

# The Forgotten Father: What Happened to Equal Rights?

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## INTRODUCTION

Roe v. Wade, the seminal U.S. Supreme Court case concerning abortions, contains a most important footnote, 47, that has been ignored for over 40 years. It states: “the provisions of the father’s rights in the constitutionality of the paternal rights in an abortion need not be de-cided.” The time has now come, in which the constitutionality of a father’s rights in an abortion decision must be recognized and honored. My article will advocate for fathers to have a voice in the abortion decision. Today, a married woman can have an abortion without letting her husband know she is doing so. In examining the issues of important court cases defending unrestricted abortion, and providing counter arguments to their findings and conclusions, I will defend the right of the voiceless father to claim his constitutional rights to save the life of his own child.

## HISTORY

A landmark case involving abortion rights is Roe v. Wade. 410 U.S. 113; 93 S. Ct. 705; 35 L. Ed. 2d 147; 1973 U.S. A pregnant single woman (Roe) brought a class action suit challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother’s life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife’s health. A three-judge federal District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justifiable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and over broad in infringing those plaintiffs’ 9th and 14th Amendment rights. The court ruled the Does’ complaint not justifiable. Appellants directly appealed on the injunctive rulings, and appellee cross-appealed from the District Court’s grant of declaratory relief

to Roe and Hallford. Although Roe granted certain rights to pregnant women, to physicians and to childless married couples, the District Court left for another day the rights of the father of the unborn child—and the case was later filed by a father who wanted to have his paternal rights recognized in Pater v. French Hospital.

In Pater v. French Hospital a father fighting against the abortion of his pre-born child argued that the California abortion statutes denied him equal protection of the laws and were therefore unconstitutional because: (1) they are void on their face for not providing any role for the prospective father’s decision concerning the disposition of the pregnancy; (2) they do not provide for consideration of the prospective father’s mental or physical health in the disposition of the pregnancy; (3) they denied to him his cognizable and substantial interest in his potential offspring without notice of a hearing or any hearing at all, which amounts to a denial of due process of law; (4) such denial of due process was also a denial of the equal protection of the laws because California could not terminate a prospective mother’s interests; and lastly, (5) that to prefer the prospective mother’s decision over the prospective father’s is also to deny Pater the equal protection of the laws.

Pater’s complaint was dismissed, relying on the decision of Roe v. Wade. But a critical application of the five arguments stated above prove that Pater did, in fact have constitutionally defensible rights. The first three arguments of Pater fall under his reason (5) in bringing up the equal protection of laws. The Equal Protection Clause of the 14th Amendment of the U.S. Constitution prohibits states from denying any person within their jurisdiction the equal protection of the laws. In other words, the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. Generally, the question of whether the Equal Protection Clause has been violated arises when a state grants a particular class of individuals the right to engage in an activity yet denies other individuals the same right.

Under this theory, it is unfair for a father to be deprived of a voice in the abortion decision since both the mother and father share the condition of being parents of the unborn child. To be left out of participation in

the decision in which the father is equally responsible is unconstitutional. Is it sufficient for a case to simply cite *Roe v. Wade* as the only legal reason to dismiss all of Pater's arguments when there are other equally important and defensible constitutional rights at issue? *Roe v. Wade* fails to specifically address any of Pater's issues and therefore cannot be used as a precedent. Pater's Equal Protection argument is sound and should not be dismissed without due process of law and unless there is a strong contravening principle to justify it.

An important case involving an abortion that was denied in which appellant was granted declaratory relief is *Doe v. Bolton*. The plaintiff, a pregnant woman who was given the pseudonym "Mary Doe" in court papers to protect her identity, sued Arthur K. Bolton, then the Attorney General of Georgia, as the official responsible for enforcing the law. Georgia law proscribes an abortion except as performed by a duly licensed Georgia physician when necessary in "his best clinical judgment" because continued pregnancy would endanger a pregnant woman's life or injure her health; the fetus would likely be born with a serious defect; or the pregnancy resulted from rape. In addition to a requirement that the patient be a Georgia resident and certain other requirements, the statutory scheme poses three procedural conditions in 26-1202(b).

