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Body Autonomy During Pregnancy: Where Did It Go?

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Body Autonomy During Pregnancy: Where Did It Go?

This paper takes a personal yet informative look at body autonomy during pregnancy, examining the laws that remove autonomy from pregnant women with a look at how that affects women overall. The paper uses feminist theory to examine how the commodification of reproduction has stripped women of their body autonomy during their pregnancies and argues how women throughout history have largely been valued only for reproductive purposes.

Introduction

The idea that women are only good for reproductive value is something that is echoed in society. We see that with the obsession with reproductive rights and freedoms in the media and all over most of the social media platforms we have today. I am a mother to two daughters. I know that for both of my pregnancies, I and any other pregnant women were the center of the office where I worked. Food decisions were made to cater to our whims, jokes were made whenever we sat too close together, or that there must have been something in the building's water. Frankly, I never had so much attention paid to me by co-workers. Usually I just did my job wherever I was and sometimes I socialized with a few people I liked more than the others. But I was also told at both jobs that my pregnancies were keeping me from being promoted – one employer specifically told me

the promotion was waiting for me when I came back to work after having my first child. Talk about pressure to go back to work after delivering a baby two months ago! That was one of the times that I realized that my value to others was wrapped up in my reproductive actions. It made sense when our species' prominent worry was survival, reproduction, and sustenance. But even though we have evolved past survival mode, society's view on women and the value they provide has not moved passed reproduction. We see that with the national and international policing of pregnancies resulting in forced caesareans, abortion restrictions, and the increased change of the meaning of fetus viability. In this essay, I look at how the legal commodification of reproduction has stripped women of their body autonomy during their pregnancies, compromising their personal and public lives.

Theoretical Framework

When you began to examine the almost infinite body of feminist thought on the various avenues that commodify the female body, it gets pretty overwhelming. There have been so many theorists who have looked at how women's bodies have been bought, sold, and taken over both literally and

figuratively throughout generations. Susan Bordo (2004) is one feminist theorist who has written extensively on the topic of body autonomy during pregnancy and how placing such a high value on reproduction ends up placing most women at a disadvantage to the fetus growing inside them. This disadvantage usually is a consequence to various legislations that give more rights to the fetus than the mother carrying it. Bordo (2004) writes that, "...the ideology of women-as-fetal-incubator is stronger than ever and is making ever greater encroachments into pregnant women's lives" (p. 81). She explains that even though the Supreme Court banned certain policies that restrict pregnant women in the workplace through 'fetal protection,' the opposite was happening as she was writing her book and the nation was becoming obsessed with fetal rights (Bordo, 2004). I completely agree with her idea that our national society looks at fetuses as separate persons with equal or overriding rights to the women who carry them. We see that today in the "pro-life" movement with their position that a life begins at conception, and therefore, fetuses should have the same rights as all autonomous beings, except for pregnant women.

Once we introduce feminist theory and legislation, it is important to look

into the history surrounding reproductive rights. Ricki Solinger (2013) is a curator and a historian, and even though she is not a theorist in the existential sense, she has written extensively about the laws surrounding reproduction. Solinger (2013) points out how after *Roe v. Wade*, a landmark ruling that made abortion in the United States legal, passed in 1973, several groups worked to have political candidates elected to offices that would work around the laws to advance the “pro-life” agenda. One of the ways legislators began to work against *Roe v. Wade* was by restricting Medicaid funds for elective abortions (Solinger, 2013). By setting this political precedence early on, “pro-life” activists set the path for pregnant women of lower socioeconomic status to be disadvantaged through governmental legislation. As Solinger (2013) writes, “Even today, the political culture in the United States supports the reproductive rights of women who have abundant resources far more than it supports the rights of women with few resources” (p. 159). The passing of *Roe v. Wade* is also when the idea of assigning ‘personhood’ to the fetus began, and Solinger (2013) theorizes that the introduction of ultrasound imaging aided in this new aspect of the “pro-life” movement. It is

not hard to see the connection made between seeing the fetus growing inside of a woman’s body and wanting to assign it an identity. But it seems that with each advancement in reproductive technology, legislations that restrict pregnant women in some way followed, and the end result of all this legislative control puts the most vulnerable women at risk of losing themselves and their bodily autonomy.

