"Does our law condemn a man before he has heard him."
(Nicodemus to his fellows, in Jn. 7:40-53)

While "A" = "X," "B" does not. So, "B" cannot be "A". Due process of law for incompetents (lunatics, minors, and persons unable to care for themselves, et al) requires the appointment of a guardian ad litem, who represents the incompetent, and who hires a sagacious attorney to argue on behalf of the incompetent. "A" = persons entitled to due process of law. "X" = due process of law (the right to be heard before an impartial judicial body). "B" = a live human fetus.

The Roe justices decided whether "B" is an "A," and ruled no. However, in deciding so, the Roe justices assumed (and so, did "not" decide) that "B" is no "A" because in

deciding so, they failed to afford "B" "X" (due process of law): "All persons living under the jurisdiction of the USA are entitled to due process of law." (Plyler v. Doe (1982), 457 U.S. 202, 230 n. 11.)

A judicial tribunal drags before it your client ("X"), and says to him: "Only persons who qualify as "A" persons are exempt from "Z" (death by medically-performed execution). And, since we find that you don't qualify as an "A," then you are consigned to "Z". As due process counsel for "X", would you not demand that "X" be given an opportunity to have a say on what he is here? Why, then, do you remain silent before the great injustice that occurred in Roe v. Wade? Was not Jane Roe's fetus deprived of due process of law?

The 5th Amendment (and its due process clause) was incorporated into the Constitution in 1791, and that due process clause was incorporated into the 14th Amendment which was ratified in 1868. This clause reads as follows: "Nor shall any person be denied life, liberty or property without due process of law." There is a rule of constitutional interpretation which holds that when a legal phrase or legal term from another law, such as a statute or court holding is put into another law or statute, then the law which was incorporated into the new or later law carries with it whatever interpretation it had before it was incorporated so. Now, suppose that the United States Supreme Court, in 1792, held that the conceived, unborn child is a person within the meaning of the 5th Amendment due process clause. Then that 5th Amendment meaning of "person" becomes the same meaning of "person" in the 14th Amendment. The 5th Amendment operates against federal action, while the 14th Amendment operates against actions of the several states. Roe v. Wade was a 14th Amendment case, which, in pertinent part, holds that the word "liberty" in the 14th Amendment due process clause includes a woman's right to have an abortion basically at any time during her pregnancy, and (2) the unborn child or live human fetus is not a person within the meaning of the word person in the due process clause of the 14th Amendment. In Roe v. Wade the Court elevated a woman's demand to have an abortion to the same status as the fundamental or unalienable right to procreate. Just how the Roe Court concluded that abortion is elevated so, I can show, and I have shown already, and by the Court's own arguments, that procured abortion is the exact opposite of a fundamental constitutional right. It is, in no uncertain terms, a crime of the highest order. Roe v. Wade simply arbitrarily converted murder/manslaughter into a fundamental constitutional right. I can also demonstrate, and have demonstrated already, that there is no question that throughout the USA when the 5th

Amendment was incorporated into the Constitution in 1791, no one disputed that a "formed" human fetus is a person no less than is General George Washington.

The below constitutional equation proves irrefutably that the Roe Court, in deciding the issue of constitutional fetal personhood, not only denied Jane Roe's fetus due process of law, but, in effect, assumed (and so, did not constitutionally decide) that Jane Roe's conceived unborn child does not qualify as a 5th (14th) Amendments' due process clause person. That makes Roe's fetal non-person holding void ab initio. And unless the USSC takes immediate decisive and direct action to rectify this gross constitutional injustice, then it is implicated in the unlawful killing of some 350 million plus constitutional persons. If, here, any person doubts me, then access my Roe Silver Bullet 2 (in "parafferty.com") and prove your doubt. "A" = 5th (14th) Amendment due process clause persons. "B" = the right of "A" persons to due process of law. "C" = The constitutional dictate that in a court action, et al, every legally incompetent person's right to due process of law requires "absolutely" the appointment of a guardian ad litem, who becomes legally responsible for protecting the rights and interests of the incompetent person, such as an infant, or minor, or incompetent adult, and in some cases, a conceived unborn child or fetus. To insure that such due process protection is afforded the incompetent person, said guardian ad litem hires a sagacious lawyer to argue, et al, on behalf of the incompetent person.

In Roe v. Wade, the USSC ruled that the conceived unborn child ("X") is not entitled to "C" (due process of law) because he does not qualify as a foregoing "A" person. But, in ruling so, the Roe v. Wade Court, without any explanation whatsoever – and "without ruling or deciding" so, failed to appoint Jane Roe's fetus "C" (a guardian ad litem, who would have

argued through his lawyer that "X" does indeed qualify as an "A" person, and therefore his life must be safeguarded from being willfully aborted).

In failing to appoint "X" "C", the Roe Court, in effect, unconstitutionally "assumed" (and so, did "not" rule or decide) that "X" does not qualify as an "A" person. Therefore, the constitutional issue or question of fetal constitutional personhood remains undecided; and that means that a state is free to conclude that the human fetus is a constitutional due process clause protected person no less than is a born-alive person.

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 wherein 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 defense of

his client's 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.

If the United States Supreme Court rejects its judicial and moral obligation to take up anew or redecide the question of fetal personhood, then, it is cowering silently before the greatest judicial injustice ever perpetrated on humanity. There is no question that the human fetus does indeed qualify as a 5th (14th) Amendment due process clause protected person. If a person thinks otherwise, then let him 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 in "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 Wm. 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 clause 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.

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 the USSC fails to listen here, then I hereby charge that 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."