MR. JUSTICE DOUGLAS, concurring *

While I join the opinion of the Court, 1 I add a few words.

I

The questions presented in the present cases go far beyond the issues of vagueness, which we considered in United States v. Vuitch, 402 U.S. 62 . They involve the right of privacy, one aspect of which we considered in Griswold v. Connecticut, 381 U.S. 479, 484 , when we held that various guarantees in the Bill of Rights create zones of privacy. 2 [410 U.S. 179, 210]

The Griswold case involved a law forbidding the use of contraceptives. We held that law as applied to married people unconstitutional:

"We deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred." Id., at 486.

The District Court in Doe held that Griswold and related cases "establish a Constitutional right to privacy broad enough to encompass the right of a woman to terminate an unwanted pregnancy in its early stages, by obtaining an abortion." 319 F. Supp. 1048, 1054.

The Supreme Court of California expressed the same view in People v. Belous, 3 71 Cal. 2d 954, 963, 458 P.2d 194, 199.

The Ninth Amendment obviously does not create federally enforceable rights. It merely says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." But a catalogue of these rights includes customary, traditional, and time-honored rights, amenities, privileges, and immunities that come within the sweep of "the Blessings of Liberty" mentioned in the preamble to the Constitution. Many of them, in my view, come [410 U.S. 179, 211] within the meaning of the term "liberty" as used in the Fourteenth Amendment.

First is the autonomous control over the development and expression of one's intellect, interests, tastes, and personality.

These are rights protected by the First Amendment and, in my view, they are absolute, permitting of no exceptions. See Terminiello v. Chicago, 337 U.S. 1 ; Roth v. United States, 354 U.S. 476, 508 (dissent); Kingsley Pictures Corp. v. Regents, 360 U.S. 684, 697 (concurring); New York Times Co. v. Sullivan, 376 U.S. 254, 293 (Black, J., concurring, in which I joined). The Free Exercise Clause of the First Amendment is one facet of this constitutional right. The right to remain silent as respects one's own beliefs, Watkins v. United States, 354 U.S. 178, 196 -199, is protected by the First and the Fifth. The First Amendment grants the privacy of first-class mail,

United States v. Van Leeuwen, 397 U.S. 249, 253 . All of these aspects of the right of privacy are rights "retained by the people" in the meaning of the Ninth Amendment.

Second is freedom of choice in the basic decisions of one's life respecting marriage, divorce, procreation, contraception, and the education and upbringing of children.

These rights, unlike those protected by the First Amendment, are subject to some control by the police power. Thus, the Fourth Amendment speaks only of "unreasonable searches and seizures" and of "probable cause." These rights are "fundamental," and we have held that in order to support legislative action the statute must be narrowly and precisely drawn and that a "compelling state interest" must be shown in support of the limitation. E. g., Kramer v. Union Free School District, 395 U.S. 621 ; Shapiro v. Thompson, 394 U.S. 618 ; [410 U.S. 179, 212] Carrington v. Rash, 380 U.S. 89 ; Sherbert v. Verner, 374 U.S. 398 ; NAACP v. Alabama, 357 U.S. 449 .

The liberty to marry a person of one's own choosing, Loving v. Virginia, 388 U.S. 1 ; the right of procreation, Skinner v. Oklahoma, 316 U.S. 535 ; the liberty to direct the education of one's children, Pierce v. Society of Sisters, 268 U.S. 510 , and the privacy of the marital relation, Griswold v. Connecticut, supra, are in this category. 4 [410 U.S. 179, 213] Only last Term in Eisenstadt v. Baird, 405 U.S. 438 , another contraceptive case, we expanded the concept of Griswold by saying:

"It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Id., at 453.

This right of privacy was called by Mr. Justice Brandeis the right "to be let alone." Olmstead v. United States, 277 U.S. 438, 478 (dissenting opinion). That right includes the privilege of an individual to plan his own affairs, for, "`outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.'" Kent v. Dulles, 357 U.S. 116, 126 .

Third is the freedom to care for one's health and person, freedom from bodily restraint or compulsion, freedom to walk, stroll, or loaf.

These rights, though fundamental, are likewise subject to regulation on a showing of "compelling state interest." We stated in Papachristou v. City of Jacksonville, 405 U.S. 156, 164 , that walking, strolling, and wandering "are historically part of the amenities of life as we have known them." As stated in Jacobson v. Massachusetts, 197 U.S. 11, 29 :

"There is, of course, a sphere within which the individual may assert the supremacy of his own will [410 U.S. 179, 214] and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will."

