

LEGAL FETAL PERSONHOOD: THE UNITED STATES VS. THE WORLD

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I. INTRODUCTION

Legal fetal personhood is the belief that all the legal rights of a born person should be provided to every collection of cells that could someday be a human being. Under a legal fetal personhood system, every blastocyte, every zygote, and every fetus would possess all the same legal rights that every person reading this article has.¹ In fact, it would mean that even before a pregnancy was detectable, every fertilized egg would have to be treated as a live human being. It would even mean that every test tube with any collection of cells that might someday develop into a pregnancy would have to be treated as a person with full legal rights.² This alone would make for an impossible and confusing conflict of laws.³ But legal fetal personhood creates an even more unworkable scenario, because it not only calls for the recognition of full legal rights for every collection of cells with any potential to develop, but it also takes the decision-making power over those cells away from the would-be pregnant person and gives it to the government. This is because under a legal fetal personhood scheme a pregnant person, or a pregnant capable person, is not trusted to act in the best interest of the unborn, so the state steps in and assumes the role of the actor best able to speak for the fetus. Or the test tube. This creates an uncalled-for tension between would-be parents and a pregnancy and inserts the state into an individual's autonomous decision-making.⁴ A legal fetal personhood scheme is excessive and unworkable, which is why most nations and court systems in the world have increasingly rejected it.⁵ In contrast, subnational entities in the U.S., particularly states providing little to no access to abortion health care, are increasingly embracing the notion of legal fetal personhood.⁶

In this article, we explain the concept of legal fetal personhood and how it undermines the autonomy of pregnant people and threatens the availability of reproductive health care, assisted reproductive technologies, and medical research. We then portray the ways and areas in which proponents of legal

¹ *Unpacking Fetal Personhood: The Radical Tool That Undermines Reproductive Justice*, PREGNANCY JUST. (Sep. 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Fetal-personhood.pdf> [https://perma.cc/V2C5-VYSJ].

² Carliss N. Chatman, *If a Fetus is a Person, It Should Get Child Support, Due Process and Citizenship*, 76 WASH. & LEE L. REV. ONLINE 91 (2020), <https://scholarlycommons.law.wlu.edu/wlulr-online/vol76/iss2/2> [https://perma.cc/6Y7N-XLD9].

³ *Id.* at 95.

⁴ Wendy Heipt & Julia Littell, *Fetal Personhood Creep*, 28 J. GENDER RACE & JUST. 283, 288 (2025).

⁵ *European Abortion Laws: A Comparative Overview*, CTR. FOR REPROD. RTS. (2022), https://reproductiverights.org/wp-content/uploads/2022/06/15381_CRR_Europe_V8.pdf [https://perma.cc/EYZ9-Q7GV].

⁶ *Legal Landscape*, PREGNANCY JUST. (2025), <https://www.pregnancyjusticeus.org/legal-landscape/> [https://perma.cc/F4LF-8Z78].

fetal personhood have advanced their agenda in the United States and how they have been stymied from doing the same abroad. After providing these landscape depictions, we then describe specific areas in which U.S. subnational entities, such as state courts and legislators, have allowed legal fetal personhood to advance, and how those same arguments have been rejected, in those same areas, elsewhere. While there is a plethora of areas to highlight, we focus on examples in abortion health care, in assisted reproductive technologies, in contraception, and in stem cell research.

After laying out how legal personhood has advanced in these areas in the United States and been largely rejected elsewhere, we unpack the differences in legal reasoning that have led to these divergent trends and what they portend going forward. We specifically look at the rationales used by decision-making bodies in the U.S. and abroad to support their actions and how these rationales serve their intent. We then note the implications of these trends for individuals, families, and society more broadly. Finally, we conclude by noting that unless the movement in the United States towards legal fetal personhood is forced to face the rationales and support for autonomy increasingly found elsewhere, the march towards legal fetal personhood in America will continue.

II. LEGAL FETAL PERSONHOOD

Legal fetal personhood has little to do with the undisputed value of a pregnancy.⁷ This is because, while the value of any pregnancy can be profound, that value is not equivalent to the legal standing of an already born individual.⁸ Giving a fetus legal standing means that there are two legal rights-holding individuals in one body.⁹ This separation is problematic—it puts the pregnant person into an unnecessary conflict with their fetus, it diminishes the autonomy and rights of the pregnant person, and it is legally

⁷ Both domestic and international sources recognize the societal, personal, moral, religious, relational and community values of a pregnancy, aside from any legal value. *See, e.g.*, Greer Donley & Jill Wieber Lens, *Abortion, Pregnancy Loss, & Subjective Fetal Personhood*, 75 VAND. L. REV. 1649, 1694-95 (2023); Jemma Rollo, *A Relational Ethics of Pregnancy*, 15 INT’L J. FEMINIST APPROACHES TO BIOETHICS 27 (2022).

⁸ *See* T.M. Scanlon, *Adjusting Rights and Balancing Values*, 72 FORDHAM L. REV. 1477, 1478 (2004) (examining John Rawls’ ‘balancing’ of rights and noting the distinction between a value and a legal right).

⁹ Throughout this article, specific pregnancy stages are noted when appropriate; otherwise, we use the word ‘fetus’ to generally represent all stages of pregnancy development, including blastocyst, zygote, embryo, fetus, and cell collections not yet within a pregnant person’s body. Likewise, while discussions of legal fetal personhood and pregnancy apply generally to assisted reproductive technologies as well as traditional pregnancies, we specifically address that intersection in Section III.B.

unworkable.¹⁰ It is precisely because of this unworkability and the concurrent diminishment of the autonomy and privacy of the pregnant person that, internationally, legal personhood is generally recognized as beginning at birth.¹¹ Despite this global recognition, and the worldwide trend toward greater access to abortion health care and increased recognition of the privacy and autonomy rights of families, legal fetal advocates in the United States have been achieving incremental advances in their push to create legal personhood recognition of the fetus.¹²

The drive for legal fetal personhood has advanced at both the federal and state levels in the United States.¹³ Federally, the push has come most noticeably through the judiciary, with the 2022 U.S. Supreme Court decision in the *Dobbs* case.¹⁴ In this case, the highest American court found that the 14th Amendment to the U.S. Constitution did not provide a right to abortion care, overturning decades of judicial precedent, and passing decision-making authority regarding abortion health care access to the states.¹⁵ The language of the *Dobbs* court, both in the terminology used and in their framing of the issue before them, made the case a 'next step' for legal fetal person

¹⁰ Jainab Banu, *Fetal Personhood and Access to Reproductive Rights: Power and Precarity in Post-Roe America*, 27 J. INT'L WOMEN'S STUD. 1, 11 (2025) (noting fetal personhood can elevate a fetus over the autonomy of the mother).

¹¹ For example, the Universal Declaration of Human Rights (UDHR), the 1948 foundational fundamental human rights agreement, premises human rights on birth. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR], <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [<https://perma.cc/5PAY-VHEG>]; see also U.N. Working Group on the Issue of Discrimination Against Women and Girls, Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends, U.N. Doc. A/HRC/36/56, at 2-4 (Oct. 2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf> [<https://perma.cc/9LKK-66ZX>] (explaining that "[b]etween 1950 and 1985, almost all developed countries liberalized their abortion laws for reasons of women's human rights, including equality, health and safety. This liberalization reflects the understanding that personhood is not established until birth..."); *infra* Section IV.A.2.

¹² Women and Foreign Policy Program Staff, *Abortion Law: Global Comparisons*, COUNS. ON FOREIGN RELATIONS (Mar. 7, 2024, at 14:30 ET), <https://www.cfr.org/article/abortion-law-global-comparisons> [<https://perma.cc/9XGZ-GJHE>].

¹³ While federal law generally prevails in America, states have the ability to draft their own laws and state level constitutions. U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding").

¹⁴ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

¹⁵ *Id.* at 336; *Roe v. Wade and Supreme Court Abortion Cases*, BRENNAN CTR. FOR JUST. (Sep. 28, 2022), <https://www.brennancenter.org/our-work/research-reports/roe-v-wade-and-supreme-court-abortion-cases> [<https://perma.cc/RB3Q-WX2Y>].

advocates.¹⁶ Other U.S. federal courts have also used language indicating support for legal fetal personhood.¹⁷

In the United States, legal fetal personhood has also made advances at the federal level in the executive and legislative branches. In Congress, legislation seeking to establish legal fetal personhood has been introduced over 300 times since the *Roe v. Wade* case guaranteed a limited right to abortion health care in the country.¹⁸ The latest proposed bill seeking to establish legal fetal personhood was introduced in January 2025, soon after President Trump took office.¹⁹ The executive branch has also weighed in. U.S. President Ronald Reagan spoke favorably of legal fetal personhood and introduced “Human Life Sundays” in 1984.²⁰ President George W. Bush signed a law that holds the fetus as a separate legal person in a criminal context and also put limits on scientific research that relied on the idea of legal fetal personhood.²¹ President Trump also used the language of legal

¹⁶ Heipt & Littell, *supra* note 4 (noting specific instances where the *Dobbs* court referenced fetal personhood language); see also Kate Zernike, ‘Unborn Child’ or ‘Fetus’: Parsing Word Choices on Abortion at the Supreme Court, N.Y. TIMES (Apr. 24, 2024), <https://www.nytimes.com/2024/04/24/us/politics/abortion-law-emergency-ban-fetus-unborn-child.html> [https://perma.cc/G99Y-CLU5] (discussing fetal personhood language in the *Dobbs* decision and noting that “Justice Alito relied on the language of fetal personhood in writing the decision overturning *Roe*, citing several 19th-century state laws referring to “unborn children”). Note that the U.S. Supreme Court later denied review in a case presenting the issue of whether the U.S. Constitution provides protections for prenatal life. *Benson v. McKee*, 273 A.3d 121 (R.I. 2022), *cert. denied*, *Doe v. McKee*, 143 S. Ct. 309 (2022).

¹⁷ As just one example, in the Texas litigation over whether a federal law overseeing hospital emergency rooms could cover abortion health care, the Court read the statute as designed to protect the pregnant person and the fetus equally and had no problem with a legislative decision to balance the two, or even to prefer the life of the fetus. *Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *aff’d*, 89 F.4th 529 (5th Cir. 2024). For a full discussion of how the issue of legal fetal personhood was the determinative factor in both this Texas case and in the Idaho litigation looking at the same issue, see Wendy S. Heipt, *EMTALA in a Post-Dobbs World: The March Towards Fetal Personhood Continues*, 59 U. IDAHO L. REV. 369 (2023).

¹⁸ *Roe v. Wade*, 410 U.S. 113 (1973). The so-called “Human Life Amendments” were first introduced less than a week after the *Roe* court made its decision, but only one version of the bill ever reached a floor vote. *Human Life Amendment Highlights: United States Congress (1973-2003)*, HUM. LIFE ACTION, <https://www.humanlifeaction.org/downloads/sites/default/files/HLAHighlights.pdf> [https://perma.cc/UVV3-TDUW] (last visited Nov. 9, 2025). Other Congressional attempts at enshrining legal fetal personhood into law in the U.S. include six versions of the “Sanctity of Life” Act and two versions of the “Life at Conception Act.” Heipt & Littell, *supra* note 4, at 313-15.

¹⁹ Life at Conception Act, H.R. 722, 119th Cong. (2025).

²⁰ Ronald Reagan, *Proclamation No. 5147 - National Sanctity of Human Life Day, 1984*, RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM (Jan. 13, 1984), <https://www.reaganlibrary.gov/archives/speech/proclamation-5147-national-sanctity-human-life-day-1984> [https://perma.cc/N8YN-V3K6].

²¹ In 2024, President Bush signed the ‘Unborn Victims of Violence Act,’ which made a fetus a separate crime victim. Unborn Victims of Violence Act, 18 U.S.C. § 1841; *President Bush Signs Unborn Victims of Violence Act of 2004*, THE WHITE HOUSE ARCHIVES (Apr. 1, 2004), <https://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040401-3.html> [https://perma.cc/85A9-7PCX]

fetal personhood in Executive Order (“EO”) 14168, issued in January 2025.²² Although the main thrust of this EO was to contend that there are only two unchangeable sexes, the EO also asserted that both male and female designations start at conception, incorporating the concept of legal fetal personhood.²³

In addition to the movements advancing legal fetal personhood at the federal level, the U.S. has also seen considerable momentum towards legal fetal personhood at the state level.²⁴ Although legal fetal personhood has been making incremental advances in U.S. states for decades, the *Dobbs* case was a watershed moment that significantly advanced the movement. These efforts have involved state level constitutions, criminal and civil laws, judicial rulings, prosecutorial interpretations, and legal codes.²⁵

Because state constitutions are the highest-level law in U.S. states, enshrining rights or prohibitions here have the greatest impact, and inserting legal fetal personhood in state constitutions is the goal of advocates.²⁶ Arkansas was the first U.S. state to amend its state constitution in favor of legal fetal personhood.²⁷ In 1988, Arkansas voters passed a constitutional amendment, which stated that, “the policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.”²⁸ In 2018, voters in Alabama also passed a constitutional amendment on legal fetal personhood.²⁹ Post-*Dobbs*, this movement to enshrine legal fetal personhood in state-level constitutions has

(noting that there are “two” victims). President Bush also weighed in on stem cell research, detailed below in Section III.D.1, because of legal fetal personhood concerns.

²² Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

²³ Carter Sherman, *Trump’s Executive Order on Gender uses Language Pointing to ‘Fetal Personhood,’* THE GUARDIAN (Jan. 23, 2025, at 07:29 ET), <https://www.theguardian.com/us-news/2025/jan/23/trump-executive-order-fetal-personhood> [<https://perma.cc/XAF6-ULLZ>].

²⁴ This article focuses on a comparative legal analysis of the fetal personhood movement at the federal and state levels in the U.S., but we note that smaller subnational entities have also made attempts to advance legal fetal personhood. See, e.g., Laura Hermer, *Municipal Abortion Bans: When Local Control Clashes with State Power*, 32 J. GENDER, SOC. POL’Y & L. 279 (2024) (detailing the strategy of enforcing limits on reproductive health care availability at the most local levels).

²⁵ See *id.*

²⁶ EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS*, Princeton Univ. Press (2013).

²⁷ In Arkansas, the state constitution can be amended if a simple majority of both houses of the legislature vote to put the amendment on a statewide ballot and a simple majority of voters then vote in favor, or by citizen initiated constitutional amendments. ARK. CONST., art. XIX, § 22 (1874).

²⁸ ARK. CONST. amend. 68, § 2 (1874); see *Knowlton v. Ward*, 889 S.W.2d 721, 726 (Ark. 1994) (holding that the 1988 Arkansas constitutional amendment was not self-executing).

²⁹ H.B. 98, 2017 Reg. Sess. (Ala. 2017). In Alabama, the state constitution can be amended if three-fifths of both houses of the legislature vote to put the amendment on a statewide ballot, and a simple majority of voters then vote in favor. ALA. CONST., art. XVIII, § 284. Almost four years later, this amendment became a significant part of the basis for the Alabama Supreme Court’s opinion in the IVF case discussed in Section III.B.1.

intensified.³⁰ Efforts in the 2024-2025 U.S. state legislative sessions include a failed Montana bill that would have amended their state constitution to define a person as existing from the moment of fertilization, regardless of its health or feasibility,³¹ and ongoing efforts in Missouri and Tennessee.³²

While state constitutional amendments may be the ultimate goal of those seeking to restrict abortion health care and enshrine legal fetal personhood, other state-level laws, particularly in the criminal context, have also been used to forward the agenda of legal fetal personhood proponents.³³ This generally begins by targeting pregnant individuals with substance use disorders and often expands to target medical professionals.³⁴ And while criminal law is usually the first step in normalizing legal fetal personhood at the state level, efforts almost always include other legal avenues as well.³⁵

Internationally, legal fetal personhood advocates have also attempted to advance their agenda through national-level constitutional amendments, legislative reforms, and judicial decisions.³⁶ However, decision-makers in

³⁰ Other U.S. states also considered state constitutional amendments recognizing legal fetal personhood pre-*Dobbs*. In some, they were defeated by voters, for example, North Dakota (S. Res. No. 4009 (N.D. 2014)); Mississippi (Mississippi Secretary of State Office, *Initiative #26 Definition of 'Person'* (2011)); Colorado (*Amendment 62*, PERSONHOOD COLO. (last visited Nov. 15, 2025)). And in some they did not make it to the polls, for example, Florida (2012), Nevada (2010) and South Carolina (2016). *Fetal Personhood Law in the United States*, LEGAL VOICE, <https://legalvoice.org/legal-fetal-personhood-timeline/> [<https://perma.cc/655F-K543>] (last visited June 12, 2025).

³¹ H.B. 316, 69th Leg., Reg. Sess. (Mont. 2025), <https://www.billtrack50.com/billdetail/1750069> [<https://perma.cc/524S-T5MF>]. Although the bill passed both chambers it did not garner the required two-thirds majority necessary to further advance. *How the 2025 Legislature Answered Montana's Big Policy Questions*, MONT. FREE PRESS (May 2, 2025), <https://montanafreepress.org/2025/05/02/how-the-2025-legislature-answered-montanas-big-policy-questions/> [<https://perma.cc/4KBV-M86V>].

³² Note that the proposed Missouri bill specifies that the entity at issue is “in utero,” addressing an issue raised by assisted reproductive technologies. See Section III.C.1; see also S.J. Res. 8, 103rd Gen. Assemb., Reg. Sess. (Mo. 2025), <https://legiscan.com/MO/text/SJR8/id/3030902/Missouri-2025-SJR8-Introduced.pdf> [<https://perma.cc/6NJJ-9RKR>] (describing that the term person includes “every human being with a unique DNA code regardless of age”); H.R.J. Res. 7, 115th Gen. Assemb. (Tenn. 2025), <https://www.capitol.tn.gov/Bills/114/Bill/HJR0007.pdf> [<https://perma.cc/K6L2-ENKL>] (outlining that the word person refers to “every human being from fertilization to natural death”).

³³ Johanna Hussain, *The Legal Consequences of the Fetal Personhood Movement*, CORN. J.L. & PUB. POL’Y, ISSUE SPOTTER (Mar. 4, 2025), <https://jpp.org/legal-consequences-of-the-fetal-personhood-movement/> [<https://perma.cc/2HTC-3463>]; see also Heipt & Littell, *supra* note 4 (“By incorporating language into abortion laws referring to fetuses as rights bearing individuals, lawmakers serve two ends: restricting access to abortions and endowing fetuses with personhood status from the moment of conception”).

³⁴ Mridula S. Raman, *Prosecutorial Discretion and the Crime of Abortion*, 43 YALE L. & POL’Y REV. 171, 219-20 (2024) (examining the expanding role of prosecutors in using existing criminal and fetal personhood laws).

³⁵ Heipt, *EMTALA in a Post-Dobbs World*, *supra* note 17, at 402.

³⁶ *Whose Right to Life? Women’s Rights and Prenatal Protections Under Human Rights and Comparative Law*, CTR. FOR REPROD. RTS. (2014), https://reproductiverights.org/wp-content/uploads/2020/12/GLP_RTL_ENG_Updated_8-14_Web.pdf [<https://perma.cc/6A8D-C9BN>].

other countries have largely rejected such efforts.³⁷ Below, we recount several of these attempts.

Relatively few constitutions worldwide currently include explicit references to prenatal life.³⁸ An analysis of 195 constitutions by the O'Neill Institute for National and Global Health found that only 26 include the terms "unborn,"³⁹ "conception,"⁴⁰ "before birth,"⁴¹ "prenatal,"⁴² "born,"⁴³ and "embryo."⁴⁴ Additionally, some nations that once had these specific references in their constitutions no longer do. For example, Ireland rolled back constitutional references to prenatal life in the context of abortion decriminalization.⁴⁵ And even in countries where constitutional references to prenatal life remain, court decisions in those countries have largely limited their impact. This is particularly true where high courts have looked at regulations around assisted reproductive technologies or reproductive health care services.⁴⁶

Legislatively, while many countries, like the United States, have seen an uptick in the number of bills introduced or referenda initiated attempting to

³⁷ *Id.*

³⁸ Ireland was the first country to explicitly protect the right to life of the fetus in its constitution in 1983. Fiona de Londras, *Constitutionalizing Fetal Rights: A Salutary Tale from Ireland*, 22 MICH. J. GENDER & L. 243 (2015).

³⁹ Eleven countries use the term "unborn," these are: Gambia, Honduras, Jamaica, México, The Netherlands, Norway, Peru, The Philippines, Uganda, Zambia, and Zimbabwe. CONSTITUTE PROJECT, "Unborn", 12 results, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "unborn" in the keyword search) [https://perma.cc/7TV8-BEPX]; Zachary Elkins et al., *Constitute: The World's Constitutions to Read, Search, and Compare*, 27-28 J. WEB SEMANTICS 10 (2014).

⁴⁰ Eleven countries use the term "conception," these are: Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Guatemala, Hungary, Kenya, Madagascar, Paraguay, Philippines, and Venezuela. CONSTITUTE PROJECT, "Conception", 40 results, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "conception" in the keyword search) [https://perma.cc/7TV8-BEPX]; Elkins, *supra* note 39.

⁴¹ Two countries, the Czech Republic and Slovakia, use the term "before birth." CONSTITUTE PROJECT, "Before Birth", 3 results, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "before birth" in the keyword search) [https://perma.cc/7TV8-BEPX]; Elkins, *supra* note 39.

⁴² One country, Honduras, uses the term "prenatal," while other countries use "prenatal" in the context of prenatal care for women. CONSTITUTE PROJECT, "Prenatal", 5 results, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "prenatal" in the keyword search) [https://perma.cc/7TV8-BEPX]; Elkins, *supra* note 39.

