

Supreme Court of Florida

CASE NO.: SC22-1050

Lower Tribunal No(s).:

1D22-2034; 372022CA000912XXXXXX

PLANNED PARENTHOOD OF
SOUTHWEST & CENTRAL
FLORIDA, ET AL.

Petitioner(s)

vs.

STATE OF FLORIDA, ET AL.

Respondent(s)

EXHIBITS

STATUTES AND AUTHORITIES USED IN

**BRIEF OF AMICUS CURIAE PICKETT,
IN SUPPORT OF RESPONDENTS**

FOR CONVENIENCE OF THE COURT, ONLY

RECEIVED, 01/24/2023 09:48:22 AM, Clerk, Supreme Court

Exhibits are provided only for the convenience of the Court and may be reviewed or discarded at the Court’s discretion.

TABLE OF CONTENTS

EXHIBIT A – EXCERPT FROM FCRA A1

 1) INDIVIDUAL: Definition & Legal Meaning A2

 2) DIGNITY: Philosophy..... A2

EXHIBIT B – CRITICISMS OF *ROE V WADE*..... B1

Dobbs (2022):..... B1

 Byrn (1973)..... B1

 III. THE FUNDAMENTAL ERRORS IN *WADE*: IN GENERAL B2

 A. *The Failure To Resolve the Crucial Question of Fact*..... B3

 Ely (1973) B4

 Gorby (1979)..... B5

EXHIBIT C – DEFINITIONS OF AGE C1

 See *Lexico Oxford Dictionary*
<https://www.lexico.com/en/definition/age> C1

 See *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health*, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. All rights reserved..... C2

 See *Farlex Partner Medical Dictionary* © Farlex 2012 C3

 University of Florida..... C3

EXHIBIT D – EXCERPTS FROM *GONZALES v CARHART* D1

EXHIBIT E – WHY THE UNBORN IS A HUMAN BEING E1

 SCIENCE OF HUMAN BEING..... E1

 DEFINITION OF HUMAN BEING E2

 WHEN HUMAN LIFE BEGINS E2

 THE AUTONOMY OF THE EMBRYO..... E3

 DISCUSSION OF PERSONHOOD E4

IMPLICATIONS OF DEFINITION OF PERSON.....	E5
FETUS: LAW AND LEGAL DEFINITION	E5
EXHIBIT F – UNCERTAINTY OF TERM VIABILITY	F1
Inverse chronology	F1
“ <i>Extremely Preterm Birth Outcomes Tool</i>	F6
EXHIBIT G – SUPPLEMENTAL AUTHORITY.....	G1
STATE OF GEORGIA.....	G1
ELEVENTH CIRCUIT	G1
Sistersong Women of Color Reprod. Justice Collective v.	
Governor of Georgia, No. 20-13024 (11th Cir. Jul. 20, 2022):	G1
Living Infants Fairness and Equality (LIFE) Act of 2019. 2019	
Ga. Laws Act 234 (H.B. 481) passed on March 29, 2019:.....	G2
STATE OF LOUISIANA	G3
August 12, 2022: Louisiana Supreme Court rejects appeal in	
abortion ban case.	G3
JUNE MEDICAL SERVICES, LLC, et al, versus Landry, et al:	
.....	G3
2015 Louisiana Laws.....	G3
LOUISIANA CONSTITUTION	G4
STATE OF OKLAHOMA.....	G5
House Bill 4327.....	G5
Section 1-745.31 of Title 63	G5
OKLAHOMA CONSTITUTION	G6
STATE OF TENNESSEE	G7
<i>Memphis Ctr. For Reprod. Health v. Slatery</i> , 24 F.4th 1069 (6th	
Cir. 2022)	G7
2019 Tennessee Laws Pub. Ch. 351 (S.B. 1257)	G7
TN Code § 39-15-211 (2018).....	G7
STATE OF TEXAS	G8

Federal District Court, N.D. TEXG8
EXHIBIT H – COMMONLY ACCEPTED BELIEFS OF THE
COMMUNITYH1

STRICKEN

EXHIBIT A – EXCERPT FROM FCRA

“760.01 Purposes; construction; title.—

(1) Sections 760.01-760.11 and 509.092 shall be cited as the “Florida Civil Rights Act of 1992.”

“(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for **all individuals**¹ within the state **freedom from discrimination** because of race, color, religion, sex, pregnancy, national origin, **age**, handicap, or marital status and thereby to **protect their interest in personal dignity**², to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to **promote the interests, rights, and privileges of individuals** within the state.

“(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and **shall be liberally construed** to further the general purposes stated in this section and the special purposes of the particular provision involved.” [emphasis added: **bold**; underline].

¹ INDIVIDUAL: below

² DIGNITY: below

1) INDIVIDUAL: Definition & Legal Meaning

Definition & Citations: As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons. See *Bank of U. S. v. State*, 12 Smedes & M. (Miss.) 400; *State v. Bell Telephone Co.*, 30 Ohio St. 310, 38 Am. Rep. 583; *Pennsylvania it. Co. v. Canal Com'rs*, 21 Pa. 20. As an adjective, "individual" means pertaining or belonging to, or characteristic of, one single person, either in opposition to a firm, association, or corporation, or considered in his relation thereto. (See *Black's Law Dictionary*, 2nd Ed.

<https://thelawdictionary.org/individual/>)

2) DIGNITY: Philosophy

Dignity may be considered as the intrinsic and unconditional worth of a human being. - Immanuel Kant (See e.g., James Rachels, *The Elements of Moral Philosophy*, pp. 114-17, 122-23. Copyright © 1986 by Random House, Inc.)