In Union Pacific R. Co. v. Botsford, 141 U.S. 250, 252 , the Court said, "The inviolability of the person is as much invaded by a compulsory stripping and exposure as by a blow."

In Terry v. Ohio, 392 U.S. 1, 8 -9, the Court, in speaking of the Fourth Amendment stated, "This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs."

Katz v. United States, 389 U.S. 347, 350 , emphasizes that the Fourth Amendment "protects individual privacy against certain kinds of governmental intrusion."

In Meyer v. Nebraska, 262 U.S. 390, 399 , the Court said:

"Without doubt, [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The Georgia statute is at war with the clear message of these cases - that a woman is free to make the basic decision whether to bear an unwanted child. Elaborate argument is hardly necessary to demonstrate that childbirth may deprive a woman of her preferred lifestyle and force upon her a radically different and undesired future. For example, rejected applicants under the Georgia statute are required to endure the [410 U.S. 179, 215] discomforts of pregnancy; to incur the pain, higher mortality rate, and aftereffects of childbirth; to abandon educational plans; to sustain loss of income; to forgo the satisfactions of careers; to tax further mental and physical health in providing child care; and, in some cases, to bear the lifelong stigma of unwed motherhood, a badge which may haunt, if not deter, later legitimate family relationships.

II

Such reasoning is, however, only the beginning of the problem. The State has interests to protect. Vaccinations to prevent epidemics are one example, as Jacobson, supra, holds. The Court held that compulsory sterilization of imbeciles afflicted with hereditary forms of insanity or imbecility is another. Buck v. Bell, 274 U.S. 200 . Abortion affects another. While childbirth endangers the lives of some women, voluntary abortion at any time and place regardless of medical standards would impinge on a rightful concern of society. The woman's health is part of that concern; as is the life of the fetus after quickening. These concerns justify the State in treating the procedure as a medical one.

One difficulty is that this statute as construed and applied apparently does not give full sweep to the "psychological as well as physical well-being" of women patients which saved the concept "health" from being void for vagueness in United States v. Vuitch, 402 U.S., at 72 . But, apart from that, Georgia's enactment has a constitutional infirmity because, as stated by the District Court, it "limits the number of reasons for which an abortion may be sought." I agree with the holding of the District Court, "This the State may not do, because such action unduly restricts a decision sheltered by the Constitutional right to privacy." 319 F. Supp., at 1056.

The vicissitudes of life produce pregnancies which may be unwanted, or which may impair "health" in [410 U.S. 179, 216] the broad Vuitch sense of the term, or which may imperil the life of the mother, or which in the full setting of the case may create such suffering, dislocations, misery, or tragedy as to make an early abortion the only civilized step to take. These hardships may be properly embraced in the "health" factor of the mother as appraised by a person of insight. Or they may be part of a broader medical judgment based on what is "appropriate" in a given case, though perhaps not "necessary" in a strict sense.

The "liberty" of the mother, though rooted as it is in the Constitution, may be qualified by the State for the reasons we have stated. But where fundamental personal rights and liberties are involved, the corrective legislation must be "narrowly drawn to prevent the supposed evil," Cantwell v. Connecticut, 310 U.S. 296, 307 , and not be dealt with in an "unlimited and indiscriminate" manner. Shelton v. Tucker, 364 U.S. 479, 490 . And see Talley v. California, 362 U.S. 60 . Unless regulatory measures are so confined and are addressed to the specific areas of compelling legislative concern, the police power would become the great leveler of constitutional rights and liberties.

There is no doubt that the State may require abortions to be performed by qualified medical personnel. The legitimate objective of preserving the mother's health clearly supports such laws. Their impact upon the woman's privacy is minimal. But the Georgia statute outlaws virtually all such operations - even in the earliest stages of pregnancy. In light of modern medical evidence suggesting that an early abortion is safer healthwise than childbirth itself, 5 it cannot be seriously [410 U.S. 179, 217] urged that so comprehensive a ban is aimed at protecting the woman's health. Rather, this expansive proscription of all abortions along the temporal spectrum can rest only on a public goal of preserving both embryonic and fetal life.

