

Draft Temple Emanu-El Advocacy Statement on Reproductive Rights

Introduction

The Advocacy Team is seeking approval from the Board of Trustees to educate and advocate for Reproductive Rights.

Overview

Reproductive rights, including a woman's right to choose whether to carry a pregnancy to term, have been recognized for decades by the Supreme Court. In the landmark case **Roe v. Wade** in 1973, the Court recognized the right to terminate a pregnancy up to the point of fetal viability as a fundamental right of privacy for women guaranteed by the United States Constitution. Since *Roe*, state legislatures have sought to chip away and even eliminate the right to abortion (see the Appendix for current examples). In Texas, SB 8, the Texas Heartbeat Law, which became the law of Texas on September 1, 2021, stands out as one of the boldest efforts by a state legislature.

SB 8 bans pregnancy termination after detecting fetal cardiac activity, which typically occurs at about six weeks of pregnancy. Detection of fetal cardiac activity is months before fetal viability and often well before a woman knows she is pregnant. SB 8's enforcement scheme authorizes private citizens to file civil lawsuits against any person who performs or assists in the performance of an abortion if fetal cardiac activity is detected. Cases can also be filed against any person who knowingly "aids or abets" a woman in obtaining an abortion. The law incentivizes plaintiffs to bring lawsuits by guaranteeing an award of at least \$10,000 plus court costs and attorney's fees per case if the action is successful.

There are many compelling reasons why a woman may seek to terminate a pregnancy such as a pregnancy resulting from rape or incest, a pregnancy that poses a threat to the mother's health due to other underlying health conditions, or the deterioration of the mother's mental health that could result in the mother's suicide without an abortion option. An abortion ban like SB-8 will inevitably lead to increasing numbers of women dying from illegal abortions or other tragic consequences short of death for both the mother and the fetus.

The Board of Trustees of Temple Emanu-El has not adopted a formal policy on the issue of reproductive rights, including abortion. However, our Clergy have spoken powerfully on the subject over the years, including a recent sermon by Rabbi Stern decrying SB 8. Many other Jewish organizations with which Temple often partners, including the Women of Reform Judaism, the National Council of Jewish Women, and the Religious Action Center of Reform Judaism URJ, have taken strong positions in support of a woman's right to abortion, reproductive health services, and reproductive justice.

Our Values

The same values that informed Temple's 2021 Advocacy Statement on Medicaid Expansion apply to this statement about Reproductive Rights:

“Our Jewish values place the highest value on the preservation of human life for all people, and the highest duty of Tikkun Olam - making our society a fairer and more just one.”

A society with broad access to health care is a more just society. Reproductive health care, including abortion, is health care. The great physician and rabbi Maimonides stated that “if a woman is in hard labor...her life takes precedence over [the fetus’] life.” In the Mishnah Ohalot 7:6, we learn that if a woman is forbidden from sacrificing her own life for that of the fetus, and if her life is threatened, she is allowed no other option but abortion. In addition, if the mother’s mental health is at risk, then her life may take priority over that of the fetus.

Further, our sages teach that “If a physician withholds treatment, s/he is regarded as one who sheds blood” (Shulchan Arukh, Yoreh De’ah 336:1). SB 8 interferes with the doctor’s ability to provide comprehensive treatment. The law prohibits performing or even discussing abortion with a woman once fetal cardiac activity has been detected – even if the pregnancy results from rape or incest. Perhaps even more troubling, SB 8 interferes in the sacred relationship between our Clergy and congregants, as well as bonds between friends and within families. Anyone, whether Clergy, friend, family, or stranger who “aids and abets” someone seeking an abortion faces litigation that could subject them to financial ruin.

In addition, SB 8 has already had a demonstrated impact in driving pregnant women who can afford to do so to other states where they can lawfully access their constitutional right to an abortion. This only further expands and highlights the sizeable and unjust gap in healthcare access based upon financial resources, a gap that betrays our Jewish values.

Finally, it is important to recognize that the underlying premise of the SB 8 abortion ban, and other laws like it, is a non-Jewish religious belief that a human fertilized egg, embryo, or fetus is the equivalent of a born infant. Our tradition does not make the same equivalence. Our tradition recognizes that a woman’s health is the paramount concern of whether a pregnancy should be carried to term.

