A Sure Due Process Path to Kill Roe v. Wade

There is a surefire legal play to force our US Supreme Court to reconsider the constitutional validity of Roe v Wade, and especially, its express holding that the fetus does not qualify as a 5th (14th) Amendment, due process clause person. The first thing to do is, for those states desirous of outlawing procured abortion and in favor of a Fetal Personhood Amendment, is to enact, simultaneously, or as nearly simultaneously as is possible, virtually identical criminal statutes expressly outlawing abortion with the express statutory purpose being to comply with the 5th (14th) Amendment due process clause truth that the human fetus qualifies there as a person. This would seemingly be in direct and open defiance of Roe v Wade, but it can be demonstrated that it is not, because of a specific provision of the Declaration of Independence which the Constitution, itself, implicitly recognizes is an authority greater than itself.

Once these statutes are attacked in federal court, the defendant states should each move to have all these attacks combined before a single federal trial court judge. If there is a sufficient number of united states then that becomes a voice too big for the Court to credibly refuse to hear. Maybe a person such as Rand Paul could be enlisted to help establish a sufficient number of such states.

The state federal trial court briefs must, among other items, contain these irrefutable legal points: **1)** Roe v Wade holds explicitly and expressly that if the fetus is a due process-clause person, then, not only does Roe fall in its entirety, but the states (and this is an implicit Roe holding) would be compelled constitutionally to outlaw procured abortion; **2)** Roe's fetal non-person holding is "void ab initio" along the lines of the Court's holding in Burgett v Texas (1967) because Jane Roe's fetus was not given a due process-mandated opportunity (let alone a "meaningful"one) to be heard on the question of its personhood status. (This means, in no uncertain terms, that legally or constitutionally speaking, the question of fetal personhood becomes, once again, an "open and undecided" constitutional question and in which case, the several states are constitutionally permitted or free to act on a yes answer they may give to this now newly opened vital constitutional question); and **3)** there can be no question, whatsoever, that the fetus qualifies as a 5th, and therefore also as a 14th Amendment, due process clause person: See Rafferty's Unraveling book (at www.parafferty.com) at pp. 49-54, including all the "primary" and secondary authorities cited in those pages.

What gave rise to this new legal play thinking was a realization that, contrary to a near universal opposite belief, the Supreme Court, in Dred Scott's Case, held "implicitly" that the negro slave, Dred Scott, constitutes a 5th Amendment due process "person"; for otherwise Scott would not have been allowed the due process guaranteed right, which is given only to constitutionally recognized "persons", to a "meaningful opportunity" to argue in federal court that he was a citizen, and therefore could, indeed, sue in federal court. Dred Scott's holding that a negro slave is not a US *citizen*, and therefore that he cannot sue in a federal court, notwithstanding that he *is* a constitutionally recognized person, was never overruled. Rather, it was legislatively nullified by the 13th Amendment. Unlike Scott, the slave, who was at least given the due process mandated opportunity to argue that he was a citizen and entitled to his freedom, Jane Roe's fetus was not even afforded an opportunity to argue for his very own life. And so, no one can argue rationally that Roe's fetal non-person holding complied with the dictates of procedural due process. Without such a foundation, Roe's fetal non-person holding can carry no more weight than that of the tail feathers of a humming bird. As the Court, itself, reiterated in Wisconsin v Constantineau (1971): It is the constitutional guarantee of procedural due process that secures rule, by the rule of law, and not by judicial fiat; and such process is always "personal" to the person entitled to it. There is no such thing as a valid or legitimate constitutional substitute for being

afforded due process of law.

Finally, let it be supposed that the legal play proposed here is deemed as an outright legal attack on the Constitution. The response here should be that our Declaration of Independence grants to the states, or the people, the authority to make just such an attack: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain Unalienable Rights, that among these are Life [and which, and according to Blackstone - see Rafferty, id. At pp. 51-52, begins, in contemplation of law, as soon as the human embryo develops into a recognizable human shape] … That to secure these rights, Governments are instituted among men … that whenever any Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it."