H. 57 Testimony
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Thank you for permitting me to address you today.

I am an attorney and Christian Pastor.

I wish to indirectly address fetal personhood, by directly addressing certain women's rights.

Two Vermont cases bear directly on this issue. (As far as I am aware, they have not been overturned or reversed; nor their rulings altered by statute):

Vaillancourt v. Medical Center of Vermont, Inc., 139 Vt. 138, (1980)
Recognized the personhood of a fetus for civil (wrongful death) actions:
"The statutory remedy is for the death of a "person." For the reasons hereinafter discussed, we hold a viable fetus, though later stillborn, to be within the meaning of that term."

State v Oliver, 151 Vt. 626 (1989)
Denied fetal recognition in criminal actions: "As far back as the 17th century, it was the prevailing view under the common law that only living human beings could be the victims of homicide. The killing of a fetus did not constitute criminal homicide unless it was born alive and later died of injuries inflicted prior to birth…."
(this is the current law in Vermont)

"We agree with the State that application of the "born alive" rule may lead to irrational or unjust results….This Court, however, is not the proper forum in which to consider and accomplish the extension of criminal liability that would occur as a result of interpreting the term "person" in § 1091(c) to include a viable fetus. That task must be accomplished by the legislature."

In 2019, Vermont's legislature has still not fixed the problem noted by its Supreme Court in Oliver. Thus, a doctor can be sued for neglecting a fetus that a drunk driver or spousal abuser cannot be charged for killing. I submit that these two situations chiefly do address *mothers'* rights, (and father's rights) as much as they do fetal life -- because

the two are inextricable. It's not an either/or. The mother and father in Vaillancourt lost their child; so did the couple in Oliver.

In H.57, the Vermont legislature has ignored existing law in its (stated) zeal to "preserve" Roe v. Wade. The original draft of H.57 specifically denied legal recognition of the fetus *at any stage*, which would have eliminated Vermont parents' civil rights to recovery under Vaillancourt. At the same time, the Legislature has *avoided* the important issue raised by Oliver -- which could easily have been cured by an amendment recognizing fetal personhood, if only in criminal cases. But instead such efforts were quashed -- that amendment was soundly defeated, was it not?

The pretense for all this histrionic flurry is Roe v Wade, and its sacred text. Roe very clearly acknowledged that at some time prior to delivery the fetus became a human person, and that the government has an important interest in protecting the health and safety of women, but also:
"it has still *another* important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes "compelling."....
State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion."
Roe v. Wade, 410 U.S. 113 (1973), at pp. 162-163.

I offer four anecdotal examples of the importance TO WOMEN (and men) of fetal recognition:

1) I handled a divorce case in which the parties had suffered a second-term miscarriage, of twins. (They also had two subsequent twins, who survived to term). The greatest hurdle in the divorce was not the numerous monetary assets, or the current or future child support -- it was the destiny of those ashes. Some ten years later, they continue to periodically exchange the urn containing their *children's* ashes. There is a father there.
2) In 1998, my friend Heather Messenger was carrying twins when she was brutally murdered by her husband. The husband is free, and inherited all of his wife's Estate. He was never charged with any crime for "terminating" the lives of Heather's babies, because Connecticut, like Vermont, is not "interested in protecting fetal life after viability…" (Roe, supra). The son never got a penny.

3) Last fall, my wife and I met a woman whose daughter had just given birth prematurely, at 26 weeks. Little Arianna was struggling, so the grandmother asked us to pray for that tiny baby girl; and we did -- week after week, month after month, in corporate prayer in our church. During this period, this legislative body introduced legislation denying her legal existence, depriving babies like her of any rights at all. Last week we saw current pictures of Arianna. She is alive, and thriving, at seven months (however you measure that in such circumstances)! But what I really want to share about Arianna is also the gushing, beaming, devoted, grateful smile on her mother's face in the pictures. There are indeed two persons there.
4) Roe v Wade. Nora Leah Nelson McCorvey was the plaintiff in Roe v Wade, and had also worked in abortion clinics. She completely reversed her position on the subject, and committed huge energies in her life to atone for her ignorance. She wrote about what "converted" her:
   "I was sitting in O.R.'s offices when I noticed a fetal development poster. The progression was so obvious, the eyes were so sweet. It hurt my heart, just looking at them. I ran outside and finally, it dawned on me. 'Norma', I said to myself, 'They're right'. I had worked with pregnant women for years. I had been through three pregnancies and deliveries myself. I should have known. Yet something in that poster made me lose my breath. I kept seeing the picture of that tiny, 10-week-old embryo, and I said to myself, that's a baby! It's as if blinders just fell off my eyes and I suddenly understood the truth—that's a baby!"

I have other, more intimate, portrayals of such cases, but these SHOULD suffice to demonstrate what is irrefutably plain.

In its self-appointed crusade to champion women's rights, Vermont is uninterested in protecting women from criminal actors who kill their unborn children; reckless in its readiness to extinguish an existing right in malpractice law.

But this life in the womb, especially as it approaches the daylight of delivery (where it is safe from arbitrary torture and execution), cannot be ignored, not even by the Vermont legislature. Often, it cannot be ignored by the women who take a life this way, like Nora Leah Nelson McCovey.

Vermont has not protected women in response to Oliver in the 30 years elapsed; it has not done a thing since Roe (46 years) to protect "fetal life after viability," something that even secular North Korea, Russia, and France (waiting period also) do. This is not about religion -- it is about being *civilized*, regardless of religion.

Vermont’s extremism, of which it so very proud, invites a riled nation and a fresh Supreme Court to protect the viable unborn person that you not only refuse to protect, but actively resist protecting even in the most extreme cases. You are inviting the Roe overturn you say motivates this legislation -- and you are handing the Pro-life movement the test case on a silver platter, to escort to Brett Kavanaugh for review.

Thanks for that.