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Religion and Abortion

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## **Abortion as Religious Freedom**

### **Introduction**

In recent months, the US has seen the overturning of *Roe v. Wade*, which has allowed states to form their own abortion laws. Several states, such as Florida, Kentucky, and Indiana, have used the overturning of *Roe* to further restrict abortion access within their respective state. Rather than revisit *Roe* and discuss its importance further, this paper will look at the new court cases fighting for abortion rights on the grounds of religious freedom. In each of the states mentioned above, court cases are being fought for the right to a safe and legal abortion in instances where the plaintiff's religion would permit or prescribe one.

While *Roe* was a landmark decision in favor of legal abortion on the basis of privacy, these new cases represent a never-before-seen legal argument. The argument of abortion as part of one's religion is a brand-new idea in the court system (Schreiner). Consequently, the decisions made in these cases will set a precedent for future abortion legislation and religious freedom arguments. Members and leaders of Judaism, Islam, and The United Church of Christ are all fighting for the right to an abortion on the grounds that abortion is part of their religion. While the ideal basis for a legal abortion argument would be female bodily autonomy, these cases could represent a *Roe*-level decision that could restore the right to an abortion. Although the argument may not be ideal, the argument of religious freedom is quite strong.

While the cases are being fought by members and leaders of Judaism, Islam, and the United Church of Christ, they do not stand alone in this discussion. Also included in this discussion are more pro-life positions from Mormonism and Catholicism. These two faiths represent a more conservative view of abortion than the previous three, with Catholicism banning any direct abortion and Mormonism limiting abortion to very narrow circumstances. Including pro-life religious beliefs in this study alongside more pro-choice religious beliefs helps illustrate the diversity of a religious freedom argument for abortion. Another reason to include more pro-life views is to help illustrate the claims made in *Hafner v. The State of Florida et al.* and *Generation to Generation Inc v. The State of Florida et al.* that the abortion laws in Florida establish conservative religious views on abortion.

The motivation for this paper comes from the general lack of knowledge about religious views on abortion. Kranson writes that “both the scholarly and popular writing on abortion [have] suffered from the tendency to assume that all religious Americans share conservative Christian views on reproductive rights” (171). The religious right created the idea that reproductive freedom was not compatible with religious worldviews; when secular feminists did not disagree, it became challenging for anyone to say otherwise, and subsequently, “much of the public began to view anti-abortion sentiment as a universal belief shared by all socially conservative people of faith” (Kranson 173, 181). The general lack of public knowledge regarding abortion beliefs of various religions makes this discussion extremely important.

Along with this topic’s importance, it is also quite precarious. With such broad and varying beliefs on abortion, any paper, much less one discussing five religions, will be unable to fully encapsulate the views of every person within a religious group. One example of the difficulty of discussing religious belief comes from Islam; Hessini states that “individual

interpretation is a key Islamic principle” and “Muslims are encouraged to read and analyze traditional religious sources to find solutions to contemporary problems” (76). With views varying so much and individual interpretation being encouraged, it is impossible to reflect the beliefs of every religious individual within this paper. Thus, this paper will focus on broader beliefs and contexts for abortion, mainly the beliefs expressed by religious leaders and the plaintiffs of the court cases.

Before discussing each religion and the general views on abortion, it is essential to understand the court cases’ context. After having an overview of the court cases, the discussion will shift to the abortion beliefs of Judaism, Islam, The United Church of Christ, Mormonism, and Catholicism. The religious beliefs will be broken into the timeline (i.e., when the religion defines personhood and gives rights to the fetus) and the circumstances under which an abortion is allowed. Finally, the paper will discuss the societal vision of each religion or in other words, what level of legality they seek for abortion and if any significant divides are present that make that vision hard to obtain.

## **The Cases**

Each court case represents a unique group of people, all making a similar argument for abortion based on religious freedom. Two cases are occurring in Florida: *Generation to Generation Inc v. The State of Florida et al.*, filed by a synagogue, and *Hafner v. The State of Florida et al.*, filed by a Reverend from the United Church of Christ. Following the Florida cases will be a discussion of *Sobel et al. v. Kameron et al.* where three Jewish women are filing suit against members of the Kentucky legislature. Last will be the case in Indiana, *Hoosier Jews for Choice et al. v. The Individual Members of the Medical Licensing Board of Indiana et al.*, where the group Hoosier Jews for Choice is suing alongside five anonymous plaintiffs. Each case is

occurring simultaneously and represents an unprecedented legal argument that requires deeper analysis than is available in news articles.

In *Generation to Generation Inc*, a Florida synagogue is fighting the current abortion law on the basis of privacy concerns and the prohibition of abortion in cases where Jewish law allows or requires an abortion. As the law stands, Florida allows abortion under any circumstance before 15 weeks of gestation and after that only if the mother's life is at risk or if there is a significant risk to the mother's physical health (State of Florida). From the lawsuit:

In Jewish law, abortion is required if necessary to protect the health, mental or physical well-being of the woman, or for many other reasons not permitted under the Act. As such, the Act prohibits Jewish women from practicing their faith free of government intrusion and thus violates their privacy rights and religious freedom.... the Act also threatens the integrity of the Jewish family and denies religious freedom to Jewish women and their families (Florida State Trial Court 10).

Although the case started with a Rabbi and his congregation, *Generation to Generation Inc* does not limit its complaint to Judaism.

*Generation to Generation Inc* mentions that any religious group with differing views is not receiving the religious freedom provided by the constitutions of the state of Florida and the United States and that *Generation to Generation Inc* "do[es] not share the religious views reflected in the [a]ct" (Florida State Trial Court 11, 16). *Generation to Generation Inc* accuses Florida's current abortion ban of:

Reflect[ing] the views of Christian nationalists who seek to deny religious freedom to all others, under the arrogant, self-righteous notion that only they are capable of

understanding God's law and judgments and the religious views of all others are false, evil and not entitled to respect or constitutional protections (Florida State Trial Court 19).

Furthermore, the case asserts that Generation to Generation does not attempt to make their views on abortion mandatory by law, thus accusing those in the Florida legislature of doing so (Florida State Trial Court 19). The plea of *Generation to Generation Inc* is for the Florida State Trial Court to grant Generation to Generation Inc and all Floridians the right to freely exercise their religion through the right to an abortion in situations where the current law prohibits one (Florida State Trial Court 24).

