No. 19-1392

In The Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

Respondents.

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

AMICUS CURIAE BRIEF OF MELINDA THYBAULT, FOUNDER OF THE MORAL OUTCRY PETITION, (INDIVIDUALLY AND ACTING ON BEHALF OF 539,108 SIGNERS OF THE MORAL OUTCRY PETITION), 2,249 WOMEN INJURED BY ABORTION, THE NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES (NIFLA), AND FLORIDA VOICE FOR THE UNBORN IN SUPPORT OF PETITIONERS FOR REVERSAL ON THE MERITS

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INTEREST OF *AMICI*[1]

Amicus Melinda Thybault (pronounced Té-bo), the founder of The Moral Outcry Petition, who has collected over 539,108 signatures as of July 4,[2] and the Signers, are convinced that this Court's abortion cases are a crime against humanity. "Severe criticism" like this, as well as significant major changes in factual and legal circumstances, constitute a compelling new mandate for the Court to do justice by reversing *Roe v. Wade*[3] (hereafter *Roe*), *Doe v. Bolton*[4] (hereafter *Doe*) and *Planned Parenthood v. Casey*[5] (hereafter *Casey*). A true and correct copy of the Petition is attached hereto as Appendix A or *see* www.themoraloutcry.com. Melinda Thybault is filing this *Amicus Curiae* Brief, individually, while acting on behalf of all The Moral

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[1] Blanket Consent to all *Amici* has been granted. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The Justice Foundation is a 501(c)3 non-profit legal foundation that handles cases pro-bono in cases of great public importance. The Foundation is supported by private contributions of donors who have made the preparation and submission of this brief possible. No party contributed to the writing or financing of the brief.

[2] The names of The 539,108 Signers of The Moral Outcry Petition can be viewed at https://www.dropbox.com/s/jf40qpiwfczui6l/Signers%20of%20The%20Moral%20Outcry%20Petition%202021-07.pdf?dl=0.

[3] *Roe v. Wade*, 410 U.S. 113 (1973).

[4] *Doe v. Bolton*, 410 U.S. 179 (1973).

[5] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

Outcry Petition Signers.[6] She is joined by over 2,249 Women Injured By Abortion, The National Institute of Family and Life Advocates (NIFLA), and Florida Voice for the Unborn. *Amici* seek a more humane society with justice for the children, with mercy and compassion for the mothers, and with love for the new families that will be created by Safe Haven laws, if women so choose.

Melinda Thybault and The Signers, as do all citizens, have the right to petition the United States government for redress of grievances. U.S. Constitution Amendment I. With all due respect, *Amici* believe the Supreme Court is the specific branch of their government which has committed this crime against humanity by forcing all states to legalize abortion. Therefore, *Amici* must bring their arguments to this Court, not Congress or the States.

Many states, if not most, would make abortion a crime if they could do so in order to perform one of government's most "self-evident" and important purposes, to protect and defend the fundamental and unalienable right to human life. The Declaration of Independence states: "We hold these truths to be self-evident, that all men are created equal, and endowed by their Creator with certain unalienable Rights, among these are **Life**, Liberty and the Pursuit of Happiness – That to secure these rights, Governments are instituted among Men, deriving their just powers from the

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[6] At the *cert.* phase in this case, The Moral Outcry Petition had 336,214 Signers.

consent of the governed, . . . "[7] (emphasis added) Therefore, it is the duty of this Court to redress and correct this grave injustice which the Court itself created. A crime against humanity occurs when the government withdraws legal protection from a class of human beings resulting in severe deprivation of rights, up to and including death.[8]

Amicus Melinda Thybault and her husband Denny are also passionate practitioners and advocates for children's lives and adoption. After raising three of their own biological children, they felt the call to adopt three additional children through domestic newborn adoption. With these three little adopted ones still in the home, and after reaching menopause, Melinda and Denny "adopted" human beings at the frozen embryo stage. These "unwanted" children were conceived through another couple's in vitro fertilization process. **These frozen embryos were viable outside their mother's womb and thus "potentially able to [and actually did] live outside the mother's womb, albeit with artificial aid."** *Roe v. Wade*, 410 U.S. at 160 (1973). (The Court's definition of viability).

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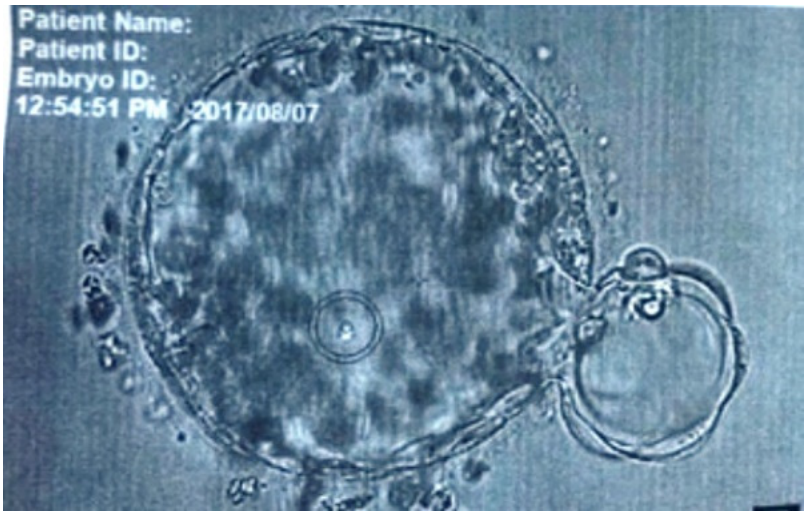
[7] Declaration of Independence, Congress, July 4, 1776.

[8] *See* Crime Against Humanity at https://www.law.cornell.edu/wex/crime_against_humanity and *see* U.N. Office, Genocide Prevention, Crimes Against Humanity https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml; Treaty of Rome (1957). *See also* Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, www.ohchr.org.

