Paul B. Linton & Clark Forsythe On the Myth of Fetal-Personhood

When the meringue is sliced away from Linton's and Forsythe's argument "against" constitutionally recognized fetal personhood, it amounts to no more than the following: No U.S. Supreme Court justice has ever put forth the position that the fetus is (or should be) recognized so. (Google, e.g., Paul B. Linton, How Not to Overrule Roe v. Wade.) That doesn't even qualify as a legal argument – and even far less so than does "lack of precedent" fail to qualify so. Chief Justice Mansfield, in Jones v. Randall, 98 Eng. Rep. 706, 707 (1774) insightfully observed:

> The law would be a strange science if it rested solely upon cases; and if after so large an increase of commerce, arts and circumstances accruing, we must go to the time of Rich. I (1189-1199) to find a case, and see what is law. Precedent, indeed may serve to fix principles, which for certainty's sake are not suffered to be shaken, whatever might be the weight of the principle, independent of the precedent. But precedent, though it be evidence of the law, is not law in itself, much less the whole of the law.

The only reason no justice has held so, is because the issue of constitutionally recognized, due process clause, fetal personhood has "never" been put to those justices in a "proper context." And "citation out of context is pretext."

My chosen arena ("context") for picking a fight with Linton & Forsythe is at a hypothetical oral argument session before the Supreme Court of the United States in a real case involving the two (2) critical issues addressed in Roe v. Wade. Linton is representing one of the parties before the Court, and he is in the course of arguing heavily on how the fetal-personhood issue should be resolved against the fetus, as Roe so held, but that Roe, nevertheless, should be overruled in so far as it holds that a woman has a "fundamental" right to undergo a medically procured abortion (and therefore the issue of the legalization/criminalization of abortion should be returned to the several states for each state to decide separately). Linton is then rudely cut-off by all nine (9) justices who put to him this hypothetical question: "Counsel Linton, we are well aware of your essay, How Not to Overrule Roe v. Wade, and we are not the least bit impressed with it. And as you well know, not too long ago, we put to AUL'S Clarke Forsythe the hypothetical that we are about to put to you; and when Forsythe refused continuously to engage that hypothetical question/issue "head-on", we ordered our bailiffs to take him to the roof of this Courthouse and there to launch him into the deepest portion of the Potomac River for contempt of court in engaging in "issue- dodging." So, Counsel Linton, here is the hypothetical question (and God forbid that you also engage, here, in " issue - dodging " – unless you brought with you a good pair of long distance, deep - water swimming trunks☺: Answer head – on the hypothetical issue posed in page fifty (50) of Philip A Rafferty, Roe v. Wade: Unraveling the Fabric of America (2012) and reproduced online on page 4 of "Letters to Justice Scalia" at www.parafferty.com.

And before you give to us your answer, here, be sure to consider each and every reason which Rafferty gives in support of how he goes about answering the hypothetical issue/question which he poses there. (See Rafferty, id. at pp. 50-54, including accompanying endnotes. And see also Rafferty's scathing letter to our former fellow justice, Antonin Scalia, reproduced in www.parafferty.com.) And know well, here, that each of us is at an utter loss to say that there exists any good constitutionally sound reason for denying that these same reasons which Rafferty gives, here, would dictate also that, constitutionally speaking, the several states and the Federal Government must take direct " affirmation action " forthwith to safeguard the fetal person from being aborted.