In a similar case in Florida, *Hafner v. The State of Florida et al.*, Rev. Laurinda Hafner is suing the state of Florida on the grounds that the current ban is in direct conflict with their spiritual beliefs. Like with *Generation to Generation Inc*, *Hafner* claims that the Florida abortion ban establishes:

a particular and narrow religious view about abortion and when "life" begins. This view is contrary to the religious beliefs of Plaintiff and the UCC, which does not necessarily make a claim regarding when "life" begins, but instead, centers on the mother's right to have a choice, oversee her own body, and make her own decisions (Miami Dade County Courts 15).

Not only does *Hafner* suggest that the act supports certain religious views, *Hafner* goes further and accuses the act of explicitly targeting the religious beliefs of others (Miami Dade County Courts 27). As discussed previously, *Hafner* argues that since opinions on when life begins, both based on medicine and faith, are so varied, the law should not enforce any specific view (Miami Dade County Courts 13).

Much like *Generation to Generation Inc*, *Hafner* maintains that abortion in cases of rape, incest, and psychological concerns are an important part of their faith (Miami Dade County Courts 15). *Hafner* continues beyond the complaints of *Generation to Generation Inc* by including trafficking and non-fatal fetal abnormalities as circumstances that justify abortion in their faith (Miami Dade County Courts 15). Finally, in a similar plea to that of *Generation to Generation Inc*, *Hafner* pleads that the court find Florida's abortion ban unconstitutional because it violates the Religious Freedom Reconstruction Act, violates the religious freedom of Rev. Hafner and her congregation as well as discriminates against the religious views of Rev. Hafner and her congregation (Miami Dade County Courts 30-31).

Like *Generation to Generation Inc* and *Hafner*, *Sobel et al.* represents a comparable argument for abortion on the grounds of religious freedom. The three plaintiffs are Jewish women who are suing members of the Kentucky legislature over the "trigger ban" that went into effect after the overturning of *Roe*. This ban prohibits abortion unless the mother's life or physical well-being is at risk (US District Court). Much like the previous cases, *Sobel et al.* argues that Kentucky's ban is in violation of the religious freedom of the plaintiffs and that it is in violation of Kentucky's own Religious Freedom Restoration Act. *Sobel et al.* state that the Religious Freedom Restoration Act "imposes strict scrutiny on all government actions that 'substantially burden a person's freedom of religion'" (US District Court 13). *Sobel et al.* also contend that under the federal Religious Freedom Restoration Act, there is protection for actions that are in accordance with faith, whether or not faith requires that action (US District Court 13-14). If their claim is to be read correctly, at the federal level, there is protection in place both when religions prescribe abortion and when an abortion is merely an option.

In another similarity with *Generation to Generation Inc* and *Hafner, Sobel et al.* stress the lack of allowance for abortion in the circumstances of rape or incest.

Jewish law stresses the necessity of protecting birth givers in the event a pregnancy endangers the woman's life and causes the mother physical and mental harm. Harm includes but is not limited to rape, incest, or the case of a significant fetal anomaly (US District Court 6).

The circumstances of rape, incest, and fetal abnormality are not currently allowed under the Kentucky abortion ban and, as will be discussed later, are circumstances that can justify abortion in Jewish law. Finally, *Sobel et al.* again have a similar plea to the Florida cases, that the abortion law in Kentucky is found unconstitutional on the grounds that it violates the women's religious freedom (US District Court 18).

Last is the case in Indiana, *Hoosier Jews for Choice et al. v. The Individual Members of the Medical Licensing Board of Indiana et al.*, where the plaintiffs are arguing against Indiana's current abortion ban. Similar to the cases discussed previously, *Hoosier Jews for Choice* asserts that while some religions define life at conception, it is not a universal belief shared by all religions (Marion Superior Court 6). In an example of how the Indiana ban is against the religious freedom of the plaintiffs, *Hoosier Jews for Choice* states that mental health is a circumstance under which an abortion could be allowed in Jewish faith (Marion Superior Court 6-7). Along with the group Hoosier Jews for Choice, one of the anonymous plaintiffs, a 39-year-old Jewish mother, believes according to Jewish law that "if her health or wellbeing—physical, mental, or emotional—were endangered by a pregnancy, pregnancy-related condition, or fetal abnormality, she must terminate the pregnancy" (Marion Superior Court 11-12). The

circumstances of mental or emotional well-being are not currently allowed by Indiana's abortion ban (Indiana General Assembly 6).

Alongside the lack of allowance for abortion in cases of mental well-being under Indiana's abortion ban, another anonymous plaintiff takes issue with the timeline presented by the ban. *Hoosier Jews for Choice* lists another anonymous plaintiff, a 24-year-old Muslim woman who does not believe life begins at conception. This plaintiff believes that ensoulment occurs after 120 days of gestation (Marion Superior Court 19). Furthermore, this plaintiff also believes that the life and wellbeing of the mother always take precedence over the fetus (Marion Superior Court 19). *Hoosier Jews for Choice* also mentions that more conservative sects of Islam place ensoulment at 40 days of gestation and prohibit abortion thereafter unless there is "a pressing need" justifiable "in the eyes of Islamic law" (Marion District Court 7-8). Furthermore, *Hoosier Jews for Choice* asserts that Muslim scholars state it is "proper and appropriate to seek an abortion for any reason" before 40 days of gestation (Marion District Court 7). The final plea in *Hoosier Jews for Choice*, similar to the previous cases, is that Indiana's abortion ban violates Indiana's Religious Freedom Act and therefore should be overturned (Marion District Court 26).

While there are unique features in each case, there are some common themes throughout. First, each case highlights circumstances where state law prohibits abortion when the plaintiff's religious views would permit one. Second is the mention of the Religious Freedom Restoration Act, both as it is present within each state and at the federal level (Marion District Court 1, 26, US District Court 13-16, Miami Dade County Court 3, 17-18, 28). Again, as it is presented in *Sobel et al.*, the Religious Freedom Restoration Act protects the free exercise of religion both when faith does or does not compel an action, thus leaving the mere option of abortion in one's faith protected under the Act (US District Court 13-14).

