

IN SUPPORT OF CREATING A LEGAL DEFINITION OF PERSONHOOD

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The words “person” or “people” appear twenty-four times in the original version of the U.S. Constitution, and thirty-four times in the amendments to the Constitution, including the Bill of Rights. People have rights granted by these documents: guarantees of protection inviolable by the federal and, often, state government. Innumerable laws provide other protections, rights and responsibilities for people. Yet, nowhere in these sources did the drafters articulate what, specifically, a “person” is. Generally, where the statute is unclear, case law clarifies. In this instance, case law has created a confusing and varying sense of personhood; a fuzzy conception without so much as a multi-factor balancing test. Philosophers, psychologists, and ethicists also explore the boundaries of personhood. Many legal critics argue

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that the definitions of personhood created by courts and academics are incorrect or inadequate. Battles, both in and out of court, have been fought over whether this or that entity is a person under the law. When the definition is wrong, as when slaves were alternately considered partial persons or property, we eventually realize that behavior that seemed sensible at the time was, in fact, shameful. Some argue that we will again feel this way if the conception of person comes to include the unborn. Others feel that our conception that corporations are people is also shameful. Advances in technology suggest that our definitional confusion may lead to more problems in the future. Thus, it is important to get the definition right now.

To set the stage properly, I will first describe how the courts have defined personhood in the context of abortion, slavery, and corporations. Then, I will describe various definitions offered by philosophers, psychologists, and ethicists. Finally, I will suggest a definition of personhood that will provide guidance for future decisions.