



# Resolution No. 509 (New York State D) - Oppose "Fetal Personhood" Terminology in Governmental Policies and Legislation

## **ACTION TAKEN BY THE 2018 CONGRESS OF DELEGATES: ADOPTED**



The Board of Directors referred this resolution to the Commission on Governmental Advocacy. Please address questions regarding the resolution to Robert Hall at [rhall@aafp.org](mailto:rhall@aafp.org) (<mailto:rhall@aafp.org>).

### **RESOLUTION NO. 509 (New York State D)**

#### **Oppose "Fetal Personhood" Terminology in Governmental Policies and Legislation**

Introduced by the New York State Chapter

Referred to the Reference Committee on Advocacy

WHEREAS, "Fetal personhood" is not a medical term, and

WHEREAS, current politicians have used the following language in multiple proposed bills on the state and national levels: "fetal personhood," "child in utero," "unborn child," "a human being at any stage of development," and

WHEREAS, the creation of fetal rights is in direct conflict with the constitutional rights of the pregnant person, and

WHEREAS, "the unborn have never been recognized in the law as persons in the whole sense" and has not afforded it rights as an entity separate from the pregnant person, and

WHEREAS, fetal personhood language included in legislation is designed to undermine women's rights and access to abortion, and

WHEREAS, the use of fetal personhood terminology in legislation has far reaching implications on the bodily autonomy of the pregnant person, for instance, patient access to safe and effective assisted reproductive technologies, such as IVF, selective reduction, and embryo storage and disposal, and

WHEREAS, the use of fetal personhood terminology has far reaching implications on the bodily autonomy of the pregnant person including abortion access, as well as the ability of a pregnant person to make medical decisions surrounding birth, like consent for cesarean sections and pregnant persons' well-being when Catholic institutions' refuse to treat ectopic pregnancies or miscarriages with a fetal heartbeat, now, therefore, be it

RESOLVED, That the American Academy of Family Physicians oppose the use of non-scientific language in the domain of reproductive health in governmental policies and legislative initiatives.

(Received 7/11/18)

**Fiscal Impact:** None

### **Background**

The term "fetal personhood" represents a set of policies, research, laws, and cultural norms aimed at promoting 14<sup>th</sup> Amendment Constitutional protections for a fertilized egg and through all stages of gestation until birth. Fetal personhood was a key argument utilized by the state of Texas during the Supreme Court's *Roe v. Wade* argument (<https://caselaw.findlaw.com/us-supreme-court/410/113.html>) that an embryo was a person deserving full rights and protections under the law. The justices did not concur with that argument, and no legal precedent has undermined the decision.

Generally, fetal personhood advocates argue that life begins at the estimated time when a sperm penetrates a human egg. This perspective is the basis for opposition to hormonal birth control, in vitro fertilization treatment, stem cell research, and abortion. Historically, personhood advocates have supported constitutional amendments to provide fertilized eggs full civil rights. In recent years, personhood advocates have supported "fetal heartbeat" bills and restrictions based on claims that a fetus can experience pain.

Fetal personhood laws have also informed maternal health, criminal justice, and child welfare policies. A 2013 paper (<https://read.dukeupress.edu/jhpl/article/38/2/299/13533/Arrests-of-and-Forced-Interventions-on-Pregnant>) published in the Journal of Health Politics, Policy, and Law indicates that there have been at least 413 criminal and civil cases between 1973 to 2005 where women were subject to legal action related to their unborn children. In 2015, Congress passed the *Unborn Victims of Violence Act (P.L. 108-212)* (<https://www.congress.gov/108/plaws/publ212/PLAW-108publ212.pdf>), the first federal law making it a crime to harm or kill a fetus during an act of violence against the mother. UVVA only covers federal crimes, and its passage triggers a new wave of similar laws at the state level. Prosecutors have criminally charged women for actions that may impact pregnancy outcomes if a miscarriage occurs. There are also instances where pregnant women have faced court orders to follow her physician's treatment recommendations. These laws require women to be tested for drugs and face potential child endangerment conviction if it is established that she used alcohol or illegal drugs during her pregnancy. There are also court cases where women have been convicted of homicide for performing self-induced medical abortions.

Although there is a consensus about the importance of fetal well-being, most "personhood" and related policies contrast with mainstream science, medical practice, bioethics, public health, and human rights. For example, the scientific consensus is a pregnancy begins in the days after a fertilized egg implants into the uterine wall, creating the threshold for fetal protections. The point of viability, as by the Supreme Court's *Roe v. Wade* decision, is the time at which a fetus is capable of sustained life outside of the womb (around 24 weeks). Currently, most states' abortion laws (<https://www.kff.org/womens-health-policy/state-indicator/late-term-abortions/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D>) are consistent with this standard.

