

## No. 19-1392 Dobbs v Jackson Women's Health Organization

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*Citation for published version (Harvard):*

De Londras, F, Fredman, S, Rubio Marin, R, Sheldon, S, Cali, B, Scott, R & Jackson, E 2021, *No. 19-1392 Dobbs v Jackson Women's Health Organization: brief of European Law Professors as amici curiae in support of respondents*. Wilson-Epes Printing Co., Inc. . <<https://www.supremecourt.gov/docket/docketfiles/html/public/19-1392.html>>

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No. 19-1392

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IN THE  
**Supreme Court of the United States**

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THOMAS E. DOBBS, M.D., M.P.H.,  
STATE HEALTH OFFICER OF THE  
MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

*Petitioners,*

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

*Respondents.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

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**BRIEF OF EUROPEAN LAW PROFESSORS  
AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTERESTS OF AMICI CURIAE .....	1
SUMMARY OF ARGUMENT .....	3
ARGUMENT.....	8
I. Legal regulation of abortion engages the right to private life under Article 8 of the European Convention on Human Rights.	8
II. COE Member States’ “margin of appreciation” to regulate abortion in national law is limited and subject to narrowing as European and international consensus in favor of broad abortion access strengthens. ....	10
III. The European and international consensus has further stabilized in favor of broad access to abortion. ....	14
IV. In certain circumstances, denial of abortion or health care necessary to access abortion can also violate ECHR Article 3.....	20
V. The fetus is not recognized as a rights bearer under the ECHR.....	21
A. The ECtHR has never recognized the fetus as a person for the purposes of ECHR Article 2.....	22
B. The ECtHR has never applied other Convention rights to the fetus .....	23

TABLE OF CONTENTS—Continued

	Page
C. The ECtHR has never found a national law permitting abortion to be incompatible with the Convention.....	23
D. Compatibility of national abortion law with the ECHR is not determined by reference to “fetal rights” .....	24
CONCLUSION .....	25
APPENDIX	
Summary of national abortion laws in Member States of the Council of Europe.....	1a

## TABLE OF AUTHORITIES

U.S. CASES	Page(s)
<i>Lawrence v. Texas</i> , 539 U.S. 558 (1993).....	3
<i>Planned Parenthood of Se. Pa. v. Casey</i> , 505 U.S. 833 (1992).....	3
<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	3
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	3
<i>Sanchez-Llamas v. Oregon</i> , 548 U.S. 331 (2006).....	3
ECHR CASES	
<i>A, B &amp; C v. Ireland</i> , 2010-VI Eur. Ct. H.R. 185 ..... <i>passim</i>	
<i>Airey v. Ireland</i> , 32 Eur. Ct. H.R. (Ser A) (1979) .....	9
<i>AL-B v. Poland</i> , App. No. 3801/21 (2021), <a href="http://hudoc.echr.coe.int/eng?i=001-21117">http://hudoc.echr.coe.int/eng?i=001-21117</a> .....	20
<i>Artico v. Italy</i> , 37 Eur. Ct. H.R. (ser. A) (1980).....	9
<i>Barraco v. France</i> , App. No. 31684/05 (2009), <a href="http://hudoc.echr.coe.int/eng?i=001-91570">http://hudoc.echr.coe.int/eng?i=001-91570</a> .....	11
<i>Bayatyan v. Armenia</i> , 2011-IV Eur. Ct. H.R. 3 .....	13

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Bensaid v. United Kingdom</i> , 2001-I Eur. Ct. H.R. 303.....	8
<i>Boso v. Italy</i> , 2002-VII Eur. Ct. H.R. 451.....	23
<i>Brüggemann v. Germany</i> App. No. 6959/75, 3 Eur. Comm'n H.R. Dec. & Rep. 244 (1981).....	9, 25
<i>Demir v. Turkey</i> , 2008-V Eur. Ct. H.R. 395.....	12, 13
<i>E.B. v. France</i> , App. No. 43546/02 (2008), <a href="http://hudoc.echr.coe.int/eng?i001-84571">http://hudoc.echr.coe.int/eng?i001-84571</a> .	8
<i>Evans v. United Kingdom</i> , 2007-I Eur. Ct. H.R. 353.....	23
<i>Fretté v. France</i> , 2002-I Eur. Ct. H.R. 345.....	12
<i>Gaskin v. United Kingdom</i> , App. No. 10454/83, 12 Eur. H.R. Rep. 36 (1989).....	10-11
<i>Goodwin v. United Kingdom</i> , 2002-VI Eur. Ct. H.R. 1 .....	7, 12, 19
<i>Grimmark v. Sweden</i> , App. No. 43726/17 (2020), <a href="http://hudoc.echr.coe.int/eng?i=001-201915">http://hudoc.echr.coe.int/eng?i=001-201915</a> .....	9
<i>H v. Norway</i> , App. No. 17004/90, 73 Eur. Comm'n J.R. Dec & Rep. 155 (1992).....	23

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Hämäläinen v Finland</i> , 787 Eur. Ct. H.R. 37 (2014) .....	10
<i>Handyside v. United Kingdom</i> , 24 Eur. Ct. H.R. (ser. A) (1976) .....	7, 10, 11, 12
<i>Hassan v United Kingdom</i> , 2014-IV Eur. Ct. H.R. 936 (2014) .....	13
<i>İlhan v. Turkey</i> , 34 Eur. Ct. H.R. 36 (2002) .....	21
<i>K.B. v. Poland</i> , App. No. 1819/21 (2021), <a href="http://hudoc.echr.coe.int/eng?i=001-211176">http://hudoc.echr.coe.int/eng?i=001-211176</a> .....	20
<i>K.C. v. Poland</i> , App. No. 3639/21 (2021), <a href="http://hudoc.echr.coe.int/eng?i=001-211179">http://hudoc.echr.coe.int/eng?i=001-211179</a> .....	20
<i>Odièvre v. France</i> , 2003-III Eur. Ct. H.R. 51 .....	12, 25
<i>Open Door &amp; Dublin Well Woman v. Ireland</i> , 246 Eur. Ct. H.R. (ser. A) (1992) .....	11, 24
<i>Opuz v. Turkey</i> , 2009-III Eur. Ct. H.R. 107 .....	13
<i>Osman v. United Kingdom</i> , App. No. 87/1997/871/1083 (1998) .....	11
<i>P &amp; S v. Poland</i> , App. No. 57375/08 (2012) .....	9, 15, 21
<i>Parrillo v. Italy</i> , 2015-V Eur. Ct. H.R. 249 .....	12

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Paton v. United Kingdom</i> , App. No. 8416/78, 3 Eur. H.R. Rep. 408 (1981).....	22, 23
<i>Powell v. United Kingdom</i> , 2000-V Eur. Ct. H.R. 703.....	21
<i>R.R. v. Poland</i> , 2011-III Eur. Ct. H.R. 209.....	<i>passim</i>
<i>Reeve v. United Kingdom</i> , App. No. 2844/94 (1994).....	25
<i>Saadi v. Italy</i> , 49 Eur. Ct. H.R. 30 (2009).....	20
<i>S.A.S. v. France</i> , 2014 Eur. Ct. H.R. 695 .....	11
<i>Senturk v. Turkey</i> , 2013-II Eur. Ct. H.R. 363 .....	23
<i>Soering v. United Kingdom</i> , 161 Eur. Ct. H.R (ser. A) (1989).....	7, 25
<i>Steen v. Sweden</i> , App. No. 62309/17 (2020), <a href="http://hudoc.echr.coe.int/eng?i=001-201732">http://hudoc.echr.coe.int/eng?i=001- 201732</a> .....	9
<i>Tyrer v. United Kingdom</i> , 26 Eur. Ct. H.R. (ser. A) (1978).....	12
<i>Tysi�c v. Poland</i> , 2007-I Eur. Ct. H.R. 219.....	9
<i>V.C. v. Slovakia</i> , 2011-I Eur. Ct. H.R. 1888.....	21



## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Vo v. France</i> , 2004-VIII Eur. Ct. H.R. 67 .....	14, 22, 23, 25
<b>FOREIGN CASES</b>	
<i>In the matter of an application by the Northern Ireland Human Rights Com- mission for Judicial Review (Northern Ireland)</i> [2018] UKSC 27 .....	15, 19, 22
Poland Const. Trib. Decision, <i>Family Planning, Protection of the Fetus and Conditions for Termination of Pregnancy</i> , K 1/20, Judgment 4/A/2021 (Oct. 22, 2020) .....	20
Portugal Const. Ct., TC Acórdão no. 75/2010, Diário da República.º 60/2010, Série II de 2010-03-26 .....	17
Slovakia Const. Ct., Decision PL. ÚS 12/01 No. 1/2007 .....	17
<b>INTERNATIONAL AGREEMENTS, INSTRUMENTS AND RESOLUTIONS</b>	
COE Res. (95)37, <i>On Observer Status for the United States of America with the Council of Europe</i> (adopted Dec. 7, 1995)	3
European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 .....	<i>passim</i>
Article 2 .....	8, 22, 23

