

# Personhood Contra Mundum

*Gualberto Garcia Jones*

**T**he Personhood movement is unique within the larger pro-life movement because, although it has a clear legal component,<sup>1</sup> it never subverts its strategy to positive law. Positive law refers to laws crafted by human beings on their own authority. In contrast, natural law or “the laws of Nature and of Nature’s God,” as the Declaration of Independence terms it, is common to all human beings because it is derived from nature (and ultimately, from nature’s Creator). It is therefore above man-made laws, and the standard by which those laws should be judged.

The tension between positive and natural law as sources of legal authority has led many pro-life legal practitioners<sup>2</sup> to profoundly misunderstand the Personhood movement as merely a band of idealists. However, the essential tenets of the Personhood movement are actually universally held: All human beings, without exception, have intrinsic worth and derive their value from the Creator rather than from government; government is legitimate only insofar as it serves to protect these inalienable rights; and individual citizens have the right and duty to actively resist the government if it suppresses these rights.<sup>3</sup>

Pro-life criticism of the Personhood movement, regardless of the wording, is fundamentally consequentialist. Consequentialism holds that the consequences of one’s conduct are the ultimate basis for judging the rightness or wrongness of that conduct. The Personhood movement maintains that the promotion of laws that explicitly consent to the murder of some human beings for the sake of an uncertain reduction in evil<sup>4</sup> is a profound and unacceptable violation of our principles; however, its detractors hold that Personhood’s adherence to principle results in inevitable legal failures, harming the larger pro-life movement.

Princeton University law professor Robert George, in another context, captures the reasoning behind the Personhood movement’s rejection of compromise when he writes that “the conviction that a little evil may rightly be done . . . for the sake of preventing a greater evil, puts human beings on a path to losing their grip on good and evil altogether. We would not have gotten those ‘liberal’ abortion laws in the first place were it not for the

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widespread adoption of an essentially consequentialist view of right and wrong.”<sup>5</sup>

Being attacked by the mainstream pro-life movement for adhering to its foundational principles can be discouraging for any pro-life activist. However, now, more than ever, a return to our foundational principles is the only long-term solution to the constitutional, political, and cultural crisis brought on by liberal secularism.

### **Understanding the Personhood Movement**

It bears repeating that Personhood measures are governed by adherence to a principle, not to a particular legislative or legal strategy. The recent use of the citizen-initiated state constitutional amendment was a particularly fruitful strategy for grassroots activism. It allowed activists to go directly to the people and discuss the fundamental ideas that motivate the pro-life movement. It fomented the growth and activation of grassroots networks through the arduous task of collecting signatures. Legally, it raised the important question of federalism and the proper role of the states under the Tenth Amendment power to exercise police powers.

But the citizen-initiated state constitutional amendment process has not been the only fertile field for the Personhood movement’s activists. At the urging of local activists, state political party bosses have had to acknowledge that large majorities of the GOP base in South Carolina and Georgia are calling for the protection of all innocent human beings in their respective states.<sup>6</sup> Large religious organizations such as the Mississippi,<sup>7</sup> Texas,<sup>8</sup> Georgia,<sup>9</sup> and Oklahoma<sup>10</sup> Baptist Conventions have all passed resolutions calling for the legal protection of all human beings at every stage of development as a result of the Personhood movement.

The Personhood standard has also been used to successfully support the election of public officials who pledge to adhere to the highest possible pro-life standards. For example, Georgia Right to Life, which has Personhood endorsement criteria,<sup>11</sup> just elected 90.2 percent of its candidates in the 2014 primary<sup>12</sup>; 98.7 percent of those candidates won their respective races in the general election in November.<sup>13</sup> Nationally, the Personhood pledges of presidential candidates such as Rick Santorum, Mike Huckabee, and Newt Gingrich helped them win primaries in crucial states such as Iowa, Colorado, Georgia, and South Carolina in the 2008 and 2012 primaries. Personhood can also be credited with ensuring that proliferators held strong against pressure to insert rape exceptions into several measures, among them the Tennessee Constitutional Amendment passed last year.

