No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Donna Holman, Petitioner

vs.

State of Iowa, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

THE IOWA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Donna Holman

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Questions Presented for Review:

1. Is the unanimous, uncontested consensus of all four categories of court-recognized finders of facts (juries, expert witnesses, state legislatures, and Congress) that all babies are humans/persons from fertilization, sufficient to invoke Roe's ruling that lawmakers and courts must now protect babies' 14th Amendment right to life by outlawing aborticide?

2. Does any court have the authority to tell Christians they can't state conclusions based on facts about aborticide that have been established by all four categories of court-recognized finders of facts, and by God?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Iowa Court of Appeals, with the statement of the Iowa Supreme Court declining to review, appears at Appendix A to the petition and is reported at COURT OF APPEALS OF IOWA No. 15-1375 (Iowa Ct. App. Oct. 26, 2016).[1] I petitioned for rehearing but the Court of Appeals did not respond. The date the highest state court affirmed the Court of Appeals decision against me and declined to review was December 21, 2016. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). The trial court entry of judgment is in Appendix B.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

My arguments are based on and involve the Preamble to the U.S. Constitution, 14th Amendment "equal protection", 1st Amendment "Freedom of Speech", and 18 U.S.C. § 1841(d).

> Preamble to the U.S. Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and *secure the Blessings of Liberty to* ourselves and *our Posterity,* do ordain and establish this Constitution for the United States of America.
>
> 14th Amendment, § 1, sentence 2: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State *deprive any person of life,* liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> 18 U.S.C. § 1841(d) As used in this section, the term "unborn child" means a child in utero, and the term "child in utero" or "child, who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.
>
> First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press....

1 https://casetext.com/case/state-v-holman-80

STATEMENT OF THE CASE

On November 1, 2006, I was accused of saying "your baby wants to live", "They kill babies in there!" and a few other statements consistent with the fact, which no one disputed anywhere in my court record, and which has been established unanimously by all four categories of court-recognized fact finders, that constitutionally protected "life begins" at fertilization. (Nor has any American court or other legal authority ever asserted that "life begins" at any later time.)

This appeal seeks *injunctive* relief from a No Contact Order which a) infringes on the First Amendment right of Petitioner to publicly say demonstrably true things to the effect that abortion is murder, and b) concommitantly protects conduct which is legally cognizable as murder from being publicly exposed for what it is. It seeks *declaratory* relief for the millions I work to save, that the doubt that is the basis for *Roe v. Wade,* 410 US 113, 159 about "when life begins" has long been resolved by fact finders, making abortion cognizable as killing preborn persons.

The 2006 complaint charged me with Disorderly Conduct, Iowa 723.4(2), and 3rd Degree Harassment, Iowa 708.7(1)(b), of Planned Parenthood staff and customers, for statements which would have been just as true had I never existed.

This appeal is not from that first criminal trial, held January 26, 2007, but from a review of the 5-year extension of the associated NCO. The part of the record relevant to that review began with my motion August 8, 2014 and ended with the July 14, 2015 order from which I appeal. However, the facts alleged against me in that 2007 trial were part of the basis for the July 14, 2015 order. And the elements of the crimes I was convicted of in 2007 – annoy, alarm, intimidate, threat to the

safety – were cited in the 2015 order as what the NCO is meant to thwart.

> She argues that she is only exercising her right to freedom of speech and that her intent is not to annoy, alarm, *or intimidate, but to commu*nicate to women why they should not kill their children. Affidavit 12-27-14, page 2, paragraph 6.
>
> ...Taken together, the Affidavits *and the Defendant's criminal history* clearly proves that the Defendant continues to present *a threat to the safety* of the Protected Party in this case, the Planned Parenthood Clinic[2] in Iowa City, Iowa. (2015 Order, App. B)

The order lacked any analysis of how anything I said or did, at any time, had any conceivable relation to any "threat" to anyone's "safety". Nor does anything in the record allege or explain how anything I ever said or did endangered anyone. Nor are the elements of the charges against me concerned with any kind of danger.

Judge Gerard allowed the unusual review, three years into a five-year NCO extension, because he had extended it in the same illegal ex parte manner in which he had filed the original order.[3] That is why the title of my August 8, 2014 motion (through my appointed attorney) was "Motion to Correct (Vacate) Illegal Order".

On September 23, 2014, Gerard granted the hearing, but changed its focus from the legality of his earlier order to the merits of whether I "continue to present" a "threat" to the "safety" of Planned Parenthood staff and customers.

That change made relevant the cognizability of the abortionist's activities as the killing of Constitutionally protected humans, so on October 21, 2014, I filed a brief making essentially the argument about "when life begins" as I make here.

With the issue shifted to whether I am such a Superwoman that at the age of 80 I still "threaten the safety" of several youngsters and their security guard so seriously that they require court protection, it became relevant to note the

2 "Clinic" is a place where people go to be healed. It is an outrageous word to use for a place where babies go to be killed. Planned Parenthood distributes far more pills, which chemically cause early aborticides, than surgical aborticides. Besides killing babies, pills turn healthy fertile women into unhealthy infertile sex objects. How can they call that a "clinic" or "health services"?

3 The Iowa Court of Appeals ruling, App. 1, admits the illegality of the second ex-parte NCO ruling.

cognizability of their murders, which are no longer *legally* protectable. (*Surely* not!?)

My brief was thus titled, "Motion to challenge standing of protected party to participate in hearing or to receive legal protection." I reasoned that the "protected party", being at least partly responsible for the turbulence the NCO sought to remedy, lacked "clean hands" and standing to request the NCO. Killing legally recognizable human beings without necessity or due process makes Planned Parenthood the reason for efforts like mine to save those lives – efforts which are made legal by Iowa 704.10 – Iowa's version of the "Necessity Defense".

On December 27, 2014, I reinserted this issue in a court-ordered affidavit:

> 9. I would like to add that with the impact of Federal Law 18 U.S.C. 1841(d) which recognized the humanity of all pre-born babies at ALL stages of development. What Planned Parenthood is doing is ILLEGAL as of April 1, 2004. LIFE BEGINS AT FERTILIZATION....

Judge Gerard completely ignored that argument. My affidavit also preserved the issue that my speech violated no law. Instead of ruling on that, he transformed my argument into a declaration of my intent to *"continue"* to violate law!

> It is very clear from the Defendant's Affidavit that she has no intention of stopping her activities as an anti-abortion protester.

Here is my appeal to law, which Gerard turned into *defiance* of law:

> Affidavit: #4. My intent as a Missionary to the Pre-Born is to ensure that any woman entering an aborticide facility have all of the information they need to make an informed decision whether they want to murder their baby. I believe I have a right to peacefully communicate in this regard."
>
> "6. ...I do not communicate with people without legitimate purpose. My purpose in communicating with women considering aborticide is to ensure they are fully informed. This is in my opinion a very legitimate purpose. I would also add that I believe it is protected speech under the 1st Amendment to the U.S. Constitution and to section 7 of the Iowa State Constitution. Finally, my intent is never to annoy, alarm, or intimidate; my intent is to communicate to women why they should not kill their children."
>
> "8. ...People seeking aborticide have the right to hear the baby's point of view. I am sure that Planned Parenthood is not giving this information or there would be less children murdered by their parents."

Judge Gerard completely ignored my brief, along with #9 of my affidavit. He

did not address or acknowledge it. He deprived me of any right to be heard through my brief as positively as he had deprived me of any right to be heard in person at his original ex parte NCO Nov 2, 2006, and his ex parte extension, Nov 16, 2011.

APPELLATE REVIEW. I appealed to the Iowa Supreme Court, which handed my case down to the Iowa Court of Appeals, which ruled October 26, 2016, again completely ignoring my entire defense on the merits, addressing only the peripheral issue of ex parte hearings. The Court mildly scolded Judge Gerard, but said the harm was undone three years later when he finally gave me a hearing, sort of.

The Court turned my appeal to law into defiance of law as Gerard had done. Issue preservation became state's evidence. My defense was not ruled upon.

> Holman had the burden to establish that she no longer *posed a threat* to the protected parties, but instead she did quite the opposite. The affidavits she filed with the court, rather than assuaging fears about her possible future behavior, indicated that she intended to continue *much as she had before*....

Once the Court had transformed my arguments into a finding of fact, the Court said my *arguments* were not even "before the court":

> ....Holman lists a number of other arguments about issues not properly before us on appeal; we decline to consider them.

I again preserved these issues in my Motion for Rehearing that was ignored:

> "Issues" this court "declines" to "consider" include several defenses showing that the actions and statements I [was convicted of, which are the basis of your ruling] do not meet the elements of any Iowa crime....How can [my] claims that the elements of the charge [were never] met be so far from "before this court" that they can be dismissed without even a word about why they are not [before this court], or what they even are? ...
>
> Until some Court somewhere finally squarely addresses the unanimous verdict of court-recognized fact finders, that has "established" what Roe said must be "established" for legal aborticide to end, (an inquiry avoided by every court since 1973 as my initial brief shows), my theory remains unchallenged that the only way it has been possible for aborticide to remain "legal" all these years, and especially since 18 USC §1841(d) in 2004, has been to suppress evidence – in my case, to not allow me to attend my trial, to prosecute undisputed statements of fact as "threats", to ignore my October 21 brief, and to ignore the fact that all four court-recognized finders of fact have unanimously "established" what Roe v. Wade said must be established for legal aborticide to end.

My Nov 15, 2016 Motion for Further Review, denied, asked:

> 3. The Court of Appeals erred as a matter of constitutional law when it ruled that religious and factual statements never alleged to be untrue constitute prosecutable criminal "threats". Especially when my statements focused on spiritual, factual and intellectual matters and never at any time expressed any desire to harm anyone physically or on any other level. To the extent such rulings are allowed to stand, we have no First Amendment.

On Dec 21, 2016, further review was denied and the procedendo was issued.

Although the reviewable portion of this case has had its final judgment, these issues are not moot through expiration of Judge Gerard's NCO extension. The docket for the criminal case shows a new ex-parte NCO extension order set to expire in 2022, where (1) the judge's order followed the prosecutor's request by scarcely two hours; (2) the judge checked that I had opportunity to defend myself; (3) the extension was permanent in violation of the 10 day limit on an ex-parte NCO; (4) no necessity was alleged for ruling ex-parte; (5) the order came after the deadline in Iowa law for an extension; and (6) after I promptly demanded a hearing, one was scheduled, but again, far past the 10-day deadline.

REASONS TO GRANT THE WRIT

"When life begins", as *Roe v. Wade* 410 US 113, 159 framed the issue, is "an important question of federal law that has not been, but should be, settled by this Court", as Supreme Court rule 10c states your criteria for accepting cases.

The statement in *Roe* containing that phrase has the *appearance* of saying "when life begins" is *not* an important question: "We *need not* resolve the difficult question of when life begins [because doctors and preachers don't agree]." Id. at 159.

That can't mean "*because it is unimportant",* because *Roe* said it's important enough to *require* states to once again outlaw aborticide:

> "If this suggestion of personhood [of preborn babies] is established, the...case [for legalizing aborticide], of course, **collapses**, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment." Roe v. Wade, 410 US 113, 156

The "we need not" statement must mean "we don't need to wait *until we can completely resolve this controversy* before we can *tentatively* rule on it." Or "*we can't yet* resolve this question." At least not "at this point in the development of man's knowledge". Id. at 159. We still have to make decisions, even with finite minds.

This interpretation avoids an internal contradiction in *Roe,* and absurdity. It would be irrational to see no "need" to *ever* "resolve" serious, divisive national doubts about whether a protected activity is, in fact, murder!

But not according to the 1st Circuit, which said the reason "[SCOTUS] need not resolve the difficult question of when life [in fact] begins" is because it doesn't matter. Because legal aborticide is *the law*. *Reality* is irrelevant:

> I neither summarize nor make any findings of fact [about whether preborn babies of humans are humans]. To me the United States Supreme Court made it unmistakably clear that the question of when life begins needed no resolution by the judiciary as it was not a question of fact. ... I find it all irrelevant ... *Doe v. Israel,* 358 F. Supp. 1193, 1197

If it were a law question, (1) how could the justices not already know the answer? (2) How could the justices step aside for doctors and preachers?

A New York judge mistook a fact question unanswered for a ruling that fact finders must never be allowed to answer:

> The defendants assert that since the Supreme Court expressly left open the question of when life begins...that there exists a genuine issue of fact as to whether what, in their view, amounts to the killing of human beings is a[n]...injury.... However, the court declined to adopt the position that life begins at conception, giving recognition instead to the rights of a woman.... *People v. Crowley,* 142 Misc.2d 663 (N.Y. Misc. 1989)

A Florida judge mistook past lack of consensus for a ruling that consensus will *never* happen so evidence that it *has* happened is inadmissible:

> With regard to the state's interest in potential life, I believe that this Court is not in a position to radically alter the traditional legal view that the unborn are not legal "persons" and decide an issue on which there is no social, religious, philosophical, or scientific consensus, i.e., when life begins. In Re T.W, 551 So.2d 1186 (Fla. 1989)

A South Dakota judge, undecided whether a "human being" is a "Homo Sapiens", said "science" is trumped by the "legislative fact" of no "consensus", which was *Roe's* "factual underpinning" for leaving it to "individual conscience and belief"![4]

> Although...the Act's definition of a "human being" in §8, as a "living member of the species Homo sapiens"...*may* be *one* definition, the term human being is also *likely* to have much broader meaning for both physicians and patients.
>
> ...whether a fetus or embryo is a "whole, separate, unique, living human being" as a matter of objective science is a question of legislative fact already addressed by...*Roe*...The factual underpinning for this holding was the Court's finding that there was no medical, scientific, or moral consensus about when life begins, *making the question of when a fetus or embryo becomes a human being one of individual conscience and belief.* Id. at 159-63, 93 S.Ct. 705. *Planned Parenthood Minnesota v. Rounds* 467 F.3d 716, 720 (8th Cir. 2006)

Roe treated "when life begins" as a fact question in five ways. *Roe did* care whether aborticide *is* in fact genocide. I don't challenge *Roe*. I *rely* on *Roe*.

