

No. 19-1392

In The
Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF
THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

**AMICUS CURIAE BRIEF OF JEWISH PRO-LIFE
FOUNDATION, THE COALITION FOR
JEWISH VALUES, RABBI YAKOV DAVID COHEN,
RABBI CHANANYA WEISSMAN, AND BONNIE
CHERNIN, (PRESIDENT, JEWISH LIFE LEAGUE)
ON THE MERITS IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI*¹

The Jewish Pro-Life Foundation promotes life-saving solutions to unplanned pregnancy by providing the Jewish community with much needed pro-life education, Jewish-friendly pregnancy care and adoption referrals, and healing after the terrible trauma of abortion.

The Coalition for Jewish Values (CJV) is a charity incorporated in the State of Maryland and operating pursuant to 26 U.S.C. § 501(c)(3). CJV represents over 1,500 traditional, Orthodox rabbis and advocates for classical Jewish ideas and standards in matters of American public policy.

Rabbi Yakov David Cohen is the founder and director of Institute of Noahide Code (www.Noahide.org). He received his Bachelor's Degree at the Rabbinical College of America and was ordained Dayan at the United Lubavitcher Yeshiva NY. He is a Renowned Talmudic scholar and Dayan-Jewish Judge.

Rabbi Chananya Weissman received his rabbinic ordination from Rabbi Isaac Elchanan Theological Seminary (RIETS) and received an M.A. in Jewish Education from Azrieli Graduate School of Jewish

¹ Pursuant to Supreme Court Rules 37.3 and 37.6, all parties have provided written consent to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

Education & Administration. He is the author of hundreds of articles and seven books on a wide range of subjects, including *Tovim Hashnayim: A Study of the Role and Nature of Man and Woman*, a scholarly work based on primary Torah sources.

Bonnie Chernin is Founder and President of the Jewish Life League and serves on the Board of Directors of the Jewish Pro-Life Foundation. The Jewish Life League maintains that human life, both before and after birth, is sacred and that the pro-choice position of some Jewish organizations is antithetical to the Jewish faith. She is a Grief Recovery Method Specialist and a Certified Professional Coach assisting women in achieving their life and career goals.

Amici are Jewish religious leaders and organizations who agree that legal abortion in America is an egregious wrong that must be rectified. Jewish law prohibits abortion and Judaism obligates us to protect innocent life in the womb. The views of other religious groups have been repeatedly presented to the Court. This pleading to the Court is *Amici's* attempt to rescue innocent children in the womb from execution, as commanded in our Bible, Proverbs 24:11-12: "*Rescue those being led away to death; hold back those staggering toward slaughter. If you say, 'But we knew nothing about this', does not He who weighs the heart perceive it? Does not He who guards your life know it? Will He not repay everyone for what they have done?*"



SUMMARY OF ARGUMENT

Judaism has a strong legal tradition of protecting human life and prohibiting the murder of “infant life”² in the womb. Pregnancy and childbearing are considered religious and social responsibilities, making it incumbent upon Jews to protect the safety and health of both mother and child. Jewish doctrine also recognizes that in very rare cases the infant life in the womb may pose a serious threat to the mother’s life, and in this rare instance a termination is permissible.³

This very narrow exception to the prohibition of abortion in Judaism was biblically justified for a breech birth. Life threatening situations now occur in less than 1% of all pregnancies, making this exception almost inapplicable.

Abortion is antithetical to Torah principles. The act of abortion, and the industry that promotes and benefits financially from it, violates all Jewish ethics and morals.

The history of Judaism includes many existential threats to Jewish life in the form of state sponsored mass murder. This makes us especially sensitive to the plight of the child in the womb, whose protection under

² *Gonzales v. Carhart*, 550 U.S. 124, at 159 (2007) hereafter *Gonzales*.

³ Rotzeach uShmirat Nefesh—Chapter One. No. 9. https://www.chabad.org/library/article_cdo/aid/1088917/jewish/Rotzeach-uShmirat-Nefesh-Chapter-One.htm

the law was completely abrogated by *Roe v. Wade*, *Doe v. Bolton* and *Planned Parenthood v. Casey*.

This tragic human rights violation must be remedied. The Mississippi law in this case seeks to protect the God-given right to life for babies of 15 weeks gestation and beyond. Yet, most significant developmental milestones occur during the first eight weeks following conception. A baby's heart beats at 22 days, and her brainwaves can be measured at 6 weeks. At 9 weeks all internal organs are present and the baby is sensitive to touch.⁴

As early as 8 weeks, the "infant"⁵ feels real physical pain during an abortion.⁶ This is much sooner than the 15-week issue before the Court, a gestational age when the pain felt by the baby must surely be considered. Jeremiah 22:3 admonishes us to avoid causing pain and death to the powerless: "*Do what is right and just; rescue the wronged from their oppressors; do nothing wrong or violent to the stranger, orphan or widow; don't shed innocent blood in this place.*"

Science has advanced a great deal since 1973 when *Roe v. Wade* and *Doe v. Bolton* were decided. A new human being is formed at the moment of

⁴ Endowment for Human Development. Prenatal Summary. <https://www.ehd.org/prenatal-summary.php>

⁵ *Gonzales* 159, 160.

⁶ Expert Tells Congress Unborn Babies Can Feel Pain Starting at 8 Weeks. Ertelt, Steven. May 23, 2013. LifeNews. <https://www.lifenews.com/2013/05/23/expert-tells-congress-unborn-babies-can-feel-pain-starting-at-8-weeks/>

conception, a human being that never existed and will never exist again. This Court has a providential opportunity to correct its misguided error of 1973. The Jewish concept of Teshuvah allows for Heavenly forgiveness of sins against the most vulnerable among us. *Amici* implore the Court to study our arguments in this filing and thereby find the moral authority and conviction to overturn *Roe*, *Doe* and *Casey*. Indeed, to apply the protective elements of the 14th Amendment of the Constitution to all children.

