

**SUPREME COURT OF PENNSYLVANIA**

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No. 26 MAP 2021

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Allegheny Reproductive Health Center, *et al.*

*Appellants,*

v.

Pennsylvania Department of Human Services, *et al.*

*Appellees.*

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***Amici Curiae* Brief of Jewish Pro-Life Foundation, Institute for  
Judaism and Civilization, Inc., Beit Emunah, LLC, Rabbi Menashe  
Bovit and Rabbi Yakov David Cohen on the Merits in Support of  
Appellees**

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Appeal from the Orders of the Commonwealth Court, dated January 28,  
2020, and March 26, 2021, in the Commonwealth Court of Pennsylvania at  
No. 26 MD 2019

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## **Interest of Amici**

The Jewish Pro-Life Foundation promotes lifesaving solutions to unplanned pregnancy by providing the Jewish community with much needed pro-life education, Jewish-friendly pregnancy care and adoption referrals, and healing after the trauma of abortion.

Since 2006, the Jewish Pro-Life Foundation has provided education concerning fetal development, viability, the sanctity of unborn life, as well as traditional Jewish laws regarding abortion. The Jewish Pro-Life Foundation provides adoption and pregnancy care referrals, education resources about the harmful effects of abortion, and support to Jewish men and women suffering after an abortion. While not affiliated with any Jewish denomination, political organization or messianic movement, the Jewish Pro-Life Foundation adheres to a traditional and conservative viewpoint on Jewish law and its advocacy on this issue is a reflection of those beliefs.

The Institute for Judaism and Civilization Inc. (“Institute”) specializes in the study of Torah Law and its relationship to society. The Institute has a strong interest in the universal ethics of the Noahide Laws which are at the root of many of the world’s great religions. The Institute’s primary task is to explore the interface between Judaism and the arts, sciences and values of civilization generally. The Institute seeks to promote sophisticated



communication between society and culture at large and specific Jewish traditions received at Sinai. The published work of the Institute's Director, Rabbi Dr. Shimon Cowen, includes *The Theory and Practice of Universal Ethics - the Noahide Laws*, a book which drew endorsements for the Noahide laws from the Governor General of Australia, the King of Morocco and the President of the European Union.

Beit Emunah, LLC is an independent Sephardic-based Chassidic Breslov Synagogue, shul and community welcoming all people of positive intention and all Jews regardless of movement or sect. Beit Emunah is proud to stand with the Jewish Pro-Life Foundation in support of life. Beit Emunah supports the God-given and constitutionally guaranteed rights of all Americans to life, liberty and the pursuit of happiness from conception to the grave.

Rabbi Menashe Bovit serves in Queens, New York, as the spiritual leader and Torah authority to his congregation and the wider Jewish community. Rabbi Bovit embraces the precepts of the Universal Biblical Moral Laws also known as the Noahide Laws, and offers Biblical guidance to non-Jews and believing Christians, as well. As the son of a Holocaust survivor, Rabbi Bovit is a strong and vocal advocate of American Exceptionalism, Patriotism, Zionism, liberty and the sanctity of life.

Rabbi Yakov David Cohen is the founder and director of the Institute of Noahide Code ([www.Noahide.org](http://www.Noahide.org)) UN NGO Universal Noahide for all people with Universal Peace. Born in Brooklyn, New York, Rabbi Cohen received his rabbinic ordination from the Chief-Rabbi Piekarski, OBM Bachelor's degree at the Rabbinical College of America, was ordained as a Dayan/Jewish judge at UL Yeshiva, New York, and obtained a graduate degree from Monash University in Australia. Rabbi Cohen is a renowned Talmudic scholar writing on various Jewish subjects. His most recent work include a compilation of the works of Noahide practice, New York television show, "*One People One World under G-D*," and a book titled "*Divine Image*." Rabbi Cohen has met with world leaders and is an experienced lecturer travelling internationally to locations including China, Korea and Africa. Rabbi Cohen serves as the head of a delegation to the United Nations NGO ECOSOC and relishes the questions of both the perplexed and not so, of all backgrounds and ages.<sup>1</sup>

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<sup>1</sup> Note: This brief's use of terms such as "Jews," "Judaism" and "Jewish beliefs" is not intended to convey a sense that Amici's position represents a universally-held set of theological and/or ethical beliefs in Judaism generally. Rather, such terms are used in connection with the sincerely-held beliefs of Amici themselves. Amici recognize that various schools and teachings of Judaism differ in significant respects, and the use of broad terms referring to Amici's beliefs is thus not intended to deny or negate the existence of other beliefs held by other Jews who may disagree with Amici's position.