⁴³ One country, Chile, uses the term "born," while other countries use "born" in the context of establishing rights for born children. CONSTITUTE PROJECT, "Born", 141 results, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "born" in the keyword search) [https://perma.cc/7TV8-BEPX]; Elkins, *supra* note 39.

⁴⁴ One country, Switzerland, uses the term "embryo." CONSTITUTE PROJECT, "Embryo", 1 result, <https://www.constituteproject.org/constitutions?lang=en> (follow link, select "search | topics | filters" and type in "embryo" in the keyword search) [https://perma.cc/7TV8-BEPX]; Elkins, *supra* note 39.

⁴⁵ Luke Field, *The Abortion Referendum of 2018 and a Timeline of Abortion Politics in Ireland to Date*, 33 IRISH POL. STUD. 608 (2018).

⁴⁶ See discussion *infra* Sections III.B.2 and III.C.2.

advance constitutional protections for prenatal life, the majority outside the United States have proven unsuccessful. In 2015, for example, Zambian lawmakers tried to include a clause stating that “the right to life begins at conception” in a proposed new Bill of Rights for the country’s constitution.⁴⁷ The referendum ultimately failed to pass.⁴⁸ Similarly, efforts by anti-abortion health care lawmakers throughout Latin America to pass bills seeking to establish explicit rights for prenatal life have seen little success. In 2023, for example, lawmakers introduced but ultimately failed to pass such legislation in both Chile⁴⁹ and in Colombia.⁵⁰

It is also uncommon for criminal and civil codes in other countries to contain provisions that advance legal fetal personhood. In fact, when the acquisition of legal personhood is mentioned at all in civil codes, it is to make clear that the attainment of full legal rights is contingent upon live birth. For example, Argentina’s Civil Code states that “[t]he rights and obligations of the conceived or implanted in the woman are irrevocably acquired if born alive. If not born alive, it is considered that the person never existed. Live birth is presumed.”⁵¹ Inserting legal fetal personhood into criminal codes has also seen limited success in other parts of the world. In Chile, the Constitutional Court relied upon its Civil Code’s approach to the accrual of legal rights being contingent upon birth in its ruling upholding the constitutionality of abortion under certain circumstances.⁵² The Court noted that its Civil Code “distinguishes between persons, those who must already be born from those who are not born yet, whom the Code calls “creature” [and] “unborn.”⁵³

Finally, other countries are increasingly recognizing the link between certain criminal code provisions ostensibly forwarded to help pregnant women and the advancement of legal fetal personhood. As one example, in the United Kingdom offenses such as “child destruction,” “procurement of a miscarriage,” and “concealment of birth,” were being used as proxies to prosecute women for pregnancy loss and self-managed abortions.⁵⁴ In

⁴⁷ Marte E.S. Haaland et al., *Shaping the Abortion Policy—Competing Discourses on the Zambian Termination of Pregnancy Act*, 18 INT’L J. EQUITY HEALTH 20 (2019).

⁴⁸ *Id.*

⁴⁹ *Consejo consagra protección de la vida de quien está por nacer*, PROCESO CONSTITUCIONAL (Sep. 20, 2023), <https://www.procesoconstitucional.cl/consejo-consagra-proteccion-de-la-vida-de-quien-esta-por-nacer/> [<https://perma.cc/YR2P-3KFX>].

⁵⁰ Proyecto de Acto Legislativo No. 06, (2 Aug. 2023) (Colom.).

⁵¹ Código Civil y Comercial de la Nación [Civil and Commercial Code of the Nation], art. 21 (Arg.).

⁵² Tribunal Constitucional de Chile [T.C.], STC Rol N° 3729(3751)-17 CPT (Arg.), *translated by* INT’L REPROD. & SEXUAL HEALTH L. PROGRAM U. TORO. (Mar. 23, 2018).

⁵³ “[T]hose who are born are called persons. And those who are about to be born, creatures. And if they have not existed, they are never considered persons.” *Id.* at 51.

⁵⁴ Emma Milne, *Putting The Fetus First—Legal Regulation, Motherhood, and Pregnancy*, 27 MICH. J. GENDER & L. 149, 155 (2020).

response, in June 2025, the United Kingdom's House of Commons passed an amendment to clarify that "no offence is committed by a woman acting in relation to her own pregnancy."⁵⁵ In other words, even when legal fetal personhood proponents try to use existing laws to forward their agendas, other countries are taking proactive steps to ensure that existing legal provisions intended to protect people are not used to criminalize people for accessing reproductive health care. In fact, decriminalization advocates in the United Kingdom pointed to opposing pregnancy criminalization trends in the United States as part of their calls for this law reform.⁵⁶

III. LEGAL FETAL PERSONHOOD IN SPECIFIC AREAS OF REPRODUCTIVE JUSTICE LAW

It is instructive to overlay the legal strategies through which legal fetal personhood proponents and opponents attempt to advance their agendas within specific areas of reproductive justice. Below, we examine the ways in which advocates have used various strategies to insert or resist inserting legal fetal personhood into particular areas of law in the United States and in other regions of the world. Specifically, we look herein at abortion health care, assisted reproductive technologies, contraception, and stem cell research, in and out of the United States.

A. In Abortion Health Care

The relationship between opponents of abortion health care and proponents of legal fetal personhood is a deep one: while abortion opponents are not always legal fetal personhood proponents, proponents of legal fetal personhood often see the criminalization of abortion health care as the first step towards their overall goal.⁵⁷ Over time, legal fetal personhood supporters in the United States have advocated for more extreme anti-abortion laws that provide fewer exceptions and harsher penalties to more actors. Worldwide, conversely, countries are moving towards greater decriminalization of abortion. In the past 30 years, legislatures and high courts in at least 60 countries have liberalized their abortion laws, in some cases striking down or narrowing the scope of constitutional protections

⁵⁵ CRIME AND POLICING BILL, AS AMENDED, H.C. Bill [Amendment Paper], Report Stage (3 June 2025) (U.K.), https://publications.parliament.uk/pa/bills/cbill/59-01/0235/amend/crime_policing_rm_rep_0603.pdf [<https://perma.cc/WT8D-W2GF>].

⁵⁶ Milne, *supra* note 54; see also Emma Milne, *Foetal Protection Laws: Paving the Way for the Criminalisation of Abortion*, FEMINISTS@LAW Vol.11, No. 2 (2022).

⁵⁷ Jeff Amy, *Explainer: What's the Role of Personhood in Abortion Debate?*, AP NEWS (July 30, 2022, at 13:51 ET), <https://apnews.com/article/abortion-us-supreme-court-health-government-and-politics-constitutions-93c27f3132ecc78e913120fe4d6c0977> [<https://perma.cc/YE74-4PZU>].

afforded prenatal life in the process.⁵⁸ Below we provide an overview of how legal fetal personhood has worked with and influenced abortion health care in the United States and abroad.

I. U.S.A.

The *Dobbs* decision opened the door to a new era of abortion restrictions, increasingly tied to legal fetal personhood, in the United States.⁵⁹ In fact, twenty-seven U.S. states use the language of fetal personhood in their anti-abortion statutes.⁶⁰ The abortion restrictions in nineteen of these states would have been illegal before *Dobbs*.⁶¹ These ever-more extreme measures exemplify the growing influence and impact of legal fetal personhood proponents in this country.

There are multiple ways legal fetal personhood is now present in state-level U.S. anti-abortion health care restrictions. For example, some U.S. states have abortion bans that take effect at fertilization, effectively assigning personhood to a fertilized egg and ending all abortions in the state.⁶² Oklahoma was the first state to successfully ban abortion from the moment of fertilization post-*Dobbs*.⁶³ Since then, both Texas and Tennessee have adopted laws outlawing most abortions during a woman's pregnancy, and pregnancy is defined as beginning at fertilization.⁶⁴ South Dakota's anti-abortion law refers to the fetus as a human being from the moment of fertilization.⁶⁵

Once a fetus has been designated a legal person in abortion statutes, that not only effectively ends abortion health care, including in cases of rape, incest, and where there are serious maternal or fetal health concerns, it also

⁵⁸ Katy Mayall et al., *Global Progress in Abortion Law Reform: A Comparative Legal Analysis Since the International Conference on Population and Development (1994–2023)*, 33 SEX & REPROD. HEALTH MATTERS 2499324 (Dec. 2024).

⁵⁹ Ivette Gomez et al., *10 Things to Know About Abortion Access Since the Dobbs Decision*, KFF (June 20, 2024), <https://www.kff.org/womens-health-policy/10-things-to-know-about-abortion-access-since-the-dobbs-decision/> [https://perma.cc/4B3N-HTT6].

⁶⁰ Katherine Fleming & Emma Roth, *When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, PREGNANCY JUST. (Aug. 17, 2022), <https://www.pregnancyjusticeus.org/resources/when-fetuses-gain-personhood-understanding-the-impact-on-ivf-contraception-medical-treatment-criminal-law-child-support-and-beyond/> [https://perma.cc/86PD-R8PK].

⁶¹ Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Laws Across the Country*, N.Y. TIMES (Mar. 9, 2026, at 07:20 ET), <https://www.nytimes.com/interactive/2025/us/abortion-laws-tracker.html> [https://perma.cc/P9AB-LWER].

⁶² Fleming & Roth, *supra* note 60.

⁶³ 63 OKLA. STAT. § 1-731.4 (2022).

⁶⁴ TEX. HEALTH & SAFETY CODE ANN. § 170A.001 (West 2022); TENN. CODE ANN. § 39-15-211 (2024).

⁶⁵ S.D. CODIFIED LAWS § 34-23A (2022).

impacts every other decision made during pregnancy.⁶⁶ One example occurred recently in Ohio, with the introduction of the “Prenatal Equal Protection Act” in their legislature.⁶⁷ This proposal states that it seeks to provide human beings, from fertilization, all the legal protections ‘mandated’ by the 14th Amendment to the U.S. Constitution, including the imposition of homicide charges against anyone denying these fetuses their full legal rights.⁶⁸ Not only could this impact certain assisted reproductive technologies,⁶⁹ it would also make medical practitioners and their patients criminally liable, even in cases of fetal anomalies, rape, or incest.⁷⁰ This Ohio bill, while extreme, follows naturally on the heels of seven other 2025 state efforts that sought to allow homicide charges to be brought against individuals who had or were suspected of having abortions, on the premise that they terminated the life of another fully rights-bearing human being.⁷¹

Should any of these bills become law, the implications for pregnant people would be profound. As just one example, any one of these laws would likely end the use of mifepristone (RU-486) in the state.⁷² Mifepristone is a medication used to manage miscarriages and to induce an abortion.⁷³ When

⁶⁶ Katherine Long, *The Future of the Fetal Personhood Movement*, POLITICO (April 25, 2025, at 11:08 ET), <https://www.politico.com/newsletters/women-rule/2025/04/25/the-future-of-the-fetal-personhood-movement-00309299> [https://perma.cc/CEG4-2S55].

⁶⁷ Ohio Prenatal Equal Protection Act, H.B. 370, 136th Gen. Assemb., Reg. Sess. (Ohio 2025-2026), https://search-prod.lis.state.oh.us/api/v2/general_assembly_136/legislation/hb370/00_IN/pdf/ [https://perma.cc/M4LT-2X6Q].

⁶⁸ *Id.* at (C), (D).

⁶⁹ See *infra* Section III.B.1.

⁷⁰ Giacomo Luca, *Ohio lawmakers propose near-total abortion ban, reigniting debate*, WLWT5 (June 20, 2025, at 08:25 ET), <https://www.wlwt.com/article/ohio-lawmakers-propose-near-total-abortion-ban-debate/65121256> [https://perma.cc/S2DC-5VUX]. It is worth noting that this legislation was introduced in spite of the fact that in 2023 Ohio voters approved a constitutional amendment protecting a subset of abortion rights, an additional indication that the country is moving towards greater recognition of legal fetal personhood despite any voter and polling preference. See, e.g., Alicia Bannon, *Three Years after Dobbs, State Courts Are Defining the Future of Abortion*, STATE CT. REP. (June 5, 2025), <https://statecourtreport.org/our-work/analysis-opinion/three-years-after-dobbs-state-courts-are-defining-future-abortion> [https://perma.cc/XM65-LFLE].

⁷¹ The Idaho bill was introduced in February 2025 but did not pass. Idaho Prenatal Equal Protection Act, S.B. 1059, 68th Leg., 1st Reg. Sess. (Idaho 2025). The Indiana bill is currently in committee. H.B. 1334, 2025 Sess. (Ind. 2025). The North Dakota bill did not pass. H.B. 1373, 69th Leg. Assemb. (N.D. 2025). The Oklahoma bill failed to pass. The Abolition of Abortion Act, S.B. 456, 60th Leg., 1st Sess. (Okla. 2025). The South Carolina bill is still under consideration. South Carolina Prenatal Equal Protection Act, H.B. 3537, 126th Sess. (S.C. 2025-2026). The Texas bill did not pass. Tx. HB 2197, Relating to the protection of an unborn child’s rights and criminal liability and justification for prohibited conduct (2025-2026). The Kentucky bill is still under legislative review. Ky. House bill 523, AN ACT relating to unborn children (2025).

⁷² Melissa Gira Grant, *Republicans Can—and Will—Keep Trying to Ban Mifepristone*, THE NEW REPUBLIC (June 14, 2024), <https://newrepublic.com/article/182683/republicans-canand-willkeep-trying-ban-mifepristone> [https://perma.cc/JWV2-JGV6].

⁷³ Kristyn Brandi, *What to Know About Abortion and Miscarriages With or Without Mifepristone*, ACOG (Feb. 2025), <https://www.acog.org/womens-health/experts-and-stories/the-latest/what-to-know->

used in abortion health care, mifepristone works by blocking the hormone progesterone, which is necessary to sustain a pregnancy.⁷⁴ This causes the uterine lining to break down, ending the pregnancy.⁷⁵ It is typically followed by misoprostol, which causes contractions to expel the pregnancy tissue.⁷⁶

While always a target of the anti-abortion health care movement, the use of mifepristone in the United States has been under direct attack using a fetal personhood lens since the *Dobbs* opinion.⁷⁷ As one example, in the Texas lawsuit seeking to restrict or ban the use of mifepristone, the federal district court employed the language of the legal fetal personhood movement, referring to the fetus, at any stage, as an “unborn child,” and “unborn human.”⁷⁸ Louisiana provides another example.⁷⁹ Here, legislators passed a 2024 law that classified mifepristone and misoprostol as ‘controlled substances,’ a redesignation designed to make the drug less available and protect ‘unborn human beings.’⁸⁰ In fact, the assumption that mifepristone is

about-abortion-and-miscarriages-with-or-without-mifepristone [https://perma.cc/N3RR-DSWL] (last visited June 25, 2025).

⁷⁴ U.S. Food and Drug Administration, *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation* (Feb. 11, 2025), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation> [https://perma.cc/VNQ7-ZY69].

⁷⁵ Brandi, *supra* note 73.

⁷⁶ *The Availability and Use of Medication Abortion*, KFF (Mar. 20, 2025), <https://www.kff.org/womens-health-policy/the-availability-and-use-of-medication-abortion/> [https://perma.cc/H76D-GKYV].

⁷⁷ *Missouri v. FDA*, No. 2:22-cv-00223 at 4 (N.D. Tex. Oct. 11, 2024) (After the U.S. Supreme Court dismissed *Alliance for Hippocratic Medicine v. FDA*, three state AGs filed suit to challenge the FDA’s regulations on mifepristone); see Mifepristone Related Litigation, EMAA PROJECT (Oct. 13, 2025), https://emaaproject.org/wp-content/uploads/2025/10/EMAA-_-Mifepristone-Court-Cases-Updated-07.28.25-1.pdf [https://perma.cc/4KQC-WXJZ] (Note that there are also multiple lawsuits seeking to counter the efforts to restrict or ban the drug).

⁷⁸ Chloe Atkins & Daniel Arkin, *Judge’s Abortion Pill Decision Embraces Extreme Language and Ideology of Anti-Abortion Movement, Experts Say*, NBC NEWS (Apr. 10, 2023, at 18:04 ET) <https://www.nbcnews.com/news/us-news/abortion-pill-ruling-analysis-anti-abortion-terms-ideology-rcna78937> [https://perma.cc/8CLV-LKTG] (also noting use of the term ‘chemical abortion’).

⁷⁹ Birthmark Doula Collective, LLC v. State of Louisiana, Case No. C-755217 (19th Jud. Dist. Ct. 2024). We note that in the U.S. an 1873 law, the Comstock Act, also presents a threat to abortion health care under a legal fetal personhood lens. 18 U.S.C. §§ 1461, 1462 (1996). After the *Dobbs* decision, a number of U.S. politicians have opined that the Comstock Act could work to protect the lives of unborn babies from abortions. See, e.g., Letter from Congressional Republicans to Attorney General Merrick B. Garland (Jan. 25, 2023), <https://www.documentcloud.org/documents/24834197-20230123-letter-on-comstock-to-doj/> [https://perma.cc/Q5SU-238J] (“The OLC memo only serves to further the deeply troubling proliferation of illegal mail order abortion drug trafficking operations that operate both openly and covertly and endanger the lives of pregnant moms and their preborn babies”).

⁸⁰ A challenge seeking to enjoin Act 246 has been filed and is currently active. See Birthmark Doula Collective, LLC v. State of Louisiana, Case No. C-755217 (19th Jud. Dist. Ct. 2024) (challenging the rescheduling of Mifepristone & Misoprostol as Schedule IV drugs by the Louisiana legislature). Note that other U.S. states are already seeking to follow Louisiana’s example; in 2025, Idaho legislators introduced

an abortifacient used to kill a human being with full legal rights is a particular threat in all U.S. states that are embracing legal fetal personhood.⁸¹ Because of this threat and the uncertainty in the U.S. around both lawsuits and prosecutorial discretion, some medical providers have already reacted by ceasing to offer medication abortions.⁸²

2. *Internationally*

While the United States is seeing an overall diminishment in the availability of abortion health care, and the increase of abortion restrictions tied to legal fetal personhood language, the trend worldwide is opposite.⁸³ First, abortion health care is increasingly available world-wide.⁸⁴ And legal fetal personhood advocates outside the U.S. have seen relatively little success in their attempts to link abortion restrictions that do exist to legal fetal personhood.⁸⁵

In numerous countries around the world, decision-makers from various branches of government have rejected efforts to integrate legal fetal personhood concepts into the regulation of abortion health care. This includes legislatures voting against bills that would add legal fetal personhood language to abortion laws. As one example, in the wake of Argentina's decriminalization of abortion health care through the fourteenth week of pregnancy in 2020, the legislature rejected Fetal Heartbeat Protection Bills in both 2021 and 2023.⁸⁶ These bills would have added a

House Bill 137, which, had it passed, would have also classified Mifepristone and Misoprostol as Schedule IV controlled substances. H.B. 137, 68th Leg., Reg. Sess. (Idaho 2025) (as proposed).

⁸¹ See discussion herein of Georgia's LIFE Act, which provides a particular example, but this is also a threat in other states. H.B. 481, 2019 Gen. Assemb., Reg. Sess. (Ga. 2019). For example, should Ohio's proposed *Prenatal Equal Protection Act* become law, even pregnant people carrying fetuses with fatal anomalies could be liable for killing another human being. H.B. 370, 136 Gen. Assemb., Reg. Sess. (Ohio 2025) (as introduced).

⁸² Eyal Press, *The Problem with Planned Parenthood*, THE NEW YORKER (May 8, 2023) <https://www.newyorker.com/magazine/2023/05/15/the-problem-with-planned-parenthood> [<https://perma.cc/X83T-KHQT>] (noting that MT Planned Parenthood temporarily stopped offering medication abortions because of legal concerns).

⁸³ This section provides an overview of the authors' research on worldwide legal fetal personhood trends. A longer paper explaining that research in more detail is forthcoming from the O'Neill Institute in 2026.

⁸⁴ *The World's Abortion Laws*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/world-abortion-laws/> [<https://perma.cc/FE3F-VJWJ>] (last visited Aug. 6, 2025).

⁸⁵ Katy Mayall, Laurence Ajayi & Caitlin Gruer, *supra* note 58, at 1. As explained herein, while the international trend is in opposition to the U.S., a few countries also reference legal fetal personhood in abortion health care. This includes Kenya's 2010 constitutional right to life protection under Article 26 and Hungary's 1992 abortion law. CONSTITUTION art. 26 (2010) (Kenya); évi LXXIX. törvény a magzati élet védelméről (Act LXXIX of 1992 on the protection of fetal life) (Hung.).

⁸⁶ Ley No. 4711-D-2021, 2021, Detección del Latido Cardíaco Fetal (Arg.) [Law No. 4711-D-2021, 2021, Detection of Fetal Heartbeat (Arg.)],

legal fetal personhood aspect to the country's abortion laws, by requiring health care providers to perform an ultrasound to determine whether there was fetal cardiac activity before terminating a pregnancy.⁸⁷ Similarly, in 2024, legislators in Argentina also voted down a bill introduced by anti-abortion health care legislators that sought to repeal the country's abortion law based on arguments that life begins at fertilization.⁸⁸ In Brazil, legislators voted against a bill that would have treated abortions performed after 22 weeks of pregnancy as homicides, even in cases of rape, based on the notion that a fetus is a person for the purposes of criminal law.⁸⁹ Ecuador's legislature also rejected a bill titled "Harmonization of the Protection of the Right to Life from Conception with the Decriminalization of Abortion in Cases of Rape."⁹⁰ Had it passed, this bill would have formally integrated the right to life from conception as part of the country's regulation of abortion provision in rape cases.⁹¹

In addition to rejecting additions to abortion restrictions that attempt to slyly advance legal fetal personhood, movements to decriminalize abortion health care have even led some nations to explicitly reject prenatal fetal personhood. For example, between 1983 and 2018, the Irish constitution contained a provision that afforded a certain level of protection to the "unborn."⁹² In order to enable the legislature to decriminalize abortion health care, two-thirds of Ireland's voters elected to repeal this provision.⁹³ Based

<https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2021/PDF2021/TP2021/4711-D-2021.pdf> [https://perma.cc/9GQR-JJPR]; Ley No. 729-D-2023, 2023, Detección del Latido Cardíaco Fetal (Arg.) [Law No. 729-D-2023, 2023, Detection of Fetal Heartbeat (Arg.)], <https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2023/PDF2023/TP2023/0729-D-2023.pdf> [https://perma.cc/2D75-MTBY].

