FETAL NEGLECT AND STATE INTERVENTION: PREVENTING ANOTHER ATTLEBORO CULT BABY DEATH

MARILYN L. MILLER*

I. INTRODUCTION

Rebecca Corneau, a thirty-two-year-old pregnant woman who is a member of a small religious cult that does not believe in science, medicine, or the U.S. government, was held in contempt of court for refusing to answer medical questions about her pregnancy.[1] Corneau was held in a secure hospital facility for pregnant prison inmates.[2] Attleboro, Massachusetts Juvenile Court Judge Kenneth Nasif ordered Corneau held until she either gave birth or submitted to a medical examination.[3] The judge told the courtroom that he heard the fetus' voice telling him, "I do not want to die."[4] Corneau had quietly refused to allow herself to be examined by a nurse and would not even admit that she was pregnant[5] although it was obvious that she was well into her third trimester.[6]

Corneau and other members of the cult were under investigation by Bristol, Massachusetts District Attorney Paul Walsh for the deaths of Corneau's infant son Jeremiah and his ten-month-old cousin Samuel.[7] Prosecutors had evidence that Jeremiah, who was

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This Note is dedicated to the author's parents, Lucy E. and Edgar T. Miller.

1 David Abel, *Pregnant Sect Member in State Custody*, BOSTON GLOBE, Sept. 1, 2000, at A1, LEXIS, Nexis Library, Mass. News Publications File.

2 Dave Wedge, *Judge Confines Cult Mom to Secure Hospital; Judge's Ruling Locks up Defiant Pregnant Cult Mom*, BOSTON HERALD, Sept. 1, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File.

3 Dave Wedge, *Lawyer Fights Judge's Ruling v. Pregnant Cult Mom*, BOSTON HERALD, Sept. 2, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File.

4 Mac Daniel, *Judge Keeps Mother Confined Says Fetus Told Him "I Do Not Want To Die,"* BOSTON GLOBE, Sept. 8, 2000, at B6, LEXIS, Nexis Library, Mass. News Publications File. *But see* Jack Thomas, *Story on Fetus Speaking to Judge Misled Readers*, BOSTON GLOBE, Sept. 25, 2000, at A15, LEXIS, Nexis Library, Mass. News Publications File (quoting Massachusetts Superior Court Judge Rudolph Kass who studied tape of hearing in response to accusations that Judge Nasif was "looney" and should be removed from the bench: "The reporter correctly quoted the judge in a literal sense . . . but the problem is that the judge was speaking metaphorically").

5 Wedge, *supra* note 2, at 1.

6 Daniel, *supra* note 4, at B6.

7 Dave Wedge, *Attleboro Cultists Jailed for Silence in Baby Probe*, BOSTON HERALD, May 4, 2000, at 2, LEXIS, Nexis Library, Mass. News Publications File.

born without medical assistance of any kind, died five or ten minutes after birth because he aspirated fluids in the birth canal.[8] The simple, routine medical procedure of suctioning the baby's mouth at birth could have saved Jeremiah's life.[9] Corneau claimed the baby was stillborn.[10]

Corneau is a member of a small religious cult that believes that God is the only true authority.[11] They live an isolated existence in a rural part of Massachusetts and dress in colonial clothes.[12] Cult members believe that using doctors and other medical professionals is equivalent to worshipping false gods.[13] Although cult members have used midwives to aid in births in the past,[14] they no longer allow medical assistance of any kind at births.[15]

Because their religious beliefs forbade them from pleading the Fifth Amendment, several cult members were incarcerated for refusing to answer questions about the deaths of the two little boys.[16] The cult does not acknowledge any governmental authority.[17] Since they believe the government that put them in jail does not have authority, they refused to allow lawyers to fight their incarceration.[18]

Apparently, former cult members notified authorities of the deaths of Jeremiah and Samuel.[19] Prosecutors had descriptions of the circumstances of the babies' deaths from diaries kept by cult

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8 Jacob H. Fries, *Court Action Planned Against Cult Member*, BOSTON GLOBE, Aug. 31, 2000, at B2, LEXIS, Nexis Library, Mass. News Publications File.

9 *Id.*

10 *Id.*

11 Dave Wedge, *Cultist Vows to Defy Judge*, BOSTON HERALD, Aug. 30, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File ("'You cannot force the medical system on myself or my wife,' David Corneau proclaimed, 'only one holds the key to life and death and that's God Almighty himself, not the medical system.'").

12 Dave Wedge, *Two More Attleboro Cultists Arrested*, BOSTON HERALD, May 12, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File.

13 Dave Wedge, *Defiant Mom - Pregnant Cultist Refuses Medical Assistance*, BOSTON HERALD, Aug. 31, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File (Rebecca Corneau reportedly told the court-appointed nurse that "the medical system is 'under the direction of a pagan god' and that '[t]o submit to a medical evaluation would be bowing to another god.'").

14 Wedge, *supra* note 2, at 1.

15 Wedge, *supra* note 13, at 1.

16 Wedge, *supra* note 7, at 2 (Samuel's father, who was incarcerated for refusing to tell a juvenile court judge what happened to his son, said that "the state has no jurisdiction in the case, claiming that what happened to Samuel is 'between myself and my God.' He has repeatedly refused to accept legal assistance or to invoke his Fifth Amendment right against self-incrimination.").

17 David Wedge, *DA: Save That Baby; Walsh Wants Cultist to Give Birth in Custody*, BOSTON HERALD, Aug. 29, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File ("None of the cult members have lawyers and all refuse to acknowledge the court system.").

18 Wedge, *supra* note 12, at 1.

19 Mac Daniel, *Sect Member Leads Way to Graves; Remains of Boys Recovered in Park*, BOSTON GLOBE, Oct. 25, 2000, at A1, LEXIS, Nexis Library, Mass. News Publications File.

members.[20] The cult kept no birth or death records,[21] however, and investigators had been unable to find the babies' bodies.[22] Authorities believed that Samuel was starved to death because the cult believed that it was God's will that they stop feeding him,[23] and that he was a formerly robust baby[24] who died an agonizing death over a three-month period.[25] Relatives had told investigators that several men from the cult buried the babies in Baxter State Park in Maine,[26] but an extensive search had not yielded the graves.[27] It was difficult to charge cult members with the deaths until the bodies were found and examined to determine the cause of death.[28] The fathers of Jeremiah and Samuel and six other cult members were jailed for refusing to cooperate with a grand jury investigation into the deaths.[29]

Thirteen of the cult's children, including Rebecca Corneau's three children, were placed in foster care.[30] The baby that Corneau was carrying at the time was taken from her at birth and placed in foster care also.[31] Judge Nasif had ruled that if Corneau would submit to daily medical examinations and agree to further pre-natal care and medical assistance with the birth, she could remain at home.[32] She did not allow the examinations, and when a nurse tried to talk to her about her pregnancy, she kept repeating her religious ideas and would not even admit to being pregnant.[33] Consequently, Corneau was kept at the hospital facility until after the birth when she was free to go home.[34] Hospital employees watched Corneau closely, and Judge Nasif ordered medical person-

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20 Fries, *supra* note 8, at B2.

21 Wedge, *supra* note 2, at 1.

22 Wedge, *supra* note 7, at 2.

23 Wedge, *supra* note 2, at 1.

24 Wedge, *supra* note 11, at 1 ("Prosecutors also say they have pictures of Samuel which depict him as a 'fat-faced, robust kid' and that by all accounts, he was developing normally until the group – at the urging of Samuel's father, reputed cult leader Jacques Robidoux – stopped feeding him.").

25 *Id.* ("Samuel is believed to have starved for about three months before succumbing . . . .").

26 Wedge, *supra* note 17, at 1.

27 *Id.*

28 Wedge, *supra* note 7, at 2.

29 Abel, *supra* note 1, at A1.

30 Dave Wedge, *Hearing Slated on Cult Baby's Future*, BOSTON HERALD, Oct. 18, 2000, at 18, LEXIS, Nexis Library, Mass. News Publications File.

31 Rebecca Corneau gave birth to a healthy seven pound, fifteen ounce baby girl in the secure hospital facility with the help of a midwife. *See id.*

32 *See* Abel, *supra* note 1, at A1.

33 *See id.*

34 Brian MacQuarrie & Richard Higgins, *Attleboro Sect Member Gives Birth State Custody Seen; Court Hearing Is Set*, BOSTON GLOBE, Oct. 17, 2000, LEXIS, Nexis Library, Mass. News Publications File.

nel to stand by and intervene in case of a medical emergency during the birth.[35]

Judge Nasif admitted that his decision was based on his feeling that it was the morally right thing to do and that he found the legal issues difficult.[36] District Attorney Walsh said, "[W]hy don't we save this baby first and then figure out conflicting legal rights?"[37]

This Note argues that in situations like Corneau's the state's interest in protecting the life of the fetus takes precedence over any rights, including religious rights, the mother may have and that the fetus has the right to be protected by the State as soon as the fetus is viable or when a woman can no longer obtain a legal abortion.

II. The Legal Status of Corneau's Fetus

Was Rebecca Corneau's fetus a person with the same legal rights and status as an after-born human being?

A. Historical View

For millennia, people have considered the question of when human life begins. Does it begin at the moment of live birth or at some point before birth? Religious scholars, philosophers, and scientists have held widely divergent views on this subject.