"The concept of dignity became prominent in the work of Immanuel Kant. He argued objects can be valuable in two different ways. They can have a price or dignity. If something has a price, it is valuable only because it is useful to us. By contrast, things with dignity are valued for their own sake. They can't be used as tools for our own goals. Instead, we are required to show them respect. For Kant, dignity was what made something a person." (See Article: *Big Thinkers + Explainers* By The Ethics Centre 19 JAN 2017 <https://ethics.org.au/ethics-explainer-dignity/>)

EXHIBIT B – CRITICISMS OF *ROE V WADE*

Dobbs (2022):

“The Court also made no real effort to remedy one of the greatest weaknesses in *Roe*’s analysis: its much-criticized discussion of viability. The Court retained what it called *Roe*’s “central holding”- that a State may not regulate pre-viability abortions for the purpose of protecting fetal life- but it provided no principled defense of the viability line. 505 U.S., at 860, 870-871. Instead, it merely rephrased what *Roe* had said, stating that viability marked the point at which “the independent existence of a second life can in reason and fairness be the object of state protection that now overrides the rights of the woman.” 505 U.S., at 870. Why “reason and fairness” demanded that the line be drawn at viability the Court did not explain. And the Justices who authored the controlling opinion conspicuously failed to say that they agreed with the viability rule; instead, they candidly acknowledged “the reservations [some] of us may have in reaffirming [that] holding of *Roe*.” *Id.*, at 853.”

(See *Dobbs* at III B 2)

Byrn (1973)

at 812-813

With respect to unborn children, the *Wade* decision means at a minimum: that an unborn child is neither a fourteenth amendment person nor a live human being at any stage of gestation; an unborn child has no right to live or to the law’s protection at any stage of gestation; a state may not protect an unborn child from abortion until viability; after viability, a state may, if it chooses, protect the unborn child from abortion, but an exception must be made for an abortion necessary to preserve the life or health of the mother; and finally, health having been defined in *Doe v. Bolton* to include “all factors-

physical, emotional, psychological, familial, and the woman's age-relevant to the well-being of the patient," 8 it follows that a physician may with impunity equate the unwantedness of a pregnancy with a danger to the pregnant woman's health-emotional, psychological or otherwise. Thus, even after viability, there is little that a state can do to protect the unborn child

at 813-814

III. THE FUNDAMENTAL ERRORS IN WADE: IN GENERAL

Upon analysis, it becomes evident that the structure of the Court's opinion in Wade is defective. The Court agreed that if the fourteenth amendment personhood of the unborn child were established, "the appellant's case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the Amendment." Hence, the approach of the Court should have been to decide: (a) whether the unborn child, as a matter of fact, is a live human being, (b) whether all live human beings are "persons" within the fourteenth amendment, and (c) whether, in the light of the answers to (a) and (b), the state has a compelling interest in the protection of the unborn child, or to put it another way, whether there are any other interests of the state which would justify denying to the unborn child the law's protection of his life. Instead, the Court reversed the inquiry, deciding first that the right of privacy includes a right to abort, then deciding that the unborn child is not a person within the meaning of the fourteenth amendment, and finally, refusing to resolve the factual question of whether an abortion kills a live human being. In effect, the Court raised a presumption against the constitutional personality of unborn children and then made it irrebuttable by refusing to decide the basic factual issue of prenatal human beingness.

The refusal to resolve the threshold question of fact at the outset is the crucial error in Wade. There is a "long course of judicial construction which establishes as a principle that the duty rests on

this Court to decide for itself facts or constructions upon which federal constitutional issues rest." This fundamental error may have been caused by the Court's misapprehension of the common law of abortion and the motivation behind early American anti-abortion statutes. This, in turn, apparently led the Court to forego researching the intent of the framers of the fourteenth amendment: to bring within the aegis of the due process and equal protection clauses every member of the human race, regardless of age, imperfection or condition of unwantedness. Left without any reliable historical basis for constitutional interpretation, the Court both failed to allude to its own prior explication of "person" under section one of the fourteenth amendment and mistook the general status in law of unborn children. Further, it adverted to a number of criteria which it erroneously interpreted as proof that the unborn child is not a person at all under the fourteenth amendment. In short, error was piled upon error.

At 840

A. The Failure To Resolve the Crucial Question of Fact

The Court noted, as justification for its refusal to resolve the crucial factual issue, that "[w]hen 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."²⁰⁷ The Court then concluded that "we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake."²⁰⁸ But what was at stake for the unborn child was not a "theory" of life; it was the fact of life. The lack of consensus, to which the Court referred, is not a lack of consensus on the fact of existence of human life at all stages of gestation-that is established beyond cavil by medical science²⁰⁹ -but on conflicting theories of the value of a human life already in existence.²¹⁰ That value judgment was made over one hundred years ago, on a constitutional level and as a matter of binding law, by the framers of the fourteenth

amendment. A "consensus" is not relevant. "One's right to life... depend[s] on the outcome of no elections."²¹¹

Robert M. Byrn, *An American Tragedy: The Supreme Court on Abortion*, 41 *Fordham L. Rev.* 807 (1973).

Available at: <https://ir.lawnet.fordham.edu/flr/vol41/iss4/2>

Ely (1973)

at 943

"Roe's "refutation" of the legislative judgment, on the other, is not obviously wrong, for the substitution of one nonrational judgment for another concerning the relative importance of a mother's opportunity to live the life she has planned and a fetus's opportunity to live at all, can be labeled neither wrong nor right. The problem with Roe is not so much that it bungles the question it sets itself,¹²³ but rather that it sets itself a question the Constitution has not made the Court's business. It looks different from *Lochner*-it has the shape if not the substance of a judgment that is very much the Court's business, one vindicating an interest the Constitution marks as special-and it is for that reason perhaps more dangerous. Of course in a sense it is more candid than *Lochner*.¹²⁴ But the employment of a higher standard of judicial review, no matter how candid the recognition that it is indeed higher, loses some of its admirability when it is accompanied by neither a coherent account of why such a standard is appropriate nor any indication of why it has not been satisfied."

at 949

"A neutral and durable principle may be a thing of beauty and a joy forever. But if it lacks connection with any value the Constitution marks as special, it is not a constitutional principle and the Court has no business imposing it."