⁸⁷ Law No. 4711-D-2021 (Arg.); Law No. 729-D-2023 (Arg.).

⁸⁸ Ley No. 5172-D-2023, Derogación de la Ley 27.610 (IVE) (5 Feb. 2024) (Arg.) [Law No. 5172-D-2023, 2024, Repeal of Law 27.610 (Arg.)], <https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2023/PDF2023/TP2023/5172-D-2023.pdf> [https://perma.cc/9J22-PNXG].

⁸⁹ Lei No. 1904/2024 (Braz.) [Law No.1904/2024 (Braz.)], <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2434493> [https://perma.cc/VM5D-AR2Q].

⁹⁰ Proyecto de Ley Orgánica para la Armonización de la Protección a la Vida Humana desde la Concepción con la Despenalización del Aborto Consentido en Caso de Violación [Organic Bill for Harmonizing the Protection of Human Life from Conception with the Decriminalization of Consented Abortion in Cases of Rape], Proyecto de Ley Orgánica, Asamblea Nacional, presentación 25 de octubre 2021 (cód. AN-2021-2137 / AN-VCRX-2021-0027-M). (Ecuador).

⁹¹ The bill's goal was to "ratify and specify the international and constitutional state to protect the right to life from conception." *Id.* at Art. 1.

⁹² "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right." CONSTITUTION OF IRELAND 1937 amend. 8 (1983) <https://www.irishstatutebook.ie/eli/1983/ca/8/enacted/en/print.html> [https://perma.cc/3D5R-U34S].

⁹³ See Referendum on the Thirty-sixth Amendment of the Constitution Bill 2018 - regulation of termination of pregnancy (2018) (Ir.), <https://www.referendum.ie/archive/referendum-on-the-regulation->

on this rejection of legal fetal personhood, Ireland's parliament was able to adopt legislation legalizing abortion, up to twelve weeks, later that year.⁹⁴ A similar rejection occurred in Mexico. Here, after one Mexican state decriminalized abortion health care through week twelve of pregnancy,⁹⁵ anti-abortion health care proponents in other states began trying to block similar attempts by protecting the "right to life from conception" in state constitutions.⁹⁶ These constitutional amendments were challenged, and in 2021 the federal Supreme Court ruled that the state could not extend constitutional protection of the right to life to embryos and fetuses.⁹⁷ In its decision, the Court stressed that there was no constitutional or international obligation to protect life from conception.⁹⁸

High courts in other countries have also considered, and largely dismissed, constitutional challenges to abortion laws that are grounded in legal fetal personhood arguments. In South Africa, for example, a high court

of-termination-of-pregnancy-thirty-sixth-amendment-of-the-constitution-bill-2018/
[<https://perma.cc/WQE9-8JWK>] (showing the votes in favor of the proposal and the language replacing the subsection stating, "[p]rovision may be made by law for the regulation of termination of pregnancy").

⁹⁴ Health (Regulation of Termination of Pregnancy) Act 2018, (Act No. 31/2018) (Ir.), <https://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/pdf> [<https://perma.cc/UZB3-X5JJ>].

⁹⁵ Asamblea Legislativa Del Distrito Federal, IV Legislatura, Diario De Los Debates, Segundo Periodo Ordinario De Sesiones Del Primer Año De Ejercicio, [Legislative Assembly of the Federal District, IV Legislature, Diary of Debates, Second Regular Sessions Period of the First Year of Exercise, Minutes of the Ordinary Session] 1, 11 (2007) (Mex.), <https://web.archive.org/web/20230308100012/https://aldf.gob.mx/archivo-758210fce6f5232bc6f068dfc58dd9bb.pdf> [<https://perma.cc/3AZY-BZ5P>].

⁹⁶ The following states amended their constitutions to protect life from conception: Baja California and Morelos (2008); Colima, Sonora, Quintana Roo, Guanajuato, Puebla, Nayarit, Jalisco, Yucatán, San Luis Potosí, and Querétaro (2009); Chiapas and Tamaulipas (2010); Durango (2013); Oaxaca (2015); Veracruz (2016); Sinaloa (2018); Nuevo León (2019); and Aguascalientes and Colima (2021). Caroline Beer, *Abortion Policy in Mexico: A Changing Role for the Supreme Court*, 30 SW. J. INT'L L. 452, 461-62 (2024).

⁹⁷ As part of its analysis, Mexico's Supreme Court stressed that it is impossible for "courts and legislatures to normatively and legally determine the beginning of human life—a dilemma for which there is no scientific, moral, or religious consensus," and declined to impose a specific set of beliefs on others who do not share them. Acción de inconstitucionalidad [Action of unconstitutionality] 106/2018 y su acumulada [and its accumulated] 107/2018 [AI 106/208 y 107/2018], Pleno de la Suprema Corte de Justicia de la Nación [SCJN], [Plenary Session of the Supreme Court of Justice of the Nation] Septiembre de 2021, ¶¶ 31, 34 (Mex.); Note that the issue had first come before the court several times in 2011, in those cases they fell one vote short of ruling the protection unconstitutional. Acción de Inconstitucionalidad [Action of unconstitutionality] 11/2009 [AI 11/2009], Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Plenary Session of the Supreme Court of Justice of the Nation], Septiembre de 2011 (Méx.); Acción de Inconstitucionalidad [Action of unconstitutionality] 62/2009 [AI 62/2009], Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Plenary Session of the Supreme Court of Justice of the Nation], Septiembre de 2011 (Méx.).

⁹⁸ A more in-depth analysis of the Mexico Supreme Court's decision will be featured in a forthcoming article. See *infra* Section III.B and note 104.

found that the constitution's right to life⁹⁹ does not extend to prenatal life and upheld its decriminalization of abortion through the twelfth week of pregnancy as constitutional.¹⁰⁰ In fact, even in cases where a country's constitution explicitly affords some level of protection to prenatal life, high courts have nonetheless upheld the constitutionality of abortion decriminalization.¹⁰¹ In Chile, although the constitution holds that "[t]he law protects the life of the one about to be born," the country's highest court held that abortion health care was constitutional in cases of risks to pregnant woman's life, fatal fetal unviability, and pregnancies resulting from rape.¹⁰² Similarly, while the constitution of Slovakia holds that "[h]uman life is worthy of protection already before birth[.]" that country's high court found that abortion health care was protected through the twelfth week of pregnancy.¹⁰³ In short, the trend worldwide has been to dismiss assertions of legal fetal personhood in the realm of abortion health care allowances, and even in cases where some abortion restrictions exist.

B. In IVF

In a legal fetal personhood scheme, as soon as fertilization occurs, there is a "child" entitled to the full rights of any actually born individual, even if the fertilization takes place outside of the human body. This makes fetal personhood a threat to Assisted Reproductive Technologies ("ART") in general, and a particular threat to In Vitro Fertilization ("IVF"). Below, we explain what IVF is, how the push for legal fetal personhood in the United States threatens the procedure, and how other nations have resolved the issue.¹⁰⁴

The IVF process involves gathering a fertility history, administering medications, retrieving eggs, fertilizing those eggs, and then implanting

⁹⁹ Section 11 of the constitution states that "everyone has the right to life," and plaintiffs argued that the term "everyone" applies to an "unborn child" because life begins at conception. S. AFR. CONST., (1996), § 11.

¹⁰⁰ *Christian Lawyers' Ass'n v. Minister of Health* 1998 (11) BCLR 1434 (T) (S. Afr.), https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/south_africa_1998_christian_lawyer_s.pdf (on file with the WRLR).

¹⁰¹ T.C., *supra* note 52, at 79 (Chile); Act on Artificial Interruption of Pregnancy, Slovak Const. Ct. PL. ÚS 12/01-297, 9–11, https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/slovak_2007_decision_english_excerpts.pdf (last visited Sep. 13, 2024) (on file with the WRLR).

¹⁰² CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P] art. 19.

¹⁰³ *Slovakia* 1992 (rev. 2017), CONSTITUTE https://www.constituteproject.org/constitution/Slovakia_2017 [<https://perma.cc/UKU3-T6W6>]; Act on Artificial Interruption of Pregnancy, *supra* note 101.

¹⁰⁴ An abbreviated version of this subsection will appear in a forthcoming article by the authors. Rebecca B. Reingold, Wendy S. Heipt & Paulina Macías Ortega, *Fetal Personhood on the Global Stage: The United States as Outlier*, NYU HARBINGER (forthcoming 2026).

them.¹⁰⁵ This extended process exacts a physical and emotional toll on patients, but provides the hope of having a child with a genetic link to its parent(s).¹⁰⁶ The procedure can involve the creation and implantation of multiple embryos to increase the chances that at least one will develop into a pregnancy.¹⁰⁷ If a patient has a successful pregnancy, remaining embryos that meet storage criteria can be frozen for future use in one of two ways, at different developmental points.¹⁰⁸ The first IVF baby was born in 1978,¹⁰⁹ and to date, over 10 million IVF babies have been born around the world.¹¹⁰

Under legal fetal personhood, IVF faces threats in a variety of ways. Most obviously, destroying embryos could be tantamount to manslaughter.¹¹¹ But the destruction of embryos could also leave individuals and organizations open to charges of negligence or wrongful death.¹¹² Medical practitioners could face malpractice suits or professional licensing consequences, and embryos would have to be properly disposed of.¹¹³ In short, IVF would become prohibitively expensive or would cease to be a viable option.

¹⁰⁵ Kirsten Hennigan, *In Vitro Fertilization (IVF) Step-by-Step Guide From a Fertility Nurse*, ILLUME FERTILITY (Feb. 21, 2025), <https://www.illumefertility.com/fertility-blog/step-by-step-guide-to-ivf> [https://perma.cc/B4SD-WBJ5].

¹⁰⁶ *What are the Emotional Challenges of Fertility Treatments?*, REPROD. MED. & INFERTILITY ASSOC., <https://www.rmia.com/fertility-treatments/what-are-the-emotional-challenges-of-infertility-treatments/> [https://perma.cc/Q3SD-RSMN] (last visited May 19, 2025).

¹⁰⁷ When too many embryos develop, medical staff can perform a multifetal pregnancy reduction (“MFPR” or “selective reduction”) to reduce the number of developing fetuses. Regardless of the terminology, an MFPR is an abortion. Zhu Yimin et al., *Fetal Reduction Could Improve but Not Completely Reverse the Pregnancy Outcomes of Multiple Pregnancies: Experience from a Single Center*, 13 FRONT. ENDOCRINOL. (June 23, 2022).

¹⁰⁸ *ART: Step-by-Step Guide*, SOC’Y FOR ASSISTED REPROD. TECH., <https://www.sart.org/patients/a-patients-guide-to-assisted-reproductive-technology/general-information/art-step-by-step-guide/> [https://perma.cc/B9SQ-5RFF] (last visited Mar. 28, 2025).

¹⁰⁹ *The History of IVF: Origin and Developments of the 20th Century*, PAC. FERTILITY CTR. L.A. (July 25, 2022), <https://www.pfcla.com/blog/history-of-ivf> [https://perma.cc/2JTG-KH2L].

¹¹⁰ *In Vitro Fertilization (IVF)*, YALE MED., <https://www.yalemedicine.org/conditions/ivf> [https://perma.cc/D8SX-JQM8] (last visited June 9, 2025). Note that the medical innovations that led to the procedure go back an additional fifty years. *Id.*

¹¹¹ Jamie Smith, *After Alabama’s Ruling on IVF, What’s Next for the Rest of the U.S.?*, JOHNS HOPKINS UNIV.: HUB (Feb. 27, 2024), <https://hub.jhu.edu/2024/02/27/alabama-ivf-ruling/> [https://perma.cc/3JB4-2UCC].

¹¹² Bonnie Steinbock, *Fetal Personhood, IVF and the Negligent Loss of Embryos*, HASTINGS CTR. FOR BIOETHICS FORUM (Mar. 5, 2024), <https://www.thehastingscenter.org/fetal-personhood-ivf-and-the-negligent-loss-of-embryos/> [https://perma.cc/9Y4E-DPYH]. Some commentators have suggested a new tort, “reproductive negligence,” in the United States to address the loss of a frozen embryo while avoiding fetal personhood. *Id.*

¹¹³ Risa Cromer & Sophie Bjork-James, *Deploying Fetal Death: “Fetal Burial” Laws and the Necropolitics of Reproduction in Indiana*, 46 POLAR: POLIT. LEG. ANTHROPOL. REV. (May 16, 2023) (noting the push to individuate prebirth).

I. U.S.A.

In the United States, IVF is already an expensive process.¹¹⁴ Many states and insurance plans do not cover or fully cover the process itself, or the embryo storage fees.¹¹⁵ But despite the financial costs and the physical and emotional toll, IVF accounts for approximately 2% of births in the United States.¹¹⁶ Many of these patients create more embryos than immediately needed in order to lower costs and increase the chances for success, and those additional embryos sit in storage facilities. Approximates of the number of frozen embryos vary, with estimates between 400,000 and 1 million.¹¹⁷

Regardless of the exact number, the vast majority of the frozen embryos in the United States are being stored for future pregnancy attempts, with roughly 3% designated for research.¹¹⁸ While in theory this may amount to over 10,000 frozen embryos, the number of viable embryos is likely much lower, as the most viable specimens are the first ones implanted and the freezing and thawing process also leads to loss.¹¹⁹ While these test tubes certainly have value for the patients who created them, until 2024, most people in the United States did not realize that under a legal fetal personhood regime, these test tube embryos could be considered full rights-bearing “children” in the eyes of the law.

This realization came through *LePage*, a now infamous Alabama case.¹²⁰ This case involved three couples that, thanks to IVF treatments, were each able to have a child. All three had remaining embryos preserved in the Mobile Infirmary Medical Center. In 2020, a hospital patient entered the

¹¹⁴ *IVF in the USA – What’s on Offer and How Much Does it Cost?*, FERTILITY CLINICS ABROAD, <https://www.fertilityclinicsabroad.com/ivf-clinics-abroad/ivf-usa-offer-cost-availability/> [https://perma.cc/784P-3RNE] (last visited May 25, 2025).

¹¹⁵ See *Insurance Coverage by State*, RESOLVE, <https://resolve.org/learn/financial-resources/insurance-coverage/insurance-coverage-by-state/> [https://perma.cc/GGK5-A9U5] (last visited May 28, 2025) (explaining only 15 states have mandatory IVF insurance coverage).

¹¹⁶ Madeline Holcombe, *About 2% of Babies Born in the US are From IVF, Here’s What You Need to Know About it*, CNN (Feb. 21, 2024, at 13:01 ET), <https://www.cnn.com/2024/02/21/health/ivf-egg-freezing-explainer-wellness> [https://perma.cc/BUA9-G7UD].

¹¹⁷ Annalisa Merelli, *Embryo Loss is Integral to IVF. Alabama’s Ruling Equating Embryos with Children Jeopardizes its Practice*, STAT (Feb. 22, 2024), <https://www.statnews.com/2024/02/22/alabama-frozen-embryo-ruling-threatens-ivf-clinics/> [https://perma.cc/MS5L-SPRJ].

¹¹⁸ David I. Hoffman et al., *Cryopreserved Embryos in the United States and Their Availability for Research*, 79 FERTILITY & STERILITY 1063, 1066 (2003).

¹¹⁹ David I. Hoffman et al., *How Many Frozen Human Embryos are Available for Research*, RAND: RSCH. BRIEF (2003), https://www.rand.org/pubs/research_briefs/RB9038.html [https://perma.cc/Q56E-9CG6].

¹²⁰ *LePage v. Ctr. for Reprod. Med., P.C.*, 403 So. 3d 747 (Ala.), *reh’g denied* (2024), *cert. denied sub nom. Ctr. for Reprod. Med., P.C. v. Burdick-Aysenne*, 145 S. Ct. 280 (2024) [https://perma.cc/JNR2-LAUM].

unlocked facility and dropped the embryos, destroying them.¹²¹ The couples sued the hospital under Alabama's Wrongful Death of a Minor Act, claiming that their test tube embryos were minor children. In February 2024, the Alabama state supreme court upheld their claim, based on its conclusion that the embryos were actually "extrauterine children" and had to be legally treated the same as actual children.¹²²

Outside of Alabama, the decision in *LePage* was met with delight by dozens of U.S. based organizations, many of whom are affiliated with the current U.S. administration and the 2025 Presidential Transition Project, known as Project 2025.¹²³ These organizations have stated that they believe IVF is not "proper" or "biblical" procreation, that it unacceptably allows LGBTQ+ individuals to have children, and that it is comparable to eugenics.¹²⁴ While the widespread popularity of IVF in the United States has led many of the practice's detractors to try and find a workable solution, it is also true that many would like to abolish IVF entirely.¹²⁵

Across the nation, the *LePage* decision and the support it received from some quarters gravely worried IVF providers and users and frozen embryo storage facilities and transporters.¹²⁶ IVF advocates in the United States began forwarding legislation to try to protect IVF in particular and ART in general from legal fetal personhood problems.¹²⁷ In Alabama, legislators

¹²¹ Susan Lee et al., *Alabama IVF Clinics: Potential Implications of the LePage Case*, GOODWIN L.: ALERT (Feb. 23, 2024), <https://www.goodwinlaw.com/en/insights/publications/2024/02/alerts-lifesciences-hlhc-lepage-implications> [<https://perma.cc/M6RB-SJFH>]. That patient remains anonymous, although it has been reported that he was in-patient at an adjacent facility. *Id.*

¹²² Clare Ryan & Benjamin J. McMichael, *The Future of Frozen Embryos*, 78 SMU L. REV. 789, 806 (2025).

¹²³ See *The Mandate for Leadership: The Conservative Promise*, PROJECT 2025 PRESIDENTIAL TRANSITION PROJECT 454-55, <https://www.documentcloud.org/documents/24088042-project-2025s-mandate-for-leadership-the-conservative-promise> [<https://perma.cc/KND6-N46C>] (last visited Aug. 4, 2024). Organized by the Heritage Foundation, a conservative think tank, Project 2025 is an anti-choice blueprint for the current administration. *Id.*

¹²⁴ Sophie Lawton et al., *Inside Project 2025's Attack on Reproductive Rights; IVF*, MEDIA MATTERS FOR AM. (June 24, 2024, at 13:30 ET), <https://www.mediamatters.org/project-2025/inside-project-2025s-attack-reproductive-rights-ivf> [<https://perma.cc/K4YX-R43S>] (compiling the anti-IVF rhetoric of numerous partner organizations of Project 2025).

¹²⁵ Inge Oosterhoff, *IVF is Life-Changing for Infertile Families. But the Christian Right Says it's not in 'God's Plan'*, GUARDIAN (June 5, 2025, at 19:00 ET), <https://www.theguardian.com/us-news/ng-interactive/2025/jun/05/embryo-adoption-ivf-christian-right> [<https://perma.cc/2BKY-PHBH>].

¹²⁶ See *The Alabama Supreme Court's Ruling on Frozen Embryos*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Feb. 27, 2024), <https://publichealth.jhu.edu/2024/the-alabama-supreme-courts-ruling-on-frozen-embryos> [<https://perma.cc/9P7W-UUS9>].

¹²⁷ See, e.g., S.B. 159, 2024 Leg., Reg. Sess. (Ala. 2024), <https://legiscan.com/AL/text/SB159/id/2952994> [<https://perma.cc/27UR-UJEZ>] (Relating to in vitro fertilization; to provide civil and criminal immunity for death or damage to an embryo to any individual or entity when providing or receiving services related to in vitro fertilization; to provide criminal immunity and damage calculations for death or damage to an embryo against manufacturers of goods used to facilitate the in vitro fertilization process; and to provide retroactive effect).

moved quickly to pass a law that provided in-state facilities with some legal protections.¹²⁸ Other states attempted to follow suit, recognizing that the reasoning in *LePage* threatened all aspects of IVF.¹²⁹ Efforts to try and protect IVF ranged from trying to pass constitutional amendments that widely covered reproductive decisions, to laws meant to cover and protect infertility treatments specifically. The result is a patchwork of protection and coverage.¹³⁰

In the United States, courts as well as legislatures have been looking at the impact of the *LePage* decision and of legal fetal personhood on IVF. A few months after the Alabama Supreme Court's decision, the Texas Supreme Court was asked to similarly consider whether frozen embryos are considered persons under Texas law, but declined to do so.¹³¹ That case, *Antoun v. Antoun*, stemmed from the appeal of a trial court's decision to award a couple's frozen embryos to the husband following the couple's divorce, in accordance with what the couple had previously agreed to. Following the *Dobbs* decision, the wife alleged that the embryos should be treated as human beings rather than property.¹³² This microcosm of the larger debate played out in the state, with advocates of legal fetal personhood and

¹²⁸ *Id.* This law does not address the central holding of *LePage*, and at least one Alabama IVF facility has decided to close permanently because of liability concerns. Sara Moniuszko, *Alabama Hospital to Stop IVF Services at End of the Year Due to 'Litigation Concerns,'* CBS NEWS (Apr. 4, 2024), <https://www.cbsnews.com/news/alabama-hospital-to-stop-ivf-embryos-mobile-infirmary> [<https://perma.cc/K68W-BJJR>] (reporting that Mobile Infirmary Hospital announced it would end IVF services because the immunity statute did not eliminate liability risks). Of the remaining clinics, most are moving embryos out of the state, and one is destroying the embryos they have in storage in the wake of the *LePage* decision. Azeen Ghorayshi & Sarah Kliff, *I.V.F. Threats in Alabama Drive Clinics to Ship Out Embryos*, N.Y. TIMES (Aug. 12, 2024), <https://www.nytimes.com/2024/08/12/health/ivf-embryos-alabama.html> [<https://perma.cc/JH2C-4NE8>] (reporting that of the remaining clinics, most have begun shipping out or discarding embryos).

