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 U.S. Court of Appeals for the Fifth Circuit

Brief *Amicus Curiae* of Intercessors for America including its Intercessor Prayer Partners in Support of Petitioners

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INTEREST OF THE *AMICI CURIAE*[1]

Intercessors for America ("IFA") is a Massachusetts not-for-profit corporation, with offices in Purcellville, Virginia, exempt from federal income taxation under IRC section 501(c)(3). IFA was founded shortly after, and in direct response to, this Court's decision in *Roe v. Wade*. IFA has grown from a small group to a network reaching over 1 million Americans praying for the nation and the protection of life by all branches of government on whose behalf this *amicus* brief is also being submitted. As well as through their individual prayers posted on www.appealforlife.com, many thousands of Intercessors have prayed the following prayer for this case:

> Lord, it grieves my heart to think of the millions of lives lost because of legal abortion; each life is precious in Your sight, woven together in the womb. We ask that You would forgive us of this national sin and cause the U.S. Supreme Court Justices to agree with You that every life is precious. We deserve judgment, but we humbly ask for the wisdom of heaven to bring godly conviction upon our nine Supreme Court Justices. Lord, cause them to rule in favor of protecting life. Lord, we appeal to You as we appeal for life. In Jesus' name, Amen.

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[1] It is hereby certified that counsel for the parties have filed blanket consents to the filing of this and other *amicus* briefs; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Scant weeks after *Roe* was decided, a group of Christian leaders, including international Bible teacher, author and theologian Derek Prince, began to gather to develop an organizational response to this Court's assault on life. Derek Prince was the author of over 100 books, including Shaping History Through Prayer and Fasting (Whitaker House: 2002), which reflects the founding principles of Intercessors for America. The result was the founding of IFA. These leaders saw *Roe* as a tragedy, but also a sign — a warning — to the People, that the nation had opened itself up to the judgment of a Holy and Righteous God. Biblical principles were being replaced by pagan principles. At such a time, they believed, it would be necessary to rally Americans to call upon the Lord. IFA continues to urge Christians to engage in the disciplines of prayer and fasting to overturn *Roe* — the same way in which the People have responded to other threats to the country throughout its history.

STATEMENT OF FACTS

Justice Kennedy recognized: "No one would dispute that, for many, D&E is a procedure itself laden with the power to devalue human life." *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007). In truth, this Court's abortion decisions have led not just to the devaluing of human life, but also to the destruction of human life. The following are eight different gruesome abortion methods currently being practiced in the United States:

- **Suction (Vacuum) Aspiration**. In the most common abortion method, the cervix is dilated, and

a hollow plastic tube with a sharp tip is inserted into the cervix and then into the uterus. An aspirator attached to the tube tears the body of the fetus apart and suctions the pieces through the tube.

- **Dilation and Curettage (D&C)**. A curette (a sharp looped knife) is inserted into the uterus to dismember the fetus and placenta.
- **Intracardiac Injection Abortion.** A needle is guided into the fetus's heart with the aid of ultrasound, and poison (often potassium chloride or digoxin) is injected, causing a heart attack. Intracardiac injection is most commonly used for "pregnancy reduction" abortions following in vitro fertilization (IVF) procedures, if multiple embryos were implanted to increase the likelihood of pregnancy. Intracardiac injection is used in late-term abortions when there is the likelihood of delivering a live baby in order to avoid state laws that would require the baby to be resuscitated and given medical care.
- **Dilation and Evacuation (D&E)**. In the second trimester, the fetus's tendons, muscles, and bones are more developed. Therefore, forceps are inserted into the uterus to forcibly dismember the fetus, and the pieces are removed individually. Larger fetuses must also have their skulls crushed so the pieces can pass through the cervix.
- **Dilation and Extraction (D&X or Partial-Birth Abortion)**. Typically performed in the late second or third trimester. The cervix must first be dilated, and forceps are then inserted into the uterus to grasp the fetus's legs. The fetus is delivered breech while the head remains inside the

birth canal. Using blunt-tipped surgical scissors, the base of the skull is pierced, and a suction catheter is inserted to extract the contents of the skull. This causes the skull to collapse, and the dead fetus is then fully delivered. This Court's ruling upholding the federal Partial-Birth Abortion Ban Act in 2007 did not end D&X abortions, as abortionists now use a lethal intracardiac injection to ensure that the fetus is dead before being partially delivered.

