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*Testimony before the Assembly Committee on Health
State Senator André Jacque
February 13, 2020*

Chairman Sanfelippo and Members of the Assembly Committee on Health,

Thank you for holding this hearing on Assembly Joint Resolution 130, relating to the term persons.

Activist liberal judges composing a majority of the State Supreme Courts of Iowa and Kansas recently (*in 2018 and 2019 respectively*) and disgustingly created a “fundamental right to abortion” within their interpretation of their state constitutions:

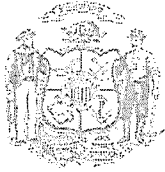
- *Kansas Supreme Court Rules State Constitution Protects Right To Abortion*
- *Iowa Supreme Court rejects 72-hour abortion waiting period requirement, says women have right to abortion*

Because these judicial decisions were made using state Constitutions, they would remain in effect even if *Roe v. Wade* is overturned (though legislators in both states are moving to amend their constitutions) and have already been used to strike down pro-life statutes in both states. The potential exists for a future Wisconsin Supreme Court to similarly find a ‘right’ to abortion in the Wisconsin Constitution - and they would assuredly have an even easier time doing so.

In order to proactively avoid a similar situation, Assembly Joint Resolution 130, a proposed amendment to Wisconsin’s Constitution, corrects this glaring oversight within its declaration of rights, in order to clearly safeguard Wisconsin’s existing anti-abortion statute (s. 940.04) and recognize the inherent right to life of all persons at every stage of development, from the moment of conception. Whereas article one of the Wisconsin Constitution presently requires that individuals be “born” to access their inalienable rights to life, liberty, and the pursuit of happiness, this amendment would eliminate such a requirement. The duty to defend human life and dignity from its very beginning is the core of the pro-life philosophy, and it should be noted that it was the failure to establish a legal definition of personhood that was cited by Justice Blackmun as the basis for finding a “right to abortion” under the 14th Amendment in his majority opinion in *Roe v. Wade*.

Simply put, we cannot trust a potential future, activist Wisconsin State Supreme Court to uphold s. 940.04 or any of Wisconsin’s other pro-life statutes under the current state constitution should *Roe v. Wade* be overturned; in such a scenario, Wisconsin would be left without any semblance of constitutional protection for the unborn.

Our proposed amendment also specifies that any prohibition of conduct with regard to unborn persons must be prescribed by the legislature by law. This component offers certainty in dispelling the mistaken arguments against similar previous efforts, making it crystal clear that this amendment would not threaten an implied



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repeal of s. 940.04 or other protections in statute, nor result in the false assertions put forward by liberals claiming it would be interpreted to result in sweeping legislative policy changes regarding issues like birth control

While adoption of this amendment will not end abortion now, it tackles the two most important obstacles to doing so: a return to a principle of equal protection, and a rejection of government by the judiciary.

Thank you for your consideration of Assembly Joint Resolution 130.

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NATIONAL

Kansas Supreme Court Rules State Constitution Protects Right To Abortion

April 26, 2019 · 10:52 AM ET

DAN MARGOLIES

CELIA LLOPIS-JEPSEN

FROM



Kansas passed a ban on dilation and evacuation abortions in 2015.

Stephen Koranda/Kansas News Service

Updated at 11 a.m. ET

The Kansas Constitution protects a woman's right to an abortion, the state Supreme Court ruled Friday.

The landmark ruling now stands as the law of the land in Kansas with no path for an appeal. Because it turns on the state's Constitution, abortion would remain legal in Kansas even if the *Roe v. Wade* case that established a national right to abortion is ever reversed by the U.S. Supreme Court.

The decision turbocharged efforts among conservative legislators to ask voters to add an abortion ban to the Kansas Constitution. Lawmakers return to the capital, Topeka, next week.

The decision, in which one of the seven justices dissented, cites in its first sentence the first section of the Kansas Constitution's Bill of Rights: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

The decision continues: "We are now asked: 'Is this declaration of rights more than an idealized aspiration? And, if so, do the substantive rights include a woman's right to make decisions about her body, including the decision whether to continue her pregnancy? We answer these questions, 'Yes.' "

The court continued that "this right allows a woman to make her own decisions regarding her body, health, family formation, and family life — decisions that can include whether to continue a pregnancy."

"The State may only infringe upon the right to decide whether to continue a pregnancy," the ruling continued, "if the State has a compelling interest and has narrowly tailored its actions to that interest."

The court took up the question of a constitutional right to abortion after two abortion providers in Overland Park, Kan., doctors Herbert Hodes and his daughter, Traci Nausser, challenged a ban on dilation and evacuation abortions passed by the Legislature in 2015.

The law known as the Kansas Unborn Child Protection from Dismemberment Abortion Act prohibits dilation and evacuation abortions except when necessary to preserve the life of the mother, prevent impairment of a major bodily function of the

mother or where the fetus is already dead. The law was the first in the nation to ban the procedure, which is used for nearly all second-trimester abortions.

The procedure only accounts for 9 percent of abortions in Kansas. Anti-abortion-rights activists call it "dismemberment abortion," but it is known medically as dilation and evacuation, or D&E.



HEALTH

Federal Judge Blocks Trump Changes To Reproductive Health Program

In July 2015, Shawnee County District Judge Larry D. Hendricks blocked the law from taking effect, ruling that the Kansas Bill of Rights "independently protects the fundamental right to abortion."

Hendricks also determined that alternatives to D&E weren't reasonable, "would force unwanted medical treatment on women, and in some instances would operate as a requirement that physicians experiment on women with known and unknown safety risks as a condition (of) accessing the fundamental right of abortion."

The state appealed, and in a sweeping decision in January 2016, the Kansas Court of Appeals upheld Hendricks' decision, finding that the state's Bill of Rights provides a right to abortion. It was the first time a Kansas appellate court had found such a right in the Kansas Constitution.

Signifying the importance of the case, all 14 judges on the appeals court weighed in. The court split down the middle, with seven judges voting to uphold Hendricks' decision and seven voting to reverse it. When an appeals court is equally divided, the effect is to uphold the decision of the trial court.

Writing for the faction voting to strike down the ban, Judge Steve A. Leben said that the "rights of Kansas women in 2016 are not limited to those specifically intended by the men who drafted our state's constitution in 1859."

Then-Gov. Sam Brownback issued a statement saying he was "deeply disappointed in the court's decision to allow dismemberment abortions of a living child to continue in the state of Kansas. The court's failure to protect the basic human rights and dignity of the unborn is counter to Kansans' sense of justice."

The state appealed again, and the Supreme Court heard arguments in the case in March 2017. The amount of time it took for it to decide the case — it usually rules within months of oral arguments, not years — reflects the extraordinarily high stakes involved and the degree to which the abortion issue has polarized Kansas politics.

Hodes and Nauser's challenge to the law was unusual in that they did not argue the statute is illegal under the U.S. Constitution. Rather, they based their argument on the Kansas Constitution, contending that Sections 1 and 2 of its Bill of Rights recognize a "fundamental right to abortion."

The state countered that the Kansas Constitution could not protect abortion rights because abortion was largely illegal when the document was drafted in 1859.

Before the mid-1990s, Kansas was one of the least abortion-restrictive states in the country. Wichita was home to one of the country's few third-trimester abortion providers, Dr. George Tiller, who was assassinated by an anti-abortion-rights extremist in 2009.

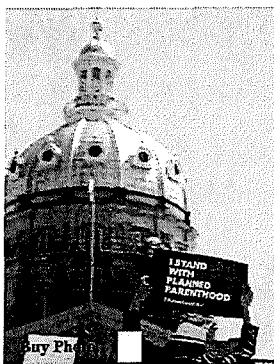
But the Summer of Mercy anti-abortion protests in 1991 spurred political action that allowed policymakers to pass laws and regulations requiring minors to get consent from their parents for an abortion procedure, preventing state-funded insurance plans from covering abortions and requiring women on private insurance plans to pay for a separate abortion rider if they wanted insurance to cover the procedure.

Dan Margolies is a senior reporter and editor at KCUR. You can reach him on Twitter @DanMargolies.

Celia Llopis-Jepsen is a reporter for the Kansas News Service, a collaboration of KCUR, Kansas Public Radio, KMUW and High Plains Public Radio covering health, education and politics.

Iowa Supreme Court rejects 72-hour abortion waiting period requirement, says women have right to abortion

Tony Leys and Stephen Gruber-Miller, Des Moines Register Published 9:51 a.m. CT June 29, 2018 | Updated 6:14 p.m. CT June 29, 2018



(Photo: Bryon Houlgrave/The Register)

Iowa women have a fundamental right to abortion under the Iowa Constitution, the state Supreme Court ruled Friday.

The landmark 5-2 decision tossed out a 72-hour waiting period requirement, which legislators passed in 2017. Experts said the justices' decision could dim the chances for a 2018 "fetal heartbeat" law, which would ban most abortions after six weeks of pregnancy.

