

---

**Testimony of Lourdes A. Rivera**  
**President, Pregnancy Justice**  
**before the United States Senate Judiciary Committee**  
**March 20, 2024**

Thank you for the opportunity to submit this testimony to the Senate Judiciary Committee and for convening today’s hearing, “The Continued Assault on Reproductive Freedoms in a Post-Dobbs America.” Pregnancy Justice is a non-partisan legal advocacy organization that for over 20 years has defended and advocated for the rights of pregnant people facing criminalization and other rights violations.

This testimony will first explain “pregnancy criminalization” and “fetal personhood,” and then discuss the path to Alabama’s in vitro fertilization (“IVF”) decision. Pregnancy criminalization occurs when law enforcement charges pregnant people<sup>1</sup> for actions that would not be crimes, except for the fact of the pregnancy or the pregnancy outcome.<sup>2</sup> This includes being charged with murder for experiencing a stillbirth or self-managing an abortion,<sup>3</sup> or for having a miscarriage and not knowing what to do with the fetal remains,<sup>4</sup> as if there were an instruction manual for such things. Pregnant people are charged for actions during pregnancy that allegedly posed a risk to the fetus—conduct that is typically legal for every other member of society.

Pregnancy Justice has documented over 1,800 cases of pregnancy criminalization in the years 1973 to 2022, from *Roe* to *Dobbs*.<sup>5</sup> The majority of those cases—1,400 of them—occurred in the last 15 years: as fetal personhood has gained traction in state law, the rate of pregnancy criminalization has accelerated.<sup>6</sup> Unsurprisingly, those targeted are overwhelmingly poor or disproportionately people of color.<sup>7</sup>

Bestowing legal personhood status on fertilized eggs, embryos, and fetuses is what underlies these prosecutions, and it’s the same premise that underlies abortion bans, and that threatens IVF and birth control.<sup>8</sup> Attempts to define fetuses as legal persons have been rejected by voters in nearly every state in which it has been put on the ballot,<sup>9</sup> including in Mississippi.<sup>10</sup> Yet, state legislatures in at least 11 states passed broad fetal personhood laws before *Dobbs*.<sup>11</sup> These laws could potentially be read to extend full rights to fertilized eggs. Constitutional protections provided by *Roe v. Wade*, however, meant that fetal personhood laws could not always be fully enforced.

*Roe v. Wade* forcefully rejected the idea of fetal personhood, asserting that “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn”<sup>12</sup> and that “the unborn have never been recognized in the law as persons in the whole sense.”<sup>13</sup> The Supreme Court instead affirmed the personhood of the pregnant person, focusing on the pregnant person as the only rights-holder: “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”<sup>14</sup> Thus, the Court

ultimately concluded that “we do not agree that, by adopting one theory of life, [states] may override the rights of the pregnant woman that are at stake.”<sup>15</sup>

Even with *Roe* in place, though, states have sought to enshrine fetal personhood. Ten years ago, for example, the Alabama Supreme Court held that embryos and fetuses are the same as “children” under the state’s criminal chemical endangerment law,<sup>16</sup> and that pregnant people can be charged as “child abusers” from the moment of fertilization if they use substances while pregnant.<sup>17</sup> With over 600 women being charged under the state’s chemical endangerment law since 2006, Alabama leads every state in the nation on pregnancy criminalization.<sup>18</sup> While horrifying, it is hardly surprising that the Alabama Supreme Court decided to extend its reasoning to frozen embryos. Alabama—along with Oklahoma and South Carolina, whose Supreme Courts have also designated fetuses as children under their state criminal laws<sup>19</sup>—accounts for two-thirds of arrests of pregnant people nationally, regardless of whether they have a live, healthy birth or experience a pregnancy loss.<sup>20</sup>

When conduct during pregnancy or pregnancy outcomes are punished, pregnant people and their families suffer irreparable harm. This includes dire health consequences, incarceration, and families torn apart.<sup>21</sup> Our nation is facing a maternal and infant health crisis, and pregnant and postpartum people—but especially Black women—face increased risks of death and severe complications, including due to mental health conditions.<sup>22</sup> The three states with the highest prevalence of pregnancy criminalization also have some of the highest rates of maternal mortality in the nation.<sup>23</sup> Alabama ranks fourth<sup>24</sup> and has some of the worst infant health outcomes.<sup>25</sup> In fact, Alabama’s own maternal mortality review committee has called for the elimination of the state’s chemical endangerment law—which, despite being passed to prevent harm to children exposed to the toxic environments of home-grown methamphetamine labs, has been used to prosecute pregnant women who use prescribed and illicit substances<sup>26</sup>—because it makes it harder for pregnant women to seek treatment for substance use disorder, thus leading to worse maternal mortality outcomes.<sup>27</sup>

