

## JEWISH LAW AND ABORTION RIGHTS IN FLORIDA

By Rabbi Barry Silver - February 9, 2024

1. Jews have always cherished the preciousness of life. The Hebrew numerical equivalent for the word life in Hebrew, Chayim, is 18. Thus, 18 has reflected best wishes, good luck and joy for the Jewish people over the centuries and to the present day.
2. The goal of the Jewish people has always been tikkun olam (the repair or fixing of the world). Jews believe that one of the prerequisites for fulfilling this sacred mission of tikkun olam is the goal of creating a world where all life is deemed precious, all children are wanted children, and parenthood is chosen out of love and freedom rather than imposed by fear and coercion.
3. Many Jews today do not take the entire Torah as literally true. Nevertheless, most practicing Jews, such as those of our congregation, L'Dor Va-Dor, consider the Torah sacred, not because it was written by an infallible, perfect being, but because it was written by fallible Jewish ancestors who shared a vision of a perfect world of peace, love and justice with others and who were willing to sacrifice their lives to pass down their hopes, dreams and vision of a more perfect world, reflected in some of the beautiful passages of the Torah and other Jewish holy writings, throughout the generation to the Jews of today and to the people of the world throughout time. Many non-Jews have been so inspired by these writings that they also look upon the Jews as the conscience of humanity and the people who offered a moral code to the world. This moral code as contained in the 10 Commandments and elsewhere in Jewish writ, is also not perfect, but has inspired others to see the need for a moral code for society, which will hopefully evolve along with humanity's moral, educational and scientific evolution, adaptation and development.
4. Jews from the Orthodox to the Humanists, to Reconstructionists, and all Jews in between practice various levels of faith in the inerrancy and infallibility of the Torah, all accept the Torah as authoritative to various extents and the Torah thus forms the basis for many Jewish beliefs today, such as abortion, women's rights and the question of when human life begins. Congregation L'Dor Va-Dor adopts my father, its founding Rabbi's view, like most other modern Jews that many stories in the Torah didn't happen, but they are true because they teach eternal truths and lessons. We reject blind faith, and put our faith in reason, science, the profound revelations of evolution and Jewish ideals to separate truth from fiction.
5. Our prophets of old and of today, teach us respect for the sanctity of life, by seeking health care for all, food for the poor, shelter for the homeless, beating swords into plowshares which of course promotes strict control and restrictions to the access to guns for all people, kindness towards animals, compassion and love, and protecting women's autonomy over their own body and their right to choose when they are ready to accept the joy, love, and awesome responsibility of parenthood.
6. In the Torah, Genesis 2:7 states that humans were created in a divine image and that God "breathed into his nostrils the breath of life and it was then that the man became a "nefesh chayah" i.e. "a living being". Thus, although man was fully formed physically prior to this time, he was not considered a living being in the Torah until he took his first breath. This understanding has shaped the Jewish view of when life begins since the inception of Judaism and is consistent with science, embryology, ontogeny and evolution.