Friday's ruling (<https://www.iowacourts.gov/courtcases/439/embed/SupremeCourtOpinion>) came as the result of a lawsuit Planned Parenthood of the Heartland filed challenging the 72-hour waiting period. The requirement was part of a law signed by then-Gov. Terry Branstad, a Republican who is a staunch opponent of abortion. The waiting period requirement had been placed on hold during Planned Parenthood's legal challenge, which prevailed in Friday's ruling.

"We conclude the statute enacted by our legislature, while intended as a reasonable regulation, violates both the due process and equal protection clauses of the Iowa Constitution because its restrictions on women are not narrowly tailored to serve a compelling interest of the state," Supreme Court Chief Justice Mark Cady wrote for the court majority.

MORE: [How are people reacting to the Iowa Supreme Court's abortion ruling? \(/story/news/politics/2018/06/29/iowa-state-supreme-court-abortion-decision-abortion-rights-opponents-support-reject-opinion/746179002/\)](https://www.desmoinesregister.com/story/news/politics/2018/06/29/iowa-state-supreme-court-abortion-decision-abortion-rights-opponents-support-reject-opinion/746179002/)

MORE: [Three pregnancies. Three outcomes. Three women's tough decisions. Here are their journeys \(https://features.desmoinesregister.com/news/fetal-heartbeat-abortion-women-tell-stories-choice-life-iowa/\)](https://features.desmoinesregister.com/news/fetal-heartbeat-abortion-women-tell-stories-choice-life-iowa/)

Death knell for Iowa abortion limits?

Drake University law professor Mark Kende said the ruling included the court's strongest finding ever that Iowa women have a right to abortion under the state Constitution.

The way Cady wrote the decision is "pretty much a death knell" for any new Iowa laws limiting abortion, the professor added in an interview Friday.

The 2017 waiting-period law is separate from a stricter law passed this spring by the Republican-controlled Legislature. [That "fetal heartbeat" law \(/story/news/politics/2018/05/04/abortion-ban-law-iowa-fetal-heartbeat/577443002/\)](https://www.desmoinesregister.com/story/news/politics/2018/05/04/abortion-ban-law-iowa-fetal-heartbeat/577443002/) would be the most restrictive abortion limit in the country.

That law has been placed on hold during a different legal challenge, which is still pending.

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The 2017 law said a woman could not have an abortion for at least 72 hours after an initial appointment. At that appointment, the woman would have had to be given the opportunity to view an ultrasound scan of her fetus and would be given information about abortion and its options, including adoption.

Cady wrote on behalf of the court that the waiting period would require many women with little money or access to transportation to travel twice to distant cities for appointments with Planned Parenthood of the Heartland, which is the state's main abortion provider. In some cases, the change would saddle women with hundreds of dollars in extra costs, including for transportation and lodging, he wrote.

The chief justice wrote that Planned Parenthood already declines to proceed with abortions for women who are unsure of their decisions.

"Without a mandatory delay in effect, the evidence showed that women who are conflicted in their decision or under duress do not receive the procedure and, instead, are given more time to consider or given resources to pursue alternatives," he wrote. "An objective review of the evidence shows that women do not change their decision to have an abortion due to a waiting period."

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Abby Maas, of Pella adds a pair of baby shoes to the display representing the lives lost to abortion in Iowa during the pro-life Rally for Life on Thursday, March 30, 2017, at the Iowa Capitol. (Photo: Kelsey Kremer/The Register)

The five-justice majority also found that the waiting-period law violated Iowa women's constitutional right to equal protection under the law.

"Without the opportunity to control their reproductive lives, women may need to place their educations on hold, pause or abandon their careers, and never fully assume a position in society equal to men, who face no such similar constraints for comparable sexual activity," Cady wrote.

Dissents from two justices

Justices Edward Mansfield and Thomas Waterman dissented.

Mansfield, [who is currently being considered by President Trump for a seat on the U.S. Supreme Court \(/story/news/politics/2018/06/27/anthony-kennedy-retiring-us-supreme-court-iowans-edward-mansfield-steve-colloton-bader-ginsburg/739139002/\)](#), noted in his dissent that abortion used to be illegal in Iowa. That changed in 1973, after the U.S. Supreme Court ruled in the Roe v. Wade that women have a right to abortion. Mansfield wrote that it's difficult to see how a limit on abortion could violate the Iowa Constitution if a ban on abortion had been considered legal under that same document for more than a century.

Outside of Iowa: [How does Iowa's abortion law compare to other states? \(/story/news/politics/2018/06/29/abortion-iowa-fetal-heartbeat-bill-law-other-sta\)](#)

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Mansfield also noted that Iowa law imposes waiting periods for other important life decisions. "We have a three day waiting period for marriage. There is a 72-hour waiting period after birth for adoption. There is a 90-day waiting period for divorce," he wrote. "No one can reasonably question the legislature's power to impose these waiting periods before Iowans begin or end a marriage or give up a newborn baby for adoption. So why can't the legislature impose a waiting period before an abortion?"

Gov. Kim Reynolds, a Republican who opposes abortion, said the decision was disappointing.

"Often, women are in crisis when facing this decision, and it's a decision that can impact them for the rest of their lives. I don't think it is unreasonable to require 72 hours for someone to weigh their options and the important decision they are about to make," she said in a statement.

Kende, the Drake University constitutional law professor, noted the court's majority determined any law limiting abortions should be viewed with "strict scrutiny," to see if it violates women's rights. That's a very tough standard, he said.

The dissenting justices said the court should have determined instead whether the 2017 waiting-period law placed an "undue burden" on women's right to abortion. The "undue burden" test is a less strict measure — stemming from the U.S. Supreme Court's landmark 1992 "Casey" decision — which has allowed some states' abortion restrictions to stand.

'Fetal heartbeat' law next to go?

Friday's reversal of the waiting-period law does not bode well for the new "fetal heartbeat" law, which would impose much stricter limits on Iowa women's rights to abortion, Kende said.

Proponents of the 2018 law have said they want it to reach the U.S. Supreme Court as a test case that could possibly lead to an overturning of the *Roe v. Wade* precedent. But opponents are challenging it in state court, and it is likely to wind up before the Iowa Supreme Court. If the Iowa justices determine the "fetal heartbeat" law violates the Iowa Constitution, it would be difficult for proponents of the law to get it before the U.S. Supreme Court, Kende said. That's because federal courts generally don't decide debates over state constitutions.

A leading Iowa abortion opponent acknowledged Friday that the waiting-period ruling could lengthen the odds for the fetal heartbeat law. "In our view, it certainly makes it more difficult, but not impossible," said Maggie DeWitte, executive director of Iowans for Life.

DeWitte added that she has faith in the Thomas More Society, a conservative legal group that [volunteered to defend the fetal heartbeat law](https://www.thomasmoresociety.org/news/2018/05/21/thomas-more-society-abortion-ban-lawsuit-iowa-fetal-heartbeat-planned-parenthood-aclu-emma-goldman/629352002/) in court. The national group stepped in after Iowa Attorney General Tom Miller, who supports abortion rights, took the rare step of having his office decline to defend the new law from legal challenges.

More: [Anti-abortion group seeks to strike rape and incest exceptions from Iowa's fetal abortion heartbeat law](https://www.thomasmoresociety.org/news/2018/06/19/iowa-fetal-heartbeat-abortion-law-exceptions-rape-incest-save-1-challenge-court-supreme/713467002/)

Suzanna de Baca, chief executive officer of Planned Parenthood of the Heartland, expressed relief at Friday's ruling.

"This ruling sends a very clear message to Gov. Reynolds and to the elected officials who voted for this medically unnecessary law, that whatever you try to throw at Iowa women, the Iowa Constitution is on the side of protecting our fundamental right to abortion," she said at a Friday afternoon press conference.

Reynolds told the [Quad City Times on Friday afternoon](https://qctimes.com/news/local/government-and-politics/reynolds-waiting-period-decision-an-indication-of-obstacles-to-fetal/article_26963ce2-b645-5a62-bbae-a5042cb1c7a9.html?utm_content=buffer361fa&utm_medium=social&utm_source=twitter.com&utm_campaign=LEEDCC) that the Supreme Court's ruling on the waiting period could mean trouble for the "fetal heartbeat" law she signed last month.

"You never know with the courts, but it probably is an indication of what we're up against, moving forward. You know, I think it probably is," she said.

Although it successfully challenged the waiting period requirement, Planned Parenthood did not legally challenge another part of the 2017 law, which bars most abortions after 20 weeks of pregnancy. That ban, which is in effect, includes an exception if doctors determine an abortion is necessary to preserve the life or health of the mother.

Rita Bettis Austen, legal director for the American Civil Liberties Union of Iowa, which is helping represent Planned Parenthood, said the ban on abortions after 20 weeks is clearly unconstitutional. After Friday's ruling tossing the 72-hour wait portion of the law, she said her group will now decide whether to

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Iowa abortion protection, no matter what happens in federal courts?

