and because no other indication of weakened precedent has been shown), the Court could not pretend to be reexamining *Roe* with any justification beyond a present doctrinal disposition to come out differently from the *Roe* Court. That is an inadequate basis for overruling a prior case. Pp. 861-864.

(i) Overruling *Roe's* central holding would not only reach an unjustifiable result under *stare decisis* principles, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. Where the Court acts to resolve the sort of unique, intensely divisive controversy reflected in *Roe*, its decision has a dimension not present in normal cases and is entitled to rare precedential force to counter the inevitable efforts to overturn it and to thwart its implementation. Only the most convincing justification under accepted standards of precedent could suffice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. Moreover, the country's loss of confidence in the Judiciary would be underscored by condemnation for the Court's failure to keep faith with those who support the decision at a cost to themselves. A decision to overrule *Roe's* essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy and to the Nation's commitment to the rule of law. Pp. 864-869.

JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER concluded in Part IV that an examination of *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705,* and subsequent cases, reveals a number of guiding principles that should control the assessment of the Pennsylvania statute:

(a) To protect the central right recognized by *Roe* while at the same time accommodating the State's profound interest in potential life, see *id., at 162,* the undue burden standard should be employed. An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability.

(b) *Roe's* rigid trimester framework is rejected. To promote the State's interest in potential life throughout pregnancy, the State may take measures to ensure that the woman's choice is informed. Measures designed to advance this interest should not be invalidated if their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right.

(c) As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion, but may not impose unnecessary health regulations that present a substantial obstacle to a woman seeking an abortion.

(d) Adoption of the undue burden standard does not disturb *Roe's* holding that regardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.

(e) *Roe's* holding that "subsequent to viability, the State in promoting its interest in the potentiality of human life 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" is also reaffirmed. *Id., at 164-165.* Pp. 869-879.

JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER delivered the opinion of the Court with respect to Parts V-A and V-C, concluding that:

1. As construed by the Court of Appeals, § 3203's medical emergency definition is intended to assure that compliance with the State's abortion regulations would not in any way pose a significant threat to a woman's life or health, and thus does not violate the essential holding of *Roe, supra, at 164.* Although the definition could be interpreted in an unconstitutional manner, this Court defers to lower federal court interpretations of state law unless they amount to "plain" error. Pp. 879-880.

2. Section 3209's husband notification provision constitutes an undue burden and is therefore invalid. A significant number of women will likely be prevented from obtaining an abortion just as surely as if Pennsylvania had outlawed the procedure entirely. The fact that § 3209 may affect fewer than one percent of women seeking abortions does not save it from facial invalidity, since the proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom it is irrelevant. Furthermore, it cannot be claimed that the father's interest in the fetus' welfare is equal to the mother's protected liberty, since it is an inescapable biological fact that state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband. Section 3209 embodies a view of marriage consonant with the common-law status of married women but repugnant to this Court's present understanding of marriage and of the nature of the rights secured by the Constitution. See *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 69, 49 L. Ed. 2d 788, 96 S. Ct. 2831.* Pp. 887-898.

JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER, joined by JUSTICE STEVENS, concluded in Part V-E that all of the statute's record-keeping and reporting requirements, except that relating to spousal notice, are constitutional. The reporting provision relating to the reasons a married woman has not notified her husband that she intends to have an abortion must be invalidated because it places an undue burden on a woman's choice. Pp. 900-901.

JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER concluded in Parts V-B and V-D that:

1. Section 3205's informed consent provision is not an undue burden on a woman's constitutional right to decide to terminate a pregnancy. To the extent *Akron I, 462 U.S. at 444,* and *Thornburgh, 476 U.S. at 762,* find a constitutional violation when the government requires, as it does here, the giving of truthful, nonmisleading information about the nature of the abortion procedure, the attendant health risks and those of childbirth, and the "probable gestational age" of the fetus, those cases are inconsistent with *Roe's* acknowledgment of an important interest in potential life, and are overruled. Requiring that the woman be informed of the availability of information relating to the consequences to the fetus does not interfere with a constitutional right of privacy between a pregnant woman and her physician, since the doctor-patient relation is derivative of the woman's position, and does not underlie or override the abortion right. Moreover, the physician's First Amendment rights not to speak are implicated only as part of the practice of medicine, which is licensed and regulated by the State. There is no evidence here that requiring a doctor to give the required information would amount to a substantial obstacle to a woman seeking an abortion. The premise behind *Akron I's* invalidation of a waiting period between the provision of the information deemed necessary to informed consent and the performance of an abortion, *462 U.S. at 450,* is also wrong. Although § 3205's 24-hour waiting period may make some abortions more expensive and less convenient, it cannot be said that it is invalid on the present record and in the context of this facial challenge. Pp. 881-887.

2. Section 3206's one-parent consent requirement and judicial bypass procedure are constitutional. See, *e. g., Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 510-519, 111 L. Ed. 2d 405, 110 S. Ct. 2972.* Pp. 899-900.

JUSTICE BLACKMUN concluded that application of the strict scrutiny standard of review required by this Court's abortion precedents results in the invalidation of all the challenged provisions in the Pennsylvania statute, including the reporting requirements, and therefore concurred in the judgment that the requirement that a pregnant woman report her reasons for failing to provide spousal notice is unconstitutional. Pp. 930, 934-936.

THE CHIEF JUSTICE, joined by JUSTICE WHITE, JUSTICE SCALIA, and JUSTICE THOMAS, concluded that:

1. Although *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705,* is not directly implicated by the Pennsylvania statute, which simply regulates and does not prohibit abortion, a reexamination of the "fundamental right" *Roe* accorded to a woman's decision to abort a fetus, with the concomitant requirement that any state regulation of abortion survive "strict scrutiny," *id., at 154-156,* is warranted by the confusing and uncertain state of this Court's post-*Roe* decisional law. A review of post-*Roe* cases demonstrates both that they have expanded upon *Roe* in imposing increasingly greater restrictions on the States, see *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 783, 90 L. Ed. 2d 779, 106 S. Ct. 2169* (Burger, C. J., dissenting), and that the Court has become increasingly more divided, none of the last three such decisions having commanded a majority opinion, see *Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 111 L. Ed. 2d 405, 110 S. Ct. 2972; Hodgson v. Minnesota, 497 U.S. 417, 111 L. Ed. 2d 344, 110 S. Ct. 2926; Webster v. Reproductive Health Services, 492 U.S. 490, 106 L.*

Ed. 2d 410, 109 S. Ct. 3040. This confusion and uncertainty complicated the task of the Court of Appeals, which concluded that the "undue burden" standard adopted by JUSTICE O'CONNOR in *Webster* and *Hodgson* governs the present cases. Pp. 944-951.

2. The *Roe* Court reached too far when it analogized the right to abort a fetus to the rights involved in *Pierce v. Society of Sisters, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571; Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625; Loving v. Virginia, 388 U.S. 1, 18 L. Ed. 2d 1010, 87 S. Ct. 1817;* and *Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678,* and thereby deemed the right to abortion to be "fundamental." None of these decisions endorsed an all-encompassing "right of privacy," as *Roe, supra, at 152-153,* claimed. Because abortion involves the purposeful termination of potential life, the abortion decision must be recognized as *sui generis*, different in kind from the rights protected in the earlier cases under the rubric of personal or family privacy and autonomy. And the historical traditions of the American people — as evidenced by the English common law and by the American abortion statutes in existence both at the time of the Fourteenth Amendment's adoption and *Roe's* issuance — do not support the view that the right to terminate one's pregnancy is "fundamental." Thus, enactments abridging that right need not be subjected to strict scrutiny. Pp. 951-953.

3. The undue burden standard adopted by the joint opinion of JUSTICES O'CONNOR, KENNEDY, and SOUTER has no basis in constitutional law and will not result in the sort of simple limitation, easily applied, which the opinion anticipates. To evaluate abortion regulations under that standard, judges will have to make the subjective, unguided determination whether the regulations place "substantial obstacles" in the path of a woman seeking an abortion, undoubtedly engendering a variety of conflicting views. The standard presents nothing more workable than the trimester framework the joint opinion discards, and will allow the Court, under the guise of the Constitution, to continue to impart its own preferences on the States in the form of a complex abortion code. Pp. 964-966.

4. The correct analysis is that set forth by the plurality opinion in *Webster, supra:* A woman's interest in having an abortion is a form of liberty protected by the Due Process Clause, but States may regulate abortion procedures in ways rationally related to a legitimate state interest. P. 966.

5. Section 3205's requirements are rationally related to the State's legitimate interest in assuring that a woman's consent to an abortion be fully informed. The requirement that a physician disclose certain information about the abortion procedure and its risks and alternatives is not a large burden and is clearly related to maternal health and the State's interest in informed consent. In addition, a State may rationally decide that physicians are better qualified than counselors to impart this information and answer questions about the abortion alternatives' medical aspects. The requirement that information be provided about the availability of paternal child support and state-funded alternatives is also related to the State's informed consent interest and furthers the State's interest in preserving unborn life. That such information might create some uncertainty and persuade some women to forgo abortions only demonstrates that it might make a difference and is therefore relevant to a woman's informed choice. In light of this plurality's rejection of *Roe's* "fundamental right" approach to this subject, the Court's contrary holding in *Thornburgh* is not controlling here. For the same reason, this Court's previous holding invalidating a State's 24-hour mandatory waiting period should not be followed. The waiting period helps ensure that a woman's decision to abort is a well-considered one, and rationally furthers the State's legitimate interest in maternal health and in unborn life. It may delay, but does not prohibit, abortions; and both it and the informed consent provisions do not apply in medical emergencies. Pp. 966-970.

6. The statute's parental consent provision is entirely consistent with this Court's previous decisions involving such requirements. See, *e. g., Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 76 L. Ed. 2d 733, 103 S. Ct. 2517.* It is reasonably designed to further the State's important and legitimate interest "in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson, supra, at 444.* Pp. 970-971.

7. Section 3214(a)'s requirement that abortion facilities file a report on each abortion is constitutional because it rationally furthers the State's legitimate interests in advancing the state of medical knowledge concerning maternal health and prenatal life, in gathering statistical information with respect to patients, and in ensuring compliance with other provisions of the Act, while keeping the reports completely confidential. Public disclosure of other reports made by facilities receiving public funds — those identifying the facilities and any parent, subsidiary, or affiliated organizations, § 3207(b), and those revealing the total number of abortions performed, broken down by trimester, § 3214(f) — are rationally related to the State's legitimate interest in informing taxpayers as to who is benefiting from public funds and what services the funds

are supporting; and records relating to the expenditure of public funds are generally available to the public under Pennsylvania law. Pp. 976-977.

JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE THOMAS, concluded that a woman's decision to abort her unborn child is not a constitutionally protected "liberty" because (1) the Constitution says absolutely nothing about it, and (2) the longstanding traditions of American society have permitted it to be legally proscribed. See, *e. g., Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 520, 111 L. Ed. 2d 405, 110 S. Ct. 2972* (SCALIA, J., concurring). The Pennsylvania statute should be upheld in its entirety under the rational basis test. Pp. 979-981.

COUNSEL: Kathryn Kolbert argued the cause for petitioners in No. 91-744 and respondents in No. 91-902. With her on the briefs were Janet Benshoof, Lynn M. Paltrow, Rachael N. Pine, Steven R. Shapiro, John A. Powell, Linda J. Wharton, and Carol E. Tracy.

Ernest D. Preate, Jr., Attorney General of Pennsylvania, argued the cause for respondents in No. 91-744 and petitioners in No. 91-902. With him on the brief were John G. Knorr III, Chief Deputy Attorney General, and Kate L. Mershimer, Senior Deputy Attorney General.

Solicitor General Starr argued the cause for the United States as amicus curiae in support of respondents in No. 91-744 and petitioners in No. 91-902. With him on the brief were Assistant Attorney General Gerson, Paul J. Larkin, Jr., Thomas G. Hungar, and Alfred R. Mollin. +

+ Briefs of amici curiae were filed for the State of New York et al. by Robert Abrams, Attorney General of New York, Jerry Boone, Solicitor General, Mary Ellen Burns, Chief Assistant Attorney General, and Sanford M. Cohen, Donna I. Dennis, Marjorie Fujiki, and Shelley B. Mayer, Assistant Attorneys General, and John McKernan, Governor of Maine, and Michael E. Carpenter, Attorney General, Richard Blumenthal, Attorney General of Connecticut, Charles M. Oberly III, Attorney General of Delaware, Warren Price III, Attorney General of Hawaii, Roland W. Burris, Attorney General of Illinois, Bonnie J. Campbell, Attorney General of Iowa, J. Joseph Curran, Jr., Attorney General of Maryland, Scott Harshbarger, Attorney General of Massachusetts, Frankie Sue Del Papa, Attorney General of Nevada, Robert J. Del Tufo, Attorney General of New Jersey, Tom Udall, Attorney General of New Mexico, Lacy H. Thornburg, Attorney General of North Carolina, James E. O'Neil, Attorney General of Rhode Island, Dan Morales, Attorney General of Texas, Jeffrey L. Amestoy, Attorney General of Vermont, and John Payton, Corporation Counsel of District of Columbia; for the State of Utah by R. Paul Van Dam, Attorney General, and Mary Anne Q. Wood, Special Assistant Attorney General; for the City of New York et al. by O. Peter Sherwood, Conrad Harper, Janice Goodman, Leonard J. Koerner, Lorna Bade Goodman, Gail Rubin, and Julie Mertus; for 178 Organizations by Pamela S. Karlan and Sarah Weddington; for Agudath Israel of America by David Zwiebel; for the Alan Guttmacher Institute et al. by Colleen K. Connell and Dorothy B. Zimbrakos; for the American Academy of Medical Ethics by Joseph W. Dellapenna; for the American Association of Prolife Obstetricians and Gynecologists et al. by William Bentley Ball, Philip J. Murren, and Maura K. Quinlan; for the American College of Obstetricians and Gynecologists et al. by Carter G. Phillips, Ann E. Allen, Laurie R. Rockett, Joel I. Klein, Nadine Taub, and Sarah C. Carey; for the American Psychological Association by David W. Ogden; for Texas Black Americans for Life by Lawrence J. Joyce and Craig H. Greenwood; for Catholics United for Life et al. by Thomas Patrick Monaghan, Jay Alan Sekulow, Walter M. Weber, Thomas A. Glessner, Charles E. Rice, and Michael J. Laird; for the Elliot Institute for Social Sciences Research by Stephen R. Kaufmann; for Feminists for Life of America et al. by Keith A. Fournier, John G. Stepanovich, Christine Smith Torre, Theodore H. Amshoff, Jr., and Mary Dice Grenen; for Focus on the Family et al. by Stephen H. Galebach, Gregory J. Granitto, Stephen W. Reed, David L. Llewellyn, Jr., Benjamin W. Bull, and Leonard J. Pranschke; for the Knights of Columbus by Carl A. Anderson; for the Life Issues Institute by James Bopp, Jr., and Richard E. Coleson; for the NAACP Legal Defense and Educational Fund, Inc., et al. by Julius L. Chambers, Ronald L. Ellis, and Alice L. Brown; for the National Legal Foundation by Robert K. Skolrood; for National Right to Life, Inc., by Messrs. Bopp and Coleson, Robert A. Destro, and A. Eric Johnston; for the Pennsylvania Coalition Against Domestic Violence et al. by Phyllis Gelman; for the Rutherford Institute et al. by Thomas W. Strahan, John W. Whitehead, Mr. Johnston, Stephen E. Hurst, Joseph Secola, Thomas S. Neuberger, J. Brian Heller, Amy Dougherty, Stanley R. Jones, David Melton, Robert R. Melnick, William Bonner, W. Charles Bundren,

and James Knicely; for the Southern Center for Law & Ethics by Tony G. Miller; for the United States Catholic Conference et al. by Mark E. Chopko, Phillip H. Harris, Michael K. Whitehead, and Forest D. Montgomery; for University Faculty for Life by Clarke D. Forsythe and Victor G. Rosenblum; for Certain American State Legislators by Paul Benjamin Linton; for 19 Arizona Legislators by Ronald D. Maines; for Representative Henry J. Hyde et al. by Albert P. Blaustein and Kevin J. Todd; for Representative Don Edwards et al. by Walter Dellinger and Lloyd N. Cutler; and for 250 American Historians by Sylvia A. Law.

JUDGES: O'CONNOR, KENNEDY, and SOUTER, JJ., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III, V-A, V-C, and VI, in which BLACKMUN and STEVENS, JJ., joined, an opinion with respect to Part V-E, in which STEVENS, J., joined, and an opinion with respect to Parts IV, V-B, and V-D. STEVENS, J., filed an opinion concurring in part and dissenting in part, post, p. 911. BLACKMUN, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, post, p. 922. REHNQUIST, C. J., filed an opinion concurring in the judgment in part and dissenting in part, in which WHITE, SCALIA, and THOMAS, JJ., joined, post, p. 944. SCALIA, J., filed an opinion concurring in the judgment in part and dissenting in part, in which REHNQUIST, C. J., and WHITE and THOMAS, JJ., joined, post, p. 979.

OPINIONBY: O'CONNOR; KENNEDY; SOUTER

OPINION:

[*843] [***693] [**2803] JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE SOUTER announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III, V-A, [*844] V-C, and VI, an opinion with respect to Part V-E, in which JUSTICE STEVENS joins, and an opinion with respect to Parts IV, V-B, and V-D.

I

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages, *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973)*, that definition of liberty is still questioned. Joining the respondents as *amicus curiae*, the United States, as it has done in five other cases in the last decade, again asks us to overrule *Roe*. See Brief for Respondents 104-117; Brief for United States as *Amicus Curiae* 8.

[***LEdHR1A] [1A] [***LEdHR2A] [2A] [***LEdHR3A] [3A] [***LEdHR4A] [4A] [***LEdHR5A] [5A] [***LEdHR6A] [6A]At issue in these cases are five provisions of the Pennsylvania Abortion Control Act of 1982, as amended in 1988 and 1989. 18 Pa. Cons. Stat. §§ 3203-3220 (1990). Relevant portions of the Act are set forth in the Appendix. *Infra, 505 U.S. at 902.* The Act requires that a woman seeking an abortion give her informed consent prior to the abortion procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed. § 3205. For a minor to obtain an abortion, the Act requires the informed consent of one of her parents, but provides for a judicial bypass option if the minor does not wish to or cannot obtain a parent's consent. § 3206. Another provision of the Act requires that, unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband of her intended abortion. § 3209. The Act exempts compliance with these three requirements in the event of a "medical emergency," which is defined in § 3203 of the Act. See §§ 3203, 3205(a), 3206(a), 3209(c). In addition to the above provisions regulating the performance of abortions, the [***694] Act imposes certain reporting requirements on facilities that provide abortion services. §§ 3207(b), 3214(a), 3214(f).

