

4
DATE 3/28/11
HB 490

HOUSE BILL 490 – REP WENDY WARBURTON:

A Referendum to the People of Montana to Amend Article II, Section 3, Declaration of Rights,
Defining Person

Dan McGee, Laurel, MT – March 28, 2011 – Senate Judiciary Committee

1. HB 490 proposes a referendum to the people of Montana to amend their Constitution.

2. HB 490 proposes to amend Article II, Section 17, Due Process of law:

“(1) No person shall be deprived of life, liberty or property without due process of law.”

to add:

*“(2) As used in this section, the word “person” applies to all members of the species *Homo sapiens* at any stage of development, including the stage of fertilization or conception, regardless of age, health, level of functioning, or condition of dependency.*

“(3) The legislature shall implement this section by appropriate legislation.”

3. The People of Montana have the exclusive right to amend their Constitution.

a. Article II, Section 1: Popular Sovereignty: *“All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.”*

b. Article II, Section 2, Self-government: *“The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.”*

4. Legal Background:

a. Declaration of Independence:

*“We hold these truths to be self-evident – **that all men are created equal; that they are endowed by their Creator with certain inalienable rights** – that among these are **life, liberty and the pursuit of happiness**; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the People to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness.”*

b. U.S. Constitution, Amendment 14, Section 1 (1868):

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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.** (emphasis added).*

(in 1868, the issue being addressed was slavery, not the question of when life began)

c. Black’s Law Dictionary – Definition of Person:

- *“In general usage, a human being (i.e. natural person)...”*
- *“Unborn child. Word ‘person’ as used in the Fourteenth Amendment does not include the unborn (per Rove v. Wade)... Unborn child is a ‘person’ for purposes of remedies given for personal injuries, and a child may sue after his [her] birth.”*

d. Montana Constitutional Convention, 1972, Verbatum Transcript, page 1640

- Delegate Kelleher proposes amendment to Art. II, Sec. 3, to change the word ‘born’ for ‘conceived’.
- Delegate Dahood opposes the proposed amendment, and states: *“Mr. Chairman, I stand in opposition to the amendment. What Delegate Kelleher is attempting to do at this time is, by constitutional command, prohibit abortion in the State of Montana. That issue was brought before the committee. We decide that we should no deal with it within the Bill of Rights. **It is a legislative matter insofar as we are concerned. The world of law has for centuries conducted a debate as to when a person becomes a person, at what particular state, at what particular time; and we submit that this particular question should not be decided by this delegation.** It has no part at this time within the Bill of Rights of the Constitution of the State of Montana, and we oppose it for that reason.”* (emphasis added).
- The Kelleher amendment was then defeated.

e. Roe v. Wade, 1973

- *“State criminal abortion laws...violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman’s **qualified right to terminate her pregnancy.**”* (emphasis added)
- *“Though the state cannot override that right, it has legitimate interests in **protecting both the pregnant woman’s health and the potentiality of human life, each of which interests grow and reaches a “compelling” point at various stages of the woman’s approach to term.**”* (emphasis added)

- “For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion, except...for the preservation of the life or health of the mother.”
(emphasis added)

f. **Doe v Bolton, 1973**

- “Pregnant woman **does not** have absolute constitutional right to abortion on her demand.” (emphasis added)

g. **Webster v. Reproductive Health, 1989**

- “This court has emphasized that Roe implies no limitation on a State’s authority to make a value judgment favoring childbirth over abortion.”
- “...this court upheld governmental regulations withholding public funds for non-therapeutic abortions but allowing payments for medical services related to childbirth, recognizing that a government’s decision to favor childbirth over abortion through the allocation of public funds does not violate Roe v. Wade.”
- Reiterates: “...state’s interest in protecting potential human life.” (Pp 15-23)
- Viability: “...as the point at which its interest in potential human life must be safeguarded.”
- Emphasized maternal health
- “There is also no reason why the State’s compelling interest in protecting potential human life should not extend throughout pregnancy rather than coming into existence only at the point of viability.”
- “The doubt cast on the Missouri statute by these cases is not so much a flaw in the statute as it is a reflection of the fact that Roe’s rigid trimester analysis has proved to be unsound in principle and unworkable in practice.” (Pp 19-21)
- **The Roe framework is hardly consistent with the notion of a Constitution like ours that is cast in general terms and usually speaks in general principles. The framework’s key elements – trimesters and viability – are not found in the Constitution’s text, and since the bounds of the inquiry are essentially indeterminate, the result has been a web of legal rules that have become increasingly intricate, resembling a code of regulations rather than a body of constitutional doctrine. There is also no reason why the State’s compelling interest in protecting potential human life should not extend throughout**