Most medical societies support access to hormonal birth control and abortion as allowed under the law. These organizations have also promoted policies to maintain patient privacy and patient access to evidence-based, unbiased information. In 2015, the Coalition to Protect the Patient Physician Relationship issued a statement (<http://www.coalitiontoprotect.org/assets/docs/unsubstantiated-medical-information.pdf>), saying "we are united in our opposition to inappropriate interference in the relationship between a patient and health care provider. This relationship is one in which sensitive and confidential information is privately exchanged in trusted, open, and honest discussion. The Coalition believes that all parties speaking to the provision of health care should respect the unique nature of the patient-provider relationship and support the ethical obligation of the health care provider to deliver individualized, evidence-based care and put the patient first."

The Coalition includes the following medical societies: American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, American College of Obstetrics and Gynecologists (ACOG), American Medical Association, and American Osteopathic Association.

The coalition recommends all legislators adhere to patient-provider relationship principles, including the following:

- Providers should not be prohibited by law or regulation from discussing with, or asking their patients about, risk factors that evidence shows may negatively impact their health, or from disclosing clinically relevant information to patients.
- The information and care provided should be consistent with the best available medical evidence on clinical effectiveness and appropriateness and professional standards of care.
- The information and care should be tailored to individual patient circumstances and allow for flexibility as to the most appropriate time, setting and means of delivering information and care, as determined by the provider and patient.
- The information and care provided should facilitate shared decision-making between patients and their providers, based on the best medical evidence, the provider's knowledge and clinical judgment, and patient values, beliefs, and preferences.

### **AAFP's Legislative and Related Actions**

In recent years, the AAFP has supported access to evidence-based reproductive health care and opposed efforts to interfere with the doctor-patient relationship. The following are recent examples.

- 2018, the AAFP submitted a letter expressing concerns about HR 490, the *Heartbeat Protection Act*, a bill which would restrict abortion to as early as six weeks.
- 2017, the AAFP submitted a letter (<http://www.aafp.org/dam/AAFP/documents/advocacy/campaigns/LT-EC-AHCA-030717.pdf>) on the Affordable Care Act replacement bill that included concerns about legislative interference policies that would undermine reproductive health care access.
- 2017, the AAFP signed a letter (<http://www.aafp.org/dam/AAFP/documents/advocacy/campaigns/ST-WomensHealth-012517.pdf>), urging policymakers to protect women's health. The letter included the AAFP, along with the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Academy of Pediatrics. The groups expressed strong support for women's right to access evidence-based health care services.
- 2017, the AAFP opposed (<http://www.aafp.org/dam/AAFP/documents/advocacy/coverage/aca/LT-Smith-HR7-012317.pdf>) legislation that would codify the Hyde amendment into law and require unnecessary insurance coverage and reporting requirements.
- 2015, the AAFP supported legislation (<http://www.aafp.org/dam/AAFP/documents/advocacy/prevention/women/LT-Senate-OTCBirthControl-071715.pdf>), to improve over-the-counter contraceptive access.

- 2012, ACP, AAFP, ACOG, American Academy of Pediatrics, and American College of Surgeons wrote a joint editorial in the New England Journal of Medicine condemning laws that interfere with the doctor-patient relationship ([2012;367:1557-9](https://doi.org/10.1056/NEJMsb1209858) (<http://www.nejm.org/doi/full/10.1056/NEJMsb1209858>)).

**Current Policy**

**Reproductive Health and Maternity Health Services** (<https://www.aafp.org/about/policies/all/reproductivehealth-services.html>)

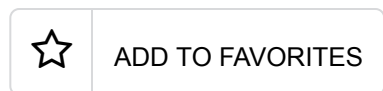
**Reproductive Decisions** (<https://www.aafp.org/about/policies/all/reproductive-decisions.html>)

**Prior Congress Action**

None

**Prior Board Action**

None



---

**Resolution No. 509 (New York State D) - Oppose "Fetal Personhood" Terminology in Governmental Policies and Legislation -- Congress of Delegates**

<https://www.aafp.org/about/governance/congress-delegates/2018/resolutions2/newyork-d.mem.html>



Copyright © 2019 American Academy of Family Physicians. All rights reserved.  
11400 Tomahawk Creek Parkway • Leawood, KS 66211-2680  
800.274.2237 • 913.906.6000 • Fax: 913.906.6075 • [aafp@aafp.org](mailto:aafp@aafp.org)

---