These "unwanted" children's biological sex (male or female) at the early embryo stage can actually be determined in the lab six days after fertilization, as *Amicus* Melinda's doctor's notes show:

"EMBYROS GRADE PGS RESULTS
TVBE #4 4AA 46, XX Normal Female
#6 4AA 46, XY Normal Male"

Their first human embryo child was placed in *Amicus* Melinda's womb after being viable, but frozen outside his mother's womb for seven months. *See* his human embryo photo below:



Gideon – Outside His Biological Mother's Womb, *"albeit with artificial aid." Roe* at 160.

That human child, named Gideon Wilberforce Thybault, was later born alive because he was viable and alive outside and inside her womb. Here he is after his birth:

Gideon

This loving act of adoption of frozen human embryos outside the womb at fertilization is the opposite of abortion. Gideon's journey from his viable frozen embryo stage (while outside his biological mother's womb) to his birth through his adoptive mother Melinda as a beautiful child provides living evidence that, with today's science, viability begins at fertilization. Melinda is now carrying Pearl, Gideon's biological sister, in her womb, another human embryo child that has been frozen outside the womb. Melinda is very much "with child" at this time.

Pearl – Viable Outside Her Biological Mother's Womb – She is now in Melinda's Womb

AMICI 2,249 WOMEN HURT BY ABORTION

Amici Operation Outcry Women Injured by Abortion[9] are women who were injured by their own abortions and their abortionists. Most of the *Amici* Women Injured by Abortion suffered grievous psychological injuries, but many suffered severe physical complications

[9] Attached as Appendix A is the list of the initials, first names, or full names of the *Amici Curiae* Women. In order to protect their identities, some of the women have requested that we use initials only or first name only. These women's sworn affidavits or declarations made under penalty of perjury are on file at The Justice Foundation. Protecting the identity of women who have had abortions or seek abortions has been customary since *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973) in which *Roe* and *Doe* both were pseudonyms.

as well. All were exposed to the risk of serious physical injury, as well as serious psychological injuries,[10] and thus have a profound interest in protecting other women from such injuries. All of the *Amici* Women have personally experienced abortion in actual practice, not just theory.

Amici Women have experienced first-hand, some multiple times, the callous reality of the abortion industry. They and the vast majority of women who go to high volume abortion facilities like Respondent's, are treated as a business asset or customer, not as a patient. Therefore, the word "patient" will not be used in this Brief because there is no real doctor/patient relationship in most abortion facilities, only the technical or legal fiction of a doctor/patient relationship. It is standard practice for a woman to not even see her doctor until she has paid her money and is prepped for the abortion. A normal doctor-patient relationship does not exist, despite the fundamental expectation espoused in *Roe v. Wade*, 410 U.S. 113 (1973) (hereafter "*Roe*"), that the decision should be left to the woman and her doctor alone.

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[10] *See, e.g.*, "Women who had undergone an abortion experienced an 81% increased risk of mental health problems, and nearly 10% of the incidence of mental health problems was shown to be attributable to abortion." *See* Coleman, Priscilla, "Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009," The British Journal of Psychiatry (2011) 199, 180-186, DOI: 10.1192/bjp.bp.110.077230 (A meta-analysis of 22 studies).

NIFLA

The National Institute of Family and Life Advocates (NIFLA) is a national legal network for pro-life pregnancy resource centers and medical clinics. Its purpose is to provide legal training, consultation, and education to its membership of pro-life centers, which number 1,600. Of these members, over 1,300 operate as medical clinics providing medical services, such as ultrasound confirmation of pregnancy to mothers contemplating abortion, and STI testing and treatment.

It is the mission of NIFLA and its members to provide alternatives to abortion for women considering abortion through the provision of life-affirming services. The legal status of abortion impacts the direction and programs offered in such agencies. Thus, NIFLA is an interested party in this case.

FLORIDA VOICE FOR THE UNBORN

Florida Voice for the Unborn is a pro-life grassroots lobbying group based in Florida's capital city, Tallahassee. It exists to positively influence laws and regulations that affect, directly and indirectly, all infant lives – from the moment of conception onward. The work of Florida Voice for the Unborn is guided by faith in God's only Son, Jesus Christ. The group seeks to attract the support of all Christians as well as other persons of good will, while operating entirely independently from any church or other organization. The prior decisions of this Court have forced states like Florida to permit abortion. As such, Florida Voice for

the Unborn's lobbying efforts at the state and local levels are greatly affected by abortion's legality. Accordingly, Florida Voice for the Unborn has an interest in this case's outcome.

SUMMARY OF THE ARGUMENT

Roe, *Doe* and *Casey* should be reversed at this time under *stare decisis* and *The Law of Judicial Precedent*[11] in the interest of Justice.

Five sound and necessary reasons to reverse *Roe*, *Doe*, and *Casey* exist independently, under *The Law Of Judicial Precedent*, on grounds that would warrant such a course, even if the makeup of the Court had remained unchanged, *see The Law of Judicial Precedent*, §50, p. 415. These reasons include "severe criticism," new science, women's actual abortion experience, and major changes in factual circumstances and law.

A. First, Abortion Is A Crime Against Humanity.

The first sound and necessary reason for overturning a Supreme Court decision is as follows:

> §47[D] "*The decision has been met with general dissatisfaction, protest or* ***severe criticism***. *The Law of Judicial Precedent*, at p. 399 (emphasis added)

[11] By Garner, Gorsuch, Kavanaugh, *et al*. with a foreword by Justice Stephen Breyer. Thomson Reuters (2016).

