No. 19-1392

In The
Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H.,
STATE HEALTH OFFICER OF THE
MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,
Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION,
ON BEHALF OF ITSELF AND
ITS PATIENTS, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF *AMICUS CURIAE* FOR MARY KAY BACALLAO ADVOCATING FOR UNBORN CHILDREN AS PERSONS ON BEHALF OF NEITHER PARTY

George L. Lyon, Jr.
Counsel of Record
1929 Biltmore Street NW
Washington, D.C. 20009
(202) 669-0442
glyon@fcclaw.com

Counsel for Amicus Curiae

Dated: July 28, 2021

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. THE *ROE* COURT MISINTERPRETED THE MEANING OF THE WORD "PERSON" AS FOUND IN THE SECOND AND THIRD CLAUSES OF THE FOURTEENTH AMENDMENT 3

II. THE CORPUS OF SUPREME COURT OPINIONS FROM 1850-1880 SUGGESTS THAT AN UNBORN CHILD IS A PERSON WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION 7

III. THE CORPUS OF HISTORICAL AMERICAN ENGLISH AND THE HANSARD CORPUS SUGGESTS THAT AN UNBORN CHILD IS A PERSON WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION 9

IV. STATUTES OUTLAWING ABORTION IN THE STATES IN 1868 CONFIRM THAT AN UNBORN CHILD IN A MOTHER'S WOMB WAS A PERSON WHEN THE FOURTEENTH AMENDMENT WAS RATIFIED 14

CONCLUSION 18

TABLE OF AUTHORITIES

Page(s)

***Cases*:**

Croxall v. Shererd,
72 U.S. 268, 18 L. Ed. 572 (1866) 8

Doe v. Considine,
73 U.S. (6 Wall.) 458 (1868) 8

Gaines v. Hennen,
65 U.S. 553, 16 L. Ed. 770 (1860) 9

Knotts v. Stearns,
91 U.S. 638, 23 L. Ed. 252 (1875) 8

McArthur v. Scott,
113 U.S. 340, 5 S. Ct. 652,
28 L. Ed. 1015 (1885) 7, 13

Prewit v. Wilson,
103 U.S. 22, 26 L. Ed. 360 (1880) 8

Roe v. Wade,
410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d
147 (1973), *holding modified by Planned Parenthood of Se. Pennsylvania v. Casey*,
505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed.
2d 674 (1992) ..... *passim*

Root v. Ry. Co.,
105 U.S. 189 (1881) 8

Webster v. Reprod. Health Servs.,
492 U.S. 490, 109 S. Ct. 3040,
106 L. Ed. 2d 410 (1989) 6

Constitutional Provision:

U.S. CONST. amend. XIV
(adopted July 9, 1868) ..... *passim*

Statutes:

1839 Miss. LAWS 102, §§ 19, 20, 21 16

Act of Feb. 15, 1839, ch. 66, art. 1, tit. 3, art. 1, §§ 8, 9, 1839 Miss. LAWS 112-113 17

Compiled Statutes of the State of New Hampshire: To Which Are Prefixed the Constitutions of the United States and of the State of New Hampshire (2). Title XXVI Sec. 11, 12, 13, 14..... 16

Illinois. Revised Laws of Illinois, Containing All Laws of a General and Public Nature Passed by the Eighth General Assembly, at Their Session Held at Vandalia, Commencing on the Third Day of December, 1832, and Ending the Second Day of March, 1833 (1833)..... 15

Mo. Ann. Stat. § 1.205..... 6

Public Statute Laws of the State of Connecticut, Compiled in Obedience to a Resolve of the General Assembly, Passed May 1835 (1835)..... 14

Revised Statutes of the State of Maine, Passed October 22, 1840 (1841). Title XII Chapter 160, Sections 13, 14 15

Theron Metcalf, ed.; Cushing, Luther S., ed. Supplements to the Revised Statutes. Laws of the Commonwealth of Massachusetts, Passed subsequently to the Revised Statutes: 1836 to 1849, Inclusive (1849). Pg. 322 Chapter 27 16

Corpora:

https://www.english-corpora.org/coha/ 9, 10, 11
https://www.english-corpora.org/hansard/ ... 12, 13
https://www.english-corpora.org/scotus/..... 7

Dictionary:

https://www.merriam-webster.com/dictionary/child 1

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Amicus curiae uses the U.S. Constitution, historical state laws, and corpus linguistics research to suggest the original public meaning of a "person" included an unborn child when the Fourteenth Amendment to the United States Constitution was written and ratified.

