

House Bill 258

Thank you. I am grateful that you are taking the time to hear my story.

On June 19, 2012 the state of Ohio declared that I had a voluntary abortion. My rabbi and my doctors disagreed. I simply wanted to be pregnant.

The ordeal began two weeks earlier. The sonogram technician needed more images. When she got them she looked ashen. "You should see a doctor today," she emphasized as she handed me the printed image of my 13-week-old baby or fetus, I still don't know what word to use. "But there is a heartbeat. Thank god there is a heartbeat," I mumbled. I had been here before. But last time, during my first pregnancy, there was no heartbeat.

I waited. I overheard the technician as she looked at the screen with the doctor, "this is bad, this is really bad." He wasn't my doctor, but he had a soft voice with a southern kick that I liked. He saw me, gestured for me to come to his office, and referred to the ailing life in my belly as a baby. "This isn't good," he whispered. "It's really not. Let me show you." He was kind but clear. "The organs are not inside the baby's body. The hands and feet are curled, actually one limb seems to be stunted or missing. The neck isn't right. This really doesn't look good." I looked at the expanded sonogram on his desk. I saw the hands turned in, the area that he referred to as the organs, the dead space where there should be a limb. Minutes ago, I had looked at this same image and smiled. "I don't understand," I replied. "What do I do now?" "Why don't you wait a week," he offered. "I don't understand," I repeated, "can the baby survive? Can these problems be solved? I don't understand exactly what you are telling me." "No, I don't think so," he said finally, "but there are always miracles."

I was withered, but functional. I knew this could happen and knew that I could recover. I had been blessed with a healthy child in between and felt, in my Nana's words, "Why should this be easy?" I decided to wait out the week. Looking pregnant, I returned to work, still hoping that maybe with more quiet time, with more love, next week the baby would be better. As I sat down at my desk, my own doctor called. To him, it was a fetus. "Tamara, I have looked at the scans and I have shown the scans to doctors in my office. I want to tell you that we all agree that this fetus is not compatible with life. It will not survive the pregnancy. You should get it removed immediately. The longer you wait the more risks are involved." I hung up the phone.

The idea of "removing" my baby, my fetus, while its heart was still beating was simply unbearable. Was it living? Was it still growing? Would I be stopping the heartbeat, cutting short its life? And what do I do after the operation? Do I bury it? I didn't understand what I had inside of me and I didn't understand what I should do. I called a dear friend, an Orthodox rabbi, who I knew would be both compassionate and firm. After consulting with his rabbi, he said the case was clear. In situations where the mother's

health is at risk and the fetus (he explicitly said fetus) is not viable, Jewish law errs on the side of the mother's health. I should have the operation and I should not bury the fetus -- it is not a life.

The next morning I got the following message, "Because your fetus still has a heartbeat, it has been our experience that insurance companies in Ohio will not cover the costs of the operation. They consider it an optional abortion. Our office suggests that you go to Planned Parenthood, which will only run you \$800. If you go to the hospital it will be over \$10,000." I was stunned. What did my insurance company want, for me to have a dangerous late-stage miscarriage or go through the risks of labor to give birth to a stillborn? And why this obsession with the heartbeat as the sole marker of life? What about organ and brain function, what about viability?

My home morphed into a crazy lair of pencil scribbling, tissues and phone numbers. For three days we fought. My husband, my parents and my doctors made phone calls, wrote letters and tried every avenue possible to get the insurance company to change their mind. Finally, three days later, we got the news. Because of my doctor's carefully crafted letter, my insurance company would cover the procedure. I thought the political nightmare was over. I thought I could start the process of mourning. I was wrong.

Another phone call, this time from the office of the OBGYN performing the procedure. You must come in 24 hours in advance to sign a consent form." "What consent form?" Silence. "Well, you only don't have to sign it if you were raped." I was still completely confused. "I wasn't raped. I don't understand. What are you talking about?" "You are having an optional abortion right?" "No. I am having a therapeutic D&C (dilation and curettage operation to remove the fetus and womb lining) to remove a non-viable fetus." "But the baby is alive?" "Well, according to my religious faith, that is not so." "Is there a heartbeat?" "Yes." "Then, I am sorry to say, you are having an elective abortion and you must sign an informed consent 24 hours before the operation."

