EXHIBIT 7
DATE 2/14/2011
HB 490

Proponent testimony for Montana H.B. 490
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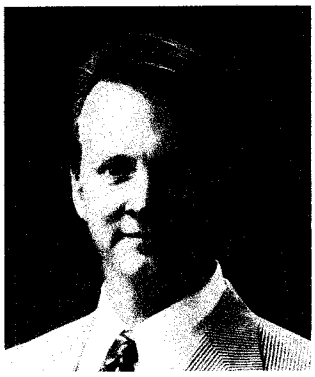

Dr. J. P. Johnston, D.O.

Education:

- ♦ Graduated with B.S. Biology from Florida State University, 1993
- ♦ Recipient of the McAllister Award in biological research in 1997
- ♦ Graduated with doctorate in medicine from Nova Southeastern University, Ft. Lauderdale, Florida, 1998
- ♦ Graduated chief resident from Ohio University Family Practice Residency in 2001

The point of contention in this debate

As this committee considers House Bill 490, we must focus on the primary question to be asked in this debate: "When Does a Human Being's Life Begin?" This question can be answered conclusively in scientific terms. There is a diverse array of religious, philosophical, and social opinions on this subject, but it is our object to set before you the unambiguous scientific facts.

Unfortunately, you will rarely find the question of when life begins debated in scientific terms. It is important to be circumspect to identify and avoid the "smoke and mirrors" in this debate.

What the debate is <u>not</u> about

This debate is <u>not</u> primarily about:

1. Personal autonomy – "I have a right to my own personal choices."
2. Women's rights – "I have a right to do what I want with my own body."
3. What's most beneficial for women – "An abortion of an unwanted pregnancy is best for my career, my relationship, my well-being, etc." or "An abortion of my pregnancy caused me great emotional distress and illness."
4. The right to privacy
5. Subjective and arbitrary calculations on the value or quality of another human life
6. Hormonal contraception

As proof, I offer the following argument: If someone were to argue that they have a right to terminate their one-day-old infant because "I have a right to my own personal choice" or "This will help my career and improve my health" or "It's unwanted and unloved" or "I have a right to privacy," *how would you respond?* <u>Not one</u> of us would concur with these justifications for terminating a one-day-old infant. If we were convinced that, in fact, the human *fetus* is just as alive as the infant whose life you would defend, then we would not accept these justifications for aborting human *fetuses* any more than we would accept them for aborting one-day-old infants.

This proves that the question to which we must give our attention is "When Does a Human Being's Life Begin?" Issues of personal autonomy, women's rights, privacy rights, and pragmatic considerations are "smoke and mirrors," distractions from the real issue.

Opponents to H.B. 490 may argue that hormonal contraception would be hindered if we respect the right to life of preborn human beings because hormonal contraception *may* prevent implantation of the embryo into the uterus and thus cause a miscarriage. However, we must never let our confidence in what we know be shaken by what we don't know. We know that abortion ends a human's life. We do not know if hormonal contraception does (there are good arguments that it does not.)