The Greek physician, Hippocrates, the Father of Medicine, displayed his reverence for the life of the fetus by proscribing abortion in the Hippocratic Oath. "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy."[38] The duality of promises in the Hippocratic Oath, the promise not to kill an after-born human being and the promise not to aid a woman in producing an abortion, strongly suggests that Hippocrates valued the fetus and the after-born human being equally. Hippocrates' Oath reflected the Pythagorean belief that the fetus "was an animate being from the time of conception."[39] Despite this view, however, abortion was a common and accepted practice in Ancient Greece, suggesting that the vast majority of people did not view the

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35 Daniel, *supra* note 4, at B6.

36 *Id.*

37 Margery Eagan, *DA May Be Tumbling Down Slippery Slope*, Boston Herald, Aug. 31, 2000, at 4, LEXIS, Nexis Library, Mass. News Publications File.

38 Ludwig Edelstein, The Hippocratic Oath 3 (2d ed. 1954).

39 *Id.* at 16.

fetus with the same reverence that Hippocrates and the Pythagoreans did.[40]

Some early groups believed that human life begins before conception. The most radical of these groups believed that individual human beings begin thousands of years before conception.[41] Preformationism, espoused in medical literature beginning in the seventeenth century, held that all the human beings that will exist in the future are in existence now in miniature form inhabiting the male seed (spermaticism or animalculism) or the female egg (ovism).[42]

> The most extreme version of preformationist belief was the notion of *emboitement*, or encasement, which could be accommodated in either spermaticist or ovist formulations. The Swiss anatomist Albrecht von Haller offered an ovist explanation of this all-inclusive view: "It follows that the ovary of an ancestress will contain not only her daughter but also her granddaughter, her great-granddaughter and her great-great-granddaughter, and if it is once proved that an ovary can contain many generations, there is no absurdity in saying that it contains them all." In other words, all potential human beings existed from the moment of divine creation.[43]

In sharp contrast to the views of the preformationists, by the eighteenth century, "newborns did not legally exist unless born alive."[44]

However, most early theories fixed the time at which human life begins at some point between conception and birth. Early Christians believed that a male fetus became a human being forty days after conception and that a female fetus became a human being eighty days after conception.[45] This "view persisted until the 19th century."[46] At that time, realizing that the "40-80-day view" could not be proven, and finding no consensus among other theorists as to when the fetus became a human being, common law in England, and subsequently in the United States, began using the time of "quickening," or the first fetal movements in the womb, to determine when life began.[47] Since only the pregnant woman could feel those first movements, the mother decided, on an indi-

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40 *Id.*

41 Julia Epstein, *The Pregnant Imagination, Fetal Rights, and Women's Bodies: A Historical Inquiry*, 7 YALE J.L. & HUMAN. 139, 154 (1995).

42 *Id.* at 153.

43 *Id.* at 154.

44 *Id.* at 150.

45 Roe v. Wade, 410 U.S. 113, 133 n.22 (1973).

46 *Id.* at 134.

47 *Id.*

vidual basis, when the life of her child began.[48] Early common law used the quickening milepost to determine when human life began for purposes of criminal liability for the death of the fetus.[49]

B. Modern View

1. Viability as Line of Demarcation Defining the Point at Which the Fetus Has Legal Rights

While the seminal case of *Roe v. Wade*[50] did not purport to answer the question of when life begins,[51] it is useful to examine the guidelines the *Roe* Court used to determine at what point in a woman's pregnancy the woman no longer has the right to terminate the life of her fetus to help establish the point at which a fetus has the right to life and the right to the State's protection in preserving its life. The Court held that "[f]or the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."[52] More recently, the Supreme Court reaffirmed *Roe's* position protecting the post-viable fetus in *Planned Parenthood of Southeastern Pennsylvania v. Casey*:[53]

> We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy. We adhere to this principle for two reasons. First, as we have said, is the doctrine of stare decisis. Any judicial act of line-drawing may seem somewhat arbitrary, but *Roe* was a reasoned statement, elaborated with great care. We have twice reaffirmed it in the face of great opposition.[54]

Viability is the point at which the fetus "has the capability of meaningful life outside the mother's womb."[55] Whether a fetus is viable is a judgment call for the physician.[56] The Court in *Webster v.*

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48 Epstein, *supra* note 41, at 139-40.

49 2 HENRY DE BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND 341 (Samuel E. Thorne ed. & trans., Harvard Univ. Press 1968) (1256).

50 410 U.S. 113 (1973).

51 *Id.* at 159 ("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, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.").

52 *Id.* at 164.

53 505 U.S. 833 (1992).

54 *Id.* at 870.

55 *Roe*, 410 U.S. at 163.

56 Colautti v. Franklin, 439 U.S. 379, 388 (1979) ("Viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is

Reproductive Health Services[57] affirmed the District Court's finding that the earliest point at which a fetus can be viable is twenty-three and one-half to twenty-four weeks and that there may be a four week error in estimating gestational age.[58]

How old was "Unborn Child Corneau"[59] at the time Rebecca Corneau was placed in the prison hospital facility? Since Corneau refused to answer any questions about her pregnancy, would not submit to a medical exam, and even refused to acknowledge that she was, in fact, pregnant,[60] on what legal grounds could she be incarcerated?

Six weeks after being placed in a secure prison hospital facility, Rebecca Corneau gave birth to a healthy baby girl in the facility with a midwife attending the birth.[61] Since "[p]regnancy lasts an average of . . . 38 weeks from the date of conception,"[62] in retrospect, we know that Unborn Child Corneau was, indeed, a viable fetus subject to state protection at the time Rebecca Corneau was incarcerated. Despite lack of medical evidence of her pregnancy, and in light of the suspicion that Corneau was covering up the death of her last baby, Judge Nasif was able to hold her in contempt of court for refusing to answer questions about her pregnancy, and he was able to take her into custody until she either answered the court's questions about her medical condition or gave birth.[63]

There is precedent in Massachusetts for considering even a pre-viable fetus a person in a wrongful death action. In *Torigian v. Watertown News Co.*,[64] a three and one-half month-old fetus was born prematurely and lived for two and one-half hours after an accident caused by the defendant's negligence. The court allowed the fetus' administrator to bring an action on its behalf as a "person"[65] under the Wrongful Death Act.[66] This decision gives legal support to Judge Nasif's actions in protecting "Unborn Child

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reasonable likelihood of the fetus' sustained survival outside the womb with or without artificial support.").

57 492 U.S. 490 (1989).

58 *Id.* at 493.

59 Abel, *supra* note 1, at A1. "Unborn Child Corneau" is the name by which Judge Nasif and District Attorney Walsh referred to Rebecca Corneau's fetus. *Id.*

60 Wedge, *supra* note 13, at 1.

61 Wedge, *supra* note 30, at 18.

62 THE MERCK MANUAL OF MEDICAL INFORMATION 1139 (Robert Berkow, M.D. ed., 1997).

63 Fries, *supra* note 8, at B2.

64 225 N.E.2d 926 (Mass. 1967).

65 *Id.*

66 *Id.*

Corneau"[67] even though there was no definitive medical evidence as to the age or viability of this fetus.

2. Legal Rights of the Fetus

Perhaps the earliest fetal wrongful death statute is in the Bible. "When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman's husband demands, paying as much as the judges determine."[68] There is no requirement that the fetus be viable.

As of 1995, at least thirty-seven jurisdictions recognized a wrongful death cause of action for viable fetuses.[69] "Many states

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67 Eagan, *supra* note 37, at 4.

68 *Exodus* 21:22.

69 Farley v. Sartin, 466 S.E.2d 522, 529 n.13 (W. Va. 1995). The court lists the following jurisdictions which recognize a wrongful death action:

See Espadero v. Feld, 649 F.Supp. 1480 (D.Colo.1986); Simmons v. Howard Univ., 323 F.Supp. 529 (D.D.C.1971); Wade v. U.S., 745 F.Supp. 1573 (D.Hawaii 1990); Eich v. Town of Gulf Shores, 293 Ala. 95, 300 So.2d 354 (1974); Summerfield v. Superior Court, 144 Ariz. 467, 698 P.2d 712 (1985); Hatala v. Markiewicz, 26 Conn.Sup. 358, 224 A.2d 406 (Super.Ct.1966); Worgan v. Greggo & Ferrara, Inc., 50 Del. 258, 128 A.2d 557 (Super.Ct.1956); Volk v. Baldazo, 103 Idaho 570, 651 P.2d 11 (1982); Seef v. Sutkus, 145 Ill.2d 336, 164 Ill.Dec. 594, 583 N.E.2d 510 (1991); Britt v. Sears, 150 Ind.App. 487, 277 N.E.2d 20 (1971); Hale v. Manion, 189 Kan. 143, 368 P.2d 1 (1962); Rice v. Rizk, 453 S.W.2d 732 (Ky.Ct.App.1970); Danos v. St. Pierre, 402 So.2d 633, 637 (La.1981) (rehearing opinion); State, Use of Odham v. Sherman, 234 Md. 179, 198 A.2d 71 (1964); Mone v. Greyhound Lines, Inc., 368 Mass. 354, 331 N.E.2d 916 (1975); O'Neill v. Morse, 385 Mich. 130, 188 N.W.2d 785 (1971); Verkennes v. Corniea, 229 Minn. 365, 38 N.W.2d 838 (1949), limited on other grounds State v. Soto, 378 N.W.2d 625 (Minn.1985); Terrell v. Rankin, 511 So.2d 126 (Miss.1987); Rainey v. Horn, 221 Miss. 269, 72 So.2d 434 (1954); Connor v. Monkem Co., Inc., 898 S.W.2d 89 (Mo.1995) (En Banc) (permits wrongful death action for unborn child even prior to viability); Strzelczyk v. Jett, 264 Mont. 153, 870 P.2d 730 (1994); White v. Yup, 85 Nev. 527, 458 P.2d 617 (1969); Wallace v. Wallace, 120 N.H. 675, 421 A.2d 134 (1980); Poliquin v. MacDonald, 101 N.H. 104, 135 A.2d 249 (1957); Salazar v. St. Vincent Hosp., 95 N.M. 150, 619 P.2d 826 (Ct.App.), writ quashed 94 N.M. 806, 617 P.2d 1321 (1980); DiDonato v. Wortman, 320 N.C. 423, 358 S.E.2d 489 (1987); Hopkins v. McBane, 359 N.W.2d 862 (N.D.1984); Werling v. Sandy, 17 Ohio St.3d 45, 476 N.E.2d 1053 (1985); Evans v. Olson, 550 P.2d 924 (Okla.1976); Libbee v. Permanente Clinic, 268 Or. 258, 518 P.2d 636 (1974); Coveleski v. Bubnis, 535 Pa. 166, 634 A.2d 608 (1993); Amadio v. Levin, 509 Pa. 199, 501 A.2d 1085 (1985); Fowler v. Woodward, 244 S.C. 608, 138 S.E.2d 42 (1964); Farley v. Mount Marty Hosp. Assoc., Inc., 387 N.W.2d 42 (S.D.1986); Vaillancourt v. Medical Ctr. Hosp. of Vermont, Inc., 139 Vt. 138, 425 A.2d 92 (1980); Cavazos v. Franklin, 73 Wash.App. 116, 867 P.2d 674 (1994); Moen v. Hanson, 85 Wash.2d 597, 537 P.2d 266 (1975); Baldwin v. Butcher, 155 W.Va. 431, 184 S.E.2d 428 (1971); Kwaterski v. State Farm Mut. Auto. Ins. Co., 34 Wis.2d 14, 148 N.W.2d 107 (1967).

