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## Inconsistent State Court Rulings Concerning Pregnancy-Related Behaviors

Lidia Hoffman

Monica K. Miller

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# INCONSISTENT STATE COURT RULINGS CONCERNING PREGNANCY-RELATED BEHAVIORS

LIDIA HOFFMAN AND MONICA K. MILLER

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## I. INTRODUCTION

Women have the right to terminate their pregnancies,<sup>1</sup> although it is neither absolute nor free from numerous attempts to be abolished or to be significantly limited.<sup>2</sup> Attempts to regulate pregnancy have also affected women’s rights to make decisions concerning the refusal of medical procedures.<sup>3</sup> In *In re Brown*,<sup>4</sup> the Illinois court appointed a guardian to protect the interests of a fetus and ordered a pregnant woman to undergo a blood transfusion against her will.<sup>5</sup> In 2004, Melissa Rowland refused to undergo a cesarean section. Doctors claim that her refusal resulted in the stillbirth of one of her fetuses.<sup>6</sup> She became the first pregnant woman arrested for homicide because of her behavior during pregnancy.<sup>7</sup>

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<sup>1</sup> See *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>2</sup> See generally Human Rights Watch, U.S. Abortion Regulations Undermine Women’s Right to Choose, <http://www.hrw.org/english/docs/2006/10/27/usdom14469.htm> (last visited Oct. 30, 2006).

<sup>3</sup> *Id.*

<sup>4</sup> *In re Brown*, 689 N.E. 2d. 397 (Ill. App. Ct. 1997).

<sup>5</sup> SHEENA MEREDITH, *POLICING PREGNANCY* 45 (Ashgate 2005) [hereinafter Meredith].

<sup>6</sup> See Monica Miller, *Refusal to Undergo a Cesarean Section: A Woman’s Right or A Criminal Act?* 15 HEALTH MATRIX 383, 400 (2005) [hereinafter Miller].

<sup>7</sup> *Id.* at 383.

State courts vary in their willingness to protect pregnant women's rights to self-determination, bodily integrity, privacy, and religious freedom; these rights are sometimes outweighed by fetal rights to live.<sup>8</sup> Different state courts have issued many competing decisions, which emphasizes a lack of unification in this area of law.<sup>9</sup> This inconsistency in the law creates confusion for women concerning the scope of their legal protections and alters women's selection of prenatal care and decision to give birth. Thus, it is important to recognize the prevailing themes and grounds on which courts have rested their opinions.

An analysis of these state court rulings will expose a lack of unification among states' interests in protecting either women's rights or fetal rights. This article will first identify the factors that courts have used in their rulings; these are the factors that judges most often have used to support or limit pregnant women's constitutional rights. A psycho-legal analysis then examines the effects of inconsistent rulings on women, the medical profession, and the law. The concluding section will provide recommendations for pregnant women and offer policy suggestions.

## II. FACTORS INFLUENCING LEGAL RULINGS

A number of recent court cases emphasize inconsistencies in the law concerning pregnant women's rights and fetal rights.<sup>10</sup> Some courts recognize fetal rights at viability,<sup>11</sup> whereas other courts sustain a mother's overriding right to refuse any medical treatment during the entire pregnancy.<sup>12</sup> Fetal rights are based on the state's compelling interest to protect human life, especially at viability, and on recognition of a fetus as a person under particular state laws.<sup>13</sup> Most state courts reference the provisions of *Roe v. Wade*<sup>14</sup> that refer to "viability" as the point at which the state has a compelling interest in protecting fetal rights to live and be born healthy.<sup>15</sup> Not all courts, however, have referred to the point of viability as the premise for their

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<sup>8</sup> See generally *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), reprinted as an appendix to *In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990); *In re Jamaica Hosp.*, 491 N.Y. S.2d 898 (N.Y. Sup. Ct. 1985).

<sup>9</sup> See generally *Stallman v. Youngquist*, 531 N.E. 2d 355 (Ill. 1988) (ruling in favor of the mother's right to refuse medical treatment); *In re Madyun*, Misc. No. 189-86 (ordering a pregnant woman to undergo a cesarean section).

<sup>10</sup> See, e.g., *In re Baby Boy Doe*, 632 N.E. 2d 326 (Ill. App. Ct. 1994) (noting that a pregnant woman's right to refuse a medical treatment is absolute); *Raleigh Fitkin-Paul Morgan Mem'l Hosp. v. Morgan*, 201 A.2d 537 (N.J. 1964) (articulating that the state's interest in protecting a viable fetus outweighs a mother's right to refuse medical treatment).

<sup>11</sup> See *Nold v. Binyon*, 31 P.3d 274 (Kan. 2001); *People v. Taylor*, 32 Cal. 4th 863, 883 (Cal. 2004).

<sup>12</sup> *In re Baby Boy Doe*, 632 N.E. 2d at 332, following *Stallman*, 125 Ill.2d at 223 (this rationale refers to pregnant women's right to refuse invasive medical treatment which does not diminish during pregnancy).

<sup>13</sup> See, e.g., *Miller*, *supra* note 6, at 391.