Research shows that the criminalization of pregnancy is contributing to the maternal health crisis because if people fear being reported to the police for seeking care, they will not get essential prenatal care and other supports.<sup>28</sup> Over 15 major medical and public health associations in the nation, including the American Medical Association, the American College of Obstetricians and Gynecologists, and the American Academy of Pediatrics, oppose criminalizing pregnancy because it interferes with the patient-provider relationship and deters access to needed health care.<sup>29</sup>

The antiabortion movement’s push to endow fertilized eggs, embryos, and fetuses with full rights has also led to the passage of fetal homicide laws in over 35 states.<sup>30</sup> Homicide is a leading cause of death during pregnancy and the postpartum period, and most murders of pregnant people are linked to intimate partner violence (with 70% of perpetrators using guns to kill their pregnant partner).<sup>31</sup> But fetal homicide laws do absolutely nothing to deter the homicide of pregnant or postpartum people. In fact, state abortion bans are making it harder for people to escape intimate partner violence. The National Domestic Violence Hotline reported seeing a 100% increase in calls since *Dobbs*;<sup>32</sup> pregnancy criminalization and the exodus of obstetrician-gynecologists from states with abortion bans means that pregnant people have less contact with someone who can

provide help.<sup>33</sup> There are multiple ways to intervene without resorting to granting separate legal rights to an embryo or fetus, which makes pregnant people even more vulnerable to homicide. If lawmakers are concerned about making pregnant women safer, they should ensure the bodily autonomy and reproductive decision-making of pregnant women.

Let us be very clear: the struggle for fetal personhood today is not about when life begins, or whether Americans see life in the womb as having value, or protecting babies and children. The idea of personhood that the antiabortion movement advances today is about controlling and punishing women, pregnant people, and communities that are already marginalized. When antiabortion lawmakers endow fertilized eggs with personhood rights, they seek to ban abortion and IVF and threaten contraception. As legal personhood advances, more pregnant people can face criminal charges for any conceivable risk to their pregnancies, or even to a fertilized egg before implantation.<sup>34</sup> This is not hyperbole. Our clients are living this reality right now.

Indeed, Alabama may have passed legislation theoretically protecting IVF,<sup>35</sup> but IVF is still vulnerable in the state. The legislation states that “no action, suit, or criminal prosecution for the damage to or death of an embryo shall be brought or maintained against any individual or entity when providing or receiving services related to in vitro fertilization,” but it does not address or refute the idea that an embryo is a person.<sup>36</sup> It is also unclear if the legislation will survive legal challenges; a state constitutional amendment passed in 2018 reads, “[t]his state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life,”<sup>37</sup> and the Alabama Supreme Court relied, at least in part, on that constitutional amendment in its decision finding that embryos are people.<sup>38</sup> The IVF legislation is also exclusively centered around immunity for providers and patients, but it does not address when patients cease being patients, such that they may face liability for destroying embryos years after their IVF treatments have ended.<sup>39</sup>

Additionally, even if IVF in Alabama is fully protected, IVF patients and providers in other states are still at risk. Laws defining life beginning at conception and/or endowing fertilized eggs, embryos, and fetuses with full rights vary greatly state to state, and several laws make no mention of IVF and define “life” in such ways that could endanger the procedure.<sup>40</sup> And the federal Life at Conception Act, if ever adopted, would risk creating the conditions now seen in Alabama on a national scale—banning abortion, threatening the right to IVF, endangering access to birth control, and expanding the government’s ability to police pregnant people and criminalize pregnancy and pregnancy outcomes.<sup>41</sup>

In the face of these attacks, and the crisis we are facing, we must remember that women and pregnant people are and must be treated as fully autonomous, rights-bearing persons who are entitled to health care and bodily integrity, and who must be allowed to make their own decisions.

---

<sup>1</sup> Throughout this testimony, Pregnancy Justice uses the terms “pregnant people” or “pregnant person” more frequently than “pregnant women.” This is because in the face of “fetal personhood” it is important to exert the personhood of the people who are pregnant. This is also in recognition that not everyone who becomes pregnant identifies as a woman. At the same time, sexism based on the gender binary is a clear throughline in pregnancy criminalization cases, and the patriarchal desire to impose traditional gender roles on women must be acknowledged. In recognition of all of these complexities, we use the terms “pregnant person/people” and “pregnant woman/women.”

<sup>2</sup> AMNESTY INTERNATIONAL, CRIMINALIZING PREGNANCY: POLICING PREGNANT WOMEN WHO USE DRUGS IN THE USA 5 (2017) (defining pregnancy criminalization as “[t]he process of attaching punishments or penalties to women for actions that are interpreted as harmful to their own pregnancies. This includes laws that punish actions during pregnancy that would not otherwise be made criminal or punishable. It also refers to other laws not specific to pregnancy but which are either applied in a discriminatory way against pregnant women and/or have a disproportionate impact on pregnant women which can in practice work as de facto criminalization”).