Yet appellate courts, many in aborticide prevention trials,[5] have ruled in a manner that "conflicts with relevant decisions of this Court", ruling irrelevant jury review of "when life begins" which *Roe* said was not only relevant, but dispositive.

Not every judge has so ruled. Only the majority. Here is a thoughtful dissent:

> "Until the Court decides when a fetus is a person, I see no reason to deny the defense of necessity to those who believe that the fetus is viable and is a person...At least it would get the issue squarely before the U.S. Supreme Court...." A dissent by Mahoney in *Detwiler v. Akron, C.A.* No. 14385 at 22 (9th App. Dist. 1990)

Despite this general censorship of evidence, all four categories of court-recognized Finders of Facts have since "established" what *Roe* said, if "established", must "of course" end legal aborticide. In the face of their evidence, the myth collapses that "when life begins" cannot be known. It is widely known. No legal

4 *Roe* only said that was the position of some churches – not that of the Constitution!

5 By this term I mean the whole range of actions to prevent or reduce aborticides, but the tens of thousands of trials over nonviolent blocking of aborticidists' doors produced most of the case law.

authority asserts a date any later than fertilization.

I sympathize with this Court's preference for cases where the issue appealed has been ruled on by lower courts and exhaustively analyzed by lower appellate courts.[6] But that "general rule" can't be satisfied concerning "when life begins" as long as lower courts doggedly censor the question whenever it is presented to them. This is too urgent a question, as *Roe* itself said, to allow to be censored forever.

The longer review is delayed, continued genocide is not the only result. Due process is poisoned[7] in general in cases involving aborticide. It is worse than irrational to continue protecting an activity believed by half our nation to be murder, relying still on the premise that we can't agree whether it is, this long after 100% consensus of court-recognized finders of facts that it truly is.

Aborticide is now, if it ever wasn't, legally recognizable as murder. Which requires states, and state courts, to criminalize it, so that 82-year-old women like myself won't have to struggle against American courts just to *speak* against it.

This Court has avoided updating its review of the facts since 1973, to take back the words out of your mouth which courts and the public have jammed in.

Beginning with Rhode Island, where Judge Pettine assumed two states carry no more weight than one, and a legislature's finding of fact carries no more weight than a courtroom claim, in order to conclude that Rhode Island's declaration is too little to establish "when life begins". Cert denied.[8]

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6 *Pushing Aside the General Rule in Order to Raise New Issues on Appeal*, by Rhett R. Dennerline, Indiana University School of Law, Volume 64 | Issue 4 Article 7, Fall 1989

7 An egregious example early in my case was the psychiatric treatment to which I was ordered to submit as part of my sentence. When the evaluation came back clean it was ruled invalid. See summary of the incident in my May 23, 2016 final brief, p. 10.

8 *Doe v. Israel,* 1 Cir., 1973, 482 F.2d 156, cert. denied, 416 U.S. 993

Continuing with aborticide prevention cases, where the Necessity Defense weighed the "harm" of trespassing against the "necessity" of saving humans, whose lives were ruled irrelevant because aborticide was "Constitutionally protected" as a *matter of law!* Judges ruled that juries must never be allowed to know the fact question even exists! Not even when that is the only seriously contested issue, in a "trial *by jury"!* They thought reality must never be allowed to disturb *Roe's* conclusions! The routine response: *Cert denied.*

> "An injunction is an equitable remedy, and it would be wholly inequitable to ignore the reality... *Whole Woman's Health v. Cole,* 790 F.3d 563 (5th Cir. 2015)[9]

Continuing with a few reviews of state laws, for example *Webster v. Reproductive Health Services*, 492 US 490 (1989) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Cert was not denied, but the question of "when life begins" was explicitly ruled not "ripe" in O'Connor's concurrence because Missouri had promised not to let its "personhood" declaration actually interfere with aborticides.[10] And in *Casey* a new rationale for legal aborticide was created, that women had gotten *used* to killing their babies! But *Casey* never said "when life begins" no longer matters, much less that *even after everyone knows* aborticide is murder, women have gotten so *used* to it that their "right to murder" must continue! Now that *Roe's* "outer shell" – "we cannot tell" – has "collapsed", nothing can "hang" on it.[11]

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9 The "reality" that concerned the court was distance to the killer: not, unfortunately, the reality of the killing.

10 Other examples of remarkable "personhood" statutes emasculated by a promise not to violate *Roe,* combined with an absence of any enabling legislation, are Nebraska 28-325. R.R.S. 1943 (1) and Louisiana LSA-R.S. 40:1299,35.0 14:2(7).

11 "The joint opinion...retains the outer shell of Roe v. Wade...but beats a wholesale retreat from the substance of that case.... Roe continues to exist, but only in the way a storefront on a western movie set exists: a mere facade to give the illusion of reality." Planned Parenthood v. Casey, 505 U.S. 833, 945, 954 (1992) (Concurrence/dissent of Rehnquist, White, Scalia, Thomas)

Rhode Island was the only state that applied a personhood finding with laws against aborticide, making review of "when life begins" "ripe" according to O'Conner. Aborticide prevention cases force the question, but aren't reviewed.

In *Stenberg v. Carhart* 530 U.S. 914 (2000) and *Gonzales v. Carhart,* 550 U.S. 124 (2007), even though the horrors of partial birth aborticide was described by all the justices with eloquence barely exceeded by prolifers, the question of "when life begins" somehow was never considered; nor was there mention of the accumulating evidence by court-recognized fact finders that "life begins" at fertilization.

Not to mention the evidence plain to all the justices in their own emotional reaction to the bloody barbaric reality of the "procedure", which could not have existed had the justices perceived preborn babies as mere animals or plants like those served in the Supreme Court Cafeteria.

How has "when life begins" escaped review these 44 years? Why has there been no update to incorporate the evidence that wasn't available in 1973? Can any question be more pivotal to the rational outcome of aborticide cases than one which resolves whether aborticide is a privacy right, or murder? Can any be a more "important question" than the one which has divided our nation, in our time, more and longer than any other? In fact, more than any other, has fed national skepticism about SCOTUS' very legitimacy? Why has this "question...not been decided" despite all these missed opportunities? Will it finally be addressed now?

Now that the factual evidence is conclusive, the fiction must be exploded that SCOTUS has made reality irrelevant – as a matter of law, evidence that aborticide is *in fact* the genocide of a discrete class of humans/persons is no reason to end it!

In SCOTUS' silence, these lower precedents stating the opposite of *Roe v. Wade* stand. These precedents are not just contrary to *Roe;* the result they reach is absurd. *Roe* said the reasons for treating "when life begins" as a fact question were obvious, and they remain just as obvious today. When that which *Roe* preceded with "of course" is twisted into an opposite result by all lower precedents, we have SCOTUS' blessing for labeling their result as absurd.

SPEECH. Cognizability of aborticide as the killing of innocent humans removes from aborticidists the "clean hands" necessary in law to give them standing to sue for restraining orders against speech exposing their crimes.

It must never, in America, become constitutional to prosecute mention of "the elephant in the room", or that "the emperor has no clothes". Truth, especially truth established by court-recognized fact finders, must never be dismissed as "personal belief" to excuse ignoring evidence. Americans must be free to make spiritual and factual statements widely accepted as true independently of their own existence.

The definitions of "harassment" and "threats" must never be stretched over statements about mental and spiritual matters whose truth no one contests and which many Americans believe, and which do not involve any *physical* danger.

If the alleged threat is to *psychological* safety, from hearing what is indisputably true independently of actions of the speaker, the proper treatment is to grow up and get used to America, the greatest, freest nation on Earth, where Truth is constitutionally protected. And not just get *used* to Truth being free, but *love* it. *Fight* for it. *Resist* those relativists who demote it to "personal belief", leaving evidence irrelevant. *Pray* for it. Don't let it be thrown in the wastebasket of history.

> Some of her answers might excite popular prejudice, but if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought-not [just] free thought for those who agree with us but freedom for the thought that we hate. ...I would suggest that....many citizens agree with the applicant's belief and that I had not supposed hitherto that we [should punish] them because they believed more than some of us do in the teachings of the Sermon on the Mount. Justice Oliver Wendell Holmes, *United States v. Schwimmer,* 279 U.S. 644, 655, (1929)

THE HISTORICAL BASIS FOR ROE. Much of the rationale for *Roe* was that "the unborn have never been recognized in the law as persons in the whole sense."

> "...the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn ...[exceptions] would appear to be [designed] to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. ...In short, the unborn have never been recognized in the law as persons in the whole sense. Roe v. Wade: 410 U.S. 113, 161.

But Roe's legislative history has been seriously criticized by scholars. *Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012) (See App. D for excerpts.) For as long as this controversial history is made the basis for deciding who gets to live, shouldn't SCOTUS revisit this history, address criticisms, and make warranted corrections?

For example, *Roe's* "the unborn have never been treated in the law as persons in the whole sense" is based on the lesser common law penalties for killing a baby before "quickening". But that was only because before the baby kicks, mothers couldn't tell if they were pregnant, so criminal intent couldn't be established:

> Blackstone's reference to the point in time when the unborn child "is able to stir" or when "a woman is quick with child," 1 Commentaries at *125, acknowledges the notice sufficient for criminal intent to form under the common law, but should not be read as a definitive statement about when life begins in fact. ...Modern medicine and prenatal technology, of course, have given us a clearer and much earlier view into when a "foetus is already formed" or when a woman is pregnant and has notice thereof. As this Court first noted in 1973: "Medical authority has recognized long since that the child is in existence from the moment of conception...." Mack v. Carmack, 79 So. 3d 597, 602 (Ala. 2011) (quoting Wolfe v. Isbell, 291 Ala. 327, 330, 280 So.2d 758, 760 (1973), quoting, in turn, Prosser, Law of Torts 336 (4th ed.1971)). Concurrence by Moore, *Hicks v. State* 153 So.3d 53 (Ala. 2014)

THE RELIGIOUS BASIS FOR ROE. The rationale for Roe's alleged ignorance of "when life begins" was that "those trained in...theology are unable to

arrive at any consensus...." *Roe v. Wade* 410 US 113, 159. Yet not one single Bible verse was analyzed in reaching this conclusion. How is it possible to assess the position of any religion, while treating its Scriptures as irrelevant?

Roe's characterization of the position of Protestantism and Judiasm on when babies become humans/persons was not decided by anything resembling a thoughtful study, yet it was made part of Roe's basis for deciding when it is legal to kill them. This makes the relevant Scriptures (see App. E for examples) an "important question of federal law". I don't think SCOTUS needs that.

This religious basis for ignorance of "when life begins" should either be thoughtfully documented, or formally withdrawn as a factor in weighing the interests of life versus "privacy", and that weighing of interests recalculated.

ARGUMENT IN SUPPORT OF THESE REASONS: LIFE, SPEECH

It is unanimous. Not one American legal authority has said "life begins" at any *later* time than fertilization. No fact can be any more firmly "established". If courts still can't know "life begins" at fertilization, in the face of such overwhelming uncontradicted evidence, courts are unable to know any fact.

New "personhood amendments" are useful educationally, politically and psychologically, but not to establish what has not already been established in law.

"Collapse" Clause. There is a "collapse" clause in *Roe* which basically says "if we ever find out preborn babies of people are people, then *obviously* we will have to stop murdering them." This statement in *Roe* is well known to prolifers. It is quoted in every Personhood movement fundraising letter.

> "If this suggestion of personhood[12] [of preborn babies] is established, the...case [for legalizing aborticide], of course, **collapses**, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment." Roe v. Wade, 410 US 113, 156

This short statement tells us five things which would be just as inescapably true had it never been written, regardless of any possible law, ruling, or philosophy:

(1) **What must be "established" is a fact question** about which the *Roe* court was in doubt – not a settled question of law. By saying "IF this *suggestion* of personhood is established....", the justices painted a future scenario in which "personhood" might be "established" which they couldn't "establish" right then.

If it were a matter of law, how could the official world's experts in American law be in doubt? How could they be unable to "establish" the matter right then? If *they* couldn't "establish" a matter of law, then, *who could? When?*

The only possible way the question could be "established" later, by other authorities able to "establish" what the justices couldn't, was if the question were

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12 The term "Personhood" has confused many because in the national struggle to comprehend how the justices could not know babies are people, it has been theorized that they distinguished between "humans" and "persons", as if some "humans" are not "persons". Or that *Roe's* distinction was between reality and law, so that while they did not doubt that babies *are* humans, it is something different whether they are "persons", which is a legal recognition of constitutional rights. But *Roe* used the terms interchangeably, as the quote below shows.

The problem was that *Roe* did not see very young babies as "*recognizably* human". Probably the justices were confused by the ridiculous illustrations in a medical textbook by Dorland, which was cited in the ruling. The illustrations, hopelessly out of date, depicted very young babies as fish.

Meanwhile all four categories of court-recognized fact finders have legally *recognized* all babies as *human,* making them "recognizably human", which *Roe* equates with "persons".

Here is where *Roe* equates the terms: "These disciplines variously approached the question [of when life begins] in terms of the point at which the embryo or fetus became 'formed' or recognizably human, or in terms of when a 'person' came into being, that is, infused with a 'soul'"... Roe v. Wade 410 U.S. 113, 133 (1973)

See also United States v. Palmer 16 U.S. 610, 631 (1818), "The words 'any person or persons,' are broad enough to comprehend every human being." Wong Wing v. United States, 163 U.S.228, 242 (1896), "The term 'person' is broad enough to include any and every human being within the jurisdiction of the republic…This has been decided so often that the point does not require argument." Steinberg v. Brown 321 F. Supp. 741 (N.D. Ohio, 1970) "a new life comes into being with the union of human egg and sperm cells," Id at 746, and "[o]nce human life has commenced, the constitutional protections found in the Fifth and Fourteenth Amendments impose upon the state a duty of safeguarding it," Id 746-47.

not a matter of law but of facts.