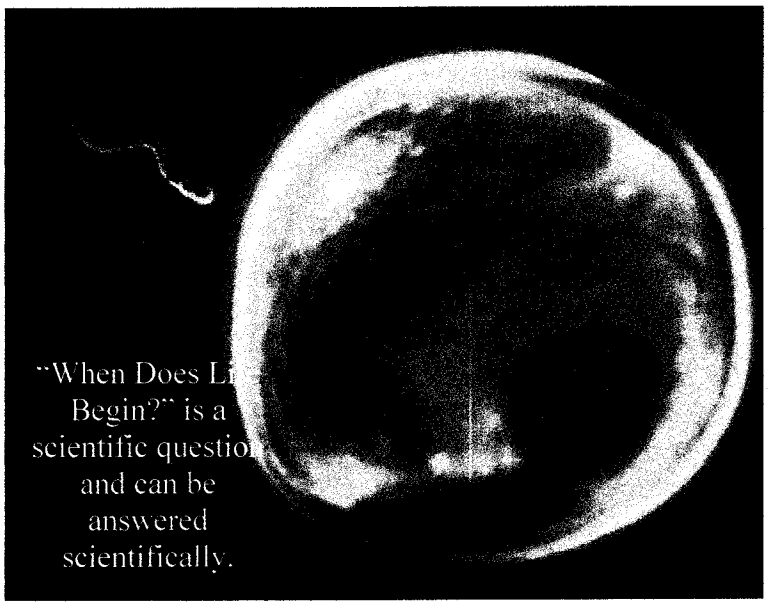
According to the universally-accepted five scientific criteria that define life, she's been alive for 6 weeks. Her heart has been beating her own blood type since 21 days after conception and measurable brain waves could be documented as early as 40 days after conception. (Moore & Persaud, *The Developing Human*, p.310; Dr. H. Hamlin, Life or Death by EEG, *Journal of the American Medical Assn.*, Oct.12, 1964, p.113)

When does a person's life begin?

I am aware of the nature by which we listen defensively to such claims as when life begins, always measuring what is said by whether or not it challenges our views on abortion. Let me challenge each of you to keep an open mind as you weigh the scientific evidence.

What is "life?" *The Basics of Biology*, a scientific textbook for elementary students, gives five characteristics of living things (as do all public elementary science textbooks).

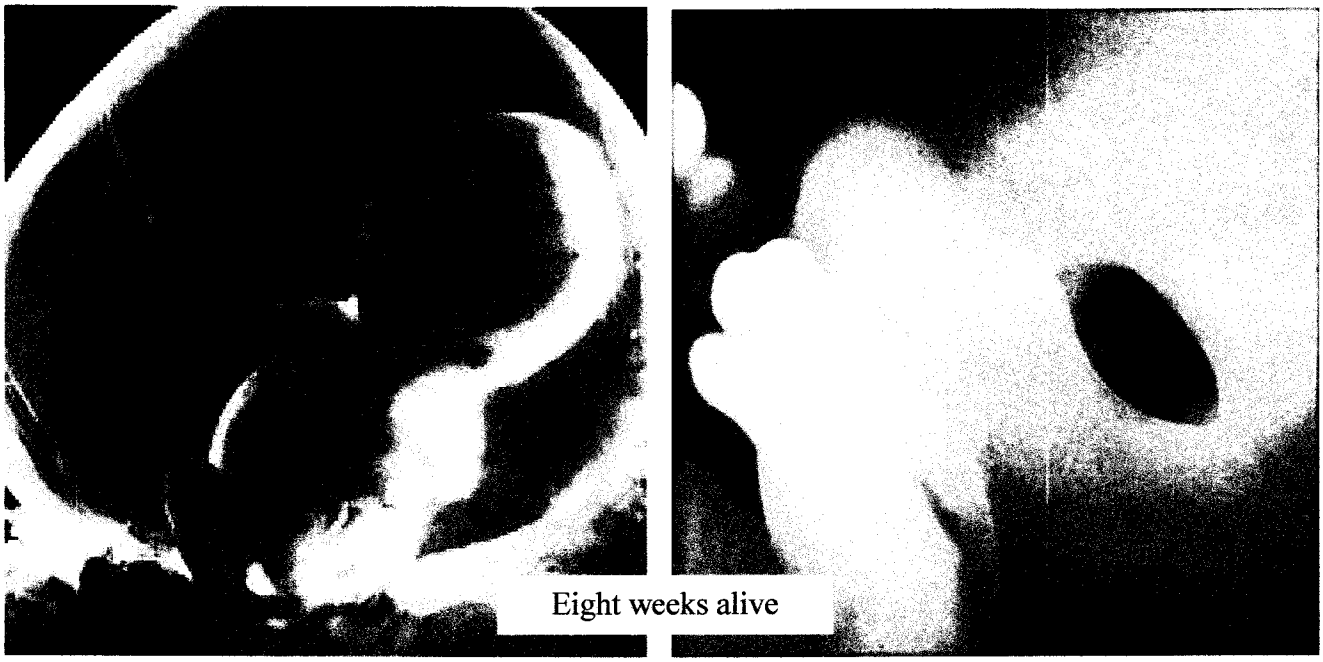
1. Living things are highly organized.
2. All living things have an ability to acquire materials and energy.
3. All living things have an ability to respond to their environment.
4. All living things have an ability to reproduce.
5. All living things have an ability to adapt.