◆

ARGUMENT

I. Judaism Is The Original Pro-Life Religion. It Was The First Religion In Human History To Sanctify Human Life From Conception To Natural Death And To Prohibit Child Sacrifice.

Judaism has a strong legal tradition of protecting human life and prohibiting the murder of innocents. Jewish law and tradition emphasize and support the moral right to life for all human beings at every stage of development based on the understanding that all people are created in the image of God; therefore, each of us has intrinsic value and worth with a destiny to fulfill God's vision for humanity on Earth. Psalm 139:13-16 reveals this: "*For you created my inmost being: you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made . . . My frame was not hidden from you when I was made in the secret place. When I was woven together in the*

depths of the earth, your eyes saw my unformed body. All the days ordained for me were written in your book before one of them came to me.”

Rights in the Jewish tradition are entitlements given by God through the Torah. A right entails a duty not to interfere with the rights-holder’s exercise of her or his right, or a duty to actively save anyone from having their right violated. Duties are commanded (*mitzvot*) to enforce legitimate rights. Hence a baby, from the moment of conception, has the right not to be prevented from continuing to live and grow in utero, and to be nurtured there.⁷ All of us who are able to do so have the duty to enforce this right of the child in the womb: Leviticus 19:16: “*Do not stand idly by when your neighbor’s life is at stake.*” Pro-abortion groups “support every woman’s legal right to make decisions about and have control over her own body.” While this is true about a number of decisions, nobody has the moral right to kill another human person. In fact, the child in the womb is a separate individual from the mother with a different genetic code, often a different blood type or gender. The child in the womb may not even have any of the eventual receiving mother’s DNA, or race in cases of in vitro fertilization (IVF). According to the International Covenant on Civil and Political

⁷ Jewish Pro-Life Foundation Response to National Council of Jewish Women. Jewish Pro-Life Foundation. July 27, 2020. <https://jewishprolifefoundation.org/pro-life-blog/f/jplf-response-to-ncejw>

Rights: Article 6.5—a pregnant woman cannot be executed.⁸

The Almighty gives clear instructions on the life issue in Deuteronomy 30:19: *“This day I call the heavens and the earth as witnesses against you that I have set before you life and death, blessings and curses. Now choose life, so that you and your children may live.”*

Judaism considers abortion to be murder. One of the most prolific and influential Torah scholars in the history of Judaism, rabbi, legal authority, physician and philosopher Moses ben Maimon, referred to as Maimonides, declared in his compilation of Jewish law, the Mishneh Torah: *“The definition of murder according to the Noahide⁹ Laws includes a person ‘who kills even one unborn in the womb of its mother,’ and adds that such a person is liable for the death penalty.”*¹⁰

The Talmud¹¹ (Sanhedrin 57b) says that an unborn child is included in the Noahide prohibition of

⁸ Sentenced to death when pregnant. <https://law.stackexchange.com/questions/3495/sentenced-to-death-when-pregnant>. See also Cornell Center on the Death Penalty Worldwide. In almost every country in the world, it is illegal to execute a pregnant woman. Of the 92 countries that retain the death penalty, 83 have passed laws prohibiting the execution of pregnant women.

⁹ Pertaining to Seven Laws of the Noahide Code. <http://noahide.org/sevenlaws/> These laws apply to all humans, not just Jews.

¹⁰ Abortion and Judaism. The Noahide prohibition on abortion. https://en.wikipedia.org/wiki/Judaism_and_abortion

¹¹ What Is the Talmud? Definition and Comprehensive Guide. Chabad.org. https://www.chabad.org/library/article_cdo/aid/3347866/jewish/What-Is-the-Talmud-Definition-and-Comprehensive-Guide.htm

bloodshed that is learned from Genesis 9:6-7: (from a direct translation of the original text), “*He who spills the blood of man within man shall have his blood spilt for in the image of God made He man. And you, be fruitful, and multiply; swarm in the earth, and multiply therein.*”¹² The Talmud interprets “the blood of man in man” to include a fetus, which is the blood of man in man. Things that are prohibited under the Noahide laws are also prohibited to Jews.¹³

Clearly, the Jewish religion prohibits child sacrifice, the modern day version being abortion, as stated in the Torah:

Leviticus 18:21: “*Do not give any of your children to be sacrificed to Molek, for you must not profane the name of your God. I am the Lord.*”

Psalms 106:35-38: “*They mingled with the nations and adopted their customs. They worshiped their idols, which became a snare to them. They sacrificed their sons and their daughters to false gods. They shed innocent blood, the blood of their sons and daughters, whom they sacrificed to the idols of Canaan, and the land was desecrated by their blood.*”

¹² Abortion in Halakhic Literature. J. David Bleich. Contemporary Halakhic Problems Vol.1 KTAV Publishing House. 1977. pp. 330-331. <https://drive.google.com/file/d/1RgE1RnuQvB4hiCav7123LqOK3MuA9--/view?usp=sharing>

¹³ Ibid.

Rabbinical opinion on the issue of abortion in Judaism includes that of the supreme halakhic¹⁴ authority in modern times, **Rav Moshe Feinstein**, who stated, “Not only are Jews prohibited from having an abortion, but they are prohibited from assisting non-Jews from having an abortion, too. According to halacha, abortion is prohibited for non-Jews; it’s actually a capital crime. A Jewish doctor may not perform an abortion even if it would result in antipathy towards Jews.” (Igros Moshe, Choshen Mishpat 2:73:8). In responsum 69, Rav Moshe not only categorizes abortion as bloodshed; he unequivocally warns against relying on an erroneous *heter* (decision)¹⁵ for aborting babies with physical abnormalities.¹⁶

Additional rabbinical authority declaring protections for children in the womb follows:

Rav Joseph B. Soloveitchik

“I consider the society of today as insane . . . I read from the press that in Eretz Yisrael [Land of Israel] they permit abortions now! Sapir [Pinchas Sapir,