pregnancy rather than coming into existence only at the point of viability.
Thus, the Roe trimester framework should be abandoned.” (Pp19-21) (emphasis added throughout above)

h. Planned Parenthood v. Casey

- a. Addresses Viability, state’s legitimate interests, and informed consent
- b. Paragraph. No. 14 – discussion on effects of overturning Roe v. Wade – see handout

i. Montana Case Law – State Supreme Court Decisions:

- Armstrong V. Mazurek, 98-066, 1999 MT 261, ppg 44:
“Significantly, the Convention determined not to deal with abortion in the Bill [Declaration] of Rights “at this time” and rather chose to leave the matter to the legislature because of the historical debate as to “when a person becomes a person”. (page 1640)
- “Roe, handed down a year after the Convention resolved this debate from the legal standpoint, concluding that a fetus does not enjoy a constitutionally protected status – i.e., that a fetus is not a constitutional person – until “viability” (at about 26 weeks or the third trimester).
- **This Montana Supreme Court opinion is controverted by the Webster decision.**

HB 490 - TERMINOLOGY

1. Court Terms:

Person – Unborn – human being – human life – potential human life – a living being

2. Biological Developmental Terms:

Zygote...embryo...fetus...unborn...born...baby...infant...toddler...child...pre-teen...teenager...adolescent...mature adult...senior citizen... A person is a person throughout these developmental terms.

3. Facts...

- One egg = has ½ of the 46 chromosomal pairs of a human gene.
- One sperm = has ½ of the 46 chromosomal pairs of a human gene.
- At conception, at one specific instant in time, only one sperm, out of millions, fertilizes one egg.

- At that fertilization, the 46 chromosomal pairs are joined to form 1 human gene – only then, at no other time and under no other conditions.
 - The result is a human gene, unique in all mankind ...never before in the history of mankind...never again.

 - A unique, human life begins. It has its own DNA; its own blood type; its own gender, its own fingerprints, its own hair, color of eyes, ultimate height – everything necessary for status of human person - a “unique genome of homo sapiens” (N.D. Bill)

 - A unique human-being life begins...A person begins.
4. Senate Bill 490 is necessary to submit to the people of Montana the opportunity to define Person.
 5. The people (i.e., the “Persons”) of Montana have the right and duty to determine this issue pursuant to Article II, Sections 1 & 2.
 6. The People (i.e., “Persons”) of Montana must decide this question.

A parallel moral issue Slavery.

- In the early to mid-1800's this country faced a moral issue. That issue was slavery.
 - In 1857, the U.S. Supreme Court ruled in the Dred Scott decision of 1857 that black persons who were slaves were "chattel property; had no rights in the courts; and could be bought and sold. The decision opined that blacks were substandard as compared to whites.
 - Abraham Lincoln, in his First Inaugural Address stated: *"I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court...At the same time, the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made...the people will have ceased to be their own rulers, having...resigned their Government into the hands of the eminent tribunal... Intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land, are still competent to adjust in the best way all our present difficulty."*
 - From our historical perspective, few among us, if any, would argue today that slavery is acceptable; that a black person is "chattel property", or that a black person is substandard.
7. The issue of slavery, the moral issue of the time, led to:
1. a unique executive order, "The Emancipation Proclamation",
 2. a civil war in which more Americans died than in all other wars combined (600,000+);
 3. two amendments to the US Constitution, the XIII and XIV amendments, which finally outlawed slavery in the United States.
8. The moral dilemma of our time, and for the past 37 years: life and abortion.
- Scientifically, it is proven that a unique life begins when the chromosomes of the sperm combine with the chromosomes of the egg to create the 46 chromosomal pairs of the human gene. That combination occurs at conception or fertilization.
 - Life begins at conception; A person begins at conception.
 - This is a fact - not a theory; nor is it faith, nor an argument of religion or choice.
 - Abortion kills unborn human persons.
 - Abortion kills a person, regardless of the developmental term used to describe that person, i.e., "fetus", "zygote", etc.