If we were to trace your existence to when your life first began, when you were first highly organized, when you could first acquire and metabolize nutrients and oxygen, when you could first begin to grow, where would that point be?

According to this elementary definition of life, the life of those conceived through sexual reproduction begins at fertilization, when a sperm unites with an oocyte. (In monozygotic twinning, one twin's life begins when the zygote divides to form two distinct single-cell human beings. *In vitro* fertilization occurs outside the womb.) From this moment of the onset of biological development, the being is highly organized – the sex, hair and skin color, and facial features are already determined. From this moment, the being has the ability to acquire materials and energy, has the ability to respond to his or her environment, and has the ability to reproduce (the cells divide, then divide again, etc., and barring pathology and pending reproductive maturity have the potential to reproduce other members of the species.) Non-living things do not do these things. Even before the mother is aware that she is pregnant, a distinct, unique life has begun his or her existence.

The new human being is not a part of the mother's body, but is a distinct living entity that is dependent upon the mother for nutrition. Since when does a reproductively mature woman's body have male genitals? No arbitrary milestone after this point makes us any more human or any more alive.



Eight weeks alive

The experts answer...

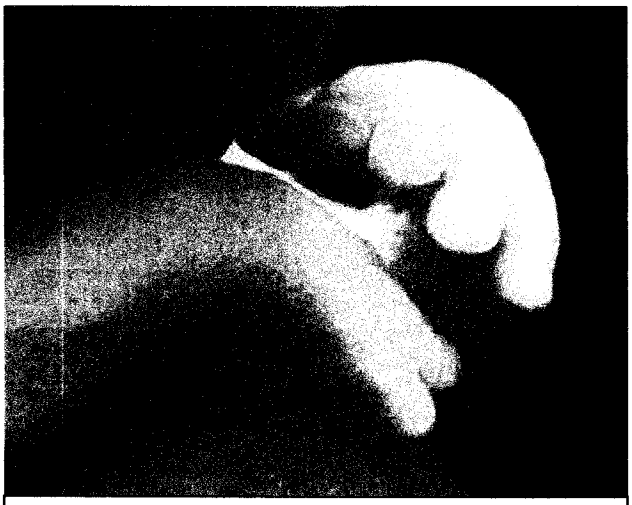
Quotes from famous, well-known physicians who testified on April 23-24, 1981, in a Senate Judiciary Subcommittee hearing on this subject:

The "Father of Modern Genetics" who identified Downs Syndrome as Trisomy 21, Dr. Jerome Lejeune, M.D., University of Descarte, Paris:

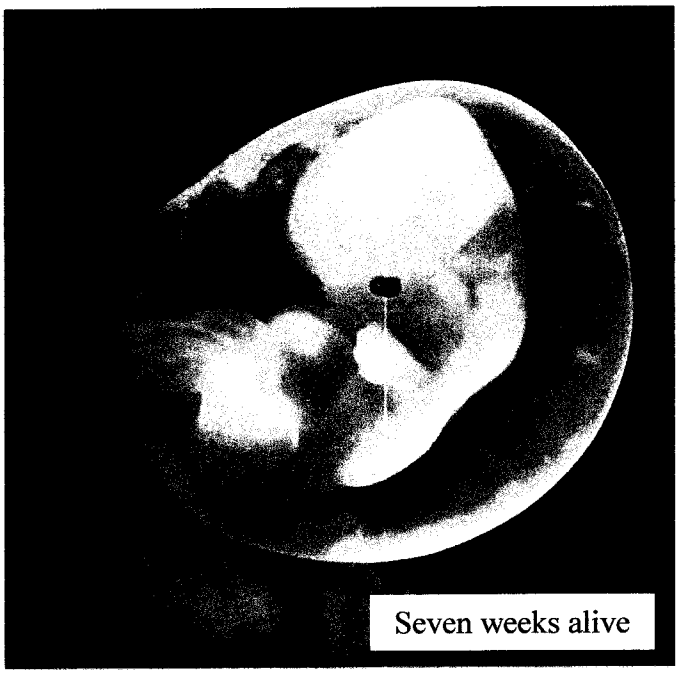
> *"To accept the fact that after fertilization has taken place a new human has come into being is no longer a matter of taste or opinion... it is plain experimental evidence."*

The "Father of *In Vitro* Fertilization," Dr. Landrum Shettles, M.D. Professor of Obstetrics & Gynecology at Columbia University's College of Physicians and Surgeons, and Director of Research at the New York Fertility Research Foundation:

> *"Conception confers life and makes that life one of a kind."**



Most of the accompanying intrauterine photographs were taken under the direction of Professor Andrzej Skawina of Collegium Medicum Jagiellonian Univ., Krakow, Poland, and Antoni Marsinek, M.D. of the Czerwiakowski Gynecological and Obstetrics Hosp., Krakow, Poland



Seven weeks alive

Dr. McCarthy de Mere, M.D., law professor, University of Tennessee:

"The exact moment of the beginning of personhood and of the human body is at the moment of conception."

Dr. Hymie Gordon, M.D., Chairman of the Department of Genetics at the Mayo Clinic:

"By all the criteria of modern molecular biology, life is present from the moment of conception."

Dr. Alfred Bongiovanni, M.D., University of Pennsylvania School of Medicine:

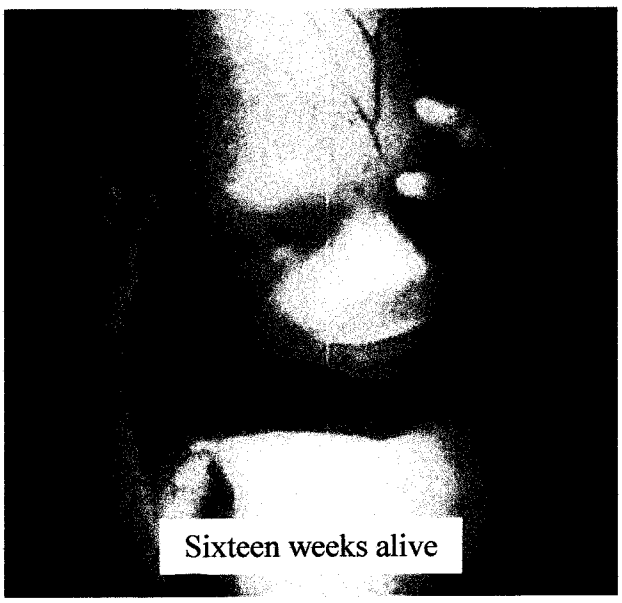
"I am no more prepared to say that these early stages represent an incomplete human being than I would be to say that the child prior to the dramatic effects of puberty ... is not a human being."

Dr. Micheline Matthews-Roth, M.D., Professor at Harvard University Medical College:

"Each individual has a very neat beginning, at conception."

Dr. Matthews-Roth gave confirming testimony, supported by references from over 20 embryology and other medical textbooks that human life began at conception.

Life Educational Reprint, 1965 (revealing the scientific consensus at the time) stated: "The birth of a human life really occurs at the moment the mother's egg cell is fertilized by one of the father's sperm cells."