Through The Moral Outcry Petition, over 500,000 Americans have correctly identified legalized abortion as "a crime against humanity" which is very, very "severe criticism." With due respect to the Court, every single signature on the Moral Outcry Petition is, by itself, evidence under *The Law of Judicial Precedent*[12] because each person calling abortion a crime against humanity is "severely" criticizing this Court's abortion jurisprudence. *Amici* respect the Court and its desire to do justice, and believe the Court will eventually find the wisdom, courage, and fortitude to change the law in light of these remarkable, new, changed circumstances and continued "severe criticism" for 48 years. Most reasonable observers would agree that *Roe* has been met with general dissatisfaction and major protest since its inception. The Court has an ethical and moral duty to never forget past crimes against humanity, to never stand by silently while one is occurring today, and to rescue the perishing.[13]

B. Second, Abortion Hurts Women.

The second reason or "new circumstance" is that substantial new evidence now shows that abortion hurts women, as does the *Amici* experience expressed in this Brief. *See* 4,728 Testimonies of Women Injured

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[12] *Id.* at 400.

[13] "Yes, rescue those being dragged off to death – Won't you save those about to be killed? If you say, 'We know nothing about it,' won't He who weighs hearts discern it? Yes, He who guards you will know it and repay each one as his deeds deserve." Prov. 24:11.

By Abortion, https://www.dropbox.com/sh/p2fi4taxmrbivyz/AAAP_aenldXwXb34Ktcq_X8la?dl=0. These testimonies were collected by Operation Outcry, a project of The Justice Foundation, beginning in 2000 on behalf of Norma McCorvey (the former *Roe of Roe v. Wade*) and Sandra Cano (the former *Doe* of *Doe v. Bolton*) as they filed Rule 60 Motions in their efforts to reverse their own cases.

The Court probably thought it was helping women by freeing them from the unwanted child in *Roe*. The Court did not know in 1973 that millions of women would endure "devastating psychological consequences," and often physical injury. By 1992, the Court became painfully aware that abortion can cause "devastating psychological injuries," *Casey* at 882, and by 2007 that "severe depression and loss of esteem can follow," *Gonzales* at 159.

C. Third, Safe Haven Laws in All 50 States.

This case presents an excellent opportunity to reverse *Roe*, *Doe*, and *Casey*, while still preserving for women the freedom of "*Roe*" from the burden of raising an unwanted child – a freedom which *Casey* felt constrained to continue, since there was "**nothing more**" for women at that time. *Casey* stated:

> "Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and

> society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted. . . . Her suffering is too intimate and personal for the State to insist, **without more**, upon its own vision of the woman's role, . . . " *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) page 853. (emphasis added)

Yet today there is "**much more**." **As a matter of law, there are no more "unwanted" children in America because of the major change in circumstances known as Safe Haven laws**. Because of Safe Haven laws in all fifty states, women can now have the "freedom" of *Roe*, and make their own decision about the ultimate direction of their life, without the crime against humanity of killing the child and injuring themselves.

Today, in all fifty states, a better alternative to abortion exists through the Safe Haven laws. This is a major evolution of society and the law of criminal neglect or abandonment starting in 1999. Freedom from the "unwanted" child can now be obtained without killing the "**infant life**" (per *Gonzales*, at 159) that this Court has already recognized exists in the womb when it is aborted. **Even if states ban or restrict abortion completely, or if only one clinic exists in a state, no woman would have to care for a baby if she does not have the desire or ability to do so.**

Safe Haven laws in all fifty states allow every woman to relinquish her child at a designated place within a designated time after birth and eliminate all burden of parenting and providing for the unwanted child. She can transfer responsibility to the state with no questions asked, no legal procedure, and unlike abortion, at no cost.

D. Fourth, Millions Of Women Desire to Adopt Newborn Infants. Instead Of Being Killed, Children Will Be Loved By These Waiting Families. Safe Haven Children Will Be Adopted, Not Indefinitely Placed In Foster Care.

There are millions of Americans who desire to adopt newborn infants. Safe Haven will allow these children to go to loving homes instead of a painful, early death. The result would be a more just, humane, and healthy society, even for women who might choose abortion today. Thus, it is time to advance to a society in which we provide justice for the "infant," mercy to the mother, and love to the families that are longing for children.

E. Fifth, New Evidence Proves Life Begins At Conception.

Fifth, new science, including but not limited to DNA testing, in vitro fertilization (IVF) and sonograms, which were not available to this Court in 1973, now show what the *Roe* Court **did not know**, or even

the *Casey* Court, **that life begins at conception**. But the Court has now correctly found in *Gonzales* that abortion terminates an "**infant life**," at 159 at the moment of the abortion.

ARGUMENT

1. *Roe*, *Doe*, And *Casey* Are Truly A Crime Against Humanity Like *Dred Scott* And *Plessy v. Ferguson*. Recognizing After 48 Years That Abortion Is Indeed A Crime Against Humanity Constitutes "Severe Criticism" Of the Decisions Requiring Abortion To Be Legal In All States. This Is A Sound And Necessary Reason Under *The Law of Judicial Precedent* to Reverse Them.

One of the reasons for overturning a Supreme Court decision is:

> "§ 47. Reasons for Overruling A Horizontal [Supreme Court] Opinion" . . .
>
> "(D) The decision has been met with general dissatisfaction, protest, or severe criticism." *The Law of Judicial Precedent* p. 400.[14]

See also Ramos v. Louisiana, per Kavanaugh, concurring, saying the prior decision must not just be wrong,

[14] By Garner, Gorsuch, Kavanaugh, *et al*. with a foreword by Justice Stephen Breyer. Thomson Reuters (2016).

but "egregiously" wrong.[15] *Ramos* recently overturned a 1972 precedent of this Court.

Abortion is a crime against humanity. Like *Dred Scott v. Sanford*, 60 U.S. 393 (1857), which purported to enshrine slavery in the Constitution forever. It is unjust. *Dred Scott* also decided unjustly that African Americans "had no rights which the white man was bound to respect", at 400. The *Dred Scott* decision prevented national compromise from occurring and many commentators feel it eventually led to the Civil War.[16] A crime against humanity occurs when the government withdraws legal protection from a class of human beings, as this Court did in *Scott*.[17]

While the Court has now recognized that the human in the womb when it is aborted is an "**infant life**," *Gonzales* at 159, and the Court has substantially reduced abortion from *Roe* to a mid-level "right" subject to "undue burden" analysis in *Casey*, the Court has not yet fully reversed *Roe*, *Doe*, and *Casey*. No American citizen should have to live under, nor as history tragically demonstrates, should they stand by silently, while

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[15] *Ramos v. Louisiana*, 140 S. Ct. 1390, at 1414-1415 (2020). Kavanaugh, J., *concurring in part*. Slip Opinion, p. 8.