¹⁴ Refers to Jewish legal code. What Is Halakhah (Halachah)? Jewish Law. Posner, Menachem. https://www.chabad.org/library/article_cdo/aid/4165687/jewish/What-Is-Halakhah-Halachah-Jewish-Law.htm

¹⁵ Loophole in the law. How does “getting a heter” work? <https://judaism.stackexchange.com/questions/56224/how-does-getting-a-heter-work>

¹⁶ The Halakhic Debate on Abortion Between Moshe Feinstein and Eliezer Waldenberg. p.7. <https://drive.google.com/file/d/1kwN0eLWj8VS2ropFLEjKD32voGuxdpXB/view?usp=sharing>

Israeli Minister of Finance] comes to the U.S. and asks that 60,000 boys and girls should leave the U.S. and settle in Eretz Yisrael. When a child is born, it's also immigration to Eretz Yisrael, and yet you murder the children." . . . "And if you kill the fetus, a time will come when even infants will be killed . . . The mother will get frightened after the baby will be born . . . and the doctor will say her life depends upon the murder of the baby. And you have a word, mental hygiene, whatever you want you can subsume under mental hygiene . . . And there is now a tendency for rabbis in the U.S. to march along with society, otherwise they'll be looked upon as reactionaries." In 1975, Rabbi Joseph Soloveitchik said: "to me it is something vulgar, this clamor of the liberals that abortion be permitted."¹⁷

Rabbi J. David Bleich

"A Jew is governed by such reverence for life that he trembles lest he tamper unmindfully with the greatest of all divine gifts, the bestowal or withholding of which is the prerogative of God alone. Although he be master over all within the world, there remain areas where man must fear to tread, acknowledging the limits of his sovereignty and the limitations of his understanding. In the unborn child lies the mystery and enigma of existence. Confronted by the miracle of life

¹⁷ "You Murder the Children": Rav Soloveitchik on Abortion. Menachem Ben-Mordechai. The Jewish Press. <https://www.jewishpress.com/blogs/a-banner-raised-high/you-murder-the-children-rav-soloveitchik-on-abortion/2013/09/23/>

itself, man can only draw back in silence before the wonder of the Lord.”¹⁸

Rabbi David Novak

“At this point I would ask my fellow Jewish ethicists, especially the traditionalist ones: Does our reverence for human life as the image of God not require that we treat every human life, even the miniscule human life of the newly conceived embryo, with what the Jewish tradition calls ‘human dignity’ (*kvod ha-beriyot*)? Surely we are not obligated or even permitted to kill a human life, however prehuman it looks, for the sake of someone else’s therapeutic needs—that is for the sake of somebody to whose life the embryo is not a direct threat. We certainly are not obligated or even permitted to kill an embryo for the more indirect benefit of the advancement of possible helpful scientific information. I believe that we are neither obligated nor permitted to do so. I believe that we are prohibited from doing so. We can discover that prohibition (*issur*) in philosophy and thus argue it to anyone, anywhere, at any time. The argument need not be confined to persons who are required to live according to our own moral theology, although our moral theology certainly can confirm it.”¹⁹

¹⁸ Abortion in Halakhic Literature. J. David Bleich. Contemporary Halakhic Problems Vol.1 KTAV Publishing House. 1977. p. 370. <https://drive.google.com/file/d/1OncqrDEfIxmYkgwnWKOz18VhKhlzVJj/view?usp=sharing>

¹⁹ The Sanctity of Human Life. Novak, Rabbi David. Georgetown University Press; 1st edition (May 1, 2009). P. 68.

Rabbi Chananya Weissman

“It should not need to be debated that unborn children have the right to be born, and the lives of the elderly and infirm are no less precious than the lives of society’s most fortunate. The rich and powerful do not have the right to decide the value of anyone’s life, nor when someone has ‘already lived their life’ and it’s time for them to go. That is strictly the purview of God, who forbids us to make such distinctions or calculations, even for the alleged ‘greater good.’ It is always for the greater evil. It is always to displace God. The Torah teaches that every life is a unique world, and every moment of every life is infused with the potential to achieve great spiritual heights.”²⁰

Rabbi Norman Lamm, Retired Chancellor of Yeshiva University.

“The freedom of parents to crush prenatal life, which now seems to be in vogue, will eventually lead to utter destruction,” Rabbi Norman Lamm stated in 1970, “because it is only a small leap of logic from feticide to infanticide, to getting rid of infants who may not fulfill our ideals of mental and physical health, or eventually, ethnic and genetic respectability.” Rabbi Lamm reiterated those themes in a sermon from 1976: “Never, never, must we allow this desacralization of life—whether in the form of benevolent euthanasia or

<https://drive.google.com/file/d/1DQ1TLuVdxsCi0jxEX7DdtYFSDEzTgCCB/view?usp=sharing>

²⁰ A War on God and Creation. Weissman, Rabbi Chananya. <https://www.chananyaweissman.com/article.php?id=288>

free and easy abortions . . . or any of the other manifestations of this fundamental antagonism to life—to influence us.”²¹

Rabbi Shimon Cowen

“The opposition of Noahide law to the abortion of an unborn life, except in very special circumstances, embodies one of the deepest norms of human society, the protection of life. In other words, Torah forbids abortion on demand, whether by a Jew or non-Jew.”²²

Rabbi Pinchas Teitz

“Shedding innocent blood in Jewish life is so reprehensible that at times even those not responsible for the act of murder who hear of such an incident must dissociate themselves from it. This is expressed by the recitation of the elders of the city in whose proximity a dead man is found. In the *eglo arufo*²³ ceremony that the Torah mandates, they must wash their hands, saying: ‘Our hands did not shed this blood,’ even though there is no reason to assume that they were directly involved in the death. How, then, are we to respond with less than shock to the killing of 100,000 fetuses through abortion in Israel, year after year? This is

²¹ Ben Shapiro, Judaism And The Unborn: Which Stance Is The Right Stance? Kantor, Miles. The Daily Caller. <https://dailycaller.com/2018/07/18/judaism-unborn-ben-shapiro/>