## Summary of Argument

Judaism has a strong legal tradition of protecting human life and prohibiting abortion except in very narrow circumstances, i.e., where the life of the mother is endangered. Nontherapeutic abortion is antithetical to Jewish law as followed by Amici, and the compelled funding of nontherapeutic abortions would constrain Jews to assist financially in abortion practices which are almost entirely foreclosed under the Torah. Jewish law provides that even the soul of an unborn child is sacred, because that child is formed in the image of their Creator and further provides that Jews must advocate on behalf of those who cannot advocate for themselves. Accordingly, Amici submit this brief for the Court's consideration in illustration of how certain areas of Pennsylvania's current law are consistent with Jewish theology.

Pennsylvania's Abortion Control Act, Act of June 11, 1982, P.L. 476, No. 138, 18 Pa. C.S. §§ 3201–3220, *as amended*, sets forth the legislative purpose of protecting the life and health of unborn children and shows the Commonwealth of Pennsylvania's high valuation of even unborn human life. This Court in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985), echoed those purposes when affirming the constitutionality of the Abortion Control Act and holding that public funds could indeed be

prohibited for nontherapeutic abortions. Judaism likewise places an extraordinarily high value on human life, and Amici urge this Court to again uphold the Abortion Control Act's bar on utilizing public funds to pay for abortions except for therapeutic abortions. *Stare decisis* and appropriate respect for Pennsylvania public policy as declared by its legislature elected by the people direct that upholding the Act is appropriate.

### **Argument**

- I. The plight and historical persecution of the Jewish people situates Amici in a unique position to advocate on behalf of children still within their mothers' wombs.**
  - A. Throughout history, Jewish people have endured persecution and discrimination motivating Amici to now advocate for unborn children yet without a voice to defend their own right to life.**

The plight and persecution of the Jewish people is without parallel in world history. As a people, Jews have faced contempt, scorn and persecution under the Babylonian, Persian, Greek and Roman empires,<sup>2</sup> have survived existential threats by enemies' attempts to exterminate them

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<sup>2</sup> See generally Misheck Mutua Mbevi, *Paul and Ethnicity: A Socio-Historical Study of Romans*, Chapter III (November 2013) (Masters of Arts thesis, North-West University) available at [https://repository.nwu.ac.za/bitstream/handle/10394/11845/Mbevi\\_MM.pdf;sequence=1](https://repository.nwu.ac.za/bitstream/handle/10394/11845/Mbevi_MM.pdf;sequence=1) (last visited September 17, 2021) (discussing Roman figures such as Tacitus, Juvenal, and views of other authors and criticism of Roman Judeans).

as a “subhuman” race,<sup>3</sup> and still face threats of those prejudiced against the Jewish community.<sup>4</sup> Despite the trials endured, the Jewish people remain firm in their beliefs and steadfast in their conviction that it is their duty to advocate for other vulnerable and victimized humans facing strife and peril as commanded by Proverbs 31:8: “Speak up for those who cannot speak for themselves.”<sup>5</sup>

Amici are especially sympathetic to the lives of children still in their mother’s wombs, who are not recognized by law as fully human<sup>6</sup> and who are without an opportunity to advocate on their own behalf or to protect

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<sup>3</sup> Holocaust Education & Archive Research Team, *Der Untermensch* “The Subhuman” <http://www.holocaustresearchproject.org/holoprelude/deruntermensch.html> (last visited September 17, 2021). This classification of the Jewish people as subhuman is what gives Amici and other like-minded Jewish people a special sensitivity to defining the unborn as less than a whole person entitled to the right to live. See note 6, *infra*.