These instances demonstrate that the Personhood movement is not limited

to citizen initiatives, legislation, resolutions, or even the law. It is instead defined by adherence to the principles of a limited government that recognizes and protects the inalienable rights of all<sup>14</sup> human beings as persons and a commitment to grassroots activism.

### **How We Became Slaves in Sodom and Gomorrah**

*. . . the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made in ordinary litigation between parties in personal actions the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.*

—Abraham Lincoln, *First Inaugural Address*

Today's proliferers are generally agreed that we Americans have ceased to be our own rulers, having instead resigned our government into the hands of unelected judges and bureaucrats. On the moral issues that hold together our culture and sustain the rule of law, such as the issuance of laws for the benefit of the health, safety, and morals of the people, the Supreme Court has claimed for itself an unchecked and practically unappealable power. If the Supreme Court says there is a right to homosexual sodomy, or pornography, or abortion, or anything else, then nothing short of a constitutional amendment can stop it. And where there is no limit to the power of the government, the government inevitably becomes a tyrant. It follows that in modern America, the foundational principles of limited government have been overrun by a despotic state. Federalism, the limitation of government action through the enumeration of rights, and the checks and balances of co-equal branches have been replaced by Federal Supremacy, Judicial Supremacy, the Imperial Presidency, and the pork-barrel Congress.

In the Executive Branch, President Obama is fond of saying that if Congress doesn't act, then he will. And act he has: usurping the legislative functions of Congress with his despotic use of administrative rule-making on the issues of health, marriage, immigration, and drug enforcement; engaging in foreign wars with no congressional approval; and naming judges during non-existent recesses. In the Judicial Branch, according to the Supreme Court, it is a constitutional right to tear a baby limb from limb, but unconstitutional to teach children to pray at a public school. It is a constitutionally protected right to engage in, record, and sell explicit acts of fornication, but unconstitutional to display the Ten Commandments in public spaces. It is constitutional to define a fine as a tax in order to force private citizens to buy certain products, but unconstitutional for citizens to define the institution of marriage as between one man and one woman.

While there is no single cause for the decline of America into legal despotism and moral relativism, and to some extent all three branches of the federal government have failed, nevertheless the primary structural failure in our government that precipitated the others has been the Judiciary.

Alexander Hamilton assured the newly independent American people in the Federalist Papers No. 78 that “the judiciary is beyond comparison the weakest of the three departments of power.” Thomas Jefferson, however, alive to the danger of Judicial Supremacy, wrote in 1820, “You seem . . . to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy.”<sup>15</sup>

After the *Kelo v. City of New London* decision in 2005, Nancy Pelosi famously stated that when the Supreme Court rules on the constitutionality of a matter it is “almost as if God has spoken.”<sup>16</sup> Although Pelosi is one of the fiercest opponents of the right to life, I believe that her logic is essentially the same as that driving the pro-life opposition to the Personhood movement. Consider:

1. When attempting to advocate for a Congressional Personhood Act under Section 5 of the 14th Amendment, Personhood proponents are countered by pro-life critics who say that the Supreme Court has ruled definitively and exclusively on the meaning of the term person and Congress cannot contradict it;
2. When attempting to pass state constitutional amendments or state statutes recognizing the Personhood of the preborn, Personhood proponents are told that a state constitutional amendment can’t supersede or contradict the United States Constitution, because Judicial Supremacy trumps the Tenth Amendment police powers of the states to regulate on matters of health and morals;
3. When attempting to pass local measures, Personhood proponents are confronted with arguments that local governments cannot regulate these matters, because the state legislature shapes the criminal code, and in turn the state legislature cannot contradict *Roe v. Wade*, because of (you guessed it) Judicial Supremacy.

Of course these critics are partly correct, but they also miss the point. The fact is that we currently don’t live in a democratic constitutional republic. Resistance at every level of society—but especially at every level of government—is the only hope for restoring America to a limited government and to a culture of life.

### **Revival: Personhood and the Resurrection of America**

Alexis de Tocqueville, the great French aristocrat who provided an international context for American exceptionalism, credited much of the vitality of 19th century America to the numerous and influential activities and functions of civil associations and churches. Unfortunately, in the past 50 years, as America has slouched along on its march toward Gomorrah, the organizations that once sustained traditional American morals were in retreat. However, in his insightful masterpiece on America's decline in the face of secular liberalism, Judge Robert Bork noted with uncharacteristic optimism the emergence of a vital grassroots religious conservative movement.

