

# The Anti-Abortion Movement Has Been Pushing a “Fetal Personhood” Strategy – It’s Not What You Think.

## Fact Sheet #2 in “All Part of the Plan”: How Lawmakers and Courts Are Granting Legal Rights to Fetuses and Embryos

State courts and lawmakers have spent half a century building the [scaffolding for the U.S. Supreme Court](#) to recognize fetuses and embryos as persons under the U.S. Constitution<sup>1</sup> in order to ban abortion nationwide and take away rights from pregnant people. The legal strategy relies on lawmakers and courts recognizing rights and protections for fetuses and embryos separate from the pregnant person or the person who could become pregnant. Now that those opposed to abortion have control of key decision-making institutions, including the U.S. Supreme Court, they are capitalizing on every opportunity to recognize rights for fetuses and embryos.

### Extremist legislators are advancing laws that give rights to fetuses and embryos or otherwise equate them to living children.

For decades, anti-abortion legislators have introduced and passed state and federal laws that assign rights or benefits to zygotes, embryos, and fetuses or that enshrine notions that zygotes, embryos, and fetuses are persons or equated to children.

Laws that ban abortions contain the most explicit legislative form of equating embryos and fetuses to persons or children.<sup>2</sup> Twenty-seven states incorporate terminology like “unborn human being,” “persons, born and unborn,” and “unborn child” in anti-abortion statutes.<sup>3</sup> The operative text of abortion bans denies pregnant people a right to abortion, but does so by advancing the notion that embryos and fetuses are living persons. That these abortion bans include person-establishing language puts in plain view how the strategy to establish rights for embryos and fetuses necessarily takes away the freedom of individuals who are or could be pregnant.

Anti-abortion lawmakers have also introduced bills that attempt to enshrine views about when life begins

and provide rights at that moment. At the federal level, this includes the Life at Conception Act, H.R. 722,<sup>4</sup> which seeks to grant constitutional rights and protections to embryos and fetuses: “To implement equal protection for the right to life of each ... preborn human person.”<sup>5</sup> The bill defines “human being” as “each and every member of the species homo sapiens at all stages of life, including the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being.”<sup>6</sup> This definition is so broad that it could reach fertilized eggs before implantation – including frozen fertilized eggs created during fertility care.<sup>7</sup>

Lawmakers have also passed laws assigning rights and benefits to embryos and fetuses that focus on criminal or civil liability around pregnancy loss or harm to a fetus. For example, 38 states have enacted laws that permit homicide charges for a person who causes the loss of a pregnancy, with 21 of those states expanding the definition of a homicide victim to include “zygote,” “embryo,” or “fetus.”<sup>8</sup>

States have also amended their civil wrongful death laws to apply to harm against a fetus or embryo in utero, thereby equating an embryo or fetus to a person in the case of a wrongful death lawsuit.<sup>9</sup> These laws are often passed under the cover of holding responsible those who cause harm, such as causing a car wreck,<sup>10</sup> but in fact lay the groundwork for anti-abortion extremists to later argue that embryos and fetuses are persons under state and U.S. Constitutions.

Lawmakers have advanced legislation aimed at economically benefiting fetuses and embryos. State lawmakers have offered proposals to include embryos and fetuses in public benefits and family income support programs, including Temporary Assistance for Needy Families (TANF), tax credits, and child support programs.<sup>11</sup> At the federal level, Senator Daines and former-Senator Rubio introduced bills that would expand the child tax credit (CTC) for pregnant people by allowing them to retroactively claim the CTC, after the pregnant person gives birth.<sup>12</sup> Representative Blake Moore similarly introduced the Family First Act, which would make several changes to the CTC and establish a new tax credit for pregnant people.<sup>13</sup> These bills do not explicitly say that an embryo or fetus is a person for purposes of the tax code, but they equate the fetus to a child for purposes of claiming the *child* tax credit. Even without saying it explicitly, these laws are part of the legal strategy for giving rights to embryos and fetuses, enshrining consideration of an embryo or fetus as a “child” or “person” separate and distinct from the pregnant person.

## PRO-BIRTH ACCOUNTABILITY ACT

Bills that equate embryos or fetuses to children or persons are not only being introduced by lawmakers who oppose abortion. Some lawmakers who support reproductive freedom have introduced legislation that is designed to call out anti-abortion lawmakers’ failure to provide economic supports for people forced to stay pregnant against their will because of abortion bans. This kind of legislation, sometimes called the “Pro-Birth Accountability Act” in states like Arizona,<sup>14</sup> Georgia,<sup>15</sup> and South Carolina,<sup>16</sup> extends tax credits and benefits to fetuses and embryos in order to compensate pregnant people for the harm they have experienced due to abortion bans and being forced to carry a pregnancy to term. Although Pro-Birth Accountability bills acknowledge and seek to mitigate the harms of abortion bans, they employ the same damaging tactic as many anti-abortion bills—creating laws that can be exploited to argue that fetuses and embryos are separate from the pregnant person and have equal rights under the law.