Positions Taken by Others in Our Movement

See attached statement dated September 1, 2021, entitled “Reform Movement Leaders Deplore New Texas Anti-Abortion Law” signed by 14 Reform Jewish Organizations. In addition, see below for references to earlier statements in support of reproductive rights by some of these same organizations.

URJ: Union for Reform Judaism

- Abortion Reform (1967)
- Abortion (1975)
- Resolution on Free Choice in Abortion (1981)
- Reproductive Rights (1990)
- Resolution on Women’s Health (1993)

CCAR: Central Conference of American Rabbis

- Resolution on Abortion (1974)

- Resolution on Violence Against Women (1990)
- Resolution on International Women's Rights (1994)
- Resolution on Violence Against Reproductive Health Clinics (1995)
- Resolution on State Restrictions on Access to Reproductive Health Services (2008)

WRJ: Women of Reform Judaism

- Resolution on Reproductive Rights (1989)
- Resolutions, Statements, and Advocacy Alerts on reproductive rights starting in 1935 (40+ statements)

Our Advocacy

This issue calls for immediate and long-term action, including strengthening relationships with our coalition partners referenced in this statement, additional outreach to our elected and governmental officials, and education within our community.

We believe Temple's advocacy should include advocating for:

- The Constitutionally guaranteed legal right of a woman to access an abortion for her health and well-being; and, if the Supreme Court were to issue a decision overturning *Roe v. Wade*, advocating for state and federal laws that provide for a statutory right to abortion.
- Our Congregation's right to religious freedom; and
- Our Clergy and members' rights to freely counsel and assist a person considering an abortion without fear and risk of financial ruin from lawsuits brought by private persons.

In the immediate term, we want to focus on advocacy efforts as outlined below. We note that this list is not intended to be exhaustive but rather an example of the measures to be taken by the advocacy committee within the guidelines of this statement.

State and Local

Continue outreach to our state and local elected officials as a part of our general advocacy efforts, highlighting our views on reproductive rights to ensure our priorities are known. At the same time, continue to monitor for additional legislation and regulations that pop up and be ready to respond promptly.

Strengthen and renew our relationships with existing and new local affinity partners, including those listed in this memo, to understand their priorities regarding reproductive rights and find ways to partner in both education and advocacy efforts.

Advocate for comprehensive sex education in local public school districts and private schools, including education necessary to reduce unintended teen pregnancies. Involve our teens in these efforts to the extent possible.

Federal

Schedule meetings with our Congressional representatives and Senators to advocate for the Women's Health Protection Act (WHPA), Equal Access to Abortion Coverage in Health Insurance Act (EACH Woman Act), and sustained funding for Title X family planning program:

The Women's Health Protection Act (WHPA) assures the right to access abortion care, free from bans, obstacles, and medically unnecessary restrictions not required for similar health care services (i.e., TRAP laws).

The EACH Woman Act promotes the affordability of abortion care by eliminating federal coverage restrictions on abortion services. The EACH Woman Act would ensure that an individual's access to abortion services is not dependent on their health insurance or income.

The Title X family planning program, administered by the US Department of Health and Human Services, is a federal grant program created in 1970 to provide comprehensive and confidential family planning services, including abortions, as well as preventive health services. Title X prioritizes serving low-income people and families and is implemented through grants to over 3500 clinical sites, including public health departments and non-profit health centers.

Education

Temple can host a panel discussion on reproductive health and rights, preferably with interfaith partners, to educate the community about SB 8 and its effects. This program can help our Congregation and community understand what our Jewish values teach about reproductive rights. Further, during this politically charged time, our efforts can demonstrate that not all communities of faith oppose access to reproductive health care.

Similarly, Temple can create a space for open conversations about abortion in our own Congregation and community. While many congregants may believe they don't know anyone who has had an abortion, statistics show that 1 in 4 women have had an abortion.

Potential Advocacy Partners

Religious Action Center of Reform Judaism
National Council of Jewish Women
Women of Reform Judaism

Other Organizations Working on Reproductive Health Advocacy

Center for Reproductive Rights
American Civil Liberties Union (ACLU)
Guttmacher Institute

In Our Own Voice: National Black Women’s Reproductive Justice Agenda
NARAL Pro-Choice America
National Latina Institute for Reproductive Health
National Women’s Law Center
Planned Parenthood Action Fund
SisterSong Women of Color Reproductive Justice Collective

Conclusion

We believe that our advocacy both alone and with other strategic partners will give Temple a genuine opportunity to influence public policy consistent with our Jewish values that aligns with the important work already being done by so many of our members.