Austen hailed the Iowa justices for declaring a fundamental right to abortion under the state Constitution.

"This opinion can't be appealed to the federal courts," she said.

Austen added that Iowa women's access to abortion would now be protected by even if the U.S. Supreme Court overturns its *Roe v. Wade* decision finding a right to abortion under the U.S. Constitution. Prospects for that happening increased this week, with [the retirement of Justice Anthony Kennedy \(/story/news/politics/2018/06/27/justice-kennedy-retiring-opening-supreme-court-seat/952716001/\)](#), who has been a moderate swing vote on the issue.

Chuck Hurley, vice president of the conservative group the Family Leader, told reporters he was shocked to read the majority opinion in the case. He said that despite the setback, conservatives would push forward with defending the 2018 fetal heartbeat law. "This makes the heartbeat bill — the heartbeat law — and litigation even more important," he said.

Hurley expressed hope that conservative lawyers could find a way to have the legal fight over the heartbeat law transferred to federal court, where it might find its way to the U.S. Supreme Court. The odds of victory there jumped with news that President Trump should be able to nominate a conservative justice to replace Kennedy, he said.

The Iowa Supreme Court decided another major abortion case in 2015. In that case, the justices unanimously [upheld the use of telemedicine abortions \(/story/news/politics/2015/06/19/iowa-supreme-court-approves-planned-parenthood-heartland-telemedicine-abortion-system/28973085/\)](#) after the state medical board, appointed by Branstad, tried to ban the practice. In that case, the court used the looser "undue burden" test to find that the medical board's rules violated women's rights.

The Iowa Supreme Court overruled Polk County District Judge Jeffrey Farrell in both the telemedicine abortion case and in the new waiting period case. In both instances, Farrell had upheld the abortion restrictions.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.



JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Thank you Chairman Sanfelippo and Members of the Assembly Committee on Health for holding this hearing today on Assembly Joint Resolution 130.

The Wisconsin Constitution was ratified in 1848 and is the oldest Constitution outside of New England. The Constitution has been amended many times over the course of the last 172 years.

AJR 130 removes the word “born” to Article 1, thus removing the condition that a person has to be “born” in order to be considered having rights such as life, liberty and the pursuit of happiness.

The Resolution would provide a path for “equal protection under the law” for all persons. The Resolution assigns the responsibility of defining the rights of an unborn child to the Legislature.

The Resolution would need to pass both houses of the Legislature in two consecutive sessions and then go to a state wide referendum and passed by a majority vote.

Again, thank you for holding this hearing on AJR 130, and I’d be happy to address any questions or concerns you may have.

Thank you,

A handwritten signature in black ink that reads "Janel Brandtjen". The signature is written in a cursive, flowing style.

State Representative Janel Brandtjen



ProLife
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Testimony in Support of AJR 130: Wisconsin Personhood Amendment
Assembly Committee on Health
By Matt Sande, Director of Legislation

February 13, 2020

Good morning Chairman Sanfelippo and Committee members. My name is Matt Sande and I serve as director of legislation for Pro-Life Wisconsin. Thank you for this opportunity to express our strong support for Assembly Joint Resolution (AJR) 130, also known as the "**Wisconsin Personhood Amendment**," legislation that would amend the Wisconsin Constitution to apply personhood rights to preborn children at all stages of development. Authored by Reps. Sanfelippo and Brandtjen and Sen. Jacque, the amendment simply extends the inalienable right to life already found in the Wisconsin Constitution to all preborn children from the beginning of their lives.

What is personhood and why is it so foundational to the pro-life movement? Put simply, a "person" is a human being who is fully protected under the law; and we use the legal term "personhood" to describe this condition. Once a human being is declared a person that individual is guaranteed certain legal rights, such as the right to life, liberty and the pursuit of happiness. In other words, to be a person is to be fully protected by a series of God-given and constitutionally protected rights.

Both the Kansas and Iowa supreme courts have recently ruled that the liberty right in their respective state constitutions includes a substantive due process right to abortion, severely jeopardizing their states' abortion regulations. Abortion is now a fundamental right in Kansas and Iowa. Both states are now moving to amend their state constitutions.

It is truly shameful that the modern judicial leaders of Kansas and Iowa have found a right to kill innocent human beings in the precious, inalienable right of liberty enshrined in their constitutions by their states' founders. They did so by utterly ignoring the existence of preborn children growing inside their mothers' wombs; by depersonalizing them. **If the Wisconsin Supreme Court loses its tenuous conservative majority we can be assured that a new liberal majority will move quickly to find a right to abortion in the Wisconsin Constitution. And they would have an easier time doing so. How so?**

From a pro-life perspective, the Wisconsin Constitution contains a glaring error at its outset. In specifying the beneficiaries of its human rights enumerated in Section 1 of the Declaration of Rights, our state constitution leaves out the preborn. It applies the rights of "life, liberty, and the pursuit of happiness" to only those people who are "born."

An activist Wisconsin Supreme Court most assuredly would use the word "born" in our current state constitution to deny the right to life of the preborn by interpreting an independent right to

abortion in that document. In so doing, the court would nullify any present or future pro-life laws in our state. Let's not wait for this to happen, like Kansas and Iowa. Rather, let's be prepared by moving swiftly to amend our state constitution. Only by enshrining the right to life in our state's highest law will our preborn children be afforded full and lasting legal protection.

The authors are proposing a minimal but absolutely essential correction, a Wisconsin Personhood Amendment, to make the Wisconsin Constitution cover all people, every person, at any stage of development.

Section 1 of the amendment tracks the original constitutional language as closely as grammatically possible, only substituting the inclusive personhood definition for the word "born." That definition is as follows: **As applied to the right to life, the term "persons" shall apply to every human being at any stage of development, born or unborn.** Such a definition enshrines in our state constitution the principle of equality of all human beings before the law. It is indispensable to extending the protective cover of Wisconsin's constitution over our state's preborn children.

Section 2 of the amendment specifies that the legislature may define the scope of protections afforded to unborn persons and requires any prohibition of conduct concerning unborn persons to be prescribed by the legislature. This is as it should be. **The legislature, not the judiciary, is the proper authority to implement the equality provision in the amendment.** Over the past fifty years, the courts have usurped the role of the legislature in making law, interpreting a so-called "living constitution" and then brazenly and undemocratically imposing their morals and personal values on the public. The legislature, not the judiciary, has the sole authority to make law, and is the institution closest to the people, under the legal framework of our federal and state constitutions.

An amendment to the Wisconsin Constitution requires passage in two successive legislatures followed by a simple majority vote of the people. The Governor's signature is not required. The amendment language reads as follows:

Article 1. Declaration of Rights. Equality; inherent rights.

SECTION 1 (1) is amended to read: All ~~people~~ persons are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. As applied to the right to life, the term "persons" shall apply to every human being at any stage of development, born or unborn.

SECTION 1 (2) is created to read: The legislature may define, by law, the scope of protections afforded by this section to unborn persons. Any prohibition of conduct with regard to unborn persons shall be prescribed by the legislature by law.

The Wisconsin Personhood Amendment is not intended, or worded, as a challenge to *Roe v. Wade*, or as an attempt to define personhood under the 14th Amendment to the United States Constitution. It seeks only to bring into the Wisconsin Constitution a true definition of human life as endorsed by Wisconsin citizens speaking through the amendment process, thus making the highest law in our state cover all people, every person, at any stage of development. We recognize that its protections cannot be fully effective as long as *Roe* remains law, but we

believe a proper definition of personhood should be in place should Wisconsin be freed from the effects of that noxious decision.

In Wisconsin, it is likely that if *Roe* fell, our pre-*Roe* criminal abortion statute (Section 940.04, Wisconsin Statutes) would come out of dormancy. However, there are two serious concerns regarding its effectiveness in banning abortion. First, the statute contains a loophole – a broad and undefined life-of-the-mother exception. Second, it is questionable whether s. 940.04 would operate as an abortion ban because the Wisconsin Supreme Court, in *State of Wisconsin v. Glendale Black*, construed it as a feticide statute. This 1994 case involved a loathsome defendant who had punched his wife in the abdomen five days before her due date killing her baby. In sum, it is certain that s. 940.04 would not fully protect all preborn children in Wisconsin and questionable whether it would be applicable to abortion.

Regardless of whether s. 940.04 could be employed as an abortion prohibition post-*Roe*, the proposed constitutional amendment does not pose a risk to it by “implied repeal” or otherwise. **The erroneous concern that s. 940.04 (or other current pro-life statutes) would be impliedly repealed by the personhood amendment is alleviated by Section 2 which expressly requires that any prohibition of conduct relating to unborn persons (abortion) be prescribed by the legislature (not the judiciary).** Section 2 also relieves any concerns that the personhood amendment could be broadly interpreted by courts to require legislative policy changes impacting birth control, in vitro fertilization, embryo destructive research, etc.

