

LEGAL FETAL PERSONHOOD IN THE UNITED STATES

REVISED 2024

1884 In the first U.S. case on the topic, the Supreme Court of Massachusetts held that injury to a fetus was recoverable to the pregnant person only, and not to the fetus as a legal person.

1900 Six years later, an Illinois court agreed with Massachusetts and held that an infant could not recover for pre-birth injuries, because pre-birth a fetus is part of the mother and not a legal person on its own.

1908 A New Hampshire Court agreed, holding that while a pregnant woman could recover for injuries sustained in an accident, there was no separate recovery allowed for fetal injuries.

1927 A Louisiana court held that a pregnant person could not recover for the loss of her stillborn fetus following an accident, because fetuses are not regarded as distinct legal persons until they are born alive. No matter their gestational age, fetuses are not legally separate from the pregnant person.

1969 A New York court holds that a stillborn fetus, which died from injuries received in utero, was not a “decedent” within the meaning of New York’s wrongful death statute.

1973 In *Roe v. Wade*, the U.S. Supreme Court states that the word “person” as used in the Fourteenth Amendment “does not include the unborn.”

One week after *Roe*, the Human Life Amendment to the U.S. Constitution is proposed for the first time. This amendment, which failed, would have given fetus’ equal protection of the laws “from the moment of conception.”

1983 The Senate holds a vote on another proposed Human Life Amendment, which also fails to pass. Note that while over 300 federal “Human Life” resolutions have been proposed since 1973, no others have made it to a floor vote.

1986 Having failed at the federal level, the fetal personhood movement turns to state law, attempting circuitous routes to get to legal fetal personhood. Minnesota is the first state to do so, passing a “fetal homicide” law under the guise of extra protection for the pregnant woman.

1987 North Dakota becomes the second state to pass a fetal homicide law. (As of January 2024, thirty-nine states have similar statutes.) Twenty-nine of these laws contain language defining a fetal person as beginning at conception.

This same year, a D.C. pregnant woman fighting cancer who elects to have chemotherapy is reported to authorities by her doctor. At a subsequent hearing the judge orders involuntary hospitalization and a C-section. Both the fetus and the woman die.

The Texas Supreme Court holds that the Texas Wrongful Death Act does not permit recovery for the loss of a stillborn fetus.

1988 Arkansas passes an amendment to its state constitution providing that it is the public policy of the state to “protect the life of every unborn child from conception until birth.”

1989 A woman in Florida is convicted of passing cocaine through the umbilical cord to her fetus under a state statute intended to prevent distribution of controlled substances to minors. Five years later, the Supreme Court of Florida reverses the conviction on the grounds that the legislative history did not show an intent to use the word “delivery” in the context of passing controlled substances through the umbilical cord.

1997 Reversing a long-standing unwillingness to punish pregnant women, the South Carolina Supreme Court holds that pregnant people may be prosecuted under criminal child abuse and endangerment laws for their conduct during pregnancy.

The Texas Supreme Court holds that a pregnant person can recover damages for negligence “that causes the loss of a fetus as part of the woman’s body,” not as a separate legal individual.

1998 Wisconsin enacts a law which allows state courts to order pregnant people with a history of substance abuse to enter inpatient treatment programs due to the risk to the fetus. One of the pregnant women later charged under this law told her doctor she had successfully overcome a pill addiction before becoming pregnant. Although this was true, because she declined an anti-addiction drug during pregnancy, she was reported by her doctor and forced into inpatient drug treatment.

2000 The Supreme Court of Massachusetts upholds a conviction for two counts of involuntary manslaughter where the victims were a pregnant person and a viable fetus, denying that it violated double jeopardy principles.

2001 The U.S. Supreme Court holds that a specific state hospital’s policy of drug testing pregnant people without their consent—and reporting positive results to the police—violates the Fourth Amendment.

Arizona becomes the first state to require birth certificates for fetal deaths occurring after twenty weeks of gestation.

2003 The Texas Penal Code is updated to include an “unborn child at every stage of gestation from fertilization until birth” as an “individual.”

