

# Cover Sheet

## Roe v Wade and Constitutional Fetal Personhood

*By Philip Rafferty May 2021*

*Cover Sheet updated May, June & September 2021*

**Biography.** Philip Rafferty is a retired criminal defense attorney, who had a private practice in Southern California. His books: (baseline work) Roe v. Wade: The Birth of a Constitutional Right, Philip A. Rafferty (1992), 774 pages (with an Analytic Index at the end), Roe v. Wade: Unraveling the Fabric of America, Philip A. Rafferty (2012), 236 pages, and A Silver Bullet for Roe v Wade Revised II (2016), 29 pages, and other related articles and books by Mr. Rafferty on abortion and constitutional law can be read online for free at [www.parafferty.com](http://www.parafferty.com). Silver Bullet is available for sale online from Amazon and Barnes & Noble. Other articles of interest on the website by Mr. Rafferty are Roe V. Wade: A Scandal Upon the Court, RJLR No. 7.1.1 (2005) (see [www.lawandreligion.com](http://www.lawandreligion.com) , vol 7, part 1, Fall 2005), and The Unborn Child as a Constitutional Person, a talk given to the University Faculty for Life (UFFL), Twenty-Third Annual Conference, 06/01/2013.

### **Related articles published by others in First Things magazine.**

2021/10/01 Roe Must Fall, A symposium by Robert P. George, Michael S. Paulsen, Darel E. Paul, Yuval Levin, Mary Eberstadt

2021/06/01 Personhood, Letter by Mary Ziegler

2021/05/08 Dobbs to be Decided, by Gerard V. Bradley

2021/04/08 Doubts About Constitutional Personhood, by Edward Whelan

2021/04/09 Born and Unborn: Answering Objections to Constitutional Personhood, by John Finnis

2021/04/01 Abortion is Unconstitutional, by John Finnis

2008/05/08 Recycling The Myths of Abortion History, by Joseph W. Dellapenna

2007/06/01 Supreme Confusion, by Michael M. Uhlmann (Review of Dispelling the Myths of Abortion History, Joseph W. Dellapenna (2006))

**Importance.** I believe this paper will be a complimentary, timely help in the effort to reverse Roe v Wade. The US Supreme Court has recently agreed to hear a challenge to Mississippi's 15-week ban on abortion, in Dobbs v Jackson Women's Health Organization.

**Thesis.** I argue, on Roe v Wade's own grounds, that the human fetus is an (English common law based) Constitutional person. The Court in Roe v Wade, 410 U.S. 113 (1973) specifically states that if the fetus is a constitutional person, then the right to an abortion necessarily collapses (id. at 156-57). Roe and its progeny say that the human fetus does not qualify as a due process clause person. I demonstrate, through the earliest collection since Roe of over 180 prosecuted abortion cases, from primary sources, at the English common law from the 19<sup>th</sup> century going back as far as the 13<sup>th</sup> century, and a slew of important associated legal and medical articles and major reference works during the same period that the Roe justices certainly got this wrong. These English common law cases and other major works clearly recognize the human fetus as a human person, fully protected by the law. The court in Roe was mis-led that a woman had a liberty to abort under English common law. The exact opposite is true.

Mr. Rafferty can be contacted at:

(mailing address omitted here)

Cell phone 805-558-8457, [philiparafferty@gmail.com](mailto:philiparafferty@gmail.com)

**Slightly more Biography:** I began research on the prosecution of abortion under English common law in 1974 right after the Roe v Wade decision in 1973. I quickly realized that there was something horribly wrong with the legal history presented to the court. I was able to locate references to the majority of 180 cases myself in various research libraries, and then locate the original documents. While producing the baseline 2-volume work published in 1992 I consulted with about three dozen eminent lawyers, professors and archivists listed in the acknowledgements to the book. I hired, and traveled to England to meet, Sir John H. Baker, retired Professor of English Legal History, University of Cambridge, former Downing Professor of the Laws of England, and Fellow of Saint Catharine's College, who, over an eight-year period, answered my countless questions, provided background and critical commentary, and in many instances located and translated original case documents. My work is most likely the earliest, most comprehensive, detailed, research collection and analysis of abortion related primary documents, subsequently used by others. The final analysis, significance, conclusions, and arguments presented in the baseline 1992 work, based on these original case documents and important associated legal and medical articles and major reference works during the same period, and in my three subsequent books and articles, are my own.

Here is a reference to my work from Joseph Dellapena, Dispelling the Myths of Abortion History (2006), 1283 pages, p. XV, A Personal Aside:

Apart from my research assistants, three people deserve special mention for their assistance in this project. The first is Philip Rafferty, of the California Bar, who shared his own extensive re-search unstintingly and frequently critiqued my work. **Virtually every case, and many other sources cited in this article appear in full in the appendixes to his book.** That he and I differ in our interpretation of some of these sources does not detract from the importance of his work in uncovering and collecting these original sources, some of which were unknown before he found them and most of which were scattered in obscure historical studies or even more obscure collections of almost randomly assembled cases. Mr. Rafferty or I can provide copies of the originals of these sources, which until recent times are all recorded in either medieval Latin script or Law French.