[16] *See, e.g.*, https://civilwaronthewesternborder.org/encyclopedia/dred-scott-v-sandford-1857.

[17] *See* Crime Against Humanity at https://www.law.cornell.edu/wex/crime_against_humanity *and see* U.N. Office, Genocide Prevention, Crimes Against Humanity https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml; Treaty of Rome (1957). *See also* Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, www.ohchr.org.

their government sanctions and even promotes crimes against humanity.

The Court has fully recognized that: "While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the **infant life** they once created and sustained. . . . **Severe depression and loss of esteem can follow**." *Gonzales v. Carhart*, 550 U.S. 124, at 159 (2007) (emphasis added).

Roe, *Doe* and *Casey* also constitute a crime against humanity like *Plessy v. Ferguson*, 163 U.S. 537 (1896) (hereinafter *Plessy*). *Plessy* denied legal protection to a class of human beings, African-Americans, as *Dred Scott* did. *Plessy* ignored the plain language of the Fourteenth Amendment, as *Roe* does. *Plessy* accepted the gloss that "separate but equal" was "equal;" while *Roe* ignores the right to "life" explicitly mentioned, but *not yet* guaranteed in full, in the Fifth and Fourteenth Amendments ("nor shall any state deprive any person of **life**, . . . without due process of law,") emphasis added.

The preferred dehumanizing euphemism for abortion is "termination of pregnancy." But what is a human mother pregnant with? A human infant life. *Gonzales*, *id*. Unlike the abortion industry, which only mentions "liberty" (but not "life," both of which are guaranteed in the same sentence), the Fourteenth Amendment actually protects the explicitly mentioned

right to life.[18] When the government withdraws legal protection from a class of human beings, it is the classic definition of a crime against humanity.[19]

Amici remind this Court of its universally respected decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (hereinafter "*Brown*") for two major reasons.[20] First, the Supreme Court reversed its own 58-year-old decision which had approved segregation in *Plessy v. Ferguson*. Reversal did not require a constitutional amendment or civil war, but it was controversial. *Roe* is only 48 years old, not 58. Second, *Plessy*'s Court-approved segregation as the "law of the land" was well settled, and unjustly relied upon by millions. Yet the Court courageously, justly, and wisely

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[18] *See* "Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?" Craddock, J., Harvard J. of Law and Public Policy, Vol. 40, Nov. 2, 2017 (concluding it does). Many commentators have called on the Court to reverse *Roe v. Wade*, e.g. most recently Forsythe, Clark, "A Draft Opinion Overruling *Roe v. Wade*, 16 Georgetown J. of Law & Public Policy, #2 (Spring 2018); *see also* Calabresi, Steven G. Text, Precedent, and the Constitution: Some Originalist and Normative Arguments for Overruling *Planned Parenthood v. Casey*, 22 Const. Commentary, 311 (2005).

[19] *See* Crime Against Humanity at https://www.law.cornell.edu/wex/crime_against_humanity and *see* U.N. Office, Genocide Prevention, Crimes Against Humanity https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml; Treaty of Rome (1957).

[20] Justice Kavanaugh calls *Brown* the "single most important and greatest decision in the Court's history, which repudiated the separate but equal doctrine of *Plessy*." *Ramos v. Louisiana*, 140 S. Ct. 1390, at 1412 (2020) (Kavanaugh *concurring*), Slip Opinion, p. 4.

overturned its own 58-year-old precedent, its own "crime against humanity" to use the modern expression. *Brown* was ultimately vindicated by widespread acceptance. *Roe* is still not uniformly accepted even after 48 years.

In addition, there is the persuasive moral and legal argument that "*the intentional taking of human life by private persons is always wrong*." "The Right to Assisted Suicide," Harvard Journal of Law and Public Policy, Gorsuch, 2000, Summer; 23(3), 599-710, at 697. The Court in *Gonzales* has acknowledged that abortion involves a "painful and difficult moral decision," and the American common law has always been based on the basic proposition that protecting human life is a moral good. "Human life qualifies as such a basic value." *Gorsuch*, *id.* at 699.

> "The fundamental and irreducible value of human life is further evidenced by the fact that it is essential to well-being. To have a good and fulfilled life, one must have life. Human beings are not merely rational beings, but corporeal bodies. Their fulfillment depends on their having physical lives, life is intrinsic to human fulfillment." *Id*. . . .
>
> Justice Gorsuch goes on to state:
>
> "The alternative to an absolute rule against private, intentional killing, moreover is troubling territory." *Id.* at 701.

Justice Gorsuch makes a compelling "argument for respecting life as a sacrosanct good" in the article.

Id. at pages 696-702. *Amici* agree wholeheartedly, as does the common law and American tradition.

Most doctors have a conscience that is bothered by the taking of "**infant life**" per *Gonzales*. Human life in the womb is an undeniable fact, and killing that life can produce depression and trauma in anyone, including doctors, who take that life.[21] Only one abortion facility exists in Mississippi despite an abundance of qualified doctors, because most doctors do not want to kill "**infant life**."

2. ABORTION HURTS WOMEN

A Unanimous Supreme Court (*Gonzales*), *Amici* 2,249 Women Injured By Abortion, Even Planned Parenthood and Abortionists, Admit That Abortion is "Painful and Difficult" for Women.

