Nos. 18-1323, 18-1460

# In The Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., et al.,

*Petitioners-Cross-Respondents,*

v.

REBEKAH GEE, Secretary,
Louisiana Department of Health and Hospitals.

*Respondent-Cross-Petitioner.*

REBEKAH GEE, Secretary,
Louisiana Department of Health and Hospitals,

*Cross-Petitioner,*

v.

JUNE MEDICAL SERVICES L.L.C., et al.,

*Cross-Respondents.*

**On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## BRIEF OF *AMICUS CURIAE* ILLINOIS RIGHT TO LIFE SUPPORTING RESPONDENT-CROSS-PETITIONER


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TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

# TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

## INTERESTS OF *AMICUS CURIAE*[1]

*Amicus curiae* Illinois Right to Life (IRL) is an Illinois educational not-for-profit corporation that has been dedicated to educating the American public about the medical realities of abortion since 1968. IRL uses a grassroots approach to educate members of the public, legislative bodies, and the judiciary regarding advances in scientific research relating to fetal development that demonstrate the biological humanity of fetuses, and the secular value of preborn human life. IRL is active in helping the public recognize that previable human fetuses are human beings.

IRL also addresses the legal implications of these scientific developments, including that human fetuses, as human beings, are entitled, as persons under the Constitution, to the right to life, and to due process and equal protection of the laws, and that states have a right to enact laws to protect unborn persons.

These principles bear directly on the issues presented in this case. For this reason, the *amicus* believes this brief will be of assistance to the Court in analyzing and deciding the case before it.

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[1] Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. The parties have filed blanket consents to the filing of *amicus curiae* briefs in accord with Supreme Court Rule 37.3.

## SUMMARY OF ARGUMENT

*June Medical Services* v. *Rebekah Gee* presents the question of "whether the Fifth Circuit's decision upholding Louisiana's law requiring physicians who perform abortions to have admitting privileges at a local hospital conflicts with this Court's binding precedent in *Whole Woman's Health*."

There is no conflict because the "undue burden" test set forth in *Whole Woman's Health* v. *Hellerstedt*, 136 S. Ct. 2292 (2016), an application of the standard applied in *Planned Parenthood* v. *Casey*, 505 U.S. 833 (1992), that was first adopted in *Roe* v. *Wade*, 410 U.S. 959 (1973), is not entitled to the protection of the rule of *stare decisis* in view of the significant scientific, legal, and social developments that have occurred since *Roe*.

*Whole Woman's Health* applied *Casey*'s holding that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." 136 S. Ct. at 2309 (citing *Casey*, 505 U.S. at 878). The test enunciated in *Casey* was itself derived from the "essential holding" of *Roe*, which recognized "the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State." *Casey*, 505 U.S. at 846. But *Roe* emphasized that its decision depended on evidence of substantial social burdens to women posed by pregnancy and child-rearing (410 U.S. 959 at 153), the lack of a scientific consensus on the question of when human life begins (*id*. at 159), and the reluctance of

states to recognize a fetus as a legal person in non-abortive contexts. (*Id.* at 161).

The Court in *Casey* declined to reexamine *Roe*, but acknowledged that continuing to adhere to the rule of *stare decisis* would not be justified if the circumstances underpinning *Roe*'s jurisprudence changed: "[I]n constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations." 505 U.S. at 864. "[D]ramatic technological and social changes" also justify overturning precedent. *South Dakota* v. *Wayfair, Inc.*, 138 S. Ct. 2080 (2018). In nearly 50 years since *Roe*, circumstances have indeed changed in significant ways, requiring a reevaluation of *Roe* and the "undue burden" rule derived from it.

First, the question of when a human's life begins is now recognized to be biologically determinable, and an overwhelming scientific consensus affirms the view that human life begins at fertilization. (*See infra* at Argument I.B.2.a-c). Even abortion proponents admit the humanity of the fetus, and no viable alternative scientific theories have been propounded. Dissenting voices base their views on ideology, not science. (*See infra* at Argument I.B.2.d-e). Second, this growing scientific consensus has prompted 38 of 50 states to enact changes in fetal homicide laws that recognize the humanity of preborn humans in non-abortive contexts, and other laws are being passed to protect preborn humans even though abortion restrictions are a consequence. (*See infra* at Argument I.B.3.a-b). Finally, the social burdens

associated with pregnancy identified by the Court in *Roe* have considerably lessened in the ensuing years owing to greater societal support of pregnancy and child-rearing. (*See infra* at Argument I.B.4). Thus, the underpinnings of *Roe* and its progeny have been undercut, requiring the Court to reassess *Roe*'s binding precedential weight. It should reject the "undue burden" test of *Casey* and *Whole Woman's Health*, which rely on *Roe*, and permit Louisiana to enact legislation that aims to protect preborn human life. (*See infra* at Argument II).

## ARGUMENT

### I. RECENT DEVELOPMENTS ESTABLISH FETUSES AS HUMAN PERSONS AND RENDER *ROE* AND ITS PROGENY OBSOLETE.

#### A. The Court in *Roe* based its viability standard on: (a) lack of scientific consensus on when human life begins, (b) absence of uniform legal protection of fetuses, and (c) maternal burdens of pregnancy.

In *Roe* v. *Wade*, attorneys for Jane Roe and some *amici* argued that "the woman's right [to privacy] is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses." 410 U.S. at 153. The Court rejected this argument as "unpersuasive." *Id.* It recognized that if a human fetus is a "person" under the Fourteenth Amendment, the case for unrestricted abortion would be untenable "for the fetus' right to life

would then be guaranteed specifically by the Amendment." *Id.* at 157. The Court even acknowledged that the state may assert a "legitimate interest in protecting the potentiality of human life." *Id.* at 162. Texas asserted that "the State has a compelling interest in protecting that life from and after conception," recognizing a human zygote as a human no less legally protectable than an infant or an adult. *Id.* at 163-64. But ultimately the Court declared that the evidentiary record was insufficient to establish in science or in law when a human's life begins.

