



Consequences and Ethics of Abortion Restrictions In The US

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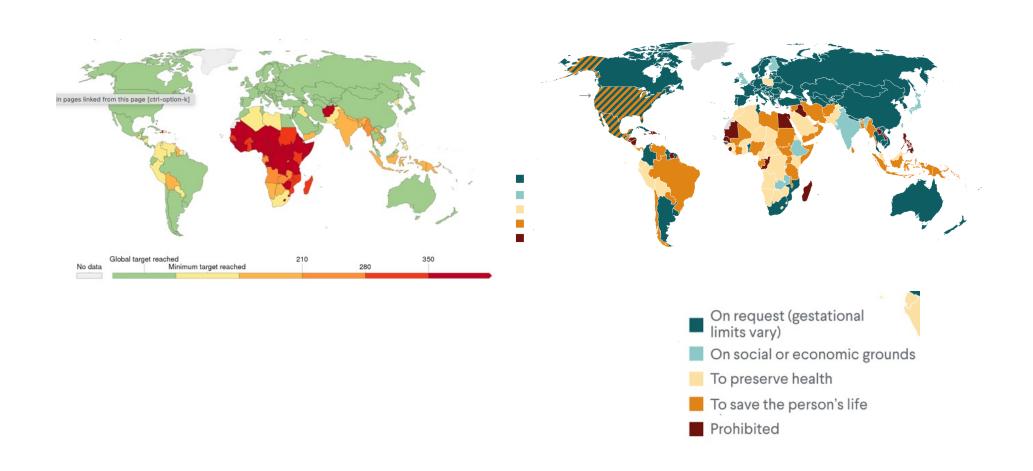
AOGOI Ian Donald Course Turin, Italy March 2024 Abortion and Maternal Mortality

Approximately 5-15% of maternal deaths worldwide are due to complications from unsafe abortions

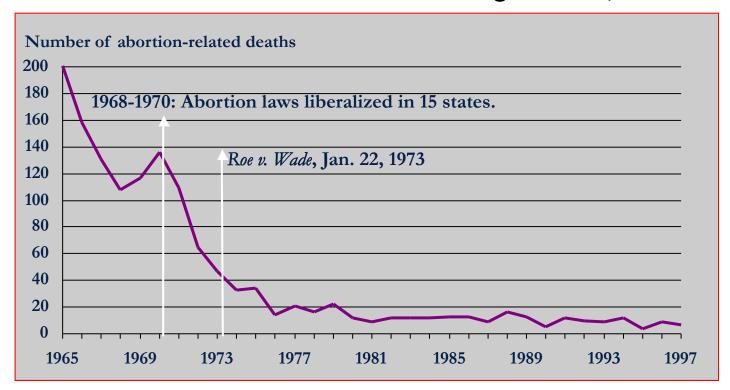
3 in 4 abortions are unsafe in countries where abortions are banned

Maternal Mortality

Abortion Access



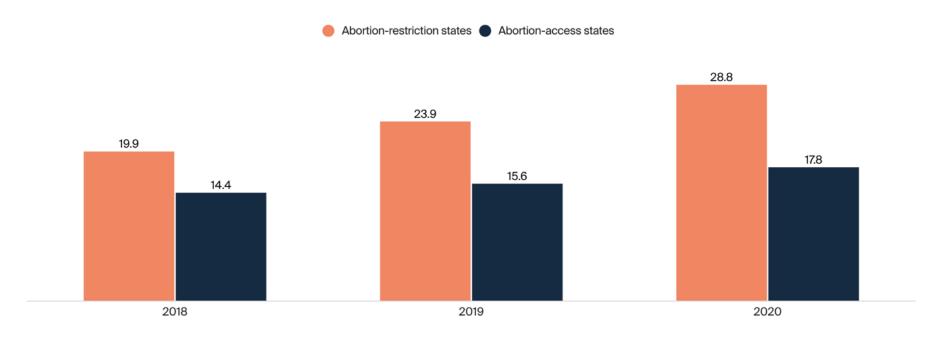
US maternal deaths from abortion after legalization, 1965-1997



Cates W, Rochat RW, Grimes DA, Tyler CW. Legalized abortion: effect on national trends in maternal mortality,

1940 through 1976. Am J Obstet Gynecol 1978;132:211-4.

Maternal Deaths per 100,000 Births, by State Abortion Policy, 2018–2020



Data: Centers for Disease Control and Prevention, "National Center for Health Statistics Mortality Data on CDC WONDER," last updated Dec. 22, 2021.

Source: Eugene Declercq et al., The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions (Commonwealth Fund, Dec. 2022). https://doi.org/10.26099/z7dz-8211

Abortion Law in Italy

- In Italy, abortion is regulated by Law 194, which was passed in 1978. According to this law, abortion is generally allowed **up to the 90th day** (end of the first trimester) of pregnancy for a broad range of reasons, including health, economic, social, or family circumstances.
- After the first trimester, abortions are permitted only if the mother's health is at risk or if the fetus has abnormalities.
- However, accessing abortion services can be challenging due to a high number of medical staff who refuse to carry out abortions, especially in regions with strong Catholic influences.
- Italian Law On Refusal: The law gives the option for health professionals to claim the right to refuse to perform abortion. If the health personnel demands to be conscientious objector, they have to declare it in advance.

In June 2022 The United States Supreme Court removed the federal constitutional right to abortion on June 24, 2022. This ruling overturned the landmark 1973 Roe v. Wade decision that had previously recognized women's constitutional right to abortion.

US supreme court overturns abortion rights, upending Roe v Wade

Biden calls ruling in pivotal case Dobbs v Jackson Women's Health Organization 'a tragic error'



Italy slowly erodes abortion access, riding US wave

An ascendant far right is building in obstacles at the regional level to getting abortions.