That is exactly the case, according to why the justices said they couldn't settle the question. They actually considered themselves less able than doctors and preachers to "resolve" it! Which would be pretty astonishing, if the justices thought the question were a matter of law! As if the justices thought the top experts in American law were not themselves, but doctors and preachers!

> "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Roe v. Wade* 410 US 113, 159

Who does this sentence envision being able to "establish" "when life begins", or preborn "personhood", if SCOTUS justices are less able to do it than doctors and preachers? Doctors and preachers? How may such testimony be submitted? By appearing as court-recognized finders of facts (expert witnesses and *amici*) in relevant cases.[13] That is how *facts* are developed and established.

The hope that SCOTUS justices consider their own *legal* expertise inferior to that of doctors and preachers is absurd. The lower courts are completely wrong.

It is just as obvious today as when Roe's "collapse" clause began with "of course", that SCOTUS can't decide who lives and dies as a question so exclusively of law as to render irrelevant the now "established" fact that aborticide is murder.

The 14th Amendment "equal protection of the laws" is for all who are *in fact*

13 Although this did not happen in Roe v. Wade. A few *amici* represented doctors; Christian representation was limited to one *amicus* by Catholic lawyers who were possibly the source of the claim that many Christians believe "life begins at conception". The claim that many churches "that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family" comes from the American Ethical Union, footnote 58. Other claims about what Christians believe in *Roe* were supported only by published books. The complete lack of analysis of any Scripture testifies to the superficiality of *Roe's* review of what Christians believe.

humans/persons. Had it been only for those who are *legally recognized* as human, every deprivation of fundamental rights would have the blessing of the 14th Amendment so long as it was "legal"! Nothing would be left of the Amendment!

We could still have slavery! All that pro-slavery judges would need to do would be to rule that blacks are only 3/5 human *by law!*[14] Or are not "persons in the whole sense"![15] Or the immigrants coming after our quotas are full are "illegals".[16] Considering the current blame on "illegals", there can be only one reason this "solution" isn't being pursued: the conviction, however annoying, that immigrants – even those to whom we deny any "line" – are *in fact "endowed by their Creator with certain unalienable rights"* as fully as you and I, and it is eternally dangerous to interfere with their rights, with our laws.

The second fact *Roe's* "collapse" clause tells us:

(2) **"Establishment", to an extent that SCOTUS will legally recognize it, of the preborn as *in fact* humans, is *possible*,** and will transfer "constitutional protection" from baby killers to babies.

By saying "IF this suggestion of personhood is established....", the justices said it was possible: they didn't *know* if it would be, or that it *wouldn't* be.

Even if *Roe* had not said it, it would be so. There can be no reason for courts

14 Did Southern judges try that? But not even the *Dred Scott v. Sandford,* 60 U.S. 393 (1857) decision made that claim, although they said blacks may never become citizens. They probably could have pulled off that claim before the Civil War, though. But after the war, things going on like not letting Southerners into the U.S. Senate to oppose ratification of the 13th and 14th Amendments probably put a damper on that kind of creativity.

15 Had the South thought of that phrase then, that would have been the Rebel Cry.

16 I am grateful that no one is talking about doing this! Thanks to rulings like *Plyler v. Doe* 457 U.S. 202 (1982), the "fundamental rights" of undocumented immigrants are intact, except for the fundamental right of Liberty which apparently no one has thought to ask. But since liberty is already denied them with almost everyone's blessing, how would slavery be much more controversial?

or laws to exist, if not to punish crimes. No act merits the designation "crime", if murder doesn't. When the evidence is clear of mass murder, it can't be nullified by any court or law without chopping away the very reason for courts and laws.

SCOTUS describes, as a definite possibility, "establishment" of "this suggestion of personhood" so compelling that it will become obvious to SCOTUS and everyone (viz. "of course") that aborticide's legality has "collapsed" and the preborn must be protected by the 14th Amendment – that is, states must outlaw aborticide.

Roe never specified *how much* or *what kind* of authority it would take, but its "of course" acknowledges that enough of such authority exists *somewhere*.

For any lower Court to rule that no such authority can ever exist, or that *Roe* determined that the preborn are not humans/persons, or that whether they are is irrelevant, is for that Court to place itself above SCOTUS, overturning its holdings.

If sufficient fact-finding authority to trigger *Roe's* "collapse" exists somewhere, it must be among the same court-recognized fact-finding authorities which have now firmly and unanimously established that life begins at fertilization.

Alternative Theories. The only possible alternative theory to this analysis is that *Roe's* "collapse" clause was rhetorical, like saying "when Hell freezes over"; the justices did not look ahead to the possibility that "when life begins" might ever actually be "established" as occurring before live birth, at least to their satisfaction.

Or, although they framed the question as a "fact question" by ruling themselves inferior to doctors and preachers, they did not foresee that their perception of disagreement among doctors and preachers *outside* court[17] would be

17 *Roe* didn't begin to assemble a comprehensive picture of the testimony of medicine and theology, in order to establish a sense of where the *weight* of testimony lay. It established only that

overcome by the uncontested testimony of juries and expert witnesses *in court,* joined by state legislatures and Congress whose findings are court-recognized.[18]

Or, they didn't actually care about reality anyway – whether aborticide is *in fact* murder of Constitutionally protected human life. They were so determined to make legal aborticide the law of the land, that *they ruled as a matter of law that the fact of "when life begins" is impossible to know, making evidence that it begins at fertilization (making aborticide cognizable as murder) irrelevant and prohibited*!

Fortunately SCOTUS never *said* any such thing, either then or since. But numerous state supreme courts have ruled in all these cases, in profound, tragic, genocidal conflict with the rulings of this Court. Most of the rest of the world also thinks such cruel perversions of *Roe* is how *Roe* indeed ruled. But not all:

> ...the Roe Court conceded that if the unborn child's "personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." Id. at 156–57. Thus, the very opinion in which the "right" to abortion was judicially created also left open the possibility that if an unborn child's personhood is established, he or she must be equally protected under law. *Hicks v. State* 153 So.3d 53 (Ala. 2014)

What *Roe's* "collapse" clause *said* was obvious ("of course") *remains* obvious: neither laws nor rulings can be constitutional, which protect and legalize genocide,

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disagreement exists, however scant. Were that standard applied to SCOTUS rulings, 5-4 decisions would leave Americans shaking their heads in bewilderment that "When the world's experts in American law are unable to arrive at any consensus, the public, at this point in the development of man's knowledge, is not in a position to speculate as to what is against the law."

18 ...the existence of facts supporting the legislative judgment is to be presumed...not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators....the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist. ...But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it. *U.S. v. Carolene Products,* 304 U.S. 144, 152 (1938)

to the extent we know that is the reality of aborticide.

The third thing *Roe's* "collapse" clause tells us:

(3) **The unspecified authority/agency of this "establishment" is not SCOTUS.** Since SCOTUS couldn't "establish" that preborn babies are humans – persons – whose right to life is protected, but such "establishment" is possible, therefore SCOTUS's scenario was that *other* authorities would do it.

Roe said "IF this suggestion of personhood is established....". They didn't *know*. How would they not know if anyone could do it, if they were the ones to do it?

(4) **Aborticide's legality and penumbra of "constitutional protection" can exist only in the absence of this "establishment"** – *as long as uncertainty is alleged whether the preborn babies of humans are humans.* In other words, the foundation of legal aborticide is ignorance of the humanity of the preborn.

They said "of course". It was *obvious* to them that once this fiction falls, so must aborticide's ignorance-based legality, regarded as probably eternal:

> While *there may never be* a definitive, legal determination of exactly when "life" begins, there must be a determination of when "viability" begins. *Womancare of Southfield, P.C. v. Granholm,* 143 F. Supp.2d 827 (E.D. Mich. 2001)

This dependence on ignorance to sustain legal aborticide was acknowledged even more explicitly in this popular excerpt from *Roe's* oral debate:

> Potter Stewart: Well, if it were established that an unborn fetus is a person within the protection of the Fourteenth Amendment, you would have almost an impossible case here, would you not?
>
> Sarah R. Weddington: I would have a very difficult case. [Laughter]
>
> Potter Stewart: You certainly would because you'd have the same kind of thing you'd have to say that this would be the equivalent to after the child was born.
>
> Sarah R. Weddington: That's right.
>
> Potter Stewart: If the mother thought that it bothered her health having the [born] child around, she could have it killed. Isn't that correct?
>
> Sarah R. Weddington: That's correct.

https://www.oyez.org/cases/1971/70-18 , Oral Reargument, October 11, 1972, beginning at 24 minutes.

> Liberty finds no refuge in a jurisprudence of doubt. Yet, 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages, Roe v. Wade, 410 U.S. 113 (1973), that definition of liberty is still questioned. Joining the respondents as amicus curiae, the United States, as it has done in five other cases in the last decade, again asks us to overrule Roe. *Planned Parenthood v. Casey*, 505 U.S. 833, 844, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992)

SCOTUS was annoyed with "the United States" for continuing to "doubt" SCOTUS' commitment to doubting that the babies of humans are humans. So SCOTUS reaffirmed its commitment to its doubt which is its premise for *Roe*.

> A plurality of United States Supreme Court Justices stated this truism in their misguided effort to stabilize our nation's abortion jurisprudence by reaffirming "the essential holding of Roe v. Wade [, 410 U.S. 113 (1973)]." 12 Casey, 505 U.S. at 846. However, as discussed below, by affirming the rejection in *73Roe v. Wade, 410U.S.113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), of an unborn child's inalienable right to life, Casey did anything but dispel the shroud of doubt hovering over our nation's abortion jurisprudence. Rather, Casey has resulted in a jurisprudential quagmire of arbitrary and inconsistent decisions addressing the recognition of an unborn child's right to life. Concurrence by Moore, *Hicks v. State* 153 So.3d 53 (Ala. 2014)

How can anyone have justice, while courts profess doubt whether they are humans?! Yet this very degree of doubt is the premise of legal aborticide.

(5) **Fact finders** (ie. juries, expert witnesses, and legislatures) are ***invited*** – **even *urged* – to "establish" this fact** if they can, just as soon as they are able.

Roe's "collapse" clause not only *tolerates* such review by finders of facts, not only *welcomes* it, but *urges* it, reasoning that if constitutionally protected "life" really does "begin" at conception, or at fertilization, then all preborn babies have a constitutionally protected "right to life" which must be restored as soon as their humanity is "established". In other words, aborticide, upon "establishment" that all preborn babies are humans/persons, becomes legally recognizable as murder.

There is urgency in this clause: an unwillingness by the judges to be found

knowingly guilty of genocide: a confidence in American justice to quickly abort any unintended travesty, by bringing forward any facts, unknown to the justices at the time, that might be capable of "establishing" the humanity of the preborn which "of course" would render legal aborticide unthinkable.

No subsequent case, nor any future case, nor any philosophical argument outside the courtroom, has changed or can change how obvious it is that the knowledge that aborticide is in fact murder renders legal aborticide profoundly criminal and unconstitutional.

The power of the Supreme Court to limit its own rulings ought to be acknowledged as equal to its power to make rulings. The "collapse" clause explicitly put a leash on Roe. Not even Blackmun, Roe's author, could stomach the thought of knowingly legalizing genocide. *Roe* made its own allegedly unreviewable power reviewable under the personhood establishment clause that *Roe* itself defined.

Therefore, *SCOTUS' alleged ignorance isn't a rational or legal obstacle to letting fact finders "establish" this fact* - although we are not told which, or how many, must agree before SCOTUS will consider the fact established "enough".

FOUR CATEGORIES OF COURT-RECOGNIZED FACT FINDERS

Congress. Federal law since April 1, 2004 "establishes" legal recognition of the preborn as humans/persons:

> 18 USC §1841(d) ...the term "unborn child" means a child in utero, and the term "child in utero" or "child, who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

§1841(c) It has been objected that although §1841(d) defines all preborn babies as humans/persons, §1841(c) exempts aborticide from the penalties of

§1841(a). This is criticized as a contradiction.

> (c) Nothing in this section shall be construed to permit the prosecution—
> (1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
> (2) of any person for any medical treatment of the pregnant woman or her unborn child; or
> (3) of any woman with respect to her unborn child.

The legal obstacle imagined because of these exceptions is that *Roe v. Wade* had cited earlier laws, with penalties for killing the preborn lighter than for killing adults, as proof that *they* did not treat the preborn as "persons in the whole sense".[19]

> *(Roe:)* In areas other than criminal abortion, the *law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn* except in narrowly defined situations and except when the rights are contingent upon live birth. [Some penalties appear to merely] vindicate the parents' interest and is thus consistent with the view that *the fetus, at most, represents only the potentiality of life.* ...Perfection of the interests involved, again, has generally been *contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense.*

How are the preborn treated any more as "persons in the whole sense" by this new law that stops one class of adults from killing them but invites another class?

In other words, by Roe's reasoning, the fact that penalties for a mother killing her 5-*year*-old child are greater than for killing her 5-*month*-old preborn child proves the 5-*month*-old is not a "person in the whole sense". But by that reasoning, the fact that our laws more vigorously pursue threats against President Trump than against any of the rest of us proves that none of the rest of us are "persons in the whole sense". Either that, or that President Trump is a Superperson.

Besides that challenge for the "persons in the whole sense" theory, what is radically different since 2004 than before 1973 is that federal law today, in

19 Another obstacle imagined by some is that paragraph (c) does not "permit the prosecution" of aborticidists, so that must keep other legislatures, or a future Congress, from using (d) to outlaw aborticide. Of course (c) simply means the penalties of (a) don't apply to aborticide; with the fact established by (d), no statute can prevent legislatures from obeying the 14th Amendment!

paragraph (d), explicitly defines a preborn baby as "a member of the species Homo Sapiens, at any stage of development, who is carried in the womb". Federal law could not more legally recognize that as a true *fact*. Especially in the absence of any explicit finding of fact that being *unloved* makes babies, by contrast, *sub*human.

That being the reality, where this discrete class of preborn human beings is unconstitutionally deprived of full rights, *that* is what courts need to fix – not further *dehumanize* the victims of our unequal justice and *increase* legal anarchy.