bell hooks (2000) is one of the more well-known black feminist theorists who looks at reproductive freedoms through an intersectional lens of race and class. The reason why I feel it is important to bring up her thoughts on reproductive justice is that hooks (2000) explains how “the abortion issue captured the attention of mass media because it really challenged...the notion that a women’s reason for existence was to bear children,” and I think that even though her quotes are from writings that originated in the 1960s, those words still apply to the type of social and mass media that we have today (p. 27). hooks (2000) also argues that because of the fascination with abortion as the ‘face’ of reproductive rights, it has led to keeping any other aspect of reproductive injustices – forced sterilizations and hysterectomies, for example – out of public discussion. As she puts it,

abortion “...called attention to a capitalist patriarchal male-dominated medical system that controlled women’s bodies and did with them anything they wanted to...” (hooks, 2000, p. 27). And she is right – reproductive rights and freedoms usually focus on access to safe abortions and birth control, not on what rights women are afforded while they are in pre- and perinatal care. And even though I do believe that access to safe and legal abortions is a right and not a privilege, I also believe that when we focus on only one hotly contested aspect of reproduction, we leave other areas of women’s health vulnerable to legal manipulations. Other theorists (Bordo, 2004; Phillips, 2013; Solinger, 2013) have looked at this complication.

Black feminist theorist, Angela Davis (1991) writes about reproductive commodification also through an intersectional lens of class and race. Davis (1991) points at how pregnancies were commodified pre-Civil War – before surrogacy – when black slave women were forced to have children in order to (eventually) have plenty of workers for their masters. This is possibly one of the first times in American history that reproduction was actually commodified – those babies born into slavery were being produced strictly as a product to be traded, used,

sold, or killed. But Davis (1991) also argues that just as reproduction value separated one class of slaves from another, the advancement of surrogacy and other reproductive technologies does the same thing among free women. Reproduction as a market variable separates women with the ability to pay for reproductive services from women who lack resources to access this commodity. Ultimately, this further separates the women who are able to and choose to provide the service of reproduction from those who cannot or choose not to engage in this type of work. Many feminist theorists (Bordo, 2004; Davis, 1991; hooks, 2000; Phillips, 2013; Solinger, 2013) have argued this point over the years. As Davis (1991) affirms,

The availability of the technology further mythologizes motherhood as the true vocation of women. In fact, the new reproductive medicine sends out a message to those who are capable of receiving it: motherhood lies just beyond the next technology (p. 455).

It’s important to note the last sentence of this quote: “...to those who *are capable* of receiving it...” Davis (1991), like Solinger (2013), is quick to remind us that not every woman is going to be able

to access reproductive technology. We also have to keep in mind that access to the technology is controlled by the patriarchal and capitalist systems that modern medicine is beholden to, like hooks (2000) reminded us earlier. Importantly, these reproductive systems are known to be the most non-inclusive of social structures that exist today.

Anne Phillips (2013) is a theorist who looks at the commodification of reproduction through surrogacy, but through the lens of enforceable contracts. She writes, “It is also worth stressing the general notion of bodies as different is widely recognized in law...” (p. 82). Phillips points out, like Bordo (2004), that the laws quite blatantly treat pregnant women far more restrictively than most other people. Phillips (2013) uses the example of renegeing on a contract to exchange property for cash versus a contract of services rendered by a specific person via their body, and where the law would stand on contractual enforceability. Phillips argues that the very nature of involving the body illegitimizes most of the bodily restrictions in surrogacy contracts, but since we have commodified reproduction in this way, we’ve come to accept that women’s bodies are purposed for reproduction, and we ignore the legal hypocrisy. Phillips

(2013) also argues that this commodification of reproduction has further separated women through a class divide of women who use their body to provide a service (surrogacy) and women who pay for it (consumption). She specifically mentions India’s income gap between the surrogates and the “commissioning parents” as proof of this happening in modern society (Phillips, 2013). But the final point important to Phillips’ theory falls on the debate surrounding body autonomy and property involving the commodification of reproduction, particularly, ways the “...discomfort with the language of property amongst those whose activities otherwise seem to embrace it...” conveys “...significant indictment” (Phillips, 2013, p. 66). What Phillips (2013) means by this is that the very people we would expect to embrace the idea of self-body autonomy (the surrogates and others who perform bodily transactions), in reality, are not, and the fact that they aren’t should speak volumes to the imbalance society legally affords pregnant women during contractual surrogacy.