<sup>4</sup> See Zach Beauchamp, *Poway and Pittsburgh: the rise of murderous anti-Semitism, explained*, Vox (May 1, 2019) <https://www.vox.com/policy-and-politics/2019/5/1/18524103/poway-synagogue-shooting-anti-semitism> (last visited Dec. 7, 2021); see also Nicole Hemmer, *The seeds of Pittsburgh were sown in Charlottesville*, CNN OPINION (October 30, 2018) <https://www.cnn.com/2018/10/30/opinions/pittsburgh-shooting-antisemitism-charlottesville-hemmer/index.html> (last visited Dec. 7, 2021) (reporting on the mass shooting of eleven people attending the Tree of Life Synagogue and its connection to other anti-Semitic demonstrations).

<sup>5</sup> *Proverbs* 31:8 (NIV).

<sup>6</sup> See *Roe v. Wade*, 410 U.S. 113, 162 (1973) (declining to recognize the unborn “in the law as persons in the whole sense[.]” noting that a person’s interests are perfected by and contingent upon a live birth). In short, the prevailing view is that an unborn child does not attain humanity until that child is born. Just as Jewish life was categorized as subhuman in Nazi Germany, unborn children have been relegated to a status wherein they are not recognized as whole humans with perfected legal interests until birth.

themselves from others. Psalm 139:13-16 illustrates the Jewish belief that life begins while an infant is still in his or her mother's womb:

For you created me in my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made; your works are wonderful, I know that full well. My frame was not hidden from you when I was made in the secret place, when I was woven together in the depths of the earth.<sup>7</sup>

Leviticus 19:16 has been interpreted to command Jews to action where the life of another is threatened: "Don't stand idly by if someone's life is in danger and you can help."<sup>8</sup> In the words of Holocaust survivor and writer, Elie Wiesel, "[i]ndifference is not a beginning; it is an end. And, therefore, indifference is always the friend of the enemy, for it benefits the aggressor – never his victim, whose pain is magnified when he or she feels forgotten...In denying their humanity, we betray our own."<sup>9</sup> In short, Jewish people are commanded to take a stand for those who fall victim to another

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<sup>7</sup> *Psalm* 139:13-16 (NIV).

<sup>8</sup> Rabbi Jonathan Roos, Kol Nidre Sermon: *Do Not Stand Idly By...*, (September 23, 2015) <https://templesinaidc.org/wp-content/uploads/sites/57/2018/06/erev-yom-kippur-5776-don-t-stand-idly-by.pdf> (last visited Sept. 17, 2021). Jewish tradition directs that Jewish people stand up for the vulnerable. While an unborn child is dependent on their mother for life during a period of pregnancy, nevertheless, Jewish tradition directs that the unborn child's vulnerability and dependent existence is entitled to protection save for the exceedingly rare circumstance where the mother's life is endangered and Jewish law would permit an abortion. See note 19, *infra*.

<sup>9</sup> Elie Wiesel, *The Perils of Indifference* (April 12, 1999).

in recognition of the sanctity of human life.<sup>10</sup> The Torah declares the life of an unborn child sacred, inasmuch as that life contains a divinely bestowed soul made in his or her Creator's image that is entitled to the same protections and respect as are accorded to live-born humans.<sup>11</sup>

Furthermore, it is Jewish belief that rights are entitlements given by God and thus accompanied by a duty to not interfere with another's exercise of his or her right.<sup>12</sup> It follows then that an unborn child, due to his or her intrinsic humanity, has the right to be free from interference with life and growth *in utero*.<sup>13</sup> Termed another way, a child has a right to be born and to live.

The experiences of extreme cruelty towards the Jewish people provide further motivation for Amici to speak out against wrongs taken

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<sup>10</sup> "The sanctity and infinite worth of every human being is a quintessential Jewish value, grounded in the biblical notion that man is created in the divine image and likeness to the creator. According to the Mishnah (Sanhendrin 4:5) 'Whoever destroy one life is as if he destroyed a whole world.'" Rabbi Yakov D. Cohen, *Abortion and Jewish Law – Partial birth abortion*, INSTITUTE OF NOAHIDE CODE, <http://noahide.org/abortion-and-jewish-law/> (last visited Dec. 7, 2021).

<sup>11</sup> Rabbi Shlomo Nachman, *Abortion and Related Issues* (April 17, 2018) <http://learnemunah.com/being/abortion.html> (last visited Dec. 7 2021). This belief is derived from Genesis 9:6 which prohibits killing another human because man is made in the image of God and human life is valuable at all stages of development.