## TABLE OF AUTHORITIES—Continued

	Page(s)
Article 3.....	<i>passim</i>
Article 6.....	11
Article 8.....	<i>passim</i>
Article 8(2).....	8, 10, 11
Article 9.....	11
Article 10.....	11
Article 11.....	11
International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Mar. 23, 1976).....	18
UN Human Rights Committee, <i>General Comment No. 36: Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life</i> , UN Doc. CCPR/C/GC/36 (2018).....	18

## FOREIGN CONSTITUTIONS &amp; STATUTES

Cyprus Law amending Penal Code art. 169a (Medical Termination of Pregnancy) (2018).....	17
Iceland Termination of Pregnancy Act No. 43/2019.....	17
Ireland Const. of 1937 am. 36.....	17, 25
Ireland Health (Regulation of Termination of Pregnancy Act) 2018, 31 2018.....	17

## TABLE OF AUTHORITIES—Continued

	Page(s)
Poland Law on Family Planning, Protection of the Fetus, and Conditions for Termination of Pregnancy of 1993 (as amended in 1997).....	19
United Kingdom:	
Abortion Act 1967 §1(1)(a).....	5, 16
Gibraltar Crimes (Amendment) Act 2019 .....	17
Guernsey Abortion Amendment Law 2021 .....	17
Isle of Man Abortion Reform Act 2019.....	17
Northern Ireland Abortion Regulations 2020 .....	17
 OTHER AUTHORITIES	
Beverly Bains & Ruth Rubio Maria, THE GENDER OF CONSTITUTIONAL JURISPRU- DENCE (2005) .....	2
Başak Çalı, THE AUTHORITY OF INTERNA- TIONAL LAW: OBEDIENCE, RESPECT, AND REBUTTAL (2015) .....	1
Center for Reproductive Rights, <i>The World's Abortion Laws</i> , <a href="https://maps.reproductive&lt;br/&gt;rights.org/worldabortionlaws">https://maps.reproductive rights.org/worldabortionlaws</a> .....	5
COE Comm'r for H.R., ISSUE PAPER: WOMEN'S SEXUAL & REPRODUCTIVE RIGHTS IN EUROPE (2017).....	18, 22

## TABLE OF AUTHORITIES—Continued

	Page(s)
Kanstantsin Dzehtsiarou, EUROPEAN CONSENSUS AND THE LEGITIMACY OF THE EUROPEAN COURT OF HUMAN RIGHTS (2015).....	13
Kanstantsin Dzehtsiarou & Fiona de Londras, GREAT DEBATES ON THE EUROPEAN CONVENTION OF HUMAN RIGHTS (2018).....	2
Sandra Fredman, COMPARATIVE HUMAN RIGHTS LAW (2018).....	2
DJ Harris et al, HARRIS, O'BOYLE AND WARBRICK: LAW OF THE EUROPEAN Convention ON HUMAN RIGHTS (3d ed. 2014) .	11
Emily Jackson, REGULATING REPRODUCTION (2001).....	2
Rosamund Scott, <i>Reproductive Health: Morals, Margins and Rights</i> , 81(3) Mod. L. Rev. 422 (2018) .....	2
Sally Sheldon, <i>The Decriminalisation of Abortion: An Argument for Modernisation</i> , 36 Oxf. J. Legal Studs. 334 (2015)...	2
UK Nat'l Health Serv., <i>Abortion</i> , <a href="https://www.nhs.uk/conditions/abortion/">https://www.nhs.uk/conditions/abortion/</a> .....	16

## INTERESTS OF AMICI CURIAE<sup>1</sup>

*Amici curiae* are European law professors expert in the law of the European Convention on Human Rights (“ECHR”) and constitutional and human rights laws of the 47 Council of Europe Member States subject to the ECHR. Particularly in light of claims regarding ECHR law made by petitioner and by *amici* European Legal Scholars and the European Centre for Law and Justice, *amici* seek to provide the Court with a full and accurate account of ECHR and Council of Europe Member States’ laws relating to abortion. *Amici* support respondent in this case because respondent’s position, and current U.S. constitutional precedent, are much more consistent than petitioner’s position with the overwhelming and strengthening European consensus in favor of strong abortion rights. *Amici curiae* are:

*Başak Çalı*, Professor of International Law and Co-Director, Centre for Fundamental Rights, the Hertie School, Berlin, Germany; member of Faculty of Law, Koç University, Istanbul, Turkey; Permanent Visiting Professor, Centre for Excellence for International Courts, Copenhagen, Denmark. Publications include *THE AUTHORITY OF INTERNATIONAL LAW: OBEDIENCE, RESPECT AND REBUTTAL* (2015).

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<sup>1</sup> The parties have filed blanket consents to *amicus* briefs. Pursuant to Rule 37.6, *amici curiae* and their counsel authored this brief in whole; no party or party’s counsel authored this brief in whole or in part; and no person other than *amici* and their counsel contributed monetarily to preparing or submitting this brief.

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*Sally Sheldon*, Professor of Law, Kent Law School, University of Kent, UK; Fellow of the Academy of the Social Sciences (UK). Publications include *The Decriminalisation of Abortion: An Argument for Modernisation*, 36 Oxf. J. Legal Studs. 334 (2015).

**SUMMARY OF ARGUMENT**

While “the opinion of the world community” does not control U.S. constitutional outcomes, this Court has recognized that “[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.” *Roper v. Simmons*, 543 U.S. 551, 578 (2005). The United States shares a particular “heritage of freedom” with the 47-member Council of Europe (“COE”), in light of which the United States undertook permanent observer status at the COE in 1995.<sup>2</sup> Accordingly, and consistent with its general “respectful consideration” of the decisions of international courts, *see, e.g., Sanchez-Llamas v. Oregon*, 548 U.S. 331, 360 (2006), this Court has on several occasions considered, and ultimately harmonized U.S. constitutional law with, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (“ECHR”). *See, e.g., Roper*, 543 U.S. at 576 (holding juvenile death penalty unconstitutional); *Lawrence v. Texas*, 539 U.S. 558, 569 (1993) (holding criminalization of gay sex unconstitutional).

In that spirit, *amici* believe that a review of the law of the ECHR and the COE Member States provides “respected and significant confirmation,” *Roper*, 543 U.S. at 560, of the soundness of the approach to abortion taken by existing U.S. law under *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992). Conversely, adopting

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<sup>2</sup> COE Res. (95)37, *On Observer Status for the United States of America with the Council of Europe* (adopted Dec. 7, 1995).

petitioner's approach would place U.S. law at odds with the overwhelming consensus on abortion rights in Europe, while also shifting the United States in the opposite direction from European and most other democratic countries that respect the rule of law, which have increasingly favored broader recognition of abortion rights.

Already before this Court are two *amicus* briefs that suggest that ECHR law with respect to abortion is either favorable to petitioner or ambiguous in its implications for this case: the *Amicus* Brief of the European Centre for Law and Justice in Support of Petitioners (“ECLJ *Amicus*”) and the Brief of European Legal Scholars as *Amici Curiae* in Support of Neither Party (“ELS *Amicus*”). The present *amici* believe that those briefs do not present a balanced picture. They do not fully account for what is an overwhelming and growing consensus in favor of broad availability of abortion pre-viability across Europe at the level of national laws, and under European Court of Human Rights (“ECtHR”) doctrine, that evolving consensus has the effect of strengthening and broadening the existing protection of abortion rights at the ECHR level. The European consensus on abortion cannot be accurately discerned by reviewing ECtHR decisions divorced from their Member State law context, by ignoring the broad availability of abortion on grounds of the health, welfare and/or socioeconomic circumstances of the pregnant woman (as well as “on request”), or by quibbling about whether the ECtHR has recognized a “right to abortion” as opposed to a right to private life which encompasses freedom of choice regarding abortion. Moreover, the ECLJ *Amicus* is incorrect in suggesting that the ECtHR has recognized the fetus as having individual ECHR rights that Member States must



respect and that preclude the recognition of abortion rights.