²² Should We Care If Non-Jews Abort Their Babies? Kantor, Myles. August 10, 2018. <https://www.jewishpress.com/indepth/opinions/should-we-care-if-non-jews-abort-their-babies/2018/08/10/>

²³ Refers to the hand washing commandment. Deuteronomy 21:7. https://www.chabad.org/library/bible_cdo/aid/9985

certainly a sin against Torah . . . It is a crime against Jewry, against mankind, and even against the Land itself—for the Torah clearly warns that the Land, in its sensitivity to corruption, can tolerate no bloodshed.”²⁴

Rabbi Menachem Mendel Schneerson

Advising an expectant mother in 1971, Rabbi Schneerson (the Lubavitcher Rebbe) wrote, “Should there be those who desire to persuade [you] that—God forbid—you perform an abortion: Tell them that this constitutes deliberate murder of a creature who is as yet unable to protect himself from those who seek to murder him.”²⁵

Jews were active in the early pro-life movement in America. The following rabbis stood in the public square defending life.

Rabbi Joshua Sperka

“We have experienced the impact of a society which, step by step, has betrayed humanity’s essential reverence for the sacredness of human existence,” he said during a Senate Judiciary committee meeting in 1967. “These words disguised the mass murder of a

²⁴ Rabbi Teitz’ Opinion on Abortion Law in The Jewish Observer. May 1976. p. 10. https://drive.google.com/file/d/1_kXEfSrCXi6koc6-kyZZCjWW9ZtU-17n/view?usp=sharing

²⁵ Ben Shapiro, Judaism And The Unborn: Which Stance Is The Right Stance? Kantor, Miles. The Daily Caller. <https://dailycaller.com/2018/07/18/judaism-unborn-ben-shapiro/>

people. We are dealing with human life and the consequences of this proposal no man can foresee.”²⁶

Rabbi Joseph Karasick, Past President of the Union of Orthodox Jewish Congregations of America.

“To destroy a human embryo is sacrilegious interference with life itself and akin to murder. Only when there is actual and acute danger to the life of the mother does Jewish religious law permit termination of pregnancy,” he said. According to Rabbi Karasick, the Talmud asserts that ‘whoso sheds the blood of man within man his blood shall be shed.’ This has been traditionally interpreted as constituting a commandment against the killing of unborn children.”²⁷

Rabbi Bernard L. Berzon, Past President of the Rabbinical Council of America.

“In Judaism, the life of an unborn child is sacred and only when It (sic) is a threat to the mother can the moral issue of abortion be resolved. For each person to decide arbitrarily, on the basis of economics or convenience, whether a fetus is to survive is literally for man to play God and is religiously blasphemous and socially destructive.”²⁸

²⁶ “‘We should be terrified’: What Michigan women should know if abortion becomes illegal.” Gray, Kathleen. Detroit Free Press. Aug. 8, 2019. <https://www.freep.com/in-depth/news/politics/2019/08/08/abortion-illegal-michigan-roe-wade-overturned/1790907001/>

²⁷ “2 Top Orthodox Rabbis Score ‘Blanket’ Abortion Permission.” Dugan, George. July 11, 1970. <https://www.nytimes.com/1970/07/11/archives/2-top-orthodox-rabbis-score-blanket-abortion-permission.html>

²⁸ Ibid.

Victor Rosenblum

Mr. Rosenblum was a Jewish attorney who helped defend the Hyde Amendment case before the Supreme Court.²⁹ In March 1973, Mr. Rosenblum expressed his disagreement with the *Roe v. Wade* decision before the McLellan Committee of the U.S. Senate, stating that, “The real test of our humanity is not formal viability. It is not our ability to survive outside the womb. The test of our humanity, rather, is our concern with facilitating human survival and human achievement through developing science’s capacity to nurture and enhance human life in all its manifestations.”³⁰

Even when New York passed the Reproductive Health Act in 2019, the Rabbinical Council of America (RCA) released a public statement. “Jewish law opposes abortion, except in cases of danger to the mother. Most authorities consider feticide an act of murder; others deem it an act akin to the murder of potential life.” The RCA maintains that “abortion on demand, even before twenty-four weeks from the commencement of pregnancy, is forbidden,” the statement continued. “There is no sanction to permit the abortion of a healthy fetus when the mother’s life is not endangered.”³¹

²⁹ *Harris v. McCrea*, 448 U.S. 297 (1980). <https://aul.org/wp-content/uploads/2018/10/1980-Harris-v.-McRae.compressed.pdf>

³⁰ Statement of Professor Victor Rosenblum, Vice Chairman of Americans United for Life, before the McLellan Committee of the US Senate. March 7, 1973. <https://aul.org/wp-content/uploads/2020/08/1973-03-07-AUL-U.S.-Senate-McLellan-Committee-Statement.pdf>

³¹ Jewish women express anger after Orthodox rabbis compare abortion to murder. By Sales, Ben. Feb, 3, 2019. The Times of Israel. <https://www.timesofisrael.com/jewish-women-express-anger-after-orthodox-rabbis-compare-abortion-to-murder/>

II. The Prohibition Of Abortion In Judaism Has One Narrow Exception, To Save The Life Of The Mother In Extremely Rare Circumstances. This Exception Is Reflected In Every Pro-Life Law And Should Not Be Used To Justify Unlimited Legal Abortion.