<sup>14</sup> See generally *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>15</sup> *Meredith*, *supra* note 5, at 41.

rulings.<sup>16</sup> In a few cases, the judges noted the state's compelling interest in protecting the life of a not-yet-viable fetus.<sup>17</sup>

The prevailing factors on which courts rest their holdings about pregnant women's rights to refuse medical treatment can be grouped into categories based on common themes. Identifying these themes will emphasize the factors on which courts base their opinions and how these opinions affect pregnant women's rights and fetal rights. These factors include self-determination, bodily integrity, privacy, free exercise of religion, and the protection of a woman's health and life. The remainder of this section will focus on each of the major factors that judges have relied on in their rulings.

#### A. *Pregnant Women's Right to Self-Determination and Bodily Integrity*

A right to control one's body is an issue of one's autonomy, and typically the state is not allowed to interfere in these intimate, personal decisions.<sup>18</sup> The Fourteenth Amendment to the U.S. Constitution protects the right to bodily integrity.<sup>19</sup> A right to self-determination is protected under the common law,<sup>20</sup> and it is supported by the doctrine of informed consent.<sup>21</sup> Individuals have a right to refuse to subordinate their rights to the rights of others, even in order to save another person's life.<sup>22</sup> This provides a competent adult with the right to refuse to consent to any medical treatment being performed on him or her.<sup>23</sup>

Courts that have heard cases concerning the pregnant woman's right to refuse medical treatment have discussed such rights.<sup>24</sup> Several courts established the legal importance of a pregnant woman's rights to self-determination and refusal of an

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<sup>16</sup> See generally Mark Field, *Controlling the Woman to Protect the Fetus*, 17 L., MED., AND HEALTH CARE 114-129 (1989) [hereinafter Field].

<sup>17</sup> See *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. 837, 846 (1992); *In re Jamaica Hosp.*, 491 N.Y. S.2d 898 (N.Y. Sup. Ct. 1985).

<sup>18</sup> See, e.g., *Cruzan v. Director Missouri Dept. of Health*, 497 U.S. 261, 278 (1990) (discussing individuals' constitutional rights protected by the Fourteenth Amendment).

<sup>19</sup> The Fourteenth Amendment to the U.S. Constitution, in section 1, 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.  
U.S. CONST. amend. XIV, § 1.

<sup>20</sup> See Meredith, *supra* note 5, at 6.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> See *McFall v. Shimp*, 10 Pa. D. & C.3d. 90 (Allegheny Cp. Ct. 1978) (opining that an individual is not obligated to undergo a medical procedure to benefit another person).

<sup>23</sup> See *Schloendorff v. Soc'y of New York Hosp.*, 105 N.E. 92, 93 (N.Y. 1914).

<sup>24</sup> See, e.g., *Jefferson v. Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. 457 (Ga. 1981); *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), *reprinted as an appendix to In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990); *In re Baby Boy Doe*, 632 N.E. 2d. 326 (Ill. App. Ct. 1994).

invasive medical treatment based on the “reasonable man” standard.<sup>25</sup> The “reasonable man” standard originated in the development of the common law.<sup>26</sup> This standard concerns the ability of an individual to act sensibly (e.g., making a reasonable decision whether to undergo a medical procedure).<sup>27</sup> Pregnancy does not prevent women from adhering to this standard; thus, pregnant women have the full capacity to make decisions for themselves, including the decision to refuse or consent to any medical treatment.

This approach is reflected in the court ruling in *Mercy Hospital v. Jackson*.<sup>28</sup> In this case, the Maryland Court of Special Appeals denied a hospital’s request for appointment of a guardian for a pregnant Jehovah’s Witness who refused a blood transfusion during a cesarean section.<sup>29</sup> The court’s reasoning was based on a competent individual’s right to bodily integrity. Similarly, in *In re Baby Boy Doe*, the judge ruled that a woman’s right to refuse an invasive medical procedure, such as a cesarean section, does not diminish during pregnancy; thus it is absolute.<sup>30</sup>

The right of a pregnant woman to self-determination was the focus of the *In re Brown* case.<sup>31</sup> In this case, a pregnant woman lost a lot of blood during surgery; the doctors recommended a blood transfusion, but she refused.<sup>32</sup> The trial court ordered the transfusion to be administered, but the appellate court ruled differently, articulating that the state may not overrule a competent woman’s decision to refuse medical treatment in order to save the life of her fetus.<sup>33</sup> The judge also stated that a blood transfusion is an invasive medical procedure that interferes with bodily integrity.<sup>34</sup>

Some courts have even noted that pregnant women do not face civil liabilities for hurting their fetuses.<sup>35</sup> The court in *Stallman v. Youngquist* enunciated the right of a pregnant woman to reject medical treatment, even if it will result in jeopardizing her health and life, and the life and welfare of her fetus.<sup>36</sup> In this case, the Illinois Supreme Court refused to recognize a mother’s liability for prenatal injuries to her

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<sup>25</sup> See *Canterbury v. Spence*, 464 F.2d. 772, 780 (D.C. Cir. 1972) (establishing the “reasonable man” standard for informed consent).