[*845] Before any of these provisions took effect, the petitioners, who are five abortion clinics and one physician representing himself as well as a class of physicians who provide abortion services, brought this suit seeking declaratory and injunctive relief. Each provision was challenged as unconstitutional on its face. The District Court entered a preliminary injunction against the enforcement of the regulations, and, after a 3-day bench trial, held all the provisions at issue here unconstitutional, entering a permanent injunction against Pennsylvania's enforcement of them. *744 F. Supp. 1323 (ED Pa. 1990).* The Court of Appeals for the Third Circuit affirmed in part and reversed in part, upholding all of the regulations except for the husband notification requirement. *947 F.2d 682 (1991).* We granted certiorari. *502 U.S. 1056 (1992).*

The Court of Appeals found it necessary to follow an elaborate course of reasoning even to identify the first premise to use to determine whether the statute enacted by Pennsylvania meets constitutional standards. See *947 F.2d at 687-698.* And at oral argument in this Court, the attorney for the parties challenging the statute took the position that none of the enactments can be upheld without overruling *Roe v. Wade.* Tr. of Oral Arg. 5-6. We disagree with that analysis; but we acknowledge that our decisions

after *Roe* cast doubt upon the meaning and reach of its holding. Further, THE CHIEF JUSTICE admits that he would overrule the central **[**2804]** holding of *Roe* and adopt the rational relationship test as the sole criterion of constitutionality. See *post, 505 U.S. at 944, 966.* State and federal courts as well as legislatures throughout the Union must have guidance as they seek to address this subject in conformance with the Constitution. Given these premises, we find it imperative to review once more the principles that define the rights of the woman and the legitimate authority of the State respecting the termination of pregnancies by abortion procedures.

[*LEdHR7A]** [7A] **[***LEdHR8]** [8] **[***LEdHR9]** [9] **[***LEdHR10]** [10]After considering the fundamental constitutional questions resolved by *Roe*, principles of institutional integrity, **[*846]** and the rule of *stare decisis*, we are led to conclude this: the essential holding of *Roe v. Wade* should be retained and once again reaffirmed.

It must be stated at the outset and with clarity that *Roe's* essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger the woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each.

[*695]** II

[*LEdHR11A]** [11A]Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall "deprive any person of life, liberty, or property, without due process of law." The controlling word in the cases before us is "liberty." Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years, since *Mugler v. Kansas, 123 U.S. 623, 660-661, 31 L. Ed. 205, 8 S. Ct. 273 (1887),* the Clause has been understood to contain a substantive component as well, one "barring certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams, 474 U.S. 327, 331, 88 L. Ed. 2d 662, 106 S. Ct. 662 (1986).* As Justice Brandeis (joined by Justice Holmes) observed, "despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth **[*847]** Amendment applies to matters of substantive law as well as to matters of procedure. Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States." *Whitney v. California, 274 U.S. 357, 373, 71 L. Ed. 1095, 47 S. Ct. 641 (1927)* (concurring opinion). "The guaranties of due process, though having their roots in Magna Carta's *'per legem terrae'* and considered as procedural safeguards 'against executive usurpation and tyranny,' have in this country 'become bulwarks also against arbitrary legislation.'" *Poe v. Ullman, 367 U.S. 497, 541, 6 L. Ed. 2d 989, 81 S. Ct. 1752 (1961)* (Harlan, J., dissenting from dismissal on jurisdictional grounds) (quoting *Hurtado v. California, 110 U.S. 516, 532, 28 L. Ed. 232, 4 S. Ct. 111 (1884)).*

The most familiar of the substantive liberties protected by the Fourteenth Amendment are those recognized by the Bill of Rights. We have held that the Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the States. See, *e. g., Duncan v. Louisiana, 391 U.S. 145, 147-148, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968).* It is tempting, as a means of curbing the discretion of federal judges, to suppose that liberty **[**2805]** encompasses no more than those rights already guaranteed to the individual against federal interference by the express provisions of the first eight Amendments to the Constitution. See *Adamson v. California, 332 U.S. 46, 68-92, 91 L. Ed. 1903, 67 S. Ct. 1672 (1947)* (Black, J., dissenting). But of course this Court has never accepted that view.

[*LEdHR11B]** [11B]**[***LEdHR12]** [12]It is also tempting, for the same reason, to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified. See *Michael H. v. Gerald D., 491 U.S. 110, 127-128, n.6, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989)* (opinion of SCALIA, J.). But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this principle before. Marriage is mentioned nowhere in the Bill of Rights and interracial **[***696]** marriage was illegal **[*848]** in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in *Loving v. Virginia, 388 U.S. 1, 12, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967)* (relying, in an opinion for eight Justices, on

the Due Process Clause). Similar examples may be found in *Turner v. Safley, 482 U.S. 78, 94-99, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987);* in *Carey v. Population Services International, 431 U.S. 678, 684-686, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977);* in *Griswold v. Connecticut, 381 U.S. 479, 481-482, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965),* as well as in the separate opinions of a majority of the Members of the Court in that case, *id., at 486-488* (Goldberg, J., joined by Warren, C.J., and Brennan, J., concurring) (expressly relying on due process), *id., at 500-502* (Harlan, J., concurring in judgment) (same), *id., at 502-507* (WHITE, J., concurring in judgment) (same); in *Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925);* and in *Meyer v. Nebraska, 262 U.S. 390, 399-403, 67 L. Ed. 1042, 43 S. Ct. 625 (1923).*

[*LEdHR11C]** [11C]Neither the Bill of Rights nor the specific practices of States at the time of the adoption of the Fourteenth Amendment marks the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects. See U.S. Const., Amdt. 9. As the second Justice Harlan recognized:

> "The 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.* **[*849]** *Ullman, supra, at 543* (opinion dissenting from dismissal on jurisdictional grounds).

Justice Harlan wrote these words in addressing an issue the full Court did not reach in *Poe v. Ullman,* but the Court adopted his position four Terms later in *Griswold v. Connecticut, supra.* In *Griswold,* we held that the Constitution does not permit a State to forbid a married couple to use contraceptives. That same freedom was later guaranteed, under the Equal Protection Clause, for unmarried couples. See *Eisenstadt v. Baird, 405 U.S. 438, 31 L. Ed. 2d 349, 92 S. Ct. 1029 (1972).* Constitutional protection was extended **[**2806]** to the sale and distribution of contraceptives in *Carey v. Population Services International, supra.* It is settled now, as it was when the Court heard arguments in *Roe v. Wade,* that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family **[***697]** and parenthood, see *Carey v. Population Services International, supra; Moore v. East Cleveland, 431 U.S. 494, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977); Eisenstadt v. Baird, supra; Loving v. Virginia, supra; Griswold v. Connecticut, supra; Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942); Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra,* as well as bodily integrity, see, *e. g., Washington v. Harper, 494 U.S. 210, 221-222, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990); Winston v. Lee, 470 U.S. 753, 84 L. Ed. 2d 662, 105 S. Ct. 1611 (1985); Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952).*

The inescapable fact is that adjudication of substantive due process claims may call upon the Court in interpreting the Constitution to exercise that same capacity which by tradition courts always have exercised: reasoned judgment. Its boundaries are not susceptible of expression as a simple rule. That does not mean we are free to invalidate state policy choices with which we disagree; yet neither does it permit us to shrink from the duties of our office. As Justice Harlan observed:

> "Due process has not been reduced to any formula; its content cannot be determined by reference to any code. **[*850]** The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint." *Poe v. Ullman, 367 U.S. at 542* (opinion dissenting from dis-

missal on jurisdictional grounds).

See also *Rochin v. California, supra, at 171-172* (Frankfurter, J., writing for the Court) ("To believe that this judicial exercise of judgment could be avoided by freezing 'due process of law' at some fixed stage of time or thought is to suggest that the most important aspect of constitutional adjudication is a function for inanimate machines and not for judges").

Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these [***698] philosophic questions in such a definitive way that a woman lacks all choice in the matter, except perhaps [*851] in those rare circumstances in which the pregnancy is itself a danger to her own life or health, or is the result of rape or incest.

It is conventional constitutional doctrine that where reasonable people disagree the government can adopt one position or the other. See, *e. g., Ferguson v. Skrupa, 372 U.S. 726, 10 L. Ed. 2d 93, 83 S. Ct. 1028 (1963);* [**2807] *Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461 (1955).* That theorem, however, assumes a state of affairs in which the choice does not intrude upon a protected liberty. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, we have ruled that a State may not compel or enforce one view or the other. See *West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943); Texas v. Johnson, 491 U.S. 397, 105 L. Ed. 2d 342, 109 S. Ct. 2533 (1989).*

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *Carey v. Population Services International, 431 U.S. at 685.* Our cases recognize "the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird, supra, at 453* (emphasis in original). Our precedents "have respected the private realm of family life which the state cannot enter." *Prince v. Massachusetts, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438 (1944).* These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

[*852] These considerations begin our analysis of the woman's interest in terminating her pregnancy but cannot end it, for this reason: though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted. Though abortion is conduct, it does not follow that the State is entitled to proscribe it in all instances. That is because the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, [***699] to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by woman with a pride that ennobles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.

It should be recognized, moreover, that in some critical respects the abortion decision is of the same character as the decision to use contraception, to which *Griswold v. Connecticut, Eisenstadt v. Baird,* and *Carey v. Population Services International* afford constitutional protection. We have no doubt as to the correctness of those decisions. They support [*853] the reasoning in *Roe* relating to the woman's liberty because they involve personal decisions concerning not only the meaning of procreation but also human responsibility and respect for it. As with abortion, reasonable people will have differences of opinion about these matters. One view is based on such reverence for the wonder of [**2808] creation that any pregnancy ought to be welcomed and carried to full term no matter how difficult it will be to provide for the child and ensure its well-being. Another is that the inability to provide for

the nurture and care of the infant is a cruelty to the child and an anguish to the parent. These are intimate views with infinite variations, and their deep, personal character underlay our decisions in *Griswold*, *Eisenstadt*, and *Carey*. The same concerns are present when the woman confronts the reality that, perhaps despite her attempts to avoid it, she has become pregnant.

[*LEdHR7B]** [7B]It was this dimension of personal liberty that *Roe* sought to protect, and its holding invoked the reasoning and the tradition of the precedents we have discussed, granting protection to substantive liberties of the person. *Roe* was, of course, an extension of those cases and, as the decision itself indicated, the separate States could act in some degree to further their own legitimate interests in protecting prenatal life. The extent to which the legislatures of the States might act to outweigh the interests of the woman in choosing to terminate her pregnancy was a subject of debate both in *Roe* itself and in decisions following it.

While we appreciate the weight of the arguments made on behalf of the State in the cases before us, arguments which in their ultimate formulation conclude that *Roe* should be overruled, the reservations any of us may have in reaffirming the central holding of *Roe* are outweighed by the explication of individual liberty we have given combined with the force of *stare decisis*. We turn now to that doctrine.

[*854] III

A

[*LEdHR13]** [13]The obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit. With Cardozo, we recognize that no judicial system could do society's work if it eyed each issue **[***700]** afresh in every case that raised it. See B. Cardozo, The Nature of the Judicial Process 149 (1921). Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable. See Powell, Stare Decisis and Judicial Restraint, 1991 Journal of Supreme Court History 13, 16. At the other extreme, a different necessity would make itself felt if a prior judicial ruling should come to be seen so clearly as error that its enforcement was for that very reason doomed.

Even when the decision to overrule a prior case is not, as in the rare, latter instance, virtually foreordained, it is common wisdom that the rule of *stare decisis* is not an "inexorable command," and certainly it is not such in every constitutional case, see *Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405-411, 76 L. Ed. 815, 52 S. Ct. 443 (1932)* (Brandeis, J., dissenting). See also *Payne v. Tennessee, 501 U.S. 808, 842, 115 L. Ed. 2d 720, 111 S. Ct. 2597 (1991)* (SOUTER, J., joined by KENNEDY, J., concurring); *Arizona v. Rumsey, 467 U.S. 203, 212, 81 L. Ed. 2d 164, 104 S. Ct. 2305 (1984)*. Rather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for example, we may ask whether the rule has proven to be intolerable simply in defying practical workability, *Swift & Co. v. Wickham, 382 U.S. 111, 116, 15 L. Ed. 2d 194, 86 S. Ct. 258 (1965)*; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, *e. g., United States v. Title Ins. & Trust* **[*855]** *Co., 265 U.S. 472, 486 (1924)*; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, see *Patterson v. McLean Credit Union, 491 U.S. 164, 173-174, 105 L. Ed. 2d 132,* **[**2809]** *109 S. Ct. 2363 (1989)*; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification, *e. g., Burnet, supra, at 412* (Brandeis, J., dissenting).

So in this case we may enquire whether *Roe's* central rule has been found unworkable; whether the rule's limitation on state power could be removed without serious inequity to those who have relied upon it or significant damage to the stability of the society governed by it; whether the law's growth in the intervening years has left *Roe's* central rule a doctrinal anachronism discounted by society; and whether *Roe's* premises of fact have so far changed in the ensuing two decades as to render its central holding somehow irrelevant or unjustifiable in dealing with the issue it addressed.

1

[*LEdHR7C]** [7C]Although *Roe* has engendered opposition, it has in no sense proven "unworkable," see *Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 546, 83 L. Ed. 2d 1016, 105 S. Ct. 1005 (1985)*, representing as it does a simple limitation beyond which a state law is unenforceable. While *Roe* has, of course, **[***701]** required judicial assessment of state laws affecting the exercise of the choice guaranteed against government infringement, and although the need for such review will remain as a consequence of today's decision, the required determinations fall within judicial competence.

2

The inquiry into reliance counts the cost of a rule's

repudiation as it would fall on those who have relied reasonably on the rule's continued application. Since the classic case for weighing reliance heavily in favor of following the earlier rule occurs in the commercial context, see *Payne v. Tennessee,* **[*856]** *supra, at 828,* where advance planning of great precision is most obviously a necessity, it is no cause for surprise that some would find no reliance worthy of consideration in support of *Roe.*

While neither respondents nor their *amici* in so many words deny that the abortion right invites some reliance prior to its actual exercise, one can readily imagine an argument stressing the dissimilarity of this case to one involving property or contract. Abortion is customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control, and except on the assumption that no intercourse would have occurred but for *Roe's* holding, such behavior may appear to justify no reliance claim. Even if reliance could be claimed on that unrealistic assumption, the argument might run, any reliance interest would be *de minimis.* This argument would be premised on the hypothesis that reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.

To eliminate the issue of reliance that easily, however, one would need to limit cognizable reliance to specific instances of sexual activity. But to do this would be simply to refuse to face the fact that for two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. See, *e. g.,* R. Petchesky, Abortion and Woman's Choice 109, 133, n.7 (rev. ed. 1990). The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed.

[*857] [2810]** 3

No evolution of legal principle has left *Roe's* doctrinal footings weaker than they were in 1973. No development of constitutional law since the case was decided has implicitly or explicitly left *Roe* behind as a mere survivor of obsolete constitutional thinking.

It will be recognized, of course, that *Roe* stands at an intersection of two lines of decisions, but in whichever doctrinal category one reads the case, the result for present purposes will be the same. The *Roe* Court itself placed its holding in the succession of cases most prominently **[***702]** exemplified by *Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965).* See *Roe, 410 U.S. at 152-153.* When it is so seen, *Roe* is clearly in no jeopardy, since subsequent constitutional developments have neither disturbed, nor do they threaten to diminish, the scope of recognized protection accorded to the liberty relating to intimate relationships, the family, and decisions about whether or not to beget or bear a child. See, *e. g., Carey v. Population Services International, 431 U.S. 678, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977); Moore v. East Cleveland, 431 U.S. 494, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977).*

Roe, however, may be seen not only as an exemplar of *Griswold* liberty but as a rule (whether or not mistaken) of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection. If so, our cases since *Roe* accord with *Roe's* view that a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims. *Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990);* cf., *e. g., Riggins v. Nevada, 504 U.S. 127, 135, 118 L. Ed. 2d 479, 112 S. Ct. 1810 (1992); Washington v. Harper, 494 U.S. 210, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990);* see also, *e. g., Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952); Jacobson v. Massachusetts, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (1905).*

Finally, one could classify *Roe* as *sui generis.* If the case is so viewed, then there clearly has been no erosion of its central determination. The original holding resting on the **[*858]** concurrence of seven Members of the Court in 1973 was expressly affirmed by a majority of six in 1983, see *Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (Akron I),* and by a majority of five in 1986, see *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 90 L. Ed. 2d 779, 106 S. Ct. 2169,* expressing adherence to the constitutional ruling despite legislative efforts in some States to test its limits. More recently, in *Webster v. Reproductive Health Services, 492 U.S. 490, 106 L. Ed. 2d 410, 109 S. Ct. 3040 (1989),* although two of the present authors questioned the trimester framework in a way consistent with our judgment today, see *id., at 518* (REHNQUIST, C. J., joined by WHITE and KENNEDY, JJ.); *id., at 529* (O'CONNOR, J., concurring in part and concurring in judgment), a majority of the Court either decided to reaffirm or declined to address the constitutional validity of the central holding of *Roe.* See *Webster, 492 U.S. at 521* (REHNQUIST, C. J., joined by WHITE and KENNEDY, JJ.); *id., at 525-526* (O'CONNOR, J., concurring in part and concurring in judgment); *id., at 537,*

553 (BLACKMUN, J., joined by Brennan and Marshall, JJ., concurring in part and dissenting in part); *id., at 561-563* (STEVENS, J., concurring in part and dissenting in part).

Nor will courts building upon *Roe* be likely to hand down erroneous decisions as a consequence. Even on the assumption that the central **[***703]** holding of *Roe* was in error, that error would go only to the strength of the state interest in fetal protection, not to the **[**2811]** recognition afforded by the Constitution to the woman's liberty. The latter aspect of the decision fits comfortably within the framework of the Court's prior decisions, including *Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942); Griswold, supra; Loving v. Virginia, 388 U.S. 1, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967);* and *Eisenstadt v. Baird, 405 U.S. 438, 31 L. Ed. 2d 349, 92 S. Ct. 1029 (1972),* the holdings of which are "not a series of isolated points," but mark a "rational continuum." *Poe v. Ullman, 367 U.S. at 543* (Harlan, J., dissenting). As we described in **[*859]** *Carey v. Population Services International, supra,* the liberty which encompasses those decisions

> "includes 'the interest in independence in making certain kinds of important decisions.' While the outer limits of this aspect of [protected liberty] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions 'relating to marriage, procreation, contraception, family relationships, and child rearing and education.'" *431 U.S. at 684-685* (citations omitted).

