

Pregnancy Exceptionalism: A Review of Restrictions on Advance Directives

What Are Advance Directives?

Advance directives are legal documents that outline a patient's wishes for end-of-life care in the event they become terminally ill or incapacitated and unable to communicate for themselves. These directives help ensure that treatment decisions reflect and center the patient's values, dignity, and autonomy.

Restrictions on Advance Directives During Pregnancy

Twenty-nine states invalidate a pregnant person's advance directive, creating a dangerous legal carveout that subordinates the expressed wishes of pregnant individuals to state priorities. These laws may compel pregnant people to receive unwanted or non-beneficial interventions, including life-sustaining machines and artificially-provided nutrition and hydration—sometimes even when such treatment prolongs pain and suffering, would not result in a live birth, and/or contradicts the patient's documented wishes.

- **10 states** invalidate a pregnant person's advance directive *regardless* of the likelihood of fetal survival.¹
- **19 states** override an advance directive if there is a potential for fetal survival with continued life-sustaining treatment.²

- **Three states**—Florida,³ Oklahoma,⁴ and Minnesota⁵—honor a pregnant person's advance directive if it clearly notes that it applies during pregnancy. In Florida, the patient “must expressly delegate such authority to the surrogate in writing” to apply during pregnancy.⁶ In Oklahoma, the patient must “specifically authorize[], in her own words, that during a course of pregnancy, life-sustaining treatment and/or artificially administered hydration and/or nutrition shall be withheld or withdrawn.”⁷ In Minnesota, the law presumes that a pregnant person would want life-sustaining treatment to continue if there is a reasonable medical possibility that the fetus could survive to live birth, but this presumption may be overridden if the person's advance directive includes explicit instructions to the contrary,⁸ “or, in the absence of such provisions, by clear and convincing evidence that the patient's wishes, while competent, were to the contrary.”⁹ In Georgia, an advance directive can be honored so long as it is a pre-viable pregnancy and the directive expressly authorizes withholding or withdrawing life-

sustaining treatment, or nourishment.¹⁰

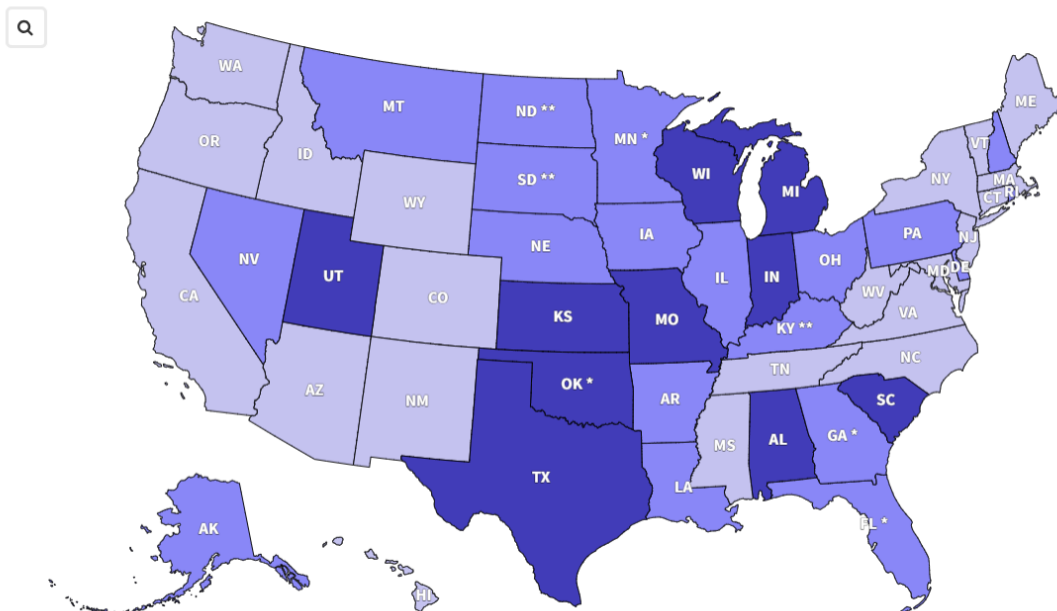
- Although Arizona,¹¹ Connecticut,¹² Maryland,¹³ New Jersey,¹⁴ and Vermont¹⁵ reference pregnancy in their advance directive statutes or sample forms, none of them expressly require a pregnancy-specific clause as a condition of validity, nor do they mandate suspension of a directive in its absence.
- **Four states**, including Kentucky,¹⁶ New Hampshire,¹⁷ North Dakota,¹⁸ South Dakota,¹⁹ permit the withdrawal of life-sustaining treatment if such treatment would cause the pregnant person “severe pain” that “cannot be alleviated by medication.”²⁰