This brief is filed with the written consent of all parties pursuant to this Court's Rule 37.2(a).

SUMMARY OF ARGUMENT

This brief is not about stopping abortion, but it is about the definition of the word "person" in the Fourteenth Amendment to the U.S. Constitution. An unborn child is a person within the original meaning of the 1868 Fourteenth Amendment of the U.S. Constitution as suggested by a proper linguistic analysis of the text of the Fourteenth Amendment, an analysis of the computer generated Corpus of Supreme Court Opinions, the COHA and Hansard Corpora, and the text of Mississippi and other state abortion statutes in place when the Fourteenth Amendment was ratified in 1868.

According to Webster's Dictionary, a child is "a person not yet of the age of majority."[2] In 1868,

---

[1] No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from Marshall Bandy and Mary Kay Bacallao made a monetary contribution intended to fund the preparation or submission of this brief.

[2] https://www.merriam-webster.com/dictionary/child

Mississippi's laws protected unborn children from death by postponing the execution of a woman quick with child or allowing her sentence to be changed to life in prison. Mississippi also outlawed the abortion of unborn children. These Mississippi laws were in place before the Fourteenth Amendment was ratified by the States and remained in place for a total of 134 years until they were unjustly declared unconstitutional by the *Roe* Court in 1973.

It is time to recognize, once again, the unborn children as persons in Mississippi. It is time to extend to unborn children the equal protection and due process rights they enjoyed in Mississippi until the *Roe* Court made an elementary grammar error, using a phrase that conferred citizenship in one clause to define personhood for other clauses. It is time to correct the *Roe* Court's error in refusing to determine when life began and in the same stroke of the pen stripping the unborn of their personhood, citing the very amendment that codified the right of all persons, born and unborn, to equal protection and due process.

ARGUMENT

I. THE *ROE* COURT MISINTERPRETED THE MEANING OF THE WORD "PERSON" AS FOUND IN THE FOURTEENTH AMENDMENT.

The Fourteenth Amendment to the U.S. Constitution[3] includes the following three references to persons:

[1.] "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

[2.] "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;"

[3.] "nor deny to any person within its jurisdiction the equal protection of the laws."

Here, in looking at statutory construction cannons such as *noscitur a sociis*, which means, "it is known by its companions," the meaning of the word "persons" can only be ascertained by its associates. In the first instance, "persons" is being modified by "born or naturalized in the United States, and subject to the

---

[3] U.S. Const. amend. XIV (adopted July 9, 1868) Text: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

jurisdiction thereof…" Here, "persons" is a general term that is being limited at least by two conditions, either "born" or "naturalized." In this instance, the Fourteenth Amendment limits the type of persons who can be citizens to those either born or naturalized in the United States and subject to the jurisdiction thereof.

In the second instance, no "person" shall be deprived of life, liberty, or property, without due process of law, where "person" is used generally, unmodified by "born" or "naturalized, etc." Here "citizens" as defined in the first instance is separate and distinct from "person" found in the second part of the sentence. The second use of "person" is unmodified. These persons are not necessarily citizens, nor does it follow that they must necessarily be "born."

In the third instance, "any person" is also unmodified by either "born" or "naturalized, etc." In other words, "person" is not limited to a person "born" or "naturalized in the United States," rather, the term "person" is again unmodified and used in the general sense. Thus, where the second use of the term "person" prohibits a State from depriving a person of life, liberty, or property, without due process of law, "person" is used generally rather than in the context of being "born." Additionally, where the third use of the term "person" does not allow a State to deny to any person within its jurisdiction the equal protection of the laws, again, "person" is unmodified. This does not limit protection to "persons born or naturalized in the United States…"

To assert that one word, such as "born," that is used in a single line to limit a general term, such as "person," in one provision also limits that same general term, in this case "person," each time it occurs

is linguistically incorrect. It is the same as saying that because one line refers to a black cat, all other times the word cat appears it can only refer to cats that are black. This is not the way language works.

