
**Testimony of Lourdes A. Rivera, President of Pregnancy Justice
before the United States Senate Judiciary Committee
March 20, 2024**

Thank you, Chairman Durbin, Ranking Member Graham, and Senate Judiciary Committee members for the opportunity to testify today. I am Lourdes Rivera, President of Pregnancy Justice, a non-partisan legal advocacy organization that for over 20 years has defended and advocated for the rights of pregnant people facing criminalization and other rights violations.

I want to first explain what is “pregnancy criminalization” and “fetal personhood” and then discuss the path to Alabama’s IVF decision. Pregnancy criminalization is charging pregnant women for conduct that would not be illegal, except for the fact that they are pregnant and regardless of pregnancy outcomes.¹ This includes being charged with murder for experiencing a stillbirth,² or for having a miscarriage and not knowing what to do with the fetal remains,³ as if there were an instruction manual for such things.

We’ve documented over 1,800 cases of pregnancy criminalization in the years 1973 to 2022, from *Roe* to *Dobbs*.⁴ The majority, 1,400 of them, occurred in the last 15 years, as fetal personhood gained traction in state law.⁵ Unsurprisingly, those targeted are overwhelmingly poor or disproportionately people of color.⁶

Bestowing legal personhood status on fertilized eggs, embryos, and fetuses is what underlies these prosecutions, as well as abortion bans, and threatens IVF and birth control.⁷ Attempts to define fetuses as legal persons have been rejected by voters in nearly every state in which it has been put on the ballot,⁸ including in Mississippi.⁹ Yet, state legislatures in at least 11 states passed broad fetal personhood laws before *Dobbs*.¹⁰ These laws could potentially be read to extend full rights to fertilized eggs. Constitutional protections provided by *Roe v. Wade*, however, meant that fetal personhood laws could not be fully enforced.¹¹

But there are significant exceptions. Ten years ago, the Alabama Supreme Court held that embryos and fetuses are the same as “children” under the state’s criminal child abuse laws, and that pregnant women can be charged as “child abusers” from the moment of fertilization.¹² With over 600 women being charged, Alabama leads every state in the nation on pregnancy criminalization.¹³ While shocking, it is hardly surprising that the Alabama Supreme Court decided to extend its reasoning to frozen embryos.

Alabama—along with Oklahoma and South Carolina, whose Supreme Courts have also designated fetuses as children under their state criminal laws¹⁴—accounts for two-thirds of arrests of pregnant people nationally, including those who experience miscarriage and stillbirth.¹⁵

When conduct during pregnancy or pregnancy outcomes are punished, pregnant people and their families suffer irreparable harm. This includes dire health consequences, incarceration, and families torn apart.¹⁶ Our nation is facing a maternal and infant health crisis, and pregnant and postpartum people—but especially Black women—face increased risks of death and severe

complications, including due to mental health conditions.¹⁷ The three states with the highest prevalence of pregnancy criminalization also have some of the highest rates of maternal mortality in the nation.¹⁸ Alabama ranks fourth¹⁹ and has some of the worst infant health outcomes.²⁰

Research shows that criminalizing pregnancy does absolutely nothing to improve maternal and infant health; in fact, it does the opposite.²¹ Every major medical and public health association in the nation opposes criminalizing pregnancy, because it interferes with the patient-provider relationship and deters access to needed health care.²²

Let me be very clear: When antiabortion lawmakers endow fertilized eggs with personhood rights, they seek to ban abortion and IVF and threaten contraception. As legal personhood advances, more pregnant people can face criminal charges for any conceivable risk to their pregnancies, or even to a fertilized egg before implantation.²³ This is not hyperbole. Our clients are living this reality right now.

When the antiabortion movement talks about fetal and embryonic personhood, it is not about protecting babies; it is about controlling and punishing women, pregnant people, and communities that are already marginalized. And the Life at Conception Act, if ever adopted, would ban abortion nationally, eliminate the right to IVF, endanger access to birth control, and expand the government's ability to police pregnant people and criminalize pregnancy and pregnancy outcomes.²⁴

In the face of these attacks, and the crisis we are facing, we must remember that women and pregnant people are and must be treated as fully autonomous, rights-bearing persons who are entitled to health care and bodily integrity, and who must be allowed to make their own decisions.

¹ AMNESTY INTERNATIONAL, CRIMINALIZING PREGNANCY: POLICING PREGNANT WOMEN WHO USE DRUGS IN THE USA 5 (2017) (defining pregnancy criminalization as “[t]he process of attaching punishments or penalties to women for actions that are interpreted as harmful to their own pregnancies. This includes laws that punish actions during pregnancy that would not otherwise be made criminal or punishable. It also refers to other laws not specific to pregnancy but which are either applied in a discriminatory way against pregnant women and/or have a disproportionate impact on pregnant women which can in practice work as de facto criminalization”).

² PURVAJA S. KAVATTUR ET AL., THE RISE OF PREGNANCY CRIMINALIZATION: A PREGNANCY JUSTICE REPORT 31–34 (2023).

³ See, e.g., Claretta Bellamy, *Black woman charged after miscarrying in bathroom shares feelings about arrest*, NBC NEWS (Jan. 26, 2024, 4:49 PM), <https://www.nbcnews.com/news/nbcblk/brittany-watts-miscarriage-bathroom-charged-rcna135861>.

⁴ Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POLITICS, POL. & L. 299 (2013); PURVAJA S. KAVATTUR ET AL., THE RISE OF PREGNANCY CRIMINALIZATION: A PREGNANCY JUSTICE REPORT (2023).

