Any proposed future personhood language in state or federal law is No Greener Light than the legal green light already shining since 2004, for State Lawmakers to Criminalize Abortion as if *Roe* Never Existed

40 years of legal abortion

9th year after its "collapse"

What prolifers hope to achieve through a Life At Conception Act, or even by a Constitutional Amendment, has already been achieved by a 2004 federal law.

In 2004, Federal law said what *Roe v. Wade* said must be said **for legal abortion to end.** The same "personhood statement" which prolifers are trying to get in state and federal laws is already in a law with authority over all courts. State legislatures already have a legal green light to outlaw abortion.

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Revised as of July 25, 2013

THE WAY
a state legislature can end abortion

A 2004 federal law "established" what *Roe* said must be "established" for legal abortion to end.

Roe v. Wade had said "the point at which the...fetus became...recognizably human [is] when a 'person' came into being....", and 18 U.S.C. § 1841(d) *legally* recognized all unborn babies as human – as "members of the species homo sapiens". *Roe* also said "If this suggestion of personhood [of unborn babies] is established, the...case [for legalizing abortion], **of course**, collapses, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment."

But when Texas' Attorney General tried to "establish" unborn personhood by saying that is *implied* by Texas' law against abortion, Roe said Texas law implies the opposite by punishing murder of unborn babies less than murder of grownups.

That begged the question: how much "establishment", then, is enough? How about an explicit personhood statement in a state law? Can we nullify Roe that easily, Rhode Island promptly asked? [Doe v. Israel] If not, how much more evidence do you want, SCOTUS, to establish what you treated as a fact rather than a matter of law by deferring to legislatures, doctors, and even preachers, and which you said must be established by some authority other than yourself?

Maybe the reason SCOTUS did not review that case, or dozens of others that asked that question, was that they still have no believable, just answer. But that hasn't kept lower courts and legal experts from filling in the gaps of SCOTUS logic by going even farther than SCOTUS has, insisting that nothing can *ever* "establish" unborn "personhood".

Even if Roe had never said it is possible to "collapse" legal abortion by "establishing" unborn "personhood", it is true. It is so obvious that even Roe said "of course" it is true. But what more, than a state's personhood statement, can "establish" it?

That question is "ripe for review", with personhood "established" in federal law, which is a more sensible basis for national policy than conflicting state positions. Especially since no American legal authority has ever dared say any unborn baby is *not* human! Federal courts conform their rulings to federal law. At least until they overturn, which won't happen to 18 U.S.C. § 1841(d) because similar laws have survived dozens of challenges.

But a case is needed that forces reluctant judges to address the question, and that educates and motivates the public to take disciplinary steps, such as those proposed by Newt Gingrich, against any lawless judges who rule on the basis of foreign laws, or who order us to obey whatever they say the Constitution says, which the Constitution does not say.

This "collapse" of abortion's legality leaves states free to outlaw abortion. The only reason courts haven't acknowledged this yet is that prolifers still haven't brought them a case that makes them "squarely address" the law and resulting "collapse". A challenge to a state law criminalizing abortion, defended by the 2004 law by the state's Attorney General, would be such a case. The weaker alternative would be to raise the issue in Amicus briefs.

Imagine that some future state outlaws abortion as if Roe never existed, and includes in the law a "Finding of Fact" that explains abortion's "collapse".

Imagine the news headlines when it is introduced, again when it gets out of subcommittee, then out of committee, etc. Imagine the interviews with legal experts discussing whether abortion's legality really is this much in doubt, and whether such a law might survive a court challenge.

Public astonishment and support will only build because abortion supporters won't be able to refute the legal reasoning. Chamber dictators will be swept aside, and other prolife lawmakers besides the one who introduced it will take the bill seriously, seeing it has a viable strategy for surviving courts.

When the law is challenged, the AG will argue Roe's "collapse" if it is part of the bill.

As Roe's allegation falls, of uncertainty whether unborn babies of humans are human, no replacement sophistry will keep abortion legal. Voters will remove state judges seen to defend what laws recognize as murder. Even federal judges can only get away with so much absurdity before enough people see through it to support their restraint by Congress.

This case is clear enough to not only save millions of lives, in about a year, but to save our courts, our Constitution, and our Rule of Law.

God has put this mountain under our command, if we will work *together*. Matthew 17:20. Proverbs 15:22.

FAQ'S (FREQUENTLY ASKED QUESTIONS)

Contents

1. Why do fund raising letters still say Roe's "collapse" won't be triggered until we get another "personhood" law?

Answer summary: Ever since a few Republican prolifers and prolife organizations promised Democrats, during congressional debate over 18 U.S.C. § 1841(d), that passage wouldn't threaten abortion's legality, that promise has been honored. But analysis of what they passed, compared with future proposals which are promised to trigger Roe's "collapse", reveals no significant difference.

Fundraising letters sent in 2010 by *Iowa* Congressman Steve King, Mississippi U.S. Senator Roger Wicker, Senator Rand Paul as recently as April 30, 2012, and surely others promise that if the Life At Conception Act passes, that will create a legal green light for state legislatures to criminalize abortion as if *Roe v. Wade* never existed.

This study compares the proposed future law with the 2004 Unborn Victims of Violence Act, to show that both are equally green lights for ending legal infanticide.

This is not an argument that the Life At Conception Act should be abandoned as unnecessary. The more often this legal green light can be erected, the better. This is an argument that there is no reason to wait for the second green light to be erected in another few years, before proceeding through the first.

It is also a warning. If there is not yet the courage to proceed through the first green light, where will courage arise to proceed through the third or fourth? The second even shares an alleged legal difficulty with the first, equally enabling cowards with their feet firmly on the brakes.

The Fundraising Promise.

The legal reasoning that would "collapse" *abortion's legality* through these laws is explained in these excerpts from Senator Wicker's April 12, 2010 letter: (This same verbiage was in the fundraising letters of Congressman Steve King and Senator Rand Paul):

> Now the time to grovel before the Supreme Court is over.
>
> Working from what the Supreme Court ruled in Roe v. Wade, pro-life lawmakers can pass a Life at Conception Act and end abortion using the Constitution instead of amending it.
>
> ...A Life at Conception Act declares unborn children "persons" as defined by the 14th Amendment to the Constitution, entitled to legal protection.
>
> This is the one thing the Supreme Court admitted in Roe v. Wade that would cause the case for legal abortion to "collapse."
>
> ...never once did the Supreme Court declare abortion itself to be a constitutional right.
>
> Instead the Supreme Court said:
>
> "We need not resolve the difficult question of when life begins...the judiciary at this point in the development of man's knowledge is not in a position to speculate as to the answer."
>
> Then the High Court made a key admission:
>
> "If this suggestion of personhood is established, the appellant's case [i.e., the case brought by "Roe" who sought an abortion], of course, collapses, <u>for the fetus' right to life is then guaranteed specifically by the [14th] Amendment.</u>"
>
> The fact is, the 14th Amendment couldn't be clearer:
>
> "...nor shall any state deprive <u>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 law.</u>"
>
> Furthermore, the 14th Amendment says:
>
> "Congress shall have the power to enforce,

by appropriate legislation, the provisions of this article."

That's exactly what a Life at Conception Act would do.

As is typical with fundraising letters, the letter didn't actually quote a single word from the Life at Conception Act. See #12 for the text. But the letter says *Roe's* "collapse" clause has a condition which is satisfied by the Life at Conception Act. *Roe* says that condition will be satisfied when "personhood is established" of a "fetus". Once the Act is passed, legal abortion "collapses".

(Senator Wicker's letter directed support to the National Pro-Life Alliance, and shared the same verbiage as the website of the National Pro-Life Alliance, so it appears Wicker merely gave the National Pro-Life Alliance permission to use his name. A note at the bottom of the page says "not printed or mailed at government expense." Nor is there the campaign disclaimer required for mailings paid for by campaign funds. Later I got a fundraising letter from Iowa Congressman Steve King with almost the same verbiage.)

Both Laws Satisfy Roe's "Collapse" Conditions. The 2004 law defines all unborn babies as human beings:

> ...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.**

Zionica reports: (http://zionica.com/2013/07/18/preposterous-pro-abortion-positions/#ixzz2ZSfyrMLV)

"The law cannot hold both that a pregnant woman is two persons and at the same time allow her to have an abortion" - Heather Boonstra, senior public policy associate at the pro-abortion Alan Guttmacher Institute, quoted in Simon, 2001

"[t]he pro-choice Obama White House requires pregnant visitors to count their unborn child as a person for tours of the executive mansion" - Dave Boyer, reporting in the Washington Times, 2012

2. To trigger Roe's "collapse", doesn't a personhood law have to specify that unborn babies are "persons"? Can it be enough that federal law specifies they are humans, or "members of the species homo sapiens"?

Answer summary: Roe itself equates "persons" with "recognizably human", and the 2004 federal law legally, officially "recognizes" all unborn babies as "human".

"So what does that accomplish," you ask, "that 18 U.S.C. § 1841(d) legally recognizes all unborn babies as *human beings?* Roe doesn't dictate the 'collapse' of abortion's legality when the *humanity* of the unborn is established, but when the *personhood* of the unborn is established."

But "persons" and "humans" are equated in Roe:

> *"These disciplines variously approached the question in te"The law cannot hold both that a pregnant woman is two persons and at the same time allow her to have an abortion"*
>
> *Read more: http://zionica.com/2013/07/18/preposterous-pro-abortion-positions/#ixzz2ZSf7um5Hrms 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' or 'animated.' "*

"Recognizably human" equals "person". 18 U.S.C. § 1841(d) *legally recognizes* all unborn babies as humans, and therefore, according to Roe, as "persons".

Roe's phrase "recognizably human" evokes memories of old science textbooks with doctored charts showing the "evolution" of a "fetus" from a fish to a human being. Harry Blackmun, author of Roe, probably believed those charts, and probably didn't see anything "recognizably human" about a "fetus" who had not yet grown a full head of hair or been fitted for a judicial robe.

In fact, *Roe* identifies the charts that confused Blackmun:

> *She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. See Dorland's Illustrated Medical Dictionary 478-479, 547 (24th ed. 1965).*

But *Roe* does not leave the determination of the humanity of the unborn to Harry Blackmun's ability to "recognize" it. Blackman specifically admitted that others besides the Supreme Court are so much more qualified than the Court to "establish" that recognition, that the Court must defer to their judgment. *Roe* said that is one area where even preachers know more than Supreme Court justices:

> *Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that [human] life from and after conception. 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.*

To use courtroom language, *Roe* treated "when [human] life begins" as a *fact* question. Were it a question of *law*, the justices would have deferred to no one, they being the world's experts on questions of American *law*.

But this *fact,* that all unborn babies are humans/persons, had to be *legally recognized, or established.* There are three kinds of authorities entrusted by courts to tell them about facts: juries (called "triers of facts"), expert witnesses, and legislatures (especially in their resolutions, or in their "findings of facts" that precede some laws).

In the case of 18 U.S.C. § 1841(d), Congress created a federal law that states, legally recognizes, and legally establishes a fact. Even the Supreme Court has to conform its rulings to federal laws, up until such time as it overturns them. The Court has never overturned this one, or the dozens of similar laws in several states, but rather, courts have affirmed these laws.

(The Court can't rule by the law of one state on a matter that affects all states, but federal law has authority for all states.)

The 2004 law legally recognized the fact that all unborn babies are human beings, whom *Roe* equates with "persons". And although Harry Blackmun had trouble "recognizing" that an embryo is human, Congress and the President were very clear, in enacting the law, about the point where they were able to recognize when an unborn child is human: "at all stages of development".

In short, *Roe* said that once the humanity – that is, the personhood – of an unborn baby is established, then "of course" (Roe said, meaning it was so obvious that even a judge would have to recognize it), *legal abortion* must "collapse".

The 2004 law legally recognizes – establishes – the humanity, and thus the personhood, of every unborn baby of a human.

Legal abortion legally "collapsed" April 1, 2004, by authority of Roe v. Wade.

No other definition in Federal law offers an alternative definition, and indeed a contradictory definition elsewhere would be absurd because if unborn babies are humans while you are reading this law they will not be changed into fish by your reading another section of law.

3. Before prolife lawmakers pass laws that fundamentally challenge Roe, shouldn't they enact additional "personhood" laws in order to better our odds in court?

Answer summary: The clearer we can make our laws, the better. But 18 U.S.C. § 1841(d) is already a green enough light for states to outlaw abortion, that they don't need to wait several more years full of several million more corpses for a greener light, before entering the intersection.

One other nice touch in the proposed Life At Conception Act is spelling out the legal obligation of states, imposed by the 14th Amendment, to protect unborn baby humans. It can't hurt to remind everybody of this.

> SEC. 2. RIGHT TO LIFE. To implement equal protection for the right to life of each born and preborn human person, and pursuant to the duty and authority of the Congress, including Congress' power under article I, section 8, to make necessary and proper laws, and Congress' power under section 5 of the 14th article of amendment to the Constitution of the United States, the Congress hereby declares that the right to life guaranteed by the Constitution is vested in each human being.

That, plus the definition of human as applying from fertilization, (see above), invokes 14th Amendment protection for the unborn.

While this is the stuff of a great speech, is it a significant legal step forward? Is its green light significantly greener?

Roe's "collapse" clause already concedes 14th Amendment protection for unborn humans, once federal law established that the unborn are humans:

> *The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment.* In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for *the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument.* On the other hand, the appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment. - *Roe v. Wade,* 1973

The *only* thing "greener" about the future light I can figure out is that at least so far, prolife leaders and Congressmen haven't started insisting the Life at Conception Act won't undermine abortion. (More about that issue later.) If this Legal Green Light is significantly greener, legally, than the previous light, I can't figure out where, other than adding protection to the cloned who are not in a womb.

18 U.S.C. § 1841(d) only protects unborn babies "in utero" – in a human mother's womb. The proposed Life at Conception Act extends protection to cloned babies living in test tubes.

> "*The terms `human person' and `human being' include each and every member of the species homo sapiens at all stages of life, including the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being.*

This is an important thing to add, but state lawmakers should not wait for that to happen, to outlaw abortion. Establishing legal recognition of Roe's "collapse" will authorize state lawmakers to criminalize cloning without an additional federal act.

"Persons" and "human" are equated throughout case law.

In United States v. Palme, 14-17 U.S. 607, (1818), Chief Justice John Marshall stated, "The words 'any person or persons,' are broad enough to comprehend every human being." Justice Stephen Field stated in 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."

These cases, close in time to the passage of the 5th and 14th Amendments, respectively, show us the meaning of "person" as it was understood by the framers.

A lower federal case, more recent but pre-Roe, was Steinberg v. Brown 321 F. Supp. 741 (N.D. Ohio, 1970). Its assertion that human life begins at conception, later doubted by Roe but reestablished by 18 U.S.C. 1841(d), is not the relevant argument here, but its equation of "humans" with "persons". The 5th and 14th Amendments protect only "persons", without ever using the word "humans". Yet Steinberg said all humans are protected by the Amendments. Steinberg rejected a challenge to Ohio's abortion laws, explaining "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.

4. 18 U.S.C. §1841(c) lets moms and docs keep killing babies, leaving babies unprotected until they are born. Don't we need future personhood laws that protect all human life equally before we are ready for court?

Answer summary: Section (c) does not legally recognize any right of moms and docs to keep killing. It does not protect them from other laws that do, or will in the future, target them. Providing a penalty for one category of baby killers does not preclude penalties for another category, any more than a penalty for killing an adult with a gun precludes a penalty for killing the same adult with a car. Different penalties for different circumstances do not reflect on whether victims are "persons in the whole sense."

American laws, unlike the laws of nations not influenced by the Bible, distinguish between First Degree (premeditated) Murder and (accidental) Manslaughter. The penalty for First Degree Murder is typically life in prison, if not execution, while the penalty for Manslaughter is typically very few years, if not acquittal.

Does that mean lawmakers consider people killed accidentally to not be "persons in the whole sense" like people killed deliberately? Of course not. It just means that culpability is different, so different penalties are appropriate.

The distinction comes from the Bible: from Numbers 35:15-25. God doesn't decide whether a man is a "person in the whole sense" based on whether he is killed deliberately or accidentally.

18 U.S.C. §1841 only has jurisdiction over federal property. That doesn't mean Congress regards babies killed on state property to not be "persons in the whole sense". Section (d) says *all* babies are fully human.

If you read Numbers 25:22-25, about the penalty that applies only to *accidental* killing, will you assume God opposes penalties for *deliberate* killing because they are not found in verses 22-25? Of course not. Neither should anyone assume that because 18 U.S.C. §1841(c) lists only penalties for killers other than moms and docs, that section (c) offers any opposition to any subsequent law that will state the penalties for moms and docs. Abortion "doctors", having far greater culpability than common thugs, should face a far greater penalty. Moms, especially young teens, generally having far less culpability, and sometimes none - dragged there against their will, should face far less penalty. In the past moms were not penalized, in order to encourage them to come forward as witnesses against the docs.

Every judge understands that laws routinely protect people unevenly whom lawmakers regard as "persons in the whole sense" equally meriting "equal protection of the laws". There are several common reasons.

Culpability. Sometimes there is a difference in culpability; for example, abortionists are completely culpable, while many mothers kill only under severe duress. Every judge knows that without culpability, there can be no guilt.

Prosecution strategy: Sometimes there is a difference in prosecution strategy; for example, one historical reason for light sentences for mothers, overlooked in *Roe,* was to not frighten them away from testifying against their abortionists. Sometimes a minor criminal is set free in return for testifying against a major criminal, even though that denies justice to the victims of the minor criminal. Judges arrange schemes like that all the time.

Popular support: Sometimes there is quite honestly not enough popular support for prosecuting a crime because "everybody does it". The fact that prohibition was repealed did not change the fact that drink is often more deadly than drugs today which are still criminalized. Are sodomy, adultery, and breaking up a marriage, which were crimes 60 years ago, less harmful than, say, shoplifting or passing a $1,000 rubber check? The lesson of the woman caught in adultery, combined with Matthew 7:1-5, is not that everybody sins so therefore no one can be a policeman, judge, jailer, juror, or lawmaker, but rather Jesus taught what we call "jury nullification": humans are not authorized to judge others for doing the exact same things they themselves do. (See Bible analysis at http://www.examiner.com/article/the-woman-caught-adultery-how-u-s-law-follows-jesus-example.) As revival sweeps across the land, penalties can change. Meanwhile judges are painfully aware of the limits of legislatures in criminalizing all harms evenly. Judges know that holes in our laws do not make those left unprotected not quite "persons in the whole sense", but if anything, the doubt is whether we have "legislators in the whole sense", or who have common sense.

Evidence. Some very serious crimes are not seriously prosecuted only because it is very difficult for humans to document them. For example, embezzlement is more destructive than shoplifting, but it is harder to detect, so laws are written differently for them to make prosecution practical. A future example, we hope: when an adult is murdered, at least we can know there used to be a living adult. But when contraception murders, we often can't document whether there was ever a fertilized egg. That is an example of where it would make no sense to prosecute for murder which would probably require a death certificate (documentation that someone has died) which cannot exist in the absence of evidence that anyone has existed; it would make more sense to simply criminalize the sales of contraceptives. Not because a human being is not fully human "at all stages of development", but because human prosecutors can only prosecute what they can prove. Judges understand that inability to gather evidence in some situations does not mean the humans in those situations are not "persons in the whole sense"! Well, at least they should.

Technology. The crime of wiretapping could not exist before there were wires. Auto insurance could not be mandated before there were autos. Legislatures require a few years to catch up to a newly created need. No judge thinks the first drivers were not "persons in the whole sense" until auto insurance was required. Cloning, and disposing or experimenting on unwanted clones, is so new that even personhood initiatives are still catching up.

Jurisdiction. The scope of all laws is limited

to the circumstances in which their provisions make sense. 18 U.S.C. §1841(d) limited its scope - that is, jurisdiction - to situations where a violent man attacks a mother and her unborn baby (on federal property). The fact that the law's jurisdiction stops short of prosecuting a mother is mostly because of political conditions, but also partly, possibly, because uncertainty about culpability calls for a future law tailored to address that probability of lesser culpability. Conversely, the obvious culpability of an abortionist, and the evidence of criminal history in just the fact of his practice, calls for a future law tailored to factor in that enhanced culpability. Thus the fact that a law limits its jurisdiction to circumstances where its provisions make sense, leaving for a future legislature to cover adjacent circumstances, is not taken by any judge as evidence that persons in yet-to-be-covered circumstances will not be "persons in the whole sense" until a legislature covers them.

Politics. Yes, this is also a factor that every judge understands. Judges know that sometimes there just isn't enough political support to penalize every evil that judges and lawmakers would like. No judge assumes, when lawmakers address an evil but haven't yet decided how to address the evil next to it, that persons harmed by the neighboring evil are regarded by lawmakers as less than "persons in the whole sense".

Judicial meddling. Everyone knows that a number of state legislatures recognize all unborn babies as human persons and would protect them if they could, but cannot because of the U.S. Supreme Court.

Section (d) legally recognizes the humanity of all unborn babies as a fact. (c) creates a penalty for some of their murderers, without in any way preventing any state, or future Congress, from creating penalties for the rest of them, and without any way diminishing the fact recognized in (d). Therefore the Roe-"collapsing" effect of section (d) of 18 U.S.C. §1841 is in no way diminished by anything about section (c).

So why do so many people seem to think it is?

There are two possibilities. First is the similarity between 18 USC 1841 and the laws which *Roe v. Wade* analyzed as evidence that our laws do not treat the unborn as "persons in the whole sense".

Roe reasoned that historical laws criminalizing abortion less than murdering adults indicated that history's lawmakers must not have considered unborn babies as "persons in the whole sense". Presumably those laws never contained "findings of facts" which explicitly stated otherwise. According to *Roe's* reasoning, had there been some explicit statement somewhere in law to the contrary, *Roe* couldn't have concluded that the unborn are less than "persons in the whole sense", and thus *Roe* couldn't have justified abortion. Here is their reasoning:

> *(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. For example, the traditional rule of tort [lawsuits] law denied recovery for prenatal injuries even though the child was born alive. 63 That rule has been changed in almost every jurisdiction. In most States, recovery is said to be permitted only if the fetus was viable, or at least quick, when the injuries were sustained, though few courts have squarely so held. 64 In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries. 65 Such an action, however, would appear to be one to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. Similarly, unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians ad litem. 66 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.

Had 18 U.S.C. §1841 contained a penalty for moms and docs which was lower than that for violent thugs, then that disparity of penalty would have been the kind of disparity Roe discerned in historical laws. But its existence alongside (d) which explicitly affirms the full humanity of all unborn babies would have

nullified *Roe's* reasoning above, that disparity of penalty for different circumstances somehow indicates disparity of human worth. But because 18 U.S.C. §1841 did not address penalties for other categories of killers, it creates no disparity of penalty at all, so that *Roe's* reasoning above is not even relevant.

Yet commentators have seen in section (c) a failure to protect the unborn as much as adults; thus, they say, it does not treat the unborn as "persons in the whole sense" according to Roe's reasoning. They say this is both a legal problem, and a Biblical problem. (This section addresses the legal "problem". Sections 6 and 12 address the Biblical "problem".)

In other words, under 18 U.S.C. §1841(c), were a 5-year-old child murdered by his mother, or by an abortionist, the killer would be prosecuted, but not if the child were murdered at 5 months in the womb. At least not until some future law provides penalties for moms and/or docs. Thus the 5-month-old unborn child is not protected equally by the law, and thus by *Roe's* reasoning is not a "person in the whole sense", if we ignore 18 U.S.C. §1841(d) or imagine that the fact legally established by (d) is somehow altered by some implication drawn from (c), as if laws have somehow acquired some magical power to alter facts.

Here is the section of the 2004 law which exempts moms and docs from its penalties:

> 18 U.S.C. §1841 **(c)** Nothing in this section shall be construed to permit [authorize] the prosecution— **(1)** of any person for conduct relating to an abortion for which the consent of the pregnant woman... has been obtained... [or] **(3)** of any woman with respect to her unborn child."

To whatever extent this is a problem, it is a problem uncorrected by the "Life at Conception" proposal, which says:

> "However, nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child."

Indeed, there is more popular support for giving drivers licenses to dogs, than there is for giving the death penalty to mothers who murder their unborn. But for the above reasons, that is no legitimate obstacle to legal recognition of *Roe's* "collapse". Once its "collapse" has been officially recognized, states will be free to enact whatever penalties prolifers can persuade lawmakers to enact.

Even though Roe's reasoning is irrelevant to 18 U.S.C. §1841(d), its blood-soaked errors in relation to the laws of history deserve to be exposed. Roe's "persons in the whole sense" theory was reasoned in ignorance of very good practical, legal, and Biblical historical reasons for penalizing mothers, if at all, less than abortionists, even though the lives of the unborn are just as sacred as the lives of adults. Such as the reasons listed previously, especially the fact that giving moms a pass made it easier for prosecutors to get them to come forward to testify against docs.

In fact confusion about this has only existed during amnesia of the natural limits of laws which every judge understands. Laws routinely protect people unevenly whom lawmakers meant to protect evenly. Every judge knows that.

