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Agudath Israel of America on Abortion

Jewish tradition teaches that all human life is sacred and a human fetus has status and dignity. Termination of pregnancy therefore raises profound moral concerns. Agudath Israel of America has long opposed the central holding of *Roe v. Wade*, that the right to abortion protected under the Fourteenth Amendment's personal liberty/due process clause is uniformly "fundamental," and thereby protected against governmental abridgment absent a compelling state interest.

At the same time, as a representative of a religious minority community whose constituents rely heavily on the religious freedoms guaranteed under the First Amendment, Agudath Israel is a staunch advocate of religious liberty for all Americans. As a general rule, Judaism rejects the notion that termination of pregnancy, even prior to fetal viability, is properly a matter of free maternal choice. Nonetheless, in certain exceptional cases, Jewish law may authorize abortion, indeed, may require abortion as a matter of religious obligation. Accordingly, in conjunction with its opposition to legalized abortion on demand, Agudath Israel has supported a woman's legal right to abortion where she seeks the abortion as an expression of her religious faith.

The central premise of Agudath Israel's position is that characterization of the right to abortion as "fundamental" need not be a matter of always or never. In most cases, where the sole constitutional source of the claimed right to abortion is the personal liberty/privacy right developed in *Roe v. Wade*, the right to abortion should not be accorded the status of a "fundamental" right. Accordingly, legislative measures designed to restrict the availability of abortion should generally be upheld even in the absence of any compelling state interest, so long as there is a rational basis for the legislation.

There are times though when a woman's claimed right to an abortion is grounded not only in her personal liberty/privacy right, but also in another constitutionally protected interest. For example, for a state to deprive a woman the right to an abortion even where continuing a pregnancy threatens her life, it is not merely to deprive her of some vague sense of a personal liberty "interest"; it is literally to deprive her of the "life" the Fourteenth Amendment expressly protects. Surely a strong case can be made that abortion in such cases is a right that is "fundamental".

Additionally, when abortion is an expression of the mother's religious beliefs, her constitutional claim is enhanced by her right to freely exercise her religion. In such cases, access to abortion is indeed a right that is "fundamental," and may not be abridged, absent a countervailing compelling state interest.

We commend your efforts to protect the sanctity of life. However, in the context of the present legislation, we respectfully ask that an exception be made when an abortion is an expression of the mother's sincerely held religious belief. For practitioners of the Jewish faith that would include where the pregnancy poses a risk to the life of the mother, and perhaps even if it poses a grave danger to her physical or mental health. We ask that you not force citizens to choose between following their religion and complying with the law. Thank you for your understanding and consideration.