¹²⁹ See Megan Messerly, 'Scratching Their Heads': State Lawmakers Take a Closer Look at Personhood Laws in Wake of Alabama Ruling, POLITICO (Feb. 29, 2024), <https://www.politico.com/news/2024/02/29/states-fetus-personhood-alabama-ivf-00143973> [<https://perma.cc/65GM-EBWG>]; see also Donna M. Gitter, *Fertile Ground for Regulation: Preserving Pre-Implantation Genetic Testing Post-Dobbs While Protecting Consumers of Embryonic Testing*, 31 VA. J. SOC. POL'Y & LAW 300, 300-01 (2024) (discussing how pre-implantation genetic testing ("PGT") is often used in IVF to assess an embryo's genetic characteristics and as legal fetal personhood has made inroads in convincing people that test tubes can be 'people,' states are limiting the availability of this procedure, as any selective reduction in this context is raising red flags).

¹³⁰ For example, California's SB 729 will mandate large employer coverage of IVF. The law was set to go into effect the summer of 2025, but the Governor has requested an implementation delay which has yet to be decided. See Health Care Coverage: Treatment for Infertility and Fertility Services, Cal. S.B. 729 ch. 930 (2024).

¹³¹ See *Antoun v. Antoun*, No. 23-0727 (Tex. June 14, 2025), <https://statecourtreport.org/case-tracker/antoun-v-antoun> [<https://perma.cc/2GBP-GYAV>].

¹³² *Id.* (noting that the wife relied heavily on both *Dobbs* and a Texas Case, *Roman v. Roman*); see also *Roman v. Roman*, 193 S.W.3d 40 (Tex. App. 2006) (in *Roman*, the Texas Court of Appeals overturned a lower court's findings and upheld an embryo agreement dictating that a couple's frozen embryos would be discarded in the event of divorce).

opponents both pointing out the perils of the unknown and each arguing for a decisive ruling in their favor.¹³³ Because the Texas Supreme Court declined review, the question remains.¹³⁴ And as it now stands, IVF remains under a legal fetal personhood threat in the United States.

2. Internationally

Since the late 1970s, countries worldwide have heavily regulated IVF, though few of these regulations are based on legal fetal personhood considerations.¹³⁵ Common restrictions include prohibitions on who can access IVF and who can serve as an egg or sperm donor.¹³⁶ In fact, some courts have explicitly rejected legal fetal personhood arguments in upholding IVF restrictions.

As one example, the European Court of Human Rights has held that, in general, restrictions on IVF are permitted. But the Court has repeatedly declined to grant pre-implantation embryos legal personhood under the European Convention on Human Rights (the European Convention).¹³⁷ The Court has instead stressed that the European Convention does not extend the

¹³³ Brief of American Society for Reproductive Medicine as Amicus Curiae Supporting Respondents, *Antoun v. Antoun*, No. 21-5535-367 (Tex. 2024), <https://www.documentcloud.org/documents/24679867-antoun-v-antoun-ivf-case-brief-of-amicus-curiae-american-society-for-reproductive-medicine/> [https://perma.cc/G2SC-6FTB]; Molly Hennessy-Fiske, *Texas High Court Declines to Decide if Embryos are People or Property*, WASH. POST (June 14, 2024), <https://www.washingtonpost.com/nation/2024/06/14/ivf-texas-court-embryos-divorce/> [https://perma.cc/39KB-5KYA] (noting stance of Texas Right to Life) (on file with the WRLR).

¹³⁴ See Erin Sutton, *Texas Supreme Court Declines Opportunity to Hear Personhood Case*, EPSTEIN BECKER GREEN: HEALTH L. ADVISOR (June 18, 2024), <https://www.healthlawadvisor.com/texas-supreme-court-declines-opportunity-to-hear-personhood-case> [https://perma.cc/9W26-8WEF].

¹³⁵ See Margaret E.C. Ginoza & Rosario Isasi, *Regulating Preimplantation Genetic Testing Across the World: A Comparison of International Policy and Ethical Perspectives*, 10 COLD SPRING HARB. PERSP. MED. a036681 (2020) (explaining that PGT, discussed above, has also been subject to periodic bans in other countries, such as Austria, Germany, Italy and Switzerland).

¹³⁶ For example, some countries may prohibit single women, unmarried couples, or same-sex couples from accessing IVF altogether (e.g., France, Italy, Poland, Slovakia). Others prohibit the use of donor eggs (e.g., Germany) or both donor eggs and sperm (e.g., France) only allowing IVF to be performed using the intended parents' eggs and/or sperm. See C. Calhaz-Jorge et. al., *Survey on ART and IUI: legislation, regulation, funding and registries in European countries: The European IVF-monitoring Consortium (EIM) for the European Society of Human Reproduction and Embryology (ESHRE)*, 1 HUM. REPROD. OPEN (2020), <https://pubmed.ncbi.nlm.nih.gov/32042927/> [https://perma.cc/L6KE-6R54].

¹³⁷ See generally *ECHR Reform: The "Margin of Appreciation" Doctrine*, OPEN SOC'Y JUST. INITIATIVE (Apr. 2012), <https://www.justiceinitiative.org/uploads/918a3997-3d40-4936-884b-bf8562b9512b/echr-reform-margin-of-appreciation.pdf> [https://perma.cc/8GG8-AE9H] (explaining that the doctrine stands for the proposition that a member state is permitted a degree of discretion when it takes legislative, administrative or judicial action in the area of a Convention right); *S.H. v. Austria*, App. No. 57813/00 (Nov. 3, 2011), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-107325%22%7D> [https://perma.cc/4CDM-AVJN]; *Pavan v. Italy*, App. No. 78147/13 (Aug. 28, 2012), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-112993%22%7D> [https://perma.cc/2N7V-WRQE].

right to life to in vitro embryos and that “the concept of ‘child’” cannot be put in the same category as that of “embryo.”¹³⁸

To date, only one country outside the U.S. has banned IVF for a reason related to legal fetal personhood and that decision did not stand. In 1995, prenatal personhood advocates challenged a Costa Rican law regulating IVF, arguing that the destruction of embryos violated the constitution's right to life.¹³⁹ The Supreme Court's Constitutional Chamber ultimately ruled in their favor, resulting in an absolute prohibition of IVF in the country. Couples experiencing infertility then challenged this ban in a complaint before the Inter-American human rights system. In 2012, the Inter-American Court of Human Rights (IACtHR) found that Costa Rica's absolute protection of embryos' right to life failed to consider or balance conflicting rights and led to an arbitrary and excessive interference in prospective parents' rights to private and family life.¹⁴⁰ Notably, the IACtHR held that the question of when life begins can be evaluated from biological, medical, ethical, moral, philosophical, and religious perspectives and it is not a court's role to determine which theory should prevail.¹⁴¹ Based on this decision, the Costa Rican government overturned the ban. Thus, internationally, IVF has remained generally safe from direct legal fetal personhood challenges.

C. In Contraception

Medically, pregnancy does not begin until implantation.¹⁴² But under a legal fetal personhood scheme, the creation of a human being with full legal rights begins at conception.¹⁴³ Under this definition any action that disrupts

¹³⁸ Evans v. United Kingdom, App. No. 6339/05 (Apr. 10, 2007), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-80046%22%7D> [<https://perma.cc/JC7Z-DPJ7>]; Pavan v. Italy, App. No. 78147/13.

¹³⁹ Julieta Lemaitre & Rachel Sieder, *The Moderating Influence of International Courts on Social Movements: Evidence from the IVF Case Against Costa Rica*, 19 HEALTH & HUM. RTS. 149 (June 6, 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5473045/> [<https://perma.cc/FB7H-WVM7>]; see generally CONSTITUTION OF THE REPUBLIC OF COSTA RICA, (1949 (rev. 2011)), Art. 21 (providing that “[t]he human life is inviolable.”).

¹⁴⁰ Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica, Judgment, Inter-Am. Ct. H. R. (ser. C). No. 257, ¶¶ 277-284 (Nov. 28, 2012).

¹⁴¹ According to the IACtHR, giving precedence to a specific set of beliefs when interpreting the scope of the Convention's right to life is not permissible, as it would imply imposing them on others who do not share them. *Id.* at ¶ 185.

¹⁴² Rachel Benson Gold, *The Implications of Defining When a Woman is Pregnant*, 8 GUTTMACHER POL'Y REV. 2 (May 9, 2005), <https://www.guttmacher.org/gpr/2005/05/implications-defining-when-woman-pregnant> [<https://perma.cc/83PQ-WRUU>] (“Pregnancy is established when a fertilized egg has been implanted in the wall of a woman’s uterus.”).

¹⁴³ Currently, definitions of when pregnancy starts vary. In America, some states hold that pregnancy begins at fertilization, others at implantation. Several use “conception,” which is viewed as fertilization but, medically, is implantation. *Id.*

pregnancy or prevents implantation causes the killing of a human being.¹⁴⁴ This has significant consequences not only for abortion, but for contraception.¹⁴⁵

There are numerous contraceptive methods that would be at risk under a legal fetal personhood scheme. For example, intrauterine devices (IUDs) are small-sized T-shaped devices that are inserted into the uterus.¹⁴⁶ There are two main types of IUDs, copper and hormonal, and neither causes an abortion.¹⁴⁷ Hormonal IUDs essentially prevent pregnancy from beginning by blocking sperm movement and access.¹⁴⁸ Copper IUDs chiefly prevent pregnancy by creating a toxic environment for sperm.¹⁴⁹ Under legal fetal personhood, both types of IUDs are at risk.

Emergency contraception (EC) is another type of contraception that is not an abortifacient but would be at risk under a legal fetal person scheme.¹⁵⁰ EC works before implantation occurs, primarily by delaying or preventing ovulation.¹⁵¹ If a fertilized egg has already implanted, taking EC will not terminate a pregnancy.¹⁵² There are three main types of EC pills in addition to the copper IUD: 1) ulipristal (or “ella”), 2) progestin-only pills (such as “plan B”), and 3) combined EC pills.¹⁵³ Under a fetal personhood regime, all of these types of EC are at risk.

While legal fetal personhood poses the greatest risk to IUDs and EC, other contraceptive methods would also be in jeopardy. For example, “the

¹⁴⁴ *Are Unborn Babies Human?*, CHOICES, <https://choicesaz.com/are-unborn-babies-human/> [https://perma.cc/V6LB-7AUJ] (last visited June 22, 2025).

¹⁴⁵ Hussain, *supra* note 33.

¹⁴⁶ Emily L. Lanzola et al., *Intrauterine Placement and Removal*, STATPEARLS (Feb. 25, 2025), <https://www.ncbi.nlm.nih.gov/books/NBK557403/> [https://perma.cc/7E4R-K4UL].

¹⁴⁷ *Intrauterine Contraception or Intrauterine Device (IUD)*, KAISER PERMANENTE (2022), https://mydoctor.kaiserpermanente.org/ncal/Images/Intra%20Uterine%20Contraception_tcm75-475859.pdf [https://perma.cc/PNC2-3GDR] (last visited June 22, 2025).

¹⁴⁸ Carrie Macmillian, *What Women Should Know About Intrauterine Devices (IUDs)*, YALE MED. (May 27, 2025), <https://www.yalemedicine.org/news/intrauterine-devices-iud>. [https://perma.cc/8YD7-DLFC]. Hormonal IUDs may also inhibit ovulation and fertilization. *Id.*

¹⁴⁹ *Id.* Copper IUDs can also inhibit fertilization and are an effective form of emergency contraception if inserted within 5 days after unprotected sex. *Id.*

¹⁵⁰ D.C. Weiss et al., *Does Emergency Contraception Cause Abortion?*, BIXBY CTR. FOR GLOB. REPROD. HEALTH, UNIV. OF CAL., S.F. (Apr. 2008), https://intranet.bixbycenter.ucsf.edu/publications/files/DoesECCauseAbortion_2008.pdf [https://perma.cc/6DVD-CE67].

¹⁵¹ Office of Women's Health, *Emergency Contraception*, U.S. DEPT. HEALTH & HUM. SERVS. (Jan. 6, 2023), <https://womenshealth.gov/a-z-topics/emergency-contraception> [https://perma.cc/SC5F-MDQJ].

¹⁵² Cornell Health, *Emergency Contraception*, CORN. UNIV., <https://health.cornell.edu/services/sexual-health-care/contraception/EC> [https://perma.cc/FA99-XSS6] (last visited June 22, 2025).

¹⁵³ *Emergency Contraception FAQs*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Apr. 2025), <https://www.acog.org/womens-health/faqs/emergency-contraception> [https://perma.cc/HF94-JHE5] (last visited June 22, 2025).

patch” is a small sticky patch that attaches to your body and releases hormones into your bloodstream.¹⁵⁴ While the patch primarily works to prevent ovulation, it also thins the lining of the uterus, making it more difficult for implantation to occur.¹⁵⁵ As legal fetal personhood proponents believe that there is a full human being prior to implantation, even contraceptive methods that chiefly work to prevent ovulation, such as the patch, are at risk.¹⁵⁶ Below we explain how the attempts of the legal fetal personhood movement to affect the availability of contraception has fared in the United States and abroad.

1. U.S.A.

As legal fetal personhood continues to advance in the wake of the *Dobbs* decision, the legal uncertainty regarding contraception in the United States has grown.¹⁵⁷ One example is found in Missouri, a state that currently has a near-total abortion ban in effect.¹⁵⁸ The reach of the ban is unclear – it does not define pregnancy but does establish legal personhood for fertilized eggs.¹⁵⁹ After the ban went into effect, the Missouri Governor said publicly that the state’s health department was ‘evaluating’ and would ‘clarify’

¹⁵⁴ *Birth Control Patch*, MAYO CLINIC (Feb. 9, 2023), <https://www.mayoclinic.org/tests-procedures/birth-control-patch/about/pac-20384553> [<https://perma.cc/NXC5-9TGB>] (last visited June 22, 2025).

¹⁵⁵ *Contraceptive Patch*, NHS INFORM (Oct. 24, 2024), <https://www.nhsinform.scot/healthy-living/contraception/contraceptive-patch/> [<https://perma.cc/K7H2-PSAE>].

¹⁵⁶ *MEMO: The Growing Threat of “Fetal Personhood” Measures Across the Country*, PLANNED PARENTHOOD (Feb. 29, 2024), <https://www.plannedparenthoodaction.org/pressroom/the-growing-threat-of-fetal-personhood-measures-across-the-country> [<https://perma.cc/X5PF-ENW6>]. Other contraceptive methods that could be at risk under legal fetal personhood include the ring, birth control pills, injectables and implants. *See id.*

¹⁵⁷ While *Dobbs* squarely dealt with one constitutional protection to abortion health care, the opinions in the case, most notably Justice Thomas’ concurrence, have engendered considerable legal uncertainty over the future of cases that followed the same legal logic as the *Roe* case, including the right to contraception. *See* *United States v. Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). This worry has spurred the introduction of federal-level legislation to protect contraception, most recently, Right to Contraception Act, S.B. 422/H.R. 999, 119th Cong.

¹⁵⁸ Missouri citizens would be hard-pressed to follow the current state of the law. First, Missouri had a trigger law that went into effect when the *Dobbs* decision was issued, effectively banning all abortions. Then, in the wake of a state voter-approved constitutional amendment enshrining the right to reproductive freedom in the state, the abortion restrictions were put on hold. Then, in May 2025, those holds were lifted and the case resent to the lower court for further deliberations, once again effectively putting a halt to abortion health care in the state. *See* Jason Hancock, *Missouri Supreme Court Order Reinstates ‘De Facto Abortion Ban’ Across the State*, MO. INDEP. (May 27, 2025, at 16:37 PM CT), <https://missouriindependent.com/2025/05/27/missouri-supreme-court-reinstates-abortion-restrictions-imposing-de-facto-ban/> [<https://perma.cc/N94Y-U66V>].

¹⁵⁹ MISS. REV. STAT. § 188.015 (2024).

whether the ban would affect access to contraception in the state.¹⁶⁰ The AG's office later clarified that the ban did not prohibit EC, a decision which the Governor supported, allowing the health system to resume providing contraceptive services, including EC.¹⁶¹ Missouri is not the only U.S. state where legal fetal personhood language has generated legal uncertainty around contraception.

In Alabama, after issuance of the *LePage* decision, the fear that the decision could be used to prohibit contraceptive access in the state immediately took hold.¹⁶² The legal uncertainty prompted lawmakers to introduce a bill specifically targeted to protect contraceptive access.¹⁶³ The same uncertainty prompted similar bills in other states, some of which became law and some of which did not.¹⁶⁴ For example, Tennessee lawmakers introduced and passed a bill in the 2024-2025 legislative session specifically to protect contraception.¹⁶⁵ Virginia twice passed bills to protect contraception, but both were vetoed by the Governor.¹⁶⁶ Some states also introduced constitutional amendments to attempt to protect the right to contraception in the face of abortion bans and legal fetal personhood incursions.¹⁶⁷ As these examples demonstrate, the *Dobbs* opinion and the rise

¹⁶⁰ Rachel Lippmann, *In St. Louis Stop, Parsons Touts Accomplishments in Fighting Violent Crime*, ST. LOUIS PUB. RADIO (June 28, 2022, at 18:38 ET), <https://www.stlpr.org/government-politics-issues/2022-06-28/in-st-louis-stop-parson-touts-accomplishments-in-fighting-violent-crime> [https://perma.cc/CM2V-29QA].

¹⁶¹ Tessa Weinberg & Allison Kite, *Missouri AG Says State Abortion Ban Does Not Prohibit Plan B or Contraception*, MO. INDEP. (June 29, 2022, at 13:32 CT), <https://missouriindependent.com/2022/06/29/missouri-ag-says-state-abortion-ban-does-not-prohibit-plan-b-or-contraception/> [https://perma.cc/3TBF-DZXR].

¹⁶² Carrie N. Baker, *Alabama IVF Ruling Imperils Contraception*, MS. MAG. (Mar. 1, 2024), <https://msmagazine.com/2024/03/01/alabama-ivf-birth-control-contraception-fetal-personhood-iud-abortion/> [https://perma.cc/M2K8-7WDW].

¹⁶³ See H.B. 279, 2024 Reg. Sess. (Ala. 2024); LegiScan, H.B. 279 (Ala. 2024), <https://legiscan.com/AL/bill/HB279/2024>.

¹⁶⁴ Mississippi lawmakers introduced a satirical bill, entitled *The Contraception Begins at Erection Act*, to highlight the hypocrisy of the anti-contraception movement. Miss. S.B. 2319, Reg. Sess. (2025).

¹⁶⁵ This law, which takes effect July 1, 2025, makes Tennessee the first state in the southern U.S. to protect any method of contraception. Fertility Treatment and Contraception Freedom Act, H.B. 553, 2025 Sess. (Tenn. 2025).

¹⁶⁶ Jessica F. Simmons, *Gov. Youngkin Vetoes Contraception Protections—Again*, DOGWOOD (May 5, 2025), <https://vadogwood.com/2025/05/05/youngkin-vetos-va-contraception-act-again/> [https://perma.cc/LB3Z-C4EH].

¹⁶⁷ A Washington state proposal to amend the state constitution, introduced by request of the Governor's Office, did not progress. S. Judiciary Comm., S. B. Rep. on S.J.R. 8202, 68th Leg., Reg. Sess. (Wash. 2023). As of this writing, the proposed constitutional amendment in Hawaii has not passed but made it through the senate and sits in the house. S.B. 350 SD1, 33rd Leg. (Haw. 2025). The proposed amendment in Nevada did pass, but under state law it must pass the legislature twice; if it does so, it will be before the voters in 2026. S.J.R. 7, Proposed Art. 1, § 25, NEV. CONST. (Nev. 2023). Maryland's proposed amendment protecting contraception passed and was officially enshrined into the state constitution in 2025. MD. CONST. art. XLVIII (2024).

of legal fetal personhood have sowed confusion among American lawmakers and the public.¹⁶⁸

In addition to the legal fetal personhood movement creating legal uncertainty around the legality of contraception in the absence of explicit legislation, legislation specifically targeting contraception through a fetal personhood lens has also been introduced in the United States.¹⁶⁹ This began before the *Dobbs* decision overturned *Roe* but has gained momentum in the wake of that decision.¹⁷⁰ In North Dakota, lawmakers introduced a bill that would define a human from the moment of conception and threatened the legality of EC.¹⁷¹ Ohio provides an even more extreme example. In 2025, Ohio legislators introduced a bill that would criminalize the destruction of a fertilized egg.¹⁷² This bill, if made into law, could protect fertilized eggs, even before implantation, by holding the pregnant person and anyone who assists them criminally liable, a situation that would certainly affect contraception.¹⁷³

Finally, in addition to legal fetal personhood proponents both targeting contraception writ-large and sowing legal uncertainty, they have also sought to stop funding contraception. Medicaid has been a particular target, even though Medicaid-funded programs must cover family planning.¹⁷⁴ For example, the state of Texas sought a Medicaid waiver in 2017 that was granted in 2020.¹⁷⁵ In 2021 the Missouri legislature considered a proposal

¹⁶⁸ In the U.S., there is considerable uncertainty regarding what constitutes an abortion and what constitutes contraception, a situation exploited by fetal personhood proponents. Grace Sparks et al., *KFF Health Tracking Poll: Early 2023 Update on Public Awareness on Abortion and Emergency Contraception*, KFF POLLING (Feb. 1, 2023), <https://www.kff.org/womens-health-policy/kff-health-tracking-poll-early-2023/> [<https://perma.cc/PM5M-5FMG>].

