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*Opposing Viewpoints:*

**The Unborn Child Support Act: Support for Expecting Mothers or Pro-Fetus Personhood Act**

*Taelor Thornton\**

Since the decision in *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* in 2022, Republican Senators have proposed a new bill, the Unborn Child Support Act, that would allow prospective mothers to request child support from their child's prospective fathers from the moment of conception as determined by a physician. Under the Act, paternity tests are only conducted if the mother consents, and if the safety of the child can be maintained. The bill originates from the idea that life begins at conception, allowing women to receive child support payments while they are pregnant from their child's father without requiring a paternity test.

The Act was introduced in response to two dozen states restricting abortion access after the *Dobbs* decision, eight of which have also decided to opt-out of an expansion of the Affordable Care Act, covering pregnancy and postpartum care for low-income beneficiaries. While this bill would allow expecting mothers to receive financial support from their child's father from the conception date, it may have unforeseen additional consequences should it become law, which will be addressed in this article.

**I. CHANGES IN CHILD SUPPORT CALCULATIONS**

States generally use one of three models to determine the child support amount due. One model is the Income Share Model which attempts to proportionally divide the costs to raise a child based on the income of both parents. A second model is the Percentage of Income Model which considers only the "noncustodial" (the parent whose children do not live with them for a majority of the time) parent's income. The last model is the Melson Formula which is a more nuanced version of the Income Share Model, as it incorporates several public policy judgments to ensure each parent's basic needs are met in addition to the child's basic needs. Forty-one states use the Income Share Model, ten states use the Percentage of Income Model and three use the Melon Formula. However, the Unborn Child Support Act proposes a new method of calculation.

The Act will require the states to establish and enforce child support obligations on the biological expecting father of an unborn child at the mother's request. The payment amounts for such obligations would be determined by a court after a meeting with the mother. As the Act is written now, the court does not have to meet with the expecting father or consider the income of both parents. The Act does not discuss what the meeting with the expecting mother must cover or what the judges need to consider when determining the amount of child support. The bill merely requires judges to meet

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with the mother to discuss the amount of support she may need and leaves the rest at the judge's discretion.

Some states have already introduced new bills on custody, making the father financially responsible for his baby beginning at conception after paternity is established. In 2021, Utah became the first state to require biological fathers to pay half of a woman's pregnancy-related medical expenses. Other states have laws allowing mothers to collect payments for pregnancy-related costs from the father. For example, in Wisconsin, a court can order a father to pay for part or all of the costs of childbirth.

## II. DIFFERENT VIEWS ON THE ACT

It is unclear whether the Unborn Child Support Act will move forward in Congress, however, the bill has sparked debates about its true motives. Some lawmakers believe this bill will reflect their beliefs that life begins at conception and help with the challenges an expecting mother may face by ensuring the expecting father fulfills his responsibility. Others believe the goal of this bill is to classify a fetus as a person under the law and, therefore, give a fetus the same protection and rights any other person would have under the law. leading to women potentially being prosecuted for miscarriage and a wider abortion ban. A 2022 survey conducted by the Bucknell Institute for Public Policy found that approximately half of the participants favored the Act, including 53% of citizens who identify as Democrats, 47% who identify as Republicans, and 40% who identify as Independents. Many Republican Senators have spoken out publicly in support of the bill, while most Democratic Senators have remained silent.

### A. *In Favor of the Act*

In favor of the bill, U.S. Senator Kevin Cramer of North Dakota stated, "caring for the well-being of our children begins long before a baby is born...Life begins at conception." This viewpoint is centered around the idea that human life begins when the egg and the sperm combine to create their own unique DNA separate from anyone else's DNA. Proponents of this Act believe that unborn children should be recognized as living human beings with inherent worth. They think that financial support should be provided to unborn children to ensure that they have the opportunity to live a full life and that should start as soon as the mother is supporting a child.

Various U.S. Senators have expressed that to encourage expecting mothers to choose life, they need to look at the challenges facing the mothers. One of the biggest reasons cited by women who have gotten an abortion is financial strain. In a 2013 survey, 40% of women seeking an abortion expressed that they were not financially prepared to bear the burden and long-term commitment of having a child. The Concerned Women for America, a conservative religious group, acknowledged that this legislation would recognize the sanctity of human life and encourage expecting mothers to "choose life." Supporters believe this bill would allow such women to receive financial support during pregnancy with the hopes of preventing women from aborting children for financial reasons.

Further, if a woman is legally barred from obtaining an abortion, then the man involved should not be able to walk away from his responsibilities. This is the viewpoint of those who support the Act because they believe that expecting fathers have a serious obligation to the mothers of their children that start well before the child is born. Many who support this Act believe how fathers care for and treat their children in utero will have a huge impact on their children's development and experiences in life. The Family Research Council, a non-profit organization dedicated to advancing a family-centered philosophy of public life, supports this bill because they believe children do best when they are cared for and supported by both parents and this care must begin in the womb.

### ***B. Against the Act: Categorizing a Fetus as a Legal Person Consequences***

Some reproductive rights advocates believe the Act will be difficult to enforce and could lead to a redefinition of a fetus as a person from the moment of conception. In *Roe v. Wade*, the Supreme Court identified a fundamental right to abortion in the Fourteenth Amendment by declaring that the word "person" in the Fourteenth Amendment did not include the unborn. With the *Dobbs* decision overturning *Roe v. Wade*, a fetus can be considered a person under the law.

