

# EXECUTIVE SUMMARY

In the United States, a battle is being waged over women’s reproductive health and rights. Although federal law has expanded access to many forms of reproductive health care, including contraception, numerous new restrictions on abortion and contraception have been enacted at the state and federal levels. As this onslaught of attacks on women’s health and constitutionally-protected reproductive rights has taken center stage politically, a fringe movement pursuing “prenatal personhood” has attempted to push forward its own radical agenda. This extremist minority seeks to entirely ban some reproductive health care—abortion, some contraceptive methods, and some fertility treatments—and to enshrine in state and federal law their belief that life begins at the moment of conception. At its core, the so-called “personhood” movement seeks to establish that fertilized eggs, embryos, and fetuses should be treated as full persons under the law, with rights equal to, and in some cases superior to, the rights of women.

Prenatal personhood measures attempt to define life as beginning at the moment of fertilization or conception. They have been proposed as amendments to state constitutions, ballot initiatives or legislative bills. To date, the personhood movement has been a complete failure—not one of the so-called personhood bills proposed in recent years has passed, and three ballot measures were roundly rejected by voters. Despite repeated rejection by voters, legislators, and courts, proponents of these measures persist in their efforts to impose their view of when life begins on everyone else.

This briefing paper provides legal and contextual information to help advocates, legislators, and others understand and respond to these harmful proposals, including details about some of the prenatal personhood measures in the United States and background about the U.S. personhood movement; explanation of the reasons United States constitutional law and human rights law reject prenatal personhood; and examples from several countries where prenatal personhood has been incorporated into law with devastating results.

A prenatal personhood measure enacted in the United States would directly conflict with the United States Constitution. The Supreme Court held in *Roe v. Wade*<sup>1</sup> that a fetus does not have a right to life under the Fourteenth Amendment of the U.S. Constitution. The Court reaffirmed this holding in *Planned Parenthood v. Casey*.<sup>2</sup> The plurality decision states:

At the heart of liberty, is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.<sup>3</sup>

International human rights law recognizes that human rights attach at birth. Article 1 of the Universal Declaration of Human Rights, the foundational human rights instrument the U.S. helped to draft, declares that “[a]ll human beings are *born* free and equal in dignity and rights.”<sup>4</sup> The International Covenant on Civil and Political Rights, which the U.S. has ratified and is obligated to enforce, does not recognize the “right to life” as pertaining to the fetus. Rather, laws that criminalize abortion jeopardize a woman’s right to life as protected by the treaty.

In the handful of countries where prenatal personhood has been enshrined in law, the consequences have been both devastating and far-reaching. Because extending legal rights to fetuses could criminalize any conduct that might harm a fetus, prenatal personhood laws impose a chilling effect on physicians who risk liability if they provide the best medical care to a pregnant woman in certain situations. Women in Poland and the Dominican Republic have been denied urgent medical treatment at great cost to their health and, in some cases, their lives. Elsewhere, prenatal personhood measures have led to restrictions not only on safe abortion, but also a wide range of other reproductive health services, including a ban on in vitro fertilization (IVF) services in Costa Rica, the inability to secure genetic testing in Poland, and a prohibition on emergency contraception in Honduras. In El Salvador, prenatal personhood measures have prompted criminal prosecutions of women for pregnancy-related complications such as miscarriage and stillbirths. These results violate international human rights law, and human rights bodies and courts are holding countries accountable.

Public policy should help, not harm women. Policymakers and advocates who are truly interested in advancing the well-being of women and children should oppose prenatal personhood proposals and support measures that will benefit women and families. Ensuring that all women have access to affordable health care will help keep women healthy prior to becoming pregnant. Expanding health insurance coverage to cover preconception care, as well as prenatal, delivery and post-natal care, will help reduce poor maternal and infant birth outcomes and reduce shameful health disparities in the United States. Improving access to, and affordability of, contraceptive information and services will improve the health of women and their children.

*Women and their families benefit when policies respect human rights.*

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## Endnotes

<sup>1</sup> *Roe v. Wade*, 410 U.S. 113, 129, 132, 157-62 (1973).

<sup>2</sup> 505 U.S. 833 (1992).

<sup>3</sup> *Id.* at 851.

<sup>4</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), art. 1, U.N. Doc A/810 at 71 (1948) (emphasis added).