Chief Justice John G. Roberts (and your Fellows)
U.S. Supreme Court Building
1 First Street N.E.
Washington, D.C. 20543

Dear Chief Justice Roberts (and your Fellows):

You know well that "all" persons living under the jurisdiction of the U.S.A. are entitled to due process of law. (*See, e. g.,* Plyler v. Doe (1982), 457 U. S. 202, 230, fn. 11.). Now, let it be supposed that you the reader are charged in federal court with negligent homicide committed in USA territorial waters. Do you not possess a due process right to argue that the homicide or death occurred outside of USA territorial waters? So, do you not think that in the case of Roe v Wade, Jane Roe's unborn child had a due process right to argue that he is a due process clause protected person? In the case of an unborn child, the only form of due process of law that that child can have is to be appointed a *guardian ad litem* who hires an attorney to argue on behalf of the unborn child. The Supreme Court Justices in Roe v. Wade, in the course of deciding the constitutional issue of whether the unborn child is a person within the meaning of the due process clauses, failed to appoint a *guardian ad litem* to represent Jane Roe's unborn child. The Roe Court's inaction (to make that appointment of a *guardian ad litem for Jane Roe's unborn child*), in effect, assumed that this unborn child is not a constitutional person. If it were otherwise, then the Roe Court would have appointed Jane Roe's fetus a *guardian ad litem*. And what is assumed is not, and cannot, thereby, be deemed decided. Putting this another way, a fact cannot be proved by assuming the truth of the fact to be proved. What this means is that the Supreme Court's holding in Roe v. Wade that the unborn child is not a human person is *void ab initio* (of no legal effect period). And if a prior felony conviction used to enhance a punishment on a new felony charge is *void ab initio* where in the prior felony case the defendant was denied his constitutional, due process of law right to counsel (*see* Burgett v. Texas (1967), 389 U. S. 101, 113-116), then, how much more so is a ruling that authorizes the medically performed execution or death of a person without that person being afforded counsel to argue in defence of his client's his right to life. This means that the constitutional question of whether the unborn child constitutes a due process clause person remains undecided. And in Roe v. Wade the Court stated that if the unborn child is a due process clause protected person, then, not only is there no constitutional right to an abortion, but the several states and the federal government are constitutionally obligated to protect the unborn child in a manner equal to the way they protect born persons. (Roe v Wade (1973), 410 U. S. 113, 156-57.) Since whether or not an unborn child constitutes a 5th (14th) Amendment due process clause person is now an open or undecided question, then the several states and the federal government are constitutionally free to pass legislation that supports their determination that the conceived unborn child is such a constitutionally protected person. And, of course, every person enjoys a fundamental constitutional right to protect or save (through non-violent actions such as blocking the entrance to a Planned Parenthood abortion or death clinic) the life of an innocent person.

To make sure that the United States Supreme Court cannot be implicated in the unconstitutional destruction of sixty-five million plus constitutional persons, then the Supreme Court has an absolute judicial and moral obligation to take up anew or redecide the question of fetal personhood. If the Court fails to do so, then, it is cowering silently before the greatest judicial injustice ever perpetrated on humanity. You know well (or you should know well) that there is no question that the human fetus does indeed qualify as a 5th (14th) Amendment due process clause protected person. If you think otherwise, then put a constitutional dent on what is said on pp. 16-17 in my A Silver Bullet for Roe v. Wade 2 (free online read at www.parafferty.com).

In Roe, the Court related that its core holding, that a woman's right to procure an abortion of her nonviable fetus is *fundamental*, constitutionally speaking, is in accord with, and derives from the English Common law (ECL) (Roe v Wade, 410 U.S. at 140-141 & 165). The *exact opposite* is true, and is proved so, by a slew of unassailable *primary* ECL legal authorities, one of which is an aborted-alive, infant murder prosecution that leaves out *quickening* (*i.e.*, a pregnant woman's *initial* perception of fetal movement) as an element of infant murder, and occurred twenty years before the incorporation of the Fifth Amendment's (1791) due-process clause into the

Fourteenth Amendment (1868). *See* Queen v. West (1848), 175 E.R. 329, wherein the trial court judge related the following to the jury:

> The prisoner is charged with murder and the means stated are that the prisoner caused the premature delivery of the witness Henson, by using some instrument for the purpose of procuring abortion; and that the child so prematurely born was, in consequence, so weak that it died. This, no doubt, is an unusual mode of committing murder …; but I direct you in point of [the common] law, that if a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time, that it is born in such a state that it is less capable of living [meaning that the child
> "became nearer to death and farther from life"], and afterward dies in consequence of its exposure to the external world [*i.e*, because it was aborted alive in a non-viable state], the person, who by her misconduct so brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder.

See Smith v. Alabama (1888), 465 U.S. 478: "The interpretation of the Constitution … is necessarily influenced by the fact that its provisions are formed in the language of the English Common law, and are to be read in light of that history."

If, under the Constitution, a woman has a fundamental right to abort her unborn child, then there is no way the conceived unborn child can be deemed a 5th (14th) amendment due process clause person. And this is because, by definition, the exercise of inalienable or fundamental constitutional rights cannot collide on a constitutional plane. ("Interests may conflict; [but] rights do not." J. Dolliver dissenting in Fed. Pubs. v Kurtz (1980), 94 Wn. 2nd 51, 68. *See also, e. g*., Caplin v U. S. (1989), 491 U. S. 617, 628: "there is no hierarchy among constitutional rights.") In Roe v Wade, the Court held that a woman owns a fundamental right to rid herself of her unwanted, unborn child. But, he or she who claims a right must prove the right. So, there can be no true fundamental right to an abortion unless it can be proved that the unborn child is not a due process clause protected person. But in Roe v Wade, the Court ruled that abortion access is a fundamental right without reference to determining whether a procured abortion destroys a due process protected person. To maintain that a concern for whether abortion kills an intact human person can be arbitrarily excised from the *fundamental rights equation* is the equivalent of arbitrarily excising a concern for human safety from the building equation for a new super highway.

So, listen to these words of Justices Marshall and Brennan, respectively: "The validity and moral authority of a conclusion largely depends on the mode by which it was reached." (J. Marshall dissenting in Greenholtz (1979), 442 U.S. 1, 34); and: "The integrity of the process through which a [constitutional] rule is forged and fashioned is as important as the result itself; if it were not, the legitimacy of the [constitutional] rule would be doubtful." (J. Brennan, In Defense of Dissents, 37 Hastings L. J. 427, 435 (1986)). In the event that your Court fails to listen here, then I hereby charge the United States Supreme Court with the worst crime a tyrannical judicial body can commit: Remaining silent in the face of the greatest injustice ever committed by a judicial body on humanity. And the punishment for that crime is being deemed a "Wasted Court."

Respectfully,

Philip A. Rafferty