<sup>12</sup> Jewish Pro-Life Foundation, *JPLF Response to NCJW*, PRO-LIFE BLOG (July 27, 2020), <https://jewishprolifefoundation.org/pro-life-blog/f/jplr-response-to-ncjw> (last visited Sept. 17, 2021).

<sup>13</sup> *See id.*

against others. In 2018, a shooter killed eleven people attending Shabbat services in Pittsburgh, later reportedly stating to police that he “just want[ed] to kill Jews.”<sup>14</sup> Six months later, another shooting occurred on the last day of Passover at a synagogue in Poway, California.<sup>15</sup> Upticks in violence against Orthodox Jews in Brooklyn further illustrate the continuation of historic violence against Jewish populations.<sup>16</sup> Jewish women and their unborn children endured additional persecution in concentration camps during the Holocaust at the hands of the murderers. They were moreover used as “guinea pigs” in scientific experiments with both the mother and her unborn infant losing their lives and being cremated along with over a million others in the ovens of Auschwitz.<sup>17</sup> Accordingly, while Jewish beliefs command Amici to advocate on behalf of unborn

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<sup>14</sup> Hemmer, *supra*, note 3.

<sup>15</sup> See Beauchamp, *supra*, note 4.

<sup>16</sup> See Ben Sales, *In Orthodox Jewish Brooklyn, a spate of assaults feels all too familiar*, JEWISH TELEGRAPHIC AGENCY, (September 3, 2019) <https://www.jta.org/2019/09/03/united-states/in-orthodox-jewish-brooklyn-a-spate-of-assaults-feels-all-too-familiar> (last visited Dec. 7, 2021).

<sup>17</sup> Nadine Brozan, *Out of Death, A Zest for Life*, NEW YORK TIMES (Nov. 15, 1982), <https://www.nytimes.com/1982/11/15/style/out-of-death-a-zest-for-life.html> (reporting on an interview with Dr. Gisella Perl, a Holocaust survivor, inmate and physician at Auschwitz wherein Dr. Perl recalled that “[t]he greatest crime in Auschwitz was to be pregnant” and later learning that women who revealed their pregnancy to Josef Mengele “were all taken to the research block to be used as guinea pigs, and then two lives would be thrown into the crematorium.”) (last visited Sept. 17, 2021).



children, the experiences of the Jewish people allows Amici to further empathize with the plight of the unborn and their families stricken with the impacts of abortion practices and procedures.

**B. Funding would enable state sponsored nontherapeutic abortion, action directly contrary to the public policy set forth by the Pennsylvania legislature as recognized by the Courts in *Fischer* and consistent with Jewish beliefs.**

The Abortion Control Act, this Court's ruling in *Fischer*, and Jewish theology all unite in a critical priority: forbidding the use of public monies in the termination of the life of an unborn child when that life does not endanger the mother's own life.

Judaism has received commandments, which it transmits not only to the Jewish people but to humanity generally. A very early set of commands recognized by Judaism, the Noahide Laws, are binding on both Jews and non-Jews alike.<sup>18</sup> Rabbi Shimon Cowen describes the Noahide Laws' prohibition of the taking of the life of another human as follows,

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<sup>18</sup> *Noahide Code*, INSTITUTE OF NOAHIDE CODE, <http://noahide.org/noahide-code/> (last visited November 30, 2021). The laws were transmitted to Noah, the survivor of the flood that destroyed the earth, through whom civilization was renewed on the basis of these universal laws. These laws have been recognized by the United States Congress as part of the bedrock moral principles which underlie American law and society more broadly. See *generally* Education Day Proclamation, H.J. Res. 104, 102nd Cong. (March 20, 1991) (Congress recognizing "the historical tradition of ethical values and principles which are the basis of civilized society and upon which our great Nation was founded[,] that such ethical values and principles "have been the bedrock of society from the dawn of civilization, when they were known as the Seven Noahide Laws" and that without such ethical values and principles "the edifice of civilization stands in serious peril of returning to chaos").