The three procedural conditions in 26-1202(b) are: (1) that the abortion be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH); (2) that the procedure be approved by the hospital staff abortion committee; and (3) that the performing physician's judgment be confirmed by independent examinations of the patient by two other licensed physicians. The statute was found to violate the 14th Amendment in the following ways:

(a) The JCAH accreditation requirement is invalid, since the state has not shown that only hospitals (let alone those with JCAH accreditation) meet its interest in fully protecting the patient; and a hospital requirement failing to exclude the first trimester of pregnancy would be invalid on that ground alone, see *Roe v. Wade*, supra. pp. 193-195.

(b) The interposition of a hospital committee on abortion, a procedure not applicable as a matter of state criminal law to other surgical situations, is unduly restrictive of the patient's rights, which are already safeguarded by her personal physician. pp. 195-198.

(c) Required acquiescence by two co-practitioners also has no rational connection with a patient's needs, and unduly infringes on her physician's right to practice. pp. 198-200.

The appellant was granted declaratory relief based on the above conditions, but the court held that the state's interest in health protection and the existence of a "potential of independent human existence" justified regulation through §26-1202(b) of the "manner of performance as well as the quality of the final decision to abort." Like *Roe v. Wade*, *Doe v. Bolton* declared abortion a constitutional right and overturned most laws against abortion in the United States. But at the same time, the case supports the principle that an abortion is not an unfettered and absolute right without conditions and restrictions; reasonable restrictions that serve a justifiable purpose can be imposed.

On one hand, there is a line of cases that seems to give complete decision making rights for an abortion to the mother. In *Planned Parenthood v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), the Court held that a state may not constitutionally require the consent of the spouse of a married woman or parent of an unmarried minor as a condition for abortion during the first twelve weeks of pregnancy. The spousal consent provision in § 3(3), gives the full statutory citation, which does not comport with the standards enunciated in *Roe v. Wade*, supra, at 164-165, is unconstitutional, since the state cannot:

"delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy." (pp. 67-72.)

The state may not constitutionally impose a blanket parental consent requirement, such as § 3(4), which requires the written consent of a parent or person in loco parentis to the abortion of an unmarried minor under age 18, as a condition for an unmarried minor's abortion during the first 12 weeks of her pregnancy for substantially the same reasons as in the case of the spousal consent provision, there being no significant state interests, whether to safeguard the family unit and parental authority, in conditioning an abortion on the consent of a parent with respect to the under-18-year-old pregnant minor. As stressed in *Roe*, "the abortion decision and its effectuation must [p54] be left to the

medical judgment of the pregnant woman's attending physician." 410 U.S. at 164. pp. 72-75. There is no justifiable reason to substantiate that the only issue here is a medical reason. There is substantial proof that a woman is psychologically affected by abortion, therefore the court is not justified to limit this to a medical determination alone.

Another case denying rights to the father in the abortion matter is *Jones v. Smith*, where the father wanted his pregnant girlfriend to have the child. The mother sought to terminate the pregnancy and Jones filed an appeal in the Fourth District Court of Appeals in Florida, claiming that as a putative father, he had a right to participate in the abortion decision, and that his own mental health would be adversely affected if the pregnancy was terminated.

The Plaintiff John Jones, a medical doctor, challenged the constitutionality of (1) clause (4)(a) of Section 458.505,<sup>1</sup> which regulates abortions of unmarried pregnant women under 18 years of age, and (2) clause (4)(b) which regulates abortions of married women. Under the decision, an unmarried minor who desires an abortion must provide her physician with either the written informed consent of a parent, custodian, or legal guardian, or an order from the Circuit Court. A married woman who desires an abortion must give notice of the proposed abortion to her husband (the notice requirement does not apply if the husband and wife are "separated or estranged") and allow him the opportunity to consult with her concerning the procedure. The wife must provide the physician with either her written statement that such notice and opportunity have been given or with the written consent of the husband.

The Plaintiff alleged that Section 458.505 of the Act violates the 14th Amendment and is unconstitutional on its face because it places an undue burden upon the fundamental right of women to terminate their pregnancies during the first trimester. The Plaintiff alleged further that the specific provisions that apply to minor unmarried women and all married women impose unconstitutional burdens on the fundamental right to privacy of the Plaintiff and his class.