<sup>26</sup> See, e.g., *Vaughan v. Menlove*, 132 E.R. 490 (C. P. 1837).

<sup>27</sup> See BLACK’S LAW DICTIONARY 594 (Pocket Ed. 3<sup>rd</sup> 2006) (defining a “reasonable person” as one who “acts sensibly”).

<sup>28</sup> *Mercy Hosp. v. Jackson*, 489 A.2d. 1130, 1134 (Md. Ct. Spec. App. 1985).

<sup>29</sup> *Id.* at 1134.

<sup>30</sup> See *In re Baby Boy Doe*, 632 N.E.2d. at 326.

<sup>31</sup> *In re Brown*, 689 N.E.2d. at 398-99, 404-05.

<sup>32</sup> *Id.* at 398.

<sup>33</sup> *Id.* at 400.

<sup>34</sup> *Id.* at 405.

<sup>35</sup> See, e.g., *Stallman v. Youngquist*, 531 N.E.2d 355 (Ill. 1988).

<sup>36</sup> *Id.* at 356.

fetus.<sup>37</sup> The court reasoned that such claims would expose mothers to unreasonable state scrutiny and would violate the right to bodily integrity.<sup>38</sup>

In contrast, the Washington, D.C. court in *In re A.C.* reached the opposite conclusion regarding a pregnant woman's right to refuse invasive medical treatment.<sup>39</sup> There a young woman was pregnant when doctors discovered that her cancer had returned. She became seriously ill before the fetus was born. Although some of the doctors doubted that the child would live and predicted that a cesarean delivery will hasten the mother's death, the court ordered the cesarean surgery in an attempt to save the child.<sup>40</sup> The child died within two hours after the delivery, and the mother died two days later.<sup>41</sup>

These few examples illustrate the inconsistencies among states. The obligation of a pregnant woman to comply with doctors' advice to undergo a particular medical treatment conflicts with her right to self-determination and bodily integrity. Courts disagree as to whether the pregnant woman's rights or the rights of the fetus should prevail.<sup>42</sup> This is the same situation for women's right to privacy.

#### *B. Pregnant Women's Right to Privacy*

A pregnant woman has a fundamental right to privacy under *Canterbury v. Spence* and *Stallman v. Youngquist*.<sup>43</sup> In some cases of pregnant women rights to privacy, state courts have issued opinions based on the Ninth Amendment.<sup>44</sup> Although the Constitution does not articulate the right to privacy, the U.S. Supreme Court in *Griswold v. Connecticut* determined that this right is one of the "unenumerated" rights protected by the Ninth Amendment.<sup>45</sup> The *Griswold* Court emphasized the significance of the right to privacy concerning individuals' decisions to bear a child.<sup>46</sup>

Some pregnant women have refused medical treatment based on the right to privacy.<sup>47</sup> In *Taft v. Taft*,<sup>48</sup> the Massachusetts Court of Appeals disregarded a lower

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* (basing its rationale on a pregnant woman's right to privacy, self determination, and religious freedom).

<sup>39</sup> *In re A.C.*, 573 A.2d 1235, 1235, 1237 (D.C. 1990).

<sup>40</sup> *Id.*

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

<sup>42</sup> See *In re Baby Boy Doe*, 632 N.E. 2d. 326 (Ill. App. Ct. 1994); *In re A.C.*, 573 A.2d. at 1235.

<sup>43</sup> See *Canterbury v. Spence*, 464 F.2d. 772, (D.C. Cir. 1972); *Stallman*, 531 N.E.2d. 355 (rejecting the perspective that pregnant women's rights are subordinated to fetal rights); Alan John Cohan, *Judicial Enforcement of Lifesaving Treatment for Unwilling Patients*, 39 CREIGHTON L. REV 849 (2006) [hereinafter Cohan].

<sup>44</sup> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

<sup>45</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>46</sup> *Id.*

<sup>47</sup> See *Jefferson v. Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. 457 (Ga. 1981).

court's order that required a woman in her fourth month of pregnancy to undergo an invasive medical procedure.<sup>49</sup> The Court held that there were no compelling circumstances to justify overriding her right to privacy.<sup>50</sup>

In other cases, judges have overruled pregnant women's rights, declaring that the fetal rights to live and to be born healthy outweigh the mother's rights.<sup>51</sup> For instance, the court in *In re A.C.* chose not to uphold the incompetent woman's right to privacy (against the dissent's objections) and instead determined that the decision could be made by a guardian who could be appointed to make the decision whether the procedure should be performed.<sup>52</sup> As the dissent points out, overruling the mother's wishes potentially violated her privacy rights.<sup>53</sup>

Some appellate courts have overruled lower courts' decisions to force a woman to undergo medical procedure. For instance, the *Taft* court vacated a lower court's decision, finding that forced medical procedures violate the mother's privacy.<sup>54</sup> Even though the courts recognize the importance of individuals' right to privacy, they sometimes significantly limit this right for pregnant women.<sup>55</sup> Another restricted right is the right to freely exercise one's religion.