John Hart Ely, *The Wages of Crying Wolf* "A Comment on *Roe v. Wade*, 82 YALE L.J. 920 (1973)

Gorby (1979)

at 3-4

"A legislative solution to the abortion problem is necessarily based upon the premise that the Constitution is neutral about abortion and does not impose a solution, one way or another.

"In this article, the existence of such a premise is denied. More specifically, this author concludes (1) that the Constitution is not neutral about abortion and does indeed impose a solution on the abortion question; (2) that, as Justice Blackmun conceded in *Roe*, if the fetus is a person under the fourteenth amendment, "the [plaintiffs] case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [fourteenth] [a]mendment;"¹⁸ and (3) that the concept of "person" in the fifth and fourteenth amendments includes unborn human life.¹⁹ It thus follows that the solution to the abortion problem set forth in *Roe*²⁰ as well as that suggested by Justices White and Rehnquist in dissent²¹ are constitutionally unsound, both solutions permitting the violation of the fetus's constitutionally protected right to life without due process of law. More positively, there is substantial historical support for the notion that the due process clause was designed to guarantee access of all persons to the courts for the protection of fundamental rights,²² that those fundamental rights refer to "life, liberty and property,"²³ and that the unborn human being, as an individual living human being, is a person under the Constitution and is entitled to access to the courts to protect his fundamental right to life."

at 25

“Perhaps the Court's reluctance to "speculate" about "when life begins" results from its expressed desire to follow "Mr. Justice Holmes's admonition in his now-vindicated dissent in *Lochner v. New York*" "that the individual opinions of the justices "ought not to conclude [the Court's] judgment upon the question whether statutes embodying them conflict with the Constitution." What Justice Holmes seems to have said is that the justices should not sit as superlegislators and declare statutes unconstitutional which they do not like.”

at 32

“For reasons which are not completely clear, the Supreme Court decided that, although not important for constitutional personhood, viability is an important criterion for the state's assertion of a compelling interest. In other words, the state can assert its interest in keeping the fetus alive at "viability," which the Court defined as the point at which the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid." The Court then noted that "[v]iability is usually placed at about seven months (twenty-eight weeks) but may occur earlier, even at twenty-four weeks." ⁵² Here, the Supreme Court, for reasons neither apparent nor offered, utilized scientific data in determining when a state's interest in the unborn becomes compelling enough to preclude the abortion but, because of its creation of the birth requirement, rendered the same or similar data irrelevant in its determination when the right to have constitutional rights begins. Considering that the Court placed such emphasis on the viability concept, it perhaps should be of interest that in a study of 650,000 live births in New York City, over twenty percent of the children born at less than twenty weeks gestational age survived the neonatal period.”

at 35

“To put these hard decisions in their proper perspective, it must be borne in mind that constitutional protection of fundamental rights never takes place in a social vacuum. Rather, the protection of the fundamental rights of one necessarily requires personal sacrifices of some significance by those against whom the right is enforced.”

John D. Gorby, *The “Right” to an Abortion, the Scope of Fourteenth Amendment Personhood, and the Supreme Court's Birth Requirement*, 4 S. Ill. U. L.J. 1 (1979)

STRICKEN

EXHIBIT C – DEFINITIONS OF AGE

AGE:

As a Noun:

1. The length of time that a person has lived or a thing has existed. [*vide, Gonzales at 126*]

1.1 A particular stage in someone's life.

1.2 The latter part of life or existence; old age.

As a Verb:

1 Grow old or older, especially visibly and obviously so.

1.1 [with object] Cause to grow, feel, or appear older.

See *Lexico Oxford Dictionary*

<https://www.lexico.com/en/definition/age>

age [āj]

1. the duration, or the measure of time of the existence of a person or object.

2. to undergo change as a result of passage of time.

developmental age.

achievement age a measure of achievement expressed in terms of the chronologic age of a normal child showing the same degree of attainment.

chronologic age the actual measure of time elapsed since a person's birth.

developmental age

1. age estimated from the degree of anatomical development.

2. in psychology, the age of an individual determined by degree of emotional, mental, anatomical, and physiological maturation.

mental age: the age level of mental ability of a person as gauged by standard intelligence tests.

See *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health*, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. All rights reserved.

Gestational age: the estimated age or stage of maturity of a conceptus. Gestational age of the newborn infant can be estimated by noting various physical characteristics that normally appear at each stage of fetal development. Gestational age assessment of the newborn is facilitated by using a scoring system such as the one developed by Dubowitz and Dubowitz, or a modification of it by Ballard.

As the preterm newborn emerges from the birth canal it will be covered with a rather heavy coating of vernix caseosa; the full-term newborn has only a small amount of this cheeselike substance in body creases and the hair. By the 40th to 42nd week of gestation the skin of the newborn is pale and opaque, whereas the skin of the baby born before this period of gestation may be thin and transparent; venules can be seen under the skin on the abdomen.