As we elaborate below, the key points of ECHR/COE law regarding abortion rights are as follows. First, abortion is lawful and widely available through approximately the point of fetal viability (at least 20 weeks of pregnancy, generally more) throughout the vast majority of the COE. Attached as an appendix to this brief is a table summarizing COE laws regarding abortion as categorized by the World Health Organization. It reflects that abortion is available “on request” for at least 10 weeks (in most cases, longer) in 34 of the 47 Member States, but that understates its availability. Among the remaining 13 States, Belgium, Italy, Switzerland and the Netherlands permit abortion on grounds requiring only self-certification or certification by a doctor chosen by the pregnant woman, and are classified by other sources as “on request” States.<sup>3</sup> Similarly, while the United Kingdom is not a *de jure* “on request” State, abortion is available there for 24 weeks subject solely to confirmation by two doctors, selected by the pregnant woman, that continuation of pregnancy causes a greater risk to her health than termination of pregnancy, a conclusion that is easily and almost-universally reached. UK Abortion Act 1967 §1(1)(a). Thus, 39 of the 47 COE Member States make abortion broadly available for periods ranging from 10 weeks through viability. Abortion is permitted through at least 22 weeks of pregnancy in 37 States, and through 18-21 weeks in a further three, either on request, or on broad socioeconomic grounds, or based on a health of the

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<sup>3</sup> See, e.g., Center for Reproductive Rights, *The World's Abortion Laws*, <https://maps.reproductiverights.org/worldabortionlaws>.

pregnant woman criterion that does not entail a risk to her life (and for similar periods, in most cases, based on rape or incest). Of the remaining seven States, abortion is broadly permitted for 12 weeks in Bulgaria, Monaco and Portugal and for 10 weeks in Turkey. Only Andorra, Malta and San Marino—which collectively represent less than 0.1% of the COE’s 820 million population—prohibit abortion. *See generally* Appendix.

Second, given this broad recognition of abortion rights at the level of national law, the ECtHR has had little occasion to address the *recognition* of abortion rights. It has, however, clearly ruled that freedom respecting “the interruption of pregnancy” is an aspect of the “right to private life” guaranteed by Article 8 of the ECHR, *R.R. v. Poland*, 2011-III Eur. Ct. H.R. 209 at ¶¶180-81, and held certain applications of Ireland’s former abortion law (which has since been replaced by a much more liberal regime) in violation of the ECHR. *A, B & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185 at ¶268. More frequently, the ECtHR has addressed the *implementation* of abortion rights, repeatedly finding violations of Article 8 when States fail to meet their “positive obligation” to make rights they recognize in law readily and fairly available in practice. In addition, the ECtHR has held that in some circumstances, denial of access to abortion violates the Article 3 right to be free from torture or inhuman or degrading treatment.

Third, the precise parameters of the freedom of choice with respect to abortion guaranteed by Article 8 (as opposed to the broad protections provided by Member State laws) are somewhat unclear and evolving. As a general matter, the ECtHR recognizes that “inherent in the whole of the Convention is a

search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights." *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) at ¶89 (1989). That entails a "margin of appreciation," *i.e.*, some degree of State discretion in balancing a qualified right like the right to private life against legitimate and substantial public interests such as the protection of health and morals. *See, e.g., Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) at ¶49 (1976) (applying a limited "margin of appreciation" to laws restricting freedom of expression). The "margin of appreciation" was critical to the split decision in *A, B & C*, in which one applicant prevailed and two lost—*i.e.*, the old Irish abortion law was upheld in part and held in violation of Article 8 in part. Importantly, the "margin of appreciation" allowed by the ECtHR narrows as European and international consensus supporting recognition and application of the human right at issue strengthens. *See, e.g., Goodwin v. United Kingdom*, 2002-VI Eur. Ct. H.R. 1 at ¶¶85, 93. The overwhelming consensus favoring broad abortion rights in the COE and internationally has strengthened significantly since *A, B & C*—not least in the dramatic change in the law in Ireland itself—so the ECtHR will likely be less tolerant of burdens imposed on women seeking abortions in future decisions. Indeed, the ECtHR may soon clarify ECHR abortion law in three pending cases involving a new Polish law restriction on abortion based on fetal abnormality.

Finally, the ECtHR and other leading authorities interpreting the ECHR have squarely rejected the claim asserted by the ECLJ *Amicus* that ECHR law puts the fetus on an equal footing with the pregnant woman as a rights-holder or confers on the fetus a

“right to life” under Article 2. ECLJ *Amicus* at 7-8. Were that the law, the vast majority of European laws, which protect the right to abortion “on request” or based on interests of the pregnant woman far short of her own “right to life,” would violate the ECHR. But it is not.

## **ARGUMENT**

### **I. Legal regulation of abortion engages the right to private life under Article 8 of the European Convention on Human Rights**

Article 8 of the ECHR provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of life or morals, or for the protection of the rights and freedoms of others.

Article 8 protects a person’s right to respect for private and family life. “Private life” is a broad concept that encompasses personal autonomy, personal development, and physical and psychological integrity. *See, e.g., E.B. v. France*, App. No. 43546/02 at ¶43 (2008), <http://hudoc.echr.coe.int/eng?i=001-84571> (sexual orientation); *Bensaid v. United Kingdom*, 2001-I Eur. Ct. H.R. 303 at ¶47 (mental health). The ECtHR has recognized that “the decision of a pregnant woman to continue her pregnancy or not belongs to the sphere of

private life and autonomy,” so that “legislation regulating the interruption of pregnancy touches upon the sphere of private life.” *R.R. v. Poland*, 2011-III Eur. Ct. H.R. 209 at ¶¶180-81; *see also Brüggenmann v. Germany*, App. No. 6959/75, 3 Eur. Comm’n H.R. Dec. & Rep. 244 at ¶59 (1981). The right to physical integrity as part of the right to privacy has played a particularly prominent role in many abortion cases. *See, e.g., Tysic v. Poland*, 2007-I Eur. Ct. H.R. 219 at ¶107. The ECtHR thus recognizes the broad implications of abortion law for the right to private life under Article 8.

This is further reinforced by the ECtHR’s repeated holdings that Member States have “positive obligations” to ensure that, where it is lawful, abortion is accessible in practice. *See, e.g., A, B & C*, 2010-VI Eur. Ct. H.R. 185 at ¶¶244-68; *Tysic*, 2007-I Eur. Ct. H.R. 219 at ¶¶110-30; *R.R.*, 2011-III Eur. Ct. H.R. 209 at ¶¶184-211; *P & S v. Poland*, App. No. 57375/08 at ¶¶98-112 (2012). This reflects the general principle in ECHR law that “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.” *Artico v. Italy*, 37 Eur. Ct. H.R. (ser. A) at ¶33 (1980); *accord Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) at ¶24 (1979); *Tysic*, 2007-I Eur. Ct. H.R. 219 at ¶113. The ECtHR recently elaborated on these positive obligations, ruling that “Sweden provides nationwide abortion services and therefore has a positive obligation to organise its health system in a way as to ensure that the effective exercise of freedom of conscience of health professionals in the professional context does not prevent the provision of such services.” *Grimmark v. Sweden*, App. No. 43726/17 at ¶26 (2020), <http://hudoc.echr.coe.int/eng?i=001-201915>; *Steen v. Sweden*, App. No. 62309/17 at ¶21 (2020), <http://hudoc.echr.coe.int/eng?i=001-201732>.

Accordingly, it is immaterial whether the ECtHR has adopted the phrase “right to abortion.” *See* ECLJ *Amicus* at 29; ELS *Amicus* at 19. Just as this Court has recognized a constitutional right to privacy and determined that various restrictions on freedom of choice with respect to abortion violate that right, the ECtHR has recognized that various restrictions on freedom of choice with respect to abortion violate the “right to private life” protected by Article 8.

**II. COE Member States’ “margin of appreciation” to regulate abortion in national law is limited and subject to narrowing as European and international consensus in favor of broad abortion access strengthens.**

Article 8 is a qualified right. As national law or policy restricting abortion *prima facie* interferes with Article 8 rights, it will be considered compatible with the Convention only where it can be justified under Article 8(2). Accordingly, limitations to the right to private life including abortion laws are permissible only if they are “prescribed by law,” and “necessary in a democratic society” in pursuit of a legitimate aim recognized in Article 8(2) (in this case “the protection of . . . morals”).

When determining whether an act or omission of national authorities is “necessary in a democratic society” the ECtHR asks whether there is a pressing social need for it, whether it corresponds to that need, whether it is a proportionate response to that need, and whether the reasons presented by the authorities are relevant and sufficient. *Handyside*, 24 Eur. Ct. H.R. (ser. A) at ¶49. In these assessments, and in line with its general jurisprudence on Article 8, *see, e.g., Hämäläinen v Finland*, 787 Eur. Ct. H.R. 37 (2014); *Gaskin v. United Kingdom*, App. No. 10454/83, 12 Eur.