<sup>3</sup> PURVAJA S. KAVATTUR ET AL., THE RISE OF PREGNANCY CRIMINALIZATION: A PREGNANCY JUSTICE REPORT 31–34 (2023).

<sup>4</sup> See, e.g., Claretta Bellamy, *Black woman charged after miscarrying in bathroom shares feelings about arrest*, NBC NEWS (Jan. 26, 2024, 4:49 PM), <https://www.nbcnews.com/news/nbcblk/brittany-watts-miscarriage-bathroom-charged-rcna135861>.

<sup>5</sup> Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women’s Legal Status and Public Health*, 38 J. HEALTH POL., POL’Y & L. 299 (2013); PURVAJA S. KAVATTUR ET AL., THE RISE OF PREGNANCY CRIMINALIZATION: A PREGNANCY JUSTICE REPORT (2023).

<sup>6</sup> KAVATTUR ET AL. at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See, e.g., Laura Bassett, *Colorado and North Dakota Voters Reject Fetal Personhood Measures*, HUFFPOST (Nov. 4, 2014, 10:14 PM), [https://www.huffpost.com/entry/personhood-colorado\\_n\\_6104120](https://www.huffpost.com/entry/personhood-colorado_n_6104120); Dahlia Ward McManus, *Voters to Personhood: Stick a Fork In it. You’re Done.*, ACLU (Aug. 30, 2012), <https://www.aclu.org/news/reproductive-freedom/voters-personhood-stick-fork-it-youre-done> (detailing failed efforts to establish fetal personhood in Oklahoma, Ohio, Oregon, Mississippi, Montana, Nevada, Arkansas, Florida, California, Alabama, Georgia, Iowa, South Carolina, Washington, and Wisconsin).

<sup>10</sup> Frank James, *Mississippi Voters Reject Personhood Amendment By Wide Margin*, NPR (Nov. 8, 2011, 11:28 PM), <https://www.npr.org/sections/itsallpolitics/2011/11/08/142159280/mississippi-voters-reject-personhood-amendment#:~:text=The%20Mississippi%20%22personhood%22%20amendment%20on,41%20percent%20voting%20%22yes.%22>.

<sup>11</sup> PREGNANCY JUSTICE, WHEN FETUSES GAIN PERSONHOOD: UNDERSTANDING THE IMPACT ON IVF, CONTRACEPTION, MEDICAL TREATMENT, CRIMINAL LAW, CHILD SUPPORT, AND BEYOND 3 (2022).

<sup>12</sup> *Roe v. Wade*, 410 U.S. 113, 158 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

<sup>13</sup> *Id.* at 161.

<sup>14</sup> *Id.* at 153.

<sup>15</sup> *Id.* at 162.

<sup>16</sup> ALA. CODE § 26-15-3.2.

<sup>17</sup> *Ex parte Ankrom*, 152 So. 3d 397 (Ala. 2013).

<sup>18</sup> KAVATTUR ET AL. at 4, 20.

<sup>19</sup> *State v. Green*, 474 P.3d 886 (Okla. 2020); *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997).

<sup>20</sup> KAVATTUR ET AL. at 4.

<sup>21</sup> See, e.g., Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, HEALTH JUST., 2015 Feb 12;3:2. doi: 10.1186/s40352-015-0015-5. PMID: PMC5151516; Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475 (2021).

<sup>22</sup> 2023 MARCH OF DIMES REPORT CARD FOR UNITED STATES (2023), <https://www.marchofdimes.org/peristats/reports/united-states/report-card>; Katie Kindelan, *Maternal and infant care in ‘crisis’ in US, new report finds*, ABC NEWS (Nov. 16, 2023, 7:06 AM), <https://abcnews.go.com/GMA/Wellness/us-earns-grade-preterm-birth-maternal-infant-care/story?id=104909605> (“This year’s report shows the state of infant and maternal health in the United States remains at crisis-level, with grave disparities that continue to widen the health equity gap.”).

<sup>23</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, MATERNAL DEATHS AND MORTALITY RATES: EACH STATE, THE DISTRICT OF COLUMBIA, UNITED STATES, 2018-2021, <https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-2021-State-Data.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> 2023 MARCH OF DIMES REPORT CARD FOR ALABAMA (2023), <https://www.peridev.marchofdimes.org/peristats/reports/alabama/report-card> (giving Alabama a F because of its high rate of preterm birth and infant mortality).

<sup>26</sup> Nina Martin & Amy Yurkanin, *Special report: Alabama leads nation in turning pregnant women into felons*, PROPUBLICA & AL.COM (Sept. 23, 2015, 9:00 AM), [https://www.al.com/news/2015/09/when\\_the\\_womb\\_is\\_a\\_crime\\_scene.html#incart\\_special-report](https://www.al.com/news/2015/09/when_the_womb_is_a_crime_scene.html#incart_special-report).

