Angela Carder’s brave struggle for life began at the age of thirteen, when she was first diagnosed with a rare form of cancer. She endured ten years of surgery, radiation, experimental chemotherapy, and, finally, the amputation of her left leg and hip. At the age of twenty-seven, after three years of apparent remission, Carder had married and become pregnant. When doctors at George Washington University Medical Center (GWUMC) discovered that the cancer had returned, Carder consented to chemotherapy and radiation treatment in the hope of once again successfully fighting for her life. Yet, as researchers Terry Thornton and Lynn Paltrow reveal in a study of Carder’s case, as Angela’s condition worsened, bureaucrats in the hospital’s risk management department became concerned about the possibility of legal ramifications from anti-abortion activists if an attempt was not made to deliver her extremely premature and possibly already brain-dead fetus (Thornton and Paltrow). Carder clung to life for two more days, just long enough to learn of the death of her fatally premature child.

This shocking case galvanized the reproductive rights community in 1987. After a legal effort on behalf of Carder’s estate, policy reforms were enacted at GWUMC and healthcare institutions across the country to ensure that such a grievous violation to women’s rights in the name of “fetal rights” would never happen again. However, nearly a quarter-century after Angela Carder’s
struggle, fetal personhood amendments, which expand the rights of fertilized eggs and fetuses at the expense of reproductive rights, now represent a serious threat to women’s basic rights on a much broader scale. “Personhood amendments,” which have failed referenda in Mississippi and Colorado but are being in planned in states across the country, are not merely flashes in the pan of the recent news cycle, but the newest and most dangerous manifestations of an entrenched political and judicial effort to erode the liberties of American women. This effort takes advantage of inherent weaknesses in the landmark Roe v. Wade decision and can only be stopped for good by the legal recognition of a woman’s fundamental human right to health.

Abortion has been a perennial controversy in American politics since it was declared legal by the Supreme Court in Roe v. Wade. The debate has been generally formed as a question of rights. “Pro-choice” activists campaign to protect a woman’s right to make decisions regarding her own body, while “pro-life” activists assert that a fetus is a living being with an unalienable right to life. While the issue is complex, emotionally fraught, and bitterly contested, the right to choice has been steadily upheld for nearly forty years, and a slim but consistent majority of Americans support legalized abortion (“Shifting”). However, personhood amendments have upended the tacit consensus on the issue.

These amendments involve not only restrictions on abortion, but also restrictions on broader rights we take for granted as part of twenty-first century society. Consider the 2011 proposed personhood amendment to the state constitution in Mississippi: “As used in Article III of the state constitution, ‘The term ‘person’ or ‘persons’ shall include every human being from the moment of fertilization, cloning, or the functional equivalent thereof’” (Office of the Secretary of State for Mississippi). That single sentence proposed a death sentence for reproductive rights by taking the radical step of defining a fertilized egg as a person, which would have outlawed stem-cell research, in-vitro fertilization, and even traditional oral birth control known as “the pill” (Will 66). A fertilized egg is formed at a stage of human development even before the medically defined beginning of pregnancy. It is not clear whether hormonal birth control acts to prevent fertilization in the first place, or whether it prevents the implantation of an already-fertilized egg (Will 68). “The pill” may not affect fertilized eggs, but the ambiguity alone is enough to create a threat of prohibition. According to William Saletan, writing for Slate magazine, “theoretical mechanisms of action, not just demonstrated effects, will be used to judge what counts as an abortifacient” under the amendment.

It is almost unthinkable to imagine any bill specifically banning “the pill” or in-vitro fertilization appearing on a ballot in the modern United States. Oral contraception is used by thirty-one percent of women aged 15-44 (Jones and Dreweke), and in-vitro-fertilization has been used by over three million families over the past three decades (Mencimer). An effort by political conservatives to explicitly ban these procedures alone is an easily exposed, blatant attempt to fire a vindictive, last-gasp shot in cultural battles settled since the Sixties. Personhood amendments such as the Mississippi bill mask this effort by injecting settled issues of debate into the context of today’s volatile abortion controversy. The ambiguity of these amendments opens a Pandora’s Box of attacks on human rights that would likely shock even those who oppose abortion under any circumstances.

A fertilized egg has no self-consciousness. It cannot feel love, pain, regret, or joy. Yet, under personhood amendments, its right to life would be “equal” to the “mother’s right to life” (Sale- tan). A healthcare provider could just as legally choose to sacrifice a woman’s life to save a fetus (as in the Angela Carder case) as choose to perform an abortion to save the life of the mother. A fertilized egg or fetus would have the same legal
status as any other minor, leading to possible murder charges in cases of illegal abortions or even miscarriages (Saletan). Under the vague language of personhood amendments, an expectant mother who suffers a miscarriage could easily be labeled a murderer at the whim of any ambitious local prosecutor.

Yet, as threatening as personhood amendments are, they represent just one weapon in a broader legal effort to roll back the hard-won gains made for reproductive rights over the past half-century. To better understand the effects of this effort, imagine, for example, that you are a woman in the state of Washington seeking the emergency contraception commonly known as “Plan B.” The clock is ticking: emergency contraception, which prevents the growth of a fertilized egg, is most effective when taken within 72 hours of contraceptive failure or unprotected sex. You live in a rural town with only two pharmacies. One is one of the over twenty percent of Washington pharmacies that does not stock Plan B; the other pharmacy stocks the contraceptive, but the only pharmacist employed there willing to dispense it is not currently on duty. The other pharmacist refuses to dispense emergency contraception because doing so contravenes her religious beliefs.