The fact that something is legal doesn't make it harmless. The fact that federal law currently has no penalty for murdering moms and docs does not alter the fact legally established by (d), that abortion is the premeditated murder of human beings, making moms and docs murderers as well as violent thugs. Laws routinely protect people unevenly whom lawmakers wish they could protect evenly.

The failure of laws to equally protect all human beings does not prove that the least protected groups are not fully human, or that any lawmaker thought so!

The following argument is excerpted from www.Saltshaker.US/SLIC/Brief4Roeder.pdf, pages 20-22.

> viii. HUMANITY AFFIRMED DESPITE DISPARATE TREATMENT
>
> It may be objected that Congressional withholding of protection [in 18 U.S.C. §1841(d)] from the unborn "human" children whose mothers arrange

for their killing mirrors the kind of difference between legal treatment of born and unborn babies from which *Roe v. Wade* presumed laws historically treat only born babies as "persons in the whole sense".

The most obvious difference [between 18 U.S.C. §1841(d) and historical laws] is that only Laci's Law [the popular name for 18 U.S.C. §1841(d)] explicitly defines an unborn 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 clearly acknowledge that is a true fact. Yet if it is, then where this unborn group of human beings is unconstitutionally deprived of full constitutional rights, it is the lack of equal protection which courts [and lawmakers] need to adjust, not judicial notice of the facts, if we do not want utter legal anarchy.

Even among born human U.S. citizens, whose full Constitutional Rights no one has ever questioned, and where every effort is made to balance individual rights against national interests in difficult situations, there are many examples of imprecisely equal protection of all.

The difference in treatment, then, requires some other explanation, than that loved babies are human while unloved babies are tumors. There are many reasons laws treat equally deserving citizens differently.

Sometimes the difference reflects the realities of the limitations of government in recognizing when citizens equally deserve rights. For example, a law student one week before taking his bar exam may be equally qualified with the lawyer who took it a week ago, but Courts are unable to recognize their equality until students actually take it and pass it. Similarly, unborn babies before and after viability are equally "persons" and "humans" according to current federal law, [as of 18 USC 1841(d)] but the justices of *Roe v. Wade* admitted they were "unable to speculate" whether that was the case.

Sometimes the difference is because of the difference in how criminal intent must be established. 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, which is and should be an element of First Degree Murder. Similarly, *Roe* misunderstood the point of Exodus 21:22 when *Roe* (in a footnote) gave the passage as a possible reason for treating unborn babies as not fully human. The verse says when a pregnant woman finds herself in the middle of a fight between two men, and gets hit, causing her to go into labor, then if the child is unharmed, a jury shall set damages. This does not suggest the baby is less than human [since the penalty for murdering an adult was execution]; but only a jury can hear witnesses to establish how deliberate the punch to the womb appeared.

Sometimes the difference has nothing to do with merit, but with 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 disparity simply reflects political reality, and nothing else. The newspaper headlines and Congressional debate about Laci's law proved beyond any reasonable doubt that the disparity of treatment of loved unborn babies, versus unloved unborn babies, had nothing to do with a finding of law that not being loved makes you less than human, and everything to do with the pro-death political machine.

To imagine any deeper significance in Laci's Law's disparate treatment would quickly lead to absurdity. To imagine the disparity was Congress' choice, as opposed to the result of limitations beyond its control, would place Congress in a patently false, even absurd, and profoundly immoral theoretical position, where, to maintain any semblance of consistency when trying to explain the statute, it *must* concede that this statute implies that the right to life of an innocent human being depends purely on the will of its mother. Congress would have

to posit that the slaying of an unborn human child is a non-harm under United States law, provided solely that his mother wants him dead.

Were this a correct interpretation of Laci's Law, then, given its explicit equation of the humanity of the unborn with that of the born, mothers of older children who want them dead have a legal, if not Constitutional right to kill them.

Should this Court remain tempted to discount Laci's Law's establishment of the personhood of the unborn because of its 'ambiguity' or 'inconsistency', let the Court ponder what will happen to the Constitutional Rights of all if the discovery that not all human beings are equally protected proves they are not equally human, which in turn justifies depriving the less protected of any rights at all, including even the Right to Life!

To interpret the facial contradiction between the two relevant parts of §1841 as "ambiguities" is to accuse Congress either of patent absurdity or monstrous immorality. This Court should construe the statute to intend, minimally, that, even if the killing of an unborn child is tolerated when the mother - but no one else - wishes to kill him, nonetheless, the overwhelmingly more important fact is that Congress still expressly concedes that soon-to-be-aborted children are still just that - unborn children and human beings. Congress concedes this by not having written soon-to-be-aborted children out of its definition of 'unborn child'. From this, full 14th Amendment rights may be inferred by a reasonable person.

You can see that this argument could not be made in 1973; indeed, not until 2004. So criminalization of abortion through legal recognition of *Roe's* "collapse" doesn't even 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 unborn babies of humans as humans.

"Persons in the whole sense": before you start there, see where it leads, and count the cost.

My goal is to end all legal abortions. This goal probably requires a court case forcing courts to address *Roe's* "collapse". The strongest legal argument for doing this that I can imagine relies on 18 U.S.C. §1841(d).

It is not necessary to cross the "persons in the whole sense" minefield, to reach this goal. Crossing it unwisely, especially with a spirit of selfishness or division, can blow up this goal.

Do you believe unborn babies are "persons in the whole sense"? Prolifers are split almost down the middle over how far to take this reasoning.

There are "personhood" movements in many states, to get state laws to declare that every unborn baby is a "human being" and a "person", but sometimes they are actively opposed (not just ignored) by established prolife groups. Clark Forsythe, of AUL, Americans United for Life, considers personhood movements a distraction from the core prolife work of making tiny incremental advances in the courts while waiting for a prolife majority in the Supreme Court.

It is very important to "personhood" prolifers that the legislation they sponsor make no exceptions. Their bills sometimes allow abortion only to save "the life of the mother". (The reasoning for that exception is that it may be heroic to give your life for another, and mothers are typically our greatest heroes, we can't jail people for not being a hero.)

But not all prolifers accept even that exception. They think even that undermines the position that all unborn babies are "persons", thus validating Roe's logic which I hope I have successfully just refuted, legally sowing the seeds of the personhood law's own overturning, as well as morally undermining reverence for life created in the Image of God.

So what do you think? If you believe the unborn are humans - persons, (Roe equated "recognizably human" with "person"), do you support protecting their right to life just as much as if they were adults?

In *every* situation?

Now be careful: there is a trap in this truth.

A cost, to state it. As you stand before God, Who is watching along with the Supreme Court and a

few News Reporters from Hell, to see whether you regard unborn babies as "persons in the whole sense", do you support protecting their right to life just as much as if they were adults? In *every* situation?

I signed the petition that said "yes", but not lightly. I dreaded the cost that I sensed ahead. It said **"We proclaim that whatever force is legitimate to defend the life of a born child is legitimate to defend the life of an unborn child."** (The "Defensive Action Statement" written by Paul Hill. The Defensive Action Statement was actually a statement about the legal elements of the Necessity Defense.)

You see, that conviction, that unborn babies are human persons and ought to be protected as much as any adult, wouldn't take you all the way down to the bottom of polite society if you could confine it to what laws you want lawmakers to pass to put abortionists in jail, although even that will get you close.

But you can't confine that conviction there.

It will stick its politically incorrect nose into another area of law: the legal authority that individuals have under America's "Necessity Defense" and "defense of others" laws to use force, lethal if necessary, to stop a murderer, which every abortionist is, if unborn babies are "persons in the whole sense".

Do you see the problem? Do you understand the cost of saying, out in public, that unborn babies are "persons in the whole sense" *in every situation?* (My personal journey through this issue is continued in answer #13)

My point is not that it is not true. I have said publicly for 20 years that it is true. But I said it because back then, the Necessity Defense with its "comparison of harms" elements was the strongest legal argument for overturning *Roe*, so it seemed crucial to me to proclaim its legal validity. Unfortunately Congress, in 1992, made shooting an abortionist the most effective way to get a Necessity Defense in court. They passed FACE, Freedom of Access to Clinic Entrances, which made the penalty for blocking a door twice about the same as for shooting, which is why the sitting stopped and the shooting started. I had no interest in shooting, and even less in having my name dragged through the mud by news reporters, but I had a great interest in ending abortion.

But since 18 USC 1841(d), the cleanest way to overturn *Roe* should be a challenge to a state law criminalizing abortion as if Roe never existed, defended in court by the state's Attorney General. For that, no one needs to talk about the Necessity Defense's protection of the right of every human being to use reasonable force to save other human beings from being murdered.

The only reason for even talking about that would be to muster public education and maybe Amicus briefs in the Scott Roeder case, in which I have embedded the legal arguments of this article, giving his case, I believe, a shot at overturning *Roe.* For a list of "divine coincidences" about the case, see http://youtu.be/39hYkDGBHUU.

I explain why it was inescapably controversial between 1992 and 2004 to talk about the strongest legal challenge to abortion, but not at all since 2004, at http://youtu.be/cslicXNXZd4.

5. The 2004 law does not "permit [authorize] prosecution" for abortion. Doesn't that prevent *states* from enacting their *own* criminal laws authorizing prosecution for abortion?

Answer summary: No judge thinks state legislatures have to ask some federal authority for permission to outlaw something. The fact that a federal law doesn't outlaw something on federal land doesn't keep states from passing laws that outlaw it in their state. The 2004 law triggers Roe's "collapse", which in turn triggers state responsibility, under the 14th Amendment, to protect unborn babies from abortionists.

The 2004 law does not "permit [authorize] prosecution" for abortion. That does not, and cannot, prevent states from enacting their own criminal laws authorizing prosecution for abortion.

The 2004 law does not "permit prosecution" of abortionists or mothers. In other words, abortionists and mothers are exempted from the specific penalties which the 2004 law imposes upon other murderers.

There are three reasons this can't mean states are prevented by this 2004 law from enacting their own criminal laws authorizing penalties against abortionists: (mothers are not going to be prosecuted in the foreseeable future, and even in the distant future their penalties should always be lighter as appropriate to their culpability):

(1) State legislatures don't need the "permission" of federal law to enact whatever criminal laws they please. Federal law doesn't have that kind of jurisdiction over states. Federal laws have jurisdiction over federal property, and actions that cross state lines, for which the ever-stretching "commerce clause" is invoked. But the 2004 law says nothing about the Commerce Clause or federal property, so it makes no pretense at jurisdiction over states. The only other way Congress asserts itself over states is by offering states back their citizens' own money on the condition they follow their latest law. But the 2004 law doesn't offer states any money. The reach of federal law, to impose criminal penalties over states, is so limited that 18 U.S.C. § 1841(a) applies this law's *penalties* only to a list of 68 federal criminal violations.

(However, section (d) doesn't list a penalty. It states a fact. And although states aren't subject to Congress' version of the facts, the U.S. Supreme Court is. *Roe v. Wade* assumed jurisdiction over states on the strength of its alleged ignorance whether unborn babies are humans/persons. So when Congress officially removed that ignorance, Congress removed *Roe's* prop for its usurped jurisdiction over states. The Supreme Court can't logically conform its rulings to state personhood laws on matters that affect all states, since state laws conflict. But the Supreme Court has to conform its rulings to federal laws, up until such time as a law is found unconstitutional. The opposite has occurred in this case: a number of state supreme courts have ruled that state versions of 18 U.S.C. § 1841 *are* constitutional, in the face of numerous constitutional challenges brought by accused murderers because *Roe* questions the humanity of the baby they killed. See chapter 7.)

Congress has no jurisdiction over states, to prevent states from enacting criminal laws without Congress' "permission". But Congress has jurisdiction over the U.S. Supreme Court, which has to conform its rulings to federal laws, up until such time as it finds a law unconstitutional. Thus the penalties of 18 U.S.C. § 1841 have jurisdiction only over 68 federal violations. But its definition of all unborn babies as humans, being an uncontested statement of fact in federal law, has jurisdiction to end *Roe's* usurped jurisdiction over states.

(2) A statement of fact that a law does not constitute permission does not make the statement a prohibition. (ie. if your mother doesn't give you permission, that doesn't mean your father can't.)

(3) After the 2004 law "established" the humanity of the unborn, states became legally obligated by the 14th Amendment to criminalize

abortion to give the unborn "equal protection of the laws". A federal law can't order states to disobey the Constitution.

Here's how Wikipedia overstated the legal importance of this "abortion exception", as of February, 2011: (under Laci's Law)

> The legislation was both hailed and vilified by various legal observers who interpreted the measure as a step toward granting legal personhood to human fetuses, even though the bill explicitly contained a provision excepting abortion, stating that the bill would not "be construed to permit the prosecution" "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", "of any person for any medical treatment of the pregnant woman or her unborn child" or "of any woman with respect to her unborn child."

To summarize, Wikipedia assumes that because this law does not "permit...prosecution... relating to an abortion", it cannot "grant...legal personhood to human fetuses".

I added the following to the Wikipedia entry for "Unborn Victims of Violence" on April 26, 2012. As of April 19, 2013, this addition is still there. I consider this somewhat of a test of its validity, since the article's history shows that 13 "persons" and one robot had modified the page or the associated talk page since my addition, and none of them apparently saw a problem with what I added. Not only that, but there is a "WikiProject Law" that lists this as a page of some importance, though of "low importance".

> However, the reticence of a federal law to authorize federal prosecution of a particular act committed under federal jurisdiction does not prevent states from passing their own laws against the act committed under their jurisdiction. Meanwhile the definition of all unborn babies as "members of the species homo sapiens" in section (d) says essentially what proposed "human life amendments" say. Sponsors of such proposals say such legal language will trigger the "collapse" clause in Roe v. Wade, by establishing what Roe said must be established for legal abortion to end. (footnote: to Roe quote) Several state supreme courts have ruled that sections (a) through (c) are not threatened by Roe, (see list below), but no court has addressed whether Roe can survive the triggering of its "collapse" clause by section (d).

(Here is the Roe quote again, which I put in the footnote: Roe v. Wade's "collapse" clause says: "The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. *If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment.* The appellant conceded as much on reargument. On the other hand, the appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment.")

Wikipedia asks me to "briefly explain" any edit that I submit. I said: "I rescue the article from the previous paragraph's conflation of 18 USC § 1841's penalties in (a) with its finding of fact in (d). The fact allegedly and logically triggers Roe's "collapse" clause, and is unaffected by the 'penalties'section."

Roe equates "human" with "person". (See Chapter 2.) Once the "fetus" was legally recognized as "human", *Roe* demanded acceptance of the unborn baby as a "person". If we obey *Roe,* once the "personhood" of the unborn was established by clause (d) of the 2004 law, no reading or misreading of clause (c) had any power to order states not to criminalize abortion, because the 14th Amendment from that point *required* states to criminalize abortion in order to extend "equal protection of the laws" to the unborn. Not even the Supreme Court itself has such power to protect abortionists, according to *Roe*! This limit to Supreme Court authority is so obvious that

Roe said "of course"!

Fortunately section (c) does not, on its face, order states to keep abortion legal. To read it that way is a sloppy reading not faithful to the plain grammar. If you get a building permit to install a fireplace, and the fine print says "this does not constitute permission to install a bathtub", that statement should not be taken as a prohibition against the homeowner going to the plumbing department for a separate permit to install a bathtub. By the same principle, the statement that section (c) is not "permission" to prosecute abortionists is not a law against a state creating a state law that authorizes prosecutions of abortionists.

Congress doesn't have any jurisdiction over state legislatures anyway. Congress has to stretch the "commerce clause" just to create criminal penalties that exist side by side with state criminal laws, giving prosecutors the choice whether to prosecute in state or federal court. Congress can also create financial incentives with its borrowed money to entice states to pass certain laws in a certain way. Guided by the Supreme Court's "absurd result" test, we should choose an interpretation of clause (c) that is consistent with legal reality.

More about the greater power of federal, than of state law, to "establish" unborn "personhood".

Doe v. Israel, 358 F. Supp. 1193, May 16, 1973, explained the problem with states "establishing" things like personhood:

> "...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.
>
> "....Surely the States could not, by legislative or judicial fiat, overturn....Pierce v. Society of Sisters, ... (1925), by finding that the right of parents to send their children to private school was not a 'liberty'; or overturn Brown v. Board of Education, ...(1954), by finding that black children were not 'persons'. If a Federal Constitution is to exist, these decisions must be made by the Federal courts."
>
> It is sheer sophistry to argue as the defendant does that Roe v. Wade and Doe v. Bolton can be nullified by the simple device of a legislative declaration or presumptions contrary to the court's holding.

Interesting point. It is true: rights to life, liberty, and property are "fundamental rights", over which SCOTUS overrules states *and* Congress all the time for not protecting them enough.

Could the argument stick, that even though Roe said otherwise, only SCOTUS can rule on who is a person?

But regarding no other right has SCOTUS point blank said "we are too dumb to know whether unborn babies of humans are humans." SCOTUS can't take a non-position and then say "and everyone else, shut up. We don't want to hear any evidence. Don't confuse us with the facts. Our mind is already made up." Especially after Roe had described the "establishment" of unborn "personhood" as a distinct possibility, which obviously, "of course", would end legal abortion.

Fortunately, SCOTUS said no such thing. This judge puts words in Roe's mouth because he doesn't want Rhode Island to challenge Roe's *conclusion*, that abortion is legal, with *evidence*, that abortion is murder.

Nevertheless, this judge's objections are especially to "giving determinative weight to varying state versions". How can conflicting state positions about a central fact be our basis for classifying someone as human? Federal law 18 U.S.C. § 1841(d) completely escapes this problem.

6. Shouldn't law be simple: the same penalty for surgical abortion as for contraception, the same for moms as for docs? Details, exceptions, and different penalties treat the youngest unborn as less than "persons in the whole sense".

Answer summary: Broad principles in law are toothless without "enabling legislation". "Thou shalt not kill" is a simple principle that might not seem to require any "enabling legislation" to spell out its application in a variety of situations, but even Moses' laws include a variety of applications for the variety of situations.

Prolifers need to discuss and agree upon the variety of penalties and legal mechanisms that will be required to enforce the various aspects of abortion. We have to grow beyond simplistic soundbites about purity and good intentions and achieve sensible, practical, ethical consensus.

We need to be willing to study and address all the complexities which reality requires. Reality stubbornly refuses to become as simple as we demand. Matthew 25:14-30 calls us, not to pray that reality will halve its difficulty, but to double our capacity.

This section contains a list of several abortion-related situations prolifers need to be agreeing how to provide for in law once God opens up that door, that prolifers haven't been thinking about.

Even though God treated all human beings as "persons in the whole sense", He created different penalties for killing them, depending on whether it was deliberate or an accident, and varying with the ability of human courts to establish the facts. Today's abortion and contraception situation similarly requires what is called "enabling legislation" to take these circumstances into account to make prosecution possible, and penalties predictable.

The future Life At Conception Act's assurance that it doesn't "authorize prosecution" of mothers has no legal meaning, since it identifies no crimes or penalties. It makes no reference to abortion. It gives no reason to interpret its reach as any farther than probate court.

The 2004 law made sense, in saying in section (c) that the penalties of section (b) did not apply to abortionists and mothers. But the "Life at Conception" proposal has no penalties for anyone. A law against something, without a penalty for violating it, doesn't authorize prosecution of anyone for anything. What, therefore, is disclaimed by this disclaimer?

> "However, nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child."

It is hard to imagine any practical effect of its assurance that it does not "authorize prosecution" of moms. This future proposal not only doesn't "authorize the prosecution of any" mother, it doesn't "authorize the prosecution of any" abortionist, either. Prosecution of an act is only "authorized" by a specific penalty for a specified act.

Even if the Life at Conception Act specified abortion as its target, and provided penalties, (enabling legislation), its promise that mothers would escape prosecution would remain empty, because once the personhood of the unborn is officially acknowledged states are required by the 14th Amendment to protect their Right to Life. No mere federal law has any authority over any state to order them to violate the Constitution. For that matter no federal law has any power to prevent states from prosecuting mothers.

(Of course, the political reality is that no such Act will ever pass without that assurance for mothers. It is essential that mothers hear those words. It matters little whether they have any legal meaning.)

The Life at Conception Act doesn't mention abortion; much less does it list appropriate penalties for various aspects of the crime; much less does it guide prosecutors in arriving at proportionate penalties in a variety of situations where justice requires taking into account uncertainty about facts and levels of culpability.

Examples of situations requiring their own

appropriate penalties: should contraception have the same penalty as a surgical abortion, considering the difference in criminal intent – nearly everyone admits surgical abortion kills a human being, but even a majority of prolife Christians don't know contraception does? Should mothers be penalized equally with abortionists, considering the profound difference in culpability: abortionists are very clear about what they are doing, as evidenced by their efforts to keep mothers in ignorance of a number of facts which, if known, would depress business, while many mothers are not only kept ignorant of those facts but are sometimes under tremendous pressure to kill? If mothers are penalized, should age be a factor in weighing culpability, and consequently of a just penalty? That is, should a 12-year-old required to take a pill by her father receive the same penalty as a 17-year-old high school senior getting a surgical abortion without notifying her parents? Should a legislature accommodate the practical value of giving immunity to mothers who testify against abortionists? If contraception is penalized, how should the legislature treat forms of contraception where scientists are in doubt whether life is killed before or after conception? Since there is no body which a medical examiner can declare dead, and no way of knowing if a human was ever killed, should contraceptive use be prosecuted as murder, or as attempted murder?

The examples above are not arguments against penalizing certain ways of killing human beings by certain people. They are an argument that it is folly to expect prosecutors and courts to know what to do with a law against something which specifies no penalties. They are an argument that it is folly to expect prosecutors to simply follow the laws regarding murdering adults, when the evidentiary and culpability circumstances are so different.

In other words, if this proposed "Life at Conception Act" is passed without adding any penalties, it will not generate one prosecution of anyone, directly. This law will not authorize a single prosecutor to press charges against a single abortionist.

There are two ways it could cause prosecutions indirectly. First, states, on the strength of the "collapse" of abortion's legality triggered by this law, (which has already been triggered by the 2004 law), could outlaw abortion with specific penalties for abortionists. Congress itself might later set penalties, although they would have limited jurisdiction.

Second, the proposed federal law could be enforced by lawsuits in federal courts.

This would not be the first time Congress has outlawed crimes without bothering to state a penalty or even specifying which authorities should enforce it. It happens so often that courts have developed a doctrine called the "implied right of private action". "Action" in this context means legal action through a lawsuit. "Private" means any individual, affected by the outlawed actions, could sue to stop it, without having to be a public official like a county prosecutor. The "right" to sue is "implied" by the obvious intent of Congress to prohibit the action, without provision by Congress of any other means of enforcing it other than a private lawsuit.

The problem is that those most harmed by abortion, the unborn, are unable to communicate whether the attorney purporting to represent them is doing so with their consent, and is presenting the defense that they would want. This is not an insurmountable obstacle, since "guardian ad litems" in child abuse cases "represent" born children they have never met, all the time, but it complicates it. It would be much simpler, legally, if the law would specify penalties.

The one thing the Life at Conception Act would do, had it not been already done in 2004, would be to trigger Roe's "collapse" clause. Once that was done, neither Congress nor the Supreme Court nor any state may forbid state or federal lawmakers from giving unborn persons as much legal protection as born persons.

So then, if the disclaimer *"...nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child"* has no legal effect, why is it included?

The only practical purpose it can have is to soften political opposition with an empty promise.

Here is my guess why this empty promise was included: the political unthinkability of prosecuting a mother for aborting her unborn child is so strong that politicians think the Life At Conception Act is politically dead in the water unless it includes this empty promise. Even if the assurance has no legal force, murdering mothers are so anxious for that assurance that they demand to hear it anyway.

The assurance to mothers may be someone's wish, but I can't see that it has any legal meaning. Not only does it fail to trump the 14th Amendment, but

federal law doesn't have that kind of jurisdiction over states, to prohibit them from penalizing mothers if they want to.

However, although this promise is empty, there are other reasons mothers were never penalized as much as murderers of adults – not even in America's Christian past when everyone accepted the full humanity of the unborn. (See chapter 8.)

These reasons are too little known to prevent the pervasive paranoia that requires empty promises. Talk of outlawing abortion terrifies today's mothers who fear being stoned for abortions they had before abortion was outlawed. They don't realize our Constitution prohibits "ex post facto laws", meaning laws which authorize prosecuting people who did what the law prohibits, before the law prohibited it.

But there is one painful effect that outlawing abortion will have on mothers who aborted before it was outlawed: it will nationally affirm the value that killing babies is terribly wrong. That will be a burden on any conscience, and an unbearable burden on a conscience that will not turn to Jesus for consolation, forgiveness, and love. Hopefully that value will be nationally affirmed in the same forgiving spirit as Acts 17:30 "And the times of this ignorance God winked [Greek: "overlooked; didn't punish"] at; but now commandeth all men every where to repent")

And of course as Chapter 4 pointed out, the clause feeds the legal doubt whether unborn babies are "persons in the whole sense".

In other words, two competing goals have generated this language: the goal of getting it passed through Congress, and the goal of getting it passed through courts. The empty promise is deemed necessary to get it through Congress, even though it could kill the measure in courts.