Law contains many disparate penalties for disparate situations, for many reasons, without finding that people in less protected situations have less value.

For example, no one says laws treat auto accident fatalities as less human than gunfight fatalities because drivers who kill with their cars are not penalized as greatly! The difference is one of intent.[20]

Sometimes unequal justice proceeds from no greater fount of wisdom or virtue than political reality. It would be absurd to conclude from repeal of prohibition, while marijuana criminalization increased, that drinking is "not legally recognizable as a harm"! Or even that it is less harmful than marijuana! The political reality perpetuating legal aborticide is, of course, court rulings.

It is absurd and even evil to imagine that if you *receive* less justice, that proves you *merit* less justice! That justifies all injustice and blocks reform!

Applied to 18 USC §1841(d), it would say that the right to life of an innocent

20 Intent is the factor missed in a *Roe* footnote about Exodus 21:22 implying the passage treats babies as not fully human. When a pregnant woman gets between two fighting men, and gets hit, causing her child to go into labor, a jury shall set damages based on the harm caused. Many interpret that if the baby dies, the penalty is capital punishment; others, that being up to the jury, it may be less, which treats the lives as less than fully protectable. But the reason for the jury would be to weigh intent from the evidence. That is, was the man seen to deliberately aim for the womb? Having juries weigh intent does not suggest babies are less than human.

human being depends purely on the will of its mother: Congress *intended* that the slaying of a preborn human child is a non-harm under United States law, provided solely that his mother wants him dead. And not just a preborn child: given the law's explicit equation of the humanity of the preborn with that of the born, mothers of *older* children who want them dead have a Constitutional right to kill them![21]

"In This Section". It may be objected that paragraph (d) says its definition of all preborn babies as human beings applies "in this section" (of the U.S. Code), which adversaries may argue means "*only* in this section": the finding isn't a "fact" capable of being actually "true", but is merely a *policy* with narrow application.

Grammatically, to say a statement of fact applies "in this context" never means it applies only in the specific example before us and nowhere else in human writing. It means "in this and similar relevant contexts". Examples of sections of the U.S. Code which are *not* similar relevant contexts in which the definition in (d) would make any sense, are sections dealing with corporations called "persons".

An example of applying findings of fact to similar relevant contexts:

> Held: that the definition of "person" in Missouri law is applicable to other statutes, including at least the state's involuntary manslaughter statute. *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992).

Rationally, the interpretation that preborn babies are human beings while you are reading one section of federal law but turn into something less while you are reading another section is absurd. Facts do not change according to which

21 You can see that this argument could not be made in 1973; indeed, not until 2004. So it doesn't truly require reversal of the "persons in the whole sense" doctrine in the legal context available in 1973. Thus it doesn't require justices to "change their minds", or admit they were wrong. New laws create new legal contexts, which require adjustments in rulings, without bothering any judge's self esteem. These arguments merely keep the "persons in the whole sense" doctrine from surviving the federal definition in 2004 of all babies of humans as humans.

section of law you are reading. Certainly not facts like this! But there is no competing definition of the humanness of the preborn anywhere else in the Code.

It is also irrelevant whether there are sections of federal law which should be affected by this definition but which aren't yet. For example, 18 U.S.C. §248, Freedom of Access to Clinic Entrances, creates draconian penalties for trying to save lives taken by aborticide. Its continued existence, even after Congress discovered that all preborn babies are human beings, is absurd and horrifying.

But there are two reasons FACE does not undermine the 2004 definition's satisfaction of the conditions of Roe's "collapse" clause: (1), the 2004 definition came 12 years after 1992; federal law is a patchwork of laws reflecting the varying principles held by over 100 different Congresses over two centuries; contradiction in the philosophies behind human laws is to be expected. If *that* were grounds for invalidating laws we would have few laws! (2) The 1992 law does not dispute that the preborn are human beings. Its focus is stopping anarchy.

In 1992, saving preborn humans was severely punished, while ignoring the little detail of whether they were humans; in 2004, they were declared humans, without this principle being explicitly applied to the repeal of the 1992 law. There is no contradiction in the letter of the law. There is no confusion in how to enforce the two laws. The contradiction is only in the philosophies that inspired them.

But even that is entirely typical for humans, since some of the very same human lawmakers voted for the 1992 law as who voted for the 2004 law, with little or no attention to their philosophical inconsistency.

If philosophical inconsistency were grounds for repealing laws and rulings,

we would never have gotten *Roe v. Wade* in the first place! *Roe* certainly has little consistency with the Preamble to the Constitution which says the beneficiaries of its rights are "ourselves and our posterity"! *Roe* certainly robs half our posterity of their right to life, without which they have *no* Constitutional Rights!

When federal law states a fact, SCOTUS generally accepts it.

> It is well settled that American courts possess power to review the constitutionality of legislative enactments. But this power of judicial review does not inherently include the power to examine underlying legislative findings of fact informing policy decisions... legislative action can be defeated if its constitutionality is dependent upon facts later determined to be erroneous or fundamentally changed. - *"Revising Judicial Review of Legislative Findings of Scientific and Medical 'Fact'; a Modified Due Process Approach",* by Kate T. Spelman, 64 N.Y.U. Ann. Surv. Am. L. 837 (2008-2009)
>
> In Ragland Inv. Co. v. Commissioner, 435 F.2d 118 (6th Cir. 1970), the court stated that on appeal, the court will not disturb findings of fact unless they are clearly erroneous. - *"Clearly Erroneous Standard"*, USLegal.com
>
> Clearly erroneous adj: being or containing a finding of fact that is not supported by substantial or competent evidence or by reasonable inferences findings of fact...shall not be set aside unless clearly erroneous — Federal Rules of Civil Procedure Rule 52(a)
>
> ...the existence of facts supporting the legislative judgment is to be presumed...not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators....the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist. ...But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it. *U.S. v. Carolene Products,* 304 U.S. 144, 152 (1938)

It should prove impossible for SCOTUS to find the personhood statements of Congress and 38 states (in their various "unborn victims of violence" laws) "clearly erroneous", when *not one legal authority in the entire United States, in all these 44 years, has ever positively stated that the preborn are* not *human beings!*

States. "At least 38 states have enacted fetal-homicide statutes, and 28 of those statutes protect life from conception." *Hamilton v. Scott,* 97 So. 3d 728 (Ala. 2012) (Source: the Nat. Conference of State Legislatures, Fetal Homicide Laws.)

Several states explicitly affirm that all preborn babies are humans/persons.

28 protect as many preborn babies as SCOTUS will let them, as seriously as they protect adults, leaving obsolete *Roe's* claim that babies are protected less in law.

Most of the state preborn victims of violence laws survived constitutional challenges brought by murderers. The issue was whether *Roe* nullified them. Apparently no one asked if their findings nullified the premise of *Roe*.

Expert witnesses. A third category of court-recognized fact finders is expert witnesses. It was typical of aborticide prevention trials to bring in a doctor to testify that fully distinct human life begins from fertilization.

> "If the [Necessity] defense is permitted evidence [from doctors or scientists] is introduced [by the prolife defendants] that life begins at conception. This evidence is rarely contradicted by the prosecution...." *Necessity as a Defense to a Charge of Criminal Trespass in an Abortion Clinic", 48 U.Cin.L.Rev. 501 (1979), in a footnote on page 502*

A striking example of such a case is when the world's top genetic experts flew in from as far as France to testify before Sedgwick County Judge Paul Clark.[22]

Judge Clark said their DNA evidence established that life begins at fertilization, so killing life before birth is a great harm:

> I will find Mrs. Tilson's evidence proffered through witnesses Lejeune, Hilgers, McMillan and Rue relevant to the issue here. The entire evidence of her experts is admitted. The evidence proves that the medical and scientific communities dealing with the subject matter on a daily basis are of opinion that life in homo sapiens begins at conception; and harm is the result of termination of life under most circumstances.
>
> That opinion—as a proposition based on intuition in earlier years—has always been foundation for the public policy in Kansas (*State vs. Harris, Supra; Joy vs. Brown, Supra).* "Memorandum of Opinion Following Bench Trial" p. 22.

Judge Clark said *Roe* protected aborticide from *governmental* interference.

> Roe vs. Wade (401 U.S. 113, 35 L.Ed 147, 93 S.Ct. 705) set the law whereby the Constitution guarantees a right whereby a pregnant woman, during the first trimester, may make a decision whether to terminate her pregnancy without *governmental* interference in that decision. P. 8
>
> The City of Wichita's ordinance prohibiting "criminal trespass" (Ex. 4, Supra) protects the right of a corporation and its business invitees to do lawful business without interference. P. 10

22 Sedgwick Cty, KS, 7/21/1992, No. 91 MC 108, "Memorandum of Opinion Following Bench Trial"

> Roe, Supra, and Doe, Supra, declared a qualified constitutional right protecting a woman "from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy," (Casey vs. Planned Parenthood.... P. 20-21
>
> Any corporation authorized to do business and its clientele still have a right to do lawful business without interference under the law of this state. P. 24

But not from interference from *individuals!*

> P. 9-10: The Bill of Rights, federal and state, [in whose "penumbra" the Roe court imagined they spotted a right to kill babies] is law that protects the people from their government. Neither was meant to protect people from fellow citizens (Burdeau vs. McDowell. 41 S.Ct. 574, 65 L.Ed. 1048, 256 U.S. 465).

Certainly, Clark said, "*Roe* and its progeny" did not reverse Kansas policy, that aborticide is a "wrongful act", making it a "harm". It's *legal* – not *harmless!*

> [P. 23] Neither *Roe vs. Wade, Supra;* its companion case *Doe vs. Bolton, Supra*; nor their progeny (*Webster vs. Reproductive Services et al, Supra; Casey vs. Planned Parenthood of Southeastern Penn., Supra)* worked to abrogate the public policy of the state of Kansas that the voluntary act of prematurely terminating a pregnancy without qualifications is a wrongful act. Those federal cases only qualified that policy by constitutionally guaranteeing to each woman in Kansas or elsewhere a "qualified right" (Roe, Doe, Webster, Casey) to decide whether to terminate her pregnancy.
>
> The City argues...that *Roe vs. Wade, Supra,* declares that the voluntary termination of pregnancy cannot be a harm because it is legal. That is too broad an application.

Judge Clark missed the plea of *Roe's* "collapse" clause, that if aborticide really is harmful, no way can it remain legal. It is fascinating how he let the law based on ignorance, and the fact which shatters that basis, coexist. Clark was overturned by the logic that it matters not if it *is* murder: it is *legal* – so how can it be harmful?[23]

Juries are the fourth category of court-recognized fact-finders. Every judge addresses them as "finders of fact". Every judge tells every jury some version of "If the question is one of fact, it should be *decided by the jury at trial."*[24]

But as if to reach the favored result no matter the cost to Due Process, even when the only contested issue of aborticide prevention trials is whether the preborn are human beings, and that is the defendant's only defense, courts haven't allowed

23 This ruling will be considered under the "Juries" heading below.

24 http://legal-dictionary.thefreedictionary.com/Question+of+Law

juries to even know the existence of the defense, much less decide it, ever since courts discovered that when juries are shown this fact question, aborticide loses.

> After the court ruled that it would allow the [Necessity] Defense to go to the jury, the Women for Women Clinic dropped the prosecution. If the defense is permitted, evidence is introduced that life begins at conception. This evidence is rarely contradicted by the prosecution, which is merely proving the elements of criminal trespass. Rather than risk such a precedent, many clinics prefer to dismiss. In fact, defense counsel have admitted that their intent is to bring the abortion issue back before the United States Supreme Court to consider the very question of when life begins, an issue on which the Court refused to rule in Roe... *("Necessity as a Defense to a Charge of Criminal Trespass in an Abortion Clinic", 48 U.Cin.L.Rev. 501 (1979), in a footnote on page 502. The Cincinnati Law Review footnote analyzes the case of Ohio v. Rinear, No. 78999CRB-3706 (Mun. Ct. Hamilton County, Ohio, dismissed May 2, 1978)*

"Suppression of the evidence ought always to be taken for the strongest evidence" is the principle that won Freedom of the Press in the 1735 trial of Peter Zenger. Thus, suppression of the evidence of "when life begins" tells us that to the scandalously limited extent judges have allowed juries to weigh this fact question, juries have "established" that fertilization *is* "when life begins".

Juries are a Russian Plot? By calling the goal of triggering Roe's "collapse" clause through jury verdicts an "admission", the *Cincinnati Law Review* author treats the resort to our 6th Amendment right to Trial by Jury as some sort of nefarious scheme which the clever author has artfully exposed.

Juries "establish" facts by their sheer constitutional authority, apart from any respect judges have for their expertise or competence. When a pattern of jury acquittals seems to turn on some fact alleged by defendants, prosecutors eventually give up building cases on that fact. No single jury verdict establishes this kind of influence over American law; it takes a series of them. Prosecutors and defense teams study thousands of varying verdicts to estimate what strategies seem to work, and what claims of facts juries will accept.

But an Illinois Supreme Court called this process anarchy.

> Under Roe, an abortion during the first trimester of pregnancy is not a legally recognizable injury, and therefore, defendants' trespass was not justified by reason of necessity. Defendants attempt to *circumvent the effect of Roe* and to bolster their defense of necessity by arguing that they reasonably believed that they acted to prevent the destruction of human life. They point to language in Roe in which the court declined to speculate on when human life begins. [Citation omitted.] Defendants argue that life begins at the time of conception, and that they were denied due process of law because the trial court refused to admit evidence which was proffered to support this contention. True, in Roe, the court acknowledged the existence of competing views regarding the point at which life begins. However, the Court declined to adopt the position that life begins at conception, giving recognition instead to the right of a woman to make her own abortion decision during the first trimester. [Citation omitted.] *We do not believe that the Court in Roe intended courts to make a case-by-case judicial determination of when life begins.* We therefore reject defendants' argument." *People v. Krizka* 92 III.App.8d at 290-91, 48 Ill.Dec. 141, 416 N.E.2d 36 (*1980*)

The Court's bottom line was not any response to the evidence that aborticide is, in fact, barbaric genocide, but the Court's "belief", not citing any authority for such a "belief" in Roe, law, or case law, that courts shouldn't have to resolve unclear facts through juries, which must decide *all* matters case-by-case.