Subsection 4 (a) was reversed, which allows for an unmarried minor to get an abortion without the consent of a parent or legal guardian.

The plurality opinion described the scope of permissible state regulation on a minor's abortion decision. In their view, a state may constitutionally institute a

procedure that alternatively provides for either parental consent or judicial authorization, but in the court proceeding, the minor must be entitled to show either: (1) that she is mature enough and well enough informed to make her abortion decision in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interest's. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. The time is right for these cases to be challenged.

Today, we have gay couples claiming and awarded the right to adopt and raise children. We have gay couples claiming and awarded the right to marry. Individual rights are being expanded and recognized in ways that were not envisioned 30 years ago. The father of an unborn child has an equal right and interest in the unborn child with the mother of the child since they are irreplaceable and sole contributors to the life of the child; his rights are therefore greater than the rights of a physician who has no rights, contributions, or obligations whatsoever in the unborn child. Many children of single mothers, when they reach teenage years and adulthood, seek to discover the identity of their fathers and to establish filial relationships with their fathers; this never happens with their mother's OB/GYN.

To show how the law is evolving, courts now have to decide custody and visitation matters involving pets in divorce actions. Even if the wife bought the dog and therefore "owns" the dog, the courts recognize that the husband has an interest in the dog that must be recognized; even more does a father have an interest in his own child that is bone from his bone and flesh from his flesh.

In the law, when two sides of a case must be made, and when there is a person who cannot speak for himself, then the court appoints a "Guardian ad Litem" In certain domestic relations and juvenile court proceedings, a Guardian ad Litem is an attorney or Court Appointed Special Advocate appointed by the court to represent the best interest of the ward of the court until discharged by the court—for example, if the issue is the competence of an elderly person with Alzheimer's Disease—or a minor child—why should there not be a Guardian ad Litem appointed to represent the rights

of the child—who would then argue that the abortion would or would not be in the mother’s best interest? Or the father’s? Or the child’s? There is no “other side” being presented!

In the sixth holding of Blackmun J. of *Roe v. Wade* the unborn are not included within the definition of “person” as used in the 14th Amendment. Currently, one cannot make the argument that the unborn child is not a “person” in the eyes of the law, in Alabama, at least, where the Supreme Court in April 2013, held that an unborn child is a human person, with all the rights of persons with a birth certificate; they are simply “undocumented persons. In an article titled, “Alabama Court Rules Unborn Children Deserve Legal Protection,” Steven Ertelt comments on the rights of unborn children,

“A ruling by the Alabama Supreme Court today makes the argument that unborn children deserve legal protection under the law...The Court has ratified our argument that the public policy of our state is to protect life, both born and unborn...It is a tremendous victory that the Alabama Supreme Court has affirmed the value of all life, including those of unborn children whose lives are among the most vulnerable of all...The U.S. Supreme Court’s abortion cases are an aberration to law and stand on an island by themselves, and that island will one day disappear.”

With unborn children now being protected under the law, the legal precedent of *Roe* needs to be forgotten. Despite the fact that the unborn are not included within the definition of “person” as used in the 14th Amendment in *Roe*, now that the unborn are included as persons, a woman’s right to privacy in an abortion is not sole, therefore each abortion case should be decided specifically based on the measure of importance between the interest in human life and the woman’s right to privacy.

It is most important to note that the Plaintiff’s argument of his own mental health being adversely affected upon the termination of pregnancy wasn’t even considered in the context of the decision. While it may be argued that the abortion may be in the potential mother’s best interest—according to someone other than herself—at the time of the procedure, it is clear that any analysis that does not consider abortion symptoms including, sadness, post abortion depression, guilt, and nightmares, and the long term effects of an abortion is incomplete and negligent; any court must therefore hold “expert” physicians to a high standard and scruti-

ny since crucial, life-changing issues are at stake. And under Equal Protection, a physician should be appointed to assess the same issues of sadness, depression, guilt and nightmares that the father also experiences.

