



Unpacking Fetal Personhood

The Radical Tool That Undermines
Reproductive Justice

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I. Introduction

Fetal personhood is a radical legal doctrine that seeks to endow fertilized eggs, embryos, and fetuses with full rights and legal protections. Fetal personhood directly challenges the rights of women and anyone capable of pregnancy and creates a direct conflict between pregnant people's¹ rights and those of so-called "unborn children."² By elevating embryonic and fetal rights over the rights of women and pregnant people, anti-abortion proponents use legal and policy frameworks informed by fetal personhood principles to impose government surveillance over women's bodies for the purpose of social and political control. As fetal personhood increasingly influences judicial decisions, statutes, and state constitutional amendments, it has led to: the criminal prosecutions of pregnant people for actions deemed to pose even a risk of harm to an embryo or fetus; forced medical interventions during pregnancy;³ threats to in vitro fertilization (IVF) care;⁴ and denials of life-saving obstetric and abortion care,⁵ all under the guise of protecting "fetal life." Fetal personhood diminishes the rights of women the moment they become pregnant⁶ and directly impacts anyone who might have the potential for pregnancy.

Historical context reveals that some of the nascent seeds of federal personhood doctrines were planted in the United States at the end of the transatlantic slave trade in 1808. With the international importation of enslaved people brought to an end, the reproductive servitude of Black women became even more

pronounced.⁷ Black women's reproductive labor—tied to their capacity to "produce" more enslaved people—became one of the central means through which the capital of white enslavers was increased, including the fortunes of founding patriarchs like Thomas Jefferson.⁸ The fetus signified wealth for white enslavers and its gestation was necessarily, if dissonantly, divorced from the mother's humanity.⁹

Broad fetal personhood concepts—redefining a person to include fertilized eggs, embryos, and fetuses—have existed in a patchwork of state laws and judicial decisions since at least 1989.¹⁰ But fringe fetal personhood principles have gained traction and slowly marched toward normalization after *Roe v. Wade* established a national constitutional right to abortion in 1973¹¹ and have only created devastating and lasting impacts for and on reproductive justice in the decades since. A national constitutional amendment called the Human Life Amendment was introduced, but never passed, in Congress just days after *Roe* was decided.¹² State legislatures and courts soon picked up the mantle, however, embedding the concept of fetal personhood into state laws and judicial decisions.¹³ On the federal level, members of Congress have introduced the Life at Conception Act nearly every year over the last decade, including in 2021 and 2023, in an effort to codify fetal personhood nationwide.¹⁴

The U.S. Supreme Court’s 2022 decision in *Dobbs v. Jackson Women’s Health Organization*, which overturned *Roe*, supercharged the legitimization of fetal personhood as an actionable legal principle. Peppered throughout the decision are discussions of the jurisdictions and institutions that view a fetus as an “unborn human being,”¹⁵ views that are then relied upon to distinguish *Roe* from other substantive due process cases granting civil rights, suggesting that abortion is distinct due to its “destruction of... ‘potential life.’”¹⁶ Indeed, Justice Samuel Alito’s majority opinion presented fetuses as “an underrepresented constituency in need of judicial protection.”¹⁷ The majority’s nod to Justice Clarence Thomas’ view—that abortion is a form of “racial genocide”—normalized the idea that “fetuses [are] a minority group” entitled to equal protection and have full constitutional protections.¹⁸ The Court dismissed amici’s equal protection clause arguments in a single sentence,¹⁹ ignoring the independent basis for abortion rights under the Fourteenth Amendment; this decision exposes the deep sexism and misogyny animating the *Dobbs* ruling, given the inextricable link between the ability to control one’s reproduction and sex and gender equity.²⁰ What initially functioned as a means to preserve profits through the invasive state regulation of Black women’s reproductive functions now become universalized to all women and pregnant people under the guise of a state’s right to protect “unborn life.”²¹

Fetal personhood *is* the basis for pregnancy criminalization. Pregnancy-related criminal prosecutions have forced pregnant people to face child abuse, neglect, or endangerment charges for alleged harm, or even risk of harm, to fetuses.²² In the over 50 years since *Roe* was decided, pregnant and postpartum people have been charged with murder or manslaughter for experiencing a pregnancy loss or self-managing an abortion.²³ These prosecutions have often sat at the intersection of fetal personhood and the war on drugs.²⁴

In post-*Dobbs* America, fetal personhood has taken center stage, and, as Dorothy Roberts warns, “there’s no limit” on the state’s power to punish people through the application of this legal doctrine.²⁵ The growing influence of fetal personhood threatens to upend the civil and human rights of half the American population,²⁶ with its impact being felt nationwide and its disproportionate impact continuing to harm communities of color, LGBTQ and poor people, and people who use drugs.²⁷ Wherever fetal personhood principles are enmeshed and sanctioned, the rights, liberty, and autonomy of women and pregnant people are threatened. This updated report provides a necessary overview of the legal framework supporting fetal personhood in a post-*Dobbs* world, examines the escalating application of fetal personhood principles since *Roe*’s fall, and explores the real-world implications and harms of this radical legal doctrine while identifying areas both for intervention and resistance.

II. The Legal Edifice of Fetal Personhood

Fetal personhood is woven into the fabric of state constitutions, criminal codes, and civil wrongful death statutes, affecting the entire reproductive health spectrum.

a. Overview

This section provides a high-level overview of state laws that redefine personhood.

- **Eleven states have broad personhood language that could affect all state laws, civil and criminal.** Laws in those states have incorporated fetal

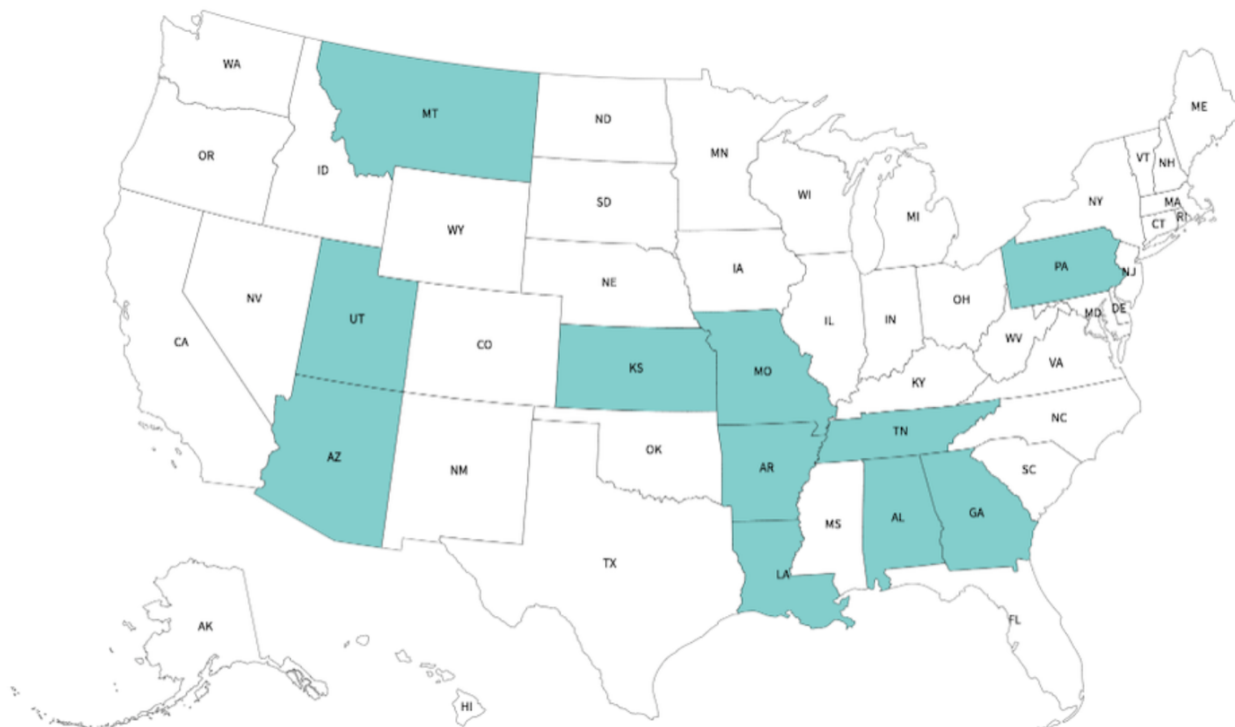
personhood principles by (1) establishing an inalienable right to life in their state constitution; (2) extending legal and constitutional rights, privileges, and immunities to fertilized eggs, embryos, and/or fetuses in anti-abortion laws; or (3) by expanding the definition of a “person,” in their general definition section to apply across all their laws.²⁸

- **At least nine of these 11 state laws are broad enough to put IVF at risk if a case comes before a hostile state court.**²⁹

Arizona’s broad fetal personhood language explicitly exempts IVF,³⁰ and Georgia’s language limits its “unborn child” definition to unborn children “in the womb.”³¹

States where Fetal Personhood Applies to All Laws

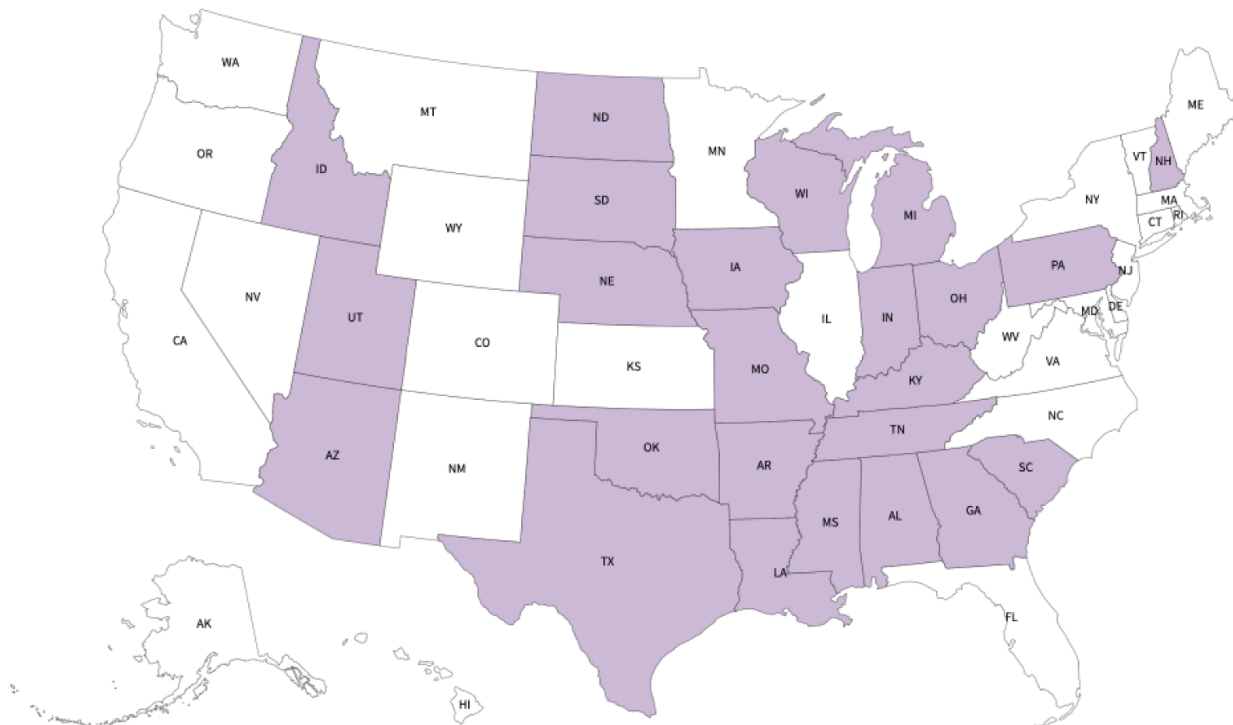
Legend ■ YES



*Fetal Personhood does not apply across all of District of Columbia’s laws.

States with Fetal Personhood Language in their Abortion Laws

Legend YES

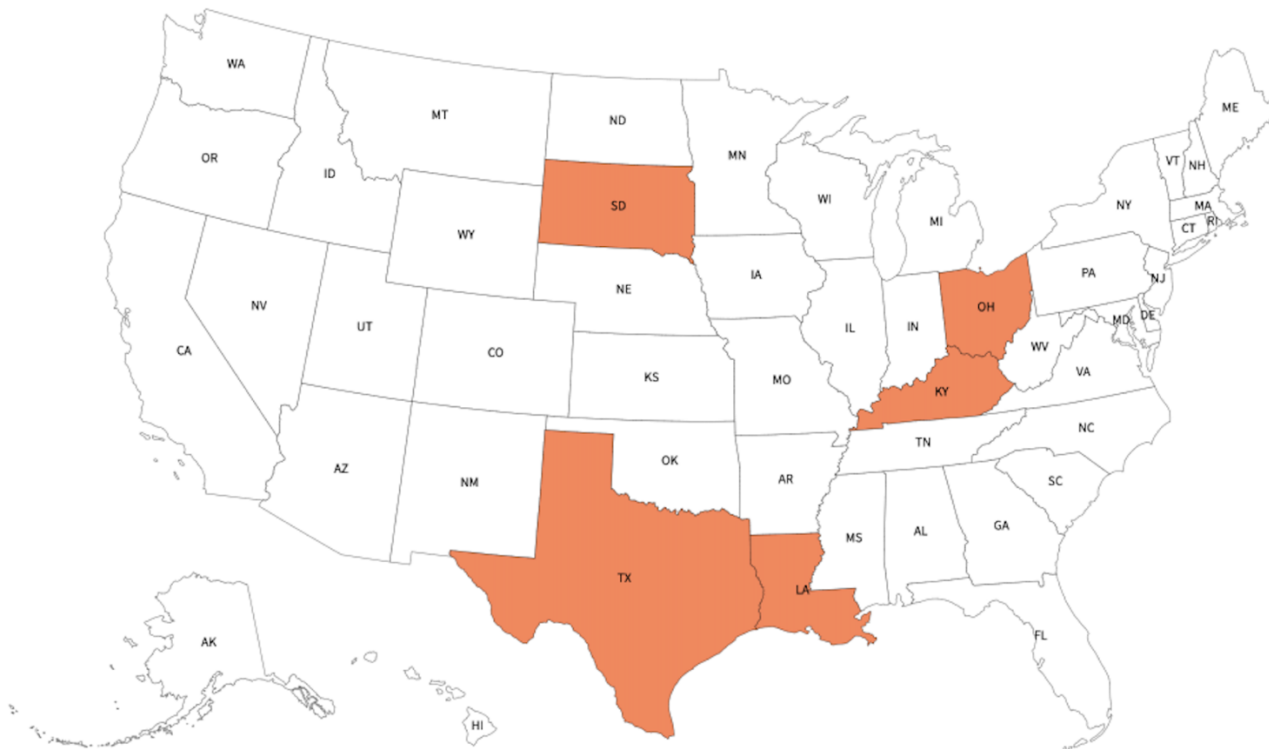


*District of Columbia does not have any fetal personhood language in its abortion laws.

- **At least 24 states include personhood language in laws regulating or prohibiting abortion care** (e.g., “member of species Homo sapiens,” “unborn human being,” “unborn human individual,” “dignity of all human life,” “persons, born and unborn,” “class of human beings,” etc.).³²

States where Fetal Personhood Applies to All Criminal Laws

Legend ■ YES

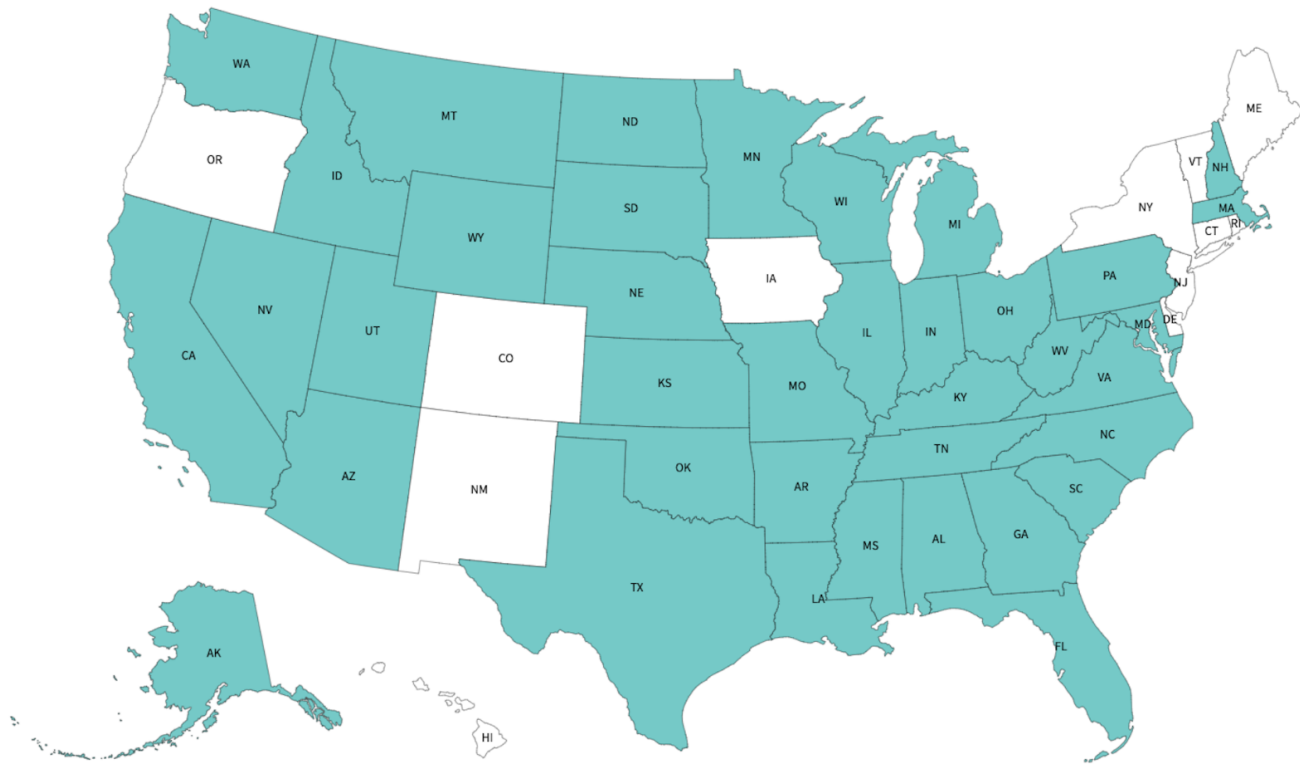


*Fetal personhood does not apply across all of District of Columbia's criminal laws.

- **At least five states define “person” (or “individual” or “human being”) to include a fetus throughout the state criminal code.**³³
- **At least two additional states define an “unborn child” as “a member of the species *Homo sapiens*, at any stage of development, who is carried in [the/a] womb” throughout the criminal code.**³⁴ The term “person” is used instead of “*homo sapiens*” to describe victims of various offenses in these two criminal codes; it is unclear how this definition impacts how these offenses are interpreted.

States with Fetal Homicide Laws

Legend ■ YES



*District of Columbia does not have any fetal homicide laws.

- **Thirty-eight states** have **feticide** laws allowing homicide charges to be brought for causing the loss of a pregnancy.³⁵

- **Twenty-two of those 38 states**³⁶ have expanded—by criminal code or by caselaw—definitions of a homicide victim, or a charge similar to homicide, to include a fertilized egg, embryo, and/or fetus. In **seven of those 38 states**,³⁷ terms such as **“person,” “human being,” or “another”** have been **redefined in the homicide code** to include a fertilized egg, embryo, or fetus.

- **Six states’ feticide laws** could be interpreted to criminalize the destruction

of frozen embryos and **threaten access to IVF care**.³⁸

- The **remaining 32 states** limit the definition of unborn child in their criminal code to in utero embryos and/or fetuses.

- **At least eight states/territories**³⁹ have statutes or caselaw declaring that, as a general matter, a **“child” that is conceived but not yet born is considered an existing person, but violation of rights that occur before birth, like “prenatal injury,” do not apply until after the child is born.**

- **Forty-four states, in addition to Washington D.C., have wrongful death laws that apply—or that state courts have interpreted to apply—to the demise of fetuses.**⁴⁰

- While most of these laws only apply to “viable” fetuses or explicitly exempt frozen embryos, **at least eight of these 44 states** allow wrongful death claims for “non-viable” fetuses or fail to provide a limiting definition of “unborn child” under their wrongful death statute.⁴¹

- Of these eight states, **five states fail to exclude frozen embryos** from the definition of unborn child or explicitly state a cause of action from the “moment of conception” or “fertilization,” **threatening IVF access.**⁴²

- The remaining **three states allow a cause of action for “non-viable” fetuses** because they either do not exclude that stage of development or explicitly state a cause of action for a “non-viable” fetus.⁴³

- Every state and territory has some statute or caselaw defining or interpreting “person,” “minor,” or “child” to include a fetus.⁴⁴

b. The Roots of Statutory Fetal Personhood

Missouri’s fetal personhood law was the first and only one of its kind to reach the U.S. Supreme Court.⁴⁵ In 1989, the Court reviewed the state’s abortion restrictions, including a statutory preamble stating that “[t]he life of each human being

begins at conception,” and “unborn children have protectable interests in life, health, and well-being,” effectively guaranteeing that state laws treat “unborn children” as born people.⁴⁶ Because this provision was not operable unless applied by state courts to interpret other state statutes or regulations, the U.S. Supreme Court held that “it is inappropriate for federal courts to address its meaning.”⁴⁷ The Court considered this language to be a “value judgment,” and left it intact,⁴⁸ thus opening the door for other states to reframe the moment when “life” begins.⁴⁹

Following the U.S. Supreme Court’s decision, the Missouri Supreme Court interpreted the preamble to confer “legally protectable rights, privileges, and immunities” to “unborn child[ren]” from the moment of conception onward, directing Missouri courts to analyze state statutes in lockstep with this interpretation.⁵⁰

The subsequent interpretations of these decisions have at times served as powerful case studies of how fetal personhood principles test the boundaries of legal logic. For example, a litigant requested that a Missouri court date a child molestation victim’s age from conception rather than birth—a disturbing tactic intended to avoid a criminal conviction by asserting the victim was older than she was. That application was rejected by the intermediary appellate court.⁵¹ On the other hand, Missouri prosecutors sought to expand the personhood provision

beyond its original scope by ignoring the law's explicit exclusions of actions against women "for indirectly harming her unborn child by failing to properly care for herself" or not receiving prenatal care.⁵² In these instances, Missouri prosecutors have "criminalize[d] pregnant and postpartum women for perceived risks during pregnancy."⁵³ These prosecutions underscore that fetal personhood language is not merely symbolic; but instead carries real, often devastating, ramifications for women and pregnant people's lives.⁵⁴

c. Fetal Personhood Spreads Across States

Following the U.S. Supreme Court's decision not to strike down Missouri's fetal personhood law, other states have embedded similar personhood provisions within their anti-abortion laws,⁵⁵ constitutions,⁵⁶ and the general provisions or statutory interpretation sections of their state codes,⁵⁷ often as part of a broader interpretative policy. For example, Louisiana's fetal personhood provision—which is embedded in the abortion section of its code—states: "every unborn child is a human being from the moment of conception and is, therefore, a legal person under state law."⁵⁸ The language is so sweeping it could arguably apply far beyond abortion. Tennessee's law, also embedded in its criminal abortion code, goes even further, claiming that "unborn human beings" have rights under the Fourteenth and Ninth Amendments of the

U.S. Constitution.⁵⁹

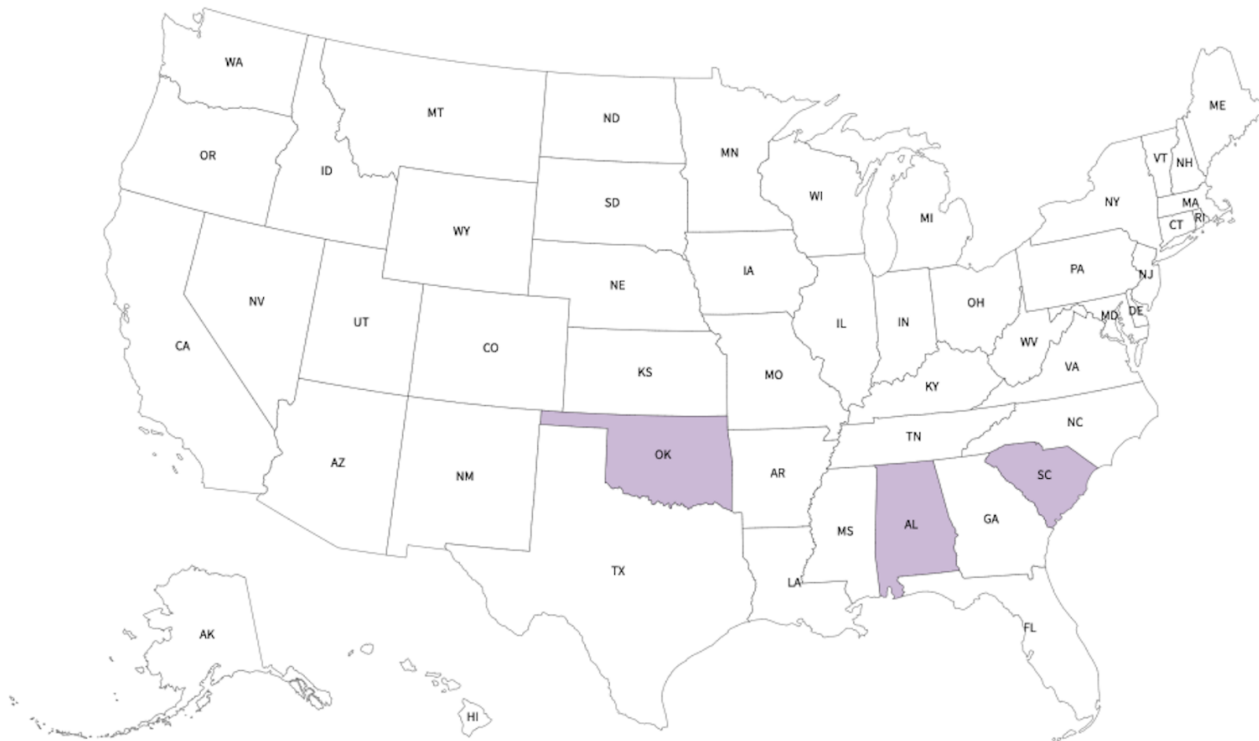
The practical implications of many of these state laws are unclear, raising questions about whether they are self-executing or require enabling legislation for enforcement. For example, after *Dobbs*, a federal court granted a limited preliminary injunction against Arizona's personhood provision—insofar as it applies to legal abortions in the state—citing uncertainty over its actual effect.⁶⁰

III. Fetal Personhood as a Pathway to Criminalization and Family Policing

States use fetal personhood to charge and convict pregnant and postpartum women for actions that would not otherwise be crimes under the theory that they exposed their fertilized egg, embryo, or fetus to risk of harm; they also use their prenatal behavior to develop a theory of post-natal criminal intent.⁶¹ This legal formulation sharply restricts pregnant and postpartum people's due process rights as guaranteed by the Fourteenth Amendment of the U.S. Constitution, i.e., the right to be on notice that they could be prosecuted for a crime.⁶² Additionally, criminal and civil charges often lead to family separation, thus infringing on the fundamental right to parent one's children,⁶³ which is also protected under the Fourteenth Amendment's Due Process Clause.

States Where Judicial Decisions Have Expanded Criminal Child Abuse Statutes to Include Fetal Personhood

Legend  YES



*District of Columbia does not have any judicial decisions expanding criminal child abuse statutes to include fetal personhood.

As discussed in Part II(A) above, in addition to the 11 states with broad personhood language that could affect all state laws, civil and criminal,⁶⁴ at least five states, including Kentucky, Louisiana, Ohio, South Dakota, and Texas,⁶⁵ define a person to include a fetus throughout the criminal code.

The highest courts in Alabama, Oklahoma, and South Carolina have expanded criminal child abuse, neglect, and/or endangerment statutes to include fetuses within the definition of “child;” and in Alabama’s case, fertilized eggs, and embryos in addition to fetuses.⁶⁶ These decisions have dramatically accelerated the rate of pregnancy

prosecutions in their respective states, emboldening prosecutors to criminalize people for conduct during their pregnancy that is otherwise legal for everyone else.⁶⁷

These decisions also embolden prosecutors to charge pregnant and postpartum people under other criminal statutes in the hopes that courts will continue to judicially expand statutes that do not, on their face or as a matter of legislative intent, apply to prosecuting them. Collectively, these sweeping definitions open the door to a wide swath of statutes that are, or can be, mobilized to criminalize pregnancy.⁶⁸

a. Fetal Homicide

Fetal homicide laws allow homicide charges for causing a pregnancy loss. These criminal statutes vary in their approach. Some create new, separate crimes for causing pregnancy loss by injury to a pregnant person, while others expand definitions of “person” or “another” to include a fertilized egg, embryo, and fetus under criminal codes for murder or manslaughter. The majority of these laws apply from “conception,” or an early stage of pregnancy, until birth. While some states define “unborn child” or fetus broadly in their criminal codes, others change the definition of “person” or “victim” within their homicide statutes. Additionally, some states create entirely new laws, often labeled as feticide or murder of an “unborn child.”

Thirty-eight states have fetal homicide laws allowing charges for causing pregnancy loss.⁶⁹ Seventeen of these 38 states provide a unique statute or chapter in the criminal code for prosecuting people for causing pregnancy loss.⁷⁰ Twenty-nine states with fetal homicide laws explicitly prevent charging pregnant people in relation to their own pregnancies,⁷¹ and one additional state implies the same exception.⁷² Despite these exclusions, overzealous state prosecutors have prosecuted pregnant people for their own pregnancy losses,⁷³ either by improperly charging them with a homicide crime or bringing other criminal charges for pregnancy loss

experiences. Worse still, even when these prosecutions are not justified by the plain language of the statute, people facing years-long sentences will enter pleas and face the collateral consequences of a conviction for the rest of their lives.⁷⁴

b. Criminal Child Abuse

Criminal statutes related to child abuse cover a range of offenses including child neglect, child deprivation, chemical endangerment, and exposing children to controlled substances.

