

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

Fact Sheet #3 in “All Part of the Plan”: The Harms of Equating Embryos and Fetuses to Persons Under the Law

The anti-abortion movement’s strategy to assign legal rights and benefits to fetuses, embryos, and fertilized eggs is already creating chaos in the lives of those who are pregnant, seek to be pregnant, or want to prevent pregnancy. Giving legal rights to fetuses, embryos, and fertilized eggs takes away pregnant people’s rights to make their own decisions about their bodies, lives, and futures and opens the door to government intrusion into pregnancy in unprecedented ways.

While those leading this strategy openly admit their goal is to ban abortion nationwide without exception, a nationwide abortion ban is only one of the many consequences of this dangerous strategy – some of which are already occurring.

Here are some examples of the harms of the strategy of assigning legal rights and benefits to fetuses, embryos, and fertilized eggs:

- In 2024, the Alabama State Supreme Court issued a decision that frozen embryos are “children” for purposes of a civil liability law, meaning that individuals could be held legally responsible for destroying such embryos. Because of the court’s decision, three of the largest clinics in the state swiftly stopped providing in vitro fertilization (IVF) services.¹ People seeking infertility treatment and procedures were left without the care they needed, and were filled with uncertainty and panic, as were the health care professionals who wanted to provide the care.² The state legislature was forced to pass a “fix” a few weeks after the decision, but patients seeking access to IVF and other related care in Alabama continue to face fear and uncertainty.³

- In the first year after the Supreme Court erroneously overturned *Roe v. Wade*, police subjected hundreds of women to intrusive investigations into their pregnancies and pregnancy outcomes.⁴ In the name of protecting the rights of fetuses, police and prosecutors are aggressively investigating these women for their behaviors during pregnancy. One woman, Brittany Watts, was criminally charged with “abuse of a corpse” when she miscarried a fetus in a toilet at home.⁵ The prosecutor argued to the judge that the fetus was a child that Watts “left in her toilet” and that she should be charged under the state law prohibiting “abuse of a corpse.”⁶ Watts was arrested and taken to the local police department days after her miscarriage, and forced to hire a lawyer to defend herself.

These are just two examples of the actual harm unleashed by the strategy to assign rights to fetuses and embryos that take away rights from pregnant people. More broadly, the strategy carries other far-reaching harm. It threatens the standard of care relating to pregnancy, threatens other care like contraceptive and fertility care, and results in increased surveillance and criminalization of pregnant individuals.

Giving Legal Rights to Fetuses and Embryos Would Result in Health Care Professionals Denying Patients the Standard of Care, Including Emergency Care.

State abortion bans have already caused women to be denied emergency care⁸ and cancer treatment.⁹ Health care providers operating in states with abortion bans have already reported¹⁰ that fear of prosecution has meant they have deviated from providing the standard of care, including to those facing emergency situations. In Texas, after the state banned abortion in 2021, “[t]he rate of sepsis shot up more than 50% for women hospitalized when they lost their pregnancies in the second trimester.”¹¹ Moreover, women are dying: “dozens more pregnant and postpartum women died in Texas hospitals [after the state banned abortion] than had in pre-pandemic years.”¹²

If the U.S. Supreme Court were to conclude that fetuses and embryos are persons under the U.S. Constitution, this crisis would only worsen. Recognizing the fetus as a person under the Constitution would elevate the rights and needs of the fetus or embryo, putting them at odds with the pregnant person. This would lead to a nationwide ban on

abortion, likely without any exceptions at all and throughout pregnancy. And it would cause a range of consequences for how providers can treat their pregnant patients.

Providers would be left to balance the constitutional rights of fetuses and embryos versus those of the pregnant person when making determinations about how to treat patients. Given that anti-abortion lawmakers and advocates have made clear they will aggressively implement anti-abortion laws – including by charging abortion providers,¹³ pursuing civil litigation against friends of those who have abortions, and charging patients themselves with murder¹⁵ – providers may reasonably believe that they face more legal risk by providing care to a pregnant patient than denying her that care in the interest of fetal rights. For example, a doctor might not provide emergency abortion care to save a pregnant person’s life because of a fear that they could be charged with murder for violating the fetus’s right to life.