The present statute has struck the balance between the woman's and the State's interests wholly in favor of the latter. I am not prepared to hold that a State may equate, as Georgia has done, all phases of maturation preceding birth. We held in Griswold that the States may not preclude spouses from attempting to avoid the joinder of sperm and egg. If this is true, it is difficult to perceive any overriding public necessity which might attach precisely at the moment of conception. As Mr. Justice Clark has said: 6

"To say that life is present at conception is to give recognition to the potential, rather than the actual. The unfertilized egg has life, and if fertilized, it takes on human proportions. But the law deals in reality, not obscurity - the known rather than the unknown. When sperm meets egg life may eventually form, but quite often it does not. The law does not deal in speculation. The phenomenon of [410 U.S. 179, 218] life takes time to develop, and until it is actually present, it cannot be destroyed. Its interruption prior to formation would hardly be homicide, and as we have seen, society does not regard it as such. The rites of Baptism are not performed and death certificates are not required when a miscarriage occurs. No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. 7 This would not be the case if the fetus constituted human life."

In summary, the enactment is overbroad. It is not closely correlated to the aim of preserving prenatal life. In fact, it permits its destruction in several cases, including pregnancies resulting from sex acts in which unmarried females are below the statutory age of consent. At the same

time, however, the measure broadly proscribes aborting other pregnancies which may cause severe mental disorders. Additionally, the statute is overbroad because it equates the value of embryonic life immediately after conception with the worth of life immediately before birth.

III

Under the Georgia Act, the mother's physician is not the sole judge as to whether the abortion should be performed. Two other licensed physicians must concur in his judgment. 8 Moreover, the abortion must be performed in a licensed hospital; 9 and the abortion must be [410 U.S. 179, 219] approved in advance by a committee of the medical staff of that hospital. 10

Physicians, who speak to us in Doe through an amicus brief, complain of the Georgia Act's interference with their practice of their profession.

The right of privacy has no more conspicuous place than in the physician-patient relationship, unless it be in the priest-penitent relationship.

It is one thing for a patient to agree that her physician may consult with another physician about her case. It is quite a different matter for the State compulsorily to impose on that physician-patient relationship another layer or, as in this case, still a third layer of physicians. The right of privacy - the right to care for one's health and person and to seek out a physician of one's own choice protected by the Fourteenth Amendment - becomes only a matter of theory, not a reality, when a multiple-physician-approval system is mandated by the State.

The State licenses a physician. If he is derelict or faithless, the procedures available to punish him or to deprive him of his license are well known. He is entitled to procedural due process before professional disciplinary sanctions may be imposed. See In re Ruffalo, 390 U.S. 544 . Crucial here, however, is state-imposed control over the medical decision whether pregnancy should be interrupted. The good-faith decision of the patient's chosen physician is overridden and the final decision passed on to others in whose selection the patient has no part. This is a total destruction of the right of privacy between physician and patient and the intimacy of relation which that entails.

The right to seek advice on one's health and the right to place reliance on the physician of one's choice are [410 U.S. 179, 220] basic to Fourteenth Amendment values. We deal with fundamental rights and liberties, which, as already noted, can be contained or controlled only by discretely drawn legislation that preserves the "liberty" and regulates only those phases of the problem of compelling legislative concern. The imposition by the State of group controls over the physician-patient relationship is not made on any medical procedure apart from abortion, no matter how dangerous the medical step may be. The oversight imposed on the physician and patient in abortion cases denies them their "liberty," viz., their right of privacy, without any compelling, discernible state interest.

Georgia has constitutional warrant in treating abortion as a medical problem. To protect the woman's right of privacy, however, the control must be through the physician of her choice and the standards set for his performance.

The protection of the fetus when it has acquired life is a legitimate concern of the State. Georgia's law makes no rational, discernible decision on that score. 11 For under the Code, the developmental stage of the fetus is irrelevant when pregnancy is the result of rape, when the fetus will very likely be born with a permanent defect, or when a continuation of the pregnancy will endanger the life of the mother or permanently injure her health. When life is present is a question we do not try to resolve. While basically a question for medical experts, as stated by Mr. Justice Clark, 12 it is, of course, caught up in matters of religion and morality.

In short, I agree with the Court that endangering the life of the woman or seriously and permanently injuring [410 U.S. 179, 221] her health are standards too narrow for the right of privacy that is at stake.

I also agree that the superstructure of medical supervision which Georgia has erected violates the patient's right of privacy inherent in her choice of her own physician.