Even without Section 2 of AJR 130, the concern that s. 940.04 would be impliedly repealed by the personhood amendment is alleviated by Wisconsin Supreme Court case law. In *State of Wisconsin v. Glendale Black*, 188 Wis.2d 639, 526 N.W.2d 132 (1994), the Wisconsin Supreme Court was unpersuaded that the legislature intended to repeal s. 940.04 when it enacted the *Roe*-conforming s. 940.15. It said, “Implied repeal of statutes by later enactments is not favored in statutory construction.”

For recent law on the subject pertaining to a later constitutional amendment rather than a later statute, *State of Wisconsin v. Phillip Cole* WI 112, 264 Wis.2d 520, 665 N.W.2d 328 (2003), is instructive. The Court said in that case that it did not matter whether a statute predated or postdated a constitutional amendment in deciding the issue of the statute’s constitutionality. It found that an old statute restricting concealed carry was not repealed by a later amendment to the Wisconsin Constitution guaranteeing the right to keep and bear arms. In *Hui v. Castenada* 130 S. Ct. 1845, 1853 (2010), the Court found disfavor with repeal by implication stating, “As we have emphasized, repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest.” It is certainly not the intent of the legislative authors of the personhood amendment to repeal s. 940.04.

The Wisconsin Supreme Court has consistently stated that acts of the legislature are presumed to be constitutional and are to be given due deference. For example, in *State ex rel. Hammermill Paper Co. v. La Plante* 58 Wis. 2d at 47 (1973), the Court, quoting Wisconsin precedent, stated: “All legislative acts are presumed constitutional, and every presumption must be indulged to sustain the law if at all possible.” In *Aicher v. Wis. Patients Comp. Fund* 237 Wis. 2d 99, P 20 (2000), the Court said that its duty is only to determine whether a statute “clearly and beyond doubt” offends constitutional protections. And in *State v. Zawistowski* 95 Wis. 2d

250, 264, 290, N.W.2d 303 (1980), the Court specifically held: "All statutes passed and retained by the legislature should be held valid unless the earlier statute is completely repugnant to the later enactment." Section 940.04 of the Wisconsin Statutes is clearly not inconsistent with, offensive or repugnant to the personhood amendment and therefore its constitutionality would not at all be threatened by the amendment.

Accordingly, concerns over s. 940.04 should NOT stand in the way of supporting the personhood amendment. And as stated above, if the Wisconsin Constitution is not amended and a future Wisconsin Supreme Court finds a right to abortion in that document, s. 940.04 and all of our pro-life laws would be greatly imperiled. **The Wisconsin Personhood Amendment is absolutely essential to protecting all of our state's pro-life laws, now and in the future.**

The proposed personhood amendment will decidedly NOT end abortion now, but it offers a return to first principles: 1) equal protection; and 2) subsidiarity, by assigning the proper authority to implement equal protection to the group closest to the people, the legislature.

Extending legal personhood to the preborn child, with respect to the right to life and without exception, is a constitutional and moral imperative. The Wisconsin Personhood Amendment would codify for the preborn child the same right to live enjoyed by her older brother or grandmother. The preborn child would no longer be outside the protection of the law; he or she could not be denied the equal protection of the laws.

Wisconsinites, indeed all Americans, born and preborn, deserve total and permanent legal protection of their right to life; an inalienable right grounded in natural law. It is the foremost duty of the state to protect its citizens, especially those most vulnerable. We commend the authors and co-sponsors of AJR 130 for their boldness in the defense of human life, and we urge you to recommend this critical legislation for passage.

Thank you for your consideration, and I am happy to answer any questions committee members may have for me.

JAMES BOPP, JR.
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February 12, 2020

Rep. Joe Sanfelippo, Chair
Committee on Health
Wisconsin State Assembly
State of Wisconsin

Re: 2019 Assembly Joint Resolution 130

Dear Chair Sanfelippo:

We write to comment on 2019 Assembly Joint Resolution 130, which would amend the Constitution of the State of Wisconsin regarding “persons,” and James Bopp, Jr. looks forward to testifying on February 13, 2020. As set out below, we recommend against passage of Resolution 130.

Resolution 130 would amend the Constitution as follows:

SECTION 1. Section 1 of article I of the constitution is renumbered section 1 (1) of article I and amended to read:

[Article I] Section 1 (1) All ~~people~~ persons are ~~born~~ equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. As applied to the right to life, the term “persons” shall apply to every human being at any stage of development, born or unborn.

SECTION 2. Section 1 (2) of article I of the constitution is created to read:

[Article I] Section 1 (2) The legislature may define, by law, the scope of protections afforded by this section to unborn persons. Any prohibition of conduct with regard to unborn persons shall be prescribed by the legislature by law.

This proposed language does two things: (1) Section 1 adds the concept of equally protected unborn persons and (2) Section 2 clarifies that Section 1 has no independent, automatic operation but rather is a grant of constitutional authority for possible legislation. Absent Section 2, whatever consequences flow from Section 1 would flow from the extension of the constitutional rights guaranteed therein, as now applicable to the unborn. With Section 2, these natural applications are eliminated and any legal protection of unborn persons under Section 1 requires specific legislation to implement.

In our opinion, the proposed language (herein “Resolution 130”) would have little or no practical utility. This is clear from the following three circumstances in which Resolution 130 could operate.

Rep. Joe Sanfelippo, Chair
Committee on Health
February 12, 2020
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The first circumstance is the current one. With *Roe v. Wade*, 410 U.S. 113 (1973), still the controlling law of the land, Resolution 130 has no utility because whatever authority it gives the legislature to protect unborn persons is limited by *Roe*. There is nothing about what Resolution 130 does that will do anything to affect or undermine the scope of the Supreme Court's protection for the abortion right it announced in *Roe* and reaffirmed in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

The second circumstance is if *Roe* is overturned by the U.S. Supreme Court. If that happens, Resolution 130 has no utility because Resolution 130 gives the legislature no more power than the legislature would already have to regulate abortion under its inherent police power. And if *Roe* is overturned, Wisconsin's pre-*Roe* abortion statute (§ 940.04), which remains on the books and is enforceable absent *Roe*, would ban abortion by its terms.

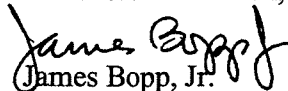
The third circumstance is if—before or after *Roe* is overturned—the Wisconsin Supreme Court decides to interpret Wisconsin's Constitution to include a right to abortion. In that scenario, Resolution 130 would not prevent the Wisconsin Supreme Court from finding a right to abortion in some other provision of the Constitution. The situation then would be the balancing of rights: the new right to abortion being balanced against Resolution 130's granting of personhood and the right to life in the unborn. And this balancing would likely be done by a Wisconsin Supreme Court majority that favored an abortion right after recognizing one in the Wisconsin Constitution. The result of this balancing is uncertain.

The possible scenario is as follows: *Roe* is overturned and Wisconsin's statutory abortion ban is challenged in court. In deciding the case, the Wisconsin Supreme Court recognizes a state-constitutional right to abortion and balances the rights of the woman seeking abortion against the rights of the unborn child. The outcome of that balancing is highly uncertain and even problematic. So if the purpose of Resolution 130 is to head off a state-constitutional abortion right, a much better and certain approach is to do that directly by a constitutional amendment stating that the Wisconsin Constitution shall not be construed to protect or secure a right to abortion. This would ensure that the Wisconsin Constitution is not used to create a right to abortion that can be used against future legal protections for the unborn.

In sum, the approach of Resolution 130 lacks utility and its apparent purpose should be accomplished directly, not by Resolution 130 with its uncertain effect. We recommend against passage of Resolution 130 in its current form.

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp, Jr.
Richard E. Coleson

TO: Assembly Committee on Health
FROM: Dr. Emily Buttigieg
RE: Testimony in Opposition of Assembly Joint Resolution 130
DATE: February 13, 2020

Chairman Sanfelippo and members of the Assembly Committee on Health, thank you for the opportunity to testify in opposition to the Assembly Joint Resolution (AJR) 130.

For the past 7 years, I have committed my life to learning the practice of medicine. Beyond the medicine, I entered the field of Obstetrics and Gynecology to build trusting relationships with my patients in order to partner with them through some of the happiest and most challenging times in their lives. Throughout medical school and residency, my training focused on how to provide patients with the best possible care based on medically accurate information and evidence.

Despite my rigorous training, policy makers, most without any healthcare background, dictate how I interact with my patients. Over the past decade, anti-abortion politicians have been using inflammatory, deceptive, and cruel language to pass laws that limit or ban abortion care.

AJR 130 serves as yet another insertion of politics into my exam room. AJR 130 takes the decision making away from women and their trusted physicians and places it in the hands of the government. This level of political interference threatens the sacred patient-physician relationship and prevents patients from receiving the optimal care for their individual circumstance.