As of June 2022 there is no single Abortion Law in the United States

- **Federal law** is created at the national level, and applies to the entire nation (all 50 states and the District of Columbia), and U.S. territories. The U.S. Constitution forms the basis for federal law; it establishes government power and responsibility, as well as preservation of the basic rights of every citizen.
- **State law** is the law of each separate U.S. state and is applicable in that specific state. The state law applies to residents and visitors of the state, and also to business entities, corporations, or any organizations based or operating in that state.
- Federal laws apply to everyone in the United States. State and local laws apply to people who live or work in a particular state, commonwealth, territory, county, city, municipality, town, township or village.
- When a state law is in direct conflict with federal law, the federal law prevails. A state law
 can afford more rights to its residents than federal law, but is not meant to reduce or
 restrict the rights of a U.S. citizen.
- As of June 2022 each of the 50 US States have their own abortion law

- Since the United States Supreme Court overturned Roe v. Wade on June 24, 2022, the legal landscape of abortion rights in the United States has changed significantly.
- The decision effectively removed the federal constitutional protection of abortion rights, returning the power to regulate abortions to **individual states**.
- This has led to a diverse and complex array of outcomes across the country

Abortion Laws In The United States

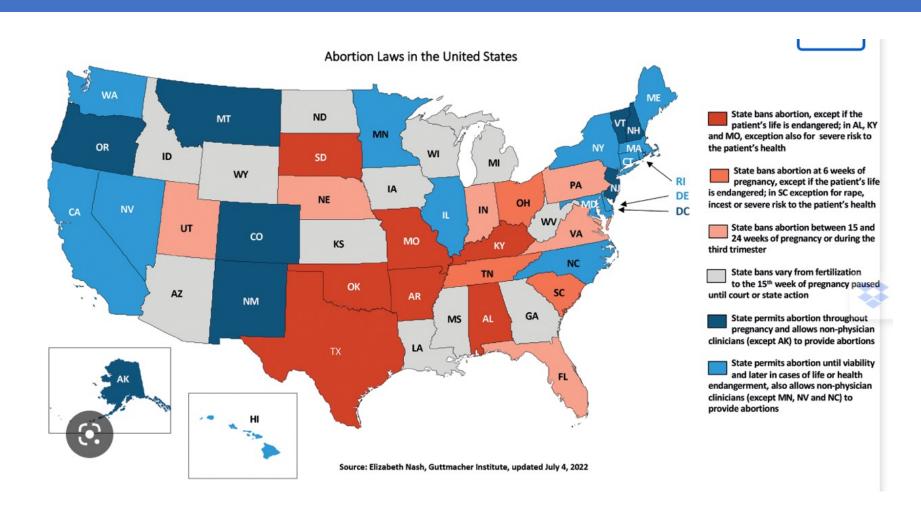


Figure 1

States with Abortion Bans and Restrictions with Exceptions for Life

Click on the buttons below to see information about other exceptions:

Health Rape/Incest Fatal Fetal Anomaly Contains Life Exception (22 states) No Ban Hover over state for details X X X X X X X X

X





X

X

X

X

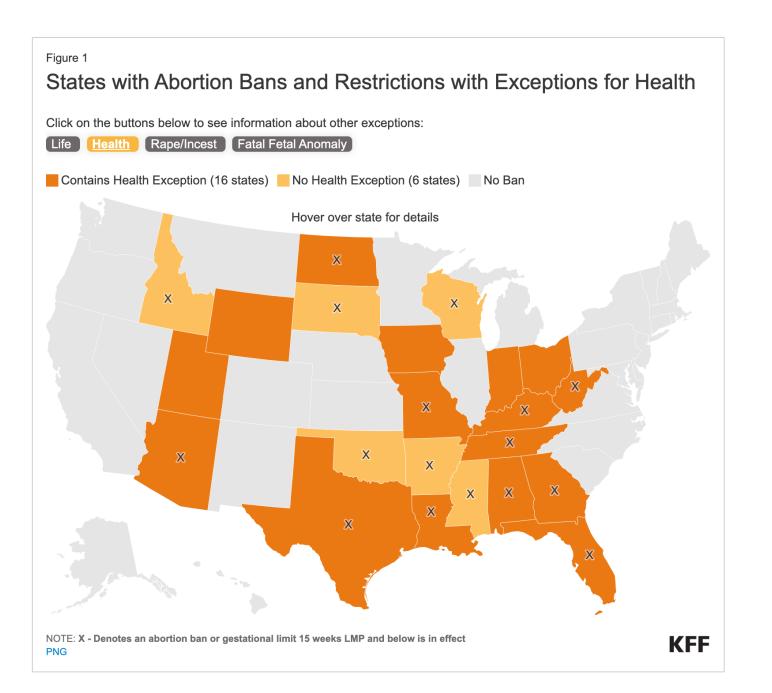
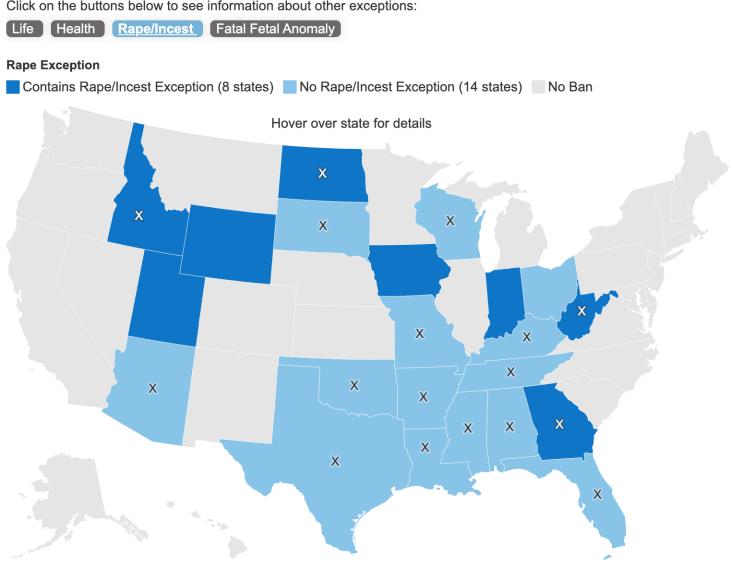


