

Repro Shabbat  
February 4, 2023  
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In light of the new reproductive health realities in our country and the State of Wisconsin, we at Beth Israel Center have joined with the National Council of Jewish Women to observe Repro Shabbat today.

Before getting into the issues, I want to offer a bit of support. Many of us have been affected first-or second-hand by abortion. Each story unfolds differently and brings up different feelings. I am not going to be talking graphically about abortion today, but I will touch on our tradition's understanding of fetal development as it relates to personhood, and I will talk about abortion access. These topics may be triggering for some of us. Please protect your own boundaries. If anyone feels the need to leave the sanctuary or speak with me privately following this talk, please don't hesitate to let me know. We need to be extra sensitive in talking with one another about these things. If someone shares their personal story with you later, I advise you to listen openly and calmly without offering your own perspective, no matter how positive it may be.

So, are Jews pro-reproductive choice? Are Jews pro-life? Are we pro-bodily autonomy? From a purely Jewish perspective, those are not really the right questions. They are not concepts around which we make decisions. I'd like to share with you what our tradition does say and what I think should concern us about abortion access, as Jewish and Jewish-adjacent Wisconsinites and Americans.

Simply put, Jewish law is clear that a pregnant person's health and personal concerns take precedence over the life of a fetus. When a fetus poses a threat to the person carrying it, the fetus is to be aborted. A fetus does not have the status of personhood. So, yes, we are pro-reproductive choice. We'll get into more detail about that shortly. As for being "pro-life," our tradition and culture are intensely life-focused, but obviously that militant, politic expression is not meant to apply to our principle of prioritizing people over the unborn.

Abortion rights were established by *Roe v. Wade* 50 years ago and overturned by the U.S. Supreme Court last June, opening floodgates to allow states across the country to ban abortion. More than one in three people of reproductive capacity in the U.S. no longer have access to abortion in their state. Of course, the Supreme Court's decision does not stop people from needing abortions. Over the past six months we've seen chaos, confusion, and devastation as bans have eliminated access to all or some

abortions in 18 states. As you know, here in Wisconsin we have reverted to a 173-year old abortion ban. There is a new level of anxiety among those who are considering becoming pregnant, because they may not be able to obtain abortion care should they need it for physical or emotional reasons, including decisions they may need to make based on prenatal testing.

The problem we face today is not only about abortion access. Before we get into detail about our tradition's perspectives on abortion and bodily autonomy, we must understand that the abortion issue is part and parcel of a broader social justice problem. The national health crisis we are now facing is tied to a social and economic crisis that has intensified since *Roe* was overturned. Due to our country's legacy of racist and unjust systems, abortion bans and harsh restrictions hit hardest among people of color and people who are poor. People of means who need abortions will still be able to take the time and expense to obtain the care that they need. People who lack those means will bear the short and long-term burdens of that inequity, and our society will be worse for it. We must understand that given the systemic inequities in our society, denial of reproductive choice perpetuates white supremacy.

Moreover, the harmful effects of abortion bans stretch beyond abortion care. It is now harder for people to get lifesaving medical care for miscarriages, ectopic pregnancies, and other pregnancy-related complications. There, too, those same inequities further entrench white supremacist culture.

We also need to know that anti-abortion rights lawmakers and their allies are not satisfied with overturning *Roe v. Wade*. They are weaponizing the court system and hostile state legislatures to attack other sexual and reproductive health rights now. We are seeing new legislation and lawsuits to block access to birth control, life-saving cancer screenings, HIV prevention, fertility assistance, gender-affirming care, and more, as well as efforts to deny the right to travel to get health care and censoring public health information.

These are serious problems and affronts to Jewish values that should concern us religiously and morally. The social justice and human issues here would be enough for us to rally around this issue, even if our religious imperative to be able to access abortion services were not imperiled, as it is.

Now, let's briefly survey how Jewish tradition perceives and makes decisions about reproductive health.

In two weeks we will read from the Book of Exodus, Chapter 21: “When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman’s husband may exact from him, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth...” (v. 22-25).

The Torah does not apply the resonant phrase of “life for life” (*nefesh tachat nefesh*) when a miscarriage occurs, but only if the mother is killed. In other words, if someone accidentally causes a miscarriage to take place, and the pregnant person remains alive, the case is not treated as manslaughter or murder, because the fetus is not regarded as a person.

Rabbinic law sustained the same underlying principle that life begins at birth. Our Talmudic sages taught that up to the fortieth day from conception, an embryo is considered mere fluid, not a unique being at all (Yevamot 69b). After forty days, the embryo or fetus is considered part of the pregnant person’s body and still, definitively not a separate life (Gittin 23b). Moreover, we are explicitly commanded to abort a fetus that threatens the health of the pregnant person, even during labor (Mishna Oholot 7:6).

