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A WOMAN'S RIGHTS: PART 8

The Future of Personhood Nation

BY THE EDITORIAL BOARD

Now that the Supreme Court has a conservative majority that appears inclined to overhaul *Roe v. Wade*, it is likely only a matter of time before women's reproductive rights are ratcheted back. But what if the court goes further? What if, as many opponents of abortion hope, the court rules that the fetus has "personhood" rights under the Constitution?

In that event, all abortions would be illegal — even in states that overwhelmingly support a woman's right to choose. Wealthy women might travel to other countries for reproductive health care, but poorer women would be left behind.

And the changes to American life would go deeper than that. A society that embraces a legal concept of fetal personhood would necessarily compromise existing ideals of individual freedom. Americans — even many who oppose abortion — have not considered the startling implications of this idea, even as it has steadily gained strength in the law and in social norms. If a fetus is granted equal rights, women who become pregnant may find their most personal decisions coming under state control.

Would a woman who chooses to smoke cigarettes or drink wine during pregnancy be charged with a crime? What if a judge rules, or a police officer believes, she is risking the life of a fetus by, say, climbing a mountain, or riding a roller coaster, or undertaking a humanitarian mission in a war zone? Who will decide whether a pregnant woman diagnosed with cancer may undergo chemotherapy?

Every health decision facing a pregnant woman that might affect the fetus would be up for scrutiny by prosecutors, the courts and expectant fathers. A pregnant woman would cease to exist as an autonomous person. Her womb would become a legal battleground.

Conferring personhood on fertilized eggs could also call into question the legality of treatments like IVF (which often involves fertilizing multiple eggs, with the understanding that not all will result in embryos and viable pregnancies) and of some common birth control methods, like the pill, IUDs, vaginal rings and the morning-after pill. A black

market for abortion pills and birth control would flourish.

It might be tempting to dismiss this vision as dystopian fiction — as a version of "The Handmaid's Tale" — if it weren't already taking shape in states across the country.

Consider the case of Marsha Jones, who may soon face a grand jury in Alabama. The police say that when Ms. Jones was five months pregnant, she started a fight that led to her being shot in the stomach and losing her fetus. "That child is dependent on its mother to try to keep it from harm, and she shouldn't seek out unnecessary physical altercations," explained Lt. Danny Reid of the Pleasant Grove, Ala., police force.

To assert the government's right to protect a fetus as early as fertilization, anti-abortion activists have won the passage of laws in Congress and in state capitals around the country. That shifting of rights acknowledges a tension at the root of pregnancy, that both the parents and society have a stake in successful human reproduction. And it reflects a tragic reality: There are circumstances in which the interests of a fetus and those of a pregnant woman collide. There may be extreme situations in which a woman seeks to harm her viable fetus and tries to force an abortion when one is not legally permitted.

But the vast majority of women falling prey to these fetal-protection laws — like the majority of pregnant women generally — have no desire to harm their fetuses or terminate their pregnancies. Many of them are grieving the very loss that triggers the action against them.

To deal with what amounts to a small number of edge cases, it makes no sense to equip the state with such broad power to coerce women. In the unimaginably hard, profoundly intimate moments when a pregnant woman must weigh her own needs against the possibilities of a fetus growing inside her, she — not the state — should have the authority to judge what is best for her body, her family and their future.

The doctrine of fetal personhood represents a sharp break from the great traditions of Western law that, at

their philosophical core, seek to preserve space for the individual to live free from the tremendous power of the state. That this doctrine is acquiring the force of law within the United States should deeply concern Americans — men and women — who value their freedoms.