Through discussion of the religious beliefs of Judaism, Islam, and the United Church of Christ, it will be found that these beliefs in favor of abortion are deeply and widely held within each religion. Furthermore, a deeper understanding of the more conservative religious perspectives of abortion will be cultivated through discussing Mormonism and Catholicism. As has been discussed with the court cases, religious perspectives on abortion generally have two major components: the timeline under which an abortion is allowed and the circumstances of when an abortion can be justified. This study will divide into sections to focus discussion on each issue separately. Beginning with the timeline, and then moving to the extenuating circumstances and concluding with any societal goals or visions that can be observed from each religion.

### **Timeline**

At its core, defining a specific moment of pregnancy when abortion becomes prohibited has the same effect as declaring the fetus a person and giving the fetus full rights as one. Religions and the law vary greatly on when the fetus receives personhood. In the state laws, personhood is given at conception in Kentucky, after 15 weeks of gestation in Florida, while Indiana gives the fetus rights as the pregnancy progresses with milestones occurring at 10 and 20 weeks of gestation. Religion varies similarly, with personhood being given at conception, at ensoulment, at birth, and various moments in between. Looking to the religious understanding of the timeline is essential to see why the plaintiffs of each case believe the law is violating their religious freedom.

From *Sobel et al.*, Jewish law does not give the fetus personhood until the child takes its first breath (Marion Superior Court 11). This belief of personhood occurring at birth aligns with what is said by Jewish scholars. From Kranson, “Jewish law does not support the idea of

ensoulment at conception” (172). Giving personhood at birth is justified in Jewish law by the belief that the fetus is part of the mother until the moment of birth (Silber 232). Silber reports that if the mother is to have a life-threatening birth, then the fetus shall be aborted, even if the abortion takes place just before birth (233).

With the understanding of personhood being bestowed at birth, there is another milestone in Judaism which is when the fetus first comes to exist. As mentioned in *Sobel et al.*, for the first 40 days of gestation the fetus is sometimes referred to as “mere water” (Marion Superior Court 6). However, while this view is a part of Jewish law, it is not understood as the defining moment of personhood. Barilan discusses the views of a Rabbi who considered dividing pregnancy into stages but quickly dismissed the idea because reasoning should be based on the Torah rather than human bias or intuition (126). After considering dividing pregnancy into stages, the conclusion in Jewish belief is that dates and milestones during pregnancy do not define when abortion is permitted. Abortion is permitted in Jewish law up until the fetus emerges and takes its first breath.

*Hoosier Jews for Choice* also discusses the abortion beliefs of Muslim scholars, who have a similar view of the first 40 days of gestation. *Hoosier Jews for Choice* asserts that Muslim scholars believe abortion is allowable for any reason before 40 days of gestation (Marion Superior Court 7). The first 40 days of pregnancy are referred to as the *nutfa* stage in Islamic faith (Katz 32). Katz cites Al-Qurtubi, a Maliki jurist, when they said that “the *nutfa* is not definitely known to be anything at all, and no legal consequences ensue if the woman expels it, because it has not [yet] coalesced in the womb” (32). *Hoosier Jews for Choice* presents another milestone in Islam that occurs at 120 days when the fetus is believed to receive its soul (Marion

Superior Court 7). While the view presented in *Hoosier Jews for Choice* is accurate, the case does not give the full story of Islamic ideas of fetal personhood.

Islam, like Christianity, is an umbrella that contains multiple schools of thought. Katz presents the three primary schools: the Hanafi school being the most liberal, the Maliki school being the most conservative, and the Hanbali school landing somewhere in the middle (31). Katz remarks that for many Hanafis, abortion can be allowed before 120 days of gestation, after which abortion is prohibited as the fetus has been ensouled (31). Katz continues, stating how the Hanbali school splits, with some saying abortion is not permissible after the *nutfa* stage and others saying abortion is permissible until 120 days of gestation (31). And lastly, the Maliki school varies from abortion being allowable until the end of the *nutfa* stage or not being allowed at all (Katz 31). While the view on when an abortion is permissible varies by school, the two critical markers are the end of the *nutfa* stage occurring at 40 days of gestation and ensoulment at 120 days. After the fetus is ensouled, abortion is prohibited for all reasons except a direct threat to the mother's life (Khorfan and Aasim). As mentioned previously, religion varies greatly and operating under the label of faith forces many generalizations to be made. Although *Hoosier Jews for Choice* may not present the faith and beliefs of every Muslim, the case represents a large portion of Muslim beliefs regarding fetal life.

*Hafner* acknowledges this variety of religious views regarding when personhood is given to the fetus and goes further to claim the Florida ban establishes a small subset of those views. As presented in *Hafner*, the UCC recognizes that there are many different religious beliefs on when life begins and the laws of the state of Florida represent religious views that are contrary to the beliefs of the UCC, Rev. Hafner, and her congregation (Miami Dade County Courts 5, 15). *Hafner* states that the UCC does not see dates as necessary for understanding when a mother may

choose an abortion; the more important factors are the mother's circumstances, much like the understanding in Jewish faith (Miami Dade County Courts 15).

The statements made in *Hafner* are well supported by the history of statements relating to abortion made by the UCC. In 1971, the Eighth General Synod made its first statement on abortion entitled "Freedom of Choice Concerning Abortion" ("United Church of Christ" 1). In their statement, the Eighth General Synod explores various moments when fetal personhood could be declared. They discuss conception, implantation, first cardiac activity, quickening, and viability as potential times when personhood could be granted to the fetus ("United Church of Christ" 2). After discussing all of these potential milestones that could mark personhood, the Eighth General Synod concludes that the decision to abort a fetus should be decided on a case-by-case basis with the understanding that although no dates are specified, only "the most serious cases" qualify as situations for a late-term abortion ("United Church of Christ" 2). What is considered the most serious of cases will be discussed later, but what can be gleaned here is that the UCC, much like Judaism, has no specific timeline for when a pregnancy can be terminated through abortion. There is no moment that the General Synod points to as when a fetus is a person. Rather than provide specific dates, the General Synod teaches that an abortion can only be undertaken for more serious reasons as the pregnancy continues.