Georgia permits recovery if an unborn child is "quick" in the womb. Shirley v. Bacon, 154 Ga.App. 203, 267 S.E.2d 809 (1980); Porter v. Lassiter, 91 Ga.App. 712, 715, 87 S.E.2d 100, 102 (1955) ("quick" means "capable of moving in its mother's womb").

have enacted separate fetal homicide statutes that criminalize the killing of a fetus from the time of conception or from the state of quickening. California, for example, criminalizes the killing of a fetus that has progressed beyond the embryonic state of seven to eight weeks."[70] Pennsylvania's Crimes Against the Unborn Child Act[71] considers the fetus a person from the time of conception,[72] as do similar feticide statutes in Illinois, Minnesota, and Wisconsin.[73]

The Supreme Judicial Court of Massachusetts in *Commonwealth v. Cass*,[74] considered the question of whether a viable fetus is a person for purposes of the Massachusetts vehicular homicide statute. The Court said that even if the legislature had not considered the issue, legislative intent to include viable fetuses in the definition of "person" in the statute could be assumed "by reference to established and developing common law."[75] The court noted that the statute was written shortly after *Mone v. Greyhound Lines, Inc.*[76] which extended the wrongful death cause of action to viable fetuses, and that "[t]he legislature is presumed to have had knowledge of the decisions of this court."[77] The court further stated:

> In keeping with approved usage, and giving terms their ordinary meaning, the word "person" is synonymous with the term "human being." An offspring of human parents cannot reasonably be considered to be other than a human being, and therefore a person, first within, and then in normal course outside, the womb.[78]

The *Cass* court concluded "that a viable fetus is within the ambit of the term 'person' as used in the [Massachusetts vehicular homicide] statute."[79] Thus, in Massachusetts, where the Corneau situation took place, a viable fetus is considered a person in both civil wrongful death actions and in criminal actions for vehicular homicide.

Id. (citation errors in original).

70 Cari L. Leventhal, Comment, *The Crimes Against the Unborn Child Act: Recognizing Potential Human Life in Pennsylvania Criminal Law*, 103 DICK. L. REV. 173, 178 (1998).

71 18 PA. CONS. STAT. ANN. § 2603-2605 (West 1998). Although establishing the crimes of first, second, and third degree murder, voluntary manslaughter, and aggravated assault for harming an unborn child at any time from conception to birth, the act exempts the pregnant woman for crimes against her unborn child. *Id.*

72 Leventhal, *supra* note 70, at 173.

73 *Id.* at 184.

74 467 N.E.2d 1324 (Mass. 1984).

75 *Id.* at 1326.

76 331 N.E.2d 916 (Mass. 1975).

77 *Cass*, 467 N.E.2d at 1325.

78 *Id.*

79 *Id.* at 1326.

III. Rebecca Corneau's Legal Rights to Refuse Medical Intervention in Her Pregnancy and in the Delivery of Her Baby

A. Rebecca Corneau's Right to Freely Exercise Her Religious Beliefs

The First Amendment to the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[80] Thus, the United States Constitution bestows on everyone the right to the free exercise of religious beliefs.

Courts have upheld a person's right to refuse medical treatment on First Amendment grounds because of the person's religious objections to the treatment. However, the right to refuse medical treatment for herself on religious grounds does not, in every instance, give a parent the right to refuse medical treatment for her minor child on religious grounds.[81]

"The family itself is not beyond regulation in the public interest, as against a claim of religious liberty."[82] In cases where the life of a child is endangered, courts have intervened to protect the child despite the parents' religious objections.[83] A balancing test is applied in which the risk of the medical procedure is compared to the probability of death or serious injury to the child if medical treatment is not given.[84] If the medical treatment poses little or no risk to the child, the state's interest in preserving the life of the child takes precedence over the parents' religious objections, and the life-saving treatment is given.[85]

Judge Nasif believed that Corneau's fetus' life was at stake without medical treatment.[86] Upon applying the balancing test to the Corneau situation, it is evident that the state's interest in protecting Corneau's fetus takes precedence over Corneau's religious

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80 U.S. Const. amend. I.

81 *See generally* People *ex rel.* Wallace v. Labrenz, 104 N.E.2d 769 (Ill. 1952) (upholding life-saving blood transfusions for eight-day-old child in spite of religious objections of the child's Jehovah's Witness parents).

82 Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (finding that the state could intervene to prevent minor child from distributing Jehovah's Witness literature on the streets in violation of child labor laws even though the child was accompanied by the parent).

83 *See, e.g.*, Jehovah's Witnesses v. King County Hospital, 278 F. Supp. 488, 498-505 (W.D.Wash. 1967), *aff'd*, 390 U.S. 598 (1968); Morrison v. State, 252 S.W.2d 97 (Mo. Ct. App. 1952); State v. Perricone, 181 A.2d 751 (N.J. Sup. Ct. 1962).

84 *Wallace*, 104 N.E.2d at 773 ("[T]he facts here disclose no such perilous undertaking, but, on the contrary, an urgently needed transfusion - virtually certain of success if given in time - with only such attendant risk as is inescapable in all of the affairs of life.").

85 *Id.*

86 Daniel, *supra* note 4, at B6. In a closed hearing, Judge Nasif ordered Corneau confined, stating, "I believe that Jeremiah died by asphyxiating some contents of the birth canal. And I believe that this baby could die like Jeremiah." *Id.*

belief that accepting medical care is against God's will.[87] Routine medical care during pregnancy and birth posed slight physical risk to Corneau's fetus. But, if Corneau's fetus aspirated fluids during birth in the same way that her brother Jeremiah did,[88] and if her mouth and nose were not aspirated, then her chances of dying shortly after birth were great.[89] Therefore, Judge Nasif was justified in holding Corneau in custody so that a midwife or doctor could be present at the birth to perform any needed medical procedures for Corneau's baby.

Is the Corneau cult a true religious cult? One commentator has suggested that by virtue of its behavior, the Corneau cult cannot be classified as a religion, and therefore its members should not be allowed to invoke constitutional protection.[90] "This is not about religious freedom. No acceptable religion allows a child in its immediate care to starve to death. No acceptable religion hides corpses from authorities who don't just have a right but a responsibility to recover and analyze them."[91]

Should the constitutional protection of freedom to exercise one's religion be extended to individuals who commit crimes in the name of that religion? In *Reynolds v. United States*,[92] the Supreme Court held that the law against polygamy in the United States applies even to those individuals whose religion permits a man to have multiple wives.[93] The Court explained the policy reasons underlying the decision:

> Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstance.[94]

Reynolds, where the Supreme Court found a Mormon defendant guilty of bigamy,[95] provides guidance for protecting Rebecca Corneau's constitutional right to freedom of religion while at the same time giving the State the right to protect her unborn child

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87 *See id.*

88 Fries, *supra* note 8, at B2.

89 *See infra* notes 252-66 and accompanying text.

90 Brian McGrory, *Stop the Rhetoric, Save the Child*, BOSTON GLOBE, Sept. 5, 2000 at B1, LEXIS, Nexis Library, Mass. News Publications File.

91 *Id.*

92 98 U.S. 145 (1878).

93 *Id.*

94 *Id.* at 167.

95 *Id.* at 168.

from harm caused by criminal acts done in the name of religion.[96] The Supreme Court in *Reynolds* differentiated between a person's constitutionally protected religious beliefs and opinions, on the one hand, and the harmful actions, subject to the laws of the land, that that person takes in the name of his or her religion on the other hand.[97] The court explained that the state may exert power over actions done in the name of religion which are counter to the good of society:

> Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?[98]

The *Reynolds* court upheld a person's constitutional right to freely choose his or her religious beliefs and opinions without interference from the legal system.[99] However, the Court explained that if those religious beliefs are transformed into practices which violate the law, the state may intervene.[100] The Court described children harmed by their parents' illegal acts done in the name of religion as "innocent victims."[101] The Court went on to state that not only may the state intervene, but the State has a mandate to interfere with parents' religiously motivated actions which are both illegal and harmful to their children.[102]

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96 *See generally id.* (explaining that although a person is constitutionally entitled to hold the religious beliefs of the Mormon Church, the practice of polygamy, which is harmful to the children born of polygamous relationships, is contrary to the laws of the United States and, therefore, the state may act to stop the practice).