If the life of the baby is being mortally threatened, then it is mandated to save that baby's life by whatever means are appropriate. On the other hand, Judaism provides a permission to abort a child only to save the life of the mother if the infant in the womb mortally threatens her life. In biblical times, this exception to the prohibition of abortion was intended to be used only in the case of imminent death of the mother because of breech birth, when the baby would act as a danger "*rodef*" to the mother.³²

Currently, less than 1% of the abortions performed in the United States are done in order to save the life of the mother, and all legislation drafted to protect "infant life"³³ includes this exception. Justifiable abortions are very much the rare exceptions to the prohibition of "shedding innocent blood" (*shefikkhut damim*), which the Jewish tradition recognizes to be a universal prohibition. When the mother experiences a life-threatening medical crisis during pregnancy, it is now

³² One who is "pursuing" another to murder him or her. According to Jewish law, such a person must be killed by any bystander after being warned to stop and refusing. https://drive.google.com/file/d/11uEtR7DLESaDKg8Q6_aLqiToxYQmFRCF/view?usp=sharing

³³ Per *Gonzales* 159, 160

often possible to remove the growing child from the womb and place him/her in a neonatal intensive care unit to grow to term. Therefore, ectopic pregnancy is now primarily the only case where the pregnancy must be terminated to save the mother's life.³⁴

A note about Exodus 21:22-25, the mistranslation of which has led many to conclude that Judaism condones the mass slaughter of infant life.

This conclusion is entirely false. The verse describes a case in which fighting men in close proximity to a pregnant woman inadvertently cause a miscarriage. The Torah specifies that the guilty party would be prosecuted for involuntary manslaughter only if the pregnant woman herself dies. If the infant in the womb dies, they must pay only a monetary fine.

Long used by abortion advocates to reframe abortion as legal in Judaism, this text is not a license to abort infant life; rather, it is a reference to involuntary manslaughter requiring an adjudicated fine. It is not a capital crime. Rabbi Ahron Soloveitchik warns against using biblical text to justify unholy attitudes and actions. He reminded us that the Torah is compared to the *sneh*, the Burning Bush, because "fire gives heat, light and devours fuel, but the light of Torah must only give warmth and light, love and hope; it must never be

³⁴ "What is AAPLOG's Position on 'Abortion to Save the Life of the Mother?'" <https://aaplog.org/what-is-aaplogs-position-on-abortion-to-save-the-life-of-the-mother/>

used to destroy or kill. This is not Torah; it is a perversion of Torah.”³⁵

Jewish Pro-Life Foundation board member, Rabbi Shlomo Nachman, corrects the mistaken translation and bias that permeates much of pro-abortion arguments stemming from this religious text. He clarifies, “This verse must be carefully understood. Many translations read ‘and a miscarriage occurs’ rather than as ‘a premature birth results’ as I have it here. The passage, in my opinion, is to ‘a premature birth’ when the context is considered. The text actually says that if the child ‘departs’ [*yasa*] the womb and no other damage ensues from the event. In other words, if because of the struggle the baby is born early but is otherwise fine, then the men may be required to pay damages for their carelessness but no more. ‘But if other damage ensues,’ i.e. the baby is born with some deformity or born dead, then the standard penalties will apply, ‘an eye for eye, tooth for tooth’. If the child dies as a result, the men are guilty of the murder, a life for a life. The text makes no sense any other way. The Hebrew term *shachol* references an abortion or miscarriage. That word is not used here. There is conclusive evidence that both Torah and Rabbinic halacha regarding the pre-birth child as

³⁵ Rabbi Ahron Soloveichik and NCSY—An Appreciation. Jewish Action. Luchins, David. Jewish Action. Winter 2011. https://jewishaction.com/tribute/rabbi_ahron_soloveichik_and_ncsy_appreciation/

fully human and subject to the same protections and respect as all other people.”³⁶

III. Abortion Is Antithetical To Torah Principles, All Of Which Provide Sensible, Effective, And Wholesome Guidelines For Human Thriving And Human Interaction, Both Personally And Professionally, The Act Of Abortion, And The Industry That Promotes And Benefits Financially From It, Violate All Jewish Ethics And Morals.

Judaism leads the way in providing support to women, children and families. Discussion about abortion must include acknowledgment that an innocent child dies in each abortion, and that abortion poses great dangers to vulnerable mothers, fathers, families, and communities. Our tradition teaches us to advocate for vulnerable and victimized targets of abuse and murder. Proverbs 31:8 demands, “*Speak up for those who cannot speak for themselves.*” We acknowledge the harms done by abortion and speak out to prevent them.

Women suffer horribly after abortion with devastating physical, emotional, psychological, and spiritual problems.³⁷ Many regret the abortion decision and suffer in silence. Mothers and fathers endure a chronic

³⁶ Abortion and Related Issues. Nachman, Rabbi Shlomo. April 17, 2018. <http://learnemunah.com/being/abortion.html>

³⁷ See *Cert. Petition Amicus Curiae* Brief of 375 Women Hurt By Late Term Second And Third Trimester Abortion previously filed in this case for actual testimonies.

sense of desolation and alienation from God. Abortion has become an accepted means of birth control, encouraging irresponsible, dangerous sexual activity leading to an explosion of sexually transmitted disease. Women die from legal abortion.³⁸

The devastating effects of abortion on men go unspoken in pro-abortion circles. It is now confirmed that men grieve lost fatherhood, resulting in broken relationships and dysfunctional family life.³⁹ We heed Jeremiah 29:6, emphasizing the importance of the family even in difficult times: *“Marry and have sons and daughters; find wives for your sons and give your daughters in marriage, so that they too may have sons and daughters. Increase in number there; do not decrease.”*

Judaism demands a high level of compassion and mercy for the vulnerable and defenseless. No other demographic is as vulnerable as the defenseless child in the womb. Abortion allows no compassion for infants in the womb who are given no pain medication before being starved, poisoned, burned, dismembered, and whose skull is punctured and crushed after partial

³⁸ Abortion Side Effects | Abortion Dangers—After Abortion. The Elliot Institute. <https://afterabortion.org/abortion-risks-abortion-complications-abortion-dangers-abortion-side-effects>

³⁹ Men’s Pain and Need for Healing After Abortion Is Real. Feb. 2, 2018. The Elliot Institute. <https://afterabortion.org/mens-pain-and-need-for-healing-after-abortion-is-real/>

delivery or who are delivered perfect and alive for organ harvesting.⁴⁰

Judaism's biblical tradition identifies the child in the womb as precious, valuable and unique. Isaiah 49:1: *"Before I was born the Lord called me; from my mother's womb he has spoken my name."* And Jeremiah 1:5: *"Before I formed you in the womb I knew you, before you were born I set you apart, I appointed you as a prophet of nations."*