The opposition of Noahide law to the abortion of unborn life, except in very special circumstances, embodies one of the deepest norms of human society, the protection of human life. In other words, Torah forbids abortion on demand, whether by Jew or non-Jew.<sup>19</sup>

Pennsylvania's Public Welfare Code provides that the Commonwealth's chosen public policy is "to favor childbirth over abortion," thus barring the expenditure of public funds toward nontherapeutic abortions.<sup>20</sup> Likewise, this Court in *Fischer* affirmed the legislature's ability to choose between competing policies and affirmed Pennsylvania lawmakers' choice to allocate funds in a manner that favors childbirth over abortion.<sup>21</sup> Specifically, this Court found that that the legislative objective of

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<sup>19</sup> Myles Kantor, *Should We Care if Non-Jews Abort Their Babies?*, JEWISHPRESS.COM (August 10, 2018), <https://jewishpress.com/indepth/should-we-care-if-non-jews-abort-their-babies/2018/08/10/> (last visited Sept. 17, 2021) (quoting *The Theory and Practice of Universal Ethics: The Noahide Laws*). Rabbi Bernard L. Berzon explains those very special circumstances as follows:

In Judaism, the life an unborn child is sacred and only when it is a threat to the mother can the moral issue of abortion be resolved. For each person to decide arbitrarily, on the basis of economics or convenience, whether a fetus is to survive is to play God and is religiously blasphemous and socially destructive.

George Dugan, *2 Top Orthodox Rabbis Score 'Blanket' Abortion Permission*, NEW YORK TIMES (July 11, 1970), <https://www.nytimes.com/1970/07/11/archives/2-top-orthodox-rabbis-score-blanket-abortionpermission.html>. (last visited Sept. 17, 2021). This pronouncement stands in stark contrast with the Supreme Court's contrary observation in *Roe v. Wade* that the "predominant, though not unanimous, attitude of the Jewish faith" was that life did not begin until after birth. 410 U.S. 113, 160 (1973).

<sup>20</sup> 62 P.S. § 453

<sup>21</sup> 502 A.2d at 118-121.

the Abortion Control Act was to preserve life recognizing that the Act encouraged “the birth of a child in all situations except where another life would have to be sacrificed.”<sup>22</sup> This policy decision has a direct impact on society and plays an integral part in preventing the effects that completed abortion procedures can produce on women who make the choice to end a pregnancy as well as the effects on those close to them.

The United States Supreme Court in *Planned Parenthood v. Casey* recognized the social impacts caused by abortions when stating,

Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one’s beliefs, for the life or potential life that is aborted

505 U.S. 833, 852 (1992).

Amici believe that abortion terminates the life of a fully-human person. As part of advocating for the life of unborn children Amici are also bound to advocate on behalf of those in society secondarily harmed by the consequences of abortion. The alternative of adoption serves the child, his or her mother, and society better than a system in which the state sponsors

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<sup>22</sup> *Id.* at 122.

nontherapeutic abortions.<sup>23</sup> Likewise, Pennsylvania’s Newborn Protection Act provides an alternative to women facing the decision between keeping and raising a child and abortion.<sup>24</sup> Utilizing these alternatives results in a multitude of benefits in addition to sparing the life of the unborn child. These include promoting responsibility and commitment in relationships and promoting the overall mental and physical health of the parents.<sup>25</sup> In short, providing public funds to finance nontherapeutic abortions would, rather than promoting the health of the mother and benefitting society, likely be detrimental to women and society at large.

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<sup>23</sup> A recent study examining medical record claims from all states that provide Medicaid funding for elective abortions between 1999 and 2012 found that abortion can increase the risk of mental health problems, sleep disorders, and premature deaths in women. David C. Reardon, *Effects of Pregnancy Loss on Subsequent Postpartum Mental Health: A Prospective Longitudinal Cohort Study*, INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH (Feb. 23, 2021), <https://www.mdpi.com/1660-4601/18/4/2179/htm> (last visited Dec. 1, 2021).

<sup>24</sup> Act of December 9, 2002, P.L. 1549, 23 Pa. C.S. §§ 6501 – 6509 (allowing a parent to bring an unharmed baby up to 28 days old to a hospital, police station, or emergency service provider station without the threat of facing legal consequences for their decision to relinquish the child). The Safe Haven Law has shown success as fifty babies have been entrusted to this process since 2003. See About Safe Haven, Department of Human Services, <https://www.dhs.pa.gov/secretsafe/Pages/About.aspx> (last visited Dec. 7, 2021).