With a better understanding of those religions involved in the court cases, this paper can now discuss those outside the court cases, starting with Mormonism. From Hendrix-Komoto, Brigham Young, then the leader of the LDS Church, identified the moment of personhood as when the mother could feel the child, which commonly occurs at 12 weeks of gestation (39). However, Hendrix-Komoto writes, "Latter-Day Saints have not always agreed on when life [begins]" (45). Another Mormon figure, physician Hannah Sorenson, believed that many

Mormon women misunderstood the value of fetal life and eventually claimed that life begins at conception (Hendrix-Komoto 40). While Young and Sorenson's statements give personhood at specific times, the LDS Church's current and official statement on abortion includes no mention of defining moments of personhood (The Church of Jesus Christ). The official position of the LDS Church is devoid of any declarations of a defining moment of personhood, defying the expectation that all conservative religions define life at conception.

While Mormonism does defy the stereotype of conservative religions defining personhood at conception, Catholicism does not. The understanding in Catholic belief is that a fetus is a human being from the moment of conception (Schindler 120). Schindler writes that in Catholic tradition, a fetus does not gain its right to live based on "what it can do" (120). Schindler's remark takes issue with the idea that a fetus is a person because of cardiac activity or other medical definitions. While both Judaism and the UCC also avoid using milestones in pregnancy to define personhood and thus define personhood at birth, Catholicism defines personhood at conception.

Like with Mormonism, we can also turn to the official statement made by the United States Conference of Catholic Bishops ("USCCB") for more guidance on why Catholicism defines personhood at conception. From the USCCB, the "life of each individual of the human species begins with the earliest embryo" ("Respect for Unborn Human Life"). Like *Hafner* and the statement on abortion by the Eighth General Synod, the USCCB acknowledges the beliefs of other religions regarding the moment of personhood but unlike *Hafner*, the USCCB rejects those beliefs in favor of life beginning at conception ("Respect for Unborn Human Life").

Given the scientific fact that a human life begins at conception, the only moral norm needed to understand the Church's opposition to abortion is the principle that each and

every human life has inherent dignity, and thus must be treated with the respect due to a human person... Conversely, to claim that some live human beings do *not* deserve respect or should *not* be treated as "persons" (based on changeable factors such as age, condition, location, or lack of mental or physical abilities) is to deny the very idea of *inherent* human rights. Such a claim undermines respect for the lives of many vulnerable people before and after birth. ("Respect for Unborn Human Life")

The Catholic Church's official position places personhood at conception and does not allow for an abortion because the fetus is not yet a person.

### **Extenuating Circumstances**

The second defining characteristic of any abortion law or religious belief is the circumstances under which an abortion is allowable. In religion, these circumstances can define when an abortion is allowed before or after personhood is given to the fetus. For instance, as will be discussed in Islam, reasons viewed as lesser are sometimes allowed before ensoulment (within the timeline and before personhood), but abortion can only be procured after ensoulment to save the mother's life (outside of the timeline and after personhood).

The circumstances that will be discussed below are health concerns, traumatic events, and social abortion. Health concerns are situations where the reason for an abortion is a threat to the mother's life or wellbeing. Traumatic events are situations where an abortion is sought to avoid the further trauma of carrying the fetus of rape or incest to term. Health concerns and traumatic events are more generally accepted as reasons that would allow for an abortion. Social abortion are cases where an abortion is sought for reasons that are less commonly accepted, such as cases when the fetus could endanger the life of an existing child or when one believes they cannot

support another child. Each section has been grouped by theme, as it is difficult to understand one without the other. For instance, as will be seen in Judaism, understanding the reason for allowing abortion in the case of a fetal abnormality is very closely tied to the reasoning in instances where the mother's mental health is the primary concern. The sections below provide discussion of the laws of each state, followed by a discussion of religious beliefs, for each topic.

### ***In Cases Where the Life or Health of the Mother is at Risk or a Fetal Malformity***

As discussed previously, the abortion bans of Florida, Indiana, and Kentucky allow for faithful practice of one's religion in some circumstances. The most common circumstance where the bans allow for faithful practice of one's religion is when the mother's life or physical health is at stake. However, it is crucial to fully understand what constitutes a threat to the mother's life and health as prescribed by law, as it may not be precisely how religious groups define those threats.

The laws in each state speak to some degree of physician discretion regarding what defines a valid health concern. Rather than create an exhaustive list of illnesses and injuries that would allow an abortion to occur, the laws leave it to physicians to decide what constitutes a serious health risk. In Kentucky, an abortion can be performed in cases when a physician, "in reasonable medical judgment," would perform the abortion "to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman" (Kentucky General Assembly 2). In Indiana, an abortion may be performed "to prevent death or a serious risk of substantial and irreversible physical impairment of a major bodily function" but does not allow abortion for psychological or emotional concerns (Indiana General Assembly 6). Lastly, in Florida, an abortion can be undertaken for health reasons before 15 weeks of gestation or after only if:

Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. (State of Florida)

Each state generally understands the risk of death and serious health risk quite similarly, with differences mainly in the allowance of abortion for the sake of the mother's mental health.

Kentucky and Indiana prohibit abortion for the sake of the mother's mental health, with Florida only allowing abortion for the sake of the mother's mental health before 15 weeks of gestation.

Similarly, understanding if and when the bans allow abortion in cases of fetal abnormality is also crucial to understanding if the abortion bans allow for the faithful practice of one's religion. In Indiana, an abortion is permitted if the fetus has a fatal abnormality and the abortion takes place before 20 weeks of gestation (Indiana General Assembly 13). Similarly, in Florida, an abortion can be obtained before or after 15 weeks of gestation if two physicians "certify in writing" that the fetus has a fatal abnormality (State of Florida). However, in Kentucky, abortion is never allowed in the circumstance of a fetal abnormality, no matter how much time has elapsed in the pregnancy (Kentucky General Assembly). With the understanding of the legal perspectives on abortion in the circumstances relating to health, one can now begin to understand more comprehensively the arguments made in the cases and the religious beliefs behind them.