When these criminal child abuse statutes are expanded to apply to fertilized eggs, embryos, and fetuses, they are used to charge pregnant people with crimes that allegedly occurred before the existence of an actual child.⁷⁵ The decisions from the highest courts in Alabama, Oklahoma, and South Carolina to include fetuses (and in Alabama’s case fertilized eggs and embryos) in the definition of child have dramatically increased pregnancy prosecutions in these states and show the clearest real-world impact of fetal personhood to date.⁷⁶

Being pregnant and testing positive for a substance makes one vulnerable to criminal charges in states that have established fetal personhood through their courts. In Alabama, 96% of pregnancy-related arrests are based on substance use,⁷⁷ typically charged as chemical endangerment. These charges posit that the womb is an environment where the child was exposed to a substance, without requiring proof of

harm beyond exposure.⁷⁸ Oklahoma’s criminal child neglect statute relies on the definition of neglect from its civil statute, located in the state’s children and juvenile code, and does not require a show of harm.⁷⁹

In Oklahoma, 97% of pregnancy-related arrests are related to allegations of substance use,⁸⁰ which are framed as criminal child neglect based on the theory that prenatal substance use exposes the child to some risk of harm.⁸¹ These charges are possible because the state’s highest criminal appeals court has determined that a “viable” fetus is considered a “child” under these statutes.⁸²

Other courts have refused to extend the reach of criminal statutes to punish pregnant and postpartum people.⁸³ For example, in 2007, in *State v. Wade*, a Missouri appellate court held that while Missouri’s sweeping personhood language “generally” protects “the rights of [the] unborn,” it explicitly states that “[n]othing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.”⁸⁴ The court concluded this exception covers substance use during pregnancy, preventing efforts to “prosecute a mother” for causing indirect harm to a fetus by ingesting illegal drugs.⁸⁵

Even so, pregnant people across the country are charged for conduct during pregnancy that is not considered a crime under their state laws.⁸⁶

Even decisions like *Wade* have not dissuaded Missouri prosecutors from attempting to criminalize pregnant and postpartum women for what they perceive is a risk posed to a fetus during pregnancy.⁸⁷ The “vast majority of women—disproportionately women of color and those who are low-income—are compelled to accept plea deals rather than” challenge the legitimacy of the prosecution’s case.⁸⁸ By way of example, a prosecutor in Jackson County charged 22 pregnant or postpartum women with felony child endangerment for substance use during pregnancy and claimed that one of the mothers “directly” endangered the fetus by ingesting illegal drugs and that “Missouri’s personhood provision put her ‘on notice . . . that she could be prosecuted for child endangerment.’”⁸⁹

c. Civil Child Abuse and Civil Confinement Laws

Fetal personhood has also been embedded in civil child abuse and neglect statutes. **Twenty-four states and Washington D.C.** consider substance use during pregnancy to be civil child abuse or neglect.⁹⁰

- In **14 states**, being pregnant and using drugs cannot demonstrate abuse or neglect without an additional showing of harm.⁹¹

- **Twelve states** do not include drug use during pregnancy in their civil child abuse and neglect laws.⁹²

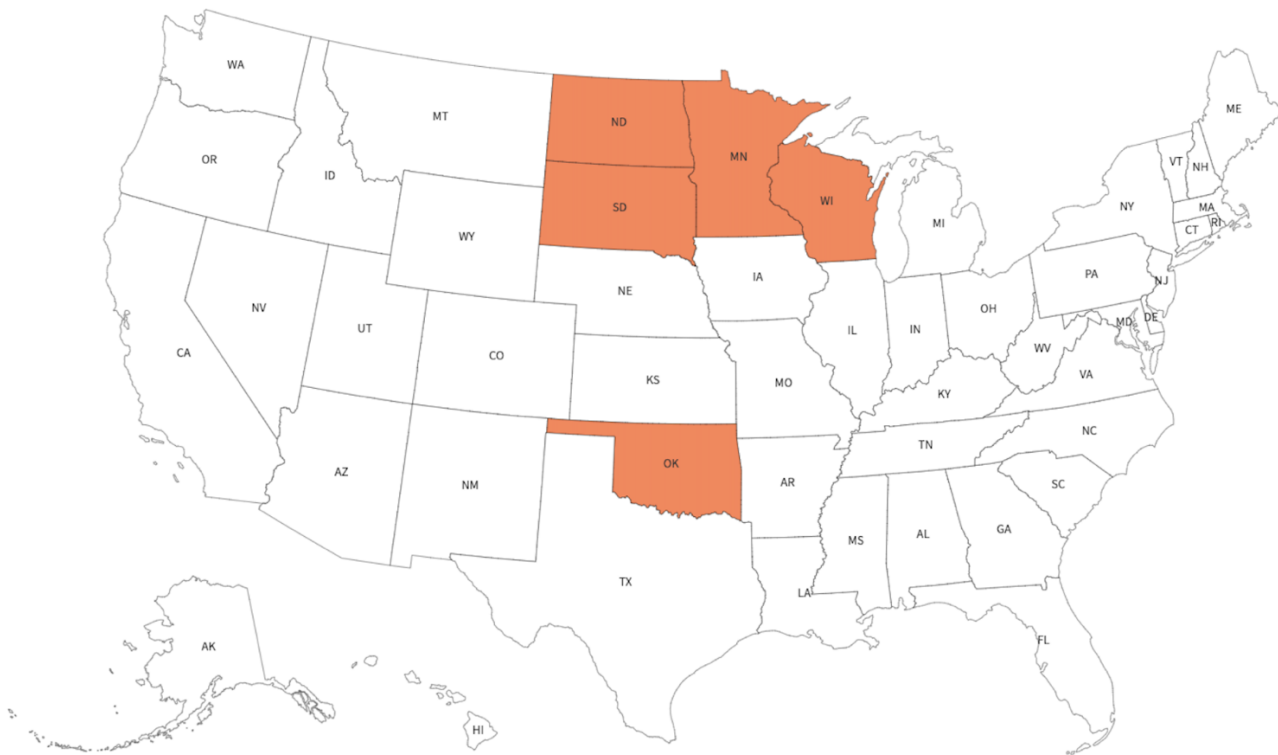
- **At least five states**—Minnesota, Oklahoma, North Dakota, South Dakota, and Wisconsin—consider prenatal substance use grounds for civil commitment, which forces pregnant

people into inpatient drug treatment programs.⁹³

In states with high numbers of pregnancy-related arrests, cases often stem from civil investigations.⁹⁴ Where a state defines civil child abuse or neglect to include conduct during pregnancy, mandatory reporting is implicated.⁹⁵

States that Consider Prenatal Substance Use Grounds for Civil Commitment

Legend ■ YES



*District of Columbia does not consider prenatal substance use grounds for civil commitment.

While civil child abuse cases are far more common than criminal child abuse cases for pregnancy-related conduct, many parents face both; under either regime, parents may lose custody of their children when the process begins, often leading to permanent or long-term

separation during the critical early years of a child's development.⁹⁶ Evidence suggests that this punitive approach actually worsens maternal and infant health outcomes for pregnant people living with substance use disorders.⁹⁷

Wisconsin's child welfare code allows the state to take custody of a pregnant person with even fewer protections than in a criminal case.⁹⁸ In 1997, the Wisconsin legislature amended the Children's Code to define "unborn child" as a "human being from the time of fertilization to the time of birth"⁹⁹ and enacted the "Unborn Child Protection Act" or Act 292.¹⁰⁰ This law allows "juvenile courts to take physical custody of an 'unborn child,'" effectively detaining a pregnant person on the *mere* suspicion that they have consumed or *may* consume alcohol or a controlled substance.¹⁰¹ These proceedings are particularly difficult to document because they take place in juvenile court due to the state's idea that the fetus the pregnant person carrying is a juvenile. Worse still, the fetus is guaranteed a lawyer, but the pregnant person is not.¹⁰²

Courts in California, Georgia, Michigan, New Jersey, New York, Ohio, Tennessee, Texas, Vermont, West Virginia, and Wisconsin have also stretched civil child welfare laws to cover fetuses.¹⁰³ These courts cite wrongful death and negligence liability laws to argue that prenatal conduct can be considered in the context of child welfare proceedings, since, for example, "a child has a legal right to begin life with a sound mind and body."¹⁰⁴ This broad interpretation drags virtually any conduct during pregnancy into the ambit of the family policing system,¹⁰⁵ and inevitably leads to devastating family separations immediately after birth.¹⁰⁶

IV. Fetal Personhood as a Tool to Deny Basic Health Care

The right not to be deprived of one's life without due process of law, as enshrined in the Fourteenth Amendment, does not skip the life of women and pregnant people.¹⁰⁷ Still, the *Dobbs* decision previewed a significant effort to deny

pregnant people their right to life, bodily autonomy, and safety under the Fourteenth Amendment.¹⁰⁸ The most recent battle over fetal personhood has emerged where states assert their near complete abortion ban preempts the Emergency Medical Treatment and

Active Labor Act ("EMTALA"). EMTALA is a federal law requiring most hospital emergency departments to provide "stabilizing treatment" to any patient experiencing a medical emergency—including patients facing obstetric emergencies.¹⁰⁹ For patients needing abortion care as stabilizing treatment, abortion bans with narrow medical exceptions create a direct conflict with EMTALA protections, a conflict in which federal law would normally control.

a. Denial of Medical Care in Obstetric Emergencies

Texas sued the federal government's Department of Health and Human Services ("HHS") over guidance HHS issued reiterating that EMTALA requires that abortion care qualifies in certain situations as stabilizing care.¹¹⁰ Rejecting the letter's mandate, the Fifth Circuit

undercut the agency's power to enforce its own regulations, prioritizing Texas' right to enforce its abortion ban over the patient's right to health-preserving abortion care.¹¹¹

In a separate challenge to EMTALA protections out of Idaho, *Moyle v. United States*, the U.S. Supreme Court refused to affirm that pregnant people have the right to abortion care to stabilize their health under EMTALA.¹¹² The decision maintains a temporary block on Idaho's total abortion ban in the context of medical emergencies, leaving pregnant people in other states with similar bans vulnerable to life- and health-threatening pregnancy complications.¹¹³ Justice Alito's dissent foreshadows the possible adoption of the Fifth Circuit's view that EMTALA protects the "unborn child[']s" health,¹¹⁴ potentially stripping pregnant women and people needing emergency abortion care of their personhood and demoting them to second class status as the only class of patients undeserving of protections under EMTALA.¹¹⁵

Because medical procedures and medications for miscarriage care are the same as medication for abortion care, laws restricting abortion have blocked or delayed treatment for care.¹¹⁶ For example, a Texas woman suffering a miscarriage was denied a dilation and curettage procedure and sent home "with instructions to return only if her bleeding was so excessive that it filled a diaper more than once an hour" because there was still fetal cardiac activity.¹¹⁷ A review of 28 patients experiencing

inevitable pregnancy loss in Texas after the state's near-complete abortion ban went into effect found that almost all patients suffered complications.¹¹⁸ These stories highlight the absurdity of the fetal personhood movement. Nonviable pregnancies are prioritized over the actual person who could die or suffer grave injuries, including (ironically) complications that will harm future fertility.

Against a backdrop of fetal personhood, pregnant people are forced to risk their health, lives, and future fertility to continue pregnancies—even in non-obstetric emergency situations—where pregnant patients' other medical conditions make pregnancy extremely risky.¹¹⁹ As scholars predicted after *Dobbs*,¹²⁰ pregnant cancer patients have been denied abortion care under these regimes; they are forced to go out of state or wait to receive life-saving treatment until after the pregnancy ends.¹²¹ One Kentucky oncologist reported giving a pregnant cancer patient a relatively untested treatment instead of radiation after a hospital panel denied the patient's request to terminate their pregnancy.¹²² As the oncologist stated, due to the likely inferior care, "[s]he could have not been okay" and "may still not be okay."¹²³ Providers are chilled from even recommending or discussing abortion care as an option, jeopardizing pregnant people's health and safety.¹²⁴ For example, Yeni Glick from Texas experienced health complications exacerbated by pregnancy but was never advised on abortion care.¹²⁵ She ultimately died later in her

pregnancy, and some of her providers were haunted by their fear-driven failure to advise her on abortion care.¹²⁶

Court challenges to medical exceptions in state abortion bans have experienced varying levels of success. Lawsuits in Texas,¹²⁷ Idaho,¹²⁸ Tennessee,¹²⁹ North Dakota,¹³⁰ and Indiana¹³¹ have challenged the insufficiency of the medical exceptions in their state's abortion bans. These challenges raise pregnant people's state constitutional rights to life, health, safety, and equal protection under the law, and physicians' concerns about providing substandard care. Pregnant patients in these states face harrowing scenarios, ^{where they} receive devastating fetal diagnoses and experience high-risk pregnancies but cannot access abortion care in their home states.¹³² In North Dakota, a state court recently struck down the state's total abortion ban as unconstitutional, reasoning that the North Dakota Constitution "protects a woman's right to procreative autonomy – including to seek and obtain a pre-viability abortion."¹³³ While the claims brought by women who experienced obstetric emergencies in Texas were ultimately denied,¹³⁴ litigation in Idaho and Tennessee is ongoing. In Idaho, a federal challenge in *Seyb v. Members of the Idaho Board of Medicine* raises alarms about the hypocrisy of abortion bans that permit so-called life-saving abortions, but not when this health crisis is mental health related.¹³⁵

The reach of fetal personhood extends even before pregnancy, as some patients—based on their mere capacity for pregnancy—have been denied medications contraindicated for pregnancy in the wake of *Dobbs*.¹³⁶ People who take mifepristone, misoprostol, and methotrexate for conditions such as Cushing's syndrome, ulcers, miscarriage management, autoimmune conditions, and cancer are especially vulnerable because these medications are also used in abortion care.¹³⁷ *Dobbs* has also complicated access to teratogenic medications—which are used to treat various mental health conditions¹³⁸ and other conditions, including multiple sclerosis¹³⁹ and epilepsy¹⁴⁰—leading to medical complications, suffering, substandard care, and forcing patients to use a less effective treatment course.¹⁴¹ These systems relegate women and pregnant-capable people to second-class status, forcing them to live in pain and peril because at some hypothetical point they might become pregnant.

b. Denial of One's Right to Decline Medical Treatment

With the expansion of fetal personhood, we expect a rise in forced medical interventions. This is a phenomenon that occurred even under *Roe*, where hospitals overrode pregnant people's medical decisions to force them to have cesarean surgeries, blood transfusions, or confined them to hospitals on forced bedrest.¹⁴² While some states have strong caselaw against forced interventions,¹⁴³

these judicial decisions have come after the rights and dignity of a pregnant person have already been violated. These interventions are influenced by and connected to longstanding histories, which contribute to these harms disproportionately affecting poor people and people of color.¹⁴⁴

Healthcare providers have cited fetal personhood to justify such forced medical interventions.¹⁴⁵ A striking example is the 1990 case *In re A.C.*, where a pregnant woman living with cancer was forced to undergo a cesarean surgery against her wishes after the hospital fought for and received a court order from a District of Columbia trial court letting them override A.C.'s wishes, finding that the state "had an interest in protecting the potential life of the fetus." The baby was delivered and died two hours after the procedure, and the woman herself died two days later, the surgery having contributed to her death.¹⁴⁶ The D.C. Court of Appeals later held that pregnant women should decide their medical care,¹⁴⁷ but this decision came too late for A.C.

Similarly, in 1999, a federal district court in Florida held that compelling a pregnant woman to undergo a cesarean surgery did not violate her constitutional rights, as the state's interest "in preserving the life of the unborn child" outweighed her rights.¹⁴⁸ More recently, a New York hospital forced a woman to undergo a cesarean surgery over her objections. A 2019 New York trial court ruled this was not discriminatory, citing the state's

interest in protecting "viable fetal life," although parts of the trial court's order were recently modified on appeal.¹⁴⁹

This view of pregnant women as mere vessels for fetuses rather than people with basic rights also manifests in end-of-life care. For example, in 2014, a Texas hospital kept a pregnant woman who suffered loss of total brain function on life support for two months against her advanced directive and contrary to her family's expressed wishes,¹⁵⁰ arguing its action was justified by a compelling state interest in fetal life.¹⁵¹ More than half of all states have laws invalidating the advanced directives of pregnant patients so they can keep pregnant patients on life support against their wishes in service of the fetus.¹⁵²

Women in Texas have been forced to undergo cesarean surgery or hysterotomies, surgeries far more dangerous than abortions, rather than receiving health-preserving abortion care, because the state purports to advance fetal personhood with its abortion ban, all while denying the humanity and dignity of pregnant people.¹⁵³ Similarly, in Louisiana, patients who have preterm premature rupture of membranes—a dangerous complication where one's water breaks before the fetus is viable—have been forced into cesarean surgeries rather than receiving abortion care.¹⁵⁴

c. Denial of One's Right to Reproductive Healthcare

Abortion

At least 24 states—Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wisconsin—include fetal personhood or personhood-adjacent language in their anti-abortion laws.¹⁵⁵ This personhood language ranges from the most explicit—e.g., Kentucky's abortion ban trigger law defining an “unborn human being” as “an *individual living member* of the species *homo sapiens* throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth”¹⁵⁶—to the more ambiguous, where the law stops short of explicitly declaring full legal personhood but still applies human characteristics to the fetus—e.g., Iowa's law defining an “unborn child” as “an *individual organism* of the species *homo sapiens* from fertilization until live birth.”¹⁵⁷

States hostile to abortion have enacted symbolic laws and resolutions promoting religiously infused ideas of personhood. Oklahoma, for example, created a revolving fund for the State Board of Education labeled the “Public Education on the Humanity of the Unborn Child Fund.”¹⁵⁸ Oklahoma has also recognized “Rose Day,” an annual anti-abortion rally, at the state capitol as “a reminder” to

legislators of the ongoing fight to protect the “unborn.”¹⁵⁹ A 2024 House Resolution in Oklahoma declared “all human life is sacred from the point of conception” and emphasized “the right to life of the unborn” as “one of the great public policy issues of our day.”¹⁶⁰

Tennessee passed a law to establish a “Tennessee Monument to Unborn Children, In Memory of the Victims of Abortion: Babies, Women, and Men” on the state capitol campus.¹⁶¹ The preamble aligns itself with monuments against slavery and genocide, characterizing slavery, genocide, and abortion as practices “justified on the idea that some humans have less value than others.”¹⁶² The only outdoor monument for women on the Tennessee State Capitol grounds is the Confederate Women's Monument, highlighting the symbolic denial of personhood to women and girls of color in Tennessee while glorifying white supremacy and fetal personhood over living women.

Such disingenuous analogies are also prevalent in Alabama's Human Life Protection Act, which equates the number of abortions since *Roe* to deaths in historical genocides.¹⁶³ Judicial opinions also reflect these disturbing comparisons, including *Dobbs*, which situated *Roe* as causing as much harm as the decision in *Plessy v. Ferguson*, the judicial opinion that upheld racial segregation laws.¹⁶⁴

Contraception

Anti-abortion advocates have effectively spread disinformation, falsely claiming that some contraceptives, such as IUDs and Plan B, are abortifacients.¹⁶⁵ These claims contravene scientific and medical consensus, which holds that contraception prevents pregnancy by interfering with ovulation, fertilization, or implantation, whereas abortion ends an established pregnancy after implantation has occurred.¹⁶⁶ This deliberate attempt to mislead the public stems directly from fetal personhood ideology, which posits that life—and therefore legal personhood—begins at conception (before implantation occurs).¹⁶⁷ If the conflation of contraception and abortion is codified into law, it could place the legality of many forms of contraception at risk under state abortion restrictions and fetal personhood statutes.

This spread of disinformation has already created legal ambiguity in hostile states, leading to confusion over the scope of abortion bans.¹⁶⁸ In the days following *Dobbs*, some pharmacies temporarily stopped providing emergency contraception,¹⁶⁹ mistakenly believing it fell under newly enacted abortion restrictions. Although these pharmacies quickly resumed care, public uncertainty

persists, exacerbated by the rhetoric of fetal personhood that conflates contraception with abortion.¹⁷⁰

Despite emergency contraception being legal nationwide, a 2023 survey found nearly 40% of adults are unsure of its legality or incorrectly believe it is illegal.¹⁷¹ In states with total abortion bans, this number rises to 60%.¹⁷² Although legislative attempts to ban emergency contraception have so far failed,¹⁷³ the underlying push for fetal personhood continues to reduce its accessibility by stoking fear and uncertainty.

Abortion bans have also forced abortion clinic closures that previously provided affordable and accessible contraception.¹⁷⁴ The intersection of clinic closures and the disinformation that equates birth control with ending fetal life has significantly reduced the use of contraceptive methods, particularly emergency contraception, in states that ban abortion care.¹⁷⁵ This decline is a direct consequence of the growing influence of fetal personhood, which threatens to redefine contraception as akin to ending a life.

V. Embryonic Personhood's Threat to IVF

The fundamental right to procreate was recognized by the U.S. Supreme Court over 80 years ago in *Skinner v. Oklahoma*, which recognized that “the right to have offspring” is “fundamental to the very existence and survival of the race” and “one of the basic civil rights of man.”¹⁷⁶

Yet, embryonic personhood, i.e., the theory that embryos are people, not only justifies abortion bans, but also threatens IVF, the most effective form of assisted reproductive technology, which is used by millions of Americans to build their families.¹⁷⁷

On February 16, 2024, the Alabama Supreme Court issued its decision in *LePage v. Center for Reproductive Medicine*, holding that embryos created through IVF are “extrauterine children” under Alabama’s Wrongful Death of a Minor Act.¹⁷⁸ The Court relied on dictionary definitions and its earlier decisions to hold that fetuses can be the subject of wrongful death suits, even when the fetus dies before reaching “viability,” to reach the extraordinary, unprecedented conclusion that frozen embryos were “minor children” for purposes of the Act.¹⁷⁹ Given that standard IVF practices result in the freezing of embryos and the eventual disposal of unused embryos, the decision sent a shockwave through the state and across the nation, leading to the temporary closure of Alabama IVF clinics due to liability concerns and people scrambling to find out-of-state clinics to

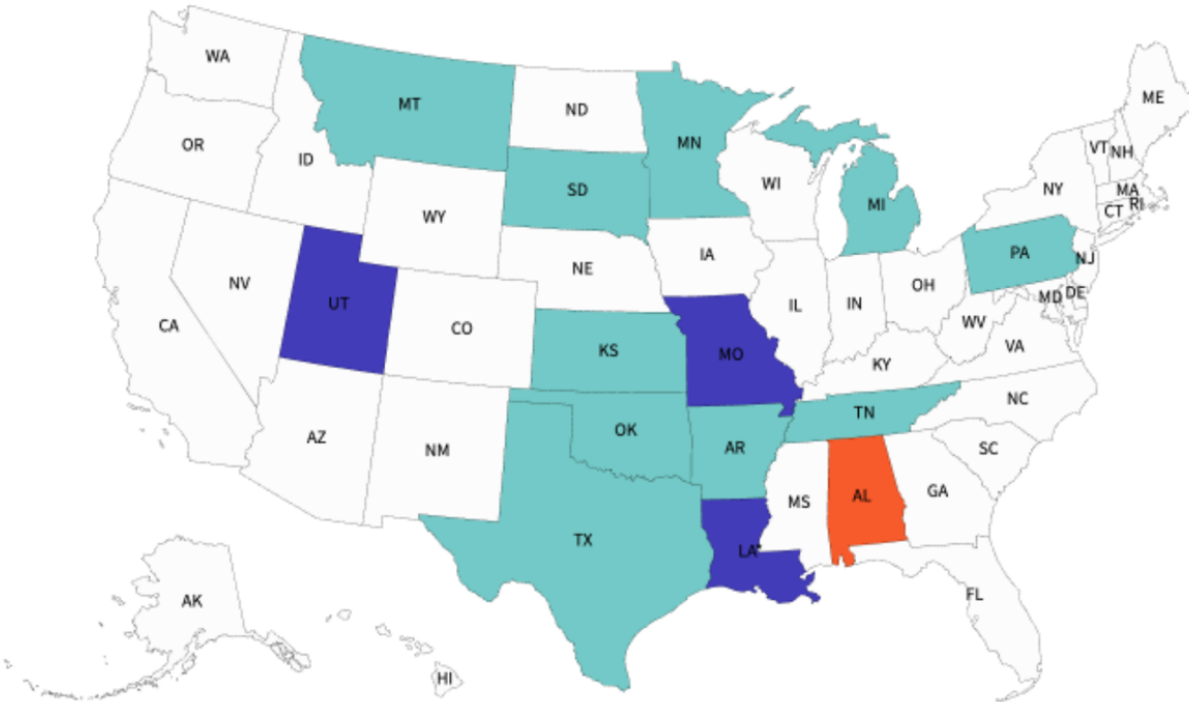
continue their care.¹⁸⁰ The Alabama legislature rushed to pass a bill to protect IVF; however, as the Chief Justice of the Alabama Supreme Court noted in his concurrence, so long as Alabama has a fetal personhood constitutional amendment, statutory stopgaps will not be sufficient to fully protect IVF care.¹⁸¹

Emboldened by Alabama’s decision, promoters of embryonic personhood have launched new attacks on IVF access.¹⁸² The 2024 Idaho Republican party platform includes opposition to embryo destruction, labeling it as “intentionally end[ing] an innocent human life,”¹⁸³ and for the first time, the Southern Baptist Convention, the nation’s largest and most politically powerful Protestant denomination, voted to oppose IVF in an effort to “reaffirm the unconditional value and right to life of every human being, including those in an embryonic stage.”¹⁸⁴

While the Alabama decision was the first to explicitly classify embryos created through IVF as people, several other states’ fetal personhood laws and state statutes use similar personhood language that could render IVF susceptible to legal challenges. Given that certain communities generally face healthcare access¹⁸⁵ and coverage¹⁸⁶ barriers, these restrictions will have outsized impact on groups for whom IVF care is a critical way to build their families and who are already disproportionately impacted by restrictions on IVF access—particularly LGBTQ+ people and people with disabilities.

States Where IVF May Be Vulnerable to Legal Challenge

- Either Broad Fetal Personhood Law, Wrongful Death Statute, or Fetal Homicide Law
- Has Both Broad Fetal Personhood Law and Wrongful Death Statute that May Include Frozen Embryos
- Has a Judicial Decision Holding Frozen Embryos Are People



*Louisiana's "juridical persons" law also limits IVF access in the state.

**District of Columbia does not have any laws or judicial decisions that could threaten IVF.

a. Potential Impact of Wrongful Death Laws on IVF

Wrongful death is a civil cause of action that family members and dependents can bring against individuals or institutions they allege have intentionally or negligently caused a person's death. The Alabama Supreme Court in *LePage* interpreted this cause of action to apply to frozen embryos in ways that imperiled IVF access in the state.¹⁸⁷ Although this is the first decision to uphold a wrongful death cause of action for losing embryos created through IVF, at least 44 states and Washington D.C. have wrongful

death laws that apply—or have been interpreted to apply—to the demise of fetuses.¹⁸⁸ Most of these laws cannot readily be applied to the loss of embryos created through IVF because they either were interpreted to only apply to "viable" fetuses¹⁸⁹ or because the laws explicitly exempt embryos created through IVF.¹⁹⁰ It is worth noting that the viability cutoff used in these statutes and decisions is a judicial construction, as "there is no single formally recognized clinical definition of 'viability.'"¹⁹¹ That said, states have varied approaches to determining viability within the context of wrongful death suits, as some rely on individual expert

testimony specific to the facts of the case, while others import cutoffs established by the United States Supreme Court in cases such as *Planned Parenthood v. Casey*.¹⁹²

Wrongful death claims on behalf of embryos created through IVF have failed in Illinois,¹⁹³ Arizona,¹⁹⁴ and Ohio. In Ohio, one appellate court held that patients had no wrongful death cause of action based on the destruction of frozen embryos because embryos have no statutory rights before implantation.¹⁹⁵ Another Ohio appellate court found that a trial court's treatment of frozen embryos as "property" was not an abuse of discretion.¹⁹⁶

Still, in addition to Alabama,¹⁹⁷ at least seven of these 44 states have extended wrongful death claims to "non-viable" fetuses¹⁹⁸ or fail to provide a limiting definition of "unborn child" under their wrongful death statute.¹⁹⁹ Of these seven states, Missouri, Oklahoma, Texas, and Utah either fail to exclude embryos created through IVF from the definition of "unborn child" or provide a cause of action for wrongful death from the "moment of conception" or "fertilization" by statute or caselaw.²⁰⁰ The remaining three states do not have a viability cutoff in their wrongful death caselaw or statutes. Specifically, Michigan and South Dakota courts have extended their wrongful death causes of action to "non-viable" fetuses, and Louisiana's wrongful death caselaw extends the cause of action to fetuses, while making no mention of viability.²⁰¹ The lack of a

viability cutoff in these three states leaves open the possibility that they could extend their wrongful death law to embryos created through IVF.²⁰²

Although *embryos* are a distinct stage of development from "non-viable" *fetuses*, the lack of clear language surrounding what constitutes a person for wrongful death claims in these three states is a cause for concern.