At about 20 weeks the body is covered with fine hair called lanugo, which begins to disappear as maturation continues, first from the face, then the trunk, and finally from the extremities. At nine months gestation lanugo is usually seen only over the shoulders. Wrinkling of the soles of the feet is another indication of the newborn's gestational age. It occurs first near the toes and progresses toward the heels so that by the 40th week the entire sole is covered with creases. The preterm newborn will have smooth soles with only a few creases. "Cotton wool" hair that tends to stick together in small bunches so that it is difficult to distinguish one strand from another is common until the 38th week of gestation. This sign is of less significance in black infants. Cartilage of the ear can also be used to assess gestational age. Until about 32 or 33 weeks the pinnae stay folded when bent inward; by 36 weeks they spring back when released. At term they are firm enough to stand erect from the sides of the head.

See *Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health*, Seventh Edition. © 2003 by Saunders, an imprint of Elsevier, Inc. All rights reserved.

Gestational age

1. in obstetrics, the developmental age of a fetus, usually based on the presumed first day of the last normal menstrual period.
2. in embryology, this term is superfluous because gestation does not begin until fertilization of an oocyte occurs around the middle of the menstrual cycle.

See *Farlex Partner Medical Dictionary* © Farlex 2012

University of Florida

Gestational age is the **common term** used during pregnancy to **describe how far along the pregnancy is. ... Gestational age can be determined before or after birth.** [emphasis added: **bold; underline; italics**] See, University of Florida, <https://ufhealth.org/gestational-age>

EXHIBIT D – EXCERPTS FROM *GONZALES v CARHART*

At 126, adjudicating the merits of the Partial-Birth Abortion Ban Act of 2003 (Act) codified as 18 U.S.C. §1531, stated, "And it [the Act] **applies** both ***previability*** and ***postviability*** because, by common understanding and scientific terminology, **a fetus is a living organism within the womb, whether or not it is viable outside the womb.**";

"The Act's stated purposes are **protecting innocent human life** from a brutal and inhumane procedure and protecting the medical community's ethics and reputation. The government undoubtedly "has an interest in protecting the integrity and ethics of the medical profession." *Washington v. Glucksberg*, 521 U. S. 702, 731". at 128;

Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts. " at 129;

"...the **State, from the inception of the pregnancy, maintains its own regulatory interest in protecting the life of the fetus that may become a child, cannot be set at naught** ..." at 158;

"...it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained." at 159;

"The Court has given **state** and federal **legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.** See *Kansas v. Hendricks*, 521 U.S. 346, 360, n. 3 (1997); *Jones v. United States*, 463 U. S. 354, 364-365, n. 13, 370 (1983); *Lambert v. Yellowley*, 272 U. S. 581, 597 (1926); *Collins v. Texas*, 223 U.S. 288, 297-298 (1912); *Jacobson v. Massachusetts*, 197 U. S. 11, 30-31 (1905); see also *Stenberg*, supra, at 969-972 (KENNEDY, J., dissenting); *Marshall v. United States*, 414 U. S. 417, 427 (1974) ("When Congress undertakes to act in areas fraught with medical and scientific uncertainties, **legislative options must be especially broad**"). " at 163;

"**Medical uncertainty does not foreclose the exercise of legislative power in the abortion context** any more than it does in other contexts. See *Hendricks*, supra, at 360, n. 3." at 164;

"...Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts. See *Hendricks*, supra, at 360, n. 3." at 166;

and JUSTICE THOMAS, with whom JUSTICE SCALIA joined, concurred. at 168 169, "I join the Court's opinion because **it accurately applies current jurisprudence**, including *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992). I write separately to reiterate my view that the **Court's abortion jurisprudence, including *Casey* and *Roe v. Wade*, 410 U. S. 113 (1973), has no basis in the Constitution**. See *Casey*, supra, at 979 (SCALIA, J., concurring in judgment in part and dissenting in part); *Stenberg v. Carhart*, 530 U. S. 914, 980-983 (2000) (THOMAS, J., dissenting)." [emphasis added: **bold**; underline; *italics*]

EXHIBIT E – WHY THE UNBORN IS A HUMAN BEING

SCIENCE OF HUMAN BEING

“The unborn is a human being: What science tells us about unborn children

“Why the unborn is a human being

“When a sperm successfully fertilizes an oocyte (egg), a new cell, called a zygote, is generated by their union. The zygote represents the first stage in the life of a human being. This individual, if all goes well, develops through the embryonic (first eight weeks) and fetal (eight weeks until birth) periods and then through infancy, childhood, and adolescence before reaching adulthood.

“Four characteristics of the unborn human (the zygote, embryo, or fetus) are important:

“Distinct. The unborn has a DNA and body distinct from her mother and father. She develops her own arms, legs, brain, nervous system, heart, and so forth.

“Living. The unborn meets the biological criteria for life. She grows by reproducing cells. She turns nutrients into energy through metabolism. And she can respond to stimuli.

“Human. The unborn has a human genetic signature. She is also the offspring of human parents, and humans can only beget other humans.

“Organism. The unborn is an organism (rather than a mere organ or tissue)—an individual whose parts work together for the good of the whole. Guided by a complete genetic code (46 chromosomes), she needs only the proper environment and nutrition to develop herself through the different stages of life as a member of the species.”

From: Paul Stark <https://www.mccl.org/post/2017/12/20/the-unborn-is-a-human-being-what-science-tells-us-about-unborn-children> Dec 20, 2017

Presented by: MINNESOTA CITIZENS CONCERNED FOR LIFE

“Founded in 1968, Minnesota Citizens Concerned for Life (MCCL) has worked ever since to secure protection for innocent human life from conception until natural death through effective education, legislation, and political action.

“MCCL contends that human rights belong to all human beings, regardless of their age, size, ability, health, or dependency.”