97 *Id.* at 163.

> [T]hat to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty . . . . [I]t is declared that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

Id. (quoting Thomas Jefferson's definition of religious freedom).

98 *Id.* at 166.

99 *Id.*

100 *Id.* at 166.

101 *Id.* at 167-68 (approving Utah District Court's statement that the children born of polygymous marriages are the innocent victims, "innocent in a sense even beyond the degree of the innocence of childhood itself").

102 *Id.* at 167.

In the name of their religion, Rebecca Corneau and her fellow cult members allegedly ignored basic survival needs of two of their infant cult members, ultimately causing their deaths.[103] When put into practice, their religious beliefs became crimes.[104] As District Attorney Walsh said when referring to ten-month-old Samuel, "They starved their baby in a house full of food" because they thought God was directing them to stop feeding Samuel.[105] Nothing was done to help Jeremiah who "was born with pink skin and was attempting to breathe" because the Corneaus' religious beliefs did not allow them to use the medical system.[106] Samuel and Jeremiah were "innocent victims" of the cult's religious practices and the state did, in fact, have a "mandate" to provide Corneau's fetus with medical care at her birth to prevent her from becoming the next "innocent victim."[107]

B. Rebecca Corneau's Constitutional Right to Due Process of Law

While the term privacy "does not appear anywhere in the U.S. Constitution or its amendments,"[108] the Fourteenth Amendment to the Constitution does require that due process of law be followed before depriving a person of her autonomy.[109] The Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*[110] interpreted the Fourteenth Amendment as giving a pregnant woman autonomy over her own body and allowing her to make choices that will affect not only her body but that will end the life of her unborn baby.[111] The Court in *Casey* stated that "[i]t is a promise of the Constitution that there is a realm of personal liberty which the government may not enter."[112] After drawing on prece-

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103 Dave Wedge, *DSS Keeps Custody of Cultist's 4 Children; Cult's Cohesion in Question After Court No-Shows*, BOSTON HERALD, Oct. 27, 2000, at 1, LEXIS, Nexis Library, Mass. News Publications File.

104 Samuel's parents were indicted by a grand jury for the murder of their son. *See* Mac Daniel, *3 in Sect Indicted in Boy's Death*, BOSTON GLOBE, Nov. 14, 2000, at A1, 2000 WL 3350708. Samuel's aunt, who prophesized that God wanted the group to stop feeding Samuel, was indicted as an accessory to the crime. *Id.* Rebecca Corneau and her husband, David, received immunity from prosecution in exchange for David Corneau's grand jury testimony. *Id.*

105 *Id.*

106 Wedge, *supra* note 2, at 1 (quoting David Corneau: "Only one holds the key to life and death and that's God Almighty himself, not the medical system.").

107 *See* Reynolds v. United States, 98 U.S. 145, 167-68 (1878).

108 DEBORAH MATHIEU, PREVENTING PRENATAL HARM, SHOULD THE STATE INTERVENE? 79 (2d ed. 1996).

109 U.S. CONST. amend. XIV, § 1.

110 505 U.S. 833 (1992).

111 *See id.* at 966 (stating that "a woman's interest in having an abortion is a form of liberty protected by the Due Process Clause").

112 *Id.* at 847.

dents that "have respected the private realm of family life which the state cannot enter,"[113] the Court went on to say:

> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.[114]

However, the *Casey* Court qualifies the liberties protected by the due process clause by endorsing the tradition of "reasoned judgment"[115] that courts have applied in analyzing due process claims, and by calling for a balance between respect for the liberty of an individual and the "demands of an organized society."[116] The Court further states that "[a] woman's interest in having an abortion is a form of liberty protected by the Due Process Clause, but States may regulate abortion procedures in ways rationally related to a legitimate state interest."[117] The Court in *Roe v. Wade* also found that the "right of privacy" of a pregnant woman "is not absolute and is subject to some limitations; and that at some point the state interests as to protection of health, medical standards, and prenatal life become dominant."[118] The *Roe* court explained that any limitation of a pregnant woman's "'fundamental rights' may be justified only by a 'compelling state interest.'"[119]

"Reasoned judgment"[120] is the perfect description of what Judge Nasif used in deciding to confine Corneau to a prison hospital until the birth of her baby in light of the strong evidence that her last baby had died at birth for lack of medical care.[121] And, despite the fact that there were, at the time of Nasif's ruling, no bodies to confirm that the two cult babies were murdered,[122] the

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113 *Id.* at 851 (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944)).

114 *Id.*

115 *Id.* at 849.

116 *Id.* at 850 (citing Justice Harlan's opinion in Poe v. Ullman, 367 U.S. 497, 542 (1961) ("No formula could serve as a substitute in this area, for judgment and restraint.")).

117 *Id.* at 966. Although Rebecca Corneau did not seek to abort her fetus, the Supreme Court's views on abortion give insight into how the Court views the privacy rights of pregnant women. Midtown Hospital v. Miller, 36 F. Supp. 2d. 1360, 1365 (N.D. Ga. 1997) (interpreting *Casey*: "Once the state is empowered to proscribe abortions, however, any liberty interest in humanistic self-determination is extinguished.").

118 Roe v. Wade, 410 U.S. 113, 155 (1973).

119 *Id.*

120 Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 849 (1992).

121 *See* Wedge, *supra* note 3, at 1.

122 Wedge, *supra* note 7, at 2.

mere fact that the two babies had been in the exclusive care of cult members and that they were now unaccounted for is a "compelling state interest,"[123] surely compelling enough to override Corneau's right to privacy. The "demands of an organized society"[124] such as ours, which mandates that its children be protected from neglect and harm and that they be accounted for by their caretakers, outweigh Corneau's due process rights to liberty and privacy in light of evidence that Corneau and her fellow cult members had murdered two of their babies.[125]

C. Rebecca Corneau's Constitutional Protection Against Unreasonable Search and Seizure

Was detaining Rebecca Corneau against her will for the purpose of giving her medical treatment and examinations an unreasonable seizure? Was taking her baby away from her at birth an unreasonable seizure? And, was inquiring about her pregnancy and giving her a medical examination against her will an unreasonable search?

The Fourth Amendment,[126] "made applicable to the states through the Fourteenth Amendment,"[127] guarantees protection against "unreasonable searches and seizures."[128] This amendment guarantees that governmental intrusions into an individual's privacy through searches or seizures must be reasonable.[129] Thus, constitutionally, the issue turns on whether the search and seizure of Rebecca Corneau and her baby were reasonable.

The reasonableness of a search or seizure need not be predicated upon the existence of a warrant or a certain predetermined amount of suspicion.[130] Rather, the United States Supreme Court recognizes a "special needs" exception to the Fourth Amendment.[131] Reasonableness, using the "special needs" doctrine, is determined using a balancing test which considers and weighs the respective needs and interests of the parties involved and which

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123 *Roe*, 410 U.S. at 155.

124 *Casey*, 505 U.S. at 850.

125 Wedge, *supra* note 7, at 2.

126 U.S. CONST. amend. IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." *Id.*

127 U.S. CONST. amend. XIV.

128 U.S. CONST. amend. IV.

129 *Id.*

130 O'Connor v. Ortega, 480 U.S. 709, 720 (1987); Griffin v. Wisconsin, 483 U.S. 868, 873 (1987).

131 New Jersey v. T.L.O., 469 U.S. 325, 351 (1985).

factors in the extent of the intrusion upon the individual and the effectiveness of that intrusion.[132] Thus, a Fourth Amendment inquiry into the reasonableness of a search or seizure is highly individualized and dependent upon the facts of the specific situation. The competing interests include the interest of the State in protecting the life of the viable Corneau fetus, Rebecca Corneau's right to refuse medical treatment for herself,[133] and even the interests of medical personnel, doctors, and nurses who have been brought into the situation by the court.[134]

The Corneau situation fits the "special needs" exception to the Fourth Amendment.[135] Here, authorities had evidence of the deaths of Corneau's baby, Jeremiah, who died due to a lack of routine medical attention at his birth, and of another cult baby, Jeremiah's cousin Samuel, who died from starvation.[136] The evidence, in the form of journals kept by cult members detailing the deaths of the babies, was in the hands of the prosecutors.[137] The intrusion upon Corneau, a few weeks in a minimum security hospital facility, seems justified when weighed against the very real danger to her fetus of an unaided birth.[138]

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132 *Id.*

133 *See* Jeffrey P. Phelan, *The Maternal Abdominal Wall: A Fortress Against Fetal Health Care*, 65 S. CAL. L. REV. 461, 470 (1991) (citing United States v. Crowder, 543 F.2d 312 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1062 (1977); *In re* President & Directors of Georgetown College, 331 F.2d 1000 (D.C. Cir. 1964), *cert denied*, 377 U.S. 978 (1964); Rasmussen *ex rel.* Mitchell v. Fleming, 741 P.2d 674, 683 (Ariz. 1987); Hughes v. United States, 429 A.2d 1339 (D.C. 1981); *In re* Boyd, 403 A.2d 744, 749 (D.C. 1979); *In re* Osborne, 294 A.2d 372, 374 (D.C. 1972); *In re* Conroy, 486 A.2d 1209, 1223 (N.J. 1985) (as authority for the statement that "[t]he right to accept or reject medical treatment is not absolute"); MATHIEU, *supra* note 108 (citing Breithaupt v. Abram, 352 U.S. 432 (1957); Buck v. Bell, 274 U.S. 200 (1927); Jacobson v. Massachusetts, 197 U.S. 11 (1905); Schmerber v. California, 384 U.S. 757 (1966) (as authority for her statement that "[t]he court has upheld vaccinating and sterilizing people against their wills, for instance, as well as having blood samples taken").