The Supreme Court in *Gonzales* unanimously came to the conclusion that abortion is a "difficult and painful decision," at 159. *Gonzales* stated, "**Whether or not to have an abortion is a difficult and painful moral decision**."[22] The five-person majority consisted of Justices Kennedy, Roberts, Thomas, Alito and Scalia. The four Justices in dissent, Justices Ginsburg, Stevens, Souter, and Breyer, also said: "**The Court is surely correct that, for most women, abortion is**

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[21] "OB-GYNs Remain Conflicted About Abortion, Survey Shows, But Pills May Be Changing Attitudes" Los Angeles Times, Melissa Healey, Feb. 8, 2019. https://www.latimes.com/science/sciencenow/la-sci-sn-doctors-medical-abortion-20190208-story.html.

[22] *Gonzales*, at 159.

a painfully difficult decision." The dissent left out the word "moral" as part of the difficulty. *Gonzales*, FN 7, at 183, per Ginsburg, *dissenting*. Thus, all nine justices agreed that abortion is "difficult" and "painful." Why? Because at some level, most people "know" or "sense" that abortion kills a human life.

Planned Parenthood has recently admitted through its chief physician in Missouri, that: "Sometimes the choice to end a pregnancy, even when it is a highly desired one, is a really difficult one for people", Dr. Eisenberg, Planned Parenthood St. Louis Clinic Director.[23] Abortionist Lisa Harris states: "I know that for every woman whose abortion I perform, I stop a developing human from being born . . . Abortion feels morally complicated because it stops a developing **human being** from being born, which, of course, it does."[24] (emphasis added) Safe Haven ends the conflict between the mother and her child, and the conflict between our rightful compassion for both the mother and the child.

Amy Hagstrom-Miller, the abortion business owner in this Court's 2016 abortion case *Whole Women's Health v. Hellerstadt*, 579 U.S. ___, 136 S. Ct. 2292 (2016) admitted: "*Nobody gets pregnant to get an abortion.*"[25] To further understand the pain of Late Term

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[23] NBC News, nbcnews.com by Ericka Edwards and Ali Galarte, May 28, 2019.

[24] "My Day as An Abortion Care Provider," Oct. 22, 2019, New York Times OP/ED.

[25] 5th Circuit ROA, 3091, line 17, 579 U.S. ___, 136 S. Ct. 2292, (2016) (Docket No. 15-274).

Abortion, *see Amicus Curiae* Brief of 375 Women Injured By Second and Third Trimester Late Term Abortion filed in this case. *Amici* 2,249 Women Injured By Abortion's written affidavits and declarations under penalty of perjury describe for this Court the women's gruesome experience of abortion's "devastating psychological consequences" *Casey* at 882 from abortion at all stages of pregnancy.[26] Many, many women are morally conflicted as this Court has recognized. Many women feel they have murdered their own child, with devastating consequences.[27]

The affidavit of Norma McCorvey, the "*Roe*" of *Roe v. Wade* describing her experience working in the abortion industry, which changed her mind about abortion and caused her to seek reversal of her case, is still on file in *McCorvey v. Hill*, 385 F. 3d 846 (5th Cir. 2004) (*cert*. denied) (Supreme Court Docket No. 04-967).

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[26] See 4,728 Testimonies of Women Hurt By Abortion, https://www.dropbox.com/sh/p2fi4taxmrbivyz/AAAP_aenldXwXb34Ktcq_X8la?dl=0.

[27] These testimonies were collected by Operation Outcry, a project of The Justice Foundation, beginning in 2000 on behalf of Norma McCorvey (the former *Roe of Roe v. Wade*) and Sandra Cano (the former *Doe* of *Doe v. Bolton*) as they filed Rule 60 Motions in their efforts to reverse their own cases.

3. Safe Haven Laws, Like Mississippi's, Render Abortion Obsolete And Constitute A Major "Change In Circumstances." Therefore, They Are A Sound And Necessary Reason To Reverse *Roe*, *Doe* And *Casey* Under *The Law Of Judicial Precedent*. Mississippi's Safe Haven Law Meets The Unwanted Child Needs Of Women Without Killing "Infant Life" (*See Gonzales*), or Injuring Women With Abortion Trauma.

Today, there is a better way to give women the freedom and liberty envisioned by *Roe* and *Doe* without killing the "**infant**" in the womb, *Gonzales*, at 160, and injuring the child's mother. That better way is the dramatic social evolution in the law of criminal child abandonment called Safe Haven laws. Beginning seven years after *Casey*, in 1999, today all fifty states have now adopted Safe Haven laws which allow women to be free from the burden of an unwanted child without killing the child. These laws remove all risk of injury to herself from post-abortion trauma **as a matter of law**.[28]

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[28] *See* www.nationalsafehavenalliance.org for a quick summary of every state with its own unique law. *See* also: Ala. Code §§ 26-25-1 to -5; Alaska Stat. §§ 47.10.013, .990; Ariz. Rev. Stat. Ann. § 13-3623.01; Ark. Code Ann. §§ 9-34-201, -202; Cal. Health & Safety Code § 1255.7; Cal. Penal Code § 271.5; Colo. Rev. Stat. § 19-3-304.5; Conn. Gen. Stat. §§ 17a-57, -58; Del. Code. Ann. tit. 16, §§ 902, 907-08; D.C. Code §§ 4-1451.01 to .08; Fla. Stat. § 383.50; Ga. Code Ann. §§ 19-10A-2 to -7; Hawaii Rev. Stat. §§ 587D-1 to -7; Idaho Code Ann. §§ 39-8201 to -8207; 325 Ill. Comp. Stat. 2/10, 2/15, 2/20, 2/27; Ind. Code § 31-34-2.5-1; Iowa Code §§ 233.1, .2 ; Kan. Stat. Ann. § 38-2282; Ky. Rev. Stat. Ann.

Under the Court's current legal abortion regime, women have the "liberty" to kill "**infant life**," but when they do so, many suffer the associated trauma, grief, and "devastating psychological consequences" as stated in *Casey* at 882, and "severe depression and loss of self-esteem" as stated in *Gonzales* at 159, that comes from killing an innocent human being.[29] Under Safe Haven laws, any woman can now relinquish her baby at a hospital, fire station or other designated safe place in each state, within a set period of time, which is 3 days in Mississippi.[30] She will suffer zero abortion related trauma, which *Amici* Women attest can last for decades, if there is no abortion.