The soundness of this prong of the *Roe* analysis is apparent from a consideration of the alternative. If indeed the woman's interest in deciding whether to bear and beget a child had not been recognized as in *Roe*, the State might as readily restrict a woman's right to choose to carry a pregnancy to term as to terminate it, to further asserted state interests in population control, or eugenics, for example. Yet *Roe* has been sensibly relied upon to counter any such suggestions. *E. g., Arnold v. Board of Education of Escambia County, Ala., 880 F.2d 305, 311 (CA11 1989)* (relying upon *Roe* and concluding that government officials violate the Constitution by coercing a minor to have an abortion); *Avery v. County of Burke, 660 F.2d 111, 115 (CA4 1981)* (county agency inducing teenage girl to undergo unwanted sterilization on the basis of misrepresentation that she had sickle cell trait); see also *In re Quinlan, 70 N.J. 10, 355 A.2d 647* (relying on *Roe* in finding a right to terminate medical treatment), cert. denied *sub nom. Garger v. New Jersey, 429 U.S. 922, 50 L. Ed. 2d 289, 97 S. Ct. 319 (1976)).* In any event, because *Roe's* scope is confined by the fact of its concern with postconception potential life, a concern otherwise likely to be implicated only by some forms of contraception protected independently under *Griswold* and later cases, any error in *Roe* is unlikely to have serious ramifications in future cases.

[*860] 4

We have seen how time has overtaken some of *Roe's* factual assumptions: advances in maternal health care allow for abortions safe to the mother later in pregnancy than was true in 1973, see *Akron I, supra, at 429, n.11,* and advances in neonatal care have advanced viability to a point somewhat earlier. Compare *Roe, 410 U.S. at 160,* with *Webster, supra, at 515-516* (opinion of REHNQUIST, C. J.); see *Akron I, 462 U.S. at 457,* **[***704]** *and n.5* (O'CONNOR, J., dissenting). But these facts go only to the scheme of time limits on the realization of competing interests, and the divergences from the factual premises of 1973 have no bearing on the validity of *Roe's* central holding, that viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions. The soundness or unsoundness of that constitutional judgment in no sense turns on whether viability occurs at approximately 28 weeks, as was usual at the time of *Roe*, at 23 to 24 weeks, as it sometimes does today, or at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future. Whenever it may occur, the attainment of viability may continue to serve as the critical fact, just as it has done since *Roe* was **[**2812]** decided; which is to say that no change in *Roe's* factual underpinning has left its central holding obsolete, and none supports an argument for overruling it.

5

The sum of the precedential enquiry to this point shows *Roe's* underpinnings unweakened in any way affecting its central holding. While it has engendered disapproval, it has not been unworkable. An entire generation has come of age free to assume *Roe's* concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions; no erosion of principle going to liberty or personal autonomy has left *Roe's* central holding a doctrinal remnant; **[*861]** *Roe* portends no developments at odds with other precedent for the analysis of personal liberty; and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips. Within the bounds of normal *stare decisis* analysis, then, and subject to the considerations on which it customarily turns, the stronger argument is for affirming *Roe's* central holding, with whatever de-

gree of personal reluctance any of us may have, not for overruling it.

B

In a less significant case, *stare decisis* analysis could, and would, stop at the point we have reached. But the sustained and widespread debate *Roe* has provoked calls for some comparison between that case and others of comparable dimension that have responded to national controversies and taken on the impress of the controversies addressed. Only two such decisional lines from the past century present themselves for examination, and in each instance the result reached by the Court accorded with the principles we apply today.

The first example is that line of cases identified with *Lochner v. New York, 198 U.S. 45, 49 L. Ed. 937, 25 S. Ct. 539 (1905)*, which imposed substantive limitations on legislation limiting economic autonomy in favor of health and welfare regulation, adopting, in Justice Holmes's view, the theory of laissez-faire. *Id., at 75* (dissenting opinion). The *Lochner* decisions were exemplified by *Adkins v. Children's Hospital of District of Columbia, 261 U.S. 525, 67 L. Ed. 785, 43 S. Ct. 394 (1923)*, in which this Court held it to be an infringement of constitutionally protected liberty of contract **[***705]** to require the employers of adult women to satisfy minimum wage standards. Fourteen years later, *West Coast Hotel Co. v. Parrish, 300 U.S. 379, 81 L. Ed. 703, 57 S. Ct. 578 (1937)*, signaled the demise of *Lochner* by overruling *Adkins*. In the meantime, the Depression had come and, with it, the lesson that seemed unmistakable to most people by 1937, that the interpretation of contractual freedom protected in *Adkins* rested on fundamentally **[*862]** false factual assumptions about the capacity of a relatively unregulated market to satisfy minimal levels of human welfare. See *West Coast Hotel Co., supra, at 399*. As Justice Jackson wrote of the constitutional crisis of 1937 shortly before he came on the bench: "The older world of *laissez faire* was recognized everywhere outside the Court to be dead." The Struggle for Judicial Supremacy 85 (1941). The facts upon which the earlier case had premised a constitutional resolution of social controversy had proven to be untrue, and history's demonstration of their untruth not only justified but required the new choice of constitutional principle that *West Coast Hotel* announced. Of course, it was true that the Court lost something by its misperception, or its lack of prescience, and the Court-packing crisis only magnified the loss; but the clear demonstration that the facts of economic life were different from those previously assumed warranted the repudiation of the old law.

The second comparison that 20th century history invites is with the cases employing **[**2813]** the separate-but-equal rule for applying the Fourteenth Amendment's equal protection guarantee. They began with *Plessy v. Ferguson, 163 U.S. 537, 41 L. Ed. 256, 16 S. Ct. 1138 (1896)*, holding that legislatively mandated racial segregation in public transportation works no denial of equal protection, rejecting the argument that racial separation enforced by the legal machinery of American society treats the black race as inferior. The *Plessy* Court considered "the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." *Id., at 551*. Whether, as a matter of historical fact, the Justices in the *Plessy* majority believed this or not, see *id., at 557, 562* (Harlan, J., dissenting), this understanding of the implication of segregation was the stated justification for the Court's opinion. But this understanding of **[*863]** the facts and the rule it was stated to justify were repudiated in *Brown v. Board of Education, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954) (Brown I)*. As one commentator observed, the question before the Court in *Brown* was "whether discrimination inheres in that segregation which is imposed by law in the twentieth century in certain specific states in the American Union. And that question has meaning and can find an answer only on the ground of history and of common knowledge about the facts of life in the times and places aforesaid." Black, The Lawfulness of the Segregation Decisions, *69 Yale L. J. 421, 427 (1960)*.

The Court in *Brown* addressed **[***706]** these facts of life by observing that whatever may have been the understanding in *Plessy's* time of the power of segregation to stigmatize those who were segregated with a "badge of inferiority," it was clear by 1954 that legally sanctioned segregation had just such an effect, to the point that racially separate public educational facilities were deemed inherently unequal. *347 U.S. at 494-495*. Society's understanding of the facts upon which a constitutional ruling was sought in 1954 was thus fundamentally different from the basis claimed for the decision in 1896. While we think *Plessy* was wrong the day it was decided, see *Plessy, supra, at 552-564* (Harlan, J., dissenting), we must also recognize that the *Plessy* Court's explanation for its decision was so clearly at odds with the facts apparent to the Court in 1954 that the decision to reexamine *Plessy* was on this ground alone not only justified but required.

West Coast Hotel and *Brown* each rested on facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. Each case was comprehensible as the Court's response to facts that the country could understand, or had come to understand already, but which the Court of an earlier day, as its own declaration, disclosed.

had not been able to perceive. As the decisions were thus comprehensible [*864] they were also defensible, not merely as the victories of one doctrinal school over another by dint of numbers (victories though they were), but as applications of constitutional principle to facts as they had not been seen by the Court before. In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty.

Because the cases before us present no such occasion it could be seen as no such response. Because neither the factual underpinnings of *Roe's* central holding nor our understanding of it has changed (and because no other indication of weakened precedent has been shown), the Court could not pretend to be reexamining the prior law with any justification beyond a present doctrinal disposition to come out differently from the [**2814] Court of 1973. To overrule prior law for no other reason than that would run counter to the view repeated in our cases, that a decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided. See, *e. g., Mitchell v. W. T. Grant Co., 416 U.S. 600, 636, 40 L. Ed. 2d 406, 94 S. Ct. 1895 (1974)* (Stewart, J., dissenting) ("A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve"); *Mapp v. Ohio, 367 U.S. 643, 677, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961)* (Harlan, J., dissenting).

C

The examination of the conditions justifying the repudiation of *Adkins* by *West Coast Hotel* and *Plessy* by [***707] *Brown* is enough to suggest the terrible price that would have been paid if the Court had not overruled as it did. In the present cases, however, as our analysis to this point makes clear, the terrible price would be paid for overruling. Our analysis [*865] would not be complete, however, without explaining why overruling *Roe's* central holding would not only reach an unjustifiable result under principles of *stare decisis*, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. To understand why this would be so it is necessary to understand the source of this Court's authority, the conditions necessary for its preservation, and its relationship to the country's understanding of itself as a constitutional Republic.

The root of American governmental power is revealed most clearly in the instance of the power conferred by the Constitution upon the Judiciary of the United States and specifically upon this Court. As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands.

The underlying substance of this legitimacy is of course the warrant for the Court's decisions in the Constitution and the lesser sources of legal principle on which the Court draws. That substance is expressed in the Court's opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all. But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is [*866] obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.

The need for principled action to be perceived as such is implicated to some degree whenever this, or any other appellate court, overrules a prior case. This is not to say, of course, that this Court cannot give a perfectly satisfactory explanation in most cases. People understand that some of the Constitution's language is hard to fathom and that the Court's Justices are sometimes able to perceive significant facts or to understand principles of law that eluded their predecessors and that justify departures from existing decisions. However upsetting it may be [**2815] to those most directly affected when one judicially derived rule replaces another, the country can accept some correction of error without necessarily questioning the legitimacy of the Court.

In two circumstances, however, [***708] the Court would almost certainly fail to receive the benefit of the doubt in overruling prior cases. There is, first, a point beyond which frequent overruling would overtax the country's belief in the Court's good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that

a prior decision was wrong. There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.

That first circumstance can be described as hypothetical; the second is to the point here and now. Where, in the performance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in *Roe* and those rare, comparable cases, its **[*867]** decision has a dimension that the resolution of the normal case does not carry. It is the dimension present whenever the Court's interpretation of the Constitution calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.

The Court is not asked to do this very often, having thus addressed the Nation only twice in our lifetime, in the decisions of *Brown* and *Roe*. But when the Court does act in this way, its decision requires an equally rare precedential force to counter the inevitable efforts to overturn it and to thwart its implementation. Some of those efforts may be mere unprincipled emotional reactions; others may proceed from principles worthy of profound respect. But whatever the premises of opposition may be, only the most convincing justification under accepted standards of precedent could suffice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure, and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. So to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court's legitimacy beyond any serious question. Cf. *Brown v Board of Education, 349 U.S. 294, 300, 99 L. Ed. 1083, 75 S. Ct. 753 (1955) (Brown II)* ("It should go without saying that the vitality of the constitutional principles [announced in *Brown I*,] cannot be allowed to yield simply because of disagreement with them").

The country's loss of confidence in the Judiciary would be underscored by an equally certain and equally reasonable condemnation for another failing in overruling unnecessarily and under pressure. Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or to force its reversal. The price may be criticism or ostracism, or it may be violence. An extra price will be paid by those who themselves disapprove of the decision's results **[*868]** when viewed outside of constitutional **[***709]** terms, but who nevertheless struggle to accept it, because they respect the rule of law. To all those who will be so tested by following, the Court implicitly undertakes to remain steadfast, lest in the end a price be paid for nothing. The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and the understanding of the issue has not changed so fundamentally as to render the commitment obsolete. From the obligation of this promise this Court cannot and should not assume any exemption when duty requires it to decide a case in conformance **[**2816]** with the Constitution. A willing breach of it would be nothing less than a breach of faith, and no Court that broke its faith with the people could sensibly expect credit for principle in the decision by which it did that.

It is true that diminished legitimacy may be restored, but only slowly. Unlike the political branches, a Court thus weakened could not seek to regain its position with a new mandate from the voters, and even if the Court could somehow go to the polls, the loss of its principled character could not be retrieved by the casting of so many votes. Like the character of an individual, the legitimacy of the Court must be earned over time. So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in themselves as such a people is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.

The Court's duty in the present cases is clear. In 1973, it confronted the already-divisive issue of governmental power **[*869]** to limit personal choice to undergo abortion, for which it provided a new resolution based on the due process guaranteed by the Fourteenth Amendment. Whether or not a new social consensus is developing on that issue, its divisiveness is no less today than in 1973, and pressure to overrule the decision, like pressure to retain it, has grown only more intense. A decision to overrule *Roe's* essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of *Roe's* original decision, and we do so today.

IV

From what we have said so far it follows that it is a constitutional liberty of the woman to have some freedom

to terminate her pregnancy. We conclude that the basic decision in *Roe* was based on a constitutional analysis which we cannot now repudiate. The woman's liberty is not so unlimited, however, that from the outset the State cannot show its concern for the life of the unborn, and at a later point in fetal development the State's interest in life has sufficient force so that the right of the woman to terminate the pregnancy can be restricted.

[*710]** That brings us, of course, to the point where much criticism has been directed at *Roe*, a criticism that always inheres when the Court draws a specific rule from what in the Constitution is but a general standard. We conclude, however, that the urgent claims of the woman to retain the ultimate control over her destiny and her body, claims implicit in the meaning of liberty, require us to perform that function. Liberty must not be extinguished for want of a line that is clear. And it falls to us to give some real substance to the woman's liberty to determine whether to carry her pregnancy to full term.

[*870] We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy. We adhere to this principle for two reasons. First, as we have said, is the doctrine of *stare decisis*. Any judicial act of line-drawing may seem somewhat arbitrary, but *Roe* was a reasoned statement, elaborated with great care. We have twice reaffirmed it in the face of great opposition. See *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. at 759; Akron I, 462 U.S. at 419-420.* Although we must overrule those parts of *Thornburgh* and *Akron I* which, in our view, are inconsistent **[**2817]** with *Roe's* statement that the State has a legitimate interest in promoting the life or potential life of the unborn, see *infra, 505 U.S. at 882-883,* the central premise of those cases represents an unbroken commitment by this Court to the essential holding of *Roe*. It is that premise which we reaffirm today.

The second reason is that the concept of viability, as we noted in *Roe*, is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman. See *Roe v. Wade, 410 U.S. at 163.* Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw. And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point of viability, see *supra*, at 860, but this is an imprecision within tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter. The viability line also has, as a practical matter, an element of fairness. In some broad sense it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child.

[*871] The woman's right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.

On the other side of the equation is the interest of the State in the protection of potential life. The *Roe* Court recognized the State's "important and legitimate interest in protecting the potentiality of human life." *Roe, supra, at 162.* The weight to be **[***711]** given this state interest, not the strength of the woman's interest, was the difficult question faced in *Roe*. We do not need to say whether each of us, had we been Members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly 20 years of litigation in *Roe's* wake we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedential force that must be accorded to its holding. And we have concluded that the essential holding of *Roe* should be reaffirmed.

Yet it must be remembered that *Roe v. Wade* speaks with clarity in establishing not only the woman's liberty but also the State's "important and legitimate interest in potential life." *Roe, supra, at 163.* That portion of the decision in *Roe* has been given too little acknowledgment and implementation by the Court in its subsequent cases. Those cases decided that any regulation touching upon the abortion decision must survive strict scrutiny, to be sustained only if drawn in narrow terms to further a compelling state interest. See, *e. g., Akron I, supra, at 427.* Not all of the cases decided under that formulation can be reconciled with the holding in *Roe* itself that the State has legitimate interests in the health of the woman and in protecting the potential life within her. In resolving this tension, we choose to rely upon *Roe*, as against the later cases.

[*872] *Roe* established a trimester framework to govern abortion regulations. Under this elaborate but rigid construct, almost no regulation at all is permitted during the first trimester of pregnancy; regulations designed to protect the woman's health, but not to further the State's interest in potential life, are permitted during the second trimester; and during the third trimester, when the

[**2818] fetus is viable, prohibitions are permitted provided the life or health of the mother is not at stake. *Roe, supra, at 163-166.* Most of our cases since *Roe* have involved the application of rules derived from the trimester framework. See, *e. g., Thornburgh v. American College of Obstetricians and Gynecologists, supra; Akron I, supra.*

The trimester framework no doubt was erected to ensure that the woman's right to choose not become so subordinate to the State's interest in promoting fetal life that her choice exists in theory but not in fact. We do not agree, however, that the trimester approach is necessary to accomplish this objective. A framework of this rigidity was unnecessary and in its later interpretation sometimes contradicted the State's permissible exercise of its powers.

[***LEdHR14A] [14A] [***LEdHR15A] [15A]Though the woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is prohibited from taking steps to ensure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy, the State may enact rules and regulations [***712] designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child herself. "'The Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth.'" *Webster v. Reproductive Health Services, 492 U.S. at 511* (opinion of [*873] the Court) (quoting *Poelker v. Doe, 432 U.S. 519, 521, 53 L. Ed. 2d 528, 97 S. Ct. 2391 (1977)).* It follows that States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning. This, too, we find consistent with *Roe's* central premises, and indeed the inevitable consequence of our holding that the State has an interest in protecting the life of the unborn.

