

Any proposed future personhood language in state or federal law is

No Greener Light

40 years of legal abortion

9 years after its "collapse"

By Dave Leach

than the legal green light already shining since 2004, for State Lawmakers to Criminalize Abortion as if *Roe* Never Existed

What proliferers 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 proliferers 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.

By Dave Leach, November 25, Thanksgiving, 2010.
(Revised as of 4/20/2013)

Legal recognition of the fact that all unborn babies are human beings, in a 2004 federal law, triggered the "collapse" of abortion's legality, leaving states legally free to outlaw abortion. The only reason courts haven't acknowledged this yet is that proliferers 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, (such as in North Dakota, Arkansas, or Kansas), and citing the 2004 law, could be such a case. If the state's Attorney General doesn't raise the argument, it could be raised through Amicus Briefs when it is appealed, *IF* it is appealed.

If some future law includes a "Finding of Fact" that explains legal abortion's "collapse" by the 2004 law, then (1) other prolife lawmakers besides the one who introduced it will take the bill seriously, knowing it has a viable legal strategy for surviving a challenge, (2) public discussion can build enough to expose, humiliate, and remove chamber dictators and lawless judges, and (3) the Attorney General will argue the 2004 "collapse" when the bill is challenged,

We don't need *Roe*'s overturn, since *Roe* itself authorizes legal abortion's "collapse": "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." *Roe* also equated "personhood" with "recognizably human". "[They considered] the point at which the embryo or fetus became 'formed' or recognizably

human, or in terms of when a 'person' came into being...."]

So when federal law 18 U.S.C. § 1841(d) legally recognized all unborn babies as human – as "members of the species homo sapiens", federal law "established" the "personhood" of unborn babies. Federal law said what *Roe* said must be said for legal abortion to end.

While the impact of state personhood laws on *Roe* is in doubt, because of confusion about Webster and because state personhood positions conflict, SCOTUS accepts the authority of federal law over itself, until such time as it rules the law unconstitutional. But this law, and state laws like it, have been unanimously declared constitutional by courts dozens of times.

The 2004 law doesn't "permit [authorize] prosecution" for abortion. But that doesn't, and can't, prevent states from enacting their own criminal laws authorizing prosecution for abortion.

FAQ S

(Frequently Asked Questions)

(these are summaries of the detailed answers at www.Saltshaker.US/SLIC/NoGreenerLight.pdf)

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

A: Ever since a few Republican proliferers 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.

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"?

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

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?

A: 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.

4. 18 U.S.C. §1841(c) lets moms and docs keep killing babies they are too paganized to love, leaving babies unprotected until they are born. How is that different than the historical laws with lower penalties

for killing babies than for killing adults, which led Roe to conclude that “the unborn have never been recognized in the law as persons in the whole sense” so why not kill them? Isn’t that why we need future personhood laws that protect all human life equally before we are ready for court?

A: Future proposed personhood laws don’t protect unborn babies as much as adults, either, nor can they. But that is not a legal problem. The fact that something is legal doesn’t make it harmless. Laws routinely protect people unevenly whom lawmakers wish they could protect evenly. There are several common reasons. No judge assumes, when lawmakers address an evil but haven’t yet decided how to address the evil next to it, that adults harmed by the neighboring evil are regarded by lawmakers as less than “persons in the whole sense”

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?

A: 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.

6. Shouldn’t a law against abortion just say “the penalties for killing the unborn, from any point after fertilization, are the same as for killing an adult”, without a pile of details with different penalties for contraception than for surgical abortion, for example, which treat the youngest unborn as less than “persons in the whole sense”?

A: 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. Here is 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

7. Wouldn’t the Supreme Court simply rule 18 U.S.C. §1841 unconstitutional, rather than allow it to trigger Roe’s “collapse”?

A: 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”.

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?

A: 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.”

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.?

A: 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.”

10. Can God bless our involvement with a law that saves only some unborn, but not all of them? Does God bless compromise?

A: Christians should not construct ethical positions except on a foundation of Scripture, which ordinarily is forgotten during discussions like this. “Compromise” is not a word from the Bible. 1 Samuel 8 is an example of God compromising with His People. Picketers and sidewalk counselors believe it is better to save some than none. 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!

these are summaries of the detailed answers at www.Saltshaker.US/SLIC/NoGreenerLight.pdf. Contact: GALLAGHER@Saltshaker.US The Partnership Machine, Inc.