Figure 1

States with Abortion Bans and Restrictions with Exceptions for Rape or Incest

Click on the buttons below to see information about other exceptions:



NOTE: X - Denotes an abortion ban or gestational limit 15 weeks LMP and below is in effect **PNG**



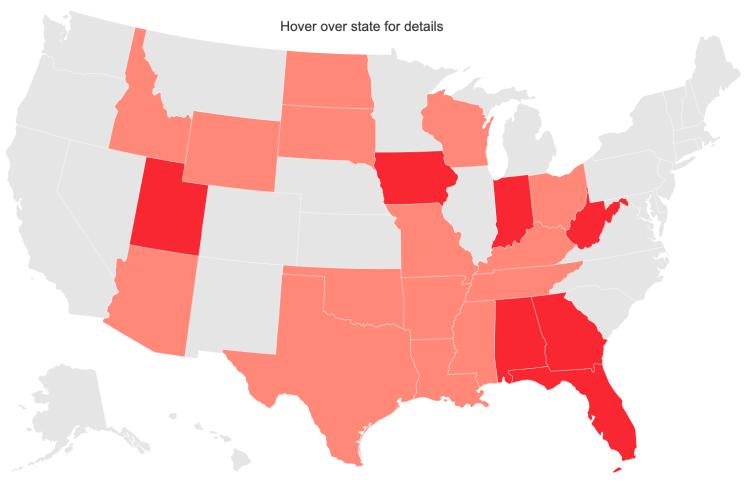
Figure 1

States with Abortion Bans and Restrictions with Exceptions for Fatal Fetal Anomalies

Click on the buttons below to see information about other exceptions:

Life Health Rape/Incest Fatal Fetal Anomaly

Contains Fatal Anomaly Exception (7 states) No Fatal Anomaly Exception (15 states) No Ban



NOTE: X - Denotes an abortion ban or gestational limit 15 weeks LMP and below is in effect PNG



Table 1

Language in health exceptions to abortion bans

State(s)	Health Exception	
Arizona, Florida, Ohio, Wyoming, Indiana	When there is a serious risk of substantial and irreversible impairment of a major bodily function.	
Kentucky (total ban and 6-week ban), Louisiana	To prevent serious, permanent impairment of a life-sustaining organ.	
Georgia	To prevent substantial and irreversible physical impairment of a major bodily function.	
Utah	When there is serious physical risk of substantial impairment of a major bodily function.	
Texas	When there is a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that poses a serious risk of substantial impairment of a major bodily function.	

KFF

United States

Texas top court rules against woman who sought abortion for medical emergency

By Brendan Pierson

December 12, 2023 2:48 AM EST · Updated 14 days ago







- Texas law does not allow abortions after 6 weeks unless the pregnant person has a "life-threatening" condition
- 3) "Medical emergency" means a lifethreatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.
- In this case the woman was 21 weeks pregnant with a fetus that had trisomy 18. The court did not consider this a "medical emergency".

October 2023

Clinical Opinion

ajog.org

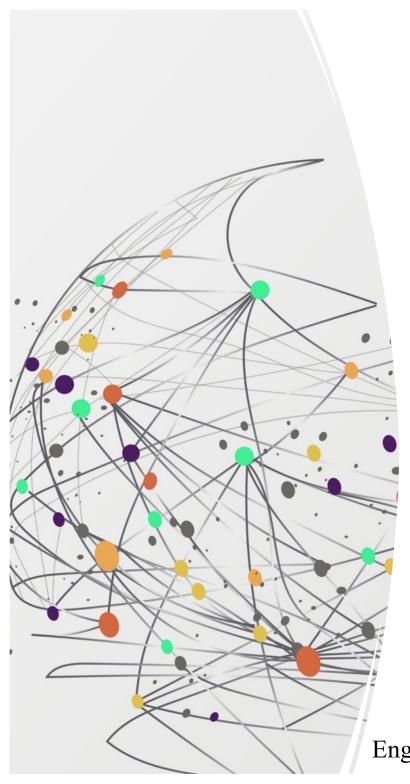
Addressing challenges related to the professional practice of abortion post-Roe

Frank A. Chervenak, MD; Jonathan D. Moreno, PhD; Renee McLeod-Sordjan, DNP, APRN, HEC-C; Eran Bornstein, MD; Adi Katz, MD; Susan L. Pollet, JD; Adriann Combs, DNP, NNP-BC; Monique De Four Jones, MD; Dawnette Lewis, MD; Gloria Bachmann, MD; Mollie Rebecca Gordon, MA, MD; Ashley Warman, MS, HEC-C; Amos Grünebaum, MD

Undue burdens created by the Texas Abortion Law for vulnerable pregnant women

Mollie R. Gordon, MD, MA; John Coverdale, MD, MEd; Frank A. Chervenak, MD; Laurence B. McCullough, PhD

- 1. In states where subsequent legislation has restricted or banned access to abortion services, physicians and trainees are prevented from providing ethically justified evidence-based care when patients with previable pregnancies are seeking an abortion.
- 2. Pregnant patients' vulnerabilities, stress, and the undue burden that they experience when prevented from acting in accordance with their reproductive decision making can evoke negative emotional consequences, including moral distress in clinicians.
- 3. Moral distress occurs when clinicians feel a moral compulsion to act a certain way but cannot do so because of external constraints, including being hindered by state laws that curtail practicing in line with professional standards on reproductive health care.
- 4. Moral distress has the potential to subvert prudent clinical judgment.