[***LEdHR16A] [16A]We reject the trimester framework, which we do not consider to be part of the essential holding of *Roe.* See *Webster v. Reproductive Health Services, 492 U.S. at 518* (opinion of REHNQUIST, C. J.); *id., at 529* (O'CONNOR, J., concurring in part and concurring in judgment) (describing the trimester framework as "problematic"). Measures aimed at ensuring that a woman's choice contemplates the consequences for the fetus do not necessarily interfere with the right recognized in *Roe,* although those measures have been found to be inconsistent with the rigid trimester framework announced in that case. A logical reading of the central holding in *Roe* itself, and a necessary reconciliation of the liberty of the woman and the interest of the State in promoting prenatal life, require, in our view, that we abandon the trimester framework as a rigid prohibition on all previability regulation aimed at the protection of fetal life. The trimester framework suffers from these basic flaws: in its formulation it misconceives the nature of the pregnant woman's interest; and in practice it undervalues the State's interest in potential life, as recognized in *Roe.*

As our jurisprudence relating to all liberties save perhaps abortion has recognized, not every law which makes a right more difficult to exercise is, *ipso facto,* an infringement of that right. An example clarifies the point. We have held that not every ballot access limitation amounts to an infringement of the right to vote. Rather, the States are granted substantial flexibility in establishing the framework within which voters choose the candidates for whom they [*874] wish to vote. *Anderson v. Celebrezze, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983); Norman v. Reed, 502 U.S. 279, 116 L. Ed. 2d 711, 112 S. Ct. 698 (1992).*

[**2819] The abortion right is similar. Numerous forms of state regulation might have the incidental effect of increasing the cost or decreasing the availability of medical care, whether for abortion or any other medical procedure. The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Only where [***713] state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause. See *Hodgson v. Minnesota, 497 U.S. 417, 458-459, 111 L. Ed. 2d 344, 110 S. Ct. 2926 (1990)* (O'CONNOR, J., concurring in part and concurring in judgment in part); *Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 519-520, 111 L. Ed. 2d 405, 110 S. Ct. 2972 (1990) (Akron II)* (opinion of KENNEDY, J.); *Webster v. Reproductive Health Services, supra, at 530* (O'CONNOR, J., concurring in part and concurring in judgment); *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. at 828* (O'CONNOR, J., dissenting); *Simopoulos v. Virginia, 462 U.S. 506, 520, 76 L. Ed. 2d 755, 103 S. Ct. 2532 (1983)* (O'CONNOR, J., concurring in part and concurring in judgment); *Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 505, 76 L. Ed. 2d 733, 103 S. Ct. 2517 (1983)* (O'CONNOR, J., concurring in judgment in part and dissenting in part); *Akron I, 462 U.S. at 464* (O'CONNOR, J., joined by WHITE and REHNQUIST, JJ., dissenting); *Bellotti v. Baird, 428 U.S. 132, 147, 49 L. Ed. 2d 844, 96 S. Ct. 2857 (1976)*

(Bellotti I).

For the most part, the Court's early abortion cases adhered to this view. In *Maher v. Roe, 432 U.S. 464, 473-474, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977),* the Court explained: "*Roe* did not declare an unqualified 'constitutional right to an abortion,' as the District Court seemed to think. Rather, the right protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy." See **[*875]** also *Doe v. Bolton, 410 U.S. 179, 198, 35 L. Ed. 2d 201, 93 S. Ct. 739 (1973)* ("The interposition of the hospital abortion committee is unduly restrictive of the patient's rights"); *Bellotti I, supra,* at 147 (State may not "impose undue burdens upon a minor capable of giving an informed consent"); *Harris v. McRae, 448 U.S. 297, 314, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980)* (citing *Maher; supra*). Cf. *Carey v. Population Services International, 431 U.S. at 688* ("The same test must be applied to state regulations that burden an individual's right to decide to prevent conception or terminate pregnancy by substantially limiting access to the means of effectuating that decision as is applied to state statutes that prohibit the decision entirely").

These considerations of the nature of the abortion right illustrate that it is an overstatement to describe it as a right to decide whether to have an abortion "without interference from the State." *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 61, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976).* All abortion regulations interfere to some degree with a woman's ability to decide whether to terminate her pregnancy. It is, as a consequence, not surprising that despite the protestations contained in the original *Roe* opinion to the effect that the Court was not recognizing an absolute right, *410 U.S. at 154-155,* the Court's experience applying the trimester framework has led to the striking down of some abortion regulations which in no real sense deprived women of the ultimate decision. Those decisions went too far **[***714]** because the right recognized by *Roe* is a right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird, 405 U.S. at 453.* **[**2820]** Not all governmental intrusion is of necessity unwarranted; and that brings us to the other basic flaw in the trimester framework: even in *Roe's* terms, in practice it undervalues the State's interest in the potential life within the woman.

Roe v. Wade was express in its recognition of the State's "important and legitimate interests in preserving and protecting **[*876]** the health of the pregnant woman [and] in protecting the potentiality of human life." *410 U.S. at 162.* The trimester framework, however, does not fulfill *Roe's* own promise that the State has an interest in protecting fetal life or potential life. *Roe* began the contradiction by using the trimester framework to forbid any regulation of abortion designed to advance that interest before viability. *Id., at 163.* Before viability, *Roe* and subsequent cases treat all governmental attempts to influence a woman's decision on behalf of the potential life within her as unwarranted. This treatment is, in our judgment, incompatible with the recognition that there is a substantial state interest in potential life throughout pregnancy. Cf. *Webster, 492 U.S. at 519* (opinion of REHNQUIST, C. J.); *Akron I, supra, at 461* (O'CONNOR, J., dissenting).

The very notion that the State has a substantial interest in potential life leads to the conclusion that not all regulations must be deemed unwarranted. Not all burdens on the right to decide whether to terminate a pregnancy will be undue. In our view, the undue burden standard is the appropriate means of reconciling the State's interest with the woman's constitutionally protected liberty.

The concept of an undue burden has been utilized by the Court as well as individual Members of the Court, including two of us, in ways that could be considered inconsistent. See, *e. g., Hodgson v. Minnesota, supra, at 459-461* (O'CONNOR, J., concurring in part and concurring in judgment); *Akron II, supra, at 519-520* (opinion of KENNEDY, J.); *Thornburgh v. American College of Obstetricians and Gynecologists, supra, at 828-829* (O'CONNOR, J., dissenting); *Akron I, supra, at 461-466* (O'CONNOR, J., dissenting); *Harris v. McRae, supra, at 314; Maher v. Roe, supra, at 473; Beal v. Doe, 432 U.S. 438, 446, 53 L. Ed. 2d 464, 97 S. Ct. 2366 (1977); Bellotti I, supra,* at 147. Because we set forth a standard of general application to which we intend to adhere, it is important to clarify what is meant by an undue burden.

[*877] A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid **[***715]** because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends. To the extent that the opinions of the Court or of individual Justices use the undue burden standard in a manner that is inconsistent with this analysis, we set out what in our view should be the controlling standard. Cf. *McCleskey v. Zant, 499 U.S. 467, 489, 113 L. Ed. 2d 517, 111 S. Ct. 1454 (1991)* (attempting "to define the doctrine of abuse of the writ with more precision" after acknowledging tension among ear-

lier cases). In our considered judgment, an undue burden is an unconstitutional burden. See *Akron II, 497 U.S. at 519-520* (opinion of KENNEDY, J.). Understood another way, we answer the question, left open in previous opinions discussing the undue burden formulation, whether a law designed **[**2821]** to further the State's interest in fetal life which imposes an undue burden on the woman's decision before fetal viability could be constitutional. See, *e. g., Akron I, 462 U.S. at 462-463* (O'CONNOR, J., dissenting). The answer is no.

Some guiding principles should emerge. What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose. See *infra, 505 U.S. at 899-900* (addressing Pennsylvania's parental consent requirement). **[*878]** Unless it has that effect on her right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal. Regulations designed to foster the health of a woman seeking an abortion are valid if they do not constitute an undue burden.

[*LEdHR14B]** [14B] **[***LEdHR15B]** [15B] **[***LEdHR16B]** [16B]Even when jurists reason from shared premises, some disagreement is inevitable. Compare *Hodgson, 497 U.S. at 482-497* (KENNEDY, J., concurring in judgment in part and dissenting in part), with *id., at 458-460* (O'CONNOR, J., concurring in part and concurring in judgment in part). That is to be expected in the application of any legal standard which must accommodate life's complexity. We do not expect it to be otherwise with respect to the undue burden standard. We give this summary:

(a) To protect the central right recognized by *Roe v. Wade* while at the same time accommodating the State's profound interest in potential life, we will employ the undue burden analysis as explained in this opinion. An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.

(b) We reject the rigid trimester **[***716]** framework of *Roe v. Wade*. To promote the State's profound interest in potential life, throughout pregnancy the State may take measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right.

(c) As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion. Unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.

[*879] (d) Our adoption of the undue burden analysis does not disturb the central holding of *Roe v. Wade*, and we reaffirm that holding. Regardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.

(e) We also reaffirm *Roe's* holding that "subsequent to viability, the State in promoting its interest in the potentiality of human life 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." *Roe v. Wade, 410 U.S. at 164-165.*

These principles control our assessment of the Pennsylvania statute, and we now turn to the issue of the validity of its challenged provisions.

V

The Court of Appeals applied what it believed to be the undue burden standard and upheld each of the provisions except for the husband notification requirement. We agree generally with this conclusion, but refine the **[**2822]** undue burden analysis in accordance with the principles articulated above. We now consider the separate statutory sections at issue.

A

[*LEdHR1B]** [1B]Because it is central to the operation of various other requirements, we begin with the statute's definition of medical emergency. Under the statute, a medical emergency is

> "that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function." 18 Pa. Cons. Stat. § 3203 (1990).

[*880] Petitioners argue that the definition is too narrow, contending that it forecloses the possibility of an immediate abortion despite some significant health risks.

If the contention were correct, we would be required to invalidate the restrictive operation of the provision, for the essential holding of *Roe* forbids a State to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health. *410 U.S. at 164.* See also *Harris v.* **[***717]** *McRae, 448 U.S. at 316.*

[*LEdHR1C]** [1C]**[***LEdHR17]** [17]The District Court found that there were three serious conditions which would not be covered by the statute: pre-eclampsia, inevitable abortion, and premature ruptured membrane. *744 F. Supp. at 1378.* Yet, as the Court of Appeals observed, *947 F.2d at 700-701,* it is undisputed that under some circumstances each of these conditions could lead to an illness with substantial and irreversible consequences. While the definition could be interpreted in an unconstitutional manner, the Court of Appeals construed the phrase "serious risk" to include those circumstances. *Id., at 701.* It stated: "We read the medical emergency exception as intended by the Pennsylvania legislature to assure that compliance with its abortion regulations would not in any way pose a significant threat to the life or health of a woman." *Ibid.* As we said in *Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 499-500, 86 L. Ed. 2d 394, 105 S. Ct. 2794 (1985):* "Normally, . . . we defer to the construction of a state statute given it by the lower federal courts." Indeed, we have said that we will defer to lower court interpretations of state law unless they amount to "plain" error. *Palmer v. Hoffman, 318 U.S. 109, 118, 87 L. Ed. 645, 63 S. Ct. 477 (1943).* This "'reflects our belief that district courts and courts of appeals are better schooled in and more able to interpret the laws of their respective States.'" *Frisby v. Schultz, 487 U.S. 474, 482, 101 L. Ed. 2d 420, 108 S. Ct. 2495 (1988)* (citation omitted). We adhere to that course today, and conclude that, as construed by the Court of Appeals, the medical emergency definition imposes no undue burden on a woman's abortion right.

[*881] B

[*LEdHR2B]** [2B]We next consider the informed consent requirement. 18 Pa. Cons. Stat. § 3205 (1990). Except in a medical emergency, the statute requires that at least 24 hours before performing an abortion a physician inform the woman of the nature of the procedure, the health risks of the abortion and of childbirth, and the "probable gestational age of the unborn child." The physician or a qualified nonphysician must inform the woman of the availability of printed materials published by the State describing the fetus and providing information about medical assistance for childbirth, information about child support from the father, and a list of agencies which provide adoption and other services as alternatives to abortion. An abortion may not be performed unless the woman certifies in writing that she has been informed of the availability of these printed materials and has **[**2823]** been provided them if she chooses to view them.

Our prior decisions establish that as with any medical procedure, the State may require a woman to give her written informed consent to an abortion. See *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. at 67.* In this respect, the statute is unexceptional. Petitioners challenge the statute's definition of informed consent because it includes the provision of specific information by the doctor and the mandatory 24-hour waiting period. The conclusions reached by a majority of the Justices in the separate opinions filed today and the **[***718]** undue burden standard adopted in this opinion require us to overrule in part some of the Court's past decisions, decisions driven by the trimester framework's prohibition of all previability regulations designed to further the State's interest in fetal life.

In *Akron I, 462 U.S. 416, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (1983),* we invalidated an ordinance which required that a woman seeking an abortion be provided by her physician with specific information "designed to influence the woman's informed choice between abortion or childbirth." *Id., at 444.* As we later described **[*882]** the *Akron I* holding in *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. at 762,* there were two purported flaws in the Akron ordinance: the information was designed to dissuade the woman from having an abortion and the ordinance imposed "a rigid requirement that a specific body of information be given in all cases, irrespective of the particular needs of the patient . . . ." *Ibid.*

To the extent *Akron I* and *Thornburgh* find a constitutional violation when the government requires, as it does here, the giving of truthful, nonmisleading information about the nature of the procedure, the attendant health risks and those of childbirth, and the "probable gestational age" of the fetus, those cases go too far, are inconsistent with *Roe's* acknowledgment of an important interest in potential life, and are overruled. This is clear even on the very terms of *Akron I* and *Thornburgh.* Those decisions, along with *Danforth,* recognize a substantial government interest justifying a requirement that a woman be apprised of the health risks of abortion and childbirth. *E. g., Danforth, supra,* at 66-67. It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State

furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible.

We also see no reason why the State may not require doctors to inform a woman seeking an abortion of the availability of materials relating to the consequences to the fetus, even when those consequences have no direct relation to her health. An example illustrates the point. We would think [*883] it constitutional for the State to require that in order for there to be informed consent to a kidney transplant operation the recipient must be supplied with information about risks to the donor as well as risks to himself or herself. A requirement that the physician make available information similar to that mandated by the statute here was described in *Thornburgh* as "an outright attempt to wedge the Commonwealth's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician." *476 U.S. at 762.* [***719] We conclude, however, that informed choice need not be defined in such narrow terms that all considerations of the effect on the fetus are made irrelevant. As [**2824] we have made clear, we depart from the holdings of *Akron I* and *Thornburgh* to the extent that we permit a State to further its legitimate goal of protecting the life of the unborn by enacting legislation aimed at ensuring a decision that is mature and informed, even when in so doing the State expresses a preference for childbirth over abortion. In short, requiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the pregnancy to full term is a reasonable measure to ensure an informed choice, one which might cause the woman to choose childbirth over abortion. This requirement cannot be considered a substantial obstacle to obtaining an abortion, and, it follows, there is no undue burden.

Our prior cases also suggest that the "straitjacket," *Thornburgh, supra, at 762* (quoting *Danforth, supra, at 67, n.8),* of particular information which must be given in each case interferes with a constitutional right of privacy between a pregnant woman and her physician. As a preliminary matter, it is worth noting that the statute now before us does not require a physician to comply with the informed consent provisions "if he or she can demonstrate by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely [*884] adverse effect on the physical or mental health of the patient." 18 Pa. Cons. Stat. § 3205 (1990). In this respect, the statute does not prevent the physician from exercising his or her medical judgment.

Whatever constitutional status the doctor-patient relation may have as a general matter, in the present context it is derivative of the woman's position. The doctor-patient relation does not underlie or override the two more general rights under which the abortion right is justified: the right to make family decisions and the right to physical autonomy. On its own, the doctor-patient relation here is entitled to the same solicitude it receives in other contexts. Thus, a requirement that a doctor give a woman certain information as part of obtaining her consent to an abortion is, for constitutional purposes, no different from a requirement that a doctor give certain specific information about any medical procedure.

All that is left of petitioners' argument is an asserted First Amendment right of a physician not to provide information about the risks of abortion, and childbirth, in a manner mandated by the State. To be sure, the physician's First Amendment rights not to speak are implicated, see *Wooley v. Maynard, 430 U.S. 705, 51 L. Ed. 2d 752, 97 S. Ct. 1428 (1977),* but only as part of the practice of medicine, subject to reasonable licensing and regulation by the State, cf. *Whalen v. Roe, 429 U.S. 589, 603, 51 L. Ed. 2d 64, 97 S. Ct. 869 (1977).* We see no constitutional infirmity in the requirement that the physician provide the information mandated by the State here.

The Pennsylvania statute also requires us to reconsider the holding [***720] in *Akron I* that the State may not require that a physician, as opposed to a qualified assistant, provide information relevant to a woman's informed consent. *462 U.S. at 448.* Since there is no evidence on this record that requiring a doctor to give the information as provided by the statute would amount in practical terms to a substantial obstacle to a woman seeking an abortion, we conclude that it is not [*885] an undue burden. Our cases reflect the fact that the Constitution gives the States broad latitude to decide that particular functions may be performed only by licensed professionals, even if an objective assessment might suggest that those same tasks could be performed by others. See *Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461 (1955).* Thus, we uphold the provision [**2825] as a reasonable means to ensure that the woman's consent is informed.

Our analysis of Pennsylvania's 24-hour waiting period between the provision of the information deemed necessary to informed consent and the performance of an abortion under the undue burden standard requires us to reconsider the premise behind the decision in *Akron I* invalidating a parallel requirement. In *Akron I* we said: "Nor are we convinced that the State's legitimate concern that the woman's decision be informed is reasonably served

by requiring a 24-hour delay as a matter of course." *462 U.S. at 450.* We consider that conclusion to be wrong. The idea that important decisions will be more informed and deliberate if they follow some period of reflection does not strike us as unreasonable, particularly where the statute directs that important information become part of the background of the decision. The statute, as construed by the Court of Appeals, permits avoidance of the waiting period in the event of a medical emergency and the record evidence shows that in the vast majority of cases, a 24-hour delay does not create any appreciable health risk. In theory, at least, the waiting period is a reasonable measure to implement the State's interest in protecting the life of the unborn, a measure that does not amount to an undue burden.

Whether the mandatory 24-hour waiting period is nonetheless invalid because in practice it is a substantial obstacle to a woman's choice to terminate her pregnancy is a closer question. The findings of fact by the District Court indicate that because of the distances many women must travel to reach an abortion provider, the practical effect will often be **[*886]** a delay of much more than a day because the waiting period requires that a woman seeking an abortion make at least two visits to the doctor. The District Court also found that in many instances this will increase the exposure of women seeking abortions to "the harassment and hostility of antiabortion protestors demonstrating outside a clinic." *744 F. Supp. at 1351.* As a result, the District Court found that for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others, the 24-hour waiting period will be "particularly burdensome." *Id., at 1352.*

These findings are troubling in **[***721]** some respects, but they do not demonstrate that the waiting period constitutes an undue burden. We do not doubt that, as the District Court held, the waiting period has the effect of "increasing the cost and risk of delay of abortions," *id., at 1378,* but the District Court did not conclude that the increased costs and potential delays amount to substantial obstacles. Rather, applying the trimester framework's strict prohibition of all regulation designed to promote the State's interest in potential life before viability, see *id., at 1374,* the District Court concluded that the waiting period does not further the state "interest in maternal health" and "infringes the physician's discretion to exercise sound medical judgment," *id., at 1378.* Yet, as we have stated, under the undue burden standard a State is permitted to enact persuasive measures which favor childbirth over abortion, even if those measures do not further a health interest. And while the waiting period does limit a physician's discretion, that is not, standing alone, a reason to invalidate it. In light of the construction given the statute's definition of medical emergency by the Court of Appeals, and the District Court's findings, we cannot say that the waiting period imposes a real health risk.