This "persons in the whole sense" problem is not insurmountable, but it requires an attack on part of the reasoning of *Roe v. Wade*. And in an age of reverence for the letter of Supreme Court rulings no matter how stupid, no matter how evil, no matter how bloody, that takes a little courage. Either that or we need to change the future proposal to strike out *"However, nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child."* But that will take courage too! There is no political will to even sound like you want to prosecute mothers!

A similarly toothless law was introduced in 2011 in the Iowa legislature by Kim Pearson, a lawyer. It was HF 153. It "recognizes...from the moment of conception...the same rights and protections guaranteed to all persons by the Constitution...."

> HF 153 Section 1. New Section. 1.19. Rights and protections beginning at conception.
>
> The sovereign state of Iowa recognizes that life is valued and protected from the moment of conception, and each life, from that moment, is accorded the same rights and protections guaranteed to all persons by the constitution of the United States, the constitution of the State of Iowa, and the laws of this state. The Iowa Supreme Court shall not have appellate jurisdiction over the provisions of this section.
>
> Sec. 2 EFFECTIVE UPON ENACTMENT. This act, being deemed of immediate importance, takes effect upon enactment.
>
> (This section would be added to the very first chapter of the Iowa Code, titled state sovereignty.)

But abortion is never mentioned directly as a target of this bill.

No penalty is linked to it.

We will not dote on the possibility that since "life" is not limited to "humans", the law might have conferred Iowa citizenship to animals. Or plants.

Kim should have been concerned that if the Supreme Court could classify Missouri's personhood language as meaningless, for want of connection to any specific penalty or restriction of abortion that reaches past probate, they can do it with HF 153.

Besides the problem that this bill does not clearly target abortion, because it lacks "enabling legislation", this bill illustrates the practical political problems of planning a showdown between Iowa and the federal government without saying so. This is an excerpt from my correspondence with Pearson and cosponsor Glen Massie at the time:

> But where would it be argued? This bill denies appellate jurisdiction to the Iowa Supreme Court, which the legislature has every

legal right to do; but does that necessarily deny jurisdiction to Iowa district courts? It certainly doesn't touch federal courts or the U.S. Supreme Court, which are the courts to worry about. Rep. Glen Massie told me his scenario is a showdown with SCOTUS (Supreme Court Of The United States). He wants Iowa to tell SCOTUS it has no jurisdiction over Iowa's treatment of the unborn, if over anything else in Iowa. But if this is the strategy, shouldn't the bill say that? Shouldn't the bill deny jurisdiction to federal courts? Rather than get the bill passed and *then* say "by the way, we interpret this as denying jurisdiction to federal courts", and *then* find out if the federal courts interpret it that way?

If there is no court where the interpretation of this bill can be resolved, isn't it especially important that the bill be unambiguous? If it is ambiguous in any detail of how to apply it, how will law enforcement know what to do with it? For example, suppose everyone can agree this means abortion is a crime. What about the exception for the life of the mother, where it has been historically argued that the state cannot demand that the mother lay down her life for her child? Does this bill intend to resolve that issue?

Solution: make this unambiguous by joining it to new abortion laws, and making those laws, also, exempt from judicial review. If there is to be a showdown with the federal courts, it needs to begin now for two reasons: (1) you can't add denial of federal jurisdiction to the bill after it passes. And even if you could, (2) you can't generate the statewide support necessary for such a showdown by surprising Iowans with the battle after the bill passes. Statewide discussion must begin now. Iowans need to start thinking now about whether they really want to do this.

There is another problem with denying federal court jurisdiction. The 14th Amendment says every person subject to the laws of a state shall have the equal protection of those laws. This was originally applied to prohibit state laws permitting slavery. If federal courts have no jurisdiction to enforce the 14th Amendment, does anyone? Is it to be unenforced, which would then permit slavery once again? (Not of blacks, this time; this time, the natural target would be "illegals".)

Solution: do not deny federal court jurisdiction. But give them something to chew on before they mess with Iowa. Declare not only that unborn babies have the same protection as "persons", but also that they are, IN FACT, "persons" and "humans"; and lay out the arguments that this establishment of FACT is what trigger's Roe's "collapse" clause, which in turn obligates states to protect the right to life of unborn "humans/persons". Do NOT leave out the fact that this fact was established in federal law, not just in Iowa law; that point is what will keep courts from arguing that national policy cannot be dictated by the several states which contradict each other.

"...the same rights and protections guaranteed to all persons by the Constitution..." does seem to suggest babies cannot be dismembered any more than state lawmakers can, but it may be no more than a suggestion since laws commonly dispense rights in proportion to capacity. For example everyone has the right to drive but you have to be 16 first. Everyone has the right to be a brain surgeon but you have to go to medical school first. Without the "collapse" arguments, and with Roe still intact, which says babies are not "persons in the whole sense", I would worry that the Supreme Court, which this bill does not and cannot push aside, might think the limited right to be born has been equally applied to all Americans less than 38 years old, so this law really calls for no change.

If you want a surreal experience, listen to the hour-long debate about this bill in a public subcommittee hearing. This was a Valentine for the Unborn, falling on February 14, 2011. I filmed it and posted it at https://www.youtube.com/watch?v=RT_pgPgqQko.

The most informative part is the debate between Kim and Beth Whasser-Name, the Democrat on the subcommittee, who of course opposed HF 153. (No, "Whasser-Name" isn't how to google her name, but it is close. I can't remember her name. It's one of those hyphenated names left over from the feminist movement, both names are in a foreign language, and

I am 67 years old, for crying out loud! So I use a name I can remember, and that makes sense. And I'm sure it will be easier for you to remember, too.)

There are three remarkable things about the video.

1. Beth Whasser-Name gave an incredibly comprehensive list of the issues which any no-exceptions criminalization of abortion will need to address.

2. Kim Pearson answered after most of the issues, "yes, that will be a crime" or "no, it will not", just as if she had any idea how any future prosecutor or court will interpret her one paragraph law in each situation, and as if she were confident they would all interpret it the same as she did!

3. Even in the face of all that need for clarification, Pearson remained defiant against the onslaught of complexity. She is to be admired for her honesty to boldly state the politically unthinkable, and for her instincts to focus on the value of human life. But she is a lawyer. She should not have had to be told by Beth Whasser-Name, who is not a lawyer, that laws should clearly state how law enforcement should proceed in every circumstance affected by the law.

But that's the other surreal thing about this exchange. Whasser-Name never told Pearson that without enabling legislation, no one can predict what future prosecutors might pursue. Whasser-Name carried on as if all of Pearson's predictions would indeed follow passage of the law, and that is why the law should not be passed. It was like listening to two children arguing over imaginary rules by which reality was expected to govern itself. "When I open the window, dad will bring me a pizza in his space ship." "No he won't! He will come in his submarine!"

Here is a transcript of the exchange. Whasser-Name describes a situation, asking if that would become a crime. Pearson answers. Then after each one I add, in blue, my opinion of whether it should some day be made a crime, and my reasoning for it.

The value of this is, I believe, its rather comprehensive list of all the issues prolifers ought to be thinking about whether, and how, to criminalize, when God finally grants us that authority.

Begins at 25:45 into the video.

Penalties for mothers.

W: I think we need to look at the unintended consequences which, because of the brevity of the bill, are included. ...Does this mean a woman who decides to terminate her pregnancy will be subject to prosecution?

P: ...she would be subject to our laws.

W: So this would be considered murder. Probably intentional murder because -

P: It would have to be....This wouldn't be an accident...it goes to the doctor as well.

W: So the doctor would potentially now be charged with 1st degree murder. Without parole...

P: (Gesture of assent) We already have criminal laws on the books. You come to it with the idea that the only value to a human being is whether the mother wants the child or not. That is not right to view it like that.

Editorial comment: I give my reasons, and the historical reasons, why mothers should be charged lightly if at all compared with abortionists, in chapter 4. Jesus gave a very powerful teaching about taking both culpability of the defendant and of culture as human courts judge lawbreakers. Please see my Bible study at http://www.examiner.com/article/the-woman-caught-adultery-how-u-s-law-follows-jesus-example.

W: Thank you. I appreciate your honesty and your passion.

Contraception.

The next issue: I am concerned about contraception. I think many families rely on contraception for family planning. It's my understanding that birth control works in three ways. By preventing a woman from releasing an egg – by preventing her from ovulating; by preventing fertilization; or by creating a change in the uterine lining which would reject the fertilized embryo. I understand that it is impossible to know which way that birth control method works in each circumstance. Under this bill, I think the third option would violate the code. So will the state be forced to ban contraception to make sure that no fertilized egg gets - ?

P: I don't know.

W: Do you see that as being a problem, if we have to ban contraception from many families in Iowa?

P: No, I don't see that as a problem. I see that as an (? inaudible)

W: Is a woman who uses contraception criminally liable?

P: (Gesture suggesting "I don't know" and "what an annoying question".)

W: How does the state enforce that?

P: (Same gesture) Let's get back to the focus on the value of human life. I mean if you want to get into contraception, you know, I'm sure that the state is [not] going to get involved in going into the bedroom to see if a woman is using contraception. What I want to do is make sure that our culture values life. You want to go around the edges of it, but get right to it. Talk about life, and whether or not it is valued. It is murder. That is one of the issues that is never in the debate. And that's where I think this bill talks about. ...Is the state in that position of protecting life, or not? Do we really believe that life is equal? Do we really believe in life, the pursuit of happiness, liberty? That's the issue.

Editorial comment: Certainly only a fraction of prolifers, overall, would tolerate laws against contraception, but a considerable portion of the most devoted prolife activists definitely target contraception equally with surgical abortion. So Whasser-Name is right to ask about it, and it is crazy for any law to claim to protect all human life from fertilization to avoid taking a position on contraception!

W: I think those are laudable goals, and we need to consider those. But I also think that we have to consider unintended consequences. Not necessarily in the bedrooms, but certainly in the state regulated pharmacies, pharmaceutical companies. Many drugs are put on different schedules that allow us to use them for certain things, and not for other certain things. That's what the state does. And if this bill interrupts those medications, which women - I don't think there are contraceptives for men yet, but usually women, take for family planning, I think that is something that we need to consider as legislators. I don't think we should ignore that, in a bill that we are voting on to put into our code. So I appreciate where you are going, I appreciate your respect for life... Do you have a plan for who will become the criminal in a contraception case? The Pharmacist? The physician? Or the woman who is taking the contraception?

P: (shakes head)

W: That's not in the plan at this time?

P: No. (Facial expression: what a nitpicker!)

Heaton: I'm not following the thing with contraception. Because the bill, "moment of conception", that's it. Anything that prevents the conception, ...that's not here.

Editorial comment: State Representative Heaton assumes, as do most average prolifers, that contraception prevents fertilization. He does not know that often the killing is after fertilization, and sometimes after implantation. He is a prolife state representative and even he does not know that. This is a measure of how much public education prolifers will need before a majority of them will support laws against contraception.

(33 minutes into the video)

W: ...(lists 3 ways contraception works again. The first two ways) would be acceptable under this law. But another way is by creating a change in the uterine lining so that it prevents the fertilized egg or the embryo from implanting. That would not be legal under this law. And we don't know, in each circumstance, which way the birth control is working. It's different every time. It's different in the time of day a woman takes the medication, it's different on when she has intercourse...so we don't know how that's happening, and therefore I do believe that contraception could very well become illegal under this bill.

H: You're talking about the morning after pill?

W: No, I'm talking about the birth control pill, the things that are implanted in a woman's arm now, there is a shot that a woman can get every 3 months or so, all these are hormonal. There' s also an IUD that there are concerns, questions about how that actually works, so those are at least four different types of contraception that are commonly used by Iowa families who are trying to control their fertilization, control the growth of their family, that under this law, would become illegal. And I have some concerns there.

Editorial comment: Taking a contraceptive should not be a crime for practical legal reasons suggested here, and more: (1) humans can't tell if any human is ever killed by a woman's contraceptives, without which we don't know whether to charge her with first degree murder or attempted murder; (2) we don't know whether the killing was before or after conception, without which we don't know if there was a human victim; (3) government can't normally document whether a woman takes contraceptives, without a massive government intrusion of monitoring sufficient to finish off what liberties we still enjoy. However, we can create penalties for doctors and pharmacists who distribute contraceptives. Since they are already accustomed to a long list of prohibited and restricted drugs, one more won't crimp their style; the remaining concern for voters will be whether such a

demand for contraceptives will remain that a black market for them will feed crime like marijuana and like drugs do.

These are legitimate legal considerations even for Christians who honor all human life as sacred from conception. Even Kim Pearson, who is "no exceptions" to the point of readily, publicly, with NPR microphones in her face, calling for first degree murder charges against mothers who get surgical abortions, thought it ridiculous to criminalize contraception, though she had apparently not thought of it previously.

This distinction between the prosecution of crimes which humans can document and enforce, alongside the "amnesty" given criminals whom humans cannot detect, is Biblical. God's laws under Moses do not hold communities responsible for crimes they can't solve. Deuteronomy 21:1-9. And a quick tour through Matthew 5 reveals several examples of where God's laws under Moses criminalized only a fraction of what God considers wrong. Where Jesus gives more detail about what is a crime before God but not before human courts, we see that these are "thought crimes" which humans have no capacity to document.

However, this common sense can't be assumed to be in the heart of every future prosecutor and judge who will enforce our general principle whose application to contraception is vague. We need enabling legislation clear enough that prosecutors will not have to guess what is a crime, leaving 10 different prosecutors to come up with 10 different guesses, and leaving citizens with no idea what they must avoid to stay out of jail.

A way to absolutely leave no confusion would be a "findings of fact" or "legislative intent" that says something like this:

"It is the intent of the general assembly to protect human life from the moment of fertilization as fully as Iowa law protects adult human life, limited only by the practical relative difficulty of determining whether there has been a death, whether any death was before or after fertilization, and what actions of the mother, if any, contributed to any death, subject only to the natural limits on human prosecutors to establish when (1) humans can't tell if any human is ever killed by a woman's contraceptives, without which we don't know whether to charge her with first degree murder or attempted murder; (2) we don't know whether the killing of life was before or after conception, without which we don't know if the victim was human; (3) government can't normally document whether a woman takes contraceptives, without a massive government intrusion of monitoring sufficient to finish off what liberties we still enjoy.

To state the principle of protecting all human life in as absolute terms as Kim says, by saying it is the intent of the Iowa legislature to protect unborn life every bit as much as adult life, without any guidance to prosecutors how to apply it in real life situations, dangerously fires legal imaginations.

Prenatal care.

I am also concerned about a troubled pregnancy, and what we can do...as this bill is written, I think a woman is considered to be a legal guardian of a child, with an egg that has been fertilized? Is that correct?

P: (Just glared at W)

W: We know that prenatal care is essential for the wellbeing of a baby during its months in the womb. If a mother is not able to access prenatal care while she is pregnant will she be criminally liable for endangering the welfare of her child?

P: Nope. Not that I know of.

W: Is that ceded in the law? [How much assurance can you give us that she will not be liable?] Because we are saying very clearly that life begins at conception.

P: (Nods)

W: And so a woman is responsible for that life for the first 40 weeks. Is she criminally liable then if she doesn't take care of herself? If she smokes, is this child abuse? Or if she drinks alcohol, if she is obese, if she gets diabetes, if she over exercises, gets too hot, I know that's a concern for doctors especially early in pregnancy? Is the woman now a child abuser? And do we have reason to prosecute her on that?

P: No. It's not. You're coming up with all these peripheral issues I think. You're getting away from the intent to protect life.

W: I think legislative intent is very important. But if we don't have a law written, to say what we actually intend to do, then all of this could be up for interpretation by somebody else. By whoever is enforcing this law.

Editorial comment: Indeed it is! What prolifer has thought of these legal implications of "no exceptions" protection from fertilization? And yet isn't it valuable to plan ahead for these questions?

Indeed, are we ready to send our child abuse

police after pregnant women as viciously as they go after parents of born children?

My answer is no, for two reasons: first, the connection between what doctors recommend and danger to the child in the womb is both relative (a matter of degree, where there is no clear line between what behavior is OK and what is not) and imprecise (doctors can only guess what will harm the child, and every doctor will guess differently, leaving doctors witnessing in court to contradict each other).

Second, child abuse law today is driven by psychiatrists whose own research shows they can't help anybody any more than a friend can. It operates with vague definitions without clear lines, like "dirty home" or "imminently likely to inflict emotional abuse". It operates without a standard of evidence, unless you count "preponderance of evidence", defined as if the judge is slightly more inclined to think you are guilty than that you are innocent, you are guilty. Trials are never by jury. Hearsay is welcome in the record. All these abuses need to be removed from all parents, not added to the backs of expecting parents too! See www.Saltshaker.US, click on "child abuse".

36 minutes into the video

Fertilization certificates when pregnancy begins, death certificates for miscarriages?

And we need to be very clear on what we plan to do. For example. Most women tend to go over the counter and get a pregnancy test. You go into a pharmacy, or a grocery store, and you buy a pregnancy test. Is that women now required, or is a doctor required, to notify a recorder's office, which is where we notify of death, or at birth, that there is a life that needs to be protected by the state?

P: No.

Editorial comment: What prolifer has thought of this? Leave it to one of Hell's lawmakers! But it is a valid question about any "no exceptions" law. I would argue against state certification simply because I see no benefit to the child of state involvement at that age. When there is a miscarriage, it would be virtually impossible, in most cases, to prove in a human court whether the parents' negligence caused it.

W: How do we plan to protect those embryos that are developing?

P: The greatest way to protect that is to have a culture of life, that doesn't allow the murdering of innocent children. And there are pregnancy centers and churches that will step up and help.

(37 minutes into the video)

So I'm not going to be going in and trying to figure out if there is a fertilized embryo, which is basically saying we are not going to mandate advocate, pay for abortion.

Editorial comment: Beth Whasser-Name is absolutely correct to demand answers to these questions of a bill which protects unborn and born life alike without giving any detail how to apply that principle in myriad situations.

And yet Kim Pearson would be correct to ridicule Beth's questions about issues prolifers don't think about, *if* there were even *one* specific act with one specific penalty. All kinds of laws are prefaced with a statement of "legislative intent", which anyone might observe is not completely met by the laws that follow. And yet no one in law enforcement thinks "oh, here's a guy doing something not penalized by the law, but he is violating the legislative intent; we had better arrest him"! No, everyone understands that the law with its specific penalties for specific acts is the legislature's solution to the problem, and is satisfied to enforce no more than the law.

It's Kim's creative intent to apply existing criminal laws to killing unborn babies which causes all this legal confusion, because although the value of the life is not different, the legal circumstances such as ability to document a death of a human, not to mention the existence of a violation, and culpability, are very different.

In Vitro Fertilization

W: An issue that's near and dear to my heart is infertility treatments. And when you said you want to be a mom (W addresses another woman at the hearing who previously testified at Pearson's invitation) I can truly relate to that. I remember for many years wanting to be a mom, and struggling with that. Because of infertility treatments, I am very concerned for the families who are building their families through in vitro fertilization. Because of this bill, the in vitro process creates numerous fertilized eggs in a laboratory, so that the technician has a plentiful supply. Not all of these embryos that are created actually become children. If one of these embryos does not develop normally, in a lab, or fails to result in a live birth, after being planted in the uterus – this frequently happens – is the patient, the physician, or the lab criminally liable for those embryos that didn't make it?

P: Once again, you're off on the periphery. Here we are talking about the intent to save life. Is

your intent to kill? No. You've got to get to the issue here. Whether or not you think life is valuable and worthy of protection. You've been skirting around this. What is your answer to that?

W: My answer is that when we write legislation, we have to be careful to avoid unintended consequences that can seriously impact the lives of Iowans. Iowa families that want to grow through in vitro fertilization are as equally important to me, as Iowa families who grow normally. And I want to make sure that this law does not make it so that those women, their physicians, or the lab are criminals. That's my reaction to this. And we legislators are responsible for doing that. If we pass a law that says in vitro fertilization would be illegal under this, that would be so damaging to so many families I know, and would create the loss of some really incredible children that I know, and so I am very concerned that the words you have written, Representative Pearson, does that.

P: I don't believe it does.

W: I think it does.

P: I don't.

W: One question is very telling. Frequently what happens is a couple goes through in vitro fertilization. They have numerous embryos which are fertilized. Some of them are implanted into a woman. If three are implanted and one takes, that's considered a success. So two have now disappeared and essentially died. But what happens after the extra embryos are then frozen? Lots of things can happen. A couple has a choice. They can put them up for adoption. They can have them destroyed. Or they can put them up for research. Are those going to be options for those parents any more?

P: You're talking about embryonic stem cell research?

W: There is research, there is destruction, and there is adoption. Or there is implanting.

P: No.

Editorial comment: This moral issue really has me stumped. I think Whasser-Name has a very important question that prolifers should answer, but I've not heard this discussed. I have always admired this technology that allows otherwise infertile couples to have children. That certainly is a Biblical goal! But if every fertilized egg really is a human being, and destroying them is murder, then in vitro fertilization is a murderous business! Would it kill the technology to make the labs hold off on fertilizing an egg until it is determined that it will be implanted?

Inheritance rights of embryos.

W: OK. How about if there are frozen embryos, and both biological parents are deceased. They have two children that are alive, and running around, and both of the parents die. Do those embryos get full rights of inheritance? Which would reduce the share of the children who were actually born?

[She is asking whether embryos can "inherit" wealth, not after they are implanted and are born, but while they remain embryos; in other words, can a share of the inheritance be diverted to keeping them alive!]

P: I don't think so.

W: So what happens to them, then?

41:47

P: What happens to them now?

W: (repeats 4 choices)

P: Again, it's back to the intent of life. Here you are trying to say that they're inheriting something? Even a child that goes through a natural pregnancy and maybe dies, you're not asking whether that person inherits, are you?

W: These [embryos] are still potential life. They are potential siblings to these children who are alive. It costs the parents money to keep them in the frozen state that they are in. I think it's a legitimate question to ask what happens when we are saying they are life, do they get inheritance rights when the parents are deceased?

P: One of the things you said that I wholeheartedly disagree, you said they are potential life. They *are* life. They have potentiality – they may grow up to be the president. But they are life. And that is what I am talking about. Changing this culture from one that so quickly goes to death to one that actually celebrates life – and I believe in in vitro fertilization. Absolutely. And these are the issues that they're having to deal with. But they have to continue to take care of those babes. And as far as the inheritance thing? They won't inherit, as far as I can tell.

W: Well, it costs money to keep them. So they're going to inherit something.

Editorial comment: Yes, this is a legitimate, and important, question. If killing the embryo is murder, then somehow the embryo must be maintained. And yet when maintaining it means keeping it frozen in a petri dish, somehow that doesn't strike me as God's vision for mankind, either. This problem can be solved, of course, if the technology

can survive being prohibited from fertilizing an egg until time to implant. Then there won't be any frozen embryos to destroy, to research, or to inherit.

These are just the very beginning of the questions that I have. There are consequences when we pass legislation. We all know that. We can't pass legislation without looking carefully at the words that we are putting into law, where we're putting them into law. I have many other questions, but if we are going to impact contraception, and infertility treatments, which the law, as it's written right now, absolutely will, we need to go back and look at how we can fix those problems. I respect that we probably disagree on whether it's potential life, or life. But when we are talking about embryos in a frozen dish, I think there are a lot of other potentials for it too, for saving life in many different ways.

P: So if those concerns that you brought up were met, then you would agree that life is valuable and should be protected?

W: I agree that life is valuable and should be protected but we may disagree on how to go about doing that. Absolutely.

Ends at 45:30

7. Wouldn't the Supreme Court simply rule 18 U.S.C. §1841 "unconstitutional" rather than let Roe "collapse"?

Answer summary: The U.S. Supreme Court has to conform its rulings to federal laws until such time as it finds them unconstitutional. It is going to be pretty difficult for the Court to find 18 U.S.C. §1841 unconstitutional, because it, and state laws like it, have had their constitutionality challenged often by murderers who didn't like being charged with murder twice, and courts have unanimously found such laws constitutional. Perhaps it is to let this case law build up, that God has seen fit to let nine years pass since 18 U.S.C. §1841(d)'s passage before turning it loose to trigger Roe's "collapse".

And yet this powerful opportunity to knock out legal abortion with this law which the Supreme Court cannot rule "unconstitutional" has been perceived as almost the opposite: that the only reason laws like 18 U.S.C. §1841 remain "constitutional" must be because the "abortion exception" strips it of any challenge to abortion. Therefore the legally established fact that all unborn babies are human/persons must be powerless to trigger Roe's "collapse" clause.

But that issue remains untested in virtually any court. All these cases considered the opposite issue: whether Roe's dehumanization of the unborn has the power to topple laws that humanize the unborn. Humanization of the unborn was found to be

constitutional in every case, despite Roe!

In fact that line of rulings goes back to *Webster v. Reproductive Health Services,* 492 US 490 (1989), which said until such point as personhood language is applied to the restriction of abortion, through laws that specify penalties for abortion, the issue is not even before the court, of whether or not personhood declarations, and *Roe*, are irreconcilable, and if so, which should be struck down.

