



# OPINION: ALABAMA SUPREME COURT'S EMBRYO RULING EMBODIES AMERICA'S LEGAL HERITAGE - JOSH HAMMER

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Leftists have spent much of the past week up in arms about a ruling last Friday from the Alabama Supreme Court.

At first blush, it is curious that a state supreme court case would engender so much vitriol and bellyaching. But the groaning from the left-wing media and political class can be easily explained: The Alabama case entails a dispute over the destruction of unborn human life, and there is no greater sacrament for the contemporary secular leftist than the destruction of unborn human life.

The secular Left's weeklong meltdown notwithstanding, Americans should be grateful for the Alabama Supreme Court's clarion affirmation of the Anglo-American legal tradition, as well as the inherent dignity and moral worth of unborn life.

The case, *LePage v. Center for Reproductive Medicine, P.C.*, involved a negligent fertility clinic that failed to secure its cryogenic nursery. A hospital patient wandered into the clinic and accidentally killed several embryos. The legal question before the Court was whether the parents of the dead embryonic children could file suit against the clinic under Alabama's Wrongful Death of a Minor Act.

As Justice Jay Mitchell explained in his straightforward majority opinion, the Alabama Supreme Court had held in an uninterrupted line of cases that an unborn child constitutes a "minor child" under the state's wrongful death statute -- regardless of stage of embryonic or fetal development. Crucially, neither the plaintiffs nor defendants contested this understanding, and the question was not before the court.

The only legal question in *LePage* was thus whether the court should legislate from the bench and decree that which the Alabama Legislature had opted not to do itself: Read into the law an "extrauterine exception" that would retain the wrongful death statute's inclusion of unborn children developing in utero but remove legal protection for embryos developing outside the womb.

The court, appropriately, declined to do so.

That's it. That's the whole case.

A sterling concurring opinion from Chief Justice Tom Parker has attracted the most leftist outrage. Parker explored the meaning of a 2018

amendment to the Alabama Constitution, which stipulates: "This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life."

Parker correctly explained how the word "sanctity" cannot be understood in anything other than a religious context -- namely, the Judeo-Christian tradition that is America's great heritage. The "sanctity" of human life, he noted, is a concept that goes all the way back to the creation of man "in the image of God," as recorded in the Book of Genesis. Parker cited other verses from Scripture, including the famous verse from the Book of Jeremiah: "When I had not yet formed you in the womb, I knew you." He also cited other authoritative religious figures, such as John Calvin and Thomas Aquinas.

Because of the case's holding and Parker's colorful concurrence, many on the Left have denounced LePage as an imperious act of "theocracy" or "Christian nationalism."

Nothing could be further from the truth.

America was quite literally founded on the notion that "all men are created equal" and that "they are endowed by their Creator with certain unalienable Rights." Thomas Jefferson, the man who penned those words but redacted his Bible to remove those parts he did not himself believe, was about the furthest thing imaginable from an Orthodox Christian. Yet even Jefferson held that our rights flow from our Creator -- the very God, we know from Genesis, who made man in His image. The political theory of the American Founding is that man is made in God's image and that we accordingly possess certain rights that no other man or ruler can deny.

This is not "theocracy." It is basic American history -- basic historical literacy.

No one was clearer about the role of God in the American public square than George Washington, the greatest of all the Founders, whose birthday we celebrated this week. Washington's 1789 Thanksgiving Proclamation began by explaining that "it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor." Washington then declared that a Thursday in late November should be "devoted by the People of these States to the service of that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be."

The Alabama Supreme Court's ruling in LePage was a straightforward case of statutory interpretation. But it also affirmed and upheld this broader, venerable tradition.

The reality is those decrying the Alabama Supreme Court's ruling in LePage don't merely hate unborn human life. They hate America itself.

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