This concern goes far beyond abortion care. For health care professionals who interact with pregnant patients – or patients who could become pregnant – standard care that they give every day could suddenly come under the microscope. If there are health care services or treatment that they regularly provide, but where there potentially could be an impact on fetuses or embryos, they may be hesitant to provide the necessary care. For example, in the wake of the Supreme Court’s decision to overturn *Roe* and as states passed abortion bans, people with chronic medical conditions were denied access to critical medicine unless they could prove that they were not pregnant.¹⁶

The strategy to assign rights to fetuses and embryos is a zero-sum game for pregnant people – or people who could become pregnant. The efforts by anti-abortion lawmakers, officials, and advocates center the rights of the fetus or embryo, thereby overriding those of the pregnant person. As governments act to “protect” the constitutional rights of fetuses or embryos, the rights of the pregnant person fall by the wayside.

Enshrining Legal Rights for Fetuses and Embryos Threatens Health Care for Those Seeking to Prevent – Or Begin – Pregnancy Care.

The anti-abortion movement’s disinformation campaign claims that certain contraceptives cause abortions. This purposeful conflation of birth control methods with abortion helps to explain why certain methods of birth control are threatened by the legal strategy to assign rights to embryos

and fetuses, particularly when legislation establishes rights beginning “at fertilization.”¹⁷ The anti-abortion movement’s argument relies on both the idea that fetal personhood begins at the moment of “conception” and the erroneous belief that some forms of contraception - specifically IUDs and emergency contraception - are abortifacients, not contraceptives. The harm of this strategy to contraception was evident in the months after the Supreme Court overturned *Roe* and confusion was rampant about the possible effects of abortion bans on contraception. For example, the University of Idaho in September 2022 issued a memo saying that—to ensure it did not run afoul of various state laws in the wake of the *Dobbs* decision—the university would not provide standard birth control or provide information about birth control.¹⁸

The idea that an embryo or fertilized egg is a person with legal rights endangers fertility treatments that involve storing embryos or that may lead to the destruction of embryos, like in vitro fertilization (IVF) and other assisted reproductive technology (ART),¹⁹ as well as embryonic research.²⁰ The chaos and fertility clinic closures in Alabama are evidence of what could lie ahead for fertility care if the strategy takes hold in more states or nationwide.

Assigning Legal Rights to Fetuses and Embryos Would Increase Criminalization of Pregnancy and Government Surveillance into Pregnant People’s Lives.

In the period between the *Roe* decision in 1973 and *Roe*’s reversal in 2022, there were at least 1,800 cases of pregnancy criminalization, including when “someone is arrested for reasons related to pregnancy” or faces enhanced penalties in sentencing or bail treatment because of a subsequent pregnancy.²¹ Many of these cases relied on the expansion of child endangerment and child abuse laws to include fetuses, in combination with broader substance use criminalization and regulation. In one case, an Oklahoma woman was charged with felony child neglect—which Oklahoma law extends to fetuses—for legally using medical marijuana during her pregnancy.²² Prosecutors argued that the woman broke the law because the fetus did not have its own state license to use medical marijuana.²³

Other forms of pregnancy criminalization that rely on fetal personhood include investigations or charges related to feticide/murder/manslaughter, fetal assault, failure to report birth/death, and tampering with remains or abuse of a corpse.²⁴

- In March 2023, Amari Marsh of South Carolina had a miscarriage, for which she was eventually charged with homicide by child abuse. She was forced to spend three weeks behind bars and 13 months on house arrest.²⁵
- In southern Georgia in 2025, emergency personnel were called to help a woman who was unconscious and bleeding after experiencing a miscarriage. While providing emergency care, a third party told the emergency personnel that the woman had disposed of the fetus in the dumpster. Law enforcement subsequently arrested and charged the woman with concealing the death of another person and abandonment of a dead body. Even though the charges were ultimately dropped, the woman was put through the wholly unnecessary trauma of being arrested and charged while recovering from miscarriage.²⁶

These cases make clear how the legal strategy to extend laws to apply to fetuses and embryos wreak havoc in people’s lives.

