

13
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HB 490

GUALBERTO GARCIA JONES J.D., LEGAL ANALYST, PERSONHOOD USA
TESTIMONY IN SUPPORT OF HB 490

Esteemed members of the committee, my name is Gualberto Garcia Jones, and I would like to thank you for allowing me to testify, and especially for allowing me to do so by phone.

I am, the Director of Legal Analysis with Personhood USA, a national non-profit organization that advocates for the human and civil rights of preborn children.

I have helped legislators draft over 20 personhood measures in the last two years, and have written numerous legal articles on the subject of personhood.

CORRECTLY DEFINING THE WORD "PERSON" IS CRITICAL

As you know, HB 490 is a constitutional amendment that defines the word "person" for purposes of safeguarding that person's life, liberty, and property.

The definition of the word "person" is incredibly important.

That's because in every section of Montana's Declaration of rights, the word "person" is how Montana law refers to those entities that deserve rights.

Take Section 15, for example. This section of Montana's Declaration of Rights is the section that spells out the Rights of persons who are not yet adults. Please note the use of the word "person":

"The rights of **persons** under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such **persons**."

Section 15 is instructive as to how a good law should be written. Section 15 makes the important point that when a group of persons is more vulnerable, they should not only enjoy the same rights as everybody else, but they also should also be entitled to protections concomitant with their vulnerability.

PROTECTING HUMAN BEINGS IS A BI-PARTISAN STATE ISSUE

Now most public servants, whether liberal or conservative, Republican or Democrat work under the understanding that all human life is precious.

And yet our laws do not reflect this truth. In the widely criticized Roe v. Wade decision, Justice Blackmun made the pronouncement that “the word “person” does not include the unborn.” With this simple legal maneuver, the Supreme Court effectively outlawed every meaningful protection for prenatal human beings in every state of the nation.

THE ROLE OF ROE V. WADE

There has been no clearer example of judicial tyranny than Roe v. Wade.

The question of who is a person has been the legal key to the meaningful protection of prenatal human life all along.

Therefore, it should not surprise us that when Roe v. Wade was being debated before the Supreme Court, the question of personhood was brought up repeatedly.

Supreme Court Justice Potter Stewart at one point in the Roe v. Wade oral argument asked the attorneys, “The basic constitutional question, initially is, whether or not the unborn fetus is a person. That’s critical to this case is it not?”

Later, in the Roe v. Wade oral argument, United States Supreme Court Chief Justice Warren Burger posed a hypothetical questions to Sarah Weddington, the pro-abortion attorney, their exchange is as follows: “Could Texas, constitutionally in your view, declare, by statute, that a fetus is a person for all constitutional purposes?”

“The state could OBVIOUSLY adopt that kind of statute, and then it would have to be adjudicated.”

THE ABORTION INDUSTRY’S SCARE TACTICS

You will hear abortion rights advocates talk about outrageous scenarios that they say will result from this law, women going to jail for miscarriages,

doctors refusing to practice medicine, the banning of contraception, and much more.

It is important to know, that throughout the 200 years of American history, when the child was given the standing of legal personhood, the opposition will not be able to point to a single precedent of any of their outrageous scenarios actually taking place, not one.

As legislators you know very well, that the declaration of rights section of the constitution is the place for fundamental protections, these fundamental principles must later be applied with common sense to every day situations. Just like the right to free speech does not mean one has the right to commit libel or slander, neither does the right to due process for all human beings mean that embryos will be protected at the cost of their mothers' rights.

THE PROPER AND IMPORTANT ROLE OF THE STATE LEGISLATURE

Dear legislators, I am confident that none of the apocalyptic scenarios that the abortion lobby will suggest to you, will come to pass, and the reason is that you would not allow such outrageous applications of this law to occur.

The Due Process section is especially fitting for a definition of the word "person" as the Due Process section stands only for the proposition that before the life, liberty, or property of any person is taken that person must have standing and an opportunity to defend themselves, nothing more.

Coincidentally, this is already done in many cases with minors and even with embryos, where courts will appoint a guardian ad litem: a representative to advocate for the interests of the minor or preborn child.

Far from causing legal havoc, HB 490 would bring some badly needed common sense into constitutional interpretation.

THE DEHUMANIZATION OF THE MOST VULNERABLE MUST STOP

Because of my experience drafting and defending laws similar to HB 490, I know the deceptive language that opponents of the law will use to attack it. They will use the term "fertilized egg" in order to dehumanize the human being at his or her earliest stage. I ask you that every time they use the dehumanizing term "fertilized egg" you remember that the whole point of

HB 490 is to protect an entire class of human beings from dehumanizing tactics such as calling a human being an “egg” or a “blob of cells.”

The opposition will also say that HB 490 is the legislation of religious principles, yet the only thing that HB 490 is attempting, is to make sure that the word “person” be used synonymously with the scientifically defined word “human being”.

WHAT HAPPENS WHEN HB 490 BECOMES LAW?

There is no doubt in my mind that once HB 490 becomes law, it will be taken to federal court and will work its way up to the Supreme Court. When this happens, the court will have to reconsider *Roe v. Wade*’s central holding.

The tenth amendment to the U.S. Constitution states that:
“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Nowhere in the United States Constitution is the right to commit an abortion listed as a delegated power of the Supreme Court or any branch of the federal government. In fact most states had specifically outlawed abortion prior to *Roe v. Wade*, and they did so without any sort of legal or social upheaval.

In his dissenting opinion in *Stenberg v. Carhart*, Justice Antonin Scalia agreed with this view, and observed further that:

“ If only for the sake of its own preservation, the Court should return this matter to the people—where the Constitution, by its silence on the subject, left it—and let them decide, State by State, whether this practice should be allowed. *Casey* must be overruled.”

Let me finish with a quote from a 1949 case from the Ohio Supreme Court. In *Williams vs. Marion Rapid Transit Co.*, the court wrote that “if the common law protects the rights of the unborn child and if every intendment in the law is favorable to him, **the inference is inevitable that such unborn child is a person and possesses the rights that inhere in a person even though he is incapable himself to assert them.**”

Just as the Ohio Court in this 1949 case had no problem with reconciling the status of a person with regard to an unborn child, courts will have no problem after the status of person is restored to all human beings in Montana.

By passing HB 490, you will be prompting the Supreme Court to reconsider its nefarious ruling that the most defenseless amongst us, our very own posterity , are sub-human ... are not persons.

I urge you to find the courage to stand up for the children in the womb, just like prior generations of Americans stood up for other groups of people who had been stripped of their fundamental rights and dignity.

Thank you,
Gualberto Garcia Jones, J.D.