I posted this information in Wikipedia's article, "Unborn Victims of Violence Act", on April 28, 2012, two days after I posted the addition I referenced in Answer #5. As of April 19, 2013, the information is still there, untouched. The two paragraphs before my addition had said, and still say,

> The Unborn Victims of Violence Act was strongly opposed by most pro-choice organizations, on grounds that the U.S. Supreme Court's *Roe v. Wade* decision said that the human fetus is not a "person" under the Fourteenth Amendment to the Constitution, and that if the fetus were a Fourteenth Amendment "person," then he or she would have a constitutional right to life. However, the laws of 36 states also recognize the human fetus as the legal victim of homicide (and often, other violent crimes) during the entire period of pre-natal development (27 states) or during part of the pre-natal period (nine states).[8] Legal challenges to these laws, arguing that they violate *Roe v. Wade* or other U.S. Supreme Court precedents, have been uniformly rejected by both the federal and the state courts, including the supreme courts of California, Pennsylvania, and Minnesota.[9]
>
> Some prominent legal scholars who strongly support *Roe v. Wade*, such as Prof. Walter Dellinger of Duke University Law School, Richard Parker of Harvard, and Sherry F. Colb of Rutgers Law School, have written that fetal homicide laws do not conflict with *Roe v. Wade*.[10]

In my note for the "history" page explaining the purpose of my edit, I said "The previous two paragraphs stated that this Unborn Victims... law does not conflict with Roe, but leaves hanging how that is possible. I inserted one explanation, from Webster." Here is the explanation that I inserted:

> A principle that allows language in a law to not conflict with Roe, which logically should trigger Roe's "collapse" clause, was explained in Webster v. Reproductive Health Services, 492 US 490 (1989). Until such language becomes the basis for laws that specify penalties for abortion, the issue is not even before the court, of whether or not such language conflicts with Roe, and if so, which should be struck down.[11] [The footnote reads:] ...until those courts have applied the...state's view of when life begins...to restrict appellees' [abortionists'] activities in some concrete way, it is inappropriate for federal courts to address its meaning." Webster v. Reproductive Health Services, 492 US 490 (1989). Sandra Day O'Conner added in a concurrence, "When the constitutional invalidity of a State's abortion statute actually turns upon the constitutional validity of Roe, there will be time enough to reexamine Roe, and to do so carefully."

The fact that 11 "persons" and one robot have edited or talked about the article since my addition, not to mention however many others have read it, and my two additions have not been challenged or modified much less removed, is some measure of scrutiny which my understanding of these laws has received, and of concurrence that what I have said is true.

Also going all the way back to *Webster* is the misconstruing of rulings affirming the constitutionality of personhood language as rulings that personhood language has no power to trigger

Roe's "collapse" clause. Prolife lawyers to this day insist that was *Webster's* holding, despite *Wester's* explanation that courts aren't supposed to rule on issues not brought before them. Missouri Attorney General Ashcroft had even gone out of his way to promise the Court that the personhood language would not be applied to restricting abortion, and the personhood language itself had an abortion exception! Can you imagine that? Personhood language with an abortion exception!

(Actually there is a logical way around that exception, since April 1, 2004 with the passage of 18 U.S.C. §1841(d). The Missouri exception makes the personhood language subject to *Roe*. But *Roe* makes itself subject to future personhood language. Therefore Missouri could have, and still can, criminalize abortion, and argue in court that its law against abortion obeys *Roe's* "collapse" paragraph which requires states to protect the unborn in obedience to the 14th Amendment upon "establishing" that the unborn are human.)

(Answer 8 has more detail about Webster.)

Wikipedia puts in words what I have heard many say, including Congressmen during the debates of the 2004 law: that "legal challenges to [identical state] laws, arguing that they violate Roe v. Wade...have been uniformly rejected by...courts", which proves that the 2004 law has no power to make the case "that the human fetus is...a 'person' under the 14th Amendment...[with] a constitutional right to life."

In none of these cases (reviewing the constitutionality of "unborn victims of violence" laws) was the issue whether the establishment of all unborn babies as humans/persons triggers legal abortion's "collapse". That issue has never been raised in any case; it remains untested before any court.

The issue raised in all these cases was just the opposite: it was whether Unborn Victims of Violence laws are constitutional since they conflict with Roe v. Wade! All these courts decided it was! All these courts affirmed the constitutionality of their establishment of all unborn babies as humans/persons! One of these courts was the U.S. Supreme Court! (The last case on the list below.)

Remember that all these challenges to 2004-type laws were brought, not by prolifers wanting to end legal abortion, but by thugs who killed pregnant wives or girlfriends and wanted Roe's dehumanization of the unborn to stomp the life out of Unborn Victims of Violence laws so they wouldn't be convicted of a double murder!

Here is an overview of the cases (summarized from Wikipedia):

California: People v. Davis [872 P.2d 591 (Cal. 1994)], "fetus" was properly added to the state murder code, but the term applies "beyond the embryonic stage of seven to eight weeks." <> People v. Dennis [950 P.2d 1035 (Cal. 1994)], capital punishment for a double murder OK'd.

Georgia: "The proposition that Smith relies upon in Roe v. Wade -- that an unborn child is not a 'person' within the meaning of the Fourteenth Amendment -- is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus." Smith v. Newsome, 815 F.2d 1386 (11th Cir. 1987). <> See also Brinkley v. State, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

Pennsylvania: "to accept that a fetus is not biologically alive until it can survive outside of the womb would be illogical, as such a concept would define fetal life in terms that depend on external conditions, namely, the state of medical technology (which, of course, tends to improve over time). . . viability outside of the womb is immaterial to the question of whether the defendant's actions have caused a cessation of the biological life of the fetus . . ." Commonwealth of Pennsylvania v. Bullock (J-43-2006), December 27, 2006, rejecting constitutional challenges to the Crimes Against the Unborn Child Act, 18 Pa. C.S. Sec. 2601. <> Commonwealth of Pennsylvania v. Corrine D. Wilcott, January 24, 2003, arguments were rejected that the law is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person."

Texas: Terence Chadwick Lawrence v. The State of Texas (No. PD-0236-07), November 21, 2007, the court explained that after learning that a girlfriend, Antwonyia Smith, was pregnant with his child, defendant Lawrence "shot Smith three times with a shotgun, causing her death and the death of her four-to-six week old embryo." For this crime, Lawrence was convicted of the offense of "capital murder," defined in Texas law as causing the death of "more than one person . . during the same criminal transaction." The court said that the abortion-related rulings of the U.S. Supreme Court have "no application to a statute that prohibits a third party from causing the death of the woman's unborn child against

her will." The court noted, "Indeed, we have found no case from any state supreme court or federal court that has struck down a statute prohibiting the murder of an unborn victim, and appellant [Lawrence] cites none."

Utah: State of Utah v. Roger Martin MacGuire. MacGuire was charged under the state criminal homicide law with killing his former wife and her unborn child. He argued that the law, which covered "the death of another human being, including an unborn child," was unconstitutional because the term "unborn child" was not defined. The Utah Supreme Court upheld the law as constitutional, holding that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . ." MacGuire was also charged under the state's aggravated murder statute, which applies a more severe penalty for a crime in which two or more "person" are killed; the court ruled that this law was also properly applied to an unborn victim and was consistent with the U.S. Constitution. January 23, 2004.

All of the following challenges were based at least partly on *Roe* and/or denial of equal protection:

Illinois: U.S. ex rel. Ford v. Ahitow, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, People v. Ford, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991). <> People v. Campos, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: appeal denied, 602 N.E.2d 460 (Ill. 1992), habeas corpus denied, 827 F.Supp. 1359 (N.D. Ill. 1993), affirmed, 37 F.3d 1501 (7th Cir. 1994), certiorari denied, 514 U.S. 1024 (1995).

Louisiana: A double murder charge for the same act is not "double jeopardy": State v. Smith, 676 So.2d 1068 (La. 1996), rehearing denied, 679 So.2d 380 (La. 1996).

Minnesota: State v. Merrill, 450 N.W.2d 318 (Minn. 1990), cert. denied, 496 U.S. 931 (1990). Establishment clause -- State v. Bauer, 471 N.W.2d 363 (Minn. App. 1991).

Wisconsin: regarding due process -- State v. Black, 526 N.W.2d 132 (Wis. 1994) (upholding earlier statute).

Missouri: State v. Knapp, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in Mo. Rev. Stat. 1.205.1 is applicable to other statutes, including at least the state's involuntary manslaughter statute.

8. Didn't Webster say personhood affirmations have no power to topple Roe? How then can any legal argument based on personhood language in any law undermine legal abortion?

Answer summary: Webster did not say "personhood affirmations have no power to topple Roe", but only "as long as a personhood affirmation is not directed against abortion, we see no need to decide whether it has the power to topple Roe."

And finally we come to the U.S.Supreme Court case affirming the right of states to humanize the unborn in their laws: *Webster v. Reproductive Health Services* (492 U.S. 490), 1989.

Webster said a state is free to enact laws that recognize the "personhood" or huanity of unborn children, so long as the state does not include restrictions on abortion that Roe forbids.

This is commonly characterized as meaning that at such point as a state dares to apply its humanization of the unborn to criminalizing abortion, then that application, forbidden by Roe, *must be found unconstitutional.*

That isn't what Webster said.

Webster said that at such point as a state dares to apply its humanization of the unborn to criminalizing abortion, then that application, forbidden by Roe, *will finally be sufficient reason for the Supreme Court to reconsider the constitutionality of Roe!*

As Sandra Day O'Conner explained it, concurring with the majority:

O'Conner: the plurality [of

> the Court of Appeals] should therefore not have proceeded to reconsider *Roe v. Wade.* This Court refrains from deciding constitutional questions where there is no need to do so, and generally does not formulate a constitutional rule broader than the precise facts to which it is to be applied. *Ashwander v. TVA,* **297 U.S. 288**, 346, 347. ….When the constitutional invalidity of a State's abortion statute actually turns upon the constitutional validity of *Roe,* there will be time enough to reexamine *Roe,* and to do so carefully. Pp. 525-531.

Not that, prior to the Supreme Court reversing Roe, the Court would ignore contradiction by a state. It's just that before there is a clear contradiction, the Court has nothing to decide. As the majority explained it:

(This is taken from the syllabus, [official summary], not the ruling itself)

> This Court need not pass on the constitutionality of the Missouri statute's preamble. In invalidating the preamble [of Missouri's law with the personhood statement], the Court of Appeals misconceived the meaning of the dictum in *Akron v. Akron Center for Reproductive Health, Inc.,* **462 U.S. 416**, 444, that "a State may not adopt one theory of when life begins to justify its regulation of abortions." **[p491]** That statement means only that a State could not "justify" any abortion regulation otherwise invalid under *Roe v. Wade* on the ground that it embodied the State's view about when life begins. The preamble does not, by its terms, regulate abortions or any other aspect of appellees' medical practice, and § 1.205.2 can be interpreted to do no more than offer protections to unborn children in tort and probate law, [for example, the rights of a child to inherit property from a father who died before the child was born] which is permissible under *Roe v. Wade, supra,* at 161-162. This Court has emphasized that *Roe* implies no limitation on a State's authority to make a value judgment favoring childbirth over abortion, *Maher v. Roe,* **432 U.S. 464**, 474, and the preamble can be read simply to express that sort of value judgment. The extent to which the preamble's language might be used to interpret other state statutes or regulations is something that only the state courts can definitively decide, and, until those courts have applied the preamble to restrict appellees' activities in some concrete way, it is inappropriate for federal courts to address its meaning. *Alabama State Federation of Labor v. McAdory,* **325 U.S. 450**, 460. Pp. 504-507.

The Missouri law reviewed, Mo. Rev. Stat. 1.205.1, declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, especially so long as the state does not include restrictions on abortion that Roe forbids.

In other words, the personhood language has no legal meaning except to whatever extent it is coupled with specific laws describing specific actions and affixing specific penalties; either by the unambiguous letter of the law, or by subsequent case law from courts. There is no need, or even basis, for reviewing the constitutionality of a toothless law.

Toothless. Not meaningless! "The life of each

human being begins at conception" and has "protectable interests in life" could not very much more clearly invoke the 14th Amendment, thus criminalizing abortion! But the Missouri law promised not only to be subject to the Constitution, but to Supreme Court rulings. Courts don't worry about laws that *might* be taken as a challenge to the Constitution, if they can also be interpreted as consistent with the Constitution.

The way around this legal obstacle, even for Missouri, available since April 1, 2004 with the passage of 18 U.S.C. §1841(d), was given towards the beginning of Chapter 7, and here it is again: The Missouri exception makes the personhood language subject to *Roe*. But *Roe* makes itself subject to future personhood language. Therefore Missouri could have, and still can, criminalize abortion, and argue in court that its law against abortion obeys *Roe's* "collapse" paragraph which requires states to protect the unborn in obedience to the 14th Amendment upon "establishing" that the unborn are human.

The future proposed Life At Conception Act is toothless. It contains not one single penalty. It makes no reference to abortion. Nothing in it discourages the interpretation that its reach is limited to probate. *Webster* is a 1989 Supreme Court gauntlet, saying "If you're going to pitch the ball and expect us to swing at it, you're going to have to get it in the air! This isn't bowling!"

Well, that's *close* to what they said. They said even *Roe* allows states to treat the unborn as fully human persons from the moment of conception, in probate cases. (For example, when a child is born after his rich father dies, he can inherit his father's fortune.) So if you can't show us a law that specifically applies your glorious view of when life begins beyond a probate case, go home and quit bothering us!

So here come more prolife fundraising letters dreaming of yet another law that does not specifically apply the truth of when life begins beyond a probate case!

9. 18 U.S.C. §1841(d) only applies its definition of unborn babies as "members of the species homo sapiens" "in this section". Therefore, isn't it canceled by other federal laws that say babies whom their mothers are too hard hearted to love are *not* human beings, for example, F.A.C.E.?

Answer summary: Neither FACE, nor any other American legal authority, has ever dared assert that any unborn baby is not human. Roe dared say no more than "we cannot tell". The grammar of "in this section" normally does not mean "only in this section", but "in this section and all similar contexts."

F.A.C.E., Freedom of Access to Clinic Entrances, takes no position on the humanity of the unborn. *Roe* is the bravest any lawmaking authority has come towards positively asserting that unborn babies are *not* human beings; *Roe* dared say no more than "we cannot tell". (Shades of Matthew 21:27.)

The 2004 law says its definition of all unborn babies as human beings applies "in this section" (of the U.S. Code), which adversaries may argue means "*only* in this section".

Grammatically, to say a definition of a word or phrase applies "in this context" never means it applies only in the specific example before us and nowhere else in English literature. It always means "in this and all similar contexts".

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

Rationally, the interpretation that unborn babies are human beings while you are reading one section of federal law but might turn into something less while you are reading another section is absurd. The definition legally recognizes a fact: the unborn babies of humans are humans. This is acknowledged as a fact. Courts treat facts as not their area of expertise. They defer to juries, expert witnesses, and legislatures to establish facts. *Roe* even said:

> (If not even the doctors and preachers can agree "when [human] life begins") 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*

Facts do not change according to which section of law you are reading. Certainly not facts like this!

Not only would it be absurd to speculate that any competing fact exists when you are reading any other section of the U.S. Code, but in fact there is no competing definition of the humanness of the unborn anywhere else in the Code.

It is this fact, legally acknowledged in this federal law, which "establishes" the personhood of the unborn. It is irrelevant which sections of federal law acknowledge this fact. It is irrelevant how many sections of law are affected by establishment of this fact.

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, FACE, 18 U.S.C. §248, Freedom of Access to Clinic Entrances, enacted in 1992, creates draconian penalties for trying to save lives taken by abortion. Its continued existence, even after Congress discovered that all unborn 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 it were grounds for invalidating laws we would have few laws! But who would decide which to repeal in the event of such a contradiction? (2) The 1992 law does not dispute that the unborn are human beings. It simply ignores the issue.

In 1992, saving unborn 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. Even if states ever criminalize abortion and are upheld, while FACE remains, there will be no confusion; abortionists will be arrested by states, but civilians will still be arrested who try to stop abortionists themselves. 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, without 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 all the rest of our Constitutional Rights are of little value!

10. What is the actual text of the 2004 Law, the Life At Conception Act, and the No Greener Light proposal?

Laci's Law=The Unborn Victims of Violence Act. 18 U.S.C. § 1841

Introduction: Section (a) applies this law's *penalties* only to a list of 68 federal criminal violations. But section (d) defines all unborn babies as "members of the species homo sapiens" as a *fact* recognized by federal law. Federal law didn't have to do that. In fact, the Democrats offered an alternative that didn't do that. The application of the *fact* established by (d) cannot be limited to the 68 crimes, or to any limited areas of federal law. If one federal law says "running water is wet", and another federal law says "running water is dry", that would fail the Supreme Court's "absurd result" test. But now that a section of federal law says unborn babies of humans are humans, and no law, federal or otherwise, says otherwise, we have the uncontested legal recognition of all unborn babies of humans as humans.

Text of the law:

(a)

(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

(2) (A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.

(B) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are the following:

(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247,248, 351, 831, 844 (d), (f), (h)(1), and (i), 924 (j), 930, 1111, 1112, 1113,1114, 1116, 1118, 1119, 1120, 1121, 1153 (a), 1201 (a), 1203, 1365 (a),1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191,2231, 2241 (a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b,2340A, and 2441 of this title.

(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C.848 (e)).

(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

(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.

(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.**

The Life At Conception Act

SECTION 1. SHORT TITLE.

This Act may be cited as the `Right to Life Act'.

SEC. 2. RIGHT TO LIFE.

To implement equal protection for the right to life of each born and preborn human person, and

pursuant to the duty and authority of the Congress, including Congress' power under article I, section 8, to make necessary and proper laws, and Congress' power under section 5 of the 14th article of amendment to the Constitution of the United States, the Congress hereby declares that the right to life guaranteed by the Constitution is vested in each human being. However, nothing in this Act shall be construed to authorize the prosecution of any woman for the death of her unborn child.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) HUMAN PERSON; HUMAN BEING- The terms `human person' and `human being' include each and every member of the species homo sapiens at all stages of life, including the moment of fertilization, cloning, or other moment at which an individual member of the human species comes into being.

(2) STATE- The term `State' used in the 14th article of amendment to the Constitution of the United States and other applicable provisions of the Constitution includes the District of Columbia, the Commonwealth of Puerto Rico, and each other territory or possession of the United States.

NO GREENER LIGHT MODEL LEGISLATION

This is how a law criminalizing abortion might look like in Iowa.

Iowa Code 707.7 Feticide.

(a) Findings of Fact: The Iowa Legislature finds itself obligated by the 14th Amendment "equal protection of the laws" to protect the Right to Life of all unborn babies since 18 U.S.C. § 1841(d) triggered the "collapse" clause of Roe v. Wade, ending the constitutional protection of abortion.

(b) 1. Any person who intentionally terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, ~~after the end of the second trimester of the pregnancy~~ where death of the fetus results commits feticide. Feticide is a class "C" felony.

2. Any person who attempts to intentionally terminate a human pregnancy, with the knowledge and voluntary consent of the pregnant person, ~~after the end of the second trimester of the pregnancy~~ where death of the fetus does not result commits attempted feticide. Attempted feticide is a class "D" felony.

3. Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the provisions of chapter 148, commits a class "C" felony.

4. This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery or osteopathic medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life ~~or health~~ of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus.

[R60, §4221; C73,

MODEL JOINT RESOLUTION

A "joint resolution" is a statement of facts upon which a legislature can agree. It is not a "law" because it creates no penalties; it is not a restriction of activities which police can enforce. As a statement of facts, it is an option for laying out the facts of Roe's "collapse" in more detail than is usually possible in the short "findings of facts" of a law. Here is what a Joint Resolution might look like:

Whereas, Federal law has protected unborn children as human beings since April 1, 2004, stating: **"'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",** (18 U.S.C. § 1841(d)) and criminalizes "intentionally killing or attempting to kill a human being" (18 U.S.C. § 1841(a) (c) – officially called "The Unborn Victims of Violence Act" and popularly known as "Laci and Conner's Law"), using terms applying absolutely to all

unborn children, hence officially, *legally recognizing* all unborn babies as human beings; And

Whereas, *Roe v. Wade* 410 U.S. 113 (1973) equates the time an unborn child becomes "recognizably human" with the time the child becomes a "person", to wit: "These disciplines variously approached the question 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' or 'animated.' " (See also *United States v. Palme*, 14- 17 U.S. 607, (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. And

Whereas, *Roe v. Wade* spells out the conditions for *Roe's* own "collapse", to wit: "[Texas argues] that the 'fetus' is a person. **If this suggestion of personhood is established, the case [for legal abortion], of course, collapses, for the right to life would then be guaranteed specifically by the [14th] Amendment**... And

Whereas, 18 U.S.C. § 1841(c) does not "permit [authorize] the prosecution of any person for...an abortion for which the consent of the pregnant woman...has been obtained...." (but only authorizes prosecution where the child is murdered without consent) And

Whereas, there is no inconsistency between the "collapse" of *Roe* caused by 18 U.S.C. § 1841(d) and the fact that 18 U.S.C. § 1841(c) does not "permit [authorize] the prosecution" of elective abortions, since the "collapse" of *Roe* does not outlaw abortion; it frees *states* to outlaw abortion. Outlawing abortion is clearly a process with two distinct steps - "collapsing" Roe, and outlawing abortion - and 18 U.S.C. § 1841(c)-(d) clearly takes only the first, without hindering the second. 18 U.S.C. § 1841(c) has no power to prevent states from criminalizing abortion, as the 14 Amendment requires once the humanity of the unborn is established by 18 U.S.C. § 1841(d). And

Whereas, the authority of U.S. law is superior to the authority of the U.S. Supreme Court, in the sense that up until such time as courts declare laws unconstitutional, courts must conform their rulings to them. No court has declared 18 U.S.C. § 1841 or the many similar state laws unconstitutional, in the course of dozens of challenges. To do so find would require the Court to positively affirm that human life does *not* begin until birth, a position which no legal authority has ever taken, in contrast to a number of America's highest legal authorities which have taken the position that human life *does* begin at conception (See Missouri #1.205, R.S.Mo.1986, Louisiana LSA-R.S. 40:1299,35.0, Nebraska 28-325. R.R.S. 1943, besides various proclamations of Presidents and Governors). And

Whereas, "(I)f the law recognizes that a fetus is a legal person from the moment of conception.....then the law must recognize and protect the rights of that person on a legal basis with the rights of the adult pregnant woman. If our laws recognize that, then there can be no right to choose, because, logically, terminating a pregnancy even in its earliest stages would be killing a fully legal person." (Mr. Nadler, opposing the law, *UNBORN VICTIMS OF VIOLENCE ACT OF 2003 150 Cong. Rec. H637-05, *H640.) [For the record with analysis, see www.Saltshaker.US/SLIC/CongressionalRecord.htm].* And

Whereas, [the consequence of 18 U.S.C. § 1841 is that] "....unborn children whether viable or not, will be considered as human beings, and therefore, whole as persons as victims of crime.... [Laci's Law's] extension of legal personhood to a[n] [unborn child] is entirely unprecedented in the history of federal law... .[The Court] could be forced to do what it has avoided for over thirty years: determine the ultimate value of the life interest and decide when that life begins." (Amanda Bruchs, *Clash of Competing Interests: Can the Unborn Victims of Violence Act and Over Thirty Years of Settled Abortion Law Co-Exist Peacefully?*, 55 Syracuse L. Rev. 133 (2004). See also: Wilmering, R.R., Note, *Federalism, The Commerce* Clause 80 Tns . L_J. 1989 (2005); Speizer, E., *Recent Developments in Reproduction Health Law....*41 Cal. W.L. Rev. 507 (2005); Kole, T. and Kadetsky, L., *Recent Developments,* 39 Harvard Journal Legislation 215 (2002))]. And

Whereas, there is no conflict between 18 U.S.C. § 1841 and 18 U.S.C. §248 (FACE, Freedom of Access to Clinic Entrances, 1992). 18 U.S.C. §248 merely prevents *individuals* from saving the lives of the unborn; it asserts no jurisdiction over states, to

prevent *states* from protecting the unborn in compliance with 18 U.S.C. § 1841;

Therefore, be it resolved, that:

Legal Abortion technically and legally "collapsed" on April Fool's Day, 2004. 18 U.S.C. § 1841(d) precisely meets the conditions laid out in Roe's "collapse" clause. 18 U.S.C. § 1841 is a doe in estrus, and Roe's "collapse" clause is a 20 point buck; AND

This state has no further legal obligation to refrain from criminalizing abortion, or to support or protect abortion in any way; AND

After 18. U.S.C. §1841 it is impossible to treat ex-utero and intra-utero children differently without violating the XIV Amendment rights of one or the other: therefore this state is legally obligated to protect unborn children with the same criminal laws that protect born children; AND

Criminal laws against abortion by this state, or a Personhood Amendment in this state defining the unborn as "persons", or amending this state's Necessity Defense law to clarify that abortion is a "harm" to which it applies and "imminence" means "nearness in time to the closing of the window of opportunity to prevent harm", are not bold, legally dubious attempts by one state to rewrite the legal landscape for the entire nation, but will merely bring state law into conformity with federal law, including the requirements of *Roe v. Wade* itself; AND

Any court which attempts to block this state's effort to bring its laws into conformity with these federal laws will, in so doing, violate Roe v. Wade, interfere with this state's compliance with federal law, and be an accessory to genocide according to federal law; AND

Should any state judge interfere with this state's obligation to obey the 14th Amendment obligation to protect its unborn citizens from abortion, this legislature urges voters to remember that judge at this state's next retention election; and should any federal judge so interfere, this legislature urges its congressional delegation to pursue disciplinary action such as that outlined in "Bringing the Courts Back Under the Constitution". (https://newt.org/ wp-content/uploads/2013/04/Courts.pdf)

My summary of his 54 page "white paper":

11. Can God bless our involvement with a law that saves only some unborn, like section (c), but not all of them? Does God bless compromise?