The Case for Repeal & Reform

All people, including pregnant people, deserve the autonomy and dignity to direct their medical care, including decisions about end-of-life care. Laws that invalidate pregnant people’s directives and relegate them to second class status must be repealed. In their place, states can enact laws that affirm and protect the validity of advance directives during pregnancy, ensuring that no one is forced to endure unwanted medical interventions, and pain and suffering, against their wishes. In 2025, for example, Washington took a critical step in that direction by passing the “Natural Death Act,” affirming that advance directives are valid and upheld in cases of pregnancy.²¹

Does a state have advance directive exclusions based on pregnancy?

Legend ■ No ■ Yes, based on potential of fetal survival or fetal viability ■ Yes, regardless of potential of fetal survival



In District of Columbia, advance directives are valid and upheld in cases of pregnancy.

* The healthcare directives of pregnant people are valid only if they explicitly state they apply in the case of pregnancy. ** Life-sustaining treatment can be stopped if it would cause the pregnant person pain

Appendix

States Invalidating Advance Directives Regardless of Fetal Survival

State	Citation
Alabama	<p>“The advance directive for health care of a declarant who is known by the attending physician to be pregnant shall have no effect during the course of the declarant’s pregnancy.”</p> <p>Ala. Code § 22-8A-4 (e) (2025).</p>
Indiana	<p>“The living will declaration of a person diagnosed as pregnant by the attending physician has no effect during the person’s pregnancy.”</p> <p>Ind. Code Ann. § 16-36-4-8 (d) (West 2025).</p>
Kansas	<p>“The declaration of a qualified patient diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient’s pregnancy.”</p> <p>Kan. Stat. Ann. § 65-28,103 (a) (West 2025).</p>
Michigan	<p>“A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient’s death.”</p> <p>Mich. Comp. Laws Ann. § 700.5512 (1) (West 2025).</p>
Missouri	<p>“The declaration to withdraw or withhold treatment by a patient diagnosed as pregnant by the</p>

	<p>attending physician shall have no effect during the course of the declarant's pregnancy.”</p> <p>Mo. Ann. Stat. § 459.025 (West 2024).</p>
Oklahoma	<p>“If a qualified patient has been diagnosed as pregnant and that diagnosis is known to the attending physician, the pregnant patient shall be provided with life-sustaining treatment and artificially administered hydration and nutrition, unless the patient has specifically authorized, in her own words, that during a course of pregnancy, life-sustaining treatment and/or artificially administered hydration and/or nutrition shall be withheld or withdrawn.”</p> <p>Okla. Stat. Ann. tit. 63, § 3101.8 (C) (West 2025).</p>
South Carolina	<p>“If a principal has been diagnosed as pregnant, life-sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal's pregnancy. This subsection does not otherwise affect the agent's authority to make decisions concerning the principal's obstetrical and other health care during the course of the pregnancy.”</p> <p>S.C. Code Ann. § 62-5-507 (2025).</p>
Texas	<p>“A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.”</p> <p>Tex. Health & Safety Code Ann. § 166.049 (West 2025).</p> <p>“A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule under this subchapter from a person known by the</p>

	<p>responding health care professionals to be pregnant.”</p> <p>Tex. Health & Safety Code Ann. § 166.098 (West 2025).</p>
Utah	<p>“An advance health care directive that provides for the withholding or withdrawal of life sustaining procedures has no force during the course of a declarant's pregnancy.”</p> <p>Utah Code Ann. § 75A-3-306 (1) (West 2025).</p>
Wisconsin	<p>“The declaration of a qualified patient who is diagnosed as pregnant by the attending health care professional has no effect during the course of the qualified patient's pregnancy.”</p> <p>Wis. Stat. Ann. § 154.07 (2) (West 2025).</p>