The Court said it could find no consensus of experts trained in "medicine, philosophy, and theology" on the "difficult question of when life begins." *Id.* at 159. It said: "the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Id*. The Court then looked to the status of fetuses under the law, but concluded that "in areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn." *Id*. at 161. The Court said it could find no case "that holds that a fetus is a person within the meaning of the Fourteenth Amendment"[2] and decided

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[2] While the *Roe* Court, 410 U.S. at 155, cited *Steinberg* v. *Brown*, it failed to acknowledge that that case did recognize that preborn human life was entitled to protection under the Constitution. *Steinberg* v. *Brown*, 321 F. Supp. 741, 746-47 (N.D. Ohio 1970) ("Once human life has commenced, the constitutional protections found in the Fifth and Fourteenth Amendments impose upon the state the duty of safeguarding it.").

that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *Id.* at 157.

Roe's attorneys also repeatedly stressed that women need access to abortion to free themselves of many pregnancy-related burdens extant at the time. *Id.* at 165. In the oral reargument session, the attorney for Roe asserted that "a woman, because of her pregnancy, is often not a productive member of society. She cannot work. She cannot hold a job. She's not eligible for welfare. She cannot get unemployment compensation."[3] Given those challenges[4], the Court found that the "Fourteenth Amendment's concept of personal liberty and restrictions upon state action . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id.* at 153.

The Court concluded that a woman's liberty interest in terminating her pregnancy superseded the state's interest in protecting the fetus, at least until the point of "viability" (the point at which "the fetus then presumably has the capability of meaningful life outside the mother's womb," *id.* at 163), which was the Court's proxy for the point at which the state possessed a compelling interest to protect the life of the fetus. *Id.* at 163-64.[5] Before that point, the state's interest was

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[3] Sarah Weddington, Oral Reargument of *Roe* v. *Wade*, 1972, at 48.

[4] The Court described its holding in *Roe* as consistent "with the demands of the profound problems of the present day." 410 U.S. at 165.

[5] For centuries, laws have restricted abortion access at the point a fetus was considered to be a human being. Under common

not considered sufficiently compelling to supersede a woman's right to terminate her pregnancy.

Thus, the *Roe* Court's decision was based on its stated inability to locate in the record a scientific or legal basis for the humanity or personhood of the fetus, and the detriments posed by pregnancy. However, these conditions no longer prevail, so the Court is obliged to reconsider *Roe* in light of these changed circumstances.

### B. Scientific, legal, and social developments have robbed *Roe*'s viability standard of its original justification.

#### 1. *Casey*'s *stare decisis* factors for reviewing *Roe* require evaluation of changes in fact and law.

The *Casey* Court directly addressed the issue of *stare decisis* as it related to the precedential strength

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law, that point was quickening, which was the moment the fetus first stirred in the womb; this was the "moment recognized by women and by law as a defining moment in human development." Leslie J. Reagan, *When Abortion Was a Crime, Women, Medicine, and Law in the United States, 1867-1973*, UNIVERSITY OF CALIFORNIA PRESS, 9, 1997. In the 19th century, statutory enactments across the nation banned abortion from the moment of fertilization amidst broad acceptance of the official position of the American Medical Association that a human being's life begins at fertilization. *See generally*: Ryan Johnson, *A movement for change: Horatio Robinson Storer and physicians' crusade against abortion*, JAMES MADISON UNDERGRADUATE RESEARCH JOURNAL, 4(1), 13-23 (2017), https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1023&context=jmurj [Permanent Link Available at: https://perma.cc/A799-K8QR].

of *Roe*, and admitted that *stare decisis* is not an "inexorable command." 505 U.S. at 854, citing *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 405 (1932) (Brandeis, J., dissenting). The *Casey* Court said it would evaluate various "prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law." 505 U.S. at 854. While the Court in *Casey* declined to overturn *Roe*, 505 U.S. at 854-69, it acknowledged that applying the rule of *stare decisis* would be unjustified if the circumstances underpinning *Roe*'s jurisprudence changed: "[I]n constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations." 505 U.S. at 864.

Relevant *stare decisis* factors laid out by the Court include "whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine" (citing *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 173-74 (1989)) and "whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." (505 U.S. at 855). In the decades since *Roe*, scientific understanding of human development has advanced significantly, and corresponding changes in law have occurred, requiring a reexamination of the continued viability of the bases of that decision.

*Roe*'s recognition of a right to abort a previable pregnancy rests on the belief that the termination does *not* extinguish the life of a human person. That belief is no longer factually tenable given the current state of

scientific knowledge concerning the origin and development of the human fetus. *Roe* also rests on a determination that the humanity and personhood of a human fetus was not at that time generally recognized *in law*. That legal context has changed as well, with the fetus now being protected as a human being in laws prohibiting fetal killing (fetal homicide). Other laws, such as "heartbeat" laws and laws protecting fetuses from experiencing pain, are increasingly being proposed and passed. Finally, changes in the laws and the availability of social services that support and protect pregnant women have ameliorated the plight of pregnancy and lessened the burden of pregnancy and child-rearing. All of these changes rob *Roe* of its factual and legal underpinnings and require the Court to revisit and overrule it or, at a minimum, to recalibrate the "undue burden" standard it forged in *Roe*, *Casey*, and *Whole Woman's Health* to reflect the realities of today.

