On December 1, the Supreme Court heard oral argument in a case challenging a Mississippi law that bans abortions after 15 weeks’ gestation. Adhering to the Supreme Court decisions of *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), the district court in Mississippi and the Fifth Circuit had struck down the law because it did not simply regulate but outright banned abortions before fetal viability. Mississippi argued that *Roe* and *Casey* found no support in the Constitution and that the Court should overturn those decisions and return authority for abortion regulation to the states. Jackson Women’s Health Organization (JWHO) argued that the right to abortion is rooted in the Fourteenth Amendment’s guarantee of liberty and Supreme Court precedents relating to (1) bodily integrity and (2) decisional autonomy with regard to marriage, procreation, and family.

With respect to bodily integrity, the relevant Supreme Court precedents establish the right to refuse (with exceptions) medical treatment, examinations, or the invasive collection of bodily tissues or fluids. Significantly, no case outside the abortion context extended that right of bodily integrity to encompass a right to affirmatively undergo a medical procedure or ingest a substance.

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You may recall in 2020 Life Legal brought your attention to the increasing number of cities enacting bubble zones outside of abortion clinics. These zones are designed to silence and intimidate pro-life sidewalk counselors.

What the abortion cartel did not anticipate was that the peaceful, courageous sidewalk counselors would not back down! In cities across the country, sidewalk advocates continued to pray and offer life-saving alternatives to pregnant women in desperate need of truth and hope.

When abortion workers realized passionate pro-lifers foiled their strategy, they turned to clinic escorts—“deathscorts”—with a new scheme to chill pro-life speech outside their death mills. Their strategy became if you can’t silence the pro-life message, then drown it out with car horns and loud music, threaten to harm sidewalk counselors, and, when possible, shove them off the sidewalk. If none of that works, call the police, make a false claim, and have the pro-lifers arrested. The deathscorts’ aggressive, often violent, tactics are at an all-time high!

**Jackson, Mississippi—The heart of the battle.**

Jackson, Mississippi is center stage in the fight to end abortion. The Jackson Women’s Health Organization (JWHO) is the last abortion clinic in Mississippi. For more than a decade, Life Legal has fought to protect the rights of sidewalk counselors who minister outside the infamous “pink house.” Tensions have risen since the Mississippi legislature passed a law prohibiting abortion after 15 weeks’ gestation. Although the law is currently enjoined, meaning a court has blocked its implementation, the U.S. Supreme Court heard the case on December 1, 2021. Although the Court has not issued a ruling at the time of this writing, six justices seem willing to consider upholding the 15-week ban. This would significantly reduce the number of abortions in Mississippi and across the nation, drastically cutting into the profits Jackson Women’s Health makes from killing babies. Diminished business profits lead to business shutdowns.
As the Jackson Women’s Health Organization’s closure looms, pro-abortion advocates have ramped up their efforts to defend the “pink house.” Deathscorts routinely circle the abortion clinic in their vehicles honking horns, playing loud music, and threatening to run over sidewalk counselors. Yes, clinic supporters encourage deathscorts to use their vehicles to bulldoze through peaceful prayer warriors.

In October of 2021 deathscort Kim Gibson drove her car into an elderly sidewalk counselor and ran him over. Mark ended up in the hospital with a broken leg, a broken tooth, two small brain hemorrhages, and several bruises. Gibson is a co-founder of the pro-abortion group “WeEngage.” Life Legal has teamed up with some of our allies in Mississippi to ensure the local authorities prosecute the escorts responsible for these crimes.

New Orleans, Louisiana—An orchestrated conspiracy.

In New Orleans, Louisiana, a faithful group of sidewalk counselors have offered hope and healing to women outside the Women’s Health Care Center abortion clinic. Deathscorts are so outraged by their effective witness that they have formed an alliance to remove the pro-life advocates from the sidewalk. The New Orleans Abortion League trains the deathscorts to interfere with sidewalk counselors, to push them away, and to make it appear as though the counselors have illegally touched the deathscorts.