Furthermore, AJR 130 takes away autonomous choices from women regarding their health and their bodies. AJR would ban all abortions at any point in pregnancy and force a woman to carry a pregnancy to term regardless of fetal outcomes or risks to maternal health. Additionally, I am concerned about the effects that AJR 130 would have on fertility treatments and procedures such as in vitro fertilization and whether this bill will limit the forms of birth control I can provide for my patients, often for medical reasons outside of contraception.

Despite our great political divides, we each aspire to live a safe and healthy life, and to be free to define our path. We cannot attain this freedom if we cannot make decisions about our bodies, lives, and futures. As an Ob-Gyn specializing in women's health care, I appreciate that the personal decision on whether and when to become a parent has far-reaching impacts on a person's life. Patients thrive when they have freedom to make that personal decision without political interference.

Therefore, I encourage you to see this bill for what it is, a political aim to insert governmental control into the private lives of its citizens. In order to protect our fundamental freedom of choice and ensure women have access to the best healthcare options, I implore you to vote no on AJR 130.



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Good morning Chairman Sanfelippo and committee members, my name is Gualberto Garcia Jones and I am here to testify in favor of AJR 130.

First of all let me express what a great pleasure it is to be back in Madison, where I was fortunate enough to spend a good part of my formative years. I am a proud graduate of James Madison Memorial High School here in Madison as well as of the University of Wisconsin. It was in Madison where I became pro-life and decided to devote my professional life to fight against the injustice of legal abortion. I am also a graduate of the George Washington University Law School and am admitted to practice law in the Commonwealth of Virginia. I have spent the last 15 years of my life analyzing and supporting 100% pro-life legislation before congress, many of the states and also in many parts of the globe. It is in my capacity as a pro-life constitutional expert that I wish to address this committee today.

AJR 130, known as the Wisconsin Personhood Amendment is absolutely necessary and timely for the defense of the right to life.

At its core the personhood amendment seeks to accomplish two things. The first is to bring all members of the human family under the protective umbrella of state constitutional juridical personhood. The second is to preempt what Justice White called "an exercise of raw judicial power" whereby a future activist state court decides it has discovered a right to abortion within the Wisconsin Constitution.

Section one of the Wisconsin Personhood Amendment simply eliminates the requirement that a person be born before they are vested with the inherent right to life. It is very likely that the drafters of the Wisconsin Constitution recognized the unborn child as a legal person but did not foresee the assault on innocent human life brought on by the dehumanization of the child in the womb. That the drafters of the original Wisconsin Constitution would have intensely disapproved of abortion can be inferred from the fact that the very first criminal code in the history of the state of Wisconsin included a complete ban on abortion. Therefore to clarify that the right to life applies to all human beings regardless of birth is not only just in and of itself, but

is also in keeping with the original understanding of the framers of the Wisconsin Constitution.

Section two of the Wisconsin Personhood Amendment then proceeds to safeguard the power of the legislature, as the rightful representatives of the people, to determine how the protection of the inherent right to life is carried out into law.

When read in its entirety, the Wisconsin Personhood Amendment recognizes the state constitutional right to life of all human beings without distinction or discrimination, and reserves the exclusive power to enact laws to defend these inherent rights to the state legislature.

It is important to note that unlike other proposed amendments that seek to prevent activist courts from establishing state rights to abortion, by simply declaring that the right to abortion does not exist in the state constitution, the Wisconsin Personhood Amendment establishes that the reason why there can never be a state constitutional right to abortion is that the unborn child is a person with all the benefits of equal standing under the constitution of Wisconsin. Not only could no future state supreme court find a state right to abortion, but no future legislature could pretend to legalize the killing of the unborn.

While AJR 130 goes a long way towards recognizing the humanity and dignity of the unborn child, it is not a criminal abortion statute and it is not intended to replace any legislation in particular. The personhood amendment seeks to recognize the humanity of the unborn and return the power to protect children in the womb to the legislature. It will be the legislature's job to enact legislation that it considers necessary to protect the right to life of all of its people. It is the legislature that can take into account all of the complex scenarios in which innocent human beings' lives are threatened. Future legislatures will also have to deal with the ever changing landscape of federal abortion jurisprudence, navigating the limitations placed in their way by the federal judiciary as they seek to protect the right to life established in the constitution.

Some critics may believe that AJR 130 would conflict with the federal constitution - as interpreted by the post *Roe v. Wade* supreme court precedent - and is therefore doomed to failure. But in fact, even under *Roe v. Wade* and its progeny, a measure such as AJR 130 would survive constitutional scrutiny.

The closest case on point is the 1986 Supreme Court case of *Webster v. Reproductive Health Services*. In this case from the state of Missouri, the U.S. Supreme Court ruled that a law which amended existing state law concerning unborn children and abortion in a similar way to what is being proposed by AJR 130 was, in fact, constitutional. The Missouri law's first provision contained findings by the state legislature that "[t]he life of each human being begins at conception," and that "unborn children have protectable interests in life, health, and wellbeing." The Act further required that all Missouri laws be interpreted to provide unborn children with the same rights enjoyed by other persons. In upholding the constitutionality of the Missouri law, the Court stated that "This Court has emphasized that *Roe* implies no limitation on a State's authority to make a value

judgment favoring childbirth over abortion” and since the preamble “does not, by its terms, regulate abortions or any other aspect of appellees' medical practice ... it is inappropriate for federal courts to address its meaning.” Like the Missouri law, AJR 130 does not regulate abortion in any way. In fact it does not mention abortion at all. What the amendment explicitly does is to make a value judgement favoring the recognition of the full humanity of the child in the womb. It also vests the power to prohibit conduct that affects unborn persons in the body that is best suited to regulate the conduct of the people of Wisconsin, and that is the state legislature.

Since the election of President Trump there has been a nationwide campaign to neutralize the president's impact on the judiciary with respect to the right to life. In states that have Democrat controlled legislatures like New York and Virginia, laws are being passed to ensure that children can be killed by abortion up until the moment of birth. In fact, in New York, a child born alive during a failed abortion can now, legally, be abandoned to die through exposure even after birth. In those states where the radical wing of the Democrat party does not have the control necessary to impose abortion as a state right through the legislature, abortion activists have been pushing state courts to manufacture constitutional rights to abortion based upon tortured interpretations of their state constitutions. Two of the most troubling examples are the states of Iowa and Kansas which in the last two years have had activist state supreme courts impose abortion on demand.

It is interesting to note that in all of the cases where a fundamental state right to abortion was created by activist state courts, it was done through legal challenges to pro-life laws that sought to regulate abortion. This is important because proponents of a personhood amendment are often told by other pro- lifers, that personhood amendments could “set the movement back.” Yet, as we can see, in fact it has been pro-life laws that attempt to regulate abortions that have afforded the state courts the necessary cases through which to create these fundamental state rights to abortion. The sad fact is that activist judges do not care about the law that is placed before them, but only care to see their own policy preferences reflected in the outcome of the case. Make no mistake, if no constitutional protection is in place in Wisconsin, sooner or later an activist court will step in and invent a state constitutional right to abortion in Wisconsin.

Traditionally, the state constitutional rights to abortion were limited to the most liberal state in the nation where the people support abortion on demand. But recently, abortion proponents have been going on the offensive and preempting state pro-life legislation by attempting to nip it in the bud through the state courts. As President Trump's judges settle into the federal judiciary we can expect abortion activists with their teams of sophisticated lawyers to target more and more liberal courts in conservative states.

Currently there are fifteen states where activist supreme courts have created a fundamental right to abortion in the constitution: Alaska, California, Connecticut, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, Oregon, Vermont, and West Virginia. United States Supreme Court precedent based on the 10th amendment police powers establishes a wide margin of autonomy for states. In *Pruneyard*, a U.S. Supreme Court case decided in 1980, the court stated that it is proper for “the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal

Constitution.” The only question that remains as we look forward into the future is whether our particular state will use its sovereign police powers to protect the right to life or to establish a fundamental right to abortion.

As the world moves further into the 21st century, emerging technologies are stretching the boundaries of medical ethics. Defining the right to life to extend to all human beings is imperative as we attempt to prevent the abuse of defenseless human beings for the sake of “scientific advancement.” Abortion, euthanasia, cloning, human experimentation, organ harvesting, eugenics, the creation of human and animal hybrids; all of these require a strong definition of the human being based upon our unique intrinsic value and inalienable right to life.

The abortion industry will try to create end-of-the-world scenarios to dissuade pro-life legislators from supporting a state constitutional amendment that recognizes the right to life from conception. They will say that women will be prosecuted for miscarriages: There is not a single instance in 200 years of pro-life laws throughout American history of such a case.