Answer summary: Christians should not construct Biblical positions without quoting the Bible, as is typical during discussions like this. "Compromise" is not a word from the Bible. 1 Samuel 8 is an example of God "compromising" with His People. Matthew 21:28-31 teaches us to prefer results over "pure" words. But some concessions are indeed deadly.

Picketers and sidewalk counselors believe it is better to save some than none. I agree.

A "pure" law that will save all, with no strategy for passage, will help babies less than a law that will save some, with a strategy for its passage. Especially if, after passage, it will be challenged in court, and amici briefs arguing 18 U.S.C. § 1841(d) can pressure courts to acknowledge Roe's "collapse", which will save all!

Even God endorses a strategy that only saves some.

> Romans 11:14 If by any means I may provoke to emulation *them which are* my flesh, and might save some of them.
>
> 1 Corinthians 9:22 To the weak became I as weak, that I might gain the weak: I am made all things to all *men,* that I might by all means save some.

Ask picketers and sidewalk counselors that question. They save only a fraction of the babies

carried past them to their cruel deaths. But all of them that I have talked with think it is better to save some, than all.

A way to save all of them might be to shoot the abortionist, or at least burn his building, but who wants to do that? Or, who wants to tell a sidewalk counselor, "I won't associate with you, because you didn't save all of that abortionists' victims – you only saved some of them"? If we don't do that, why do we tell a lawmaker we won't associate with a law that only saves some babies?

Of course, the whole point of this article is to turn that law, designed to save only some babies, into a hammer for nailing shut legal abortion's coffin. Can we pass by such an opportunity to end this scandalous infanticide, in the name of "remaining pure" and not "compromising"? How Orwellian such language becomes!

"No compromise." Amazing how much theology Christians invest in this word, considering it is not found in the Bible and no verse is cited to support the assumption that compromise is always evil.

2 Corinthians 6 urges separation from idolatrous orgies. 1 Corinthians 5 acknowledges the necessity of generally interacting with wicked people, but keeping the distinction clear when a wicked person claims he has his ticket to Heaven too.

God "compromises" all the time by giving authority to men, instead of angels. God "compromises" between His Will and our will, by answering our persistent prayers, even when it is clearly not necessarily God's Will, according to Luke 11:8. The classic example of that was 1 Samuel 8. God wanted freedom for His people. They wanted a dictator. So God compromised between His Best for His people, and what they wanted. Without becoming their dictator Himself, He offered them the best that they were willing to tolerate: a dictator chosen by Him, who was not a law unto himself but was subject to a Constitution. (1 Samuel 10:25.)

I submit that it is better to save lives than to be "pure", when someone's notion of "purity" and "not compromising" is to oppose legislation that might pass and save some lives, and instead to support legislation that would save more lives if it ever passed but where there is no strategy for ever passing it.

Especially when a law that will save some lives will face a court challenge, in which 18 U.S.C. § 1841(d) can be argued through amici briefs with the goal of not just saving that law but ending all legal abortions!

Deadly Concessions.

There are sensible trade-offs necessary to get a bill through a legislature and through the courts that will save some lives when a better bill is calculated as impossible, and there are unnecessary concessions that emasclate, unnecessarily and tragically, the power of a bill to directly challenge legal abortion.

The reasons for unnecessary concessions range from misunderstanding of the law to, tragically, misnderstanding of Scripture.

An email from a state Personhood group July 25, 2013 gives examples of concessions added to laws:

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> ...Some of these bills re-affirm Roe v. Wade, dehumanize the preborn, and justify the killing of some children. Those supporting such bills believe that the abortion of any preborn child is murder, and yet their bills permit some murder. ...The Texas "20-week" bill actually nullifies itself if it poses an "undue burden" on a women intent on killing her baby. The Ohio Heartbeat Bill actually nullifies itself if a judge overturns it!
>
> Christians cannot support most so-called pro-life bills that
>
> - attempt to regulate abortion (for example, bills attempting to make child-killing clinics more sanitary, safer for the killers); or
>
> - designate an age at which some children may be killed (like most heartbeat bills and late-term abortion bans), or
>
> - designate circumstances, such as rape, incest, or fetal handicap, when some children may be killed.

Of course No Greener Light is not promoting these half measures while it offers a strategy for ending all abortions in about a year. Yet even so, while waiting for prolife lawmakers who will study, understand, and support this strategy, are lawmakers wrong to enact a half measure which they already do understand?

There is a right and wrong way to analyze opportunities.

The Practical. Of course the reason for putting concessions like that in bills is to make it more likely

that courts will approve them. But where is the spirit of passing laws that "push the court's envelope"? Where is the spirit of challenging abortion's alleged "legality"? Challenging a court is a risky way to get a law to survive the courts, but crafting a law safe enough to survive the courts is not any way to challenge the courts.

Why can't a legislature enact two bills - one that is more likely to pass the legislature and survive the courts because it limits how many lives it will save, and another which challenges legal abortion at its core? And which forces lawmakers to put themselves on record just how "prolife" they are?

Republican majority legislative leaders hate to "waste time" on bills which either don't have enough votes to pass out of their chamber, or which the other chamber's Democrat leader has vowed to kill in subcommittee, or which the governor won't sign and there aren't enough votes for an override, or which won't survive the courts. Of course there are honest disagreements about these calculations.

Generally it is very sensible to avoid "wasting time" in that manner. Indeed it consumes a great deal of legislative time to pursue a controversial bill. Leaders *should* make those judgments and "kill" bills that they judge have no chance to become law.

Except on the subject of infanticide. Surely infanticide is important enough to take extra time to put murderer sympathizers on record, and if possible to make judges put themselves on record, to help voters vote intelligently.

It is tragic when Republican prolife leaders, in and out of the legislature, oppose bills with some prospect of challenging legal abortion, because that might "waste time".

The Spiritual. There is another faction of prolife lawmakers who will not vote for a prolife bill that will save some lives, because it won't save all lives like their own bill would if it were law.

So why won't they cooperate with the "safe way" prolife lawmakers, voting for each other's bills so both may be passed? Because that would be "impure".

This gets crazier, when they don't even have a serious strategy for making anything happen, nor do they even care about developing such a strategy! And when they feel no responsibility for being successful! Because "our duty is to obey; results are God's"! Or "We are not called to be successful, but faithful"!

How many lives is *that* likely to save?! How does that philosophy reconcile with Jesus' promise that if we were faithful we would be moving mountains? They might as well be Democrats, if they are going to vote on prolife bills the same way Democrats do!

Matthew 21:28-31 teaches us to care about results. Are some lives likely to be saved from a particular law? If so, don't oppose the bill because it doesn't save *all* lives! Especially when you don't have a political strategy for getting a law passed, without which it will save no lives!

This email expects men to be greater saviours than God! Not even God saves *everyone* from Hell! (Even Universalists admit that many people go to Hell before God brings them to Heaven.) But that didn't stop Jesus from dying for us, to save *some* of us!

The email said:

> "Some lives will be saved," the argument is made. That remains to be seen. ...Many oppose personhood bills because they worry that the courts will overturn them, but many of these regulatory bills get overturned, too. If we'd start trying to protect all the threatened children, instead of trying to legalize circumstances in which they may be killed, or designating an age at which they may be killed, then maybe we've have a law worth defying the feds over, a law God would bless.

There is no "remains to be seen" about it. No one can seriously look at the evidence and deny that abortion restrictions depress the abortion rate measurably, just as sidewalk counselling depresses abortions measurably without stopping all abortions. Restrictions in laws also keep the horror of abortion in the headlines, and mitigate society's stamp of approval on the infanticide. By contrast, at least some Personhood leaders have no vision for translating state Personhood laws into any impact on courts whatsoever. They think Webster ruled that state Personhood laws are irrelevant.

Nevertheless there are real legal problems with some of the features of prolife laws listed in this email.

"Undue Burden". The "undue burden" was created in Casey, in which a dissent said it was "not built to last" because it has no clear meaning that is even respected, as a legal standard, by the whole Court. So why, 20 years later, do we still think we

have to bow to this made-up standard and make exemptions from our restrictions when someone thinks they create some undefined "undue burden"? Isn't this worth a robust challenge?

"Re-affirming Roe." We have to do a bit of guessing to imagine what the writer means by this. Perhaps this means the kind of willingness to subject personhood reality to the whims of SCOTUS, as Missouri did in its preamble that was reviewed by Webster. Certainly this is a way to keep a laws "safe" from courts. It was probably inspired by way too much fear of Doe v. Israel, whose characterization of Roe went way beyond Roe. (See analysis at www.Saltshaker.US/SLIC/AUL&Opportunity..pdf.)

But Missouri's concession crippled its law's glorious opportunity to force SCOTUS to reconsider legal abortion, according to a concurrence by O'Conner. (See FAQ #8.)

Restrictions, Exceptions. The email is unkind to characterize sanitation requirements as only for the benefit of murdering mothers. They make abortion more expensive, with the goal of closing the bloody businesses.

Exceptions like rape and incest are obviously wrong, Biblically, *as an ultimate, ideal goal*. (As an accommodation to the best which the people will tolerate, compare them with 1 Samuel 8, or with any of the imperfect political leaders in the Bible whom God authorized.)

Obviously the only reason most prolifers tolerate them is a calculation that the public will support saving the remaining 98% scheduled for slaughter, but not these 2%.

Of course such calculations are subject to human error. Perhaps the public will be *more* likely to support saving all, if they see us standing by the pure bill and supporting it with the facts we know.

But the point of the Personhood email is that such a calculation ought never be made. If it be so that we can save the 98% but not the 100%, we should save no one.

> Think about this: Should we "do evil that good may come"? ... Would you dismember and kill one Downs Syndrome baby in order to save others from dying?

"Do evil that good may come" is from Romans 3:8. The scenario is someone reasoning that we ought to be as wicked as we can be because that will make God look that more righteous by contrast! Obviously that is as wicked as it is dumb.

But how can anyone think it evil to save 98% of the babies being led away to slaughter, whom Proverbs 24:10-12 commands us to save? This passage warns that if we make excuses for not doing this duty, God knows better, because He sees our hearts. Doesn't "we won't save any because we can't save all" sound like such an excuse? Won't God see through it?

The only way prolifers would be complicit in evil for supporting these exceptions would be if there were an opportunity to save all, which prolifers rejected. But when soldiers go to war and finally win, no one accuses them because they failed to save the civilians cruelly slaughtered by the enemy before the soldiers could arrive. No one accuses heroes for not stopping all the rest of the evil in the world. That's crazy talk.

Nor does it square with the verses quoted already in this section, and I can't imagine the 2% "honored" by this reasoning will thank us for the honor, either, when we meet them in Heaven.

The email quotes:

> ... "He that keeps the whole law and offends in one point is guilty of all" (James 2:10). His law says "Thou shalt not kill", not "Kill this baby, but not this baby." Thou shalt not kill!

To not save all is not the same as to kill some! That's crazy talk. God does not judge *us* for the evil that *others* do, but only for what evil we do, or could have prevented. Jeremiah 31:29-30.

In Luke 19:12-27, ten servants (employees) were given one "pound" each, presumably of silver or gold. When the master (boss) returned, one servant had turned his one into ten. Another into five. Jesus did not judge the one with five, "you wicked servant! You could have earned ten, and you only earned five!" Jesus knows we have to work with human beings as imperfect as ourselves, who will not always pay us ten.

> ... We can enter the Promised Land of "liberty and justice for all." "It is not the will of your Father in heaven that one of these children should perish", and "if we ask anything in His name, believing we have received it, we will

have it." Will you pray and believe with us? Will you help us?

Join our cause. Don't try to regulate the killing. Be an abortion abolitionist.

Except for the "don't try to [reduce] the killing", I agree, and I propose this strategy: support whatever is the most good that any group of humans - whether lawmakers, prolife leaders, voters, or pastors - are willing to tolerate. Cooperate with other prolifers, and maybe they will cooperate back.

But for any fellow abortion abolitionists out there, whose hearts ache to stop ALL abortions, without waiting until 2050 as AUL urges but within a year, study this No Greener Light strategy. If it's wrong, explain it to me, Ezekiel 3:18, so I can find something more productive to do. But if it's right, get behind it and help me stop abortion. Don't let your reason for ignoring this opportunity be that you didn't have time to study it! Especially not if you want to honor and save all unborn babies and do not want to face God's judgment for letting babies die whom you could have saved.

12. Even if courts admit Roe's "collapse", hasn't Roe's reasoning already been displaced with other rationales, so that abortion will remain legal?

Answer summary: As Justice Rehnquist said it, new rationales "hang on the outer shell of Roe." Part of Roe has been displaced, but the "collapse" clause remains obvious: if babies of humans are humans, then "of course" states have a 14th Amendment obligation to protect them.

Clarke Forsythe, president of Americans United for Life (AUL), says we should not bring any direct challenge to Roe before we have a prolife majority on the Supreme Court, which will not be before 2050, because a pro-death majority would simply replace Roe's rationale with one of the other Roe-replacement-wannabes waiting in line, and abortion would remain legal even longer.

This section reviews several of the wannabe replacements, to show that none of them can survive Roe's "collapse".

Forsythe was shown a summary of this No Greener Light initiative and he wrote a short analysis of it. He gives several other reasons why (1) we should not directly challenge legal abortion in this generation, (2) courts will never acknowledge unborn "personhood", and (3) "there is no 'collapse clause' in Roe v. Wade that will be automatically 'triggered' by some future event." For a detailed response to that and several other AUL articles, see www.Saltshaker.US/SLIC/AUL &Opportunity.pdf.

The Roe-replacement-wannabes are:

(Rationales that SCOTUS has already suggested:)

1. Should abortion remain legal, even after legal personhood of the unborn is established, because women have come to "rely" on murder?

2. We have to keep abortion legal because it is impossible to know whether the unborn or the elderly are human beings.

3. We need to keep abortion legal because the unborn are not human, as proved by how cruelly we mistreat them.

(Rationales by others:)

4. Should we keep the killing of unborn human beings legal because they are essentially kidnapping mothers?

5. Should we keep abortion legal because unborn babies are like thieves guilt of breaking and entering?

6. Must we keep abortion legal because the Constitution can't require a mother to nurture her baby nine months even if her child is a human being – a "person"?

7. Shall we keep abortion legal, while keeping murder of ourselves illegal, because there is such a clear line between us and them?

8. Should we keep abortion legal and expand it to children, since the personhood of children is almost as much in doubt?

9. Shouldn't we allow abortion of handicapped babies who surely would rather not live?

10. Shouldn't we oppose all laws whose origins are exclusively Christian?

"Indeed, our decision in United States v. Vuitch, 402 U.S. 62 (1971), inferentially is to the same effect, for we would not have indulged in statutory interpretation favorable

to abortion in specified circumstances if the necessary consequence was the

termination of life entitled to Fourteenth Amendment protection." – Roe v. Wade

Even before Roe's "collapse", the Supreme Court has long since abandoned the status of abortion as "constitutionally protected". Thus no obstacle remains to according Appellant the protection of the Necessity Defense as classically defined.

(4) All state statutory and case law, therefore, which still fails to treat abortion as "unlawful force", violates the 14th Amendment. This court is therefore obligated by the 14th Amendment to treat the abortions prevented by appellant as "unlawful force", to overturn all statutory laws to the contrary, and to accord appellant the availability of the Defense of Others.

In oral arguments in Roe v. Wade, Justice Potter Stewart asked Sarah Weddington "If it were established that an unborn fetus is a person, you would have an almost impossible case here, would you not?" Weddington audibly laughed and acknowledged "I would have a very difficult case." Stewart pursued, "This would be the equivalent to after the child was born...if the mother thought it bothered her health having the child around, she could have it killed. Isn't that correct?" Weddington answered, "That's correct."

This exchange is what presumably promoted Justice Blackmun to write "[If the] suggestion of personhood is established, the case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment."

Since 2004, the "suggestion of personhood" was established by federal law. The 14th Amendment right to life of unborn human beings has been "guaranteed". Abortion has been no longer legal.

These facts can certainly be ignored. They cannot be squarely addressed and still be refuted.

The liberal magazine, Slate, is likewise terrified of a direct challenge to legal abortion coming to the Supreme Court.

> ...As the Rev. Pat Mahoney, director of the Christian Defense Coalition, told CBN news: "We don't have to see a Roe v. Wade overturned in the Supreme Court to end it. … We want to. But if we chip away and chip away, we'll find out that Roe really has no impact. And that's what we are doing."
>
> Gone are the days in which legislatures at least attempted to ensure state regulations conformed to the broadest interpretation of the Roe constraints. The new game lies in expressly violating Roe and Casey, at the state level, in the hopes of either forcing the issue at the Supreme Court or making abortion unobtainable as a matter of fact. Either way, abortion opponents believe they will win—and here pro-abortion rights groups may actually agree.
>
> After Justice Anthony Kennedy's vote in 2007 to uphold the federal ban on so-called "partial birth" abortion...Kennedy

opened the door to a whole raft of state regulations that—under the guise of helping women make smarter choices—in many instances make it all but impossible for them to make choices at all. Since the court hasn't heard an abortion case in the intervening four years, Kennedy's wobbliness in Gonzales v. Carhart has emboldened abortion foes to push their cause even further and frightened those who are pro-abortion rights into being grateful for what they have.

The risk of challenging these clearly unconstitutional laws and then losing at the Supreme Court is evidently so high, according to Terry O'Neill, president of the National Organization for Women, that it's not worth taking. As she explained last week to Rachel Maddow, the fear that Justice Samuel Alito would vote to overturn Roe is so deep that reproductive rights groups may be opting to leave the state bans in place. And, as she conceded in that interview, wherever unconstitutional state abortion bans go unchallenged, they become law.

...Given that public opinion has changed virtually not at all since Roe v. Wade, my guess is still that the Roberts court is as uninterested in overturning the law as its challengers are in forcing the issue. It does not want to be the court that makes abortion illegal, or all-but-illegal, in America. The backlash would be staggering. The conservatives on the court are much happier with the status quo, allowing abortion as a matter of federal law while the states effectively outlaw it as a matter of fact....

http://www.slate.com/id/2291596/ "The Death of Roe v. Wade (Supporters and opponents of abortion seem to agree: It's no longer the law of the land.) By Dahlia Lithwick, Posted Tuesday, April 19, 2011, at 6:49 PM ET

Roe's shattered 'Outer Shell' - alleged uncertainty whether the babies of humans are human – has no replacement

Prolifers will gain nothing if we succeed in Court recognition of Roe's "collapse", only to have the Court turn around and replace Roe with a substitute rationale that continues to sustain legal abortion and the illegality of saving its human victims.

Therefore a direct challenge to Roe must be accompanied by a challenge to Roe's wannabe substitutes. There are enough of them for a comprehensive response to fill a book. Here is an overview.

Is it true that abortion's fragile "legality" must "collapse" along with Roe? Can it be sustained, after Roe's burial, by SCOTUS rationales added after Roe, to Roe's "outer shell"?

> The joint opinion, following its newly minted variation on stare decisis, retains the outer shell of Roe v. Wade, 410 U.S. 113 (1973), but beats a wholesale retreat from the substance of that case. (Rehnquist, joined by White, Scalia, and Thomas, in Planned Parenthood v. Casey, 505 U.S. 833 (1992)

What is Roe's "outer shell"? Can any rationale hanging on it stand alone, without it?

Since it does not appear to be identified anywhere, it must be taken as a metaphor of whatever it is about Roe that keeps abortion legal despite the shifting sands of legal rationales for it.

There is only one skeletal sustaining principle I can think of in Roe, to which a succession of rationales may attach in turn: *alleged uncertainty whether the unborn babies of human mothers are human.*

This alleged uncertainty is articulated in Roe's "collapse" clause where it is explicitly identified as Roe's sustaining principle, in the sense that without it, Roe cannot stand.

This uncertainty as a matter of law cannot still seriously be alleged. Every American legal authority which has taken a position on whether the unborn are "humans" or "persons" has unanimously agreed they are. These authorities include governors and presidents in their proclamations, federal law 18 USC

1841(d), and the 35 state legislatures which have versions of that law.

Against that, not one legal authority in America has yet disagreed. Roe could only say "we don't know". No legal authority has positively asserted that even one unborn baby is *not* a human being.

What Court will be the first? Or, granting that the unborn babies of humans are humans, making their killing murder, will this Court still insist their murder is some kind of "private and personal right", a "sacred choice" with which courts and lawmakers ought not interfere?

Legal recognition that babies of humans are human has become well enough established to make Roe ripe for review.

SCOTUS rationales post-Roe, in defense of abortion's fragile "legality", cannot stand against unrebutted national legal recognition of the fact that all unborn babies of human mothers are human beings and persons. This fact triggers 14th Amendment protection of their Right to Life, just as Roe's "collapse" clause says. Once this "outer shell" of alleged uncertainty who is human "collapses", no rationale attached to it can stand by itself.

Let us be clear that Roe does not merely "collapse". The terms of Roe's "collapse" clause make it clear that Roe becomes unconstitutional, along with every law and court ruling which violates the 14th Amendment by obstructing protection of the Right to Life in the course of protecting abortion's fragile "legality".

1. **Should abortion remain legal, even after legal personhood of the unborn is established, because women have come to "rely" on murder?**

Perhaps someone will argue that the following quote from Planned Parenthood v. Casey explains that whether or not the unborn babies of human mothers are humans, mothers have for two generations relied on the right to murder them in order to advance their careers, so it would simply be too costly to mothers to suddenly punish them for killing the human beings whom they so urgently need to kill.

> The inquiry into reliance counts the cost of a rule's repudiation as it would fall on those who have relied reasonably on the rule's continued application. *[Translation: we can't overlook the heavy cost of outlawing abortion, to mothers who have come to reasonably rely on the legal right to murder their own babies.]* Since the classic case for weighing reliance heavily in favor of following the earlier rule occurs in the commercial context, see Payne v. Tennessee, [505 U.S. 833, 856] supra, at 828, where advance planning of great precision is most obviously a necessity, it is no cause for surprise that some would find no reliance worthy of consideration in support of Roe. *[Translation: since the "reliance interests" principle in the past was applied only to laws that affect business contracts, making it impossible for businessmen to plan business ventures, we shouldn't be surprised that some folks think the principle has no application to mothers' "reliance" on the right to murder.]*
>
> While neither respondents nor their amici in so many words deny that the abortion right invites some reliance prior to its actual exercise, one can readily imagine an argument stressing the dissimilarity of this case to one involving property or contract. *[Translation: Although even prolifers agree women have come to rely on legal abortion, it wouldn't be hard to argue what a stretch it is to give that any legal weight.]* Abortion is customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control, and except on the assumption that no intercourse would have occurred but for Roe's holding, such behavior may appear to justify no reliance claim. *[Translation: The only way you can argue that women rely on Roe is if you can believe Roe is the only reason Americans are promiscuous, which creates the babies which mothers need to kill.]* Even if reliance could be claimed on that unrealistic assumption, the argument might run, any reliance interest would be de minimis. [minimal] This argument would be premised on the hypothesis that reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.
>
> To eliminate the issue of reliance that easily, however, one would need to limit cognizable reliance to specific instances of sexual activity. But to do this would be simply to refuse to face the fact that, **for two decades of economic and social developments, people**

> **have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.** See, e.g., R. Petchesky, Abortion and Woman's Choice 109, 133, n. 7 (rev. ed. 1990). The Constitution serves human values, and while the effect of reliance on Roe cannot be exactly measured, neither can the certain cost of overruling Roe for people who have ordered their thinking and living around that case be dismissed. [505 U.S. 833, 857]

Americans United for Life summarizes this argument:

> The *Casey* plurality ultimately justified its adherence to *Roe* and *Doe* on the foundation of the "reliance on the availability of abortion in the event that contraception should fail."...The bottom-line rationale of *Casey* is that "reliance interests" in abortion—as a backup to failed contraception—justified retaining the rule of *Roe*. ... The assertions of the plurality opinion in *Casey*, its reliance interests justification, and its "undue burden" standard were adopted by the majority in *Stenberg v. Carhart* in 2000.120 (An argument found at http://www.trolp.org/main_pgs/issues/v10n1/Forsythe.pdf.)

Such reasoning can only escape public ridicule to the extent it remains uncertain whether unborn babies of human mothers are humans. This issue, upon which abortion's legality hangs, has still not been addressed by any court.