While bills that provide rights and benefits to embryos and fetuses run the gamut – from banning abortion to providing economic benefits to establishing wrongful death liability under criminal or civil law – they all operate from a core concept that embryos and fetuses are persons. With this scaffolding of laws establishing this concept, anti-abortion advocates are then turning to the courts to further cement this legal strategy.

## Extremist courts are recognizing rights for fetuses and embryos.

Heavily funded campaigns to overhaul the nation’s judicial system have made courts strategic locations to solidify the strategy of establishing legal rights for fetuses and embryos. State courts have upheld laws granting fetuses and embryos rights separate from the pregnant person in certain cases,

sometimes going beyond the letter of the law to do so. For example, in the 1997 case *Whitner v. State*, the South Carolina Supreme Court expanded the definition of a “child” within a child abuse statute to include a fetus, greenlighting the state’s ability to pursue child endangerment charges against people who use drugs during pregnancy.<sup>17</sup> The state supreme courts of Alabama and Oklahoma have also expanded the definition of “child” in their child abuse statute to include fetuses.<sup>18</sup> Through this expansion, these courts weaponized laws protecting against child abuse or endangerment against pregnant people in order to criminalize women for their behavior while pregnant.<sup>19</sup>

In Alabama, the state supreme court interpreted the state’s civil wrongful death statute in 2011 to include an embryo or fetus at any stage of development.<sup>20</sup> And then, in a February 2024 decision, the Alabama Supreme Court held that a wrongful death civil liability law applied to frozen embryos.<sup>21</sup> In reaching this decision, the court relied on several other laws, a recently added constitutional provision, previous court decisions equating or defining fetuses as persons and children,<sup>22</sup> what it claimed was “common understanding,” and dictionary definitions of the term “children” to include “unborn children.”<sup>23</sup> In other words, the State Supreme Court of Alabama relied heavily on the scaffolding of previous laws and court decisions equating embryos and fetuses to persons to hold that a frozen embryo stored in a fertility clinic is also a “person” under a civil wrongful death state law. While this legal decision was about civil liability regarding the destruction of frozen fertilized eggs, it had effects that were much further reaching: local fertility clinics shut down care following the case because they worried that the same analysis being applied to the state’s criminal wrongful death law would mean they could be charged with a crime, as fertility care can involve destroying frozen embryos.

The Alabama case encapsulates the legal strategy to assign rights and benefits to embryos and fetuses. It reflects how the strategy includes lawmakers passing various laws extending rights and benefits to embryos or fetuses or otherwise equating embryos and fetuses to persons and courts interpreting those laws to establish additional rights for embryos and fetuses. This leads to taking away rights from pregnant people and criminalizing their behavior and the conduct of those who seek to help them.

What happened in Alabama should be understood as a clear warning: anti-abortion advocates are aiming to take the scaffolding approach so harmfully applied in Alabama

that denied people access to fertility care and apply it nationwide. This is a clear threat and will bring about a host of harms – taking away the rights of pregnant people or those who seek reproductive health care, denials of pregnancy-related care, increased criminalization of pregnancies, and the government’s unprecedented interference into the lives of those who can be [pregnant](#).