There is no evidence that the original meaning of person was limited to those who were born. Rather, the corpus evidence found in COHA, the Hansard Corpus, and the Corpus of U.S. Supreme Opinions point to the unborn as persons, legally able to inherit property and in need of protection.

The *Roe* court did not resolve the question of when life begins, "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."[4] However, the *Roe* Court maintained that "… the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."[5] The *Roe* Court used faulty linguistics in determining that someone unborn was not a 'person' as used in second and third parts of the Fourteenth Amendment. In the first use of person, 'born' modifies or limits the meaning of 'person,' not the other way around. The *Roe* Court did not use proper linguistic interpretation of the text of the Fourteenth Amendment when limiting its interpretation of the second and third references to persons as those who were born.

---

[4] *Roe v. Wade*, 410 U.S. 113, 159, 93 S. Ct. 705, 730, 35 L. Ed. 2d 147 (1973), *holding modified by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)

[5] *Ibid.*

The second reference to person in the Fourteenth Amendment, stating that a State may not deprive any person of life, liberty, or property, without due process of law applies to persons both born and unborn. The third reference to person in the Fourteenth Amendment, where a State may not deny to any person within its jurisdiction the equal protection of the laws also applies to persons both born and unborn. Simple linguistics, applied to these provisions in the U.S. Constitution, where the word person is unmodified by the word "born" confirms that a person is a person no matter how small.

In Webster, the Court did not disturb Missouri's preamble[6] which contained findings by the state legislature that the "life of each human being begins at conception" and that, "unborn children have protectable interests in life, health, and well-being."[7]

---

[6] Mo. Ann. Stat. § 1.205 "1. The general assembly of this state finds that: (1) The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child. 2. Effective January 1, 1988, the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state. 3. As used in this section, the term "unborn children" or "unborn child" shall include all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development."

[7] *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 501, 109 S. Ct. 3040, 3047, 106 L. Ed. 2d 410 (1989)

II. THE CORPUS OF SUPREME COURT OPINIONS FROM 1850-1880 CONFIRMS THAT AN UNBORN CHILD IS A PERSON WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

A search of the Corpus of U.S. Supreme Court Opinions from 1850-1880 reveals 12 concordance lines that cover 8 distinct cases.[8] Five of the hits were for one case,

"But according to the will, the children as well as the grandchildren, took merely equitable interests. To none of them was any legal title devised. The five present plaintiffs, children of the complainant in that suit, as well as the children afterwards born of the testator's other surviving children, all grandchildren of the testator, and entitled under the will to share with his other grandchildren, were not parties, and, being yet unborn, could not be personally made parties."[9]

At first glance, it appears that the unborn cannot be parties to a lawsuit. However, a close reading of the case reveals that the reason they were not able to be made parties was not because they were unborn at the time of the will, but because they only took equitable interests rather than legal title. As later the case shows, "The only parties to that proceeding, who were of age and capable of representing themselves, were the heirs at law."[10]

---

[8] https://www.english-corpora.org/scotus/

[9] *McArthur v. Scott*, 113 U.S. 340, 393–94, 5 S. Ct. 652, 668–69, 28 L. Ed. 1015 (1885)

[10] *McArthur v. Scott*, 113 U.S. 340, 393–94, 5 S. Ct. 652, 668–69, 28 L. Ed. 1015 (1885)

Another case involves inheritance for the unborn, "where there could be no injunction, in favor of a complainant unborn at the time of its commission, whose estate was a contingent remainder, supported by a limitation to trustees to preserve it, the defendant being the owner of a prior term of years…"[11] Next, a case involved consent, "No interest vested or contingent of the lessor of the plaintiff in error was involved; and no consent was asked of him, for the reason that he was then unborn."[12] Yet another inheritance showed that children in the womb are represented:

"Assuming that the child, before its birth, whilst still en ventre sa mère, [in the womb] possessed such a contingent interest in the property as required his representation in the suit for its sale, he was thus represented, according to the law which obtains in Virginia, by the children in being at the time who were then entitled to the possession of the estate. Parties in being possessing an estate of inheritance are there regarded as so far representing all persons, who, being afterwards born, may have interests in the same, that a decree binding them will also bind the after-born parties."[13]

