

Numerous flaws in 'personhood' movement, says family law expert

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(PhysOrg.com) -- On Nov. 8, Mississippi voters will cast their ballots on Initiative 26, which would make every “fertilized egg” a “person” as a matter of law.

“Many have rightly condemned this so-called ‘personhood’ initiative as an attack not only on abortion rights, but also on the ability to practice widely used methods of birth control, to attempt in vitro fertilization, and to grieve a miscarriage in private, without a criminal investigation by the state,” says Susan Appleton, JD, family law expert and the Lemma Barkeloo and Phoebe Couzins Professor of Law at Washington University in St. Louis.

“But these criticisms fail to identify another flaw in the reasoning of the initiative’s proponents,” she says. “The proponents assume that attaching the label of ‘person’ to fertilized eggs, embryos and fetuses necessarily establishes a legal basis for criminalizing abortion, or even for requiring its criminalization.”

Appleton says that U.S. law and legal tradition have never punished all behavior that results in the death of a person. Examples include the principles of self-defense and the Good Samaritan laws, which observers have argued (both before and after *Roe v. Wade*) apply to abortion.

“First, our laws have never required one individual to give up part of his or her body to save another person, even the individual’s own child,” she says.

“While we always find admirable, for example, life-saving donations of bone marrow or kidneys to others, we have no laws compelling such altruism even if a person — including one’s child — would die without the donation. Indeed, it’s not a crime to refuse to perform far less invasive or demanding actions although another person’s death will result.

“Second, our laws have always allowed causing the death of another in the exercise of self-defense, especially in the face of threats to one’s body.”

Appleton, the co-author of a family law casebook and a casebook on adoption and assisted reproduction, is a member of the Board of Directors of the local Planned Parenthood affiliate.

“Apparently, the proponents of the Mississippi initiative believe that the criminalization of abortion follows seamlessly from an expanded understanding of personhood,” Appleton says.

“They ignore, however, what it would mean to single out pregnant women for physical sacrifices and burdensome duties not required of any other class of citizens. Such exceptional treatment would raise serious equal protection questions.

“Perhaps in an equalizing effort, forced kidney and bone marrow donations would become the new regime and the privilege of self-defense would be substantially narrowed for everyone,” she says.

Appleton notes that “equal treatment would mean that any pregnant woman who agreed to an abortion would herself become a criminal, as an accomplice or conspirator, just like anyone else who agreed to a premeditated homicide.”

She says that personhood has never been the critical issue.

“The critical issue has always been whether, as a society, we trust and respect a woman’s ability to make the difficult, even life-and-death, choices that we allow others to make when confronted with either another’s need for lifesaving help or an unwanted attack on one’s body,” Appleton says.

“Pregnant women, no less than other citizens, must be entitled to make such decisions.”

Provided by Washington University in St. Louis

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