Obstetric ethics is sometimes represented by polarized views.

- One extreme asserts the rights of of the fetus as the overwhelming ethical consideration.
- Another extreme asserts the pregnant woman as the overwhelming ethical consideration.
- Both assertions are overly simplistic. Such oversimplification is called reductionism.

Engel G 1960; Chervenak FA, McCullough LB, Brent RL 2011

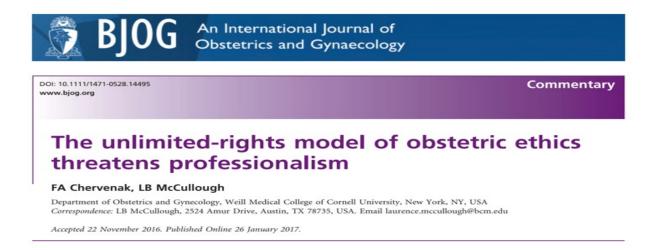
Why Rights-based Reductionism When Applied to Abortion Is Unprofessional In Obstetric Ethics

- Rights-based reductionism has an appealing simplicity
- Rights-based reductionism can be problematic when applied to the issue of abortion because it oversimplifies the complexities involved in the ethical debate.
- By exclusively focusing on the rights of the pregnant person or the rights of the fetus, it may disregard other relevant considerations such as bodily autonomy, women's reproductive health, and the overall well-being and circumstances of those involved including the fetus.
- This narrow focus on either the fetus or the pregnant person can neglect the broader societal and ethical implications surrounding the abortion debate.
- This reductionist approach fails to adequately account for the complexity and nuance inherent in the abortion debate.

What is Ethics?

- Ethics is the disciplined study of morality
- Morality concerns both right and wrong behavior
- i.e. what one should and should not do
- Good and bad, virtues vs vices
- Ethics in obstetrics deals with the same questions
- Ethics is an essential dimension of our professions' approach to abortion

Chervenak & McCullough 1985



- The unlimited-rights model should be replaced with the clinically more nuanced and applicable **professional responsibility model**, in which obstetricians have professional obligations to patients and in which patients' rights have an essential but not unlimited role.
- Non-directive shared decision making should not be universally used in obstetric practice.
- There is a role for directive shared decision making: when recommendations have a strong evidence base, obstetricians should make recommendations as professionally responsible obstetric practice.

The Professional Responsibility Model

- A clinically ethically sound approach to overcome the clashing forms of rights-based reductionism and zealotry and to address the professional practice of abortion.
- Describes the ethical and professional obligations that obstetricians and other healthcare providers have toward pregnant patients, fetuses, and the society at large.
- It provides a more balanced and nuanced approach to the abortion debate, avoiding the pitfalls of reductionism and zealotry, and allows both the rights of the woman and the obligations to pregnant and fetal patients to be considered alongside broader ethical, medical, and societal implications.
- Constructive and respectful dialogue is crucial in addressing diverse perspectives and finding common ground.
- Embracing the professional responsibility model enables professionals to manage abortion responsibly, thereby prioritizing patients' interests and navigating between absolutist viewpoints to find balanced ethical solutions.

TABLE 2

Three models of obstetrical ethics

Variable	Fetal rights reductionism model	Professional responsibility model	Pregnant woman's rights reductionism model
Pregnant woman	Pregnant woman's rights systematically secondary to fetal rights	Autonomy-based and beneficence obligations	Pregnant woman's rights systematically override fetal rights
Previable fetus	Fetal rights systematically override woman's rights	Beneficence-based obligations, if the status of patienthood is determined by the pregnant woman	Fetal rights systematically secondary to woman's rights
Viable fetus	Fetal rights systematically override woman's rights	Beneficence-based obligations	Fetal rights systematically secondary to woman's rights

Reprinted with permission from Chervenak et al.²³

Chervenak. Addressing challenges to the professional practice of abortion post-Roe. Am J Obstet Gynecol 2023.



What is Preventive Ethics?

- Preventive ethics is based on the recognition of the potential for ethical conflict in patient care.
- It adopts ethically justified strategies to prevent those conflicts from from occurring
- Chervenak & McCullough 1985

FIGURE

Print of the ship of Ulysses



The perilous trip of the ship of Ulysses between Scylla and Charybdis. https://www.alamy.com/stock-photo-the-six-headed-monster-scylla-and-the-whirlpool- charybdis-homers-odyssey-140641751. html.

Accessed May 9, 2023.

Chervenak. Addressing challenges to the professional practice of abortion post-Roe. Am J Obstet Gynecol 2023.

Three Core Ethical Concepts

Respect for the pregnant woman's autonomy

The fetus as a patient

Individual conscience of the OB/GYN



Autonomy

Autos Nomos

Self Law

The word 'autonomy' comes from the ancient Greek word αυτονομία providing the overarching, literal meaning of 'living by one's own laws'.

Respect for Autonomy in a Patient

As physicians we must accept that the patient has a perspective on her interests that is based on her values and beliefs, and that the patient should have the freedom to choose alternatives based on these values and beliefs.

Respect for
Autonomy in a
Pregnant
Patient

Empower pregnant patients with the information that they need to make informed and voluntary decisions.