### C. Pregnant Women's Right to Free Exercise of Religion

When a competent adult declines medical treatment on religious grounds, the courts generally respect his or her wishes, even in a life-or-death situation.<sup>56</sup> However, if a state can demonstrate a compelling interest that would justify overriding the right to free exercise of religion, a court may limit this constitutional right. At the point of fetal viability, the state's interest becomes compelling, thus a judge may overrule a pregnant woman's right to freely exercise her religion.<sup>57</sup>

A host of cases have considered a pregnant woman's right to free exercise of religion.<sup>58</sup> In some instances, the woman's religious rights have prevailed. The court in *Mercy Hospital v. Jackson* came to such a conclusion.<sup>59</sup> In this case, a pregnant

<sup>48</sup> *Taft v. Taft*, 446 N.E.2d. 395 (Mass. Ct. App. 1983).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. 457; *In re A.C.*, 533 A.2d 611 (D.C. 1987).

<sup>52</sup> See *In re A.C.*, 573 A.2d at 1235, 1258.

<sup>53</sup> *Id.* at 1248

<sup>54</sup> *Taft*, 446 N.E.2d.395.

<sup>55</sup> See, e.g., *In re A.C.*, 573 A.2d 1235.

<sup>56</sup> See *Miller*, *supra* note 6, at 387.

<sup>57</sup> See *Roe v. Wade*, 410 U.S. 113 (1973); see also *Miller*, *supra* note 6, at 389.

<sup>58</sup> See, e.g., *Raleigh Fitkin-Paul Morgan Mem'l Hosp. v. Morgan*, 201 A.2d. 537 (N.J. 1964).

; *In re Jamaica Hosp.*, 491 N.Y. S.2d 898 (N.Y. Sup. Ct. 1985); *Nold v. Binyon*, 31 P.3d 274 (Kan. 2001); *Taft*, 446 N.E.2d. 395.

<sup>59</sup> *Mercy Hosp. v. Jackson*, 489 A.2d. 1130, 1134 (Md. Ct. Spec. App. 1985).

woman with the signs of premature labor agreed to a cesarean delivery, but she refused to have a blood transfusion due to her religious beliefs.<sup>60</sup> Although the hospital tried to obtain a court order to administer the procedure, the judge said that a competent adult has a right to refuse a blood transfusion based on religious grounds, if it will not endanger the fetus.<sup>61</sup>

In contrast, some courts have refused to honor the woman's religious rights. In *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Morgan*, a pregnant woman refused a blood transfusion due to her religious beliefs.<sup>62</sup> The lower court refused to intervene, but the Supreme Court of New Jersey ordered the transfusion to save the lives of both the mother and the fetus.<sup>63</sup> In *In re Jamaica Hospital*, the court ordered a blood transfusion to save the lives of a mother and her not-yet-viable fetus, disregarding the woman's religious objections.<sup>64</sup> Similarly, in *Crouse Irving Memorial Hospital v. Paddock*, a pregnant woman agreed to a cesarean section but refused a blood transfusion based on her religious beliefs.<sup>65</sup> The court ordered the mother to receive blood transfusions as necessary for the survival of her fetus, despite her objections.<sup>66</sup>

In the majority of cases, courts have significantly limited a pregnant women's Constitutional right to the free exercise of religion.<sup>67</sup> Even those state courts which issued opinions protecting pregnant women's religious right have added stipulations that a pregnant woman's religious freedom may be respected if it does not conflict with endangering her fetus.<sup>68</sup> Consequently, the right to free exercise of religion is neither absolute nor well protected.

#### *D. Pregnant Women's Right to Protect Their Health and Lives*

Pregnant women who consent to a cesarean section assume numerous health risks associated with this procedure. Cesarean birth is a major surgery that may result in infection of the bladder or kidneys, increased blood loss (twice as much as with vaginal birth), decreased bowel functions, respiratory complications, and maternal death. A cesarean section also presents possible complications to the infant, such as premature birth, breathing problems, injury during the delivery, and infant lung immaturity. This procedure is also associated with a longer hospital stay and recovery time for women. There are long-term risks, too. For instance, the incision scar could break open during a later pregnancy or labor. In addition, the placenta

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<sup>60</sup> *Id.* at 1134.

<sup>61</sup> *Id.*

<sup>62</sup> *See Raleigh*, 201 A.2d. at 537.

<sup>63</sup> *Id.*

<sup>64</sup> *See In re Jamaica Hosp.*, 491 N.Y. S.2d at 898-99; *see also generally* Cohan, *supra* note 43.

<sup>65</sup> *Crouse Irving Memorial Hosp. v. Paddock*, 485 N.Y.S.2d 443, 445 (N.Y. Sup. Ct. 1985).

<sup>66</sup> *Id.* at 443, 445.

<sup>67</sup> *See Raleigh*, 201 A.2d. 537; *In re Jamaica*, 491 N.Y. S.2d. 898; *Crouse Irving*, 485 N.Y.S.2d. 443.

<sup>68</sup> *See, e.g., Mercy Hosp. v. Jackson*, 489 A.2d. at 1130, 1134.



could sink too low in the uterus and block the cervix, causing severe bleeding after childbirth or necessitating a hysterectomy. In short, a cesarean section presents some serious threats to a woman's health.