2004 Congress passes the Unborn Victims of Violence Act, a law originally drafted in part by the National Right to Life Committee. This is the first federal law making it a separate crime to harm or kill a fetus during an act of violence against the pregnant person. Its passage triggers a wave of similar laws at the state level.

A Kentucky man is convicted of manslaughter in connection with the death of a viable fetus following a car accident. The court holds that the words “human being” in Kentucky’s penal code definitions includes a viable fetus.

2005 South Dakota enacts a law which requires telling a pregnant patient seeking an abortion that the procedure would “terminate the life of a whole, separate, unique, living human being.”

2008 Colorado voters reject a state constitutional amendment which would have modified the definition of “person” to begin at the moment of fertilization.

A new national organization, Personhood USA is created, with the stated goal of raising awareness for the personhood rights of the unborn.

2010 Colorado voters again reject adoption of a personhood amendment to the state constitution.

2011 Mississippi voters reject a state constitutional amendment that would have amended the constitutional definition of “person” to begin at the moment of fertilization.

2012 The Oklahoma Supreme Court unanimously vetoes a ballot measure that would have given embryos full personhood rights, calling it “clearly unconstitutional” because it would block abortion access.

2013 The Alabama Supreme Court rules that the state’s chemical endangerment law, written to protect children from dangerous meth labs, may be used to prosecute pregnant people who use drugs during pregnancy. The court holds that the word “child” includes embryos in utero.

North Dakota becomes the first state to pass a personhood amendment to its state constitution. However, voters reject the measure two-to-one the following year.

The Alaska Supreme Court rejects a ballot measure that would generally prohibit abortion by granting rights to “all mankind from the beginning of biological development.” The Court concludes that the State’s duty to protect “all persons... did not extend to the unborn.”

2014 Tennessee becomes the first state to enact a criminal law specifically allowing prosecution of pregnant people for illegal use of narcotics while pregnant. The statute includes penalties of up to 15 years in prison. The law expired in 2016, although there have been several attempts to reimplement it. By this point, hundreds of U.S. pregnant women have been arrested or forced into treatment.

Colorado voters reject, for the third time, an initiative to amend the state constitution's definitions of "child" and "person" to include fetuses.

North Dakota voters similarly reject a personhood ballot measure, which would have amended to the state constitution to recognize the rights of fetuses "at any stage of development."

2018 Alabama voters pass a ballot initiative amending the state constitution making it public policy to "recognize and support the sanctity of unborn life and the rights of unborn children."

2019 Georgia's Living Infants Fairness and Equality Act is passed and allows state residents to claim any fetus with a detectable heartbeat as a dependent on tax forms, requires state officials to count fetuses towards the state's official population count, allows demands for child-support payments from the other parent, and even allows pregnant people to lawfully drive in the carpool lane without any additional passengers. The Act had delayed implementation (until 2022) due to legal proceedings.

2020 An Oklahoma criminal court holds that a fetus that is viable at the time of injury can be the "a victim" of child neglect and abuse.

2021 At the federal level, the "Life at Conception Act," is introduced, with 164 cosponsors. The Act proposes extending a constitutional "right to life" to fetuses and embryos, beginning at fertilization.

The Ohio legislature considers, but does not pass, a bill which would have recognized personhood as beginning at conception.

Arizona enacts a fetal personhood provision, which seeks to "acknowledge" the equal rights, immunities, and privileges of an "unborn child at every stage of development. This law is later blocked by a federal district court.

Texas enacts its "Human Life Protection Act," which defines an "unborn child" as "an individual . . . from fertilization until birth."

2022 The U.S. Supreme Court overturns *Roe* in *Dobbs v. Jackson Women's Health Organization* but declines to definitively weigh in on fetal personhood.

Missouri quickly introduces a bill, which does not pass, stating that life begins at conception and seeking to secure equal rights, privileges, and immunities as available to “unborn children.”

2023 Post-*Dobbs*, anti-access legislators and courts increase their use of terms seeking to convey legal personhood on fetuses. As one example, the U.S. District Court for the Northern District of Texas uses words such as “unborn human” and “unborn child” to describe embryos and fetuses.

During the 2023 legislative session five states (Alabama, Missouri, New York, South Carolina, and Virginia) introduce legislation to ban all abortion procedures based on the personhood of a fetus.

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