Sixteen weeks alive

Williams Obstetrics textbook, Sixteenth Edition, stated: *"Happily, we have entered an era in which the fetus can be rightfully considered and treated as our second patient. Who would have dreamed – even a few years ago – that we could serve the fetus as a physician."* (from the preface)

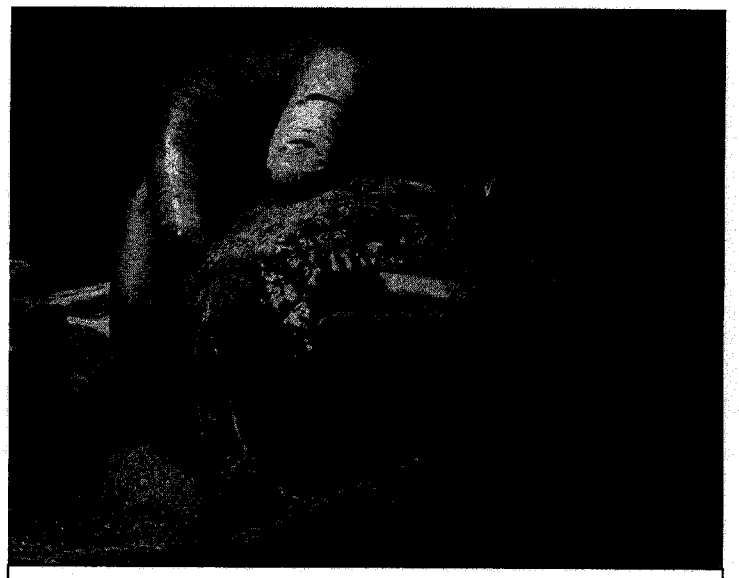
Quotes from human embryology textbooks proving when life begins

"Fertilization is a sequence of events that begins with the contact of a sperm with a secondary oocyte and ends with the fusion of their pronuclei... and the mingling of their chromosomes to form a new cell. This fertilized ovum, known as a zygote, is a large diploid cell that is the beginning of a human being." (Moore, Keith L., *Essentials of Human Embryology.* Toronto: B.C. Decker, Inc., 1988, p.2.)

"Although human life is a continuous process, fertilization is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is thereby formed." (O'Rahilly, Ronan and Muller, Fabiola. *Human Embryology and Teratology,* 2nd edition. New York: Wiley-Liss, 1996, pp. 8, 29.)

"Almost all higher animals start their lives from a single cell, the fertilized ovum (zygote)... The time of fertilization represents the starting point in the life history, or ontogeny, of the individual." (Carlson, Bruce M., *Patten's Foundations of Embryology,* 6th edition. New York: McGraw-Hill, 1996, p.3.)

The original Hippocratic oath, 460-377 B.C., states: "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy."



Samuel Armas is surgically treated in utero at 21 weeks gestation for spina bifida. (Not the obvious: Samuel is alive, and is a human being being treated by a physician trained in treating humans.) Photographer M. Clancy

Conclusion

H.B. 490 inscribes into the Montana constitution a scientifically valid and morally appropriate definition of a person. It catches up with the advances of medical science and brings state leadership into compliance with state constitutional obligations, and is compatible with the limitations that the U.S. Constitution places on federal power, all unlawful usurpations of the federal judiciary notwithstanding. Montana is constitutionally and morally responsible for protecting the innocent through the administration of justice within the jurisdiction of Montana. The federal government is lawfully limited to specifically enumerated powers within the Constitution and thus, should let you. Montana has the constitutional and moral authority to respect the God-given rights of all human beings in Montana.

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*"Conception" traditionally has referred to fertilization, when sexual reproduction produces a new human being. Nevertheless, the term has mutated in the medical literature and "fertilization" is the more accurate contemporary term for the onset of biological development in sexual reproduction.