The “language of property” that Phillips (2013) refers to is the contractual language that surrounds transactions involving the body and how similar to property terms they tend to be. Using

the property example as earlier described, pregnant women serving as surrogates are the only people whose bodily transactions are afforded the same leverage as property disputes and decided as such, where most other contracts involving body services will favor the body autonomy of the servicer. Some might argue that a woman providing surrogacy services knows what she is signing up for, literally; surrogacy contracts are usually gone over extensively before final signing. But when body autonomy rights are chipped away in little pieces here and there with popular legislation in specific situations, it makes it much easier to move on to other areas of personal rights in reproduction.

Rickie Solinger (2013) concedes the awkwardness surrounding the topic of reproductive justice as we see it in today's society. Solinger (2013) argues, "The impact of public policies and societal attitudes on the reproductive decisions of women may be a particularly difficult insight to bring into focus, in part, because of the way that *personal choice* has become the dominant way characterizing pregnancy and motherhood in recent times" (p. 3). What Solinger means by this is that we've spent so much time focusing on the fact that (some) women have choices

now, choices regarding birth control and IVF treatments, that we forget that there are many women who do not have access to the same choices for various socioeconomic reasons. Phillips (2013) points out this imbalance using India as the example, as do hooks (2000) and Davis (1991) in discussing women, race, and reproduction.

Another interesting perspective to consider in the body autonomy question comes from the field of anthropology. In anthropological writings, Sweeney and Hodder (2002) discount how women have changed the way bodies have been looked at over time, and it is worth noting that other disciplines are noticing the work women's movements have made. When Sweeney and Hodder (2002) write, "...the Women's Movement and various forms of feminism have turned attention to the body as part of a wider critique and overturning of male control and objectification" (p.3), it feels somewhat satisfying to see women and our efforts being recognized in other, male-dominated fields of study. This writing also shows that there is a recognition that women's bodies are utilized in ways that are completely different than men's bodies are and that there is work being done to change it.

Something else that I think is important to point out after discussing some of the theoretical framework surrounding women's bodies is the span of time that these particular theorists have been discussing the commodification of reproduction. I am only looking at arguments that have been made in the last twenty years or so, and I am only using some of the authors that I am familiar with in my research. This is important to point out is because it is worth noting that we are still having this debate surrounding a woman's right to choose what is best for her body today, just like these theorists were writing about the ramifications of women losing body autonomy in 1991, 2003, 2004, and 2013. As part of my argument about reproduction and body autonomy, I introduce two recent cases of women in the national news who both had their body autonomy stripped from them, making the women human incubators for the sake of their fetuses. The end results of both cases are disturbing to say the least, and the consequences of both cases were completely avoidable if both women's wishes were respected regarding their bodies and medical care.

Marlise and the Law

One case where a woman's body autonomy did not apply to her anymore because of her pregnancy is the circumstances surrounding Marlise Munoz and her pregnancy. Munoz was a 33-year-old married mother of one child, living in Texas and pregnant with another when she suffered a blood clot in her lungs and collapsed at her home on November 26, 2013 (Curry, 2014; Lavandera, Rubin, & Botelho, 2014). When she was admitted to John Peter Smith Hospital, in Fort Worth, Texas, it was found that both Munoz and her fetus experienced significant oxygen loss, which resulted in diminished brain activity (Curry, 2014; Powell, 2014). Because of this development, Munoz was declared brain dead and the hospital was made aware of her wishes not to be kept alive artificially (Lavandera, et al., 2014). The hospital refused to take her off of life sustaining machines, citing a Texas law that prevents pregnant women from being denied life-sustaining medical treatment for the benefit of the unborn child and statutes that stated that living wills became invalidated when pregnant (Curry, 2014; FindLaw, 2015). And let me interject to say that yes, you read that right: a hospital in Texas interpreted the law to mean that they were legally supposed to keep Munoz on life-sustaining treatment

for the sake of her fetus, even though Munoz, as the patient, was medically brain-dead, and multiple family members expressed that Munoz's final wishes were that medical treatment not intervene.

For almost two months, Munoz's family went to court repeatedly to challenge this law while the hospital fought back, arguing that they were following the law and that they were correct in applying it to this particular case (Lavandera, et al., 2014). In January of 2014, a judge ruled that the hospital had to take Munoz off of life support and release her body to family (Lavandera, et al., 2014), but the base of his ruling does not address the law. Judge Wallace ruled that John Peter Smith Hospital had to remove Munoz from the ventilation machines, not because the law was improperly applied, but because testing had proved that the fetus was developing so abnormally that it was no longer viable (Lavandera, et al., 2014). It is worrisome that the judge only ruled because of the viability of the fetus and not the person whose end-of-life decisions were being violated. Texas is not the only state with laws like this; almost half of the country has similar statutes. The wide variations between the states' statutes regarding living wills and pregnancy portray the many legal

complexities surrounding women and reproduction. The complete list to state statutes is significant, since there are wide variations between the states' statutes regarding living wills and pregnancy. You can see the complete list and the wordings here: www.estate.findlaw.com.