States Invalidating Advance Directives for Potential Fetal Survival

State	Citation
Alaska	<p>“Notwithstanding any other provision of this chapter to the contrary, an advance health care directive by a patient or a decision by the person then authorized to make health care decisions for a patient may not be given effect if [] the patient is a woman who is pregnant and lacks capacity... and it is probable that the fetus could develop to the point of live birth if the life-sustaining procedures were provided.”</p> <p>Alaska Stat. Ann. § 13.52.055 (b) (1) (4) (West 2025).</p>
Arkansas	<p>“The declaration of a qualified patient known to the attending physician to be pregnant must not be given effect as long as it is possible that the fetus could develop to the point of live birth with</p>

	<p>continued application of life-sustaining treatment.”</p> <p>Ark. Code Ann. § 20-17-206 (c) (West 2025).</p>
Delaware	<p>“A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure.”</p> <p>Del. Code Ann. tit. 16, § 2503 (j) (West 2025).</p>
Florida	<p>“Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for: [] Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined in s. 390.011(4).”</p> <p>Fla. Stat. Ann. § 765.113 (2) (West 2025).</p>
Georgia	<p>“Prior to effecting a withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a declarant pursuant to a declarant's directions in an advance directive for health care, the attending physician: Shall determine that, to the best of that attending physician's knowledge, the declarant is not pregnant, or if she is, that the fetus is not viable and that the declarant has specifically indicated in the advance directive for health care that the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration are to be carried out...”</p>

	Ga. Code Ann. § 31-32-9 (a) (1) (West 2025).
Illinois	<p>“The declaration of a qualified patient diagnosed as pregnant by the attending physician shall be given no force and effect as long as in the opinion of the attending physician it is possible that the fetus could develop to the point of live birth with the continued application of death delaying procedures.”</p> <p>755 Ill. Comp. Stat. Ann. 35/3 (c) (West 2024).</p>
Iowa	<p>“The declaration of a qualified patient known to the attending physician to be pregnant shall not be in effect as long as the fetus could develop to the point of live birth with continued application of life-sustaining procedures.”</p> <p>Iowa Code Ann. § 144A.6 (2) (West 2025).</p> <p>“Life-sustaining procedures may be withheld or withdrawn from a patient who is in a terminal condition and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter if there is consultation and written agreement for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals, who shall be guided by the express or implied intentions of the patient, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act... Subsection[] 1 [] shall not be in effect for a patient who is known to the attending physician to be pregnant with a fetus that could develop to the point of live birth with continued application of life-sustaining procedures.”</p> <p>Iowa Code Ann. § 144A.7 (1) (3) (West 2025).</p>

Kentucky	<p>“Notwithstanding the execution of an advance directive, life sustaining treatment and artificially-provided nutrition and hydration shall be provided to a pregnant woman unless, to a reasonable degree of medical certainty, as certified on the woman's medical chart by the attending physician and one (1) other physician who has examined the woman, the procedures will not maintain the woman in a way to permit the continuing development and live birth of the unborn child, will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.”</p> <p>Ky. Rev. Stat. Ann. § 311.629 (4) (West 2025).</p>
Louisiana	<p>“It is the policy of the state of Louisiana that human life is of the highest and inestimable value through natural death. When interpreting this Subpart, any ambiguity shall be interpreted to preserve human life, including the life of an unborn child if the qualified patient is pregnant and an obstetrician who examines the woman determines that the probable postfertilization age of the unborn child is twenty or more weeks and the pregnant woman's life can reasonably be maintained in such a way as to permit the continuing development and live birth of the unborn child, and such determination is communicated to the relevant classes of family members and persons designated in R.S. 40:1151.4.”</p> <p>La. Stat. Ann. § 40:1151.9 (E) (2024).</p>
Minnesota	<p>“When a patient lacks decision-making capacity and is pregnant, and in reasonable medical judgment there is a real possibility that if health care to sustain her life and the life of the fetus is provided the fetus could survive to the point of live birth, the health care provider shall presume that the patient would have wanted such health</p>

	<p>care to be provided, even if the withholding or withdrawal of such health care would be authorized were she not pregnant. This presumption is negated by health care directive provisions described in section 145C.05, subdivision 2, paragraph (a), clause (10), that are to the contrary, or, in the absence of such provisions, by clear and convincing evidence that the patient's wishes, while competent, were to the contrary.”</p> <p>Minn. Stat. Ann. § 145C.10 (g) (West 2025).</p>
Montana	<p>“Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”</p> <p>Mont. Code Ann. § 50-9-106 (7) (West 2025).</p> <p>“Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”</p> <p>Mont. Code Ann. § 50-9-202 (3) (West 2025).</p>
Nebraska	<p>“Life-sustaining treatment shall not be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”</p>