Perhaps the most promising development in our time is the rise of an energetic, optimistic, and politically sophisticated religious conservatism. It may prove more powerful than merely political or economic conservatism because religious conservatism's objectives are cultural and moral as well. Thus, though these conservatives can help elect candidates to national and statewide offices, as they have repeatedly demonstrated, their more important influence may lie elsewhere. Because it is a grass roots movement, the new religious conservatism can alter the culture both by electing local officials and school boards (which have greater effects on culture than do national politicians), and by setting a moral tone in opposition to today's liberal relativism.<sup>17</sup>

The first step, noted Robert Bork, is to understand what has happened to us as a nation; the next is resistance in every area of the culture.

#### **Recalibrating the Personhood Movement: From Statewide Initiatives to Local Measures**

I received considerable criticism following my recent article on LifeSiteNews.com<sup>18</sup> calling for a recalibration<sup>19</sup> of the Personhood strategy. There I called for a sober post-mortem analysis of the two Personhood amendments that had just failed at the ballot box in Colorado and North Dakota. Some of the criticism came from those who support the prior and ongoing<sup>20</sup> Personhood efforts and feel betrayed or threatened by the prospect of modifying the movement's focus.<sup>21</sup> Others, who have never supported Personhood as a viable strategy, saw in the article the raising of the white flag of surrender.<sup>22</sup> Both misread the article's thesis.

A central reason for calling for an evolution of strategy was the need to increase the social and legal tension:

Social and legal tension was our goal, and that will continue to be our goal until we achieve the abolition of abortion, but we have to be honest with ourselves and realize that the current strategy of statewide ballot measures may have reached its limit.

Due to space constraints, I had to omit some important supporting points.

The article didn't mention that, contrary to what the campaign leadership in Colorado had publicly maintained, actual volunteer participation was at an all-time low, church participation was dwindling, and the debate that the Personhood movement so desired as a mechanism for cultural change was simply not occurring.

In a behind-the-scenes story on the campaign in Colorado, MSNBC described the campaign headquarters in the following way: "The Personhood USA headquarters in Denver does not look like the seat of a revolution. It doesn't even look like an organized campaign office. On a recent Saturday, less than a month before Colorado voters will be asked to vote on Amendment 67, the unremarkable office suite was nearly empty."

For once, MSNBC was actually telling the truth: The campaign headquarters was nearly empty because the movement had ceased to attract and motivate people to sacrifice for the campaign. Another fact not mentioned in the article was that the Colorado campaign had only raised \$29,000, compared to over \$3 million from Planned Parenthood for the opposition.<sup>23</sup> These fundraising discrepancies pointed to an unavoidable conclusion: The base had become exhausted physically, financially, and emotionally.<sup>24</sup>

If statewide ballot initiatives give Planned Parenthood an operational advantage due to their greater financial and media resources, then the logical response is to take the fight to a smaller and more local venue.

### **The Municipal Ballot Initiative, Local Ordinances, and Local Resolutions**

In the LifeSiteNews article, I suggested exploring ways for citizens to engage, in a very local way, in the type of activism that will have a culturally transformative effect while minimizing exposure to the well-funded abortion interests.

During 2013, no pro-life initiative gathered more attention and generated more debate than the Albuquerque 20-week abortion ban. Although the law itself was morally flawed, the idea of engaging in a citizen-led local pro-life battle was a novel one for the pro-life movement and was very successful at grassroots activation.<sup>25</sup>

Critics of the municipal approach state that it is hard to see any connection between local law and abortion. But the wording of the Albuquerque 20-week ban explicitly and credibly put this objection to rest by referencing both the New Mexico Statutes and the Charter of the City of Albuquerque as recognizing the power of the city to "secure health and safety within its geographical borders."<sup>26</sup>

Critics also objected that Personhood measures cannot be enacted at a local level because civil rights are a matter of state concern. Here, it is useful

to examine another local ballot measure that failed to pass but was successful in educating and activating the grassroots: Anchorage’s Proposition 5. In 2012 the homosexual movement attempted to add “protections” for people regardless of “sexual orientation or transgender identity” to the city’s civil rights laws.<sup>27</sup> Proposition 5 proves that significant civil rights change can be proposed at the local level.