Fetal personhood deepens the harm that marginalized communities may experience within certain social and economic programs.

State lawmakers who are otherwise supportive of reproductive freedom have introduced bills that expand child support to include fetuses in an attempt to address the harm of being forced to carry an unintended pregnancy to term because of abortion bans and restrictions. While these efforts may be well meaning, they feed into the legal strategy of fetal personhood and cause harm to certain communities. Child support systems often rely on punitive policy approaches²⁷ to compel disproportionately low-income and BIPOC noncustodial parents to make (often prohibitively high) child support payments.²⁸ These systems not only set unrealistic expectations; they also further perpetuate poverty for individuals and families who are disproportionately low-income and BIPOC.²⁹ Child support enforcement often ignores the structural racism these parents face in the labor market, the criminal legal system, and other systems that makes securing consistent, full-time employment extraordinarily challenging.³⁰ Adding fetuses to child support would only further

exacerbate the harm in these systems. For example, bills that were introduced in Arizona and South Carolina would have criminalized noncustodial parents who are unable to pay child support for a fetus but allowed a suspension of the associated prison sentence if the noncustodial parent agrees to pay restitution and have a vasectomy.³¹ In addition to assigning rights to the fetus in ways that would further involve communities in what can be a harmful system, offering reduced jail time in exchange for sterilization is a prime example of reproductive coercion, which includes any attempt to control someone's fertility by force, threat, or other act of pressure.³² Reproductive coercion is a deeply harmful practice historically targeting BIPOC communities and other marginalized groups.³³ This is just one example of the ways that introducing laws that assign rights to fetuses into already complex social and economic policies and programs only deepens the harm that pregnant people, their families, and communities experience.

actors to access individuals' most private moments will exacerbate the harm of recognizing rights for embryos and fetuses. For example, as more states give benefits to embryos and fetuses, like tax benefits, information a pregnant individual must provide to receive the benefit could later be used to investigate individuals who do not end up carrying to term or experience a stillbirth.⁴⁰

The harm of establishing rights and benefits for embryos and fetuses is not theoretical—it is already creating harsh realities for many. In the face of a decades-long effort by the anti-abortion movement to enshrine rights for fetuses and embryos, it is critical for lawmakers, advocates, and communities to remain vigilant and proactive in rooting out and stopping this dangerous legal framework.

Laws that extend rights to fetuses also expose pregnant people to criminalization due to subjective and evolving notions of "negligent" behavior, subjecting pregnant people's day-to-day behaviors (i.e. eating, sleeping, working, exercising, etc.) to heightened surveillance and scrutiny.³⁴ Pregnant people who engage in what some may deem "ill-advised," yet legal, behaviors, whether it is refusing prenatal care, engaging in vigorous exercise, or using contraindicated substances, could face surveillance that leads to criminalization. This surveillance may come from not only mandatory reporters (i.e. healthcare providers, social workers, etc.),³⁵ but also family, friends, and intimate partners.³⁶

At the same time, the digital age has turbocharged the government's ability to engage in extensive surveillance on its residents, including into people's reproductive decisions.³⁷ Just recently, a Trump-appointed anti-abortion judge in Texas blocked a rule that protected health information relating to pregnancy.³⁸ Part of the judge's decision rested on his conclusion that fetuses are persons with protections under state law, and that the federal health privacy protection rule unlawfully overrode those protections.³⁹

The intersection of expanding criminalization of pregnancy outcomes with increasing mechanisms for state and federal

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