Ultimately, the ability of another state to follow in Alabama's footsteps and extend the wrongful death cause of action to embryos created through IVF rests with the states' judiciaries. The laws of Missouri, Oklahoma, Texas, Utah, Michigan, South Dakota, and Louisiana provide the clearest pathway for another rogue extension of embryonic personhood that could imperil IVF access in those states.

b. Potential Impact of Fetal Homicide Laws on IVF

As discussed in Part III, many states have fetal personhood concepts embedded in their criminal laws. Thirty-eight states have feticide laws or homicide laws that apply to fetuses which allow the prosecution of individuals who have caused the death of a fetus for murder, manslaughter, or the distinct offense of "feticide."²⁰³ Thirty-two of these states limit the definition of "unborn child" in their criminal code to in utero fetuses and embryos.²⁰⁴ Accordingly, the extrauterine destruction of embryos created through IVF seemingly falls outside the reach of these criminal laws. However, Minnesota, Missouri, Oklahoma, Pennsylvania, South

Dakota, and Utah, the six remaining states with feticide laws, define “unborn child” in ways that could encompass embryos created through IVF as potential homicide victims.²⁰⁵ To date, our research has not identified any prosecution in these states where criminal charges were levied against an individual who destroyed an embryo. Regardless, the broad reach of these feticide laws should raise alarm given the increasing hostility towards IVF by anti-abortion activists.

c. Potential Impact of Broad Fetal Personhood Laws on IVF

In *LePage*, the Alabama Supreme Court cited Alabama’s 2018 constitutional amendment, which “acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate” in support of its finding that frozen embryos are children.²⁰⁶ The Court interpreted this section to mean that if there were any ambiguity in the meaning of the word “child” under the Wrongful Death of a Minor Act, it should be construed to include all “children who have not yet been born” including frozen embryos.”²⁰⁷

Ten states in addition to Alabama have similarly broad personhood provisions in their codes or constitutions.²⁰⁸ Of those ten states, eight have language that could be used by state courts (as occurred in Alabama) to extend rights to embryos, potentially threatening IVF access.²⁰⁹ These eight states include:

Arkansas, Kansas, Louisiana, Missouri, Montana, Pennsylvania, Tennessee, and Utah.²¹⁰ While these eight laws may not independently limit or eliminate IVF access, they provide an interpretive framework that could be used by the courts to extend personhood to embryos created through IVF.

As noted in Part II, three states already have broad fetal personhood provisions and wrongful death laws that could be interpreted to apply to embryos: Utah, Missouri, and Louisiana. While it is difficult to predict how courts will rule in future IVF cases, the *LePage* decision makes clear that the particular combination of broad fetal personhood and wrongful death laws may pose the greatest danger to IVF care. Nine additional states possess at least one of three red flags: (1) broad definitions of unborn children for wrongful death liability; (2) broad definitions of unborn children for criminal liability; or (3) broad fetal personhood laws. Those nine states are: Arkansas (broad fetal personhood law); Kansas (broad fetal personhood law); Michigan (broad wrongful death law); Minnesota (broad feticide law); Montana (broad fetal personhood law); Oklahoma (broad wrongful death and feticide laws); Pennsylvania (broad fetal personhood and feticide laws); South Dakota (broad wrongful death and feticide laws); Tennessee (broad fetal personhood law); and Texas (broad wrongful death law).

d. Potential Pathways to Embryonic Personhood

Several other bodies of law could also establish embryonic personhood and limit IVF access. These include (1) embryo destruction laws; (2) embryo disposition disputes during divorce proceedings; and (3) laws restricting embryonic research.

Louisiana’s “juridical persons” law passed in 1986, well before the repeal of *Roe*, and is a striking example of an embryo destruction law. That law declares that embryos created through IVF are “juridical persons,” which “shall not be intentionally destroyed by any natural or other juridical person or through the actions of any other such person.”²¹¹ This law has severely complicated and limited access to IVF in the state.²¹²

Divorce proceedings have also involved disputes over frozen embryos.²¹³ Arguments that frozen embryos should be treated as children rather than property in divorce proceedings has profound implications for IVF access and the rights of people to decide whether and how to preserve or destroy embryos created during marriage. While—to our knowledge—no court has yet held that frozen embryos should be treated as children within the divorce context, courts in several states have considered frozen embryos as distinct from other marital property, inching closer to embryonic personhood.

For example, an Ohio appellate court recently agreed with one party’s position that “categorizing the frozen embryos as marital property is inadequate as they have the potential to develop into children.”²¹⁴ The Court cited Ohio’s recent constitutional amendment enshrining a *Roe*-like protection of reproductive autonomy as justification for this rogue ruling, explaining that the couple exercised their state constitutional right to fertility treatment; yet, the Court contravened its intended purpose, showing even well-meaning protections can be twisted to support fetal personhood.²¹⁵ The court also emphasized, “what is involved [here] is not property, but life or the potential for life Because this Court cannot conclude that the frozen embryos are property, we likewise cannot say that they are marital property.”²¹⁶ This holding represents a departure from Ohio law, as every other Ohio court that has addressed embryo allocation in a divorce proceeding has considered frozen embryos marital property.²¹⁷

Courts in Indiana, Michigan, and Tennessee have reasoned that frozen embryos, in the context of divorce proceedings, should be treated as neither people nor property, but something else altogether.²¹⁸ For example, as an appellate court in Michigan has noted, the idea that a frozen embryo is a “human subject . . . which requires that it be accorded the rights of a person,” is “extreme” and untenable.²¹⁹ This recognition that embryos are neither people nor property should be carefully

articulated to avoid any suggestion that embryos are to be treated as people.

Other state courts have rejected embryonic personhood arguments in divorce proceedings, including the highest courts in Colorado,²²⁰ Iowa,²²¹ and New York.²²² The Texas Supreme Court recently declined to hear an appeal in a divorce proceeding that sought to overturn a lower court decision holding that frozen embryos were not children under Texas law.²²³ Additionally, a Missouri appellate court found that frozen embryos could not be considered children under the state's dissolution-of-marriage-statute consistent with the potential parents' constitutional rights to "procreational autonomy."²²⁴ The court concluded that the General Assembly's declarations concerning the potential life of the frozen pre-embryos did not provide a sufficient basis to justify an infringement on the freedom and privacy of a married couple in making intimate decisions about procreation.²²⁵

Still, some states have advanced embryonic personhood to influence embryo disposition preferences. In 2009, Georgia passed the first "embryo adoption" law in the nation,²²⁶ suggesting a shared legal classification with children,²²⁷ though not extending full personhood protection to embryos.²²⁸ A 2018 Arizona law requires courts in divorce proceedings to "[a]ward the in vitro human embryos to the spouse who intends to allow [them] to develop to birth."²²⁹

Embryonic personhood also calls into question the legality of embryonic research. Of the 29 states with laws affecting research on human embryos or embryonic stem cells, only eleven "have banned or effectively banned" this research, while others expressly allow it.²³⁰ In states where this research is legal, people undergoing IVF often have the option to donate excess fertilized embryos to scientific research.²³¹ Embryonic research plays a pivotal role in advancing scientific innovation, from preventing pregnancy loss to improving the success rates of IVF.²³² In the wake of *LePage*, scientists have expressed deep concerns that embryonic personhood could interfere with this essential research.²³³ Concerns about facing criminal or civil liability for embryo destruction may deter scientists, research institutions, and funders from pursuing critical embryonic research, further exacerbating existing disparities in access to reproductive care.²³⁴

VI. The Privatization of Fetal Personhood

For half a century, ex-partners of pregnant women have argued that fetal personhood gives them standing to prevent their former partners from obtaining abortions or to sue various people allegedly involved in the abortion after it occurred.²³⁵ While plaintiffs in these cases have been unsuccessful, the plaintiffs' framing of their legal claims through the lens of fetal personhood foreshadows future strategies, especially given the dismantling of *Roe* and *Casey*,

which explicitly rejected men's dominion over women.²³⁶

In a 1974 Massachusetts case, an estranged husband claimed a fundamental right under *Griswold v. Connecticut* to prevent his "child" from being aborted.²³⁷ The highest state court in Massachusetts rejected his claim, stating that substantive due process is a shield that protects citizens from government action, "not a sword" to overturn private decisions.²³⁸ Strikingly though, a temporary restraining order was first issued to block the woman's abortion, and a guardian ad litem was appointed for the "unborn child."²³⁹ Similarly, in a 1977 New Jersey case, the former partner's claim that his "right to procreate" allowed him to block the pregnant woman's decision was denied.²⁴⁰

In a 1983 Maryland case, the plaintiff argued that the state's child abuse laws should apply to a fetus in the context of an abortion.²⁴¹ Although the case was dismissed as moot, this framing illustrates how existing child abuse statutes are deployed to advance fetal personhood. In a Maryland case nearly 40 years later, the plaintiff argued for standing to assert "his unborn child's right to life under the Due Process Clause of the Fourteenth Amendment."²⁴²

The privatized use of fetal personhood, via attempts to convert wrongful death laws or child abuse statutes into cause for standing to sue former partners for having an abortion and their friends—and

family for helping them obtain an abortion—raises significant concerns. For example, a man in Arizona sued an abortion clinic that provided abortion care to his now ex-wife under a wrongful death theory.²⁴³ The lawsuit was able to move forward after a judge let him establish an estate for the aborted 8-week-old embryo, a dangerous example of a court facilitating fetal personhood.²⁴⁴

Texas has also enabled a man to file wrongful death claims against anyone involved in his ex-partner's out-of-state abortion care.²⁴⁵ This theory treats the fetus not only as a person, but as one whose rights trump the rights of the pregnant person to receive lawful care. Jonathan Mitchell, the former Texas solicitor general who helped craft the state's abortion ban, represents the plaintiff and has sought to depose anyone who may have assisted the plaintiff's ex-partner in receiving the abortion care.²⁴⁶

Fetal personhood as an applied legal doctrine provides the infrastructure for a regime of state-endorsed harassment and stalking by ex-partners in the name of vindicating the rights of fetuses, mirroring and exacerbating the controlling dynamics of abusive intimate partner relationships. In the wake of Texas' S.B. 8, which turned ordinary citizens into "bounty hunters" by offering a \$10,000 reward to anyone who sues another person for performing or aiding in an abortion after cardiac activity is detected during a pregnancy, abortion care was effectively banned even before

Roe was overturned.²⁴⁷ Additionally, with other private enforcement provisions, the reality of private individuals wielding “a sword of government assistance” to overturn the private decisions of people is all too real.²⁴⁸

VII. Fetal Personhood in Other Bodies of Law

Every U.S. state and territory has statutes and/or caselaw defining or interpreting terms like “person” or “child” to include a fetus, in areas such as wrongful death, negligence, trusts and estates, property, insurance, and anatomical gift acts. While these laws are not unusual, they are often used as a foundation for fetal personhood expansion.

Fetal personhood creep often has its roots in civil wrongful death statutes. For example, in 1997, the South Carolina Supreme Court, relying on prior wrongful death statute interpretations, expanded the definition of “child” in child abuse statutes to include fetuses.²⁴⁹ Alabama’s Supreme Court in 2013 also noted how “minor child” in Alabama’s wrongful death of a minor statute included a “viable” fetus to justify extending its “chemical endangerment of a child” statute to include fetuses as victims.²⁵⁰ Similarly, pre-Roe, the Michigan Supreme Court used a property law recognizing guardian ad litem for “unborn persons” to extend wrongful death claims to fetuses, arguing that if the law protects their property interests, it should protect their right to life even more.²⁵¹ Likewise, a federal court in North Carolina

recognized “an unborn infant” as a person in a wrongful death case.²⁵²

a. Civil Wrongful Death Claims

Before the wave of statutory amendments and judicial expansion, the general principle of fetal personhood was embodied in Justice Oliver Wendell Holmes’ 1884 opinion in *Dietrich v. Inhabitants of Northampton*; in that case, the fetus was considered “a part of the mother,” and thus, “any damage to it which was not too remote to be” recoverable, could be recovered by the mother.²⁵³ Gradually, these wrongful death statutes were expanded, reshaped, or interpreted in over forty states to either include fetuses within the definition of “person” or at the very least to allow recovery for fetal death (e.g., through a separate cause of action for the death of an “unborn child”).²⁵⁴

Some statutes and cases emphasize protecting parental rights and interests.²⁵⁵ For example, the Supreme Court of Iowa stated that “recovery [is] given to a parent,”²⁵⁶ and Virginia’s statute creates a separate category of “fetal death.”²⁵⁷ On the other hand, a Wisconsin appellate court let a man sue a pregnant woman’s insurer for a fetus’ death in an accident, showing how the legal edifice of fetal personhood can be wielded to hold pregnant people liable for losses of their own pregnancies.²⁵⁸ Similarly, as discussed in Part VI above, in 2020, an Arizona man filed a wrongful death suit

against an abortion clinic regarding his ex-wife's abortion.²⁵⁹ The court let him establish a legal estate for the embryo, and the plaintiffs, both the man and the embryo's estate, claimed the abortion was performed without informed consent.²⁶⁰ Wrongful death statutes, intended to recognize and recompense people who have lost actual loved ones or pregnant people who have experienced pregnancy losses, can thus become weapons for ex-partners to harass and stalk former partners.

b. Negligence Claims

Parental tort immunity doctrine bars a child from suing a parent for damages,²⁶¹ and states like Illinois, Massachusetts, North Dakota, and Texas have upheld this immunity.²⁶²

However, a disturbing body of caselaw across several states has recognized a cause of action by a fetus or a subsequently born child against its mother for prenatal injuries.²⁶³ For example, the New Hampshire Supreme Court upheld a lawsuit brought by a child suing her mother for negligence for failing to use a designated crosswalk when she was pregnant with the future child.²⁶⁴ The dissent warned that such claims intrude on rights to bodily autonomy and privacy, and could govern every aspect of a pregnant person's "waking and sleeping moment."²⁶⁵

The Supreme Court of Illinois has even let an infant sue a hospital for injuries from a Rh-negative blood transfusion given to a

woman with Rh-positive blood years before conception.²⁶⁶ Allowing an infant to sue for preconception negligence opens the door to questions regarding the scope of liability for actions taken well before conception.

As these cases illustrate, negligence claims could include any behavior considered to fall short of a certain level of conduct courts decide to impose on pregnant people. As states become more willing to monitor pregnant people's behavior, the definition of negligent behavior could widen. Michele Goodwin highlights the disparity in how tort law imposes a special duty of care on pregnant people while generally rejecting such duties in other contexts.²⁶⁷ A person cannot be forced to donate bone marrow or a kidney to a dying sibling,²⁶⁸ but a pregnant person can be forced to submit to coercive medical interventions or be held liable by her future child for not crossing the street cautiously enough, thus offending equal protection principles.²⁶⁹

c. Workers' Compensation

Courts in several states have let children bring workers' compensation suits against their mother's employer for in utero injuries. For example, the Supreme Court of California held that although workers' compensation was the exclusive remedy for injuries to employees arising out of their employment, a child could claim a separate cause of action for injuries caused by their mother breathing toxic fumes in the workplace during

pregnancy.²⁷⁰ The Colorado Supreme Court,²⁷¹ the Washington Supreme Court,²⁷² and a Louisiana appeals court reached similar results, with Louisiana going above and beyond to use explicit fetal personhood language.²⁷³

Employers have tried to distance themselves from fetal personhood to avoid liability for fetal demise as a result of workplace injury or death.²⁷⁴ In Missouri, a family is currently litigating a case²⁷⁵ against the Missouri Department of Transportation (“MoDOT”), alleging wrongful death claims for both the mother and her fetus, who were struck and killed by a vehicle while the mother was performing road work in November 2021.²⁷⁶ MoDOT refused to pay the mother’s workers’ compensation claims because she passed away unmarried, and her fetus did not survive.²⁷⁷ MoDOT claimed that the fetus was not a separate entity but, like its mother, was considered an “employee”; under Missouri’s workers’ compensation laws, MoDOT argued, a lawsuit could not be brought for the “employee’s” death while on the job.²⁷⁸ The trial court in its March 2023 decision agreed that MoDOT’s interpretation of the workers’ compensation law was flawed and reasoned that “[the fetus] independent claims as an unborn child [were] just as strong as if he was outside his mother’s womb next to her at the time of his death from the accident.”²⁷⁹ This case also inspired Jaxx’s Law in Missouri, a bill introduced to forbid unborn fetuses from being considered employees in wrongful death and other civil suits.²⁸⁰ It remains to be seen

whether other states will introduce similar bills.

d. Taxes

Georgia’s broad personhood law is the only such law to specify that a fetus qualifies as a “dependent minor” for state income tax exemptions.²⁸¹ Instead of providing tangible support centered on pregnant people’s needs, the fetal personhood law allows people to claim a dependent child exemption for a fetus with cardiac activity.²⁸² In 2022, the Department of Revenue reported that 36,486 “unborn children” were claimed on the state’s tax returns, resulting in a \$109.4 million reduction to the state’s taxable base.²⁸³ The Department’s FAQ page also specifically defines how the tax code classifies frozen embryos. The Department specifies that through IVF, the embryo must be transplanted into the mother and the fetus must reach six weeks gestation to qualify for the exemption.²⁸⁴ In other words, frozen eggs and embryos do not qualify as dependents.²⁸⁵ In the event of a surrogate mother, the state leaves it up to individuals to determine if the surrogate claim the fetus or the future parents make the tax claim.²⁸⁶ While some questions have been answered, the “inconsistency between the federal and state definitions of a dependent for tax purposes” will likely lead to litigation brought by taxpayers seeking to resolve the differences.²⁸⁷

Indiana’s Senate Bill 98, which proposed a tax deduction for expecting parents, required radiology imaging to prove pregnancy status.²⁸⁸ Although the bill did not advance in the 2024 session, its imaging requirement raises concerns about “invasive surveillance” and compromises to pregnant people’s privacy rights under the guise of tax breaks.²⁸⁹

e. Divorce, Child Support, and Custody

Defining a fetus as a person suggests child support obligations could begin before birth. While there is some scattered precedent for such obligations, intertwined with paternity proceedings and older “illegitimacy” laws,²⁹⁰ there is significant resistance against support obligations beginning before birth in caselaw and regulations across several states.²⁹¹

Additionally, legal frameworks exist in Arizona, Arkansas, California, and Texas—and in practice, as reported by local law firms, in Alabama, Delaware, Hawaii, Indiana, Maine, Mississippi, Nebraska, South Dakota, and Wyoming—that prevent pregnant people from obtaining divorces until after birth.²⁹² Similarly, in Missouri, a pregnant person’s divorce cannot be finalized until orders of custody, visitation, and child support are issued after birth.²⁹³ Missouri lawyer Danielle Drake highlights the “double standard in . . . how the state treats an unborn child in a divorce proceeding compared to in abortion law,” noting that

the state’s divorce law “does not see fetuses as humans” because “[y]ou can’t have a court order that dictates visitation and child support for a child that doesn’t exist.”²⁹⁴

In California, a male partner unsuccessfully accused his pregnant partner of “kidnapping” their fetus when she moved to New York while pregnant.²⁹⁵ This case illustrates how fetal personhood arguments can lead to attempts to restrict a pregnant person’s basic rights to travel freely.

Amid these attempts to subjugate pregnant people’s rights, Senator Kevin Cramer introduced a national bill allowing women to receive child support beginning at conception.²⁹⁶ An analogous bill succeeded in Virginia in 2023, with similar bills introduced in Indiana and Iowa in 2024.²⁹⁷ Additionally, Kentucky’s Senate Bill 110 lets parents seek nine months of child support for their pregnancy retroactively after birth and before the child’s first birthday.²⁹⁸

These measures mask the peril of personhood ideology while letting anti-abortion activists claim they are providing for people forced to carry pregnancies and give birth.

VIII. Other Attempted Applications

a. Age

Litigants have invoked fetal personhood to argue that candidates’ age qualifications for the Missouri state

legislature should be calculated from the moment of conception.²⁹⁹ Courts have rejected such claims, and the U.S. Supreme Court denied certiorari.³⁰⁰

Disturbingly, defendants in sexual assault cases have unsuccessfully argued that victims' ages should be calculated from conception to claim they were nine months older than their birthdates indicated.³⁰¹

These failed suits show the absurdity that follows from fetal personhood. One could imagine similar suits regarding statutory age requirements for voting, consuming alcohol, or driving.

b. Carpool Lanes

In 2021, a failed Texas bill proposed letting pregnant people drive in carpool lanes, counting a fetus as a passenger.³⁰² An Arizona woman also unsuccessfully argued this point in municipal court where the court noted that "cops can't conduct pregnancy tests."³⁰³ In June 2022, a pregnant woman in Texas similarly, and unsuccessfully, argued this point, where the deputy officer stated she needed to have "two bodies outside of the body."³⁰⁴ The Texas Penal Code includes a fetus within the definition of "person," but the Transportation Code does not.³⁰⁵ Fetal personhood is thus primarily marshaled to strip rights from pregnant people, not to grant them rights.

We should be wary of seemingly innocuous laws. In 2023, Virginia House Bill 1894 proposed counting pregnant women as two people for carpool and toll

lanes, requiring proof of pregnancy linked to toll collection devices like E-Z Passes.³⁰⁶ This measure raises concerns about increased government surveillance of pregnant people.

c. Incarceration

The incarceration rate of women has grown at twice the pace of men in recent decades, with 190,600 women and girls currently incarcerated in the United States.³⁰⁷ An estimated 58,000 pregnant people are incarcerated every year, thousands of whom give birth or experience other pregnancy outcomes while incarcerated.³⁰⁸ Given this trend, fetal personhood is bound to impact incarcerated women and pregnant people.

Some laws set special standards for treating incarcerated pregnant women.³⁰⁹ For example, Kansas law³¹⁰ and the federal code³¹¹ prohibit the execution of a pregnant woman, but what happens to that person after pregnancy? These laws are utterly insufficient because they fail to address broader issues with incarceration.

In reality, fetal personhood has been used to justify the continued incarceration of several pregnant and postpartum women.³¹² For example, in 2017, a pregnant woman incarcerated on drug charges in Pennsylvania was denied immediate parole because the trial court wanted to "protect" her fetus from the risk of heroin use while on parole.³¹³ The Superior Court upheld the denial, rejecting her substantive due process

and equal protection claims.³¹⁴

It is also worth noting the hypocrisy. While states often justify the incarceration of pregnant people with purported concerns for fetuses, carceral settings typically provide inadequate care to incarcerated women, putting individuals and their pregnancies at grave risk of harm.³¹⁵ It is telling that Etowah County, Alabama, which in recent years has criminalized more pregnant women than any other county in the nation, is currently facing allegations of a pattern and practice of deliberate indifference and cruelty to the medical needs and safety of incarcerated pregnant and postpartum women.³¹⁶

d. Public Benefits

In 1975, the U.S. Supreme Court ruled that states may, but are not required to, offer benefits to fetuses as dependent children under the Social Security Act.³¹⁷ Statutes and regulations pertaining to state benefits, thus, become another route for establishing fetal personhood.³¹⁸

This is particularly problematic given that the public benefits system often acts as a site of state surveillance, policing, and coercion—one with racist roots and overtones.³¹⁹ A state program providing public benefits to an “unborn child” could join forces with broader family policing systems to penalize pregnant people for perceived failures in receiving prenatal care or behavior during pregnancy. It is important to scrutinize the supporters of such legislation and their agendas, which

undermine the health and wellbeing of pregnant people, and their rights more broadly.

Some states treat the fetus as a recipient of benefits. States like Iowa,³²⁰ Minnesota,³²¹ South Dakota,³²² and Wisconsin³²³ extend coverage to “unborn children.”³²⁴ Missouri’s “Show-Me Healthy Babies Program,” a separate Children’s Health Insurance Program (CHIP), specifies coverage for “unborn” children for prenatal care and pregnancy-related services and offensively provides that “[c]overage *need not include services that are solely for the benefit of the pregnant mother*, that are unrelated to maintaining or promoting a healthy pregnancy, and that provide no benefit to the unborn child.”³²⁵

Additionally, the Child Tax Credit for Pregnant Moms Act of 2023, introduced in the Senate in June 2023 and currently under review by the Committee on Finance, proposes amending the Internal Revenue Code to extend child tax credits to “unborn child[ren]” in cases of live births, miscarriages before 20 weeks, or stillbirths after 20 weeks.³²⁶ While the bill seems harmless, embedding fetal personhood into federal law may become a slippery slope with wide-ranging implications beyond public benefits. Treating fetal needs as separate from the pregnant person’s is a strange fiction, one that insincerely elevates the status of a fetus to deny personhood to the person carrying the pregnancy.

IX. Resisting Fetal Personhood

a. Constitutional Arguments

Not Deeply Rooted in History and Tradition

Fetal personhood proponents continue to advance arguments that fetuses are people under the Fourteenth Amendment of the U.S. Constitution.³²⁷ In *Dobbs*, the U.S. Supreme Court expanded the interpretation that rights *not explicitly* stated in the U.S. Constitution must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” as outlined by the *Glucksberg* test.³²⁸ The *Dobbs* ruling concluded that abortion is not protected under the Fourteenth Amendment, overruling *Roe*.³²⁹ The Court’s approach inherently incorporates 19th century subordinations, given that the U.S. Constitution at the time of its writing explicitly excluded white women through coverture³³⁰ and a system of white enslavement of Black women was in place. While the *Dobbs* holding threatens a century of substantive due process jurisprudence,³³¹ it also implies that the legal enshrinement of fetal personhood principles under the Fourteenth Amendment could hinge on the same test.

Roe expressly rejected the concept of fetal personhood³³² and provides a significant datapoint indicating that constitutional rights for fertilized eggs, embryos, and fetuses are not “deeply rooted in history and tradition,” and thus, are not protected by the Fourteenth

Amendment.

Additionally, robust caselaw suggests a consensus that fetal personhood is not deeply rooted in history and tradition. Many courts—in Colorado, Florida, Georgia, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, and Vermont—have described the enshrinement of fetal personhood in the law is a *break* from common law traditions,³³³ which followed the “born alive” rule “[a]s far back as the 17th century.”³³⁴ Feticide laws marked a sharp departure from the “prevailing common law view” since this nation’s founding.³³⁵ Additionally, the Florida Supreme Court stated that punishing pregnant people goes against the common law, which aimed to protect women, not punish them.³³⁶ The New Hampshire Supreme Court similarly noted:

“Although it is true that at common law, the existence of a child *en ventre sa mere* was recognized for some purposes, all such rights conferred were contingent upon live birth. The fetus took nothing and had no rights as a fetus. It was only the prospective child if born alive which could enforce and enjoy the rights. Nowhere . . . did the common law give a fetus a cause of action or any other right.”³³⁷

At common law, a fetus was *not* a “person,”³³⁸ and had no separate juridical existence or legal personality until birth.³³⁹ Any recognition of rights was “contingent” upon live birth.³⁴⁰ A New York appellate court noted, the “unborn

child” was viewed as a part of the mother, with legal personality “accorded . . . merely as a fiction[] in anticipation of birth.”³⁴¹

Similarly, the expansion of wrongful death statutes to include fetuses as people is framed as modern tort law’s rejection of the common law belief “that an unborn child is merely part of his mother’s body”³⁴² in light of “growing social awareness of the individuality of the unborn.”³⁴³ In 1924, a Pennsylvania court went so far as to say that “[t]here is no doubt that at early common law an injury to an unborn child was looked upon as an injury to the mother exclusively,” as the fetus was “not yet a human being.”³⁴⁴

The Rhode Island Supreme Court ruled in 1982 that the legislature would have to pass a law to extend protections under criminal statutes to an “unborn child” since protections were “thus far denied by common law and rules of statutory interpretation.”³⁴⁵ Accordingly, if the legislature does not explicitly include the word “unborn” or “fetus” in a statute, the “common-law meaning of the term ‘person,’” which does not include a fetus, governs.³⁴⁶

In 1981, the Supreme Court of North Carolina analyzed its own state history, “practical considerations,” and *Roe*, to hold that the fetus is not a legal “person” within the North Carolina Constitution.³⁴⁷

However, the same common law evidence has been summoned to find the

opposite. The Supreme Court of New Hampshire argued that “common law has always been most solicitous for the welfare of the fetus in connection with its inheritance rights as well as protecting it under the criminal law.”³⁴⁸ But even that decision acknowledged that recognition of fetal personhood in wrongful death actions broke from “early orthodox views.”³⁴⁹ This means that the common law did not pronounce full legal personhood across the board. There is a notable exception to this argument: where fetal rights are *explicitly* enshrined by state constitution. For example, this argument is not tenable in Alabama where Article I, § 36.06(b) of its state constitution “acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate,” “including the right to life” and the “rights of the unborn child” are coextensive with “the rights of born children.”³⁵⁰

Religious Freedom

Christian fundamentalist beliefs about when life begins are foundational to the personhood agenda and cannot be separated from it. The U.S. Supreme Court’s (1) expanding jurisprudence on religious freedom and (2) weakening protections against a government’s establishment of religion (i.e., separation of religion and the state) have emboldened anti-abortion legislators and judges to use religion as pretext to deny people basic rights, as seen in states including Missouri and Kansas.³⁵¹

Religious liberty in these states is used to bolster draconian religious beliefs favoring fetal personhood at the expense of everyone else's beliefs. However, following *Dobbs*, several religious freedom lawsuits were filed in hostile states, continuing this nation's rich history of challenging abortion bans based on religious freedom principles.³⁵² For example, in *Blackmon v. Missouri*, a group of interfaith clergy sued to permanently enjoin Missouri's anti-abortion laws, arguing they violate the state constitution's establishment clause.³⁵³ These laws ban abortion care, state that life begins at conception, and grant fertilized eggs, embryos and fetuses the same rights as born people.³⁵⁴ While the state's motion for summary judgment was granted, plaintiffs are considering appealing this decision.³⁵⁵

Lawsuits in Indiana and Kentucky illustrate how abortion bans conflict with the free practice of several religions. In Indiana, plaintiffs sued the state medical licensing board and prosecutors, claiming the state's abortion laws violate the state Religious Freedom Restoration Act ("RFRA").³⁵⁶ One plaintiff, a Jewish woman, had an abortion due to a likely fatal fetal diagnosis,³⁵⁷ in accordance with Jewish beliefs that place significant value on the life of a pregnant woman and her mental health.³⁵⁸ Her abortion was not prohibited by Indiana law at the time but would be under the current law. Several religious and civil rights organizations submitted an amicus brief highlighting the conflict between religious pluralism and fetal personhood, emphasizing that

laws like Indiana's fail to account for diverse beliefs about when life begins.³⁵⁹ An Indiana appellate court temporarily blocked the state's abortion law while the case proceeds.³⁶⁰

In Kentucky, Jewish plaintiffs sued, alleging that the state's anti-abortion laws violate Kentucky's RFRA and Section 5 of the state constitution, which prohibits preferential treatment of any particular religion.³⁶¹ The lawsuit notes, Judaism does not support the belief that life begins at conception or that fetuses have inalienable rights. Summary judgment was granted to the state in this case.³⁶²

These cases could turn the tide pushing back against fetal personhood by asserting rights to religious freedom in a friendly venue.