Three Core Ethical Concepts

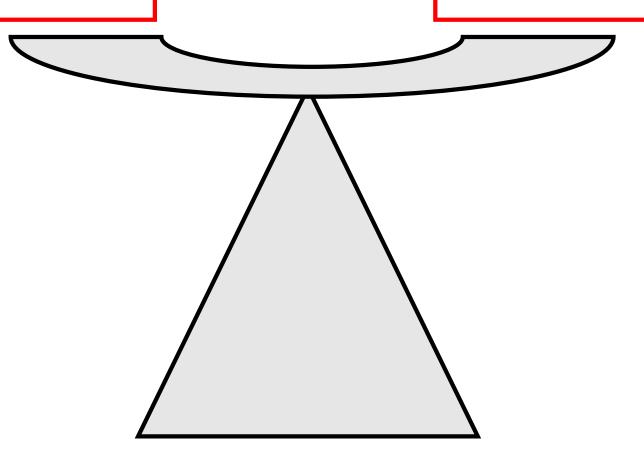
Respect for the pregnant woman's autonomy

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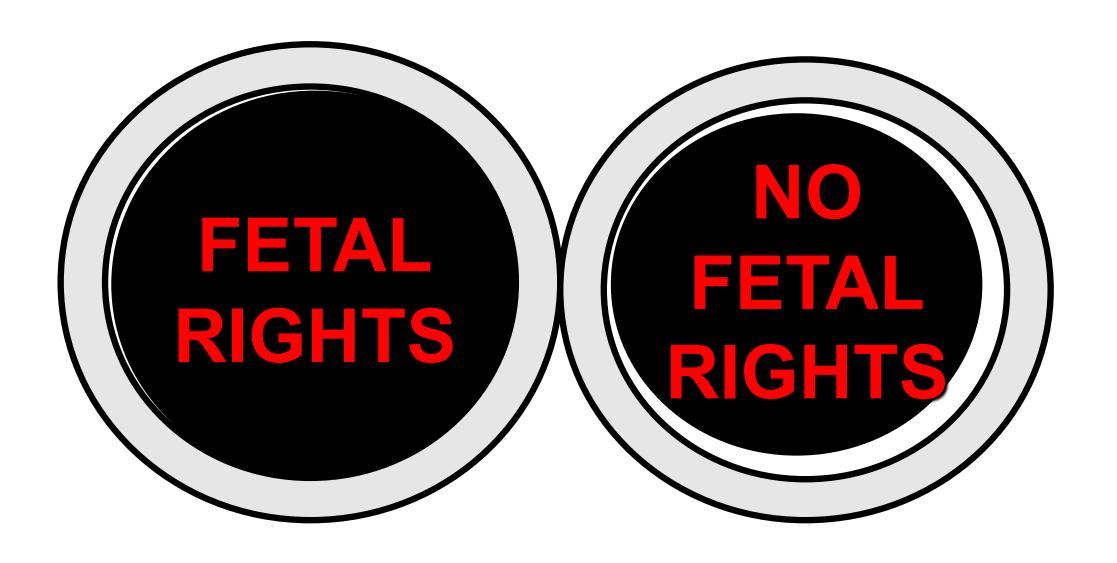
Maternal Interests

Fetal Interests



WHEN IS
THE FETUS
A PATIENT?

A patient is any recipient of health care services that are performed by healthcare professionals.



The Fetus As a Patient: Viability

- Viability: Reasonable chance of survival
- Viability depends on both biological and technological factors.
- No world-wide, uniform gestational age to define viability.
- US: 22-23 weeks and above

Chervenak FA, McCullough LB, J Perinat Med 1997;25:418-20

The US is the only country where some some states allow and practice abortion after viability

Status of abortion (gestational age by last menstrual period in wk)	States	No. of states
Banned with no exceptions for rape or incest.	Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin	11
Banned with exceptions for rape or incest.	Idaho, Indiana, North Dakota, West Virginia,	4
6 wk limit	Georgia	1
12 wk limit	Nebraska, North Carolina	2
15 wk limit	Florida, Arizona	2
18 wk limit	Utah	1
Ban blocked (eg, by State Supreme Court or judge)	lowa, Montana, Ohio, South Carolina, Wyoming	5
Legal before 22 wk	Kansas	1
Legal before 24 wk	California, Connecticut, New Hampshire, Massachusetts, Nevada, Pennsylvania	6
Legal before viability	Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Rhode Island, Washington	9
Legal before 26 wk and 6 days (before 3rd trimester)	Virginia	1
Legal before 27–28 wk	New York	1
Legal without gestational age limit	Alaska, Washington DC, Colorado, New Jersey, New Mexico, Oregon, Vermont	7

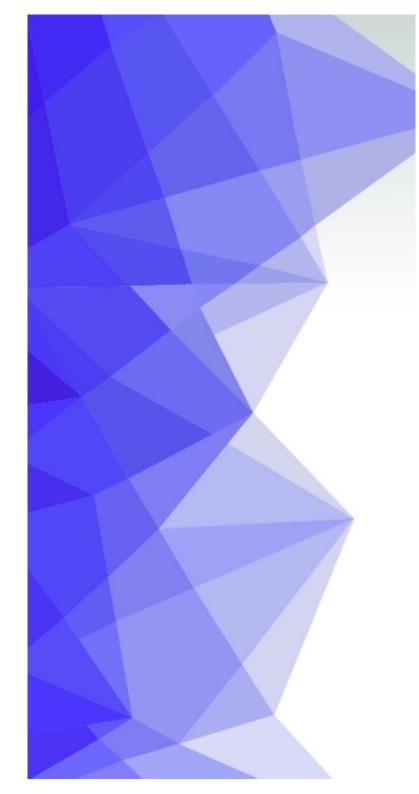
The Fetus As a Patient

Being a patient means that one is presented to the physician and there exist clinical interventions that are reliably expected to result in a greater balance of clinical goods over harms for the patient.