Pregnant women's rights to protect their own health and life precede the fetal right to live, as outlined in *Thornburgh v. American College of Obstetricians and Gynecologists* and in *Stallman v. Youngquist*.<sup>69</sup> In *Thornburgh*, the court offered strong support for the mother's right to refuse a risky medical procedure for the sake of her fetus.<sup>70</sup> The U.S. Supreme Court agreed with the appellate court that the statute providing for the protection of the life of a fetus before a woman's health was unconstitutional.<sup>71</sup> Similarly, in *Stallman*, the court said that if a procedure would compromise the health of the mother, the court will not overrule her refusal to consent.<sup>72</sup> A mother's rights are superior to the rights of a fetus, and a woman's health cannot be subordinated to the state's interest in preserving the potentiality of a viable fetus.<sup>73</sup>

Some courts have forced invasive medical treatments on pregnant women, ignoring the possible complications that could result in pregnant women's loss of life, health, psychological well-being, and self-worth.<sup>74</sup> These court decisions were based only on medical evaluations, which were not always accurate.<sup>75</sup> The inaccuracy of doctors' diagnoses is demonstrated in cases such as *In re Madyun* and *In re Jamaica Hospital*.<sup>76</sup> In *In re Madyun*, the doctors stated that there was a big chance of a fetal infection through a vaginal delivery, but after the forced cesarean section was performed, there was no infection found.<sup>77</sup> Obstetricians were also incorrect in their diagnoses in *Jefferson* and *In re Baby Boy Doe*.<sup>78</sup> In both cases, the babies were born healthy, contrary to the doctors' predictions that the babies would die or be seriously harmed if they were not delivered through cesarean section.<sup>79</sup> In these cases, the pregnant women's health was unnecessarily put at risk.

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<sup>69</sup> *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747, 768-69 (1986) (prohibiting the state from placing restrictions on abortions); *Stallman v. Youngquist*, 531 N.E. 2d 355 (Ill. 1988).

<sup>70</sup> See *Thornburgh*, 476 U.S. at 768-69.

<sup>71</sup> *Id.* at 768-69.

<sup>72</sup> See *Stallman*, 531 N.E. 2d at 333, 355.

<sup>73</sup> *Id.* at 333, 355.

<sup>74</sup> See generally Field, *supra* note 16.

<sup>75</sup> See Miller, *supra* note 6, at 398; Meredith, *supra* note 5, at 64.

<sup>76</sup> See *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), reprinted as an appendix to *In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990); *In re Jamaica Hosp.*, 491 N.Y. S.2d 898 (N.Y. Sup. Ct. 1985).

<sup>77</sup> See Meredith, *supra* note 5, at 65.

<sup>78</sup> See e.g., *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. at 460 (the woman checked out of the hospital and later gave birth to a healthy child to the contrary of the doctors' diagnoses); *In re Baby Boy Doe*, 632 N.E. 2d. at 326.

<sup>79</sup> See generally Miller, *supra* note 6.

Generally, state courts favor protecting pregnant women's health. However, courts have different opinions on how particular medical treatments may pose health risks and how necessary they are to the delivery of a baby.<sup>80</sup> When courts perceive that a medical procedure, such as a blood transfusion or a cesarean section, presents a minimal risk to the health of a pregnant woman, the judges order the treatment despite the woman's objections.<sup>81</sup>

#### *E. Fetal and State Rights*

The state has a compelling interest in protecting the potentiality of human life, including the right of a viable fetus to be born alive and healthy. Many state courts have protected the state's interest because they determine that a fetus deserves the state's protection.<sup>82</sup> Some courts have ruled that beyond the legal period of time allowed for abortion, the state automatically has the power to protect the life and health of a woman's fetus.<sup>83</sup> In *Planned Parenthood v. Casey*, the court has ruled that the state has an interest in protecting the potentiality of human life from conception.<sup>84</sup> Thus, a pregnant woman's rights are often balanced with the rights of the fetus or of the state.

### III. "BALANCING" THE RIGHTS OF A WOMAN AND THE FETUS

When determining the rights of the woman, the fetus and the state, courts have used different rationales and have issued different decisions.<sup>85</sup> Some courts have emphasized the importance of applying a balancing test to determine whether a pregnant woman can refuse an invasive medical procedure.<sup>86</sup> In some cases, the judges have articulated that in order to protect the life or health of a fetus, a cesarean section or a blood transfusion is the least invasive procedure to be imposed on pregnant women.<sup>87</sup> In *In re Madyun*, the Supreme Court of the District of Columbia authorized the imposition of an invasive medical treatment over the wish of a pregnant woman.<sup>88</sup> The court determined that fetal rights and a pregnant woman's

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<sup>80</sup> See, e.g., *Thornburgh*, 476 U.S. at 747; *In re Jamaica*, 491 N.Y.S.2d. at 898; *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. at 457.

<sup>81</sup> See, e.g., *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), reprinted as an appendix to *In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990); *In re Brown*, 689 N.E. 2d. 397 (Ill. App. Ct. 1997).