H.R. Rep. 36 (1989), the ECtHR has considered whether a “fair balance” has been struck between the rights of the pregnant woman and the “protection of morals” as per Article 8(2). *See, e.g., A, B & C*, 2010-VI Eur. Ct. H.R. 185 at ¶230.

The ECtHR’s jurisprudence on the right to private life under Article 8 is informed by its distinctive doctrine of “margin of appreciation,” which has also been applied to other qualified rights, including the Article 9 freedom of thought, conscience and religion in *S.A.S. v. France*, 2014 Eur. Ct. H.R. 695; the Article 10 freedom of expression in *Handyside*; the Article 11 freedom of assembly and association in *Barraco v. France*, App. No. 31684/05 (2009), <http://hudoc.echr.coe.int/eng?i=001-91570>; and the Article 6 right to a fair trial in *Osman v. United Kingdom*, App. No. 87/1997/871/1083 (1998). Under this doctrine, “the state is allowed a certain measure of discretion, subject to European supervision, when it takes legislative, administrative and judicial action in the area of a Convention right.” DJ Harris et al, HARRIS, O’BOYLE AND WARBRICK: LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 14 (3d ed. 2014). The Convention “does not give the Contracting States an unlimited power of appreciation” and it is for the ECtHR to determine “whether a ‘restriction’ or ‘penalty’ is reconcilable with [the Convention right].” *Handyside*, 24 Eur. Ct. H.R. at ¶49; *accord Open Door & Dublin Well Woman v. Ireland*, 246 Eur. Ct. H.R. (ser. A) at ¶68 (1992) (holding that Ireland’s former ban on counseling women in Ireland regarding the availability of abortions in the UK violated the Article 10 right of freedom of expression).

COE Member States remain subject to the ECtHR’s supervision of their abortion laws and must establish

that they are compatible with the Convention. The breadth of the margin of appreciation changes over time, and is determined not only by the nature of the issue being considered, but also by the existence and extent of European or international consensus.

If an issue is “a particularly important facet of an individual’s existence or identity...the margin allowed to the State will usually be restricted.” *Parrillo v. Italy*, 2015-V Eur. Ct. H.R. 249 at ¶169. The margin of appreciation will ordinarily be wider where there are sensitive moral issues in question, *see, e.g., Fretté v. France*, 2002-I Eur. Ct. H.R. 345 at ¶41, there is a need to balance competing private and public interests, *see, e.g., Odièvre v. France*, 2003-III Eur. Ct. H.R. 51 at ¶¶44-49, or there is a lack of consensus among the Member States, *see, e.g., Parrillo, 2015-V Eur. Ct. H.R. 249 at ¶169.*

To date, the ECtHR has afforded Member States a considerable margin of appreciation in determining whether their national laws reflect such a fair balance. However, reflecting its supervisory role in respect of the margin of appreciation, *see Handyside*, 24 Eur. Ct. H.R. (ser. A) at ¶49, the existence, extent or strength of European or international consensus is continuously reassessed by the ECtHR as applications before it raise questions of the margin of appreciation. This reflects the Convention’s nature as a “living instrument which must be interpreted in light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights.” *Demir v. Turkey*, 2008-V Eur. Ct. H.R. 395 at ¶¶142-43; *see also Tyrer v. United Kingdom*, 26 Eur. Ct. H.R. (ser. A) at ¶31 (1978); *Goodwin*, 2002-VI Eur. Ct. H.R. 1 at ¶¶85, 93;



*Bayatyan v. Armenia*, 2011-IV Eur. Ct. H.R.3 at App. No. 23459/03 ¶102. Reflecting this, in respect of matters considered to raise sensitive moral or ethical issues, the ECtHR has narrowed the margin of appreciation afforded to Member States as a European and/or international consensus emerges, expands, or strengthens and in light of social realities (for example, in respect of gender recognition in *Goodwin*, 2002-VI Eur. Ct. H.R. 1). *See generally* Kanstantsin Dzehtsiarou, EUROPEAN CONSENSUS AND THE LEGITIMACY OF THE EUROPEAN COURT OF HUMAN RIGHTS (2015). As the decision whether to continue a pregnancy relates to a “particularly important facet of an individual’s existence or identity,” *Parrillo*, 2015-V Eur. Ct. H.R. 249 at ¶169, the margin of appreciation will narrow as consensus about the “fair balance” solidifies.

Developments in international human rights law also influence the margin of appreciation enjoyed by Member States. The ECHR does not exist in a vacuum and must be interpreted harmoniously with other rules of international law, including international human rights law and the interpretations and decisions of international legal bodies on similar legal questions. *See, e.g., Hassan v United Kingdom*, 2014-VI Eur. Ct. H.R. 936 at ¶77 (2014); *Demir*, 2008-V Eur. Ct. H.R. 395 at ¶¶65, 67; *Opuz v. Turkey*, 2009-III Eur. Ct. H.R. 107 at ¶185. The ECtHR has confirmed that, in interpreting the ECHR, it “can and must take into account elements of international law other than the Convention [and] the interpretation of such elements by competent organs.” *Demir*, 2008-V Eur. Ct. H.R. 395 at ¶85. Accordingly, the ongoing trend in favor of broader recognition of abortion rights in international human rights law will tend to lead the ECtHR to narrow the margin of appreciation allowed to Member States that restrict those rights.

### **III. The European and international consensus has further stabilized in favor of broad access to abortion.**

In the ECtHR's last significant decision on the compatibility of a restrictive abortion law with the Convention, *A, B & C*, it recognized that there was "a consensus amongst a substantial majority of the Contracting States of the Council of Europe towards allowing abortion on broader grounds than accorded under Irish law." *A, B & C*, 2010-VI Eur. Ct. H.R. 185 at ¶235. However, it held that this did not "decisively narrow[] the broad margin of appreciation of the State," *id.* at ¶236, because of its findings that there was no European consensus on "the scientific and legal definition of the beginning of life," *id.* at ¶237 (*citing Vo v. France*, 2004-VIII Eur. Ct. H.R. at ¶¶75-80), and that the Irish Constitution reflected the "profound moral views" of the Irish people, *id.* at ¶241. On that basis, in a case involving three Irish applicants who had succeeded in obtaining abortions in the United Kingdom, a majority of the ECtHR upheld as within the margin of appreciation the compromise then embodied in Irish law, under which abortions were available in Ireland only based on risks to the life of the pregnant woman but Ireland did not restrict information about or the freedom to travel to the United Kingdom for abortions. *Id.* at ¶¶216-42. However, the Court unanimously held that the rights of one of the applicants, who was undergoing treatment for cancer, had been violated by Ireland's lack of effective procedures for vindicating its exception for cases involving risks to the life of the pregnant woman. *See id.* at ¶¶243-68. Six judges dissented, and two members of the majority (Judges López Guerra and Casadevall) concurred only in the result, opining that Article 8 would require the

allowance of abortion based on the health and well-being of the pregnant woman (short of risks to her life) in an appropriate case.

Importantly, even in 2010 the ECtHR recognized a strong consensus in Member States' laws to protect a pregnant woman's privacy interests (*i.e.*, rights protected by Article 8) by making abortion broadly available on the basis of her health and well-being. *Id.* at ¶235. The six dissenting judges noted that this was "one of the rare times" that the Court had ignored a European consensus and described it as "a real and dangerous new departure" for the ECtHR. *A, B & C*, 2010-VI Eur. Ct. H.R. 185, Joint Partly Dissenting Opinion of Judges Rozakis, Tulkens, Fura, Hirvelä, Malinverni and Poalelungi at ¶¶6, 9. Similarly, in the United Kingdom Supreme Court Lady Hale described the ECtHR majority as having taken "an unusual step," *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* [2018] UKSC 27 at [22], and opined that "[a]part from its restatement of the requirement to examine all material circumstances, the [ECtHR] expressed no general principle that might be considered applicable to cases where the facts were significantly different." *Id.* at [249].

Of particular importance, then, is the fact that in *A, B & C*, the ECtHR acknowledged that there was already a European consensus in favor of permitting abortion on broad health and wellbeing grounds. Two years later, the ECtHR once again recognized that "there is indeed a consensus among a substantial majority of the Contracting States of the Council of Europe towards allowing abortion." *P & S*, App. No. 57375/08 at ¶97. In the nine years since, the European

consensus towards allowing abortion has strengthened further.