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§§ 216B.190, 405.075; La. Child. Code Ann. arts. 1149-53; Me. Rev. Stat. tits. 17-A, § 553, 22 § 4018; Md. Code Ann. Cts. & Jud. Proc. § 5-641; Mass. Gen. Laws Ch. 119, § 39 1/2; Mich. Comp. Laws §§ 712.1, .2, .3, .5, .20; Minn. Stat. §§ 145.902, 260C.139, 609.3785; Miss. Code Ann. §§ 43-15-201, -203, -207, -209; Mo. Rev. Stat. § 210.950; Mont. Code Ann. §§ 40-6-402 to -405; Neb. Rev. Stat. § 29-121; Nev. Rev. Stat. §§ 432B.160, .630; N.H. Rev. Stat. Ann. §§ 132-A:1 to :4; N.J. Stat. Ann. §§ 30:4C-15.6 to -15.10; N.M. Stat. Ann. §§ 24-22-1.1, -2, -3, -8; N.Y. Penal Law §§ 260.00, .10; N.Y. Soc. Serv. Law § 372-g; N.C. Gen. Stat. § 7B-500; N.D. Cent. Code §§ 27-20-02, 50-25.1-15; Ohio Rev. Code Ann. §§ 2151.3515, .3516, .3523; Okla. Stat. tit. 10A, § 1-2-109; Or. Rev. Stat. § 418.017; 23 Pa. Cons. Stat. §§ 4306, 6502, 6504, 6507; R.I. Gen. Laws §§ 23-13.1-2, -3; S.C. Code Ann. § 63-7-40; S.D. Codified Laws §§ 25-5A-27, -31, -34; Tenn. Code Ann. §§ 36-1-142, 68-11-255; Tex. Fam. Code Ann. §§ 262.301, .302; Utah Code Ann. §§ 62A-4a-801, -802; Vt. Stat. Ann. tit. 13, § 1303; Va. Code Ann. §§ 8.01-226.5:2, 18.2-371.1, 40.1-103; Wash. Rev. Code § 13.34.360; W. Va. Code § 49-6E-1; Wis. Stat. § 48.195; Wyo. Stat. Ann. §§ 14-11-101, -102, -103, -108.

[29] *See* Abortion Hurts Women Section 2 *infra*.

[30] Miss. Code Ann. §§ 43-15-201, -203, -207, -209.

The Safe Haven law is totally free to women, unlike abortion, making this liberty equally available to the rich and poor.[31] Freedom or "liberty" from the unwanted child described in *Roe* and *Casey* is now absolutely and totally guaranteed in all states, with much wider availability than abortion, at no cost to the woman, unlike abortion. Even small communities usually have a fire station, police station or emergency room of some kind. Some type of "medical facility" is far more abundant than abortion facilities. There are about 128 hospital Safe Havens in Mississippi, plus adoption agencies.[32]

Using Safe Haven laws, women don't have to suffer the grief and trauma that many, many women have experienced after their abortion. Safe Haven laws often give women far longer than the abortion industry does to decide which option they will choose – to personally care for the child or Safe Haven relinquishment or traditional adoption. Abortionists constantly pressure women to make quick decisions about abortion, claiming it is riskier the longer one waits, while also telling women it is "safe" no matter how late into the second or third trimester one has the abortion. Safe Haven Laws give the full length of pregnancy, plus

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[31] *See* www.childwelfare.gov (which also lists all 50 state Safe Haven laws). *See* Lynn Marie Kohm, "*Roe's Effects on Family Law*, Washington and Lee Law Review, Vol. 71, p. 139, 2014 discussing Safe Haven laws at 1354-1358.

[32] Safe Havens vary, but are usually hospitals, emergency rooms, police or fire departments or adoption agencies. Mississippi has chosen either a hospital emergency room or licensed adoption agency.

additional time after birth to decide. State laws vary with 3, 30, 60, 90 days, commonly, or up to 1 year after birth in North Dakota.[33] If she is low-income, a woman can have Mississippi Medicaid pay for her pre-natal care and delivery of the baby at no cost, with no legal obligation to care for the child whatsoever. The Safe Haven law eliminates the need for any woman of any color, income, or sexual orientation, to bear the burden of an unwanted child.

Low-income women are much better protected by the Mississippi Safe Haven law than they are by the abortion industry because **baby relinquishment is free to all women as opposed to an often expensive abortion, especially late term abortions**. The abortion industry and its supporting *Amici* express concern for low-income women and are **willing to disproportionately abort low-income women's children, especially Black children, as Planned Parenthood has admitted**. But Mississippi has decided this concern can be better served by providing free Safe Haven relinquishment and 18 years of freedom from parenting and providing for the child through adoptions by the millions of waiting families.[34] With the Safe Haven laws, no abortion-related guilt or trauma from taking the life of one's own child will fall on the pregnant mother.

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[33] www.nationalsafehavenalliance.org.

[34] "Thousands line up to adopt Safe Haven baby", Christy Cooney, The Sun, June 28, 2019. https://www.thesun.co.uk/news/9397746/new-born-baby-plastic-bag-atlanta-georgia/.

America is deeply divided on the issue of abortion. Yet everyone wants to help women in difficult pregnancies. Many view abortion as a "**necessary** evil." Many people view it as simply "evil." With Safe Haven, abortion is now absolutely an "**unnecessary** evil." Since, as *Gonzales* admits, abortion is the taking of "**infant life**," it is in fact a crime against humanity. That is why even *Casey's* attempted "compromise" designed to end the controversy has been met with intense, "severe criticism," including being called "The Worst Constitutional Decision of All Time."[35]

Indeed, Safe Haven laws did not exist in the past when many women of older generations had their abortions. *Casey* (1992) did not consider Safe Haven laws since the first came into existence seven years later in Texas in 1999. The abortion industry does not inform women of these Safe Haven laws, nor of the "devastating psychological consequences" (*Casey*) or "severe depression and loss of esteem" (*Gonzales*) suffered after abortion. *See* testimonies of Women Injured By Abortion.[36]

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[35] "The Worst Constitutional Decision of All Time," Prof. Michael S. Paulsen, 78 Notre Dame L. Rev. 995 (2003) (cited by 144 related articles. Called "horrendous" by Ed Whelan's Bench Memo, June 29, 2012, stating only *Dred Scott* might be worse.)