Other cases concern, "life to unborn children,"[14] and remainders that "…let in unborn children…"[15] The court also ruled, "A bastard in esse [essential nature],

---

[11] *Root v. Ry. Co.*, 105 U.S. 189, 216 (1881)

[12] *Croxall v. Shererd*, 72 U.S. 268, 285–86, 18 L. Ed. 572 (1866)

[13] *Knotts v. Stearns*, 91 U.S. 638, 640–41, 23 L. Ed. 252 (1875)

[14] *Prewit v. Wilson*, 103 U.S. 22, 24, 26 L. Ed. 360 (1880)

[15] *Doe v. Considine*, 73 U.S. (6 Wall.) 458, 477 (1868)

whether born or unborn, is competent to be a devisee or legatee of real or personal estate."[16]

This exhaustive review of all the cases between 1850 and 1880 where "unborn" is found in the U.S. Supreme court cases reveals no instance where an "unborn" human is not considered a person. Rather, the cases show that unborn humans have property rights.

III. THE CORPUS OF HISTORICAL AMERICAN ENGLISH AND THE HANSARD CORPUS CONFIRM THAT AN UNBORN CHILD IS A PERSON WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

A computerized search of the Corpus of Historical American English yielded 188 hits for "unborn" noun collocates from 1850-1880.[17] The noun modified by "unborn" was identified in each hit.

Each concordance line was reviewed and coded. Some concordance lines were not able to be categorized. All the noun collocates that were able to be categorized were grouped based on commonalities that emerged in the data: person, multitudes, time, living but non-human, state of mind, and other. The person category includes nouns such as child/children, infant, babe/s, person/s, names of specific people, boys, grandchildren, etc. The multitudes category includes nouns such as generations, millions, future, nations, etc. The time

---

[16] *Gaines v. Hennen*, 65 U.S. 553, 592, 16 L. Ed. 770 (1860)

[17] https://www.english-corpora.org/coha/ (word/phrase=unborn, Collocates=noun.ALL, +6 right, +6 left, 1850-1880)

category includes nouns such as days, years, ages, etc. The living but non-human category includes unborn living organisms such as a spider, a moose calf, a whale, a tadpole, a lamb, etc. The state of mind category includes nouns such as soul, romance, love, etc. The other category includes related but unusual meanings that did not fit into any category.

Further analysis of individual concordance lines reveals detail about the status of an unborn human. In the 1850's, there is "love of an unborn child."[18] There is also mention of the absurdity of a "price for an unborn infant"[19] and making "slaves of the unborn"[20] in an argument against slavery in the New England Yale Review. In the "other" category there is a reference to the divine "I AM" as unborn[21] in Rational Cosmology.

In the 1860's, a popular magazine called The Atlantic deals with the "crime, so common among church going ladies and others, of murdering their unborn offspring!"[22] The same magazine asks a question about, "those who provide women with [th'] means of killing their unborn children, - a double crime, murder and suicide?"[23] The Atlantic also mentions the "murder of unborn offspring" in the context of a "Church powerful enough to guard the

---

[18] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1850s) line 10.

[19] *Ibid*, line 15.

[20] *Ibid*, line 14.

[21] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1850s) line 31.

[22] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1860s) line 26.

[23] *Ibid*, line 27.

issues of life."[24] In the 1870's, the English Constitution mentions unborn children in the context of persons:

"An Act of Parliament is at least as complex as a marriage settlement; and it is made much as a settlement would be if it were left to the vote and settled by the major part of persons concerned, including the unborn children. There is an advocate for every interest, and every interest clamours for every advantage."[25]

In the 1880's, there were two concordance lines sorted in the "other" category. Looking Backward refers to the "right of the unborn to be guaranteed an intelligent and refined parentage."[26] The same publication includes the following quote, "Over the unborn our power is that of God, and our responsibility like His toward us. As we acquit ourselves toward them, so let Him deal with us."[27]

The highest percentage of hits for "unborn" did modify a person directly 50% of the time. Multitudes also referred to person, but in the aggregate, 21% of the time. Unborn measures of time such as days, years, and ages were found 13% of the time and did not illuminate the meaning of "unborn" one way or the other in defining the unborn as a person. State of mind such as love and romance occurred 10% of the

---

[24] *Ibid*, line 30.