As summarized in the Appendix, abortion is legal and widely available in almost all of the 47 Member States of the COE. Full appreciation of the availability of abortion in the COE cannot be gleaned by simply counting how many States permit abortion “on request” or for how many weeks they do so. *C.f.* Pet. Br. at 31. Based on that crude metric, the United Kingdom, for example, could be mischaracterized as a restrictive State. But in fact abortion is available (and government-funded) through 24 weeks with no meaningful impediment in the United Kingdom: a woman need only contact two doctors of her choice and have them certify (without both having to see her in person) that “the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family.” UK Abortion Act §1(1)(a). There is no mystery as to what that means: the British Government, on a National Health Service website, states: In other words, as a British Government website states: “The decision to have an abortion is yours alone.” UK Nat’l Health Serv, *Abortion*, <https://www.nhs.uk/conditions/abortion/>. Likewise, abortion is broadly available, and in many cases government-funded, through viability in most other COE Member States, whether “on request” or based on broad health or well-being of the pregnant woman or socioeconomic criteria. *See generally* Appendix; Brief of Int’l & Comparative Legal Scholars as *Amici Curiae* Supporting Respondents. Approximately 39 of the 47 COE States, including all the major western European countries except for Portugal, make abortion available through viability (or at least through 20 weeks of

pregnancy) on much broader grounds than Mississippi's medical emergency or severe fetal abnormality standard.

This consensus continues to strengthen, with significant recent developments including the removal, following referendum, of the constitutional prohibition on legalising abortion in Ireland, Ireland Const. of 1937 am. 36, and the introduction of legislation to legalise abortion on broadening grounds in Ireland (Health (Regulation of Termination of Pregnancy) Act No. 31/2018), Iceland (Termination of Pregnancy Act No. 43/2019), Cyprus (Law (Medical Termination of Pregnancy) amending Penal Code art. 169A (2018)) and a number of territories in respect of which United Kingdom has ECHR obligations (Northern Ireland Abortion Regulations 2020; Gibraltar Crimes (Amendment) Act 2019; Isle of Man Abortion Reform Act 2019; Guernsey Abortion Amendment Law 2021). Furthermore, even in Member States with long-standing constitutional recognition of the fetus, abortion—including abortion on request—has been introduced, and there has been judicial recognition that other, more proportionate modes of pursuing the State interest in fetal protection are possible, such as taking measures to prevent unwanted pregnancies. *See* Portugal Const. Ct., TC Acórdão no. 75/2010, Diário da República n.º 60/2010, Série II de 2010-03-26; Slovakia Const. Ct., PL. ÚS 12/01 No. 1/2007.

This growing consensus was recognized and encouraged in 2017, before Ireland's landmark shift in favor of broader availability of abortion, in a report by the COE Commissioner for Human Rights, who noted that 40 out of 47 COE States (not then including Ireland) permitted abortion for 10-24 weeks either on request, for reasons of distress, or on broad socioeconomic

grounds, and most of them permitted abortion for longer periods based at least on the pregnant woman's physical or mental health. COE Comm'r for H.R., ISSUE PAPER: WOMEN'S SEXUAL & REPRODUCTIVE RIGHTS IN EUROPE 33 (2017). The Commissioner called on the remaining States to conform to "international human rights standards and regional best practices by ensuring that abortion is legal on a woman's request in early pregnancy, and thereafter throughout pregnancy to protect women's health and lives and ensure freedom from ill-treatment." *Id.* at 11. These developments indicate an ever-stronger European consensus recognizing that access to abortion is essential to the enjoyment and effective protection of Convention rights, and are likely to have a significant influence on the interpretation of the Convention and the extent of States' margin of appreciation vis-à-vis regulation of abortion in future cases.

Since *A, B & C*, there have also been significant developments in international law and jurisprudence to which the ECtHR would attend in any future case. These developments, which are more fully addressed in section II of the Brief of United Nations Mandate Holders as *Amici Curiae* in Support of Respondents, indicate a strengthened international consensus towards an international legal obligation to protect access to abortion under, among other instruments, the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (Mar. 23, 1976), which the United States ratified in 1992. *See, e.g.*, UN Human Rights Committee, *General Comment No. 36: Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life* ¶8, UN Doc. CCPR/C/GC/36 (2018) ("States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at

risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly.”).

Thus, since *A, B & C*, there has been a further strengthening of the European and international consensus that denial of access to abortion results in violations of individual rights. This solidified European and international consensus reflects a growing recognition that onerous limitations on access to abortion are incompatible with human rights law. In keeping with the significant narrowing of States’ margin of appreciation in other situations considered to raise complex questions of morality or ethics, *see, e.g., Goodwin*, 2002-VI Eur. Ct. H.R. 1 at ¶¶85, 93, it is likely that the ECtHR will confirm the narrowness of the margin in the next appropriate case, as suggested by the U.K. Supreme Court’s decision in *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* [2018] UKSC 27. That opportunity may arise in a trio of pending challenges to a recent decision of the Polish Constitutional Tribunal that part of the Law on Family Planning, Protection of the Fetus, and Conditions for Termination of Pregnancy of 1993 (as amended in 1997), is incompatible with the Polish Constitution, as a result of which abortion is no longer legally available in cases where a fetal anomaly is

diagnosed.<sup>4</sup> *K.B. v. Poland*, App. No. 1819/21 (2021), <http://hudoc.echr.coe.int/eng?i=001-211176>, *K.C. v. Poland*, App. No. 3639/21 (2021), <http://hudoc.echr.coe.int/eng?i=001-211179>; *AL-B v. Poland*, App. No. 3801/21 (2021), <http://hudoc.echr.coe.int/eng?i=001-21117>. The applicants in those cases argue that the new Polish judicial decision, which is contrary to more liberal legislation and prior practice in Poland, violates ECHR Articles 3 and 8.

**IV. In certain circumstances, denial of abortion or health care necessary to access abortion can also violate ECHR Article 3**

ECHR Article 3 provides:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Whereas Article 8—the right to private life—is implicated whenever freedom of choice regarding abortion is restricted, it may be a rare case in which denial of abortion rights amounts to inhuman or degrading treatment. Nonetheless, the ECtHR has found on several occasions that Article 3 was implicated and even violated by abortion restrictions. Article 3 has independent significance in such cases inasmuch as Article 3 rights are absolute, and not subject to any margin of appreciation. *See, e.g., Saadi v. Italy*, 49 Eur. Ct. H.R. 30 (2009).

It is well established in ECHR jurisprudence that the denial of health care or medical treatment to individuals can, if it causes sufficient suffering, violate

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<sup>4</sup> Poland Const. Trib. Decision, *Family Planning, Protection of the Fetus and Conditions for Termination of Pregnancy*, K 1/20, Judgment 4/A/2021 (Oct. 22, 2020).



Article 3. See, e.g., *Powell v. United Kingdom*, 2000-V Eur. Ct. H.R. 703; *V.C. v. Slovakia*, 2011-I Eur. Ct. H.R. 1888; *İlhan v. Turkey*, 34 Eur. Ct. H.R. 36 (2002). Accordingly, in certain circumstances, the ECtHR has found that denials of abortion violated Article 3. *R.R. v. Poland* concerned the failure to guarantee the applicant’s access to prenatal diagnostic testing and information, which would have allowed her to decide whether to seek a legal abortion under the Polish law as it then was. R.R. did not have sufficient resources to access private testing, and the ECtHR recognized the distress she experienced following the preliminary diagnosis and the “painful uncertainty,” “acute anguish,” and “humiliation” she experienced in seeking and being denied access to healthcare services antecedent to accessing abortion care. *R.R.*, 2011-III Eur. Ct. H.R. at ¶¶159-60. The ECtHR therefore concluded that Poland had violated Article 3, as well as Article 8. *Id.* at ¶¶148-62. *P & S v. Poland* concerned an adolescent girl, pregnant following rape, who encountered multiple barriers in seeking to access legal abortion. These included doctors’ refusal to provide abortion or to refer her for abortion from a willing provider, the provision of inaccurate information regarding the legal requirements for access to abortion, and disclosure of private medical information to the press. Recognizing the particular vulnerability of adolescents seeking abortion, the ECtHR found a violation of, *inter alia*, Article 3. *P & S*, App. No. 57375/08 at ¶¶157-69.