They will say that a personhood amendment will prohibit life-saving medical care: In Ireland and Chile, where similar amendments were in force until very recently, women enjoyed some of the lowest maternal mortality rates in the entire world, certainly lower than in the United States. They will say that recognizing that life begins at conception will outlaw fertility treatments like In Vitro Fertilization. Yet, states like Louisiana and countries like Germany, allow In Vitro Fertilization while simultaneously protecting the embryo.

The fact of the matter is that the abortion industry stands to lose a multibillion-dollar industry if the humanity of the preborn child is recognized and defended. The reproductive technology and infertility industry wants to remain totally unregulated to do what they please with human beings at the embryonic stage. Lastly, the scientific community wishes to accept no limitations in its blind desire to replace and play God. A state constitutional amendment that recognizes the right to life of all human beings is the legal embodiment of belief in the sanctity of life. It has been the goal of the pro-life movement since day one, and it is the best hope for a future, which respects the dignity of all human beings without giving the power of life and death to any one person over any other.

Nobody knows what the future will bring. Most legal scholars believe that abortion will be returned to the states at some level. Ultimately, abortion, like slavery, will have to be outlawed on the federal constitutional level, but in the meantime the best possible avenue, and the most prudent is to work for a state constitutional amendment like AJR 130.

Whether the U.S. Supreme Court decides to reaffirm *Roe v. Wade*, overturn it, or limit it in some way, the front lines of the struggle to uphold the right to life will be in the states for the foreseeable future and the Wisconsin Personhood Amendment is the gold standard of state level pro-life measures.

Martin Luther King wrote that “justice too long delayed is justice denied” and that “wait has almost always meant ‘Never.’”

William Wilberforce introduced his act to outlaw the slave trade in 1787 and reintroduced it for 20 consecutive years before he finally achieved his glorious purpose of abolishing the slave trade. It would be another 26 years after that, and several years after Wilberforce's death that slavery itself as an institution was abolished in the United Kingdom.

Like William Wilberforce, the twenty two sponsors and co-sponsors of AJR 130 have an uphill climb ahead of them. Changing the hearts and minds of our fellow citizens will not be easy and it may take some time, but with perseverance, goodwill and above all with faith in God, all things are possible.

I thank you for the opportunity to speak to you today and I am happy to answer any questions from the committee members.

Good morning, Chairman Sanfelippo and fellow committee members, my name is Tobey Neuberger and this is our 13 year old son, Creede. We live in the town of Cedarburg in Ozaukee County. We are very grateful for your leadership on AJR 130, the Personhood Amendment.

I am a mom of six and have been active in pro-life work for many years. I am currently the chair of our Respect Life committee at St. Francis Borgia. That work has pierced my heart with steadfast fortitude in giving voice to the unborn, as I am able, which is why I'm here today.

The Personhood Amendment to the State Constitution will provide the essential distinction to protect the unborn, assuring them of their inherent legal right to life, as it currently provides for all born citizens. This is SO simple and the very least we can do. If we don't, we risk losing all our hard-fought safeguards to a loophole that will certainly be tested if our Supreme Court were to change.

As we observe all the various classifications and designations we wish to assign people and the subsequent protections afforded them, we must, must, must keep in mind that the ones left out are the most vulnerable, voiceless ones. And their number is 60 million and counting. We cannot let the loud chaotic noise of "choice" and "reproductive freedom" drown out their silent cries for justice and the truth that every human, born and unborn, has the right to life. **WE ARE THE ONLY VOICE THEY HAVE!**

From my experience, the pro-abortion side stops at nothing - there is no lie they won't tell, no procedure they won't outlaw, no person they won't use to achieve their end: **Abortion at any stage of development for any reason at taxpayer expense.** It's time the pro-life side acts aggressively and pro-actively in fortifying and securing what we can when we can, i.e. this Personhood Amendment.

Ryan Bomberger, author of the book "Not Equal, Civil Rights Gone Wrong" is an African American. He was a child conceived in rape and adopted into a loving family. He spends his life sounding the siren on the injustice of abortion and dispelling the "exception" argument especially in the black community. In his extraordinarily researched book, he emphasizes that the number of leading "civil rights" organizations that fight abortion--America's #1 killer of black lives--is ZERO!"

His book is full of clever posters designed to inspire thought. One such says "FREEDOM IS EASILY ERASED WHEN WE DO NOTHING TO PROTECT IT." He says, "Our culture of abortion and the bondage it has created is crying out for heroes... We desperately need more that will bravely stand up to an unjust system that denies the humanity of God's creation. There is a precious freedom waiting to be experienced that is worth the sacrifice."

It is so terribly sad to know that the unborn child is the last unprotected class of human beings on the planet. We have to make a change!

Interestingly enough, I am on the American Civil Liberties Union (ACLU) email list. I have no idea why, but I didn't "unsubscribe" them so I can keep tabs on what they are doing and saying. This week I got one expressing great concern that because of President Trump's judicial appointments, the future of *Roe* is shaky. I'm glad they're scared. That will be a glorious day, indeed.

But we must first get the language in our State Constitution sewed up to include protections for the unborn! If we don't, the ACLU and other "civil rights" organizations will go after every single pro-life protection in place, finding the loopholes, causing judicial chaos, all the while allowing more innocent children to needlessly die in abortion.

We have the chance to secure the freedom our unborn brothers and sisters deserve with AJR 130, the Personhood Amendment.

The time is now.

Thank you.

Creede Neuberger:

I just returned from my second time going to the March for Life in DC. I heard President Trump speak. It was so awesome and exciting. He said in his speech:

"We are here for a very simple reason: to defend the right of every child, born and unborn, to fulfill their God-given potential."

We cannot know what our unborn citizens will yet achieve. The dreams they will imagine. The masterpieces they will create. The discoveries they will make. But we know this: every life brings love into this world. Every child brings joy to a family. Every person is worth protecting.

And above all, we know that every human soul is divine and every human life, born and unborn, is made in the holy image of Almighty God.”

If our President is working this hard to protect the unborn, then we surely should work as hard. This amendment makes simple sense, that ALL the citizens, born and unborn, in Wisconsin are guaranteed protection and the right to life by our State Constitution and the Personhood Amendment does that.

You can do that.

Thank you for this time to speak and for your leadership on this!

Tobey Neuberger
Creede Neuberger
409 Lindale Drive
Cedarburg, WI 53012

Members, Assembly Committee on Health

Support for Assembly Joint Resolution 130

February 13, 2020

Greetings Chairman Sanfelippo and Committee Members,

My name is Ken Pientka. I am a retired engineer that now works nearly full time in the Madison area returning the gifts I have been given to my church and to those in need . I come today with great hope knowing that you are undertaking a public hearing to consider the establishment of a personhood amendment to our state constitution.

I unequivocally support a Personhood Amendment that would grant the same rights to a newly conceived child as it would to any other person. A mother's womb, which should be the safest place on earth, has become a place where over 60 million preborn children have been killed since 1973. Advances in technology have shown us that the fetus is much more than a blob of tissue:

- At day 22, the heart begins to beat
- Eyes, legs and hands begin to develop at week 5
- Brain waves are detectable in week 6
- Week 7 brings the formation of eyelids and toes... the baby is kicking and swimming
- Week 8 – Every organ is in place
- Week 11 – the baby can grasp an object placed in its hand
- Week 17 – Brain waves are detectable
- Week 21 – Babies have survived outside the womb

Some might argue that an abortion is protected through an opinion by the U.S. Supreme Court. History has shown us that the Supreme Court has made grievous errors in the past, and the "right" to an abortion is just one of them. Some of the rulings that are now judged to be on the wrong side of history include:

- Free and slave Negroes were not citizens of the United States;
- Upheld states' rights to forcibly sterilize people considered mentally deficient; and
- Women were denied the right to vote

I believe that all new life is a gift from our Creator and that each preborn human being deserves the same Constitutional protections as any other person. Thank you for this opportunity to share my views on this important issue. I urge you to move AJR 130 forward with great resolve.

Sincerely,

Ken Pientka
7511 Oak Circle Drive
Middleton, WI 53562
Ken.pientka@gmail.com
608 220 8022

Wisconsin Personhood Amendment – AJR 130

Good morning Chairman Sanfelippo and committee members, my name is Jim Schmidt. I am the father of 7 children with 14 grandchildren. I live in Necedah and am a homebuilder by trade. I lead Pro-Life Wisconsin's Juneau County affiliate.

I strongly urge you to support and act on Assembly Joint Resolution (AJR) 130. Wisconsin law must again protect the God-given right to life, as it did prior to the judicial fiat of the U.S. Supreme Court's stunning *Roe v. Wade* decision in 1973.

The need to enshrine personhood rights for the preborn in our state constitution is a fundamental and non-negotiable priority. The Wisconsin Legislature needs to define the beginning of a human being's existence from the time of conception and recognize the rights of unborn persons in our state's highest law.