[25] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1870s) line 9.

[26] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1880s) line 31.

[27] https://www.english-corpora.org/coha/ (word/phrase=unborn, 1880s), line 32.

time and living but non-human use was found in 4% of the concordance lines.

The Hansard Corpus analysis eliminates the state of mind and living but non-human categories as neither category received any hits. The concordance lines were dominated by the person and multitudes categories which combined received 92% of all hits. Both of these categories refer to the unborn as persons either directly or in the aggregate.

According to the Hansard Corpus, in the 1850's, unborn persons had interests in property rights, with eight direct references.[28] Some examples include, "… the interests of unborn persons,"[29] if "… the trust is such that persons yet unborn are interested in it,"[30] or "…children unborn, having similar rights,"[31] and "…with remainder to children, born and unborn."[32] The inheritance rights of unborn children continued into the 1860's with reference to, "Thus, a gift to A for life, and after his death to his unborn son for life…"[33]

The Hansard 1870's Corpus includes references to the health and happiness of the unborn as well as the effect of disease on the unborn, "…the health and happiness of those yet unborn,"[34] and the disease

---

[28] https://www.english-corpora.org/hansard/ (List=unborn, 1850's lines 1, 4, 9, 22, 24-27)

[29] *Ibid*, line 1.

[30] *Ibid*, line 9.

[31] *Ibid*, line 24.

[32] *Ibid*, line 27.

[33] https://www.english-corpora.org/hansard/ (List=unborn, 1860's line 15)

[34] https://www.english-corpora.org/hansard/ (List=unborn, 1870's line 17)

among countless thousands that had a "dreadful effect on children unborn: We are all aware of this, and we all regret it…"[35]

In the 1880's, the Hansard Corpus includes more references to inheritance rights for the unborn. One such reference names the grandchildren of the Queen: "Her Majesty to be provided for, but provision was to be made for the unborn grandchildren of the Queen…"[36] The Hansard Corpus did not include any concordance lines in opposition to the personhood of the unborn.

"But according to the will, the children as well as the grandchildren, took merely equitable interests. To none of them was any legal title devised. The five present plaintiffs, children of the complainant in that suit, as well as the children afterwards born of the testator's other surviving children, all grandchildren of the testator, and entitled under the will to share with his other grandchildren, were not parties, and, being yet unborn, could not be personally made parties."[37] Both corpora, COHA and Hansard, suggest that an unborn child in a mother's womb was considered a person when the Fourteenth Amendment to the United States Constitution was ratified by the States.

---

[35] https://www.english-corpora.org/hansard/ (List=unborn, 1870's line 20)

[36] https://www.english-corpora.org/hansard/ (List=unborn, 1880's line 32)

[37] *McArthur v. Scott*, 113 U.S. 340, 393–94, 5 S. Ct. 652, 668–69, 28 L. Ed. 1015 (1885)

IV. STATUTES OUTLAWING ABORTION IN THE STATES IN 1868 CONFIRM THAT AN UNBORN CHILD IN A MOTHER'S WOMB WAS CONSIDERED A PERSON WHEN THE FOURTEENTH AMENDMENT WAS RATIFIED BY THE STATES.

In Connecticut, beginning in 1835, the punishment for abortion was at least 7 years, " Every person who shall wilfully and maliciously administer to, or cause to be administered to, or taken by, any woman, then being quick with child, any medicine, drug, noxious substance, or other thing, with an intention thereby to procure the miscarriage of any such woman, or to destroy the child of which she is pregnant; or shall wilfully and maliciously use and employ any instrument, or other means to produce such miscarriage, or to destroy such child, and shall be thereof duly convicted, shall suffer imprisonment in the Connecticut State Prison, for a term not less than seven, nor more than ten years."[38]

Abortion was also illegal in Illinois, "And every person who shall administer, or cause to be administered, or taken, any such poison, substance, or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the

[38] Public Statute Laws of the State of Connecticut, Compiled in Obedience to a Resolve of the General Assembly, Passed May 1835 (1835).

penitentiary, and fined in a sum not exceeding one thousand dollars."[39]