The establishment of a fetus as a legal person can have implications far beyond child support by providing the same rights and protections to fetuses that we would a living person. A fetus would theoretically need a name and a social security number to begin exercising private rights and using public resources. If a fetus has a social security number, the mother can claim the fetus on her taxes. Usually, this is done when the parents obtain a birth certificate, however, the Act could make it possible for parents to do this while the child is in utero.

Additionally, the establishment of a fetus as a person under the law could make abortion murder. Law professor and abortion historian at the University of California, Davis, Mary Ziegler, believes that establishing a fetus as a legal person has always been the ultimate ambition of the anti-abortion movement. Ziegler expressed that the movement wants to declare abortion a constitutional violation, not just a crime.

Then, many people believe defining a fetus as a person under the law can open the door for women to be charged with murder for having an uncontrollable miscarriage. Advocates for abortion warn that in the states which outlaw abortion, pregnancy losses will be treated as crimes. Women have been prosecuted for miscarriage under fetal harm laws throughout history. These laws were supposed to protect and provide justice for women who lost their pregnancies due to violence but were instead used to criminalize pregnant women. Now, if a fetus is defined as a person, many women experiencing pregnancy loss can be investigated and would need to prove their miscarriage was unintentional or they could go to prison for murder. It is hard to prove this, however, since almost all the methods used to manage miscarriages are identical to those used in medical abortions.

Some states have now started to pass laws that declare a fetus as a legal person at the initial detection of a heartbeat. The Mississippi Reproductive Freedom Fund, an organization that offers financial and practical support to people seeking an abortion, co-

founder Laurie Bertram Roberts opposed this bill and believes that lawmakers should instead focus on improving established social service programs such as Medicaid.

### ***C. Against the Act: No Rights for the Expecting Father***

As of right now, paternity must be established before the court can enter a child support order if the parents are not married. In all states when a child is born to unwed parents, the child has no legal father, and the father technically has no legal rights. Once paternity is established, a court will then determine how much child support a parent would have to pay by looking at different factors such as which parent is the child's main caregiver and if they are fit to have custody.

Under the Act, a paternity test is only conducted with the mother's consent, and it is not done at all if the measure poses any risk of harm to the child. This part of the Act sought to address the high cost of paternity tests, as every time a paternity test is done for a child, and the test comes back to state the man is not the father, the mother is charged for that test. Since paternity is required to be established to obtain a child support order, this test can be a large expense if the mother is unsure about the expecting father.

However, because paternity tests are not required, this could lead to suspected fathers financially supporting another person's child and they cannot even ask for a paternity test to find out. This provision completely ignores the father's right to know if the child is his before the child is born. The father would be on the hook for a child that might not be theirs for nine months without reimbursement or the right to ask for a paternity test.

The Act would place financial responsibility on an expecting father who may not be able to provide due to poverty. As the Act is written now, the court only needs to meet with the expecting mother to determine how much support she will need. According to the Office of Child Support Enforcement's 2020 Preliminary Report, over 10 million people under a court order to pay child support are behind in their payments. The Act would potentially increase this number and result in more expecting fathers penalized for failing to pay child support.

Generally, judges weigh income, age, and earning capacity in determining how much child support to award, but under the Act, the court wouldn't need to do that. The court is not required to have a meeting with the father to discuss any barriers he may have that affect his ability to pay. The Act does not give any guidance on the calculation of how much the expecting father would have to contribute, other than it is in their discretion to award the payment to the mother after a meeting with her.

Further, right now, if an expecting father does not make the child support payments, they could lose their driver's license, have a lien placed on their property, tax return seized, or even face jail time and felony charges. Then, fathers are also not entitled to be reimbursed for child support payments made for a child that is not theirs. Nothing in this law, as it is written now, addresses this situation.

### **III. CONCLUSION**

Regardless of one's support or objection to the Unborn Child Support Act, the Act intends to provide financial support for expecting mothers from the expecting father, however, the way this Act would achieve its intent might have negative consequences should the bill become law. Proponents of the Act believe that since a mother might not have the right to choose whether to have a child, a father should not be able to walk away either. However, this law could potentially define a fetus as a person who has the same rights as every other U.S. citizen and affect the father's rights. A fetus becoming a person under the law could have implications that go far beyond child support such as the mother potentially being criminalized for a miscarriage. Then, an expecting father can be on the hook for child support payments without any rights such as the right to a paternity test or to ask for a reimbursement.

While it is unclear whether this Act will become law, some states have already started passing laws that mirror this Act. In Georgia, a fetus, after approximately six weeks of pregnancy, qualifies for tax credits and child support and is included in the population counts and redistricting. Georgia organizations that support the right to life also are calling for the state to pass a fetal personhood amendment to the state constitution. Other states have considered a fetal personhood amendment, but voters have consistently rejected these initiatives every time. The Unborn Child Support Child Act could provide financial support for expecting mothers upon their request for child support from the child's father from the time of conception but could also have unseen implications such as defining a fetus as a person, more women who have miscarried will be subjected to police investigations and impact the rights an expecting father has before the birth of the child. Ultimately, the language of the Act, if it becomes law, will be essential to achieving its intent and to the potential future consequences it might have.

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