As mentioned previously, the general understanding in Judaism is that a fetus is a part of its mother and if the mother's life is threatened by carrying the fetus to term an abortion is required (Silber 232-233). A threat to the mother's life always comes before the fetus's life, regardless of its gestational age (Barilan 168). Furthermore, the circumstance can even be

extended after the fetus's first breaths "if there is a situation in which without the intervention both the pregnant mother and child would die, intervention is mandatory to save one life" (Silber 233).

Silber reports on a piece of Jewish law with an example of what would constitute a health risk. From Maimonides' Code, if a pregnant mother is suffering from food cravings, even cravings that may harm the fetus, the mother will be allowed to eat as much as they please (Silber 234). Barilan also reports on the example of hunger pains, concluding that while "overeating is precisely what endangers her... she may appease her cravings even at the cost of the life of the fetus" (134). With something seemingly innocuous like the pain associated with food cravings being seen as a health risk that comes before the fetus's life, one can easily see that both the mother's life and health always come before the fetus in Jewish law.

While circumstances of the mother's health are strong enough to warrant an abortion on their own, the case of a fetal malformity is generally not. Silber reports that if the child may be born with a birth defect, the plea for an abortion is unlikely to be approved purely because the child may have a difficult life (235). However, if the mother is likely to suffer severe mental anguish or other hardship due to having a child with a malformity, the plea for an abortion is much more likely to be approved (Silber 235). While the outcome is the same, the reasoning is extremely different. Rather than allowing the abortion because the child is unlikely to have a fruitful life, the abortion is permitted because the mother feels they will suffer some degree of hardship by giving birth to a child with a malformity. The understanding that abortion should be allowed for the mother's mental health is entirely at odds with the laws of each state. Neither Kentucky nor Indiana allows abortion for the mother's psychological concerns. Still, abortion in

the case of fetal malformity is understood in Judaism through concern for the mother's mental health.

Unlike the common understanding in Judaism of abortion in the case of fetal malformity as a matter of psychological concern for the mother, there is a different understanding in Islam. Generally speaking, in Islam, the fetus may be aborted due to a malformity if the malformity is discovered and the abortion takes place before ensoulment (Rispler-Chaim 85). Rispler-Chaim also discusses the belief by some Muftis that abortion is not allowable since fetal malformity does not endanger the mother's life (85). The difference of opinion in cases of fetal malformity highlights how all discussion of abortion in Islam comes down to if the circumstance being discussed is deemed a good reason for an abortion. From Bowen, Islamic schools have many differences of opinion, but the major point of unity is that abortion is allowed in cases with a good reason, and the abortion would occur before ensoulment (53). Whether a fetal malformity is a good reason depends on the school, scholars, and leaders asked, but there is much more unity in the circumstance of the mother's health.

While the case of a fetal malformity is not universally considered a good reason for abortion in Islam, Bowen states, "the best example of a good reason is the mother's health" (57). "All schools accept the necessity of sacrificing the unborn child to preserve the mother's life," and much like the laws in Florida, Indiana, and Kentucky, Islamic law dictates that a physician is the one to make that decision (Bowen 57). Furthermore, an abortion for the mother's life is the one case when Islam allows abortion after ensoulment. From Khorfan and Aasim, "the one necessity that overrides the prohibition of abortion after 120 days is when the mother's life is at stake." Lastly, in the case of mental health, Islam has no clear or sweeping guidance. From Hedayat, one Muslim leader decried that abortion is "not allowed when the mother has

diagnosed mental illness” while another more progressive leader states any “maternal condition that brings extreme difficulties (*'usr va haraj*) for the mother... allows for an abortion” (653-654). Again, like the case of fetal malformity, there is no consensus on abortion in for the sake of the mother’s mental health in Islam.

While Islam has no comprehensive guidance regarding mental health, the United Church of Christ lists mental health as a good reason for abortion, even late-term. The Eighth General Synod wrote that “during the later months of a normal pregnancy life should not be interrupted except for the most serious reasons;” examples of those reasons include “the physical or mental health of the mother” and “abnormality or disease of the fetus” (“United Church of Christ” 2). For the Eighth General Synod, in the circumstances of the life and health of the mother (both physical and mental) and the case of a fetal malformity, they find that an abortion can be allowed even through the late stages of pregnancy.

Similarly, the LDS Church also allows for an abortion when the mother’s life or health is at risk (The Church of Jesus Christ). Like Islam, the LDS Church asks a “competent physician” to define those risks (The Church of Jesus Christ). However, the LDS Church makes known that a mother’s health risks do not “automatically justify abortion” on their own; abortion should only be sought after those involved in the decision “have received confirmation through prayer” (The Church of Jesus Christ). While the life and health of the mother are allowable circumstances, they are not good enough reasons on their own. Similarly, in the cases when a “competent physician determines that the fetus has severe defects that will not allow the baby to survive beyond birth,” an abortion would also be allowed after those involved receive “confirmation through prayer” (The Church of Jesus Christ). Unlike the reasoning present in Judaism, the understanding of abortion in the case of a malformed fetus is not based on the mother’s mental

anguish of delivering a malformed child. In Mormonism, malformity alone permits abortion, so long as the mother receives confirmation through prayer.

While each religion discussed thus far has some degree of openness to abortion for the mother's health and in cases of fetal malformity, Catholicism is quite closed to these ideas. Catholic belief regarding abortion always follows the "principle of double effect" (Khorfan and Aasim). Essentially, the principle of double effect allows the greater good of saving the mother to supersede the evil of killing the fetus (Khorfan and Aasim). However, the principle of double effect only applies to actions that will indirectly harm the fetus, for example:

the case of an ectopic pregnancy when the embryo implants into the fallopian tube and a continued pregnancy would lead to rupture and the possibility of maternal and fetal death. In this scenario surgical removal of the fallopian tube is permitted even though it would cause the death of the growing embryo... because the process is indirect (Khorfan and Aasim).

The principle of double effect does not allow for an abortion that is undertaken for the sole purpose of aborting the fetus to save the life of the mother, "even if [abortion] is the only means to save the mother's life" (Khorfan and Aasim).

