

No.

In the Supreme Court of the United States

SCOTT P. ROEDER, AS NEXT FRIEND OF UNBORN AND
PARTIALLY BORN INDIVIDUALS UNDER SENTENCE OF
DEATH, PETITIONER

v.

DEREK SCHMIDT, ATTORNEY GENERAL OF THE
STATE OF KANSAS

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF KANSAS*

PETITION FOR A WRIT OF CERTIORARI

SCOTT P. ROEDER #65192

Proximus Amicus

In Propria Persona

ELLSWORTH CORRECTIONAL FACILITY

P.O. Box 107

ELLSWORTH, KANSAS 67439

CAPITAL CASE

Question Presented

1. Whether the suggestion of personhood having been established, should unborn and partially born individuals be protected from lethal execution?

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Scott P. Roeder, as next friend of unborn and partially born individuals under sentence of death, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Kansas in this case.

OPINIONS BELOW

The final opinion of the Supreme Court of the State of Kansas, which was issued on its original jurisdiction, appears at Appendix A and is unpublished.

JURISDICTION

The date on which the Supreme Court of the State of Kansas decided this case was December 20, 2017. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

PROVISIONS INVOLVED

Pertinent constitutional, statutory, and regulatory provisions are reproduced in Appendix B to this petition.

STATEMENT OF THE CASE

Being in possession of proof of the suggestion of personhood, petitioner filed this case as an original habeas corpus action on November 22, 2017 in the Supreme Court of the State of Kansas as next friend on behalf of unborn and partially born individuals under sentence of death. The case was styled as an “Emergency Habeas Corpus Petition Under K.S.A. 60-1501 for a Stay of Execution of Sentence of Death.” The relief sought was a stay of execution on behalf of unborn and partially born individuals under sentence of death, an order prohibiting transfer of the unborn and partially born for execution, and an order appointing counsel *ad litem* for the unborn and partially born.

Aside from noting petitioner’s memorandum of points and authorities, the case was dismissed at the initial pleading stages by the Supreme Court of the State of Kansas without comment on December 20, 2018 and without response from the state. See Appendix A.

REASONS FOR GRANTING THE PETITION

Kansas Statutes Annotated 65-6732 provides a legislative declaration that life begins at fertilization, but does not include any proof of the suggestion of personhood on behalf of unborn or partially born individuals. Yet because petitioner is in possession of legal proof of the suggestion of personhood on behalf of unborn and partially born individuals, he urgently appears before this Court as next friend to transmit the same so that their scheduled executions may be stayed immediately.

A. Establishment of the Suggestion of Personhood

This Court has not previously considered abortion to be "the termination of life entitled to Fourteenth Amendment protection." *Roe v. Wade*, 410 U.S. 113, 159 (1973).

But a subtle facet of abortion policy is that the Court in *Roe* quietly denied women the safeguards of *Skinner v. Oklahoma*, 316 U.S. 535 (1942), by way of narrowly defining the meaning of procreation to include only the act of fertilizing, and not the pregnant state itself, *Roe v. Wade*, 410 U.S., at 159:

The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. See *Dorland's Illustrated Medical Dictionary* 478-479, 547 (24th ed. 1965). The situation therefore is inherently different from ... procreation ... with which ... *Skinner* ... [was] concerned.

The same edition of Dorland's Illustrated Medical Dictionary relied upon by the Court in *Roe v. Wade*, 410 U.S., at 159, *viz.* 24th ed. 1965 (hereinafter Dorland's), provides the following definition for the word "procreation": "The entire process of bringing a new individual into the world." Dorland's, at 1223. The same edition also provides the following definition, in relevant part, for the word "pregnancy": "The condition of having a developing embryo or fetus in the body, after union of an ovum and spermatozoon." *Id.*, at 1212.

Importantly, having found pregnancy and procreation to be inherently different, the Court's abandonment of *Skinner* for abortion clearly establishes that *Roe* accepts procreation as being complete once pregnancy begins, *viz.* once fertilization is accomplished. From this it follows that *Roe* considers an abortion to occur *after* procreation is complete, *viz.* after a new individual has been brought into the world.

This subtle observation can be combined with a relatively recent case, *Mohamad v. Palestinian Authority*, 566 U.S. 449, 132 S.Ct. 1702 (2012), to establish the suggestion of personhood on behalf of the unborn.

Despite many religious and philosophical views on the meaning of the word "person," the Court in *Mohamad*, 566 U.S., at 453-456, § II, 132 S.Ct., at 1706-1708, found that the ordinary meaning of the word "individual" refers unmistakably to a "natural person." As a consequence of the decision in *Mohamad*, simply being an "individual" in the ordinary sense creates the standing of a "natural person" in the law.

Despite there being religious and philosophical concepts of the person which are debatable, and

perhaps even more sublime than that of a natural person—such as a spiritual person—it would nonetheless violate the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution to summarily terminate the life of a natural person after procreation is complete. See also Kansas Statutes Annotated 21-6617, which requires procedures to schedule an execution.