	Neb. Rev. Stat. Ann. § 20-408 (3) (West 2025).
Nevada	<p>“Life-sustaining treatment must not be withheld or withdrawn pursuant to a declaration from a qualified patient known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.”</p> <p>Nev. Rev. Stat. Ann. § 449A.451 (4) (West 2025).</p>
New Hampshire	<p>“Nothing in this chapter shall be construed to condone, authorize, or approve: [] The consent to withhold or withdraw life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified in the principal's medical record by the attending practitioner and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.”</p> <p>N.H. Rev. Stat. Ann. § 137-J:10(II)(a) (2025).</p> <p>“Nothing in this chapter shall be construed to give an agent or surrogate authority to: [] Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified in the principal's medical record by the attending practitioner and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or</p>

	<p>prolong severe pain which cannot be alleviated by medication..."</p> <p>N.H. Rev. Stat. Ann. §137-J:5(V)(c) (2025).</p>
North Dakota	<p>"Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication."</p> <p>N.D. Cent. Code Ann. § 23-06.5-09(5) (West 2025).</p>
Ohio	<p>"Life-sustaining treatment shall not be withheld or withdrawn from a declarant pursuant to a declaration if the declarant is pregnant and if the withholding or withdrawal of the treatment would terminate the pregnancy, unless the declarant's attending physician and one other physician who has examined the declarant determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive."</p> <p>Ohio Rev. Code Ann. § 2133.06 (B) (West 2025).</p>
Pennsylvania	<p>"If you are a woman and diagnosed as being pregnant at the time a health care decision would otherwise be made pursuant to this form, the laws of this Commonwealth prohibit implementation of that decision if it directs that life-sustaining treatment, including nutrition and hydration, be</p>

	<p>withheld or withdrawn from you, unless your attending physician and an obstetrician who have examined you certify in your medical record that the life-sustaining treatment:</p> <p>(1) will not maintain you in such a way as to permit the continuing development and live birth of the unborn child;</p> <p>(2) will be physically harmful to you; or</p> <p>(3) will cause pain to you that cannot be alleviated by medication.”</p> <p>20 Pa. Stat. and Cons. Stat. Ann. § 5471 (West 2025).</p>
Rhode Island	<p>“The declaration of a qualified patient known to the attending physician to be pregnant shall be given no force or effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life sustaining procedures.”</p> <p>23 R.I. Gen. Laws Ann. § 23-4.11-6 (c) (West 2025).</p>
South Dakota	<p>“Notwithstanding a declaration made pursuant to this chapter, life-sustaining treatment and artificial nutrition and hydration shall be provided to a pregnant woman unless, to a reasonable degree of medical certainty, as certified on the woman's medical chart by the attending physician and one other physician who has examined the woman, such procedures will not maintain the woman in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.”</p> <p>S.D. Codified Laws § 34-12D-10 (2025).</p>

States Requiring Pregnancy-Specific Language in Advance Directives

State	Citation
Florida	Fla. Stat. Ann. § 765.113 (West 2025) (must expressly delegate such authority in writing).
Oklahoma	Okla. Stat. Ann. tit. 63, § 3101.8(C) (West 2025) (must specifically authorize in her own words).
Minnesota	Minn. Stat. Ann. § 145C.10 (West 2025) (presumption may be overridden by explicit instructions or clear and convincing evidence).
Georgia*	Ga. Code Ann. § 31-32-9 (a) (1) (West 2025) (advance directive honored during a pre-viable pregnancy and directive expressly authorizes withholding or withdrawal of life-sustaining treatment, nourishment, or hydration).

States Permitting Withdrawal Due to Unrelievable Severe Pain

State	Citation
Kentucky	Ky. Rev. Stat. Ann. § 311.629(4) (West 2025) (exception for prolonged severe pain that cannot be alleviated by medication).
New Hampshire	N.H. Rev. Stat. Ann. § 137-J:10(II)(a) (2025) (exception for prolonged severe pain that cannot be alleviated by medication). N.H. Rev. Stat. Ann. § 137-J:5(V)(c) (2025) (exception for prolonged severe pain that cannot be alleviated by medication).
North Dakota	N.D. Cent. Code Ann. § 23-06.5-09(5) (West 2025) (exception if it would be “physically harmful or

	unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.”).
South Dakota	S.D. Codified Laws § 34-12D-10 (2025) (exception if it would be “physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.”).