Anchorage is also a good municipality to illustrate how Personhood can be advocated at the local level. Taking the exact same path as the homosexual movement did in Proposition 5, Personhood activists could propose an amendment to Chapter 8.10 (Offenses against Persons) of the Anchorage Code of Ordinances, specifically to the section dealing with child abuse. In Section 8.10.030 it is declared “unlawful for any person to commit child abuse . . .” and a child abuser is defined as a person who “intentionally, knowingly, recklessly, or negligently causes or permits a child or vulnerable adult to be tortured; cruelly confined; cruelly punished or physically injured.”<sup>28</sup> The above-referenced municipal section points to the Alaska State Code for the applicable definitions, but the word child is not defined in either the municipal or state code.<sup>29</sup> It would be perfectly feasible to use the initiative process in Anchorage to define the word “child,” as the Supreme Court of Alabama recently recognized, to include all children born and preborn for purposes of the child abuse ordinance.

In the 2014 Alabama Supreme Court decision *Hicks v. Alabama*,<sup>30</sup> the court ruled that although the chemical endangerment section of the Alabama Code of 1975 did not define “child,” it was nonetheless proper and constitutional to include the preborn in that class. In his concurring opinion, Chief Justice Roy Moore eloquently wrote:

I concur with the main opinion and with Justice Parker’s specially concurring opinion, which rightly notes that “[b]ecause an unborn child has an inalienable right to life from its earliest stages of development, it is entitled . . . to a life free from the harmful effects of chemicals at all stages of development.” I write separately to emphasize that the inalienable right to life is a gift of God that civil government must secure for all persons—born and unborn.

Notice that Chief Justice Moore calls the protection of the inalienable right to life the duty of all “civil government,” which would include not just the Supreme Court of the United States, or Congress, or the state legislature, but municipal governments. However, Chief Justice Moore goes even further, emphatically calling upon us to nullify *Roe v. Wade* and its progeny:

I would go further and state that the judicially created “right” to abortion identified in *Roe* has no basis in the text or even the spirit of the Constitution and is therefore an illegitimate opinion of mere men and not law. See *id.*, 410 U.S. at 174 (Rehnquist, J.,

dissenting) (describing Roe as finding “within the Scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment”); *Doe v. Bolton*, 410 U.S. 179, 221 (1973) (White, J., dissenting) (finding “nothing in the language or history of the Constitution to support the Court’s judgments . . . fashion[ing] and announc[ing] a new constitutional right”). Roe and its progeny therefore have no applicability in any case, in any context, and, like the German laws nullified at Nuremberg, should be jettisoned from federal and state jurisprudence.<sup>31</sup>

Two other common objections to the local Personhood measures merit a brief response. One is that the municipal ballot initiative is not available in all municipalities. However, this is not a hurdle, since Personhood is not wedded to one particular political mechanism. Where the municipal ballot initiative is not available, activists can effectively lobby or even seek election and take over city councils or assemblies. The second objection is that the small conservative municipalities will rarely have an abortion facility to regulate. However, the fact that there is no abortion clinic in a particular community does not mean that the community can’t find other ways to protect the rights of the preborn.

These are just a few of the possibilities that we are contemplating. Much has yet to be discovered and developed at the local level. No national organization or leader can match the impact of a local citizenry determined to reclaim its role in its own government.

Undoubtedly, those who object to the central political idea of the Personhood movement—that we must actively resist judicial tyranny—will attempt to demonstrate how the courts will shut down our initiatives and local efforts. Quite frankly, the Personhood movement is not so much concerned with the changes that we can achieve through the legal system as it is with changing the legal system itself. That system is so broken that attempting to get it working in its current condition is an exercise in futility. Instead, the Personhood movement will look to the true repository of American sovereignty: the people and the Creator from whom our inalienable rights emanate. We will not limit ourselves to one strategy, just as we will not accept judicial, legislative, or executive tyranny.

