

Reflections on Montana CI-100.

Background:

CI-100 is currently circulating in the state in an attempt to obtain the necessary signatures to place it on the ballot in November. It seeks to amend our state constitution to define personhood as beginning at fertilization. The intent of this human life amendment (HLA) is to overturn *Roe v Wade*.

While the church respects those promoting this initiative, the Catholic Bishops of Montana declined to support its passage because it does not provide a realistic opportunity for ending or even reducing abortion in Montana.

A statement by the Bishops was published recently because Catholics throughout the state have asked for clarification from their bishops on CI-100. This document is designed to provide background and further explanation of the bishops' perspectives.

Personhood Key Part of Church Teaching on Life:

The belief in the sacredness of human life is the core of Catholic Social Teaching. A recent statement by the bishops reiterates their commitment to defend human life in all of its stages, from conception to natural death. The goal does not vary: the full legal recognition of the right to life of the unborn child, and to bring an end to all abortions, so that all unborn children will be protected in law and welcomed in life.

The Catholic Bishops share the conviction that personhood begins at the moment of fertilization. For several years the Roman Catholic Bishops of the US have been working to promote a human life amendment to the US Constitution which is fundamentally different from a state initiative due to the fact that *Roe* is a federal not state issue.

The Catholic Church in Montana has a long and rich history of working in our state legislature to protect life from conception to natural death.

Legal and Constitutional Concerns:

In evaluating CI-100, the bishop sought and carefully weighed valued opinions from pro-life groups, legal experts with extensive and lengthy experience in abortion law, as well as brother bishops and Catholic Conferences in Colorado, Michigan, and Georgia, who have faced similar initiatives in their home states. The conclusion they reached was this HLA will not and cannot achieve the goal of providing a direct challenge which would ultimately overturn *Roe*.

If the bishops thought this HLA would move the state and country one step closer to overturning *Roe*, or if they thought it would save even one baby their conclusion would have been different. Their assessment of this initiative is that it will not stop even one abortion. The greatest concern is that it will lead us away from accomplishing our common goal of reducing and ultimately ending abortion.

CI-100 is designed to change the Montana constitution which will not make abortion illegal in Montana. Abortion is legal in Montana because the US Supreme Court declared the right to abortion is in the federal constitution. Any state constitutional provision that contravenes a federal constitutional right is void.

According to Clarke D. Forsythe, President of Americans United for Life, "Proponents of state Human Life Amendments frequently argue that an Human Life Amendment is an effective vehicle to present medical evidence that human life begins at conception (evidence that was not available in 1973 when *Roe* was decided) and that it is this evidence that will cause the USSC to hear the case and, ultimately, lead to *Roe* be overturned. However, the Court has refused at least nine times over the past 15 years to hear a case that directly challenged *Roe* using this same evidence; most recently on October 1, 2007, when the Court refused to hear a case on appeal from the New Jersey Supreme Court,

Potential for Serious Negative Consequences:

Adoption of CI-100 or other state HLA will certainly result in one or more law suits against the State of Montana and all state and federal courts will be required to apply Supreme Court precedent to void the HLA as it applies to abortion. Any such suit, whether it goes to the Supreme Court or not, carries the danger of causing more legislative and judicial damage than no opinion at all.

Legal experts agree that the current Supreme Court would, at best, decline to hear the case, and at worst, use the opportunity to reaffirm the right to abortion yet another time. The more times the Supreme Court's abortion decisions are affirmed, the more difficult it becomes to obtain further hearings from the Court and to expect decisions to end abortion.

If the initiative passes it will pass without defining what "Life begins at fertilization" means. Neither will it define how the law would be implemented nor the affect will it have on current state law. The sponsors tell us "it creates no laws, it legislates nothing, it establishes a constitutional principle." They tell us "it merely defines person in the constitution and the details will be decided by the next legislature." Thus the initiative if passed would be void of critical detail, and we would be asked to trust the newly seated legislature to define what the moment of conception is. What it means. Then the courts will then be asked to weigh in, because there will certainly be a challenge.

We asked to be part of the process to help clarify the initiative before it went to the voters, but were turned down. We maintained an initiative of this importance should be very carefully defined before we vote on it, and not left to an unknown group (our newly elected legislature) to determine what it was that we approved. Depending on the makeup of the next legislature, we could be worse off than before.

The Ninth (federal) Circuit Court of Appeals would be required to declare all or part of CI-100 void based on the precedent set by Roe and other Supreme Court decisions. Such a ruling would be binding on all federal courts in the Circuit and could discourage legislators in area states from considering similar legislation in the future.

Conclusion:

Finally, dramatic changes to law and public policy do not occur through chance, but through careful and detailed planning. There does not appear to be sufficient analysis or planning to suggest that the stated goals of CI-100 can be achieved, and the negative consequences avoided.

Alternate strategies exist at the state level which would make a concrete difference in reducing abortions and which would incrementally bring about the ultimate objective of ending abortion. They include: 1) Establishing and funding pregnancy help centers that promote informed choice by offering alternatives to abortion, especially adoption; 2) Provide supportive services for pregnant and parenting women including low income women and college students patterned after the federal "Pregnant Women Support Act"; 3) Bolster abortion alternatives by increasing adoption services for women who place their infant for adoption; 4) Pass a law requiring parental notification with judicial bypass in cases where the woman seeking an abortion is under eighteen.