It is incomprehensible that the *Roe* justices, who treated "when life begins" as a fact issue which the justices had less capacity to resolve than doctors and preachers, and who invited ***triers of fact*** to resolve it even if that meant *Roe's* "collapse", could not have anticipated the possibility of resolution through future cases! And surely the *Roe* justices understood that case law is not established by a single case that then automatically prevails across the nation for all time, but by a series of cases with somewhat competing arguments and rulings. "Precedent" is sort of an average of them.

Krizka's fear of anarchy from answering *Roe's* invitation to establish the factual nature of aborticide is fear of the *everyday operation of American law.* The *opposite* of *Krizka's* claim is true: *Roe does* invite Triers of Fact – juries – to

establish the Facts of "when life begins" in the only way possible: case by case.

Judge Clark was overturned by reasoning, erroneously, that *Roe* had made aborticide legal *as a matter of law,* permitting judges to dismiss as irrelevant the evidence that aborticide is murder *as a matter of fact.*

> "The rationale utilized by '[t]he majority of courts. . . [was] that because abortion is a lawful, constitutionally protected act, it is not a *legally* recognized harm which can justify illegal conduct.'" *City of Wichita v. Tilson,* 855 P.2d 911 (Kan. 1993)

"Legal?" yes. "Constitutionally protected?" Not since *Casey* had made it no longer a "fundamental right",[25] as Justice Scalia explained.[26]

The Kansas justices further pushed reality into irrelevance by rearranging the multiple choice historical elements of the Necessity Defense in a way that makes it illegal to save the lives of a discrete class of persons.[27]

They misapplied Professor Robinson's analysis of the Necessity Defense. Robinson said when "any legally protected interest" is threatened, "conduct constituting an offense is justified if" the conduct "furthers a legal interest greater than the harm or evil caused...." The justices said abortion, a "legally protected interest", was threatened; hindering it was *not* justified just for the sake of "political protest". The justices could not process Tilson's defense that our Constitutionally protected Right to Life is a "legally protected interest", or that saving lives is a "legal interest", much less that hindering aborticide is not a harm at all after the

25 Planned Parenthood v. Casey, 505 U.S. 833, 945, 954 (1992)

26 Justice Scalia's dissent in *Lawrence v. Texas* 539 U.S. 558, 595, 123 S. Ct. 2472, 2493 (U.S., 2003), explained how the Supreme Court, in *Casey*, abandoned Roe's position that the right of a woman to choose to hire someone to kill her child was a "fundamental right": "We have since rejected Roe' s holding that regulations of abortion must be narrowly tailored to serve a compelling state interest, see *Planned Parenthood v. Casey,* 505 U.S., at 876,....-and thus, by logical implication, Roe' s holding that the right to abort an unborn child is a 'fundamental right.'"

27 Where constitutional rights directly affecting the implication of guilt are implicated, rules of evidence may not be applied mechanistically to defeat the ends of justice. See *Chambers,* 410 U.S. at 302.

uncontested trial evidence that aborticide kills innocent preborn humans/persons.

The justices grossly misstated the defendant's motive, without support from the record and obviously contrary to the record. It wasn't to save lives at all, they insisted! It was to make a political statement![28] A classic "straw man" argument.

> The evil, harm, or injury sought to be avoided, or the interest sought to be promoted, by the commission of a crime must be legally cognizance [sic; presumably, "recognizable" or "cognizable" is the meaning] to be justified as necessity. '[I]n most cases of civil disobedience a lesser evils defense will be barred. This is because as long as the laws or policies being protested have been lawfully adopted, they are conclusive evidence of *the community's view* on the issue.' 2 P. Robinson, Criminal Law Defenses 124(d)(1), at 52. Abortion in the first trimester of pregnancy is not a legally recognized harm, and, therefore, prevention of abortion is not a legally recognized interest to promote." (*City of Wichita v. Tilson,* 253 Kan. 295)

First, saving lives is more defensible than "civil disobedience" or "protesting".

Second, the "community view" about "when [protectable] life begins" is not represented by rulings forced upon state legislatures by eight unelected men who admitted they were "in no position to speculate" on the key premise of their rulings.

Third, to the extent Robinson's "community view" test fits aborticide prevention, it provides another reason to review state rulings, now that 28 states[29] join Congress in recognizing the humanity of the preborn from fertilization.

It is cruel, insulting circular reasoning for courts to force all states to legalize what they had criminalized for a century, forcing communities across America to

28 Tilson summarized several other appellate rulings which employed the same Straw Man, such as: "...the 'injury' prevented by the acts of criminal trespass is not a legally recognized injury." *People v. Krizka*, 92 IILApp.3d 288, 48 III.Dec. 141, 416 N.E.2d 36, "... a claim of necessity cannot be used to justify a crime that simply interferes with another person's right to lawful activity." *State v. Sahr,* 470 N.W.2d at 191-192. *Krizka* is correct, if the "injury prevented" is merely abortions of unloved soul-less "blobs of tissue" whose humanity is uncertain. *Krizka* is cruelly corrupt, if the "injury prevented" is the mass slaughter of human beings who are "persons in the whole sense" as documented by triers of fact! *Sahr* is precise, if the only reason for breaking a law is to "interfere with another person's right to lawful activity". *Sahr* is foolishly sad, if saving human lives was the real reason a relatively minor law was broken, and it was to obscure that real reason that *Sahr* contracted with a Straw man.

29 State v. Courchesne, 296 Conn. 622, 689 n. 46, 998 A.2d 1, 50 n.46 (2010) ("'[As of March 2010], at least [thirty-eight] states have fetal homicide laws.'" (quoting the National Conference of State Legislatures, Fetal Homicide Laws (March 2010) (alterations in Courchesne))

reverse their definition of aborticide as murder, under protest more vigorous than America saw during the Civil Rights Movement, and then say it is only honoring "the community view" to rule that aborticide cannot be recognized as murder!

A lesson from Nazi Germany is that some things which are legal are evil. Murder can be made legal, but not harmless. The slaughter of millions whose only offense is their existence has often been encouraged by laws, but never justified.

Another lesson is the power of evil laws to intimidate "the community" into tolerating terrible evils which poison its "community values" into what "the community" itself recognizes as an abomination, both before, after, and even during the reign of those laws. One measure of how far laws depart from historical "community values" is the number of martyrs compelled to act by the departure.

Even apart from the poison of evil laws, the history of the 14th Amendment should remind us that not all "communities" have "values" that protect the least among us. America is founded on higher law than "community values"!

Rhode Island. The question, "when life begins", was avoided by this Court just weeks after *Roe,* even after a federal judge butchered the position of this Court.

The Rhode Island legislature saw that *Roe* alleged uncertainty about the preborn because "the unborn have never been recognized in the law as persons in the whole sense".[30] Rhode Island immediately so recognized the preborn, explicitly, with a powerful finding of facts added to its updated criminalization of aborticide.

30 Roe v. Wade: 410 U.S. 113, 161 *Roe's* conclusion from lesser penalties in law for killing preborn babies is puzzling given that (1) there have always been a wide range of penalties for causing the death of *adults*, depending on factors like intent, real or perceived threat to oneself, or prosecutorial difficulties like absence of a body or the need to secure the testimony of lesser criminals against worse criminals, (2) murder laws do not explicitly state that adults are human beings or "persons", and (3) no one says the adults whose killers get lesser penalties must have "never been recognized in the law as persons in the whole sense".

> "73-S 287 Substitute 'A', R.I.G.L. § 11-3-1 March 7, 1973 PREAMBLE
> ....Whereas, The state of Rhode Island has a legitimate and important interest in preserving and protecting the life of pregnant women and in protecting all human life; and Whereas, The state of Rhode Island, in its fulfillment of its legitimate function of protecting the well-being of all persons within its borders, hereby declares that in the furtherance of the public policy of said state, human life and, in fact, ***a person within the language and meaning of the fourteenth amendment to the constitution of the United States, commences to exist at the instant of conception;*** now, therefore, It is enacted by the General Assembly as follows:
> ....'11-3-1. PROCURING, COUNSELING OR ATTEMPTING MISCARRIAGE. -- Every person who,...unless the same be necessary to preserve her life, *shall...assist...any person so intending to procure a miscarriage,* shall...be imprisoned....
> '11-3-4. CONSTRUCTION AND APPLICATION OF SECTION 11-3-1. -- It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, ***that human life commences at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States,*** and that miscarriage at any time after the instant of conception *caused by the administration of any poison or other noxious thing or the use of any instrument or other means* shall be a violation of said section 11-3-1, unless the same be necessary to preserve the life of a woman who is pregnant.

Judge Pettine presumed that *Roe* had eternally settled the "question of when life begins", leaving Rhode Island's declaration about reality irrelevant.

> The Rhode Island legislature apparently read the opinion of the Supreme Court in Roe v. Wade to leave open the question of when life begins and the constitutional consequences [**12] thereof. *Doe v. Israel,* 358 F. Supp. 1193, 1199 (1973)

Rather than present any analysis of *Roe* itself in support of his presumption, Pettine appealed to the unthinkability, for him, of the consequence of letting individual states reach conflicting conclusions about who is a human!

> ...while the States have traditionally established a network of property and contract rights, they have not done so as to life, liberty or person. There is little reason to accept or give determinative weight to **varying state versions** of the existence or character of the rights at stake. Such issues are exclusively questions of Federal constitutional law. See *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

As it turned out, not even after 44 years have there been the emergence of any "varying state versions" about the right of all humans/persons to live, or about whether preborn babies are humans/persons. Every American legal authority which has taken a position has agreed that "life begins" at fertilization. No state, nor any

other court-recognized fact finder, has ever said it begins any later. There are zero arguments about the facts: the only argument is over whether to ignore them.

> It is true that the Court in Wade and Bolton did not attempt to decide the point "when human life begins." No reading of the opinions, however, can be thought to empower the Rhode Island legislature to "defin[e] some creature as an unborn child, to be a human being and a person from the moment of its conception." *Doe v. Israel,* 482 F.2d 156 (l st Cir. 1973)

OK, *Roe* gave no such *explicit* empowerment, but by then *two* states were on record, saying what *Roe* said must be said/"established" for legal aborticide to end. *Roe* did *not, indeed,* say *how much more* evidence it would take to "establish" the fact. But *Roe did* explicitly say *some* unspecified level of evidence would, indeed, "collapse" legal aborticide. Pettine, disagreeing, spoke as if all the evidence in the world would be irrelevant. Pettine said *Roe* said Texas' testimony about "when life begins" was "irrelevant". *Roe* did not say that. *Roe* only *implied* it was not *enough.*

> ...defendant [Rhode Island's AG] relies principally on the fact that the Rhode Island legislature had made a conclusive finding that life begins with conception. In Roe v. Wade the Court specifically stated that it was irrelevant, in determining the validity of Texas' statute, that Texas adopted the theory that life begins at conception. "[W]e do not agree that, by adopting one theory of life, Texas may overide the rights of the pregnant woman that are at stake." Id. at 162, 93 S.Ct. at 731. Defendant nevertheless would argue that the Rhode Island legislature's "conclusive presumption or finding of fact" that life begins at conception requires this court to find that Rhode Island's interest in preventing aborticides should be weighed more heavily than the Supreme Court weighed Texas' interest in Roe v. Wade.

Rhode Island was right to ask, "Here is *twice as much* evidence, SCOTUS. Now *two* states affirm the fact that 'life begins' at conception. Now you have an enacted law, instead of just an AG's argument in court. Now you have the explicit finding in law which you said you haven't found. Is *that* enough evidence for you? If not, please tell us: *how much more* do you need?" SCOTUS' reply: *Doe v. Israel,* 1 Cir., 1973, 482 F.2d 156, *cert. denied,* 416 U.S. 993.

No more evidence is possible, than the consensus of all court-recognized fact-finders. The question is ripe.

Aborticide, and its sustaining rationale that we can't tell if babies of humans are humans, threatens more than preborn babies. By successfully dehumanizing millions of persons over a term like "fetus", *Roe* shows how to deny rights to any group the state considers "unwanted" (ie. PVS, seniors, mentally ill, prisoners, or immigrants) by simply alleging inability to define certain elements of humanity or personhood. Or by assuming any victim of injustice must have *deserved* injustice.

Even this famous prolife dissent, even after saying unborn personhood can't be determined as law, overlooks the possibility of establishing it as a fact! What is left? A personal, subjective "value judgment" unrestrained by either law or fact!

> There is, of course, no way to determine [whether the unborn are human] as a legal matter; it is, in fact, a value judgment. Some societies have considered newborn children not yet human, or the incompetent elderly no longer so. *Planned Parenthood v. Casey,* 505 U.S. 833, 982 (1992) (Concurrence/dissent of Scalia, White, Thomas)

Whether I am a human being is a "value judgment"? Not a question for fact finders? Is our Right to Life any safer at the mercy of whether we are "wanted" by decision makers than if our humanity is "legally recognized"? We already pull plugs on semi-conscious patients like Nancy Cruzan and Christine Busalacchi.

Only one thing holds up Roe, Casey, and all in between: alleged uncertainty whether unborn babies of human mothers are humans. Smash that "shell" with legally recognized certainty that the unborn are human, and let's see how long that "reliance interests" sophistry can stand, all alone! Once aborticide is "established" as genocide, "women's schedules" are exposed as a barbarically trivial excuse for it.

As late as *Stenberg v. Carhart* 530 U.S. 914, 920-921 (2000) SCOTUS still

had no position on whether the unborn are humans/persons. It dismisses the belief of many "that life begins at conception and consequently that an aborticide [causes] the death of an innocent child" as a "point of view" which is "irreconcilable" with, and according to the religion of Relativism canceled by, the "view" that murder is OK. As for Roe's "speculation" whether aborticide is murder, or Casey's claim that women are used to killing, "We shall not visit these *legal* principles."