- This is a fact - not a theory; nor is it faith, nor an argument of religion or choice.
9. Defining that *a person is a person at conception* may be inconvenient to some; defining that a black person was a person was also inconvenient to some. ***Inconvenience does not alter the truth.***
 10. People are fallible. Courts are made of fallible people.
 - The Court was wrong in Dred Scott. In fact, the US Supreme Court has never overturned Dred Scott – but the people did through constitutional amendment - within 3 years after the Civil War.
 - The Court was wrong in Roe v. Wade. The Webster decision says so. Even Jane Roe says so.
 11. The People of Montana must be given the opportunity to speak on this issue; an opportunity denied to them by the 1972 Constitutional Convention, and relegated to the Legislature.
 12. It is our hope, that as the People's elected representatives, this Committee, and the Legislature as a whole, will allow the People the right to express themselves on this issue. They have the right and duty to so express themselves.
 13. I ask for your courageous support of HB 490; for this request, indeed, calls for courage.

Thank You.

TITLE 40 – FAMILY LAW

40-1-203. Proof of age and medical certificate – waiver of medical certificate requirement. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by ~~40-1-201~~. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services or as provided in subsection (2), shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a blood test for rubella immunity, that the report of the test results has been shown to the applicant tested, and that the other party to the proposed marriage contract has examined the report.

(2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include:

- (a) the reasons for undergoing a blood test for rubella immunity;
- (b) the information that the results would provide about the woman's rubella antibody status;
- (c) the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and
- (d) contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing.

(3) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations, tests, or waivers required or allowed by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983; amd. Sec. 1, Ch. 186, L. 1989; amd. Sec. 73, Ch. 418, L. 1995; amd. Sec. 113, Ch. 546, L. 1995; amd. Sec. 2, Ch. 294, L. 2007.

TITLE 41 - MINORS

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

TITLE 44 – LAW ENFORCEMENT

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than \$500 or imprisoned in the county jail for not more than 1 year, or both, if he:

- (1) purposely fails to report or conceals a death, including a fetal death;
- (2) refuses to make available prior medical or other information in a death investigation;
- (3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse; or
- (4) knowingly or purposely disobeys a cessation order of a coroner.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979; amd. Sec. 12, Ch. 660, L. 1991.

TITLE 46 – CRIMINAL PROCEDURE

46-4-122. Human deaths requiring inquiry by coroner. The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

- (1) that was caused or is suspected to have been caused:
 - (a) in any degree by an injury, either recent or remote in origin; or
 - (b) by the deceased or any other person that was the result of an act or omission, including but not limited to:
 - (i) a criminal or suspected criminal act;
 - (ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or
 - (iii) an accidental death; or
 - (c) by an agent, disease, or medical condition that poses a threat to public health;
- (2) whenever the death occurred:
 - (a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;
 - (b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;
 - (c) during or as a result of the deceased's employment;
 - (d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or
 - (e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;
- (3) if the dead human body is to be cremated or shipped into the state and lacks proper medical certification or burial or transmit permits; or
- (4) that occurred under suspicious circumstances.

History: En. Sec. 4, Ch. 660, L. 1991; amd. Sec. 2, Ch. 287, L. 1993.

46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. In the case of a fetal death inquiry under 46-4-122, the department of justice shall adopt rules for respectful transportation and delivery of the fetus to the place where the autopsy will be performed. The rules must require that a fetus be transported in a crush-proof container and be labeled with the words "fragile--human remains inside". The report must be made in triplicate on a form provided by the division of forensic sciences of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, the coroner shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.

History: En. Sec. 5, Ch. 660, L. 1991; amd. Sec. 1, Ch. 268, L. 2007.

TITLE 50 – HEALTH & SAFETY

50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician or attending advanced practice registered nurse, the attending physician or attending advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) A full guardian may consent or withhold consent under subsection (1) as provided in 21-3-321.