APPENDIX

Constitutional Status of Abortion

As noted earlier, the case of **Roe v. Wade** clearly established the constitutional right for a woman to have an abortion without government interference before fetal viability. In 1992, the Supreme Court in **Planned Parenthood v. Casey**, refined its holding in Roe to limit states from placing any rules or regulations on a woman’s right to get an abortion before viability if such rules create undue burdens on a woman’s right to obtain an abortion. Subsequent litigation in lower courts concerned whether state regulations concerning abortion created undue burdens on women seeking those services.

The Supreme Court on December 1, 2021, heard oral arguments in the Mississippi case of **Dobbs v. Jackson Women’s Health Organization**, in which there is grave concern that the Court could materially change or even overrule the Roe precedent. The issue is whether Mississippi’s “Gestational Age Act” passed in 2018 that prohibits abortion after 15 weeks of gestation except for medical emergency or severe fetal abnormality is an unconstitutional burden on a woman’s right to abortion. The District Court and 5th Circuit Court of Appeals held that it was, and the issue is squarely before the Supreme Court.

Lower Court Cases Attacking Abortion Rights

There are many cases winding their way through the Federal courts throughout the country involving state legislation that would limit abortion rights. Below are several examples of the type of legislative assaults on abortion rights:

1. Cameron v. EMW Women’s Surgical Center

Kentucky law bans the most common procedure for abortions, dilation, and evacuation, also known as D&E. Gov. Andy Beshear blocked the law from going into effect and then refused to defend it when it was challenged in Court. However, the state’s attorney general, Daniel Cameron, intervened to defend the law.

If AG Cameron successfully intervenes and the law is upheld, it could effectively ban abortion after 15 weeks in Kentucky, which has just two clinics and multiple restrictions, including a 24-hour waiting period and bans on insurance coverage of the procedure. Both clinics are in downtown Louisville, which means access is limited for people in other areas of the state.

Current status: Oral arguments have been held before the Sixth Circuit.

2) Reproductive Health Services v. Parsons

In 2019, Missouri Gov. Mike Parson signed one of the country's most restrictive abortion bills into law. It is structured like a Russian nesting doll. It includes bans within bans, so that as soon as one is struck down, another is ready to go. The law includes gestational bans at eight, 14, 18, and 20 weeks and "reason bans," which prohibit performing an abortion if the reason given for the abortion is based on sex, race, or fetal diagnosis. The law also makes it harder for patients to obtain abortion care out of state because it requires them to comply with Missouri's informed consent standard, forcing young people to notify their parents of their abortion decision. The law also includes a trigger provision that would immediately ban abortion in Missouri if *Roe v. Wade* were overturned.

The gestational and reason bans were struck down as unconstitutional in the district court and the Eighth Circuit, but the other provisions remain in effect, further limiting access in Missouri.

Current status: Pending before the Eighth Circuit.

3) SisterSong v. Kemp

Georgia adopted a six-week heartbeat ban similar to the one in SB 8 in Texas. In July 2020, the district court granted a permanent injunction striking down the law. The state then appealed that decision up to the 11th Circuit.

Current status: After the 11th Circuit heard the case on September 24, it decided to wait to make a decision until after the Supreme Court issues its *Jackson Women's Health* decision next year.

4) Planned Parenthood South Atlantic and Greenville Women's Clinic v. Wilson

South Carolina joined Georgia in passing a six-week abortion ban that, like Texas SB 8, doesn't allow for an exception in the case of rape or incest. In March 2021, a federal district court granted a preliminary injunction against the law just as an emergency order blocking the law was set to expire.

Current status: The case is pending before the Fourth Circuit Court of Appeals.

5) Isaacson v. Brnovich

Earlier this year, Gov. Doug Ducey of Arizona signed SB 1457, a law that includes a reason ban prohibiting abortions in cases of fetal diagnosis or anomaly, and a “personhood amendment” that classifies fetuses, embryos, and fertilized eggs as people under Arizona law.

Current status: The district court held a hearing on September 22, 2021. On September 28, a federal judge issued a preliminary injunction against the reason ban but allowed the personhood amendment to go into effect. The Arizona attorney general has filed an appeal to the Ninth Circuit.