Endnotes

¹ **Alabama:** Ala. Code § 22-8A-4 (2025); **Indiana:** Ind. Code Ann. § 16-36-4-8 (West 2025); **Kansas:** Kan. Stat. Ann. § 65-28,103 (West 2025); **Michigan:** Mich. Comp. Laws Ann. § 700.5512 (West 2025) (citing Mich. Comp. Laws Ann. §§ 700.5506-700.5511) (restriction on patient advocates and their ability to execute on the wishes of the pregnant person); **Missouri:** Mo. Ann. Stat. § 459.025 (West 2024); **Oklahoma:** Okla. Stat. Ann. tit. 63, § 3101.8 (West 2025) (advance directive will be honored only if decisions regarding pregnancy are articulated; otherwise, life-sustaining treatment will be administered regardless of likelihood of fetal survival); **South Carolina:** S.C. Code Ann. § 62-5-507 (2025); see also S.C. Code Ann. § 62-5-504 (2025) (enumerating patient can authorize a power of attorney to make decisions about whether to permit resuscitation or life-sustaining treatment); **Texas:** Tex. Health & Safety Code Ann. § 166.049 (West 2025); Tex. Health & Safety Code Ann. § 166.098 (West 2025); **Utah:** Utah Code Ann. § 75A-3-306 (West 2025); **Wisconsin:** Wis. Stat. Ann. § 154.07 (West 2025).

² **Alaska:** Alaska Stat. Ann. § 13.52.055 (West 2025); **Arkansas:** Ark. Code Ann. § 20-17-206 (c) (West 2025) (advance directive should be invalidated if fetus could develop to the point of live birth); **Delaware:** Del. Code Ann. tit. 16, § 2503 (j) (West 2025) ("A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure."); **Florida:** Fla. Stat. Ann. § 765.113 (West 2025) (Unless the pregnant person specifically authorizes their agent to do so in their advance directive, "withholding or withdrawing life-prolonging procedures" prior to fetal viability is not permissible); **Georgia:** Ga. Code Ann. § 31-32-9 (West 2025) (before ending life-sustaining treatment the physician must determine the pregnant person is not carrying a viable fetus); **Illinois:** 755 Ill. Comp. Stat. Ann. 35/3 (West 2024) (advance directive shall be invalidated if fetus could develop to the point of birth); **Iowa:** Iowa Code Ann. § 144A.6 (West 2025) (advance directive shall be invalidated if fetus could develop to the point of live birth); Iowa Code Ann. § 144A.7 (West 2025) (same); **Kentucky:** Ky. Rev. Stat. Ann. § 311.629 (West 2025) (providing that life-sustaining treatment and artificially-provided nutrition and hydration must be administered to a pregnant woman unless two physicians certify, to a reasonable degree of medical certainty, that the procedures will not sustain her in a manner that allows for the continuing development and live birth of the fetus); **Louisiana:** La. Stat. Ann. § 40:1151.9 (2024) ("the probable postfertilization age of the unborn child is twenty or more weeks and the pregnant woman's life can reasonably be maintained in such a way as to permit the continuing development and live birth of the unborn child"); **Minnesota:** Minn. Stat. Ann. § 145C.10 (West 2025) (a person may include specific instructions regarding their pregnancy in their advance directive; otherwise, life-sustaining treatment will be provided if there is a possibility of live birth); **Montana:** Mont. Code Ann. § 50-9-106 (7) (West 2025) ("Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."); Mont. Code Ann. § 50-9-202 (West 2025) (same); **Nebraska:** Neb. Rev. Stat. Ann. § 20-408 (3) (West 2025) (advance directive shall be invalidated if fetus could develop to the point of live birth); **Nevada:** Nev. Rev. Stat. Ann. § 449A.451 (West 2025) (advance directive shall be invalidated if fetus could develop to the point of live birth); **New Hampshire:** N.H. Rev. Stat. Ann. § 137-J:10 (II) (a) (2025) ("Nothing in this chapter shall be construed to condone, authorize, or approve: The consent to withhold or withdraw life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified in the principal's medical record by the attending practitioner and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus..."); N.H. Rev. Stat. Ann. § 137-J:5 (V) (c) (2025) (same); **North Dakota:** N.D. Cent. Code Ann. § 23-06.5-09 (5) (West 2025) ("health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child"); **Ohio:** Ohio Rev. Code Ann. § 2133.06 (West 2025) (life-sustaining treatment cannot end unless it can be shown "fetus would not be born alive"); **Pennsylvania:** 20 Pa. Stat. and Cons. Stat. Ann. § 5471 (West 2025) ("permit the continuing development and live birth of the unborn child"); **Rhode Island:** 23 R.I. Gen. Laws Ann. § 23-4.11-6 (West 2025) ("fetus could develop to the point of live birth"); **South Dakota:** S.D. Codified Laws § 34-12D-10 (2025) ("permit the continuing development and live birth of the unborn child").