- 1 *When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, PREGNANCY JUST., (May 2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/05/fetal-personhood-with-appendix-UPDATED-1.pdf>.
- 2 See *id.* at 6.
- 3 See *id.*; Georgia's abortion ban, which took effect after the *Dobbs* decision, also amended the state's definition of "dependent" in the state tax code provision as follows: "any unborn child with a detectable human heartbeat, as such terms are defined in Code Section 1-2-1, shall qualify as a dependent minor". Georgia House Bill 481, Section 12. After the law's passage, the Georgia Department of Revenue issued guidance allowing fetuses to be claimed as minor dependents on income tax returns. Much confusion resulted from the change in policy and ultimately many more taxpayers claimed the deduction than the law's sponsors had predicted: before the law was implemented it was estimated the deductions would total between \$7 million and \$9 million, but in 2022 they totaled \$109 million. Carter Sherman, *Georgians Probably Benefited Little From Claiming Fetuses on Tax Filings*, GUARDIAN (Apr. 15, 2024), <https://www.theguardian.com/us-news/2024/apr/15/georgia-fetus-tax-deduction>.
- 4 Life at Conception Act, H.R. 722, 119th Cong. (2025) (as introduced).
- 5 H.R. 722; For a deeper look into the history of these "personhood" bills, see *The Personhood Movement*, PROPUBLICA (last accessed Feb. 27, 2024), <https://www.propublica.org/article/the-personhood-movement-timeline>.
- 6 PROPUBLICA, *supra* note 5.
- 7 Notably, this is what happened in Alabama when the State Supreme Court concluded that the term "child" included frozen fertilized eggs.
- 8 See *When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, PREGNANCY JUST., at 4 (May 2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/05/fetal-personhood-with-appendix-UPDATED-1.pdf>.
- 9 See *id.*
- 10 Florida advances bill to allow lawsuits for wrongful death of fetuses, (April 11, 2025) <https://www.nbcmiami.com/news/local/florida-advances-bill-to-allow-lawsuits-for-wrongful-death-of-fetuses/3589552/>. ("In Florida, sponsoring Republican Sen. Erin Grall told her colleagues the measure 'is not about abortion.' 'It's not a secret. Everybody in the room knows where I stand on life,' Grall said. 'To me this is about parity in our civil justice system.'").
- 11 See generally, Diana Azevedo-McCaffrey & Joanna Lefebvre, *Economic Security Programs Should Support Pregnant People and Their Families, Not Promote Harmful "Fetal Personhood"* Agenda, CTR. FOR BUDGET AND POL'Y PRIORITIES (Mar. 19, 2025), <https://www.cbpp.org/research/income-security/economic-security-programs-should-support-pregnant-people-and-their>.
- 12 See The Child Tax Credit for Pregnant Moms Act, S. 2092, 118 Cong. (2023); The Providing for Life Act, S. 74, 118 Cong. (2023).
- 13 See Family First Act, H.R. 353, 119th Cong. (2025); *Congressman Blake Moore Introduces Legislation to Enhance the Child Tax Credit and Provide Tax Relief for Parents*, (Jan. 13, 2025) <https://blakemoore.house.gov/media/press-releases/congressman-blake-moore-introduces-legislation-to-enhance-the-child-tax-credit-and-provide-tax-relief-for-parents>.
- 14 H.B. 2138, 56th Leg., 1st Reg. Sess. (Ariz. 2023), <https://www.azleg.gov/legtext/56leg/1R/bills/HB2138P.htm>.
- 15 H.B. 347, 2025-2026 Gen. Assemb., Reg. Sess. (Ga. 2025), <https://www.legis.ga.gov/legislation/70109>.
- 16 S. 874, 125th Gen. Assemb. (S.C. 2024), [https://www.scstatehouse.gov/sess125\\_2023-2024/bills/874.htm](https://www.scstatehouse.gov/sess125_2023-2024/bills/874.htm).
- 17 *Whitner v. State*, 328 S.C. 1, 6-8 (1997); Pregnancy Justice notes that "The [Whitner] ruling paved the way for scores of women in South Carolina to be arrested and charged with child neglect or endangerment under the guise of addressing prenatal substance use." South Carolina The State of Pregnancy Criminalization, PREGNANCY JUST. (March 2024) <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/03/South-Carolina-Factsheet.pdf>.
- 18 Oklahoma The State of Pregnancy Criminalization in the First Year After *Dobbs*, PREGNANCY JUST. (Sept. 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2025/04/Oklahoma-Post-Dobbs.pdf>; Alabama The State of Pregnancy Criminalization in the First Year After *Dobbs*, PREGNANCY JUST. (March 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/03/Alabama-Factsheet.pdf>. In the 2013 case *Ex parte Ankrom*, the Alabama Supreme Court interpreted the definition of "child" in the state child endangerment statute to include "unborn children": "in keeping with the widespread legal recognition that unborn children are persons with rights that should be protected by law." *Ex parte Ankrom*, 152 So. 3d 397, 429 (Ala. 2013).
- 19 The Rise of Pregnancy Criminalization: A Pregnancy Justice Report, PREGNANCY JUST. 4 (SEPT. 2024), [HTTPS://WWW.PREGNANCYJUSTICEUS.ORG/WP-CONTENT/UPLOADS/2023/09/4-KEY-FINDINGS.PDF](https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/4-KEY-FINDINGS.PDF). As Pregnancy Justice notes: "While this study found cases of pregnancy criminalization in 46 states and U.S. territories, nearly four in five (79.4%) arrests took place in just five southern states: Alabama (46.5%), South Carolina (13.0%), Tennessee (9.4%), Oklahoma (8.1%), and Mississippi (2.6%). Alabama had far and above the highest number of pregnancy criminalization arrests, representing almost half (46.5%) of the total. With the exception of Mississippi, these were the only states in the country that either had judicial decisions that expanded definitions of "child" to include fetuses in their criminal laws, or, in the context of Tennessee, had a law in place that explicitly criminalized the pregnant person if the newborn was born exposed to or harmed by a drug". *Id.* (emphasis added).
- 20 See *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011); *Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012).
- 21 *LePage v. Ctr. for Reprod. Med.*, P.C., No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024).
- 22 These laws include: 1) a criminal wrongful death statute that the Alabama legislature amended years ago to define a victim of homicide to include "an unborn child in utero at any stage of development, regardless of viability"; 2) a subsequent state Alabama Supreme Court decision applying this definition to the civil wrongful death law; and, 3) a state constitutional amendment the public approved in 2018 that "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". The state Supreme Court concluded that given such legislative and legal precedent, along with "common" understanding of the term children, that the term applied to frozen embryos in addition to an embryo or fetus in the womb.
- 23 *LePage*, No. SC- 2022-0515 at 17.