In the Danforth case decided in 1976, spousal notification was found unconstitutional. However, In *Jones v. Smith*, decided in 1979, a married woman must give notice to her husband of a potential abortion decision procedure. While these decisions are found to be contradictory, in June of 1992 with the *Planned Parenthood v. Casey* decision the spousal notification right stood no longer.

In *Casey*, the fathers’ rights concerning abortion are briefly discussed in Headnote 19 and in fact, any rights appear to be completely eliminated: “A husband has no enforceable right under state law to require his wife to advise him before she exercises her personal choices; a state may not give to a man the kind of dominion over his wife that parents exercise over their children.”

Section 3209 of the Act contains the spousal notification provision. It requires that, before a physician may perform an abortion on a married woman, the woman must sign a statement indicating that she has notified her husband of her planned abortion. A woman is not required to notify her husband if (1) her husband is not the father, (2) her husband, after diligent effort, cannot be located, (3) the pregnancy is the result of a spousal sexual assault that has been reported to the authorities, or (4) the woman has reason to believe that notifying her husband is likely to result in the infliction of bodily injury upon her by him or by another individual. In addition, a woman is exempted from the notification requirement in the case of a medical emergency. 18 Pa. Cons. Stat. § 3209 (1990). See Appendix to opinion of O’CONNOR, KENNEDY, and SOUTER, JJ. ante, 505 U.S. at 908-909.

Let’s look at the illogical and impractical application of this holding. Let’s say a child in utero needs a medical procedure, and the mother is unconscious maybe because of an auto accident. Or perhaps the mother’s physician feels that an abortion would give the mother a 2% better chance of surviving, and therefore he decides to perform an abortion. Does this court holding mean that the father of the child (even if he is the husband of the mother) has no right to authorize the operation on the child? And no right to stop the abortion? And if he does, then by what logic does he

lose this right simply because the mother regains consciousness? His right is either real and enforceable or not; it does not depend on whether she is asleep or not.

Section 3209, the husband notification provision, constitutes an undue burden and is therefore invalid. Furthermore, it cannot be claimed that the father's interest in the fetus' welfare is equal to the mother's protected liberty, since it is an inescapable biological fact that state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband.

The provisions preventing a woman from notifying her husband of having an abortion in Section 3209 of *Planned Parenthood v. Casey* are too broad. The words "reason to believe" are so ambiguous that they could be construed in any way possible; there are no requirements of the "reasonable man" standard; and there are no Equal Protection provisions for the father's mental or emotional condition. Provision 4 should be overturned, and resubmitted claiming that only a verbal or physical threat of bodily harm can be a reason why a wife should not be required to notify her husband of an abortion. The addition of the aforementioned section claiming that notification of the husband is exempted in the case of a medical emergency is again too broad. A biased physician can claim a medical emergency to the slightest bodily problem; including those that are likely to arise in the average pregnancy. For a father to lose the opportunity of being notified of his child being murdered for these inadequate reasons is unjust and should be reconsidered.

#### *Defining the 9th and 14th Amendments*

The 14th Amendment states that, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the protection of the laws."

The 9th Amendment states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

#### ISSUE

In *Roe v. Wade*, Justice Blackmun made a crucial statement, involving a "time bomb"—a challenge to doctors, lawyers and judges today. He said that he made his decision to permit abortions because he was unsure when life began, but that as medical technology developed, the time would come to revisit and re-examine the entire question of abortions. I feel the time bomb has gone off. We are, 40 years after *Roe*, with much more knowledge and understanding of human life in utero. Doctors are performing operations on children in utero, and this is being done at earlier and earlier stages of development. These are doctors, performing surgery on human persons, not on any other form of life, in order to save a life, not to perform an experiment that could help a human being in the future. Because of medical developments, it is time for lawyers to catch up to the times and to enact laws that correctly reflect the current state of medicine, just as *Roe* applied laws to the state of medical knowledge in 1973.

In the first trimester of fetal development the major structures of the brain begin to form including the cerebral cortex. My article is looking to enable fathers the right to have a voice in the prevention of an abortion of a child post 1st trimester. Headnote 14 of *Roe v. Wade* states: "Because the risk to a woman undergoing an abortion increases as her pregnancy continues, the state retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy." The danger of an abortion procedure increases the longer a woman is pregnant, so not only is it safer for a mother to be prevented from having an abortion post 1st trimester, but since the fetus begins induction or brain development during this period, preventing abortion is synonymous with preventing murder.