¹⁶⁹ While most of this section focuses on state-level actions in the U.S., we also note that on April 1, 2025, HHS froze Title X funding for a number of organizations across the United States. Title X funds do not go to abortion services, but they do, *inter alia*, fund contraceptive services. Chantelle Lee, *Trump Administration Freezes Critical Title X Funding for 16 Organizations*, TIME (Apr. 3, 2025, at 11:21 ET), <https://time.com/7273838/trump-administration-freezes-title-x-funding-impact/> [<https://perma.cc/L54M-YGTJ>].

¹⁷⁰ As one pre-*Dobbs* example, in 2018, Missouri debated HJR 53, a proposed fetal personhood constitutional amendment that would have, *inter alia*, criminalized contraception. H.R.J. Res. 53, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁷¹ The bill did not pass. H.B. 1373, 69th Leg. Assemb. (N.D. 2025).

¹⁷² Jo Ingles, *Bill to Ban Abortion, Criminalize IVF and Some Contraceptives Proposed in Ohio*, STATEHOUSE NEWS BUREAU (June 18, 2025, at 13:40 ET), <https://www.statenews.org/government-politics/2025-06-18/bill-to-ban-abortion-criminalize-ivf-and-some-contraceptives-proposed-in-ohio> [<https://perma.cc/5DXD-JAQ9>].

¹⁷³ OHIO REV. CODE ANN. §§ 2903.24, 2903.241 (LexisNexis 2025).

¹⁷⁴ Maria I. Rodríguez et al., *Disparities in Effective Contraceptive Use in the United States Among Individuals Dually Eligible for Medicare and Medicaid*, AJOG GLO REP., vol. 3 (2023).

¹⁷⁵ TEXAS HHS, HEALTHY TEXAS WOMEN 1115 WAIVER (July 16, 2020), <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/policies-rules/1115-waiver/HTW/htw-1115-waiver-public-forum-slides.pdf> [<https://perma.cc/8Z27-27TM>]; Letter from Texas Governor Greg Abbott to Director Brian Neale (June 28, 2017).

that would have excluded EC from the state Medicaid program.¹⁷⁶ That same year, Idaho legislators passed a law that largely forbid the use of state funds in distributing EC.¹⁷⁷ In 2023, the state of Iowa stopped financing EC for rape survivors.¹⁷⁸

Overall, in the wake of *Dobbs*, the United States has seen an increase in the number and reach of attempts to limit contraception. These rely on a belief that fertilized eggs are full rights-bearing human beings, so any attempt to prevent them from continuing to grow is a crime. Should legal fetal personhood become the law, many methods of contraception in the United States will become unavailable.

2. Internationally

Worldwide, legal fetal personhood-based attempts to ban or restrict access to contraception have largely targeted EC.¹⁷⁹ While legal fetal personhood advocates saw some success initially, particularly in Latin America in the early 2000s, most countries have reversed course since. Overall, decision-makers around the world that have considered the legality of EC have rejected the idea that EC is an abortifacient or a threat to legal rights-holding embryos and fetuses.

In Latin America, high courts in Argentina, Chile, Ecuador, and Peru initially banned EC in the early 2000s on the premise that it targeted full rights-holding embryos and fetuses, and all later reversed course, recognizing the difference between contraception and abortion.¹⁸⁰ In

¹⁷⁶ This bill, which failed, might have put the state program out of compliance with federal requirements. Rudi Keller, *Abortion Amendment Puts Bill to Finance Missouri Medicaid Program in Limbo*, MO. INDEP. (Mar. 24, 2021, at 19:05 ET), <https://missouriindependent.com/2021/03/24/abortion-amendment-puts-bill-to-finance-missouri-medicaid-program-in-limbo/> [<https://perma.cc/KGY2-A63Z>].

¹⁷⁷ The law has a narrow exception in the case of rape, but not incest, as defined in the Idaho Code. IDAHO CODE § 18-8707 (2024).

¹⁷⁸ Natalie Krebs, *More than 160 Plan B Reimbursement Requests for Rape Victims are Pending at the AG's Office*, IOWA PUB. RADIO (Aug. 22, 2023, at 14:53 ET), <https://www.iowapublicradio.org/state-government-news/2023-08-22/more-than-160-plan-b-reimbursement-requests-for-rape-victims-are-pending-at-the-ag-s-office> [<https://perma.cc/L69Z-S5CG>]. The reimbursement was resumed for EC but completely discontinued for abortion. Robin Opsahl, *Iowa Attorney General Resumes Funding of Plan B for Rape Victims, but not Abortions*, IOWA CAP. DISPATCH (May 31, 2024, at 17:01 ET), <https://iowacapitaldispatch.com/2024/05/31/iowa-attorney-general-resumes-funding-of-plan-b-for-rape-victims-but-not-abortions/> [<https://perma.cc/66MA-967M>].

¹⁷⁹ Sneha Barot, *Past Due: Emergency Contraception in U.S. Reproductive Health Programs Overseas*, 13 GUTTMACHER POL'Y REV. (June 1, 2010), <https://www.guttmacher.org/gpr/2010/06/past-due-emergency-contraception-us-reproductive-health-programs-overseas> [<https://perma.cc/9776-HS43>].

¹⁸⁰ Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 5/3/2002, Portal de Belén – Asociación Civil sin Fines de Lucro c. Ministerio de Salud y Acción Social de la Nación s/ amparo (Arg). P.709 XXXVI, <https://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-portal-belen-asociacion-civil-sin-fines-lucro-ministerio-salud-accion-social-nacion-amparo-fa02000003-2002-03-05/123456789-300-0002-0ots-eupmocsollaf>

Argentina and Ecuador, even when their respective high court decisions were never formally overruled, they were limited to one EC brand only, so other brands of EC remain available and accessible in both countries.¹⁸¹ In both countries, moreover, the executive branches have since taken various actions to increase access to EC; in 2023, Argentina made EC available without prescription and Ecuador made EC free of charge through its national health system.¹⁸² In Peru, the Ministry of Health approved EC in 2006, a decision which the country's Constitutional Court overturned in 2009.¹⁸³ Then, in 2023, the Constitutional Court reversed course, relying on evidence from both the World Health Organization and the Pan American Health Organization that EC is not an abortifacient.¹⁸⁴ In Chile, that country's Constitutional Court initially banned EC in 2001, but overturned that decision in 2010.¹⁸⁵ In Honduras, the de facto government that assumed power following the coup against President Manuel Zelaya prohibited EC through an administrative regulation in 2009, and in 2012, the country's Supreme Court upheld the ban on EC on grounds that it was "abortive."¹⁸⁶ But in 2023, Honduras's President issued an executive order that lifted the country's ban on the use and sale of EC, explicitly recognizing that emergency contraception pills do not cause an abortion.¹⁸⁷ In fact, as of this

[<https://perma.cc/8FJK-4VL2>]; 0014-2005-RA, Tercera Sala del Tribunal Constitucional, 23 de mayo de 2006 (Ecuador), https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/ecuador_2006_sentencia_0014.pdf [<https://perma.cc/7VZ8-YMH2>].

¹⁸¹ *Decisions Denied. Women's Access to Contraceptives and Abortion in Argentina*, HUM. RTS. WATCH (June 14, 2005), <https://www.hrw.org/report/2005/06/14/decisions-denied/womens-access-contraceptives-and-abortion-argentina> [<https://perma.cc/UZ57-HNTN>]; *Quito*, GYNOPEDIA, <https://gynopedia.org/Quito> [<https://perma.cc/23BG-EEZX>] (last visited Aug. 18, 2025).

¹⁸² Resolución 1062/2023, Ministerio de Salud, Boletín Oficial de la República Argentina, 30 de Mayo de 2023 (Arg.), <https://www.ec-ec.org/wp-content/uploads/2023/05/RS-2023-61357851-APN-MS-AHE.pdf> [<https://perma.cc/GJQ2-95RQ>]; Leisa Sánchez, *Q&A: Ecuador Guarantees Right to Free Emergency Contraception*, IPS NEWS (Apr. 19, 2013), <https://www.ipsnews.net/2013/04/qa-ecuador-guarantees-right-to-free-emergency-contraception/> [<https://perma.cc/U64J-T76P>].

¹⁸³ EXP. N.O 02005-2009-PA/TC, Tribunal Constitucional, 16 Oct. 2009 (Peru), <https://tc.gob.pe/jurisprudencia/2009/02005-2009-AA.pdf> [<https://perma.cc/G5JH-FFVJ>].

¹⁸⁴ Sentencia 197/2023, Pleno del Tribunal Constitucional (Perú), 21 de Marzo de 2023, Exp. No. 00238-2021-PA/TC, <https://tc.gob.pe/jurisprudencia/2023/00238-2021-AA.pdf> [<https://perma.cc/L5QF-2RWQ>].

¹⁸⁵ Law No. 20.418, Fija Normas Sobre Información, Orientación Y Prestaciones En Materia De Regulación De La Fertilidad, Febrero 2, 2010, Diario Oficial [D.O.] (Chile), <https://www.bcn.cl/leychile/navegar?idNorma=1010482> [<https://perma.cc/LZ4R-A57C>].

¹⁸⁶ AMNESTY INT'L, REPRODUCTIVE RIGHTS AND THE RIGHT TO EMERGENCY CONTRACEPTION IN ECUADOR (2013), <https://www.amnesty.org/es/wp-content/uploads/2021/06/amr370052012en.pdf> [<https://perma.cc/G77P-KVVE>].

¹⁸⁷ *Decreto Ejecutivo No. 75-2023 [Executive Decree No. 75-2023]*, LA GACETA: DIARIO OFICIAL DE LA REPÚBLICA DE HONDURAS, No. 36,174, 8 Mar. 2023 (Hond.), https://www.ec-ec.org/wp-content/uploads/2023/03/GACETA-8-DE-MARZO-DE-2023-36174-SECCION-A_230309_155708-2.pdf [<https://perma.cc/3QKB-N4YW>].

writing, almost every country in Latin America now legally recognizes that EC is not abortifacient, allows its use, and, in some cases, makes it available without a prescription or at no cost.¹⁸⁸

Outside Latin America, efforts to ban EC and other forms of contraception have been less frequent and even less successful. Most other countries moved towards approval and regulation of EC since the early 2000s, based on a clear understanding that EC is not an abortifacient.¹⁸⁹ Exceptions involve timing more than disagreement. For example, in Malta and the Philippines, where abortion is banned but contraception is permitted, EC was recognized as a non-abortifacient only within the last decade. In Malta, unlike other countries in Europe, there was a ban on EC until 2016 due to long-standing and widespread misconceptions about EC being an abortifacient.¹⁹⁰ Only when other countries in the region moved towards over-the-counter availability of EC did Malta's government lift the ban.¹⁹¹ In the Philippines, legal prenatal personhood advocates challenged the legal availability of contraceptives, arguing that they violated "the right to life of the unborn."¹⁹² The Supreme Court ultimately upheld the law as constitutional in 2014, determining that the contraceptive methods at issue did not prevent implantation and were therefore not abortifacients.¹⁹³ In short, contraception and EC is increasingly permitted and supported in countries outside the United States.

D. In Stem Cell Research

Stem cells are the 'foundational' cells of the human body, defined primarily by two characteristics: they can both replicate and differentiate themselves.¹⁹⁴ Because of these unique characteristics, stem cells hold the

¹⁸⁸ No. 0014-2005-RA; Sentencia Rol N.º 914/2007, Tercera Sala del Tribunal Constitucional (Chile), 19 de Junio de 2007, <http://www.tribunalconstitucional.cl/wp/ver.php?id=914>; <https://tc.gob.pe/jurisprudencia/2009/02005-2009-AA.pdf> [<https://perma.cc/9TJT-PYXZ>].

¹⁸⁹ Martín Hevia, *The legal status of emergency contraception in Latin America*, 116 INT'L J. GYNECOLOGY & OBSTETRICS 87 (2012).

¹⁹⁰ *Pathways to Change. Building Stronger Legal Guarantees for Sexual and Reproductive Health and Rights*, CTR. FOR REPROD. RTS., 81 (2023), https://reproductiverights.org/wp-content/uploads/2024/02/Pathways-to-Change_English_2-21-24.pdf [<https://perma.cc/CJU8-RASZ>].

¹⁹¹ Eur. Consortium for Emergency Contraception (ECEC), Malta Country Summary (Jan. 26, 2022), Emergency Contraception in Eur., <https://www.ec-ec.org/emergency-contraception-in-europe/country-by-country-information/malta/> [<https://perma.cc/A4WG-JEWX>].

¹⁹² *Imbong v. Ochoa*, G.R. No. 204819, 62 (S.C., Apr. 8, 2014) (Phil.), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56973> [<https://perma.cc/FBN5-6SLS>].

¹⁹³ In this case, the court drew the line at fertilization and held that the protections afforded prenatal life post-fertilization could be the subject of future litigation; *Id.* ¶ 171.

¹⁹⁴ *Understanding Stem Cell Research*, UCLA BROAD STEM CELL RSCH. CTR., <https://stemcell.ucla.edu/understanding-stem-cell-research> [<https://perma.cc/2A7Q-FZFW>] (last visited June 1, 2025). For a discussion of the origination of the term "stem cell," see Miguel Ramalho-Santos

potential to increase our understanding of how diseases happen, replace damaged cells, and find new and better medical treatment options.¹⁹⁵ While stem cells hold future medical promises, they are already being used to treat a number of medical conditions.¹⁹⁶ Although adult stem cells hold value, fetal and embryonic stem cells are particularly favored, as they are more easily grown and differentiate more readily.¹⁹⁷

Fetal stem cells come from either the fetus itself or from adjacent structures such as the umbilical cord.¹⁹⁸ Fetal stem cells have shown promise in understanding a variety of negative human medical conditions.¹⁹⁹ Although there are differences between fetal and adult stem cells, broadly, stem cells are often referred to as either ‘adult’ or ‘embryonic,’ with even stem cells originating from umbilical cord blood categorized as ‘adult’ stem cells.²⁰⁰ Embryonic stem cells (ESCs or hESCs) come only from 3-5 day old embryos, called blastocysts, and are particularly valuable for research

and Holger Willenbring, *On the Origin of the Term “Stem Cell,”* 1 CELL STEM CELL 35 (2007). For a discussion of regenerative research, a centuries old study and a precursor to modern-day stem cell research, see Marino Buscaglia & Denis Duboule, *Developmental Biology in Geneva: A Three Century-Long Tradition*, 456 INT’L. J. DEV. BIOL. (2002).

¹⁹⁵ *Stem Cells*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/body/24892-stem-cells> [https://perma.cc/HG2R-BSDX] (last visited June 2, 2025).

¹⁹⁶ *Diseases Treated with Stem Cell Transplants*, MEM’L SLOAN-KETTERING CANCER CTR., <https://www.mskcc.org/cancer-care/diagnosis-treatment/cancer-treatments/blood-bone-marrow-stem-cell-transplants/transplantation-process/diseases-treated> [https://perma.cc/QA6P-TC8T] (last visited June 12, 2025).

¹⁹⁷ Michaela Prochazkova et al., *Chapter-18 – Embryonic Versus Adult Stem Cells*, in STEM CELL BIOLOGY AND TISSUE ENG’G IN DENTAL SCIS. (Ajaykumar Vishwakarma et al. eds., Academic Press 2015) (explaining that, in contrast to embryonic stem cells, the main purpose of adult stem cells is to maintain and repair the tissues where they reside); Ryan P. Dorin & Chester J. Koh, *Chapter 45 - Fetal Tissues*, in PRINCIPLES OF REGENERATIVE MED. (Academic Press 2011) (noting that fetal stem cells are preferred over adult stem cells in many applications). We also note that, scientifically, there are at least five categorized types of stem cells, for purposes of this article we are grouping stem cells by source (adult, fetal or embryonic) to better explain and contrast the legal landscape domestically and internationally. For an explanation of the types of stem cells, see, for example, Todd Dubnicoff, *The Five Types of Stem Cells*, CAL. INST. REGENERATIVE MED. STEM CELLAR BLOG (Aug 2, 2018), <https://blog.cirm.ca.gov/2018/08/02/the-five-types-of-stem-cells/> [https://perma.cc/SA5P-G32S] (last visited June 18, 2025).

¹⁹⁸ Akiva J. Marcus & Dale Woodbury, *Fetal Stem Cells from Extra-embryonic Tissue: Do Not Discard*, 12 J. CELLULAR & MOLECULAR MED. 730, 731 (Jan. 14, 2008). Note that stem cells are a complex scientific discipline and involve, *inter alia*, embryoids, various extraction methods and laboratory protocol – our discussion herein is focused on the legal status of embryonic stem cells in relation to personhood. For a deeper discussion of the basics of stem cells in biology and in research, see CHRISTINE MUMMERY ET. AL., *STEM CELLS: SCIENTIFIC FACTS AND FICTION* (3d ed., Academic Press 2021).

¹⁹⁹ Penelope J. Hallett et al., *Long-Term Health of Dopaminergic Neuron Transplants in Parkinson’s Disease Patients*, 7 CELL REPORTS 1755, 1755 (2014) (finding that fetal dopamine cells could remain healthy in the brains of Parkinson’s patients).

²⁰⁰ *What are the Major Types of Stem Cells*, NATURE REPS. STEM CELLS (June 14, 2007), <https://www.nature.com/articles/stemcells.2007.14> [https://perma.cc/SBU6-YQPN] (last visited June 17, 2025).

because they have the potential to become any cell in the human body.²⁰¹ Blastocysts are a tiny collection of about 200 cells, barely visible to the naked eye, that exist prior to implantation.²⁰² Extracting stem cells from a blastocyst generally destroys the blastocyst.²⁰³

Worldwide, the potential for advances in the understanding and treatment of disease via fetal and embryonic stem cells has come into conflict with those asserting legal fetal personhood and opposing abortion health care.²⁰⁴ Although there is debate around stem cells in general, some of the fiercest conflicts in the personhood context have arisen over the use of ESCs harvested from the earliest stages of prenatal development.²⁰⁵ Below, we explain how the issues around ESC research have intersected with the agendas of legal fetal personhood advocates in and out of the United States.

²⁰¹ *Stem Cells: What They Are and What They Do*, MAYO CLINIC (Mar. 3, 2024), <https://www.mayoclinic.org/tests-procedures/bone-marrow-transplant/in-depth/stem-cells/art-20048117> [https://perma.cc/7SEY-9GRK].

²⁰² *Blastocyst Embryo: What it is, Advantages, Types and Classification According to its Quality*, INSTITUTO BERNABEU, <https://www.institutobernabeu.com/en/blog/blastocyst-embryo-what-it-is-advantages-types-and-classification-according-to-its-quality/> [https://perma.cc/35W5-DUB3] (last visited June 20, 2025).

²⁰³ Donald W. Landry & Howard A. Zucker, *Embryonic Death and the Creation of Human Embryonic Stem Cells*, 114 J. CLINICAL INVESTIGATION 1184, 1184-85 (2004). We note that while extracting stem cells from a blastocyst without destroying it is the topic of current research, for purposes of this paper we are focusing on the fetal personhood debate around embryonic stem cell extraction when the blastocyst is, or is likely to be, destroyed in the process. See, e.g., R. Dittrich et al., *Non-Embryo-Destructive Extraction of Pluripotent Embryonic Stem Cells: Implications for Regenerative Medicine and Reproductive Medicine*, 75 GETBURTSH FRAUENHEILK 1239 (2015).

²⁰⁴ Bernard Lo & Lindsay Parham, *Ethical Issues in Stem Cell Research*, 14 ENDOCRINE REV. 204, 204-205 (2009). While this article focuses on the intersection of stem cells and legal fetal personhood, we note that stem cells intersect with other legal issues as well, such as intellectual property laws. See, e.g., Dinorah Hernandez-Melchor et al., *The Patent Landscape in the Field of Stem Cell Therapy: Closing the Gap Between Research and Clinic*, F1000 RSCH. (Sep. 6, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10933573/> [https://perma.cc/4MH9-V933].

²⁰⁵ Rebecca Dresser, *Stem Cell Research as Innovation: Expanding the Ethical and Policy Conversation*, 38 J. L. MED. ETHICS 332, 332 (2010). We also note the “14-day rule” for human embryo research. This is not strict law in the U.S., but a guideline stating that embryos cannot be lab cultured for more than 14 days. The rule came out of bioethical discussions in the 1970s and was first recommended by the U.S. Dept. of Health, Education and Welfare. ETHICS ADVISOR BOARD, DEP’T HEALTH, EDUC., & WELFARE, HEW SUPPORT OF RESEARCH INVOLVING HUMAN IN VITRO FERTILIZATION AND EMBRYO TRANSFER (1979). Thereafter it was formalized in a number of documents, most notably the 1980 Warnock Report in the United Kingdom. Mary Warnock, *Report of the Committee of Inquiry into Human Fertilisation and Embryology*, UK HUM. FERTILISATION AND EMBRYOLOGY ACT 1990, <http://www.legislation.gov.uk/ukpga/1990/37/contents> [https://perma.cc/R9U8-S5KQ] (last visited June 14, 2025). Currently, a number of oversight bodies are evaluating whether to continue promulgation of this rule. *ISSCR Guidelines for Stem Cell Research and Clinical Translation*, INT’L SOC’Y FOR STEM CELL RSCH., 2.2.2 Category 2, <https://www.isscr.org/guidelines> [https://perma.cc/XE64-U5TY] (last visited June 13, 2025); see *The HFEA’s Recommendation to Government on Extending the Time Limit on Embryo Research*, HUM. FERTILIZATION & EMBRYOLOGY AUTHORITY, <https://www.hfea.gov.uk/about-us/news-and-press-releases/2024/the-hfea-s-recommendation-to-government-on-extending-the-time-limit-on-embryo-research/> [https://perma.cc/C3B5-CDFU] (last visited June 14, 2025).