#### **V. The fetus is not recognized as a rights bearer under the ECHR**

One *amicus* brief asserts that under ECHR law, “the right of life applies to the unborn child.” ECLJ *Amicus* at 10. That is not accurate. The ECtHR has

never recognized the fetus as having rights under the Convention that Member States are bound to honor. Indeed, it has repeatedly declined to do so. After surveying ECtHR precedent, Lady Hale in the UK Supreme Court recently concluded “the unborn are not the holders of rights under the Convention.” *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* [2018] UKSC 27 at [21]. The COE Commissioner for Human Rights has reached the same conclusion. COE Comm’r for H.R., ISSUE PAPER: WOMEN’S SEXUAL & REPRODUCTIVE RIGHTS IN EUROPE 51-52.<sup>5</sup>

**A. The ECtHR has never recognized the fetus as a person for the purposes of ECHR Article 2**

Although invited to do so on several occasions (including in *A, B & C*), the ECtHR, and previously the European Commission of Human Rights, has consistently declined to recognize the fetus as a person for purposes of Article 2 (right to life). In *Paton v United Kingdom*, for example, the Commission noted that there were no indications that the ECHR included the fetus, and that, even at that time, there was a clear and consistent tendency towards further liberalization of national abortion law within the Member States that was not consistent with an approach that might recognize the fetus as a person for the purposes of the ECHR. App. No. 8416/78, 3 Eur. H.R. Rep. 408 at ¶¶7, 10, 19 (1981). In *Vo v. France*, the

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<sup>5</sup> The non-recognition of the fetus as a rights holder under the ECHR is consistent with international human rights law more generally. *See generally* Brief of United Nations Mandate Holders as *Amici Curiae* Supporting Respondents at 14-15.

ECtHR expressly observed that “the unborn child is not regarded as a ‘person’ directly protected by Article 2 of the Convention.” 2004-VIII Eur. Ct. H.R. 67 at ¶80. And in *Evans v. United Kingdom*, the ECtHR reiterated that an embryo did not have a right to life within the meaning of Article 2. 2007-I Eur. Ct. H.R. 353 at ¶¶54-56. See also *Senturk v. Turkey*, 2013-II Eur. Ct. H.R. 363 at ¶109 (declining to recognize fetal rights under Article 2); *Boso v. Italy*, 2002-VII Eur. Ct. H.R. 451 (same).

### **B. The ECtHR has never applied other Convention rights to the fetus**

The ECtHR has repeatedly rejected pleadings seeking the application of other ECHR rights to the fetus. In *H v. Norway*, App. No. 17004/90, 73 Eur. Comm’n J.R. Dec. & Rep. 155 (1992), an admissibility decision of the Commission, the applicant claimed that abortion involved violations of alleged fetal rights under Articles 3 and 8. The Commission found these complaints to be manifestly ill-founded. In *Boso*, 2002-VII Eur. Ct. H.R. 451, the ECtHR similarly declined to apply Article 3 to the fetus.

### **C. The ECtHR has never found a national law permitting abortion to be incompatible with the Convention**

Article 2 protects the right to life and outlines exhaustively the circumstances in which deprivation of life can be justified. If it applied to the fetus it would necessitate strict limits on access to abortion. See, e.g., *Paton*, App. No. 8416/78. However, the ECtHR has never struck down a law allowing for abortion on such a basis. Nor has the ECtHR ever held that the Convention requires any limitations on

access to abortion based on the rights or interests of the fetus.

To the contrary, the ECHR allows States to permit abortion at any stage and for any reason. Indeed, across the COE national law commonly provides for abortion on request or based on broad social, economic or health criteria focused on the interests of the pregnant woman. *See generally* Appendix.

**D. Compatibility of national abortion law with the ECHR is not determined by reference to “fetal rights”**

Contrary to the claim of the ECLJ *Amicus* (at 16-19), it follows from the above that, in determining questions of the compatibility of national abortion law with the ECHR, the question before the ECtHR is not whether a “fair balance” has been drawn between the rights of pregnant women and purported “fetal rights,” but between pregnant women’s rights and legitimate State interests such as the “protection of morals.” For example, in *A, B & C*, the ECtHR concluded that Ireland enjoyed a margin of appreciation “in determining the question whether a fair balance was struck between *the protection of that public interest*, notably the protection accorded *under Irish law* to the right to life of the unborn, and the conflicting rights of the . . . applicants to respect for their private lives under Article 8 of the Convention.” 2010-VI Eur. Ct. H.R. at ¶233 (emphasis added); *accord Open Door*, 246 Eur. Ct. H.R. (ser. A) at ¶63.

This points to the fact that, when considering the compatibility of abortion law with the ECHR, the ECtHR applies the general principle that “inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest

of the community and the requirements of the protection of the individual's fundamental rights." *Soering*, 161 Eur. Ct. H.R. (ser. A) at ¶89. The ECtHR has thus held that, while states enjoy a margin of appreciation to determine when life begins as a matter of domestic law, *see, e.g., Vo*, 2004-VIII Eur. Ct. H.R. at ¶82, the compatibility of abortion law with the right to private life under Article 8 of the ECHR will be determined by the question of whether a "fair balance" has been struck between the pregnant woman's fundamental rights and the general *public* interest in the protection of morals, as understood at the time of the application. *See, e.g., Reeve v. United Kingdom*, App. No. 2844/94 (1994); *Odièvre*, 2003-III Eur. Ct. H.R. 51.<sup>6</sup> In *A, B & C*, for example, the ECtHR derived the "moral position" of the Irish people from the then-applicable constitutional protection of fetal life. 2010-VI Eur. Ct. H.R. 185 at ¶183. This was repealed by a majority vote of 66.4% in a referendum in May 2018, Ireland Const. of 1937 am. 36, so a different analysis would apply today, reflecting Ireland's dramatic shift in public opinion and law during the past decade in favor of abortion rights.

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<sup>6</sup> Notwithstanding claims made in the ECLJ *Amicus* (at 7, 16), this same analysis was applied in *Brüggemann*, App. No. 6959/75, which upheld a German law that required a pregnant woman to receive medical and social counselling before an abortion after the twelfth week of pregnancy. 3 Eur. Comm'n H.R. Dec. & Rep. 244 at ¶¶62-63. In doing so, the Commission weighed the State's interest in protecting the fetus but expressly declined to hold that any fetal right to life under Article 2 was implicated. *See id.* at ¶60.

## CONCLUSION

Across almost all of the Council of Europe, abortion is available, at least through the point of fetal viability, either on request or subject to lenient health, welfare or socioeconomic criteria applicable to the pregnant woman that typically either she or her chosen medical professionals can easily certify. Both legal restrictions on abortion and failures to make abortion practically available in accordance with the law implicate the ECHR Article 8 right to private life (and in some cases the Article 3 right to be free of torture and inhuman and degrading treatment). While the precise parameters of the Article 8 right are subject to ongoing evolution, the ECtHR's emphasis on European consensus to determine the "margin of appreciation" permitted to States to impinge upon the private right to life strongly suggests that a restrictive law like Mississippi's would not pass muster under the ECHR and that the ECtHR would not be significantly, if at all, more tolerant of abortion restrictions than this Court's current precedents. Further, ECHR law clearly neither compels States to recognize the fetus as a person nor recognizes the fetus as a person with any rights under the ECHR.

A ruling for petitioner in this case would take the United States further from the common "heritage of freedom" it shares with Europe, as represented by ECHR and COE Member State laws pertaining to access to abortion.

Respectfully submitted,

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## **APPENDIX**



**Summary of national abortion laws<sup>1</sup> in Member States of the Council of Europe.<sup>2</sup>**

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Albania <sup>3</sup>	✓ (12 weeks)	✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks)	✓ (no time limit specified)	✓ (22 weeks)	
Andorra <sup>4</sup>							
Armenia <sup>5</sup>	✓ (12 weeks)	✓ (22 weeks)					Medical indication (22 weeks)
Austria <sup>6</sup>	✓ (3 months)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)		Under 14 when became pregnant (no time limit)
Azerbaijan <sup>7</sup>	✓ (12 weeks)						Medical reasons (no time limit) Social reasons (22 weeks)
Belgium <sup>8</sup>			✓ (no time limit specified)		✓ (no time limit specified)		Pregnancy places woman in situation of distress (12 weeks)
Bosnia and Herzegovina (Republika Srpska <sup>9</sup> )	✓ (10 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	Psychosocial indications (time limit not specified) Criminal offence (no time limit)
Bulgaria <sup>10</sup>	✓ (12 weeks)			✓ (20 weeks)	✓ (no time limit specified)	✓ (no time limit specified) (incest)	Pregnancy results from act of violence (no time limit)

<sup>1</sup> *Global Abortion Policies Database*, World Health Organization, [www.abortion-policies.srhr.org](http://www.abortion-policies.srhr.org), (last visited Sept. 16, 2021).

<sup>2</sup> *47 Member States*, Council of Europe, <https://www.coe.int/en/web/portal/47-members-states>, (last visited Sept. 16, 2021).