<sup>25</sup> See Brief of Amici Curiae 375 Women Injured by Second and Third Trimester Late Term Abortions and Abortion Recovery Leaders in Support of Petitioners, filed in *Dobbs v. Jackson Women’s Health Organization*, 19-1392 (discussing the personal experience of women obtaining an abortion and the scientific evidence showing the impacts of those who choose abortion in Section III); see also note 23 *supra*.

For decades, the law in the United States has adhered to the standard set forth in *Planned Parenthood v. Casey*, striking a balance between the state's interest in protecting unborn children and a woman's ability to obtain an abortion. As stated in *Casey*,

Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose.

505 U.S. at 877.

The legislative decision set forth in Pennsylvania's Abortion Control Act is one example of those structural mechanisms permitted by *Casey* that expresses a profound respect toward the lives of unborn infants. This decision by the Pennsylvania public as expressed through their elected officials to favor childbirth is an "unquestionably strong and legitimate interest."<sup>26</sup> The United States Supreme Court has determined that "a state may enact a statute limiting medically necessary abortion funding without offending the Constitution."<sup>27</sup> States have a far broader power to encourage citizens to take certain actions which are in the public interest. States can, for example, encourage a pregnant woman to carry an unborn

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<sup>26</sup> *Fischer*, 502 A.2d at 118 (citing *Beal v. Doe*, 432 U.S. 438, 446 (1976)).

<sup>27</sup> *Id.* (citing *Williams v. Zbaraz*, 448 U.S. 358 (1980)).

infant to term rather than opting for a nontherapeutic abortion by barring public funds to pay for the procedure but paying instead for a safe delivery.<sup>28</sup>

Even where legislation or legal decisions establish an individual right, those rights may be subject to limitations. Thus, one's speech may be restricted where it poses a real danger to others,<sup>29</sup> and a felon may be prevented from owning a gun.<sup>30</sup> Similarly, simply because a person has a present right to an abortion does not necessarily mean that the same person has the right to demand the government fund the exercise of that right.<sup>31</sup> This is the only reasonable solution to such a question; otherwise, the State would be required to fund any message which a person desires to print or provide all criminal defendants with counsel regardless of financial

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<sup>28</sup> See *id.* (citing *Harris v. McRae*, 448 U.S. 297, 315 (1980)).

<sup>29</sup> See *Schenck v. U.S.*, 249 U.S. 47, 52 (1919) (“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”).

<sup>30</sup> See *District of Columbia v. Heller*, 544 U.S. 570, 626 (2008) (“Like most rights, the right secured by the Second Amendment is not unlimited...our opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons...”).

<sup>31</sup> See *Harris*, 448 U.S. at 316-17 (observing that “it simply does not follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself to the full range of protected choices.”); see also *Fischer*, 502 A.2d at 120 (“merely because all have the right to do a thing does not require that the Commonwealth is obliged to provide the means to all.”).

resources. Much like the “government speech” doctrine permits the state to endorse messages it deems to promote the public interest, a state may spend and advocate through the purse the advancement of social policies it finds favorable without offending the constitutional rights of individuals.<sup>32</sup>

**C. The Use of Taxpayer Funds to Finance Nontherapeutic Abortions is Abhorrent to Amici as Jewish Taxpayers.**

Judaism envelopes the legal principle in civil matters of “dina d’malkhuta dina” which translates to “the law of the land is the law.”<sup>33</sup> Accordingly, Jewish law requires that observant Jews pay lawfully-levied taxes. Respect for the authority of the land and its right to levy lawful taxes is based upon the proprietary rights of the government. The government is an “owner” over the land with a proprietary right over its territory that is coextensive with, and sometimes superseding, the proprietary rights of citizens. Taxes are due, according to the law, to the government for the orderly administrative management of the jurisdiction. The government’s

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<sup>32</sup> *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009) (explaining that the government speech doctrine encompasses the idea that “a government entity has the right to speak for itself” and that the government is “entitled to say what it wishes” and “to select the views that it wants to express”) (internal quotation marks omitted) (citations omitted)).

