



Written by [Dave Bohon](#) on February 22, 2012

## Alabama High Court Challenges Roe on Viability of Pre-Born

The Alabama Supreme Court has placed a shot across the bow of *Roe v. Wade*'s crumbling rampart, calling on states to abandon the concept of fetal "viability" introduced in that ruling and to recognize the right to life of the unborn. While the ruling in the wrongful death case (*Hamilton v. Scott*) will have little immediate impact on the infamous U.S. Supreme Court decision, which effectively legalized the killing of pre-born babies who are not viable outside the womb, the court did challenge the arbitrary way in which the viability of a "fetus" is determined, arguing that the *Roe* viability standard should be abandoned in lieu of its ultimate rejection by the U.S. Supreme Court.



[LifeNews.com](#) reported that in *Hamilton v. Scott*, "Amy Hamilton filed suit against several doctors and a medical group for the wrongful death of her unborn child, claiming that the lack of proper medical intervention resulted in the child's death, which all the experts agreed was at the pre-viable stage of pregnancy and could not have survived if born at that stage of pregnancy." The state high court ruled that the woman does have a right to pursue a legal claim on behalf of her child.

In a special concurring opinion, Justice Tom Parker wrote that the concept of viability, which is at the foundation of the *Roe* verdict, is arbitrary and changes with medical technology. As reported by LifeNews, "Parker wrote that *Roe* is out of step with every other area of law in which many state legislatures and courts have recognized the rights of the unborn child in wills and estates, tort or criminal law, and more."

Among previous rulings cited by Parker was a 1973 case in which the Alabama Supreme Court declared that "from the moment of conception, the fetus or embryo is not a part of the mother, but rather has a separate existence within the body of the mother."

Parker noted that since the 1973 *Roe* verdict, "advances in medical and scientific technology have greatly expanded our knowledge of prenatal life. The development of ultrasound technology has enhanced medical and public understanding, allowing us to watch the growth and development of the unborn child in a way previous generations could never have imagined."

Similarly, he continued, "advances in genetics and related fields make clear that a new and unique human being is formed at the moment of conception, when two cells, incapable of independent life, merge to form a single, individual human entity." While the new life is not fully developed and capable of surviving independently, he added, "it is nonetheless human life. And here has been a broad legal consensus in America, even before *Roe*, that the life of a human being begins at conception. An unborn



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child is a unique and individual human being from conception, and, therefore, he or she is entitled to the full protection of law at every stage of development.”

Parker wrote that “*Roe*’s viability rule was based on inaccurate history and was mostly unsupported by legal precedent. Medical advances since *Roe* have conclusively demonstrated that an unborn child is a unique human being at every stage of development.” He added that Alabama’s homicide statute, past decisions of the Alabama Supreme Court, and statutes and case law from other states, “make abundantly clear that the law is no longer, in Justice Blackmun’s words, ‘reluctant ... to accord legal rights to the unborn.’”

Looking ahead to a day for which right-to-life proponents have prayed and striven, Parker concluded that “*Roe*’s viability rule is neither controlling nor persuasive here and should be rejected by other states until the day it is overruled by the United States Supreme Court.”

While pro-life leaders noted that the ruling will have no immediate impact on efforts to overturn *Roe v. Wade*, they marked it as one more step toward its eventual demise. Matthew Staver of the conservative legal advocacy group [Liberty Counsel](#) applauded the ruling, particularly Parker’s “clear and well-reasoned concurring opinion, which conclusively shows that *Roe v. Wade*’s viability rule does not apply, was based on flawed legal reasoning, and is undermined by advances in medical technology.” He added that the “life expectancy of *Roe* is limited and is being undermined by every other area of law and medicine.”

Ben Dupré, an attorney with the Alabama-based [Foundation for Moral Law](#), told *The New American* that Justice Parker’s opinion offered a clear and concise argument for the rights of states to defend the unborn. “Even pro-abortion attorneys have long recognized that *Roe* was bankrupt from the beginning,” he said. “In science and medicine, in law, in so many areas it was a terrible ruling based on weak reasoning.”

Dupré noted that, like Alabama, many states continue to circumvent *Roe* in an effort to protect the lives of the unborn. “This ruling gives momentum to efforts by states to pass constitutional amendments and laws that recognize the unborn child as a person under the law.”

*Photo: The Alabama Judicial Building, Montgomery*



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