Even Stenberg's dissents avoid a position. Whether the unborn are "human life or [merely] potential human life" is "depending on one's view".[31] It "dehumanizes the fetus and trivializes human life", not because it wantonly *takes* human life, but because it *"approaches* infanticide".[32] Whether to save lives "is a value judgment, dependent upon how much one respects [or wants society to respect]...life...."[33]

The 14th Amendment. In saying "all persons...are citizens" *after* we are born, the 14th Amendment recognizes citizens as "persons" *before* we are born. The framers certainly regarded the preborn as humans and as persons.[34]

> Amendment XIV Section 1. All persons born or naturalized...are citizens....no...state [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The 14th Amendment *protects* preborn "persons" as equally as born "citizens":

> ....The Equal Protection Clause expressly applies to "any person" within a state's jurisdiction. By contrast, the Privileges and Immunities Clause applies to "citizens," namely, "[a]ll persons born or naturalized in the United States...." U.S. Const. amend XIV, § 1 (emphasis added).
>
> This definitional distinction necessarily implies that *personhood—and therefore the protection of the Equal Protection Clause—is not dependent, as is citizenship, upon being born or naturalized.* See, e.g.,Yick Wo v.Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed.

31 *Stenberg v. Carhart,* 530 U.S. 914, 980 Dissent by Thomas, Rehnquist, Scalia.
32 *Stenberg v. Carhart,* 530 U.S. 914, 1006 Dissent by Thomas.
33 *Stenberg v. Carhart,* 530 U.S. 914, 954 Dissent by Scalia
34 See also United States v. Palmer 16 U.S. 610, 631 (1818), "The words 'any person or persons,' are broad enough to comprehend every human being." Wong Wing v. United States, 163 U.S.228, 242 (1896), "The term 'person' is broad enough to include any and every human being within the jurisdiction of the republic…This has been decided so often that the point does not require argument."

220 (1886) ("The fourteenth amendment to the constitution is not confined to the protection of citizens."). "The Fourteenth Amendment extends its protection to races and classes, and prohibits any State legislation which has the effect of denying to any race or class, or to any individual, the equal protection of the laws." Civil Rights Cases, 109 U.S. 3, 31, 3 S.Ct. 18, 27 L.Ed. 835 (1883) (emphasis added).

Unborn children are a class of persons entitled to equal protection of the laws. A plain reading of the Equal Protection Clause, therefore, indicates that states have an affirmative constitutional duty to protect unborn persons within their jurisdiction to the same degree as born persons.

Because a human life with a full genetic endowment comes into existence at the moment of conception, the self-evident truth that "all men are created equal and are endowed by their Creator with certain unalienable rights" encompasses the moment of conception. Legal recognition of the unborn as members of the human family derives ultimately from the laws of nature and of nature's God, Who created human life in His image and protected it with the commandment: "Thou shalt not kill." Concurrence by Moore, *Hicks v. State* 153 So.3d 53 (Ala. 2014)

SPEECH. I argued in my May 23, 2016 final brief:

The fact that I was charged with 3rd degree harassment and not 1st or 2nd degree, "threat to commit a forcible felony" and "threat to commit bodily injury", proves that no one thought I was about to *physically* hurt anybody.

708.7(1)(b) doesn't even require physical contact; it can be "personal contact", which is satisfied if two people are merely in "visual...proximity". Since that element alone would put everyone in jail, we need to seriously consider the other element: "intent to threaten, intimidate, or alarm". Several say they "felt threatened", but no one said I threatened anybody *physically,* a fact affirmed, I say again, by the charge of *3rd* degree harassment.

Did I "intimidate" anyone?....I don't think I look very intimidating when I look in the mirror. Maybe if I were a young 6' [male] athlete wearing body piercings and gang colors I might intimidate people just by talking to them, or my disapproval might intimidate them if I were in a position of authority over them. With neither of those I don't think "intimidated" would be the right word for what anyone felt because of me. People pretty generally had contempt for me. I doubt if anyone can be "intimidated" by someone they have contempt for, who poses no tangible threat.

That leaves "alarm".

This element may qualify as being Constitutionally Vague, in that it certainly can't be prosecutable when it merely informs people of facts which are true and which would still be true even if the messenger did not exist.

The following trial notes reveal that even when no "protesters" (we call ourselves "sidewalk counselors" and "missionaries to the preborn") are present, patients are sufficiently disturbed by "the nature of the business" that it is necessary for abortionist staff to "console" patients:

"Defendant questions witness [who works for Planned Parenthood] on whether the nature of the business can be traumatic for patients. Witness comes into contact with patients. Talks to patients. Some people can be stressed. [Even with no protesters outside.] There are times when witness will console patients." (Judge's notes on the January 26, 2007 trial, filed January 31. App. 7 – transcript begins p. 5)

In American justice, evidence that I told the truth *has* to be a defense against the charge that I alarmed somebody. Before this charge can legitimately, legally, and constitutionally stand, there has to be an allegation that what I said is not true, or that it would be made true only by my present or future actions. Then I would have to be allowed to present evidence that what I said was already true, and it has to be the burden on the State to prove I raised a False Alarm – the only kind of alarm which can be prosecutable.

> If my message was already true, then its recipients' strong negative emotional reaction to mere truth marks them as immature....
>
> No Court can, therefore, logically or legally rule on such a case, without addressing whether the "alarm" raised was false, or true. When an "alarm" is true, the correct word is "warning". No law criminalizes giving a "warning", and the perversion of any law to such a result would constitute an unconstitutional application. (P. 36-39, Appellant's Final Brief, May 23, 2016)

CONCLUSION. The Court should provide *injunctive* relief from a no contact order which protects activities legally recognizable as murder from statements about it never alleged to be untrue, for a corporation which never should have had standing to apply for protection.

The Court should give *declaratory* relief, that the doubt that is the basis for *Roe v. Wade* about "when life begins" has long been resolved by finders of facts: "life begins" at fertilization, making abortion legally recognizable as killing preborn humans/persons, which requires its prohibition by states.

I saved human lives by telling the truth about aborticide. I ask this Court to save all still in danger, by acknowledging the same facts, granting my petition for a writ of certiorari to affirm that the babies I saved were humans and persons, aborticide's legality has "collapsed", and it cannot be against any law in America to state facts documented by court-recognized fact-finders which no one says are not true, and which are true independently of the speaker.

I ask this so that America may be healed and confidence in SCOTUS may be restored.

Respectfully submitted,

Donna Holman

_____ Donna Holman
776 Eicher, Keokuk IA
March 17, 2017

Appendix A: Decision of Iowa Court of Appeals

IN THE COURT OF APPEALS OF IOWA

No. 15-1375
Filed October 26, 2016

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONNA JEAN HOLMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

The defendant appeals from the district court's denial of her motion to vacate a no-contact order. **AFFIRMED.**

Donna Holman, Keokuk, pro se appellant.

Thomas J. Miller, Attorney General, and Benjamin M. Parrott, Assistant Attorney General, for appellee.

Considered by Potterfield, P.J., Tabor, J., and Blane, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2015).

BLANE, Senior Judge.

Donna Holman appeals the district court's denial of her motion to vacate a no-contact order. Holman maintains the court violated her right to be heard when it extended the no-contact order in 2011, and she argues that the court was wrong in its determination that she still posed a threat in 2015, when it denied her motion to vacate.

I. Background Facts and Proceedings.

In January 2007, a magistrate found Holman guilty of third-degree harassment and disorderly conduct for her actions outside of a Planned Parenthood in Iowa City. The court sentenced Holman to two suspended, thirty-day terms of incarceration and placed her on probation for one year. The court also entered a no-contact order prohibiting Holman being within twenty-five feet of the Iowa City Planned Parenthood. The no-contact order was effective for five years.

Holman appealed the judgment and sentence, and the district court affirmed both. Holman later filed for discretionary review with the Iowa Supreme Court, but her request was denied.

In January 2008, Holman's probation was revoked for failure to comply with the terms and conditions. She served a thirty-day term in the county jail as a result.

In November 2011, the State filed a motion asking the court to extend the no-contact order for an additional five years. The State maintained that Holman still posed a threat, and affidavits supporting the assertion were submitted with the motion. The same day, without holding a hearing, the court granted the

motion and entered a modified no-contact order, extending it through January 26, 2017. The form contains the statement, "The court hereby finds: It has jurisdiction over the parties and subject matter, and the Defendant has been provided with reasonable notice and opportunity to be heard."

On August 8, 2014, Holman filed a motion asking the court to correct or vacate the "illegal no-contact order." In the motion, Holman argued the court's extension of the no-contact order without allowing her an opportunity to be heard violated her right to Due Process. She also maintained that the court was wrong in its determination that she still posed a threat.

The court denied Holman's motion, stating that Iowa Code section 664A.8 (2011), the statute controlling the procedure for extending a no-contact order, contained "no requirement for notice and hearing prior to the court considering a motion to extend."

Holman filed a motion to reconsider. She attached our court's ruling in *State v. Olney*, 13-1063, 2014 WL 2884869, at *3 (Iowa Ct. App. June 25, 2014), which concluded "an extension of a no-contact order under chapter 664A is . . . subject to a motion to dissolve, vacate, or modify." The court treated the motion as a request for a hearing on the merits to determine whether Holman continued to pose a threat to the protected party. An evidentiary hearing was scheduled.

The State, Holman's attorney, and Holman pro se filed a number of filings and the court granted at least one continuance before Holman's attorney filed a motion for another continuance the day before the rescheduled hearing in January 2015. The motion stated, in part, "Defendant also respectfully suggests that perhaps a hearing is not necessary and that the parties could instead simply

submit written arguments to the court by a certain date. This would perhaps be the most effective use of scant court resources." The court granted the motion, and both parties submitted affidavits.

On July 14, 2015, the court entered its ruling, finding that Holman continued to pose a threat and denying her request to vacate the no-contact order. Holman appeals.

II. Standard of Review.

Insofar as Holman's claims involve a constitutional right to due process, we review de novo. *See State v. Young*, 863 N.W.2d 249, 252 (Iowa 2015). We consider the district court's interpretation of a statute and claims regarding the sufficiency of the evidence for correction of errors at law. *State v. Hammock*, 778 N.W.2d 209, 210–11 (Iowa Ct. App. 2009).

III. Discussion.

Holman maintains that she had a right to be heard before the district court modified the no-contact order in 2011 to extend it for five years.[1] Although the form filed by the court stated that Holman had received notice of the hearing, the State's motion to extend the no-contact order was filed only hours before the court granted it. It is clear that Holman was not afforded notice before the court took action on the State's motion. Moreover, the requirements to issue a temporary injunction without notice to the party were not fulfilled. *See* Iowa R. Civ. Pro. 1.1507 (allowing a temporary injunction to be issued without notice where the applicant's attorney certifies in writing either the efforts that have been

[1] The State asserts Holman does not have an appeal as a matter of right and she should have requested discretionary review. Alternatively, the State maintains this appeal is untimely. We do not address these arguments; we decide the appeal on the merits.

made to give notice or the reason supporting the claim that notice should not be required); *see also Olney*, 2014 WL 2884869, at *3 ("A no-contact order is analogous to an injunction."). However, even if the district court erred in the procedure offered to Holman before the 2011 extension, Holman was afforded the opportunity to be heard in 2015 when the court reconsidered the merits of whether she still posed a threat. She complains on appeal that she wanted a hearing rather than having the court rule based on the submitted affidavits, but we note that she is the party who suggested that procedure, and she did not complain of such procedure to the district court when she had the chance. *See State v. LeFlore*, 308 N.W.2d 39, 41 (Iowa 1981) ("[G]enerally a defendant is bound by defense counsel's action within the scope of that authority taken on behalf of the defendant."). Any procedural defect that occurred prior to the extension was cured by the reconsideration of the merits in 2015.

Next, we consider whether the court erred in finding that Holman still posed a threat at the time of the 2015 motion to vacate.[2] Holman had the burden to prove she was no longer a threat to those protected by the order. *See State v. Wiederien*, 709 N.W.2d 538, 545 (Iowa 2006) (Cady, J., dissenting) ("[The court considers the evidence presented in the criminal or juvenile proceedings to decide if the no-contact order should be modified or terminated in accordance with those standards applicable to continuing, modifying, or dissolving other injunctions."); *Simmermaker v. Int'l Harvester Co.*, 298 N.W. 911, 913 (Iowa 1941) ("It is . . . well settled that on a motion to dissolve a temporary restraining

[2] We understand Holman's challenge to the district court's finding that she continued to pose a threat as a challenge to the sufficiency of the evidence supporting the determination.

order . . , the burden rests upon the defendant."); *Olney*, 2014 WL 2884869, at *3 n.4 ("At a hearing on a motion to dissolve, vacate, or modify, the moving party would be required to prove by a preponderance of the evidence that the defendant no longer poses a threat to the victim or others who are protected by the order.").

The no-contact order was originally entered after Holman was convicted of harassment in the third degree, and it was extended because the court believed she was still a threat to engage in such behaviors. "A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person." Iowa Code § 708.7(1)(b) (2013). Holman had the burden to establish that she no longer posed a threat to the protected parties, but instead she did quite the opposite. The affidavits she filed with the court, rather than assuaging fears about her possible future behavior, indicated that she intended to continue much as she had before, and as she had in other locations since her initial arrest. While Holman continues to maintain that she is simply engaging in her right to protest things that are against her personal beliefs, it is clear she plans to continue to do so in such a way as to harass those that the no-contact order is meant to protect. We cannot say the district court erred in its determination that Holman still poses a threat.

Holman lists a number of other arguments about issues not properly before us on appeal; we decline to consider them. We affirm the district court's denial of Holman's motion to vacate the no-contact order.