Similarly, the Catholic Church also prohibits abortion in cases of fetal malformity ("Respect for Unborn Human Life"). The Catholic Church makes the prohibition because:

to claim that some live human beings do not deserve respect or should not be treated as 'persons' (based on changeable factors such as age, condition, location, or lack of mental or physical abilities) is to deny the very idea of inherent human rights ("Respect for Unborn Human Life").

Along with denying human rights, an abortion in the case of a fetal malformity would constitute a direct action against the fetus which would be a violation of the principle of double effect.

### *In Cases of Rape or Incest*

Alongside health concerns, the cases of rape and incest represent other “hard” cases that are heavily debated in religion. The circumstances of rape or incest can be understood in many ways, two of which are the mother’s mental anguish of carrying the fetus to term and the potential shame placed on the child after it is born. The circumstances of rape and incest are sensitive matters which are understood differently by religions and states.

The laws of each state vary in their acceptance of rape and incest as acceptable circumstances for an abortion. In Indiana, an abortion can be allowed in cases of rape or incest if the abortion occurs before the first ten weeks of gestation (Indiana General Assembly). In Florida, any pregnancy may be terminated before 15 weeks of gestation (State of Florida). However, there is no allowance for abortion in cases of rape or incest after those 15 weeks have elapsed (State of Florida). Lastly, in Kentucky, there is no allowance for abortion in cases of rape or incest, with no mentions of rape or incest in the entire act (Kentucky General Assembly 2). To put these laws into more familiar terms, the circumstances of rape or incest do not constitute ones where an abortion would be allowed after personhood is given to the fetus, with Kentucky defining personhood at conception, Florida at 15 weeks of gestation, and Indiana at ten weeks of gestation.

Much like the variance of the state laws regarding abortion in cases of rape or incest, Silber comments that there has never been a consensus in Jewish law regarding abortion in cases of rape or incest (233-234). However, Silber also makes the important note that while “abortion

on demand” in cases of rape or incest is not available, the primary reason for abortion in Judaism is the rights of the mother (234). Thus, one can draw upon the exceptions for the mother’s health to understand better Jewish law regarding aborting a fetus of rape or incest. From Barilan, “We may conclude that any sexual or physical use of a person is forbidden, even for the sake of saving life. Pregnancy from rape... may be considered as such unacceptable uses of the woman” (169). Much like in the case of a fetal abnormality, the plea for an abortion purely based on rape or incest may not be approved. Still, if the mother should suffer from carrying the fetus of rape or incest to term, then abortion may be justifiable.

This view of carrying the fetus of rape or incest to term as detrimental to the mother is also present in Islam, with an important historical consideration for understanding Islamic ideas about abortion in cases of rape. Unfortunately, there are many examples of Muslim women being raped during conflict, with the rape of Kuwaiti Muslim women during the Gulf War of 1991 by Iraqi soldiers, in Bosnia during the 1990s, and in Kosovo in 1999 being just a few examples (Rispler-Chaim 87-88). A fatwa was issued after the events in Kosovo in 1999 which allowed Muslim women to take “abortifacient medicine” to prevent the pregnancy but not terminate it (Rispler-Chaim 88). Preventing the pregnancy was justified because the children of these pregnancies may later be drafted by the Serbs to fight against Muslims (Rispler-Chaim 88).

Keeping the historical context in mind, further understanding of Muslim views of abortion in cases of rape or incest is required. While medicine to prevent pregnancy was offered to the women in Kosovo 1999, this is not the mainstream belief in Islam. Rispler-Chaim reports, “most muftis are generally against abortion of... fetuses of rape” and are motivated by the question: “what sin did the fetus commit which justifies its killing?” (90, 88). Rispler-Chaim also presents that there is a fear of a “mudslide’ in religious ethics,” that once Islamic leadership

deems rape and incest as good reasons for abortion, they may later be “obliged to approve of other grounds for abortion” (92).

While Rispler-Chaim highlights the lack of allowance for abortion in cases of rape or incest, Hessini reports that rape is becoming more accepted as a circumstance that allows abortion. Hessini mentions a fatwa declaring that unmarried women may obtain an abortion if they were raped and a similar fatwa to the one mentioned by Rispler-Chaim, which allowed for abortion because rape was being used as “a weapon of war” (77). Like the case of fetal abnormality, there is no sweeping guidance in cases of rape or incest, meaning any guidance will depend on the leaders and scholars asked.

While Islam has significant differences of opinion regarding abortion in the case of rape or incest, the United Church of Christ does not. In *Hafner*, there is excellent insight into the UCC’s views of abortion in cases of rape or incest.

[Rev. Hafner] counseled her congregants in accordance with her religious values and beliefs as required and shaped by the UCC principles. Specifically, in counseling a pregnant adult or girl who is a victim of rape, incest, or trafficking, [Rev. Hafner] would emphasize that... God wants the victim to have a peaceful, joyful, and loving life.

Therefore, God and the Church family bless whatever decision she makes as a person of freewill, including if that decision is to receive an abortion (Miami Dade County Courts 14).

In her duties as a Reverend for the UCC, Rev. Laurinda Hafner supports congregants in choosing between abortion or carrying the fetus to term in the circumstances of rape or incest. As noted previously, the UCC has no specific dates that define when an abortion can be permitted but only

states that more robust reasoning is required to seek a late-term abortion (“United Church of Christ” 2). The Eighth General Synod and subsequent Synods affirm that rape and incest constitute “the most serious reasons” under which an abortion may be sought late term (“United Church of Christ” 2). As such, the UCC’s position is firmly in support of the legality of abortion in the cases of rape and incest, which places the UCC against the abortion bans in Kentucky, Indiana, and Florida.

Much like the UCC’s position on abortion in cases of rape and incest, the official statement on abortion by the LDS Church allows for abortion in these circumstances. Wardle reports on a statement made by the LDS church leadership after *Roe* was first decided, stating, “the Church opposes abortion... except where... the pregnancy was caused by rape and produces serious emotional trauma to the mother” (120). Much like Judaism, the circumstances of rape and incest are understood alongside concern for the mother’s mental health. However, the mother’s mental health is a component required for the abortion to take place rather than the sole reason for the abortion. Again, abortion is only allowed after discussing with the local priesthood and receiving “divine confirmation through prayer” (Wardle 120). Much like Mormon understandings of abortion in the cases of the mother’s health, there is also a focus on confirmation through prayer and approval by the local priesthood in cases of rape or incest.