7. We read in Ezekiel 37:5 and 6, “Thus says the Lord God to these bones: Behold, I will cause breath to enter you, and you shall live.” This passage confirms the consistent position that in Judaism, the beginning of life is always equated with breathing, which takes place at birth.
8. Exodus 21:22, which is read on February 9 and 10, 2024, states that if a man causes a woman to have a miscarriage, he shall be fined but if the woman dies then he will be put to death based on the Jewish maxim “Nefesh Tachat Nefesh” (a life for a life). After stating a “life for a life” for a woman, but not requiring this penalty for the death of a fetus, it is irrefutable that the fetus was not considered a human life in the Torah. As in American law, this narrative is treated as precedent and legally binding authority as dicta to the question of when life begins and is abortion murder.
9. In the Biblical book of Numbers 5:27 if a man suspects that his is pregnant through the acts of another man, and not the husband, he can take her to the priest, who administers a potion. If the fetus is not his, God performs an abortion consistent with the Jewish view that the fetus is not a nefesh, i.e. a person and spontaneous abortions often occur naturally in the early stages of pregnancy beyond the awareness of the mother, and this is not treated as the death of a child and no funeral takes place. In fact, in this procedure, the issue is presented before God and if the wife has been unfaithful, then God performs the abortion himself. This narrative is also considered persuasive evidence of the Jewish legal perspective on abortion and when life begins.
10. The Book of Jeremiah 1:5 also supports the Jewish view that human life begins at birth: “Before I formed you in the womb I knew you...” In Hebrew, like Spanish and other languages, there are two words for “to know”: “yodea”, means knowledge of things and “makir” indicates acquaintanceship with a person. Jeremiah uses “yodea” towards the fetus corroborating the Jewish view that a fetus was not considered a human being until birth as stated by the Hebrew description of the fetus as “lav nefesh hu” it is not a person. Many Christians who don’t know Hebrew erroneously cite Jeremiah mistakenly thinking this supports their claim that a fetus is considered human life but Jeremiah is saying that the fetus is actually akin to an inanimate object with *potential* human life.
11. At the time Jewish and Christian Scripture were written, legal codes of neighboring people banned abortion, but both Bibles have a pregnant silence about abortion and let the woman decide.
12. The great icon of Orthodox Judaism, Maimonides, relying upon the Talmud, Torah and other writings, opined “Ubar yerech imo” (the fetus is part of its mother) i.e., and was not considered a separate person (nefesh) until its head or “greater part” of its body emerged from the mother. Maimonides was a highly revered physician, philosopher, scientist and expert on Jewish law of the 12<sup>th</sup> century. His view that human life begins at birth and a woman is required to abort a fetus to save herself from physical or emotional harm, up until the time of birth, is an established precept of Jewish law (halacha) for traditional Jews and has become part of the shared fabric of Jewish belief today.
13. Baruch Spinoza believed the capacity for rational thought makes us human, and government should protect freedom of thought. Martin Buber spoke of the I-Thou relationship as essential to being human which consists of rational, human interaction, which does not take place with a fetus. Albert Einstein concurred that a defining quality of humans is relationship with one another, which takes place after birth. Spinoza, Buber and Einstein are modern day prophets who understand human life to involve a sacred union with one another.
14. Science informs us that the expansion and contraction of the cosmos that occurred “in the beginning” with the big bang is repeated in the act of breathing over 20,000 times a day with the expansion and contraction of our lungs. Thus, breathing links us every moment of every day with the creative power that generated all existence and is coextensive with human life on Earth.

15. Although the theory “ontogeny recapitulates phylogeny” is not precisely accurate, the development of the fetus in the womb from a one-celled zygote to a human being roughly parallels the evolution of homo sapiens from a one-celled amoeba to a fish with gills in water, an amphibian, to a reptile, then a mammal. The fetus grows a coat of hair and a vestigial tail which then disappears as it did in human evolution. Thus, the fetus is not deemed a human being in Jewish law until fully evolved at birth.

**HB 5, the Abortion law currently in effect in Florida which prohibits abortion in almost, if not all circumstances after 15 weeks of gestation violates the right of Jews and others to practice their religion, violates multiple provisions of the Florida Constitution violates FRFRA.**

16. HB 5’s proponents tend to doubt the fact of evolution and often share the ancient view of a fetus as a homunculus, a little person in miniature, which they call an “unborn baby”. Referring to a fetus as an unborn baby is like calling a living person a pre-dead corpse and confuses actual with potential.

17. Physiological changes and environmental influences upon the neonate transform the fetus into a human being at birth. Although we cannot be sure of the mental experiences of a fetus, according to the latest findings of neonatal physicians and scientists, prior to its first breath, the fetus is in a state of suspended animation, and lacks human consciousness and/or awareness.

18. Jewish sources from the Bible to the Talmud, Maimonides, Buber, Spinoza and Einstein, and science, concur that human life begins at birth. The essence of being human is our ability to think, reflect, interact, love others and appreciate the miracles of life, a fetus does none of these things.

19. This view that human life deserves protection at birth is consistent with Jewish values which find it abhorrent in an overcrowded world to force parenthood upon the unwilling. Societies that treat women as breeding cattle, suffer and decline, while those which respect women’s rights, prosper.

20. To ask when life begins is a nonsensical question from both a Jewish and scientific perspective. Life began approximately 4 billion years ago in a continuous chain of events when the first strands of RNA morphed into DNA and then evolved into humans. Life did not begin for humans at conception as the egg and sperm are alive and even conception is not a discreet event but takes place in stages.

21. Science rejects the view that at conception, a zygote which cannot think, hear, see or feel is equivalent to a born human. These human qualities also do not emerge at 15 weeks.

22. If true that human life begins at conception, then HB 5 condones the mass murder of countless “people” aborted under HB 5 prior to 15 weeks. If this were true, Jews would be the first to protest.

23. Scientists estimate that more zygotes are destroyed during the first moments, hours or days after conception due to natural causes than all human-induced abortions. The proponents of HB 5 do not seem to worry about natural abortions and do not treat fetuses as people when calculating the census, determining their age, requiring a funeral for a miscarriage, or for any other reason.

24. To ask when life begins from a Jewish perspective also makes no sense. The relevant question is when does the fetus become a nefesh chayah, i.e. a person, entitled to human rights.