DEFINITION OF HUMAN BEING

And, as defined, “a human being, or human, is any member of the mammalian species *Homo sapiens*” (see *New World Encyclopedia* https://www.newworldencyclopedia.org/entry/Human_being).

“*New World Encyclopedia* integrates facts with values. Written by certified experts.”

“*New World Encyclopedia* is a wiki-based encyclopedia which contains carefully selected articles that are rewritten and supervised by a team of editors with academic and literary qualifications.”

WHEN HUMAN LIFE BEGINS

American College of Pediatricians – March 2017

ABSTRACT: The predominance of human biological research confirms that human life begins at conception—fertilization. At fertilization, the human being emerges as a whole, genetically distinct, individuated zygotic living human organism, a member of the species *Homo sapiens*, needing only the proper environment in

EXHIBIT E – WHY THE UNBORN IS A HUMAN BEING

order to grow and develop. The difference between the individual in its adult stage and in its zygotic stage is one of form, not nature. This statement focuses on the scientific evidence of when an individual human life begins.

See <https://acpeds.org/position-statements/when-human-life-begins>

THE AUTONOMY OF THE EMBRYO

If we define organismal autonomy to mean freedom from external control, it turns out that we can identify precisely when an embryo satisfies the definition of autonomy: from the very beginning. A recent study published by Marta N. Shahbazi and colleagues from the UK demonstrates that this newly formed cell knows what to do post-conception regardless of whether or not it receives signals from a host uterus. Shahbazi and colleagues demonstrate in their study that a fertilized egg—also known as a zygote, the “product of conception,” the early embryo, or one of many other descriptive terms—is an autonomous living being. This one little cell, with its complete genetic content, can and does begin to divide and to grow, even in an experimental dish in an incubator in the closet space of some unmarked lab.

See Ana Maria Dumitru *Science, Embryonic Autonomy, and the Question of When Life Begins* January 24, 2017 <https://www.thepublicdiscourse.com/2017/01/17222/>

DISCUSSION OF PERSONHOOD

FROM NIH National Library of Medicine (2017)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5499222/>

Personhood status of the human zygote, embryo, fetus

“Conclusion

“All human beings have an end to their lives as persons in this world. In this article, the question of when personhood begins is posed. This work reviewed the economical stance that personhood begins at fertilization, as well as several other stances which argue for personhood at an arbitrary point after fertilization. The merits and criticisms of the positions which argue against personhood at fertilization were discussed herein. The arguments that challenge fertilization as the event at which human personhood begins do not sufficiently compel opinion due to several semantic discrepancies. Some of these discrepancies include extending personhood to non-human mammals and introducing discrimination among human beings by conferring “higher” personhood status to some people. Other proposed criteria for personhood discussed are fundamentally flawed. In light of the biological evidence and philosophical arguments discussed herein, it is most reasonable to support the notion that personhood status is present at the point of human fertilization.”

See Miklavcic JJ, Flaman P. *Personhood status of the human zygote, embryo, fetus*. *Linacre Q*. 2017 May;84(2):130-144. doi: 10.1080/00243639.2017.1299896. Epub 2017 May 31. Erratum in: *Linacre Q*. 2022 Feb;89(1):7. PMID: 28698706; PMCID: PMC5499222.

IMPLICATIONS OF DEFINITION OF PERSON

FAILED 2015 California Proposed Constitutional Amendment

Opinion of California Attorney General

“Proposal

“This measure amends Section 7 of Article I of the State Constitution to define the term person for purposes of that section. This measure states that “the term ‘PERSON,’ as it is applied to all living human beings, applies to all living human beings from the beginning of their biological development as human beings (i.e., human organism), regardless of the means by which he or she was procreated, method of reproduction, age, race, sex, gender, physical well-being, function, size, level of development, environment, and/or degree of physical or mental dependency and/or disability.” Thus, this measure would confer due process and equal protection rights upon human zygotes, embryos, and fetuses.”

See <https://lao.ca.gov/BallotAnalysis/Initiative/2015-072>

FETUS: LAW AND LEGAL DEFINITION

"A fetus is typically defined as a developing human at a certain point after conception to birth. The precise definition varies by applicable laws, some of which define a fetus to include the element of viability, so that it is able to survive independently outside the womb. Various laws have been enacted to protect fetuses and punish individuals who injure them or cause their death. For example, Texas' Prenatal Protection Act holds people who assault or harm a pregnant woman liable for crimes against the mother and unborn child. The issue has been raised as to whether the law requires doctors to report substance abuse of a pregnant mother. The federal Born-Alive Infant

Protection Act of 2002 amends the legal definitions of "person," "human being," "child" and "individual" to include any fetus that survives an abortion procedure. The federal law requires doctors to attempt to keep alive a fetus that survives an abortion."

See <https://definitions.uslegal.com/f/fetus/>

STRICKEN

EXHIBIT F – UNCERTAINTY OF TERM VIABILITY

There are problems with using a viability threshold to regulate because it is arbitrary. Viability is completely dependent on geography and resources. Viability is changeable and ambiguous, as the following opinions and studies demonstrate. There is disagreement about the likelihood of survival at different points in the gestational period. A fixed gestational age as the point of viability has been eschewed by the US Supreme Court and the Legislature is better able to determine the expansion or contraction of laws and rights based upon evolving medical knowledge and community standards.

Inverse chronology

2022 – 20 to 25 WEEKS

American College of Obstetrics and Gynecology: “INTERIM UPDATE: This Obstetric Care Consensus is updated as highlighted to reflect updated supporting evidence regarding the spectrum of outcomes for infants born in the periviable period.

“Number 6 (Replaces Obstetric Care Consensus Number 4, June 2016. Reaffirmed 2021)

“A recent executive summary of proceedings from a joint workshop defined *perivable birth* as delivery occurring from 20 0/7 weeks to 25 6/7 weeks of gestation.