Furthermore, it would violate the Establishment Clause of the First Amendment to the United States Constitution to require a consensus on the spiritual person as a prerequisite to legal recognition of the natural person. For example, asking a coroner to find a spiritual soul under a microscope is not possible, but he or she can easily detect an individual.

It goes without saying that the result of procreation is an individual. Having found pregnancy and procreation to be inherently different, *Roe* recognized procreation to be complete once pregnancy begins, *viz.* once fertilization is accomplished. From this it follows that an abortion interrupts pregnancy to terminate the presence of one or more individuals within the mother's body after procreation is complete. By combining this observation with *Mohamad's* unmistakable recognition of the individual as a natural person, the suggestion of personhood is legally established on behalf of the unborn from the time of procreation.

Moreover, since the unborn are persons, it follows that the partially born are persons as well. Accordingly, the suggestion of personhood is legally established on behalf of unborn and partially born individuals from the time of procreation. This is also consistent with Kansas state law, which provides a legislative declaration that life begins at fertilization. See Kansas Statutes Annotated 65-6732.

To summarize and to repeat:

1. The Court in *Roe*, having found pregnancy and procreation to be “inherently different,” abandoned *Skinner* for abortion but not for procreation. *Roe v. Wade*, 410 U.S., at 159. From this it follows that *Roe* considers procreation to be complete at the start of pregnancy, that is to say, once fertilization has been accomplished.
2. Since the logical result of procreation is an individual, it follows that an individual is legally present from the time procreation is complete.
3. Since *Roe* considers procreation to be complete at the start of pregnancy, *viz.* once fertilization has been accomplished, it follows that an individual is legally present from the start of pregnancy.
4. The Court in *Mohamad* found that the ordinary meaning of an “individual” is “unmistakably ... a natural person.” 566 U.S., at 454-455, § II(A), 132 S.Ct., at 1706-1707.
5. Combining *Roe* and *Mohamad* leads to the conclusion that an individual, *viz.* a natural person, is legally present from the start of pregnancy.
6. Though there are spiritual concepts of the person, like ensoulment, the basic secular concept is that of a natural person. Though some adhering to spiritual concepts of the person have held off as to declaring when ensoulment occurs, it would violate the separation of church and state guaranteed by the Establishment Clause of the First Amendment to the United States Constitution for governmental authorities to abstain from

recognizing the natural person at the beginning of an individual's natural biological life in deference to such debates. For example, asking a coroner to find a spiritual soul under a microscope is not possible, but he or she can easily detect an individual.

7. By adhering to the secular concept of an individual who is a natural person from the time procreation is complete, that is to say, from the time pregnancy begins, the suggestion of personhood is legally established on behalf of the unborn, while at the same time sidestepping religious and philosophical debates over spiritual persons.

B. Necessity of a Stay of Execution

Having established the suggestion of personhood on behalf of the unborn and partially born, this Court's precedent dictates that a stay of execution of sentence of death must be granted immediately to protect their right to life. See *Roe v. Wade*, 410 U.S., at 156-157 ("If this suggestion of personhood is established ... the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment.")

Because it is incumbent upon the states to abide by the Fourteenth Amendment to the United States Constitution, the stay should have been granted by the Supreme Court of the State of Kansas without delay.

Because the Supreme Court of the State of Kansas failed to do so, it is incumbent upon this Court to grant the stay. See Fed. R. Crim. P. Rule 38(a).

C. Relief Requested

The suggestion of personhood having been established, unborn and partially born individuals should be protected from lethal execution. In the interests of securing such protection in a timely and effective manner, specific relief is requested as follows.

The Court is requested to issue appropriate orders to stay the executions of all unborn and partially born individuals within its jurisdiction.

It is further requested that the Court order those having custody not to transfer the unborn or partially born for execution to persons or places outside its jurisdiction.

It is further requested that the Court appoint a guardian *ad litem* on behalf of unborn and partially born individuals under sentence of death, or issue another appropriate order. See 18 U.S.C. § 3006A, 18 U.S.C. § 3599, 28 U.S.C. § 2254(h), 28 U.S.C. § 2255(g), Fed. Rule Civ. Proc. 17(c)(2), U.S. Const. Amendments V, VI, and XIV, and Kansas Statutes Annotated 60-217(c)(2).

It is further requested that the guardian *ad litem* shall not be compromised by dilemmas or inconsistencies, shall be qualified as a death penalty attorney, and shall have no history, public or private, of advocating for or participating in the execution of unborn or partially born individuals.

Even if the Court should deny petitioner's standing as next friend, or if petitioner should die, become incapacitated, or fail to appear, the Court is requested to appoint a guardian *ad litem* to continue the prosecution of this action.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

SCOTT P. ROEDER #65192

Proximus Amicus

In Propria Persona

ELLSWORTH CORRECTIONAL FACILITY

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ELLSWORTH, KANSAS 67439

MARCH 2018