### 2. A consensus of biologists now acknowledges that a human fetus is, biologically speaking, a human being.

#### a. The scientific literature has established that fertilization initiates a new human being.

A review of recent discoveries[6] and the development of scientific literature since *Roe* reveal a strong

[6] The Virtual Human Embryo (VHE), a 14,250-page illustrated atlas of human embryology, describes the stages of human development called the Carnegie Stages of Embryonic Development. Mark A. Hill, *Embryology Carnegie Stages*, UNIVERSITY OF

consensus that sperm-egg plasma membrane fusion (fertilization) is the starting point of the life of a human organism (a human being).[7] Dr. Maureen Condic, who is a member of the National Science Foundation's National Science Board, which "advises Congress and the Administration on issues in science,"[8] writes:

> From the moment of sperm-egg fusion, a human zygote acts as a complete whole . . . The zygote acts immediately and decisively to initiate a program of development that will, if uninterrupted by accident, disease or external intervention, proceed seamlessly through formation of the definitive body, birth, childhood, adolescence, maturity and aging, ending with

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NEW SOUTH WALES, Dec. 24, 2019, https://embryology.med.unsw.edu.au/embryology/index.php/Carnegie_Stages [https://perma.cc/QX4R-UZXM]; *see also*: *Conception to birth – visualized | Alexander Tsiaras TED Talk*, YOUTUBE, Nov. 14, 2011, https://www.youtube.com/watch?v=fKyljukBE70 [https://perma.cc/VL9Z-RQB5]; and *9 Months In The Womb: A Remarkable Look At Fetal Development Through Ultrasound By PregnancyChat.com*, YOUTUBE, Jul. 11, 2014, https://www.youtube.com/watch?v=WH9ZJu4wRUE [https://perma.cc/ZNJ3-T4GU].

[7] Maureen L. Condic, *When Does Human Life Begin? The Scientific Evidence and Terminology Revisited*, 8 U. ST. THOMAS J.L. AND PUB. POL'Y 44-81 (2013), http://www.embryodefense.org/MaureenCondicSET.pdf [https://perma.cc/JP33-Y8BH]; *see also:* Rita L. Gitchell, *Should Legal Precedent Based on Old, Flawed, Scientific Analysis Regarding When Life Begins, Continue To Apply to Parental Disputes over the Fate of Frozen Embryos, When There Are Now Scientifically Known and Observed Facts Proving Life Begins at Fertilization?*, 20 DEPAUL J. HEALTH CARE L. 1, 8-9 (2018).

[8] https://www.nsf.gov/nsb/news/news_summ.jsp?cntn_id=297170&org=NSB&from=news [https://perma.cc/7UYH-UP7Z].

> death. This coordinated behavior is the very hallmark of an organism.[9]

A human organism's self-directed "program of development" initiated by fertilization (sperm-egg fusion) is the human life cycle. A necessary and sufficient condition for an organism with human DNA to be classified as a human being is simply that it is developing in one of the stages of the life cycle initiated by fertilization. From a biological point of view, a human zygote (fertilized ovum) has a complete human genome, which will dictate its development and remain throughout the entirety of the human life cycle; it is a complete human organism.[10] Thus, a human zygote is as much a human being as an infant, a teenager,[11] or an adult – it

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[9] Maureen L. Condic, *When Does Human Life Begin?: A Scientific Perspective*, WESTCHESTER INSTITUTE FOR ETHICS AND THE HUMAN PERSON, Oct. 2008, https://bdfund.org/wp-content/uploads/2016/05/wi_whitepaper_life_print.pdf [https://perma.cc/S4ZJ-AN67].

[10] This Court has recognized that human zygotes are organisms: "[B]y common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb. *See*, *e.g.*, *Planned Parenthood [Federation of America* v. *Ashcroft]*, 320 F. Supp. 2d [957], at 971-72. We do not understand this point to be contested by the parties." *Gonzales* v. *Carhart*, 550 U.S. 124 (2007).

[11] Dr. Alfred Bongiovanni, University of Pennsylvania School of Medicine, in his testimony for the 1981 hearing on Senate Bill 158, the "Human Life Bill", *see infra* at 15-16, concluded, "I am no more prepared to say that these early stages [of development in the womb] represent an incomplete human being than I would be to say that the child prior to the dramatic effects of puberty . . . is not a human being. This is human life at every stage." Cited in House Resolution No. 214, https://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+HR214+pdf [https://perma.cc/6XRG-L2C8].

is simply a human being in an earlier stage of development. Scientific articles routinely advance this view as a basic biological fact[12]: "The life cycle of mammals begins when a sperm enters an egg"[13] and "[f]ertilization is the sum of the cellular mechanisms that pass the genome from one generation to the next and initiate development of a new organism"[14]. These are the typical descriptions of human life's beginning that appear in leading scientific journals such as *Nature* and *Science*.

The biological view that a human's life begins at fertilization is also the consensus position of biologists working and teaching at universities and research facilities throughout the world.

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[12] For a list of over 100 articles, books, and legislative testimonies affirming this view, *see When Does Life Begin?*, ILLINOIS RIGHT TO LIFE, https://illinoisrighttolife.org/when-does-life-begin [https://perma.cc/3TSJ-3CYD].

[13] Yuki Okada, Kazuo Yamagata, Kwonho Hong, Teruhiko Wakayama, and Yi Zhang, *A role for the elongator complex in zygotic paternal genome demethylation*, NATURE, 463(7280):554-8, Jan. 28, 2010, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2834414 [https://perma.cc/Y5YQ-LCW3].

[14] Paul Primakoff and Diana G. Myles, *Penetration, adhesion, and fusion in mammalian sperm-egg interaction*, SCIENCE, 296(5576):2183-5, Jun. 21, 2002, https://www.ncbi.nlm.nih.gov/pubmed/12077404 [https://perma.cc/D2XU-F62E].

### b. An overwhelming majority of biologists recognize human life begins at fertilization.

A recent international study involving 5,577 biologists from 86 countries who work at 1,061 top-ranked academic institutions[15] confirmed the consensus view that a human's life begins at fertilization.[16] The study asked biologists to agree or disagree with five statements that represent the view that a human's life begins at fertilization. 5,337 biologists (96%) affirmed at least one of the five statements[17] and only 240 participants declined to affirm any of the statements (4%). The study participants were also asked to answer an

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[15] 63% of the sample were male with 95% holding Ph.Ds. Respondents predominantly identified as non-religious (63%), liberal (89%), and pro-choice (85%). American participants included biologists from Harvard University, Princeton University, Stanford University, and Yale University. Other participants included biologists from the Indian Institute of Technology Bombay, University of Cambridge, University of Oxford, and University of Chinese Academy of Sciences. For a complete list of all 1,061 institutions, *see When Does Life Begin?*, ILLINOIS RIGHT TO LIFE, https:/illinoisrighttolife.org/when-does-life-begin [https://perma.cc/3TSJ-3CYD].