1. U.S.A.

In the United States, there is no one unifying oversight body for stem cell research, although stem cells have been used for research purposes since the 1950s.²⁰⁶ And while the extra-legal issues around stem cell usage are as old as the practice,²⁰⁷ the intense debate over the use of ESCs in the context of legal fetal personhood did not begin in earnest in the United States until after the U.S. Supreme Court found a limited right to abortion health care under the federal constitution in 1973.²⁰⁸ Soon after *Roe* was decided, the first federal law impacting ESC research was passed.²⁰⁹ This law, the National Research Act, halted federally funded fetal stem cell research until a commission could report back.²¹⁰

As the anti-abortion health care movement became progressively more politicized after *Roe*, they increasingly incorporated legal fetal personhood language into their rhetoric after passage of the National Research Act.²¹¹ At the same time, scientific advancements led to increasing hope that ESCs could spark medical advancements, a belief that made the United States a leader in stem cell research at the close of the twentieth century.²¹² Despite the promise of stem cell research, the largest obstruction to ESC research in the United States came two decades after the National Research Act, with

²⁰⁶ *National Stem Cell Policy Timeline*, U. MIAMI: MILLER SCH. OF MED. INST. FOR BIOETHICS & HEALTH POL'Y.

²⁰⁷ Ionnis Alexandros Charitos et al., *Stem Cells: A Historical Review About Biological, Religious and Ethical Issues*, STEM CELLS INT. (Apr. 29, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8105090/> [<https://perma.cc/3NPK-7B3C>].

²⁰⁸ In fact, the *Roe* case is often noted as the beginning of the modern legal fetal personhood movement in this country. See, e.g., DANIEL K. WILLIAMS, DEFENDERS OF THE UNBORN: THE PRO-LIFE MOVEMENT BEFORE ROE V. WADE (Oxford U. Press 2019) (looking at the anti-abortion health care movement, including legal fetal personhood, before *Roe v. Wade*).

²⁰⁹ National Research Act, H.R. 7724, 93rd Congress (1974) (enacted).

²¹⁰ Note that the National Research Act impacts federally funded work only and focused on fetal research; nevertheless, this Act merits inclusion as it was the precursor to more targeted prohibitions on embryonic stem cell research.

²¹¹ MARY ZIEGLER, PERSONHOOD: THE NEW CIVIL WAR OVER REPRODUCTION (Yale U. Press 2025).

²¹² C. Eguizabel et al., *Two Decades of Embryonic Stem Cells: A Historical Overview*, HUM. REPROD. OPEN (2019) (noting that in the 1990s one of the most active stem cell research centers was in the United States, in the state of Wisconsin); see *Regenerative and Reproductive Medicine Scientific Working Group*, WIS. NAT'L PRIMATE RESCUE CTR., <https://primate.wisc.edu/our-science/scientific-working-groups/regenerative-and-reproductive-medicine-scientific-working-group/> [<https://perma.cc/GSD6-VR7K>] (last visited June 20, 2025). This was also the site where the process of deriving embryonic stem cells originated, under the leadership of Dr. James Thomson. *A Science Trailblazer Retires: Stem Cell Researcher James Thomson's Legacy Changed the Future of Biology*, UNIV. OF WIS.: CAMPUS STORIES (Mar. 22, 2022), <https://www.wisconsin.edu/all-in-wisconsin/story/a-science-trailblazer-retires-stem-cell-researcher-james-thomsons-legacy-changed-the-future-of-biology/> [<https://perma.cc/7P4K-CDWQ>].

passage of the Dickey-Wicker Amendment in 1995.²¹³ This amendment prohibited the Department of Health and Human Services (HHS) and the National Institutes of Health (NIH) from using funds to create embryos for research purposes, and from engaging in research that destroys embryos.²¹⁴ In an effort to continue research with ESCs, in 1999 HHS and the NIH interpreted the language in the Dickey-Wicker Amendment as disallowing the federally funded creation of ESCs, but allowing federal support for research with ESCs created with non-federal funding.²¹⁵

This interpretation did not end the debate, and successive U.S. administrations continued to explore the issue.²¹⁶ In an attempt to loosen restrictions while still adhering to the perceived personhood of blastocysts, in 2001 President George W. Bush issued a policy statement on ESC research, allowing some federal funding for existing cell lines, “where the life and death decision has already been made.”²¹⁷ Five years later, in 2006, he forwarded the same policy in EO 13435, which allowed the NIH to fund ESC research, but only if the embryos were from stem cell lines already in existence.²¹⁸ While Pres. Bush was attempting a middle ground, that rationale proved problematic.²¹⁹ Among other issues, less than one-third of

²¹³ Balanced Budget Downpayment Act, I, H.R. 2880, 104th Cong. § 128 (1996).

²¹⁴ The text of §128 reads: (a) None of the funds made available in this Act may be used for--(1) the creation of a human embryo or embryos for research purposes; or (2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero ... (b) For purposes of this section, the term ‘human embryo or embryos’ includes any organism, not protected as a human subject ..., that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

²¹⁵ Jennifer Couzin-Frankel & Gretchen Vogel, *Legal Analysis: Parsing the Stem Cell Case*, SCIENCE (Sep. 8, 2020), <https://www.science.org/content/article/legal-analysis-parsing-stem-cell-case> [https://perma.cc/9VH8-U96B].

²¹⁶ In addition to the policies referenced herein, a number of U.S. committees were also founded to study issues related to and including ESCs. For example, in 1996 President Clinton created the National Bioethics Advisory commission, in 2001 President George W. Bush created the President’s Council on Bioethics, and in 2009 President Barack Obama established the Presidential Commission for the Study of Bioethical Issues. *National Bioethics Advisory Committee*, THE WHITE HOUSE, <https://clintonwhitehouse4.archives.gov/WH/EOP/OSTP/Science/html/nbac.html> [https://perma.cc/VU6B-75WW] (last visited June 21, 2025); Exec. Order 13237, 66 Fed. Reg. 59851 (Nov. 28, 2001), <https://web.archive.org/web/20051123061302/http://www.bioethics.gov/about/executive.html> [https://perma.cc/9QF9-DT4A]; Sec’y Health and Hum. Servs., *Charter Presidential Commission for the Study of Bioethical Issues*, DEP’T HEALTH & HUM. SERVS. (Mar. 10, 2010), <https://bioethicsarchive.georgetown.edu/pcsbis/sites/default/files/Charter%203.10.10-2.pdf> [https://perma.cc/EAL4-KUTG].

²¹⁷ President George W. Bush, *Address to Nation on Stem Cell Research from Crawford Texas*, 37 Weekly Compl. Pres. Doc. 1149 (Aug. 9, 2001); see JUDITH A. JOHNSON & ERIN D. WILLIAMS, CONG. RSCH. SERV., RL31015, STEM CELL RSCH. (last updated Jan. 11, 2006) (on file with the WRLR).

²¹⁸ *Fact Sheet: President Bush’s Stem Cell Research Policy*, THE WHITE HOUSE (July 19, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060719-6.html> [https://perma.cc/LH8E-5AHZ]. Note that a stem cell line is a group of cells that all descend from a single original stem cell and are grown in a lab.

²¹⁹ Lo & Parham, *supra* note 195.

stem cell lines meeting Pres. Bush's criteria were usable, many were not of high quality or diversity, and the guidance forced labs to duplicate themselves in order to separate out federal funding supported research.²²⁰ The policy had international repercussions too, as American researchers were less able to contribute to other countries' efforts.²²¹ Because of these problems, federal legislators sought to pass legislation to ensure greater availability of ESCs for research.²²² These efforts were unsuccessful, and the Dickey-Wicker Amendment continued to be added as an appropriations rider every year.²²³ In 2009, President Barack Obama issued EO 13505, which removed the restriction against federal funding of stem cell research.²²⁴ This EO instructed NIH to release guidelines implementing the policy and, in July 2009, they did so.²²⁵ These guidelines made clear that, *inter alia*, the new policy applied only to stem cell lines derived on or after July 7, 2009, and only allowed for funding research involving unused embryos from fertility clinics, excluding any created for research.²²⁶

While this policy widened the range of research possible using federal dollars, it also left the Dickey–Wicker Amendment, a Congressional mandate, intact, an obstacle for federally-funded researchers seeking to

²²⁰ Varnee Murugan, *Embryonic Stem Cell Research: A Decade of Debate from Bush to Obama*, 82 YALE J. BIOL. & MED. 101 (2009).

²²¹ Tim Reid & Mark Hendersoon, *Bush faces backlash for stem cell veto*, THE SUNDAY TIMES (July 20, 2006), <https://www.thetimes.com/world/us-world/article/bush-faces-backlash-for-stem-cell-veto-g0hkwls3bvp> [https://perma.cc/8AZW-EWNH].

²²² As one example, in the 2005-2006 Congressional session, legislators introduced the Stem Cell Research Enhancement Act which would have expanded federal funding for research on discarded embryos. Stem Cell Research Enhancement Act of 2005, H.R. 810, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/810> [https://perma.cc/H8AH-MPL4] (last visited June 7, 2025). President George W. Bush vetoed the bill after it passed. *Message to the House of Representatives*, THE WHITE HOUSE (July 19, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060719-5.html> [https://perma.cc/P9VM-Q3DE].

²²³ See *Committee Releases FY25 Labor, Health, and Human Services* U.S. HOUSE COMM. ON APPROPRIATIONS (June 26, 2024), <https://appropriations.house.gov/news/press-releases/committee-releases-fy25-labor-health-and-human-services-education-and-related> [https://perma.cc/KH56-HEWF] (maintaining the Dickey-Wicker Amendment).

²²⁴ *Exec. Order No. 13505 – Removing Barriers to Responsible Scientific Research Involving Human Stem Cells*, THE WHITE HOUSE (Mar. 9, 2009), <https://obamawhitehouse.archives.gov/the-press-office/removing-barriers-responsible-scientific-research-involving-human-stem-cells> [https://perma.cc/CM3N-QTNJ].

²²⁵ NATIONAL INSTITUTES OF HEALTH, NO. NOT-OD-09-116, NIH GUIDELINES FOR HUM. STEM CELL RSCH., (2009), <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-09-116.html> [https://perma.cc/7H6M-WD2T].

²²⁶ Plaintiffs included an embryo adoption agency, two couples who wanted to use that agency, unnamed embryos, the Christian Medical Association, and two researchers who worked with adult stem cells. Harry T. Greely, *Are We There Yet? The End of the Sherley case About Dickey Wicker and Federal Funding for Human Embryonic Stem Cell Research is Now in Sight*, STAN. L. SCH. BLOGS (Aug. 30, 2012), <https://law.stanford.edu/2012/08/30/are-we-there-yet-the-end-of-the-sherley-case-about-dickey-wicker-and-federal-funding-for-human-embryonic-stem-cell-research-is-now-in-sight/> [https://perma.cc/Q4Q8-MF7V].

create their own stem cell lines.²²⁷ This meant that while the field of ESC research broadened under Pres. Obama, federally-funded labs still could not be used to create new embryonic lines.²²⁸ Nevertheless, President Obama's EO, and the 1999 interpretation of Dickey-Wicker, sparked outrage among American legal fetal personhood advocates and, in response, in 2009 a number of them filed a federal lawsuit claiming that the EO improperly violated the Dickey-Wicker Amendment.²²⁹

The case wound its way through the federal system; after being initially dismissed, it was partially reinstated when the D.C. Court of Appeals held that two of the plaintiffs had standing to proceed.²³⁰ The District Court for the District of D.C. then issued a preliminary injunction in the case,²³¹ a move that researchers said would cause a "massive halt" to ongoing ESC research in the country.²³² The injunction was based on what the court called a plain reading of the Dickey-Wicker Amendment, that no federal funds were allowed in any research that involved the destruction of an embryo.²³³ This injunction was then reversed,²³⁴ and summary judgement was entered against plaintiffs, in an order that was upheld by the Court of Appeals.²³⁵

In addition to federal government advancements and proscriptions in Congress, in courts, and by the executive branch, individual U.S. states have also enacted their own policies.²³⁶ Although all states must comply with federal law and do not have to enact additional legislation, there is ample room for states to further restrict or support research, and 29 have done so.²³⁷ A few of these date from the 1970s and several were passed in reaction to

²²⁷ Sheryl Gay Stolberg, *Obama is Leaving Some Stem Cell Issues to Congress*, N.Y. TIMES (Mar. 8, 2009), <https://www.nytimes.com/2009/03/09/us/politics/09stem.html> [<https://perma.cc/5BCA-HGQW>].

²²⁸ Exec. Order No. 13505, 74 Fed. Reg. 10667 (Mar. 9, 2009).

²²⁹ *Sherley v. Sebelius*, 686 F. Supp. 2d 1 (D.D.C. 2009) (*Sherley I*).

²³⁰ *Sherley v. Sebelius*, 610 F.3d 69 (D.C. Cir. 2010). Note that yet-to-be-elevated U.S. Supreme Court Justice Brett Kavanaugh was a member of the three-judge panel in the case.

²³¹ *Sherley v. Sebelius*, 704 F. Supp. 2d 63 (D.D.C. 2010). Note the DC Circuit Court stayed the injunction pending appeal after the District Court refused to do so.

²³² Karen Kaplan & Noam N. Levey, *Ruling a Blow to Stem Cell Research*, L.A. TIMES (Aug. 24, 2010, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2010-aug-24-la-na-stemcells-20100824-story.html> [<https://perma.cc/7ZFP-4Y5S>].

²³³ See *infra* note 224.

²³⁴ *Sherley v. Sebelius*, 644 F.3d 388, 396 U.S. App. D.C. 1 (D.D.C. 2011) (*Sherley II*).

²³⁵ *Sherley v. Sebelius*, 689 F.3d 776, 402 U.S. App. D.C. 178 (D.D.C. 2012) (*Sherley III*). Note that the plaintiffs sought review at the U.S. Supreme Court, which was denied. *Sherley v. Sebelius*, 2013 U.S. Lexis 551, 568 U.S. 1087, 133 S. Ct. 847 (2013).

²³⁶ Aaron D. Levine et al., *The Origins of Human Embryonic Stem Cell Research Policies in the US States*, 40 SCI. AND PUB. POL'Y 544, 545 (Feb. 18, 2013).

²³⁷ Kelly McGraw & Margit Kelley, *Overview of Federal Stem Cell Research Law*, WIS. LEGIS. COUNS. ISSUE BRIEF (Apr. 2025), https://docs.legis.wisconsin.gov/misc/lc/issue_briefs/2025/health/ib_stem_cell_laws_km_msk_2025_04_09 [<https://perma.cc/6DKZ-BQWS>] (noting that 21 states do not have state-level regulation).

federal laws or to events in the field.²³⁸ Eleven U.S. states ban embryo research and eighteen allow it, to varying degrees.²³⁹ Of those that allow it, California is probably the most well-known, having passed Proposition 71, which allows state funding and was the model for additional state-level legislation.²⁴⁰ But even more permissive statutes are not without limits – some limit embryo creation and some attach criminal penalties to using wrongly sourced ESCs.²⁴¹ In sum, the state and federal landscape in the United States is a patchwork, with opposition to ESC research focusing most heavily on limiting the practice based on the belief that the blastocyst is a human being, entitled to all the same protections and rights as any other human being.²⁴²

This belief, that ESC research using blastocysts involves “the taking of innocent human life,” has been increasingly voiced by American politicians on both the national and state stages.²⁴³ For example, Sen. Sam Brownback, a stalwart opponent of ESC research, described the problem as being willing to do research on a 10-day old (embryo) when you wouldn’t do it on a 10-year old child.²⁴⁴ The issue of ESC research at the federal level is facing

²³⁸ One example was Dolly, the world’s first cloned mammal. *The Story of Dolly the Sheep*, NAT’L MUSEUMS SCOT., <https://www.nms.ac.uk/discover-catalogue/the-story-of-dolly-the-sheep> [https://perma.cc/KVQ8-T4LH] (last visited June 10, 2025); M. Asif Ismail, *Lobbying, Old-Time Politics Block Legislation on Human Cloning*, THE CTR. FOR PUB. INTEGRITY (Feb. 15, 2001), <https://publicintegrity.org/health/lobbying-old-time-politics-block-legislation-on-human-cloning/> [https://perma.cc/JX9U-3YKM] (noting 25 state legislatures were looking at legislation in the wake of Dolly).

²³⁹ The ban states are Arkansas, Kentucky, Louisiana, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and South Dakota. The states allowing such research are Arizona, California, Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, New Jersey, New York, Ohio, Utah, and Virginia. Kristin R.W. Matthews & Daniel Morali, *Can We Do That Here? An Analysis of US Federal and State Policies Guiding Human Embryo and Embryoid Research*, 9 J. L. AND BIOSCIENCES. (Jan.-June 2022).

²⁴⁰ Proposition 71 was passed in 2004 and renewed in 2020. CA Health & Safety Code § 125118 (2005); see also Nidhi Subbaraman, *California’s Vote to Revive Controversial Stem-Cell Institute Sparks Debate*, 587 NATURE 535 (2020). Note that although California was the first state to explicitly establish a right to ESC research, New Jersey was the first state to allocate public funds in support of this research. David W. Chen, *New Jersey Awards \$5 Million in Grants for Stem Cell Research*, N.Y. TIMES (Dec. 17, 2005), <https://www.nytimes.com/2005/12/17/nyregion/new-jersey-awards-5-million-in-grants-for-stem-cell-research.html> [https://perma.cc/XM3M-C9Z6].

²⁴¹ Arizona, Illinois, Massachusetts, Michigan, and Missouri have sourcing prohibitions, and Indiana makes unlawful use of an embryo a felony. Matthews & Morali, *supra* note 239.

²⁴² Nefi D. Acosta & Sidney H. Golub, *The New Federalism: State Policies Regarding Embryonic Stem Cell Research*, 44 J. LAW. MED. ETHICS (Sep. 2016).

²⁴³ See, e.g., *Examining the Ethics of Embryonic Stem Cell Research*, HARV. STEM CELL INST., <https://www.hsci.harvard.edu/examining-ethics-embryonic-stem-cell-research> [https://perma.cc/5JCR-LYXY] (last visited June 20, 2025) (noting President Bush’s referral to innocent human life when vetoing the 2006 Stem Embryonic Stem Cell Research Enhancement Act).

²⁴⁴ Katie Toner, *Senator Brownback Decries Embryonic Stem Cell Research*, THE HOYA (Mar. 17, 2006), <https://thehoya.com/uncategorized/senator-brownback-decries-embryonic-stem-cell-research/> [https://perma.cc/4WJD-DZWD].

further limitations under the Trump Administration, encouraged by legal fetal personhood advocates and memorialized in Project 2025. In addressing ESC research, Project 2025 asserts that, “from the moment of conception, every human being possesses inherent dignity and worth, and our humanity does not depend on our age, stage of development, race, or abilities.”²⁴⁵ Building on this, the document then states that, “[r]esearch using human embryonic stem cells also involves the destruction of human life and should not be subsidized with taxpayer dollars.”²⁴⁶ and that “[t]here is never any justification for ending a child’s life as part of research.”²⁴⁷ In April 2025, a group of Representatives and Senators sent a letter to the White House, claiming that ESC research “relies on the death of young human beings[.]”²⁴⁸ This letter is built on the allegations of Project 2025.²⁴⁹ As pointed out by advocates, the letter makes a number of unsubstantiated claims, including undervaluing the medical promise ESC treatment holds and failing to recognize the substantial federal restrictions already in place.²⁵⁰ In short, the letter relies on a theory of legal fetal personhood to claim that taking a blastocyst and removing the inner cell mass to derive an ESC line is tantamount to murder, further proving that legal fetal personhood is a threat to stem cell research.²⁵¹ And despite the progress made, in the United States, the legal fetal personhood movement, in conjunction with anti-abortion advocates, have slowed the pace of research.²⁵²

²⁴⁵ *Mandate for Leadership: The Conservative Promise*, *supra* note 123, at 450.

²⁴⁶ *Id.* at 460.

²⁴⁷ *Id.* at 455.

²⁴⁸ Letter from Christopher H. Smith, U.S. Congressman, et al. to President Donald Trump (Apr. 9, 2025), https://chrissmith.house.gov/uploadedfiles/member_letter_to_president_trump_on_human_embryonic_stem_cell_research_april_7_2025.pdf [<https://perma.cc/SN8A-EENT>].

²⁴⁹ The Mandate for Leadership, *supra* note 123, at 455. The Vatican has also come out against this research, a position often used in support of bans, even in secular spaces. See *Instruction Dignitas Personae on Certain Bioethical Questions*, VATICAN CONGREGATION FOR THE DOCTRINE OF THE FAITH https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_en.html [<https://perma.cc/2QTX-LRDG>] (last visited Nov. 7, 2025).

²⁵⁰ *ISSCR Statement on the Scientific and Therapeutic Value of Human Embryonic Stem Cell Research*, INT’L SOC’Y FOR STEM CELL RSCH., <https://www.isscr.org/isscr-news/isscr-statement-on-the-scientific-and-therapeutic-value-of-human-embryonic-stem-cell-research> [<https://perma.cc/9WVV-L4QC>] (last visited May 29, 2025).

²⁵¹ Emily Bazelon, *Why ‘Fetal Personhood’ is Roiling the Right*, N.Y. TIMES (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/magazine/fetal-personhood-alabama-ivf.html>.