Lucky Me?

Living in New York State meant that when I went to deliver my baby, I was asked to fill out a form to appoint a health proxy since I did not have a living will. In contrast to the tragic situation with Marlise Munoz, the hospital along with the state made sure that I would have a voice at a time when my own health could be impacted. I would hope that by taking those extra steps when admitting me for delivery of my children meant that those wishes would be honored if needed. Unlike New York State, there are 25 other states along with Texas that also invalidate a woman's living will when they are pregnant (FindLaw, 2015). The laws and legislation surrounding pregnant women are unlike any other when it comes to autonomy, as the multiple statutes that exist across states reveal. Susan Bordo (2004) argues that philosophically, the human body has been looked at as the one thing a person owns outright since

their birth, and that the United States legal system reflects that in the legislation passed by the Highest Court over 100 years ago. As argument, Bordo (2004) cites numerous lawsuits where the judges ruled in the favor of individual body autonomy over instances involving forced blood or tissue donation. Bordo (2004) even used one specific case where the judge ruled that the possible donor did not have to follow through with donation, even though the person was so ill they died two weeks after the ruling. But Bordo (2004) goes on to explain how pregnant women are excluded from the legal protections people like that donor was afforded: “As a number of analysts have pointed out, there are no legal justifications for the discrepancies between treatment accorded to pregnant women and that given to non-pregnant persons” (p. 78). Why *would* pregnant women be afforded different treatment legally? Some people may argue that they need to think of the rights of the fetus growing inside of the woman, but I counter argue that when we place such importance on a fetus that is still completely dependent on the woman’s body for survival, we ultimately put women’s lives at risk. We also erase the woman and her body as person with all personhood rights.

Why Does This Matter?

When she was 17 weeks pregnant, Savita Halappanavar reported to University Hospital Galway, Ireland, on October 21, 2012, to receive care for a miscarriage (Darby, 2012). While she was admitted to the hospital, her membranes ruptured, meaning her ‘water broke,’ and the staff informed her that her fetus was dying (Darby, 2012; Health Information and Quality Authority (HIQA), 2013, p. 36). After hearing this, Halappanavar repeatedly asked for an abortion but was informed that since there was a fetal heartbeat that abortion is illegal under Irish law (Darby, 2012). She was also told by the midwife at the hospital, Ann Maria Burke, that “...Ireland is a Catholic country” (Darby, 2013), implying that Halappanavar will not be obtaining the services she feels she needs for her health and safety. Instead, Halappanavar’s care plan included monitoring her condition and to start administering antibiotics for her membranes that ruptured 21 hours’ prior (HIQA, 2013). During the following six days that Halappanavar was hospitalized, she and her fetus’ condition deteriorated so much that Halappanavar had a spontaneous delivery of her miscarrying fetus, went

into septic shock, and died from septicemia (Darby, 2012; HIQA, 2013).

It is absolutely deplorable that a woman died from septic shock due to a miscarriage while she was hospitalized for almost a week. Because of her death, members of the Health Service Executive (HSE) – Ireland’s health service providers – asked the Health Information and Quality Authority (HIQA), Ireland’s independent firm that aids with the oversight and implementation of health and social care services, to investigate the hospital’s policies surrounding clinical deterioration (HIQA, 2013). What they found is that the hospital did not comply with several of its own protocols and missed several opportunities to intervene in Halappanavar’s care plans to make adjustments to save her life (HIQA, 2013). I bring up the Savita Halappanavar case to show that extremes using laws to protect fetal viability can ultimately kill the mother of said fetus. This was a completely preventable death; hospital personnel could have saved Halappanavar’s life a total of eleven times over the course of the four days that she was in the intensive care unit at University Hospital Galway, but they did not provide the proper care to do so (HIQA, 2013). Much like Munoz, Savita Halappanavar

was viewed as secondary to her fetus’ health and there was no reason to deny her a life-saving abortion and no reason for her to die. But when women are viewed as reproductive incubators and stripped of the right to make autonomous decisions, we can expect to see more cases of pregnant women dying from easily preventable causes.

