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FORSYTHE: Saving personhood

Growing number of states protects the unborn child

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The Alabama Supreme Court's unanimous decision last month in a case called Mack v. Carmack might surprise some Americans.

The court held that an unborn child at any time of pregnancy is a person protected by Alabama's wrongful-death laws. Wrongful-death statutes - which virtually every state has - allow family members to sue for money damages for the death of a "person."

In reaching their decision, the justices relied on the fetal-homicide (unborn victims of violence) law passed in Alabama in 2006, reasoning that because the fetal-homicide law - sort of the criminal counterpart to the wrongful-death law - protected the unborn child as a human being throughout pregnancy, the wrongful-death law - to be consistent - should do so as well.

The principle is old, though the specific legal means of protecting human life has evolved.

In 1765, William Blackstone, the leading authority on the English common law, wrote: "Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb."

One of the first Supreme Court justices, James Wilson, wrote in the 1790s, "With consistency, beautiful and undeviating, human life, from its commencement to its close, is protected by the common law."

The decision in Mack v. Carmack rests on a growing body of statutory and case law in the states. Prenatal injury law, wrongful-death law and fetal-homicide law have increasingly protected the unborn child. Thirty-eight states have fetal-homicide laws, and 28 of those states extend protection from conception. Thirty-eight states have wrongful-death laws that protect the unborn child.

These laws have grown, and they are popular. Prosecutors use them, and juries regularly enforce them. The laws can apply - and often are applied - at any stage of pregnancy to protect the unborn child.

Virtually every state allows a prenatal-injury suit for any injury after conception, demonstrating that the law treats the life of a human being as beginning at conception.

In addition to these laws, states have enacted other laws protecting the unborn child as a person. In the 1980s, Arkansas passed Amendment 68, which states that "the policy of Arkansas is to protect the life of every unborn child from conception until birth."

All of this shows that while Mississippi's November ballot Initiative 26, which "defines human personhood as beginning at the moment of fertilization," has drawn media attention, legal protection for the unborn child as a person has been a growing phenomenon for years across the states.

State protection of the unborn child as a person is no longer a novel thing. It grows year by year, state by state, and the public supports it.

Far from being newly minted in Mississippi, recognition of the personhood of the unborn child is a movement as old as English common law, with a long tradition of acknowledging the value that such children hold for their expectant parents and family.

Clarke D. Forsythe is senior counsel with Americans United for Life and author of "Politics for the Greatest Good: The Case for Prudence in the Public Square" (IVP Books, 2009).