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The science of "viability"

In the 1973 *Roe v. Wade* decision, the Supreme Court legalized abortion in the United States. The decision made "viability" the delineating line balancing the right of a woman to end an unwanted pregnancy and the interests of the State. *Roe v. Wade* found that after the point of "viability," states may restrict access to abortion, as long as there is an exception for the health and life of the pregnant woman.

The Supreme Court has subsequently defined viability in the context of abortion as "when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support. Because this point may differ with each pregnancy, neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant."[1]

- Both in the law and in medical science, viability is not equated with a particular gestational age in pregnancy.
- At less than 21 weeks, no delivered baby has ever survived. At 23 weeks, 12.5% of delivered babies survive without disabilities; at 25 weeks, 27.5% survive with no disabilities.[2-5]
- Extrauterine viability depends on a myriad of factors, including age of gestation, sex, birthweight, and the sophistication of the medical facilities available.
- In making decisions regarding viability, physicians use their best clinical judgment regarding each individual pregnancy, depending on published science on potential survival rates and the wishes of the pregnant woman to determine the appropriate course of care.
- Doctors and women together consider the potential for sustained meaningful life, not just brief survival outside the pregnant woman's body, as a critical factor in deciding whether to continue or terminate each unique pregnancy.
- There have been no significant improvements in the survival rate of very premature babies over the last decade.

Interpreting the science

In 1995, a landmark study was conducted of the survival and later health status of children born at 25 weeks or less gestation in the United Kingdom and Ireland.[2-5] The study found that the possibility of *survival* increases for premature babies the longer the gestational age: 25 percent in the 23rd

For more information and resources on what we know about later abortions, visit www.ansirh.org/research/late-abortion/viability.php

week, 42 percent in the 24th week, 57 percent in 25th week. However, approximately half of the babies that survived at each gestational age had some level of impairment, and over half of those were multiple and severe disabilities. There is no national U.S.-based study on survival so information is usually provided for each institution where an infant might be born. Regardless of site of delivery, infants born at these early stages require numerous complex and intensive interventions to keep them alive. They require artificial lubricants for their lungs, since they are not yet able to breathe air. They survive only by virtue of weeks and sometimes months of diligent application of artificial life support and invasive neonatal intensive care. Because the chance of survival is variable, there is no "bright line" of viability.

Responses to anticipated questions

Q. Isn't a fetus viable at 24 weeks of pregnancy?

Although common usage often equates viability with a particular number of weeks of pregnancy, this usage is inaccurate. The potential for fetal survivability outside of the woman's body differs for each pregnancy and can only be made by assessing the fetus as well as the pregnant woman. Factors that can affect potential viability include chromosomal abnormalities, the sex of the fetus, the conditions of a woman's health, and the availability of sophisticated neonatology care. Because of these multiple factors, many babies born at 24 weeks will not survive, or will survive with severe disabilities requiring multiple medical interventions.

Q. Since the line of viability keeps getting lower, shouldn't the legal limit for abortion be lowered as well?

While there have been significant developments in the care of infants born prematurely, the rate of survival for infants born at or before 24 weeks has not changed and is well below 50 percent.

Q. Why should the law allow abortion for a potentially viable fetus?

Making a determination of the need for abortion when a woman is carrying a potentially viable fetus is a complex medical and ethical question that is best left to the woman and her physician. Together they will weigh the medical and social context of each pregnancy, including the physical and mental health of the mother and the best predictions of the quality of life for the developing fetus if it is delivered or carried to term.

Q. Does this mean abortion should be allowed at 36 weeks simply because a woman wants an abortion?

Women do not consider an abortion later in pregnancy frivolously. Less than one percent of all abortions occur after 20 weeks. Most of these abortions are done for some significant indication. For example, an 11 year old child raped by her father whose pregnancy is not discovered until she is at 26 weeks may be able to obtain an abortion if her physician believes continuing the pregnancy will significantly negatively affect her mental and physical health. In reality, few women want to terminate their pregnancies at these later stages. The extremely unlikely case of a woman requesting the termination of a healthy pregnancy at 36 weeks is most likely to result in counseling and support services for the woman not an abortion.

References

1 Colautti v. Franklin, 439 U.S. 379, 388 (1979).

2 Costeloe K, Hennessy E, Gibson AT, Marlow N, Wilkinson AR. The EPICure study: outcomes to discharge from hospital for infants born at the threshold of viability. Pediatrics 2000;106:659-71.

3 Wood NS, Marlow N, Costeloe K, Gibson AT, Wilkinson AR. Neurologic and developmental disability after extremely preterm birth. EPICure Study Group. New England Journal of Medicine 2000;343:378-84.

4 Wood NS, Costeloe K, Gibson AT, Hennessy EM, Marlow N, Wilkinson AR. The EPICure study: associations and antecedents of neurological and developmental disability at 30 months of age following extremely preterm birth. Archives of Disease in Childhood Fetal & Neonatal Edition 2005;90:F134-40.

5 Marlow N, Wolke D, Bracewell MA, Samara M. Neurologic and developmental disability at six years of age after extremely preterm birth. New England Journal of Medicine 2005;352:9-19.