In researching the live birth maternal success rate, I found that in 2003 only 12.1 maternal deaths occurred per 100,000 live births. Seeing that only .0121 % of mothers died in the process of birthing a child, it can be concluded that maternal death in childbirth is an extremely rare occurrence, and that the chances of this happening are quite slim. Headnote: 30 A of *Roe v. Wade* states: "From and after the end of the first trimester of pregnancy, a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." Because medicine has made substantial progress toward protecting the life of a pregnant woman, it

is no longer necessary to protect the life of the mother in over 99% of the cases by taking the life of an innocent human person.

There is a greater risk of a woman dying from alcohol abuse than from giving birth; then why does the state not ban alcohol to all women? Obviously, the health of the woman is not the compelling interest that the state is seeking to defend; think of the thousands of other things the state could regulate or prohibit if the issue really was the health of the woman. And since when is the health of the woman an area of state regulation?

In the end footnotes of *Roe v. Wade*, there is dialogue which, although not including the father in the abortion decision, suggests the prevention of abortions in the late stages of pregnancy; which will save lives, and prevent potential risks in late fetal abortions: “The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. These are legitimate objectives, amply sufficient to permit a state to regulate abortions as it does other surgical procedures, and perhaps sufficient to permit a state to regulate abortions more stringently or even to prohibit them in the late stages of pregnancy. But such legislation is not before us, and I think the Court today has thoroughly demonstrated that these state interests cannot constitutionally support the broad abridgment [\*\*736] of personal [\*171] liberty worked by the existing Texas law. Accordingly, I join the Court’s opinion holding that that law is invalid under the Due Process Clause of the 14th Amendment.”

The language of *Roe v. Wade*, highlighted in bold letters, suggests the right of the state to prevent abortion during the late stages of pregnancy, then shies away from stating justifiable examples, with the excuse that such legislation is not before the court. But in other court decisions, the court has opened and given direction for future enlightenment. As *Roe v. Wade* footnote 27 states: the abortion decision and the woman’s right to privacy are not sole, and because of this, we could very well see the fundamental aspects of the 14th Amendment applied in an abortion case shortly.

The opinion of footnote 27 of *Roe v. Wade* consists of the following:

“because a pregnant woman cannot be isolated in her privacy, carrying as she does an embryo and

later a fetus, it is reasonable and appropriate for a state to decide that, at some point in time, another interest, such as the health of the mother or the interest in potential human life, becomes significantly involved, that the woman’s rights to privacy is no longer sole, and that any right to privacy which she possesses must be accordingly measured against such other interests.”

The Supreme Court declared that autonomous abortion rights are found in the Constitution from the premise of the 14th Amendment; however in using the language of *Roe v. Wade*, the court should specifically decide in each case how the woman’s right to privacy measures against factors such as the interest in protecting human life.

The health of the mother and the interest in potential human life serve as important factors in deciding that the woman’s rights to privacy are not the sole factor for the court to consider. The failure to mention the potential father in these cases is an idea to be argued upon. Acting as half of the genetic makeup of the fetus, the father must be considered as an interest that excludes the woman’s right to privacy from being solely hers. The reasoning behind this comes from the Equal Protection clause of the 14th Amendment, which states, “the laws of a state must treat an individual in the same manner as others in similar conditions and circumstances,” Granted that a woman’s body is carrying the child and this fact prevents the circumstance from being identical to that of the father, yet because it takes a male and female to conceive a child, there are contravening facts that support the rights of the father to be given a greater weight than they are being given now by the courts. Discussing the specific rights a father has towards his child is necessary now.