<sup>33</sup> Rabbi Prof. David Golinkin, *The Basic Principles of Jewish Business Ethics*, AISH INTERNATIONAL, <https://aish-international.com/basic-principles-jewish-business-ethics/> (July 25, 2017) (last visited Dec. 1, 2021).

authority – including the levying of taxes – cannot, however, be utilized in harmony with Noahide Law to fund nontherapeutic abortions. Such a result would, according to Jewish law, lend financial assistance to an act which both Jew and non-Jew are prohibited from engaging in under the injunction of the universal Noahide commands.

While a minority in the state, Jewish taxpayers comprise 2.30% of the population in the Commonwealth.<sup>34</sup> But, should the Court determine to overrule *Fischer* and find the Abortion Control Act unconstitutional, those Pennsylvania Jewish taxpayers' funds will, in part, be obligated to fund nontherapeutic abortions. This result violates Jewish law and offends the Jewish injunction to advocate for the preservation of human life.<sup>35</sup>

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<sup>34</sup> As of 2020, over 430,000 Jewish people live in Pennsylvania and represent 5% of the Jewish population living in the United States. *Jewish Population in the United States by State (1899-Present)*, Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/jewish-population-in-the-united-states-by-state> (last visited Dec. 12, 2021); see also Leonard Saxe, et al., *American Jewish Population Estimates 2020 Summary and Highlights*, p. 8. accessible at <https://ajpp.brandeis.edu/documents/2020/JewishPopulationDataBrief2020.pdf> (last visited Dec. 12, 2021).

<sup>35</sup> As stated by Rav Moshe Feinstein, “Not only are Jews prohibited from having an abortion, but they are prohibited from assisting non-Jews from having an abortion, too.” Amicus Curiae Brief of Jewish Pro-Life Foundation, the Coalition for Jewish Values, Rabbi Yakov David Cohen, Rabbi Chananya Wessman, and Bonnie Chernin, (President, Jewish Life League) on the Merits in Support of Petitioners, filed in *Dobbs v. Jackson Women’s Health Organization*, U.S. S.Ct. No. 19-1392 (pending decision). Further, abortion industry practices clash with Jewish ethics and moral guidelines in business, their responsibility to protect friends and neighbors from harm, honesty, and women’s safety. See Exodus 23:7 (CJB) “Keep away from fraud, and do not cause the death of the innocent and righteous; for I will not justify the wicked.” According to Noahide law, causing the death of an unborn child is a capital crime. This prohibition is



Accordingly, in adherence to the dictates to Jewish law, Amici and those with similar views – namely all Americans who recognize the Noahide Laws upon which, according to Congress, “our great nation was founded”<sup>36</sup> – are placed in a position which may become untenable depending on this Court’s decision. On the one hand, the law requires that a Jewish believer follow the law of the land and ensure that he or she fulfills tax obligations. On the other hand, the law requires him or her to stand against public funds being used to fund abortion, as such practice violates Jewish law against assisting in abortion and to avoid causing pain and death to the powerless: “Do what is right and just; rescue the wrong from their oppressors; do nothing wrong or violent to the stranger, orphan or widow; don’t shed innocent blood in this place.” Jeremiah 22:3 (CJB).

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derived from Genesis 9:6: which states that one who spills the blood of a person, by a person [*ba’adam*] his blood shall be shed. The Sanhedrin 57b, interpreting this text, explains that the word “ba’adam” literally means “in a person” and encompasses an unborn child. Sanhedrin 57b, *Talmud*, The William Davidson Edition, <https://www.sefaria.org/Sanhedrin> (last visited Dec. 7, 2021). Contribution of funds towards taxpayer-funded abortions would therefore result in Jewish taxpayers adhering to a directive to pay taxes to contribute to the commission of what Jewish law proscribes as a capital crime.

<sup>36</sup> See note 18, *supra*.

## II. ***Stare Decisis* and the Noahide Code Instruct the Court on the Importance of Upholding the Existing Law Protecting Unborn Life.**

“[A]ppoint judges and officers for all your gates [in the cities] ADONAI your God is giving you, tribe by tribe; and they are to judge the people with righteous judgment.” Deuteronomy 16:18 (CJB).