- **Instillation (Saline) Abortion**. Amniotic fluid is removed from the uterus and replaced with a saline solution, which the fetus swallows. The fetus is killed by salt poisoning, dehydration, brain hemorrhage, and convulsions.
- **Prostaglandin Abortion**. A dose of prostaglandin hormones is injected into the uterine muscle, which induces violent labor resulting in the death of the fetus. Prostaglandin abortions, typically performed in the second and early third trimester, are rarely used today, due to the relatively high chance that the fetus will survive the abortion and be born alive.
- **Chemical (Medical) Abortion.** A woman is administered an abortion-inducing compound called mifepristone (also called RU-486 or Mifeprex) to block the action of progesterone, the hormone vital to maintaining the lining of the uterus. As the nutrient lining disintegrates, the embryo starves. Subsequently, the woman takes a dose of artificial prostaglandins which initiate

uterine contractions and cause the embryo to be expelled from the uterus.[2]

STATEMENT OF THE CASE

In 2018, the State of Mississippi enacted HB 1510, the Gestational Age Act, which restricted physicians from terminating the life of preborn babies who had reached 15 weeks' gestational age except in circumstances involving medical emergencies or severe fetal abnormality. The Act included numerous legislative findings about the extent of development of a 15-week-old preborn baby, including its ability to feel pain. An abortion clinic sought a temporary restraining order against the statute and the district court granted the injunction. After strictly limiting discovery to the issue of viability, the district court granted Respondents' summary judgment motion and issued a permanent injunction. *Jackson Women's Health Organization v. Currier*, 349 F. Supp. 3d 536 (S.D. Miss. 2018). The Fifth Circuit unanimously affirmed.[3] *Jackson Women's Health Organization v. Dobbs*, 945 F.3d 265, 277 (5th Cir. 2019).

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[2] *See* Abortion Facts, Pro-Life Action League. *See also*, "Abortion Procedures," Abort73.com. Videos reveal even more starkly the unbelievable brutality of abortion, such as "This is Abortion." This Court would not allow any of these methods to be used to execute a convicted murderer under a sentence of death, but they are lawfully imposed every day on the preborn.

[3] Judge Ho addressed the intemperate language of the district court and its animus to the pro-life position when it accused the Mississippi legislature of being motivated by sexism and racism. *Dobbs* at 278 (Ho, J., concurring).

SUMMARY OF ARGUMENT

Today, abortion may seem to have been normalized among some in this country, but it cannot be disputed that when *Roe* was decided 47 years ago, most Americans were profoundly shocked. They were astonished that this Court would create a right to abortion — an induced termination of a pregnancy with the destruction of the unborn baby. They simply could not believe that this Court would claim to be interpreting the Constitution while purporting to create a right out of whole cloth, in disregard of the Declaration of Independence's recognition that all Americans were both "created" and "endowed" with the "unalienable" Right to "Life," also protected by the Fifth and Fourteenth Amendments.

Petitioners have asked this Court to "overrule Roe and Casey" for being "egregiously wrong," "hopelessly unworkable," and having "inflicted profound damage." Brief for Petitioners at 14. These *amici* support that request.

First, the narrow focus of the court below on "viability" is badly misplaced. A baby in the womb is completely viable, unless and until it is removed from its natural surroundings. Second, how a society treats a preborn baby is a quintessentially religious matter — a fact which cannot be avoided by claiming the issue is secular. In fact, in *Roe v. Wade*, Justice Blackmun implicitly acknowledged this to be a religious issue when he juxtaposed the ways in which paganism and Christianity viewed abortion, and in the end, sided with the pagan position.

Third, the constitutionalization of the abortion issue was a profound mistake made by this Court. This was yet another instance where this Court placed a veneer of legalism over its own policy preferences and creatively identified a place in the Constitution where it could find this unenumerated right. Fourth, this Court's treatment of the abortion issue cannot be viewed in isolation. Although this Court's jurisprudence on other moral and religious issues is not before this Court, it provides an important backdrop to understand how comprehensively prior Courts have embraced pagan views over Biblical views.

Lastly, the Court should be aware that the fabric of the nation seems to many to be unraveling. The point is that God rules in the affairs of men, and He cannot ignore the shedding of innocent blood. Holy Writ provides many illustrations of how the righteous judgment of a Holy God can be triggered against the people of a land.

In sum, the Intercessors *amici* are fully in agreement with Justice Thomas' assertion: "*Roe* is grievously wrong for many reasons, but the most fundamental is that its core holding — that the Constitution protects a woman's right to abort her unborn child — finds no support in the text of the Fourteenth Amendment." *June Medical Services, LLC v. Russo*, 140 S. