

Pro-Life Wisconsin



Defending them all...

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TO: Members, Wisconsin State Legislature

FROM: Matt Sande, Director of Legislation
 Kirby Brant, Legislative Counsel

SUBJECT: **Support for LRB 2859/1 – Wisconsin Personhood Amendment**

Pro-Life Wisconsin encourages you to sign on as a co-sponsor to the “Wisconsin Personhood Amendment,” legislation currently under circulation that would amend the Wisconsin Constitution to apply personhood rights to preborn children at all stages of development. The amendment seeks to extend the inalienable right to life found in the Wisconsin Constitution to all preborn children from the beginning of their lives.

From a pro-life perspective, the Wisconsin Constitution contains a glaring error at its outset. In specifying the beneficiaries of its human rights, it leaves out the preborn. It applies rights to only those people who are “born.” Representative Jacque is proposing a minimal but absolutely essential correction, a personhood amendment, to make the Wisconsin Constitution cover all people, every person, at any stage of development. The proposed amendment (LRB 2859/1) tracks the original as closely as grammatically possible, only substituting the inclusive personhood definition for the word “born.” That definition is as follows: ***As applied to the right to life, the terms “people” and “person” shall apply to every human being at any stage of development.*** Such a definition is indispensable to spreading the protective cover of Wisconsin’s constitution over all its citizens.

Why is a constitutional amendment, rather than a statutory change, necessary? Should *Roe v. Wade* be overturned someday and the abortion issue remanded to the states, an activist Wisconsin Supreme Court could use the word “born” in our current state constitution to deny the right to life of the preborn by interpreting an independent right to abortion in that document. In so doing, the court could nullify any present or future pro-life laws in our state. The changing makeup of the Wisconsin Legislature could also jeopardize any pro-life laws in our state. Every two years our state election process determines the majority party in Madison. Legal protection of the preborn should not (and must not) be contingent upon which party controls the state legislature. The right to life should not be subject to the whims of a politicized supreme court or an ever-changing legislature.

Pro-Life Wisconsin’s proposed personhood amendment is not intended, or worded, as a challenge to *Roe*, or as an attempt to define personhood under the 14th Amendment to the United States Constitution. **It seeks only to bring into the Wisconsin Constitution a true definition of human life as endorsed by Wisconsin citizens speaking through the amendment process, thus making the highest law in our state cover all people, every person, at any stage of development.** We recognize that its protections cannot be fully effective as long as *Roe* remains law, but we believe a proper definition of personhood should be in place should Wisconsin be freed from the effects of that noxious decision.

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The proposed constitutional amendment is not a risk to our current, pre-Roe abortion law (Section 940.04, Wisconsin Statutes) by “implied repeal” or otherwise. The concern that 940.04 would be impliedly repealed by the personhood amendment is alleviated by case law. In ***State of Wisconsin v. Glendale Black***, 188 Wis.2d 639, 526 N.W.2d 132 (1994), the Wisconsin Supreme Court was unpersuaded that the legislature intended to repeal 940.04 when it enacted the Roe-conforming 940.15. It said, “Implied repeal of statutes by later enactments is not favored in statutory construction.” For recent law on the subject pertaining to a later constitutional amendment rather than a later statute, ***State of Wisconsin v. Phillip Cole***, 2003 WI 112, 264 Wis.2d 520, 665 N.W.2d 328, is instructive. The Court said in that case that it did not matter whether a statute predated or postdated a constitutional amendment in deciding the issue of the statute’s constitutionality. It found that an old statute restricting concealed carry was not repealed by a later amendment to the Wisconsin Constitution guaranteeing the right to keep and bear arms. Accordingly, concerns over 940.04 should not stand in the way of supporting the personhood amendment.

In fact, the reverse is true. Should *Roe* be overturned, it is essential that Wisconsin law protect all human life from the moment of conception. **Wisconsin Statutes 940.04 is marred by an obvious loophole – a “life of the mother” exception.** Many abortionists believe that the very condition of pregnancy itself is a life threatening condition. Consequently, a life of the mother exception can be and is used as a massive statutory loophole through which to drive abortion on demand at all stages of human life and in all circumstances. This exception calls into question the efficacy of 940.04 in prohibiting abortions. Only by enshrining the right to life in our state constitution will preborn children be afforded full and lasting legal protection.

Thank you for your consideration of this important legislation. The deadline for co-sponsorship of LRB 2859/1 (Jacque) is Thursday, October 27. If you have any questions, please call Matt Sande at (262) 352-0890.