Few have expressed it more eloquently than Abraham Lincoln did at Gettysburg in words that resonate so strongly in our own fallen and blood-stained America:

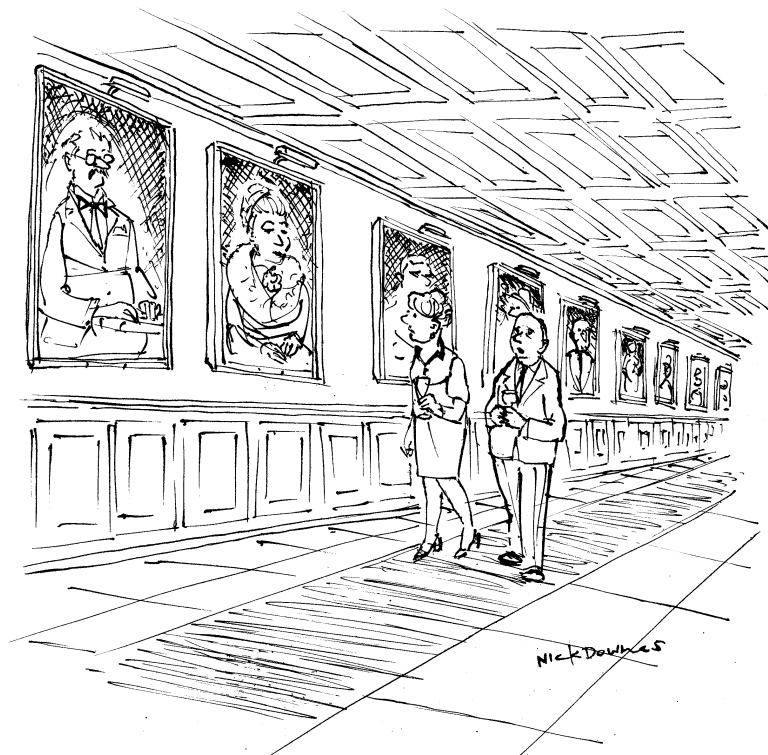
It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.<sup>32</sup>



NOTES

1. That all human beings are bearers of fundamental and inalienable legal rights simply by virtue of being human and should therefore be recognized as persons. Contrary to Justice Blackmun's opinion in *Roe v. Wade*, there is ample precedent for human beings having been afforded legal protection as persons throughout American history. My favorite example of this is the case of *Williams v. Marion Rapid Transit Co.*, a 1949 Ohio State Supreme Court decision where the court wrote that, "If the common law protects the rights of the unborn child and if every intendment in the law is favorable to him, **the inference is inevitable that such unborn child is a person** and possesses the rights that inhere in a person even though he is incapable himself to assert them."
2. There are also many notable legal scholars who support the Personhood movement. Notre Dame Emeritus professor Charles Rice has been a vocal advocate of state Personhood amendments. See <http://www.personhood.org/index.php/personhood-advocates/personhood-advocates/personhood-advocates#Legal>
3. It should be added that the individual states, the different branches of government, all those who swear to uphold and defend the Constitution, and the people themselves have the right and duty to resist tyranny by any branch of government or individual official.
4. Former Attorney General of Kansas Phill Kline once mentioned to me an astonishing fact, namely that none of the thousands of well-intentioned but morally flawed pro-life regulations has ever resulted in the successful prosecution of the world's largest abortion provider, Planned Parenthood.
5. Robert P. George, *Conscience and its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington: Intercollegiate Studies Institute, 2013), 235.
6. Georgia Voter say "Yes" to Personhood Amendment: <http://www.christiannewswire.com/news/391914486.html>; 79% of SC GOP backs Personhood: <https://www.lifesitenews.com/news/79-of-sc-gop-backs-personhood-pro-life-republican-tops-pro-abortion-gop-foe>
7. <https://www.baptiststandard.com/news/baptist/13167-mississippi-baptists-back-personhood-amendment>
8. <http://sbtexas.com/am-site/media/2011-resolutions.pdf>
9. <http://www.christianexaminer.com/article/right.to.life.says.1400000.georgia.baptists.crucial.to.personhood.efforts/47619.htm>
10. <http://baptistnews.com/culture/social-issues/item/7972-okla-baptists-affirm-'personhood'-of-unborn>
11. Personhood endorsement criteria require the politician to commit to put into practice his or her pro-life beliefs in a consistent manner. For more details on this, see GRTL's endorsement criteria here: <http://grtlpac.org/?q=endorsement-guidelines>
12. <http://www.grtl.org/?q=primary-election-victories>
13. 78 out of 79 of GRTL-endorsed candidates won their general election: <http://www.grtlpac.org/?q=grtl-pac-2014-endorsements>
14. Groups such as Rebecca Kiessling's "Save The 1" and Pam Stenzel and Monica Kelsey's "Living Exceptions" enthusiastically endorse the Personhood movement because it refuses to abandon the fight for children conceived in rape.
15. Thomas Jefferson, Letter to William Charles Jarvis (28 September 1820).
16. <http://www.washingtontimes.com/news/2005/jul/1/20050701-010419-9346r/>
17. Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline* (New York: Reganbooks, 1996), 342.
18. Gualberto Garcia Jones, "It's time for the Personhood movement to do some sober analysis." LifeSiteNews.com, November 7, 2014. <https://www.lifesitenews.com/opinion/its-time-for-the-personhood-movement-to-do-some-sober-analysis>
19. <http://www.salon.com/topic/personhood/>
20. Personhood Florida is currently engaged in the collection of signatures for a statewide Personhood amendment. See [www.personhoodfl.com](http://www.personhoodfl.com)
21. The leadership of Personhood USA, a group I was previously associated with, went so far as to publicly accuse me of "trying to undermine our initiatives by scaring citizen-activists and candidates away from supporting Personhood."
22. <http://www.jillstane.com/2014/12/personhood-split-part-2/>

