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Opinions

I would've aborted a fetus with Down syndrome. Women need that right.



By **Ruth Marcus** Deputy editorial page editor, columnist March 9

There is [a new push](#) in antiabortion circles to pass state laws aimed at barring women from terminating their pregnancies after the fetus has been determined to have Down syndrome. These laws are unconstitutional, unenforceable — and wrong.

This is a difficult subject to discuss because there are so many parents who have — and cherish — a child with Down syndrome. Many people with Down syndrome live happy and fulfilled lives. The new Gerber baby with Down syndrome [is awfully cute](#).

I have had two children; I was old enough, when I became pregnant, that it made sense to do the testing for Down syndrome. Back then, it was amniocentesis, performed after 15 weeks; now, [chorionic villus sampling](#) can provide a conclusive determination as early as nine weeks. I can say without hesitation that, tragic as it would have felt and ghastly as a second-trimester abortion would have been, I would have terminated those pregnancies had the testing come back positive. I would have grieved the loss and moved on.

And I am not alone. More than two-thirds of American women [choose abortion](#) in such circumstances. Isn't that the point — or at least inherent in the point — of prenatal testing in the first place?

If you believe that abortion is equivalent to murder, the taking of a human life, then of course you would make a different choice. But that is not my belief, and the Supreme Court has [affirmed my freedom](#) to have that belief and act accordingly.

I respect — I admire — families that knowingly welcome a baby with Down syndrome into their lives. Certainly, to be a parent is to take the risks that accompany parenting; you love your child for who she is, not what you want her to be.

But accepting that essential truth is different from compelling a woman to give birth to a child whose intellectual capacity will be impaired, whose life choices will be limited, whose health may be compromised. Most children with Down syndrome have [mild to moderate](#) cognitive impairment, meaning an IQ between 55 and 70 (mild) or between 35 and 55 (moderate). This means limited capacity for independent living and financial security; Down syndrome is life-altering for the entire family.

I'm going to be blunt here: That was not the child I wanted. That was not the choice I would have made. You can call me selfish, or worse, but I am in good company. The evidence is clear that most women confronted with the same unhappy alternative would make the same decision.

Which brings us to the Supreme Court. North Dakota, Ohio, Indiana and Louisiana [passed legislation](#) to prohibit doctors from performing abortions if the sole reason is because of a diagnosis of Down syndrome; Utah's legislature is [debating such a bill](#).

These laws are flatly inconsistent with the Supreme Court's *Roe v. Wade* ruling, [reaffirmed in 1992](#), that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy." *Of the woman*. As U.S. District Judge Tanya Walton Pratt [concluded](#) in striking down the Indiana law in September, the high court's determination "leaves no room for the state to examine, let alone prohibit, the basis or bases upon which a woman makes her choice."

Think about it. Can it be that women have more constitutional freedom to choose to terminate their pregnancies on a whim than for the reason that the fetus has Down syndrome? And, to the question of enforceability, who is going to police the decision-making? Doctors are now supposed to turn in their patients — patients whom they owe confidentiality — for making a decision of which the state disapproves?

In an argument worthy of "[The Handmaid's Tale](#)," the state of Indiana suggests precisely that scenario. The right to abortion, its lawyer argued before a federal appeals court last month, protects [only the "binary" decision](#) of whether to bear a child — not which child you must carry to term once you choose to become pregnant. In other words, though he didn't put it in these exact words, the state can hijack your body.

Technological advances in prenatal testing pose difficult moral choices about what, if any, genetic anomaly or defect justifies an abortion. Nearsightedness? Being short? There are creepy, eugenic aspects of the new technology that call for vigorous public debate. But in the end, the Constitution mandates — and a proper

understanding of the rights of the individual against those of the state underscores — that these excruciating choices be left to individual women, not to government officials who believe they know best.

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