The weekly Sabbath is considered the most holy event of the Jewish calendar. Jewish law forbids many daily activities on the Sabbath in order to concentrate on God's presence and spiritual pursuits. Nevertheless, when human life is endangered, a Jew is required to violate any Sabbath law that stands in the way of saving that person. The concept of life being in danger is interpreted broadly; for example, it is mandated that one violate the Sabbath to take a woman in active labor to a hospital. Jewish law also not merely permits, but demands, that the Sabbath be violated in order to save infant life in the womb. As lifesaving activity is the only situation in which a Sabbath violation is permitted, were the infant child not deemed alive by the Torah, this behavior would be entirely prohibited.⁴¹

Jews have a keen sense of injustice and speak out against it without reservation, as in the case of a death

⁴⁰ Live Action Simulated Abortion Procedure Videos. <https://www.abortionprocedures.com>

⁴¹ Pikuach nefesh, https://en.wikipedia.org/wiki/Pikuach_nefesh

row inmate who may be wrongly accused. Yet, innocent infants in the womb have no comparable advocate; instead, American law under *Roe* allows killing them for any reason with no second opinion or legal defense required. The United States Legal Code⁴² considers the murder of innocent people a capital crime, therefore, killing innocent infant life should be a crime, not a right, as abortion advocates claim. The American priority of assigning a severe penalty for taking innocent life corresponds to the moral foundations of our Republic based on the Judeo principle that life is of paramount concern. Because children in the womb are innocent persons, the law must provide them with equal protection.

This also pertains to the challenging cases of children conceived in rape or incest. According to traditional Jewish law, people conceived through these unfortunate circumstances are not given the death penalty. Rather, they are not allowed to marry a Jew or have a Jewish lifestyle.⁴³

The emotional health of the mother and the reputation of the family can be better served through the life-saving option of adoption rather than termination,

⁴² 18 U.S. Code § 1111

⁴³ Negative Commandments. Chabad.org. https://www.chabad.org/library/article_cdo/aid/901723/jewish/Negative-Commandments.htm

allowing the child to live a productive life and the parents to live without guilt after abortion.⁴⁴

Abortion industry practices dramatically contrast with Jewish ethics and moral guidelines in business, cleanliness, sexual propriety, responsibility to protect friends and neighbors from harm, honesty, and women's safety. Exodus 23:7 admonishes us: "*Keep away from fraud, and do not cause the death of the innocent and righteous; for I will not justify the wicked.*"

Abortion providers have long been exempted from standard medical practices and regulatory oversight. They perpetuate sex crimes by routinely failing to report evidence of sexual assault and sex trafficking. They fail to provide informed consent to patients and fail to counsel patients on alternatives to the abortion procedure or possible immediate and long-term negative consequences of the procedure.⁴⁵

Jewish ethical standards run contrary to the profiteering within the abortion industry, activities that media outlets suppress to maintain public support for a sanitized perception of the industry. The illegal sale of body parts and the extreme violation of basic moral standards regarding dismemberment of born-alive babies runs contrary to Jewish ethics. Judaism prohibits desecrating the human body, but abortion destroys a

⁴⁴ Sexual Assault Pregnancy and Abortion: What the Research Says. After Abortion. The Elliot Institute. <https://afterabortion.org/sexual-assault-and-abortion-survey/>

⁴⁵ Behind Closed Doors. LiveAction.org. <https://www.liveaction.org/what-we-do/investigations/>

human body, and the harvesting of baby parts for profit defies Jewish respect for the dead.⁴⁶

When *Roe v. Wade* and *Doe v. Bolton* were decided, abortion industry leaders, lawyers, and abortionists used the limited evidence of life in the womb to argue successfully for unlimited abortion legalization. Dr. Bernard Nathanson, was a Jew, a founding member of NARAL, and the owner of the largest abortion clinic in Manhattan where over 60,000 human beings were aborted. Eventually, scientific evidence in the form of new ultrasound-guided abortion technology convinced him that he had denied these children their humanity and presided over their deaths. He spent the remainder of his life defending the rights of infant life.⁴⁷

Today, the Justices have all the information needed to fully understand and acknowledge the status of the infant life, and have done so in *Gonzales*, at 159, 160. From conception onward, children in their mother's womb manifest humanity to such an extent that only a decision that protects their lives and futures is humane and just.

⁴⁶ In the Market for Fetal Body Parts, a Baby's Brain Sells for \$3,340. The Daily Signal. April 20, 2016. <https://www.dailysignal.com/2016/04/20/in-the-market-for-fetal-body-parts-a-babys-brain-sells-for-3340/>

⁴⁷ Bernard Nathanson's Conversion. Catholicism. <https://www.ewtn.com/catholicism/library/bernard-nathansons-%20%20%20conversion-12002>. See NY Times article also.

**IV. Jewish Experiences Throughout History
As State Sponsored Targets Of Genocide
And Eugenics Give Us A Unique Oppor-
tunity To Recognize The Injustices Wrought
On Our Innocent Unborn Brothers And Sis-
ters In The Womb.**

Genocide

Jewish victims of genocide throughout history have been redefined as subhuman, legally stripped of personhood and civil liberties, tortured and murdered. Similarly, infant life in the womb is redefined as subhuman, legally stripped of personhood and civil liberties, tortured and murdered.