²⁵² Miriam Reisman & Katherine T. Adams, *Stem Cell Therapy: a Look at Current Research, Regulations, and Remaining Hurdles*, P.T., vol. 39 (Dec. 2014).

2. Internationally

Outside the U.S., countries around the world are more likely to authorize and regulate ESC research than ban it.²⁵³ And while international guidelines on ESC do exist, they say very little about the issue of legal fetal personhood.²⁵⁴ High courts that have considered the constitutionality of ESC research based on legal fetal personhood arguments, moreover, have largely upheld their country's regulation of the technology. As explained below, legal challenges brought against ESC research have largely emerged in the wake of a country's initial decision to authorize and regulate it.²⁵⁵

In Brazil, prenatal personhood advocates challenged the country's 2005 law permitting ESC research in 2008.²⁵⁶ These challengers alleged that because frozen embryos constitute human life, any technology that destroys them threatens the dignity of the "human person" in violation of the constitution's right to life.²⁵⁷ Notably, Brazil's Civil Code grants certain rights to the "unborn child" but requires a child to be born alive to acquire "civil personality." According to Article 2, "[t]he civil personality of a person begins with live birth; however, the law protects the rights of the unborn child from conception."²⁵⁸ The Court ultimately upheld the constitutionality of the stem cell research law, ruling that the right to life only extended to intrauterine embryos and not "frozen embryos not eligible for intrauterine transfer."²⁵⁹ To reach this conclusion, the Court clarified that the Brazilian constitution neither establishes exactly when life begins nor turns "every stage of human life into an autonomous legal entity."²⁶⁰ Rather, it "protects the life that already belongs to a concrete person."²⁶¹ According to

²⁵³ Only a handful of countries worldwide, including Austria, Germany, Italy, and South Africa, have banned embryonic stem cell research. Deepali Dhar & John Hsi-En Ho, *Stem Cell Research Policies around the World*, 82 YALE J. OF BIOLOGY AND MED., 113, 113 (2009); Michelle Ralston, *Stem Cell Research Around the World*, PEW RSCH. CTR., (July 17, 2008), <https://www.pewresearch.org/religion/2008/07/17/stem-cell-research-around-the-world/> [https://perma.cc/X7NH-3D3C].

²⁵⁴ The International Society for Stem Cell Research (ISSCR) has issued Guidelines for Stem Cell Research and Clinical Translation. *Guidelines for Stem Cell Research and Clinical Translation*, INT'L SOC'Y FOR STEM CELL RSCH. (2025), https://static1.squarespace.com/static/611faaa8fee682525ee16489/t/689a1702c7ed161d03372842/1754928898909/ISSCR_Guidelines_1.2_11+FINAL.pdf [https://perma.cc/26JH-MCYT].

²⁵⁵ This is similar to how events played out internationally in the context of EC. See *supra* Section III.C.2.

²⁵⁶ Luiz Edson Fachin, *Life, Dignity and Human Rights: Stem Cell Research, the Law and a Recent Court Ruling in Brazil*, INT'L SURVEY OF FAMILY L. (2009), <https://isfl.world/wp-content/uploads/2022/07/Brazil-2009.pdf> [https://perma.cc/275P-47LC].

²⁵⁷ ADI 3510, 144 STF, em 29.05.2008.

²⁵⁸ Código Civil [C.C.][Civil Code], Art. 2, Lei No. 10.406 (Braz.).

²⁵⁹ ADI 3510 *supra* note 257, at 488.

²⁶⁰ *Id.* at 136.

²⁶¹ *Id.*

the Court, these 'concrete persons,' include "only those who survive childbirth," and ceases upon death.²⁶²

Another example occurred in France. Here, the country's Parliament first authorized and regulated ESC research in 2011.²⁶³ In response, a group of legislators challenged the law before the country's Constitutional Council, arguing that the research violated the principles of respect for life and human dignity contained in the constitution.²⁶⁴ The Council ultimately dismissed the claim, finding that ESC research did not violate either principle.²⁶⁵ It stressed that the principle of human dignity was preserved because the law did not allow indiscriminate research and imposed strict safeguards, namely a medical purpose, the absence of a "parental project," written informed consent, and a prohibition on later use for gestation.²⁶⁶

In contrast to the shifting and often cloudy legal environment surrounding ESC research in the U.S., the high courts' decisions from Brazil and France highlight a global trend towards permitting ESC research. This remains true even when various—and sometimes stringent—regulations are imposed. In the process, courts have clearly negated arguments grounded in legal fetal personhood that would render the technology illegal.

IV. RATIONALES & IMPLICATIONS

While legal fetal personhood can enter any legal system through various sources of law (e.g. constitutions, statutes, etc.), courts in all countries ultimately retain a great deal of authority to define the exact scope, content, and meaning of these provisions.²⁶⁷ This section explores the common rationales that courts in the United States and in other parts of the world have relied upon to either adopt or reject legal fetal personhood in the areas we highlight. This includes not only the specific rationales used, but also the far-reaching implications for individuals, families, and society more broadly.

²⁶² Supremo Tribunal Federal, at 161. The court also distinguished between extrauterine and intrauterine embryos. Supremo Tribunal Federal, at 137.

²⁶³ Katherine Drabiak-Syed, *New President, New Human Embryonic Stem Cell Research Policy: Comparative International Perspectives and Embryonic Stem Cell Research Laws in France*, 32 BIOTECHNOLOGY L. REP. (2013): 349-356.

²⁶⁴ Décision n° 2013-674 DC, Conseil constitutionnel [CC] [Constitutional Council], Aug. 1, 2013, ¶ 5 (Fr.), <https://www.conseil-constitutionnel.fr/decision/2013/2013674DC.htm> [<https://perma.cc/TSY7-MJFF>].

²⁶⁵ *Id.* at ¶ 19.

²⁶⁶ *Id.* at ¶ 16-17.

²⁶⁷ Giovanna Parini Bareiro, *Prenatal Life Protection Clauses in Latin American Constitutionalism: Are They Normative Barriers for Women's Reproductive Freedom?* (forthcoming 2026).

A. Intent of the Law

1. U.S.A.

In the United States, both the federal government and subnational entities are, as noted above, intensifying their push to pass new laws recognizing full legal fetal personhood. But increasingly, courts and commentators are also alleging that the laws already in place in the United States extend their protections before the actual birth of a person. As noted below, these analyses rely on a combination of using statutory construction arguments and legislative analysis to assume a fetus is included when it is not specifically excluded, and by asserting legislative intent. This reliance on intent, and on ‘history and tradition,’ is most glaring in the majority opinion in *Dobbs*, the U.S. Supreme Court case that reinvigorated the legal fetal personhood movement in the country.²⁶⁸ The *Dobbs* court relied on many of the same sources that the *Roe* court had relied on in order to come to the opposite conclusion.²⁶⁹ Although most courts and legislatures since are not as artless in their reasoning, the same basic movement exists elsewhere – an effort to rewrite existing law as cover for already agreed upon ends.²⁷⁰ Below, we explain how these efforts are occurring in the four areas of reproductive health we are highlighting.²⁷¹

As noted *supra*, abortion health care laws are increasingly being read as if they already extend to a fully rights-bearing person that is in existence from fertilization.²⁷² This is true at the federal level, as evinced by the current litigation around EMTALA, and at several instances on the state level.²⁷³ This is because once a fetus has been designated a legal person in abortion statutes, that not only effectively ends abortion health care, including in cases of rape, incest, and where there are serious maternal or fetal health concerns,

²⁶⁸ See *Dobbs*, 597 U.S. at 387.

²⁶⁹ As just some examples: the *Roe* court held that, historically, “even post-quickening abortion was never established as a common law crime,” while *Dobbs* stated that, “the great common-law authorities ... all wrote that a post-quickening abortion was a crime.” Even when discussing particular commentators, the courts highlighted inapposite portions of the relevant texts. For example, the *Roe* court noted that Sir Edward Coke “took the position that abortion of a woman ‘quick with childe’ is a great misprision, and no murder,” while the *Dobbs* court said that “abortion of a quick child was ‘murder’ if the ‘childe be born alive.’”

²⁷⁰ For a general discussion of how existing laws can be the basis for the continued expansion of legal fetal personhood in the U.S., see Fleming & Roth, *supra* note 60.

²⁷¹ Although we focus herein on these four areas, we note that reading fetal personhood intent into other areas of law also occurs, and that even states themselves are often unsure of how laws should be interpreted in this arena.

²⁷² See, e.g., *supra* Section III.A.1.

²⁷³ As noted *infra*, federal courts are reading legal fetal personhood into EMTALA, although that is not what the text of the law, or any precedent, has said.

it also affects all other decisions made during pregnancy.²⁷⁴ As one glaring recent example, a Georgia woman suffered a massive stroke nine weeks into her pregnancy.²⁷⁵ She was declared brain dead and her family sought to honor her wishes and discontinue the invasive medical procedures necessary to keep her body alive.²⁷⁶ The hospital housing her said in a statement that they were keeping her on life support in compliance with the state's abortion laws, which include the FACE Act, a state law that generally forbids the provision of abortion health care after detection of a fetal heartbeat.²⁷⁷ The hospital prolonged her life until June 2025, when a C-section was performed on her and she was taken off of life support.²⁷⁸ In other words, the wording of Georgia's legal fetal personhood-based abortion law forced her and her family to make an end-of-life and reproductive rights decision against their will.²⁷⁹ The state also recently brought and then dropped charges of abandoning and concealing a dead body against a woman who had miscarried.²⁸⁰ Even more recently, a Texas man was charged with murder

²⁷⁴ See Long, *supra* note 66.

²⁷⁵ Christine Henneberg, *The Adriana Smith Case Was an Ethical Disaster*, ATLANTIC (June 24, 2025), <https://www.theatlantic.com/health/archive/2025/06/adriana-smith-fetal-personhood-medical-ethics/683297/> [<https://perma.cc/8FYW-CQFD>].

²⁷⁶ *Adriana Smith's Family Should be Able to Honor Her End-of-Life Wishes*, COMPASSION & CHOICES (May 28, 2025), <https://compassionandchoices.org/news/adriana-smiths-family-should-be-able-to-honor-her-end-of-life-wishes/> [<https://perma.cc/JW7C-T8A7>]. Note that an eerily similar case occurred in the U.S. in Texas in 2013, when, against the wishes of the family, a Texas hospital kept a pregnant woman on life support for over two months before finally being forced to disconnect her by a court. Wade Goodwyn, *The Strange Case of Marlise Munoz and John Peter Smith Hospital*, NPR (Jan. 28, 2014), <https://www.npr.org/sections/health-shots/2014/01/28/267759687/the-strange-case-of-marlise-munoz-and-john-peter-smith-hospital> [<https://perma.cc/KTK5-M47U>].

²⁷⁷ See Carter Sherman, *Fetus of Brain-Dead Georgia Woman Kept Alive due to Abortion Ban is Growing, says Family*, GUARDIAN (May 20, 2025, at 14:11 ET), <https://www.theguardian.com/us-news/2025/may/20/pregnant-georgia-woman-brain-dead> [<https://perma.cc/4PQ8-PQJZ>]. The FACE Act (also known as the LIFE Act) is a 2019 law that largely bans abortions after a fetal heartbeat is detected. Ga. Code Ann. § 31-9B-2 (2022).

²⁷⁸ Rep. Ayanna Pressley's Statement on Adriana Smith, PRESSLEY HOUSE (June 17, 2025), <https://pressley.house.gov/2025/06/17/rep-ayanna-pressleys-statement-on-adriana-smith/> [<https://perma.cc/7T63-5JV5>]. Note that brain death is the complete disfunction of the brain, leaving the person unable to sustain life in any way – in these circumstances bodies are generally only kept on life support long enough for loved ones to say goodbye. Moira Donegan, *A Baby Born to a Brain Dead Mother: This is the Horror of Abortion Bans*, GUARDIAN (July 8, 2025, at 07:00 ET), <https://www.theguardian.com/commentisfree/2025/jul/08/adriana-smith-atlanta-brain-dead-birth> [<https://perma.cc/2XHC-6U8E>].

²⁷⁹ Note that legal fetal personhood requires parental actions that would likely not even be required by a parent after birth. See, e.g., Laura Hermer, *Even Full Fetal Personhood Shouldn't End Abortion Rights*, STATNEWS (June 16, 2025), <https://www.statnews.com/2025/06/16/full-fetal-personhood-abortion-rights-adriana-smith-pregnancy/> [<https://perma.cc/D6TH-DTF9>] (noting that actually born children could not require parents to donate bodily organs).

²⁸⁰ Praveena Somasundaram et al., *Charges Dropped Against Woman Who Had Miscarriage and Disposed of Fetus*, WASH. POST (Apr. 4, 2025), <https://www.washingtonpost.com/nation/2025/04/04/georgia-woman-miscarriage-charges-dropped/> [<https://perma.cc/KEX9-Q7Z6>].

after surreptitiously giving his pregnant girlfriend mifepristone, on the theory he killed a fully rights-bearing person.²⁸¹

In the U.S., assuming legal fetal personhood in abortion health care has even gone beyond interpreting abortion bans themselves and entered areas of law impacting abortion health care.²⁸² For example, Indiana passed a law requiring the cremation or burial of post-abortion fetal remains.²⁸³ Although a federal district court initially blocked the law, the Court of Appeals upheld it.²⁸⁴ Efforts like this represent the attempts of legal fetal personhood proponents to interject their campaign into all aspects of abortion health care law to advance their agenda.²⁸⁵

In the IVF arena, in the *LePage* case, the court worked hard to interpret their state's Wrongful Death of a Minor law in a way that would support their admitted belief that "all members of this Court agree that an unborn child is a genetically unique human being whose life begins at fertilization and ends at death."²⁸⁶ In other words, the court fashioned the question at issue as whether there was a valid legal *exception* for full rights-holding children who happened to be residing in a test tube rather than in a womb.²⁸⁷ To build their case, the court noted a 2006 legislative enactment changing the definition of the word 'person' for purposes of criminal homicide.²⁸⁸ Five years later, relying on that definitional expansion, the Alabama Supreme court had expanded that definition further to include nonviable in utero fetuses.²⁸⁹ Resting on these precedents, the *LePage* court determined that these statutes and holdings were recognizing what they felt to be true – that in 1872, the year the law at issue was passed, the word 'child' was understood to cover every collection of cells beginning at fertilization.²⁹⁰

²⁸¹ Jessica Shuran Yu & Hayden Betts, *Texas Capital Murder Case Attempts to Severely Punish Abortion Pill Use by Treating a Fetus as a Person*, TEX. TRIB. (June 30, 2025), <https://www.texastribune.org/2025/06/30/texas-abortion-pill-capital-murder-charge-fetal-personhood/> [https://perma.cc/544B-NVXQ]

²⁸² See, e.g., H.R. 1337, 119th Gen. Assemb., 2d Reg. Sess. (Ind. 2016) (noting "miscarried and aborted fetuses may be cremated by simultaneous cremation.").

²⁸³ *Id.*

²⁸⁴ See *Doe v. Rokita*, 54 F.4th 518 (7th Cir. 2022).

²⁸⁵ See generally Heipt & Littell, *supra* note 4, at 322-25 (other ways that laws around abortion health care have been interpreted to inject fetal personhood issues include using fetal personhood language in mandated abortion counseling and in the issuance of birth certificates).

²⁸⁶ *LePage*, 403 So. 3d at 751.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 786.

²⁸⁹ *Mack v. Carmack*, 79 So. 3d 597, 610-11 (Ala. 2011) (note that the *Mack* court made this expansion even though the Alabama legislature had not amended the Wrongful Death Act by alleging that "congruence" between criminal and civil law was called for); see also *Stinnett v. Kennedy*, 232 So. 3d 202, 215 (Ala. 2016) (finding this expansion and its reliance on borrowing a definition from criminal law "made sense").

²⁹⁰ *LePage*, 403 So. 3d at 753-54.

Since there was no reason to read in what the court termed an unwritten exception, the majority claimed that they were only following legislative and judicial intent when they determined that the state's Wrongful Death law applied "without limitation."²⁹¹

Fetal personhood has also been extended into contraception policies and laws, even in the absence of explicit mentions.²⁹² Here, the danger lies in the perceived ambiguity of existing statutes, which may place contraceptive users or providers at risk of criminal or civil penalties.²⁹³ These dangers are fast becoming a recognized reality.²⁹⁴ As noted above, Missouri, Alabama, Tennessee and Virginia have all faced recent situations in which the availability of contraception was questioned because of fetal personhood concerns.²⁹⁵ We also note that with these concerns come increased dangers of surveillance by states looking to prevent the 'destruction' of fully rights-holding entities at any stage.²⁹⁶

In the area of ESC research, the same broad interpretation of the law found in the *LePage* decision also threatens the continuation of stem cell research.²⁹⁷ This is particularly true in an evolving field, and many state level laws do not define the terms they use well or distinguish between different types of cell lines.²⁹⁸ This situation makes stem cell research even more vulnerable to interpretations favoring the recognition of legal fetal personhood.²⁹⁹ Federally, the current administration has said little directly on the issue, but even pre-*Dobbs* took steps against ESC research.³⁰⁰ For example, in 2019 the first Trump administration added an 'ethics step' to fetal tissue research and limited federal funding.³⁰¹ This move is in keeping

²⁹¹ *Id.* at 756.

²⁹² See Hussain, *supra* note 33.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ See Terry McGovern, *Fetal Personhood: What Happens When the Rights of the "Fertilized Egg" Supersede the Rights of the Mother*, BMJ (Feb. 24, 2025), <https://www.bmj.com/content/388/bmj.r372> [<https://perma.cc/57WD-XUEZ>].

²⁹⁷ David Peloquin et al., *Embryonic Personhood and Scientific Research Following the Alabama Supreme Court Decision on In Vitro Fertilization*, HEALTH L. WKLY. (Mar. 15, 2024), <https://www.americanhealthlaw.org/content-library/health-law-weekly/article/f71e5618-a460-48e5-a558-d00153887be0/embryonic-personhood-and-scientific-research-follo> [<https://perma.cc/6GL3-QWL6>].

²⁹⁸ Brooke Bumpers et al., *State Laws Governing Abortion Raise Questions Over Legality of Embryonic Stem Cell Research*, JD SUPRA (May 22, 2024), <https://www.jdsupra.com/legalnews/state-laws-governing-abortion-raise-4501664/> [<https://perma.cc/Q7N4-XY96>].

²⁹⁹ *Id.*

³⁰⁰ Amy Goldstein, *Trump Restrictions on Fetal Tissue Research Unsettle Key Studies and Scientists*, WASH. POST (Jan. 13, 2020), https://www.washingtonpost.com/health/trump-restrictions-on-fetal-tissue-research-unsettle-key-studies-and-scientists/2020/01/13/b4efa312-f1e1-11e9-8693-f487e46784aa_story.html [<https://perma.cc/KMK6-N6BT>].

³⁰¹ *Id.*

with the dictates of Project 2025, which states that research that uses ESC “should not be subsidized.”³⁰² In short, ESC research represents another area in which American institutions are increasingly reading fetal personhood into already existing laws.³⁰³

2. Internationally

As noted *infra*, under the majority of legal systems worldwide and international human rights law, it is well-established that basic legal rights, such as the right to life, accrue when a person is born.³⁰⁴ Analyses of the legislative histories of various international human rights treaties, for example, clearly establish that the drafters never intended to afford any rights to prenatal life.³⁰⁵ The negotiations of the International Covenant on Civil and Political Rights (ICCPR) indicate that its drafters specifically rejected a proposal to amend this article to provide that “the right to life is inherent in the human person from the moment of conception, this right shall be protected by law.”³⁰⁶ Similarly, drafters of the UDHR used the word “born” intentionally to exclude a prenatal application of the rights included in the Declaration.³⁰⁷ Finally, drafters of the Convention on the Rights of the Child (CRC) called for a reference to safeguards before birth in the treaty’s preamble clarifying that “the purpose of the amendment was not to preclude the possibility of abortion.”³⁰⁸

In the context of cases applying the right to life to embryos and fetuses, courts have frequently looked to or relied upon these types of analyses of drafters’ intent, almost always finding that it was not to extend full legal rights before birth.³⁰⁹

³⁰² Carrie N. Baker & Lynne M. Paltrow, *Project 2025 Would Establish an Unborn Uber Class*, MS. MAG. (Oct. 21, 2024), <https://msmagazine.com/2024/10/21/project-2025-fetal-personhood/> [<https://perma.cc/P3DB-7DBG>].

³⁰³ See, e.g., discussion *supra* Section III.A.1.

³⁰⁴ U.N. Working Group on the Issue of Discrimination Against Women in Law and in Practice, *supra* note 11 at 2–4.; R. Copelon et al., *Human Rights Begin at Birth: International Law and the Claim of Fetal Rights*, 13 REPROD. HEALTH MATTERS 120 (2005), [https://doi.org/10.1016/S0968-8080\(05\)26218-3](https://doi.org/10.1016/S0968-8080(05)26218-3) [<https://perma.cc/8UCX-JXQP>].

³⁰⁵ The *Artavia* court looked at the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child, as well as their respective oversight bodies (treaty monitoring bodies or “TMBs”), and concluded that none intended to give embryos the same legal rights as born individuals. *Murillo*, Inter-Am. Ct. H.R. (ser. C.) No. 257 at ¶¶ 225–26, 231–33.

³⁰⁶ U.N. GAOR, 12th Sess., 3d Comm., 819th mtg. at 33, U.N. Doc. A/C.3/L.654 (Nov. 25, 1957).

³⁰⁷ U.N. GAOR 3rd Comm., 99th mtg at 21, U.N. Doc. A/PV/99 (Oct. 11, 1948).

