IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, Plaintiff	)	Case No. 09CR1462
	)	Division 7
vs.	)	
	)	Motion to Reconsider
SCOTT P. ROEDER, Defendant	)	
	)	

MOTION TO RECONSIDER

Comes now the defendant, Scott Roeder, pro se with regard to this motion but still retaining his Public Defenders pursuant to State of Kansas v. Holmes, No. 90,420, Sept 21, 2007, to ask the Court to reconsider his ruling prohibiting the Necessity Defense, for the following reasons:

1. The Court did not read my brief in support of this defense in advance of his ruling. Defendant does not blame the court for not having read it, acknowledging the brief was only submitted at the December 22 hearing. Although the prosecutor had read it, and commented on its contents at hearing, it having been made publicly available, defendant realizes judicial ethics require a judge to limit his factfinding to what is presented in court. Neither, defendant hopes, will the Court blame the defendant for submitting it so late; obstacles in its way included mail delivery at the jail and, frankly, the challenge of reaching consensus on trial strategy between defendant and counsel on so difficult a case. So without any thought of blame, defendant simply observes that the Court ruled before reading his brief in support of the Necessity Defense, and begs the Court to read it, and then reconsider his ruling.

As defendant points out at length on page 5 of his brief, judicial ethics favor rulings that are based on having read and "regarded" the issues raised:

> (Canon of Judicial Ethics #19, prior to 1970:) In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

2. Although the Court ruled against the Necessity Defense for me, it scheduled a January 8

hearing on the Defense of Others. Defendant is very appreciative of this further opportunity, but is also confused about what has been shoved off the table and what remains on the table, since *City of Wichita v. Tilson,* 855 P.2d 911 (Kan.), cert. denied, 510 U.S. 976, 114 S. Ct. 468, 126 L. Ed. 2d 420 (1993), describes the two as if they are two names for the same defense. It uses the term "necessity defense" "for the sake of simplicity" as an umbrella term for a wide collection of defenses with different names but similar elements scattered over the nation's jurisdictions.

> Regardless of what name is attached to the defense (and for the sake of simplicity we will refer to it as the necessity defense) one thing is clear...

Well within the range of that variety of elements stands the Defense of Others, Kansas 21-3211(a). *Tilson* offers no clue, therefore, what distinguishes Defense of Others from Necessity, except the name, and the fact that while the legal force of Defense of Others in Kansas was never in doubt, the legal force of Necessity has not yet been decided!

Defendant's December 22 brief argues this difference: Defense of Others is unavailable to prevent "lawful harms"; while Necessity, as "Professor Robinson" formulates it, justifies preventing any actual harms regardless of their legal status. But not even this difference is acknowledged by Tilson:

> Regardless of what name is attached to the defense (and for the sake of simplicity we will refer to it as the necessity defense) one thing is clear: **The harm** or evil which a defendant, who asserts the necessity defense, seeks to prevent **must be a legal harm** or evil...

In its lengthy discussion of the various elements under this umbrella from jurisdiction to jurisdiction, defendant is unable to find any element in Necessity that is not also in Defense of Others, or vice versa.

Therefore, defendant is in doubt whether the thing he is asking has already been granted, in which case defendant merely asks for clarification.

3. There are a few things the Court said at the December 22 hearing which seem out of date in light of evidence presented in defendant's brief. Even if defendant is wrong, it would be a great

blessing to many other prolifers who are misled along with defendant, if the Court would rule on these errors specifically, addressing in what way so many people are wrong.

In the language of Canon of Judicial Ethics #19, this would "avoid the repetition of erroneous positions of law" and "contribute useful precedent to the growth of the law".

As the prosecutor noted, in quoting Defendant's brief (showing she read it before it was submitted to the Court), there have been over 60,000 arrests in abortion prevention cases. In most of them the Necessity Defense was presented and rejected before trial. Yet well after this pattern seemed set in stone, it continued being presented. Why? Because thousands of attorneys continued to believe it was the right defense, and a legally correct defense. If the Court has already ruled, or will rule on January 8, against the Necessity Defense of Others or whatever it should be called, it would be a great lessening of tension for many if the Court could do so with a ruling that finally settles WHY Necessity is the wrong defense, that addresses the arguments raised in defendant's brief.

Among those arguments is that *all* of the precedents created in *all* past abortion prevention trials are outdated by legal events of the past 6 years.

First is the argument that Constitutional Protection of abortion was withdrawn by the Supreme Court in 1992. Analysis of this fact is found in a 2003 Supreme Court opinion. It is not "authority", since it is in a dissent, but the analysis is pretty compelling.

Second is the 2004 Federal Law popularly known as Laci and Connor's Law, which defines the unborn as "homo sapiens". In all the debate in Congress over the effect this would have on abortion, and whether the section not permitting prosecutions sufficiently protected *Roe* from annulment, no one apparently thought of the impact the law would have on the "comparison of harms" in an abortion prevention trial. I believe it is worth thinking about.

There are several other arguments I, and others, likewise believe are compelling, and we would love to see them addressed. Even if we are wrong, we would love to have it explained how we are wrong, rather than just being told "you are wrong so just stop bothering us."

Like, the Preamble explicitly gives Constitutional Protection to "our posterity", obviously including unborn babies, irregardless of whether the Court is in doubt about whether they are "persons" or "humans", or whether the fact abortion is genocide is "relevant". The Preamble has 6 times as much *Stare Decisis* on its side of the teeter totter than *Roe.*

Or, not even *Roe* regarded the possibility that abortion is genocide as irrelevant, but explicitly ordered that should that fact be established, *Roe* must immediately cease.

Or, *Tilson* was based on a statement by Professor Robinson about the elements of the Necessity Defense which painted a quite different defense than *Tilson's* characterization of the Robinson quote. It is simply incorrect that Robinson said anything about Necessity being unavailable when the harms prevented are legal.

For these reasons defendant prays, to almighty God, while asking you, to reconsider your ruling against the Necessity Defense.

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Scott Roeder, Defendant, pro se (only with respect to the submission of this brief)

Proof of Service: I have been told I need only send this single copy to:

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