Roe v. Wade gave states the right to regulate abortion. State laws can mandate that doctors describe the risks of abortion and receive the informed consent of a woman before proceeding. Today, in Ohio, a physician must meet with the pregnant woman 24 hours before the operation to explain the procedure, give the state sponsored materials on alternatives to abortion and receive a signed form stating that the pregnant woman "consents to the particular abortion voluntarily, knowingly, intelligently, and without coercion by any person...." There are "medical necessity" exceptions to this ruling, but due to custom more than statute, the sign of a heartbeat trumps other prognoses. What is going on here? Why settle on the heartbeat as the best marker of life in-utero? This is not science. It is the tyranny of a metaphor.

There is little consensus among biologists, doctors and ethicists on when life begins. The language here can be tricky. There all sorts of things they agree are alive -- from cells, to

animals, to people. But that is not what they mean when they discuss life in utero. In this case, they mean life as something endowed with humanness, and worthy of rights, something closer to personhood. A brief look at the literature reveals a litany of standards for determining personhood: conception (day 1), implantation (day 6-7), detectable heartbeat (approximately week 6), detectable brain activity (approximately week 8), quickening (when the mother can feel the fetus moving), development of the cerebral cortex (at the end of the first trimester), viability outside the mother's body (now as early as 24 weeks with medical support), when the head is visible during labor, and when the baby takes its first breath. Smart, thoughtful people genuinely disagree. Even the Supreme Court had this to say about the issue in 1973: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus...."

In Judaism, the dominant metaphor for life is not the heartbeat -- it is the breath. In Genesis 2:7, God breathes life into man: "Then the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul." Even that final word, soul, *nefesh*, can be translated as breath. My own rabbi's rabbi, Dov Linzer, explained it to me in this way. The definition of life can also be understood through our definition of death. At the end of life, the Talmud speaks almost exclusively about breathing. Breath was used as an indicator for life. The *Shulchan Aruch* says to test for a dying person's breath to know whether or not they are alive. So, if death is the absence of breath, life is the presence of breath. Life, personhood, is marked when the baby takes its first breath.

While a fetus is not considered actual life, Jewish law does acknowledge a continuum between potential and actual life, which guides, among other considerations, including the health of the mother, abortion rulings. According to Rabbi Linzer, the presence of a heartbeat, in itself, is not an important Jewish legal marker in determining the viability of life in utero. Even in the strictest ruling, he related to me, the fetus has to be able to live for a day outside of the mother's womb to be considered a viable life. The definition of potential life, he said, "is fully dependent on it being able to be born."

Life is not instantaneous. It is an arduous, miraculous, process. So many steps have to align -- so much has to go exactly right for a baby to take its first breath. When we start to think of life this way, the pro-choice/pro-life debates seem to me almost cruel. Neither accurately explains the moral nuance of each individual's situation or honors the complexity of creation. It is time to reframe the debate and talk more about what it would mean to honor the sanctity of life. To honor the actual lives of pregnant women and the potential lives they hold within them.

On June 19, I sat down in another doctor's office and, as was required of me, read the pamphlet, "Fetal Development and Family Planning." I looked at pictures of fetuses at 12 and 14 weeks. I learned that at 12 weeks "a doctor may be able tell if it is a boy or a girl,"

and at 14 weeks "the head is erect and the legs are developed." The doctor was kind. She told me how lucky I was that my insurance would cover this and that she had a patient just a few months ago with my prognosis that had to give birth to a stillborn.

The next day, I had the operation. In the hospital, nurses, many of whom told me that they leaned toward pro-life, sympathized with my situation. Together, we spoke about the D&C, about how complicated it can be to have a child, and about how difficult this kind of a miscarriage can be. In those hours the debate between pro-choice and pro-life dissolved into one much more subtle and specific, one between the health of a mother and the viability of a fetus. One that felt like it was just about me.

Thank you so much for listening. I would be happy to answer any follow up questions you might have.