⁵ KAVATTUR ET AL. at 4.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ See, e.g., Laura Bassett, *Colorado and North Dakota Voters Reject Fetal Personhood Measures*, HUFFPOST (updated Nov. 5, 2014), https://www.huffpost.com/entry/personhood-colorado_n_6104120; Dahlia Ward McManus, *Voters to Personhood: Stick a Fork In it. You're Done.*, ACLU (Aug. 30, 2012), <https://www.aclu.org/news/reproductive-freedom/voters-personhood-stick-fork-it-youre-done> (detailing failed

efforts to establish fetal personhood in Oklahoma, Ohio, Oregon, Mississippi, Montana, Nevada, Arkansas, Florida, California, Alabama, Georgia, Iowa, South Carolina, Washington, and Wisconsin).

⁹ Frank James, *Mississippi Voters Reject Personhood Amendment By Wide Margin*, NPR (Nov. 8, 2011, 11:28 PM), <https://www.npr.org/sections/itsallpolitics/2011/11/08/142159280/mississippi-voters-reject-personhood-amendment#:~:text=The%20Mississippi%20%22personhood%22%20amendment%20on,41%20percent%20voting%20%22yes.%22>.

¹⁰ PREGNANCY JUSTICE, WHEN FETUSES GAIN PERSONHOOD: UNDERSTANDING THE IMPACT ON IVF, CONTRACEPTION, MEDICAL TREATMENT, CRIMINAL LAW, CHILD SUPPORT, AND BEYOND 3 (2022).

¹¹ *Roe v. Wade*, 410 U.S. 113, 158 (1973) (“[T]he word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

¹² *Ex parte Ankrom*, 152 So. 3d 397 (Ala. 2013).

¹³ KAVATTUR ET AL. at 4, 20.

¹⁴ *State v. Green*, 474 P.3d 886 (Okla. 2020); *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997).

¹⁵ KAVATTUR ET AL. at 4.

¹⁶ See, e.g., Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, HEALTH JUSTICE, 2015 Feb 12;3:2. doi: 10.1186/s40352-015-0015-5. PMID: PMC5151516; Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475 (2021).

¹⁷ 2023 MARCH OF DIMES REPORT CARD FOR UNITED STATES (2023),

<https://www.marchofdimes.org/peristats/reports/united-states/report-card>; Katie Kindelan, *Maternal and infant care in ‘crisis’ in US, new report finds*, ABC NEWS (Nov. 16, 2023, 7:06 AM),

<https://abcnews.go.com/GMA/Wellness/us-earns-grade-preterm-birth-maternal-infant-care/story?id=104909605> (“This year’s report shows the state of infant and maternal health in the United States remains at crisis-level, with grave disparities that continue to widen the health equity gap.”).

¹⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, MATERNAL DEATHS AND MORTALITY RATES: EACH STATE, THE DISTRICT OF COLUMBIA, UNITED STATES, 2018-2021, <https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-2021-State-Data.pdf>.

¹⁹ *Id.*

²⁰ 2023 MARCH OF DIMES REPORT CARD FOR ALABAMA (2023),

<https://www.peridev.marchofdimes.org/peristats/reports/alabama/report-card> (giving Alabama a F because of its high rate of preterm birth and infant mortality).

²¹ See, e.g., Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, HEALTH JUSTICE, 2015 Feb 12;3:2. doi: 10.1186/s40352-015-0015-5. PMID: PMC5151516; Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475 (2021).

²² See, e.g., AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, OPPOSITION TO CRIMINALIZATION OF INDIVIDUALS DURING PREGNANCY AND THE POSTPARTUM PERIOD (Dec. 2020), [https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period#:~:text=Criminalization%20of%20pregnancy%20is%20the,criminal%20or%20punishable%20\(2\);](https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period#:~:text=Criminalization%20of%20pregnancy%20is%20the,criminal%20or%20punishable%20(2);)

NORA VOLKOW, NAT’L INST. ON DRUG ABUSE, PREGNANT PEOPLE WITH SUBSTANCE USE DISORDERS NEED TREATMENT, NOT CRIMINALIZATION (Feb. 15, 2023), <https://nida.nih.gov/about-nida/noras-blog/2023/02/pregnant-people-substance-use-disorders-need-treatment-not-criminalization>; ADVANCING PUBLIC HEALTH INTERVENTIONS TO ADDRESS THE HARMS OF THE CARCERAL SYSTEM, AM. PUB. HEALTH ASS’N (updated Jan. 14, 2021), [https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/14/advancing-public-health-interventions-to-address-the-harms-of-the-carceral-system#:~:text=Therefore%2C%20APHA%20recommends%20moving%20toward,carceral%20systems%20and%20investing%20in;POLICY STATEMENT H-420.970, TREATMENT VERSUS CRIMINALIZATION – PHYSICIAN ROLE IN DRUG ADDICTION DURING PREGNANCY, AM. MED. ASS’N, \(2020\),](https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/14/advancing-public-health-interventions-to-address-the-harms-of-the-carceral-system#:~:text=Therefore%2C%20APHA%20recommends%20moving%20toward,carceral%20systems%20and%20investing%20in;POLICY STATEMENT H-420.970, TREATMENT VERSUS CRIMINALIZATION – PHYSICIAN ROLE IN DRUG ADDICTION DURING PREGNANCY, AM. MED. ASS’N, (2020),) <https://policysearch.ama-assn.org/policyfinder/detail/addiction%20pregnancy?uri=%2FAMADoc%2FHOD.xml-0-3713.xml>.

²³ PREGNANCY JUSTICE, WHEN FETUSES GAIN PERSONHOOD: UNDERSTANDING THE IMPACT ON IVF, CONTRACEPTION, MEDICAL TREATMENT, CRIMINAL LAW, CHILD SUPPORT, AND BEYOND (2022).

²⁴ Life at Conception Act, H.R. 421, 118th Cong. (2023).