Vagueness

Fetal personhood measures may be void for vagueness. For example, a district court preliminarily enjoined Arizona's sweeping fetal personhood "Interpretation Policy" since the plaintiffs were likely to succeed on the merits of the following claims that key features of the policy were unconstitutionally vague:

- ▶ It provides no clear "guidance on what it means to 'acknowledge' the equal rights of the unborn," especially since this acknowledgment does not expand the definition of "person" to include the "unborn."
- ▶ It conflicts with other Arizona laws that do not "define 'person' to include an

‘unborn child’” and provisions that regulate abortion.

► The uncertainties create a risk of arbitrary enforcement, forcing medical providers to guess whether their “lawful performance of their jobs could lead to criminal, civil, or professional liability” based on varying interpretations of the policy.³⁶³

The state itself failed to offer an explanation as to what the interpretation policy would actually do,³⁶⁴ highlighting the confusion among proponents of the Interpretation Policy. The Ninth Circuit reversed the preliminary injunction but held that the plaintiffs continue to have standing to assert their claims that the Interpretation Policy is unconstitutionally vague.³⁶⁵ This matter remains pending.³⁶⁶

Vagueness and unintelligibility were also argued in *Sobel v. Cameron* as grounds under which Kentucky’s anti-abortion laws should be struck down as unconstitutional.³⁶⁷ The federal lawsuit argued that Kentucky abortion laws are vague as to whether they apply to IVF embryos, leaving women unsure if unused IVF embryos can be disposed without risk of criminal penalty.³⁶⁸ The plaintiffs also argued the laws should be struck down due to conflicting provisions that make them unintelligible.³⁶⁹ A circuit court recently granted the defendants’ motion for summary judgment for standing reasons without resolving the vagueness or unintelligibility claims.³⁷⁰

Courts resisting the expansion of child abuse statutes to include fetuses have also relied on vagueness arguments,

emphasizing that pregnant people lacked notice that they could be prosecuted because the statutes lack explicit language about fetuses.³⁷¹

b. Statutory Interpretation

Ordinary and Public Meaning

With the U.S. Supreme Court’s conservative supermajority adopting textualism and originalism to retool constitutional law,³⁷² future courts will consider whether fetuses are people by analyzing the ordinary or public meaning of statutes when they were first enacted. This approach turns the clock back, threatening to unravel hard-won civil rights,³⁷³ and courts have already reached conflicting conclusions because of different methods of review.

For example, the South Dakota Supreme Court declared, even in 1978, “the ordinary and popular meaning of ‘child’ included ‘an unborn or recently born human being’” and “[m]ore recent dictionaries also support this meaning.”³⁷⁴ Similarly, the Alabama Supreme Court cited two dictionaries to assert that the ordinary meaning of “child” includes a fetus.³⁷⁵

Conversely, the Utah Supreme Court stated that “child” in its ordinary sense means a born child,³⁷⁶ citing the U.S. Supreme Court’s conclusion in *Burns v. Alcala*, which provides, “Congress used the word ‘child’ to refer to an individual already born, with an existence separate from its mother.”³⁷⁷ Similarly, the Supreme Court of Kansas reasoned, “[w]e

do not ordinarily use the term child to mean an unborn child.”³⁷⁸

In 2011, the Supreme Court of Utah reaffirmed, the term “minor child” ordinarily refers to children postpartum, but nevertheless inquired as to whether the legislature intended the term to include a fetus for parental claims regarding injury to a surviving fetus for tort lawsuits.³⁷⁹ The Court pointed to the popular press’ use of “child” “to refer to the unborn, including in publications like the New York Times,” highlighting the importance of precise language in news outlets.³⁸⁰ Justice Nehring’s dissent noted, “the term ‘minor child’ ha[d] appeared in the *Times* 2,886 times without ever referring to a fetus.”³⁸¹

Legislative Intent

One of the most common arguments against judicial expansion of a statute to include fetuses as people is, when a legislature intends to include a fetus, it does so explicitly. This is illustrated by preexisting statutes referring to an “unborn child” or fetus in specific contexts and for specific reasons.³⁸² A Florida court adopted this reasoning when it declined to extend the protection of guardianship statutes to an “unborn child.”³⁸³

Further, it does not make sense to import the meaning from other statutes because the purpose shaping other statutes in recognizing fetal personhood might not be relevant to the specific statute at hand. As the Supreme Court of Iowa noted, “the common denominator” in

“cases that consider the legal status of a fetus is our focus on the purpose of the law at issue and the legislative intent reflected by that purpose.”³⁸⁴ Because, for example,

the factors that are relevant in determining the custody of children in dissolution cases are simply not useful in determining how decisions will be made with respect to the disposition and use of a divorced couple's fertilized eggs[,] . . . [it] conclude[d] the legislature did not intend to include fertilized eggs or frozen embryos within the scope of the child custody statute.³⁸⁵

The legislature could clarify the law to include a fetus, but this approach to interpretation adds an initial guardrail rather than letting any law be expanded simply because a “person” includes a fetus in at least one statute or body of law (as is the case in every state).

One Florida case, though, tried to swing this rule of interpretation the opposite way, claiming, “[i]f the Legislature had intended to exclude a viable, unborn child from the meaning of the word ‘person’ . . . it would have expressly done so. Since it did not, we conclude that the Legislature used the word ‘person’ in a broad and unrestrictive sense.”³⁸⁶ The Florida Supreme Court later reversed this opinion.³⁸⁷

Absurdity

A general principle of statutory interpretation is that statutes should be construed to avoid an absurd or unreasonable result. Several courts have recognized that absurd results would flow from recognizing fetal personhood.

For example, an Arizona court found, a stillborn fetus was not a “dead human body” within the meaning of a criminal statute about the abandonment or concealment of a human body.³⁸⁸ The court emphasized, “we cannot presume the legislature intended to criminalize a woman's failure to report a miscarriage to the authorities in the very early stages of pregnancy” because a court should avoid reaching an “absurd result” in construing a statute.³⁸⁹ Similarly, a Massachusetts court reasoned, “[a]bsurd consequences would follow if a fetus were treated as a son or daughter, or as a brother or sister, under the intestacy law.” A fetus may be a *conditional* heir, but that condition is live birth.³⁹⁰

When a Pennsylvania court dismissed charges against a pregnant woman under child abuse and welfare statutes, it noted the “slippery slope” of absurd consequences that could flow from such charges, and called these carceral measures a “dangerous policy.”³⁹¹ The Court noted, applying these statutes to conduct during pregnancy would “create an indefinite number of new ‘crimes’” – including use of “over-the-counter cold remedies and sleep aids,” cigarettes, and alcohol – as the law “could be construed as covering the full range of a pregnant

woman's behavior – a plainly unconstitutional result that would, among other things, render the statutes void for vagueness.”³⁹²

The Supreme Court of Maryland similarly held that a pregnant woman could not be convicted on allegations of substance use under the reckless endangerment of a child statute, and emphasized the absurd consequences that would follow ranging from “becoming (or remaining) pregnant with knowledge that the child likely will have a genetic disorder that may cause serious disability or death,” to the use of legal drugs contraindicated during pregnancy, “to not maintaining a proper and sufficient diet,” to not receiving prenatal medical care, “to failing to wear a seat belt while driving, to violating other traffic laws . . . Such ordinary things as skiing or horseback riding could produce criminal liability.”³⁹³ Similarly, the Supreme Court of Kentucky noted that, under the prosecution's theory, behavior by a pregnant person could be criminal abuse if she “could have been addicted to downhill skiing or some other sport creating serious risk of prenatal injury.”³⁹⁴

These actions open the floodgates to policing virtually any behavior by a pregnant person, and absurdity is a good policy argument to invoke to counter fetal personhood. The highest criminal court in Oklahoma recently rejected the argument that a pregnant person cannot use legally prescribed medical marijuana since a fetus does not have a medical marijuana card of its own.³⁹⁵

X. Recommendations

Undoing the harms of the fetal personhood movement will require a comprehensive strategy, including significant federal and state legal and policy reforms, as well as vigilance in tracking and responding to emerging policy proposals and legislative bills.

Repeal Fetal Personhood Laws and Constitutional Amendments:

We must repeal existing fetal personhood laws and policies and reject any new measures that establish or reinforce fetal personhood. Instead, legislative efforts must prioritize the needs and rights of pregnant people. To that end, any bills designed to support pregnant people's access to healthcare or alleviate financial burdens associated with pregnancy should explicitly avoid defining embryos and fetuses as people with independent rights. As an example, Colorado's Reproductive Health Equity Act declares, "[a] fertilized egg, embryo, or fetus does not have independent or derivative rights under the laws of this state."³⁹⁶ Additionally, we must counter proposals that classify fetuses or embryos as tax-deductible dependents—which broaden legal recognition of fetal personhood—with alternative language that focuses on the actual and expanding needs of people during pregnancy.³⁹⁷ Navigating the delicate balance between advocating for pregnant people's rights and access to resources while rejecting fetal personhood will reinforce support for pregnant people without

undermining their broader legal protections.

Reject and Repeal Personhood Measures That Criminalize Pregnant and Postpartum People:

In addition to fighting fetal personhood in civil laws and constitutional amendments, we must develop and advocate for legislation that explicitly rejects fetal personhood in criminal law and prevents the criminalization of pregnancy. Criminal codes should clearly state that fetuses are not people to prevent their misuse in criminal cases.³⁹⁸ State codes should also include explicit immunities protecting pregnant people from prosecutions related to their pregnancy.³⁹⁹ Rejecting fetal personhood ensures ambiguous legal language cannot be exploited to prosecute pregnant people unfairly. We must also reject emerging measures that could criminalize pregnancy, such as statutes that fail to distinguish a fetus from a person in cases involving charges like abuse of a corpse.⁴⁰⁰

Foreclose Tort Claims Against Pregnant and Postpartum People:

Tort claims against pregnant and postpartum people should be foreclosed. Laws could allow claims for people who have experienced pregnancy loss and can be framed around the emotional loss of potential parenthood without invoking fetal personhood or labeling such losses as "wrongful deaths." To that end, legislation must clearly differentiate between a *person* and a *fetus* to avoid

conflating the two in legal interpretations. For example, Virginia's wrongful death act distinguishes a person's death and "fetal death" to indicate that a fetus is not a legal person.⁴⁰¹

Connect Fetal Personhood to Threats to Maternal Health:

Fetal personhood opens the door to pregnancy criminalization, erodes trust between patients, and promotes the denial of emergency obstetric care and abortion care, especially during incarceration. We must draw these connections and highlight how fetal personhood promoting policies directly imperil maternal and infant health outcomes. Until fetal personhood is decisively rejected, the nation will not see meaningful improvements in its maternal and infant health crisis.

Connect Fetal Personhood to Threats to Democracy:

The surveillance and criminalization of women and people with the capacity for pregnancy under the doctrine of fetal personhood diminishes the ability of half the population to participate in public and civic life. We must reject subjecting pregnant people (and potentially anyone with the capacity for pregnancy) to heightened surveillance and criminal consequences, including incarceration. These measures create a climate that limits pregnant people's freedom of movement, expression, and engagement in society.

These recommendations underscore the need to center the lives of pregnant and postpartum people, safeguard their rights, and prevent the erosion of hard-won legal protections.

XI. Conclusion

The struggle for the rights of women as a class have been under attack from the moment that they were won.⁴⁰² Thanks in part to a century of feminist social liberation movements, women are no longer legally considered the property of men, and are free to open bank accounts, travel, and pursue careers without permission from fathers, brothers, or husbands. However, the same misogyny underlying this history remains alive and well throughout American culture and in the fabric of our laws and policies. Nowhere are these old truths more visible than within the world of reproductive rights and the fight for reproductive justice.

For nearly half a century, the federal right to abortion care without state-imposed bans provided a social and political change that completely altered women's roles within the public sphere and allowed them to chart their own futures. With this progress came a powerful backlash. Lying in wait beneath these advances was fetal personhood, a particularly insidious form of social, reproductive, and governmental control that has developed over decades and emerged in full force after the *Dobbs* decision dismantled federal protections for abortion rights.

The resurgence of fetal personhood is not just a consequence of *Dobbs*,⁴⁰³ rather, it both reveals and reflects the patriarchal roots of the social control of women and all those with the capacity for pregnancy.⁴⁰⁴ Elevating the rights of fetuses above pregnant people is just another tool in the toolbox. The fallout is undeniable: anyone with the capacity for pregnancy faces the increasing threat of government surveillance, punishment, and incarceration where fetal personhood is the law.

Indeed, the push for fetal personhood is not confined to one legal strategy but is rather a multi-pronged assault: legislative,⁴⁰⁵ judicial,⁴⁰⁶ and executive.⁴⁰⁷ The movement is aggressively advancing on multiple fronts, from efforts to establish rights for embryos and fetuses under the Fourteenth Amendment of the U.S. Constitution, to the implementation of fetal personhood principles through policy at the lowest and highest levels of government.⁴⁰⁸

Additionally, the recent revival of the Comstock Act—a relic from the 1800s that proponents of fetal personhood wish to invoke to ban the distribution of abortion materials to eradicate this care—signals a new and deeply concerning federal strategy.⁴⁰⁹ It invites a future in which federal prosecutors could target pregnant people and their supporters nationwide,⁴¹⁰ all without the need for new federal legislation explicitly codifying fetal personhood into law.⁴¹¹ Similarly chilling is the Project 2025 Presidential Transition Project’s push to secure

constitutional rights for embryos and fetuses under the Fourteenth Amendment,⁴¹² with a top proponent even considering incarcerating those who access abortion care.⁴¹³

At its core, fetal personhood is a formidable weapon used to ban reproductive healthcare and to strip women, and all people capable of pregnancy, of their basic humanity, dignity, and autonomy. It flouts the personhood of women, using the material reality of their reproductive capacity to invite government control into their lives. Fetal personhood has become the modern lingua franca for age old subjugations. To ensure that the rights to reproductive freedom and justice are restored and expanded—and to begin dismantling this dangerous and extreme legal doctrine—we must fight and condemn it at every instance of its emergence, no matter how benign it may initially appear.

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XII. Appendix

Broadest Personhood Provisions

State	Text of Law
Alabama	<p>Ala. Const. art. I, § 36.06</p> <p>(a) This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.</p> <p>(b) This state further acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate.</p> <p>...</p>
Arizona	<p>Ariz. Rev. Stat. Ann. § 1-219*</p> <p>A. The laws of this state shall be interpreted and construed to acknowledge, on behalf of an unborn child at every stage of development, all rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States and decisional interpretations thereof by the United States supreme court.</p> <p>B. This section does not create a cause of action against:</p> <ol style="list-style-type: none"> 1. A person who performs in vitro fertilization procedures as authorized under the laws of this state. 2. A woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.

	<p>...</p> <p>*Preliminarily enjoined on July 11, 2022 but only blocked provision's application to "lawful" abortions that are "otherwise, permissible under Arizona law" <i>Isaacson v. Brnovich</i>, 610 F. Supp. 3d 1243 (D. Ariz. 2022). Litigation ongoing.</p>
Arkansas	<p>Ark. Const. amend. 68, § 2</p> <p>The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.</p> <p><i>Knowlton v. Ward</i>, 889 S.W.2d 721, 726 (Ark. 1994) held that this provision was not a "self-executing provision" that would have prohibited the state from engaging in any activity that allowed or increased access to abortion care, as the amendment "does not provide any means by which the policy is to be effectuated."</p>
Georgia	<p>Ga. Code Ann. § 1-2-1</p> <p>...</p> <p>(b) "Natural person" means any human being including an unborn child. . . .</p> <p>(d) Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.</p> <p>(e) As used in this Code section, the term:</p> <p>...</p> <p>(2) "Unborn child" means a member of the species <i>Homo sapiens</i> at any stage of development who is carried in the womb.</p>
Kansas	<p>Kan. Stat. Ann. § 65-6732</p> <p>(a) The legislature hereby finds and declares the following:</p> <p>(1) the life of each human being begins at fertilization;</p> <p>(2) unborn children have interests in life, health, and well-being that should be protected; and</p> <p>(3) the parents of unborn children have protectable interests in the life, health, and well-being of the unborn children of such parents.</p> <p>(b) "On and after July 1, 2013, the laws of this state shall be interpreted</p>

	<p>and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the Kansas constitution and the Kansas Statutes Annotated.”</p> <p>...</p>
Kentucky	<p>Ky. Rev. Stat. Ann. § 311.720*</p> <p>As used in KRS 311.710 to 311.820, and laws of the Commonwealth unless the context otherwise requires:</p> <p>...</p> <p>(6) “Fetus” means a human being from fertilization until birth;</p> <p>...</p> <p>(8) “Human being” means any member of the species homo sapiens from fertilization until death;</p> <p>...</p> <p>*Permanently enjoined in 2000. <i>Eubanks v. Stengel</i>, 28 F. Supp. 2d 1024, 1043 (W.D. Ky. 1998), <i>aff’d</i>, 224 F.3d 576 (6th Cir. 2000) (permanently enjoining enforcement of the provisions of the broad fetal personhood statute, Ky. Rev. Stat. Ann. § 311.720, because it was unconstitutional and preempted; however, basing its decision in <i>Roe</i> and <i>Casey</i>).</p>
Louisiana	<p>La. Rev. Stat. § 40:1061.1</p> <p>A.</p> <p>(1) It is the intention of the Legislature of Louisiana to regulate, prohibit, or restrict abortion to the fullest extent permitted by the decisions of the Supreme Court of the United States. The legislature does solemnly declare, find, and reaffirm the longstanding public policy of this state that every unborn child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and Constitution of Louisiana.</p> <p>(2) The legislature further finds and declares that the longstanding policy of this state to protect the right to life of every unborn child from conception by prohibiting abortion is impermissible only because of the decisions of the Supreme Court of the United States and that, therefore, if those decisions of the Supreme Court of the United States are ever</p>

	<p>reversed or modified or the United States Constitution is amended to allow protection of the unborn then the public policy of this state to prohibit abortions shall be enforced.</p> <p>...</p>
Missouri	<p>Mo. Rev. Stat. § 1.205</p> <p>1. The general assembly of this state finds that:</p> <p>(1) The life of each human being begins at conception;</p> <p>(2) Unborn children have protectable interests in life, health, and well-being;</p> <p>(3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child.</p> <p>2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.</p> <p>3. As used in this section, the term “unborn children” or “unborn child” shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.</p> <p>4. Nothing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.</p>
Montana	<p>Mont. Code Ann. § 50-20-102</p> <p>(1) The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life. It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for the viable human life. The protection afforded to a person by Montana's constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a compelling state interest exists in the protection of viable life</p>

	<p>(c) the holdings referred to in subsections (2)(a) and (2)(b) apply to unborn persons in order to extend to unborn persons the inalienable right to defend their lives and liberties;</p> <p>...</p>
Pennsylvania	<p>18 Pa. Stat. and Cons. Stat. Ann. § 3202</p> <p>...</p> <p>(c) Construction.—In every relevant civil or criminal proceeding in which it is possible to do so without violating the Federal Constitution, the common and statutory law of Pennsylvania shall be construed so as to extend to the unborn the equal protection of the laws and to further the public policy of this Commonwealth encouraging childbirth over abortion.</p> <p>...</p>
Tennessee	<p>Tenn. Code Ann. § 39-15-214</p> <p>(a) Findings. The general assembly finds:</p> <p>...</p> <p>(5) At conception, a new and genetically distinct human being is formed;</p> <p>(6) The state has a legitimate, substantial, and compelling interest in protecting the rights of all human beings, including the fundamental and absolute right of unborn human beings to life, liberty, and all rights protected by the Fourteenth and Ninth Amendments to the United States Constitution;</p> <p>...</p> <p>(63) The use of abortion as a means to prefer one (1) sex over another or to discriminate based on disability or race is antithetical to the core values equality, freedom, and human dignity enshrined in both the United States and Tennessee Constitutions. The elimination of bias and discrimination against pregnant women, their partners, and their family members, including unborn children, is a fundamental obligation of government in order to guarantee those who are, according to the Declaration of Independence, “endowed by their Creator with certain unalienable Rights” can enjoy “Life, Liberty, and the pursuit of Happiness.”</p> <p>...</p>
Utah	<p>Utah Code Ann. § 76-7-301.1</p>

	<p>...</p> <p>(3) It is the intent of the Legislature to protect and guarantee to unborn children their inherent and inalienable right to life as required by Article I, Sections 1 and 7, Utah Constitution.</p> <p>...</p> <p>Utah Code Ann. § 78B-3-109</p> <p>(1) The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition, or dependency, including all persons with a disability and all unborn persons.</p> <p>...</p>
Wyoming	<p>Wyo. Stat. Ann. § 35-6-121*</p> <p>(a) The legislature finds that:</p> <ul style="list-style-type: none"> (i) As a consequence of an unborn baby being a member of the species homo sapiens from conception, the unborn baby is a member of the human race under article 1, section 2 of the Wyoming constitution; (ii) The legislature acknowledges that all members of the human race are created equal and are endowed by their creator with certain unalienable rights, the foremost of which is the right to life; (iii) This act promotes and furthers article 1, section 6 of the Wyoming constitution, which guarantees that no person may be deprived of life or liberty without due process of law; (iv) Regarding article 1, section 38 of the Wyoming constitution, abortion as defined in this act is not health care. Instead of being health care, abortion is the intentional termination of the life of an unborn baby. It is within the authority of the state of Wyoming to determine reasonable and necessary restrictions upon abortion, including its prohibition. In accordance with Article 1, Section 38(c) of the Wyoming constitution, the legislature determines that the health and general welfare of the people requires the prohibition of abortion as defined in this act; (v) The legislature, in the exercise of its constitutional duties and powers, has a fundamental duty to provide equal protection for all human lives, including unborn babies from conception;

	<p>(vi) Wyoming's "legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." <i>Dobbs v. Jackson Women's Health Org.</i>, 142 S. Ct. 2228, 2284 (2022) (internal citations omitted).</p> <p>*Enjoined by temporary restraining order. <i>Johnson v. State</i>, No. 18853, 2023 WL 2711603, at *2 (Wyo. Dist. Apr. 17, 2023) (granting TRO to enjoin the "Life is a Human Right Act", Wyo. Stat. Ann. § 35-6-120 et seq. (2023)). Litigation ongoing.</p>
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Defining "Person" to Include a Fetus Throughout the State Criminal Code

State	Text of Law or Case
Kentucky	<i>Commonwealth v. Morris</i> , 142 S.W.3d 654, 660 (Ky. 2004) ("a viable fetus is a 'human being' for purposes of KRS 500.080(12)") (citing Ky. Rev. Stat. Ann. § 500.080)
Louisiana	<p>La. Stat. Ann. § 14:2.</p> <p>...</p> <p>(7) "Person" includes a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not.</p> <p>...</p>
Ohio	<p>Ohio Rev. Code Ann. § 2901.01</p> <p>...</p> <p>(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:</p> <p>...</p> <p>(ii) An unborn human who is viable.</p> <p>...</p> <p>(c) As used in division (B)(1)(a) of this section:</p> <p>(i) "Unborn human" means an individual organism of the species <i>Homo sapiens</i> from fertilization until live birth.</p> <p>...</p>

South Dakota	<p>S.D. Codified Laws § 22-1-2</p> <p>...</p> <p>(31) "Person," any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any other state or territory of the United States, and any of their political subdivisions, agencies, or corporations...</p> <p>...</p>
Texas	<p>Tex. Penal Code Ann. § 1.07</p> <p>...</p> <p>(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.</p> <p>...</p>

Defining “Unborn Child” Throughout the Criminal Code*

* The term “person” is used instead of “homo sapiens” to describe victims of various offenses in these two criminal codes; it is unclear how this definition impacts how these offenses are interpreted.

State	Text of Law
Alaska	<p>Alaska Stat. Ann. § 11.81.900</p> <p>...</p> <p>(66) “unborn child” means a member of the species Homo sapiens, at any stage of development, who is carried in the womb;</p> <p>...</p>
Wyoming	<p>Wyo. Stat. Ann. § 6-1-104</p> <p>...</p> <p>(xviii) “Unborn child” means a member of the species homo sapiens, at any state of development, who is carried in a womb;</p> <p>...</p>

XIII. ENDNOTES

¹ Throughout this report, we use the term “pregnant people” as well as the term “pregnant women.” This is because in the face of “fetal personhood,” it is important to center pregnant women and all pregnant people as persons entitled to dignity and the right to make autonomous decisions about their bodies, health and lives. And while the majority of people who become pregnant are cisgender women, trans men and nonbinary people’s experiences of pregnancy are shaped by gender identity realities outside that of most cisgender women. Sexism based on the gender binary and the patriarchal drive to impose traditional gender roles on women and to erase trans and nonbinary people’s experiences must be acknowledged. Our language reflects the broad community of people with the capacity for pregnancy.

² See Odette Yousef, *How ‘fetal personhood’ in Alabama’s IVF ruling evolved from fringe to mainstream*, NPR (Mar. 14, 2024, 5:01 AM), <https://www.npr.org/2024/03/14/1238102768/fetal-personhood-alabama-ivf>; John Yan & Kaisha Young, *The role of fetal personhood in the anti-abortion movement and legislation*, PBS NEWS (Mar. 10, 2024, 5:30 PM), <https://www.pbs.org/newshour/show/the-role-of-fetal-personhood-in-the-anti-abortion-movement-and-legislation>.

³ See Alex Ronan, *Why More American Women Could Be Forced to Get C-Sections*, ELLE (Feb. 1, 2024, 8:00 AM), <https://www.elle.com/culture/career-politics/a46411148/american-women-forced-c-section-interview-2024/>.

⁴ Joshua Sharfstein, *The Alabama Supreme Court’s Ruling on Frozen Embryos*, JOHN HOPKINS BLOOMBERG SCH. PUB. HEALTH. (Feb. 27, 2024), <https://publichealth.jhu.edu/2024/the-alabama-supreme-courts-ruling-on-frozen-embryos/>; *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024).

⁵ See, e.g., *Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *aff’d*, 89 F.4th 529 (5th Cir. 2024); *Moyle v. United States*, 144 S. Ct. 2015 (2024).

⁶ Lynn M. Paltrow, *Constitutional Rights for the “Unborn” Would Force Women to Forfeit Theirs*, MS. MAG. (April 15, 2021), <https://msmagazine.com/2021/04/15/abortion-constitutional-rights-unborn-fetus-14th-amendment-womens-rights-pregnant>.

⁷ Michele Goodwin, *Involuntary Reproductive Servitude: Forced Pregnancy, Abortion, and the Thirteenth Amendment*, 2022 U. CHI. LEGAL F. 191, 218 (2023).

⁸ “I know no error more consuming to an estate than that of stocking farms with men almost exclusively. I consider a woman who brings a child every two years as more profitable than the best man of the farm. what she produces is an addition to the capital, while his labors disappear in mere consumption.” Thomas Jefferson, *Extract from Thomas Jefferson to John Wayles Eppes*, (June 30, 1820), <https://tjrs.monticello.org/letter/380>.

⁹ See *Genetic impact of African slave trade revealed in DNA study*, BBC NEWS (July 20, 2024), <https://www.bbc.com/news/world-africa-53527405>. Even though more than 60% of enslaved people brought to the Americas were men, comparisons of genetics reveal a strong bias toward African women’s contributions in the modern gene pool of African heritage people across the region. Much of this can be attributed to the rape of enslaved African women by white men, and other forms of sexual exploitation, like the promise of freedom if they birthed enough children. *Id.*; see also Michele Goodwin, *Opinion, No, Justice Alito, Reproductive Justice is in the Constitution*, N.Y. TIMES (June 26, 2022) (“Ending the forced sexual and reproductive servitude of Black girls and women was a critical part of the passage of the 13th and 14th Amendments. The overturning of *Roe v. Wade* reveals the Supreme Court’s neglectful reading of the amendments that abolished slavery and guaranteed all people equal protection under the law. It means the erasure of Black women from the Constitution.”), <https://www.nytimes.com/2022/06/26/opinion/just>

[ice-alito-reproductive-justice-constitution-abortion.html](#).

¹⁰ See *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989).

¹¹ See Wendy S. Heipt, *EMTALA in a Post-Dobbs World: The March Towards Fetal Personhood Continues*, 59 IDAHO L. REV. 369 (2023).

¹² *Id.*; Hogan Human Life Amendment, H.R.J. Res. 261, 93d Cong. (1973).

¹³ Anna North, *Fetal personhood laws, explained*, Vox (Mar. 4, 2024, 1:45 PM), <https://www.vox.com/policy/24090347/alabama-ivf-ruling-fetal-personhood-abortion-embryos>; *The Personhood Movement*, PROPUBLICA (Oct. 10, 2014), <https://www.propublica.org/article/the-personhood-movement-timeline>; Heipt, *supra* note 11, at 400-01.

¹⁴ See, e.g., Life at Conception Act, H.R. 431, 118th Cong. (2023) ("This bill declares that the right to life guaranteed by the Constitution is vested in each human being at all stages of life, including the moment of fertilization, cloning, or other moment at which an individual comes into being."); Life at Conception Act, H.R. 1011, 117th Cong. (2021); Life at Conception Act, H.R. 616, 116th Cong. (2019). This bill currently has 131 cosponsors.

¹⁵ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 254 (2022).

¹⁶ Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 802 (2024) (making this point and quoting the majority in *Dobbs*, which referred to the "destruction of . . . potential life"); Lourdes Rivera, *What the Alabama Supreme Court's Decision Says About Our Failing Democracy*, HUFFPOST (Feb. 27, 2024, 5:45 AM), https://www.huffpost.com/entry/opinion-alabama-supreme-court-personhood-democracy_n_65dd5cc6e4b0189a6a7f324b; *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992); *Dobbs.*, 597 U.S. at 262.

¹⁷ Murray & Shaw, *supra* note 16, at 802.

¹⁸ Rivera, *supra* note 16; Murray & Shaw, *supra* note 16, at 802; see also Brief of *Amici Curiae* the Pacific Justice Institute in Support of Petitioners, *Dobbs*

v. Jackson Women's Health Organization, 597 U.S. 215 (2022) (No. 19-1392) ("In fact, it is the mother who treats her aborted fetus as property, and thus as a slave, in violation of the Thirteenth Amendment. Abortion carries with it all the indicia of slavery prohibited by that amendment."), https://www.supremecourt.gov/DocketPDF/19/19-1392/185314/20210806174039779_19-1392%20Amicus%20Br%20Pacific%20Justice%20Inst.pdf.