[16] Steven A. Jacobs, *Balancing Abortion Rights and Fetal Rights: A Mixed Methods Mediation of the U.S. Abortion Debate*, KNOWLEDGE@UCHICAGO, 2019, https://knowledge.uchicago.edu/record/1883 [https://perma.cc/GZT2-8JDN].

[17] For example: "Statement 4: From a biological perspective, a zygote that has a human genome is a human because it is a human organism developing in the earliest stage of the human life cycle". Overall, there was a consensus on each of the five items ranging from 69-91%; there were lower rates for biologists who identified as strongly "pro-choice" (64-90%) than neutral biologists (80-94%) and those who identified as strongly "pro-life" (91-97%). *Id.* at 244-46.

essay question: "From a biological perspective, how would you answer the question, 'When does a human's life begin?'" Most biologists (68%) indicated fertilization, with those who strongly identified as "pro-choice" (60%) doing so at a lower rate than those who were neutral on abortion (82%) and those who identified strongly as "pro-life" (89%). Of respondents who answered all six questions in a consistent manner, 1,011 biologists (97%) affirmed all five statements and wrote about fertilization in the essay question. Thus, while the *Roe* Court found that experts could not arrive at any consensus at that point in the development of man's knowledge, that is no longer the case[18].

[18] 80% of 3,883 Americans surveyed selected biologists as the group most qualified to determine when a human's life begins and the rest chose philosophers, religious leaders, Supreme Court Justices, or voters (Steven A. Jacobs, *Balancing Abortion Rights and Fetal Rights: A Mixed Methods Mediation of the U.S. Abortion Debate*, KNOWLEDGE@UCHICAGO, 208, 2019, https://knowledge.uchicago.edu/record/1883 [https://perma.cc/GZT2-8JDN]). However, using philosophical or theological beliefs that deny the humanity of fetuses to discount the scientific fact that fetuses are humans is akin to using a Jehovah's Witness's theological beliefs to conclude that a life-saving blood transfusion is harmful to a child's physical health. Extrabiological concepts should not be used to discount or disregard scientific realities.

### c. Legislative hearings on when life begins marshalled scientific evidence that life begins at fertilization.

During hearings conducted by the Senate Judiciary Subcommittee on Senate Bill 158, the "Human Life Bill," numerous scientific experts testified on the biological view of when life begins. The Official Senate Report concluded that: "Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being – a being that is alive and is a member of the human species. There is overwhelming agreement on this point in countless medical, biological, and scientific writings."[19]

In the hearings, geneticist Dr. Jerome Lejeune testified that "[l]ife has a very, very long history, but each individual has a very neat beginning – the moment of its conception" because "[t]o accept the fact that after fertilization has taken place a new human has come into being is no longer a matter of taste or opinion . . .

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[19] Report, Subcommittee on Separation of Powers to Senate Judiciary Committee S-158, 97th Congress, 1st Session 1981, 7; similarly, in 2006, the legislature in South Dakota investigated when human life begins and concluded that "abortion terminates the life of a unique, whole, living human being". Report of The South Dakota Task Force to Study Abortion, Submitted to the Governor and Legislature of South Dakota, 13, Dec. 2005. https://www.dakotavoice.com/Docs/South%20Dakota%20Abortion%20Task%20Force%20Report.pdf [https://perma.cc/4WF8-TNM3]

it is plain experimental evidence." S-158 Hearings, April 23 transcript, 18.[20]

Experts from leading institutions also testified that there are no alternative theories on when a human's life begins in the scientific literature. Dr. Hymie Gordon, Professor of Medical Genetics and physician at the Mayo Clinic, testified: "I have never ever seen in my own scientific reading, long before I became concerned with issues of life of this nature, that anyone has ever argued that life did not begin at the moment of conception and that it was a human conception if it resulted from the fertilization of the human egg by a human sperm. As far as I know, these have never been argued against." *Id.* at 52. This lack of any published alternative scientific theories was also attested to by Dr. Micheline Matthew-Roth, a principal research associate in the Department of Medicine at the Harvard Medical School. *Id.* at 41-42.

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[20] https://babel.hathitrust.org/cgi/pt?id=mdp.39015018597867&view=1up&seq=11 [https://perma.cc/6DCT-UT4P].

### d. Abortion doctors and proponents of abortion rights commonly admit fetuses are human beings.

It might be difficult to defend abortion rights while agreeing that a fetus is a biological human being,[21] but many practitioners of abortion and supporters of abortion rights do so.[22] For example, Dr. Leroy Carhart, who was the abortion doctor at the center of *Gonzales* v. *Carhart*, 550 U.S. 124 (2007), was recently interviewed by the BBC and referred to a fetus as a "baby" on multiple occasions. When asked if he had a problem killing a baby in an abortion, he suggested that he has "no problem if it's in the mother's uterus."[23] In another interview with an abortion doctor, Dr. Curtis Boyd explained that he also holds this understanding of abortion: "Am I killing? Yes, I am. I know that."[24]

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[21] "[It's] been necessary to separate the idea of abortion from the idea of killing . . . The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception," *A New Ethic for Medicine and Society*, CALIFORNIA MEDICINE, Sep. 1970.

[22] Derek Smith, *Pro-Choice Concedes: Prominent Abortion Proponents Concede The Barbarity Of Abortion*, HUMAN DEFENSE INITIATIVE, Nov. 7, 2018, https://humandefense.com/prochoice-concedes [https://perma.cc/GXH8-MAUU].

[23] *BBC Interview of Dr. LeRoy Carhart*, at 0:31, YOUTUBE, Aug. 14, 2019, https://www.youtube.com/watch?v=Sx2nhx98mfs [https://perma.cc/C7WC-EY8E].

[24] *KVUE Austin Interview of Dr. Curtis Boyd*, at 0:23, YOUTUBE, Nov. 6, 2009, https://www.youtube.com/watch?v=bfWB7tcAdhw [https://perma.cc/GYB2-3YFY].