<sup>27</sup> ALA. DEP'T OF PUB. HEALTH BUREAU OF FAM. HEALTH SERVS., ALABAMA MATERNAL MORTALITY REVIEW REPORT FOR 2018 – 2019 (2023), [https://www.alabamapublichealth.gov/perinatal/assets/2018-2019\\_annual\\_mmr.pdf](https://www.alabamapublichealth.gov/perinatal/assets/2018-2019_annual_mmr.pdf) (recommending that Alabama “[e]liminate the chemical endangerment law so that women will seek care when pregnant and promote voluntary treatment”).

<sup>28</sup> See, e.g., Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, HEALTH JUST., 2015 Feb 12;3:2. doi: 10.1186/s40352-015-0015-5. PMID: PMC5151516; Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475 (2021).

<sup>29</sup> PREGNANCY JUSTICE, MEDICAL AND PUBLIC HEALTH GROUP STATEMENTS OPPOSING PROSECUTION AND PUNISHMENT OF PREGNANT PEOPLE (updated June 2023).

<sup>30</sup> PREGNANCY JUSTICE, WHO DO FETAL HOMICIDE LAWS PROTECT? AN ANALYSIS FOR A POST-ROE AMERICA 2 (Aug. 16, 2022).

<sup>31</sup> Heather Grey, *Homicide is Top Cause of Death During Pregnancy*, HEALTHLINE (Oct. 27, 2022), <https://www.healthline.com/health-news/homicide-is-top-cause-of-death-during-pregnancy>.

<sup>32</sup> Amna Nawaz & Shoshana Dubnow, *The link between a lack of reproductive rights and domestic violence*, PBS (Jul. 14, 2023, 6:45 PM), <https://www.pbs.org/newshour/show/the-link-between-a-lack-of-reproductive-rights-and-domestic-violence>.

<sup>33</sup> Maryn McKenna, *States with Abortion Bans Are Losing a Generation of Ob-Gyns*, WIRED (Jun. 20, 2023, 6:00 AM), <https://www.wired.com/story/states-with-abortion-bans-are-losing-a-generation-of-ob-gyns/>.

<sup>34</sup> PREGNANCY JUSTICE, WHEN FETUSES GAIN PERSONHOOD: UNDERSTANDING THE IMPACT ON IVF, CONTRACEPTION, MEDICAL TREATMENT, CRIMINAL LAW, CHILD SUPPORT, AND BEYOND (2022).

<sup>35</sup> S.B. 159, 2024 Leg., Reg. Sess. (Ala. 2024).

<sup>36</sup> *Id.*

<sup>37</sup> ALA. CONST. art. I, § 36.06.

<sup>38</sup> *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591, at \*8 (Ala. Feb. 16, 2024) (“Here, the text of the Wrongful Death of a Minor Act is sweeping and unqualified. It applies to all children, born and unborn, without limitation. It is not the role of this Court to craft a new limitation based on our own view of what is or is not wise public policy. That is especially true where, as here, the People of this State have adopted a Constitutional amendment directly aimed at stopping courts from excluding ‘unborn life’ from legal protection.”).

<sup>39</sup> Jan Hoffman, *Alabama’s I.V.F. Protection Law Will Reopen Clinics But Curb Patient Rights*, N.Y TIMES (Mar. 26, 2024), <https://www.nytimes.com/2024/03/06/health/ivf-law-alabama.html>.

<sup>40</sup> For example, Oklahoma’s wrongful death statute, OKLA. STAT. ANN. Tit. 12, § 1053, includes “the death of an unborn person as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.” OKLA. STAT. ANN. Tit. 63, § 1-730 defines “unborn child” or “unborn person” as “the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus,” which means a wrongful death suit could theoretically be brought for the destruction of an embryo through the normal course of IVF. The South Dakota criminal code defines “unborn child” as “an individual organism of the species homo sapiens from fertilization until live birth,” S.D. CODIFIED LAWS § 22-1-2, and South Dakota’s homicide statute encompasses the death of an unborn child, S.D. CODIFIED LAWS § 22-16-4, which could theoretically reach the destruction of embryos. South Dakota’s wrongful death statute, S.D. CODIFIED LAWS § 21-5-1, has also been construed by some South Dakota courts to include fetuses, see, e.g., *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787 (S.D. 1996), and is unclear about whether it could be construed to include embryos. Missouri’s code generally states that “[t]he life of each human being begins at conception” and that “the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state.” MO. REV. STAT. § 1.205. The Missouri code does not have obvious exemptions or protections for IVF.

<sup>41</sup> Life at Conception Act, H.R. 421, 118th Cong. (2023).