134 Bonbrest v. Kotz , 65 F. Supp. 138 (D.C. 1946) ("[T]he interest in the integrity of the medical profession, though limited, is also embodied in state tort laws under which the health care providers may be held liable for prenatal injuries sustained by the unborn child.").

135 *T.L.O.*, 469 U.S. at 351.

136 *See supra* note 20 and accompanying text.

137 *Id.*

138 Tatsha Robertson, *Advocates for Women Scorn Ruling*, BOSTON GLOBE, Sept. 1, 2000, at A16, LEXIS, Nexis Library, Mass. News Publications File (quoting Jetta Bernier, executive director for Massachusetts Citizens for the Children, who agreed with Judge Nasif's decision: "[l]imiting her rights for a period of a few weeks seems far less disturbing than denying her child's basic right to be born in a safe and protective setting").

IV. STATE INTERVENTION TO PROTECT CORNEAU'S FETUS

"Society has a deep interest in the preservation of the race itself. It is a natural instinct that lives of infants be preserved."[139]

A. The State Did Have the Right to Intervene to Protect Corneau's Fetus from Harm

The state's interest in protecting a fetus from harm is defined by the legal status of abortion.[140]

> While *Roe* established that a woman's right to privacy extended to the decision to have an abortion, the subsequent abortion cases established a permissible zone within which states could pursue their interests . . . .
>
> . . . Roe recognized the possibility of a compelling state interest in preserving fetal health in the third trimester of pregnancy, during which time a state may legally restrict a woman's access to abortion to protect a fetus.
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> . . . .
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> In *Planned Parenthood Association v. Ashcroft* (1983), the Court for the first time considered the possibility that fetal viability could be a compelling state interest. *Webster* (1989) . . . [advanced the argument that] the state's compelling interest in protecting life begins at viability and not arbitrarily at the third trimester . . . .
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> Three years later, in *Planned Parenthood v. Casey* (1992), the Court further indicated an acceptance of the view that the state's interest in fetal health predates viability.[141]

The *Roe* Court, while sanctioning abortion, recognized that at some point the State's interest in protecting the fetus becomes dominant.[142] The Court further stated that it is not only fitting for the State to recognize its interest in the fetus,[143] but that at the point

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139 Morrison v. State, 252 S.W.2d 97, 103 (Mo. Ct. App. 1952).

140 JEAN REITH SCHROEDEL, IS THE FETUS A PERSON? A COMPARISON OF POLICIES ACROSS THE FIFTY STATES 44-47 (2000).

141 *Id.* at 44-45.

142 Roe v. Wade, 410 U.S. 113, 155 (1973).

> [T]he right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute and is subject to some limitations; and that at some point the state's interests as to protection of health, medical standards, and prenatal life, become dominant.

Id.

143 *Id.* at 159 ("It is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved.").

when the fetus becomes viable, the State's interest in the survival of the fetus becomes "compelling."[144]

Since states vary in their statutory treatment of persons accused of inflicting harm on a fetus,[145] where no specific statutory protection of the fetus exists against the type of harm inflicted, other approaches to giving the state authority over the fetus have been used. One approach is to extend child protection laws, normally applicable to children under eighteen, to the fetus.[146] The fetus, it can be argued, is a child under eighteen years of age.[147]

South Carolina, recognizing the incongruity of failing to acknowledge criminal liability for harm to a viable fetus in light of civil laws that treat the viable fetus as a person, has interpreted its child abuse and endangerment statutes to apply to viable fetuses.[148] As one South Carolina court noted, "It would be absurd to recognize the viable fetus as a person for purposes of homicide laws and wrongful death statutes but not for purposes of statutes proscribing child abuse."[149]

Wisconsin has "made it clear that even prenatal conduct that is not itself illegal could be made criminal."[150] A thirty-five-year-old woman was charged with attempted first degree homicide and reckless injury for behavior, while she was pregnant, that resulted in her daughter being born with a blood alcohol level that was twice the legal limit in Wisconsin and which left the child a victim of fetal alcohol syndrome.[151] In June of 1996, when she was almost nine months pregnant, the woman showed up at a hospital, drunk, screaming, "If you don't keep me here, I'm just going to go home and keep drinking and drink myself to death and I'm going to kill this thing because I don't want it anyway."[152] Later the same night, the woman gave birth to a severely intoxicated baby who was subse-

144 *Id.* at 163 (stating that the state's interest in protecting "potentiality of human life" grows as the pregnancy progresses and that at the point at which the fetus is viable that interest becomes "compelling" because the fetus is capable of meaningful life outside the womb).

145 *See generally id.*

146 Doretta Massardo McGinnis, *Prosecution of Mothers of Drug-Exposed Babies: Constitutional and Criminal Theory in* CHILD, PARENT, & STATE 84, 87 (S. Randall Humm et al. eds., 1994) (describing the "drug delivery complaint" against an Illinois woman accused of using drugs while pregnant; complaint "characterized her fetus as a person under eighteen years of age").

147 *Id.*

148 Whitner v. State, 492 S.E.2d 777 (S.C. 1997) (finding mother who used crack cocaine during the third trimester of her pregnancy guilty of criminal child neglect).

149 *Id.* at 780.

150 Leventhal, *supra* note 70, at 192.

151 *Id.*

152 *Id.*

quently diagnosed with symptoms of fetal alcohol syndrome.[153] The court refused to dismiss the charges against her, and this became the first time in the United States in which a murder statute was applied to a case in which the fetus had not, in fact, been murdered.[154]

Parents have a constitutional right to raise their children.[155] But the "[p]rior [a]buse or [n]eglect of the [c]hild, a [s]ibling, or [o]ther [c]hildren in the [h]ome" will, in many states, be grounds for state intervention even to the point of permanent termination of parental rights.[156] "However, for this type of proof to be most convincing, the maltreatment of the second child should be similar to the maltreatment of the first, and reasonably close in time to the prior instance of abuse or neglect."[157] Rebecca Corneau, despite having recently lost another baby shortly after birth due to the lack of medical intervention,[158] was planning exactly the same kind of unassisted birth this time.[159] "In every state, infanticide, the killing of a newborn, is considered homicide. If an infant takes one breath, the infant is legally a child who has been murdered."[160] Jeremiah, Corneau's baby who died, lived for a short time after birth and took at least one breath—the breath that aspirated fluids from the birth canal into his lungs and killed him.[161] Whether it was neglect or murder, Rebecca Corneau's unborn baby's sibling, Jeremiah, died for lack of medical care at his birth.[162] The state had every right to intervene in the interests of her fetus in order to be there to help Corneau's baby in the crucial first moments after its birth.

B. Denying Medical Care to the Corneau Fetus Was Neglect

Blackstone described the fundamental duty owed to children by their parents:

> The duty of parents to provide for the maintenance of their children, is a principle of natural law; an obligation . . . laid on them

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153 *Id.*
154 *Id.*
155 *See, e.g.*, Bowen v. Gilliard, 483 U.S. 587, 611-12 (1987) (stating that parents have constitutionally protected right under the Fourteenth Amendment to make decisions about their personal family matters).
156 MARK HARDIN & ROBERT LANCOUR, EARLY TERMINATION OF PARENTAL RIGHTS: DEVELOPING APPROPRIATE STATUTORY GROUNDS 16 (1996).
157 *Id.* at 17.
158 Fries, *supra* note 8, at B2.
159 *See supra* note 13 and accompanying text.
160 Leventhal, *supra* note 70, at 177.
161 Fries, *supra* note 8, at B2.
162 *Id.*

> not only by nature herself, but by their own proper act, in bringing them into the world; for they would be in the highest manner injurious to their issue, if they only gave their children life that they might afterwards see them perish. By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have the perfect right of receiving maintenance from the parents.[163]

"It follows that society may punish a parent for dereliction in his duties; but society is not required to stand aside until the child is dead for want of care, but may take direct steps to preserve the life that the parents neglected to cherish."[164] In today's society, medical care is part of the "maintenance" Blackstone said children have the right to receive from their parents.[165] It is one of the ways in which the life of a child is "supported and preserved."[166] Blackstone's words centuries ago seem to have been written in anticipation of the Corneaus' behavior. The Corneaus gave Jeremiah life only to literally "see [him] perish"[167] because they had not fulfilled their duty to provide him with medical care at birth.[168] By conceiving another child, the Corneaus once again voluntarily entered into an obligation to provide medical care at the birth of this baby. Since they made it clear that they would again neglect to fulfill the same duty to this new child, Judge Nasif was justified in intervening to "preserve the life that the [Corneaus] had neglected to cherish."[169]

Common law follows Blackstone's "natural law" in finding parents who fail to provide basic "maintenance" guilty of child neglect.[170] For example, the court in *Mitchell v. Davis*[171] found that the failure to provide a twelve-year-old child with necessary medical care was sufficient evidence of neglect to allow the State to take care of the child and provide him with the needed medical treat-

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163 1 WILLIAM BLACKSTONE, COMMENTARIES *447.