“This document was developed jointly by the American College of Obstetricians and Gynecologists and the Society for Maternal–Fetal Medicine.

“From the 1950s through 1980, newborn death was virtually ensured with delivery of an infant, even one that was appropriately grown, at or before 24 weeks of gestation.

“Prediction models for estimating neonatal outcomes after periviable birth were developed based on populations of neonates born during a given period, but as medical care advances, these models (if not updated based on more recent information) may not provide estimates with an accuracy equivalent to that initially reported. Prediction of outcome frequencies based on gestational age, birth weight, or both in combination with other predictors provides only a point estimate reflecting a population average and cannot predict with certainty the outcome for an individual newborn.

“Furthermore, before delivery, newborn birth weight can only be estimated. The inherent inaccuracy of ultrasound-estimated fetal weight introduces a degree of uncertainty to the prediction of newborn outcomes. In addition, how parents weigh and value these potential outcomes (ie, death, degree of neurodevelopmental impairment) can vary widely, and individual values need to be incorporated into decision making. Finally, the response of an individual neonate to resuscitation can never be known with certainty before delivery.

“It is important that the health care team provide accurate, balanced, and unbiased information and guidance. Because obstetrician–gynecologists and other obstetric providers may have divergent opinions and practices based on personal beliefs or professional experiences, it is preferable that institutions develop consensus guidelines regarding counseling about outcomes and a general approach to resuscitation of the periviable newborn. Effective communication within the health care team will identify conflicts of conscience that may arise.”

(See [American College of Obstetrics and Gynecology](https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2017/10/periviable-birth)
<https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2017/10/periviable-birth>)

“Though there is no universal consensus, currently in the U.S., fetal viability is thought to be at approximately 6 months of pregnancy (23-24 weeks’ gestation), though some hospitals offer aggressive treatment for babies born at 22 weeks gestation and survival has been reported as early as 21 weeks.”

(See *Time Magazine* <https://time.com/6196775/fetus-prioritized-before-pregnancy-viable/>)

“Periviability, also referred to as borderline viability, is defined as the earliest stage of fetal maturity (ie, between 22 and <26 weeks gestation) when there is a reasonable chance, although not a high likelihood, of extrauterine survival.”

(See *UpToDate* <https://www.uptodate.com/contents/perivable-birth-limit-of-viability> Produced by Wolters Kluwer “a global leader in professional information, software solutions, and services for the health, tax & accounting, governance, risk & compliance, and legal & regulatory sectors. Wolters Kluwer, headquartered in Alphen aan den Rijn, the Netherlands, reported 2020 annual revenues of €4.6 billion. The group serves customers in over 180 countries, maintains operations in over 40 countries, and employs approximately 19,200 people worldwide.”)

“Fetal viability is both a medical concept and a legal one, but the time frame for fetal viability is not a concrete one, says Nisha Verma, MD, Darney-Landy Fellow at American College of Obstetrics and Gynecologists (ACOG) and a complex family planning specialist.

"There is no specific benchmark. Fetal development during pregnancy is a gradual, fluid process and each pregnancy is different," she says.

care providers to offer active interventions for babies born at 23 and 22 weeks of gestational maturity. Outcome reports from multicenter databases (i.e., from the USA, Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) 2008–2011; and the Neonatal Research Network of Japan (NRNJ) 2008–2012) show variations in outcome for babies born between 22 and 24 weeks gestation, with mortality rates of 50–90%, with birth at 22 weeks gestation, over a similar time frame.

“A recent publication from Uppsala, Sweden, reports 50% survival of babies born at 22 weeks gestation with over 50% of survivors reported as unimpaired at 30 months of age, with a uniform approach of offering active perinatal and neonatal interventions for babies born beyond 22 weeks gestation between 2006 and 2015. A similar publication (over the same period) from Iowa, USA, offering a selective approach based on parental wishes, reported 63% survival at 22 weeks gestation. These two sites offer a comparative perspective for outcome at the margins of viability, although the number of infants treated was relatively small, the periods were similar, with potentially fewer variations in practice that influenced multisite databases with similar information.” [Citations omitted]

See Thomas, Sumesh and Asztalos, Elizabeth: *Gestation-Based Viability-Difficult Decisions with Far-Reaching Consequences*, Children, VOL 8, No 7 Art 593
URL = <https://www.mdpi.com/2227-9067/8/7/593>, ISSN = 2227-9067,

2020 – 22 TO 24 WEEKS (Canada)

Actuarial Survival Based on Gestational Age in Days at Birth for Infants Born at <26 Weeks of Gestation.

Of 4335 included infants, 85, 679, 1504, and 2067 were born at 22, 23, 24, and 25 weeks of gestation, respectively. Survival increased from 32% at 22 weeks to 83% at 25.4-6/7 weeks. Graphs of actuarial

survival developed for the first 6 weeks after birth in male and female children indicated a steep increase in survival during the first 7-10 days postnatally.

(See Canadian Neonatal Network J Pediatr. 2020;225:97. Epub 2020 May 28)

Extremely Preterm Birth Outcomes Tool (NIH)

“This tool provides a range of possible outcomes for infants born extremely preterm. The outcomes are based on data from infants born at specific U.S. hospitals between 2006 and 2012. “Hospital range” in the tool results represent outcomes for 80% of hospitals included in this study (10th to 90th percentiles). Please note that the tool describes outcomes for groups of infants with similar characteristics. It does not predict outcomes for any individual infant.