In fall of 2020, Jack was a victim of their scheme. As Jack walked along the sidewalk, the pro-death entourage passed by him, and deathscort Linda Kocher pushed Jack with her shoulder, knocking him off the sidewalk. The deathscorts called the police and accused Jack of threatening Kocher! Life Legal worked with local attorneys to bring the truth to light and ultimately all criminal charges were dismissed!

A few months later, the deathscorts were at it again. With a calculated plan, they targeted two sidewalk counselors, John and Ray. The deathscorts do not just position themselves in between the life-advocating counselors and the women seeking abortions; they push the counselors and then shout that they are the ones who have been touched. Both John and Ray hold signs and offer literature to abortion-minded women, which means they pose the biggest threat to the abortion clinic’s bottom line. The plan had been hatched and the net was soon cast.

It was only a matter of time before the false charges were filed. In two separate instances, John and Ray each held signs and approached the abortion-minded mothers who arrived at the clinic. They offered the women help and hope and pleaded with them to spare their children’s lives. In both situations, a deathscort quickly intervened, pushing their signs away and then abruptly shouting, “You pushed me, you pushed me.” In the same week, these deathscorts lodged battery claims against both John and Ray. Despite efforts by the pro-life sidewalk counselors to press charges against the deathscorts, neither the police nor the courts have investigated the matter further. Criminal charges are pending against both John and Ray. Life Legal has teamed up with our dedicated volunteer attorneys in New Orleans to get both unjust criminal cases dismissed and to rightfully pursue charges against the deathscorts who conspired to violate the rights of the pro-life advocates.

Napa, California—Our own backyard.

The violence hit home last year, as escorts and passersby escalated their attacks against sidewalk counselors outside the Napa Planned Parenthood. While deathscorts regularly block counselors from offering literature and talking to women, they don’t just use their bodies as physical barriers. These desperate pro-aborts have pushed and shoved pro-life advocates, put cameras in their faces, knocked over their signs, followed them to their cars, photographed them, shouted profanity in their faces, and yelled at them to stop praying.

The physical threats have come from all sides. People driving by the abortion clinic have thrown objects at prayerful pro-lifers, including a golf ball, tobacco can, and even a bottle. One person went so far as to steal a framed picture of Jesus! Life Legal is working with the police to hold the offenders liable for their criminal actions. We will not be intimidated, we will not be silenced, and we will seek all available legal remedies against the perpetrators.

Campus pro-life outreach is under attack too!

As colleges and high schools returned to in person learning, pro-life campus outreach resumed as well. Despite their peaceful presence, pro-life advocates were not welcomed with open arms.

When Project Truth and Tiny Heartbeat Ministries went to Western Washington University, they faced vitriol and hate. Pro-abortion radicals stole their signs, threw one sign in a water fountain, and broke another sign in half. That’s not the worst of it all. One student stabbed a sign with a knife; obliterating the sign, and nearly injuring Andrew who was holding the sign at the time. Life Legal is working
As to decisional autonomy, even assuming the authority of the Court to decide the parameters of “liberty” interests in broadly described areas about which the Constitution is completely silent, only in Roe and Casey has the Court held that personal autonomy includes the decision to end the life of another human being. Neither JWHO nor the United States Solicitor General disputed this biological reality, but instead simply argued that Roe got it right in prohibiting states from protecting those other lives before viability.

The heart of JWHO’s defense of the viability “point” or “line” is found in the contention of its attorney, Julie Rikelman, that using viability is “principled because, in ordering the interests at stake, the Court had to set a line between conception and birth, and it logically looked at the fetus’s ability to survive separately as a legal line because it’s objectively verifiable and doesn’t require the Court to resolve the philosophical issues at stake.”

Let’s unpack that.

First, Ms. Rikelman failed to explain why the Court “had to set a line” between conception and birth. Why fetter the abortion right at all? “Setting a line” was not based on principle but on a gut instinct by certain justices that abortion on demand throughout pregnancy, completely disregarding the state’s interest in preserving the life of the unborn child, was too extreme. Hence the necessity for some line, any line.