164 Morrison v. State, 252 S.W.2d 97, 102 (Mo. Ct. App. 1952) (construing 1 WILLIAM BLACKSTONE, COMMENTARIES *447).

165 BLACKSTONE, *supra* note 163, at *447.

166 *Id.*

167 *Id.*

168 Fries, *supra* note 8, at B2.

169 *Morrison*, 252 S.W.2d at 102.

170 BLACKSTONE, *supra* note 163, at *447.

171 205 S.W.2d 812 (Tex. Civ. App. 1947).

ment.[172] The child in *Mitchell* had arthritis, and the parents were treating him at home with prayer.[173] The court said:

> Medicines, medical treatment and attention, are in a like category with food, clothing, lodging and education as necessaries from parent to child, for which the former is held legally responsible . . . and proof that the parent is failing to provide any of these legal necessities to minor constituents of the family would, in our opinion, sustain a charge of parental neglect. "It is the right and duty of parents under the law of nature as well as the common law and the statutes of many states to protect their children, to care for them in sickness and in health, and to do whatever may be necessary for their care, maintenance, and preservation, including medical attendance, if necessary. An omission to do this is a public wrong which the state, under its police powers, may prevent."[174]

This protection has been extended to newborn infants. Courts have found that parents who refuse to allow life-saving medical treatment for their infants because of their religious objections are guilty of neglecting their children, and, therefore, it is appropriate for the State to intervene.[175] In one case, the Supreme Court of Illinois, in ordering life-saving blood transfusions for a newborn baby over the religious objections of its parents, elaborated on the definition of neglect:

> Neglect . . . is the failure to exercise the care that the circumstances justly demand . . . . It embraces willful as well as unintentional disregard of duty. It is not a term of fixed and measured meaning. It takes its content always from specific circumstances, and its meaning varies as the context of surrounding circumstances changes. . . . We entertain no doubt that this child, whose parents were deliberately depriving it of life or subjecting

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172 *Id.*

173 *Id.*

174 *Id.* at 813-14 (citations omitted).

175 *See, e.g.*, People *ex rel.* Wallace v. Labrenz, 104 N.E.2d 769 (Ill. 1952) (approving blood transfusion for seriously ill newborn over objection of Jehovah's Witness parents after declaring that the newborn was a neglected child under the Illinois statute); Morrison v. State, 252 S.W.2d 97 (Mo. Ct. App. 1952) (declaring infant to be a neglected child so that the state could step in and order blood transfusions for severe anemia against objections of the child's Jehovah's Witness parents; parents believe that, according to the Bible, receiving a blood transfusion is like eating human flesh which the Bible admonishes them not to do); State v. Perricone, 181 A.2d 751 (N.J. 1962) (affirming lower court's finding that infant was neglected and appointing special guardian to consent to blood transfusions for critically ill infant child against Jehovah's Witness parents' objections that blood transfusions are prohibited by the Bible).

> it to permanent mental impairment, was a neglected child within the meaning of the statute.[176]

The court stated that parents can be found neglectful in one area of parental responsibility even though they may not otherwise be neglecting the child.[177] Refusing life-saving medical treatment for the child is deemed neglect even though the parents are responsible parents in every other way.[178] Suctioning a baby's mouth and nose at birth, no matter how routine,[179] is still life-saving medical treatment. Perhaps the fact that it is done at every birth speaks to how important it is to the survival of the newborn baby. Under the Illinois standard, it does not matter why Jeremiah Corneau's mouth was not suctioned. The mere fact that it was not suctioned makes the Corneaus guilty of child neglect. It also does not matter whether the Corneaus were neglectful parents in any other respect. The evidence of medical neglect of their children at birth was sufficient to find child neglect. Thus, Judge Nasif was justified in ordering Rebecca Corneau into custody to provide her baby with the needed medical care.

Several cases have extended the protection of child abuse and neglect statutes to the unborn.[180] A Michigan court considered the case of an infant who showed signs of drug withdrawal during its first twenty-four hours of life.[181] In reviewing the state's petition to take custody of the child because of the mother's neglect of the child, the court concluded that since a child "has a legal right to begin life with a sound mind and body, it is within the best interest of the child to examine all prenatal conduct bearing on that right."[182] In another case, a New York court, relying on a rule of law that presumes that a child is neglected if its parent uses alcohol to the point where his or her judgment is impaired, determined that the fetus carried by a pregnant woman who refused to seek treatment for her alcoholism was a neglected child.[183] Citing the "developing body of law" on the subject, an Ohio court felt "com-

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176 *Wallace*, 104 N.E.2d at 773, *citing* ILL. REV. STAT. 1949 ch. 23, ¶ 190 (1949). The Illinois statute in effect at the time defined a neglected child as one who "has not proper parental care." *Id.*

177 *Id.*

178 *Id.* (stating that "[t]he record contains no suggestion of any improper conduct on the part of the parents except in their refusal to consent to a blood transfusion").

179 THE MERCK MANUAL, *supra* note 62, at 1177 ("Mucus and fluid are suctioned out of the baby's nose, mouth, and throat [after delivery].").

180 *In re* Baby X, 293 N.W.2d 736 (Mich. Ct. App. 1980); *In re* Smith, 492 N.Y. Supp. 2d 331 (N.Y. Fam. Ct. 1985); *In re* Ruiz, 27 Ohio Misc. 2d 31 (C.P. 1986).

181 *Baby X*, 293 N.W.2d at 736.

182 *Id.* at 739.

183 *Smith*, 492 N.Y. Supp. 2d at 334-35.

pelled to hold that a viable fetus is a child under the existing child abuse statute, and harm to it may be considered abuse under [the Ohio child abuse statute]."[184] While these cases all deal with substance abuse by the women while they are pregnant, and while there is no indication of substance abuse in the Corneau situation, these cases do establish the States' concern for the well-being of fetuses.

V. REBECCA CORNEAU'S MORAL OBLIGATION TO HER FETUS

"A discussion of fetal personhood without confronting moral (i.e. normative) questions . . . ignores a forest for the trees."[185] While Rebecca Corneau felt compelled to ignore the legal system,[186] she appeared oblivious to the moral principles underlying a mother's conduct towards her near-term fetus. This Note argues that when you strip away the legal obligations of motherhood, the underlying moral responsibilities remain.

In the pre-Civil War United States, "women were expected to take precautions to protect themselves and their potential offspring while pregnant."[187] A pregnant woman was also accorded "deference and protection" by society.[188] This "deference and protection" was embodied, "sporadically," in the common law.[189] For example, when a woman sued her neighbor charging that the neighbor's verbal harassment caused her to be so upset that her baby was stillborn, "[t]he suit was dismissed . . . because the woman had been seen carrying a bucket on her head, which, according to folk belief, constituted a threat to fetal health."[190] Thus, even in the early years of our country, "a pregnant woman was expected to take precautions to ensure the health of her unborn child."[191]

A fetus is, in effect, a "future child."[192] "Once a pregnant woman foregoes her right to have an abortion . . . it could be argued that her actions should be constrained by considerations of the welfare of the child that the fetus will become."[193] The pregnant

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184 *Ruiz*, 27 Ohio Misc. 2d at 939 (quoting *Baby X*, 293 N.W.2d at 739) ("hold[ing] that a newborn suffering narcotics withdrawal symptoms as a consequence of prenatal maternal drug addiction, may properly be considered a neglected child within the jurisdiction of the probate court").

185 SCHROEDEL, *supra* note 140, at 8.

186 Wedge, *supra* note 17, at 1.

187 SCHROEDEL, *supra* note 140, at 24.

188 *Id.*

189 *Id.*

190 *Id.* at 24-25.

191 *Id.* at 25. (construing LAUREL T. ULRICH, GOOD WIVES: IMAGE AND REALITY IN THE LIVES OF WOMEN IN NORTHERN NEW ENGLAND 1650-1750 136-37 (1982)).

192 *See* MATHIEU, *supra* note 108, at 47.

193 *Id.*

woman is the only person who can bring about the well-being of the future child she is carrying.[194] She has assumed that responsibility by choosing not to get an abortion during the time in her pregnancy when abortion is legal.[195] "And, it could be argued, society should recognize these moral obligations to be legal obligations as well, backed by the coercive power of the state."[196]

H.L.A. Hart writes that, in "role-responsibility," moral responsibility and legal responsibility co-exist:[197]

> A sea captain is responsible for the safety of his ship, and that is his responsibility, or one of his responsibilities. A husband is responsible for the maintenance of his wife; perhaps for the upbringing of their children; a sentry for alerting the guard at the enemy's approach . . . . These examples of a person's responsibilities suggest the generalization that, whenever a person occupies a distinctive place or office in a social organization, to which specific duties are attached to provide for the welfare of others or to advance in some specific way the aims or purposes of the organization, he is properly said to be responsible for the performance of these duties, or for doing what is necessary to fulfill them.[198]

"It could be argued that part of the 'role-responsibility' of a pregnant woman is to provide for the welfare of the child she will bear."[199] Therefore, Rebecca Corneau's "role-responsibility . . . is to provide for the welfare of [her fetus]."[200]

"A pregnant woman who has expressed the desire to carry the fetus to full term is arguably under an ethical obligation to accept reasonable, nonexperimental medical treatment."[201] In carrying her fetus almost to term,[202] certainly well past the point at which she could have legally obtained an abortion, Rebecca Corneau indicated her intention to carry the fetus to full term. Routine prenatal medical examinations and having a midwife in attendance at the birth is "reasonable, non-experimental medical treatment."[203] By not taking steps to prevent her baby's conception and by not

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194 *See id.*
195 *See id.* at 48.
196 *Id.*
197 *Id.*
198 H.L.A. HART, PUNISHMENT AND RESPONSIBILITY, 212 (1984).
199 MATHIEU, *supra* note 108, at 48.
200 *Id.*
201 Rebekah R. Arch, RN, Comment, *The Maternal-Fetal Rights Dilemma: Honoring a Woman's Choice of Medical Care During Pregnancy,* 12 J. CONTEMP. HEALTH L. & POL'Y 637, 668 (1996).
202 *See supra* notes 61-62 and accompanying text.
203 Arch, *supra* note 201, at 668.

seeking to abort the fetus once she was pregnant, Corneau chose her role of mother to her fetus.[204] As Hart wrote, along with that role come responsibilities,[205] not the least of which is ensuring that her fetus receives routine medical care.