¹⁹ *Dobbs*, 597 U.S. at 237 ("The regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a 'mere pretext[t] designed to effect an invidious discrimination against members of one sex or the other.'") (citing *Geduldig v. Aiello*, 417 U.S. 484, 496, n.20 (1974)).

²⁰ See, e.g., Brief of Equal Protection Constitutional Law Scholars Serena Mayeri, Melissa Murray, and Reva Siegel as *Amici Curiae* in Support of Respondents, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) (No. 19-1392).

²¹ Brief for *Amicus Curiae* Howard University School of Law Human and Civil Rights Clinic in Support of Respondents, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) (No. 19-1392).

²² Lynn 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 POL., POL'Y & L. 299, 311, 321 (2013); Purvaja S. Kavattur et al., *The Rise of Pregnancy Criminalization*, PREGNANCY JUSTICE, 27-28 (2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/9-2023-Criminalization-report.pdf>.

²³ Paltrow & Flavin, *supra* note 22, at 311, 321-322 (2013); Kavattur et al., *supra* note 22, at 27, 31.

²⁴ Jessica Mason Pieklo, *Black Women Were 'Canaries in the Coal Mine': A Conversation with Michele Goodwin*, REWIRE NEWS GRP. (Jan. 22, 2020, 12:06 PM), <https://rewirenewsgroup.com/2020/01/22/black-women-were-canaries-in-the-coal-mine-a->

[conversation-with-michele-goodwin/](#); see also MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* (2020).

²⁵ Brown University, *All of Reproductive Justice: The Pembroke Publics Lecture by Dorothy Roberts*, YouTube (Apr. 25, 2023), <https://www.youtube.com/watch?v=iQVd0jLf41M>.

²⁶ See Bachelet on US ruling on *Dobbs v Jackson Women's Health Organization*, United Nations (June 24, 2022), available at <https://www.ohchr.org/en/statements/2022/06/bachelet-us-ruling-dobbs-v-jackson-womens-health-organization>; CERD/C/USA/CO/10-12: *Concluding observations on the combined tenth to twelfth reports of the United States of America*, United Nations (Sept. 21, 2022), ¶136, <https://www.ohchr.org/en/documents/concluding-observations/cerdcusaco10-12-concluding-observations-combined-tenth-twelfth>.

²⁷ See Kavattur et al., *supra* note 22; ABC7 News Bay Area, *UC Berkeley law professor Khiara Bridges calls out Sen. Josh Hawley's 'transphobic' questioning*, YouTube (July 13, 2022), <https://www.youtube.com/watch?v=5Rv43e9Avhc>; Cirrus Jahangiri, *What the Supreme Court's Dobbs Decision Means for LGBTQ+ Rights*, LEGAL AID AT WORK <https://legallaidatwork.org/what-the-supreme-courts-dobbs-decision-means-for-lgbtq-rights/>.

²⁸ **Alabama:** Ala. Const. art. I, § 36.06; **Arizona:** Ariz. Rev. Stat. Ann. § 1-219. *But see Isaacson v. Brnovich*, 610 F. Supp. 3d 1243 (D. Ariz. 2022) (preliminarily enjoining Arizona's fetal personhood law to exclude application to "lawful" abortions that are "otherwise, permissible under Arizona law . . ." and litigation is ongoing); **Arkansas:** Ark. Const. amend. 68 § 2. *But see Knowlton v. Ward*, 889 S.W.2d 721, 726 (Ark. 1994) (holding this provision was not a "self-executing provision" that would have prohibited the state from engaging in any activity that allowed or increased access to abortion care, as the amendment "does not provide any means by which the policy is to be effectuated"); **Georgia:** Ga. Code Ann. § 1-2-1; **Kansas:** Kan. Stat. Ann. § 65-6732; **Louisiana:** La. Stat. Ann. § 40:1061.1 (couched in the abortion section of its code but has sweeping language that states, "every unborn

child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and Constitution of Louisiana"); **Missouri:** Mo. Rev. Stat. § 1.205; **Montana:** Mont. Code Ann. § 50-20-102; **Pennsylvania:** 18 Pa. Cons. Stat. § 3202; **Tennessee:** Tenn. Code Ann. § 39-15-214 (Tennessee goes so far as to claim that "unborn human beings" have rights under the Fourteenth and Ninth Amendments to the U.S. Constitution); and **Utah:** Utah Code Ann. § 76-7-301.1; Utah Code Ann. § 78B-3-109. Kentucky's fetal personhood statute is permanently enjoined; Wyoming's fetal personhood statute is preliminarily enjoined. See *Eubanks v. Stengel*, 28 F. Supp. 2d 1024, 1043 (W.D. Ky. 1998), *aff'd*, 224 F.3d 576 (6th Cir. 2000) (permanently enjoining enforcement of the provisions of the broad fetal personhood statute, Ky. Rev. Stat. Ann. § 311.720, because it was unconstitutional and preempted; however, basing its decision in *Roe* and *Casey*); *Johnson v. State*, No. 18853, 2023 WL 2711603, at *2 (Wyo. Dist. Apr. 17, 2023) (granting TRO to enjoin the "Life is a Human Right Act", Wyo. Stat. Ann. § 35-6-120 *et seq.* (2023), which encompasses multiples provisions following it including Wyoming's broad fetal personhood statutes that (1) define an "unborn baby" as an "individual," folding embryos and fertilized eggs into its definition (Wyo. Stat. Ann. § 35-6-122) and establishing state constitutional rights for an "unborn baby" too (Wyo. Stat. Ann. § 35-6-121) and litigation is ongoing).

²⁹ Alabama, Arkansas, Kansas, Louisiana, Missouri, Montana, Pennsylvania, Tennessee, and Utah. See *supra* note 28.

³⁰ Ariz. Rev. Stat. Ann. § 1-219 ("This section does not create a cause of action against: 1. A person who performs in vitro fertilization procedures as authorized under the laws of this state.").

³¹ Ga. Code Ann. § 1-2-1 ("(2) 'Unborn child' means a member of the species *Homo sapiens* at any stage of development who is carried in the womb.").

³² **Alabama:** Ala. Code § 26-21-1; Ala. Code § 26-23F; Ala. Code § 26-23H; Ala. Code § 26-22; **Arizona:** Ariz. Rev. Stat. Ann. § 36-2322; **Arkansas:** Ark. Code Ann. § 20-16-1402; Ark. Code Ann. § 20-16-1802; Ark.

Code Ann. § 5-61-303; Ark. Code Ann. § 20-16-2002; Ark. Code Ann. § 20-16-2003; Ark. Code Ann. § 20-16-1102; **Georgia:** Ga. Code Ann. § 31-9A-2; **Idaho:** Idaho Code Ann. § 18-8801; Idaho Code Ann. § 18-604; Idaho Code Ann. § 18-502; Idaho Code Ann. § 39-9304; **Indiana:** Ind. Code Ann. § 16-34-2-3; **Iowa:** Iowa Code Ann. § 146B.1; **Kentucky:** Ky. Rev. Stat. Ann. § 311.772; **Louisiana:** La. Stat. Ann. § 40:1061.25; La. Stat. Ann. § 14:87.3; La. Stat. Ann. § 40:1061.28; La. Stat. Ann. § 40:1061.1; **Michigan:** Mich. Comp. Laws Ann. § 750.213a; **Mississippi:** Miss. Code Ann. § 41-41-191; Miss. Code Ann. § 41-41-34.1; Miss. Code Ann. § 41-41-407; Miss. Code Ann. § 41-41-405; Miss. Code Ann. § 73-25-29; **Missouri:** Mo. Ann. Stat. § 188.010; Mo. Rev. Stat. § 188.037; **Nebraska:** Neb. Rev. Stat. Ann. § 28-3,103; **New Hampshire:** N.H. Rev. Stat. Ann. § 329:43; **North Dakota:** N.D. Cent. Code Ann. § 14-02.1-02; **Ohio:** Ohio Rev. Code Ann. § 2919.20; **Oklahoma:** Okla. Stat. Ann. tit. 63 § 1-730; Okla. Stat. Ann. tit. 63, § 1-745.2; Okla. Stat. Ann. tit. 63 § 1-755; Okla. Stat. Ann. tit. 63, § 1-738.7; **Pennsylvania:** 18 Pa. Stat. and Cons. Stat. Ann. § 3202; 18 Pa. Stat. and Cons. Stat. Ann. § 3203; 18 Pa. Stat. and Cons. Stat. Ann. § 3216; **South Carolina:** S.C. Code Ann. § 44-41-610; **South Dakota:** S.D. Codified Laws § 34-23A-1; S.D. Codified Laws § 34-23A-33; S.D. Codified Laws § 34-23A-32; S.D. Codified Laws § 34-23A-1.4; **Tennessee:** Tenn. Code Ann. § 39-15-211; Tenn. Code Ann. § 39-15-213; Tenn. Code Ann. § 39-15-219; **Texas:** Tex. Health & Safety Code § 170A.001; **Utah:** Utah Code Ann. § 78B-3-109; and **Wisconsin:** Wis. Stat. Ann. § 20.927.

³³ **Kentucky:** *Commonwealth v. Morris*, 142 S.W.3d 654, 660 (Ky. 2004) (citing Ky. Rev. Stat. Ann. § 500.080); **Louisiana:** La. Stat. Ann. § 14:2; **Ohio:** Ohio Rev. Code Ann. § 2901.01; **South Dakota:** S.D. Codified Laws § 22-1-2; and **Texas:** Tex. Penal Code Ann. § 1.07.

³⁴ **Alaska:** Alaska Stat. Ann. § 11.81.900(66); and **Wyoming:** Wyo. Stat. Ann. § 6-1-104(a)(xviii).

³⁵ **Alabama:** Ala. Code § 13A-6-1; **Alaska:** Alaska Stat. Ann. § 11.41.150; Alaska Stat. Ann. § 11.41.160; Alaska Stat. Ann. § 11.41.170; **Arizona:** Ariz. Rev. Stat. § 13-1102; Ariz. Rev. Stat. § 13-1103; Ariz. Rev. Stat. § 13-1104; Ariz. Rev. Stat. § 13-1105; **Arkansas:** Ark. Code Ann. § 5-1-102(13)(B); **California:** Cal. Penal Code § 187; **Florida:** Fla. Stat. Ann. § 782.09; Fla. Stat. Ann. § 775.021(5); **Georgia:** Ga. Code Ann. § 16-5-80; **Idaho:** Idaho Code Ann. § 18-4001; Idaho Code Ann. § 18-4006; **Illinois:** 720 Ill. Comp. Stat.

Ann. 5/9-1.2; 720 Ill. Comp. Stat. Ann. 5/9-2.1; 720 Ill. Comp. Stat. Ann. 5/9-3.2; **Indiana:** Ind. Code Ann. § 35-42-1-1; Ind. Code Ann. § 35-42-1-3; Ind. Code Ann. § 35-42-1-4; Ind. Code Ann. § 35-42-1-6; **Kansas:** Kan. Stat. Ann. § 21-5419; **Kentucky:** Ky. Rev. Stat. Ann. § 507A.020; Ky. Rev. Stat. Ann. § 507A.030; Ky. Rev. Stat. Ann. § 507A.040; Ky. Rev. Stat. Ann. § 507A.050; **Louisiana:** La. Stat. Ann. § 32.6; La. Stat. Ann. § 32.7; La. Stat. Ann. § 32-8; **Maryland:** Md. Code Ann., Crim. Law § 2-103; **Massachusetts:** *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984); **Michigan:** Mich. Comp. Laws Ann. § 750.322; Mich. Comp. Laws Ann. § 750.323; **Minnesota:** Minn. Stat. Ann. § 609.2661; Minn. Stat. Ann. § 609.2662; Minn. Stat. Ann. § 609.2663; Minn. Stat. Ann. § 609.2664; Minn. Stat. Ann. § 609.2114; **Mississippi:** Miss. Code Ann. § 97-3-19; Miss. Code Ann. § 97-3-37; **Missouri:** Mo. Ann. Stat. § 1.205; **Montana:** Mont. Code Ann. § 45-5-102; Mont. Code Ann. § 45-5-103; **Nebraska:** Neb. Rev. Stat. Ann. § 28-391; Neb. Rev. Stat. Ann. § 28-392; Neb. Rev. Stat. Ann. § 28-393; Neb. Rev. Stat. Ann. § 28-394; **Nevada:** Nev. Rev. Stat. Ann. § 200.210; Nev. Rev. Stat. Ann. § 200.220; **New Hampshire:** N.H. Rev. Stat. Ann. § 630:1-a; N.H. Rev. Stat. Ann. § 630:1-b; N.H. Rev. Stat. Ann. § 630:2; N.H. Rev. Stat. Ann. § 630:3; N.H. Rev. Stat. Ann. § 630:4; **North Carolina:** N.C. Gen. Stat. Ann. § 14-23.2; N.C. Gen. Stat. Ann. § 14-23.3; N.C. Gen. Stat. Ann. § 14-23.4; **North Dakota:** N.D. Cent. Code Ann. § 12.1-17.1-02; N.D. Cent. Code Ann. § 12.1-17.1-03; N.D. Cent. Code Ann. § 12.1-17.1-04; **Ohio:** Ohio Rev. Code Ann. § 2903.01; Ohio Rev. Code Ann. § 2903.02; Ohio Rev. Code Ann. § 2903.03; Ohio Rev. Code Ann. § 2903.04; Ohio Rev. Code Ann. § 2903.41; **Oklahoma:** Okla. Stat. Ann. tit. 21, § 691; **Pennsylvania:** 18 Pa. Stat. and Cons. Stat. § 2603; 18 Pa. Stat. and Cons. Stat. § 2604; 18 Pa. Stat. and Cons. Stat. § 2605; **South Carolina:** S.C. Code Ann. § 16-3-1083; **South Dakota:** S.D. Codified Laws § 22-16-1.1; **Tennessee:** Tenn. Code Ann. § 39-13-214; **Texas:** Tex. Penal Code Ann. § 1.07; **Utah:** Utah Code Ann. § 76-5-201; **Virginia:** Va. Code Ann. § 18.2-32.2; **Washington:** Wash. Rev. Code Ann. § 9A.32.060; **West Virginia:** W. Va. Code Ann. § 61-2-30; **Wisconsin:** Wis. Stat. Ann. § 940.01; Wis. Stat. Ann. § 940.02; and **Wyoming:** Wyo. Stat. Ann. § 6-2-101; Wyo. Stat. Ann. § 6-2-104.

³⁶ Alabama, Arizona, Arkansas, California, Idaho, Indiana, Kansas, Maryland, Massachusetts, Mississippi, Montana, New Hampshire, Ohio,

Oklahoma, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, and Wyoming. See *supra* note 35.

³⁷ Alabama, Arkansas, Kansas, Mississippi, New Hampshire, Oklahoma, and Tennessee. See *supra* note 35.

³⁸ **Minnesota:** Unborn child under Minn. Stat. Ann. § 609.2661 (Murder of Unborn Child in the First Degree); Minn. Stat. Ann. § 609.2662 (Murder of Unborn Child in the Second Degree); and Minn. Stat. Ann. § 609.2663 (Murder of Unborn Child in the Third Degree) is defined as “the unborn offspring of a *human being conceived*, but not yet born.” Minn. Stat. Ann. § 609.266(a) (emphasis added); **Missouri:** State courts have upheld murder, manslaughter, and wrongful death judgments against third parties for causing the death of an “unborn child” and have relied on Missouri’s broad fetal personhood law to find an unborn child is a person. See, e.g., *State v. Holcomb*, 956 S.W.2d 286, 290 (Mo. Ct. App. 1997) (murder); *State v. Knapp*, 843 S.W.2d 345, 350 (Mo. 1992) (en banc) (manslaughter) (citing Mo. Rev. Stat. § 1.205); **Oklahoma:** Homicide statute includes in its definition of “human being” “an unborn child, as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.” Okla. Stat. Ann. tit. 21, § 691(B). Section 1-730 of Title 63 of the Oklahoma Statutes defines unborn child as “the unborn offspring of human beings from the *moment of conception*.” Okla. Stat. Ann. tit. 21, § 63-1-730(4) (emphasis added); **Pennsylvania:** 18 Pa. Stat. and Cons. Stat. § 2603 (Criminal Homicide of Unborn Child), 18 Pa. Stat. and Cons. Stat. § 2604 (Murder of Unborn Child), and 18 Pa. Stat. and Cons. Stat. § 2605 (Voluntary Manslaughter of Unborn Child) define “unborn child” in accordance with its criminal abortion law, which states that an “unborn child” is “an individual organism of the species *homo sapiens* from *fertilization*.” 18 Pa. Stat. and Cons. Stat. Ann. § 3203 (emphasis added); **South Dakota:** Homicide statute (murder, manslaughter, excusable homicide, justifiable homicide, or vehicular homicide) includes the killing of an “unborn child,” S.D. Codified Laws § 22-16-1, and its criminal code defines “unborn child” as “an individual organism of the species *homo sapiens* from *fertilization*.” S.D. Codified Laws § 22-1-2 (50A) (emphasis added); and **Utah:** Criminal homicide “means an act causing the death of another

human being, including an unborn child at *any stage of the unborn child’s development*.” Utah Code Ann. § 76-5-201 (1)(a)(ii) (emphasis added).

³⁹ **California:** Cal. Civ. Code Ann. § 43.1; **Guam:** 19 Guam Code Ann. § 1104; **Idaho:** Idaho Code Ann. § 32-102; **Louisiana:** La. Civ. Code Ann. art. 26; **Michigan:** *McLain v. Howald*, 79 N.W. 182, 183 (Mich. 1899) (“For all purposes of construction, a child en ventre sa mere [fetus in utero] is considered as a child in esse [in actual existence], if it will be for its benefit to be so considered.”); **Montana:** Mont. Code Ann. § 41-1-103; **North Dakota:** N.D. Cent. Code Ann. § 14-10-15; **South Dakota:** S.D. Codified Laws § 26-1-2.

⁴⁰ **Alabama:** *Mack v. Carmack*, 79 So. 3d 597, 599–611 (Ala. 2011) (per curiam); *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024); **Alaska:** Alaska Stat. Ann. § 09.55.585; **Arizona:** *Summerfield v. Superior Ct.*, 698 P.2d 712, 724 (Ariz. 1985) (en banc); **Arkansas:** Ark. Code Ann. § 16-62-102; **Colorado:** *Espadero v. Feld*, 649 F. Supp. 1480, 1484 (D. Colo. 1986); **Connecticut:** *Gorke v. Le Clerc*, 181 A.2d 448 (Conn. Super. Ct. 1962); **Delaware:** *Worgan v. Greggo & Ferrara, Inc.*, 128 A.2d 557, 558 (Del. Super. Ct. 1956); **District of Columbia:** *Greater Se. Cmty. Hosp. v. Williams*, 482 A.2d 394 (D.C. 1984); **Georgia:** *Porter v. Lassiter*, 87 S.E.2d 100, 102–03 (Ga. Ct. App. 1955); **Hawai’i:** *Castro v. Melchor*, 366 P.3d 1058, 1065–66 (Haw. Ct. App. 2016), *aff’d*, 414 P.3d 53 (Haw. 2018); **Idaho:** *Volk v. Baldazo*, 651 P.2d 11, 12, 15 (Idaho 1982); **Illinois:** 740 Ill. Comp. Stat. 180/2.2: § 2.2; **Indiana:** Ind. Code. § 34-23-2-1; **Iowa:** *Dunn v. Rose Way, Inc.*, 333 N.W.2d 830, 833–34 (Iowa 1983) (en banc); **Kansas:** Kan. Stat. Ann. § 60-1901(a)-(c); **Kentucky:** *Mitchell v. Couch*, 285 S.W.2d 901, 904–06 (Ky. 1955); **Louisiana:** La. Civ. Code Ann. art. 26; **Maryland:** *Brown v. Contemp. OB/GYN Assocs.*, 794 A.2d 669, 701 (Md. Ct. Spec. App. 2002); **Massachusetts:** *Mone v. Greyhound Lines, Inc.*, 331 N.E.2d 916, 917 (Mass. 1975); **Michigan:** Mich. Comp. Laws Ann. § 600.2922a; *Simpson v. Alex Pickens, Jr., & Assocs., MD, PC*, 874 N.W.2d 359, 364 (Mich. Ct. App. 2015); **Minnesota:** *Verkennes v. Corniea*, 38 N.W.2d 838, 841 (Minn. 1949); **Mississippi:** Miss. Code Ann. § 11-7-13; *Federal Credit Union v. Tucker*, 853 So.2d 104 (Miss. 2003); **Missouri:** *Connor v. Monkem Co.*, 898 S.W.2d 89 (Mo. 1995) (en banc); **Montana:** *Strzelczyk v. Jett*, 870 P.2d 730, 733 (Mont. 1994);

Nebraska: Neb. Rev. Stat. § 30-809(1); **Nevada:** *White v. Yup*, 458 P.2d 617, 623–24 (Nev. 1969); **New Hampshire:** *Poliquin v. Macdonald*, 135 A.2d 249 (N.H. 1957); **New Mexico:** *Salazar v. St. Vincent Hosp.*, 619 P.2d 826, 830 (N.M. Ct. App. 1980); **North Carolina:** *DiDonato v. Wortman*, 358 S.E.2d 489, 490 (N.C. 1987); **North Dakota:** *Hopkins v. McBane*, 359 N.W.2d 862, 865 (N.D. 1984); **Ohio:** *Werling v. Sandy*, 476 N.E.2d 1053, 1054 (Ohio 1985); **Oklahoma:** Okla. Stat. tit. 12, § 1053; **Oregon:** *Libbee v. Permanente Clinic*, 518 P.2d 636, 638 (Or. 1974) (en banc); **Pennsylvania:** *Amadio v. Levin*, 501 A.2d 1085, 1089 (Pa. 1985); **Rhode Island:** *Miccolis v. AMICA Mut. Ins. Co.*, 587 A.2d 67 (R.I. 1991); *Presley v. Newport Hosp.*, 365 A.2d 748 (R.I. 1976); **South Carolina:** *Fowler v. Woodward*, 138 S.E.2d 42, 45 (S.C. 1964); **South Dakota:** S.D. Codified Laws § 21-5-1; *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787 (S.D. 1996); **Tennessee:** Tenn. Code Ann. 20-5-106(d); **Texas:** Tex. Civ. Prac. & Rem. Code Ann. § 71.003; **Utah:** *Carranza v. United States*, 267 P.3d 912 (Utah 2011); **Vermont:** *Vaillancourt v. Med. Ctr. Hosp. of Vt., Inc.*, 425 A.2d 92, 94 (Vt. 1980); **Virginia:** Va. Code Ann. § 8.01-50; **Washington:** *Moen v. Hanson*, 537 P.2d 266, 268 (Wash. 1975) (en banc); **West Virginia:** *Farley v. Sartin*, 466 S.E.2d 522, 535 (W. Va. 1995); and **Wisconsin:** *Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 148 N.W.2d 107, 112 (Wis. 1967).

⁴¹ **Alabama:** *LePage*, 2024 WL 656591, at *8 (declaring that cryogenically preserved frozen embryos are children under its wrongful death statute); c.f. Ala. Code § 6-5-810 and § 6-5-811 (legislation passed to immunize IVF providers and goods manufacturers from wrongful death liability but fails to protect others from liability under wrongful death statute); **Louisiana:** *Danos v. St. Pierre*, 402 So.2d 633, 639 (La. 1981) (finding on rehearing that wrongful death may apply to a fetus without clarifying whether the fetus needs to be viable to recover under the wrongful death statute); **Michigan:** *Simpson v. Pickens, Jr., & Assocs., MD, PC*, 874 N.W.2d 359, 364 (Mich. Ct. App 2015) (interpreting Michigan's wrongful death statute to apply to non-viable fetuses); **Missouri:** *Connor v. Monkem Co.*, 898 S.W.2d 89, 93 (Mo. 1995) (en banc) (holding "a wrongful death claim may be stated for a nonviable unborn child."); **South Dakota:** *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787, 790 (S.D. 1996) (interpreting the South Dakota's wrongful death statute to encompass "both viable and nonviable" fetuses); **Oklahoma:**

Oklahoma's wrongful death law allows for recovery for the death of an unborn person which is defined as "the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus." Okla. Stat. Ann. tit. 63, § 1-730(A)(4). However, it also provides a list of scenarios where a person would be entitled to damages pertaining to the demise of "an unborn person in utero." *Id.* Still, the statute does not explicitly exclude embryos formed outside the uterus, making Oklahoma a vulnerable state by our estimate; **Texas:** Individual under wrongful death statute includes "unborn child at every stage of gestation from fertilization until birth." Tex. Civ. Prac. & Rem. Code Ann. § 71.001(4)); and **Utah:** *Carranza v. United States*, 267 P.3d 912 (Utah 2011) (interpreting the state's wrongful death statute to include unborn children and providing no definition or limiting language as to what would be considered an "unborn child" under the court's interpretation).

⁴² Alabama, Missouri, Oklahoma, Texas, and Utah. See note 41.

⁴³ Louisiana, Michigan, and North Dakota. See *supra* note 41.

⁴⁴ These include (but are not limited to) laws on trusts and estates, anatomical gift acts, child abuse and neglect, wrongful death, negligence claims for prenatal injuries, workers' compensation, and insurance.

⁴⁵ See generally *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989).

⁴⁶ *Id.* at 501 (citing Mo. Rev. Stat. §§ 1.205.1(1), (2) (1986)).

⁴⁷ *Id.* at 490-91.

⁴⁸ *Id.* at 506.

⁴⁹ *Id.*

⁵⁰ *Connor v. Monkem Co.*, 898 S.W.2d 89, 92 (Mo. 1995) (en banc).

⁵¹ *State v. Crider*, 554 S.W.3d 460, 462 (Mo. Ct. App. 2018).

⁵² Mo. Rev. Stat. § 1.205.4; Brief of National Advocates For Pregnant Women et al. as *Amici Curiae* in Support of Plaintiffs-Appellees Seeking Affirmance in Part and Reversal in Part at 8–9, in *Isaacson v. Brnovich*, CV-21-01417-PHX-DLR (9th Cir. Dec. 23, 2021).

⁵³ Brief of National Advocates For Pregnant Women et al. as *Amici Curiae* in Support of Plaintiffs-Appellees Seeking Affirmance in Part and Reversal in Part at 8–9, in *Isaacson v. Brnovich*, CV-21-01417-PHX-DLR (9th Cir. Dec. 23, 2021).

⁵⁴ *Id.* at 9-10 (citing *Webster*, 492 U.S. at 506–07).

⁵⁵ Kansas, Louisiana, Montana, Pennsylvania, Tennessee, and Utah. See *supra* note 28.

⁵⁶ Alabama and Arkansas. See *supra* note 28.

⁵⁷ Arizona, Georgia, and Missouri. See *supra* note 28.

⁵⁸ La. Stat. Ann. § 40:1061.1

⁵⁹ Tenn. Code Ann. § 39-15-214.

⁶⁰ *Isaacson v. Brnovich*, 610 F. Supp. 3d 1243, 1255-56 (D. Ariz. July 11, 2022).

⁶¹ See, e.g., Cat Zakrzewski, Pranshu Verma & Claire Parker, *Texts, web searches about abortion have been used to prosecute women*, WASH. POST (July 3, 2022), <https://www.washingtonpost.com/technology/2022/07/03/abortion-data-privacy-prosecution/> (discussing how prosecutors used searches about abortion while pregnant as evidence of intent in a murder prosecution); *Akers v. State*, No. 0925, 2024 WL 338958 (Md. Ct. Spec. App. Jan. 30, 2024), *cert. granted*, 316 A.3d 518 (Md. 2024) (holding defendant’s lack of prenatal care and abortion contemplation could be admitted as relevant, not unfairly prejudicial evidence of intent to kill her child once born).

⁶² See U.S. CONST. amend. XIV; *Winters v. New York*, 333 U.S. 507, 520 (1948) (individuals should not

have to speculate the meaning of the law and if it applies to them or criminalizes their behavior, and “[w]here a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained”).

⁶³ See *Troxel v. Granville*, 530 U.S. 57 (2000).

⁶⁴ See *supra* note 28.

⁶⁵ *Com. v. Morris*, 142 S.W.3d 654, 660 (Ky. 2004) (holding that the term “human being” in penal code definitions in Ky. Rev. Stat. Ann. § 500.080 includes a viable fetus); La. Stat. Ann. § 14:2; Ohio Rev. Code Ann. § 2901.01; S.D. Codified Laws § 22-1-2; Tex. Penal Code Ann. § 1.07.

⁶⁶ *Ex parte Ankrom*, 152 So. 3d 397, 429 (Ala. 2013); *State v. Green*, 474 P.3d 886 (Okla. Crim. App. 2020); *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997).

⁶⁷ From 2006 to 2022, over 65% of all pregnancy-related arrests across the country occurred in just these three states. See Kavattur et al., *supra* note 22, at 4.

⁶⁸ See *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs*, NAT’L ASS’N OF CRIM. DEF. LAWS (Aug. 2021), <https://www.nacdl.org/Document/AbortioninAmericaLegOverreachCriminalizReproRights>

⁶⁹ See *supra* note 35.

⁷⁰ Alaska, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, and Virginia. See *supra* note 35.

⁷¹ **Alabama:** Ala. Code § 13A-6-1(d)(2); **Alaska:** Alaska Stat. Ann. § 11.41.180(3); **Arizona:** Ariz. Rev. Stat. §§ 13-1102, 1103, 1104, 1105 (exception built into statutory provision for each crime); **Arkansas:** Ark. Code Ann. § 5-1-102(13)(B)(iii); **California:** Cal. Penal Code § 187(b)(3); **Florida:** Fla. Stat. Ann. § 782.09(1) (“other than the mother”), § 775.021(5)(d)(3); **Georgia:** Ga. Code Ann. § 16-5-80(f)(3); **Idaho:** Idaho Code Ann. § 18-4016; **Illinois:** 720 Ill. Comp. Stat. Ann. 5/9-1.2, 2.1, 3.2 (exception built into statutory provision for each crime); **Indiana:** Ind.