Basic fifth grade biology textbooks explain that a human life begins when the sperm cells of the father and the egg cells of the mother unite. This union is referred to as fertilization. The fact that we need to even have this discussion proves the necessity of protecting the most innocent and most vulnerable from people who care little for their life.

Section 1 of AJR 130, defining personhood in our state constitution, will ensure equal protection of the laws for all preborn human beings from the moment of conception and through their developmental stages, embryonic and fetal. Section 2 of AJR 130 will help keep the law making power in the legislature where it should be. We should not tolerate judicial legislation, which is an oxymoron. The most vulnerable need to be protected by laws that cannot be twisted out of their intent by those judges who would inappropriately impose their own immoral standards on them.

I urge you to move ahead on this legislation to help save the lives of children and grandchildren across the state.

God help us to act rightly in their defense.

Jim Schmidt
W5175 State Road 21
Necedah, WI 54646

Donum Vitae Institute - for Nascent Human Life

Mary Anne Urlakis, M.A., Ph.D.

Executive Director & Co-Founder

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Hubertus, WI 53033

13 February 2020

Testimony before State of Wisconsin Assembly Committee on Health; Hearing on AJR 130

Good Afternoon. Thank you Chairman Sanfelippo and the members of the Assembly Committee on Health for allowing me to have this opportunity to speak to you today in support of Assembly Joint Resolution 130.

My name is Dr. Mary Anne Urlakis; I am the Executive Director and Co-Founder of the Donum Vitae Institute for Nascent Human Life, which is a branch of the Children First Foundation. I am a classically trained and degreed clinical bioethicist; holding graduate degrees from both Marquette University and the Medical College of Wisconsin. I was the first graduate of the Medical College of Wisconsin's Graduate Program in Bioethics, in 1994. I hold numerous graduate certificates in ethics and bioethics. I am here to speak to you both as a bioethicist and as a taxpaying citizen of the state of Wisconsin in support of Assembly Joint Resolution 130.

Our state of Wisconsin Constitution stipulates that all people are born equally free and independent, and thus hold certain inherent rights, including the rights to life, liberty, and the pursuit of happiness. Under AJR 130, the state of Wisconsin's Constitution would be amended, eliminating the word "born" and leaving the phrase, "all persons are equally free and independent", further specifying that, as applied to the right to life, the term "persons" applies to every human being at any stage of development, born or unborn. Furthermore, the proposed constitutional amendment stipulates that the legislature would properly be charged with the authority to define the scope of protections afforded to unborn persons, thus any prohibition of conduct with regard to unborn persons would necessarily be prescribed by the legislature by law.

I regard our state's Constitution as sacrosanct in principle, that is, as our foundational document, it ought not to be tampered with lightly. Rather, it ought to be amended rarely, and then only in grave matters of human justice, amended carefully and with precision. The amendment proposed in Assembly Joint Resolution 130 fulfills this criterion.

For the matter before us is indeed of grave relevance- it is an issue of justice that affects countless human persons. History is replete with examples of great harm perpetrated against vulnerable classes of human persons though the denial of their rights as persons. For example, the landmark 1857 U.S. Supreme Court Decision in *Dred Scott v. Sanford* ruled that the rights of citizenship ought not apply to black persons- whether they were slave or free. The court documents stipulate that black people were regarded as, "beings of an inferior order. . .; and so far inferior that they had no rights (*Dred Scott*, 60 U.S. at 407.)" Similarly, the Virginia State Court ruled in 1858 that "in the eyes of the law. . . the slave is not a person." The legal concept of personhood was likewise denied to women. The very field of bioethics was founded to ensure that the horrific wrongs committed against human persons as revealed by Nuremberg Doctor's Trial, and later by instances on U.S. soil like the Tuskegee Syphilis Study, would be prevented. Each of these egregious wrongs has one common antecedent: the deliberate and systematic denial of human dignity and personhood to a vulnerable, marginalized class of human beings.

Throughout the centuries, those who wish to exclude members of a vulnerable class create an arbitrary and subjective criterion for inclusion under their fluid definition of person. These definitions are

inevitably problematic and defy both experience and logic, when, for example, high-functioning computer models are ascribed “personhood,” but cognitively impaired adults are not.

When we consider the unborn human individual- at any stage of development- we are considering an individual with a unique DNA pattern, a human individual whose inception in time began with a reproductive act between human persons. One does not become human gradually- one begins as a human and remains a human from the beginning- a human person regardless of stage of development. Like you and I, each individual human person, born or unborn, is unique. One is not able to “opt out” of human personhood even if he or she should desire to do so; likewise, neither can one legitimately deny that another is in fact a human person. One does not set aside their human personhood at times throughout their lifespan. For example, when one is unconscious during surgery, one does not cease to be a human person simply because of lack of consciousness. When a patient is on ventilator or requires kidney dialysis to live, he or she is still considered a human person. Thus, level of dependency has no bearing on the inherent characteristic of human personhood. A medical procedure with an ICD 10 code neither begins nor temporarily suspends one’s personhood. Likewise, a C-section or vaginal delivery has no intrinsic effect on the reality of an individual’s innate personhood.

The arguments that I have presented thus far are logical and scientific, they are not religious in nature. However, like the Founding Fathers of this great nation, I too believe that each human person is created by God, bearing His Image and Likeness, and therefore each and every human person is sacred: of inviolable dignity and incomprehensible value.

The amendment proposed in Assembly Joint Resolution 130 accurately reflects the reality of human personhood present in each individual throughout all stages of life and development, and affords it protection necessary under the law. It is a fair, just, and precisely worded amendment. Not only does it reflect the truth that each human individual is in fact a human person, and worthy of the rights of life, liberty, and the pursuit of happiness, but it ensures that the duly elected legislative body would maintain the proper role in defining the scope of protections afforded to unborn persons.

It is for these sound reasons that I come before you today and urge you to pass Assembly Joint Resolution 130. Thank you for your time, attention, and consideration,

Hominum Vita Pro Sacra,

Mary Anne Urlakis, M.A., Ph.D.

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AMGD

Good morning Chairman Sanfelippo and committee members. My name is **Dr. Elizabeth A. Larson**. My specialty is family practice with obstetrics, and I'm currently working at an independent clinic here in Madison after having my own private solo practice in Columbus for 7 years. I want you to know that I decided to become a doctor after a personal tragedy that led me to want to help people and specifically help bring healthy babies into this world. I chose family medicine over obstetrics and gynecology because I realized one cannot provide comprehensive care to a woman without caring for her family. I also realized the greatest disease we face in America is the loss of the family – that is mother and father raising their children in the same home together. So many of our ills; drug use, mental illness, violence stem from that.

I am pleased to be here to speak on AJR 130. Let me begin by describing the persons in question. There is much unnecessary confusion about the question, "When does life begin?" The answer is very clear and very simple; it is only the heavy implications that weigh against accepting this simple truth. But ladies and gentlemen, no seeker of the truth can pick and choose what the truth is based on its implications. It is merely up to us to accept that truth and work within it. This is seen in all aspects of human life. Imagine if we had not been willing to accept Einstein's Theories of Relativity, the equality of the races, or that inoculating a person with a virus would prevent disease! Each of these truths caused disruption and chaos temporarily, but without recognizing truth we continue to live in chaos, ignorance and often times, grave immorality.

So let me begin with human reproduction. You most likely know that the average woman has a menstrual cycle once a month, that during this cycle her body both prepares an egg to be fertilized and her uterus to receive the product of conception. That for a pregnancy to take place the egg needs to be fertilized by a sperm. That egg, called an oocyte or ovum carries only half the genetic material of a human being. The egg, if not disturbed, will on its own accord live for a few days after ovulation. But then, alone, it will perish and be flushed from the woman's body as many other spent and discarded cells. But, if that egg is introduced to a sperm, which also carries just half of the genetic code for human life, and is fertilized, there is an immediate and powerful response. The two halves are joined and immediately all else is sealed off. This now single cell has the entire genetic makeup of a unique human being. From now on, this cell contains not only the directions, but the machinery and the drive, the impulse if you will, to begin a lifelong journey of growth and development.

This is precisely the moment that you became you.

This happens in the fallopian tube that leads from the ovary to the uterus. Development continues, not because of anything the mother does to compel him or her, but because she or he is now a separate, living human being with its own drive to live.

I would like to take a moment to analyze the word "being." According to Merriam-Webster's dictionary, "be" as a verb means: "to equal in meaning, have the same connotation as," "to have identity with," "to constitute the same class as," and "to belong to the class of." Also "to have an objective existence: have reality or actuality," or "to have maintain or occupy a place, situation or position." In other words, ladies and gentlemen, the zygote as we now call this new human being, belongs to the class of humans, he or

she holds the same position as, is equal to all the other human beings in existence. There is no doubt, in the minds of scientists or doctors or others that the zygote is a new, unique, individual living human being.

