

SUPPORTING THE LEGAL AUTONOMY OF PREGNANT WOMEN

ISSUE:

Some state and federal legislators are pushing to define personhood as commencing at conception. This definition could threaten the delivery of effective and safe healthcare for mothers and their babies; however fetal protection, especially after viability, is the ongoing balancing factor in the legislative fetal personhood discussion. Initiatives to define personhood as beginning at conception should be opposed to preserve the ability to deliver the best available healthcare to mothers and babies. The National Perinatal Association opposes legislation that defines personhood as beginning at or after viability.

BACKGROUND:

The debate surrounding when human life begins or “personhood” stretches back into the annals of human history. That discussion continues to morph and evolve with advances in medical care and legislative initiatives. Currently, the issue of personhood can be divided into two categories. The first category deals with medical knowledge about conception, development, and birth. The second category deals with the legal implications of laws defining personhood at various points in the development of an embryo and fetus. The medical discussion surrounding whether personhood commences at fertilization, implantation, segmentation, neuromaturation, fetal movement, the fetus’s ability to feel pain, viability, or birth is critical to ensuring that mothers and babies maximize their opportunities to receive the best available healthcare and that women retain the right to make decisions about their bodies without harming another life. These discussions are often intertwined with religious, philosophical, and bioethical considerations. Many of these more esoteric disciplines consider when a soul enters a body and when one life could take precedence over another. These discussions and their resolutions can – and will - shape healthcare and medical decisions.

Legally, however, the personhood discussion has different consequences. If legislation passes determining that personhood begins at conception and, therefore, an embryo enjoys the same rights as any other human being, the decisions that are confronted in the medical debate about personhood could become moot. Namely, laws claiming that personhood begins at conception would suffocate healthcare providers’ and patients’ ability to even consider certain, and often medically-necessary, treatments and procedures.

For example, IVF could become illegal because embryos must sometimes be discarded in that process, some forms of birth control that prevent implantation could become illegal, ectopic pregnancies or other conditions where it was medically necessary to end the pregnancy could be prohibited or could expose the patient and physician to criminal prosecution, women who have stillbirths or miscarriages could be prosecuted for murder, and embryonic stem cell research would be prohibited. Fetal personhood laws defining personhood as beginning at conception would also stifle scientific advancements in maternal-fetal medicine because

researchers and scientists would know that even scientific breakthroughs would likely be illegal or impracticable.

These implications are only a few of the far-reaching consequences that could result from varying legal definitions of personhood. In some states this type of legislation, as well as various definitions of what constitutes a person for legal purposes, such as in wrongful death statutes, is already hindering care for mothers and their babies. For example, on March 14, 2011 Bei Bei Shuai was imprisoned and charged with murder and feticide for attempting suicide during her 33rd week of pregnancy. She was released on bail over a year later but is still being charged with crimes that could result in a life sentence or, even, the death penalty. In any other situation an attempted suicide results in psychiatric care but for pregnant women in states with certain types of fetal personhood legislation it results in severe criminal charges.

However, some fetal personhood protections are necessary to prevent unencumbered violence against unborn children and their mothers. If, for example, a wrongful death statute does not include unborn children then a perpetrator of violence against a pregnant woman is better off killing the fetus than causing damage to the fetus but not causing it to die. These competing factors must be balanced and must be considered when choosing fetal personhood legislative language. Even though some fetal personhood legislation would prevent healthcare providers from exploring all available options with their patients because many of those options would be illegal or would expose the healthcare providers to too much legal liability, some moderate laws could protect mothers and their babies.

POLICY:

NPA supports comprehensive drug treatment programs for pregnant women that are family- centered and work to keep mothers and children together whenever possible. The most successful treatment models will include access to quality prenatal and primary medical care, child development services, crisis intervention, drug counseling, family planning, family support services, life skills training, mental health services, parent training, pharmacological services, relapse strategies, self-help groups, stress management, and vocational training (Lester et al.,2004).