<sup>3</sup> Për Ndërprerjen E Shtatëzaniisë [On The Interruption of Pregnancy] Law No. 8045, 26 Off. J. of the Rep. of Albania 1995, 1144–48 (1995).

<sup>4</sup> Nouveau Code Pénal [PENAL CODE] art. 107, 108, 109; La Constitució del Principat d'Andorra, art. 8.

<sup>5</sup> ՄԱՐԴՈՒՄ ՎԵՐԱՐՏԱԴՐՈՂԱԿԱՆ ԱՌՈՂՋՈՒԹՅԱՆ ԵՎ ՎԵՐԱՐՏԱԴՐՈՂԱԿԱՆ ԻՐԱՎՈՒՆԷՆԵՐԻ ՄԱՍԻՆ [On Reproductive Health and Reproductive Rights], No. 474 (2002), amended by No. HO-134-N (June 29, 2016).

<sup>6</sup> Bundesgesetzblatt [BGBL] No. 60/1974 § 96, 97, 98, [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1974\\_60\\_0/1974\\_60\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1974_60_0/1974_60_0.pdf).

<sup>7</sup> Law on the Protection of Public Health, art. 30 (1999).

<sup>8</sup> Loi relative à l'interruption volontaire de grossesse, abrogeant les articles 350 et 351 du Code pénal et modifiant les articles 352 et 383 du même Code et modifiant Diverses dispositions législatives [Voluntary Termination of Pregnancy], B.S., Oct. 15, 2018, art. 1.

<sup>9</sup> Закон О Условима И Поступку За Прекид Трудноће [Law on Conditions and Procedure for Termination of Pregnancy] (No. 34/2008).

<sup>10</sup> НАРЕДБА № 2 ЗА УСЛОВИЯТА И РЕДА ЗА ИЗКУСТВЕНО ПРЕКЪСВАНЕ НА БРЕМЕННОСТ, [On the Conditions and Procedures for the Artificial Termination of Pregnancy], Feb. 9, 1990 (Gazette No. 12), amended by Oct. 31, 2000 (Gazette No. 89).

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Croatia <sup>11</sup>	✓ (10 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	
Cyprus <sup>12</sup>	✓ (12 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (19 weeks)	Sexual abuse of an adult, a minor, or a woman with a mental illness or disability (19 weeks)
Czech Republic <sup>13</sup>	✓ (12 weeks)		✓ (24 weeks)	✓ (24 weeks)	✓ (24 weeks)	✓ (24 weeks) (rape)	
Denmark <sup>14</sup>	✓ (12 weeks)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	Intellectual or cognitive impairment of pregnant woman (no time limit specified) Young age or immaturity resulting in inability to care properly for a child (no time limit specified)
Estonia <sup>15</sup>	✓ (12 weeks)		✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks)		Intellectual or cognitive impairment of pregnant woman (22 weeks) Girl under 15 years (22 weeks) Woman over 45 years (22 weeks)
Finland <sup>16</sup>		✓ (12 weeks)	✓ (20 weeks)	✓ (20 weeks)		✓ (12 weeks)	Girl under 17 years (20 weeks) Woman over 40 years (12 weeks) Woman already has four children (12 weeks) One or more parents unable to care for child due to disease or mental ill-health (12 weeks)

<sup>11</sup> Zakon o zdravstvenim mjerama za ostvarivanje prava na besplatnu odluku o rođenju djece [Law on health measures for exercising the right to a free decision on the birth of children], 1252-1978, 18 Narodne Novine 423–26 (1978).

<sup>12</sup> Ιατρικός τερματισμός της εγκυμοσύνης [Medical termination of pregnancy], ΚΕΦ.154 [PENAL CODE] art. 169A.

<sup>13</sup> o umelom prerušení tehotenstva [on artificial termination of pregnancy] (Act No. 73/1986) amended by (Act No. 419/1991).

<sup>14</sup> Bekendtgørelse af lov om svangerskabsafbrydelse [Law on abortion] Act No. 350, (1973) amended by LBK No. 95 (2008).

<sup>15</sup> Raseduse katkestamise ja steriliseerimise seadus [Termination of Pregnancy and Sterilization Act] RT I 1998, 107, 1766 amended by Raseduse katkestamise ja steriliseerimise seaduse muutmise seadus [Abortion and Sterilization Act Amendment Act], RT I, 20.02.2015, 4 (2015).

<sup>16</sup> Laki raskauden keskeyttämisestä [termination of abortion], 1970 (Law No. 239/1970) amended by 1978 (Law No. 564/1978); 1985 (Law No. 572/1985); 2001 (Law No. 328/2001); 2009 (Law No. 374/2009); 2019 (Law No. 493/2019).

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
France <sup>17</sup>	✓ (12 weeks)		✓ (no time limit specified)		✓ (no time limit specified)		
Georgia <sup>18</sup>	✓ (12 weeks)			✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks) (rape)	Girl under 15 years Woman over 49 years Specified medical and unspecified social indications (12-22 weeks) Intellectual or cognitive disability of pregnant woman (12 weeks)
Germany <sup>19</sup>	✓ (12 weeks)		✓ (no time limit specified)	✓ (no time limit specified)		✓ (12 weeks) (rape)	Pregnant woman was the victim of an illegal act or there are pressing reasons to believe pregnancy caused by such an act (12 weeks)
Greece <sup>20</sup>	✓ (12 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (24 weeks)	✓ (19 weeks)	Pregnancy results from sex with a minor female, or woman incapable of resisting (19 weeks)
Hungary <sup>21</sup>		✓ (12 weeks)	✓ (12 or 18 weeks depending on circumstances)		✓ (12/18/20/24 weeks/no limit depending on diagnosis)	✓ (12 or 18 weeks depending on circumstances)	The pregnant woman is in severe crisis (12 weeks)
Iceland <sup>22</sup>	✓ (22 weeks)			✓ (no time limit specified)	✓ (no time limit specified)		

<sup>17</sup> Code de la Santé Publique [PUBLIC HEALTH CODE], art. L2211–13; art. R2212–14-1.

<sup>18</sup> Law on Healthcare, Chapter XXVIII, Family Planning [CIVIL CODE] art.139, 140.

<sup>19</sup> Strafgesetzbuch [StGB] [PENAL CODE] §§ 218, 218a, 218b, 218c, [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

<sup>20</sup> Nomos (1978:821) Law No. 821 14 October 1978; Nomos (1986:1609).

<sup>21</sup> 1992. évi LXXIX. törvény a magzati élet védelméről Magyarország Alaptörvénye. II. cikk (Act LXXIX of 1992 on the protection of the of fetal life, The Fundamental Law of Hungary, Article II).

<sup>22</sup> Termination of Pregnancy Act, 2019 (No. 43/2019).

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Ireland <sup>23</sup>	✓ (12 weeks)		✓ (fetal viability)	✓ (fetal viability)	✓ (no time limit specified; fatal impairment only)		
Italy <sup>24</sup>		✓ (90 days)	✓ (fetal viability)	✓ (no time limit specified)	✓ (90 days)		Family circumstances (90 days) Circumstances in which conception occurred (90 days)
Latvia <sup>25</sup>	✓ (12 weeks)					✓ (12 weeks) (rape)	Illness during pregnancy and medical complications (24 weeks)
Liechtenstein <sup>26</sup>			✓ (no time limit specified)	✓ (no time limit specified)		✓ (12 weeks) (no time limit specified)	Girl under age at the time of conception (no time limit specified) Pregnancy resulted from sexual assault (no time limit specified) Pregnancy resulted from sexual abuse of a defenceless or mentally impaired person (no time limit specified)
Lithuania <sup>27</sup>	✓ (12 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified) (listed congenital and chromosomal anomalies only)		Intellectual or cognitive disability of woman (no time limit specified) Girl under 13 (no time limit specified) Women 49 years or older (no time limit specified) Listed diseases (no time limit specified)

<sup>23</sup> Health (Regulation of Termination of Pregnancy) Act No. 31/2018, <http://www.irishstatutebook.ie/eli/2018/act/31>.

<sup>24</sup> Legge 22 maggio 1978 n.194, G.U. May 1978 n.140 (“Abortion Law 1978”).

<sup>25</sup> 2002. Seksuālās un reprodūktīvās veselības likums [Sexual and Reproductive Health Law] amended by 2018. gada 21. jūnija likums “Grozījumi Seksuālās un reprodūktīvās veselības likumā” [Amendments to Sexual and Reproductive Health Law].

<sup>26</sup> Criminal Code of 24 June 1987, last amended 1 January 2021, Special Part, Section 2 (96-98).