(4) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(5) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(6) A decision of the attending physician or attending advanced practice registered nurse acting in good faith that a consent is valid or invalid is conclusive.

(7) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

TITLE 50, CHAPTER 15 – VITAL STATISTICS

50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in [§ 2-2-101](#), in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate.

History: En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979; amd. Sec. 3, Ch. 287, L. 1993; amd. Sec. 17, Ch. 515, L. 1995; amd. Sec. 2, Ch. 118, L. 1997; amd. Sec. 93, Ch. 552, L. 1997; amd. Sec. 2, Ch. 27, L. 1999; amd. Sec. 2, Ch. 258, L. 2001.

TITLE 50, CHAPTER 19 – PREGNANT WOMEN & NEWBORN INFANTS

50-19-301. Short title. This part may be cited as "**The Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act**".

History: En. Sec. 1, Ch. 649, L. 1989.

50-19-302. Purposes. The purposes of this part are to:

- (1) assure that mothers and children, in particular those with low income or with limited availability of health services, receive access to quality maternal and child health services;
- (2) reduce infant mortality and the number of low birthweight babies; and
- (3) prevent the incidence of children born with chronic illnesses, birth defects, or severe disabilities as a result of inadequate prenatal care.

History: En. Sec. 2, Ch. 649, L. 1989.

50-19-311. MIAMI project. (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

- (a) infant mortality review;
- (b) morbidity review of births involving low birthweight babies;
- (c) low birthweight prevention;
- (d) assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;
- (e) referral of low-income women and children to other programs to protect the health of women and children, including:
 - (i) supplemental food programs for women, infants, and children;
 - (ii) family planning services; and
 - (iii) other maternal and child health programs;
- (f) public education and community outreach to inform the public on:
 - (i) the importance of receiving early prenatal care;
 - (ii) the need for good health habits during pregnancy; and
 - (iii) the availability of special services for pregnant women and for children.

History: En. Sec. 4, Ch. 649, L. 1989; amd. Sec. 2, Ch. 634, L. 1991.

50-19-401. Short title. This part may be cited as the "**Fetal, Infant, and Child Mortality Prevention Act**".

History: En. Sec. 1, Ch. 519, L. 1997.

50-19-402. Statement of policy -- access to information. (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths and make recommendations for community or statewide change, if appropriate, that may help prevent future deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in ~~50-19-402~~ (4), from a tribal attorney, and from a health care provider as permitted in Title 50, chapter 16, part 5, or applicable federal law. The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may:

(a) perform an in depth analysis of fetal, infant, and child deaths, including a review of records available by law;

(b) compile statistics of fetal, infant, and child mortality and communicate the statistics to the department of public health and human services for inclusion in statistical reports;

(c) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

(d) recommend measures to prevent future fetal, infant, and child deaths.

(4) A local fetal, infant, and child mortality review team may not review deaths of fetuses, infants, or children who are Indians and which deaths occur within the boundaries of an Indian reservation with a tribal government that opposes the review.

History: En. Sec. 2, Ch. 519, L. 1997; amd. Sec. 11, Ch. 396, L. 2003; amd. Sec. 1, Ch. 413, L. 2003.

50-20-101. Short title. This part may be cited as the "**Montana Abortion Control Act**".

History: En. by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, ; amd. Sec. 61, Ch. 130, L. 2005.

50-20-102. Statement of purpose -- findings. (1) The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life. It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for the viable human life. The protection afforded to a person by Montana's constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a compelling state interest exists in the protection of viable life.

(2) The legislature finds, with respect to 50-20-401, that:

(a) the United States supreme court has determined that states have a legitimate interest in protecting both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling point at various stages of a woman's approach to the full term of a pregnancy;

(b) the court has also determined that subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it chooses, regulate and even proscribe abortion except when necessary, in appropriate medical judgment, for the preservation of the life or health of the woman;

(c) the holdings referred to in subsections (2)(a) and (2)(b) apply to unborn persons in order to extend to unborn persons the inalienable right to defend their lives and liberties;

(d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a viable person is an infringement of that person's rights; and

(e) the state has a duty to protect innocent life and that duty has grown to a compelling point with respect to partial-birth abortion.

History: En. by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, ; amd. Sec. 1, Ch. 479, L. 1999.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, .