Unlike the other religions discussed, which all have certain allowances for abortion in circumstances of rape or incest, the Catholic Church has no allowance in such cases. Similar to instances of health risks to the mother, the principle of the double effect would not permit an abortion to take place if the direct action is to terminate the fetus. However, while an abortion is not allowed, the Catholic Church does allow the victim to “defend herself against a potential conception” (“Ethical and Religious Directives “15). The allowance for a Catholic woman to

defend herself would be in line with the allowances made in Islam when Muslim women were being raped in war; the mother may attempt to stop the pregnancy through medication after tests indicate fertilization has not yet taken place (“Ethical and Religious Directives” 15). The views of the Catholic Church permit a woman to prevent fertilization but do not permit direct action against the fetus once fertilization occurs.

***Economic Concern, Concern for the Lives of Existing Children, and Family Planning***

The circumstances of family and economic concerns are generally regarded as being “softer” than rape, incest, fetal abnormality, and the life or health of the mother. While these circumstances may be “softer,” a circumstance where one does not feel they could support a child is difficult. Florida is the only state to allow an abortion for economic concerns, but only if the abortion occurs before 15 weeks of gestation (State of Florida). Indiana and Kentucky do not have any allowance for economic concerns as a reason for abortion (Kentucky General Assembly, Indiana General Assembly).

While the states have some degree of consensus regarding abortion for economic concerns, there is little consensus or guidance regarding abortion in cases of economic concern in Judaism. Greenberg states that there is hardly any response to abortion on demand in cases of economic concern in Jewish law and teachings (165). Nevertheless, while there are few direct statements regarding an economic concern, there is a “bias for life” that already exists over life that might come to exist (Silber 236). Silber’s statement could be interpreted as reasoning that would allow for an abortion if the life of an existing child may suffer or if the family has economic concerns that would prevent them from being able to afford a child. Similarly, there is historical evidence of Jewish women seeing abortion as a matter of their economic freedom. From Kranson, the first statement made by the Women’s League for Conservative Judaism did

not include religious concepts but did state that abortion was necessary for women to be economically independent (177). While the Women's League's first statement was not backed by Jewish law, it highlights the opinion of many Jewish women that having the right to an abortion is part of their modern economic liberty (Kranson 177).

Another example of a Jewish interpretation of abortion in cases of concern for existing life is in the case of a nursing infant. Barilan discusses that one Rabbi believed bringing the fetus to term was "the virtuous choice," citing how the danger to the breastfeeding child tends to be exaggerated by doctors (117). The Rabbi's statement would place Judaism against abortion for economic or familial concerns, but without more examples and statements, it is hard to know if being against abortion for economic and familial concerns is a commonly held belief in Judaism. While some statements see economic concerns or concern for other children as valid reasons for abortion, concrete statements made by Rabbinical authorities are elusive. Without any official statements made by Rabbinical leadership, no general statements can be made about abortion in cases of familial and economic concerns in Jewish faith.

Unlike Judaism, there is more discussion around abortion for the sake of existing children or economic concerns in Islam. Starting with the concern for existing children, Bowen reports on the "small assassination," or the instance when a nursing mother should become pregnant before the existing child has nursed for two years (64-65). The ideas of the past reflect that the pregnancy would not allow the mother to provide all the required nutrients to the nursing infant and thus an abortion would be allowed before the fetus is ensouled (Bowen 64-65). Hessini also gives socio-economic concerns as an example of a justifiable or good reason for abortion prior to ensoulment (76). So, unlike Judaism, Islam does provide mothers of existing infants the option to have an abortion for the sake of their breastfeeding children as long as the abortion takes place

before ensoulment. The logic here is similar to Judaism in that all existing life comes before potential life. Still, in Islam there is the consideration that only certain circumstances can justify abortion before ensoulment.

Similar to Islam, the circumstances of existing children or the family's economic condition are seen as acceptable reasons for an abortion by the United Church of Christ. From the Eighth General Synod's statement on abortion, the UCC allows for abortion for the sake of the "welfare of the whole family" or "its economic condition" ("United Church of Christ" 2). However, economic and familial concerns are not included as circumstances for later-term abortions. Thus, economic and familial concerns are seen as circumstances with lesser weight than cases of rape, incest, the life and health of the mother, or fetal malformity but are still valid reasons for abortion earlier in pregnancy.

Unlike each religion discussed thus far, Mormonism has extreme objections to abortion in cases where the primary concern involves the cost of an additional child. Brigham Young, then the prophet-leader of the LDS Church, "condemned the 'various devices... used by married persons to prevent the expenses and responsibilities of a family'" (Wardle 112). LDS leaders John Taylor and George Q. Cannon also condemned those committing feticide "because they think they cannot afford to raise children" (Wardle 113). Furthermore, when looking at the official statement by the LDS Church regarding abortion, economic concerns are not listed as one of the situations under which an abortion is allowable (The Church of Jesus Christ). In Mormonism, there is no allowance for abortion to avoid the expense of an additional child, as evidenced by the LDS Church's current position on abortion and the past statements by LDS Church leadership.

Like Mormonism, the notion that abortion can be used as a means of birth control and family planning is “strongly condemned” in Catholicism (Brind'Amour). Again, Catholicism is the most restrictive religion discussed and would not permit any direct action against the fetus because it violates the principle of double effect. From the “Ethical and Religious Directives For Catholic Healthcare Services” made by the USCCB:

Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo (“Ethical and Religious Directives” 18).

Again, utilizing the principle of double effect, procuring an abortion based on limiting family size, protecting an existing child, or due to an economic concern would all represent an action where abortion is procured for the abortion rather than through an indirect means to save the mother.

### **Societal Vision for Abortion Policy**

The last piece of the discussion of the court cases and religions is the matter of societal vision. The plaintiffs in each case have a vision of a society that allows them to enjoy the free exercise of their religion in matters of abortion; the leadership of each religion discussed thus far would also have particular visions of when a just society would allow an abortion to take place. These visions are not always in-line with each other. The significant divide this paper focuses on is between the plaintiffs’ vision and the vision of lawmakers. Similar divides can be present within a religion, as is best illustrated by the divide between Catholic teachings and the views of

many lay-Catholics. Alongside divides between teachings and the beliefs of followers, it is important to note places where followers make their positions extremely clear, as is the case with the resolutions made by the Women's League for Conservative Judaism.