The idea of medical professionals being allowed to refuse to perform their primary duties may seem preposterous. Yet, in the *Stormans Inc. v. Selecky I and II* cases from 2008 and 2009, a pharmacy sued the government and won the right to allow pharmacists to refuse to dispense any drug that they felt objectionable. These cases are prime examples of jurisprudence that runs counter to the interest of women’s health. More specifically, they show the use by judges of “the availability tool,” which legal scholar Beth Burkstrand-Reid has identified as an “analytical shortcut that shortchanges her religious beliefs.”

The use of judicial shortcuts to shortchange women’s health in the U.S. is not surprising in light of the legal principles surrounding the issue. *Roe v. Wade* guaranteed the legal right to abortion to American women, but this right is often difficult to exercise in practice, as it is grounded in the general principle of personal liberty rather than in the right to health. Yet, as threatening as personhood amendments are, they represent just one weapon in a broader legal effort to roll back the hard-won gains made for reproductive rights over the past half-century. To better understand the effects of this effort, imagine, for example, that you are a woman in the state of Washington seeking the emergency contraception commonly known as “Plan B.” The clock is ticking: emergency contraception, which prevents the growth of a fertilized egg, is most effective when taken within 72 hours of contraceptive failure or unprotected sex. You live in a rural town with only two pharmacies. One is one of the over twenty percent of Washington pharmacies that does not stock Plan B; the other pharmacy stocks the contraceptive, but the only pharmacist employed there willing to dispense it is not currently on duty. The other pharmacist refuses to dispense emergency contraception because doing so contravenes her religious beliefs.

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health, as understood by the United Nations Committee on Economic, Social, and Cultural Rights and adopted by hundreds of governments worldwide, “consists of a state’s obligation to ensure that health care is available, accessible, acceptable, and of adequate quality” (Hammell 3). Following Planned Parenthood v. Casey in 1992, politicians opposed to abortion added many new regulations on the practice that had no relation to health, and in fact reduced the availability, accessibility, and acceptability of women’s health care.

For example, the federal Partial-Birth Abortion Ban Act passed in 2003 (and later upheld by the Supreme Court in Gonzales v. Carhart) outright bans a method of late-term abortion without a provision for situations in which the health of the mother is at stake (Greenhouse). Under the most recent version of the Hyde Amendment, the federal government is prohibited from funding abortion care through Medicaid, except in cases of rape, incest, and life endangerment (Hammell 24). And, in recent years, so many hundreds of abortion restrictions and personhood amendments have been introduced that “the head of the anti-abortion group Operation Rescue was quoted saying, ‘I feel like a little boy on Christmas morning—which package do you open first?’” (Mezey 270). Clearly, a better framework is needed to ensure that the right to abortion care in America works for all women.

A path to a possible solution to ensuring women’s reproductive rights can be found by exploring recent developments in the nation of Nepal. For decades, abortion bans so draconian that illegal abortion survivors could face prison time took a harsh toll on women’s health (Hammell 14). Abortion-related complications made up half of all OB/GYN visits in the country (“Sharing”). Then, in 2002, Nepal passed what were on paper some of the most liberal abortion laws in Asia (Hammell 14). However, as in the U.S., expense and inaccessibility limited the availability of safe abortion care. The true breakthrough did not occur until the Nepalese Supreme Court, acting on the basis of the right to health recognized by Nepal, ruled that the government must provide funding and information to help all Nepalese access needed care. Currently, the United States joins Qatar, Palau, Nauru, and Tonga as one of the five existing nation-states that have not affirmed the human right to health (Hammell 4). We would do well to take notice of Nepal’s example by ensuring that the right to reproductive care applies not just to politicians and judges, but to real-world women, their families, and their doctors.

Meanwhile, in the absence of a right to health in America, women’s bodies continue to face threats from the body politic. In early 2013, both houses of the North Dakota state legislature approved a Mississippi-style fetal personhood amendment that is scheduled to go on the ballot in 2014. The threat extends to the federal level: in 2011, Congressman Paul Broun (R-GA), who has publicly deemed the science of embryology a “lie straight from the pit of Hell,” introduced a Fetal Personhood Act in the U.S. House of Representatives (Horowitz). The measure failed to become law, but the party of “small government” has not given up using federal authority to restrict women’s rights. In 2013, Senator Rand Paul (R-KY) introduced a Fetal Personhood Amendment laden with the same dangerous ambiguities as state versions in the U.S. Senate (Benen).

From the federal to the state level, personhood amendments represent an unsettling hijacking for political gain of the fundamental principle of human personhood. In our nation—built on “we the people,” “by the people,” “for the people,” and “of the people”—women are about to experience unjust and tragic consequences if the definition of “people” becomes a political football in an underhanded game rather than a foundation of equal and inalienable rights. At the same time, these amendments help highlight flaws in current reproductive rights jurisprudence that extend as far as Roe v. Wade itself. To ensure that no American woman will have to follow in the
footsteps of Angela Carder, faced as she was by dangerous restrictions on reproductive care, the U.S. should join almost every other developed nation and recognize the basic human right to health.

**Works Cited**