In the past, fathers have challenged their lack of paternal rights under the 14th Amendment in cases where birth mothers wished to put their children up for adoption. The U.S. Supreme Court affirmed the constitutional protection of such a father’s parental rights when he has established a substantial relationship with his child. The court found that the existence of a biological link between a child and an unmarried father gives the father the opportunity to establish a substantial relationship, which it defined as the father’s commitment to the responsibilities of parenthood, as demonstrated by being involved or attempting to be involved in the child’s upbringing. If a father shows a genuine care to

participate in the responsibilities of raising his child, he has the right to prevent a third party adoption. If fathers have the right to prevent their children from being put up for adoption after birth, based on the findings in *Stanley v. Illinois*, because of the biological link between a child and a father, the father has the opportunity to establish a substantial relationship with the child, born or unborn. If a mother has an absolute right to abort the fetus that she and the natural father created, the father is being prevented from his right to develop a substantial relationship with his unborn child. This right is either real and enforceable or not; the only factor that needs to be decided by the court is when the child is considered alive.

In an argument concerning human life, Fritz K. Beller states, “if human life is said to end with the death of the brain, it follows that a human being can be said to have emerged from vegetative life only when brain life begins.” Prenatal brain development begins with the formation and closure of the neural tube, the earliest nervous tissue that looks like a fat earthworm stretched out along the entire back of the embryo. The neural tube forms from the neural plate, which begins forming just sixteen days after conception. This plate lengthens and starts folding up, forming a groove at around eighteen days, which then begins fusing shut into a tube around twenty-two days post-conception. By 27 days, the tube is fully closed and has already begun its transformation into the brain and spinal cord of the embryo. By the end of the fourth week of pregnancy, brain life begins and the fetus is considered alive. At this time, the woman’s right to privacy is no longer sole, and each abortion case should be decided specifically based on the importance of potential human life weighed against the woman’s privacy. Putting a value on human life is unconstitutional despite age. The Declaration of Independence immortally states, “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” As the Alabama Supreme Court case decided that unborn children are considered human, protecting their lives should follow with equal importance to them as well as to any other American citizen. Every justification for killing an innocent human life comes up short. There is no right of privacy more valuable than protecting a human life already in existence.

One crucial issue is whether a father’s rights ex-

tend to the fetus, and how these rights are weighed against the woman’s right to terminate her pregnancy as articulated in *Roe v. Wade*. The Supreme Court in *Roe* concluded that the right of privacy included the abortion decision, but that it was not an absolute right. It can be effectively argued that to allow the mother to terminate the pregnancy against the father’s wishes deprives him of the benefits of parenthood, including such tangibles as: the value of service and earnings, parental pride, and filial affection. Moreover, in a reverse situation, in which the mother would not desire an abortion, but the father would, the father would be legally obligated, against his will, for the financial support of his child until the child’s age of maturity. This again shows the uneven way that the law operates because it does not consider the rights of the father at all in abortion decisions.

Men as a partner in the conception of a child can suffer from profound grief and regret from having their child taken from them. Pervasive feelings of helplessness and guilt can be debilitating. Men may suffer from anxiety, persistent thoughts about the lost child, difficulty concentrating, sleep disturbances, and other somatic complaints such as headaches or palpitations. The trauma of abortion may be severe enough to cause symptoms of Post Traumatic Stress Disorder—a severe condition that may develop after a person is exposed to one or more traumatic events. Women suffer from these symptoms and worse knowing they were responsible for the death of their baby. The decision to prevent life made by a man and a woman, should be made by both the man and woman.

For a father to be considered by the Constitution to have rights in the abortion decision, more awareness on the present inequality of paternal rights needs to be raised. While the mother currently makes the final decision to have an abortion, the current legal agenda has fathers left out of the picture, only because there has not been a case presented in which this point is clearly raised. Footnote 67 of *Roe v. Wade* states:

“Neither in this opinion nor in *Doe v. Bolton*, post, p. 179, do we discuss the father’s rights, if any exist in the constitutional context, in the abortion decision. No paternal right has been asserted in either of the cases, and the Texas and the Georgia statutes on their face take no cognizance of the father. We are aware that some statutes recognize the father under certain circumstances. North Carolina, for example, N. C. Gen. Stat.

§ 14-45.1 (Supp. 1971), requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age, 41 N. C. A. G. 489 (1971); if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional.”