As discussed in the case of economic concern, the Women's League for Conservative Judaism is integral to understanding some views of Jewish women on abortion. In 1970, The Women's League for Conservative Judaism passed its first resolution on abortion; this statement remained entirely secular and "proclaimed the 'freedom of choice as to birth control and abortion' to be 'inherent to the civil rights of women,' adding that 'all laws infringing on those rights should be repealed'" (Kranson 177). Then as the political landscape changed, the Women's League changed the structure of their argument for legal abortion. In 1982, the Women's League reaffirmed its abortion statement but did so on the grounds of religious freedom, which placed any abortion ban against "the right of Jews to free exercise of their religion" (Kranson 184-185). While these statements by the Women's League support the right to an abortion, they should not be taken as statements in support of abortion itself. Kranson makes known that these resolutions were not made to "imply that the organization supported... abortion;" instead, the statement was made to "assert a woman's legal right to access [abortion] based on her own religious and moral conscience" (178). Seeking full legal access to abortion does not necessarily mean one sees abortion as justifiable in all circumstances but rather that one should be able to make the decision to have an abortion for themselves, without legal intervention.

The Women's League's statements on legal access to abortion are very similar to the arguments made by *Hafner*. From *Hafner*, "The General Synod of the UCC specifically calls for the pastors, members, and local churches to... actively oppose state and federal legislation and

amendments which seek to revoke or limit access to safe and legal abortions” (Miami Dade County Courts 13-14). Outside of *Hafner*, one can see the call for action against legal prohibitions of abortion in the Eighth General Synod’s first resolution on abortion. From their statement, “The General Synod calls upon churches of the United Church of Christ and their members to involve themselves extensively in programs which would support repeal of present abortion legislation” (“United Church of Christ” 3). Calling all UCC members to act against barriers to abortion marks a further step in the UCC’s vision for society from that laid out by the Women’s League.

Similar to the UCC and *Hafner*, the LDS Church includes a call to action in their official statement on abortion. From the LDS Church’s official statement on abortion, “as states work to enact laws related to abortion, Church members may appropriately choose to participate in efforts to protect life and to preserve religious liberty” (The Church of Jesus Christ). Much like the UCC, the LDS Church’s statement allows members to act according to their faith as pertaining to fighting for abortion access. However, alongside the notion of “preserving religious liberty” is the call to “protect life,” which harkens towards ideas of a legal restriction rather than the total allowance of abortion by the state and allowing individuals to decide for themselves (The Church of Jesus Christ).

Similarly, there are also calls to action by Catholic scholars for Catholics to speak out on the matter of abortion. Schindler states that

Catholics have a unique opportunity before them. They can enter the public square and respectfully attempt to persuade their fellow citizens of the profound philosophical and scientific logic of the pro-life position... Catholics have been given the responsibility and resources to build what John Paul II describes as a ‘culture of life’ (120).

What Schindler is speaking of here is not necessarily malevolent but does highlight Catholic leadership's attitude towards publicly supporting abortion legislation. The Pew Research Center notes that the Catholic Church "often leads the national debate on abortion" ("Religious Groups' Official Positions"). Furthermore, Cook et al. state that the Catholic Church is not the only anti-abortion religion in the US but "is perhaps the most visible" (224).

Being so vehemently opposed to direct abortion and leading the national debate on abortion, one would think that the Catholic Church is in consensus on abortion. However, more than half of all Catholics in the US believe abortion should be legal in all or most cases (Fahmy). While statements by Catholic leadership prohibit direct abortion and ask Catholics to speak to that belief publicly, a slight majority of US Catholics believe abortion should be legal in all or most cases. Callahan theorizes that such a divide could mark the beginning of a pro-abortion movement within the Catholic Church and even goes as far as to state that if the Catholic Church was to relax its position on the legality of abortion, "a change in restrictive state laws might better reflect the pluralistic character of the nation" (115-116). However, Cook et al.'s statement is pure speculation and would take many years to show an effect.

## **Conclusion**

First, now that one can better understand the religious beliefs within the discussion of abortion as a matter of religious freedom, one can see that the religious beliefs, both in favor and against abortion, are deeply held beliefs with backing in religious texts and years of teachings. One can also see that the laws of Kentucky, Indiana, and Florida are at odds with many of the religious beliefs discussed with Judaism, Islam, and the United Church of Christ. One example of the disagreement between religions and the law is the requirement for an abortion to save the

mother's life in Judaism (Kranson 172). Another is the restriction of abortion in cases of rape and incest in Kentucky with Mormonism and the UCC firmly in favor of abortion in such cases.

Second, one can see that the misconception of religions having a natural opposition to abortion could not be further from the truth. Judaism, Islam, the UCC, and Mormonism present many circumstances where there is a good reason for abortion as present in their faith. Catholicism even allows for abortion in cases where the mother must undergo a lifesaving procedure that will indirectly kill the fetus. Moreover, there are no universal beliefs regarding abortion in any religion. Divides exist within each religion, both in the timeline and circumstances that justify an abortion with the strongest example coming from Catholicism. Any view of religious beliefs on abortion requires much more nuance than is commonly given.

Third, this paper creates a deeper insight into all abortion beliefs. Within any religion, there is a constant push and pull between respect for all life and circumstances where one life must come before another. This balance is also present in the state legislature as each state has a slightly different view of the timeline and circumstances that allow abortion. No discussion of abortion can ignore how varied and complex any position on abortion is, with religious views on abortion requiring scholarly attention.

Overall, the purpose of this paper has been to highlight that there are real religious arguments for abortion. Whether these pleas are well received by the courts remains to be seen. All one can do is wait. However, we know now that these beliefs are grounded in scripture, in years of teachings, and are deeply held by religious practitioners. What will be decided in these cases is whether the freedom of religion is to be upheld or if the courts believe the government has a vested interest in fetal life. Still, no matter the decision, there will remain robust religious arguments for a legal right to an abortion.

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