The woman's autonomy provides a link between the fetus (prior to birth) and the child (after birth)

The Fetus As a Patient The ethical principle that directs physicians to seek such clinical outcomes is beneficence.

A main advantage of the ethical concept of fetus as a patient: avoids divisive discourse of fetal "right to life."



Beneficence
Bene Facere
Good To Do

Requires the physician to assess objectively the various diagnostic and therapeutic options, and to implement those that protect and promote the interest of the patient by securing for the patient the greatest balance of clinical benefits over harms.

"The art of medicine lies in balancing probabilities."

Sir William Osler



The Fetus As a Patient Pre-Viable & Viable

- Beneficence-based obligations to the fetus exist when the fetus is a patient.
- The previable fetus is a patient solely as a function of the pregnant woman's autonomous decision to confer this status.
- The viable fetus is a patient when the pregnant woman presents to the physician and existing biomedical technology results in survival ex utero.
 - Regional variation in biomedical technology means regional variation in fetal viability.

The Fetus As a Patient Severe Fetal Anomalies

Severe fetal anomalies justifiably limit beneficence-based obligations to fetus

1. Certainty or very high probability of a correct diagnosis;

AND

2. Certainty or very high probability of either death or severe and irreversible deficit of cognitive developmental capacity as a result of the anomaly diagnosed.

Examples of Severe Fetal Anomalies

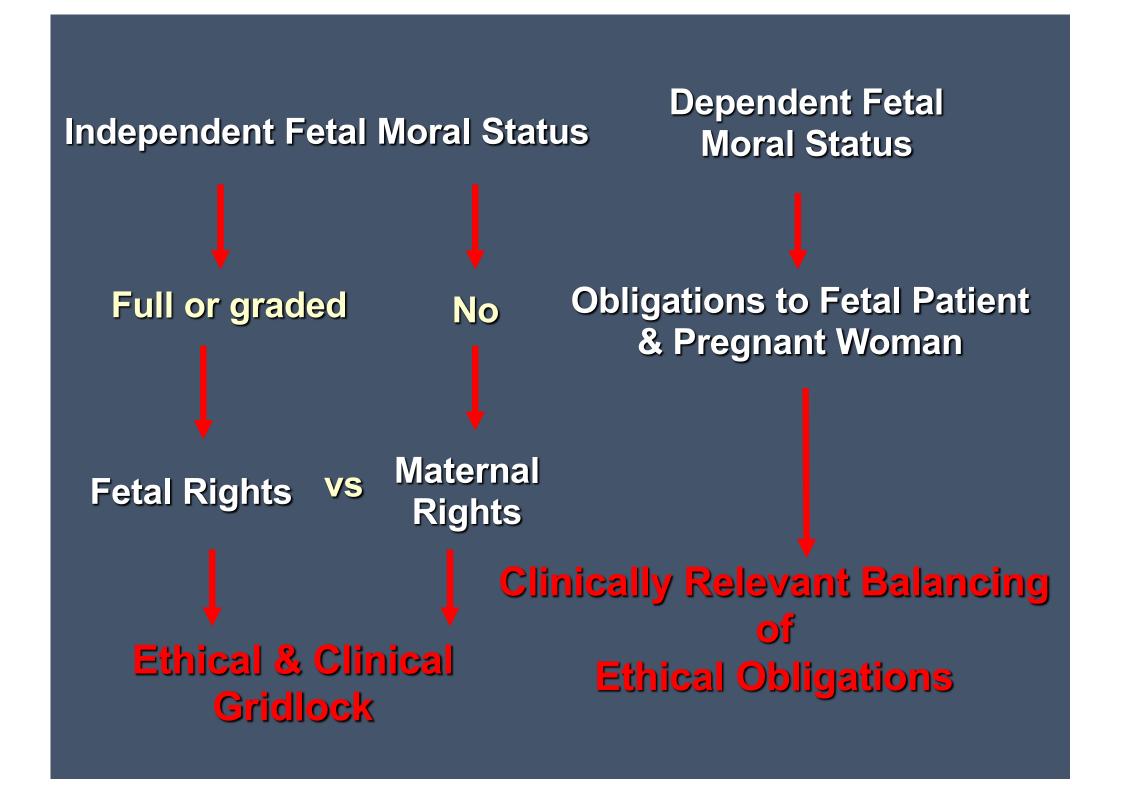
- Potter's syndrome/renal agenesis
- Anencephaly/acrania
- Thanatophoric dwarfism
- Trisomy 13
- Holoprosencephaly

Louisiana Department of Health:

§101. Conditions that shall deem an unborn child "Medically Futile" A. Pursuant to Act 545 of the 2022 Regular Session of the Louisiana Legislature, the Department of Health establishes the following exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child "medically futile" for purposes of R.S. Title 14, Chap. 1, Part V, Subpart A:

```
1. achondrogenesis;
2. acrania;
3. anencephaly;
4. arcadia:
5. body stalk anomaly;
6. campomelic dysplásia;7. craniorachischisis;
8. dysencephalia splanchnocystica (Meckel-Gruber syndrome);
9. ectopia cordis;
10. exencephaly;
11. gestational trophoblastic neoplasia;
12. holoprosencephaly;
13. hydrops fetalis;
14. iniencephaly;
15. perinatal hypophosphatasia;
16. osteogenesis imperfecta (type 2);
17. renal agenesis (bilateral);
18. short rib polydactyly syndrome;
19. sirenomelia;
20. thanatophoric dysplasia;
21. triploidy;
22. trisomy 13;
23. trisomy 16 (full);
24. trisomý 18;
25. trisomy; and
26. a profound and irremediable congenital or chromosomal anomaly existing in the unborn child that is incompatible with sustaining life after birth in reasonable medical judgment as certified by two physicians
that are licensed to practice in the State of Louisiana.
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From: https://ldh.la.gov/assets/oph/Rulemaking/noi/Medically Futile Pregnancies NOI Register.pdf



Three Core Ethical Concepts

Respect for the pregnant woman's autonomy

The fetus as a patient Pre/Post Viability

Individual conscience

Professional Conscience



Individual Conscience

Professional vs Individual Conscience

- The distinction between professional conscience and individual conscience for doctors is rooted in the context and basis of their moral and ethical judgments.
- **1. Professional Conscience**: This relates to the ethical standards, values, and principles that are specific to the medical profession. It involves adhering to established medical ethics, guidelines, and norms that govern the practice of medicine. It guides doctors in making decisions that are in line with the ethical standards of their profession, even if these decisions might conflict with their personal beliefs or preferences.
- **2. Individual Conscience**: In contrast, individual conscience is a personal moral compass that guides a person based on their own beliefs, values, and experiences. For doctors, this encompasses their personal ethics, religious beliefs, and moral convictions. Individual conscience is more subjective and varies greatly from one person to another. It influences how doctors make decisions in their personal lives and can sometimes come into conflict with professional expectations or requirements.

In practice, doctors must often navigate situations where their professional conscience might dictate a different course of action than their individual conscience. Balancing these can be challenging, especially in situations involving complex ethical dilemmas. The key is for doctors to remain aware of these distinct forms of conscience and strive to uphold their professional obligations while also respecting their personal moral values.

> Am J Obstet Gynecol. 2009 Dec;201(6):560.e1-6. doi: 10.1016/j.ajog.2009.05.057. Epub 2009 Sep 17.

An ethically justified practical approach to offering, recommending, performing, and referring for induced abortion and feticide

Frank A Chervenak ¹, Laurence B McCullough

> Am J Obstet Gynecol. 2008 Sep;199(3):232.e1-3. doi: 10.1016/j.ajog.2008.06.007. Epub 2008 Jul 29.

The ethics of direct and indirect referral for termination of pregnancy

Frank A Chervenak ¹, Laurence B McCullough

Affiliations + expand

PMID: 18667194 DOI: 10.1016/j.ajog.2008.06.007

The obstetrician's role should be based primarily on **professional conscience**, which is shaped by autonomy-based and beneficence-based obligations of the obstetrician to the pregnant and fetal patients, with important but limited constraints originating in individual conscience.

Induced Abortion and Feticide Ethical Framework

- Respecting individual conscience.
- Professional conscience governs every physician's obligations to his or her patient.
- Individual conscience originates in sources other than professional medical ethics (such as religion),