TITLE 72 – ESTATES, TRUSTS AND FIDUCIARY RELATIONSHIPS

72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History: En. 91A-2-108 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-2-108; amd. Sec. 18, Ch. 494, L. 1993; Sec. , MCA 1991; redes. by Code Commissioner, 1993.

HB 490
WARRBURTON

VIABILITY

Birth Control ⇐.50

Roe v. Wade rule's limitations required reaffirmance of holding under doctrine of stare decisis. In two decades of economic and social developments, people organized themselves and made choices that reflect their reliance on availability of contraceptive failure.

Birth Control ⇐.50

Legal principle weakened by *Roe v. Wade* and, therefore, stare decisis required whether *Roe* was viewed as precedent for person to be free from fetal intrusion into woman's decision whether to abort child, whether it was viewed as a limit on bodily autonomy and bodily integrity, or to bar itself from governmental power or to bar itself from equal treatment or to bar itself from being viewed as sui generis.

Birth Control ⇐.50

(1) Maternal health care and in *Roe v. Wade* did not render holding obsolete and did not undermine it; those facts had no bearing on *Roe's* central holding. The earliest point at which fetal life would be constituted to justify legislative ban on abortions.

Birth Control ⇐.50

(1) The legal underpinnings of *Roe v. Wade* are the Supreme Court's understanding of stare decisis to such a degree that it is a guiding decision; present stare decisis reach different result to warrant overruling.

14. Abortion and Birth Control ⇐.50

Courts ⇐90(6) *
Overruling *Roe v. Wade* in response to divisiveness of abortion issue would address error, if error there was, at cost of profound and unnecessary damage to Supreme Court's legitimacy, and to nation's commitment to rule of law; only the most convincing justification under accepted standards of precedent could suffice to demonstrate that overruling would be anything other than surrender to political pressure and unjustified repudiation of principle.

15. Abortion and Birth Control ⇐.50

Woman's constitutional liberty to terminate her pregnancy is not so unlimited as to prevent state from showing its concern for life of the unborn and, at later point in fetal development, state's interest in life may have sufficient force to allow restrictions on woman's right to terminate pregnancy. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

16. Abortion and Birth Control ⇐.50

Viability is point of fetal development at which state's interest in life has sufficient force that woman's right to terminate her pregnancy may be restricted; viability is time at which there is realistic possibility of maintaining and nourishing life outside the womb, so that independent existence of second life can in reason and fairness be object of state protection that would override woman's right to terminate her pregnancy. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

17. Abortion and Birth Control ⇐.50

Rigid trimester framework established in *Roe v. Wade* is not necessary to ensure that woman's right to choose to terminate or continue her pregnancy is not so subordinated to state's interest in fetal life that choice exists in theory but not in fact; rather, *Roe* recognizes state's interest in promoting fetal life and measures aimed at ensuring that woman's choice contemplates consequences for fetus do not necessarily interfere with right to terminate pregnancy, even if those

measures would have been inconsistent with trimester framework. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

18. Constitutional Law ⇐255(1)

Not every law which makes right more difficult to exercise is, ipso facto, an infringement of that right. U.S.C.A. Const. Amend. 14. *

19. Abortion and Birth Control ⇐.50

Constitutional Law ⇐274(5)

Only when state regulation of abortion imposes undue burden on woman's ability to decide whether to terminate pregnancy does power of state reach into heart of liberty protected by due process clause; fact that regulation has incidental effect of making it more difficult or more expensive to procure abortion cannot be enough to invalidate it. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

20. Abortion and Birth Control ⇐.50

Undue burden standard is appropriate means of reconciling state's interest in human life with woman's constitutionally protected liberty to decide whether to terminate pregnancy. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

21. Abortion and Birth Control ⇐.50

State regulation imposes "undue burden" on woman's decision whether to terminate pregnancy and, thus, regulation is invalid if it has purpose or effect of placing substantial obstacle in path of woman who seeks abortion of nonviable fetus. (Per Justices O'Connor, Kennedy and Souter.) U.S.C.A. Const. Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

22. Abortion and Birth Control ⇐.50

Regulations which do no more than create structural mechanism by which state, or parent or guardian of minor, may express profound respect for life of unborn are per-