STRATEGY:

The National Perinatal Association (NPA) opposes legislation defining fetal personhood at conception. The time when a fetus becomes a person should be left for medical experts and patients. The NPA encourages its members to oppose any legislation defining fetal personhood at conception and encourages its members to support legislators in favor of leaving this discussion to the medical sphere.

REFERENCES:

1. Julie Rovner, Woman Who Tries to Commit Suicide While Pregnant Gets Bail, NPR's Health Blog (May 18, 2012, 4:16 PM), <http://www.npr.org/blogs/health/2012/05/18/153026015/bail-granted-for-indiana-woman-charged-in-attempted-feticide>
2. Hamilton v. Scott, 2012 WL 1760204, at *7 (Ala. May 18, 2012) (permitting recovery for wrongful death on behalf of unborn, pre-viability fetus based on state's wrongful death statute).
3. Zhang v. Subaru of America, Inc., 2012 WL 1252713, at *3 (N.D. Cal. April 13, 2012) (barring recovery for death of unborn fetus in products liability case).

4. *State v. Besabe*, 271 P.3d 387 (Wash. App. 2012) (holding that shooting mother resulting in birth of her baby who died two days later constituted first degree murder of that child).
5. *Bei Bei Shau v. State*, 966 N.E.2d 619, 628-29 (Ind. App. 2012).
6. *Carson v. Kroger*, 270 P.3d 243 (Or. 2012) (evaluating constitutionality of state “right to life” ballot initiative)
7. *Carranza v. U.S.*, 267 P.3d 912 (Utah 2011).
8. Ed Goldman, *The Conflict Between Fetal Personhood Laws and Women’s Rights*, *The Jurist – Forum* (Nov. 17, 2011), <http://jurist.org/forum/2011/11/ed-goldman-personhood-laws.php>
9. *Ankrom v. State*, 2011 WL 3781258, at *8-9 (Ala. Crim. App. August 26, 2011).
10. Dina, Amber, *Wrongful Death and the Legal Status of the Preivable Embryo: Why Illinois is on the Cutting Edge of Determining a Definitive Standard for Embryonic Legal Rights*, 19 *Regent U. L. Rev.* 251, 255 n. 41, 256 n. 42 (2006).
11. Fitzpatrick, Megan, *Fetal Personhood After the Unborn Victims of Violence Act*, 58 *Rutgers L. Rev.* 553(2005-2006).
http://heinonline.org/HOL/Page?handle=hein.journals/rutlr58&div=20&g_sent=1&collection=journals
12. Giordano Francesco E.M., *Human Being and Human Person: Jaques Maritain’s Notion of the Person in the Contemporary Setting*, (November 15, 2001) <http://www.seminarianlifelink.org/articles/maritain.htm>
13. Wagner, Aaron, *Texas Two-Step: Serving Up Fetal Rights by Side-Stepping Rove v. Wade Has Set the Table for Another Showdown on Fetal Personhood in Texas and Beyond*, 32 *Tex. Tech L. Rev.* 1085 (2000-2001). http://heinonline.org/HOL/Page?handle=hein.journals/text32&div=45&g_sent=1&collection=journals
14. Schroedel, Jean Reith, Fiber, Pamela, & Snyder, Bruce D., *Women’s Rights and fetal Personhood in Criminal Law*, 7 *Duke J. Gender L. & Pol’y* 89 (2000).
http://heinonline.org/HOL/Page?handle=hein.journals/djglp7&div=8&g_sent=1&collection=journals
15. D Gareth Jones, *The Problematic Symmetry Between Brain Birth and Brain Death*, *University of Otago, Dunedin, New Zealand Journal of Medical Ethics* 1998; 24:237-242.
<http://jme.bmj.com/content/24/4/237.full.pdf>
16. Leonard, Alison M., *Fetal Personhood, Legal Substance Abuse, and Maternal Prosecutions: Child Protection or “Gestational Gestapo”?*, 32 *New Eng. L. Rev.* 615 (1997-1998).
http://heinonline.org/HOL/Page?handle=hein.journals/newlr32&div=22&g_sent=1&collection=journals

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