Code Ann. § 35-42-1-6.5 (b); **Kansas:** Kan. Stat. Ann. § 21-5419(b)(1); **Kentucky:** Ky. Rev. Stat. Ann. § 507A.010(3); **Louisiana:** La. Rev. Stat. Ann. § 14:32.5; **Maryland:** Md. Code Ann., Crim. Law § 2-103(f); **Minnesota:** Minn. Stat. Ann. § 609.266(b); **Missouri:** Mo. Ann. Stat. § 1.205(4); **Montana:** Mont. Code Ann. § 45-5-102(1)(c), 116; **Nebraska:** Neb. Rev. Stat. Ann. § 28-390(1); **New Hampshire:** N.H. Rev. Stat. Ann. § 630:1-a(V)(1); **North Carolina:** N.C. Gen. Stat. Ann. § 14-23.7(3); **North Dakota:** N.D. Cent. Code Ann. § 12.1-17.1-01; **Ohio:** Ohio Rev. Code Ann. § 2903.09(C)(2); **Pennsylvania:** 18 Pa. Stat. and Cons. Stat. § 2608(a)(3); **South Carolina:** S.C. Code Ann. § 16-3-1083(B)(3); **Tennessee:** Tenn. Code Ann. § 39-13-214(c); **Texas:** Tex. Penal Code Ann. § 19.06(1); **Washington:** Wash. Rev. Code Ann. § 9.02.120 (only penalizes persons who “perform[] an abortion on *another person*” (emphasis added)); **West Virginia:** W. Va. Code Ann. § 61-2-30(d)(5); and **Wisconsin:** Wis. Stat. Ann. § 939.75(2)(b)(3).

⁷² See Pregnancy Justice, Who Do Fetal Homicide Laws Protect? An Analysis for a Post-Roe America at 4 (Aug. 18, 2022), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/05/fetal-homicide-brief-with-appendix-UPDATED.pdf> (note that California is not included in this count since it now has explicit protection language).

⁷³ *Id.*

⁷⁴ For example, Adora Perez pled guilty to “manslaughter of a fetus” (which is not an actual crime in California) and was sentenced to 11 years. The plea was overturned years later, and the judge acknowledged that “all parties admit that voluntary manslaughter of a fetus is not a crime in California.” Gregory Yee, *California judge overturns 11-year prison term for woman whose baby was stillborn*, LOS ANGELES TIMES (Mar. 18, 2022), <https://www.latimes.com/california/story/2022-03-18/california-judge-overturns-conviction-woman-whose-baby-was-stillborn>.

⁷⁵ *Ankrom*, 152 So. 3d 397, 429 (Ala. 2013); *State v. Green*, 474 P.3d 886, 891 (Okla. Crim. App. 2020); *Whitner v. State*, 492 S.E.2d 777, 786 (S.C. 1997).

⁷⁶ See, e.g., Kavattur et al., *supra* note 22; Pregnancy Justice, Oklahoma: The State of

Pregnancy Criminalization (Mar. 14, 2024), <https://www.pregnancyjusticeus.org/resources/oklahoma-factsheet/>; Pregnancy Justice, Alabama: The State of Pregnancy Criminalization (Mar. 14, 2024), <https://www.pregnancyjusticeus.org/resources/alabama-factsheet/>; Pregnancy Justice, South Carolina: The State of Pregnancy Criminalization (Mar. 14, 2024), <https://www.pregnancyjusticeus.org/resources/south-carolina-factsheet/>.

⁷⁷ Alabama: The State of Pregnancy Criminalization, *supra* note 76.

⁷⁸ Ala. Code § 26-15-3.2 (2023).

⁷⁹ See Okla. Stat. tit. 10A § 1-1-105(49).

⁸⁰ Oklahoma: The State of Pregnancy Criminalization, *supra* note 76.

⁸¹ See Okla. Stat. tit. 21 § 21-843.5(O)(2); tit. 10A § 1-1-105(49) (2021).

⁸² *State v. Green*, 474 P.3d 886 (Okla. Crim. App. 2020).

⁸³ *Reinesto v. Super. Ct. of State of Ariz. In & For Cnty. of Navajo*, 894 P.2d 733 (Ariz. Ct. App. 1995); *Arms v. State*, 471 S.W.3d 637 (Ark. 2015); *Reyes v. Super. Ct. of State of Cal., In & For Cnty. of San Bernardino*, 141 Cal. Rptr. 912 (Cal. Dist. Ct. App. 4th Dist. 1977); *People v. Jones*, 464 P.3d 735 (Colo. 2020); *State v. Gethers*, 585 So. 2d 1140 (Fla. 4th Dist. App. 1991); *Johnson v. State*, 602 So. 2d 1288 (Fla. 1992); *Herron v. State*, 729 N.E.2d 1008 (Ind. App. Ct. 2000); *Commonwealth v. Welch*, 864 S.W.2d 280 (Ky. 1993); *State v. Armstard*, 991 So. 2d 116 (La. Ct. App. 2008), *writ denied*, 998 So. 2d 89 (La. 2009); *Kilmon v. State*, 905 A.2d 306 (Md. 2006); *People v. Jones*, 894 N.W.2d 723 (Mich. Ct. App. 2016) (noting that although fetuses are not people under the criminal code, they can be considered a “victim” for the purpose of sentencing); see *People v. Ambrose*, 895 N.W.2d 198, 201 (Mich. Ct. App. 2016); *People v. Hardy*, 469 N.W.2d 50 (Mich. Ct. App. 1991); *State v. Wade*, 232 S.W.3d 663, 665 (Mo. Ct. App. 2007); *Sheriff, Washoe Cnty., Nev. v. Encoe*, 885 P.2d 596 (Nev. 1994); *State v. Mondragon*, 203 P.3d 105 (N.M. App. 2008); *State v. Martinez*, 137 P.3d 1195 (N.M. App.

2006); *People v. Morabito*, 580 N.Y.S.2d 843 (N.Y. City Ct. 1992); *State v. Geiser*, 763 N.W.2d 469 (N.D. 2009); *State v. Stegall*, 828 N.W.2d 526 (N.D. 2013); *State v. Clemons*, 996 N.E.2d 507 (Ohio Ct. App. 4th Dist. 2013); *State v. Cervantes*, 223 P.3d 425 (Or. Ct. App. 2009); *Commonwealth v. Dischman*, 195 A.3d 567 (Pa. Super. Ct. 2018); *Youngblood v. State*, No. 2-06-329-CR, 2007 WL 2460225 (Tex. App. Aug. 31, 2007); *Ex parte Perales*, 215 S.W.3d 418 (Tex. Crim. App. 2007); *Ward v. State*, 188 S.W.3d 874 (Tex. Ct. App. 2006); *Collins v. State*, 890 S.W.2d 893 (Tex. Ct. App. 1994); *State v. Dunn*, 916 P.2d 952 (Wash. Ct. App. 1996) (although this case finds that a fetus is not a “child” for the purpose of criminal mistreatment statute, the Washington courts later found that individuals may be prosecuted for homicide based on conduct towards the fetus, if later born alive, as victim is defined at the time of death, not time of defendant’s conduct); *State v. Besabe*, 271 P.3d 387 (Wash. Ct. App. 2012); *State v. Louk*, 786 S.E.2d 219 (W. Va. 2016).

⁸⁴ *Wade*, 232 S.W.3d at 665.

⁸⁵ *Id.*

⁸⁶ See, e.g., Anna Wolfe, *They Were Prosecuted for Using Drugs While Pregnant. But It May Not Have Been a Crime*, MISSISSIPPI TODAY (Nov. 16, 2023) <https://mississippitoday.org/2023/11/16/mississippi-pregnant-women-drugs/>.

⁸⁷ Brief of National Advocates For Pregnant Women et al. as *Amici Curiae* in Support of Plaintiffs-Appellees Seeking Affirmance in Part and Reversal in Part, *supra* note 53, at 8.

⁸⁸ *Id.* at 8–9.

⁸⁹ *Id.* at 9 (citing State’s Response to Motion to Dismiss, *State v. Smith*, No. 16CR2000-00964 (Mo. Cir. Ct. Jackson Cnty. Feb. 8, 2008)).

⁹⁰ *Substance Use During Pregnancy and Child Abuse or Neglect: Summary of State Laws*, at 6, LEGIS. ANALYSIS & PUB. POLICY ASS’N (June 2024), <https://legislativeanalysis.org/wp-content/uploads/2024/06/Substance-Use-During-Pregnancy-and-Child-Abuse-50-State-Summary.pdf>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Minn. Stat. Ann. §§ 253B.01-24; Okla. Stat. tit. 63, § 1-546.5; N.D. Cent. Code Ann. § 50-25.1-16 (“controlled substances”); N.D. Cent. Code Ann. § 50-25.1-18 (“alcohol abuse”); S.D. Codified Laws § 34-20A-70; Wis. Stat. Ann. § 48.193.

⁹⁴ Kavattur et al., *note* 22, at 25.

⁹⁵ “Mandated reporting laws require certain professionals to report child abuse and neglect concerns. While some States require all people to report, many States identify specific professionals as mandated reporters.” Mandated Reporting, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/safety-and-risk/mandated-reporting/?top=78> (last visited Aug. 29, 2024).

⁹⁶ Kavattur et al., *supra* note 22, at 25, 47.

⁹⁷ Jan Hoffman, *Pregnant, Addicted and Fighting the Pull of Drugs*, N.Y. TIMES (June 17, 2024), <https://www.nytimes.com/2024/06/16/health/pregnancy-drug-addiction.html#:~:text=In%202022%2C%20204%2C000%20pregnant%20women,children%20have%20paid%20a%20price.>

⁹⁸ See Wis. Stat. Ann. § 48.193; 1997 Wisconsin Act 292, available at <https://docs.legis.wisconsin.gov/1997/related/acts/292>.

⁹⁹ Wis. Stat. Ann. § 48.02(19).

¹⁰⁰ 1997 Wisconsin Act 292, *supra* note 98.

¹⁰¹ *Wisconsin’s ‘Unborn Children Protection Act’ (Act 292)*, PREGNANCY JUSTICE (2022).

¹⁰² *Id.*

¹⁰³ See, e.g., *In re Troy D.*, 263 Cal. Rptr. 869 (Cal. Ct. App. 1989); *Jefferson v. Griffin Spalding County Hosp. Auth.*, 274 S.E.2d 457 (Ga. 1981); *Matter of Baby X*, 293 N.W.2d 736 (Mich. Ct. App. 1980); *Hoener v. Bertinato*, 171 A.2d 140 (N.J. Juv. & Dom. Rel. Ct. 1961); *Matter of Stefanel Tyeshia C.*, 556

N.Y.S.2d 280 (N.Y. App. Div. 1990); *Matter of Fathima Ashanti K.J.*, 558 N.Y.S.2d 447 (N.Y. Fam. Ct. 1990); *Matter of Smith*, 492 N.Y.S.2d 331 (N.Y. Fam. Ct. 1985); *In re Unborn Child*, 683 N.Y.S.2d 366 (N.Y. Fam. Ct. 1998); *In re Ruiz*, 500 N.E.2d 935 (Ohio Com. Pleas 1986); *In re Baby Boy Blackshear*, 736 N.E.2d 462 (Ohio 2000); *In re Benjamin M.*, 310 S.W.3d 844 (Tenn. Ct. App. 2009); *In re S.M.L.D.*, 150 S.W.3d 754 (Tex. Ct. App. 2004); *Cervantes-Peterson v. Tex. Dep't of Fam. & Protective Servs.*, 221 S.W.3d 244 (Tex. Ct. App. 2006); *In re M.M.*, 133 A.3d 379 (Vt. 2015); *In re A.L.C.M.*, 801 S.E.2d 260 (W. Va. 2017); *In re Termination of Parental Rights to Gabriella M.*, 625 N.W.2d 360 (Wis. Ct. App. 2001) (unpublished). It is worth noting that other courts have *rejected* attempts to expand civil child welfare statutes to include fetuses. See, e.g., *Matter of Appeal in Pima Cnty. Juv. Severance Action No. S-120171*, 905 P.2d 555 (Ariz. Ct. App. 1995); *In re Steven S.*, 178 Cal. Rptr. 525 (Cal. Ct. App. 1981); *In re Valerie D.*, 613 A.2d 748 (Conn. 1992); *N.J. Dep't of Child. & Fams., Div. of Youth & Fam. Servs. v. A.L.*, 59 A.3d 576 (N.J. 2013); *N.J. Div. of Child Prot. & Permanency v. Y.N.*, 104 A.3d 244 (N.J. 2014); *Interest of L.J.B.*, 199 A.3d 868 (Pa. 2018).

¹⁰⁴ See, e.g., *Matter of Baby X*, 293 N. W.2d at 738–39.

¹⁰⁵ This report uses the term “family policing” or “family policing system” to refer to what is often called the “child welfare” system or “child protection” system. We chose family policing, taking the lead from other organizations and impacted persons, because the family policing system does not protect children. Instead, it is a system of coercion and lasting trauma, disproportionately impacting BIPOC communities. In the past, Pregnancy Justice has interchangeably used “family regulation” and “family policing,” but this report chooses “family policing” as the term best encompasses the similarities to the criminal system. See, e.g., Dorothy Roberts, *Building a World Without Family Policing*, LPE PROJECT (July 17, 2023), <https://lpeproject.org/blog/building-a-world-without-family-policing/> (“‘Policing’ is the word that captures best what the system does to America’s most disenfranchised families. It subjects them to surveillance, coercion, and punishment. It is a family-policing system.”).

¹⁰⁶ See *infra* Part VII Fetal Personhood in Other Bodies of Law; see also *In re Adrianna S.*, 520 S.W.3d 548, 557–60 (Tenn. Ct. App. 2016) (holding that a father’s parental rights could be terminated because the term “child” in the statute includes a “child in utero” and rejecting the father’s argument that his rights could not be terminated because he was unaware his child had been conceived at the time of his criminal sentencing); *Dep’t of Soc. Servs. on Behalf of Mark S. v. Felicia B.*, 543 N.Y.S.2d 637, 637–38 (Fam. Ct. 1989) (rejecting a mother’s motion to dismiss a neglect petition where she allegedly used cocaine while pregnant and the child was allegedly born with a positive toxicology).

¹⁰⁷ Various legal commentators have noted that the framers and founders of the nation intended to include a right to life to underscore the government’s obligations not to simply to prevent death, but to ensure the good lives of its citizens. See Linda Keller, *The American Rejection of Economic Rights as Human Rights and the Declaration of Independence*, 19 N.Y. L. SCH. J. HUM. RTS. 557 (2003). Relatedly, at least one state supreme court has also found an explicit state constitutional right to life for pregnant people in need of abortion care. See, e.g., *Okla. Call for Reprod. Just. v. Drummond*, 526 P.3d 1123 (Okla. 2023); *Wrigley v. Romanick*, 988 N.W.2d 231 (N.D. 2023).

¹⁰⁸ “[T]he Court’s repeated references to ‘fetal life,’ ‘potential life,’ and ‘unborn human being[s]’ may have been designed both to lay the foundations for constitutionalizing such a rule and to broadcast receptivity to such claims to litigants and lower courts. And indeed, some courts have eagerly embraced this fetus-forward posture.” Murray & Shaw, *supra* note 16 (citing *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 263 (2022) (“[N]one of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed ‘potential life.’”)); *id.* at 218 (“What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call ‘potential life’ and what the law at issue in this case regards as the life of an ‘unborn human being.’” (citing *Roe v. Wade*, 410 U.S. 113, 159 (1973) and *Planned Parenthood of Se. Pa. v.*

Casey, 505 U.S. 833, 852 (1992)); *id.* at 231 (“Roe’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called ‘fetal life’ and what the law now before us describes as an ‘unborn human being.’”); *id.* at 262 (“The most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States’ interest in protecting fetal life.”); *id.* at 254 (“[O]ur decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests.”)).

¹⁰⁹ 42 U.S.C. § 1395dd.

¹¹⁰ *Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *aff’d*, 89 F.4th 529 (5th Cir. 2024); Letter from Xavier Becerra, Sec’y, Dep’t of Health & Hum. Serv. (July 11, 2022), <https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf>.

¹¹¹ *Texas v. Becerra*, 89 F.4th 529, 544 (5th Cir. 2024) (citing 1 U.S.C. § 8(a)) (relying on the Dictionary Act’s definition of “individual” as including “every infant member of the species homo sapiens who is born alive at any stage of development” to reason that providers have a duty to the “unborn” under EMTALA).

¹¹² *Moyle v. United States*, 144 S. Ct. 2015 (2024).

¹¹³ *Id.*

¹¹⁴ *Id.* at 2027 (Alito, J., dissenting).

¹¹⁵ *Becerra*, 89 F.4th at 545.

¹¹⁶ Pam Belluck, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, N.Y. TIMES (July 17, 2022), <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html>; *see also* *How abortion bans prevent clinicians from providing essential women’s health care*, WOLTERS KLUWER (Nov. 17, 2023), <https://www.wolterskluwer.com/en/expert-insights/how-abortion-bans-prevent-clinicians-from-providing-essential-womens-health-care>.

¹¹⁷ Belluck, note 116; *see also* Carrie Feibel, *Because of Texas abortion law, her wanted pregnancy became a medical nightmare*, NPR (July 26, 2022), <https://www.npr.org/sections/health-shots/2022/07/26/1111280165/because-of-texas-abortion-law-her-wanted-pregnancy-became-a-medical-nightmare>; Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans – Texas Senate Bill 8*, 387 N. ENGL. J. MED. 5 (Aug. 2022).

¹¹⁸ Shivani Patel et al., *Maternal morbidity and fetal outcomes among pregnant women at 22 weeks’ gestation or less with complications in 2 Texas hospitals after legislation on abortion*, AM. J. OB. GYN. (Oct. 2022), <https://doi.org/10.1016/j.ajog.2022.06.060> (reviewing outcomes after the passage of Texas Senate Bills 4 and 8).

¹¹⁹ The implications of these risks are especially poignant considering that the United States continues to have the highest rate of maternal deaths of any high-income nation. Further, rates of maternal morbidity in the U.S. reveal severe racial disparities, as such rates are disproportionately high for Black women. *See* Munira Z. Gunja et al., *Insights into the U.S. Maternal Mortality Crisis: An International Comparison*, THE COMMONWEALTH FUND (June 4, 2024), <https://www.commonwealthfund.org/publication/s/issue-briefs/2024/jun/insights-us-maternal-mortality-crisis-international-comparison>.

¹²⁰ Jamie Abrams, *What moving from Kentucky to Virginia after I was diagnosed with cancer reveals about Roe*, NBC NEWS (July 7, 2022), <https://www.nbcnews.com/think/opinion/end-of-roe-kentucky-virginia-divergent-health-care-systems-for-women-rcna37215>.

¹²¹ *See* Tori Rodriguez, *Lack of Access to Abortion Has Had a Negative Impact on Cancer Care*, CANCER THERAPY ADVISOR (May 12, 2023), <https://www.cancertherapyadvisor.com/features/abortion-cancer-care-lack-access/>.

¹²² Jeannie Baumann, *Abortion Restrictions Weakening Cancer Care, Other Treatments*, BLOOMBERG LAW (Aug. 14, 2023), <https://news.bloomberglaw.com/pharma-and-life->

[sciences/abortion-restrictions-weakening-cancer-care-other-treatments.](#)

¹²³ *Id.*

¹²⁴ See Elizabeth Cohen, *One year after Dobbs decision, families describe terror, trauma and putting ‘pain to purpose’*, CNN HEALTH (June 22, 2023), <https://www.cnn.com/2023/06/22/health/abortion-dobbs-one-year-later-families/index.html>.

¹²⁵ Stephania Taladrid, *Did an Abortion Ban Cost a Young Texas Woman Her Life?*, NEW YORKER (Jan. 1, 2024), <https://www.newyorker.com/magazine/2024/01/15/abortion-high-risk-pregnancy-yeni-glick>.

¹²⁶ *Id.*

¹²⁷ *State v. Zurawski*, 690 S.W.3d 644 (Tex. 2024).

¹²⁸ *Adkins v. Idaho*, No. CV01-23-14744 (Idaho Dist. Ct. filed Sept. 11, 2023); *Seyb v. Members of the Idaho Bd. of Med.*, No. 1:24-cv-00244-DKG (D. Idaho filed May 14, 2024).

¹²⁹ *Blackmon v. Tennessee*, No. 23-1196-I (Ch. Ct. Tenn. filed Sept. 11, 2023).

¹³⁰ *Access Indep. Health Serv., Inc., d/b/a Red River Women’s Clinic v. Wrigley*, No. 08-2022-CV-1608 (N.D. Dist. Ct. filed July 7, 2022).

¹³¹ *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc. v. Members of Med. Licensing Bd. of Ind.*, No. 53C06-2208-PL-001756 (Ind. Cir. Ct. filed Nov. 9, 2023).

¹³² See, e.g., *Cox v. Texas*, No. D-1-GN-23-008611 (Tex. Dist. Ct. filed Dec. 5, 2023). Kate Cox of Texas sought an emergency abortion after her fetus was diagnosed with a fatal condition that could potentially put her own health at risk. *Id.* After a week of dueling court orders, the Texas Supreme Court ultimately denied her request to pause the state’s abortion ban as it pertained to her abortion care, after she had already traveled out of the state to receive an abortion. Temporary Restraining Order, *Cox*, No. D-1-GN-23-00861 (Tex. Dist. Ct. Dec. 7, 2023) (order granting temporary restraining order); On Petition for Writ of Mandamus, *Cox*, No. D-1-GN-23-00861 (Tex. Dec. 11,

2023) (order staying the district court’s grant of a temporary restraining order); Notice to the Courts, *Cox*, No. D-1-GN-23-00861.

¹³³ *North Dakota Court Rules State Abortion Ban Unconstitutional*, CTR. FOR REPROD. RTS. (Sept. 12, 2024), <https://reproductiverights.org/north-dakota-court-rules-state-abortion-ban-unconstitutional/>; Order on Defendant’s Motion for Summary Judgment, *Access Indep. Health Serv., Inc., d/b/a Red River Women’s Clinic v. Wrigley*, No. 08-2022-CV-1608 (N.D. Dist. Ct. Sept. 12, 2024), <https://reproductiverights.org/wp-content/uploads/2024/09/ND-RRWC-v-Wrigley-SJ.pdf>.

¹³⁴ *In re State*, 682 S.W.3d 890 (Tex. 2023).

¹³⁵ See *Seyb*, No. 1:24-cv-00244-DKG (D. Idaho filed May 14, 2024).

¹³⁶ Sheryl Gay Stolberg, *U.S. Tells Pharmacists Not to Withhold Pills That Can Cause Abortion*, N.Y. TIMES (July 13, 2022), <https://www.nytimes.com/2022/07/13/health/abortion-pills-pharmacies.html?smtyp=cur&smid=tw-nytimes>; Maya Manian, *The Impact of Dobbs on Health Care Beyond Wanted Abortion Care*, 51 J.L. MED ETHICS 592, 597 (2023); Ellen Matloff, *One Year After Dobbs Decision, Women Blocked From Meds For Conditions Unrelated To Abortion*, FORBES (June 23, 2023), <https://www.forbes.com/sites/ellenmatloff/2023/06/23/one-year-after-dobbs-decision-women-blocked-from-meds-for-conditions-unrelated-to-abortion/>; Erica Jalal, *Patients being barred from medication no longer used for abortion post Roe*, ABC NEWS (July 14, 2022), <https://abcnews.go.com/Health/patients-barred-medication-longer-abortion-post-roe/story?id=86755133>.

¹³⁷ Stolberg, note 136.

¹³⁸ Rita Rubin, *Threats to Evidence-Based Care With Teratogenic Medications in States With Abortion Restrictions*, JAMA NETWORK MED. NEWS (Oct. 12, 2022).

¹³⁹ Suzanne Leigh, *Abortion Ban May Mean Denial of Effective Drugs for Women with MS, Migraine, Epilepsy*, U.C. SAN FRANCISCO (July 13, 2022),

<https://www.ucsf.edu/news/2022/07/423296/abortion-ban-may-mean-denial-effective-drugs-women-ms-migraine-epilepsy>.

¹⁴⁰ *Id.*

¹⁴¹ Ellen Matloff, *Supreme Court's Dobbs Decision Blocks Non-Pregnant Females From Critical Medication For Lupus, Rheumatoid Arthritis, Other Diseases*, FORBES (May 8, 2023), <https://www.forbes.com/sites/ellenmatloff/2023/05/08/dobbs-v-jackson-scotus-decision-blocks-non-pregnant-female-patients-from-receiving-treatment-for-lupus-rheumatoid-arthritis-other-diseases/>; Jalal, *supra* note 136.

¹⁴² See, e.g., *Jefferson*, 274 S.E.2d 457 (forced cesarean surgery); *Application of Jamaica Hosp.*, 491 N.Y.S.2d 898 (N.Y. Sup. Ct. 1985) (blood transfusion); *N.J. Div. of Youth & Fam. Servs. v. V.M.*, 974 A.2d 448 (N.J. Super. Ct. App. Div. 2009) (forced cesarean surgery).

¹⁴³ See, e.g., *In re A.C.*, 573 A.2d 1235 (D.C. 1990) (overturning a trial court's order forcing a pregnant woman to undergo cesarean surgery); *In re Baby Boy Doe*, 632 N.E.2d 326 (Ill. App. Ct. 1994) (holding that a pregnant person cannot be forced to undergo cesarean surgery); *In re Brown*, 689 N.E.2d 397 (Ill. App. Ct. 1997) (overturning a trial court's order forcing a pregnant woman to submit to a blood transfusion); *Taft v. Taft*, 446 N.E.2d 395, 396 (Mass. 1983) (overturning a court's judgment ordering a woman to submit to "purse string" operation to "hold pregnancy"); *N.J. Div. of Youth & Fam. Servs. v. L.V.*, 889 A.2d 1153 (N.J. Super. Ct. Ch. Div. 2005) (holding that refusal by a pregnant woman who was HIV-positive to take recommended medication to reduce risk of transferring HIV to unborn child was not act of abuse or neglect); *Cox v. Ct. of Com. Pleas of Franklin Cnty., Div. of Domestic Rels., Juv. Branch*, 537 N.E.2d 721 (Ohio Ct. App. 1988) (holding that a court could not compel a pregnant woman to take action for the alleged benefit of her unborn child).

¹⁴⁴ Ijeoma C. Okwandu et al., *Racial and Ethnic Disparities in Cesarean Delivery and Indications Among Nulliparous, Term, Singleton, Vertex Women*, 9 J. RACIAL & ETHNIC HEALTH DISPARITIES 1161 (2022), <https://doi.org/10.1007/s40615-021-01057-w>; Theresa Morris & Joan H. Robinson, *Forced and*

Coerced Cesarean Sections in the United States, 16 SAGE J. 24 (2017), <https://doi.org/10.1177/1536504217714259>.

¹⁴⁵ See, e.g., *Jefferson*, 274 S.E.2d at 460 (holding that a hospital could force a pregnant woman to have a cesarean surgery because a fetus was considered a child within the state's juvenile code and "the State has an interest in the life of this unborn, living human being"); *In re Madyun*, No. 189–86, 114 Daily Wash. L. Rptr 2233 (D.C. Super. Ct. July 26, 1986) (ordering a pregnant woman to undergo a cesarean surgery over her objection because "the state had a compelling interest in ensuring this infant could be born," and "in these circumstances, the life of the infant inside its mother's womb was entitled to be protected") (affirmed by D.C. Court of Appeals in unpublished decision); *Jamaica Hosp.*, 491 N.Y.S.2d at 900 (ordering a forced blood transfusion because "for the purposes of this proceeding . . . the fetus can be regarded as a human being"); see also Farah Diaz-Tello, *Invisible Wounds: Obstetric Violence in the United States*, 24 REPROD. HEALTH MATTERS, 56, 60 (2016) (analyzing cases of forced cesarean surgery as a form of "obstetric violence" and explaining that medical professionals "attempt to justify [such] violence with fetal protection").

¹⁴⁶ *In re A.C.*, 533 A.2d 611, 612–13 (D.C. 1987).

¹⁴⁷ *In re A.C.*, 573 A.2d 1235 (D.C. 1990) (en banc).

¹⁴⁸ *Pemberton v. Tallahassee Mem'l Reg'l Med. Ctr., Inc.*, 66 F. Supp. 2d 1247, 1251 (N.D. Fla. 1999).

¹⁴⁹ *Dray v. Staten Island Univ. Hosp.*, No. 500510/2014, 2019 WL 13079315 (N.Y. Sup. Ct. Oct. 4, 2019), *aff'd as modified* 227 A.D.3d 664 (N.Y. App. Div. 2024).

¹⁵⁰ Wade Goodwyn, *The Strange Case of Marlise Munoz and John Peter Smith Hospital*, NPR (Jan. 28, 2014), <https://www.npr.org/sections/health-shots/2014/01/28/267759687/the-strange-case-of-marlise-munoz-and-john-peter-smith-hospital>.

¹⁵¹ *Munoz v. John Peter Smith Hosp.*, No. 096–270080–14 (Tarrant Cnty., Tex. 96th Jud. Dist. Jan. 23, 2014).

¹⁵² Erin S. DeMartino, et al., *US State Regulation of Decisions for Pregnant Women Without Decisional Capacity*, 321 JAMA 1629 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2731161>.

¹⁵³ Mary Tuma, *Fearing Legal Threats, Doctors Are Performing C-Sections in Lieu of Abortions*, THE NATION (Apr. 17, 2024), <https://www.thenation.com/article/society/c-sections-abortions-terrifying-new-reality/>.

¹⁵⁴ *Id.*

¹⁵⁵ See *supra* note 32.

¹⁵⁶ Ky. Rev. Stat. Ann. § 311.772 (currently blocked; litigation ongoing) (emphasis added).

¹⁵⁷ Iowa Code Ann. § 146B.1 (emphasis added).

¹⁵⁸ Okla. Stat. tit. 63, § 1-755.