<sup>27</sup> Lietuvos Respublikos Sveikatos Apsaugos Ministerijos Isakymas [Order Ministry of Health of the Republic of Lithuania on Procedures for Performing a Surgical Termination of Pregnancy] No. 50, Jan. 28, 1994.

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Luxembourg <sup>28</sup>	✓ (14 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)		
Malta <sup>29</sup>							
Monaco <sup>30</sup>			✓ (12 weeks) (physical health)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (12 weeks) (rape)	
Montenegro <sup>31</sup>	✓ (10 weeks)		✓ (32 weeks)	✓ (32 weeks)	✓ (20 weeks)	✓ (20 weeks)	If pregnancy or childbirth could lead to difficult personal or family circumstances (20 weeks)
Netherlands			✓ (24 weeks)	✓ (24 weeks)	✓ (24 weeks)		Distress, which leaves the woman no other choice (no time limit specified)
North Macedonia <sup>32</sup>	✓ (12 weeks)		✓ (no time limit specified)	✓ (no time limit specified)	✓ (22 weeks)	✓ (22 weeks)	
Norway <sup>33</sup>	✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks)	✓ (no time limit specified)	✓ (22 weeks)	✓ (22 weeks)	Intellectual or cognitive disability of the woman (22 weeks) Pregnancy, birth or care of child would put woman in difficult life situation (18 weeks or until fetal viability in certain circumstance)
Poland <sup>34</sup>			✓ (no time limit specified)	✓ (no time limit specified)		✓ (13 weeks)	

<sup>28</sup> Loi du 17 décembre 2014 portant modification 1) du Code pénal et 2) de la loi du 15 novembre 1978 relative à l'information sexuelle, à la prévention de l'avortement clandestin et à la réglementation de l'interruption volontaire de grossesse [Law of 17 December 2014 amending 1) of the Penal Code and 2) of the law of 15 November 1978 relating to sexual information, the prevention of clandestine abortion and the regulation of voluntary termination of pregnancy] A238, 2014.

<sup>29</sup> CODE CRIMINAL [C. CRIM.] c. 9, art. 241.

<sup>30</sup> Penal Code, art. 248.

<sup>31</sup> Zakon o Uslovima i Postupku Za Prekid Trudnoce [Law on the Terms and Procedure for Termination of Pregnancy] 2009; CODE CRIMINAL [C. CRIM.] art. 150.

<sup>32</sup> Указ За Прогласување На Законот За Прекинување На Бременоста [Decree for Proclamation of the Law for Termination of Pregnancy] 2019.

<sup>33</sup> Lov om svangerskapsavbrudd [Law on Termination of Pregnancy] 1975.

<sup>34</sup> Trybunał Konstytucyjny [Constitutional Tribunal] Oct. 22, 2020, K 1/20, judgement 4/A/2021; Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act (1993), as amended by 23 December 1997.

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Portugal <sup>35</sup>	✓ (10 weeks)		✓ (12 weeks)	✓ (no time limit specified)	✓ (24 weeks)		Pregnancy resulted from crime against freedom and sexual self-determination (16 weeks)
Republic of Moldova <sup>36</sup>	✓ (12 weeks)		✓ (21 weeks)	✓ (21 weeks)	✓ (21 weeks)	✓ (21 weeks)	Intellectual or cognitive disability of pregnant woman (21 weeks)
							Girl under 18 (21 weeks)
							Woman over 40 (21 weeks)
							Specified social indications (21 weeks)
Romania <sup>37</sup>	✓ (14 weeks)			✓ (no time limit specified)	✓ (24 weeks)		Therapeutic purposes (24 weeks)
Russian Federation <sup>38</sup>	✓ (12 weeks)	✓ (12 weeks)			✓ (no time limit specified)	✓ (22 weeks) (rape)	Medical indications including chromosomal and congenital fetal impairments (22 weeks)
San Marino <sup>39</sup>							
Serbia <sup>40</sup>	✓ (10 weeks))		✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)	
Slovak Republic <sup>41</sup>	✓ (12 weeks)		✓ (6 months)	✓ (no time limit specified)	✓ (no time limit specified)	✓ (6 months) (incest)	Girl under 18 (6 months)
							Woman over 40 (6 months)
							Social indications (6 months)
							Health indications (6 months)

<sup>35</sup> Lei n. 16/2007 de 17 Abril [Act no. 16/2007 of 17 April], <https://data.dre.pt/eli/lei/16/2007/04/17/p/dre/pt/html>.

<sup>36</sup> Law No. 411 of 28 March 1995 on Health; Criminal Code, 18 April 2002 as amended by 2009, Special Part, Chapter II, Article 159; Regulations to Order No 647 of 21 September 2010 of the Ministry of Health on the Safe Conduct of Abortion.

<sup>37</sup> Codul Penal [PENAL CODE] art. 201.

<sup>38</sup> Federal'nyĭ Zakon RF Ob Osnovakh Okhany Zdorov'ya Grazhdan V Rossijskoi Federacii [Federal Law of the Russian Federation on Basics of Health Protection of the Citizens in the Russian Federation], Rossijskaia Gazeta [Ros. Gaz.] Nov. 21, 2011; Government Decree No. 98 On the Social Indication for Artificial Termination of Pregnancy, Feb. 6, 2012.

<sup>39</sup> Codice Penale [PENAL CODE] art. 153–154. San Marino will hold a referendum on permitting abortion on September 26, 2021.

<sup>40</sup> Zakon O Postupku Prekida Trudnoće U Zdravstvenim Ustanovama [Law on the procedure for the termination of pregnancy in healthcare institutions] (Br. no. 16/95 and 101/2005).

<sup>41</sup> Artificial Interruption of Pregnancy Act (Act. No. 73/1986), as amended by Act No. 414/1991 Coll.; Coll. Of Laws Amending Act No. 576/2004 Coll. On Healthcare, Healthcare-related Services and Amending and Supplementing Certain Acts as amended (Act No. 345/2009).

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
Slovenia <sup>42</sup>	✓ (10 weeks)		✓ (no time limit specified)	✓ (no time limit specified)			Risk to woman's future motherhood (no time limit specified)
Spain <sup>43</sup>	✓ (14 weeks)		✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks or no time limit specified, depending on circumstances)		
Sweden <sup>44</sup>	✓ (18 weeks)		✓ (fetal viability)	✓ (fetal viability)			
Switzerland <sup>45</sup>							To eliminate danger of serious injury to physical integrity or deep distress (no time limit specified) Where the pregnant woman provides a written request alleging that she is in distress or to avert the danger of serious harm to physical integrity (12 weeks)
Turkey <sup>46</sup>	✓ (10 weeks)			✓ (no time limit specified)	✓ (no time limit specified)	✓ (20 weeks) (rape)	Listed diseases and conditions (no time limit specified)
Ukraine <sup>47</sup>	✓ (12 weeks)		✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks)	✓ (22 weeks) (rape)	Intellectual or cognitive disability of the woman (22 weeks) Girl under 15 (22 weeks) Woman over 45 (22 weeks) Listed diseases (22 weeks)

<sup>42</sup> Zakon o zdravstvenih ukrepih pri urenicevanju pravice do svobodnega odlocanja o rojstvu otrok [Health Measures in Exercising Freedom of Choice in Childbearing Act] (Act No. 11/1977).

<sup>43</sup> LEY ORGANICA 2/2010 DE SALUD SEXUAL Y REPRODUCTIVA Y DE LA INTERRUPCION VOLUNTARIA DEL EMBARAZO (L.O. 2010, 2).

<sup>44</sup> LAG OM ABORTLAG (Svensk författningssamling [SFS] 1974:595).

<sup>45</sup> SCHWEIZERISCHES STRAFGESETZBUCH [STGB] [CRIMINAL CODE] Mar. 23, 2001, art. 118–120.

<sup>46</sup> Nüfus Planlamasi Hakkinda Kanun [Law on Population Planning] (No. 2827/1983).

<sup>47</sup> CODE CIVIL [C.CIV.] [CIVIL CODE] c. 21, art. 281.

Country	Abortion on request	Socio-economic grounds	Risk to health	Risk to life	Fetal Impairment	Rape and/or incest	Other
United Kingdom <sup>48</sup>			✓ (no time limit specified)	✓ (no time limit specified)	✓ (no time limit specified)		The continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family (24 weeks)

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<sup>48</sup> Abortion Act 1967, c. 87 (Eng.). See also *Global Abortion Policies Database Country Profile: United Kingdom of Great Britain and Northern Ireland*, World Health Organization, <https://abortion-policies.srhr.org/country/united-kingdom/> (last visited Sept. 16, 2021) (summarizing information on the law as it applies in Guernsey, Jersey, Isle of Man, Gibraltar, and Northern Ireland).