North Carolina acts as an example of a state that protects some of the fundamental rights a father should receive. In all the other states of our country, a father fails to have the right to be notified if his baby is being aborted. A potential mother has the right to take the life of a preborn without even notifying the father. The man should not have the final say in this decision, however he must be able to know that the decision is being made. One possible solution to this inequality is through the legislative route: a law can be proposed that would give fathers the right to be involved in the decision-making process; this right could be refused in cases of incest and rape; it could include the obligation of the father to financially support the child, once he/she is born. Then courts would be required to apply the law to give fathers their rights. Otherwise, courts can utilize the constitutional arguments that I have set forth in this paper, when a case would be filed by a father seeking to have his rights respected.

Although the actual accounts of depressed fathers who have lost the lives of their children without having any say in the matter makes for a compelling human interest story, it may require additional judicial leverage for a claim to be recognized. One could file a tort claim of Intentional Infliction of Emotional Distress if the following precedents occur: (1) the defendant must act intentionally or recklessly; (2) the defendant’s conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress. In the case of where an abortion is sought for the purpose of emotionally harming the father. While our country makes unwed fathers pay child support for children they may or may not have wanted to have, potential fathers are denied a voice in the abortion decision, as the right of being notified that the life of their son or daughter is being taken away.

In an article titled Hidden Tears by Lindy Pierce, constitutional rights of a father in the abortion decision are discussed and argued for:

“Today, however, the courts are beginning to ac-

knowledge that fathers’ contentions may be valid. Fathers are asking for a ‘balancing’ of their constitutional rights against those of the mother. They argue that the Supreme court, in striking down an absolute veto power in Danforth, left open the possibility of determining case-by-case whether a father’s rights outweigh the mother’s and that a hearing should be granted to balance the rights involved.”

The idea of determining a father’s rights case-by-case should be made a law, not a possibility, based on the due process and equal protection clause of the 14th Amendment. There are too many variables and factors involved in an abortion decision to decline fathers any say in the matter. For instance, Pierce comments on a case of injustice writing, “March, 1988, David Ostreicher charged his wife “used pregnancy as a bargaining chip, threatening to abort the fetus if he didn’t destroy a prenuptial contract, ‘A trial judge in the case of In re Unborn Baby H discovered that the only reason for an abortion was the mother’s desire to look good in a bathing suit”” The supremacy of a woman’s rights in the abortion decision are obviously not equal to those of the father. For a woman to threaten the life of a fetus for materialistic or cosmetic gain is unconstitutional. To reward an absurdity and to punish a just man is not a position the law should condone. The logic from the woman’s standpoint is, unless you do X, I’m going to have an abortion. This while risking the actual life of children, should not be the policy of our country under any circumstance.

## CONCLUSION

The lives of preborn humans need to be fought for. One innocent child being inhumanly aborted will not stand. Against all hope, our forefathers brought us out of tyranny, and into freedom. They fought for what they believed in, what they knew was right. Our Constitution was put into effect, based on the premise that all men are created equal, not once they are born, but once they are created, and our country has relied on this basic truism since its ratification. Whoever has ears to hear, let them hear that our legal institution was founded upon the Constitution. It is clear that no language concerning abortion is found within the constitution, however in article XVI our constitution states “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or



property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” As the preborn are now starting to be considered human, it follows that they must be afforded the same constitutional protections as all persons living in our country. The act of aborting a child is unconstitutional in that it deprives that child from life. By not providing father’s due process of law in the instance of his child being aborted, and instead relying on the decision of *Roe v. Wade*, men are not being provided equal protection of the law, and in turn our constitution is being violated. The right of women’s privacy being viewed as more important than the right to life is unjust. The mistreatment of preborn humans is being administered by the decision of judges from over 40 years ago. Why should any judge be able to make the decision of putting an innocent child to death? Abortion transpires against the fundamental teachings of our national law. Either an Amendment of the Constitution must be proposed involving the specific legality of abortion, or the innocent preborn infants of the United States of America must be given their constitutional right of life, liberty, and the pursuit of happiness.

## REFERENCES

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- <sup>5</sup> Planned Parenthood of Central Missouri v. Danforth. SUPREME COURT OF THE UNITED STATES. 1 July 1976. Print. Another case involving spousal notification which through *Roe v. Wade* is null and void
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- <sup>11</sup> *Roe v. Wade* end footnote 62 language on when human life begins
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