Abortion rights supporter and ethicist Peter Singer has written that being "a member of a given species is something that can be determined scientifically, by an examination of the nature of the chromosomes in the cells of living organisms. In this sense there is no doubt that from the first moments of its existence an embryo conceived from human sperm and eggs is a human being."[25]

Dr. Alan Guttmacher, former Planned Parenthood President and namesake of the Guttmacher Institute, also acknowledged this straightforward scientific fact, "We of today know that man . . . starts life as an embryo within the body of the [pregnant] female; and that the embryo is formed from the fusion of two single cells, the ovum and the sperm. This all seems so simple and evident to us that it is difficult to picture a time when it was not part of the common knowledge."[26]

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[25] Peter Singer, *Practical Ethics*, 2nd ed., CAMBRIDGE UNIVERSITY PRESS, 85-86, 1993.

[26] Alan F. Guttmacher, *Life in the Making: The Story of Human Procreation*, VIKING PRESS, 3, 1933.

### e. Views opposing the position that human life starts at fertilization are unscientific and ideological.

While some oppose the consensus view that human life begins at fertilization, the few counter arguments made are unscientific (philosophical or ideological) or examples of special pleading. In point of fact, no viable alternative to the consensus view has been propounded.[27]

One opposing argument conflates the ontogenetic question (When does a human being's life begin?) with the phylogenetic question (When did all life begin?).[28] But the two questions are obviously distinct. Another is to argue that biological principles are incapable of classifying humans[29] despite the fact that scientific authorities that have done so for countless other animal species on Earth.

Other opponents argue that a human zygote cannot be considered a human individual because it is

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[27] *Supra* at 16.

[28] Thomas D. Gelehrter, M.D., in his letter to Senator Max Baucus in opposition to "Human Life Bill," wrote: "[T]he question you have posed is beyond the reach of science. Scientific evidence would suggest that life is a continuum, that living cells including both sperm and egg all contain the essential elements of life." *The Human Life Bill Appendix*, U.S. GOVERNMENT PRINTING OFFICE, 414, 1982.

[29] Richard J. Paulson, *The unscientific nature of the concept that "human life begins at fertilization," and why it matters*, FERTILITY AND STERILITY, Volume 107, Issue 3, Mar. 2017, https://www.fertstert.org/article/S0015-0282(17)30036-5/fulltext [https://perma.cc/QDE5-C5C4?type=image].

physiologically dependent on another human. Setting aside the fact that infants are also wholly dependent on other humans for survival, this definition of human rejects the humanity of conjoined twins who are physiologically dependent on each other's bodies for survival. It is also sometimes claimed that a human zygote is not yet a human being because many fetuses fail to survive pregnancy and childbirth. But this view is fallacious because whether a human being is able to continue in life is not a condition of his or her status as a human being. A human life is always a life with potential, which may or may not be realized.

In sum, opposing arguments to the scientific consensus that a human's life begins at fertilization typically are fallacious or focus on aspects of biology that are not relevant to the biological classification of human beings.

### 3. Changes in law demonstrate that the human fetus is recognized as a human being.

#### a. Enactment of fetal homicide laws in almost 80% of the states demonstrates that outside of the abortion context a human fetus is legally recognized as a human being.

In 1973, the *Roe* Court claimed that "the unborn have never been recognized in the law as persons in the whole sense." 410 U.S. at 162. That situation has changed markedly since 1972. Legislators in 38 of 50

states have enacted laws that criminalize the intentional killing of a human fetus. These "fetal homicide" laws, which only apply to non-abortive killings, recognize that preborn human fetuses are human beings entitled to protection under the law. In this context, a majority of states today recognize a human fetus as a human person from the moment of fertilization.[30] Relatedly, in a highly publicized case in 2003, a man was convicted of first-degree murder of his pregnant wife and second-degree murder of their preborn son.[31] The case prompted federal legislators to enact the Unborn Victims of Violence Act.[32]

Fetuses are recognized as human persons in numerous contexts: (1) laws that restrict abortion at some point in fetal development, (2) fetal homicide laws, (3) capital punishment of a pregnant person, (4) recovery for fetal deaths under wrongful death statutes, (5) the rights of preborn children under property law, (6) legal guardianship of prenatal humans,[33] (7) the rights of preborn children to a deceased parent's Social Security

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[30] A listing of the states with fetal homicide laws can be found at: *State Laws on Fetal Homicide and Penalty-Enhancement for Crimes Against Pregnant Women*, NATIONAL CONFERENCE OF STATE LEGISLATURES, May 1, 2018, http://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx [https://perma.cc/3XTG-WDLB].

[31] *Scott Peterson Trial Fast Facts*, CABLE NEWS NETWORK, May 1, 2019, https://www.cnn.com/2013/10/15/us/scott-peterson-trial-fast-facts/index.html [https://perma.cc/F4RR-YSL3].

[32] Public Law 108-212, 18 U.S.C. § 1841; 10 U.S.C. § 919a.

[33] *See* Paul B. Linton, *The Legal Status of the Unborn Child Under State Law*, 6 U. ST. THOMAS J.L. AND PUB. POL'Y 141 (2011), https://ir.stthomas.edu/cgi/viewcontent.cgi?article=1093&context=ustjlpp [https://perma.cc/XB8E-G375].

and Disability[34], and (8) posthumously born children have rights of inheritance[35]. Despite the plethora of contexts in which fetuses are recognized as persons under the law, this Court has yet to recognize the personhood of preborn humans.

### b. States are increasingly proposing and enacting laws protective of unborn human beings even when abortion is curtailed as a result.

Today, 43 states have enacted laws protecting prenatal life although abortion is thereby restricted.[36] All but one restrict abortion access at the earliest point permissible by *Roe* (viability), and states have shown an increasing desire to restrict abortion access even earlier. States have enacted laws that restrict abortion: (1) after the sixth week since that has been found to be the point at which a fetus' heart first beats (AL HB314;

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[34] SSR 68-22: SECTION 216(h)(3)(C). – RELATIONSHIP – STATUS OF ILLEGITIMATE POSTHUMOUS CHILD, SOCIAL SECURITY ADMINISTRATION, https://www.ssa.gov/OP_Home/rulings/oasi/53/SSR68-22-oasi-53.html [https://perma.cc/W3TR-89L9].