We also disagree with the District Court's conclusion that the "particularly burdensome" effects of the waiting period **[*887]** on some women require its invalidation. A particular burden is not of necessity a substantial obstacle. Whether a burden falls on a particular group is a distinct inquiry from whether it is a substantial obstacle even as to the women in that group. And the District Court did not conclude that the waiting period **[**2826]** is such an obstacle even for the women who are most burdened by it. Hence, on the record before us, and in the context of this facial challenge, we are not convinced that the 24-hour waiting period constitutes an undue burden.

We are left with the argument that the various aspects of the informed consent requirement are unconstitutional because they place barriers in the way of abortion on demand. Even the broadest reading of *Roe*, however, has not suggested that there is a constitutional right to abortion on demand. See, *e. g., Doe v. Bolton, 410 U.S. at 189.* Rather, the right protected by *Roe* is a right to decide to terminate a pregnancy free of undue interference by the State. Because the informed consent requirement facilitates the wise exercise of that right, it cannot be classified as an interference with the right *Roe* protects. The informed consent requirement is not an undue burden on that right.

C

[*LEdHR3B]** [3B]Section 3209 of Pennsylvania's abortion law provides, except in cases of medical emergency, that no physician shall perform an abortion on a married woman without receiving a signed statement from the woman that she has notified her spouse that she is about to undergo an abortion. The woman has the option of providing an alternative signed statement certifying that her husband is not the man who impregnated her; that her husband could not be located; that the pregnancy is the result of spousal sexual assault which she has reported; or that the woman believes that notifying her husband will cause him or someone **[***722]** else to inflict bodily injury upon her. A physician who performs an abortion on **[*888]** a married woman without receiving the appropriate signed statement will have his or her license revoked, and is liable to the husband for damages.

The District Court heard the testimony of numerous expert witnesses, and made detailed findings of fact regarding the effect of this statute. These included:

"273. The vast majority of women con-

sult their husbands prior to deciding to terminate their pregnancy. . . .

. . . .

"279. The 'bodily injury' exception could not be invoked by a married woman whose husband, if notified, would, in her reasonable belief, threaten to (a) publicize her intent to have an abortion to family, friends or acquaintances; (b) retaliate against her in future child custody or divorce proceedings; (c) inflict psychological intimidation or emotional harm upon her, her children or other persons; (d) inflict bodily harm on other persons such as children, family members or other loved ones; or (e) use his control over finances to deprive of necessary monies for herself or her children. . . .

. . . .

"281. Studies reveal that family violence occurs in two million families in the United States. This figure, however, is a conservative one that substantially understates (because battering is usually not reported until it reaches life-threatening proportions) the actual number of families affected by domestic violence. In fact, researchers estimate that one of every two women will be battered at some time in their life. . . .

"282. A wife may not elect to notify her husband of her intention to have an abortion for a variety of reasons, including the husband's illness, concern about her own health, the imminent failure of the marriage, or the husband's absolute opposition to the abortion. . . .

"283. The required filing of the spousal consent form would require plaintiff-clinics to change their counseling **[*889]** procedures and force women to reveal their most intimate decision-making on pain of criminal sanctions. The confidentiality of these revelations could not be guaranteed, since **[**2827]** the woman's records are not immune from subpoena. . . .

"284. Women of all class levels, educational backgrounds, and racial, ethnic and religious groups are battered. . . .

"285. Wife-battering or abuse can take on many physical and psychological forms. The nature and scope of the battering can cover a broad range of actions and be gruesome and torturous. . . .

"286. Married women, victims of battering, have been killed in Pennsylvania and throughout the United States. . . .

"287. Battering can often involve a substantial amount of sexual abuse, including marital rape and sexual mutilation. . . .

"288. In a domestic abuse situation, it is common for the battering husband to also abuse the children in an attempt to coerce the wife. . . .

[*723]** "289. Mere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy. . . . The battering husband may deny parentage and use the pregnancy as an excuse for abuse. . . .

"290. Secrecy typically shrouds abusive families. Family members are instructed not to tell anyone, especially police or doctors, about the abuse and violence. Battering husbands often threaten their wives or her children with further abuse if she tells an outsider of the violence and tells her that nobody will believe her. A battered woman, therefore, is highly unlikely to disclose **[*890]** the violence against her for fear of retaliation by the abuser. . . .

"291. Even when confronted directly by medical personnel or other helping professionals, battered women often will not admit to the battering because they have not admitted to themselves that they are battered. . .

. . . .

"294. A woman in a shelter or a safe house unknown to her husband is not 'reasonably likely' to have bodily harm inflicted upon her by her batterer, however her attempt to notify her husband pursuant to section 3209 could accidentally disclose her whereabouts to her husband. Her fear of future ramifications would be realistic under the circumstances.

"295. Marital rape is rarely discussed with others or reported to law enforcement

authorities, and of those reported only few are prosecuted. . . .

"296. It is common for battered women to have sexual intercourse with their husbands to avoid being battered. While this type of coercive sexual activity would be spousal sexual assault as defined by the Act, many women may not consider it to be so and others would fear disbelief. . . .

"297. The marital rape exception to section 3209 cannot be claimed by women who are victims of coercive sexual behavior other than penetration. The 90-day reporting requirement of the spousal sexual assault statute, 18 Pa. Con. Stat. Ann. § 3218(c), further narrows the class of sexually abused wives who can claim the exception, since many of these women may be psychologically unable to discuss or report the rape for several years after the incident. . . .

"298. Because of the nature of the battering relationship, battered women are unlikely to avail themselves of the exceptions to section 3209 of the Act, regardless of [*891] whether the section applies to them." *744 F. Supp. at 1360-1362* (footnote omitted).

These findings are supported by studies of domestic violence. The American Medical Association (AMA) has published a summary of the recent research in this field, which indicates that in an average 12-month period in this country, approximately two million women are the victims of severe assaults by their male partners. In a 1985 survey, women reported that nearly one of every eight husbands had assaulted [***724] their wives during [**2828] the past year. The AMA views these figures as "marked underestimates," because the nature of these incidents discourages women from reporting them, and because surveys typically exclude the very poor, those who do not speak English well, and women who are homeless or in institutions or hospitals when the survey is conducted. According to the AMA, "researchers on family violence agree that the true incidence of partner violence is probably *double* the above estimates; or four million severely assaulted women per year. Studies on prevalence suggest that from one-fifth to one-third of all women will be physically assaulted by a partner or ex-partner during their lifetime." AMA Council on Scientific Affairs, Violence Against Women 7 (1991) (emphasis in original). Thus on an average day in the United States nearly 11,000 women are severely assaulted by their male partners. Many of these incidents involve sexual assault. *Id.*, at 3-4; Shields & Hanneke, Battered Wives' Reactions to Marital Rape, in The Dark Side of Families: Current Family Violence Research 131, 144 (D. Finkelhor, R. Gelles, G. Hataling, & M. Straus eds. 1983). In families where wifebeating takes place, moreover, child abuse is often present as well. Violence Against Women, *supra*, at 12.

Other studies fill in the rest of this troubling picture. Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common. L. Walker, The Battered [*892] Woman Syndrome 27-28 (1984). Many victims of domestic violence remain with their abusers, perhaps because they perceive no superior alternative. Herbert, Silver, & Ellard, Coping with an Abusive Relationship: I. How and Why do Women Stay?, 53 J. Marriage & the Family 311 (1991). Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income. Aguirre, Why Do They Return? Abused Wives in Shelters, 30 J. Nat. Assn. of Social Workers 350, 352 (1985). Returning to one's abuser can be dangerous. Recent Federal Bureau of Investigation statistics disclose that 8.8 percent of all homicide victims in the United States are killed by their spouses. Mercy & Saltzman, Fatal Violence Among Spouses in the United States, 1976-85, 79 Am. J. Public Health 595 (1989). Thirty percent of female homicide victims are killed by their male partners. Domestic Violence: Terrorism in the Home, Hearing before the Subcommittee on Children, Family, Drugs and Alcoholism of the Senate Committee on Labor and Human Resources, 101st Cong., 2d Sess., 3 (1990).

The limited research that has been conducted with respect to notifying one's husband about an abortion, although involving samples too small to be representative, also supports the District Court's findings of fact. The vast majority of women notify their male partners of their decision to obtain an abortion. In many cases in which married women do not notify their husbands, the pregnancy is the result of an extramarital affair. Where the husband is the father, the primary reason women do not notify their husbands is that the husband and wife are experiencing marital difficulties, often accompanied by incidents of violence. Ryan & Plutzer, When [***725] Married Women Have Abortions: Spousal Notification and Marital Interaction, 51 J. Marriage & the Family 41, 44 (1989).

This information and the District Court's findings reinforce what common sense would suggest. In well-functioning [*893] marriages, spouses discuss important intimate decisions such as whether to bear a child. But there are millions of women in this country who are

the victims of regular physical and psychological abuse at the hands of their husbands. Should these women become pregnant, they may have very good reasons for not wishing to inform their husbands of their decision to obtain an abortion. Many may have justifiable fears of physical abuse, but may be no less fearful of the consequences of reporting prior abuse to the Commonwealth of Pennsylvania. Many may have a reasonable [**2829] fear that notifying their husbands will provoke further instances of child abuse; these women are not exempt from § 3209's notification requirement. Many may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support, or the disclosure of the abortion to family and friends. These methods of psychological abuse may act as even more of a deterrent to notification than the possibility of physical violence, but women who are the victims of the abuse are not exempt from § 3209's notification requirement. And many women who are pregnant as a result of sexual assaults by their husbands will be unable to avail themselves of the exception for spousal sexual assault, § 3209(b)(3), because the exception requires that the woman have notified law enforcement authorities within 90 days of the assault, and her husband will be notified of her report once an investigation begins, § 3128(c). If anything in this field is certain, it is that victims of spousal sexual assault are extremely reluctant to report the abuse to the government; hence, a great many spousal rape victims will not be exempt from the notification requirement imposed by § 3209.

The spousal notification requirement is thus likely to prevent a significant number of women from obtaining an abortion. It does not merely make abortions a little more difficult or expensive to obtain; for many women, it will impose [*894] a substantial obstacle. We must not blind ourselves to the fact that the significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases.

Respondents attempt to avoid the conclusion that § 3209 is invalid by pointing out that it imposes almost no burden at all for the vast majority of women seeking abortions. They begin by noting that only about 20 percent of the women who obtain abortions are married. They then note that of these women about 95 percent notify their husbands of their own volition. Thus, respondents argue, the effects of § 3209 are felt by only one percent of the women who obtain abortions. Respondents argue that since some of these women will be able to notify their husbands without adverse consequences or will qualify for one of the exceptions, the statute affects [***726] fewer than one percent of women seeking abortions. For this reason, it is asserted, the statute cannot be invalid on its face. See Brief for Respondents 83-86. We disagree with respondents' basic method of analysis.

[***LEdHR18] [18]The analysis does not end with the one percent of women upon whom the statute operates; it begins there. Legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. For example, we would not say that a law which requires a newspaper to print a candidate's reply to an unfavorable editorial is valid on its face because most newspapers would adopt the policy even absent the law. See *Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 41 L. Ed. 2d 730, 94 S. Ct. 2831 (1974)*. The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.

[***LEdHR3C] [3C]Respondents' argument itself gives implicit recognition to this principle, at one of its critical points. Respondents speak of the one percent of women seeking abortions who are married and would choose not to notify their husbands of their plans. By selecting as the controlling class women [*895] who wish to obtain abortions, rather than all women or all pregnant women, respondents in effect concede that § 3209 must be judged by reference to those for whom it is an actual rather than an irrelevant restriction. Of course, as we have said, § 3209's real target is narrower even than the class of women seeking abortions identified by the State: it is married women seeking abortions who do not wish to notify their husbands of their [**2830] intentions and who do not qualify for one of the statutory exceptions to the notice requirement. The unfortunate yet persisting conditions we document above will mean that in a large fraction of the cases in which § 3209 is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion. It is an undue burden, and therefore invalid.

This conclusion is in no way inconsistent with our decisions upholding parental notification or consent requirements. See, *e. g., Akron II, 497 U.S. at 510-519; Bellotti v. Baird, 443 U.S. 622, 61 L. Ed. 2d 797, 99 S. Ct. 3035 (1979) (Bellotti II); Planned Parenthood of Central Mo. v. Danforth, 428 U.S. at 74.* Those enactments, and our judgment that they are constitutional, are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart. We cannot adopt a parallel assumption about adult women.

We recognize that a husband has a "deep and proper

[illegible]rn and interest . . . in his wife's pregnancy and in t[illegible]wth and development of the fetus she is carrying." *Danforth, supra, at 69.* With regard to the children he has fathered and raised, the Court has recognized his "cognizable and substantial" interest in their custody. *Stanley v. Illinois, 405 U.S. 645, 651-652, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972);* see also *Quilloin v. Walcott, 434 U.S. 246, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978); Caban v. Mohammed, 441 U.S. 380, 60 L. Ed. 2d 297,* [***727] *99 S. Ct. 1760 (1979); Lehr v. Robertson, 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985 (1983).* If these cases concerned a State's ability to require the mother to notify the father before taking some action with respect to a living [*896] child raised by both, therefore, it would be reasonable to conclude as a general matter that the father's interest in the welfare of the child and the mother's interest are equal.

Before birth, however, the issue takes on a very different cast. It is an inescapable biological fact that state regulation with respect to the child a woman is carrying will have a far greater impact on the mother's liberty than on the father's. The effect of state regulation on a woman's protected liberty is doubly deserving of scrutiny in such a case, as the State has touched not only upon the private sphere of the family but upon the very bodily integrity of the pregnant woman. Cf. *Cruzan v. Director, Mo. Dept. of Health, 497 U.S. at 281.* The Court has held that "when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Inasmuch as it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor." *Danforth, supra, at 71.* This conclusion rests upon the basic nature of marriage and the nature of our Constitution: "The marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird, 405 U.S. at 453* (emphasis in original). The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses.

There was a time, not so long ago, when a different understanding of the family and of the Constitution prevailed. In *Bradwell v. State, 83 U.S. (16 Wall.) 130, 21 L. Ed. 442 (1872),* three Members of this [*897] Court reaffirmed the common-law principle that "a woman had no legal existence separate from her husband, who was regarded as her head and [**2831] representative in the social state; and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most States." *Id., at 141* (Bradley, J., joined by Swayne and Field, JJ., concurring in judgment). Only one generation has passed since this Court observed that "woman is still regarded as the center of home and family life," with attendant "special responsibilities" that precluded full and independent legal status under the Constitution. *Hoyt v. Florida, 368 U.S. 57, 62, 7 L. Ed. 2d 118, 82 S. Ct. 159 (1961).* These views, of course, are no longer consistent with our understanding of the family, the individual, or the Constitution.

In keeping with our rejection of the common-law understanding of a [***728] woman's role within the family, the Court held in *Danforth* that the Constitution does not permit a State to require a married woman to obtain her husband's consent before undergoing an abortion. *428 U.S. at 69.* The principles that guided the Court in *Danforth* should be our guides today. For the great many women who are victims of abuse inflicted by their husbands, or whose children are the victims of such abuse, a spousal notice requirement enables the husband to wield an effective veto over his wife's decision. Whether the prospect of notification itself deters such women from seeking abortions, or whether the husband, through physical force or psychological pressure or economic coercion, prevents his wife from obtaining an abortion until it is too late, the notice requirement will often be tantamount to the veto found unconstitutional in *Danforth.* The women most affected by this law — those who most reasonably fear the consequences of notifying their husbands that they are pregnant — are in the gravest danger.

[*898]

[***LEdHR3D] [3D] [***LEdHR19] [19]The husband's interest in the life of the child his wife is carrying does not permit the State to empower him with this troubling degree of authority over his wife. The contrary view leads to consequences reminiscent of the common law. A husband has no enforceable right to require a wife to advise him before she exercises her personal choices. If a husband's interest in the potential life of the child outweighs a wife's liberty, the State could require a married woman to notify her husband before she uses a postfertilization contraceptive. Perhaps next in line would be a statute requiring pregnant married women to notify their husbands before engaging in conduct causing risks to the fetus. After all, if the husband's interest in the fetus' safety is a sufficient predicate for state regulation, the State could reasonably conclude that pregnant wives should notify their husbands before drinking alcohol or smoking. Perhaps married women should notify their hus-

bands before using contraceptives or before undergoing any type of surgery that may have complications affecting the husband's interest in his wife's reproductive organs. And if a husband's interest justifies notice in any of these cases, one might reasonably argue that it justifies exactly what the *Danforth* Court held it did not justify — a requirement of the husband's consent as well. A State may not give to a man the kind of dominion over his wife that parents exercise over their children.

[*LEdHR3E]** [3E]Section 3209 embodies a view of marriage consonant with the common-law status of married women but repugnant to our present understanding of marriage and of the nature of the rights secured by the Constitution. Women do not lose their constitutionally protected liberty when they marry. The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family. These considerations confirm our conclusion that § 3209 is invalid.

[*899] [2832]** D

[*LEdHR4B]** [4B]We next consider the parental consent provision. Except in a medical emergency, an unemancipated young woman under 18 may not obtain an abortion unless she and **[***729]** one of her parents (or guardian) provides informed consent as defined above. If neither a parent nor a guardian provides consent, a court may authorize the performance of an abortion upon a determination that the young woman is mature and capable of giving informed consent and has in fact given her informed consent, or that an abortion would be in her best interests.

We have been over most of this ground before. Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure. See, *e. g., Akron II, 497 U.S. at 510-519; Hodgson, 497 U.S. at 461* (O'CONNOR, J., concurring in part and concurring in judgment in part); *id., at 497-501* (KENNEDY, J., concurring in judgment in part and dissenting in part); *Akron I, 462 U.S. at 440; Bellotti II, 443 U.S. at 643-644* (plurality opinion). Under these precedents, in our view, the one-parent consent requirement and judicial bypass procedure are constitutional.