¹⁵⁹ H.R. 1022 (Okla. 2024); see *House Honors Sanctity of Life with Rose Day*, STATE OF OKLA. HOUSE OF REPRESENTATIVES (Feb. 7, 2024), https://www.okhouse.gov/posts/news-20240207_2

¹⁶⁰ H.R. 1001 (Okla. 2017); H.R. 1022 (Okla. 2018); H.R. 1003 (Okla. 2019); H.R. 1022 (Okla. 2024).

¹⁶¹ Tenn. Code Ann. § 4-8-305. Arkansas has also passed a similar law. Ark. Code Ann. § 22-3-223.

¹⁶² Tenn. Code Ann. § 4-8-305 amend. pmbl., <https://www.capitol.tn.gov/Bills/110/Amend/SA0987.pdf>.

¹⁶³ Ala. Code § 26-23H (declaring “more than 50 million babies have been aborted in the United States since the *Roe* decision in 1973, more than three times the number who were killed in German death camps, Chinese purges, Stalin’s gulags, Cambodian killing fields, and the Rwandan genocide combined”). Similarly, the legislative findings in the Arkansas Unborn Child Protection Act discuss *Roe* as a “crime against humanity” and in line with decisions that upheld slavery and segregation. Ark. Code Ann. § 5-61-402.

¹⁶⁴ *Dobbs*, 597 U.S. at 268 (“*Plessy v. Ferguson* . . . betrayed our commitment to ‘equality before the law’ . . . [and] should have been overruled at the

earliest opportunity. *Roe* was also egregiously wrong and deeply damaging.”) (internal citations omitted); see also *id.* at 335–36 (Thomas J., concurring) (comparing *Roe* to *Dred Scott*); *Cabinet for Hum. Res. v. Women’s Health Servs., Inc.*, 878 S.W.2d 806, 809 (Ky. Ct. App. 1994) (McDonald, J., concurring) (comparing abortions to lynchings and *Roe* to *Dred Scott* and Nuremberg Laws); *Gulf Life Ins. Co. v. Brown*, 351 S.E.2d 267, 271 (Ga. Ct. App. 1986) (equating the status of “unborn children” under *Roe* to Black people under slavery); *Hicks v. State*, 153 So.3d 53, 69–70, 72 (Ala. 2014) (including an entire section on Nuremberg and appealing to religious conceptions of life).

¹⁶⁵ *Emergency Contraception*, CARE NET PREGNANCY CTR. OF HUDSON VALLEY, <https://carenetpregnancycenter.com/index.php/emergency-contraception/> (last visited Sept. 1, 2024) (crisis pregnancy center website stating that “[t]aking Plan B . . . after the sperm has fertilized the egg may prevent [a] new life from settling into the womb (implantation) and continuing to grow, which is why many consider it an early abortion”); CARENET, BEFORE YOU DECIDE 8 (2024) (pamphlet claiming that emergency contraception “may prevent the new life from implanting in the uterus, ending a very early pregnancy, rather than preventing the pregnancy altogether”); WTHR.com Staff, *Controversy over long-term birth control access bill at statehouse*, WTHR.COM (Feb. 26, 2024), <https://www.wthr.com/article/news/politics/iuds-removed-indiana-bill-guaranteeing-women-medicaid-access-long-term-contraceptives-control-after-giving-birth/531-492ea897-f91c-462d-9032-dba031f2b43a> (describing a legislator maintaining that IUDs were abortive); *The Obama Administration Threatens Unborn Life* 1, FAM. RSCH. COUNCIL (Jun. 2012), <https://downloads.frc.org/EF/EF12G07.pdf> (report from a pro-life organization stating that “‘Plan B’ can kill unborn children”); Imani Gandy, *Birth Control Doesn’t Cause Abortions—and Conservatives Know It*, REWIRE NEWS GRP. (July 1, 2021), <https://rewirenewsgroup.com/ablc/2021/07/01/birth-control-doesnt-cause-abortions-and-conservatives-know-it/>; see also Lauren Weber & Sabrina Malhi, *Women are getting off birth control amid misinformation explosion*, WASH.

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¹⁶⁷ *Id.*

¹⁶⁸ Autumn Katz & Kulsoom Ijaz, *Navigating the Maze: Abortion Ban Exceptions and Their Impact on Life- and Health-Preserving Care*, A.B.A. (Feb. 28, 2024),
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¹⁷⁰ *Id.*

¹⁷¹ Dima M. Qato, et al., *Use of Oral and Emergency Contraceptives After the US Supreme Court's Dobbs Decision*, JAMA NETWORK (June 26, 2024),
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¹⁷² *Id.*

¹⁷³ Lauren Weber, *Conservative Threats on Birth Control Could Threaten Access*, WASH. POST (June 5, 2024),
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¹⁷⁴ Qato, et al., *supra* note 171 (analyzing data on prescription fills).

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¹⁷⁶ *Skinner v. Oklahoma*, 316 U.S. 535, 536, 541 (1942).

¹⁷⁷ See *In vitro fertilization (IVF)*, MAYO CLINIC (Sept. 1, 2023), <https://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/about/pac-20384716>.

¹⁷⁸ *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591, at *4 (Ala. Feb. 16, 2024).

¹⁷⁹ *Id.* at *4–5.

¹⁸⁰ Aria Bendix, *Three Alabama clinics pause IVF services after court rules that embryos are children*, NBC NEWS (Feb. 21, 2024),
<https://www.nbcnews.com/health/health-news/university-alabama-pauses-ivf-services-court-rules-embryos-are-childre-rcna139846>.

¹⁸¹ See *LePage*, 2024 WL 65659, at *14 (Parker, J., concurring).

¹⁸² Elizabeth Dias, *How Christian Conservatives Are Planning for the Next Battle, on I.V.F.*, N.Y. TIMES (Aug. 16 2024),
<https://www.nytimes.com/2024/08/14/us/republicans-christian-conservatives-ivf.html>.

¹⁸³ *Idaho Republican Party Platform*, ID. GOP (June 15, 2024), <https://idgop.org/wp-content/uploads/2024/06/2024-2026-Idaho-Republican-Party-Platform.pdf>.

¹⁸⁴ Ruth Graham, *Southern Baptists Vote to Oppose Use of I.V.F.*, N.Y. TIMES (June 12, 2024),
<https://www.nytimes.com/2024/06/12/us/ivf-vote-southern-baptists.html>.

¹⁸⁵ Lindsey Dawson, Michelle Long & Brittini Frederiksen, *LGBT+ People's Health Status and Access to Care*, KFF (June 30, 2023),
<https://www.kff.org/report-section/lgbt-peoples-health-status-and-access-to-care-issue-brief>; Gloria L. Krahn et al., *Persons with disabilities as an unrecognized health disparity population*, 105 AM. J. PUB. HEALTH S198, S198-206 (2015).

¹⁸⁶ See *Infertility and IVF Access in the United States: A Human Rights-Based Policy Approach* at 6, CTR. FOR REPROD. RTS. (Feb. 3, 2020),
https://reproductiverights.org/wp-content/uploads/2020/12/64785006_Infertility-and-IVF-Access-in-the-U.S.-Fact-

[Sheet_2.5.2020_Final.pdf](#) (“In this environment, fertility clinics have reportedly denied care to single people, people in same-sex couples, people with disabilities, and other marginalized groups based on harmful preconceptions about who can and should be able to have children and parent.”). Many private, state, and federal insurance plans contain discriminatory provisions that make it more difficult for LGBTQ+ people to have their IVF care covered. See, e.g., Jo Yurbaba, *Gay couple files first-of-its-kind class action against NYC for IVF benefits*, NBC NEWS (May 9, 2024), <https://www.nbcnews.com/nbc-out/out-news/gay-couple-files-first-kind-class-action-nyc-ivf-benefits-rcna151250>; Madeline Carlisle, *‘A Queer Tax.’ New Lawsuit Alleges Aetna Discriminates Against LGBTQ People Seeking Fertility Treatment*, TIME MAG. (Sept. 14, 2021), <https://time.com/6097850/aetna-lgbtq-fertility-lawsuit>; Patricia Kime, *Veteran Advocates Sue over ‘Discriminatory’ Fertility Treatment Policies at DoD, VA*, MILITARY.COM (Aug. 2, 2023), <https://www.military.com/daily-news/2023/08/02/veteran-advocates-sue-over-discriminatory-fertility-treatment-policies-dod-va.html>.

¹⁸⁷ *LePage*, 2024 WL 656591, at *4–5.

¹⁸⁸ See *supra* note 40.

¹⁸⁹ See, e.g., Ind. Code Ann. § 34-23-2-1(b) (defining “child” for purposes of Indiana’s wrongful death of a child law as including “a fetus that has attained viability”); *Santana v. Zilog, Inc.*, 878 F. Supp. 1373 (D. Idaho 1995), *aff’d*, 95 F.3d 780 (9th Cir. 1996) (holding wrongful death cause of action cannot be asserted for nonviable fetuses); *Thibert v. Milka*, 646 N.E.2d 1025, 1026 (Mass. 1995) (same); *Miller v. Kirk*, 905 P.2d 194, 195 (N.M. 1995) (same); *LaDu v. Oregon Clinic, P.C.*, 998 P.2d 733 (Or. Ct. App. 2000) (same); *McCaskill v. Philadelphia Housing Authority*, 615 A.2d 382, (Pa. Super Ct. 1992) (same); *Crosby v. Glasscock Trucking Co., Inc.*, 532 S.E.2d 856, (S.C. 2000) (same); *Saleh v. Damron*, 836 S.E.2d 716 (W. Va. 2019) (same).

¹⁹⁰ See, e.g., Ark. Code Ann. § 16-62-102(a)(3)(D) (“A person is not liable under this subsection when the death of the unborn child results from: Actions occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization”).

¹⁹¹ *Facts Are Important: Understanding and Navigating Viability*, AM. COLL. OBSTETRICS & GYNECOLOGY, <https://www.acog.org/advocacy/facts-are-important/understanding-and-navigating-viability>. This holds true for all of the viability cutoffs discussed throughout this report.

¹⁹² *Compare McCaskill v. Phila. Hous. Auth.*, 615 A.2d 382, 384 (Pa. Super. Ct. 1992) (relying on *Planned Parenthood v. Casey*’s 23-24 week viability line) with *Brown v. Contemp. OB/GYN Assocs.*, 794 A.2d 669, 700–02 (Md. Ct. Spec. App. 2002) (stating “by ‘viable,’ the Maryland law means . . . is the child capable of survival outside the womb” and relying on expert testimony that the fetus in the case would not have been viable at the time the injury occurred).

¹⁹³ *Miller v. Am. Infertility Grp. of Ill.*, S.C., 897 N.E.2d 837, 845 (Ill. App. Ct. 2008) (holding that the state’s Wrongful Death Act does not allow a cause of action for loss of an embryo created through IVF that has not been implanted).

¹⁹⁴ *Jeter v. Mayo Clinic Ariz.*, 121 P.3d 1256, 1261 (Ariz. Ct. App. 2005) (declining to recognize a “cryopreserved, three-day-old eight-cell pre-embryo” as a “person”).

¹⁹⁵ *Penniman v. Univ. Hosps. Health Sys., Inc.*, 130 N.E.3d 333, 338–39 (Ohio Ct. App. 2019). Although to date Ohio has declined to recognize wrongful death claims for frozen embryos, an Ohio appellate court recently suggested frozen embryos are persons in the context of a divorce property disposition dispute. See *E.B. v. R.N.*, No. 30199, 2024 WL 1651614, at *2 (Ohio Ct. App. 9th Dist. Apr. 17, 2024). This case is discussed further in Part V(D).

¹⁹⁶ *Cwik v. Cwik*, No. C-090843, 2011 WL 346173, at *9, *10 (Ohio Ct. App. Feb. 4, 2011) (noting “[c]ourts have not afforded frozen embryos legally protected interests akin to persons” and holding that the trial court’s treatment of the embryos as property was not an abuse of discretion).

¹⁹⁷ In response to *LePage*, the Alabama legislature enacted legislation which immunizes IVF providers, recipients, and goods manufacturers

from liability for the wrongful death of an embryo. See Ala. Code §§ 6-5-810, 811. The immunity law does not impact the Alabama Supreme Court's holding that IVF embryos are children for the purposes of the state's Wrongful Death of a Minor Act.

¹⁹⁸ These seven states include Missouri, Oklahoma, Texas, Utah, Michigan, South Dakota, and Louisiana. Two states that have permitted wrongful death claims for nonviable fetuses are Michigan and South Dakota. Although neither state's decision includes a definition of nonviability, in Michigan the fetus was 18.2 weeks at the time of the alleged wrongful death and in South Dakota the fetus was 7.3 weeks. See *Simpson v. Alex Pickens, Jr., & Assocs., MD, PC*, 874 N.W.2d 359, 362 (Mich. Ct. App. 2015); *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787, 789 (S.D. 1996).

¹⁹⁹ The remaining five states fail to provide a limiting definition of "unborn child" under their wrongful death statute. **Louisiana:** *Danos v. St. Pierre*, 402 So.2d 633 (La. 1981) (finding on rehearing that the wrongful death statute may apply to a fetus without clarifying whether the fetus needs to be viable to recover under the statute); **Missouri:** *Connor v. Monkem Co.*, 898 S.W.2d 89, 93 (Mo. 1995) (en banc) (holding that "a wrongful death claim may be stated for a nonviable unborn child"); **Oklahoma:** Oklahoma's wrongful death law allows for recovery for the death of an "unborn person." Okla. Stat. Ann. tit. 12, § 1053. An "unborn person" is defined as "the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus." Okla. Stat. tit. 63, § 1-730(4). However, the statute also provides a list of scenarios where a person would be entitled to damages pertaining to the demise of "an unborn person in utero." Okla. Stat. Ann. tit. 12, § 1053. Still, the statute does not explicitly exclude embryos formed outside the uterus, making Oklahoma a vulnerable state by our estimate.; **Texas:** Tex. Civ. Prac. & Rem. Code Ann. § 71.001(4) (individual under wrongful death statute includes "unborn child at every stage of gestation from fertilization until birth"); and **Utah:** *Carranza v. United States*, 267 P.3d 912 (Utah 2011) (interpreting the state's wrongful death statute to include unborn children and providing no definition or limiting language as to what would

be considered an "unborn child" under the court's interpretation).

²⁰⁰ See *supra* note 41.

²⁰¹ *Id.*

²⁰² To recognize a wrongful death claim for a frozen embryo, a Michigan court would have to overcome language in Michigan's wrongful death laws that could be read to limit the law to embryos and fetuses killed in utero. The statutory basis for Michigan's cause of action for the wrongful death of a nonviable fetus is Mich. Comp. Laws Ann. § 600.2922(1), which provides for a wrongful death cause of action "[w]henever the death of a person, injuries resulting in death, or death as described in section 2922a shall be caused by wrongful act, neglect, or fault of another." The referenced section 2922a provides: "A person who commits a wrongful or negligent act against a pregnant individual is liable for damages if the act results in a miscarriage or stillbirth by that individual, or physical injury to or the death of the embryo or fetus." Given the reference to "a pregnant individual," this language could be construed to mean that wrongful death claims can only be brought on behalf of fetuses and embryos in utero.

²⁰³ See *supra* note 35.

²⁰⁴ Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See *supra* note 35.

²⁰⁵ See *supra* note 38.

²⁰⁶ Ala. Const. art. I, § 36.06.

²⁰⁷ *LePage*, 2024 WL 656591, at *6.

²⁰⁸ See *supra* note 28.

²⁰⁹ The two broad fetal personhood laws that appear to pose less of a threat to IVF are the laws in Arizona and Georgia. Arizona's broad fetal

personhood provision explicitly exempts IVF and Georgia’s language cabins the definition of “unborn child” to those “carried in the womb.” Ariz. Rev. Stat. Ann. § 1-219(B) (“This section does not create a cause of action against: 1. A person who performs in vitro fertilization procedures as authorized under the laws of this state.”); Ga. Code Ann. § 1-2-1(e)(2) (“‘Unborn child’ means a member of the species *Homo sapiens* at any stage of development who is carried in the womb.”).

²¹⁰ See *supra* note 28.

²¹¹ La. Stat. Ann. § 9:129.

²¹² Anumita Kaur, *Louisiana’s ban on destruction of IVF embryos strips patients’ options*, WASH. POST (Mar. 3, 2024), <https://www.washingtonpost.com/nation/2024/03/03/louisiana-ivf-embryos-law-alabama/>.

²¹³ Some courts refer to the frozen embryos at issue in these disputes as “pre-embryos.” This term refers to the first 14 days of development. See Cinzia Picocchi & Lucia Martinelli, *The change of definitions in a multidisciplinary landscape: the case of human embryo and pre-embryo identification*, 57 CROAT. MED. J. 510, 510–15 (2016). Because the term is not widely used outside select cases, we use the terms “embryo” or “frozen embryo” when not quoting court decisions to be consistent with the language more commonly used when discussing the state of development involved in IVF.

²¹⁴ *E.B. v. R.N.*, No. 30199, 2024 WL 1651614, at *2 (Ohio Ct. App. 9th Dist. Apr. 17, 2024).

²¹⁵ *Id.* at *4.

²¹⁶ *Id.* at *3.

²¹⁷ *Kotkowski-Paul v. Paul*, 204 N.E.3d 66, 76 (Ohio Ct. App. 2022) (“[T]he subject embryos are marital property subject to allocation as part of the division of such property”); *Cwik v. Cwik*, No. C–090843, 2011 WL 346173, at *9 (Ohio Ct. App. Feb. 4, 2011) (“Courts have not afforded frozen embryos legally protected interests akin to persons.”); *Karmasu v. Karmasu*, No. 2008 CA 00231, 2009 WL 3155062, at *3 (Ohio Ct. App. Sept. 30, 2009).

²¹⁸ *Freed v. Freed*, 227 N.E.3d 954, 965 (Ind. Ct. App. 2024) (declining to hold that frozen pre-embryos are entitled personhood under Indiana law, but holding they “are in a separate category that entitles them to special respect”); *Markiewicz v. Markiewicz*, No. 355774, 2022 WL 883683, at *5 (Mich. Ct. App. Mar. 24, 2022) (describing a “third view—one that is most widely held”: “the preembryo deserves respect greater than that accorded to human tissue but not the respect accorded to actual persons”); *Davis v. Davis*, 842 S.W.2d 588, 597 (Tenn. 1992) (holding that pre-embryos could be considered neither “persons” nor “property”; rather, they occupy “an interim category that entitles them to special respect because of their potential for human life”). Of note, the Tennessee Supreme Court stated that bestowing on pre-embryos “legally cognizable interests separate from those of their progenitors . . . would doubtless have had the effect of outlawing IVF programs in the state of Tennessee.” *Id.* at 595.

²¹⁹ *Markiewicz*, 2022 WL 883683, at *5.

²²⁰ *In re Marriage of Rooks*, 429 P.3d 579, 591 (Colo. 2018) (citing Colo. Rev. Stat. Ann. § 13-21-1204; Colo. Rev. Stat. Ann. § 18-3.5-110) (considering the two statutes outside of the context of marriage dissolution and determining that Colorado law as a general matter “provides that pre-embryos are not ‘persons.’”).

²²¹ *In re Marriage of Witten*, 672 N.W.2d 768, 775–776 (Iowa 2003) (finding that a child custody statute did not apply to frozen embryos).

²²² *Kass v. Kass*, 696 N.E.2d 174, 179 (N.Y. 1998) (holding that cryopreserved pre-zygotes are not “‘persons’ for constitutional purposes” and that their disposition “does not implicate a woman’s right of privacy or bodily integrity in the area of reproductive choice,” and thus rejecting a wife’s action for sole custody that broke from the informed consent forms both parties signed indicating that any such dispute would be resolved by donating the pre-zygotes to the IVF program for research purposes).

²²³ *Antoun v. Antoun*, No. 02-22-00343-CV, 2023 WL 4501875 (Tex. Ct. App., July 13, 2023), *review denied* (June 14, 2024); see also Eleanor Klibanoff,

Texas Supreme Court rejects case that could have imperiled IVF access, TEX. TRIB. (June 14, 2024), <https://www.texastribune.org/2024/06/14/texas-supreme-court-ivf/>. In this case, the couple had signed an agreement prior to beginning the IVF process, whereby the husband would have possession of any remaining frozen embryos in the case of divorce. After Texas's total abortion ban went into effect, the wife claimed the embryos should be reclassified as people and that Texas's new abortion laws require the case to go through child custody proceedings instead. See Eleanor Klibanoff, *How a Denton divorce could imperil IVF access in Texas*, TEXAS TRIB. (May 13, 2024), <https://www.texastribune.org/2024/05/13/texas-supreme-court-frozen-embryos-ivf/>.

²²⁴ *McQueen v. Gadberry*, 507 S.W.3d 127, 145 (Mo. Ct. App. 2016).

²²⁵ *Id.* at 147.

²²⁶ Michele Goodwin, *If Embryos and Fetuses Have Rights* 11 L. & ETHICS HUM. RTS. 189, 193 (2017).

²²⁷ *Id.*

²²⁸ Elaine S. Povich, *Abortion Bans May Add to Uncertainty Over Embryo Donation*, PEW CHARITABLE TRS. (June 10, 2022), <https://stateline.org/2022/06/10/abortion-bans-may-add-to-uncertainty-over-embryo-donation/>.

²²⁹ Ariz. Rev. Stat. Ann. § 25-318.03(A)(1).

²³⁰ Matt Reynolds, *Embryonic Research Could Be the Next Target After Roe*, WIRED (July 20, 2022), <https://www.wired.com/story/roe-wade-embryo-research/>; Kirstin R. W. Matthews & Daniel Morali, *Can we do that here? An analysis of US federal and state policies guiding human embryo and embryoid research*, 9 J. LAW BIOSCI. 1 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9183789/>.

²³¹ *Id.*

²³² H. Irene Su, *Alabama's Embryo Personhood Decision Threatens Patients, Medicine and Advances in IVF*, SCI. AM. (Mar. 25, 2024), <https://www.scientificamerican.com/article/alaba>

[mas-embryo-personhood-decision-threatens-patients-medicine-and-advances.](#)

²³³ *Id.*

²³⁴ *Id.*; *State Abortion Trigger Laws: Potential Implications for Reproductive Medicine*, AM. SOC'Y FOR REPROD. MED. (July 1, 2022), https://www.asrm.org/globalassets/_asrm/advocacy-and-policy/dobbs/cpl-report_impact-of-state-trigger-laws-on-reproductive-medicine_final.pdf.

²³⁵ *Doe v. Doe*, 314 N.E.2d 128, 130 (Mass. 1974); *Hagerstown Reprod. Health Servs. v. Fritz*, 454 A.2d 846 (Md. 1983); *Ead v. Hagerstown Reprod. Health Servs.*, No. 1402, 2021 WL 4281310, at *2, n.5 (Md. Ct. Spec. App. Sept. 21, 2021); *Est. of Baby Villegas v. Jackrabbit Fam. Med.*, No. CV202200007 (Ariz. Super. Ct. April 17, 2024) (litigation ongoing); *In re Silva*, No. 24-0284, 2024 WL 3075694 (Tex. June 21, 2024).

²³⁶ *Casey*, 505 U.S. at 898, overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

²³⁷ *Doe*, 314 N.E.2d at 130.

²³⁸ *Id.*

²³⁹ *Id.* at 129.

²⁴⁰ *Rothenberger v. Doe*, 374 A.2d 57, 58 (N.J. Super. Ct. Ch. Div. 1977).

²⁴¹ *Hagerstown Reprod. Health Servs.*, 454 A.2d at 848.

²⁴² *Ead*, 2021 WL 4281310, at *2, n.5 (Md. Ct. Spec. App. Sept. 21, 2021) (invoking President Reagan's 1988 Proclamation No. 5761, the "Declaration of Independence for the Preborn"). Similar symbolic resolutions are also discussed above.

²⁴³ Debra Cassens Weiss, *Ex-husband is allowed to represent embryo in wrongful death suit against abortion clinic*, ABA JOURNAL (July 18, 2022), <https://www.abajournal.com/news/article/ex-husband-is-allowed-to-represent-embryo-in-wrongful-death-suit-against-abortion-clinic>; *Est. of Baby Villegas*, No. CV202200007 (originally filed as CV2020094272 (Ariz. Super. Ct. filed July 24, 2020)).

²⁴⁴ Second Amended Complaint, *Est. of Baby Villegas v. Jackrabbit Fam. Med.*, No. CV202200007 (Ariz. Super. Ct. Feb. 3, 2023).

²⁴⁵ Caroline Kitchener, *Texas Man Files Legal Action to Probe Ex-Partner's Out-of-State Abortion*, WASH. POST (May 3, 2024), <https://www.washingtonpost.com/investigations/2024/05/03/texas-abortion-investigations/>; Acacia Coronado, *How a Texas man is testing out-of-state abortions by asking a court to subpoena his ex-partner*, AP NEWS (May 13, 2024), <https://apnews.com/article/texas-abortion-ban-82c929271a33ee23962958127be59e3e> (suggesting that this tactic goes a “step beyond” anything done before).

²⁴⁶ Coronado, *supra* note 245.

²⁴⁷ S.B. 8, 2021 87th Leg. (Tex. 2021), <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00008F.pdf>.

²⁴⁸ Doe, 314 N.E.2d at 130.

²⁴⁹ Whitner, 492 S.E.2d at 779.

²⁵⁰ Ankrom, 152 So. 3d at 404.

²⁵¹ O’Neill v. Morse, 188 N.W.2d 785, 787-88 (Mich. 1971).

²⁵² *Ft. Dearborn Life Ins. Co. v. Turner*, 521 F. Supp. 2d 499, 502 (E.D.N.C. 2007), modified on reconsideration, No. 2:06-CV-4-H(3), 2008 WL 11429285 (E.D.N.C. Jan. 31, 2008).

²⁵³ *Dietrich v. Inhabitants of Northampton*, 138 Mass. 14, 17 (1884).

²⁵⁴ See *supra* note 40.

²⁵⁵ See, e.g., *Volk*, 651 P.2d at 15 (explaining that wrongful death law “protects the rights and interests of the parents, and not those of the decedent child”).

²⁵⁶ *Dunn v. Rose Way, Inc.*, 333 N.W.2d 830, 833 (Iowa 1983).

²⁵⁷ Va. Code Ann. § 8.01-50(B); In Michigan, the 2005 amendments to Mich. Comp. Laws

600.2922a(l) state that “[a] person who commits a wrongful or negligent act against a pregnant individual is liable for damages if the act results in a miscarriage or stillbirth by that individual or physical injury to or the death of the embryo or fetus.” *Simpson*, 874 N.W.2d at 365; *Toth v. Goree*, 237 N.W.2d 297, 301 (Mich. Ct. App. 1975), superseded by Mich. Comp. Laws Ann. § 600.2922a (amended 2005).

²⁵⁸ *Tesar v. Anderson*, 789 N.W.2d 351, 361 (Wis. Ct. App. 2010).

²⁵⁹ Katherine Fleming, *Wrongful Death: A Loaded Gun of Fetal Personhood and Intimate Intimidation*, 47 HARV. J.L. & GENDER, 230, 238–39 (2024); Nicole Santa Cruz, *Her Ex-Husband Is Suing a Clinic Over the Abortion She Had Four Years Ago*, PROPUBLICA (July 15, 2022), <https://www.propublica.org/article/arizona-abortion-father-lawsuit-wrongful-death>.

²⁶⁰ *Estate of Baby Villegas v. Jackrabbit Family Medicine (Arizona)*, THE LAWYERING PROJECT, <https://lawyeringproject.org/our-work/estate-of-baby-villegas-v-jackrabbit-family-medicine/> (last visited Sept. 2, 2024) (ongoing litigation; summary judgment was granted in part and denied in part on August 7, 2024).

²⁶¹ *Chamness v. Fairtrace*, 511 N.E.2d 839, 840 (Ill. App. Ct. 1987).

²⁶² Courts in Illinois, Massachusetts, North Dakota, and Texas have declined to recognize a cause of action of a fetus against a mother for negligence. *Nat’l R.R. Passenger Corp. v. Terracon Consultants, Inc.*, 13 N.E.3d 834, 838 (Ill. App. Ct. 2014) (acknowledging that the state’s Wrongful Death Act “does not specifically prevent an unborn fetus from asserting a claim against an allegedly negligent mother” but declined to recognize a legally cognizable duty of a mother to a fetus or a cause of action by a fetus against a mother); *Stallman v. Youngquist*, 531 N.E.2d 355 (Ill. 1988); *Remy v. MacDonald*, 801 N.E.2d 260 (Mass. 2004); *Geiser*, 763 N.W.2d at 472 (holding that a fetus has rights against a third party but not against its mother); *Chenault v. Huie*, 989 S.W.2d 474, 478 (Tex. Ct. App. 1999) (declining to recognize a tort cause of action for negligence for alleged substance use during pregnancy).

²⁶³ *Bonte for Bonte v. Bonte*, 616 A.2d 464, 466 (N.H. 1992) (concluding that a mother's duty to her fetus should be legally recognized, reasoning that if a child can sue for post-birth negligence, it should be able to sue for pre-birth negligence).

²⁶⁴ *Bonte for Bonte v. Bonte*, 616 A.2d 464, 466 (N.H. 1992).

²⁶⁵ *Id.* at 467 (Brock, C.J., and Batchelder, J., dissenting).

²⁶⁶ See, e.g., *Renslow v. Mennonite Hosp.*, 367 N.E.2d 1250, 1255–56 (Ill. 1977).

²⁶⁷ Goodwin, *supra* note 226, at 33.

²⁶⁸ See, e.g., *McFall v. Shimp*, 10 Pa. D. & C.3d 90 (Pa. Ct. Com. Pl. 1978) (bone marrow transplant; cousin); *In re Richardson*, 284 So. 2d 185 (La. Ct. App. 1973) (kidney; sibling); *In re Guardianship of Pescinski*, 226 N.W.2d 180 (Wis. 1975) (kidney; sibling); *Curran v. Bosze*, 566 N.E. 2d 1319 (Ill. 1990) (blood test and bone marrow; siblings).

²⁶⁹ Goodwin, *supra* note 226, at 33.

²⁷⁰ *Snyder v. Michael's Stores, Inc.*, 945 P.2d 781, 782 (Cal. 1997).