[35] Alea Roberts, *Where's My Share?: Inheritance Rights of Posthumous Children*, AMERICAN BAR ASSOCIATION, Jun. 13, 2019, https://www.americanbar.org/groups/litigation/committees/jiop/articles/2019/inheritance-rights-posthumous-children [https://perma.cc/36VN-HZZ8].

[36] Only Alaska, Colorado, the District of Columbia, New Hampshire, New Jersey, New Mexico, Oregon, and Vermont do not restrict abortion access at a certain point in a fetus' life. *An Overview of Abortion Laws, State Laws and Policies*, GUTTMACHER INSTITUTE, Dec. 1, 2019, https://www.guttmacher.org/state-policy/explore/overview-abortion-laws [https://perma.cc/K97J-JQJY].

IA SF359) and (2) after the twentieth week since that has been found to be the point at which a fetus can first feel pain (OH SB 127). Altogether, given the Court's willingness to permit states to protect preborn humans and states' desire to do so, it is clear that our nation prizes the protection of humans over the right to abortion. In the present case, Louisiana has explicated this desire to ensure fetuses' protection through legislation.

#### 4. Protective legislation has ameliorated many detriments associated with pregnancy.

When detailing the detriments facing pregnant women in 1973, the Court focused on factors associated with child-rearing: "a distressful life and future," "[m]ental and physical health may be taxed by child care," and "additional difficulties and continuing stigma of unwed motherhood may be involved." 410 U.S. at 153. These difficult social realities that pregnant women faced in 1973 have since been significantly addressed and ameliorated through various programs and legislative enactments, including: Title IX of the Education Amendments of 1972,[37] the Pregnancy Discrimination Act,[38] the Family and Medical Leave Act ("FMLA"),[39]

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[37] 20 U.S.C. § 1681 et seq.

[38] The Pregnancy Discrimination Act of 1978, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/laws/statutes/pregnancy.cfm [https://perma.cc/MH3S-MLFE].

[39] *Family Medical Leave Act*, U.S. DEPARTMENT OF LABOR, https://www.dol.gov/whd/fmla [https://perma.cc/W5XX-LJJP].

the Women, Infants, and Children program ("WIC"),[40] and the Pregnancy Assistance Fund ("PAF").[41] These laws and programs aim to reduce pregnancy-related discrimination and child-rearing burdens.

Other significant developments include the nationwide enactment of Safe Haven Laws[42] which enable mothers to leave their newborns with any fire department, police department, or state agency, with legal impunity against child abandonment laws. In addition, laws passed pursuant to the Adoption and Safe Families Act[43] permit parents to terminate their parental rights for a variety of reasons. In these ways, the detriments associated with bearing and raising a child have been alleviated, giving less basis today for recognizing a right to abortion.

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[40] *Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)*, USDA FOOD AND NUTRITION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, https://www.fns.usda.gov/wic/women-infants-and-children-wic [https://perma.cc/Y5G3-G4T8].

[41] Public Law 111-148.

[42] *Infant Safe Haven Laws*, CHILDREN'S BUREAU/ACYF/ACF/HHS – CHILD WELFARE INFORMATION GATEWAY, https://www.childwelfare.gov/pubPDFs/safehaven.pdf [https://perma.cc/5UNH-MGCT].

[43] U.S. Code – Title 42. The Public Health and Welfare, https://uscode.house.gov/browse/prelim@title42&edition=prelim [https://perma.cc/P9E4-MHPP].

### C. The Court should not continue to follow *Roe* and its progeny in view of *Roe*'s failure to acknowledge that a human fetus is a human being at all stages of the life cycle.

*Roe*'s recognition of a right to abort a previable pregnancy rested on the belief that termination does not extinguish the life of a human being. Developments in science and law since *Roe* reveal that belief to be erroneous. An abortion does take a human's life. Given these changes, the Court should reassess *Roe*'s binding precedential authority. The Court is not reluctant to overturn precedent when "dramatic technological and social changes" occur. *South Dakota* v. *Wayfair, Inc.*, 138 S. Ct. 2080 at 15 (2018). Even in *Casey*, the Court acknowledged that "in constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations." 505 U.S. at 864. With such significant factual and legal changes having occurred since *Roe*, the Court must reexamine *Roe* and the holdings in *Casey* and *Whole Women's Health* that rely on *Roe*.

Reliance interests should not hinder this reexamination. The Court found that reliance interests were not a bar for the Court to overturn its precedents in *West Coast Hotel Co*. v. *Parrish*, 300 U.S. 379 (1937), which reformed how many businesses ran, and in *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, 494-95 (1954), which drastically reformed businesses, physical structures, and the way whites and blacks interacted in society. If reliance was not considered enough to bar those changes in law, reliance on

abortion rights, when birth control methods are widely accessible and 99% of women use them today,[44] should not be considered overwhelming here where the protection of preborn human life hangs in the balance.

## II. SINCE A HUMAN FETUS IS A HUMAN BEING, ACT 620 SHOULD BE SUSTAINED AS A REASONABLE PROTECTION OF A PREBORN PERSON UNDER THE FOURTEENTH AMENDMENT.

### A. The Fourteenth Amendment covers all human beings, including the preborn, and guarantees the due process right to life and equal protection of the laws.

#### 1. The Fourteenth Amendment was intended to protect every human being within the jurisdiction of the U.S.

Around the time of the passage and ratification of the Fourteenth Amendment, promoters stressed the intended *universal* impact of the proposed amendment. Senator Lyman Trumbull of Illinois urged fellow senators to join "hand in hand together to the consummation of this great object of securing to *every human being* within the jurisdiction of the republic equal rights before the law."[45] (emphasis supplied). Senator

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[44] *Contraceptive Use in the United States, Jul. 2018*, GUTTMACHER INSTITUTE, https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states [https://perma.cc/9KWC-6RKD].