Both the Mississippi Solicitor General and Chief Justice Roberts noted that Justice Blackmun, the author of Roe, confessed in other writings that the selection of viability as the line beyond which the state’s interest in fetal life could be taken into account was “arbitrary.” Indeed, the decision to allow the states to place any limits on abortion before birth was itself arbitrary, not “principled.” The Constitution is, of course, silent on abortion. But if there were a right to abortion nestled in the Fourteenth Amendment’s guarantee of liberty, why would that right disappear when the unborn child reaches the stage of viability? Ms. Rikelman understandably could not explain why that should be, because the answer lies in the value judgments of the Roe justices, not in the Constitution.

In fact, while pressing the inviolable significance of the viability line in abortion jurisprudence, JWHO and its supporters know very well that other language in Roe and its companion case, Doe v. Bolton, deprives states of the ability to prevent post-viability abortions. Under these precedents, abortions must be allowed for “health” factors as insubstantial, flexible, and unverifiable as the mother’s “physical, emotional, psychological, [or] familial” well-being. Thus, in practice, late-term abortions are available wherever late-term abortion providers decide to provide them, and states are powerless to stop them.

Next, it is inherently illogical to employ viability—a medical concept developed in the interest of preserving the lives of children before and after birth—in the context of decisions about ending the lives of children. Using a variety of tools, neonatologists assess viability in order to make treatment decisions to enhance the odds of survival and well-being for these young patients, including, e.g., what drugs to administer to advance lung development, whether to deliver a child in distress immediately, and whether to forestall a threatened onset of labor. This assessment is simply incommensurable with an assessment of viability for the purpose of determining whether a child can legally be killed in the womb.

As a further complication, Roe and its progeny, including the district court decision in Dobbs, were clear that the “line” or “point” of viability is not based on a specific gestational age found in a medical textbook or study. States are only allowed to protect babies determined to be viable on a case-by-case basis, taking into account “fetal weight [;] the woman’s general health and nutrition; the quality of the available medical facilities; and other factors.” The Court has specifically disapproved the use of gestational age alone as a viability line. Rather, the viability assessment is “a matter for the judgment of the responsible attending physician,” i.e., an abortion provider who almost certainly has no training in, not to mention no interest in, promoting the survival of the children whose lives she is being paid to end.

Thus, the viability “line” is neither logical, nor constitutionally rooted, nor objectively verifiable, nor even a workable “line.” Which is just fine with abortion providers and advocates.

Finally, to argue that prohibiting states from restricting pre-viability abortions allows the Court to avoid the philosophical questions about when life begins is almost comically backwards. In Roe and Casey, the Court unnecessarily waded right into those questions, instead of remaining, as Justice Kavanaugh put it, “scrupulously neutral on the question of abortion.” The best, and only, way for the Court to avoid the philosophical questions that are outside its constitutional purview is by returning the abortion issue to the states and to the people.
In 1973 the Supreme Court of the United States handed down the now infamous Roe v. Wade decision which invalidated laws restricting abortion in all 50 states. In Roe, the Court adopted a trimester framework for balancing what it saw as the competing interests of the state in protecting the life of the unborn child and the privacy interests involved in the decision to obtain an abortion.

Sadie Daniels

In 1992, the Supreme Court reconsidered and reaffirmed “the essential holding of Roe” that states could not outright ban pre-viability abortions, but they were free to regulate abortions, even before viability, and even in the first trimester, as long as regulations did not place an “undue burden” on a woman’s right to obtain a pre-viability abortion. In Planned Parenthood v. Casey, the Court stated, “Before viability, the State’s interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to a woman’s right to obtain a pre-viability abortion. In Planned Parenthood v. Casey, the Court stated, “Before viability, the State’s interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman’s effective right to elect the procedure” (emphasis added). And yet, “the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.” Somewhat enigmatically, the Court added, “These principles do not contradict one another.”