³ **Florida:** Fla. Stat. Ann. § 765.113 (West 2025) (providing that unless the pregnant person specifically authorizes their agent to do so in their advance directive, "withholding or withdrawing life-prolonging procedures" prior to fetal viability is not permissible).

⁴ **Oklahoma:** Okla. Stat. Ann. tit. 63, § 3101.8 (C) (West 2025) (advance directive will be honored only if decisions regarding pregnancy are articulated; otherwise, life-sustaining treatment will be administered regardless of likelihood of fetal survival).

⁵ **Minnesota:** Minn. Stat. Ann. § 145C.10 (West 2025) (a person may include specific instructions regarding their pregnancy in their advance directive; otherwise, life-sustaining treatment will be provided if there is a possibility of live birth).

⁶ Fla. Stat. Ann. § 765.113 (West 2025).

⁷ Okla. Stat. Ann. tit. 63, § 3101.8 (C) (West 2025).

⁸ Minn. Stat. Ann. § 145C.10 (West 2025).

⁹ *Id.* Separately, a 2022 Minnesota statute provides that a **living will** will not be honored "as long as it is possible that the fetus could develop to the point of live birth with continued application of life-sustaining treatment." Minn. Stat. Ann. § 145B.13(3) (West 2025). However, we believe if an advance directive includes explicit instructions regarding life-sustaining treatment during pregnancy, then

Minn. Stat. Ann. § 145C.10 (West 2025) governs, and an advance directive must be honored.

¹⁰ Ga. Code Ann. § 31-32-9 (a) (1) (West 2025). “Georgia’s statutory provision does not specify if “viable” refers to a stage of gestational development or to the chances of survival of a particular fetus if the pregnancy is continued to term, leaving room for misinterpretation and individual discretion.” PREGNANCY JUSTICE & PATIENT FORWARD, THE ROLE OF THE VIABILITY LINE IN PREGNANCY CRIMINALIZATION 22 (2025), <https://www.pregnancyjusticeus.org/wp-content/uploads/2025/05/Viability-Line-Report.pdf>. However, the Supreme Court of Georgia adopts the following definition: “‘capable of living’ an independent existence outside the mother’s womb.” *McAuley v. Wills*, 303 S.E.2d 258, 259 n.2 (1983) (citing William Maledon, *The Law and the Unborn Child: The Legal and Logical Inconsistencies*, 46 NOTRE DAME LAWYER 349, 350 n.12 (1971)). We know that this definition is murky. The American College of Obstetricians and Gynecologists (“ACOG”) clarifies that “[t]here is no definite diagnosis of viability and no test that can definitively determine whether a fetus could survive outside of the uterus.” ACOG, *Facts Are Important: Understanding and Navigating Viability*, <https://www.acog.org/advocacy/facts-are-important/understanding-and-navigating-viability>. Thus, whether a pregnant person’s directive will be honored during pregnancy ultimately depends on how viability is interpreted, underscoring the fragility of patient autonomy under current law in Georgia.

¹¹ While Arizona permits pregnancy capable people to create alternate instructions in case of pregnancy on its sample living will form to choose to continue life-sustaining treatment “if it is possible that the embryo/fetus will develop to the point of live birth with the continued application of life-sustaining treatment.” Ariz. Rev. Stat. Ann. § 36-3262 (2025). The statute does not say that an advance directive is invalid in the case of pregnancy if a pregnancy-specific instruction cannot be furnished. Ariz. Rev. Stat. Ann. § 36-3262 (2025) (sample living will provided after stating, “A person can, but is not required to, state the person’s desires in a living will. The following form is offered as a sample only and does not prevent a person from using other language or another form...”).