[45] William H. Barnes, *History of the Thirty-Ninth Congress of the United States*, HARPER AND BROTHERS, 132, Jan. 1, 1868.

Allen Thurman in 1875 similarly stated his understanding that: "[the Fourteenth Amendment] covers *every human being* within the jurisdiction of a state. It was intended to shield the foreigner, to shield the wayfarer, to shield the Indian, the Chinaman, *every human being* within the jurisdiction of a State from any deprivation of the equal protection of the laws."[46] (emphasis supplied). The Court has also supported this inclusive interpretation.[47]

### 2. Overwhelming evidence now exists that human fetuses are human beings and therefore protected by the Fourteenth Amendment.

Today, there is a clear scientific consensus on the biological view that human fetuses are human beings from the moment of fertilization.[48] The Court can and should take judicial notice under Fed. R. Evidence

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[46] Congressional Record Containing the Proceedings and Debates of the Forty-Third Congress, Second Session, Washington, GOVERNMENT PRINTING OFFICE, 1875, https://books.google.com/books?id=NU9hwULq9BUC&pg=PA1794 [https://perma.cc/JE29-UDMN].

[47] Supreme Court Justice Hugo Black has said that "[t]he history of the [Fourteenth A]mendment proves that the people were told that its purpose was to protect weak and helpless human beings." *Connecticut Gen. Life Ins. Co.* v. *Johnson*, 303 U.S. 77, 87 (1938).

[48] *Supra* at 9-16, e.g., textbooks, articles, interviews, testimonies, and surveys of biologists all form the consensus on when life begins.

201[49] of the fact that a human fetus is a biological human being, a member of the species *homo sapiens*, and a full member of the human family.[50]

It follows that each human fetus is a human being and person entitled to the right to life[51] and to equal protection of the laws under the Fourteenth Amendment of the U.S. Constitution.[52]

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[49] Rule 201 – Judicial Notice of Adjudicative Facts, NATIONAL RULES COMMITTEE, https://www.rulesofevidence.org/article-ii/rule-201 [https://perma.cc/Q4J9-6S6M].

[50] Any attempt to claim a fetus is not a person runs afoul of legislators' and Supreme Court Justices' understanding of "person" within the meaning of the U.S. Constitution (*supra* notes 45-47), as well as human rights principles: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . . [e]veryone has the right to recognition everywhere as a person before the law" (Universal Declaration of Human Rights, UNITED NATIONS, https://www.un.org/en/universal-declaration-human-rights [https://perma.cc/PQ8R-F2S6]).

[51] This is not without precedent in the Western legal tradition: in the 1975 German Constitutional Court abortion decision, the Court found Art. 2.2 of the Basic Law guarantees the right to life of all preborn humans ("Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.", https://www.btg-bestellservice.de/pdf/80201000.pdf [https://perma.cc/8ATK-CTXD]) http://www.hrcr.org/safrica/life/39bverfge1.html [https://perma.cc/6GW6-VZRY].

[52] *Supra* note 2; consider also that several states criminalized abortion when ratifying the Fourteenth Amendment. Charles I. Lugosi, *Conforming to the Rule of Law: When Person and Human Being Finally Mean the Same Thing in Fourteenth Amendment Jurisprudence*, 22 ISSUES L. AND MED. 119, 185-86 (2006).

The *Roe* Court actually agreed with this logic. In contemplating the consequences of recognizing a fetus as a person, the Court admitted that: "[i]f this suggestion of personhood is established, [*Roe*'s] case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment. [*Roe*'s attorneys] conceded as much on reargument." 410 U.S. at 157. Justice Stevens reemphasized this point in *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U.S. 747, 779 (1986): "[T]here is a fundamental and well-recognized difference between a fetus and a human being; indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the state legislatures." In *Webster v. Reproductive Health Services*, 492 U.S. 490, 552-53 (1989), Justice Blackmun (with whom Justice Brennan and Justice Marshall joined, concurring in part and dissenting in part) said that he could not improve on Stevens' statement, thus confirming that all human beings have constitutional rights, and that abortion rights do not entail the right to kill a human being. Accordingly, if a fetus is a human being, its personhood has been established for purposes of protection under the Fourteenth Amendment.

This understanding of "person" is consistent with the understanding of the Amendment held by 19th century lawmakers[53] and the Court.[54] Thus, while some have a philosophical or metaphysical understanding of

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[53] *Supra* at 26-27.

[54] *Supra* note 47.

"person," whereby they claim a fetus must develop consciousness or sentience, reach viability, or be born to achieve personhood, its meaning in the Fourteenth Amendment applies to all humans and includes all preborn humans.[55]

### 3. The Court has a constitutional duty to recognize the right of human fetuses to legal protections as persons, and to begin to build a consensus favoring protection of fetuses under law.

The Court should fulfill its constitutional duty to reform its abortion jurisprudence in light of the realities of the present day.[56] This duty is urgent. Over 50 million humans have been killed with legal impunity in the U.S., in the wake of *Roe*[57]. Studies suggest most Americans hold the principles underlying this view. Ninety-three percent of Americans in a recent survey indicated that a human's life should be protected once it begins.[58]

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[55] *Supra* at 9-16.

[56] Joshua Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, HARVARD JOURNAL OF LAW AND PUBLIC POLICY, Vol. 40, No. 2, May 15, 2017, https://ssrn.com/abstract=2970761 [https://perma.cc/5QGV-NMSX].

[57] Jason Noble, *FACT CHECK: 50 million abortions claim checks out*, DES MOINES REGISTER, Mar. 17, 2015, https://www.desmoinesregister.com/story/news/politics/reality-check/2015/03/06/million-abortions-claim-checks/24530159 [https://perma.cc/4H92-H2AC].

[58] *Supra* note 16.