[36] *See* 4,728 testimonies of Women Injured By Abortion collected by Operation Outcry, a project of The Justice Foundation beginning in 2000 on behalf of cases for Norma McCorvey, the "*Roe*" of *Roe v. Wade* and Sandra Cano, the "*Doe*" of *Doe v. Bolton*, as they eventually asked this Court to reverse their own cases through Rule 60 Motions. https://www.dropbox.com/sh/p2fi4taxmrbivyz/AAAP_aenldXwXb34Ktcq_X8la?dl=0.

The burden of an "unwanted" child was a large factor in the Court's analysis in *Roe* itself and *Casey*.

> "Maternity or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the **unwanted** child, and there is the **problem** of bringing a child into a family already unable, psychologically and otherwise, to care for it." *Roe*, 410 U.S. 113 at 153. (emphasis added)

But today, with Safe Haven as a far better alternative, **as a matter of law**, there are no unwanted children in America and legal transfer of responsibility is *free* to every woman for any or no reason, if she so chooses.

The Safe Haven laws completely eliminate the "reliance" interest which so concerned the Court in *Casey*. Now, in exchange for relatively short *months* of pregnancy, society (either the state or adopting parents) will provide 18 *years* of freedom from the once "unwanted child" burden. **This is a major, substantial change in circumstances that has never existed before in American history.** Today in every state, every woman has a deeply controversial right to 1) abort her child in the womb – the "**infant life**" which used to be treated as murder in most states, or to 2) the uniformly accepted transfer of responsibility for the child, (which used to be treated as criminal neglect or abandonment). *Amici* and The Signers believe the

right to abort should be eliminated in favor of Safe Haven transfer of responsibility, if she chooses.

4. Fourth, Two Million Women Desire To Adopt Newborn Children Every Year Which is a "Major Change in Circumstances" Under *The Law of Judicial Precedent*.

As a fourth major "change in circumstances," at least two million Americans every year are now waiting to adopt newborn children. Far more people are waiting to adopt newborns than the number of aborted children per year.[37] This development satisfies *Casey*'s *stare decisis* reliance test because there is no longer a need for abortion to give freedom from unwanted children to women. Women do not seek abortion for its own sake, they seek to be free of the child.

So it is time to say as a country, "Don't kill the children. Don't hurt yourself. Give us your baby and we will transfer those children to the vetted families who are waiting to give them a loving home. We will love them all: love the mother, love the baby, love the adoptive families."

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[37] American Adoptions https://www.americanadoptions.com/pregnant/waiting_adoptive_families.

5. Fifth, Today Science Clearly Demonstrates That Life Begins At Conception. New Scientific Advances Justify Changing Prior Precedent Under *Stare Decisis*.

Specifically in 1973, in *Roe*, the Court stated:

> "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, **the judiciary, at this point in the development of man's knowledge**, is not in a position to speculate as to the answer." at 160. (emphasis added)

The Court did not have DNA testing, sonograms, and in vitro fertilization (IVF) in 1973. Supreme Court opinions should change when science advances. No society or court should be stuck in 1970's science. One simple example is that DNA testing was not even used in the courts until the mid-1980's. Anonymous DNA testing of the "**infant life**" in the womb and a DNA sample from the mother now shows that two separate humans exist. Sonograms, another example which started after *Roe*, convinced Dr. Bernard Nathanson, the founder of NARAL, as it should this Court, that he was wrong to kill innocent human life.[38]

Children like Gideon are undeniably and obviously viable at the frozen embryo stage,

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[38] Grimes, New York Times, Feb. 21, 2011. "B.N. Nathanson, 84, Dies; Changed Sides on Abortion." https://www.nytimes.com/2011/02/22/us/22nathanson.html.

outside their biological mother's womb. A complete, separate, unique, living human being exists from the moment of fertilization. A human being is created when the sperm and the egg are fused in fertilization. Today, with in vitro fertilization, that process can and does occur outside the mother's womb in many cases. Pearl was frozen for over 4 years. **Pearl was alive and viable, though frozen and maintained artificially outside her biological mother's womb, until ready to be received into Melinda's womb.**

If one believes in human rights today, the most important question should be, "When do 'human rights' begin?" The answer is when we become human – at conception. *Amicus* Melinda Thybault's "adopted" son, Gideon, was alive and viable outside the womb.

Human fathers and human mothers produce humans. The Eighth Circuit Court of Appeals has already upheld South Dakota's law requiring abortionists (against their will and financial self-interest) to tell a woman that "*abortion will terminate the life of a whole, separate, unique, living human being*," defined as a member of the human species (Homo sapiens). *Planned Parenthood v. Rounds*, 530 F. 3d 724 (8th Cir. 2008) (*en banc*). The Eighth Circuit reviewed the voluminous evidence and determined there was adequate scientific evidence to uphold the law, which was fact based, not opinion or ideology, just as this Court has courageously done in recognizing the child in the womb as "**infant life**" in *Gonzales*.

CONCLUSION

The Law of Judicial Precedent further notes in Section 50, p. 415,

> "A change in the court's organization or in judicial personnel should not throw former decisions open to reconsideration or justify their reversal **except on grounds that would have warranted such a course if the makeup of the court had remained the same**." (emphasis added).