What *Roe* said about a balance between the mother's right to *privacy* alleged in *Roe*, and the baby's right to life, logically and obviously applies equally to a balance between the mother's *"reliance interests"* alleged in *Casey*, and the baby's right to life. Here is *Roe's* statement:

> As we have intimated above, it is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly. (Roe v. Wade)

Now that the humanity of the unborn is established as a matter of undisputed, unchallenged, unanimous legal recognition, it is impossible to credibly argue that we need to be able to rob or enslave any group of American humans if it will benefit us, once we "have come to rely on" oppressing them "in order to achieve...equality". If the legal right to rob or enslave any human group is repugnant to American sensibilities, how much more the legal right to brutally kill them?

No doubt it will be hard for some mothers to break their habit of murdering human beings even after learning it is legally "established" that that is what they had been doing. But most Americans find it unthinkable to knowingly murder. Most Americans, upon learning that the right to kill human beings has no legal justification and in fact is murder, will back away from any thought of such behavior as readily as a child backs away from pouring pop in the fish tank upon learning that it kills a living goldfish.

Legal abortion, after legal establishment of the humanity of those aborted, is legally unthinkable under any pretense, because of its unacceptable cost: reversal of our 14th Amendment, and of our laws against murder.

The Casey reasoning was only possible before federal law legally established the fact that all unborn babies are human beings. The "reliance interests" of mothers to kill can't stand against federal establishment of the fact that those whom mothers "rely" on killing are human beings with full 14th Amendment Rights to Life. Fortunately no Court has said such a thing.

Were that indeed to become the Court's formal position, let the courts say so! Let them put in writing that even though the unborn are human beings, so that aborting them is infanticide, mothers have developed such a habit of murdering them that the blood letting must go on! Such a ruling would very likely cause its injustice and error to become so apparent to everyone, that political solutions would find more support.

Americans will no more tolerate the doctrine that getting into the habit of depriving others of fundamental rights creates a Constitutional Right to legal protection while you do so, than they will

tolerate a ruling that America must again permit slavery. Again, to set aside the 14th Amendment outlawing of murder, would definitely set aside its outlawing of slavery. But if I am wrong – if Americans are truly ready to legalize murder and slavery again – Ezekiel 3:18-20 still requires that Americans be clearly informed that that is where they are going.

Now that federal law has legally recognized the fact that the unborn are just as human as blacks, a northern state that knowingly, deliberately, consciously permits, protects, and even funds abortion can no more be tolerated than a southern state whose laws protect slave owners.

2. We have to keep abortion legal because it is impossible to know whether the unborn or the elderly are human beings.

> There is, of course, no way to determine [whether]...the human fetus is in some critical sense merely potentially 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, dissent by Scalia, White, Thomas.)

This fatalistic view that there is "no way to determine" who is human "as a legal matter" undoubtedly did not foresee 18 U.S.C. 1841(d), since it was articulated before the first efforts to insert Personhood language into the U.S. Code.

But for the sake of argument let's suppose the argument fails, that 18 U.S.C. 1841(d) has resolved Roe's alleged uncertainty about unborn humanity, and instead precedents go out that indeed it *is* impossible to know whether the unborn or the elderly are human beings. That excuse for such critical ignorance would just as easily stretch to include Blacks, Jews, Christians, or "illegals", and return us to the days of slavery, so long as the majority within a state vote for it.

This is not so far fetched in the case of "illegals", where there is a significant movement in Congress and in conservative media to redefine who is under the "jurisdiction" of state laws, whom the 14th Amendment protects from slavery, from who can be arrested by state police, to who has some sort of undefined "allegiance" to America as judged by people who generally have never met those they judge. No one has recommended enslaving them yet, fortunately, but that potential would be the direct legal effect of that redefinition.

There can be no firmer "establishment" of the humanity/personhood of the unborn, than the unanimous, unrebutted consensus all of America's legal authorities who have taken a position on it. The doctrine that it is "impossible to know" who is human "as a legal matter" must be driven out of our legal discourse, where it threatens all our freedoms.

Roe acknowledged the 14th Amendment Right to Life of all human beings, at least with lip service. Many believe that through Roe's alleged uncertainty about who is human, judicial disregard of human life has become *implicit*. To whatever extent that may be so, *we cannot allow judicial disregard of human life to become explicit.*

3. We need to keep abortion legal because the unborn are not human, as proved by how cruelly we mistreat them.

What if someone argues that lack of protection of a group of humans proves they are not, in fact, humans after all? That is very close to what Roe v. Wade argued, and a related argument was offered by the ACLU and the National Abortion Federation in their joint Amicus which they submitted into the record of the Scott Roeder trial on its fourth day.

Roe argued, "In short, the unborn have never been recognized in the law as persons in the whole sense."

One example of Roe's "evidence" was that Texas' law criminalizing abortion had an exception when the pregnancy threatened the life of the mother.

> When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. [There is always at least an exception] for the purpose of saving the life of the mother.... But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the ... exception appear to be out of line with the Amendment's

command?" (Roe v. Wade, Footnote 54 of the Opinion)

Not that striking the exception for the "life of the mother" would make a law against abortion court-proof. As justice Rehnquist pointed out,

> If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in Williamson, supra. (Dissent by Rehnquist, section II)

It is hard to be sure whether to take Blackmun's logic seriously, or as some kind of sarcasm, in view of the eminent sense which the "life of the mother" exception makes. Our Necessity Defense barely *allows* a hero to save others, typically at considerable risk to his own freedom if not to his life; we have no law which *requires* people to be life-saving heroes. We admire parents who put themselves in harm's way for their children. We are not about to require it as a matter of law!

Another example of Blackmun's evidence against considering unborn babies "persons" is that penalties against mothers who abort are historically lighter than penalties for murdering adults. It does not overstate the strangeness of his argument to say he literally argues that legal mistreatment of a group of people casts doubt on whether they are human.

We must drive out any suggestion that after a group of people are legally recognized as human beings, the denial of their rights by unconstitutional laws becomes contrary evidence, that they do not turn out to be humans after all. We can't deny fundamental rights to people, and then take that mistreatment as proof that they are not people after all so we are free to enslave or kill them.

ALTERNATIVES TO SCOTUS RATIONALES

A number of analogies have arisen in the veritable cottage industry of Roe replacement wannabes, offering to supplant Roe's rationales when they fall, in order to keep abortion's fragile "legality" on life support.

Care must be taken before using an analogy as the basis for obstructing the 14th Amendment Right to Life of millions of unborn U.S. citizens, who are called "posterity" by the Constitution's Preamble. Care must be taken that both legs of the analogy, the illustration and the reality, at least match. Otherwise law limps along, as described in Proverbs 26:7 "The legs of the lame are not equal: so is a parable in the mouth of fools."

4. **Should we keep the killing of unborn human beings legal because they are kidnapping mothers?**

Judith Jarvis Thomson wrote *"A Defense of Abortion"*. She published this in 1971, justifying infant murder before it was cool. This summary is taken from "Abortion: the Irrepressible Conflict" by Eric Rudolph.

> ...M.I.T. Philosophy Professor Judith Jarvis Thomson['s] "A Defense of Abortion" is probably the most talked about pro-abortion essay. Using a series of examples, Thomson insists that a woman has an unqualified right to an abortion, even if the fetus is a human being. ...Because even if a person, the fetus has no right to use a woman's body without her consent. To make her argument, Thomson asks you to imagine waking up in a hospital back-to-back with a famous violinist, who has a fatal kidney ailment. Because you are the only one with a matching blood type, the Society of Music Lovers has kidnapped you and hooked you up to the famous fiddler to "extract the poisons from his blood." The hospital director tells you it will be another nine months before the violinist's kidneys are in good shape and they can unhook you. Even though it was immoral for the Society of Music Lovers to kidnap you and put you in this predicament, unhooking you, the hospital director says, would be doubly immoral, because it would kill the violinist. *Judith Jarvis Thomson, "A Defense of Abortion," in <u>The Abortion Controversy: Twenty-Five Years After Roe v. Wade,</u> (Belmont, CA: Wadsworth Publishing, 1998) Poijman And Beckwith ppl. 117-118*

The first problem with this parable is that mothers are not kidnapped into having babies. The analogy should have begun with you volunteering to hook yourself to the violinist, in return for the most exhilarating pleasure as you are being hooked up.

Even in the case of rape or incest, the analogy should emphasize that the violinist was an unwilling,

unwitting participant in the scheme. The baby is as innocent as the violinist. If anyone merits retribution, it would not be the baby.

Second, the parable leaves out the consolation prize of the 9 months' "captivity": the sweetest music imaginable! Babies are even more adorable than violinists! Now if the analogy had featured a trumpet player, it would have been a different matter. But it is too late now to mend mistakes: we are stuck with a violinist, and no violinist is pretty, compared with a baby. Unless of course it is a baby violinist. Babies cry and wet, but they also smile smiles of purer joy than any adult can comprehend, reminding young adults newly free from parents and from the overwhelming influence of peers in school, how to love. How to really love. How to glimpse Heaven.

Calling it "captivity" brings us to the third problem. Mothers do not lose their freedom just because they are pregnant. Most pregnancies cause almost no curtailment of activity for the whole nine months. In those few pregnancies where doctors advise mothers to remain in bed much of the time or risk losing the baby, it remains the mother's choice whether to follow that advice, partly because any doctor's analysis of the precise limits to mom's activities which are safe for the baby is a guess: no one would accuse the mother of killing the baby if she had to get up and work. And even in those cases, the mother probably won't even know she is pregnant for several weeks, and at about 7 months the child could be surgically removed and still live, with less medical risk to the mother, not to mention the child, than that of an abortion in a clinic which courts have protected from modern medical standards - so even the worst case would probably involve 6 months of voluntary bed rest.

Fourth, to keep Thompson's analogy honest, we cannot merely detach the violinist and walk away, leaving him at the mercy of God to perhaps heal him. No, we must chop the violinist with our machete into tiny pieces, and then lay the pieces on a table and count them to be sure we did not miss any. And should our plans be interrupted by the violinist's miraculous healing before we can take our first slice, or the baby be almost completely delivered alive, we must not let him walk away unscathed, but must strap him down and finish our chopping.

When a man is dying and it is time to give up on the tubes and monitors, we just withdraw them as gently as we can and let the man die as peacefully as we can. We don't rip out the plastic like we are pulling kittens out of a house fire, and then go in with machetes, acids, and poison gas to dispatch the poor slob as brutally as we can! American law calls that "cruel and unusual punishment". How dare this Thomson woman compare very real, very prevalent, and very brutal infanticide with the peaceful separation of the mythical violinist!

Fifth, the violinist is a "parasite" in a true sense, which no baby can be. God gave me my kidney for my sole use. I *may choose* to lend it out or give it away, but no one would imagine an *obligation* to encumber my body in this way. By contrast, the baby is using an organ for which the mother has absolutely no personal The organs the baby is using were made specifically for another person besides the woman to use. The baby is not "out of place" in her body. He is exactly where unborn babies belong. A woman's body, in a way quite unlike a man's body, is not "hers". It is specifically engineered to act as temporary life support for the exact kind of being that is threatened by an abortion. She sees her kidneys as thus "mine" and "for me" in a way that her uterus is not.

Sixth, if the duty of a mother to nourish the Gift of God whom she has received into her Heaven-designed life support system cannot be presumed, what duty of any mother can be presumed? What duty is greater? Can the care of a born toddler be half as urgent, when the toddler is so much more capable of living safely with others? Can faithfulness to a husband be half as urgent, when her faithlessness will not cause her husband to die? Can financial responsibility seem a fraction as important? Can obedience to laws and court rulings be said to be one speck of her responsibility for her baby?

No! Telling a mother she owes no responsibility to nourish the life cradled within her is telling her she owes no responsibility to anyone for anything! She may, with no pang of conscience, no legitimate legal consequences, kill her toddler, her husband, her creditors, and her judge! It is a legal theory of Anarchy!

Seventh, the violinist is not "mine" in any sense, but a baby is "mine" to its mother, genetically, built from the very substance of her own body and blood. We owe a higher level of responsibility towards what we call "mine", than to a stranger. Our baby is "mine" to protect, not as chattel. The child of rape is just as much "mine"

Eighth, in the case of rape, the child of rape is the good that God draws out of evil. To destroy the child is to reject the incredible mercy and generosity God has shown. Far from showing that God either does not love, or is not powerful, the child of rape is the whisper of God, "Look how powerful and good I am! Even out of this supreme horror for you, dear woman, I can create a dazzling miracle of joy: another human being, whole and entire, made in my likeness, made to praise and glorify and love and be loved by Me, who will console you for your suffering in his conception!" Rape victims who bear their babies are offered the gift of healing through them. I claim that they would be healed by them in every case with the proper support. Indeed, it is the more horrible when a rapist is sterile, so that the abuse is "for nothing".

Ninth, in healthy societies, even during the pregnancy, the miracle of motherhood is universally celebrated as a source of joy for the mother, the siblings, the father, the extended family, the neighbors, and the community, as expressed in customs like "Baby Showers", passing out cigars (maybe that's illegal now; I haven't kept track), "It's a boy/girl!" balloons, infant dedication ceremonies in churches, and the "new baby" section of Hallmark Card displays. What sickness, what ingratitude, can spin this Gift from Heaven into "kidnapping" and imprisonment?

Much in our culture establishes this joy as beginning during pregnancy. "Baby showers" are celebrations, not times of mourning – not wakes. Broad happy smiles are often seen on expectant mothers as they announce their Gift from God to friends. Mothers prepare by reading books about how to be the best mother possible. They hold Mozart up to their bellies to begin their child's education early.

The tenth problem with this parable is that, personal notions of morality aside, even in so bizarre a situation as Thomson imagines, you might still be prosecuted for murdering the violinist by unhooking yourself. Most state formulations of Necessity Defenses would arguably justify hooking you up, and would not justify you then unhooking yourself. Fortunately I have never heard of such a bizarre medical situation, so I don't think we need to suffer nightmares over it.

In fact, the farther American law "evolves" away from God's Laws in which it is an unthinkable crime to destroy your own baby, Jeremiah 19:5, the *less* legal right you will have to unhook yourself. Under a world government which socialists like Thomson dream about, the secret police would hook you up to the fiddler/dictator and no one would complain. (Publicly.) Instead, you would be publicly admired, and counted as fortunate to be so valuable to the State! "The State" would as easily hook you up to anyone else, for its own alleged best interests, calculating your value by your benefit to it.

The same Laws of God which protect the unborn, protect the born. History is full of states abandoning God's Laws, after which states have no restraint against enslaving and murdering whomever it pleases, whether you are a baby or a violinist donor.

"Duty to Assist" laws, and mothers' responsibilities

The loss of freedom a mother experiences through pregnancy is infinitesimal compared to the kidnap victim in Thomson's analogy; but is even an hour's loss of freedom an unreasonable expectation of a mother? In other words, is there any precedent in law for forcing anyone, in any situation, to be a Good Samaritan?

Yes, according to "Good Samaritan" laws:

> Good Samaritan statutes in the states of Minnesota and Vermont do require a person at the scene of an emergency to provide reasonable assistance to a person in need. This assistance may be to call 9-1-1. Violation of the duty-to-assist subdivision is a petty misdemeanor in Minnesota and may warrant a fine of up to $100 in Vermont. At least five other states, including California and Nevada, have seriously considered adding duty-to-assist subdivisions to their good Samaritan statutes. (Wikipedia, under "Good Samaritan")

A "Duty to Assist" is most clear when one's actions have contributed to the dependency which another now has upon you. For example, hitting and injuring someone with your car will not send you to jail if you can prove you could not help it; but if you "hit and run" in any state, the penalties will be severe!

Of course, in 98% of cases, the mother's participation in conception is voluntary. Her actions have contributed to the dependency of her baby.

American laws - indeed, the laws of what we call "civilization" - are full of "duties to assist". But especially in America.

If we have a retail store, we don't have a legal right to pick and choose which customers we want to serve, refusing to serve racial groups we don't want.

We can't put up a sign, "Every customer a wanted customer", as a pretext for throwing out customers we don't "want" because of their color, IQ, religion, weight, legal training, looks, etc.

Public school teachers don't have a right to stop teaching students who don't learn fast, or who challenge teacher patience. No principal, no school board, has a legal right to refuse education to any remotely educable child.

Hospitals can't turn away patients based on whims, to let them die because they aren't "wanted". Federal law requires hospital emergency rooms to care even for undocumented immigrants rather than let them die on the hospital doorsteps. Nursing homes can't put residents out on the curb who are not "wanted" any longer.

Landlords can't instantly remove tenants who won't pay, or who even damage property! Landlords must give tenants a reasonable time to find other housing.

No parent has a legal right to simply stop caring for a child because the parent doesn't like the child any longer. Minor child neglect is grounds for removing the child and severing custody, and placing the parent on the Child Abuse Registry which bars that parent from future employment involving children. Neglect that causes injury is grounds for criminal charges that put parents in jail.

Contracts require commitments which must be kept even if a party to the contract no longer "wants" to keep their end of the bargain.

Thomson's logic fails. Our laws simply do not recognize any absolute right not to help those who depend on us. If her logic governed our laws, the same logic would end everyone's responsibility to whoever becomes dependent upon them to be responsible. In no human relationship is a human being more dependent on another human being who has done more to create the dependency, than in childbirth. The bonds of responsibility that bind together what we call "Western Civilization" would dissolve into utter anarchy, if responsibilities less than those of mothers for their unborn babies were stripped of legal support!

We can at least be grateful that she confines her logic to babies, so that it does not take the entire rest of civilization down with the unborn. For now.

5. **Should we keep abortion legal because unborn babies are thieves guilt of breaking and entering?**

Here is another analogy of Judith Jarvis Thompson, again summarized by Eric Rudolph:

> Thomson says even where sex was consensual, the child's right to use his mother's body is still dependent on the mother's consent. ...If you opened your window "to let the air in" (had sex for pleasure) and a burglar (baby) climbed in instead, are you obligated to let him stay? What if you "installed burglar bars" (contraception) on your windows and a burglar came through anyway? A mother is no more obligated to let the unwanted child stay in her womb than the homeowner is obligated to let the burglar stay in his home. It may be "indecent and self centered" to deny the child the use of her body "for one hour," but it's not "unjust." Ibid, p. 129-130. "It would be indecent in the woman to request an abortion, and indecent in a doctor to perform it, if a fetus is in her seventh month, and she wants the abortion just to avoid the nuisance of postponing a trip abroad." Such an abortion would be immoral. The state, however, has no legal basis to interfere. Rudolph, Ibid,, p. 130.

To make this analogy honest, the "burglar bars" need to be made out of tissue, to reflect the well known failure rate of contraception, and there needs to be a vacuum in our bedroom so powerful that innocent, unwilling, unwitting babies minding their own business outside are sucked in without any action on their part.

What callousness, to compare a Messenger from Heaven with a "burglar"! What anarchy, to see no responsibility to honor even humanity's most sacred of trusts!

Thomson acknowledges that this logic applies as well after birth! As it inevitably must.

But it really applies far longer than that! It applies to an adult guest in your home. Thomson would have us free to boot out a guest into the cold, even if the guest is sick and needs hospitalization!

> Orlando Depue was awarded damages after he was literally kicked out in the cold. It was a cold January night in Minnesota - we're talking Eskimo weather. Depue had eaten dinner with a couple, the Flateus. Feeling sick

> after the dinner, he asked the couple if he could sleep over. But the Flateus refused to give him board and told him to leave. Too sick to drive, Depue was forced to sleep in the backseat of his car. In the morning his fingers were popsicles, and later had to be amputated. ...The Court said:... "The law as well as humanity required that he not be exposed in his helpless condition to the merciless elements." [John T. Noonan, "How to Argue About Abortion," in Morality in Practice(Belmont, CA: Wadsworth Publishing, 1998) p. 150] An obligation is assumed once you "understand and appreciate" the conditions of your fellowman, even if he is a stranger. What goes for strangers goes double for family members. (Rudolph, Ibid.)

Thomson's logic applies to a tenant whom you, the landlord, no longer "want", and justifies you breaking the law if you don't "want" to give him time to leave safely.

Thomson's logic justifies a prisoner who no longer "wants" to remain in jail, and thinks he can be free by killing a few guards. Sure, the guards had a "right to life", and it was "immoral" to kill them, but the prisoner was under no "obligation" to permit his body to be "kidnapped" any longer.

How about the husband who no longer "wants" his wife? And who sees no reason to give her time to depart in safety?

How about the guy who doesn't "want" anyone traversing his sidewalk in winter anyway, so what harm is there if he does not shovel it?

How about the guy who WANTS junk in his yard? Or ragweed in his front lawn?

If Thomson is willing to open up a law firm to defend every criminal which her logic justifies, she is going to be busy!

What about a surgeon who, half way through surgery, decides he hates medicine and quits?

Is a man a murderer who refuses to hold out his hand, allowing another man to drown? The facts may be difficult to establish: would the man indeed have been saved? Or was it at least reasonable to have anticipated he would have been? Did the defendant know that? Did the defendant have any better reason, than hatred of the deceased, to not hold out his hand? But to the extent such facts are clear, the defendant is likely to be prosecuted in civil court, if not criminal. But Thomson will at least visit him in jail, if not marry him.

What if the police no longer "want" to protect people in a particular slum? And what if the city council approves that policy, and voters agree?

What if society no longer wants to protect the 14th Amendment fundamental rights of "Illegal Aliens", and votes to sell them into slavery to meet the "legitimate state purpose" of balancing the budget? Or authorizes citizens to enslave any Illegal Alien whom they can find and catch?

What if a state no longer "wants" to be subject to the U.S. Supreme Court?

> We are all little sovereign autonomous entities with no prior social obligation. We dole out rights on a voluntary basis. But we don't owe anybody anything, says Thomson.... Libertarian liberals like Thomson get their current definition of individual liberty from John Stuart Mill. Back in 1859, Mill wrote a book entitled On Liberty. Its purpose was to expound the principle that "the sole [justification for] interfering with the liberty of action of any [citizen] is self protection... The only purpose for which power can be exercised over any member of a civilized community, against his will, is to prevent harm to others. ...the conduct from which it is desired to deter him must be calculated [by him] to produce evil to someone else. The only part of the conduct of anyone, for which he is amenable to society, is to which concerns others. In the part which concerns himself, his independence is, of right, absolute. Over himself, over his body and mind, the individual is sovereign." (Rudolph, p. 77, 75, characterizing Thomson. His quote from Mill comes from John Stuart Mill, Autobiography,(Penguin Classics, 1989) pp. 66-69)

I would not recommend any deference to this policy to any Supreme Court justice who would like his rulings to be obeyed! In addition to all the previously mentioned disregard of laws Thomson's legal principles would cause, courts would no longer be able to compel witnesses to testify! Subpoenas would be ignored! Because Thomson thinks we have no responsibility to help anyone who depends on us, so long as we do not actively hurt them. Setting a

murderer free to resume his spree, by refusing to testify against him, is not *actively* hurting anybody!

In fact, if a woman is free to hire a butcher to carve up her own flesh and blood, because she has no obligation to help her own flesh and blood, how much less does a witness have a moral obligation to obey a subpoena to help strangers, which in a notorious case or where defendants are threatening, is dreaded more than the birth pangs of ten babies?!

My recommendation to the Supreme Court is that if Thomson ever wants to go to law school and apply to your bar, reject her! She is going to be trouble!

This reasoning is as applicable to aborting a nation's Rule of Law as it is to aborting a Gift from God! Our "rule of law" means our American legal principle that laws are applied to everybody equally. No lawmaker, and no voting majority, is exempt from the laws imposed on a minority. Even if the minority is not yet born. "Rule of law" prohibits laws protecting dismemberment of a sixth of the population, from which voters, lawmakers and judges are exempt.

In American law, the Rule of Law is most succinctly encapsulated in our 14th Amendment: "No State shall ...deny to any person within its jurisdiction the equal protection of the laws."

The model for that was God's principle that a nation must "have one manner of law, as well for the stranger [immigrant], as for one of your own country", Leviticus 24:22

Thomson knows babies are human beings with a Right to Life. She does not dispute babies are made in the Image of God.

It is irrational for anyone with this knowledge to say mothers can butcher their babies rather than wait until the baby can depart in peace and safety, because mothers have a sovereign choice whether to help another whose life depends on her help; but then to say it is unlawful for a nursing home to stab Grandma to death or put her out on the street in December, because the nursing home no longer "wants" her and does not want to wait until another home, or charity, can take her in peace and safety!

It is irrational to say a mother has no responsibility towards her most sacred obligation and occasion for joy, and then to say any other citizen has any responsibility whatsoever towards infinitely lesser societal obligations which occasion far less joy!

It is irrational for anyone who knows babies are human beings to believe in both a Right to Abortion, and the Rule of Law. Both because Thomson's reasoning undermines obedience to any law defining our responsibilities towards each other, and because Rule of Law, by definition, does not impose burdens upon one group of human beings, such as the unborn, from which other groups are exempt. All of us were residents in our mothers' wombs: we lay upon the unborn burdens we are not willing to touch with one of our fingers, Luke 11:46, if we deprive them of the legal protection from maternal responsibility which we insist was properly binding upon our own mothers.