Those early legal statements remain law for us and have been supplemented by further statements that consider not only the physical health of the pregnant person but also their emotional health. A leading 18th century German Orthodox rabbi, Jacob Emden ruled: “There is reason to be lenient if there is a great need, as long as the fetus has not begun to emerge; even if the mother’s life is not in jeopardy, but only so as to save her from woe associated with it that would cause her great pain...” Likewise, Rabbi Aharon Lichtenstein, an influential French/American/Israeli Orthodox rabbi issued a ruling in 1991, stating: “It is clear that saving a life is not the only sanction for permitting an abortion.” From the Talmud to the present, our tradition is clear that each person is empowered to determine their own suffering. It is improper for rabbis or lawmakers to determine a pregnant person’s need for abortion for any reason, be it medical or personal.

You may wonder if Jewish law takes into account when a soul enters a life. Of course, we don’t know when that happens, just as lawmakers in Wisconsin do not know. Our Talmudic sages put forth a range of theories about ensoulment, only to reach the agreement that this is something only God knows. The question of whether a fetus may have a soul does not weigh into halachic considerations of the permissibility of abortion.

The law committee of the Conservative Movement has explored many aspects of reproductive freedom and access. Our Rabbinate is a founding member of the Religious

Coalition of Reproductive Choice and independently has produced eight responses dealing with abortion from a legal perspective, as well as nine resolutions and six public statements supporting reproductive freedom and access in this country.

Note that I have not said anything about personal autonomy. That is not a Jewish concept, actually. Jewish tradition regards the body as a sacred vessel. We have numerous rules about what we can do with our bodies—what we ingest, how we dress and adorn our bodies, how we use them in speech, in bed, on Shabbat, when we're sick and dying and even what happens to them after death. You may see personal autonomy as a fundamental, civil liberty, and I would agree with you as long as we are talking about secular society. From a Jewish perspective, personal autonomy cannot be our argument for reproductive choice. Our Movement's rabbinates states explicitly: "Neither viability nor a woman's right to choose is the basis of Jewish law on abortion, although they play a role only indirectly; what matters in Jewish law is the woman's (their word, not mine) life and health, both physical and mental" (CJLS Update on Abortion, December, 29, 2021).

The responsibility for each person to take proper care of their physical and emotional health is our sacred responsibility. Self-care is a holy act and not the same thing as the secular notion of bodily autonomy.

As members of a secular society, you may see abortion access as a health care right that people need and deserve as a matter of autonomy, dignity, social and economic justice. From a secular perspective I would agree. **From a Jewish perspective, again, the issues are access to the full range of reproductive health care, which our faith demands, and the social and economic justice implications of reproductive health care in our State and our country.**

The public backlash to the overturning of Roe has been swift, immense and ongoing. Fifty years after the Roe decision, and just six months after it was overturned, popular support for legal abortion access is at a [record high](#), measured at 47% in a recent Gallup poll.

Abortion was a game changer in the 2022 midterms, defying the pundits and driving monumental victories for reproductive rights champions and abortion access across the country. Many states passed proactive legislation to secure reproductive rights; in 2022, abortion supporters went 6 for 6 on ballot referendums.

This month, scores of champions for abortion access took office at the local, state, and federal levels, and they must work to protect and bolster reproductive rights.

We must now reimagine what is possible so that these rights and freedoms are permanently protected. A vision for the future that centers those historically left behind will create a more equitable health care landscape for all. We need to be part of those conversations because we have a religious interest in abortion access and health care justice.

In the meantime, while abortion is illegal in Wisconsin, it is not illegal for a Wisconsinite to travel to Illinois, Minnesota or Iowa to obtain one. Each state has different viability, counseling, and parental notification restrictions. Planned Parenthood clinics in Wisconsin, including here in Madison can help patients navigate out-of-state appointments, including providing financial support and pre-and post-abortion care. Additional funds are available from other organizations.

Wisconsinites cannot be prosecuted for having had an abortion if they require further medical care here after obtaining one out of state.

The morning-after pill is still legal and available for purchase in Wisconsin without a prescription, and Planned Parenthood provides emergency prescription contraception. The trickiest part of Wisconsin's 1849 abortion ban is that it permits life-saving "therapeutic abortions" to save the life of the pregnant person. There are myriad circumstances in which such might be the case, and no statutory or administrative guidance on what qualifies. Various groups and practices are trying to figure out what their policies need to be in this unclear situation.

As Jews we are called to pursue justice and we cannot tolerate injustice. The road ahead will not be easy or fast, but there is momentum.

Our Torah takes us on a path to freedom today and teaches right away that the road to freedom is long and paved with difficulty. Changing the way things are requires upheaval, radical paradigm shifts—like splitting the sea—and full-on effort. We saw God as a decisive warrior for liberty, justice, and truth in today's Torah reading. May we follow in God's shadow. May we learn how we are called to split the sea, and may we take one another by the hand, as Jews and as Americans, so that together, we may walk the path of human flourishing for all people who live here.

Amen.