Pro-abortion advocates deliberately employ prop-
aganda successfully utilized by Adolf Hitler to recon-
struct compassion and concern for women facing
unplanned or unwanted pregnancy into lethal tools
that facilitate elimination of “infant life,” per *Gonzales*
at 159. Evidence of this technique is exposed in a memo
dispatched to Nazi indoctrination outlets. “We must
use every means to install in the population the idea
that it is harmful to have several children, the ex-
penses that they cause and the dangerous effect on
women’s health . . . It will be necessary to open special
institutions for abortions, and doctors must be able to
help out there in case there is any question of this

being a breach of their professional ethics.” (Adolf Hitler 1942)⁴⁸

Commonplace descriptions of babies in the womb declare that the presence of arms and legs isn’t an indication of human life and that the baby is nothing more than a parasite. These lies rob infants in the womb of their humanity, dignity, and divinely created existence. The lies originated with Nazi propaganda, when the sub-humans and parasites in question were Jews in their shops, homes, synagogues, and yes, in their mothers’ wombs. Consider the following illustrations found in the brochure, *Abortion: The Hidden Holocaust*:⁴⁹

THEN

“In 1936, The German Supreme Court refused to recognize Jews living in Germany as legal ‘persons.’ From that point on they had no rights or protection under the German Constitution. Shortly thereafter the Nazis began their ‘Final Solution’⁵⁰—putting over 6,000,000 Jews to death.”

⁴⁸ Doctors, Pregnancy, Childbirth and Abortion during the Third Reich. Chelouche, M.D., Tessa. *Medicine and the Holocaust*. Vol. 9. March 2007. <https://pubmed.ncbi.nlm.nih.gov/17402341/>

⁴⁹ *Abortion: The Hidden Holocaust*. AbortionFacts.org. <https://www.abortionfacts.com/literature/abortion-the-hidden-holocaust>

⁵⁰ The Final Solution. *Holocaust Encyclopedia*. <https://encyclopedia.ushmm.org/content/en/article/the-final-solution>

NOW

“In 1973, The U.S. Supreme Court in its *Roe v. Wade* decision ruled that unborn babies are not legal ‘persons.’ From that point on they had no rights or protection under the U.S. Constitution. Since that decision, over [60,000,000] babies have been put to death by abortion in this country.”

THEN

“Jews are ‘sub-human.’ The sub-human, that biologically seemingly complete creation of nature with hands, feet and a kind of brain, with eyes and mouth, is nevertheless a completely different, dreadful creature. He is only a rough copy of a human being, with human-like facial traits but nonetheless morally and mentally lower than an animal . . . For all that bare a human face are not equal.” (Pamphlet published by the Race Settlement Main Office, Germany, 1942.)

NOW

“Unborn babies are ‘sub-human.’ Fetuses, especially those as old as five or six months, elicit our sympathy . . . because they look disconcertingly like people . . . But, this sympathy is misplaced . . . While [it] may, perhaps, possess some flickering of sensation, or some capacity to feel pain, this is equally true . . . of creatures like fish or insects . . . a proper respect for the right to life requires that it not be respected where

it does not exist.” (Commentary on “Can The Fetus Be An Organ Farm?⁵¹)

THEN

“Jews are ‘parasites.’ The Jew was always only a parasite in the body of other peoples.” (Adolph Hitler, *Mein Kampf*. p. 419.)

NOW

“Unborn babies are ‘parasites.’ A woman would have the right to abortion just as she has a right to remove any parasitic growth from her body.” (Gloria Steinem, author and feminist leader, on CNN. Sept. 9, 1981.)

Another propaganda tactic used by abortion industry lobbyists justifies child murder for research purposes. Billions of taxpayer funded research dollars support gruesome experiments on aborted babies, the immoral and unimaginable procedures hidden in scientific language and dubious claims of benefits to society. Jewish torture and murder by Nazi doctors such as Josef Mengele at Auschwitz were designated as medical research, too, and declared good for society.

⁵¹ Mary Ann Warren. *Case Studies in Bioethics*. October 1978, pp. 23-24. <https://onlinelibrary.wiley.com/doi/abs/10.2307/3561446?sid=nlm%3Apubmed>

THEN

“Torture is ‘medical research.’ To explain the concentration camp experiments, Dr. August Hirt⁵² supplied this rationale, “These condemned men will at least make themselves useful,” he said. “Wouldn’t it be ridiculous to execute them and send their bodies to the crematory oven without giving them an opportunity to contribute to the progress of society.” (Aziz, *Doctor of Death*, 3, 305.)

NOW

“Human fetal tissue research is the gold standard.” Professor Irving Weissman, head of Regenerative Medicine at Stanford University. August 2020.⁵³

Many abortion influencers and judges apply competency tests to infant life the womb, denying their personhood based on limitations in intelligence, consciousness, development and independence. *Amici* recognize the audacity and short-sightedness of denying anyone personhood based on arbitrary measures, knowing that this leads to unbridled crimes against

⁵² Auschwitz-Birkenau: Nazi Medical Experimentation. Jewish Virtual Library. <https://www.jewishvirtuallibrary.org/nazi-medical-experimentation-at-auschwitz-birkenau>

⁵³ Members of NIH human fetal tissue research ethics advisory board revealed. LifeSiteNews. Aug. 4, 2020. <https://www.lifesitenews.com/news/members-of-nih-human-fetal-tissue-research-ethics-advisory-board-revealed>

humanity as in the Final Solution⁵⁴ and the abortion holocaust.

Elie Wiesel, Romanian-born American, Jewish writer, professor, political activist, Nobel Laureate, and Holocaust survivor personally experienced the irrational racism that leads to dehumanization and mass murder. In 2005, he gave a speech at the opening ceremony of the new building of Yad Vashem, the Israeli Holocaust History Museum:

“Jews were not killed because they were human beings. In the eyes of the killers they were not human beings! They were Jews!”⁵⁵

In a 1999 speech in Washington, D.C., Mr. Wiesel stressed our obligation to defend the defenseless. “We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.”⁵⁶

The dehumanization of children in the womb has allowed millions and millions and millions of abortion crimes in the name of justice, rights, healthcare, biomedical research, improving the gene pool, convenience, and even religious liberty. Millions and millions and millions of human beings brutally killed for profit,

⁵⁴ The Final Solution. <https://encyclopedia.ushmm.org/content/en/article/the-final-solution>

⁵⁵ Elie Wiesel. Wikipedia. https://en.wikipedia.org/wiki/Elie_Wiesel

⁵⁶ Elie Wiesel The Perils of Indifference. April 12, 1999. American Rhetoric. <https://americanrhetoric.com/speeches/ewiesel/perilsofindifference.html>

to avoid criminal prosecution or social embarrassment, to keep a job, or regrettably due to fear, uncertainty, coercion, manipulation and threatening ultimatums.