“Extremely Preterm Birth Outcomes Tool

“Prediction for 22 week newborn weighing 401 grams:

Infants Receiving Active Treatment

Avg Survival: 27% Hospital Range: 17 - 40%

All Infants, Including Infants Not Actively Treated

Avg Survival: 10% Hospital Range: 5 - 17%

(See National Institute of Child Health and Human Development <https://www.nichd.nih.gov/research/supported/EPBO/use>)

2019 – 20 WEEKS

A significant number of states have a 20-week threshold, e.g. North Carolina, N. C. Gen. Stat., 2019, §14-45.1.

2016 -- 22 TO 24 WEEKS

“RESULTS A total of 6009 infants born at 22 through 28 weeks' gestation were included. Survival to 1 year for all live births ranged from 6% at 22 weeks to 94% at 28 weeks. Seventy-three percent of deaths occurred within the first week of life. Major morbidity was present in 80% of all infants, and multiple major morbidities were present in 66% of 22- and 23-week infants. Rates of resuscitation at 22, 23, and 24 weeks were 21%, 64%, and 93%, respectively. Survival after resuscitation was 31%, 42%, and 64% among 22-, 23-, and 24-week infants, respectively. Improved survival was associated with increased birth weight, female sex, and cesarean delivery ($P<.01$) for resuscitated 22-, 23-, and 24-week infants.”

Survival and Major Morbidity of Extremely Preterm Infants: A Population-Based Study. University of California – San Francisco Pediatrics. 2016 Jul;138(1) Epub 2016 Jun 14.

2002 – INDETERMINANT: ‘ANY STAGE OF DEVELOPMENT’

The Born-Alive Infants Protection Act 2002 extended federal protection afforded to infants ‘born alive’ at any stage of development. The Act defines ‘born alive’ as breathing or ‘has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.... Regardless of whether the expulsion... occurs as a result of natural or induced labor, cesarean section, or induced abortion’.

Born-Alive Infants Protection Act 1 U.S.C. §8 (b).

1998 -- 24 WEEKS (NIH)

“When a fetus is viable, that is, when it is of sufficient maturity so that it can survive into the neonatal period and later achieve independent moral status given the availability of the requisite technological support, and when it is presented to the physician, the fetus is a patient. In the United States viability presently occurs at approximately 24 weeks of gestational age (Chervenak, L.B.

McCullough; *Textbook of Perinatal Medicine*, 1998).” (See <https://pubmed.ncbi.nlm.nih.gov/11753511/>)

1997 – NO CONCENSUS

Senate Tries to Define Fetal Viability: "Fetal viability, central issue in current Senate debate over late-term abortions, is at best murky concept that has hovered over controversy since Supreme Court's landmark decision in 1973, which legalized abortion while giving states authority to restrict procedure if fetus can live outside womb; doctrine, which Justice Sandra Day O'Connor says is 'at war with itself,' rests on idea that there is precise point in time at which developing baby can survive outside mother's uterus; obstetricians and pediatricians say it is impossible to draw line between viability and nonviability since too many factors--health and socioeconomic status of mother, her access to medical care, weight of fetus and maturity of its organs--come into play. And even if such a line could be drawn, it has kept moving, inching earlier and earlier in a woman's pregnancy as Justice O'Connor predicted."

<https://www.nytimes.com/1997/05/16/us/senate-tries-to-define-fetal-viability.html>

Author: "Sheryl Gay Stolberg

Date Modified: 1997-05-16T05:00:00.000Z

Date Published: 1997-05-16T05:00:00.000Z

1992 – 23 OR 24 WEEKS OR SLIGHTLY EARLIER

Casey found that States could restrict abortion access from 23 to 24 weeks 'or some moment even slightly earlier in a pregnancy'.

Casey, note 5, at 861 per O'Connor J., Kennedy J., and Souter J.

1976 – INDETERMINANT

“The Supreme Court resisted the claim that viability was a concept that could be fixed to a particular point in gestation because ‘viability was a matter of medical judgment, skill, and technical ability and [in *Roe*] we preserved the flexibility of the term.... It is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period’.”

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976) at 64.

1973 – 28 WEEKS

In *Roe*, fetal viability was estimated at 28 weeks, though it was acknowledged that viability could occur earlier

EXHIBIT G – SUPPLEMENTAL AUTHORITY

As the US Supreme Court held that in considering legislation, the Court should consider the laws of other States. (See *Erie R.R. Co. v. Williams*, 233 U.S. 685 at 696, (1914)), the following is brought to the Court's attention:

STATE OF GEORGIA

ELEVENTH CIRCUIT

Sistersong Women of Color Reprod. Justice Collective v. Governor of Georgia, No. 20-13024 (11th Cir. Jul. 20, 2022):

“This appeal concerns whether Georgia can prohibit some abortions and whether its redefinition of "natural person" to include unborn children is unconstitutionally vague on its face. ... But intervening Supreme Court precedent, *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022), makes clear that no right to abortion exists under the Constitution, so Georgia may prohibit them. And the expanded definition of natural person is not vague on its face.”

While this Court may adjudicate on the basis of the Florida Constitution, independent of a non-restraining US Constitution, the Court should consider Georgia's definition regarding personhood of the unborn.

Living Infants Fairness and Equality (LIFE) Act of 2019. 2019 Ga. Laws Act 234 (H.B. 481) passed on March 29, 2019:

SECTION 2

(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when Planned Parenthood v. Casey (1992) and Roe v. Wade (1973) established abortion related precedents;

(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that "[n]o person shall be deprived of life, liberty, or property except by due process of law"; and that "[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws"; and

(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons.

SECTION 3

(d) Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.

(e) As used in this Code section, the term:

(1) 'Detectable human heartbeat' means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(2) 'Unborn child' means a member of the species Homo sapiens at any stage of development who is carried in the womb."