6. **Must we keep abortion legal because the Constitution can't require a mother to nurture her baby nine months even if her child is a human being – a "person"?**

Lawrence Tribe is supposed to be real smart. He is Professor of Constitutional Law at Harvard Law School. He is a frequent guest on network television and National Public Radio. How do I know? Says so, on the back of his book, "Abortion: The Clash of Absolutes". Norton & Company, 1992.

But look how he offers to solve the Infanticide madness:

> ...perhaps the Supreme Court's opinion in Roe, by gratuitously insisting that the fetus cannot be deemed a "person," needlessly insulted and alienated those for whom the view that the fetus is a person represents a fundamental article of faith or a bedrock personal commitment. Perhaps, as Yale Law School Dean Guido calabresi has suggested, the Roe opinion for no good reason said to a large and politically active group, "[y]our metaphysics are not part of our Constitution." The Court could instead have said: Even if the fetus is a person, our Constitution forbids compelling a woman to carry it for nine months and become a mother. (p. 135)

What? "Even if the fetus is a person", a mother can slaughter her infant limb from limb? That's a *solution?*

Let's dodge the Straw Men here. The mother who doesn't want to be "burdened" with a Gift from God has an alternative to brutally torturing him to death: when the baby is big enough to show very much, and cause very much discomfort, the baby will be big enough to be delivered safely and grow to maturity, safely, in a maternity ward, until the baby

can go home to a loving adoptive family. It may be an expensive way to do it, and it isn't the best for the health of the baby, but it's a lot healthier than tearing him limb from limb, and thousands of parents are in line for the opportunity to pay all those bills in return for their own Gift from God!

Tribe imagines he can solve the world's problems by authorizing the slaughter of legally recognized Human Beings "even if the fetus, no less than Judith Thomson's violinist, is regarded as a person"!

Tribe tells how the famous Infanticidist Kate Michelman, in 1970, at 33, was pregnant with her 4th child when her husband left her for another woman. No car, no credit because she hadn't worked, no child support because she didn't know where he was, her only choice was to murder her fourth, in order to have a shot at providing for the other three. Tribe overlooks the Adoption Option: instead of going deeper in debt to hire a hit man, she could have found adoptive parents who would have paid her bills with a handsome bonus that would have helped her other children!

Why is it that resisting murder never seems to enter the minds of these people, as they go over their options?

7. Shall we keep abortion legal, while keeping murder of ourselves illegal, because there is such a clear line between us and them?

The myth that there is a clear line of humanity distinguishing us adults from our unborn offspring is the same charade slave owners once played with Blacks.

It is funny to follow **Mary Ann Warren's** creation of criteria of "personhood" by which unborn babies are not "human" or "persons", but she is.

She wrote "On the Moral and Legal Status of Abortion". Here is her best shot:

> (1) Consciousness (of objects and events, external and internal to the being, and the capacity to feel pain);
>
> (2) reasoning (the developed capacity to solve new and relatively complex problems);
>
> (3) self-motivated activity (activity that is relatively independent of either genetic or direct external control);
>
> (4) the capacity to communicate, by whatever means, messages of indefinite variety of types, that is not just with an indefinite number of possible contexts, but of many possible topics;
>
> (5) the presence of self-concepts, self-awareness, either individual or racial, or both. Mary Ann Warren, "On the Moral and Legal Status of Abortion," in The Ethics of Abortion,(New York: Prometheus Books, 2001) Baird and Rosenbaum

Well, #4 (capacity to communicate on many topics) rules out children younger than 4, depending on how fussy you are about clarity of communication. Newborn babies can communicate about many topics with eye movements, smiling, and crying.

Experiments are done with babies in the womb, trying to give them an educational head start. The younger the child, the more perceptive the adults must be to communicate. The Bible records a time when a 6-month unborn baby leaped at the sound of the voice of Jesus' mother in a clear communication of joy. Luke 1:39-44. Will that testimony persuade Mary Ann Warren if we tell her?

#5, the presence of self concepts or self awareness, I can't imagine how you would test that in a child much under 7, and even then it could be difficult. It's one thing to be self aware; it's quite another thing to convince a skeptic that you are! And that is what Warren demands before she relinquishes her right to kill you! If there is a test available to prove a newborn is self aware, I would like to see it prove that a preborn is not!

#3 self-motivated activity free of genetic control; until we can get scientists to agree how much of *adult* behavior is genetic, maybe we better lop off the "free of genetic control" and stick with "self-motivated activity". I would think the attempts of preborns to escape scalpels and suction machines is pretty overwhelming evidence of their capacity for self-motivated activity.

#1, Consciousness is proved by the reactions of preborns to many stimuli; from the suction machine to loving educational information. Ability to feel pain by 20 weeks is clearly enough established to be a threshold in Nebraska law, since 2010, beyond which abortion is a crime – not that anyone has proved that preborns feel no pain before that.

#2, reasoning that can "solve...complex problems" kind of rules out the author.

Had she settled for "ability to *think about* ...relatively complex problems" she might have escaped. But she had to insist on the "ability to *solve* ...relatively complex problems". I think everyone can agree her essay argues against her being human.

Warren criticizes Thomson for allowing that murdering your own baby to avoid postponing a trip might at least be immoral: "...it would not, in itself, be immoral, and therefore it ought to be permitted." Ibid.

Having assumed she has satisfied skeptics that the unborn are not human but she is, she next switches to an analogy that assumes everyone accepts Roe's view of the unborn as merely "potential life". As if there are people who insist on constitutional protection for life before conception which is only "potential", she sets out to refute these fanatics.

Warren's bizarre analogy has space aliens capturing you to clone your body. Is it right for you to escape, when that would keep innumerable people from being created out of you? "...one ACTUAL person's right to liberty outweighs whatever right to life even a hundred thousand POTENTIAL persons have." Ibid.

The contested issue was never whether "potential life" has any constitutional rights. It was always, in Roe's world, whether life in the womb is human or merely "potential". So Warren's analogy is irrelevant to abortion of human beings after conception. So where is such a strange analogy relevant?

Well, perhaps it could justify laws against pimps forcing women into prostitution where pregnancies recur continually. Perhaps it could justify laws against Moslems *forcing* their daughters into marriage. Perhaps it could justify laws against rape.

Oh, wait, we already have those laws.

Warren's analogy doesn't fit much of anything, so it is difficult to imagine how to repair it. The mother would be pregnant by the normal human means, and then the picketers outside Planned Barrenhood were actually space aliens in disguise, who beamed her up as she was headed inside and strapped her down to keep her from killing her own child. That would make a lot more sense. Aliens could provide us a much needed service by doing that.

8. **Should we keep abortion legal and expand it to children, since the personhood of children is almost as much in doubt?**

> **[Michael] Tooley's** definitions of personhood are pretty narrow. He admits that "even newborn humans do not have the capacities in question....it would seem that infanticide during a time interval shortly after birth must be viewed as morally acceptable." Michael Tooley, *"In Defense of Abortion and Infanticide," in* The Ethics of Abortion, *(New York: Prometheus Books, 2001),* [and] Mary Ann Warren - adopt a very narrow definition of personhood, which allows them to deny the unborn child's humanity, and therefore exclude him from legal protections. Their narrow definitions don't hold water though because they end up excluding most of mankind, both born and unborn. *[As reported in "Abortion: The Irrepressible Conflict" by Eric Rudolph.]*

9. Shouldn't we allow abortion of handicapped babies who surely would rather not live?

Surely a handicapped baby does not want to live! Surely he or she would be grateful for assisted suicide! Of course, since the baby is "incompetent" to express his own wishes, the decision must be made by the baby's legal guardian, the mother. Right? To assume, as a matter of law, that a baby would want to live, even with a handicap, is surely "establishing religion" "because it enforces a particular religiously inspired moral choice and lacks a countervailing secular justification".

So argues Edward Rubin for the Vanderbilt Law Review, http://www.vanderbiltlawreview.org/2010/04/assisted-suicide-morality-and-law-why-prohibiting-assisted-suicide-violates-the-establishment-clause/. (He argues for assisted suicide for adults; I applied his argument to abortion.)

Should such an argument ever be raised, here is a response:

10. Shouldn't we oppose all laws whose origins are exclusively Christian?

Reverence for all human life has a "religious motivation". In fact, it has a specifically Christian "religious motivation". Only Judeo-Christianity, of all the world's religions, asserts that God made man in His own image. Genesis 1:27. Other religions worship idols, but Judeo-Christianity directs

our reverence to human life itself. Certainly reverence for human life (as opposed to some kind of "self" obscured by the human body) is not found in Hinduism, which asserts that human life is not worth living, and the goal of a Hindu is to deaden his desire to every good thing on Earth so when he dies he won't have to come back. It is not found in the B'hagavad Gita, where Arjuna is told by Krishna that he must fight and kill even though the other side is largely his own family, because he is a Kshatria, a warrior by birth, and it is his "duty" to do the work of the class into which he was born, and besides killing people doesn't hurt their souls anyway. It just sets them free from their bodies.

Certainly man as "the image of God" is not found in Islam which dehumanizes "disbelievers" as "the worst of men" (Surah 98:6) and Christians and Jews as "apes and pigs". (2:63-66; 5:59-60; 7:166)

And certainly not in Atheism, whose Darwinian and Marxist religious principle is "survival of the fittest", justifying whatever raw lawless power is available.

Only Judeo-Christianity demands "equal protection of the laws", as our 14th Amendment calls it, or "no respect of persons", as the Bible calls it, for society's least influential – as epitomized in the Bible, the orphans, widows, poor, and immigrants ("strangers"). Jesus calls them "the least of these my brethren (brothers)" in Matthew 25:39-46, where He warns that mistreating these "least" is mistreating God, and will send you to Hell. This theology certainly violates Hinduism's "caste system" with its brutal oppression of "untouchables". Or Islam's slaughter of "disbelievers".

The day "religious motivation" becomes grounds for overturning America's laws, respect for human life must disappear. Our "due process" and "equal protection" clauses will wither. What "secular purpose" do they serve?

What will keep us from enslaving "illegals"? Or executing everyone with a life sentence? Or abandoning "unwanted" or orphaned children? Or letting people die whose medical treatments would be expensive?

Will not a wit too dull to see the connection between what reverence for life is left in our laws, and the economic landscape our laws make possible in which brains are free to create, invent, and serve without fear of snipers, government torturers, etc., justify an unlimited central government (dictatorship) as more "efficient"?

What "legitimate state purpose" is served by The Due Process clauses and the Equal Protection clause which ended slavery? Only in retrospect is it clear that peace and freedom are the foundations of national prosperity, but what "legitimate state purpose" does national prosperity serve? Democrats openly argue that "the rich" are a national evil and must be accordingly taxed. Democrats also argue that wealth itself is evil, at least insofar as it is built upon energy consumption whose fumes will destroy our ecosystem in a century or two. The Population Control wing argues that human life itself is an evil, and must be reduced by two thirds to restore Mother Earth's ecosystem. Communists say "the rich" are such a national evil that they must be killed, and their goods confiscated and distributed. What "legitimate state interest" can be asserted in opposition to these philosophies, without resorting to Judeo-Christian reverence for all human life as having equal value? Should not the Due Process and Equal Protection clauses be repealed? Are they not inconsistent with a "secular" legal system? What "legitimate state interest" do they serve?

Why do we need a Constitution? Why do we need courts? Dictators, preferred by atheists, don't need them. Justice just gets in their way. It is too "inefficient".

"Globalists" are a breed of people who do not even think the survival of America as a sovereign, autonomous government is good, but the world will be better under a "world government", or a "New World Order". Against such thinking, who can justify Freedom as a "legitimate state interest" without resort to principles which are exclusively Judeo-Christian?

The "Lemon Test" fails to address these questions.

> ...the *Lemon* test, which provides that a statute is constitutional only if it has a secular purpose, neither advances nor inhibits religion as its primary effect, and does not foster excessive government entanglement with religion." (From Edward Rubin's article)

This "test" does not resolve the issue whether prosperity, freedom, or national security itself are a "legitimate state interest", in opposition to the

prevalent political philosophies and world religions which say they are not.

This "test" does not resolve whether legal values such as giving the right to vote to every adult, or freedom of speech even to criticize either church or state, count as a "secular purpose" even though they are supported by no world religion other than Judeo-Christianity.

> Deuteronomy 1:13 implies that Israel's leaders under Moses were selected by the people; Josephus makes this interpretation explicit. *"[the leaders were] such as the whole multitude have tried, and do approve of, as being good and righteous men". Antiquities of the Jews,* Book 3, Chapter 4, Section 1. An 1828 translator's note adds that this selection followed campaign speeches, and then an election, making Moses' government the first Republic, or representative Democracy. " *This manner of electing the judges and officers of the Israelites by the testimonies [campaign endorsements] and suffrages [votes] of the people, before they were ordained by God, or by Moses, deserves to be carefully noted, because it was the pattern of the like manner of the choice and ordination of bishops, presbyters, and deacons, in the Christian church.*"
>
> "The Works of John Robinson", about 1,000 pages published by the pastor of the "Pilgrims" (specifically, the Separatists) trace the Scriptural origins of the Pilgrim vote given to every man, beginning with the signature of every man on Western Civilization's first instrument of self-government, the 1620 Mayflower Compact. Not only the church members, but all men; not only free men, but servants. And when Elizabeth Warren became head of household in 1627 upon the death of her husband Richard, she was given the vote.
>
> Freedom of Speech to criticize both church and state was recognized as extending even to the right to respectfully criticize leaders of both church and state, creating the first expression of our First Amendment in a thousand years: "[In our Prophesying Service we are] briefly to speak a word of exhortation as God enableth, and ... **questions also about things** delivered, [**preached**] and with them, **even disputations,** as there is occasion, being part, or appurtenances of that exercise. Acts xvii. 2 and xviii. 4. *(Book 3, Chapter 8, "On the Exercise of Prophecy", Argument Tenth.) [We all prophesy to each other so] that things **doubtful** arising in teaching may be **cleared**, things **obscure opened**, things **erroneous** convinced [**refuted**]; and lastly, that as by the beating together of two stones fire appeareth, so may the light of the truth more clearly shine by **disputations, questions, and answers modestly had** and made, and as becomes the church of saints, and work of God.*† Luke ii. 40; iv. 31, 32; Acts xvii. 2; xviii. 24, 26, 28.

It is legally reckless to allow a precedent for overturning a law to proceed one inch, just because it happens to conform with exclusively Judeo-Christian principles to the detriment of competing principles, before examining how much of our laws and constitutions would be left were such a precedent turned loose.

What if it is proved that the very institution of courts of law was established only in the Bible and not in the surrounding governments where kings acted as judges? What if the very concept of "rule of law", or "lex rex" itself – meaning rules equally binding upon everyone from whom not even the lawmakers are exempt, as opposed to "rex lex" where the king is the law, was established by Christians during the Reformation out of their Bible studies and is found in no other world religion?

In that case, any precedent for justifying abortion as constitutionally protected because prohibiting it would violate the Establishment Clause, turned loose, would eventually close down all courts of law and replace our freedoms to vote, speak, and worship, with the form of government which preceded the Bible: dictatorship.

Our "rule of law", applying to everyone equally, came from Ex 12:49, Lev 24:22, Num 15:15-16.

Corroborating witnesses came from Deu 17:6, 19:15, 18:16, 2 Cor 13:1, 1 Ti 5:19, Heb 10:28.

Sequestering witnesses came from Susanah, a 1st to 2nd century BC apocryphal book usually appended to the beginning of Daniel, a history cited in *Virgin Islands v. Edinborough*, 25 F.2d 472, footnote 3. Sequestering witnesses had to be practiced at Jesus'

trial, or the witnesses could not have had such difficulty agreeing. Mark 14:59.

American law has until now favored Biblical legal precedents which not only "disfavor" the legal systems of competing systems like Sharia law, but make criminals of their practitioners. Shall we abandon American law for that reason?

This is not an idle question. A growing number of Muslims in America want their communities, if not all America, to be ruled by Sharia law. If we are afraid to officially discern that American law, regardless of the extent to which it favors Biblical principles over competing systems, is better for America and for Americans than any alternative, we will give it away and our children will read about it only in underground history books whose reading makes them traitors to the state, criminals worthy of torture and death, as it is in many countries in the world today.

Edward Rubin argues that reverence for all human life should be dismissed as "represent[ing] a choice of the traditional morality of higher purposes [than any individual's changing feelings about right and wrong] over the modern morality of self-fulfillment". Such laws should be suspect when "The traditional morality thus favored is specifically Christian".

"Self fulfillment" is the morality of Psychiatry, which in many respects is a state-established religion. (It is given police powers in cases of alleged insanity or child abuse, and in criminal investigations. They are given access to children in school.)

> ***William Daubert, et ux., etc., et al., Petitioners v. Merrell Dow Pharmaceuticals, Inc.***, No. 92-102, 61 LW 4805. This case changed the courtroom definition of a scientific discipline whose practitioners may qualify as "expert witnesses" from whether its articles are published in peer-reviewed journals to whether the findings are testable, saying, "One can sum up all this by saying that the criterion of the scientific status of a theory is its falsifiability, or refutability, or testability." The Court's footnote on that quote was to the book Karl R. Popper, "Conjectures and Refutations (The Growth of Scientific Knowledge)" published by Routledge, London and New York, 1963. In the book, Popper gives psychoanalysis as a non-scientific discipline that is more like religion than science, like astrology compares with astronomy. For my selections from Popper's book, see www.Saltshaker.US/American Issues/ChildAbuse/Popper.htm.

But if "self fulfillment" is a "modern morality" which is a fit foundation for law, how can any law against narcotics be Constitutional? Or smoking, or consensual sex with minors, or children skipping school, or sitting down when the judge enters the courtroom? Or disobeying a court ruling which does not satisfy or "fulfill" a litigant? Where are any bounds to such a legal theory?

Edward Rubin says:

> "...arguments...that...prohibitions on abortion should be struck down because of their religious origins...have foundered on the awkward fact that many laws originate in religious thought.129 No one would argue that we should hold that laws against murder violate the Establishment Clause because the prohibition is found in the Ten Commandments, or that we should declare the prohibition of slavery unconstitutional because it was first advanced by the Quakers and carried forward by evangelical Christians....
>
> "The argument advanced in this Article does not rely on a general claim that laws against assisted suicide have religious origins. Rather, it rests on an analysis that in this society, at this historical time, these laws are based on one particular, specifically religious concept of morality and specifically reject rival concepts of morality. They thus align with one side in an ongoing debate within society and employ the coercive force of the state to impose that side's view upon the other. This is simply not true for laws against murder or slavery."

Edward Rubin thus argues that it's OK to retain those laws supported by all religions; it's just the laws whose origins are exclusively Judeo-Christian which we should jettison. Rubin's ignorance of the exclusively Judeo-Christian origins of most of our laws, institutions, and freedoms is shared by most Jews and Christians, but it is still ignorant.

Moslems own slaves! Moslems justify "honor killings", [ie. if your daughter is raped and pregnant, or worse yet converts to Christianity, you kill her to preserve the family "honor"] conducted by families

and mobs without investigation by police or courts. These "honor killings" are lawful, by Sharia Law. By American law, they are are murders.

Hindus murdered widows as part of their religion until restrained by Christianity! Hindus have a "caste system" by which, in India, especially in rural areas, a huge portion of the population are "untouchables" and treated as badly as slaves. (It exists less in cities, which are more likely to enforce the Indian Constitution's prohibition of the caste system, which exists because of Ghandi, whose autobiography says half his religious inspiration came from Christianity.)

The mass murders and "labor camps" of Atheism's Communism are legend. Only Communism, of the world's despotisms, has slain more adults during its bloody career than Americans have slain their babies. (That doesn't count the unborn babies slain under Communism.) Communist China's slave labor keeps our prices low. Atheism offers no rationale against it, (that has any authority for any other atheist other than the power of one's personal opinion), and much for it.

Slavery, as practiced anywhere outside ancient Israel, is a capital crime by Moses' laws, under which "manstealing" is a capital crime, and the closest to slavery is "bondservice" where someone works a maximum of 6 years to pay off a debt, during which time a permanent injury caused by the master is grounds for immediate release. Prisoners of war could be "enslaved" a maximum of 49 years, and they were kept in the custody of Levites who were in charge of enforcing the laws against cruelty to slaves. Exodus 21:16, 26-27, Leviticus 25

American laws against slavery and murder definitely "are based on one particular, specifically religious concept of morality and specifically reject rival concepts of morality. They thus align with one side in an ongoing debate within society and employ the coercive force of the state to impose that side's view upon the other." If this is to become the basis for repealing American law, out must go our laws against murder and slavery.

Here is the real problem: life *is* sacred, at least in the sense that it is profoundly in our own best interests to treat it so. "Western civilization" as we know it rests on the foundation of this truth which is affirmed exclusively by Judeo-Christian Scriptures. Civilization must inevitably regress into Barbarism to the extent this foundation is discarded. One who seeks to take it, outside the bounds of "due process" laid out in those same Scriptures and reflected fairly accurately in American law, doesn't understand life's purpose, or lacks faith in God to realize it.

It is serious enough when occasional individuals don't understand. But for society to heartily join the ignorance threatens the fabric of society.

This purpose is found in Christianity and nowhere else. Hinduism doesn't teach that life is sacred, but profane, and our purpose is to escape its cycles. But the fact it is not understood outside Christianity does not make it any less true, than the fact that Freedom of Speech, religion, and a vote for all are Biblical principles found nowhere else, makes these institutions unfit for American experience.

Abortion therefore, besides its irreconcilability with current American law, ravages the very foundation of civilization. It has brought America to the brink of collapse, and given enough more time, will inevitably finish her off.

CONCLUSION

But to return to the narrower scope of traditional legal discussion, and to conclude: It is impossible for a "right to privacy", which gives mothers jurisdiction over the lives of unborn babies, to exist in the "penumbra" of the 14th Amendment, once legal recognition is "established" that these babies are "persons", which Roe equates to "recognizably human", requiring 14th Amendment protection of their Right to Life.

This impossibility is declared in Roe's "collapse" clause. The trigger of Roe's "collapse" clause was pulled by 18 U.S.C. 1841(d), and later by KS 21-3452.

Roe, by its own order, has "collapsed". No legal rationale, whether attached by SCOTUS to its "outer shell", or waiting in the philosophical wings, can stand in its place. No matter how far and wide, or how desperately, you cast your net for a Roe substitute, none can stand, except to the extent we as a people allow our Constitution to "collapse", and eventually, with it, civilization.

To the extent our Constitution stands, Roe cannot.

13. What can I do about it? I'm not an expert. Shouldn't I just give experts my money and let them take care of it?

Answer summary: "The experts" won't turn down money, but they need grassroots cerebral support to handle this project. They need the "multitude of counsellors" which Proverbs 15:22 guarantees will cause "purposes" to be "established."

If you are looking at all these facts, requiring all this concentration to absorb and remember, and thinking "that isn't my calling. The experts are taking care of all this. All I need to do is send them a little money", think again.

The experts aren't taking care of this. They are too busy with projects they have already started, to study a new one they haven't heard of.

After all, "the experts" don't just have the task of studying a new issue for themselves. They have to study how to explain it to enough of the people who are so determined not to think about it that they send money to the experts to do their thinking for them, to inspire enough nonthinkers to keep sending money.

A prolifer will look at this Green Light and say "It must not be that simple, or I would have heard it from my leaders." A prolife leader will look at this and say "It must not be that simple, or I would have heard it from my lawyers."

A prolife lawyer will look at this and say "If I am the first lawyer to endorse this, news reporters will come after me with criticisms from law professors who haven't even read my arguments. I will need answers to every possible objection, before I sign my name to it, and the more airtight arguments I present, the less they will be reported, because Reporters from Hell don't like to report that abortion is lawless. Plus there is the principle guiding issues which judges don't like: 'if nobody is saying it, nobody will notice if we ignore it. Therefore it is not legally true.'"

So I send him answers showing that no credible objection to these plain, irrefutable facts is possible. Articles. Briefs. But of course, it takes a lot of time to read and think about all that, and he has to do it pro bono because I have no money to pay him, so it takes a few months before he can get to it, after which time he is unlikely to remember it.

Of course, I might be all wrong. If I am, it would be a blessing if someone would show me where I err, rather than just tell me they are so busy, or they know it can't be true because their leaders aren't saying it.

Is it possible for a "member of the species homo sapiens" to be offered exactly what he has been praying for, for years, and refuse it, because of the trouble it takes to open it up to see if it is real? People even turn down God's offer of Heaven.

The very prolife leaders and Congressmen most intent on getting the 2004 law passed, promised that the law would not undermine legal abortion, although they did not support that promise with any legal reasoning. Why? Did they say that to get Democrat votes? If so it didn't work. During House debate on the law, not one Democrat believed them. See the 2004 Congressional Record of House debate on Laci's Law, with analysis. (http://www.Saltshaker.US/Leach2010/CongressionalRecord.pdf)

In other words, if we ask prolife leaders and Congressmen, who made those promises in 2004, to acknowledge that the 2004 law created the legal green light for state legislatures to criminalize abortion which they promised would never happen, they will have to choose between their reputations and the lives of millions of unborn.

Reputations alone wouldn't be on the line, but also credibility. Prolife politicians throw away the credibility they need to help the unborn in the future, if they admit that they lied in the past.

