Brief Thoughts on the Personhood Proclamation

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Both the Fifth and the Fourteenth Amendments guarantee that no person may be deprived of life without due process.

Roe decided (wrongly), using both tortured language and logic, that pre-born humans are NOT "persons" within the meaning of the Fourteenth Amendment.

The Supreme Court itself in *Roe* noted that if prenatal "personhood is established," the case for a constitutional right to abortion "**collapses**, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." (Emphasis added).

In other words, "personhood" for the preborn child is **the key** that will unlock *Roe* and eliminate the elevation of a "right to choose" over a right to life.

Fortunately, both historic facts and legal precedent make a very strong case for "personhood" for preborn children.

Definitions

The Fourteenth Amendment was passed by Congress in 1866 and ratified by the States in 1868.

The 1864 edition of Webster's American Dictionary of the English Language defined "person" as relating "especially [to] a living human being; a man, woman, or child; an individual of the human race." Significantly, no dictionary of the time referenced birth or the status of being born in its definition of "person," "man," or "human being."

So, is a preborn child a human being? The answer to this question is irrefutably "yes." More importantly, as a human being, a preborn child is, by definition, a person.

William Blackstone, an influential commentator on English common law in the 1750s, noted that "[n]atural persons are such as the God of nature formed us." He further stated that "[l]ife is . . . a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb." Commentators following Blackstone have noted that the "able to stir" phrase is not referring to a particular point in a preborn child's development, but rather to the point when life can be first discerned. In the 1750s, that was when the child was first felt by the mother in her womb. In other words, Blackstone's rule is that "where life can be shown to exist, legal personhood exists."

In *Roe v. Wade*, Justice Blackmun relied on the use of the word "person" in other sections of the Constitution to conclude that the preborn are not persons under the Fourteenth Amendment. His logic in this respect is deeply flawed. For example, the Constitution states that only persons thirty-five years old, or older are eligible to be President of the United States. Obviously, there are other individuals who exist, who do not meet this qualification, but who are still "persons." Justice Blackmun conveniently ignored the fact that the use of the word "person" in describing the qualifications for the presidency, does not define when one becomes a person.

Section 1 of the Fourteenth Amendment states:

> All persons ***born or naturalized*** in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life***, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The opponents of life have fixated on the use of the term "born" to argue that you have to make it out of the womb alive before you have any rights. This is a narrow and improper reading of the Amendment.

A person must be "born or naturalized" in the United States and be subject to the jurisdiction of the United States in order to be a citizen. In other words, "born or naturalized" defines the requirements for citizenship in much the same was as "thirty-five years old, or older," defines one of the requirements to be president of the United States.

The second sentence of Section 1 of the Fourteenth Amendment refers merely to "any person." It does not require that such person be "born or naturalized." Indeed, there is no dispute among the courts that the second sentence of Section 1 of the Fourteenth Amendment applies to non-citizens. This further establishes that the "born or naturalized" requirement is, and should be, strictly limited to deciding the question of who is a citizen, and does not apply to the question of who has a right to life within the jurisdictional boundaries of the United States.

Legal Precedent Before and After the Fourteenth Amendment

Beginning in the mid-thirteenth century, the common law of England codified abortion as homicide as soon as the child "came to life" and appeared recognizably human (approximately 40 days after fertilization).

In the early 1800s, British courts instructed jurors in cases involving prosecution for an abortion that "quick with child," which had earlier meant "formed and animated," now meant "from the moment of conception."

In an 1850 ruling (before the passage of the 14th Amendment in 1868), the Pennsylvania Supreme Court ruled that "the moment the womb is instinct with embryo life, and gestation has begun, the crime [of abortion] may be perpetrated." Courts and statutes in other states and territories reached the same conclusion before the passage of the 14th Amendment, i.e., that a preborn child is a "person."

By the time of the Fourteenth Amendment's adoption, nearly every state had criminal legislation prohibiting abortion, and most of these statutes were classified with other "offenses against the person."

Senator Jacob Howard, who sponsored the 14th Amendment bill in the Senate, declared that its purpose was to "disable a state from depriving not merely a citizen of the United States, but ***any person***, whoever he may be, of life, liberty and property without due process." (Emphasis added).

Representative Thaddeus Stevens called the 14th Amendment "a superstructure of perfect equality of ***every human being*** before the law; of impartial protection to everyone in whose breast God had placed an immortal soul." (Emphasis added).

Representative John Bingham, the primary author of the 14th Amendment, stated that it was intended to ensure that "no state in the Union should deny to ***any human being*** . . . the equal protection of the laws." (Emphasis added).

Preborn children are human beings. To deny this fact is to deny both science and common sense.

In *McArthur v. Scott*, an 1885 case (after the passage of the Fourteenth Amendment), the U.S. Supreme Court held that a child *in utero* had the right to representation in a probate proceeding involving an inheritance dispute that followed the death of the preborn child's grandfather. This begs a question that has been left unanswered by the Court in *Roe*. If a child has a right to be represented, *in utero*, in a probate hearing, why is she not entitled to due process to secure her life?

Just as the Emancipation Proclamation did not, in and of itself, legally abolish slavery, a Personhood Proclamation will not, in and of itself, legally abolish abortion, but it will spark a public debate and focus the attention of the public, the press, Congress, State Legislatures, and the Courts on the issue, and force each of them to answer the question – is a preborn child a human being and, therefore, a person? If you say "no," do you have any reasonable, factual basis to support your conclusion, or is it based purely on your opinion and emotions?