Corneau and her fellow cult members did not believe in our legal system,[206] but a belief in our legal system is not necessary to find a moral obligation on Corneau's part to care for her fetus. In Corneau's role as mother to her fetus, her moral responsibility to provide medical care for her fetus coexisted with her legal responsibility to provide it with medical care.[207] As the early case of the pregnant woman carrying the bucket on her head illustrates,[208] and as Hart writes,[209] Corneau's moral responsibility predated and coexisted with whatever legal responsibility ultimately ensued.

VI. The Forced Hospitalization of Rebecca Corneau Will Not Have an Impact on Abortion Rights

Roe v. Wade[210] and the other abortion cases examine the question of fetal personhood and fetal rights in the context of the adversarial relationship that exists in abortion cases between the fetus and the pregnant woman carrying that fetus.[211] The woman seeking the abortion believes that it is in her best interests that the fetus should die,[212] and she believes that her right to privacy allows her to make the decision not to carry the child to term.[213] However, the fetus has an interest in living and in eventually being born,[214]

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204 Hart, *supra* note 198.

205 *Id.*

206 Wedge, *supra* note 17, at 1.

207 Hart, *supra* note 198.

208 Schroedel, *supra* note 140, at 25.

209 Hart, *supra* note 198.

210 410 U.S. 113 (1973).

211 Schroedel, *supra* note 140, at 47-48.

212 *Roe*, 410 U.S. at 153. In *Roe*, the Court stated the following reasons that a woman might have for deciding that an abortion is in her best interests:

> Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There also is the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved.

Id.

213 *Id.* at 120 (listing violations of privacy protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments claimed by plaintiff Roe of behalf of herself "and all other women similarly situated").

214 *See generally id.* (referring repeatedly to the potentiality of human life that is embodied in the fetus).

and that interest competes with the mother's interest.[215] While making it clear that it was not conferring legal personhood on fetuses,[216] the Court in *Roe* recognized that the State also has an "important and legitimate interest in potential life."[217] So, in abortion cases, the mother's right to privacy is pitted against the State's interest in the potential life of the fetus. The *Roe* Court recognized that these interests of the pregnant woman and her fetus are "separate and distinct,"[218] and the Court sought to devise a framework within which the competing interests of the pregnant woman and her fetus could be balanced.[219] The court's aim was "to establish a legal standard for this and future cases."[220] The result was the establishment of the trimester framework.[221] During the first trimester of pregnancy, the decision whether or not to get an abortion is completely up to the woman and her physician.[222] "[The Court] recognized the state's right to intervene during the second trimester only to promote the mother's health, reconciling the state's police power and the woman's right to privacy."[223] In the third trimester of pregnancy, the balance is tipped in favor of state control of abortion in order to "promot[e] its interest in the potentiality of human life."[224]

The legal implications of the trimester framework in abortion cases, within which the privacy rights of the woman are balanced against the interest of the State in protecting the life and health of the fetus, changed the way the legal system viewed the maternal-fetal relationship:[225]

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215 SCHROEDEL, *supra* note 140, at 42.

216 *Roe*, 410 U.S. at 158 (The word "person," as used in the Fourteenth Amendment, does not include the unborn.).

217 *Id.* at 163.

218 *Id.* at 162-63 ("These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling.").

219 SCHROEDEL, *supra* note 140, at 43.

220 *Id.*

221 *Id.*

222 *Id.*

223 *Id.*

224 Roe v. Wade, 410 U.S. 113, 164 (1973).

225 SCHROEDEL, *supra* note 140, at 43-44. The author points out how closely Roe's trimester framework resembles Aristotle's model of the fetus:

> Aristotle believed that during the first stage of development - the "vegetable" stage - the fetus had no independent status. When the soul entered the body, the fetus entered the second stage - the "animal" Stage - which lasted until the fetus assumed a fully human shape and was able to live separate from its mother. Aristotle believed that the fetus then entered into the final stage - the "rational" stage.

Id.

> Until *Roe*, the legal system supported the biological unity of woman and fetus and viewed their interests as identical. Even when courts had found some degree of legal personhood in the fetus in civil law or, to a lesser extent, in criminal law, they had assumed that the interests of the woman and fetus at least coincided. In *Roe*, however, the court's trimester framework established a precedent that viewed the interests of mother and fetus as adversarial .... [T]his precedent inappropriately spilled over into other aspects of the maternal-fetal relationship.[226]

This Note is not suggesting an across-the-board return to a pre-*Roe* legal view of the unity of interests of the pregnant woman and her fetus, but rather that the *Roe* view of the maternal-fetal relationship should not be automatically applied in every situation in which the State seeks to protect the interests of a fetus.[227] Where the pregnant woman and her fetus share a common protectable health interest, as in the Corneau situation, the *Roe* model of the mother and fetus as adversaries is not the correct one.[228]

Although, superficially, Rebecca Corneau and her fetus seem to have competing interests, upon closer examination, their interests are identical,[229] and the adversarial view of mother and fetus used in the abortion cases is inapplicable here.[230] In *Roe*, the interests of a woman seeking to terminate the life of her fetus by abortion conflict with the interests of her fetus in staying alive.[231] But, Corneau and her fetus each have the same protectable interest: that of getting medical care during the birth so they both can survive the birth and be healthy. When Rebecca Corneau refused medical treatment for her fetus, she also denied herself medical care. The State has an interest in protecting the life and health of both Corneau[232] and her fetus[233] by ensuring they both get medical care during what is potentially a dangerous time for both mother and baby. In some respects, it can be argued the State has even more of an interest in ensuring that Rebecca Corneau gets medical care than that her fetus receives medical care because

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226 *Id.* at 44.

227 *Id.* at 48.

228 *Id.* (citing the example of pregnant drug addicts in which the pregnant woman and her fetus both have an interest in ending the addiction).

229 Both Corneau and her fetus have an interest in being healthy and physically surviving.

230 SCHROEDEL, *supra* note 140, at 48.

231 *See generally* Roe v. Wade, 410 U.S. 113 (1973).

232 *See id.* at 150 (citing "[t]he State's interest and general obligation to protect life").

233 *See id.*

were Corneau to die in childbirth, she would leave already-born minor children without a mother to care for them.[234]

Judge Nasif received much criticism that his decision to force Corneau to get medical care would jeopardize women's reproductive freedom.[235] His decision will have no bearing on abortion rights. *Roe v. Wade* and the other abortion cases weigh the State's interest in the health and welfare of the fetus against the conflicting privacy interests of the pregnant woman who is seeking to abort the fetus.[236] Corneau and her fetus, however, have an identical interest. They have a mutual interest in receiving medical care during Corneau's pregnancy and the subsequent birth of her baby. "The spillover from *Roe*, however, an adversarial maternal-fetal relationship" has been wrongly applied to the Corneau situation by critics who then conclude that by hospitalizing Corneau, the fetus somehow wins and Corneau loses.[237] They fear that this will weaken the position of all women seeking to get an abortion.[238] The reality is that both Corneau and her fetus win when Corneau receives medical care. While it is appropriate to weigh Corneau's rights to freedom of religion and privacy vis-à-vis the State's interest in Corneau's health, the Court's analysis in *Roe* of the competing privacy rights of a pregnant woman and the right to life of the fetus is not applicable here. Any perceived victory by the Corneau fetus is shared equally by Rebecca Corneau.[239]

Roe and the other abortion cases are distinguishable. They are useful in the Corneau situation only in that they establish that a viable fetus is worthy of protection by the State.

VII. Navigating the Slippery Slope

There is a slippery slope to examine in deciding whether the State should have intervened to protect Rebecca Corneau's fetus.

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234 Wedge, *supra* note 103, at 1 (Rebecca Corneau and her husband have three other children which were taken from the couple by the Department of Social Services. David Corneau, Rebecca's husband, is trying to get the couple's children back.).

235 Jennifer Braceras, *Defining the Rights of Unborn Children*, Boston Globe, Sept. 28, 2000 at A17, LEXIS, Nexis Library, Mass. News Publications File ("[P]roponents of abortion, who are ordinarily hostile to religious persons, have sided with Corneau. In the name of 'reproductive freedom,' they have turned Corneau into a cause celebre.").

236 *Roe*, 410 U.S. at 165 (stating that the holding in Roe is consistent with the "relative weights of the respective interests").

237 Braceras, *supra* note 235, at A17 (noting that to a radical feminist, "any acknowledgment that a fetus is a life worth protecting represents a threat to 'a woman's right to choose'"; author notes that proponents of abortion who have sided with Corneau fail to recognize that the Corneau case is not about choice).

238 *Id.*

239 *Id.* ("It's time for the pro-abortion lobby to recognize that when mothers deliver healthy babies, everybody wins.").