25. This same question, also troubles Chief Justice of the Florida Supreme Court Muniz, who indicated at the oral argument regarding the ballot initiative on February 8, 2024, that he struggled with this question himself and could not answer it.
26. Both attorneys arguing the ballot initiative issue for the State of Florida and their opposing counsel, also could not answer the question and the attorney for the State of Florida indicated that despite the passage of HB 5 as well as a 6 week ban for abortions in Florida, never even considered this issue.
27. In response, Chief Justice Muniz clearly stated that the State of Florida should not enact any law, especially one which affects constitutional rights such as freedom of religion and abortion, such as HB 5 and any other abortion restrictions, unless it knows the effects of laws such as HB 5 on Section 1, Article 2 of the Florida Constitution which protects the right to life of all persons in Florida. Without knowing when life begins, Chief Justice Muniz said the law violates Florida's Constitution.
28. In Judaism personhood begins at birth and the best interests of the mother prevail over those of the fetus at all stages of pregnancy. HB 5 says the opposite, reflecting a view that life begins at conception and/or 15 weeks of gestation and places the interests of the fetus over the mother. Thus HB 5 criminalizes Judaism and subjects those who practice Judaism to fines and imprisonment.
29. If a rabbi were to share the Jewish view on abortion to fellow Jews who inquire, and if a Jewish woman and her family were to rely on Jewish law, and if this advice were to conflict with HB k5, which would frequently occur, then the rabbi who is morally bound to share the Jewish view on abortion, which contradicts the mandate of HB 5 could be put in jail under HB 5, fined and imprisoned, as could the woman undergoing the abortion and all types of people who assist in the abortion in a myriad of undefined ways.
30. As a constitutional and abortion rights attorney, I am unable to determine what the phrase "actively participates" in an abortion means as used in HB 5. I suspect others who lack a law degree will not know either. The vagueness of HB 5 and its criminal penalties have a chilling effect upon clergy who may decide not to speak at all on this topic, or if they do, to tout the narrow Christian view reflected in the law, rather than the Jewish view which could result in a felony arrest and going to jail. In this age of anti-Semitism, rabbis do not want to be in jail, unprotected.
31. Jews have survived while more powerful empires who sought our destruction are consigned to the dustbin of history, because those empires believed in the love of power while Jews believe in the power of love, transmitted from generation to generation, (L'Dor Va-Dor) from parents to children by the family. HB 5 threatens the integrity of the Jewish family, and thus threatens Jewish survival.
32. Considerations of women's rights, religious freedom, the tragedy to society and the individual, of unwanted children, forcing the unwilling to bring children into an already overcrowded world, effects upon minorities and the poor who are disproportionately harmed by lack of access to abortion, which further traps them in a cycle of poverty, health risks and death due to complications from childbirth, which are suffered exclusively by women and not by the males who voted to pas HB 5, the lack of resources to provide for people already on Earth, psychological harm, fetal abnormalities and tragic and violent circumstances which surround some pregnancies, including the nightmare of Tay-Sachs disease, are among the factors that Jews consider in deciding upon abortion. These factors that are important to those who truly cherish life are not considered in HB 5.
33. In traditional and modern Judaism, a fetus which threatens the physical or mental health or wellbeing of the mother, is considered by many Jews to be a "rodef" or pursuer, and a woman is not just entitled, but required by Jewish law to abort the fetus to protect herself and her family.

34. Other faiths are free to adopt and reinterpret our Torah, but their interpretations, no matter how sincere, cannot fairly or constitutionally be imposed upon the Jews. As part of our mission to serve as a light to the nations, Jews, who authored the Bible, are obligated to share a Jewish view of the Bible with others that unites, rather than divides people and respects women's rights. With HB 5, sharing this view regarding abortion and the onset of life with others, including fellow Jews, is now a crime, punishable by imprisonment.

35. Proponents of HB 5 do not speak for all Christians nor for Jews when they reinterpret the Biblical story of Adam and Eve to teach the misogynistic view that we are born evil due to original sin introduced to the world by a woman, who seduced Adam with an apple and with sex. HB 5 reflects this reactionary Christian concept that views each person as literally conceived in sin, being a product of sexual union and emerging from a woman's body, which they find sinful.

36. Thus, according to this view, if sex does not lead to childbirth, it is even more sinful. Accordingly, women must be "punished" for their sexuality with childbirth, and if she dies in the process, according to many proponents of HB 5, this is God's will so it's okay. Thus, with no evidence, they view physical harm and death to women as the result of HB 5 to be in the hands of God and of no concern to them.