Viability

What is viability?
Viability is defined as that point in the development of an unborn child at which he could potentially survive outside the womb, albeit with appropriate medical intervention. Children past 24 weeks’ gestation are usually considered viable, and medical advancements have seen children as young as 22 weeks’ and even 20 weeks’ gestation survive outside the womb.

Is it workable as a standard for when states have an interest in protecting unborn life?
On multiple occasions, the Supreme Court has reaffirmed that states do have an interest in protecting the life of an unborn child even before “the point of viability.”

For example, in Webster v. Reproductive Health Services, 492 U.S. 490, 519 (1989), the Supreme Court stated it could “not see why the State’s interest in protecting human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability.”

Who determines viability?
There are many problems with using the point at which a child could potentially survive outside his mother’s womb as the cutoff for when a state can or cannot regulate abortion, not least of which is the fact that the Supreme Court left the determination of whether a child is viable to the “woman’s responsible attending physician,” i.e., the abortionist. For the abortion industry, infant survival is a dreaded complication to be avoided. Abortionists are not experts in the survival of very premature children. In fact, they are the exact opposite. They are experts in their death—not their survival.

Doesn’t viability fluctuate?
Moreover, the point of viability is not a point at all, but a prediction—a prediction of whether this life is likely to survive outside the womb. It is
SWISS APPROVE USE OF SUICIDE POD

Wesley J. Smith

Some time ago, the Australian ghoul and suicide promoter Philip Nitschke, invented a machine for use in making oneself dead. He calls it the “Sarco Suicide Pod,” a futuristic gizmo the suicidal person enters. Once the lid is closed, the despairing person answers a few questions and then pushes a button to be killed by nitrogen overdose in about 30 seconds. Efficient death that supposedly feels good.

Yes, I know it sounds too bizarrely nihilistic to be real—but then, these days there is no such thing as too extreme. And indeed, the Swiss government—which permits for-pay suicide clinics—has now approved the SSP for those who want to die. From the Yahoo News story:

Switzerland has just legalized a new way to die by assisted suicide. The country’s medical review board has just given authorization for use of the Sarco Suicide Pod, which is a 3-D-printed portable coffin-like capsule with windows that can be transported to a tranquil place for a person’s final moments of life.

Conventional assisted-suicide methods have generally involved a chemical substance. Inventor Philip Nitschke of Exit International told the website SwissInfo.ch that his “death pod” offers a different approach. “We want to remove any kind of psychiatric review from the process and allow the individual to control the method themselves,” he said. “Our aim is to develop an artificial-intelligence screening system to establish the person’s mental capacity. Naturally there is a lot of skepticism, especially on the part of psychiatrists.”

The pod can be activated from inside and can give the person intending to die various options for where they want to be for their final moments. “The machine can be towed anywhere for the death,” he said. “It can be in an idyllic outdoor setting or in the premises of an assisted-suicide organization, for example.”

Of course there is no requirement for suicide prevention!

[Wesley J. Smith (@forcedexit) is a senior fellow at the Discovery Institute’s Center on Human Exceptionalism and a consultant to the Patients Rights Council. This article was originally published by the National Review (https://www.nationalreview.com/corner/swiss-approve-use-of-suicide-pod/) December 6, 2021, where links to web sources cited by the author may be clicked and followed. This article has been reproduced with kind permission of the author. Lifeline readers may be interested in Mr. Smith’s newest book War on Humans (https://waronhumans.com).]
affected by many factors, including the availability of modern medical resources, the immediate provision of medical care, the knowledge and experience of treating physicians in the treatment of very premature children, as well as the attitudes of treating physicians towards these tiny human beings.

Where premature children have access to quick, modern medical intervention, from physicians skilled, knowledgeable, and trained in the care of very premature children, children who only a decade or so ago could not have survived outside the womb are surviving and thriving. Moreover, where attitudes toward premature children are positive, and physicians cast no dispersions on their so-called “quality of life,” premature children are more likely to survive. They are a living challenge to the idea that there is such a thing as a “point” of viability.