- It can justify restrictions on practice based on whether the patient's decisions create intolerable moral burdens on the physician's individual convictions, values, and beliefs.

Ethical Dimensions of Abortion

An adequate ethical analysis of abortion must take into account:

- Respect for the pregnant woman's autonomy
- Whether the fetus is a patient (NOT: whether the fetus is a person, has rights)
 - Before viability: Pregnant woman decides
 - After viability: Fetus is a patient
- Respect for individual conscience

Definitions from Oxford Languages · Learn more



noun

<u>fanatical</u> and <u>uncompromising</u> pursuit of religious, political, or other <u>ideals</u>; fanaticism. "nations where religious zealotry had gradually increased"

Dictionary

Definitions from Oxford Languages · Learn more



zeal·ot

noun

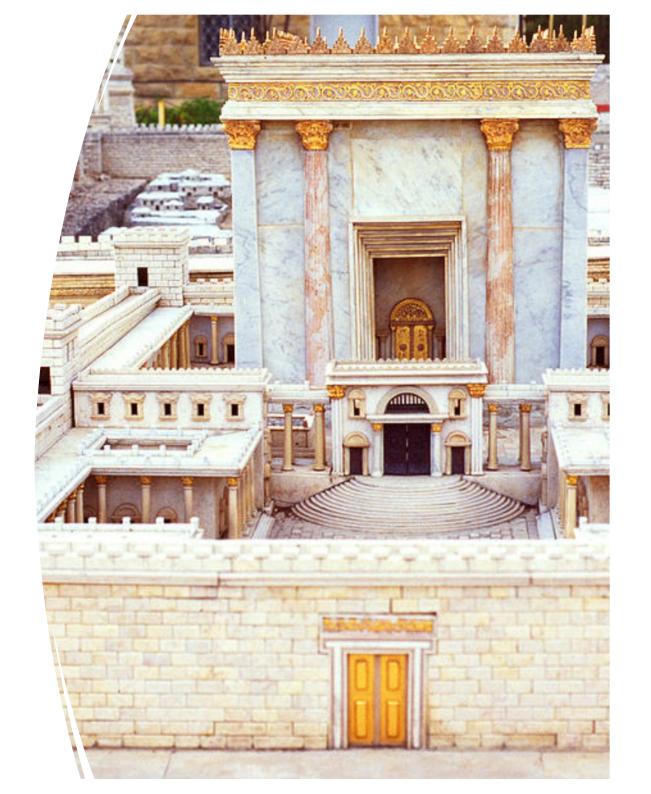
1. a person who is <u>fanatical</u> and <u>uncompromising</u> in pursuit of their religious, political, or other <u>ideals</u>.

Similar: fanatic enthusiast extremist radical diehard activist militant

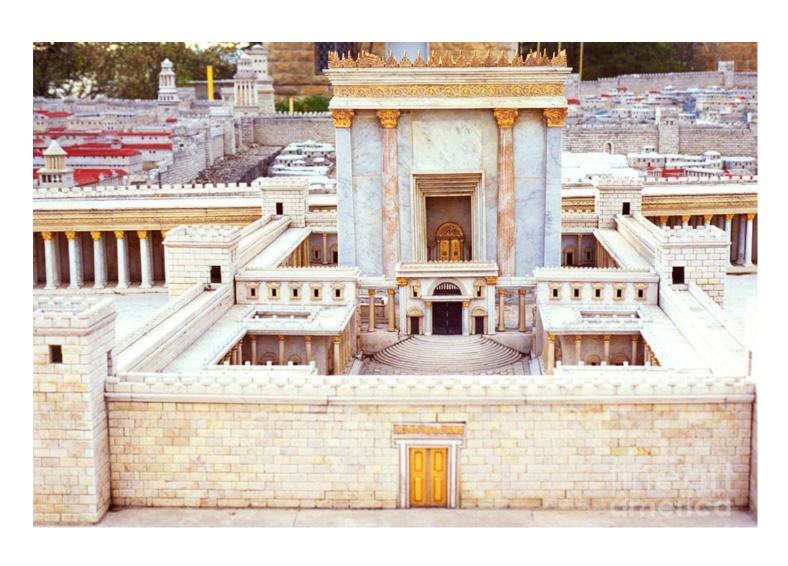
2. **HISTORICAL** a member of an ancient Jewish <u>sect</u> that aimed at a world Jewish <u>theocracy</u> and <u>resisted</u> the Romans until AD 70.

Who were the Zealots?

- The Zealots were a political movement in 1st-century Second Temple Judaism which sought to incite the people of Judea Province to rebel against the Roman Empire and expel it from the Holy Land by force of arms, most notably during the First Jewish–Roman War (66–70).
- In the Talmud, the Zealots are condemned for their aggression, their unwillingness to compromise to save the survivors of besieged Jerusalem, and their blind militarism against the rabbis' opinion to seek treaties for peace.
- The Zealots are further blamed for having contributed to the demise of Jerusalem and the Second Temple, and of ensuring Rome's retributions and stranglehold on Judea.



Jerusalem 70 AD Herod's Temple, Temple Mount



Pope Urban II and the Crusaders (Zealots)

- Pope Urban II (Latin: Urbanus II;
 c. 1035 29 July 1099) was the head of the Catholic Church and ruler of the Papal States from 12 March 1088 to his death.
- He is best known for convening the Council of Clermont which ignited the series of Christian conquests known as the Crusades.
- Estimates of dead due to the crusades range from 3-9,000,000 or up to 5% of the world population





Thirty Years' War 1618-1648 (Zealots)

- One of the longest and most destructive conflicts in European history, lasting from 1618 to 1648. Fought primarily in Central Europe, an estimated 4.5 to 8 million soldiers and civilians died as a result of battle, famine, and disease, while some areas of what is now modern Germany experienced population declines of over 50-60%.
- A war as a continuation of the religious struggle between Catholics and Protestants initiated by the 16th-century Reformation within the Holy Roman Empire.
- Disease and famine took the lion's share of the death toll. Estimates suggest that 20% of Europe's people perished, with some areas seeing their population fall by as much as 60%





Where major religious groups stand on abortion

BY DAVID MASCI

Major religious groups' positions on abortion

Opposes abortion rights, with few or no exceptions

- African Methodist Episcopal Church
- · Assemblies of God
- · Roman Catholic Church
- Church of Jesus Christ of Latter-day Saints
- Hinduism
- Lutheran Church-Missouri Synod
- Southern Baptist Convention

Supports abortion rights, with some limits

- · Episcopal Church
- Evangelical Lutheran Church in America
- United Methodist Church

Supports abortion rights, with few or no limits

- Conservative Judaism
- Presbyterian Church (U.S.A.)
- Reform Judaism
- Unitarian Universalist
- United Church of Christ

No clear position

- Islam
- Buddhism
- · National Baptist Convention
- Orthodox Judaism

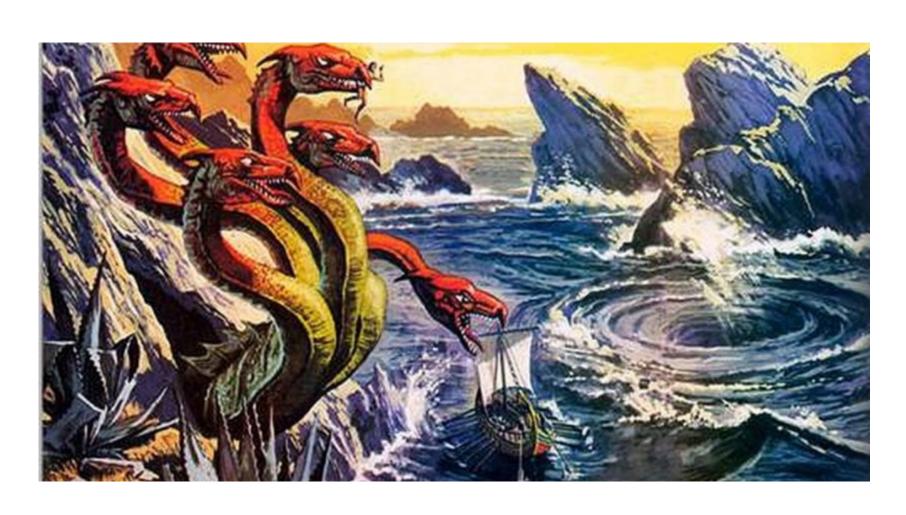
Source: Pew Research Center review of outside literature

PEW RESEARCH CENTER

Abortion is still a difficult, contentious and even unresolved issue for some religious groups.

The Challenge For Professionalism Is To Steer Between Absolute Maternal and Absolute Fetal Rights

Scylla & Charybdis: Choosing The Lesser Evil







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