Women, Bodies, and Reproductive Worth

What do these cases say about how we view the actual worth of a woman when we are being reduced to body parts in close to every aspect of our lives? Women have been asking and answering this question for decades; a whole discipline in higher education arose from it. And through this radical school of thought is where Davis (1991) argues about the commodification of reproduction through slavery and the implications that has had on women, but on women of color especially. Bordo (2004) takes it a step further and looks at all the ways that the laws are used against pregnant women, especially with the introduction of reproductive technology. One of my best friends’ favorite books is *The Handmaid’s Tale*, written by Margaret Atwood (1986). This is the novel that autonomy theorists point to as the end result of the

commodification of reproduction – a society where women are separated by reproductive fitness, and the ones who can reproduce are going to be controlled, monitored, and forced to bear children for the women who can no longer do so. In the book, Atwood (1986) accurately describes the introduction of credit and debit cards as a replacement to paper money, the government falsely blaming Islamist extremists for all of America’s problems, and a presidential assassination. Susan Bordo (2004) uses this fictional tale in her writings to describe the types of laws that we can expect to see if fetal personhood rights become the norm, and I use it to show the parallels to what is happening in today’s society.

The toxic political climate that surrounds us today is trickling down into the argument surrounding reproductive rights and freedoms and leaves many women scared for what awaits in five or ten years. Some argue that *Roe v. Wade* is law and cannot be changed or repealed; since the right to an abortion is legally protected, what are we worried about? The two examples of restricted body autonomy during pregnancy I bring up is *exactly* what we should be worried about as governments across states continue to introduce other restrictive legislation that applies to

reproduction. For example, what kind of message are we sending our children when they see that women are going to jail for miscarrying a child? Solinger (2013) argues:

Finally, fetuses may be harmed most when pregnant women are defined as potential or actual violators of fetal rights. The characterization may cause pregnant women who need help to avoid prenatal care providers, health care facilities, and other institutions where they have good reason to expect to be judged and punished instead of provided with services (p. 93).

Purvi Patel went to the hospital after she miscarried her 20-plus week fetus alone and was ultimately sentenced to twenty years for feticide under new Indiana law (Chowdhury, 2015). Even though there was no evidence that she actually did anything to harm her fetus while in utero or after delivery, Patel was punished for seeking out medical services after suffering a traumatic event (Chowdhury, 2015). She may be the first woman sentenced, but she’s not the only one to be charged in Indiana; Bei Bei Shuai, in a failed suicide attempt while pregnant, also was charged with feticide under the same law and also faced jail time before accepting a plea deal

(Penner, 2013). According to Solinger (2013), “Almost forty states have ‘fetal homicide’ laws for dealing with crimes against...” fetuses (p. 93). As we see in Indiana, conservative politicians will absolutely take advantage of these laws to persecute women who may engage in behaviors some deem ‘unsuitable’ for pregnant women. This is what women look forward to when personhood laws give more rights to the fetus than the woman – policing every move every pregnant woman makes to insure complete safety and autonomy for the person growing inside of her while the laws undermine the woman’s own health and safety.

When a woman’s body is legislated and regimented to the point of depersonalization, commodification is right around the corner. We already have commodified reproduction in some ways, for example, surrogacy contracts and how they strip women of basic autonomous rights is the basis of Bordo’s (2004) body autonomy theory and Phillips (2013) surrogacy arguments. Are we ultimately going to face a society where women who can reproduce are forced to ‘provide’ for those who can’t? We may not need to have the same reproductive ceremonies that Atwood (1986) describes in her dystopian future, but forcing women to donate their eggs

may not be that far off from reality and is certainly plausible with today’s technology. So is criminalizing pregnant women who transgress conservative ideologies about female bodies and reproductive utility.