<sup>82</sup> See *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>83</sup> See *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833 (1992).

<sup>84</sup> *Id.* at 837.

<sup>85</sup> See, e.g., *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. at 460; *Pemberton v. Tallahassee Mem'l Med. Ctr.*, 66 F. Supp. 2d. 1247, 1251 (N.D. Fla. 1999).; *In re Baby Boy Doe*, 632 N.E. 2d. 326 (Ill. App. Ct. 1994).

<sup>86</sup> See *id.*

<sup>87</sup> See generally *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), reprinted as an appendix to *In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990); *In re Jamaica Hosp.*, 491 N.Y. S.2d 898 (N.Y. Sup. Ct. 1985).

<sup>88</sup> *In re Madyun*, Misc. No. 189-86.

rights were not in conflict, despite the mother's objections.<sup>89</sup> The court also characterized a cesarean section as a minimal risk to the mother in comparison to a high risk to the fetus.<sup>90</sup>

Essentially, when recognizing the right of a pregnant woman to accept or reject any medical procedures, courts have held that this right is not absolute.<sup>91</sup> In a few cases, the right of a pregnant woman to refuse medical treatment has been judicially overridden.<sup>92</sup> The court may either protect a pregnant woman's rights or find that they are outweighed by the state's compelling interest in protecting the right of a fetus to live.<sup>93</sup> In *Jefferson*, the court held that the intrusion into the life of a mother is outweighed by the duty of the state to protect a viable fetus from death.<sup>94</sup> In *In re Jamaica*, even though the state's interest was not compelling because the fetus was not viable, the court emphasized the significance of the state's interest in protecting the life of a fetus.<sup>95</sup> In *In re A.C.*, the District of Columbia Court of Appeals upheld an order permitting doctors to perform a cesarean section on a pregnant terminally ill woman based on the interest of the fetus, and it expanded the scope of permissible intrusion into pregnancy.<sup>96</sup>

Other state court considered the opinion of the Illinois Supreme Court in *Stallman v. Youngquist*, holding that a woman's right to decide is more important than fetal interests, and courts should not balance the maternal rights and fetal rights.<sup>97</sup> Perhaps *Thornburg* presents the strongest support for a pregnant woman's refusal of an invasive medical treatment.<sup>98</sup> In this case, the court issued an opinion supporting the superiority of a mother's rights over the fetal rights by striking down portions of an abortion law which required risking a mother's health, by requiring a certain type of abortion to be performed, to protect the fetus.<sup>99</sup>

As illustrated by these examples, the state courts have made a variety of opinions concerning the rights of women to refuse medical treatment. Some courts have determined that the women's right is absolute, while other courts have concluded that the woman's rights are outweighed by the rights of the fetus or the state. Even when courts find in favor of the mother, they rely on many different rationales,

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See *In re Boyd*, 403 A. 2d. 744, 750 (D.C. 1979).

<sup>92</sup> *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d. 457 at 460; *In re Jamaica*, 491 N.Y.S. 2d at 898; *In re Brown*, 689 N.E. 2d. at 397; *In re A.C.*, 533 A.2d at 616; *Pemberton*, 66 F. Supp.2d at 1251.

<sup>93</sup> See generally *In re Madyun*, Misc. No. 189-86; *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d at 457; *Raleigh*, 201 A.2d at 537.

<sup>94</sup> See *Griffin Spalding County Hosp. Auth.*, 274 S.E.2d at 460.

<sup>95</sup> See *In re Jamaica Hosp.*, 491 N.Y.S.2d. at 898-900.

<sup>96</sup> See *In re A.C.*, 533 A.2d at 616.

<sup>97</sup> See *Stallman*, 531 N.E. 2d at 355.

<sup>98</sup> See *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).

<sup>99</sup> *Id.* at 768-69.

including the right to bodily integrity, right to religion, and the right to protect one's health. This variety of rulings has a number of effects.

#### IV. THE EFFECTS OF STATE COURT RULINGS

Court rulings have a number of effects on women, the medical system, and the legal system. One serious consequence of court-ordered treatment is that pregnant women may avoid the health care system, and thus will receive inadequate prenatal care.<sup>100</sup> For instance, a Jehovah's Witness may decide to avoid going to a doctor for fear that he or she will force her to have a blood transfusion or surgery that would violate her religious beliefs. The lack of prenatal care may result in many complications during pregnancy and childbirth, especially for women at-risk for pregnancy and childbirth difficulties.<sup>101</sup>

Some women may make medical decisions based on their doctor's willingness to force them to undergo medical procedures. For instance, a woman may learn that her regular doctor is likely to seek legal assistance to force her to undergo medical treatment, and she may decide to change doctors to avoid this outcome. Unfortunately, changing doctors may mean that the woman has to travel a great distance or pay for medical care not covered by her insurance. Women may receive significantly delayed, more expensive, and more time consuming prenatal care if they are forced to shop for a doctor that will not force them to have procedures which they find objectionable.