²⁷¹ *Pizza Hut of Am., Inc. v. Keefe*, 900 P.2d 97, 101 (Colo. 1995) (en banc).

²⁷² *Meyer v. Burger King Corp.*, 26 P.3d 925, 931 (Wash. 2001) (en banc).

²⁷³ *Adams v. Denny's Inc.*, 464 So. 2d 876, 877–78 (La. Ct. App. 1985), *writ denied*, 467 So. 2d 530 (La. 1985).

²⁷⁴ See Grant Green, *Missouri bill would block MoDOT from claiming unborn baby killed in crash as an employee*, MO. INDEP. (Feb. 14, 2024), <https://missouriindependent.com/briefs/missouri-bill-would-block-modot-from-claiming-unborn-baby-killed-in-crash-as-an-employee/>; see also Olivia Land, *Missouri judge rules that unborn fetus is not an employee, allows wrongful death suit*, N.Y. POST (May 3, 2023), <https://nypost.com/2023/05/03/missouri-judge-rules-that-unborn-fetus-is-not-an-employee/>.

²⁷⁵ As of June 2024, the mother's four supervisors had been dismissed from the case leaving the Missouri Department of Transportation as the remaining defendant. Jon Kipper, *'She should be here' Missouri Supreme Court drops part of lawsuit targeting slain MoDOT worker's supervisors; mother reacts*, FIRST ALERT 4 (June 4, 2024), <https://www.firstalert4.com/2024/06/05/she-should-be-here-missouri-supreme-court-drops-part-lawsuit-targeting-slain-modot-workers-supervisors-mother-reacts/>.

²⁷⁶ Land, *supra* note 274.

²⁷⁷ *Id.*

²⁷⁸ Green, *supra* note 274.

²⁷⁹ Land, *supra* note 274.

²⁸⁰ *Id.* This bill was referred to Workforce and Infrastructure Development. *Comments: MO HB1121 | 2023 | Regular Session*, LEGISCAN, <https://legiscan.com/MO/comments/HB1121/2023> (last viewed Sept. 2, 2024).

²⁸¹ Ga. Code Ann. § 48-7-26. Several states have established state income tax credits for stillbirth, including Arkansas, North Dakota, Minnesota, and Connecticut.

²⁸² Caitlin Cruz, *Georgia Will Start Issuing Tax Exemptions for Fetuses*, JEZEBEL (Aug. 2, 2022), <https://jezebel.com/georgia-will-start-issuing-tax-exemptions-for-fetuses-1849362723> (the dependent personal exemption for each fetus is \$3,000); *Desktop: Georgia - Dependent Personal Exemption for Unborn Children*, TAXSLAYER PRO (Feb. 10, 2024), <https://support.taxslayerpro.com/hc/en-us/articles/5273846393114-Desktop-Georgia-Dependent-Personal-Exemption-for-Unborn-Children#:~:text=Beginning%20in%20tax%20year%202022,31%20of%20the%20tax%20year.>

²⁸³ Michael Bologna, *Georgia Tax Deductions for Fetuses Lowered Tax Base \$100 Million*, BLOOMBERG LAW NEWS (Mar. 18, 2024), <https://news.bloombergtax.com/daily-tax-report-state/georgia-tax-deductions-for-fetuses-lowered-tax-base-100-million-2>.

²⁸⁴ Georgia Department of Revenue, Life Act Guidance, <https://dor.georgia.gov/life-act-guidance>.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Bologna, *supra* note 283.

²⁸⁸ Brandon Smith, *Bill to provide tax deduction for fetus won't advance in 2024 session*, WFYI (Jan. 16, 2024), <https://www.wfyi.org/news/articles/bill-to-provide-tax-deduction-for-fetus-wont-advance-in-2024-session>.

²⁸⁹ See *id.*

²⁹⁰ *Kyne v. Kyne*, 100 P.2d 806, 809 (Cal. Dist. Ct. App. 1940); *Application of Clarke*, 309 P.2d 142, 144-145 (Cal. Dist. Ct. App. 1957); *People v. Yates*, 298 P. 961, 962 (Cal. App. Dep't Super. Ct. 1931); *Shinall v. Pergeorelis*, 325 So. 2d 431, 434 (Fla. Dist. Ct. App. 1975); *Malek v. Yekani-Fard*, 422 So. 2d 1151, 1153 (La. 1982).

²⁹¹ *Waites v. State*, 226 S.E.2d 621, 622-23 (Ga. Ct. App. 1976); see also *Kan. Child Support Guidelines*, KAN. SUP. CT. (Aug. 1, 2024), <https://kscourts.gov/KSCourts/media/KsCourts/Child%20Support%20Guidelines/Child-support-guidelines-revised-8-14-2024.pdf>; *Baby X. v. Misiano*, 366 N.E.2d 755, 756 (Mass. 1977); *Alma Evans Trucking v. Roach*, 714 P.2d 1147, 1148 (Utah 1986).

²⁹² Giulia Carbonaro, *Map Shows US States Where Pregnant Women Can't Get Divorced*, NEWSWEEK (Feb. 28, 2024), <https://www.newsweek.com/map-shows-us-states-where-pregnant-women-cant-get-divorced-1874139>.

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²⁹⁵ Erik Eckholm, *Custody Battle Raises Questions About the Rights of Women*, N.Y. TIMES (Nov. 23, 2013), <https://www.nytimes.com/2013/11/24/us/custody-battle-raises-questions-about-the-rights-of-women.html>.

²⁹⁶ Unborn Child Support Act, S.3622, 118th Cong. (2024).

²⁹⁷ Leslie Bonilla Muñiz, *Committee scales down pregnancy child support proposal*, INDIANA CAPITAL CHRONICLE (Feb. 9, 2023), <https://indianacapitalchronicle.com/2023/02/09/committee-scales-down-pregnancy-child-support-proposal/>; O. Kay Henderson, *Iowa House bill would have child support period start at pregnancy*, RADIO IOWA (Jan. 30, 2024), <https://www.radioiowa.com/2024/01/30/iowa-house-bill-would-have-child-support-period-start-at-pregnancy/>; H.B. 2290, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²⁹⁸ Morgan Watkins, *Kentucky bill to grant child support payments for pregnancy advances – but with a major change*, LOUISVILLE PUB. MEDIA (Feb. 27, 2024), <https://www.lpm.org/news/2024-02-27/kentucky-bill-to-grant-child-support-payments-for-pregnancy-advances-but-with-a-major-change>. As of March 15, 2024, this bill remains with the Judiciary. Kentucky General Assembly, *Senate Bill 110*, Senate Bills, <https://apps.legislature.ky.gov/record/24rs/sb110.html>.

²⁹⁹ *Stiles v. Blunt*, 912 F.2d 260 (8th Cir. 1990).

³⁰⁰ *Stiles v. Blunt*, 499 U.S. 919 (1991).

³⁰¹ *State v. Lee*, 637 S.W.3d 446, 469 (Mo. Ct. App. 2021), *reh'g and/or transfer denied* (Nov. 23, 2021), *transfer denied* (Feb. 8, 2022); *State v. Crider*, 554 S.W.3d 460, 462 (Mo. Ct. App. 2018).

³⁰² Caitlin Cruz, *Texas Republican Proposes Bill to Let Pregnant People Drive in the HOV Lane*, JEZEBEL (Oct. 15, 2021), <https://jezebel.com/texas-republican-proposes-bill-to-let-pregnant-people-d-1847871298>.

³⁰³ *Id.* Law enforcement can, and certainly do, conduct pregnancy tests. See, e.g., *California*

sheriff ends mandatory pregnancy tests for female inmates, CBS NEWS (Oct. 29, 2025) (discussing Northern California Sheriff's office former policy of testing all women arrested and booked in the county jail), <https://www.cbsnews.com/news/california-sheriffs-office-ends-mandatory-pregnancy-tests/>.

³⁰⁴ Timothy Bella, *Pregnant woman given HOV ticket argues fetus is passenger, post-Roe*, WASH. POST (July 10, 2022), <https://www.washingtonpost.com/nation/2022/07/09/texas-abortion-pregnant-woman-hov-bottone/>.

³⁰⁵ *Id.*

³⁰⁶ A Virginia bill would deem a pregnant person's fetus a passenger in a car, thereby allowing the vehicle to use the carpool lane on highways. Adam Edelman, *Virginia bill would count a fetus as a car passenger in HOV lanes*, NBC NEWS (Jan. 12, 2023), <https://www.nbcnews.com/politics/politics-news/virginia-bill-count-fetus-car-passenger-hov-lanes-rcna65298>.

³⁰⁷ Aleks Kajstura & Wendy Sawyer, *Women's Mass Incarceration: The Whole Pie 2024*, PRISON POLICY INITIATIVE (Mar. 5, 2024), <https://www.prisonpolicy.org/reports/pie2024women.html>.

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³⁰⁹ See, e.g., N.C. Gen. Stat. § 148-25.5; S.C. Code Ann. § 24-13-35; Vt. Stat. Ann. 28 § 801a.

³¹⁰ Kan. Stat. Ann. § 22-4009.

³¹¹ Kan. Stat. Ann. § 22-4009; 18 U.S.C. § 3596; see also Legal Information Institute, *18 U.S. Code § 3596 - Implementation of a sentence of death*, CORNELL LAW SCHOOL, <https://www.law.cornell.edu/uscode/text/18/3596> (last visited Apr. 2, 2024).

³¹² Wendy A. Bach, *Prosecuting Poverty, Criminalizing Care*, 60 WM. & MARY L. REV. 809 (2019), <https://scholarship.law.wm.edu/wmlr/vol60/iss3/3>.

³¹³ *Commonwealth v. Becker*, 172 A.3d 35, 43 (Pa. Super. 2017).

³¹⁴ *Id.*

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³¹⁷ *Burns v. Alcala*, 420 U.S. 575, 580–81 (1975).

³¹⁸ See, e.g., Wis. Stat. Ann. § 49.665 (defining “unborn child” as a person from conception until birth).

³¹⁹ DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997).

³²⁰ Iowa Code Ann. § 249A.3; 42 U.S.C. § 408; 42 U.S.C. § 608.

³²¹ Minn. Stat. Ann. § 256B.055.

³²² S.D. Codified Laws § 28-6B-6 (“Medical Care for Unborn Children”).

³²³ Wis. Stat. Ann. § 49.665; Wis. Stat. § 49.471 (2023).

³²⁴ See also Conn. Gen. Stat. Ann. § 17b-292b; Mo. Ann. Stat. § 208.662; Neb. Rev. Stat. Ann. § 68-972.

³²⁵ Mo. Ann. Stat. § 208.662 (emphasis added).

³²⁶ Child Tax Credit for Pregnant Moms Act of 2023, S. 2092, 118th Cong. (2023-2024),

<https://www.congress.gov/bill/118th-congress/senate-bill/2092>.

³²⁷ See, e.g., Republican Party Platforms, 2024 GOP PLATFORM MAKE AMERICA GREAT AGAIN!, THE AMERICAN PRESIDENCY PROJECT (July 8, 2024), <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>; see also Amanda Becker & Shefali Luthra, *RNC approves platform that would give rights to fetuses, endangering abortion, IVF*, THE 19TH (July 8, 2024), <https://19thnews.org/2024/07/republican-national-convention-party-platform-fetuses-abortion-ivf/>; H.J. Res. 261, 93rd Cong. (1973); *Congressman Lamborn Introduces Recognizing Life Resolution to Protect the Rights of the Unborn*, Congressman Doug Lamborn (June 6, 2023), <https://lamborn.house.gov/media/press-releases/congressman-lamborn-introduces-recognizing-life-resolution-protect-rights>; Gerard V. Bradley, *What Comes After Roe*, FIRST THINGS (June 24, 2022), <https://www.firstthings.com/web-exclusives/2022/06/what-comes-after-roe> (suggesting *Dobbs* paves the way for future litigation to establish protections for “unborn human beings” under the Equal Protection Clause); Josh Hammer & Josh Craddock, *The Next Pro-Life Goal Is Constitutional Personhood*, NEWSWEEK (July 19, 2022, 6:30 AM), <https://www.newsweek.com/next-pro-life-goal-constitutional-personhood-opinion-1725698>; Ellena Erskine, *We read all the amicus briefs in Dobbs so you don't have to*, SCOTUSBLOG (Nov. 30, 2021, 5:24 PM) (explaining that anti-abortion associations, groups, and theorists advance fetal personhood arguments with equal protection claims), <https://www.scotusblog.com/2021/11/we-read-all-the-amicus-briefs-in-dobbs-so-you-dont-have-to/>.

³²⁸ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

³²⁹ *Dobbs*, 597 U.S. at 231; *Glucksberg*, 521 U.S. at 721 (1997).

³³⁰ For centuries, the common law doctrine of coverture subordinated women’s legal status to that of their husbands, prohibiting wives from owning property, entering contracts, or otherwise holding legal status. See Reva Siegel, *The Modernization of Marital Status Law*:

Adjudicating Wives' Rights to Earnings, 1860-1930, 82 GEO. L. J. 27 (1994).

³³¹ Reva Siegel, *The Trump court limited women's rights using 19th-century standards*, WASH. POST (June 25, 2022), <https://www.washingtonpost.com/outlook/2022/06/25/trump-court-limited-womens-rights-using-19th-century-standards/>.

³³² *Roe v. Wade*, 410 U.S. 113, 158 (1973) (“[t]he word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn”).

³³³ See, e.g., *People v. Vercelletto*, 514 N.Y.S.2d 177, 179 (N.Y. Cty. Ct. 1987); *Wallace v. Wallace*, 421 A.2d 134, 135 (N.H. 1980); *Billingsley v. State*, 360 S.E.2d 451 (Ga. App. 1987); *Endresz v. Friedberg*, 248 N.E.2d 901, 904 (N.Y. 1969); *In re Roberts' Est.*, 286 N.Y.S. 476, 477-478 (Sur. Ct., N.Y. Cty. 1936); *In re Peabody*, 158 N.E.2d 841, 844, 845 (N.Y. 1959); *Byrn v. N.Y.C. Health & Hosps. Corp.*, 286 N.E.2d 887, 888 (N.Y. 1972); *Robin v. Vill. of Hempstead*, 321 N.Y.S.2d 20, 24 (Sup. Ct. Nassau Cty. 1971); *In re Ruiz*, 500 N.E.2d 935, 936-937 (Ohio Com. Pl. 1986); *Com. v. Booth*, 766 A.2d 843, 844 (Pa. 2001); *Kine v. Zuckerman*, 4 Pa. D. & C. 227 (Pa. Com. Pl. 1924); *State v. Amaro*, 448 A.2d 1257, 1260 (R.I. 1982); *State v. Ashley*, 701 So. 2d 338, 341 (Fla. 1997); *State v. Oliver*, 563 A.2d 1002, 1003 (Vt. 1989).

³³⁴ *Oliver*, 563 A.2d at 1003.

³³⁵ *Id.*

³³⁶ *Ashley*, 701 So. 2d at 341; see also *Byrn*, 286 N.E.2d at 888.

³³⁷ *Wallace*, 421 A.2d at 135.

³³⁸ *Billingsley*, 360 S.E.2d at 452.

³³⁹ *Endresz*, 248 N.E.2d at 904–06 (citing *Peabody*, 158 N.E.2d at 844–45; *Drabbels v. Skelly Oil Co.*, 50 N.W.2d 229, 232 (Neb. 1951)).

³⁴⁰ *Endresz*, 248 N.E.2d at 904.

³⁴¹ *Byrn v. N.Y.C. Health & Hosps. Corp.*, 329 N.Y.S.2d 722, 735 (N.Y. App. Div. 2d Dept. 1972), *aff'd*, 286 N.E.2d 887 (N.Y. 1972).

³⁴² *Hempstead*, 321 N.Y.S.2d at 24.

³⁴³ *Ruiz*, 500 N.E.2d at 936.

³⁴⁴ *Kine*, 4 Pa. D. & C. at 227.

³⁴⁵ *Amaro*, 448 A.2d at 1260.

³⁴⁶ *Id.*

³⁴⁷ *Stam v. State*, 275 S.E.2d 439 (N.C. 1981).

³⁴⁸ *Poliquin*, 135 A.2d at 251.

³⁴⁹ *Id.*

³⁵⁰ *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515 and SC-2022-0579, 2024 WL 656591, at *6 (Ala. Feb. 16, 2024), *reh'g denied*, No. SC-2022-0515 and SC-2022-0579, 2024 WL 1947312 (Ala. May 3, 2024).

³⁵¹ See, e.g., Mo. Ann. Stat. § 188.010 (declaring “*Almighty God*” as “the author of life,” endows the inalienable right to life and enables the general assembly to defend the right to life for the “unborn,” and additionally declaring that the State of Missouri and “all of its political subdivisions are a ‘sanctuary of life’ that protects pregnant women and their *unborn children*” (emphasis added); Kan. Stat. Ann. § 60-5305(a)(5) (stating religious freedoms cannot be used to “protect actions or decisions to end the life of any adult or child, born or *unborn*.”) (emphasis added).

³⁵² Law, Rights & Religion Project, *3 Myths About Religious Freedom and Abortion*, COLUMBIA LAW SCHOOL, <https://static1.squarespace.com/static/668450014140a533c82d8533/t/66a19e543cf77712838decc2/1721867861076/3+Myths+About+Religious+Freedom+and+Abortion.pdf> (last visited Aug. 28, 2024).

³⁵³ First Amended Petition for Injunctive and Declaratory Relief, *Blackmon v. Missouri*, 2322-CC00120 (Cir. Ct. of St. Louis City), (Mar. 14, 2023).

³⁵⁴ *Id.* at 1.

³⁵⁵ Press Release, National Women’s Law Center, Statement on Behalf of Faith Leaders Challenging Missouri Abortion Ban as Violation of Church-State Separation (June 15, 2024),

<https://nwlc.org/press-release/statement-on-behalf-of-faith-leaders-challenging-missouri-abortion-ban-as-violation-of-church-state-separation/>.

³⁵⁶ Order Granting Plaintiffs’ Motion for Preliminary Injunction, *Anonymous Pl. 1 v. Individual Members of Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056 (Marion Cnty., Ind. Super. Ct. Dec. 2, 2022).

³⁵⁷ Complaint at ¶ 65-67, *Anonymous Pl. 1*, No. 49D01-2209-PL-031056 (Marion Cnty., Ind. Super Ct. Sept. 8, 2022).

³⁵⁸ *Id.* at ¶ 56.

³⁵⁹ Brief for Columbia University Law, Rights, and Religion Project et al. as Amici Curiae Supporting Appellees, *Anonymous Pl. 1*, No. 49D01-2209-PL-031056 (Ind. June 10, 2024).

³⁶⁰ *Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Pl. 1*, No. 22A-PL-2938 (Ind. Ct. App. Apr. 4, 2024).

³⁶¹ *Sobel v. Cameron*, No. 22-CI-005189 (June 28, 2024) (order granting defendant’s cross-motion for summary judgment).

³⁶² *Id.*

³⁶³ *Isaacson*, 610 F. Supp. 3d at 1256.

³⁶⁴ *Id.*

³⁶⁵ *Isaacson v. Mayes*, 84 F.4th 1089, 1101 (9th Cir. 2023).

³⁶⁶ *Isaacson*, No. CV-21-01417-PHX-DLR, D.I. 175.

³⁶⁷ Compl. ¶ 52-68, *Sobel v. Cameron*, No. 22-CI-5189 (Ky. Cir. Ct. Oct. 6, 2022).

³⁶⁸ *Id.* at ¶ 52-61.

³⁶⁹ *Id.* at ¶ 62-68.

³⁷⁰ Opinion and Order Denying Plaintiffs’ Motion for Summary Judgment and Granting Defendants’ Cross-Motion for Summary

Judgment, *Sobel v. Cameron*, No. 22-CI-005189 (Ky. Cir. Ct. June 28, 2024).

³⁷¹ See, e.g., *Reinesto v. Super. Ct. of State of Ariz. In & For Cnty. of Navajo*, 894 P.2d 733, 736 (Ariz. Ct. App. 1995) (holding that to interpret felony child abuse statutes to reach prenatal conduct would “render the statute impermissibly vague”); *Welch*, 864 S.W.2d at 283 (affirming lower court ruling that a fetus is not a person under the state criminal abuse statute and considering vagueness arguments in construing legislative intent).

³⁷² See Brennan Center for Justice, *What Originalism Means for Women*, YouTube (June 12, 2024), <https://www.youtube.com/live/MWuyCtwvUhY>.

³⁷³ *Id.* at 1:59-2:11.

³⁷⁴ *State v. Vargas*, 869 N.W.2d 150 (S.D. 2015).

³⁷⁵ *Ankrom*, 152 So.3d at 404–05.

³⁷⁶ *Alma Evans Trucking*, 714 P.2d at 1148 (Utah 1986).

³⁷⁷ *Id.* at 1148-49.

³⁷⁸ *In re Adoption of Nelson*, 451 P.2d 173, 176 (Kan. 1969).

³⁷⁹ *Carranza*, 267 P.3d at 917.

³⁸⁰ *Id.* at 918.

³⁸¹ *Id.* at 920 (Nehring, J., dissenting).

³⁸² See, e.g., *Reinesto*, 894 P.2d 733.

³⁸³ *In re Guardianship of J.D.S.*, 864 So. 2d 534, 538 (Fla. Dist. Ct. App. 2004); see also *Milton v. Cary Med. Ctr.*, 538 A.2d 252, 256 (Me. 1988) (finding to include a fetus would “rewrite” the statute, usurping legislative function).

³⁸⁴ *Witten*, 672 N.W.2d at 775.

³⁸⁵ *Id.* at 776.

³⁸⁶ *Miller v. Highlands Ins. Co.*, 336 So. 2d 636, 640 (Fla. 4th Dist. App. 1976), *quashed sub nom. Stern v. Miller*, 348 So. 2d 303 (Fla. 1977).

³⁸⁷ *Stern v. Miller*, 348 So. 2d 303, 307–308 (Fla. 1977).

³⁸⁸ *State v. Lockwood*, 218 P.3d 1008 (Ariz. App. 2d Div. 2009).

³⁸⁹ *Id.* at 1011.

³⁹⁰ *Harding v. DeAngelis*, 657 N.E.2d 758, 761 (Mass. App. Ct. 1995).

³⁹¹ *Com. v. Kemp*, 18 Pa. D. & C.4th 53, 63 (Pa. Ct. Com. Pl. 1992).

³⁹² *Id.* at 62-63.

³⁹³ *Kilmon*, 905 A.2d at 311.

³⁹⁴ *Welch*, 864 S.W.2d at 283.

³⁹⁵ *Oklahoma v. Amanda Camp Aguilar*, No. S-2023-575 (Okla. Crim. App. 2024).

³⁹⁶ Colo. Rev. Stat. Ann. § 25-6-403.

³⁹⁷ Enact Strategic Tax Opportunities for Raising Kids (STORK) Act, H.B. 564, 135th Gen. Assemb. (Ohio 2024), <https://legislature.ohio.gov/legislation/135/hb654> (bill would permit Ohio taxpayers to claim conceived fetuses and embryos as dependents as a tax exemption and credit); Georgia Department of Revenue, Guidance related to House Bill 481, Living Infants and Fairness Equality (LIFE) Act, <https://dor.georgia.gov/press-releases/2022-08-01/guidance-related-house-bill-481-living-infants-and-fairness-equality-life> (Georgia passed a similar tax exemption law in 2022); S.B. 299, 2023-2024 Legis. Sess. (Kan. 2023), https://kslegislature.gov/li/b2023_24/measures/documents/sb299_00_0000.pdf (Kansas senators introduced similar tax exemption bill in 2023 but it failed in committee; “Providing a Kansas exemption for state income tax purposes for an unborn child with a detectable heartbeat”); H.B. 54 Tax Revisions, 2023 Gen. Sess. (Utah 2023), <https://le.utah.gov/~2023/bills/static/HB0054.html>; Child Tax Credit for Pregnant Moms Act, S. 2092,

118th Cong. (2023), <https://lamborn.house.gov/sites/evo-subsites/lamborn-evo.house.gov/files/PregnantMomsAct.pdf>, (Congress introduced a bill to expand the Child Tax Credit to pregnancy by utilizing personhood language such as “unborn children” in the name of the bill).

³⁹⁸ See, e.g., Md. Code Ann. Crim. Law § 2-103(g) (“Nothing in this section shall be construed to confer personhood or any rights on the fetus.”).

³⁹⁹ See, e.g., Cal. Health & Safety Code §123467 (“a person shall not be subject to civil or criminal liability or penalty, or otherwise deprived of their rights under this article, based on their actions or omissions with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, including miscarriage, stillbirth, or abortion, or perinatal death due to causes that occurred in utero”).

⁴⁰⁰ See, e.g., Conn. Gen. Stat. Ann. § 7-47b; D.C. Code Ann. § 7-231.17; Mich. Comp. Laws Ann. § 333.2803.

⁴⁰¹ *Healey v. Perfectly Female Women's Health Care*, P.C., 99 Va. Cir. 357 (2018).

⁴⁰² See generally Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997).

⁴⁰³ *Fetal Personhood Law in the United States*, LEGAL VOICE (September 9, 2024), <https://legalvoice.org/legal-fetal-personhood-timeline/>.

⁴⁰⁴ DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* (2020); Reva Siegel, *The Pregnant Citizen, from Suffrage to Present*, 108 GEO. L.J. 167 (2020) (discussing how courts have regulated pregnancy to enforce traditional gender roles since women were enfranchised).

⁴⁰⁵ Additionally, the anti-abortion group, Americans United for Life (AUL), have published model legislation and suggested federal

prosecutorial policies, including one that create a federal fetal homicide law. Americans United for Life, *The Personhood Declaration* (2023), <https://aul.org/wp-content/uploads/2022/11/The-Personhood-Declaration-2023.pdf> (last visited Sept. 11, 2024); Americans United for Life, *Crimes Against the Preborn Child Act* (2023) (“In April 2004, President George W. Bush signed the federal Unborn Victims of Violence Act ...[,] filling an important gap in federal law. Federal prosecutors may now charge an assailant in the death of a preborn child ... when the death stems from the commission of another federal crime. The purpose of the Crimes Against the Preborn Child Act is to overturn the common law born-alive rule, to criminalize conduct causing the death of a preborn child, and to protect preborn children from conception until birth.”) (emphasis added), <https://aul.org/wp-content/uploads/2023/07/Crimes-Against-the-Preborn-Child-Act-6-2023.pdf>.

⁴⁰⁶ See Part IX(A)(i) *supra*.

⁴⁰⁷ See CATHERINE GLENN FOSTER ET. AL., AM. UNITED FOR LIFE, *A CONSTITUTIONAL VISION: LINCOLN PROPOSAL: AN EXECUTIVE ORDER TO RESTORE CONSTITUTIONAL RIGHTS TO ALL HUMAN BEINGS* 2–3 (2020) (“An Executive Order recognizing the constitutional rights of the preborn would therefore rest on a firm legal basis.”), <https://aul.org/wp-content/uploads/2021/09/Lincoln-Proposal.pdf>.

⁴⁰⁸ Elizabeth Dias, *How Christian Conservatives Are Planning for the Next Battle, on I.V.F.*, N.Y. TIMES (Aug. 16 2024), <https://www.nytimes.com/2024/08/14/us/republicans-christian-conservatives-ivf.html>.

⁴⁰⁹ See Melissa Mira Grant, *Republicans Can—and Will—Keep Trying to Ban Mifepristone*, THE NEW REPUBLIC (June 14, 2024), <https://newrepublic.com/article/182683/republican-s-canand-willkeep-trying-ban-mifepristone>.

⁴¹⁰ See Mabel Felix et al., *The Comstock Act: Implications for Abortion Care Nationwide*, KFF (Apr. 15, 2024), <https://www.kff.org/womens-health-policy/issue-brief/the-comstock-act-implications-for-abortion-care-nationwide>.

⁴¹¹ Julianne McShane, *Trump Could Use the 1873 Comstock Act to Ban Abortion Nationwide. Here's How.*, MOTHER JONES (Apr. 17, 2024) (Mary Ziegler, a prominent historian on abortion, cautions that from the anti-abortion movement's perspective, Comstock is a stopgap. "[T]hey want recognition that fetuses are persons . . . [I]f the Comstock Act were being enforced, it would preempt state laws [] protect[ing] abortion rights, and [override] ballot initiatives, and [] other protective legislation."), <https://www.motherjones.com/politics/2024/04/trump-could-use-the-1873-comstock-act-to-ban-abortion-nationwide-heres-how-mary-ziegler/#:~:text=From%20the%20anti%2Dabortion%20movement,Wade.>

⁴¹² See Kevin Roberts, *A Promise to America*, in MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 1, 6 (Paul Dans and Steven Groves eds., 2023) ("In particular, the next conservative President should work with Congress to enact the most robust protections for the unborn that Congress will support while deploying existing federal powers to protect innocent life and vigorously complying with statutory bans on the federal funding of abortion."), https://static.project2025.org/2025_MandateForLeadership_FULL.pdf; Jessica Valenti, *Don't Fall for the GOP's Platform lie*, ABORTION, EVERYDAY (July 8, 2024), <https://jessica.substack.com/p/dont-fall-for-the-gops-platform-lie>; Roger Severino, *Department of Health and Human Services*, in MANDATE FOR LEADERSHIP, THE CONSERVATIVE PROMISE 449, 460 (Paul Dans & Steven Groves eds., 2023) (This Project's proposals also seek to terminate federally funded research on embryonic stem cells, citing "the destruction of *human life*" as

grounds for prohibition) (emphasis added), https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

⁴¹³ Amanda Kaczynski & Em Steck, *Top leader of RNC Platform Committee entertained idea of imprisoning women who get abortions, opposes exceptions*, CNN (July 2, 2024 at 8:00 AM EDT), <https://www.cnn.com/kfile-ed-martin-rnc-platform-committee-anti-abortion-exceptions/index.html>; Will Steakin & Soo Rin Kim, *Trump is trying to distance himself from Project 2025 – but its architects helped shape his RNC party platform*, ABC News, (July 9, 2024, 8:13 AM), <https://abcnews.go.com/US/trump-distance-project-2025-architects-helped-shape-rnc/story?id=111759747>.