With respect to The March to Abolish Abortion and Rally for Personhood (March) scheduled to occur in Boston on November 4, 2023, I would like to address some reasons why I think we, as men, should decide to participate, and why some other men might be inclined to stay on the sidelines.

The March gives men an excellent opportunity, in union with the participation of women and children, to protect our cherished liberties.

Liberty is an oftentimes misunderstood concept. We know that liberty is important. But what does it mean, and who decides what it means?

When we pledge allegiance to the flag of the United States of America and the Republic for which it stands, we make a pledge for liberty and justice for all.

The Constitution, which underlies the pledge, declares our patriotic purpose to “Secure the Blessings of Liberty to ourselves and our Posterity.” Posterity is defined as “all future generations of people” and “the descendants of a person.” According to those definitions, it cannot reasonably be denied that the unborn are part of our posterity. They are our descendants – the future generation. As patriots, we have a duty to protect their lives and their liberty. Good men embrace this duty. Weak men run away from it.

When men march on November 4th on Commonwealth Avenue, between Dartmouth and Exeter Streets, they will pass a statue of the famous 19th century abolitionist, William Lloyd Garrison. Inscribed on the north face of that statue are words describing Garrison’s resolve to abolish slavery: “I am in earnest – I will not equivocate – I will not excuse – I will not retreat a single inch – And I will be heard.” Just as Garrison’s manly determination was appropriate to eliminate slavery, our manly determination is appropriate to eliminate abortion.

Just two blocks south of the Garrison statue lies the Boston Public Library. On the Boylston Street side, inscribed permanently in stone along the entire top of the original building, we can read the library board of trustees’ prescient advice given in 1897 and meant for posterity: “The Commonwealth Requires the Education of the People as the Safeguard of Order and Liberty.”

Some Massachusetts men do not yet appreciate the relationship between education and their duties to secure both liberty for posterity and the sacred nature of their pledge to liberty and justice for all. But we do! That is why all men should march, both believers and non-believers. That is why we seek to educate society about the humanity of the unborn child. For non-believers, it is seen as a civic duty. But, for believers it is both a civic and religious duty. For believing men, it is what we owe our God. It is the task of helping to build Eden on earth. It is what we mean when we pray, “Thy kingdom come on earth as it is in heaven.” It is the recognition of our duty to stand between other people and evil. It is the expression of our commitment to confront evil with courage. Patriotic and Godly men understand that liberty is not a flight from responsibility, but movement toward it - and welcome the responsibility.

Why else do we march?

We march in support of truth. And we understand that the degree to which truth is evident in a society is directly related to the courage and faith of the people - courage to discover and defend the truth, whether it be comforting or disturbing, and faith that we can influence the law and the people to treat the truth fairly. Good men seek truth. Weak men run away from it.

Truths grounded in science can and should be accepted by all, non-believers and believers alike. Life sciences confirm the following:

1. Every cell of every human embryo is genetically distinct from every cell of the mother or the father.

2. The genetic make-up of the human embryo is 100% human.

3. The human embryo is already fully programmed and growing to the mature stage of a human being. It needs no tweaking. He or she needs only food, shelter, and care - just like all of us.

4. The human embryo is already a complete organism, albeit an immature one, just like every born human being once was.

5. The human embryo is a human being, a whole living member of the species Homo sapiens, in the earliest stages of natural human development.

The second president of the United States, John Adams, had something very interesting to say about facts. He advised that “Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”

Good men accept and defend the stubborn facts about the origin of human life. Weak men run away from them.

A sad, but truthful, reality is that men have not had any lasting success obtaining constitutional rights in America’s courts with respect to abortion. But our failure has not been for lack of effort. It has been because we have consistently been pushed to the sidelines.

Men’s advocates have tried several approaches in courts throughout the years. We have progressed through arguments focused first on marital rights, then to those based on equality, and finally to those based upon individual circumstances. Unfortunately, all of these approaches and arguments have failed in court.

How did we get to this sad point?1

The 1942 U.S. Supreme Court case *Skinner v. Oklahoma* declared that procreation and marriage are fundamental to the existence of the human race, and that men have a constitutional right to procreate.

1 Much of the material dealing with the evolution of law considered herein is garnered from an article titled *Men’s Reproductive Rights: A Legal History,* by Mary Ziegler of the Florida State College of Law, which appeared in the Pepperdine Law Review, *47 Pepp. L. Rev. 665 (2020)*.

In 1965, the U.S. Supreme Court’s decision in *Griswold v. Connecticut* created a new and controversial constitutional “right to privacy” which was extended in *Eisenstadt v. Baird* in 1972. Significantly, these decisions allowing a constitutional base for contraceptive use by married and unmarried persons did not depend upon gender. Both women and men had the right to procreate or to not procreate.