Conclusion

In doing research for what various theorists have written about body autonomy during pregnancy, I selected writings that provided good explanations as to *why* focusing on reproductive justice is important to women’s studies as a whole. Monica Basile (2015) is a doula and an educator who has conducted extensive studies on the role doulas play in the birthing process and in reproduction overall. During one of her field studies, Basile (2015) quotes a doula using the pseudonym Megan Tate who says, “When women reclaim the right to birth on their own terms they might feel more empowered to challenge other forms of oppression and discrimination in their lives” (p. 227). It is extremely important to recognize and fight all forms of oppression, but she’s right – if women do not feel like they have any say over their own bodies, how are they going to be able to fight for the rights of any other individual who are at an even greater disadvantage? And we also cannot

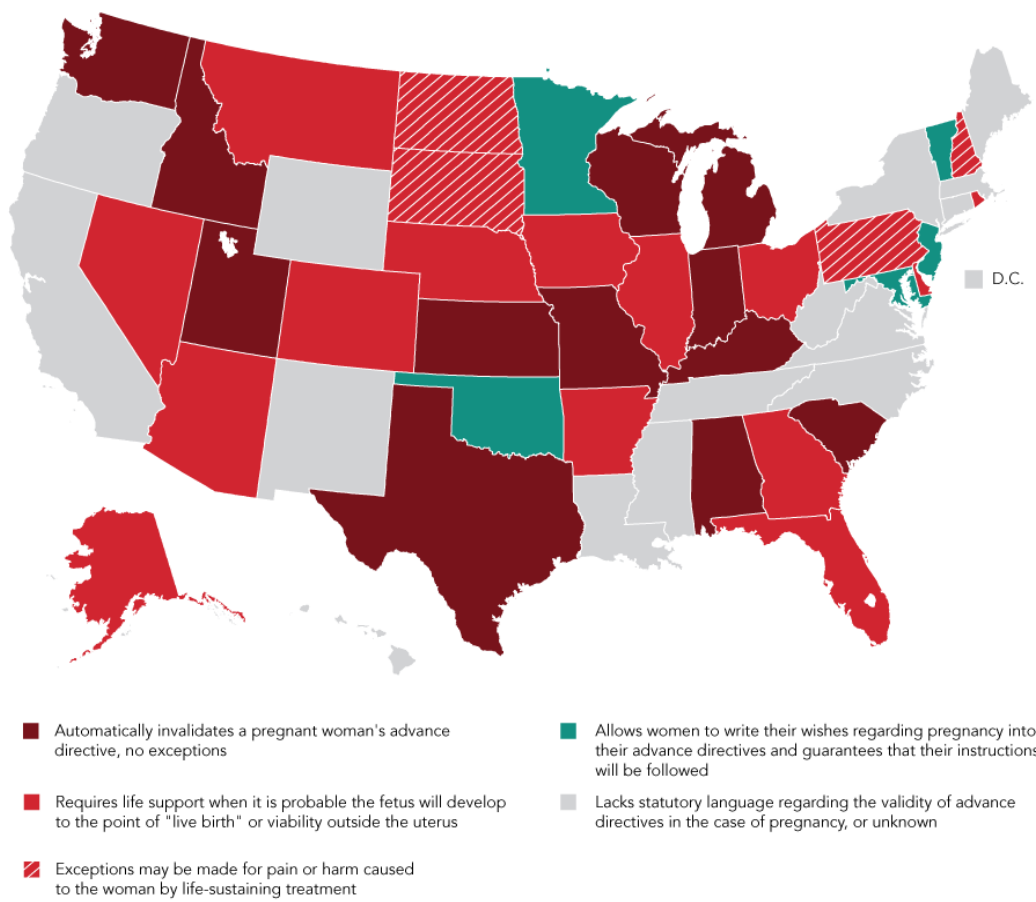
forget, in the fight for ‘fetal personhood rights,’ we are ultimately forgetting the rights of the woman carrying the fetus.

When studying Munoz’s and Halappanavar’s cases, I came across another quote that also sums up my arguments: “Women have the right to die in dignity. The goal of fetal rescue does not exonerate healthcare givers from the duty to respect this right of the primary patient—the woman” (Dickens,

2011, p. 85). This quote perfectly sums up my argument surrounding the restrictions laws place on women and their bodies during pregnancy. We have become a society that places more rights on a fetus than the person who is actually sustaining said fetus. I think society needs to treat women with the same dignity and respect that organ donors are afforded – basic human autonomy.

Where Pregnant Women Are Forced To Stay On Life Support

In most states, terminally ill pregnant women can be forced to accept life-sustaining treatment, even when the patient has authorized a directive against it. States in dark red here have the most restrictive laws, requiring life support to be continued regardless of the progression of the pregnancy, with no exceptions for pain or physical harm caused by the treatment.



Source: Center For Women Policy Studies

THE HUFFINGTON POST

Figure 1. From "Where pregnant women are forced to stay on life support", by A. Scheller, 2014 (http://www.huffingtonpost.com/2014/01/08/pregnant-living-will-n_4562964.html). In the public domain.

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