In addition to the mandate not to kill another human, the Noahide Code also instructs that a righteous and just judicial system must be established.<sup>37</sup> Establishing a righteous justice system pursuant to the Noahide Code serves an important function in governing interpersonal relationships in society:

A robust and healthy legal system, administering justice fairly, creates a society worthy of God’s blessings. Establishing a system of judges, courts, and officials to maintain and enforce the law is a far-reaching responsibility. This precept translates the ideals of our personal life into a formal order for society at large. It is the extension and guarantee of all the preceding laws.<sup>38</sup>

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<sup>37</sup> *Noahide Code*, Institute of Noahide Code, <http://noahide.org/noahide-code/> (last visited November 30, 2021). One task of the courts, according to Noahide Law, is to ensure that other Noahide laws (and laws consistent with Noahide law) are upheld. The Noahide prohibition against shedding another human’s blood includes abortion where the life of the mother is not endangered, see note 18, *supra*, finds a corollary in Pennsylvania’s current law which prohibits public funds to carry out nontherapeutic abortions.

<sup>38</sup> *Id.*; cf. Micah 6:8 (“He has shown you, O mortal, what is good. And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.”) (NIV).

The importance and impact of the Noahide Code’s foundational principles on society is underscored by the government’s reliance on the Noahide Laws and its recognition that adherence to these values is beneficial to society.<sup>39</sup>

As stated by the United States Supreme Court, *stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”<sup>40</sup> It “avoids the instability and unfairness that accompany disruption of settled legal expectations.”<sup>41</sup> This Court has likewise emphasized the importance of adhering to the rule of law by recognizing “the importance of reliance on settled jurisprudence when asked to overturn precedent and thus there is much force in the...argument that [legislative leaders] rely on this Court’s interpretation of the law and precedent when crafting legislation, and that such reliance should not be undercut except for good reason.”<sup>42</sup> Both

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<sup>39</sup> See note 18, *supra*.

<sup>40</sup> *Randall v. Sorrell*, 548 U.S. 230, 243 (2006) (quoting *Harris v. United States*, 536 U.S. 545, 556-57 (2002) (plurality opinion)).

<sup>41</sup> *Id.* at 244.

<sup>42</sup> *Stilp v. Commonwealth*, 905 A.2d 918, 967 (Pa. 2006).

Noahide law and *stare decisis* seek to establish a just and predictable legal system for the benefit of the governed.

Where, as here, *stare decisis* and upholding the rule of law militate preserving the Abortion Control Act as a valid legislative judgment, the impact of holding otherwise cannot be understated. A contrary decision would result in both a usurpation of the General Assembly’s legislative prerogative to declare the public policy of the Commonwealth and a thwarting of the will of the people as expressed through its legislature.<sup>43</sup> As discussed more fully in Section I(B) *supra*, adhering to the precedent this Court articulated in *Fischer* would permit the government to “use its voice and its regulatory authority to show its profound respect for the life within the woman.”<sup>44</sup> And so, “[t]he fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it.”<sup>45</sup> Both *Fischer* and the Abortion Control Act

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<sup>43</sup> See *Program Admin. Servs. v. Dauphin Cty. Gen. Auth.*, 928 A.2d 1013, 1017-18 (Pa. 2007) (recognizing “Legislature’s chief function to set public policy and the courts’ role to enforce that policy, subject to constitutional limitations”); see also *Parker v. Children’s Hosp. of Philadelphia*, 394 A.2d 932, 937 (Pa. 1978) (explaining that “the power of judicial review must not be used as a means by which the courts might substitute [their] judgment as to the public policy for that of the legislature”).

<sup>44</sup> *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007).

<sup>45</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 874 (1992).

express an established precedent favoring childbirth over abortion consistent with the Noahide Laws' dictates concerning just decisions by courts and the prohibition of ending the life of another human. This Court's ruling in *Fischer* should thus stand.

## Conclusion

Amici stand steadfast in their belief and advocacy that abortion is contrary to Jewish morality, as well as universal Noahide principles, and that an unborn child is a human life which is entitled to the full protections of the law just as are afforded to children who are born. To that end, Amici ask this Court to uphold the Abortion Control Act's bar on the use of public funds for nontherapeutic abortions. A decision to that effect would respect public policy as declared by the Pennsylvania General Assembly, Jewish morals and law, and the judicial doctrine of *stare decisis*.

Respectfully submitted,

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I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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