Gender with respect to reproductive rights originated in the U.S. Supreme Court with *Roe v. Wade* and *Doe v. Bolton* in 1973. Significantly, neither of these cases discussed a father’s procreative rights. That issue was neither raised nor considered. *Roe* and *Doe* dealt with balancing the privacy rights of women against the opposing rights of government in protecting fetal life. They combined, from a practical perspective, to allow women an unfettered constitutional right to abortion at any time and for any reason.

After *Roe*, with the growth of no-fault divorce law and increasing divorce rates, men’s advocates began arguing that divorce and abortion were threatening traditional marriage. They were causing people to think of married couples as individuals rather than members of a family unit. Some stated that men had “been reduced to onlookers” – that *Roe* had deprived men of their prior procreative interests – that federal fiat had allowed women to become anonymous, autonomous, and severed from traditional family roots.

One law professor likened the post-*Roe* man - powerless over his procreative rights - to male slaves who were powerless to protect their families and progeny before the 13th Amendment. He argued that post-*Roe* men had been reduced to partial slaves.

In a 1974 Massachusetts case, a 27-year-old truck driver sought to prevent his estranged wife from having an abortion. Ruling that the woman’s gestational capacity should be the deciding factor, the state’s highest court denied him relief. Two judges dissented. They expressed that gestational capacity would not necessarily be a tiebreaker when the father and mother did not

agree about an abortion. The dissenters asserted that (1) there should be a case-by-case analysis with consideration of the individual circumstances of the parties, (2) that the husband has fundamental familial rights that both antedate the Constitution and are protected by the Constitution, (3) that the husband’s rights are as old as civilization itself, and (4) that the wife had a duty to the husband and, according to the terms of marriage, a duty to forbear from abortion under the circumstances of the case. But still, according to the majority of the justices, men had no rights in abortion jurisprudence.

Following in lockstep with the Massachusetts court, the 1976 Supreme Court case *Planned Parenthood of Central Missouri v. Danforth* invalidated a Missouri abortion law that required a husband’s written consent.

So, men’s advocates shifted the basis of their arguments to a greater consideration for equal treatment for men’s and women’s reproductive rights. In 1981, a Tennessee case involved an unmarried man who argued that sex equality and a prior oral agreement between him and his ex lover - and his willingness to assume care of his child - gave him an enforceable right to block her planned abortion. And in a 1985 Iowa case, a man argued that, because men had responsibilities both before and after childbirth, it was discriminatory to deny him a say in his

former lover’s abortion. But again, men’s arguments failed in these cases - and in others based on similar arguments. Men remained on the sidelines!

And so, in the late 1980s, pro-life advocates began to argue that these cases should be controlled by looking to the individual circumstances of the men and women involved – and by balancing them with the interests of the parties.

In 1988, an Indiana family court considered the case of a 24-year-old single man who sought to block his girlfriend’s abortion, expressing his willingness to care for their child and describing her desire “to look good in a bathing suit” as “frivolous.” The trial judge ordered that the man’s desire to become a parent trumped the woman’s expressed reasons. But an Indiana appellate court reversed the trial court’s decision.

With failures of the balancing approach and the repeated success of the “gestation as the tiebreaker” argument, pro-life attorneys turned to advocacy for spousal notification laws. But in the 1992 case *Casey v. Planned Parenthood of South-Eastern Pennsylvania, et al.*, the U.S. Supreme Court found a statutory spousal notification requirement unconstitutional. *Casey* confirmed that gestation was the tiebreaker in abortion disputes between men and women. The decision belonged to the mother; the father – even a married father – had no right to even know.

In abortion cases “gestation” remains the tiebreaker, with women having all the rights. To date, men are still effectively barred from serious consideration in abortion jurisprudence.

This is not how it should be. Changing it is another reason for men to march. We advocate treating women and unborn members of the human family with love and respect. We want men to fulfill their duties and protect their progeny. And we want courts to allow good and manly men to be heard.

Why might some men be inclined to stay on the sidelines and leave their voices unheard?

Let’s face it, abortion is a delicate – and oftentimes painful - topic for many extended American families. The desire to avoid making some family members, friends, or neighbors uncomfortable persuades some of us to hide our light under a bushel. Our best rationale for letting the light of life shine is for all of us to appreciate the power of genuine love. It is for us to understand that genuine love enables us to be publicly pro-life without being disloyal to any family member, friend, or fellow citizen who has facilitated abortion. It is for us to understand the importance of educating society about the beauty of life, the power of love, and the abundance of available forgiveness.

So, I think men should march because it is our duty to defend life and liberty, and because we’re not so timid or misdirected as to think that we cannot effectively show love and compassion to our wives, daughters, granddaughters – and all of our fellow human beings – born and unborn!

Robert W. Joyce (2023)