Some women are not afforded the ability of shopping for a doctor that will honor their beliefs; sometimes women do not find out that their doctor plans to force medical treatment on them until the issue comes up, such as when the doctor decides a woman needs the medical treatment immediately. By this time, the doctor likely will have sought the help of the courts to force a woman's compliance, making it too late for her to change doctors. Various state courts have ruled differently on the issue of forced medical treatment. As a result, pregnant women are often unsure what impact the law will have on their rights if they refuse an invasive medical procedure.

Cases arise under very different circumstances, leading to a variety of bases for challenging the court order. Some courts have sided with the women, protecting their rights to self determination, bodily integrity, privacy, free exercise of religion, and health and life.<sup>102</sup> Other courts have found that fetal rights or state interest outweighs the mothers' rights.<sup>103</sup> A series of high-profile court cases have emphasized that states are divided on this issue, which creates a problem for mothers, who do not know what their rights are until a judge makes a ruling in a particular case.

Judicial intervention in pregnancy may also deprive women of their most basic civil rights and threaten their recognition as competent individuals with the ability to make their own treatment decisions.<sup>104</sup> The legal control of pregnant women may place all women of childbearing age at risk for governmental regulation of their

<sup>100</sup> See M. L. Poland, J. W. Ager, & J. M. Olson, *Barriers to Receiving Adequate Prenatal Care*, 157 AM. J. OF OBSTETRICS & GYNECOLOGY 297, 303 (1987).

<sup>101</sup> *Id.* at 303.

<sup>102</sup> See *Infra* Section II.

<sup>103</sup> See *infra* Section II.E.

<sup>104</sup> See generally Field, *supra* note 16.

behavior.<sup>105</sup> It also poses a threat of creating a new class of individuals—pregnant women—who are considered incompetent to make their own treatment decisions.

Frequently, judicial holdings have limited pregnant women's constitutional rights, and have regulated their freedom in making prenatal care choices.<sup>106</sup> This may have an impact on women's reproductive health (e.g., cesarean sections may have side-effects) and result in jeopardizing the life of the fetus (e.g., if the mother does not seek prenatal care for fear of being forced to undergo an objectionable procedure). The court rulings will also affect the medical system's ability to care for patients. Court rulings forcing women to have treatments may alienate women and make them unwilling to turn to the medical profession. Court-ordered medical procedures may alter the physician-patient relationship by creating distrust of pregnant women toward their doctors. Mistrust may lead the woman to be unable to confide in her doctor about her medical issues which could risk her health and her fetus' health. She may also refuse to follow her doctor's advice if she does not trust the doctor. Clearly, doctors can care for their patients better when there is a positive doctor-patient relationship.

Court orders may also create a potential conflict between medical personnel which could affect the quality of care they provide. One of the pregnant woman's doctors may support forcing the woman to have a particular medical procedure, but other medical staff, such as the anesthesiologist or nurses, may not agree. If the court orders the procedure, many medical personnel must be involved. This would force some medical personnel to be active in a medical procedure they would not agree with; almost certainly this would create hostility among hospital staff. Thus, the debate affects the medical profession and its ability to care for patients.

As these examples illustrate, court rulings can affect pregnant women and the medical profession. In order to avoid some of these negative outcomes, changes in policy are necessary.

#### V. POLICY RECOMMENDATIONS

As this analysis demonstrated, there is much disparity among court opinions concerning the rights of pregnant women. Consequently, most women cannot be sure of their rights, which could be confusing and stressful. Knowing the possibility of forced medical treatment can have negative effects, such as avoidance of prenatal care. Nevertheless, there are steps that can be taken to reduce the impact on women.

Some researchers propose that pregnant women should discuss the issue of possible refusal of any invasive medical treatment with their doctors.<sup>107</sup> Early in their pregnancies, women could sign necessary forms supporting their wishes to decline an unwanted medical treatment before any crisis that might occur. Doctors should notify patients of their willingness, or lack thereof, to force women to undergo medical treatments. This would allow them to find a different doctor who would not force them to undergo a cesarean section or a blood transfusion if their own doctor would not respect their preferences.<sup>108</sup>

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<sup>105</sup> *See id.*

<sup>106</sup> *See Miller, supra* note 6, at 383.

<sup>107</sup> *See Meredith, supra* 5, at 208-20.

<sup>108</sup> *Id.* at 208-20.

Unfortunately, not all women could be so proactive. Socio-economic disadvantages, which prevent some women from accessing prenatal care, may not allow them to voice their refusal of medical treatment in the delivery room. If a pregnant woman refuses to consent to an invasive medical procedure upon delivery, consents are sometimes obtained through court orders. In effect, doctors administer cesarean sections or blood transfusions, and women can only appeal these judicial decisions after the procedures have been already performed.<sup>109</sup> Women who are in hospitals do not always have the time to prepare a legal defense to protect their rights, and they are often surprised that a doctor would not honor their refusal to consent. Thus, it is unfair to surprise pregnant women with a legal dispute while they are involved in a medical crisis. Although they can appeal the order later, it is too late; the procedure has already been performed. Thus, instead of allowing emergency orders, hospitals could take proactive steps to inform pregnant women of their rights before a crisis arises.