The majority of lower court federal judges, who are the only ones to have considered, based on factual evidence presented, these five reasons to reverse *Roe*, *Doe* and *Casey*, have been persuaded by them that it is time to re-evaluate *Roe*, *Doe*, and *Casey*. For example, in a unanimous decision, the Eighth Circuit recently urged this Court to consider re-evaluating abortion based on these five reasons stating: " . . . good reasons exist for the [Supreme] Court to reevaluate its jurisprudence." *MKB Management Corp., et al. v. Wayne Stenehjem, et al.*, 795 F.3d 768, at 733 (2015) (*cert*. denied). The Court further stated:

> "To begin, the Court's viability standard has proven unsatisfactory because it gives too little consideration to the 'substantial state interest in potential life throughout pregnancy.' *Casey*, 505 U.S. at 876, 112 S. Ct. 2791 (plurality opinion)."

The Eighth Circuit also concludes at 775:

> "These declarations state women may receive abortions without consulting the physician beforehand and without receiving follow-up care after, *see*, *e.g.*, J.A. 1550, that women may not be given information about the abortion procedure or its possible complications, *see*, *e.g.*, J.A. 1541, and that the abortion clinic may function "like a mill." J.A. 1556. The declaration by Dr. John Thorp, a board-certified obstetrician and gynecologist, further states that "coercion or pressure prior to the termination of pregnancy occurs with frequency." J.A. 973. One woman declared her husband threatened to kick her out of the house and take her children away forever if she did not abort a pregnancy that was the product of an affair. J.A. 1555."

In addition, the Eighth Circuit cited the desire of Norma McCorvey, the former "*Roe*" of *Roe v. Wade* and Sandra Cano, the former "*Doe*" of *Doe v. Bolton* to reverse their own landmark cases through Rule 60 Motions.[39] And, finally the Court cited the argument that by enacting "a law that permits parents to abandon their unwanted infants at hospitals without consequences, it has reduced the burden of child care . . . " at 776. After a massive review of evidence and

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[39] *McCorvey (Roe) v. Hill*, 385 F.3d 846 (5th Cir. 2004) (*cert.* denied) (Supreme Court Docket No. 04-967). *Cano (Doe) v. Baker*, 435 F.3d 1337 (11th Cir. 2007) (*cert.* denied) (Supreme Court Docket No. 05-11641). *See Doe's* affidavit explaining fraud on the Court. Both women specifically asked the Court to reverse their cases under Rule 60, FRCP.

scientific literature, the Eighth Circuit stated: "In short, the continued application of the Supreme Court's viability standard discounts the legislative branch's recognized interest in protecting unborn children." *Id*.

Also, Fifth Circuit Court of Appeals Judge Edith Jones, (concurring) has stated:

> "In sum, if courts were to delve into the facts underlying *Roe's* balancing scheme with present day knowledge, they might conclude that the woman's 'choice' is far more risky and less beneficial, and the child's sentience far more advanced than the *Roe* Court knew." *McCorvey v. Hill* 385 F.3d 846 page 11 (5th Cir. 2004) (*cert.* denied).

In areas of constitutional concern, *stare decisis* is less binding and more flexible because "correction of an erroneous constitutional decision by the legislature is well-nigh impossible."[40] It is far more difficult for the people of the United States to overturn a Supreme Court decision than for the Court to correct its own error. In the case of a crime against humanity, it is the duty of the Court to correct its own error. All judges should be open in appropriate cases, to considering evidence that killing "**infant life**" in the womb is wrong,

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[40] *Law of Judicial Precedent*, Garner, Kavanaugh, Gorsuch, *et al*., *supra* at p. 352, Thompson Reuters, (2016), citing Kenneth L. Karst, "Precedent", in 3 *Encyclopaedia of the American Constitution* 1436, 1437 (Leonard W. Levy, *et al.* eds., 1986) ("Supreme Court Justices themselves . . . give precedent a force that is weaker in constitutional cases than in other areas of the law.").

and that changes in circumstances have produced sound and necessary reasons for reversal.

This Court in *Casey* attempted to end the controversy over abortion for all time. "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." At 867. The Court was concerned about its legitimacy, but it had not yet recognized the child as an "**infant life**" at that point. But the 29 years since *Casey* have not quelled the controversy or made the Court stronger. Ending the crime against humanity which is *Roe*, *Doe* and *Casey*, will ultimately be shown to be as wise and just as *Brown v. Board of Education*, especially with the new government social safety net provided through Safe Haven.

Obviously, with the inherent nature of abortion as a crime against humanity like slavery, the controversy will never go away as long as it is legal. On the other hand, the Safe Haven laws can someday eventually bring an end to the abortion wars. The Safe Haven laws allow the controversy to be resolved through justice – stopping the killing of human beings, and mercy – still allowing women the general freedom from the burden of unwanted children that some desire, without killing the child and injuring women. Safe Haven provides for a healthy population with loving families and adopted

children. It is a win-win-win for child, mother and society.[41]

PRAYER

The cry of *Amicus* Melinda's heart, and the voice of her plea and that of the other *Amici*, echoes the ancient cry of Esther who dared, with trembling, prayer, and fasting to humbly appeal as follows:

> "*If it please the Court, and if I have found favor, let there be a decree that reverses the orders of this Supreme Court who ordered that infants in the womb throughout all of America should be destroyed. For how can I endure to see my people and my family slaughtered and destroyed*." Adapted from Esther (Est) 8:5-6.

[41] Safe Haven also has the incidental effect of helping fathers that want to keep their children, thus restoring fathers' rights that were eliminated in *Casey*. The woman can relinquish the baby at no cost and her legal responsibility is terminated. But the father would usually be the perfect candidate to receive the child unless a background check reveals a problem. Also some women choose to abort because they want nothing to do with the father for a variety of reasons. Traditional adoption processes can be lengthy, difficult emotionally, and sometimes expensive. Safe Haven changes all that. Therefore, states should be allowed to ban or restrict abortion.

Amici respectfully prays for this Court to reverse the decision below and reverse *Roe v. Wade*, *Doe v. Bolton* and *Planned Parenthood v. Casey*.

Respectfully submitted,

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