³⁰⁸ Rep. of the Working Group, U.N. Comm’n on Human Rights, 36th Sess., U.N. Doc. E/CN.4/L.1542 (1980); Rep. of the Working Group on a Draft Convention on the Rights of the Child, U.N. Comm’n on Human Rights, 45th Sess., at 11, U.N. Doc. E/CN.4/1989/48 (1989).

³⁰⁹ See, e.g., *supra* notes 301–04.

In the context of abortion as health care, countries like Mexico, South Africa, and Chile have looked to the intent behind their constitutional provisions to find that the right to life begins at birth in accordance with intent and history. In Mexico, as part of its 2021 rulings on the constitutionality of abortion criminalization and a state's right to life from conception provision, the Supreme Court stressed that "[t]he right to life is intentionally associated with the born person and not with the product of human conception."³¹⁰ Similarly, a South African high court determined that had the constitution's drafters intended to protect a prenatal right to life, they would have expressly included a fetus or embryo in the definition of "everyone."³¹¹ According to the court:

There [is] no express provision affording the fetus (or embryo) legal personality or protection. It is improbable...that the drafters of the Constitution would not have made express provision, therefore, had it intended to enshrine the rights of the unborn child in the Bill of Rights to cure any uncertainty in the common law and the light of case law denying the fetus legal personality.³¹²

High courts in both South Africa and Chile looked to their respective constitution's treatment of children under other rights to reach a similar conclusion, namely that certain rights afforded children in the constitution could not have been intended to include prenatal life.³¹³ Chile's Constitutional Court referenced the rights to privacy, to travel, or to choose a health system, while South Africa's high court flagged rights relating to work, detention, and armed conflict.³¹⁴

In the area of IVF, in the *Artavia* case, discussed *supra*, the IACtHR cited previous caselaw to hold that drafters of the Interamerican human rights system's foundational treaties had rejected language that would have extended the right to life to the unborn.³¹⁵ Citing *Baby Boy v. United States*, the IACtHR found that when the Inter-American Commission on Human Rights ("IACHR") carried out a comprehensive analysis of the American Declaration on the Rights and Duties of Man's (American Declaration) legislative history in that case, the IACHR rejected the assertion that legal

³¹⁰ Acción de inconstitucionalidad 148/2017 [AI 148/2017], Pleno de la Suprema Corte de Justicia de la Nación [SCJN], Septiembre de 2021, página 68 (Mex.); acción de inconstitucionalidad 106/2018 y su acumulada 107/2018, *supra* note 97, at ¶ 92 (Mex.).

³¹¹ Christian Lawyers' Ass'n SA v. Minister of Health, BCLR 1434.

³¹² Christian Lawyers' Ass'n of SA v. Minister of Health, BCLR 1434 at 1439.

³¹³ *Id.* at 1442; Translation of the Tribunal Constitucional, *supra* note 52, at 52 ("[t]he unborn does not have the enabling conditions to be recognized as a person and a right holder.").

³¹⁴ Translation of the Tribunal Constitucional, *supra* note 52, at 52; Christian Lawyers' Ass'n SA v. Minister of Health, BCLR 1434 at 1442.

³¹⁵ *Murillo*, Inter-Am. Ct. H.R. (ser. C.) No. 257 at ¶ 220.

fetal personhood was part of the document.³¹⁶ The IACtHR also stressed that at the time of the American Declaration's adoption, 13 states and territories in the region had abortion laws that would have been in violation of such an interpretation.³¹⁷ Finally, the IACtHR stressed that this interpretation also aligned with both the universal and European human rights systems' approaches to the scope of their respective rights to life.³¹⁸

Similarly, at least one high court has also looked to the intent of the constitution's drafters in the context of contraception. The Supreme Court of the Philippines did so when analyzing the legality of the country's contraception law under the constitution's explicit right to life from conception. The Court characterized the drafters' intent as clearly and unequivocally "to prevent the Legislature from enacting a measure legalizing abortion. It was so clear that even the Court cannot interpret it otherwise."³¹⁹

In the area of ESC research, Brazil's high court explicitly rejected legal personhood for extrauterine embryos based on its reading of the constitution's right to life. It stated that there is no such thing as an "embryonic human person," since a pre-implantation embryo may be protected under ordinary law but is not a person in the biographical sense recognized by the Constitution.³²⁰ In short, nations and international legal systems are not assuming legal fetal personhood and even rejecting it in their laws and in their readings of history of intent.

B. Implications for Individuals and the Rule of Law

1. U.S.A.

The implications of the march towards legal fetal personhood in the United States are profound. First, increasing recognition of legal fetal personhood directly diminishes the autonomy, privacy, dignity, and decision-making power of a pregnant person and even of all people of reproductive age.³²¹ While the *Dobbs* case dealt squarely with a federal constitutional right

³¹⁶ *Baby Boy v. United States*, Case 2141, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.54, doc. 9 rev. 1, ¶ 30 (Mar. 6, 1981).

³¹⁷ Patricia Palacios Zuloaga, *Pushing Past the Tipping Point: Can the Inter-American System Accommodate Abortion Rights?*, 21 HUM. RTS. L. REV. 899, 914 (2021), <https://doi.org/10.1093/hrlr/ngab014> [<https://perma.cc/2NLD-DXXP>].

³¹⁸ *Id.* at 926.

³¹⁹ *Imbong*, G.R. No. 204819, *supra* note 192.

³²⁰ Supremo Tribunal Federal, *supra* note 262, at 136-37.

³²¹ We note that despite the increase of fetal personhood in the U.S., voters are not supportive of this concept. Lake Research Partners, *Survey of the Public's Awareness of "Fetal Personhood" and Messaging Against It*, NAT'L WOMEN'S L. CTR. AND PREGNANCY JUST. (Apr. 7, 2025), <https://nwlc.org/wp-content/uploads/2025/04/Final-Lake-Research-Partners-Memo-NWLC-and-Pregnancy-Justice-Updated-4.30.25.pdf> [<https://perma.cc/65EH-Q2Y5>].

to abortion health care in the United States, the dissent in that case recognized that the underlying danger lied in taking away an individual's personal rights "from the moment of fertilization."³²² This has already begun happening. Pregnant people have been denied medication, forced to undergo medical procedures, and been prosecuted—all on the theory that the state could step in because they, and not the pregnant people, were entitled to intervene if the fetus was a fully rights-bearing entity.³²³ In fact, in the United States, there is an increasing movement for "abortion abolition," under which all abortion would be outlawed and any pregnant person who gets or attempts to get an abortion, under any circumstances, would be criminally prosecuted.³²⁴

Additionally, the impact of legal fetal personhood goes beyond that experienced by the pregnant person and is also felt profoundly within families. The Georgia case explained *infra* presents a troubling real-world example of how the advent of legal fetal personhood influences decision-making and can unethically disrupt a family.³²⁵ This familial impact is one of the reasons courts, legislatures and commentators outside the U.S. have rejected legal fetal personhood.³²⁶ Unfortunately, U.S. conversations around the uptick in legal fetal personhood do not always consider the impacts on the larger family structure, leaving many of these concerns unresolved.³²⁷

Although the personal and familial aspects of increased legal fetal personhood laws are deeply troubling, their impact goes beyond these areas and affects the overall legal landscape in the United States. For example, anti-abortion health care and pro-legal-fetal-personhood U.S. advocates are finding success in promoting their message in schools. This started in 2023, when North Dakota became the first U.S. state to pass "fetal development education legislation."³²⁸ This has spread, and now schoolchildren in several states must watch videos such as "Meet Baby Olivia," a propaganda film that asserts that life begins "at conception."³²⁹

³²² *Dobbs*, 597 U.S. at 360 (Sotomayor, J., dissenting).

³²³ Heipt & Littell, *supra* note 4, at 290-93, 338-39.

³²⁴ Kim Bellware, *Fringe Movement Sparks Divide with Push to Charge Women Who get Abortions*, WASH. POST (May 14, 2025), <https://www.washingtonpost.com/nation/2025/05/14/abortion-abolitionists-criminal-charges-pregnant-women/> [<https://perma.cc/QHX2-V6EA>].

³²⁵ Henneberg, *supra* note 275.

³²⁶ See discussion *infra* Section III.B.2.

³²⁷ Scott Douglas Jacobsen, *Pushing Back Against Fetal Personhood Laws*, THE GOOD MEN PROJECT (Mar. 7, 2025), <https://goodmenproject.com/featured-content/pushing-back-against-fetal-personhood-laws-sjbn/> [<https://perma.cc/L9UY-R7Q6>].

³²⁸ H.B. 1265, 68th Leg., Reg. Sess. (N.D. 2023).

³²⁹ Sarah Butrymowicz, *Anti-Abortion Policy In Schools: Pro-Life "Baby Olivia" Videos Are Being Shown in Classrooms*, TEEN VOGUE (Aug. 5, 2025), <https://www.teenvogue.com/story/anti-abortion-policy-baby-olivia-videos-shown-in-classrooms> [<https://perma.cc/9W86-3YL2>].

The legal fetal personhood agenda can also impact and disrupt many areas of law outside the subtopics we highlight here, both large and small.³³⁰ One example is the continued push to have pregnancies count as additional people in carpool lanes, on the theory that if a pregnancy has all the legal rights of every born person they should also “count” in these circumstances.³³¹ Likewise, current census rules instruct the counting of all living people on census day in the United States, and if fetuses, or test tubes, count as people, this structure would no longer be workable.³³² Whole areas of law, such as estate law and planning, could be upended.³³³ The list is long.

2. Internationally

In contrast to the experience in the United States, the implications for individual, families and the rule of law under legal fetal personhood are commonly recognized as important criteria in many other countries. High courts around the world have recognized that an absolute right to life for embryos and fetuses would trigger blanket bans on various reproductive health services, including abortion and IVF, which in turn results in violations of pregnant people’s and intended parents’ constitutional and human rights. According to these courts, such bans result in violations of their rights to life, health, dignity, autonomy, equality and nondiscrimination, freedom of conscience, and freedom from cruel, inhuman and degrading treatment, among others. Mexico’s federal Supreme Court, for example, held that an absolute prenatal right to life would impose excessive burdens on women and pregnant individuals, restricting their rights to liberty, dignity, privacy, personal development, and reproductive autonomy.³³⁴

³³⁰ While a deeper discussion of these areas is beyond the scope of this article, we note these concerns to reflect that the imposition of legal fetal personhood would impact almost all aspects of society.

³³¹ This effort has been going on for several years, and Texas is primed to see an additional bill on the topic in the 2026 legislative session. Brammhi Balarajan, *Texas Lawmakers Advance Bill Granting HOV Access to Pregnant Drivers*, CHRON (May 12, 2025), <https://www.chron.com/politics/article/texas-hov-lanes-pregnant-20322952.php> [<https://perma.cc/CTX5-2S2Z>].

³³² 13 U.S.C. § 141 (1980). We note the confusion that would occur in cases not only of abortion, but of miscarriage.

³³³ Solangel Maldonado, *Constraining the Reach of Fetal Personhood Statutes*, JOTWELL (Jan. 27, 2025) (reviewing Bridget J. Crawford et al., *Unintended Consequences of Fetal Personhood Statutes: Examples from Tax, Trusts, and Estates*, 25 GEO J. GENDER & L. 1159 (2024)).

³³⁴ Acción de inconstitucionalidad 106/2018 y su acumulada 107/2018 [AI 106/2018 y 107/2018], Pleno de la Suprema Corte de Justicia de la Nación [SCJN], *supra* note 97, at ¶¶ 42-58; *Aprueba Congreso reforma constitucional en concordancia con sentencia de la SCJN*, CONGRESO DE SINALOA (Mar. 9, 2022), <https://www.congresosinaloa.gob.mx/comunicados/aprueba-congreso-reforma-constitucional-en-concordancia-con-sentencia-de-la-scn/> [<https://perma.cc/564Z-QFEG>] (Sinaloa amended its constitution to comply with the Court’s ruling on Mar. 9, 2022).

In the context of abortion health care, high courts in South Africa and Slovakia have stressed that granting prenatal life full legal standing results in an absolute prohibition of abortion, which would negatively impact the pregnant person. Moreover, South Africa's high court noted that "the termination of a woman's pregnancy would no longer constitute the crime of abortion, but that of murder," impacting the country's legal scheme.³³⁵ While high courts have taken varied approaches to hierarchizing the constitutional rights and interests involved in abortion, they all reject the granting of an absolute right to life to embryos and fetuses because of the recognized impact. High courts in countries like Italy and Mexico have stressed that a pregnant person's rights carry greater weight than the rights or interests of embryos and fetuses.³³⁶ Other high courts, like Nepal's, have stressed how the fetus's existence is completely dependent on the pregnant person.³³⁷ Even where high courts have characterized the rights and interests of the pregnant person and fetuses to be "of equal hierarchy" in theory, they have recognized the need to balance these rights and interests when considering the constitutionality of abortion bans.³³⁸

Another example occurs in the context of IVF. In the *Artavia* case, discussed *supra*, the court referred specifically to the analysis necessary to allow for the rights of the pregnant person.³³⁹ According to the Court, any attempt to protect prenatal life "must be harmonized with the fundamental rights of other individuals, especially the mother," and protections of prenatal life should be carried out through the pregnant person and not at her expense.³⁴⁰

In the area of ESC research, Brazil's high court stressed the technology's potential to improve the health and lives of people with various diseases. Referencing the constitutional mandate to "promote and encourage scientific development and research," the court characterized ESC research as a path

³³⁵ Christian Lawyers' Ass'n SA v. Minister of Health, BCLR 1434 at 1442.

³³⁶ Italy's Constitutional Court established that "there is no equivalence between the right not only to the life but also to the health of a person who already exists, like the mother, and the protection of an embryo that has not yet become a person." Elizabeth Pulice, *Constitutional Court - Sentence 27/1975: Partial Illegitimacy of the Crime of Abortion*, BIODIRITTO (June 3, 2019), <https://www.biodiritto.org/Biolaw-pedia/Giurisprudenza/Corte-costituzionale-sent.-27-1975-illegittimita-parziale-del-reato-di-aborto> [<https://perma.cc/JA9M-SGS3>]; Acción de Inconstitucionalidad 62/2009 [AI 62/2009], *supra* note 97, at ¶¶ 74-75.

³³⁷ *Landmark Decision of Supreme Court of Nepal on Abortion Rights*, CTR. FOR REPROD. RTS. 1, 16 <https://reproductiverights.org/wp-content/uploads/2021/07/Laxmi-dhital-endnote.pdf> [<https://perma.cc/2ALC-UF4S>] (last visited Nov. 8, 2025) ("It is well understood that a fetus does not have an independent existence and its existence is confined only inside the mother's womb.").

³³⁸ *Murillo*, *supra* note 315, at ¶ 220.

³³⁹ *Id.* at ¶ 260.

³⁴⁰ *Id.* at ¶¶ 260, 309.

towards “alleviating the suffering of others.”³⁴¹ Brazil’s law regulating the technology, as a result, “represents appreciation and reverence for suffering human beings” rather than “disdain or disrespect” towards embryos.³⁴²

A handful of high courts worldwide have also stressed the sweeping and impractical consequences of taking prenatal personhood to its logical conclusion, particularly given their inevitable effects on the rule of law more broadly. Slovakia’s Constitutional Court, for example, stressed that creating various categories of the right to life with different levels of significance could potentially have a destructive impact on the rule of law in that country.³⁴³ Chile’s Constitutional Court, similarly, maintained that granting prenatal life legal personhood would “distort the rest of the constitutional and legal system.”³⁴⁴ According to Mexico’s Supreme Court, state legislatures lack the authority to determine the intensity and nature of the legal protection afforded prenatal life, since this would alter “the notion of person” not only under the federal constitution but also international human rights law.³⁴⁵

V. CONCLUSION

As we can see, the incorporation of legal fetal personhood principles is trending one way in the United States and in the opposite direction for the great majority of the world. We can see this clearly when looking at the experiences and rationales for each of the four reproductive justice subcategories examined: abortion health care, assisted reproductive technologies, contraception, and stem cell research. And it is true whether we are looking at overt or covert attempts to advance legal fetal personhood. When looking at these experiences over time, we can identify a number of trends that have emerged based on this comparative analysis of legal fetal personhood.

First, overall, while efforts to establish legal fetal personhood are common in many parts of the world, they are currently only taking hold in a handful of countries. Decision-makers have largely rejected attempts to integrate fetal personhood into their countries’ respective legal systems, regardless of the mechanism relied upon or the context in which these arguments have emerged. In the U.S., conversely, the legal fetal personhood movement has begun to gain both momentum and ground in recent years, particularly in the wake of the *Dobbs* decision.

³⁴¹ Supremo Tribunal Federal, *supra* note 262, at 140, 200.

³⁴² *Id.* at 206-07.

³⁴³ PL. ÚS 12/01-297, *supra* note 101, at 5.

³⁴⁴ Translation of the Tribunal Constitucional, *supra* note 52, at 78.

³⁴⁵ Acción de inconstitucionalidad 106/2018 y su acumulada 107/2018, *supra* note 97, at ¶ 104.

Second, in the context of judicial decisions, the text of a law can be less important than a judicial interpretation. When a constitutional provision is involved, for example, the precise meaning and scope of prenatal life protection mandates remain “ambiguous and open to interpretation.”³⁴⁶ In fact, countries have decriminalized abortion while maintaining provisions in their constitutions that explicitly protect prenatal life.³⁴⁷ The United States provides a counterexample here as well, often reading in fetal personhood in the absence of specific constitutional provisions at both the state and federal levels.³⁴⁸ This premise also holds true outside constitutional provisions, with many countries rejecting prenatal personhood in other areas of law, even while the United States reads legal fetal personhood into law.³⁴⁹ In other words, the judiciary plays a central role in both establishing or rejecting legal fetal personhood.

Third, the more complex and nuanced the analysis, the more likely it is for a decision-maker to reject legal fetal personhood. On the one hand, presenting evidence-based, scientific information about how pregnancy works has typically helped counter misunderstandings that frequently underpin support for legal fetal personhood. Countering the misconception that EC functions as an abortifacient, for example, proved instrumental in efforts to repeal bans on the medication.³⁵⁰ On the other hand, the articulation of more complex views on the value of prenatal life and its relationship to born people has also led to decision-makers rejecting legal fetal personhood. For example, in the context of abortion decriminalization in Latin America, scholars have noted that “[b]efore the courts of the region began to articulate a more complex view of the protection of unborn life, constitutional arguments for abortion were easily defeated with the mere affirmation of an absolute duty to protect life from conception.”³⁵¹ In contrast, many U.S. legislatures, courts, and commentators have not engaged in detailed discussions around the impact of legal fetal personhood for laws or for

³⁴⁶ Bareiro, *supra* note 267; *see also Dobbs*, 597 U.S. at 216 (looking at, and interpreting, whether a right to abortion is an essential component of liberty, a broader entrenched right, or is in the nations “history,” or “tradition”).

³⁴⁷ Translation of the Tribunal Constitucional, *supra* note 52, at 41; PL. ÚS 12/01-297, *supra* note 101, at 9–11.

³⁴⁸ *See, e.g., supra* Section IV.

³⁴⁹ Translation of the Tribunal Constitucional, *supra* note 52, at 48; *see also* Second Amended Complaint, *Est. of Baby Villegas v. Jackrabbit Fam. Med.*, No. CV202200007 (Ariz. Super. Ct. Feb. 3, 2023) (here an Arizona judge allowed the establishment of an estate for an aborted fetus, so the would-be father could pursue a lawsuit against the abortion clinic his ex-wife had visited).

³⁵⁰ *See, e.g., supra* Section III.C.2.

³⁵¹ Paola Bergallo & Agustina Ramón Michel, *Constitutional Developments in Latin American Abortion Law*, 135 INT. J. OF GYNECOLOGY AND OBSTETRICS, 228, 228–31 (2016).

pregnant people, allowing the debate to rest solely on the separate question of whether a pregnancy has value.³⁵²

Fourth, both success and failure in the context of the push towards legal fetal personhood is frequently incremental. While this happens both in the United States and elsewhere, this is a particularly important strategy in the U.S., as fetal personhood proponents are increasingly relying on “fetal personhood creep” to attain full legal personhood prebirth without having to directly argue for it.³⁵³ Globally, when a high court has pushed back against legal fetal personhood, it has often done so only as far as it needs to decide a specific case. In Brazil and the Philippines, for example, the court only rejects legal personhood for embryos in particular in order to uphold the legality of ESC research and contraception, respectively.³⁵⁴

Each of these overarching trends has on-the-ground outcomes in each of the areas we are highlighting. In the United States, this means that laws seeking to insert legal fetal personhood are proliferating. And interpretations of already existing laws to include legal fetal personhood are escalating. Internationally, it means that courts and legislatures are engaging in more complex conversations about the rights of families and the medical and social meanings of pregnancy. These engagements are leading decision-making bodies to increasingly, if narrowly, reject the imposition of legal prenatal personhood. Unless the trajectory in the U.S. is altered, the gap between these trends may only continue to widen.

³⁵² Carliss N. Chatman, *If a Fetus is a Person, it Should get Child Support, Due Process and Citizenship*, 76 WASH. & LEE L. REV. ONLINE 91, 93-95 (2020) (noting the “absurd” reach of fetal personhood related abortion bans in the U.S.); Margaret Talbot, *Does a Fetus Have Constitutional Rights?*, THE NEW YORKER (Apr. 14, 2025), <https://www.newyorker.com/magazine/2025/04/21/personhood-mary-ziegler-book-review> [https://perma.cc/JU68-QUK5].

³⁵³ See, e.g., *supra* Section II.

³⁵⁴ “[T]he embryo is the embryo, the fetus is the fetus, and the human person is the human person.” Supremo Tribunal Federal, *supra* note 262, at 137.