¹² Connecticut’s statute on advance directives and sample form does not invalidate an advance directive **solely due to pregnancy** where no pregnancy-specific clause is included. Conn. Gen. Stat. Ann. § 19a-575a (West 2025). The statutory form provides three pregnancy-related options but does not require a selection for the advance directive to remain valid. *Id.* (“If I am pregnant: (Place a check to indicate option (1) or (2) or specify alternative instructions after (3)) ... (1) I intend to accept life support systems if my doctor believes that doing so would allow my fetus to reach a live birth.... (2) I intend this document to apply without modifications. (3) I intend this document to apply as follows...”).

¹³ Maryland’s statutory health directive contains a section titled “In Case of Pregnancy,” which allows the declarant to instruct any modifications for life-sustaining procedures during pregnancy. Md. Code Ann., Health-Gen. § 5-603. The statute explicitly states that such instructions are optional, and the form itself remains valid if that section is blank. *Id.* (“Using this advance directive form to do health care planning is completely optional. Other forms are also valid in Maryland. No matter what form you use, talk to your family and others close to you about your wishes” and on the sample form it provides, “F. In Case of Pregnancy (Optional, for women of child-bearing years only; form valid if left blank) If I am pregnant, my agent shall follow these specific instructions:”).

¹⁴ In New Jersey, “[a] female declarant **may** include in an advance directive executed by her, information as to what effect the advance directive shall have if she is pregnant.” N.J. Stat. Ann. § 26:2H-56 (West 2025). New Jersey’s statute does not say an advance directive is invalid in the case of pregnancy if a pregnancy-specific instruction cannot be furnished. *Id.*

¹⁵ In Vermont, Vt. Stat. Ann. tit. 18, § 9702 (West 2025) allows—but does not require—a person to indicate preferences for life-sustaining treatment during pregnancy. The absence of a pregnancy-specific instruction does not appear to invalidate the directive. *Id.* In fact, the statute expressly states: “An adult **may**...: (8) **direct which life-sustaining treatment the principal would desire or not desire if the principal is pregnant** at the time an advance directive becomes effective...(b) **The absence of an advance directive or of any specific instruction in an advance directive shall have no effect on determining the principal’s intent or wishes regarding health care or any other matter.**” This law allows—but does not require—a person to indicate preferences for life-sustaining treatment during pregnancy. *Id.* Importantly, the statute does not include any language that automatically suspends or invalidates an advance directive if the principal is pregnant. *Id.* Additionally, it reinforces that omitting a pregnancy-specific clause does not undermine the validity or enforceability of the advance directive. *Id.*

¹⁶ **Kentucky:** Ky. Rev. Stat. Ann. § 311.629 (4) (West 2025) (“to a reasonable degree of medical certainty, as certified on the woman’s medical chart by the attending physician and one (1) other physician who has examined the woman, the procedures will...be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.”).

¹⁷ **New Hampshire:** N.H. Rev. Stat. Ann. § 137-J:10 (II)(a) (2025) (“to a reasonable degree of medical certainty, as certified in the principal’s medical record by the attending practitioner and an obstetrician who has examined the principal, such treatment or procedures will...prolong severe pain which cannot be alleviated by medication.”); N.H. Rev. Stat. Ann. § 137-J:5 (V)(c) (2025) (same).

¹⁸ **North Dakota:** N.D. Cent. Code Ann. § 23-06.5-09(5) (West 2025) (“unless, to a reasonable degree of medical certainty as certified on the principal’s medical record by the attending physician and an obstetrician who has examined the principal, such health care...will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.”).

¹⁹ **South Dakota:** S.D. Codified Laws § 34-12D-10 (2025) (“unless, to a reasonable degree of medical certainty, as certified on the woman’s medical chart by the attending physician and one other physician who has examined the woman, such procedures...will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.”).

²⁰ Each of these statutes require a “reasonable degree of medical certainty” by two physicians (New Hampshire and North Dakota requiring the second physician to be an obstetrician) that the harm enumerated “cannot be alleviated by medication.” See Ky. Rev. Stat. Ann. § 311.629 (4) (West 2025); N.H. Rev. Stat. Ann. § 137-J:10 (II)(a) (2025); N.D. Cent. Code Ann. § 23-06.5-09 (5) (West 2025); and S.D. Codified Laws § 34-12D-10 (2025).

²¹ H.B. 1215, 69th Leg., Reg. Sess., (Wash. 2025).