Such a move would also begin to build a needed consensus of Americans that supports fetal rights. After 46 years of *Roe*, the viability standard has failed to gain traction. Polls suggest only a minority of Americans support legal access to elective abortions before viability.[59] Dr. Guttmacher, the namesake of the organization that was founded as the research arm of Planned Parenthood,[60] suggested "it is difficult to picture a time when it was not part of the common knowledge" that a human's life begins at fertilization.[61] Yet, at the present time polls indicate that only a minority of Americans[62] know this straightforward biological fact. Such a misunderstanding of biology is not trivial, as opinions on the propriety of abortion depend to a great degree on beliefs as to when life begins,[63] and

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[59] Only 21% of Americans support elective abortion after the first trimester, including only 34% of pro-choice Americans, *Americans' Opinions on Abortion*, KNIGHTS OF COLUMBUS MARIST POLL, Feb. 2019, http://www.kofc.org/un/en/resources/communications/americans-opinions-on-abortion.pdf [https://perma.cc/J5SD-2MZC].

[60] *The History of the Guttmacher Institute*, GUTTMACHER INSTITUTE, https://www.guttmacher.org/about/history [https://perma.cc/F6XT-C6SX].

[61] *Supra* note 26.

[62] 35% percent of pro-choice Americans and 59% percent of pro-life Americans said they viewed 'human life begins at conception' as a biological statement. *Americans' Opinions on Abortion*, KNIGHTS OF COLUMBUS MARIST POLL, Jan. 2018, http://www.kofc.org/en/resources/communications/abortion-limits-favored.pdf [https://perma.cc/TAJ4-X2DF]. 23% of pro-choice Americans and 59% of pro-life Americans selected fertilization as the point a human's life begins from a biological perspective. *Supra* note 16.

[63] Among factors predicting Americans' abortion attitudes (e.g., religion, political ideology, value placed on children, beliefs about rights and equality), one's stance on when life begins was

90% of pro-choice Americans believe that, if it became common knowledge that a human's life begins at fertilization, abortion rates would go down and 83% believe it would reduce support for legal abortion access.[64]

In other national controversies, such as school desegregation, the Court has proved itself capable of building consensus.[65] But *Roe*'s viability standard has failed to quell controversy. Another approach is needed. It is within the province of the Court to issue a mandate rooted in the Constitution that could correct the record and reverse the damage *Roe* has done and is still doing to this day. A recent survey found that 76% of Americans feel they deserve to know when a human's life begins to make informed reproductive decisions.[66] Scientists know, yet Americans do not because the country is still under the cloud of *Roe*'s central holding, which has led Americans to believe, and the judiciary to act as if, a nine-ounce newborn in its twenty-third week after conception is a person but a nine-pound fetus in its fortieth week after conception is not.

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by far the strongest predictor. The earlier one believes life begins, the more likely one is to support restrictions on abortion. *Id*. at 217-219.

[64] *Id.* at 223-24.

[65] "It is the dimension present whenever the Court's interpretation of the Constitution calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution. The Court is not asked to do this very often, having thus addressed the Nation only twice in our lifetime, in the decisions of *Brown* and *Roe*." *Casey*, 505 U.S. at 867.

[66] *Id.* at 217.

### B. Louisiana is entitled to protect preborn human persons by passing laws that impact abortion access.

Louisiana, having taken cognizance of the scientific and legal developments noted in this brief, has declared by statute that a human being, from the moment of fertilization, is a person under law. La. Stat. Ann. § 40:1061.8. In the case at bar, the Fifth Circuit observed that "[i]n addition to the concern for maternal health expressed at the hearing, Louisiana has an underlying interest in protecting unborn life." *June Med. Servs., LLC* v. *Gee*, 905 F.3d 787, 792. Louisiana has codified its intention to "regulate abortion to the extent permitted." La. Stat. Ann. § 40:1061.8. Its longstanding policy is that "the unborn child is a human being from the time of conception and is, therefore, a legal person . . . entitled to the right to life." *Id*. Louisiana even enacted a trigger law such that "if those decisions of the United States Supreme Court [legalizing abortion] are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced." *Id*.

Louisiana has a right to pursue this course under the Tenth Amendment, and the duty to do so under the Fourteenth Amendment. Indeed, this Court has a long history of ordering states to follow the Equal Protection Clause.[67] Such decisions have restructured

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[67] *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, 494-95 (1954); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Loving* v.

schools, mandated changes in the legality of same-sex marriage, and required many other changes of law and policy. Recognizing that human fetuses are legal persons, Louisiana has a right and a positive duty to protect them in law. *Roe* cannot be considered as consistent with this duty given that 862,320 abortions occurred in 2017,[68] a figure nearly 50 times greater than the number of postnatal homicides in that year.[69] But since *Roe* is, for the above-stated reasons, no longer entitled to be considered a binding precedent, the Court should uphold Louisiana's Act 620 as a reasonable law aiming to protect preborn human lives within its jurisdiction.

## CONCLUSION

The U.S. Constitution aims to "establish justice" and "insure domestic tranquility . . . to ourselves and to our Posterity." Our Declaration of Independence guarantees the "right to life." The Court is the guardian of the Constitution and thus should take cognizance of the changes in culture, science, and law since *Roe*. The Court should revise its abortion jurisprudence to allow Louisiana and other states to enact laws

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*Virginia*, 388 U.S. 1 (1967); *Lawrence* v. *Texas*, 539 U.S. 558 (2003); *Obergefell* v. *Hodges*, 576 U.S. 1118 (2015).

[68] *Induced Abortion in the United States*, GUTTMACHER INSTITUTE, Sep. 2019, https://www.guttmacher.org/fact-sheet/induced-abortion-united-states [https://perma.cc/7FRX-ZRFL].

[69] "[T]he estimated number of murders in the nation was 17,284," Uniform Crime Report, Crime in the United States, FEDERAL BUREAU OF INVESTIGATION, 2017, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s-2017/topic-pages/murder.pdf [https://perma.cc/W7PY-KRG7].

to protect and further the inalienable and constitutional rights of preborn human beings.

For all of the foregoing reasons, *amicus curiae* respectfully request the Court to reexamine *Roe* and affirm the Court of Appeals' decision to uphold Louisiana's admitting privileges requirement.

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