STATE OF LOUISIANA

August 12, 2022: Louisiana Supreme Court rejects appeal in abortion ban case.

June Medical Servs. v. Landry, No. 2022-CD-0103 (La. Jul. 6, 2022)

JUNE MEDICAL SERVICES, LLC, et al, versus Landry, et al:

“VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION ENJOINING THE IMPLEMENTATION OR ENFORCEMENT OF LA. R.S. §§ 40:1061, 14:87.7, AND 14:87.8”

Injunction issued July 21, 2022

The August 12, 2022 Louisiana Supreme Court REJECTION of the suit allowed to stand LA. R.S. § 40:1061 and its definition of ‘unborn human being’ in §1061 I(2)

2015 Louisiana Laws

Revised Statutes

TITLE 40 - Public Health and Safety

RS 40:1061 - Abortion; prohibition

Universal Citation: LA Rev Stat § 40:1061 (2015)

CHAPTER 5. HEALTH PROVISIONS: ABORTION

§1061. Abortion; prohibition

I. The following terms as used in this Section shall have the following meanings:

(1) "Pregnant" means the human female reproductive condition, of having a living unborn human being within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.

(2) "Unborn human being" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth.

(3) "Fertilization" means that point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

LOUISIANA CONSTITUTION

Article I - Declaration of Rights

§2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

§3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race

or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

§12. Freedom from Discrimination

Section 12. In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

§20.1. Abortion

Section 20.1 To protect human life, nothing in this constitution shall be construed to secure or protect a right to abortion or require the funding of abortion. Added by Acts 2019, No. 447, §1, approved November 3, 2020, eff. December 10, 2020.

STATE OF OKLAHOMA

Enacted 2022

House Bill 4327

Status: (Passed) 2022-05-26 - Approved by Governor 05/25/2022

Section 1-745.31 of Title 63

Section I

2. "Fertilization" means the fusion of a human spermatozoon with a human ovum;

3. "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is

endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

4. "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth; and

5. "Woman" and "women" include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

OKLAHOMA CONSTITUTION

SECTION II-2. Inherent rights.

All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.

SECTION II-7. Due process of law.

No person shall be deprived of life, liberty, or property, without due process of law.

STATE OF TENNESSEE

Memphis Ctr. For Reprod. Health v. Slatery, 24 F.4th 1069 (6th Cir. 2022)

June 28, 2022 | The full Sixth Circuit Court of Appeals unanimously vacated the district court's injunction of the timing provisions in the Tennessee "Heartbeat Bill" in *Memphis Center for Reproductive Health v. Slatery*.

2019 Tennessee Laws Pub. Ch. 351 (S.B. 1257)

TENNESSEE 2019 SESSION LAWS
2019 SESSION OF THE 111th GENERAL ASSEMBLY
HUMAN LIFE PROTECTION ACT

SECTION 2(a)

(4) "Unborn child" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth.

TN Code § 39-15-211 (2018)
2018 Tennessee Code
Title 39 - Criminal Offenses
Chapter 15 - Offenses Against the Family
Part 2 - Abortion
§ 39-15-211

(a)

(6) "Unborn child" means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth; and

(7) "Viable" and "viability" mean that stage of fetal development when the unborn child is capable of sustained survival outside of the womb, with or without medical assistance

STATE OF TEXAS

Federal District Court, N.D. TEX

State of Texas v. Becerra et al, No. 5:2022cv00185 - Document 73 (N.D. Tex. 2022) (8/23/2022)

"So both Texas civil and criminal laws prohibit abortion unless there is a threat to the life of the pregnant woman." at 15

"Thus, even when an abortion is necessary, Texas law requires procedures that maximize the chance for the unborn child to live, unless those procedures would themselves create a greater risk to the pregnant female." at 17

"AAPLOG is an organization of OB/GYNs that are opposed to elective abortions, which it defines as "the purposeful killing of the unborn in the termination of a pregnancy for no medical reason." Dkt. No. 23-1 at 20. In AAPLOG's view, an abortion is not medically necessary except when a separation of the unborn child is necessary to save the life of the mother." at 23

"CMDA is an organization of healthcare professionals that oppose abortion based on their religious beliefs. Id. at 25. In CMDA's view, an abortion is "elective" and, thus not necessary, "where the woman's life is not at stake." Id. at 26. Like AAPLOG, CMDA also believes in "protecting the life of the mother and her unborn child." Id. at 27 (emphasis added)." at 24

"So in the case of a pregnant woman, a physician's duty to screen and to stabilize or transfer appropriately applies equally to the pregnant woman and her unborn child. See § 1395dd(a), (b)(1), (e)(1)(A). And the Court must consider both duties when interpreting the statute." at 42

STRICKEN

EXHIBIT H – COMMONLY ACCEPTED BELIEFS OF THE
COMMUNITY

August 12, 2022: The Protect Human Life Florida Committee received an initial approval Aug. 12 from the Florida Department of State to move forward with the proposed constitutional amendment.


Amid debates across the country about abortion rights, a political committee has proposed a ballot initiative in Florida that would recognize a “God-given right to life of the preborn individual.”

See

<https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=74660&seqnum=2>

Certificate of Service

I certify that the foregoing document has been furnished to all counsel of record on the E-filed date of this document by filing the document with service 24 January, 2023, through the e-Service system (Fla. R. Jud. Admin. 2.516(b)(1)).



Respectfully submitted,

James Pickett, *pro se*

P O Box 6051

Winter Park, Florida 32793-6051

Telephone: 407 574 8366

amicus@nol.in.us

STRICKEN

This page intentionally blank.

STRICKEN