The only argument made by petitioners respecting this provision and to which our prior decisions do not speak is the contention that the parental consent requirement is invalid because it requires informed parental consent. For the most part, petitioners' argument is a reprise of their argument with respect to the informed consent requirement in general and we reject it for the reasons given above. Indeed, some of the provisions regarding informed consent have particular force with respect to minors: the waiting period, for example, may provide the parent or parents of a pregnant young woman the opportunity to consult with her in private, and to discuss the consequences of her decision in **[*900]** the context of the values and moral or religious principles of their family. See *Hodgson, supra, at 448-449* (opinion of STEVENS, J.).

E

[*LEdHR5B]** [5B]Under the recordkeeping and reporting requirements of the statute, every facility which performs abortions is required to file a report stating its name and address as well as the name and address of any related entity, such as a controlling or subsidiary organization. In the case of state-funded institutions, the information becomes public.

For each abortion performed, a report must be filed identifying: the physician (and the second physician where required); the facility; the referring physician or agency; the woman's age; the number of prior pregnancies and prior abortions she has had; gestational age; the type of abortion procedure; the date of the abortion; whether there were any pre-existing medical conditions which would complicate pregnancy; medical complications with the abortion; where applicable, the basis for the determination that the abortion was medically necessary; the weight of the aborted fetus; and whether the woman was married, and if so, whether notice was provided or the basis for the failure to give notice. Every abortion facility must also file quarterly reports showing the number of abortions performed broken down by trimester. See 18 Pa. Cons. Stat. §§ 3207, 3214 (1990). In all events, the identity of each woman who has had an abortion remains confidential.

In *Danforth, 428 U.S. at 80,* we held **[***730]** that recordkeeping and reporting provisions "that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." We think that under this standard, all the provisions at issue here, except that relating to spousal notice, are constitutional. Although they do not relate to the State's interest in informing the woman's choice, they do relate to health. The collection of information with respect to actual patients **[*901]** is a vital element of medical research, and so it cannot be said that the **[**2833]** requirements serve no purpose other than to make abortions more difficult. Nor do we find that the requirements impose a substantial obstacle to a woman's

choice. At most they might increase the cost of some abortions by a slight amount. While at some point increased cost could become a substantial obstacle, there is no such showing on the record before us.

[*LEdHR6B]** [6B]Subsection (12) of the reporting provision requires the reporting of, among other things, a married woman's "reason for failure to provide notice" to her husband. § 3214(a)(12). This provision in effect requires women, as a condition of obtaining an abortion, to provide the Commonwealth with the precise information we have already recognized that many women have pressing reasons not to reveal. Like the spousal notice requirement itself, this provision places an undue burden on a woman's choice, and must be invalidated for that reason.

VI

Our Constitution is a covenant running from the first generation of Americans to us and then to future generations. It is a coherent succession. Each generation must learn anew that the Constitution's written terms embody ideas and aspirations that must survive more ages than one. We accept our responsibility not to retreat from interpreting the full meaning of the covenant in light of all of our precedents. We invoke it once again to define the freedom guaranteed by the Constitution's own promise, the promise of liberty.

* * *

[*LEdHR20]** [20]The judgment in No. 91-902 is affirmed. The judgment in No. 91-744 is affirmed in part and reversed in part, and the case is remanded for proceedings consistent with this opinion, including consideration of the question of severability.

It is so ordered.

[*902] **[***731]** APPENDIX TO OPINION OF O'CONNOR, KENNEDY, AND SOUTER, JJ.

Selected Provisions of the 1988 and 1989 Amendments to the Pennsylvania Abortion Control Act of 1982

18 PA. CONS. STAT. (1990).

"§ 3203. Definitions.

. . . .

"'Medical emergency.' That condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function."

"§ 3205. Informed consent.

"(a) General rule. — No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

> "(1) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician has orally informed the woman of:
>
> > "(i) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
> >
> > "(ii) The probable gestational age of the unborn child at the time the abortion is to be performed.
> >
> > "(iii) The medical risks associated with carrying her child to term.
>
> "(2) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician, or a qualified physician assistant, health care practitioner, technician or social worker to whom the responsibility **[*903]** has been delegated by **[**2834]** either physician, has informed the pregnant woman that:
>
> > "(i) The department publishes printed materials which describe the unborn child and list agencies which offer alternatives to abortion and that she has a right to review the printed materials and that a copy will be provided to her free of charge if she chooses to review it.
> >
> > "(ii) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of

such assistance is contained in the printed materials published by the department.

[***732] "(iii) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted.

"(3) A copy of the printed materials has been provided to the woman if she chooses to view these materials.

"(4) The pregnant woman certifies in writing, prior to the abortion, that the information required to be provided under paragraphs (1), (2) and (3) has been provided.

"(b) Emergency. — Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

"(c) Penalty. — Any physician who violates the provisions of this section is guilty of 'unprofessional conduct' and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P. L. 1109, No. 261), known as the Osteopathic Medical Practice Act, the [*904] act of December 20, 1985 (P. L. 457, No. 112), known as the Medical Practice Act of 1985, or their successor acts. Any physician who performs or induces an abortion without first obtaining the certification required by subsection (a)(4) or with knowledge or reason to know that the informed consent of the woman has not been obtained shall for the first offense be guilty of a summary offense and for each subsequent offense be guilty of a misdemeanor of the third degree. No physician shall be guilty of violating this section for failure to furnish the information required by subsection (a) if he or she can demonstrate, by a preponderance of the evidence, that he or she reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

"(d) Limitation on civil liability. — Any physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent to the abortion within the meaning of that term as defined by the act of October 15, 1975 (P. L. 390, No. 111), known as the Health Care Services Malpractice Act."

"§ 3206. Parental consent.

"(a) General rule. — Except in the case of a medical emergency or except as provided in this section, if a pregnant woman is less than 18 years of age and not emancipated, or if she has been adjudged an incompetent under 20 Pa. C. S. § 5511 (relating to petition and hearing; examination by court-appointed physician), a physician shall not perform an abortion upon her unless, in the case of a woman who is less than 18 years of age, he first obtains the informed consent both of the pregnant woman and of one of her parents; or, in the case of a woman who is incompetent, he first obtains the informed consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only their child's or ward's best interests. In the case of a pregnancy that is the result [***733] of incest, where [*905] the father is a party to the incestuous act, [**2835] the pregnant woman need only obtain the consent of her mother.

"(b) Unavailability of parent or guardian. — If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman's guardian or guardians shall be sufficient. If the pregnant woman's parents are divorced, consent of the parent having custody shall be sufficient. If neither any parent nor a legal guardian is available to the physician within a reasonable time and in a reasonable manner, consent of any adult person standing in loco parentis shall be sufficient.

"(c) Petition to the court for consent. — If both of the parents or guardians of the pregnant woman refuse to consent to the performance of an abortion or if she elects not to seek the consent of either of her parents or of her guardian, the court of common pleas of the judicial district in which the applicant resides or in which the abortion is sought shall, upon petition or motion, after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion, and has, in fact, given such consent.

"(d) Court order. — If the court determines that the pregnant woman is not mature and capable of giving informed consent or if the pregnant woman does not claim to be mature and capable of giving informed consent, the court shall determine whether the performance of an abortion upon her would be in her best interests. If the court determines that the performance of an abortion would be in the best interests of the woman, it shall authorize a physician to perform the abortion.

"(e) Representation in proceedings. — The pregnant woman may participate in proceedings in the court on

her own behalf and the court may appoint a guardian ad litem to assist her. The court shall, however, advise her that she has [*906] a right to court appointed counsel, and shall provide her with such counsel unless she wishes to appear with private counsel or has knowingly and intelligently waived representation by counsel."

"§ 3207. Abortion facilities.

. . . .

"(b) Reports. — Within 30 days after the effective date of this chapter, every facility at which abortions are performed shall file, and update immediately upon any change, a report with the department, containing the following information:

"(1) Name and address of the facility.

"(2) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations.

"(3) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations having contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility.

The information contained in those reports which are filed pursuant to this [***734] subsection by facilities which receive State-appropriated funds during the 12-calendar-month period immediately preceding a request to inspect or copy such reports shall be deemed public information. Reports filed by facilities which do not receive State-appropriated funds shall only be available to law enforcement officials, the State Board of Medicine and the State Board of Osteopathic Medicine for use in the performance of their official duties. Any facility failing to comply with the provisions of this subsection shall be assessed by the department a fine of $500 for each day it is in violation hereof."

"§ 3208. Printed information.

"(a) General rule. — The department shall cause to be published in English, Spanish and Vietnamese, within 60 days after this chapter becomes law, and shall update on an annual basis, the following easily comprehensible printed materials:

[*907] [**2836] "(1) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall provide information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care, and state that it is unlawful for any individual to coerce a woman to undergo abortion, that any physician who performs an abortion upon a woman without obtaining her informed consent or without according her a private medical consultation may be liable to her for damages in a civil action at law, that the father of a child is liable to assist in the support of that child, even in instances where the father has offered to pay for an abortion and that the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care.

"(2) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures representing the development of unborn children at two-week gestational increments, and any relevant information on the possibility of the unborn child's survival; provided that any such pictures or drawings must contain the dimensions of the fetus and must be realistic and appropriate for the woman's stage of pregnancy. The materials shall be objective, non-judgmental and designed [*908] to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion [***735] procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with each such procedure and the medical risks commonly associated with carrying a child to term.

"(b) Format. — The materials shall be printed in a

typeface large enough to be clearly legible.

"(c) Free distribution. — The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital."

"§ 3209. Spousal notice.

"(a) Spousal notice required. — In order to further the Commonwealth's interest in promoting the integrity of the marital relationship and to protect a spouse's interests in having children within marriage and in protecting the prenatal life of that spouse's child, no physician shall perform an abortion on a married woman, except as provided in subsections (b) and (c), unless he or she has received a signed statement, which need not be notarized, from the woman upon whom the abortion is to be performed, that she has notified her spouse that she is about to undergo an abortion. The statement shall bear a notice that any false statement made therein is punishable by law.

"(b) Exceptions. — The statement certifying that the notice required by subsection (a) has been given need not be furnished where the woman provides the physician a signed statement certifying at least one of the following:

> "(1) Her spouse is not the father of the child.
>
> [**2837] "(2) Her spouse, after diligent effort, could not be located.
>
> [*909] "(3) The pregnancy is a result of spousal sexual assault as described in section 3128 (relating to spousal sexual assault), which has been reported to a law enforcement agency having the requisite jurisdiction.
>
> "(4) The woman has reason to believe that the furnishing of notice to her spouse is likely to result in the infliction of bodily injury upon her by her spouse or by another individual.

Such statement need not be notarized, but shall bear a notice that any false statements made therein are punishable by law.

"(c) Medical emergency. — The requirements of subsection (a) shall not apply in case of a medical emergency.

"(d) Forms. — The department shall cause to be published, forms which may be utilized for purposes of providing the signed statements required by subsections (a) and (b). The department shall distribute an adequate supply of such forms to all abortion facilities in this Commonwealth.

"(e) Penalty; civil action. — Any physician who violates the provisions of this section is guilty of 'unprofessional conduct,' and his or her license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of October 5, 1978 (P. L. 1109, No. 261), known as the Osteopathic Medical Practice Act, [***736] the act of December 20, 1985 (P. L. 457, No. 112), known as the Medical Practice Act of 1985, or their successor acts. In addition, any physician who knowingly violates the provisions of this section shall be civilly liable to the spouse who is the father of the aborted child for any damages caused thereby and for punitive damages in the amount of $5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of costs."

"§ 3214. Reporting.

"(a) General rule. — For the purpose of promotion of maternal health and life by adding to the sum of medical and [*910] public health knowledge through the compilation of relevant data, and to promote the Commonwealth's interest in protection of the unborn child, a report of each abortion performed shall be made to the department on forms prescribed by it. The report forms shall not identify the individual patient by name and shall include the following information:

> "(1) Identification of the physician who performed the abortion, the concurring physician as required by section 3211(c)(2) (relating to abortion on unborn child of 24 or more weeks gestational age), the second physician as required by section 3211(c)(5) and the facility where the abortion was performed and of the referring physician, agency or service, if any.
>
> "(2) The county and state in which the woman resides.
>
> "(3) The woman's age.
>
> "(4) The number of prior pregnancies and prior abortions of the woman.
>
> "(5) The gestational age of the unborn child at the time of the abortion.
>
> "(6) The type of procedure performed or prescribed and the date of the abortion.
>
> "(7) Pre-existing medical conditions of the woman which would complicate pregnancy, if any, and if known, any medical complication which resulted from the abortion itself.
>
> "(8) The basis for the medical judgment

of the physician who performed the abortion that the abortion was necessary to prevent either the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the woman, where an abortion has been performed pursuant to section 3211(b)(1).

[**2838] "(9) The weight of the aborted child for any abortion performed pursuant to section 3211(b)(1).

"(10) Basis for any medical judgment that a medical emergency existed which excused the physician from compliance with any provision of this chapter.

[*911] "(11) The information required to be reported under section 3210(a) (relating to determination of gestational age).

"(12) Whether the abortion was performed upon a married woman and, if so, whether notice to her spouse was given. If no notice to her [***737] spouse was given, the report shall also indicate the reason for failure to provide notice.

. . . .

"(f) Report by facility. — Every facility in which an abortion is performed within this Commonwealth during any quarter year shall file with the department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. Any report shall be available for public inspection and copying only if the facility receives State-appropriated funds within the 12-calendar-month period immediately preceding the filing of the report. These reports shall be submitted on a form prescribed by the department which will enable a facility to indicate whether or not it is receiving State-appropriated funds. If the facility indicates on the form that it is not receiving State-appropriated funds, the department shall regard its report as confidential unless it receives other evidence which causes it to conclude that the facility receives [***738] State-appropriated funds."

DISSENTBY: STEVENS (In Part); BLACKMUN (In Part); REHNQUIST (In Part); SCALIA (In Part)

DISSENT:

JUSTICE STEVENS, concurring in part and dissenting in part.

The portions of the Court's opinion that I have joined are more important than those with which I disagree. I shall therefore first comment on significant areas of agreement, and then explain the limited character of my disagreement.

[*912] I

The Court is unquestionably correct in concluding that the doctrine of *stare decisis* has controlling significance in a case of this kind, notwithstanding an individual Justice's concerns about the merits. n1 The central holding of *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973),* has been a "part of our law" for almost two decades. *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 101, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976)* (STEVENS, J., concurring in part and dissenting in part). It was a natural sequel to the protection of individual liberty established in *Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965).* See also *Carey v. Population Services International, 431 U.S. 678, 687, 702, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977)* (WHITE, J., concurring in part and concurring in result). The societal costs of overruling *Roe* at this late date would be enormous. *Roe* is an integral part of a correct understanding of both the concept of liberty and the basic equality of men and women.

n1 It is sometimes useful to view the issue of *stare decisis* from a historical perspective. In the last 19 years, 15 Justices have confronted the basic issue presented in *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973).* Of those, 11 have voted as the majority does today: Chief Justice Burger, Justices Douglas, Brennan, Stewart, Marshall, and Powell, and JUSTICES BLACKMUN, O'CONNOR, KENNEDY, SOUTER, and myself. Only four — all of whom happen to be on the Court today — have reached the opposite conclusion.

Stare decisis also provides a sufficient basis for my agreement with the joint opinion's reaffirmation of *Roe's* post-viability analysis. Specifically, I accept the proposition that "if the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except [**2839] when it is necessary to preserve the life or health of the mother." *410 U.S. at 163-164;* see *ante, 505 U.S. at 879.*

I also accept what is implicit in the Court's analysis, namely, a reaffirmation of *Roe's* explanation of *why* the State's obligation to protect the life or health of the mother [*913] must take precedence over any duty to the unborn. The Court in *Roe* carefully considered, and rejected, the State's argument "that the fetus is a 'person' within the language and meaning of the Fourteenth Amendment."

410 U.S. at 156. After analyzing the usage of "person" in the Constitution, the Court concluded that that word "has application only postnatally." *Id., at 157.* Commenting on the contingent property interests of the unborn that are generally represented by guardians ad litem, the Court noted: "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." *Id., at 162.* **[***739]** Accordingly, an abortion is not "the termination of life entitled to Fourteenth Amendment protection." *Id., at 159.* From this holding, there was no dissent, see *id., at 173;* indeed, no Member of the Court has ever questioned this fundamental proposition. Thus, as a matter of federal constitutional law, a developing organism that is not yet a "person" does not have what is sometimes described as a "right to life." n2 This has been and, by the Court's holding today, **[*914]** remains a fundamental premise of our constitutional law governing reproductive autonomy.

n2 Professor Dworkin has made this comment on the issue:

"The suggestion that states are free to declare a fetus a person. . . . assumes that a state can curtail some persons' constitutional rights by adding new persons to the constitutional population. The constitutional rights of one citizen are of course very much affected by who or what else also has constitutional rights, because the rights of others may compete or conflict with his. So any power to increase the constitutional population by unilateral decision would be, in effect, a power to decrease rights the national Constitution grants to others.

". . . If a state could declare trees to be persons with a constitutional right to life, it could prohibit publishing newspapers or books in spite of the First Amendment's guarantee of free speech, which could not be understood as a license to kill. . . . Once we understand that the suggestion we are considering has that implication, we must reject it. If a fetus is not part of the constitutional population, under the national constitutional arrangement, then states have no power to overrule that national arrangement by themselves declaring that fetuses have rights competitive with the constitutional rights of pregnant women." Unenumerated Rights: Whether and How *Roe* Should be Overruled, *59 U. Chi. L. Rev. 381, 400-401 (1992).*

II

My disagreement with the joint opinion begins with its understanding of the trimester framework established in *Roe.* Contrary to the suggestion of the joint opinion, *ante, 505 U.S. at 876,* it is not a "contradiction" to recognize that the State may have a legitimate interest in potential human life and, at the same time, to conclude that that interest does not justify the regulation of abortion before viability (although other interests, such as maternal health, may). The fact that the State's interest is legitimate does not tell us when, if ever, that interest outweighs the pregnant woman's interest in personal liberty. It is appropriate, therefore, to consider more carefully the nature of the interests at stake.

First, it is clear that, in order to be legitimate, the State's interest must be secular; consistent with the First Amendment the State may not promote a theological or sectarian interest. See *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 778, 90 L. Ed. 2d 779, 106 S. Ct. 2169 (1986)* (STEVENS, J., concurring); see generally *Webster v. Reproductive Health Services, 492 U.S. 490, 563-572, 106 L. Ed. 2d 410, 109 S. Ct. 3040 (1989)* (STEVENS, J., concurring in part and dissenting in part). **[**2840]** Moreover, as discussed above, the state interest in potential human life is not an interest *in loco parentis,* for the fetus is not a person.