Eugenics

Eugenics abortion of imperfect babies has increased in scope with improvements in genetic testing. Jewish resistance to this modern genocide is based on our respect for life and our experience as targets of eugenics-based mass murder.

The rise of eugenics ideology and science started in America with the Racial Hygiene movement. Eugenics science provided the foundations for Hitler's war against the disabled and eventually the Jews to create a pure Aryan race.⁵⁷ Margaret Sanger and her American Birth Control League became primary sponsors of eugenics during her lifetime. She associated herself with Adolph Hitler, praising him for his racial politics of eugenics. She changed the name of her organization to Planned Parenthood during WWII in order to disguise her affiliation with the Nazis.⁵⁸ This year the President of Planned Parenthood has finally admitted

⁵⁷ Eugenics in the United States. Cultural Anthropology. <https://courses.lumenlearning.com/culturalanthropology/chapter/eugenics-in-the-united-states/>

⁵⁸ Uncovering the Racist and Anti-Semitic Roots of Abortion. Margaret Sanger's Search for the Pure Race. Scholar's Corner. <https://www.scholarscorner.com/uncovering-the-racist-and-anti-semitic-roots-of-abortion/>

publicly the founder’s racist and tragically eugenicist past.⁵⁹

Frederick Osborn, who signed Margaret Sanger’s “Citizens Committee for Planned Parenthood,”⁶⁰ became president of the Population Council in 1957. The Population Council brought the abortion pill to the United States in 1994. Originally called Zyklon B, Nazi scientists developed it in gaseous form to kill Jews in concentration camp ‘showers.’⁶¹ RU 486 is now used in 40% of all abortions due to inflated pricing and low overhead costs.⁶²

Nat Hentoff, a Jewish champion of “inconvenient life,” opposed eugenics abortion of imperfect babies after discovering reports of experiments in what doctors at Yale-New Haven Hospital called “early death as a

⁵⁹ Planned Parenthood CEO Admits Its Founder Margaret Sanger Was a White Supremacist, But Still Embraces Her. Bilger, Micaiah. LifeNews. Apr. 18, 2021. <https://www.lifenews.com/2021/04/19/planned-parenthood-ceo-admits-its-founder-margaret-sanger-was-a-white-supremacist-but-still-embraces-her/>

⁶⁰ The Population Council, which brought the abortion pill to the U.S., has a shocking history that’s nothing to celebrate. Novielli, Carole. Nov. 14, 2017. Life Action. <https://www.live-action.org/news/population-council-founded-eugenicists-promoting-abortion-turns-65/>

⁶¹ Company That Made Zyklon B for Nazi Holocaust Made RU 486 for Abortions. Novielli, Carole. Feb. 23, 2014. LifeNews.com. <https://www.lifenews.com/2014/02/23/company-that-made-zyklon-b-for-nazi-holocaust-made-ru-486-for-abortions/>

⁶² Some GOP-led states taking closer look at abortions done through medication. Crary, David. The North State Journal. Apr. 15, 2021. <https://nsjonline.com/article/2021/04/some-gop-led-states-taking-closer-look-at-abortions-done-through-medication/>

management option” for infants considered to have little or no hope of achieving meaningful “humanhood.” Nat then interviewed happy handicapped adults whose parents could have killed them but didn’t. In 1984, Mr. Hentoff investigated the post-birth murders of Down Syndrome Infant Doe and a spina bifida Baby Jane Doe. He realized that eugenics abortion was the beginning of a slippery slope that would one day justify the slaughter of innocent human beings based on cost, inconvenience, and imperfection. He became a vocal advocate for life among his pro-abortion peers.⁶³ In 1991, Mr. Hentoff spoke out against the abortion industry’s campaign to exploit parental fears of disability to increase business.⁶⁴

Seen for what it really is, the abortion holocaust parallels and rises beyond crimes against humanity from which Jews have suffered dearly. After WWII, international consensus coalesced around the need to hold to account those responsible for genocidal activities. The Nuremberg Trials identified major players involved in implementing the Final Solution, as well as those engaged in gruesome medical research on prisoners condemned to death. Abortion experiments on Jewish women and their unborn children was a specialty of Dr. Josef Mengele, who in his time was a

⁶³ “To be liberal and pro-life. NAT HENTOFF, CHAMPION OF ‘INCONVENIENT LIFE.’” Donohoe, Cathryn. The Washington Times. Nov. 8, 1989. <http://groups.csail.mit.edu/mac/users/rauch/nvp/consistent/hentoff.html>

⁶⁴ The Specter Of Pro-Choice Eugenics. Hentoff, Nat. The Washington Post. May 25, 1991. http://groups.csail.mit.edu/mac/users/rauch/nvp/consistent/hentoff_eugenics.html

respected medical authority and doctor. The knowledge and skill he acquired from his research transferred into an illegal abortion practice during his exile in Argentina.⁶⁵

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CONCLUSION

We must end abortion, an appalling crime against humanity. To begin the process of reconciliation with our Creator, to restore the dignity of those who have perished, and to return our country to a life affirming nation. *Amici* ask the Court to rise above political concerns and to contemplate the Divine promise bestowed upon every human being as pledged in Jeremiah 29:11: *“For I know the plans I have for you, declares the LORD, plans to prosper you and not to harm you, plans to give you hope and a future.”*

⁶⁵ Auschwitz Concentration Camp. Josef Mengele. Auschwitz—Stories. <https://www.fold3.com/page/286021528/auschwitz/stories>

PRAYER

Amici respectfully pray this Court to reverse the decision below.

Respectfully submitted,

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