37. In fact, the state of Florida conceded that it does not even attempt to compile statistics or to have the slightest idea of how many women have been injured or died since, and/or due to the enactment of HB 5 and apparently does not seem to care.

38. Most Jews find such misogynistic views and actions towards women abhorrent. Judaism honors women, looks positively upon sexuality, love and family, respects the sacrifices made and risks taken when women choose to bring life into the world, and does not seek to "punish" women with childbirth.

39. Judaism opposes HB 5 which requires women with pregnancies that could seriously harm or kill the mother to postpone an abortion until great physical harm is imminent, which delay would place her in grave danger, and could cause horrific complications such as vesicovaginal fistulas.

40. HB 5 has no rational basis, nor does it serve a compelling governmental interest. No matter what test is used to determine its constitutionality, HB 5 fails. The only interest it serves is the lust for political power by some people who think this issue will help them gain and/or maintain political office in the State of Florida. Women should not have to pay with their lives, and the freedom of speech and religion of Floridians should not be sacrificed on the altar of political ambition.

41. It is my moral, religious conviction that when life is brought into the world by choice, and out of love, this is among life's greatest blessings but when parenthood is forced upon a woman by the power of the state against her will, this is a curse upon the woman and society.

42. To make no exceptions for pregnancies that result from rape, incest or mental trauma after 15 weeks of pregnancy, is morally reprehensible and a violation of the most basic rights of a woman. I will not refrain from sharing my views on abortion as I interpret Judaism, and if a woman chooses abortion based on my advice and counsel, I could be arrested and thrown in jail under HB 5.

43. If a woman is raped in Florida by a man who seized control of her body by force, HB 5 permits the State to take further control of her body by force of law by requiring her to deliver her rapist's or family member's baby against her will in clear violation of Jewish law and human decency.

44. An estimated 83% of Jews in a 2015 Pew Research poll are pro-choice. Many Jews have staged rallies, discussions and seminars promoting abortion rights. Most Jews believe that abortion is essential for society to flourish, Jews to be free to practice our faith, for women to achieve equality, and to protect the Jewish family.

45. Whether by design or inadvertence, HB 5 has an anti-Semitic effect by criminalizing the practice of Judaism, and by associating abortion with murder which demonizes those who support the right of abortion, who happen to consist of many Jewish individuals and organizations.

46. HB 5 is a crack in the wall of separation between church and state that was established by the founding fathers of America as the bulwark of liberty in America. President Washington supported this wall in his letter to the Jews of Newport, President Jefferson praised it in his letter to the Danbury Baptists and James Madison explained that this wall was designed to protect the soil of America from being soaked in blood as it was in Europe due to constant religious wars and corruption.

47. The soil of Europe was often first soaked in Jewish blood when the wall of separation crumbled as we saw with the Crusades, Inquisitions, Pogroms, expulsions and violence against the Jews and then spread to others afterwards. Thus, Jews are ever vigilant to work with others to safeguard this wall of separation and when necessary to work with others to repair the cracks.

48. HB 5 targets women, Jews and free thinkers, who were the frequent targets of the Church for centuries and were tortured and burned at the stake by fanatical clerics. Thousands of women whose sexuality was threatening to ecclesiastical authorities were absurdly accused of being witches across Europe and in America and were tortured and murdered when the wall of separation was dismantled.

49. Jews are morally compelled to protest and fight back on behalf of women. Starting with Abraham, the first Jew, we have been iconoclasts, smashing the idolatrous worship of every age, continuing with Moses who challenged the abusive power of Pharaoh and even argued with God in his pleas for justice for his people. The Book of Leviticus exhorts "Don't stand idly by the blood of your neighbor" and calls up us to, "Proclaim liberty throughout the land unto all the inhabitants thereof" which is found on the Liberty Bell. Jewish partisan leader Tuvia Bielski said "Freedom begins with an act of defiance", and Elie Wiesel taught us "There are times when we cannot prevent injustice, but there should never be a time when we fail to protest",

50. Those who defend women by opposing HB 5 are subject to retaliation in Florida by political authorities who have retaliated against those who do not share the administration's views, such as Disney World for defending gays and lesbians, Rebekah Jones who defended the truth about Covid-19 and the health of Floridians and had her home invaded by state agents, and Andrew Warren who was suspended for exercising his prosecutorial discretion and following his conscience. This suspension has been ruled invalid by Florida Courts. It is also unconstitutional to require that a woman diagnosed with cancer after 15 weeks in her pregnancy, who must undergo chemotherapy, is not permitted to have an abortion under these devastating circumstances unless she meets the vague standards of HB 5 with its chilling effects.

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