Identifying the State's interests — which the States rarely articulate with any precision — makes clear that the interest in protecting potential life is not grounded in the Constitution. It is, instead, an indirect **[***740]** interest supported by both humanitarian and pragmatic concerns. Many of our citizens believe that any abortion reflects an unacceptable disrespect for potential human life and that the performance of more **[*915]** than a million abortions each year is intolerable; many find third-trimester abortions performed when the fetus is approaching personhood particularly offensive. The State has a legitimate interest in minimizing such offense. The State may also have a broader interest in expanding the population, n3 believing society would benefit from the services of additional productive citizens — or that the potential human lives might include the occasional Mozart or Curie. These are the kinds of concerns that comprise the State's interest in potential human life.

n3 The state interest in protecting potential life may be compared to the state interest in protecting those who seek to immigrate to this country. A contemporary example is provided by the Haitians who have risked the perils of the sea in a desperate attempt to become "persons" protected by our laws. Humanitarian and practical concerns would support a state policy allowing those persons unrestricted entry; countervailing interests in population control support a policy of limiting the entry of these potential citizens. While the state interest in population

control might be sufficient to justify strict enforcement of the immigration laws, that interest would not be sufficient to overcome a woman's liberty interest. Thus, a state interest in population control could not justify a state-imposed limit on family size or, for that matter, state-mandated abortions.

In counterpoise is the woman's constitutional interest in liberty. One aspect of this liberty is a right to bodily integrity, a right to control one's person. See, *e. g., Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942).* This right is neutral on the question of abortion: The Constitution would be equally offended by an absolute requirement that all women undergo abortions as by an absolute prohibition on abortions. "Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." *Stanley v. Georgia, 394 U.S. 557, 565, 22 L. Ed. 2d 542, 89 S. Ct. 1243 (1969).* The same holds true for the power to control women's bodies.

The woman's constitutional liberty interest also involves her freedom to decide matters of the highest privacy and the most personal nature. Cf. *Whalen v. Roe, 429 U.S. 589, 598-600, 51 L. Ed. 2d 64, 97 S. Ct. 869* **[*916]** *(1977).* A woman considering abortion faces "a difficult choice having serious and personal consequences of major importance to her own future — perhaps to the salvation of her own immortal soul." *Thornburgh, 476 U.S. at 781.* The authority to make such traumatic and yet empowering decisions is an element of basic human dignity. As the joint opinion so eloquently demonstrates, a woman's decision to terminate her pregnancy is nothing less than a matter of conscience.

[*LEdHR14C]** [14C] **[***LEdHR15C]** [15C]Weighing the State's interest in potential life and the woman's liberty interest, I agree with the joint opinion that the State may ""express a preference for normal childbirth,"" that the State may take steps to ensure that a woman's choice "is thoughtful and informed," and that "States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning." *Ante,* **[***741]** *505 U.S. at 872-873.* Serious questions arise, however, when a State attempts to "persuade the woman to choose childbirth over abortion." *Ante, 505 U.S. at 878.* Decisional autonomy must limit the State's power to inject into a woman's most personal deliberations its own views of what is best. The State may promote its preferences by funding childbirth, by creating and maintaining alternatives to **[**2841]** abortion, and by espousing the virtues of family; but it must respect the individual's freedom to make such judgments.

This theme runs throughout our decisions concerning reproductive freedom. In general, *Roe's* requirement that restrictions on abortions before viability be justified by the State's interest in *maternal* health has prevented States from interjecting regulations designed to influence a woman's decision. Thus, we have upheld regulations of abortion that are not efforts to sway or direct a woman's choice, but rather are efforts to enhance the deliberative quality of that decision or are neutral regulations on the health aspects of her decision. We have, for example, upheld regulations requiring **[*917]** written informed consent, see *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976);* limited recordkeeping and reporting, see *ibid.;* and pathology reports, see *Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 76 L. Ed. 2d 733, 103 S. Ct. 2517 (1983);* as well as various licensing and qualification provisions, see, *e. g., Roe, 410 U.S. at 150; Simopoulos v. Virginia, 462 U.S. 506, 76 L. Ed. 2d 755, 103 S. Ct. 2532 (1983).* Conversely, we have consistently rejected state efforts to prejudice a woman's choice, either by limiting the information available to her, see *Bigelow v. Virginia, 421 U.S. 809, 44 L. Ed. 2d 600, 95 S. Ct. 2222 (1975),* or by "requiring the delivery of information designed 'to influence the woman's informed choice between abortion or childbirth.'" *Thornburgh, 476 U.S. at 760;* see also *Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 442-449, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (1983).*

In my opinion, the principles established in this long line of cases and the wisdom reflected in Justice Powell's opinion for the Court in *Akron* (and followed by the Court just six years ago in *Thornburgh*) should govern our decision today. Under these principles, Pa. Cons. Stat. §§ 3205(a)(2)(i)-(iii) (1990) of the Pennsylvania statute are unconstitutional. Those sections require a physician or counselor to provide the woman with a range of materials clearly designed to persuade her to choose not to undergo the abortion. While the Commonwealth is free, pursuant to § 3208 of the Pennsylvania law, to produce and disseminate such material, the Commonwealth may not inject such information into the woman's deliberations just as she is weighing such an important choice.

Under this same analysis, §§ 3205(a)(1)(i) and (iii) of the Pennsylvania statute are constitutional. Those sections, which require the physician to inform a woman of the nature and risks of the abortion procedure and the medical risks of carrying to term, are neutral requirements comparable to those imposed in other medical procedures. Those sections indicate no effort by the Commonwealth

to influence the [*918] woman's [***742] choice in any way. If anything, such requirements *enhance*, rather than skew, the woman's decisionmaking.

III

The 24-hour waiting period required by §§ 3205(a)(1)-(2) of the Pennsylvania statute raises even more serious concerns. Such a requirement arguably furthers the Commonwealth's interests in two ways, neither of which is constitutionally permissible.

First, it may be argued that the 24-hour delay is justified by the mere fact that it is likely to reduce the number of abortions, thus furthering the Commonwealth's interest in potential life. But such an argument would justify any form of coercion that placed an obstacle in the woman's path. The Commonwealth cannot further its interests by simply wearing down the ability of the pregnant woman to exercise her constitutional right.

Second, it can more reasonably be argued that the 24-hour delay furthers the Commonwealth's interest in ensuring that the woman's decision is informed and thoughtful. But there is no evidence that the mandated delay benefits women or that it is necessary to enable the physician to convey any relevant information to the patient. The mandatory delay thus appears to rest on outmoded [**2842] and unacceptable assumptions about the decisionmaking capacity of women. While there are well-established and consistently maintained reasons for the Commonwealth to view with skepticism the ability of minors to make decisions, see *Hodgson v. Minnesota, 497 U.S. 417, 449, 111 L. Ed. 2d 344, 110 S. Ct. 2926 (1990)*, n4 none of those reasons applies to an [*919] adult woman's decisionmaking ability. Just as we have left behind the belief that a woman must consult her husband before undertaking serious matters, see *ante, 505 U.S. at 895-898*, so we must reject the notion that a woman is less capable of deciding matters of gravity. Cf. *Reed v. Reed, 404 U.S. 71, 30 L. Ed. 2d 225, 92 S. Ct. 251 (1971)*.

n4 As we noted in that opinion, the State's "legitimate interest in protecting minor women from their own immaturity" distinguished that case from *Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (1983)*, which involved "a provision that required that mature women, capable of consenting to an abortion, wait 24 hours after giving consent before undergoing an abortion." *Hodgson, 497 U.S. at 449, n.35.*

In the alternative, the delay requirement may be premised on the belief that the decision to terminate a pregnancy is presumptively wrong. This premise is illegitimate. Those who disagree vehemently about the legality and morality of abortion agree about one thing: The decision to terminate a pregnancy is profound and difficult. No person undertakes such a decision lightly — and States may not presume that a woman has failed to reflect adequately merely because her conclusion differs from the State's preference. A woman who has, in the privacy of her thoughts and conscience, weighed the options and made her decision cannot be forced to reconsider all, simply because the State believes she has come to the wrong conclusion. n5

n5 The joint opinion's reliance on the indirect effects of the regulation of constitutionally protected activity, see *ante, 505 U.S. at 873-874*, is misplaced; what matters is not only the effect of a regulation but also the reason for the regulation. As I explained in *Hodgson:*

"In cases involving abortion, as in cases involving the right to travel or the right to marry, the identification of the constitutionally protected interest is merely the beginning of the analysis. State regulation of travel and of marriage is obviously permissible even though a State may not categorically exclude nonresidents from its borders, *Shapiro v. Thompson, 394 U.S. 618, 631, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969)*, or deny prisoners the right to marry, *Turner v. Safley, 482 U.S. 78, 94-99, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987)*. But the regulation of constitutionally protected decisions, such as where a person shall reside or whom he or she shall marry, must be predicated on legitimate state concerns other than disagreement with the choice the individual has made. Cf. *Turner v. Safley, supra; Loving v. Virginia, 388 U.S. 1, 12, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967)*. In the abortion area, a State may have no obligation to spend its own money, or use its own facilities, to subsidize nontherapeutic abortions for minors or adults. See, *e. g., Maher v. Roe, 432 U.S. 464, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)*; cf. *Webster v. Reproductive Health Services, 492 U.S. 490, 508-511, 106 L. Ed. 2d 410, 109 S. Ct. 3040 (1989); id., at 523-524* (O'CONNOR, J., concurring in part and concurring in judgment). A State's value judgment favoring childbirth over abortion may provide adequate support for decisions involving such allocation of public funds, but not for simply substituting a state decision for an individual decision that a woman has a right to make for herself. Otherwise, the interest in liberty protected by the Due Process Clause would be a nullity. A state policy favoring

childbirth over abortion is not in itself a sufficient justification for overriding the woman's decision or for placing 'obstacles — absolute or otherwise — in the pregnant woman's path to an abortion.'" *497 U.S. at 435.*

[*920] [***743] Part of the constitutional liberty to choose is the equal dignity to which each of us is entitled. A woman who decides to terminate her pregnancy is entitled to the same respect as a woman who decides to carry the fetus to term. The mandatory waiting period denies women that equal respect.

IV

In my opinion, a correct application of the "undue burden" standard leads to the same conclusion concerning the constitutionality of these requirements. A state-imposed burden on the exercise of a constitutional right is measured both by its effects and by its character: [**2843] A burden may be "undue" either because the burden is too severe or because it lacks a legitimate, rational justification. n6

n6 The meaning of any legal standard can only be understood by reviewing the actual cases in which it is applied. For that reason, I discount both JUSTICE SCALIA's comments on past descriptions of the standard, see *post, 505 U.S. at 988-990* (opinion concurring in judgment in part and dissenting in part), and the attempt to give it crystal clarity in the joint opinion. The several opinions supporting the judgment in *Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965),* are less illuminating than the central holding of the case, which appears to have passed the test of time. The future may also demonstrate that a standard that analyzes both the severity of a regulatory burden and the legitimacy of its justification will provide a fully adequate framework for the review of abortion legislation even if the contours of the standard are not authoritatively articulated in any single opinion.

The 24-hour delay requirement fails both parts of this test. The findings of the District Court establish the severity of [*921] the burden that the 24-hour delay imposes on many pregnant women. Yet even in those cases in which the delay is not especially onerous, it is, in my opinion, "undue" because there is no evidence that such a delay serves a useful and legitimate purpose. As indicated above, there is no legitimate reason to require a woman who has agonized over her decision to leave the clinic or hospital and return again another day. While a general requirement that a physician notify her patients about the risks of a proposed medical procedure [***744] is appropriate, a rigid requirement that all patients wait 24 hours or (what is true in practice) much longer to evaluate the significance of information that is either common knowledge or irrelevant is an irrational and, therefore, "undue" burden.

The counseling provisions are similarly infirm. Whenever government commands private citizens to speak or to listen, careful review of the justification for that command is particularly appropriate. In these cases, the Pennsylvania statute directs that counselors provide women seeking abortions with information concerning alternatives to abortion, the availability of medical assistance benefits, and the possibility of child-support payments. §§ 3205(a)(2)(i)-(iii). The statute requires that this information be given to *all* women seeking abortions, including those for whom such information is clearly useless, such as those who are married, those who have undergone the procedure in the past and are fully aware of the options, and those who are fully convinced that abortion is their only reasonable option. Moreover, the statute requires physicians to inform all of their patients of "the probable gestational age of the unborn child." § 3205(a)(1)(ii). This information is of little decisional value in most cases, because 90% of all abortions are performed during the first trimester n7 when fetal age has less relevance than when the fetus nears viability. Nor can the information [*922] required by the statute be justified as relevant to any "philosophic" or "social" argument, *ante, 505 U.S. at 872,* either favoring or disfavoring the abortion decision in a particular case. In light of all of these facts, I conclude that the information requirements in § 3205(a)(1)(ii) and §§ 3205(a)(2)(i)-(iii) do not serve a useful purpose and thus constitute an unnecessary — and therefore undue — burden on the woman's constitutional liberty to decide to terminate her pregnancy.

n7 U. S. Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States 71 (111th ed. 1991).

[***LEdHR5C] [5C] [***LEdHR6C] [6C]Accordingly, while I disagree with Parts IV, V-B, and V-D of the joint opinion, n8 I join the remainder of the Court's opinion.

n8 Although I agree that a parental-consent requirement (with the appropriate bypass) is constitutional, I do not join Part V-D of the joint opinion because its approval of Pennsylvania's informed parental-consent requirement is based on the rea-

sons given in Part V-B, with which I disagree.

JUSTICE BLACKMUN, concurring in part, concurring in the judgment in part, and dissenting in part.

I join Parts I, II, III, V-A, V-C, and VI of the joint opinion of JUSTICES O'CONNOR, KENNEDY, and SOUTER, *ante*.

[**2844] Three years ago, in *Webster v. Reproductive Health Services, 492 U.S. 490, 106 L. Ed. 2d 410, 109 S. Ct. 3040 (1989)*, four Members of this Court appeared poised to "cast into darkness the hopes and visions of every woman in this country" who had come to believe that the Constitution guaranteed her the right to reproductive choice. *Id., at 557* (BLACKMUN, J., dissenting). See *id., at 499* (plurality opinion of REHNQUIST, C. J., joined by WHITE and KENNEDY, JJ.); *id., at 532* (SCALIA, J., concurring in part and concurring in judgment). All that remained between [***745] the promise of *Roe* and the darkness of the plurality was a single, flickering flame. Decisions since *Webster* gave little reason to hope that this flame would cast much light. See, *e. g., Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 524, 111 L. Ed. 2d 405, 110 S. Ct. 2972 (1990)* (BLACKMUN, J., dissenting). But now, just when so many expected the darkness to fall, the flame has grown bright.

[*923] I do not underestimate the significance of today's joint opinion. Yet I remain steadfast in my belief that the right to reproductive choice is entitled to the full protection afforded by this Court before *Webster*. And I fear for the darkness as four Justices anxiously await the single vote necessary to extinguish the light.

I

Make no mistake, the joint opinion of JUSTICES O'CONNOR, KENNEDY, and SOUTER is an act of personal courage and constitutional principle. In contrast to previous decisions in which JUSTICES O'CONNOR and KENNEDY postponed reconsideration of *Roe v. Wade, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973)*, the authors of the joint opinion today join JUSTICE STEVENS and me in concluding that "the essential holding of *Roe v. Wade* should be retained and once again reaffirmed." *Ante, 505 U.S. at 846*. In brief, five Members of this Court today recognize that "the Constitution protects a woman's right to terminate her pregnancy in its early stages." *Ante, 505 U.S. at 844*.

A fervent view of individual liberty and the force of *stare decisis* have led the Court to this conclusion. *Ante, 505 U.S. at 853*. Today a majority reaffirms that the Due Process Clause of the Fourteenth Amendment establishes "a realm of personal liberty which the government may not enter," *ante, 505 U.S. at 847* — a realm whose outer limits cannot be determined by interpretations of the Constitution that focus only on the specific practices of States at the time the Fourteenth Amendment was adopted. See *ante, 505 U.S. at 848-849*. Included within this realm of liberty is "'the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.'" *Ante, 505 U.S. at 851*, quoting *Eisenstadt v. Baird, 405 U.S. 438, 453, 31 L. Ed. 2d 349, 92 S. Ct. 1029 (1972)* (emphasis in original). "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are *central* to the [*924] liberty protected by the Fourteenth Amendment." *Ante, 505 U.S. at 851* (emphasis added). Finally, the Court today recognizes that in the case of abortion, "the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear." *Ante, 505 U.S. at 852*.

The Court's reaffirmation of *Roe's* central holding is also based on the force of *stare decisis*. "No erosion of principle going to liberty or personal autonomy has left *Roe's* central holding a doctrinal remnant; *Roe* [***746] portends no developments at odds with other precedent for the analysis of personal liberty; and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips." *Ante, 505 U.S. at 860-861*. Indeed, the Court acknowledges that *Roe's* limitation on state power could not be removed "without serious inequity to those who have relied upon it or significant damage to the stability of the society governed by [**2845] it." *Ante, 505 U.S. at 855*. In the 19 years since *Roe* was decided, that case has shaped more than reproductive planning — "an entire generation has come of age free to assume *Roe's* concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions." *Ante, 505 U.S. at 860*. The Court understands that, having "called the contending sides . . . to end their national division by accepting a common mandate rooted in the Constitution," *ante, 505 U.S. at 867*, a decision to overrule *Roe* "would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law." *Ante, 505 U.S. at 865*. What has happened today should serve as a model for future Justices and a warning to all who have tried to turn this Court into yet another political branch.

In striking down the Pennsylvania statute's spousal notification requirement, the Court has established a framework [*925] for evaluating abortion regulations that

responds to the social context of women facing issues of reproductive choice. n1 In determining the burden imposed by the challenged regulation, the Court inquires whether the regulation's "*purpose or effect* is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Ante, 505 U.S. at 878* (emphasis added). The Court reaffirms: "The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Ante, 505 U.S. at 894.* Looking at this group, the Court inquires, based on expert testimony, empirical studies, and common sense, whether "in a large fraction of the cases in which [the restriction] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion." *Ante, 505 U.S. at 895.* "A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it." *Ante, 505 U.S. at 877.* And in applying its test, the Court remains sensitive to the unique role of women in the decisionmaking process. Whatever may have been the practice when the Fourteenth Amendment was adopted, the Court observes, "women do not lose their constitutionally protected liberty when they marry. The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where **[***747]** that power is employed for the supposed benefit of a member of the individual's family." *Ante, 505 U.S. at 898.* n2

> n1 As I shall explain, the joint opinion and I disagree on the appropriate standard of review for abortion regulations. I do agree, however, that the reasons advanced by the joint opinion suffice to invalidate the spousal notification requirement under a strict scrutiny standard.
>
> n2 I also join the Court's decision to uphold the medical emergency provision. As the Court notes, its interpretation is consistent with the essential holding of *Roe* that "forbids a State to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." *Ante, 505 U.S. at 880.* As is apparent in my analysis below, however, this exception does not render constitutional the provisions which I conclude do not survive strict scrutiny.

