

No. 17-1407

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 THE REHEARING
OF AN ORDER DENYING A 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

(i)

CAPITAL CASE

Question Presented

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

TABLE OF CONTENTS

	Page
Intervening matter	1
Substantial or controlling effect	2
Reasons for granting rehearing	2
Conclusion	4

TABLE OF AUTHORITIES

	Page
Cases:	
<i>Planned Parenthood v. Casey</i> , 505 U.S. 833 (1992)	2-3
<i>Roe v. Wade</i> , 410 U.S. 113 (1973)	2-3
<i>South Dakota v. Wayfair</i> , 585 U. S. ____ (2018)	1-3
U.S. Constitution:	
Amend. XIV	2-3
Amend. XIX	3

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, this Court
is respectfully petitioned for rehearing of the denial
of the petition for a writ of certiorari.

INTERVENING MATTER

The petition for a writ of certiorari was denied on
June 11, 2018.

The intervening matter is the opinion in *South
Dakota v. Wayfair, Inc., et al.*, 585 U. S. ____ (2018),
which was decided by this Court on June 21, 2018.

SUBSTANTIAL OR CONTROLLING EFFECT

The substantial or controlling effect of the decision in *Wayfair* is that the ruling modified the doctrine of *stare decisis* in a manner favorable to rehearing.

REASONS FOR GRANTING REHEARING

In *Roe v. Wade*, 410 U.S. 113 (1973), having reflected on the history of law, the Court reasoned that the rights of persons guaranteed by the Fourteenth Amendment do not apply to the unborn because, “[i]n short, the unborn have never been recognized in the law as persons in the whole sense.” *Id.*, at 162. The Court has since applied the doctrine of *stare decisis* to let that ruling stand: “[T]he rule of *stare decisis* require[s] that *Roe*’s essential holding be retained and reaffirmed....” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 833-834 (1992).

But recently in *Wayfair*, the Court revised the doctrine of *stare decisis* in a manner favorable to states seeking to protect the constitutional rights of the unborn as persons, 585 U. S. ____, slip op. 4:

Stare decisis can no longer support the Court’s prohibition of a valid exercise of the States’ sovereign power. If it becomes apparent that the Court’s Commerce Clause decisions prohibit the States from exercising their lawful sovereign powers, the Court should be vigilant in correcting the error. It is inconsistent with this Court’s proper role to ask Congress to address a false constitutional premise of this Court’s own creation.

The error of applying *stare decisis* to *Roe* can be seen clearly by analogy. In the United States, women did not gain the right to vote until the Nineteenth Amendment (1920). Up until that time, the Court could have just as easily reasoned that the rights of persons guaranteed by the Fourteenth Amendment do not apply to women because, in short, women have never been recognized in the law as persons in the whole sense. *Cf. Roe*, 410 U.S., at 162. If that had been the case, then thereafter it would have been left to a misguided application of *stare decisis* to allow such a ruling to stand indefinitely.

From this it follows that *Roe*'s fundamental proposition of inequality with the unborn is exemplary of "a false constitutional premise of this Court's own creation." *Cf. Wayfair, ibid.* Accordingly, given the ruling in *Wayfair*, the doctrine of *stare decisis* should no longer be an impediment to reversing *Roe* in favor of the rights of the unborn as persons.

Neither this Court nor the United States has ever questioned *Roe*'s fundamental proposition of inequality with the unborn. *Casey*, 505 U.S., at 913, 932. Having modified the doctrine of *stare decisis* in *Wayfair*, the Court should therefore grant rehearing to question for the first time the fundamental proposition of equality with the unborn.

CONCLUSION

The petition for rehearing should be granted.
Respectfully submitted.

SCOTT P. ROEDER #65192

Proximus Amicus

In Propria Persona

ELLSWORTH CORRECTIONAL FACILITY

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ELLSWORTH, KANSAS 67439

JUNE 2018

CERTIFICATE OF PETITIONER

I, Scott P. Roeder, certify that, in compliance with Supreme Court Rule 44.2, this petition is presented in good faith and not for delay and that its grounds are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

SCOTT P. ROEDER
PETITIONER