In Maine, abortion was illegal before quickening, or when a mother could feel the baby move within her, "Every person, who shall administer to any woman pregnant with child, whether such child be quick or not, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done as necessary to preserve the life of the mother, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year."[40]

Abortion was also illegal in Massachusetts, "AN ACT TO PUNISH UNLAWFUL ATTEMPTS TO CAUSE ABORTION. Punishment of unlawful attempts to cause abortion. Whoever, maliciously or without lawful justification, with intent to cause and procure the miscarriage of a woman pregnant with child, shall administer to her, prescribe for her, or advise or direct her to swallow, any poison, drug, medicine or noxious thing; and whoever maliciously and without lawful justification, shall use any instrument or means whatever with the like intent,

---

[39] Illinois. Revised Laws of Illinois, Containing All Laws of a General and Public Nature Passed by the Eighth General Assembly, at Their Session Held at Vandalia, Commencing on the Third Day of December, 1832, and Ending the Second Day of March, 1833 (1833).

[40] Revised Statutes of the State of Maine, Passed October 22, 1840 (1841). Title XII Chapter 160, Sections 13, 14

and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence therof, and shall be imprisoned not more than twenty years, nor less than five years in the state prison; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the state prison or house of correction, or common jail, and by fine not exceeding two thousand dollars."[41]

In New Hampshire, the provision against abortion is under the section labeled, "Offences against the person."[42] In 1839, a Mississippi law required that if a female convict sentenced to death was quick with child, the sheriff would suspend the sentence or the governor may commute the punishment to perpetual imprisonment.[43] Another 1839 Mississippi law prohibited the taking of the unborn quick child's life, "The wilful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of the mother, shall be deemed manslaughter in the first degree. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance

---

[41] Theron Metcalf, ed.; Cushing, Luther S., ed. Supplements to the Revised Statutes. Laws of the Commonwealth of Massachusetts, Passed subsequently to the Revised Statutes: 1836 to 1849, Inclusive (1849). Pg. 322 Chapter 27

[42] Compiled Statutes of the State of New Hampshire: To Which Are Prefixed the Constitutions of the United States and of the State of New Hampshire (2). Page 544-545. Title XXVI Sec. 11, 12, 13, 14.

[43] Act of Feb. 15, 1839, §§ 19, 20, 21, 1839 Miss. LAWS 102.

whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall be deemed guilty of man-slaughter in the second degree."[44]

Mississippi's dual protection for unborn children was in place when the Fourteenth Amendment was ratified by the States and remained in place for a total of 134 years until it was overturned by the *Roe* Court in 1973.

It is time to recognize, once again, the unborn children as persons in Mississippi. It is time to extend to unborn children the equal protection and due process rights they enjoyed in Mississippi until the *Roe* Court made an elementary grammar error, using a phrase that conferred citizenship in one clause to define personhood for other clauses. It is time to correct the *Roe* Court's duplicitous error in refusing to determine when life began and in the same moment stripping the unborn of their personhood, relying on the very amendment that codified the right of all persons, born and unborn, to equal protection and due process.

---

[44] Act of Feb. 15, 1839, ch. 66, art. 1, tit. 3, art. 1, §§ 8, 9, 1839 Miss. LAWS 112-113.

CONCLUSION

This Court should find that an unborn child in a mother's womb is a person. The Court should overrule *Roe*'s linguistic mistake when they determined that an unborn child is not a person as found in the second and third clauses of the Fourteenth Amendment to the U.S. Constitution. The Court should reverse the Fifth Circuit's decision because H.B. 1510 is a valid protection for an unborn child in a mother's womb, in line with the U.S. Constitution's protection of the life of every person as found in the Fifth and Fourteenth Amendments to the U.S. Constitution. Amici pray that the Court dissolve the district court's restraining order and declare H.B. 1510 constitutional because it protects the life of an unborn child in a mother's womb, a person.

Respectfully submitted,

*GEORGE L. LYON, JR.
1929 Biltmore Street NW
Washington, D.C. 20009
202-669-0442
Fax: 202-483-9267
glyon@fcclaw.com
D.C. Bar 388678

*Counsel of Record

**Counsel for Amicus Curiae*