[*926] Lastly, while I believe that the joint opinion errs in failing to invalidate the other regulations, I am pleased that the joint opinion has not ruled out the possibility that these regulations may be shown to impose an unconstitutional burden. The joint opinion makes clear that its specific holdings are based on the insufficiency of the record before it. See, *e. g., ante, 505 U.S. at 885-886.* I am confident that in the future evidence will be produced to show that "in a large fraction of the cases in which [these regulations are] relevant, [they] will operate as a substantial obstacle to a woman's choice to undergo an abortion." *Ante, 505 U.S. at 895.*

II

[*LEdHR6D]** [6D]Today, no less than yesterday, the Constitution and decisions of this Court require that a State's abortion restrictions be subjected **[**2846]** to the strictest judicial scrutiny. Our precedents and the joint opinion's principles require us to subject all non-*de-minimis* abortion regulations to strict scrutiny. Under this standard, the Pennsylvania statute's provisions requiring content-based counseling, a 24-hour delay, informed parental consent, and reporting of abortion-related information must be invalidated.

A

The Court today reaffirms the long recognized rights of privacy and bodily integrity. As early as 1891, the Court held, "no right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others . . . ." *Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891).* Throughout this century, this Court also has held that the fundamental right of privacy protects citizens against governmental intrusion **[*927]** in such intimate family matters as procreation, child-rearing, marriage, and contraceptive choice. See *ante, 505 U.S. at 847-849.* These cases embody the principle that personal decisions that profoundly affect bodily integrity, identity, and destiny should be largely beyond the reach of government. *Eisenstadt, 405 U.S. at 453.* In *Roe v. Wade*, this Court correctly applied these principles to a woman's right to choose abortion.

State restrictions on abortion violate a woman's right of privacy in two ways. First, compelled continuation of a pregnancy infringes upon a woman's right to bodily integrity by imposing substantial physical intrusions and significant risks of physical harm. During pregnancy, women experience dramatic physical changes and a wide range of health consequences. Labor and delivery pose additional health risks and **[***748]** physical demands. In short, restrictive abortion laws force women to endure physical invasions far more substantial than those this Court has held to violate the constitutional principle of bodily integrity in other contexts. See, *e. g., Winston v. Lee, 470 U.S. 753, 84 L. Ed. 2d 662, 105 S. Ct. 1611 (1985)* (invalidating surgical removal of bullet from mur-

der suspect); *Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952)* (invalidating stomach pumping). n3

n3 As the joint opinion acknowledges, *ante, 505 U.S. at 857,* this Court has recognized the vital liberty interest of persons in refusing unwanted medical treatment. *Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990).* Just as the Due Process Clause protects the deeply personal decision of the individual to *refuse* medical treatment, it also must protect the deeply personal decision to *obtain* medical treatment, including a woman's decision to terminate a pregnancy.

Further, when the State restricts a woman's right to terminate her pregnancy, it deprives a woman of the right to make her own decision about reproduction and family planning — critical life choices that this Court long has deemed central to the right to privacy. The decision to terminate or continue a pregnancy has no less an impact on a woman's life than decisions about contraception or marriage. *410 U.S.,* [*928] *at 153.* Because motherhood has a dramatic impact on a woman's educational prospects, employment opportunities, and self-determination, restrictive abortion laws deprive her of basic control over her life. For these reasons, "the decision whether or not to beget or bear a child" lies at "the very heart of this cluster of constitutionally protected choices." *Carey v. Population Services International, 431 U.S. 678, 685, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1977).*

A State's restrictions on a woman's right to terminate her pregnancy also implicate constitutional guarantees of gender equality. State restrictions on abortion compel women to continue pregnancies they otherwise might terminate. By restricting the right to terminate pregnancies, the State conscripts women's bodies into its service, forcing women to continue their pregnancies, suffer the pains [**2847] of childbirth, and in most instances, provide years of maternal care. The State does not compensate women for their services; instead, it assumes that they owe this duty as a matter of course. This assumption — that women can simply be forced to accept the "natural" status and incidents of motherhood — appears to rest upon a conception of women's role that has triggered the protection of the Equal Protection Clause. See, *e. g., Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724-726, 73 L. Ed. 2d 1090, 102 S. Ct. 3331 (1982); Craig v. Boren, 429 U.S. 190, 198-199, 50 L. Ed. 2d 397, 97 S. Ct. 451 (1976).* n4 The joint opinion recognizes that these assumptions about women's place in society "are no longer consistent with our [*929] understanding of the family, the individual, [***749] or the Constitution." *Ante, 505 U.S. at 897.*

n4 A growing number of commentators are recognizing this point. See, *e. g.*, L. Tribe, American Constitutional Law § 15-10, pp. 1353-1359 (2d ed. 1988); Siegel, Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection, *44 Stan. L. Rev. 261, 350-380 (1992);* Sunstein, Neutrality in Constitutional Law (With Special Reference to Pornography, Abortion, and Surrogacy), *92 Colum. L. Rev. 1, 31-44 (1992);* cf. Rubenfeld, The Right of Privacy, *102 Harv. L. Rev. 737, 788-791 (1989)* (similar analysis under the rubric of privacy); MacKinnon, Reflections on Sex Equality Under Law, *100 Yale L. J. 1281, 1308-1324 (1991).*

B

The Court has held that limitations on the right of privacy are permissible only if they survive "strict" constitutional scrutiny — that is, only if the governmental entity imposing the restriction can demonstrate that the limitation is both necessary and narrowly tailored to serve a compelling governmental interest. *Griswold v. Connecticut, 381 U.S. 479, 485, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965).* We have applied this principle specifically in the context of abortion regulations. *Roe v. Wade, 410 U.S. at 155.* n5

n5 To say that restrictions on a right are subject to strict scrutiny is not to say that the right is absolute. Regulations can be upheld if they have no significant impact on the woman's exercise of her right and are justified by important state health objectives. See, *e. g., Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 65-67, 79-81, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976);* (upholding requirements of a woman's written consent and recordkeeping). But the Court today reaffirms the essential principle of *Roe* that a woman has the right "to choose to have an abortion before viability and to obtain it without undue interference from the State." *Ante, 505 U.S. at 846.* Under *Roe*, any more than *de minimis* interference is undue.

Roe implemented these principles through a framework that was designed "to ensure that the woman's right to choose not become so subordinate to the State's interest in promoting fetal life that her choice exists in theory but not in fact," *ante, 505 U.S. at 872. Roe* identified two relevant state interests: "an interest in preserving and pro-

tecting the health of the pregnant woman" and an interest in "protecting the potentiality of human life." *410 U.S. at 162.* With respect to the State's interest in the health of the mother, "the 'compelling' point . . . is at approximately the end of the first trimester," because it is at that point that the mortality rate in abortion approaches that in childbirth. *Id., at 163.* With respect to the State's interest in potential life, "the 'compelling' point is at viability," because it is at that point that the **[*930]** fetus "presumably has the capability of meaningful life outside the mother's womb." *Ibid.* In order to fulfill the requirement of narrow tailoring, "the State is obligated to make a reasonable effort to limit the effect of its regulations to the period in the trimester during which its health interest will be furthered." *Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 434, 76 L. Ed. 2d 687, 103 S. Ct. 2481 (1983).*

In my view, application of this analytical framework is no less warranted than when it was approved by seven Members of this Court in *Roe*. Strict scrutiny of state limitations on reproductive choice still offers the most secure protection of the woman's right **[**2848]** to make her own reproductive decisions, free from state coercion. No majority of this Court has ever agreed upon an alternative approach. The factual premises of the trimester framework have not been undermined, see *Webster, 492 U.S. at 553* (BLACKMUN, J., dissenting), and the *Roe* framework is far more administrable, and far less manipulable, than the "undue burden" standard adopted by the joint opinion.

Nonetheless, three criticisms of the trimester framework continue to **[***750]** be uttered. First, the trimester framework is attacked because its key elements do not appear in the text of the Constitution. My response to this attack remains the same as it was in *Webster:*

> "Were this a true concern, we would have to abandon most of our constitutional jurisprudence. The 'critical elements' of countless constitutional doctrines nowhere appear in the Constitution's text . . . . The Constitution makes no mention, for example, of the First Amendment's 'actual malice' standard for proving certain libels, see *New York Times Co. v. Sullivan, 376 U.S. 254, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964).* . . . Similarly, the Constitution makes no mention of the rational-basis test, or the specific verbal formulations of intermediate and strict scrutiny by which this Court evaluates claims under the Equal Protection Clause. The reason is simple. Like the *Roe* framework, these **[*931]** tests or standards are not, and do not purport to be, rights protected by the Constitution. Rather, they are judge-made methods for evaluating and measuring the strength and scope of constitutional rights or for balancing the constitutional rights of individuals against the competing interests of government." *492 U.S. at 548.*

The second criticism is that the framework more closely resembles a regulatory code than a body of constitutional doctrine. Again, my answer remains the same as in *Webster:*

> "If this were a true and genuine concern, we would have to abandon vast areas of our constitutional jurisprudence. . . . Are [the distinctions entailed in the trimester framework] any finer, or more 'regulatory,' than the distinctions we have often drawn in our First Amendment jurisprudence, where, for example, we have held that a 'release time' program permitting public-school students to leave school grounds during school hours to receive religious instruction does not violate the Establishment Clause, even though a release-time program permitting religious instruction on school grounds does violate the Clause? Compare *Zorach v. Clauson, 343 U.S. 306, 96 L. Ed. 954, 72 S. Ct. 679 (1952),* with *Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County, 333 U.S. 203, 92 L. Ed. 649, 68 S. Ct. 461 (1948).* . . . Similarly, in a Sixth Amendment case, the Court held that although an overnight ban on attorney-client communication violated the constitutionally guaranteed right to counsel, *Geders v. United States, 425 U.S. 80, 47 L. Ed. 2d 592, 96 S. Ct. 1330 (1976),* that right was not violated when a trial judge separated a defendant from his lawyer during a 15-minute recess after the defendant's direct testimony. *Perry v. Leeke, 488 U.S. 272, 102 L. Ed. 2d 624, 109 S. Ct. 594 (1989).*
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> "That numerous constitutional doctrines result in narrow differentiations between similar circumstances does **[*932]** not mean that this Court has abandoned adjudication in favor of regulation." *492 U.S. at 549-550.*

The final, and more genuine, criticism of the trimester framework is **[***751]** that it fails to find the State's interest in potential human life compelling throughout pregnancy. No Member of this Court — nor for that matter, the Solicitor General, see Tr. of Oral Arg. 42 — has

ever questioned our holding in *Roe* that an abortion is not "the termination of life entitled to Fourteenth Amendment protection." *410 U.S. at 159.* [**2849] Accordingly, a State's interest in protecting fetal life is not grounded in the Constitution. Nor, consistent with our Establishment Clause, can it be a theological or sectarian interest. See *Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 778, 90 L. Ed. 2d 779, 106 S. Ct. 2169 (1986)* (STEVENS, J., concurring). It is, instead, a legitimate interest grounded in humanitarian or pragmatic concerns. See *ante, 505 U.S. at 914-915* (STEVENS, J., concurring in part and dissenting in part).

But while a State has "legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child," *ante, 505 U.S. at 846,* legitimate interests are not enough. To overcome the burden of strict scrutiny, the interests must be compelling. The question then is how best to accommodate the State's interest in potential human life with the constitutional liberties of pregnant women. Again, I stand by the views I expressed in *Webster:*

> "I remain convinced, as six other Members of this Court 16 years ago were convinced, that the *Roe* framework, and the viability standard in particular, fairly, sensibly, and effectively functions to safeguard the constitutional liberties of pregnant women while recognizing and accommodating the State's interest in potential human life. The viability line reflects the biological facts and truths of fetal development; it marks that threshold moment prior to which a fetus cannot survive separate from the [*933] woman and cannot reasonably and objectively be regarded as a subject of rights or interests distinct from, or paramount to, those of the pregnant woman. At the same time, the viability standard takes account of the undeniable fact that as the fetus evolves into its postnatal form, and as it loses its dependence on the uterine environment, the State's interest in the fetus' potential human life, and in fostering a regard for human life in general, becomes compelling. As a practical matter, because viability follows 'quickening' — the point at which a woman feels movement in her womb — and because viability occurs no earlier than 23 weeks gestational age, it establishes an easily applicable standard for regulating abortion while providing a pregnant woman ample time to exercise her fundamental right with her responsible physician to terminate her pregnancy." *492 U.S. at 553-554.* n6

n6 The joint opinion agrees with *Roe's* conclusion that viability occurs at 23 or 24 weeks at the earliest. Compare *ante, 505 U.S. at 860,* with *Roe v. Wade, 410 U.S. 113, 160, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973).*

[***LEdHR14D] [14D] [***LEdHR15D] [15D]*Roe's* trimester framework does not ignore the State's interest in prenatal life. Like JUSTICE STEVENS, *ante, 505 U.S. at 916,* I agree that the State may take steps to ensure that a woman's choice "is thoughtful and informed," *ante, 505 U.S. at 872,* and that "States are free to enact [***752] laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning." *Ante, 505 U.S. at 873.* But

> "serious questions arise . . . when a State attempts to persuade the woman to choose childbirth over abortion. *Ante, 505 U.S. at 878.* Decisional autonomy must limit the State's power to inject into a woman's most personal deliberations its own views of what is best. The State may promote its preferences by funding childbirth, by creating and maintaining alternatives to abortion, and by espousing the virtues of family; but it must respect [*934] the individual's freedom to make such judgments." *Ante, 505 U.S. at 916* (STEVENS, J., concurring in part and dissenting in part) (internal quotation marks omitted).

As the joint opinion recognizes, "the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it." *Ante, 505 U.S. at 877.*

In sum, *Roe's* requirement of strict scrutiny as implemented through a trimester framework should not be disturbed. No other approach has gained a majority, and no other is more protective of the woman's fundamental right. Lastly, no other approach properly accommodates the woman's [**2850] constitutional right with the State's legitimate interests.

C

[***LEdHR6E] [6E]Application of the strict scrutiny standard results in the invalidation of all the challenged provisions. Indeed, as this Court has invalidated virtually identical provisions in prior cases, *stare decisis* requires

that we again strike them down.

This Court has upheld informed-and written-consent requirements only where the State has demonstrated that they genuinely further important health-related state concerns. See *Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 65-67, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976).* A State may not, under the guise of securing informed consent, "require the delivery of information 'designed to influence the woman's informed choice between abortion or childbirth.'" *Thornburgh, 476 U.S. at 760,* quoting *Akron, 462 U.S. at 443-444.* Rigid requirements that a specific body of information be imparted to a woman in all cases, regardless of the needs of the patient, improperly intrude upon the discretion of the pregnant woman's physician and thereby impose an "'undesired and uncomfortable straitjacket.'" *Thornburgh, 476 U.S. at 762,* quoting *Danforth, 428 U.S. at 67, n.8.*

Measured against these principles, some aspects of the Pennsylvania informed-consent scheme are unconstitutional. [*935] While it is unobjectionable for the Commonwealth to require that the patient be informed of the nature of the procedure, the health risks of the abortion and of childbirth, and the probable gestational age of the unborn child, compare Pa. Cons. Stat. §§ 3205(a)(i)-(iii) (1990) with *Akron, 462 U.S. at 446, n.37,* I remain unconvinced that there is a vital state need for insisting that the information be provided by a physician rather than [***753] a counselor. *Id., at 448.* The District Court found that the physician-only requirement necessarily would increase costs to the plaintiff clinics, costs that undoubtedly would be passed on to patients. And because trained women counselors are often more understanding than physicians, and generally have more time to spend with patients, see App. 366-387, the physician-only disclosure requirement is not narrowly tailored to serve the Commonwealth's interest in protecting maternal health.

Sections 3205(a)(2)(i)-(iii) of the Act further requires that the physician or a qualified nonphysician inform the woman that printed materials are available from the Commonwealth that describe the fetus and provide information about medical assistance for childbirth, information about child support from the father, and a list of agencies offering adoption and other services as alternatives to abortion. *Thornburgh* invalidated biased patient-counseling requirements virtually identical to the one at issue here. What we said of those requirements fully applies in these cases:

> "The listing of agencies in the printed Pennsylvania form presents serious problems; it contains names of agencies that well may be out of step with the needs of the particular woman and thus places the physician in an awkward position and infringes upon his or her professional responsibilities. Forcing the physician or counselor to present the materials and the list to the woman makes him or her in effect an agent of the State in treating the woman and places his or her imprimatur upon both the materials and the list. All this is, or [*936] comes close to being, state medicine imposed upon the woman, not the professional medical guidance she seeks, and it officially structures — as it obviously was intended to do — the dialogue between the woman and her physician.
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> "The requirements . . . that the woman be advised that medical assistance benefits may be available, and that the father is responsible for financial assistance in the support of the child similarly are poorly [**2851] disguised elements of discouragement for the abortion decision. Much of this . . ., for many patients, would be irrelevant and inappropriate. For a patient with a life-threatening pregnancy, the 'information' in its very rendition may be cruel as well as destructive of the physician-patient relationship. As any experienced social worker or other counselor knows, theoretical financial responsibility often does not equate with fulfil.ment . . . . Under the guise of informed consent, the Act requires the dissemination of information that is not relevant to such consent, and, thus, it advances no legitimate state interest." *476 U.S. at 762-763* (citation omitted).

"This type of compelled information is the antithesis of informed consent," *id., at 764,* and goes far beyond merely describing the general subject matter relevant to the woman's decision. "That the Commonwealth does not, and surely would not, compel similar disclosure of every possible peril of necessary surgery or of simple vaccination, reveals the anti-abortion [***754] character of the statute and its real purpose." *Ibid.* n7

> n7 While I do not agree with the joint opinion's conclusion that these provisions should be upheld, the joint opinion has remained faithful to principles this Court previously has announced in examining counseling provisions. For example, the joint opinion concludes that the "information the State requires to be made available to the woman" must be "truthful and not misleading." *Ante, 505 U.S. at 882.* Because the State's information must be "cal-