This unique human being undergoes a marvelous amount of self-directed development in a short time. After the sperm penetrates the oocyte, there is immediately a reaction creating a hard, impermeable wall around the cell preventing further penetration by other sperm. There is, on a cellular level, an immediate self-awareness of "me" and "other."

Then the parts of the egg and sperm that contained the DNA combine and within a day and a half have already copied the entire human genome and cleaved into two cells. Then these 2 cells become 4 and then 8.

By Day 4 or 5 the zygote has divided into 16-20 cells compacted in the center with more cells forming a perimeter. They are organizing; they are more than a mere "clump of cells."

This outer layer is called the trophoblast, which will become the placental tissues, and surrounds a cavity which contains the inner cell mass attached to the inside wall. This inner cell mass will develop further into the embryo and at this stage is called the embryoblast. Again at the cellular level this zygote has an awareness of what is "I" and "not I" as the trophoblast forms a tight seal separating the embryoblast from the environment.

On Day 6 of Life, that hard shell that has protected the zygote begins to dissolve and he or she is beginning to prepare for implantation in the mother's uterus. This new life has multiplied from 1 to roughly 125 cells.

The blastocyst, as we now refer to this new human being, has floated down the fallopian tube and is entering the uterus. As the blastocyst rolls across the uterine lining it slows and then stops, not randomly, but oriented in such a way that the inner cell mass, that embryoblast, is oriented closest to the uterine lining. Then the blastocyst migrates into the uterine wall, which is called implantation. This takes place about Day 9 of life.

I would like to point out two important actions the blastocyst takes at this time. First, the blastocyst has been secreting human chorionic gonadotropin which prevents the mother from starting a new menstrual cycle. Second, the implanting blastocyst triggers a reaction in the uterine wall, as well as changes in the cervix. These changes allow the embryo to receive nutrition from his or her mother and also to protect the embryo. These events show the new human life exerting his or her influence on his or her environment.

All this time the blastocyst continues to develop. He or she has gone from embryoblast to differentiating into 2, then 3 layers. By Day 15 of life, we know where the head will be. By Day 17 the nervous system is developing. By Day 20 the musculoskeletal system has its beginnings. At week 4 post-fertilization, which is commonly referred to as week 6 of gestational age, the Embryo has a beating heart that can be seen

on an ultrasound. Rudimentary organs such as liver and kidneys are appearing and limb buds, the arms and legs, appear.

By week 6 of life we now refer to the developing person as a fetus.

I would like to point out there is a lot of angst over the word fetus. The word "fetus" comes from Latin and means "offspring, children, or young still in the womb." The use of the word fetus simply refers to the state of development, such as an infant is a child under the age of 12 months, then becomes a toddler and so forth to adolescent and then adult. Grammatically fetus was never meant to have a bearing on the personhood of a human being.

I wish I could say the attempt to disassociate the concept of "human" from that of "person" is a relatively new development in world history. It could most certainly be shown the dehumanization of the unborn is a relatively new concept. But the unfortunate reality is that mankind has perpetuated crimes against each other based on race, religion or ethnicity by depersonalizing an entire group of people for ages. There was an entire field of "scientific racism" where studies such as craniometry were carried out to "prove" the inferiority of certain races, especially the African races. Hitler often referred to Jews as "subhuman." The Rwandan Genocide was preceded by years of propagandizing the Tutsi's as cockroaches. It strikes me as a sad, but revealing, fact that one simply has to just take out "Jew," "black," or "Tutsi" and insert "fetus" and there lies the pro-abortion's argument staring at them.

Our nation's founding fathers were men of virtue and honor, but they failed us in two important ways by excluding two classes of people from equality in our constitution: the African Americans, and the unborn. In the first case, I can only guess that their failure to give full and equal protection to people of color was perhaps due to indifference, fear of rocking a tenuous unity, hatred or greed. But imagine the countless lives saved from brutality, not to mention the peace and harmony we might live in now if years of slavery and discrimination had been thwarted from the outset of our nation?

As for the second class of people, the unborn, I don't believe our founding fathers could ever have imagined the horrors and atrocities we would be committing on our children in the womb. You now have the opportunity to stand up for what is right, to change the course of history for the better and help bring an end to the chattel slavery of the most vulnerable in our society. Please, support this Amendment and rectify this oversight in our state constitution. Recognize the unborn person from the moment of conception as a fellow human being deserving of the same protections as every other human being.

Thank you for allowing me this opportunity to speak to you.

Elizabeth A. Larson, MD
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WISCONSIN CATHOLIC CONFERENCE

TESTIMONY REGARDING ASSEMBLY JOINT RESOLUTION 130: PERSONHOOD AMENDMENT

Presented by **Kim Vercauteren, Executive Director**
February 12, 2020

On behalf of the Roman Catholic bishops of Wisconsin, the Wisconsin Catholic Conference (WCC) greatly appreciates the opportunity to offer testimony for information today on Assembly Joint Resolution 130, which would amend our state Constitution and define personhood to include unborn children.

The Catholic Church fully recognizes the inherent dignity of every human being. From the moment of conception, we are created in God's image and are deserving of respect and protection until natural death.

How best to uphold this dignity is sometimes a matter of prudential judgement. While pro-life advocates work hard to make abortion unthinkable, to overturn unjust laws, and to enact protective laws for both women and their unborn children, not everyone agrees on the means for achieving these ends.

While the WCC fully supports the intent of AJR 130 – the protection of all human life from conception to natural death – serious questions remain as to whether this resolution as drafted will achieve this goal. For example, how would amending our state Constitution affect existing state pro-life laws and what implications would it have for federal laws and jurisprudence? Is redefining “person” in our state Constitution the only or the surest way to protect unborn children? We just don't know.

What we do know is that pro-life people within our state – all in good conscience – disagree on the impact of this proposed amendment. As there are good arguments to be made on both sides, the WCC is not taking a position on AJR 130. Catholics are free to support or oppose it as their formed consciences and judgement dictate, so long as they remain committed to upholding the life and dignity of every human being from conception to natural death.

On this most contentious issue of abortion, we urge everyone to respect legitimate differences, while doing everything to help women and their unborn children.

Thank you.



Wisconsin Alliance for Women's Health

www.supportwomenshealth.org

TO: Assembly Committee on Health
FROM: Sara Finger, Executive Director, Wisconsin Alliance for Women's Health (WAWH)
RE: Testimony in Opposition of Assembly Joint Resolution 130
DATE: February 13, 2020

Chairman Sanfelippo and members of Assembly Committee on Health, thank you for the opportunity to provide testimony in opposition of Assembly Joint Resolution (AJR) 130.

Wisconsin Alliance for Women's Health's vision is that every Wisconsin woman - at every age and every stage of life - is able to reach her optimal health, safety and economic security. In the spirit of our vision, we support legislation that will have a positive impact on women's health and wellbeing in Wisconsin.

AJR 130 would have a negative impact on women in Wisconsin's health and well-being. Across the country, we're seeing a new wave of extreme bans on abortion, revealing the real anti-choice agenda: to ban abortion outright. This bill is no different and would push abortion care out of reach. It would ban all abortion at any point in pregnancy and force a woman to carry a pregnancy to term regardless of whether her life is at risk. AJR 130 could be applied to outlaw forms of birth control and ban important fertility procedures, such as IVF, for women in Wisconsin. Every single health care decision facing pregnant women that might affect the fertilized egg or fetus, would be up for scrutiny if Wisconsin's Constitution were to be changed as proposed by AJR 130.

Women in Wisconsin should be trusted to make the best healthcare decisions for themselves. We strongly support that women should make decisions about their own bodies. If and when they wish to become a parent is an extremely personal decision that politicians should not be involved with. To give full legal protection to a zygote at the risk of denying women autonomy over their bodies and their lives is wrong on so many levels.

We understand this bill is a political game, being introduced at the end of the session to pander to a conservative anti-abortion base. However, the message you send to women by bringing this bill forth in Wisconsin is chilling.

According to 2019 polling, the majority of people in Wisconsin, in fact 54%ⁱ do not want to ban abortion or see *Roe v. Wade* [410 U.S. 113 (1973)] protections overturned in our state.ⁱⁱ This bill is not being brought forth in the spirit of making lives better as research shows that states with more abortion restrictions have worse outcomes for women's health.ⁱⁱⁱ

It is time Wisconsin legislators prioritize evidence-based policies that actually help to improve the health and lives of Wisconsin women and girls. Stop using women and our health as political game pieces.

Wisconsin Alliance for Women's Health asks that you vote no on AJR 130.

ⁱ <https://www.prr.org/research/legal-in-most-cases-the-impact-of-the-abortion-debate-in-2019-america/>

ⁱⁱ <https://law.marquette.edu/poll/2019/10/21/supremecourt2019/>

ⁱⁱⁱ <https://reproductiverights.org/sites/default/files/documents/USPA-Ibis-Evaluating-Priorities-v2.pdf>