23. <https://www.lifesitenews.com/opinion/post-election-analysis-planned-parenthood-is-biggest-loser-in-personhood-ba>
24. It is true that Amendment 67 in Colorado gathered more votes than any other prior Personhood amendment; however, the text and context of the amendment were of a kind which by itself elicited more support from low-information voters, and this, and not any real growth in the movement, were the reason for the increase in the total and percent of the vote.
25. The organizers of the initiative gathered 27,000 signatures to put the initiative on the ballot, more than double the 12,000 required signatures.
26. Section 12 of the City of Albuquerque Late Term Abortion Ban Initiative read “The Citizens of Albuquerque are empowered by Chapter Three of New Mexico Statutes Annotated and Article Three of the Charter of the City of Albuquerque to affirmatively act to secure health and safety within its geographical borders.” See [http://ballotpedia.org/City\\_of\\_Albuquerque\\_Late\\_Term\\_Abortion\\_Ban\\_Initiative\\_Ordinance\\_Text](http://ballotpedia.org/City_of_Albuquerque_Late_Term_Abortion_Ban_Initiative_Ordinance_Text)
27. [http://www.nytimes.com/2012/04/05/us/proposition-5-gay-rights-anchorage-alaska.html?\\_r=0](http://www.nytimes.com/2012/04/05/us/proposition-5-gay-rights-anchorage-alaska.html?_r=0)
28. [https://www.municode.com/library/ak/anchorage/codes/code\\_of\\_ordinances?nodeId=TIT8PECO\\_CH8.10OFAGPE](https://www.municode.com/library/ak/anchorage/codes/code_of_ordinances?nodeId=TIT8PECO_CH8.10OFAGPE)
29. <http://www.touchngo.com/1glcntr/akstats/statutes/title47/chapter24/section900.htm>
30. [https://www.liberty.edu/media/9980/attachments/041814-Ex\\_parte\\_Hicks\\_1110620.pdf](https://www.liberty.edu/media/9980/attachments/041814-Ex_parte_Hicks_1110620.pdf)
31. *Hicks v. Alabama*, pg. 42, n. 9, Chief Justice Moore concurring opinion. [https://www.liberty.edu/media/9980/attachments/041814-Ex\\_parte\\_Hicks\\_1110620.pdf](https://www.liberty.edu/media/9980/attachments/041814-Ex_parte_Hicks_1110620.pdf)
32. Abraham Lincoln, Gettysburg Address, November 19, 1863.



*“I come from a long line of people who have died.”*