Hospitals could establish specific guidelines for doctors and women. The policies would clearly state the conditions, if any, on which doctors are allowed to seek court orders to force women to have treatments against their will. The hospitals could also inform pregnant women of their policies as early in the pregnancy as possible so women can choose the hospital with a policy they accept. Doctors and other medical personnel would also be able to choose a hospital that has policies consistent with their personal preferences. For example, doctors who are willing to force a woman to have medical treatment could seek employment at hospitals that allow them to seek court orders. Such policies would prevent conflict created by the sudden court proceedings.

States could adopt specific statutes to outline the rights of pregnant woman, giving women notice of their rights during pregnancy. Specific guidelines could indicate under what circumstances pregnant women can or cannot refuse an invasive medical treatment. Doctors and hospitals would give pregnant women this information as early in the pregnancy as possible so women could be better informed. These guidelines could also save the society the money spent on costly litigations and allow pregnant women to avoid emotional and physical distress during their pregnancies. An unfortunate limitation of this policy could occur if a state adopts policies that do not support the women's rights. Pregnant women in this state would be forced into difficult decisions: should they continue to see their doctors and risk being forced to undergo an unwanted treatment? Should they avoid prenatal care and deliver the baby at home? Should they travel to another state that has more favorable laws? Nonetheless, having specific laws would allow women to know their rights and make decisions accordingly.

Finally, the federal government could issue a national referendum concerning women's rights during pregnancy. A national law is unlikely, as states are generally allowed to make their own guidelines regarding such issues. A national committee would consult the American Medical Association and other medical bodies for guidance as to what policies are most medically sound. The U.S. Supreme Court could agree to hear a case of forced medical treatment to determine whether the court order infringed on a woman's Constitutional rights. A Supreme Court ruling would provide the ultimate ruling about whether a hospital can force a pregnant woman to

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<sup>109</sup> See generally *In re Brown*, 689 N.E. 2d. 397 (Ill. App. Ct. 1997).

have a medical procedure. Until such time, the other policies will help women make the best personal decisions.

These policy suggestions would be beneficial in a number of ways. Women would be informed of their rights and be able to make informed choices concerning their medical care. They would avoid any emotional discomfort that accompanies the uncertainty of not knowing their rights. Medical personnel could make employment decisions based on the hospital's policies; this would reduce the chances of being involved in an uncomfortable situation. Sudden court battles and costly litigations could be avoided.

## VI. CONCLUSION

As indicated in a number of cases, state courts vary in their opinions concerning the protection of pregnant women's rights. If the life or well-being of a fetus is endangered, the court may authorize a medical treatment regardless of a pregnant woman's objections or preferences. Some courts perceive the mother's Constitutional rights as absolute whereas other courts subordinate these rights to fetal rights.<sup>110</sup> Some courts have forced pregnant women to undergo invasive medical procedures, such as a cesarean section or a blood transfusion, when the life of a viable fetus was endangered.<sup>111</sup> Some courts have determined that the surgery should be carried out because it is a relatively invasive procedure.<sup>112</sup> In many cases, judges have issued rulings based on the state's compelling interest in protecting the life of a fetus.<sup>113</sup> In contrast, courts that have protected pregnant women's rights have determined that a mother's rights are absolute.<sup>114</sup> In some instances, judges characterized a blood transfusion as an invasive medical procedure that should not be forced.<sup>115</sup>

Discrepancy among state court rulings does not provide any guidelines for pregnant women whether the law protects their constitutional rights or overrides them. Court-ordered invasive medical procedures may alter women's lives to a great extent. Pregnant women may avoid prenatal care which can jeopardize the health and life of both the mother and the fetus. In order to avoid forceful medical treatments, pregnant women may have to access costly medical out-of-insurance care or travel a great distance. Forced medical treatment may also negatively affect the patient-provider relationship by creating mistrust.

This article provided an analysis of pregnant women's rights to refuse invasive medical treatment based on inconsistencies among different state laws and different state court rulings. Most state courts issued their opinions on a case-by-case basis which contributes to the inconsistency. This discrepancy creates chaos in the law and inflicts unnecessary suffering upon pregnant women. The policy suggestions offered

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<sup>110</sup> See generally Cohan, *supra* note 43.

<sup>111</sup> See generally *In re Madyun*, Misc. No. 189-86 (D.C. Super. Ct. July 26, 1986), reprinted as an appendix to *In re A.C.*, 573 A.2d 1235, 1259 (D.C. 1990).

<sup>112</sup> *Id.* at 1259.

<sup>113</sup> See *In re Jamaica Hosp.*, 491 N.Y. S.2d at 898; *Raleigh*, 201 A.2d at 537.

<sup>114</sup> See *In re Baby Boy Doe*, 632 N.E. 2d at 326; *Stallman*, 531 N.E. 2d at 355.

<sup>115</sup> See *In re Brown*, 689 N.E. 2d. at 397.

here should help reduce the inconsistency for women, the medical profession, and the legal profession. Women will be certain of their rights, and doctors will be certain of their efficacy to force treatments. As a result, the negative outcomes discussed here can be reduced.