Abortion and women's rights activists warn that intervention by the State to protect the Corneau fetus confers personhood on the Corneau fetus in this instance and elevates the status of all fetuses in general.[240] Their fear is that condoning state intervention in the Corneau case will erode the freedoms and rights of all pregnant women.[241] "It could give the government power . . . to protectively lock up pregnant women for any number of reasons: from drug or alcohol abuse to a prior manslaughter conviction . . . ."[242] They fear that intervention by the State in the Corneau situation will lead to a policy where the State would "interfere in every instance where a pregnant woman is risking significant harm to her future child."[243] The answer to these fears is that the decision by the State to intervene to protect a fetus is not made arbitrarily. There are balancing tests that are used in deciding whether the State should intervene to order medical treatment for a pregnant woman against her wishes.[244] This Note argues that, weighing the respective interests and possible outcomes according to the balancing tests set forth in caselaw, the State did have a right to order Corneau to accept medical care.

The court in *In re A.C.*, in reviewing a lower court decision allowing the caesarean section delivery of a near term fetus against the wishes of the terminally ill pregnant woman, gives guidance to courts faced with a pregnant patient who is incompetent or unwilling to give informed consent to medical procedures aimed at saving her fetus.[245] The court states that in cases "involving life or death situations or incompetent patients, the courts have recognized four countervailing interests that may involve the state as *parens patriae:* preserving life, preventing suicide, maintaining the ethical integrity of the medical profession and protecting third parties."[246] The court further stated that "[in] those rare cases in which a patient's right to decide her own course of treatment has been judicially overridden, courts have usually acted to vindicate

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240 Eagan, *supra* note 37, at 4.

241 *Id.*

242 *Id.*

243 MATHIEU, *supra* note 108, at 58 ("Imagine the state monitoring each parent to ensure that all children are provided with nutritious diets and sufficient levels of affection; the thought makes me shudder.").

244 Jefferson v. Griffin Spalding County Hosp. Auth., 274 S.E.2d 457, 459 (Ga. 1981) (weighing high probability that both fetus and mother will die during natural birth against intrusion on mother of forced caesarean section).

245 *In re* A.C., 573 A.2d 1235 (D.C. Cir. 1990).

246 *Id.* at 1246.

the state's interest in protecting third parties, even if in fetal state."[247]

It can be argued that because Rebecca Corneau refuses to accept any medical care at all,[248] she is incompetent to make an informed consent to medical treatment for herself or the baby she is carrying. "Courts have held generally that a patient is competent to make his or her own medical choices when that patient is capable of 'the informed exercise of a choice, and that entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each.'"[249] Incompetence is defined as being either "unable or unqualified to do something."[250] Rebecca Corneau does not believe that medical care is an option. She believes that it is blasphemy to rely on any help other than that from God.[251] Not believing in medicine, Corneau has eliminated the entire field of medicine from the options available to her from which she can make her decision. Corneau could not have evaluated her medical care options during her pregnancy and the birth of her child knowledgeably since she repudiated all knowledge of traditional medicine. She was unqualified to do so because of her refusal to accept the validity of any accepted medical practices.

In evaluating whether a pregnant woman's right to refuse medical treatment has been overridden by one of the four countervailing interests in *In re A.C.*,[252] a balancing test is applied.[253] The possible individual benefits of the proposed treatment to the pregnant woman and her fetus are weighed against the likelihood of harm to the pregnant woman and to the fetus of not receiving the proposed treatment.[254] *Jefferson v. Griffin Spalding County Hospital*,[255] a case in which the pregnant defendant's reason for refusing

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247 *Id.* (construing *Jefferson*, 274 S.E.2d 457).

248 Wedge, *supra* note 2, at 1.

249 *A.C.*, 573 A.2d at 1244 (quoting Canterbury v. Spence, 464 F.2d 772, 780 (D.C. Cir. 1972)).

250 BLACK'S LAW DICTIONARY 768 (7th ed. 1999).

251 Wedge, *supra* note 13, at 1 and accompanying text.

252 *See supra* text accompanying note 236.

253 *A.C.*, 573 A.2d at 1251.

254 *Id.*

> When the patient is pregnant . . . it is proper for the court . . . to weigh . . . the mother's prognosis, the viability of the fetus, the probable result of treatment or non-treatment for both mother and fetus, and the mother's likely interest in avoiding impairment for her child together with her own instincts for survival.

Id.

255 Jefferson v. Griffin Spalding County Hosp. Auth., 274 S.E.2d 457, 459 (Ga. 1981) (describing Mr. and Mrs. Jefferson as refusing to consent to a Caesarean section because of their religious beliefs; however, Mrs. Jefferson had sought and received pre-natal medical care at the same hospital prior to the birth, so the Jeffersons were not opposed to all medical treatment). The fact that the Jeffersons did not eschew all medical treatment distinguishes Jefferson from the Corneau situation. This fact also explains the *In re A.C.*

needed medical treatment was strikingly similar to Rebecca Corneau's, illustrates how this balancing test is applied.[256] In *Jefferson*, Mrs. Jefferson, who was thirty-nine weeks pregnant and just four days away from her due date, was examined and found to have placenta previa, a condition which prevents the normal delivery of a child.[257] The Jeffersons refused to consent to a caesarean section believing that "the Lord has healed her body and that whatever happens to the child will be the Lord's will."[258] In making its decision, the court considered and weighed the likelihood of the possible outcomes:

> There is a 99 to 100 percent certainty that the unborn child will die if she attempts to have the child by vaginal delivery. There is a 99 to 100 percent chance that the child will live if the baby is delivered by Caesarean section prior to the beginning of labor. There is a 50 percent chance that Mrs. Jefferson herself will die if vaginal delivery is attempted. There is an almost 100 percent chance that Mrs. Jefferson will survive if a delivery by Caesarean section is done prior to the beginning of labor. The Court finds that as a matter of fact the child is a human being fully capable of sustaining life independent of the mother.[259]

After balancing the relative weights of the possible alternatives, the court concluded:

> [T]he State has an interest in the life of this unborn, living human being. The Court finds that the intrusion involved into the life of Jessie Mae Jefferson and her husband . . . is outweighed by the duty of the state to protect a living, unborn human being from meeting his or her death before being given the opportunity to live.[260]

Applying the *Jefferson* balancing test to the Corneau situation shows that Judge Nasif was correct in forcing Corneau to get medical care. Childbirth in the United States is inherently more dangerous for the baby than for the mother.[261] The death rate for infants before, during, and up to twenty-eight days after birth is

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court's description of Mrs. Jefferson's decision to refuse a Caesarean section as "competent," and it permits the conclusion that even if Corneau was found by a court to be competent, the countervailing consideration of preserving the life of the viable fetus she was carrying was sufficient to override Corneau's objections to medical treatment. *See A.C.*, 573 A.2d at 1243.

256 *Jefferson*, 274 S.E.2d at 459.

257 *Id.* at 458.

258 *Id.* at 459.

259 *Id.*

260 *Id.* at 460.

261 THE MERCK MANUAL, *supra* note 62, at 1145.

nearly three times the death rate for pregnant women.[262] The risk of death for Corneau's baby shortly after birth was close to one hundred percent if she aspirated fluids from the birth canal like her brother, Jeremiah, did,[263] and there was no nurse, midwife, or doctor to suction her nose and mouth. The fact that this procedure is done routinely shows that it is not uncommon for a baby to aspirate fluids during birth. There is nearly a one hundred percent chance that if the baby does aspirate fluids from the birth canal, and if the baby's mouth and nose are suctioned by a medical attendant, the baby will be able to breathe if that is the only reason the baby was unable to breathe. Having medical personnel there to assist before, during, and after the birth also increases Corneau's chances of living through the birth while imposing only a minimal intrusion on her. The Corneau fetus was viable at the time of Judge Nasif's ruling, and fully able to live separately from Corneau.[264] Weighing the State's compelling interest in the viable fetus,[265] the risk to the fetus of not getting medical help during the birth, and the benefits to and relatively insignificant intrusion on Corneau of a few weeks in a hospital, the State in the Corneau situation had a duty "to protect a living, unborn human being from meeting . . . her death before being given the opportunity to live."[266]

VIII. CONCLUSION

In situations like this one, public authorities must act promptly if their action is to be effective, and although the precise limits of authorized conduct cannot be fixed in advance, no greater uncertainty should exist than the nature of the problems makes inevitable."[267] Judge Nasif's quick decision to hold Rebecca Corneau in a secure facility in order to ensure that her baby would have a safe entry into the world was the correct decision. Corneau was neglecting the fetus she carried by not getting medical care for herself while she was pregnant and in not planning to seek medical assistance at the baby's birth. Underlying Corneau's legal obligation to

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262 *Id.* ("A pregnant woman dies . . . in 6 out of 100,000 births in the United States. The baby dies before, during or after birth . . . in 16 out of 1,000 deliveries in the United States.").

263 Fries, *supra* note 8, at B2.

264 *See supra* text accompanying notes 61-62.

265 Roe v. Wade, 410 U.S. 113, 162 (1973).

266 Jefferson v. Griffin Spalding County Hosp. Auth., 274 S.E.2d 457, 460 (Ga. 1981).

267 People *ex rel.* Wallace v. Labrenz, 104 N.E.2d 769, 772 (Ill. 1952) (describing the appropriateness of ordering a blood transfusion for a seriously ill newborn over the religious objections of its parents).

her fetus, which Nasif admitted he had not analyzed, was her moral obligation to care for the fetus that was to become her child. Judge Nasif correctly felt compelled to act to assume Corneau's moral obligation when faced with her unwillingness to do so in light of the death of Corneau's last baby under similar circumstances. After the fact, an analysis of the legal issues involved shows that the State's interest in Corneau's viable fetus was compelling enough to override Corneau's constitutional right to refuse medical treatment for herself and for her unborn child.