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
15-1375	State v. Holman

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Appendix B: Decision of Iowa trial court

E-FILED 2015 JUL 14 3:09 PM JOHNSON - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

STATE OF IOWA,	)	
	)	No. **SMSM067310**
Plaintiff,	)	
	)	
vs.	)	**RULING ON MOTION TO VACATE**
	)	**NO CONTACT ORDER**
DONNA JEAN HOLMAN,	)	
	)	
Defendant.	)	Date: **July 14, 2015**

This matter comes before the Court upon Defendant's **Motion to Vacate No Contact Order**. The Defendant requested that the matter be submitted on Affidavits and waived an In-Court Hearing. Court having reviewed the motion and reviewed the file herein, now makes the following Findings, Conclusions and Ruling:

FACTS

The Defendant is an anti-abortion protester. On November 1, 2006 she was at the Iowa City Planned Parenthood facility located at 850 Orchard Street. As persons attempted to enter the facility, the Defendant yelled at them and attempted to force anti-abortion materials upon them.

The Defendant continued yelling loudly outside the clinic disrupting the business of the clinic. Her conduct alarmed and annoyed persons entering, leaving and working at the clinic.

On **January 26, 2007**, the Defendant was convicted of the crime of **Harassment 3rd Degree** in violation of Iowa Code Section **708.7(1)(b)** and **Disorderly Conduct** in violation of Iowa Code Section **723.4(2)**.

A **Harassment No Contact Order** initially entered on November 2, 2006 was extended for a period of five years to **January 26, 2012**.

On **November 16, 2011**, the State filed a **Motion to Extend** the No Contact Order for an additional five years. Attached to the State's Motion were the Affidavits of Rebecca Bruce and Patrick Wheeler. Based upon the information provided in the Affidavits that the Defendant was continuing to protest at Planned Parenthood facilities and to be arrested and charged for her conduct, the Court found that the Defendant continued to pose a threat to the safety of the Protected Party and extended the No Contact Order for an additional five year to **January 26, 2017**.

The procedure for extending a no contact order is set forth in Iowa Code Section **664A.8**. No requirement for notice and hearing prior to the court considering a motion to extend is included in the statute.

The Defendant was personally served with a copy of the November 16, 2011 Order on November 16, 2011, and only now, three years later, complains about the Order.

The Court has reviewed the Affidavits of Rebecca Bruce, Patrick Wheeler and Penelope Dickey filed by the State, and the Affidavits of Karen Hempen, Dave and Dorothy Leach and the Defendant, filed by the Defense.

The Court has reviewed Iowa Courts On-Line and finds that one March 11, 2014, the Defendant was alleged to have violated a Protective Order entered in Lee County. This violation was subsequently dismissed. On October 11, 2011, the Defendant was charged with Criminal Trespass in Montgomery County. She was convicted after a Bench Trial on January 25, 2012.

CONCLUSIONS

Defendant now asks the Court to vacate the Order extending the No-Contact Order based upon an absence of facts which would show the Defendant continues to present a threat to the victim herein.

The Defendant cites *State v. Olney*, No. 13-1063, filed June 24, 2014 (Iowa App. 2014) in support of her Motion.

The Court respectfully suggests that Defendant misinterprets *Olney*, Id. The facts in *Olney* are somewhat similar to the facts in this case. In *Olney* the State's motion to extend the no-contact order was set for hearing and notice was mailed to the defendant's last known address. The defendant did not appear at the hearing and the no-contact order was extended as requested. The parties agreed that the defendant did not receive notice of the date and time of the hearing.

The lower court ruled that Iowa Code Section 664A.8 did not extend a right to the defendant to be heard before deciding to extend a no contact order. The lower court further determined that "there is no statutory authority for the court to vacate, reconsider, and terminate the no contact order." Id. at page 4.

On appeal, the Court of Appeals likened a no-contact order to an injunction and applied Iowa Rule of Civil Procedure **1.1509** which provides that "(a) party against whom a temporary injunction is issued *without notice* may, at any time, move the court where the action is pending to dissolve, vacate, or modify it." (emphasis added).

The Court of Appeals reversed the district court order denying Olney's motion on the basis it lacked authority to vacate, reconsider, or terminate the no-contact order and remanded the case for a consideration by the district court on the merits. Id. page 8.

The Court of Appeals *did not find* that the order extending the no-contact order was illegal or that Section 664A.5 or .8 required a hearing. The Court only decided that Olney could move the court to dissolve, vacate or modify the no-contact order and that, if supported by evidence on the merits, the district court had the authority to vacate, reconsider or terminate the no-contact order pursuant to Rule 1.1509.

In this case, the relief requested by the Defendant was a finding that the Order entered on November 16, 2011 was illegal and should be vacated. This Court denied that motion and request and now declines to amend any part of the Ruling filed on August 22, 2014. The Court did agree to treat the Defendant's Motion as a request for a hearing on the merits as to whether the Defendant continues to pose a threat to the safety of the Protected Party.

RULING

It is very clear from the Defendant's Affidavit that she has no intention of stopping her activities as an anti-abortion protester. She argues that she is only exercising her right to freedom of speech and that her intent is not to annoy, alarm, or intimidate, but to communicate to women why they should not kill their children. *Affidavit 12-27-14, page 2, paragraph 6.*

The Defendant asks to be allowed to stand five feet from the entrance to Planned Parenthood in Iowa City (Protected Party herein) so that she may speak to those who wish to enter. *Affidavit 12-27-14, page 3, paragraph 8.*

The Affidavits of Rebecca Bruce and Patrick Wheeler establish that the Defendant was, on October 6 and 7, 2011, trespassing upon Planned Parenthood properties in Ames, Ankeny and Red Oak. She was subsequently convicted of Criminal Trespass in Montgomery County on January 25, 2012.

The Affidavit of Penelope Dickey establishes that the activities of the Defendant continue to oppose and display hostility against Planned Parenthood in 2013.

Taken together, the Affidavits and the Defendant's criminal history clearly proves that the Defendant continues to present a threat to the safety of the Protected Party in this case, the Planned Parenthood Clinic in Iowa City, Iowa. The Court finds that the No Contact Order should not be vacated, modified or terminated.

IT IS THEREFORE HEREBY ORDERED that Defendant's **Motion to Vacate No Contact Order** is *denied*. The Extended No Contact Order entered herein on November 16, 2011 shall remain in full force and effect until January 26, 2017, and thereafter in the event the Order should be further extended as provided by law.

Clerk to notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
SMSM067310	STATE VS HOLMAN, DONNA JEAN

So Ordered

S C Gerard II

Stephen C. Gerard, II, District Associate Judge,
Sixth Judicial District of Iowa

Electronically signed on 2015-07-14 15:09:58 page 4 of 4

Appendix C: Decision of IA Supreme Court Denying Review

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

A filing has been submitted to the court RE: 15-1375

Official File Stamp:	12-21-2016:08:06:19
Court:	Appellate Court
Case Title:	State v. Holman
Document(s) Submitted	**Filed by or on behalf of**
ORDER: APPL. FOR FURTHER REVIEW DENIED	Mark Cady

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

The electronic filing system has served the following people:

PARROTT, BENJAMIN M. for STATE OF IOWA
CRIMINAL APPEALS DIVISION IOWA ATTORNEY GENERAL for STATE OF IOWA
MONROE, WILLIAM RAY for HOLMAN, DONNA JEAN
CMELIK, KEVIN for STATE OF IOWA
DONNA HOLMAN

The following people do not have e-filing accounts and will need to be served:

The filer is responsible for serving the following people in accordance with the Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System*:

Note: The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

IN THE COURT OF APPEALS OF IOWA

No. 15–1375

Johnson County No. SMSM067310

PROCEDENDO

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONNA JEAN HOLMAN,
Defendant-Appellant.

To the Iowa District Court for the County of Johnson:

Whereas, there was an appeal from the district court in the above-captioned case to the supreme court, and the supreme court transferred the case to the court of appeals. The appeal is now concluded.

Therefore, you are hereby directed to proceed in the manner required by law and consistent with the opinion of the court.

In witness whereof, I have hereunto set my hand and affixed the seal of the court of appeals.

Copies to:

William Ray Monroe
Suite 300 Po Box 711
218 North 3rd Street
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Donna Jean Holman
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Keokuk, IA 52632

Johnson County District Court

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
15-1375	State v. Holman

So Ordered

Donna M. Humpal, Clerk

Electronically signed on 2016-12-21 15:40:21

Appendix D: Roe's legislative history scrutinized by Alabama

Hamilton v. Scott, 97 So. 3d 728 (Ala. 2012)

A. Roe misstated the protection of the unborn child under the common law.

Roe 's viability rule was based, in significant part, on an incorrect statement of legal history. The Supreme Court in Roe erroneously concluded that "the unborn have never been recognized in the law as persons in the whole sense." 410 U.S. at 162. Roe also referred to "the lenity of the common law." 410 U.S. at 165. However, scholars have repeatedly pointed to inaccuracies in Roe 's historical account since Roe was decided in 1973.[35] "[T]he history embraced in Roe would not withstand careful examination even when Roe was written." Joseph Dellapenna, Dispelling the Myths of Abortion History 126 (Carolina Academic Press 2006).

Sir William Blackstone, for example, recognized that unborn children were persons. Although the Court cited Blackstone in Roe, it failed to note that Blackstone addressed the legal protection of the unborn child within a section entitled "The Law of Persons." It also ignored the opening line of his paragraph describing the law's treatment of the unborn child: "Life is an immediate gift of God,

35 See generally Joseph Dellapenna, Dispelling the Myths of Abortion History (Carolina Academic Press 2006); John Keown, Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982 (Cambridge University Press 1988). See also Paul Benjamin Linton, Planned Parenthood v. Casey: The Flight from Reason in the Supreme Court, 13 St. Louis U. Pub.L.Rev. 15 (1993); Dennis J. Horan, Clarke D. Forsythe & Edward R. Grant, Two Ships Passing in the Night: An Interpretavist Review of the White–Stevens Colloguy on Roe v. Wade, 6 St. Louis U. Pub.L.Rev. 229, 230 n. 8, 241 n. 90 (1987); James S. Witherspoon, Reexamining Roe: Nineteenth Century Abortion Statutes and the Fourteenth Amendment, 17 St. Mary's L.J. 29, 70 (1985) ("In short, the Supreme Court's analysis in Roe v. Wade of the development, purposes, and the understandings underlying the nineteenth-century antiabortion statutes, was fundamentally erroneous."); and Robert Byrn, An American Tragedy: The Supreme Court on Abortion, 41 Fordham L.Rev. 807 (1973).

a right inherent by nature in every individual." 1 William Blackstone, Commentaries on the Laws of England *129.[36] As Professor David Kadar noted in 1980, "Rights and protections legally afforded the unborn child are of ancient vintage. In equity, property, crime, and tort, the unborn has received and continues to receive a legal personality." David Kadar, The Law of Tortious Prenatal Death Since Roe v. Wade, 45 Mo. L.Rev. 639, 639 (1980) (footnotes omitted).

B. Roe misstated the protection of the unborn child under tort law and criminal law.

Professor Kadar and others have pointed out "the mistaken discussion within Roe on the legal status of the unborn in tort law." Kadar, 45 Mo. L.Rev. at 652. The Court's discussion in Roe of prenatal-death recovery "was perfunctory, and unfortunately largely inaccurate, and should not be relied upon as the correct view of the law at the time of Roe v. Wade." 45 Mo. L.Rev. at 652–53. See also William R. Hopkin, Jr., Roe v. Wade and the Traditional Legal Standards Concerning Pregnancy, 47 Temp. L.Q. 715, 723 (1974) ("[I]t must respectfully be pointed out that Justice Blackmun has understated the extent to which the law protects the unborn child.").

Roe 's adoption of the viability standard in 1973 did not reflect American law. Viability played no role in the common law of property, homicide, or aborticide.

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36 See Dellapenna, at 200:"[M]odern research has established that by the close of the seventeenth century, the criminality of abortion under the common law was well established. Courts had rendered clear holdings that abortion was a crime, no decision indicated that any form of abortion was lawful, and secondary authorities similarly uniformly supported the criminality of abortion. The only difference among these authorities had been the severity of the crime (misdemeanor or felony), an uncertainty that, under Coke's influence, began to settle into the pattern of holding abortion to be a misdemeanor unless the child was born alive and then died from the injuries or potions that led to its premature birth."

Clarke D. Forsythe, Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms, 21 Val. U.L.Rev. 563, 569 n. 33 (1987). And there was no viability standard in wrongful-death law because the common law did not recognize a cause of action for the wrongful death of any person. Farley v. Sartin, 195 W.Va. at 674, 466 S.E.2d at 525 ("At common law, there was no cause of action for the wrongful death of a person."); W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 127, at 945 (5th ed. 1984) ("The common law not only denied a tort recovery for injury once the tort victim had died, it also refused to recognize any new and independent cause of action in the victim's dependants or heirs for their own loss at his death.").

The viability standard was introduced into American law by Bonbrest v. Katz, 65 F.Supp. 138 (D.D.C.1946), the first case to recognize a cause of action for prenatal injuries. Bonbrest implied that such a cause of action would be recognized only if the unborn child had reached viability. 65 F.Supp. at 140.

Viability was initially adopted by courts in prenatal-injury law, but its influence was waning by 1961. See Daley v. Meier, 33 Ill.App.2d 218, 178 N.E.2d 691 (1961) (holding that an infant born alive could recover damages for injuries suffered before viability); see also Note, Torts—Extension of Prenatal Injury Doctrine to Nonviable Infants, 11 DePaul L.Rev. 361 (1961–62). One thorough legal survey of prenatal-injury law a decade before Roe was decided concluded that "[t]he viability limitation in prenatal injury cases is headed for oblivion. Courts are coming to realize that it is illogical and unjust to the children affected and not readily amenable to scientific proof." Charles A. Lintgen, The Impact of Medical

Knowledge on the Law Relating to Prenatal Injuries, 110 U. Pa. L.Rev. 554, 600 (1962).