**Dobbs and Mississippi’s Gestational Age Act**

A challenge to the Supreme Court’s jurisprudence of the “point of viability” is ripe, and Mississippi’s Gestational Age Act is ideal for making that challenge. In 2018, Mississippi’s Legislature passed H.B. 1510, which bans most abortions after 15 weeks, many weeks short of the 20-24 week point at which unborn children are typically considered “viable.”

The Gestational Age Act protects legitimate state interests in the life of the unborn, in regulating the medical profession, in preventing the barbaric practice of late-term abortion procedures which require the violent dismemberment and mutilation of unborn children, and in protecting the health of pregnant women.

Jackson Women’s Health Organization, the only licensed abortion clinic in the state of Mississippi, challenged the law in federal court, and the district court blocked Mississippi from enforcing the law. Mississippi was not allowed to present evidence of its legitimate state interests. The court claimed that such evidence was irrelevant because the law conflicted with Roe and Casey’s prohibition on abortion bans prior to viability. Thomas Dobbs, state health officer of the Mississippi Department of Health, appealed on behalf of the state, and in 2019 the Fifth Circuit Court of Appeals affirmed the district court’s decision to block the Mississippi law, holding that, under Roe and Casey, there is a categorical right to a pre-viability abortion.

The State of Mississippi petitioned the United States Supreme Court, stating its first question for the Court to consider as “whether all pre-viability prohibitions on elective abortions are unconstitutional.” The Supreme Court granted certiorari, limiting the case to the single question of pre-viability prohibitions, and heard oral arguments on the matter on Wednesday, December 1 of last year. The court is expected to hand down its opinion on the matter mid-2022.

CONTINUED FROM PAGE 3

with the team of pro-life advocates to ensure that these crimes do not go unpunished.

In Milwaukee, Nick and his team went to Riverside High School to share the truth about abortion to students on the public sidewalk outside the school. Two students ambushed Nick, punching him to the ground, then stomping his head while he lay in the street. Nick was rushed to the hospital and suffered a concussion. Though he had no recollection of the attack, the entire incident was captured on video. The principal of the school witnessed the vicious assault and simply stood by and watched as the violence unfolded. He did not stop the attack. He did not apprehend the assailants. He did not even call 911! While Nick is recovering from the brutal attack, Life Legal is in contact with attorneys in Milwaukee to pursue all legal options for Nick.

**We must not relent.**

The fervent prayers and diligent efforts of sidewalk counselors and life advocates has abortion promoters running scared. As their profit margins dwindle, their tactics to eliminate pro-life voices have become increasingly ruthless. Even in the face of this culture of death, we are encouraged by life advocates across the nation. Their message resounds: We will not cower to threats or intimidation. We will not fear false accusation. We will not be silenced by life advocates across the nation. Their message resounds: We will not cower to threats or intimidation. We will not fear false accusation. We will not be silenced from speaking truth and offering hope. We are on the verge of an historic revolution, and we will prevail!

1The Jackson Women’s Health Organization quickly filed suit challenging the constitutionality of the law. On December 1, 2021, the United States Supreme Court heard oral arguments in the much-anticipated case. The Court will decide whether laws restricting abortion should be adjudicated based on the viability of the child or by some other standard. A decision will be issued by June. See story at page 1.
LIFE LAw DEFENSE FOUNDATION

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ADVANCE HEALTHCARE DIRECTIVE UPDATE

Be sure you have a valid advance health care directive in place so your health care wishes are followed, especially during this critical time. For guidance, go to lldf.org/advance-health-care-directives/

CALL TO ACTION

• Please consider making a tax-deductible contribution today. Life Legal provides trained and committed legal representation in life and death cases across the country. Your generosity saves lives! lldf.org/donate

• Please contact your U.S. Senator to support legislation defunding Planned Parenthood!

• Wanted: Attorneys to assist with forced death and denial of care cases. We also need doctors willing to serve as expert witnesses. Please call Life Legal for more information: (707) 224-6675