Fortunately many of them are women, who are allowed to change their minds. They could dismiss their shift by saying that 10 million corpses later, they have had time to reflect on what the Democrats declared, and have concluded the Democrats were right after all.

That might be the hardest thing to admit.

But that will be very difficult since these prolife leaders are the exalted legal experts on the subject, and they insisted the laws would not undermine abortion throughout vigorous debate during

which Democrat legal experts could not more strongly have insisted the 2004 law was a serious threat to legal abortion.

For these reasons, not for legal reasons, any move to proceed through the first Legal Green Light may have to proceed without the involvement of the prolife leaders and Congressmen who made those promises in 2004.

The dilemma is tragically unnecessary. Even if the Congressional Record proves prolife leaders and Congressmen deliberately and monumentally lied in 2004, as my analysis indicates, there is no Biblical reason not to admit it now, and allow millions of lives to be saved now.

In the first place, it wouldn't be that spectacular an admission, since not one Democrat believed the lie back then, as the Congressional Record makes indisputably clear.

In the second place, we're talking about Washington. *It would be a greater scandal for a congressman to have to admit that he was honest.*

In the third place, the Bible agrees with the FBI, the CIA, local crime investigators, prisoners of war, and persecuted Christians, that when you are dealing with evil people who will use your honesty to murder the innocent, lying can be righteous, and telling the truth can be wicked. See www.Saltshaker.US, click "Bible Studies", then "When is it Righteous to Lie?"

The natural human resistance to a "new idea" is so immense, that Stopping Legal Infanticide by Christmas (SLIC) is going to take tremendous organization, volunteer talent, wisdom, and money.

Will you help? Will you contribute money? Time? Will you help with a website? Post news on Twitter or Facebook? Contact prolife lawmakers, leaders, and lawyers?

If you don't act, the messy solution is to present these arguments in a criminal prosecution of violence against an abortionist or his property. The Necessity Defense, found in every state, says an action which normally would be a crime is not, if it prevents a greater harm, like abortion, than the lesser harm that it causes. The 2004 arguments establish that abortion is a legally recognizable great harm.

You say "I'm not called to study legal stuff. I don't understand it." That's disingenuous, if you call yourself "prolife". In any war, when there is a new weapon available, you either master it or die. In this 40-year war, we have a weapon that can end the killng in a year: a law we've had since 2004. And you are comfortable letting it lie unused by anybody? You insist "I don't want to use this newfangled gun. I'm more familiar with a knife"?

The triple whammy that we are really up against.

Adult "members of the species homo sapiens" strongly resist opening up the answer to their own years-long prayers, because God has a way of sending His best stuff by some of His least eminent delivery boys, which makes it take too much faith in what our eyes are telling us to verify whether it is real, while "the whole world" accuses us of "seeing things."

Christians make a calculation about how much righteousness we can sell the world, beyond which trying to sell more will turn the world too firmly against us to accomplish anything.

Christians justify failure with Theologies of Failure like "Duty is ours, results are God's", or "we are not going to compromise with the pure goal of saving all lives, [which we have no strategy for reaching], by supporting the goal of saving some lives, [just because we can]."

Doubting your own eyes when "the whole world" says you are "seeing things". Unfortunately, adult "members of the species homo sapiens" are very slow to believe simple, obvious, irrefutable facts, if they are different than everyone is saying. Or, in other words,

1 Corinthians 3:18 You should not fool yourself. If any of you think that you are wise by this world's standards, you should become a fool [by this world's standards], in order to be really wise. **19** For what this world considers to be wisdom is nonsense in God's sight. As the scripture says, "God traps the wise in their cleverness"; (GNB)

The Politician in all of us. There is a political calculation we all make, which keeps us from moving those mountains Jesus promised.

We restrain our words to what we calculate our audience will tolerate. We compromise between what we know is right – what reality demands, and what we think ignorant people will allow us.

For the sake of accomplishing something rather than nothing, we publicly condemn those who try to sell more, lest our association with them keep us from accomplishing anything.

We assure news reporters we are not "extremists" or "fanatics" like those others. We understand that asking for more than is possible will distract from getting what is possible.

"Moderates" are embarrassed by "fanatics", even though the "fanatics" help them look "moderate" or "mainstream" - without the "fanatics", the "moderates" would be the most "extreme".

It is true that general apathy limits what is realistic for us to ask. To realistically aim for more requires a lot more public involvement and interest.

But it is also true that one way to generate a lot more public involvement is to articulate a much more exciting goal.

Except that too exciting a goal is met with incredulity because it isn't what "everyone" is talking about, and the circle begins anew.

So the usual procedure is for a few people bursting with vision to declare the whole of it, accepting upon themselves labels like "fanatic" or "extremist" from the very people they are trying to help, until over tragic years those voices grow, like the whispers of the crowd in "The Emperor's Clothes", into a mainstream so that people calculate they really can ask for that much.

Unfortunately, this works whether or not the "fanatics" are on the side of truth or of nonsense, because of the tendency of human beings to judge truth not by evidence but by how many proclaim it.

That is why it is difficult to reason with Americans in this generation. One needs true facts and sound logic to avoid being legitimately dismissed, but the soundest reasoning only half interacts with another human being's logic, and half interacts with a calculation he has made.

If a conclusion is "unacceptable", evidence that it is true is irrelevant. As an accusation becomes more vicious, it becomes less relevant whether it is true.

So what is really needed is a fundamental shift in the way Christians reason with one another. Which is even more "controversial" than merely ending legal abortion. Some ideas from Scripture are found at www.Saltshaker.US.

When Christians refuse to acknowledge what is true on the ground that it is thoroughly unacceptable to liars, Christians make a decision to not let their Light shine on darkness.

Theologies of Failure. "Duty is ours; results are God's." - John Quincy Adams.

"We are not called to be successful, but faithful." - Prolifers, especially Third Party supporters where being successful is not even seriously strategized.

Does this mean that whatever we do is the extent of our "duty", and God is obligated to make up the difference between that and whatever actual success requires? Does this mean that we are called to only take some action that strikes us as "pure", without the foggiest concept of or even interest in an actual strategy for success, and having done something "pure", (like blast some less "pure" prolifer), we are done?

Can our "duty" be over, before our Mountain has moved? In the words of James 2:15-18, are we done after we say a prayer, before we have taken whatever action is in our power to take, Proverbs 3:27, towards that for which we prayed?

Political reality v. Reality. "The Emperor's Clothes" (http://www.andersen.sdu.dk/vaerk/hersholt/TheEmperorsNewClothes_e.html) by Hans Christian Andersen wonderfully explains how different these two things are - political reality, versus reality. Read the story to see how cleverly the swindler sells the government, for a very high price, a set of clothes which are so wonderful that only those with pure hearts can even see them. It turns out that no one can see them, but no one dares admit it because first, they don't want to admit they have an impure heart, and second, if they went further and said the whole thing is a fraud and the emperor is parading buck naked, they would have been thrown in the dungeon.

The fraud unravels when it is a child, whom all regard as innocent, who exposes it. Now see the amazing conclusion of the story, and reflect that this story's power is in its true reflection of our fallen human nature:

> But he hasn't got anything on," a little child said.
>
> "Did you ever hear such innocent prattle?" said its father. And one person whispered to another what the child had said, "He hasn't anything on. A child says he hasn't anything on."
>
> "But he hasn't got anything on!" the whole town cried out at last.
>
> The Emperor shivered, for he suspected they were right. But he

> thought, "This procession has got to go on." So he walked more proudly than ever, as his noblemen held high the train that wasn't there at all.

Legal abortion has no clothes. Judges suspect it, a majority of the population thinks it was decided wrongly, and hardly any lawyer or legal authority thinks it was decided well, including later Supreme Court decisions, but "the procession has got to go on."

"The procession" in our case is not just the continuation of legal abortion despite its lawlessness. It is the deference, if not reverence, we give to courts even when their lawlessness is obvious to everybody.

As an alternative to studying the rulings ourselves to see for ourselves how absurd certain of them are, we let ourselves be easily intimidated by the blackness of the robes. As the crowds along the parade thought there must surely be clothes there, which they would see if their hearts just weren't so impure, we think the Supreme Court's rulings must surely be lawful, which we would understand if we just had sufficient legal training.

What can stop the procession?

Hans Christian Andersen's story ends with the emperor's resolve to continue the procession. But how do you think the story would have proceeded from there, in real life?

Snickering would have begun, cautious and muted at first so as to evade the attention of the armed guards, but swelling until no one feared the guards any longer. The further the emperor processed, the greater danger he faced of losing his kingdom, if not his life. At some point he would beat his retreat, but perhaps too late.

How can we stop the procession of abortion's alleged legality?

The first step is for the "crowds" to understand that its legality has "collapsed". The second step is to bring legal abortion's "collapse" properly before courts; that is, a case in which this "collapse" must be squarely addressed by the judge(s) in order to decide the case.

As of August, 2013, there are two classes of cases before courts in which prolifers could get involved to make this happen.

First, a few states have passed laws limiting abortions, which are being challenged in court. They will be defended by the Attorney Generals of those states. It is unlikely the AG's will defend their laws by attacking abortion's legality through the 2004 law. But prolife lawyers will have the opportunity to introduce that issue into these cases through Amicus Briefs when they come before appellate courts. This, too, is unlikely to happen, unless established prolife organiztions ask them to. This, too, is unlikely to happen, unless thousands of average prolifers assure their leaders that this issue is not too difficult for them to understand and support.

Second, Scott Roeder shot and killed the Wichita late term abortionist George Tiller on May 31, 2009. The arguments for Roe's "collapse" are embedded in his case. As of July 2013, briefing is complete but oral arguments have not been scheduled. No prolife lawyer submitted an Amicus Brief. (A brief which people who are not direct parties to the case can submit for the court's consideration.) Several prolifers who are not lawyers asked to submit briefs but were turned down by the Kansas Supreme Court. The Court allowed only one Amicus: from the ACLU and the National Abortion Federation. Unless the Court ends legal abortion in response to these arguments, the case will next go to the U.S. Supreme Court, which may or may not hear the case. If it does, that will be the last chance for Amicus briefs.

The third step is for when judges rule wrongly, egregiously. Offending judges of state courts can be removed by voters at their next retention elections. Federal judges can be restrained in a number of ways brilliantly outlined by Newt Gingrich in "Bringing the Courts Back Under the Constitution". (https://newt.org/wp-content/uploads/2013/04/Courts.pdf)

My summary of his 54 page "white paper":

Newt offers the example of a law insisting that "our creator" is central to our definition of rights. Congress would set limits on court jurisdiction to review the law, a thing which Congress already does often. If the Supreme Court overturns the law, Congress should pass it again and affirm the constitutional right of Congress and the President to define the court's jurisdiction. If the court won't back off, Congress could pass another law saying that any judge refusing to obey legislative limits on jurisdiction is subject to impeachment.

Congress can codify grounds for the impeachment authority which the Constitution gives Congress. It could list "the issuing of unconstitutional opinions", "asserting arbitrary power", or "usurping the authority of the legislature". Congress can establish procedures for committee hearings on certain judicial decisions. Judiciary committees can subpoena

judges and require them to explain their constitutional reasoning, and to hear, from the judiciary committee, a *proper* Constitutional interpretation.

The Constitution gives Congress such complete authority over federal courts that if Congress wanted to, it could abolish all lower federal courts, and their judges, and replace them with new ones. As Iowa Congressman Steve King says, Congress has the power to reduce the Supreme Court to Chief Justice Roberts sitting at a card table with a candle.

Why SCOTUS could not have outlawed slavery without war, but it can outlaw abortion without violence:

Had there been no civil war, and had SCOTUS ruled slavery unconstitutional instead of giving us its Dred Scott ruling, would the South have accepted that without violence?

The South seceded and claimed federal military bases on Southern soil as their own, upon the mere election of an anti-slavery president, before any legislative attack on slavery could even begin. Would the South have lain any more quietly before SCOTUS? Probably not!

But if that is my conclusion about then, how can I have any confidence that abortionists will nonviolently defer to SCOTUS today, if SCOTUS overrules them?

A couple of differences. First, slavery was thousands of years old. Its legitimacy, such as it had, did not come from SCOTUS, or Congress, or the President. But today, if SCOTUS outlaws abortion, where will abortionists turn for validation of their right? Their ONLY validation that they ever had came from SCOTUS, and if they lose that, they will have no claim whatsoever upon any legitimacy.

Second, abortionists are the ones portraying themselves for 40 years as the law abiding folk, painting a dramatic contrast between their own bloody selves and a few "lawless" prolifers whose "lawlessness" they attack with all the indignation a baby killer can muster. Their last hope of social credibility will vanish if they themselves turn violent against born human beings, too.

Third, the entire credibility of abortion rests upon the mantra "but abortion is legal". The No Greener Light strategy I propose does not set federal law against SCOTUS rulings. It does not overturn Roe. It does not insist that abortion has, for 40 years, been unconstitutional or lawless. But it insists that 9 years ago, with federal law, it became unconstitutional. It became no longer legal. There is no face to save. SCOTUS doesn't have to admit it was ever wrong. SCOTUS only needs to acknowledge that legal circumstances have changed, so SCOTUS needs to adjust, a thing they do all the time.

In other words, this strategy does not create contradictions between legal authorities, but reconciles them. This is important because it supports this undivided, unmitigated message: "abortion is *not* legal. Before, some legal authorites said abortion was legal, and some said it was not. Now all legal authorities (not to mention God) agree that abortion is *not* legal."

With anonymous comments no longer able to say "but abortion is legal" after blogs and news articles, supporters of abortion will become much quieter. Those still shouting will be more easily recognized as shrill, and without merit, if not insane.

What you can do.

Do you agree with the analysis you read here, of the opportunity God has given us to end abortion in the next year?

The first thing you need to do is become sure, by testing it, as the Bereans did, Acts 17:11, and as even Jesus did, Luke 2:46-47. Write to any prolife lawyers, lawmakers, or leaders you know of, and ask their take on this information. Don't be intimidated if they say "you aren't qualified to understand, not having graduated from law school." Answer them that if *they* have, they should have learned how to explain what is wrong with an idea.

If they answer with a persuasive objection, please forward it to me. If I can be shown where I am wrong, I will appreciate the correction. If not, I will appreciate the opportunity to respond to criticism.

But I hope you can see this is not something "leaders" can think through for you. This is knowledge which "the crowds" must master.

Faith v. Doubt. It is easy for humans to think that the thing they are fervently praying for, for years, just seems to have no chance of ever happening. So even though Mark 11:23 promises that even mountains shall jump into seas at our word when we doubt not, and even though we are supposedly Bible believers who believe every promise of God is true, we say "that is politically unrealistic", so we give up before we begin, and dismiss those too dumb to give up as "fanatics".

This is just as easy when the thing we want is

public acceptance of reality - whether that reality is the legal "collapse" of abortion rights, or is the very existence of God - and we see our whole culture lined up against that reality, preferring a myth called "political reality".

Politics is the art of the possible.
Christianity is the art of the impossible.

Have you considered *why* our culture, and our leaders, "will never accept" reality, making our argument for it "unrealistic"? Isn't it because millions more who understand reality will not articulate it because "no one will ever accept it"?

What if there are prolife leaders, lawyers, and lawmakers who already understand this same reality that we do, but dare not admit it because they have no evidence that anyone understands it but themselves, and to acknowledge reality which contributors do not is political suicide?

So, you ask, what can reverse this national rush for the cliff as the preferred alternative to acknowledging, and conforming our laws to, reality?

Wouldn't it be for a few of our fellow millions to be the first to acknowledge reality, hoping that will (1) encourage those who already understand it that they are not alone, (2) educate others, and for still others, (3) supply them the verbiage and evidence to begin speaking up for what they already sense?

If we are going to limit our acknowledgement of reality to what we believe our culture is already going to acknowledge, what are we contributing? What Light are we shining into the Darkness?

There is a simple reason God gives us all the Blessings He has created for us, only in proportion to our faith: if we aim at targets more wonderful than we believe we will ever hit, our lives become a nightmare of the dread of failure.

Must young musicians do not dread playing a song for a recital at a retirement community. But more will be nervous about playing in church, or at a school assembly. And the thought of playing on national television terrifies them all.

The Godly response to such terror is to work hard, to prepare for the opportunity. Matthew 25:14-30. But if the child trembles, quakes, soils himself, etc., the parent will say "son, you don't have to do play in that program."

Likewise God will not force his most wonderful blessings on us, when our participation in receiving them terrifies us. Not even if we, like the freed slaves led by Moses, are so terrified of the Promised Land that we prepare to kill those who would lead us there, so that we may return to our familiar, comfortable slavery. Numbers 14:1-10.

Of course, the alternative to the Promised Land is slavery in Egypt. The alternative to Heaven is Hell. The alternative to educating "the crowds" about Roe's "collapse" is years more of abortions, with its destruction of law, freedom, godliness, decency, and oh yes, babies.

Thus Revelation 21:8 warns that the "fearful, and the unbelieving", will be in the Lake of Fire. James 1:5-8 warns that those who doubt should not expect to receive anything from God. "Oh ye of little faith" is written in Matthew 6:30, 8:26, 14:31, 16:8, and Luke 12:28.

God loved Job, so God did something about Job's fear that he confessed in Job 3:25. That is the reason you should fear fear: God may love you enough to save you from it. What is the best way to save us from fear? God can put us through what we fear most, so we can learn that through the midst of it, the best thing we ever imagined might come.

If Job 1 represents God's people going before Him in prayer, and Satan walking among our prayers articulates our doubts, Job was afraid that if he were tested he might lose his faith. Through several chapters we hear Job describing the best thing he could ever hope for: the opportunity to speak directly with God.

Job complained of his suffering and his nightmares (Job 7), but Elihu explained that these are actually two ways God communicates with man! (Job 33). Yet God spoke directly to Job, besides, in the midst of Job's worst trials. And after it was all over, Job acquired twice what he had before; apparently even twice as many children - chapter one had said Job received news that they had all died, but it doesn't say whether the news was true.

Do you weep for the innocents slain, which Ezekiel 9 says we must do to escape God's judgment? Do you pray for the end of abortion? Are you willing to do what you can to cooperate with God in answering your prayer, James 2:14-18? Are you willing to pray with faith, until the mountain moves?

14. What is the author's legal resume?

Answer summary: I am not a licensed attorney. But God has granted me some interesting endorsements. Along with attacks. Hopefully this is only a temporary answer, until others help edit, improve, and correct this document until my authorship is blended in a "multitude of counsellors", Proverbs 15:22

My name: Dave Leach, Des Moines, IA

My resume: www.Saltshaker.US/resume.pdf

My general response to media attacks that mistake "explaining American Necessity Defense laws" for "advocating violence" and "stating what everybody knows is already true" for "threatening": http://www.examiner.com/article/dave-leach-response-to-media-attacks-on-his-interview-with-scott-roeder

Why the only way to legally challenge abortion between 1992 and 2004 had to be controversial: http://youtu.be/cslicXNXZd4

"Incredibly elaborate well thought out document" was the description of my brief by criminal trial author Stephen Singular, talking to the anchors of "In Session" (successor to "Court TV"). He was talking about my pro se trial brief written for and submitted to the Court by high profile prolife defendant Scott Roeder. (Watch http://youtu.be/EMNHhayn22) The brief itself is at www.Saltshaker.US/Scott-Roeder-Resources/Brief4Roeder.pdf (At the 2009 Wichita trial, In Session anchor Jean Casarez told me personally that my brief was the reason the judge allowed evidence of the Involuntary Manslaughter defense.) With Scott's consent, I was able to embed in his case a direct challenge to the constitutionality of abortion based on 18 USC 1841(d). Incredible "coincidences" about the case hint that God may have big plans for the case: see http://youtu.be/39hYkDGBHUU.

Two (count 'em) TWO 60-day extensions of time were requested by the U.S. Justice Department headed by Attorney General Janet Reno to respond to the pro se Supreme Court brief I wrote with Regina Dinwiddie in 1995. Regina was the first person charged under FACE (Freedom of Access to Clinics). It was over an injunction against her to stop talking into her bull horn (portable microphone and amplifier) outside murder offices, I kid you not! The brief is posted at www.Saltshaker.US/AmericanIssues/Life/DD-1.htm. When the Justice Department finally submitted their brief, it was remarkably unremarkable, but by that time the Court had accepted another prolife case about bubble zones for picketers, much narrower in scope, which did not strike at the heart of Roe as ours did, and no one expects SCOTUS to accept more than one prolife case in a single term.

"...your brief...appears to be good...You do a good job of setting forth the law.", Bill Kurth emailed me in 2002. Kurth, of Carroll, Iowa, is an attorney who used to grade bar exams, and who once headed up an Iowa arm of the Rutherford Institute. He was responding to my explanation of how the Iowa legislature could end legal abortion and survive a court challenge, by amending Iowa's version of the Necessity Defense, called "compulsion" in Iowa, Iowa Code 704.10. The plan is at www.Saltshaker.US/AmericanIssues/Life/Compulsion%20Amendment.htm I published it, along with these endorsements, in a campaign newspaper; I was an Iowa statehouse candidate.

"If this passes, it could facilitate the closing of every abortion clinic in Iowa." That was the response to the same plan, of Chuck Hurley, a home schooling, Bible-quoting lawyer who founded and headed the Iowa Family Policy Center, (now called the Family Leader), Iowa's branch of James Dobson's Focus on the Family, and who previously headed the Iowa House Judiciary Committee:

The same initiative got this response from Joe Scheidler, who heads Prolife Action League in Chicago, and was a defendant in the 16-years-long NOW vs Scheidler case before the Supreme Court as of 2002, said this about my initiative:

"There's a private swimming pool not far from our office with a 'no trespassing' sign on it. But if I

saw a toddler thrashing around in the water, I'd jump the fence and try to save him. That's the necessity defense. It sets aside the letter of the law for the spirit of the law. In any other situation besides abortion, the necessity of trespassing to save lives would be accepted in a flash. But the so called 'right to privacy' has blinded our judges. But if you present the facts of the humanity of a child to a jury, they are much more likely to accept the reality of the defense.

"The Necessity defense was our legal ace in the hole from the earliest days of clinic blockades. One of the major reasons we allowed ourselves to be arrested was to try the necessity defense. It is still law, which presents a fact issue to the juries. Anything that makes that clear will be a powerful tool. We should have kept our focus on this defense, but we haven't, so today most lawyers laugh if you bring it up. But a lot of water has gone over the dam since then, from cloning to the sale of baby body parts. The public may be ready to see the defense tried now. Public education on the child's humanity is crucial. That is why this initiative to spell out the necessity defense is valuable even before it is passed. It won't work if you don't try, and I am willing to help."

Text of radio ad for Dave Leach's campaign for State Representative May, 2012, Posted on Youtube at http://youtu.be/vSU1nB_qAIw:

> My name is Dave Leach. I hope you will elect me to the state House June 5. My website, saltshaker.us, lists many issues for which I propose solutions.
>
> There is one issue whose continued existence is just crazy: Abortion.
>
> It's just crazy to think we have to wait until Roe v. Wade is overturned before the Iowa legislature can outlaw abortion, when it is Roe v. Wade itself which authorizes us to do that.
>
> Roe said what must be said for legal abortion to end, and over 8 years ago, federal law said it. Now the unborn are just waiting on prolifers to bring a case so courts can address this new legal reality. The perfect case would be a state law against abortion, defended in court by the state's attorney general.
>
> Please: go to Saltshaker.US, study this opportunity, learn what you can do, and become a partner in saving lives. Paid for by Partners for Dave Leach.

On the other hand, I have been viciously attacked. Two news reporters, one in Kansas and one in Iowa, asked law professors what they thought of the brief I wrote for Scott Roeder - the same brief which Stephen Singular had called "incredibly elaborately well thought out". They both said the defense I raised had no validity. They also admitted they hadn't actually read my brief.

Over the years I have published much analysis of American law and Scripture regarding action taken to stop abortions. I report the laws that justify it, and the Scriptures that command it.

(Just one Scripture that commands it: Proverbs 24:10-12, which was on the masthead of Operation Rescue until the first abortionist was shot, tells us to stop the murders, even if the murderers are protected by government, giving them the leisure to choose the location of their executions, openly enough that the public knows when to expect them. Just one law that justifies it: 18:USC 1841(d), the subject of this booklet, makes legal abortion unconstitutional. That makes it a "legally recognizable harm", which under the Necessity Defense is counted a greater harm than the harm from physically stopping it. A series of state supreme court decisions before 2004 had said abortion is not a "legally recognizable harm"; without 18 USC 1841(d), my response was that Roe treated it as a fact question, not a question of legal recognition, and juries are "triers of facts" according to every jury instruction ever given, so juries should have been informed of the question and should have ruled on it. Instead, judges have ordered defendants not to even tell the jury that his defense even exists, even though that was their only defense, and was a fact question, and juries are supposed to judge facts. A judge who decides the only contested issue of a case without allowing the jury to even know the defense exists, and who then says he has given the defendant his constitutional right to trial by jury, is a liar and a lawbreaker. I made an entertaining, humorous series of videos to explain the denial of the right to trial by jury when the jury, the "triers of fact", are not allowed to know the existence of the only contested fact issue of a case: see the "Trial