....Since Roe was decided in 1973, 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, 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.[37] Of course, that new life is not yet mature—growth and development are necessary before that life can survive independently—but it is nonetheless human life. And there has been a broad legal consensus in America, even before Roe, that the life of a human being begins at conception.[38] An unborn

37 See, e.g., Bruce M. Carlson, Human Embryology and Developmental Biology 3 (1994) ("Human pregnancy begins with the fusion of an egg and a sperm ."); Ronan O'Rahilly & Fabiola Muller, Human Embryology and Teratology 8 (2d ed. 1996) ("Although life is a continuous process, fertilization is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is thereby formed. This remains true even though the embryonic genome is not actually activated until 4–8 cells are present, at about 2–3 days."); Keith Moore, The Developing Human: Clinically Oriented Embryology 2 (8th ed. 2008) (The zygote "results from the union of an oocyte and a sperm during fertilization. A zygote or embryo is the beginning of a new human being."); Ernest Blechschmidt, The Beginning of Human Life 16–17 (1977) ("A human ovum possesses human characteristics as genetic carriers, not chicken or fish. This is now manifest; the evidence no longer allows a discussion as to if and when and in what month of ontogenesis a human being is formed. To be a human being is decided for an organism at the moment of fertilization of the ovum."); C.E. Corliss, Patten's Human Embryology: Elements of Clinical Development 30 (1976) ("It is the penetration of the ovum by a sperm and the resultant mingling of the nuclear material each brings to the union that constitutes the culmination of the process of fertilization and marks the initiation of the life of a new individual."); and Clinical Obstetrics 11 (Carl J. Pauerstein ed. 1987) ("Each member of a species begins with fertilization—the successful merging of two different pools of genetic information to form a new individual.").

38 See Paul Benjamin Linton, Planned Parenthood v. Casey: The Flight From Reason in the Supreme Court, 13 St. Louis U. Pub.L.Rev. 15, 120–137 (1993) ("Appendix C: The Legal Consensus on the Beginning of Life," citing caselaw and statutes from 38 states and the District of Columbia stating that the life of a human being should be protected beginning with conception).

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.

Appendix E: Scriptures SCOTUS must address before saying Christianity supports aborticide.

Introduction: Roe accepted validation of its alleged ignorance of whether babies of human mothers are humans from the fact that many savage religions of ancient times had no problem murdering babies. Which seems an undesirable precedent for a free people, since those religions had no problem with murdering adults, either, or savagely "sacrificing" them. But Roe thought its ignorance vindicated by elements within Christianity and Judiasm too.

> When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer....There has always been strong support for the view that life does not begin until live birth....It appears to be the predominant, though not the unanimous, attitude of the Jewish faith.[39] It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family.[40] The Aristotelian theory of "mediate animation," that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those in the Church who would recognize the existence of life from the moment of conception. Roe v. Wade, 410 U.S. 113, 159-161

Roe's treatment of Christianity and Judiasm notes how men choose to respond to the Truth, and ignores what the Bible says is true.

Neither Judaism nor Christianity are understood by taking a poll of how well

39 Lader 97-99; D. Feldman, Birth Control in Jewish Law 251-294 (1968). For a stricter view, see I. Jakobovits, Jewish Views on Abortion, in Abortion and the Law 124 (D. Smith ed.1967).

40 Amicus Brief for the American Ethical Union et al. For the position of the National Council of Churches and of other denominations, see Lader 99-101.

Christians and Jews *live up to* their standards. They are understood by reading the Scriptures they claim *are* their standards. (I hope the views of "secular Jews" who reject Jewish Scriptures is not part of Roe's evidence of Jewish positions!)

Limiting understanding of any religion to human opinion is like a judge not looking up a law or a case for himself but taking lawyers' word for what it says. It is like hearsay, compared with cross examining an eyewitness. Citing a book about The Book, as Roe did, is a poor substitute for reading The Book.

You will find varying opinions in various churches about how Christians ought to respond to aborticide. But you will not find, even where those statements conflict, *significant* disagreement about what various verses say about the . Those who base their positions on a careful reading of Scripture pretty much agree. Those who don't, are no guide to understanding Christianity. SCOTUS can't rule analysis of the Bible irrelevant, and expect to understand the religions who revere it.

I will be totally surprised if SCOTUS conducts an appropriate analysis of Scripture in order to correct Roe's vague reliance on religion for its alleged uncertainty whether the babies of human mothers are humans/persons. But this analysis must be done or SCOTUS must retract any implication that its legalization of aborticide finds any support in any religion.

Psalm 139 says David's human life began before his tiny body had arms and legs. *Before* conception.[41] He was God-recognized before he was legally recognized.

> Psalm 139:13-16 You created every part of me; you put me together in my mother's womb. I praise you because you are to be feared; all you do is strange and wonderful. I

41 Jeremiah 1:5 likewise affirms that our souls begin *before* conception: "Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, *and* I ordained thee a prophet unto the nations."

> know it with all my heart. When my bones were being formed, carefully put together in my mother's womb, when I was growing there in secret, you knew that I was there---you saw me before I was born. and in thy book all *my members* were written, *which* in continuance were fashioned, when *as yet there was* none of them. GNB/KJV

Luke 2 says that in the womb, a baby (1) can hear voices; (2) can sense the difference between a voice sweet with blessing and a voice coarse with cursing; and (3) can choose which kind of voice to get excited about. In other words, (4) a baby can choose between good and evil.

> Luke 1:39 And Mary arose in those days, and went into the hill country with haste, into a city of Juda; 40 And entered into the house of Zacharias, and saluted Elisabeth. 41 And it came to pass, that, when Elisabeth heard the salutation of Mary, the babe [John the Baptist] leaped in her womb; and Elisabeth was filled with the Holy Ghost: 42 And she spake out with a loud voice, and said, Blessed *art* thou among women, and blessed *is* the fruit of thy womb. 43 And whence *is* this to me, that the mother of my Lord should come to me? 44 For, lo, as soon as the voice of thy salutation sounded in mine ears, the babe leaped in my womb for joy. KJV

A few verses before that tell us that even from the womb, a baby has a soul for the Holy Spirit to fill:[42]

> Luke 1:15 For he shall be great in the sight of the Lord, and shall drink neither wine nor strong drink; and he shall be filled with the Holy Ghost, even from his mother's womb.

Saline aborticides, which burn babies alive with acid that blackens over half their skin while eating out their lungs, are our cultural equivalent of the pagan god Molech, into whose red hot brass arms worshipers threw their children, whose screams were covered by the priests' drums. Today we similarly have what was given as the name of the first video of an ultrasound of an aborticide: "The Silent Scream." God said this is so barbaric that He never even imagined such a thing. This is a remarkable idea for those who believe God foresees every detail of what evils men will do, but all translations and commentators seem to agree that's what the verse means. Of no other evil in the entire Bible does God say this was so evil

42 This, along with Jeremiah 1:5, supports the capacity of a baby to choose good or evil.

that He did not foresee it.

> Jeremiah 32:35 And they built the high places of Baal, which *are* in the valley of the son of Hinnom, to cause their sons and their daughters to pass through *the fire* unto Molech; which I commanded them not, neither came it into my mind, that they should do this abomination, to cause Judah to sin.

God also has something to say about *how we should respond* to aborticide. This verse was in Operation Rescue's masthead, until 1993 when the first aborticideist was shot. The scenario is where murderers have so much power over their victims that they can "lead them away" to kill them where they choose, and by a schedule known to others. That pretty much limits the scenario to government-protected murders.

> Proverbs 24:10 If you faint in the day of adversity, your strength is small. 11 Rescue those who are being taken away to death; hold back those who are stumbling to the slaughter. 12 If you say, "Behold, we did not know this," does not he who weighs the heart perceive it? Does not he who keeps watch over your soul know it, and will he not repay man according to his work? ESV

The only citation of any Bible verse in Roe is to Exodus 21:22, in footnote 22. Roe says the verse *"may* have" influenced Augustine! What was the point of adding such a speculation if it can't even be documented that Augustine *thought* about it? Was it an attempt to stick a verse into the record that some have thought minimizes the value of the , even though most do not? Cults use obscure, ambiguous verses as a wedge to get Doubt's foot in the door. Here is the verse:

> Exodus 21:22 And when men fight, and they strike a pregnant woman, and her child goes forth, [literally "so her children come out" according to an NLT note] and there is no injury, being fined he shall be fined. *As much as* the husband of the woman shall put on him, even he shall give through the judges. [That is, he can sue in a court of equity and a jury will decide any award.] (Literal Translation of the Holy Bible)

The uncertainty is whether "there is no injury" means "no injury to either the mother or the child", or only "no injury to the mother – who cares about the child?"

Commentator John Gill (1690-1771) notes places in the talmud that say the verses are concerned only for women, but he says the verse itself applies also to babies:

> **and yet no mischief follow**: to her, as the Targum of Jonathan, and so Jarchi and Aben Ezra restrain it to the woman; and which mischief they interpret of death, as does also the Targum of Onkelos; but it may refer both to the woman and her offspring, and not only to the death of them, but to any hurt or damage to either.... *John Gill's Exposition of the Entire Bible*

Adam Clark (1715-1832) understands it to protect mother and child alike:

> But if mischief followed, that is, if the child had been fully formed, and was killed by this means, or the woman lost her life in consequence, then the punishment was as in other cases of murder - the person was put to death.... *Adam Clark's Commentary on the Bible*

The Bible Knowledge Commentary is emphatic that the child's life is revered as much as the mother's. Commentaries since 1973 take a position on aborticide.

> 21:22–25. **If ... a pregnant woman** delivered her child prematurely as a result of a blow, but both were otherwise uninjured, the guilty party was to pay compensation determined by **the woman's husband** and **the court**. However, **if there** was **injury** to the expectant mother or her child, then the assailant was to be penalized in proportion to the nature of severity of the injury. While unintentional life-taking was usually not a capital offense (cf. vv. 12–13), here it clearly was. Also the unborn fetus is viewed in this passage as just as much a human being as its mother; the abortion of a fetus was considered murder.[43]

Wiersby sees no uncertainty that the are as revered as the born:

> Verses 22–23 are basic to the pro-life position on abortion, for they indicate that the aborting of a fetus was equivalent to the murdering of the child. The guilty party was punished as a murderer ("life for life") if the mother or the unborn child, or both, died. See also Ps. 139:13–16.[44]

Tyndale's commentary sermonizes about it:

> In the case of mothers and children, special laws were given to protect the helpless and innocent (21:22–25). If a man caused a woman to give birth prematurely but the infant was not harmed, then a simple fine was to be levied. If the child or mother was harmed, then the law of retaliation was applied. Punishment was restricted to that which was commensurate with the injury. In these verses God shows clear concern for protecting unborn children, a concern that people today would do well to heed. Surely the abortion of millions of unborn babies will fall under God's condemnation.[45]

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43 Hannah, J. D. (1985). Exodus. In J. F. Walvoord & R. B. Zuck (Eds.), *The Bible Knowledge Commentary: An Exposition of the Scriptures* (Vol. 1, p. 141). Wheaton, IL: Victor Books.
44 Wiersbe, W. W. (1993). *Wiersbe's Expository Outlines on the Old Testament* (Ex 21:12–36). Wheaton, IL: Victor Books.
45 Hughes, R. B., & Laney, J. C. (2001). *Tyndale concise Bible commentary* (p. 39). Wheaton,

But the *Faithful Life Bible* seems to be pro-aborticide:

> **21:22 as the judges determine** Describes a situation where the woman who is injured survives the attack but her child does not. The penalty in such a case is a fine. However, v. 23 says that if the woman is killed, the death penalty is prescribed. Consequently, the life of the adult woman was deemed of greater value than the contents of her womb. This passage is frequently used to justify abortion: the woman was viewed as a person; the child was not.[46] [Wow!]

The Hebrew text simply doesn't specify whether "if there is no injury" applies to both child and mother, or to only one of them. Nor does the Hebrew say whether "the baby comes out" means healthy or dead. The disagreement of translators and commentators is possible because of this textual ambiguity. Commentaries since 1973 face societal pressure to stay out of Roe's way. Ancient Talmud entries likewise faced the social pressure of the ever present Molech worship surrounding Israel, and too frequently invading Israel. Jesus' metaphor for Hell was the "valley of Tophet" just outside Jerusalem where children were once burnt alive to Molech.

I would submit that while the *text* may be unclear, the *context* is certainly clear. From "be fruitful and multiply", Genesis 1:28, to "As arrows in the hand of a mighty man, so *are* the sons of the young. Blessed *is* the man who has filled his quiver with them....", Psalm 127:4-5, and all the laws in between about the importance of descendants, it is inconceivable that any jury in Moses' time could be apathetic about an unnatural miscarriage! The translations that leave this idea implied but not specified are MKJV, RV, YLT, GW, ISV, JPS, KJV, ABP, ASV, ESV, NLT, NIV84, NASB95, HCSB, NCV, TNIV, CPB, NirV. However, these translations limit concern to the mother: BBE, "causing the loss of the child, but no other evil

IL: Tyndale House Publishers.
46 Barry, J. D., Heiser, M. S., Custis, M., Mangum, D., & Whitehead, M. M. (2012). *Faithlife Study Bible* (Ex 21:22). Bellingham, WA: Logos Bible Software.

comes to her"; CEV, if she "suffers a miscarriage" but "isn't badly hurt"; DRB "and she miscarry indeed, but live herself"; ERV "If the woman was not hurt badly"; and Message "so that she miscarries but is not otherwise hurt". As noted before, "miscarriage" is a poor translation since the Hebrew word as easily means a healthy birth.

The Brenton translation expresses concern *only for the baby:* "And if two men strive and smite a woman with child, and her child be born imperfectly formed, he shall be forced to pay a penalty...."

Theologians are less likely than lawyers to consider in this verse the difficulty of assessing criminal intent in this situation. Two men are fighting, and a woman gets hit. What is she doing there? What responsibility did she have for getting out of the way? When the man hit her, was he actually aiming at her or was he just struggling against the other man? If he deliberately hit her, was he just defending himself against her attack, or was he deliberately aiming at the womb? These are questions for a jury. They are factors that could make a penalty greater for harm to the mother than for the child, *or vice versa,* depending not on their relative human worth but on where any culpability was focused.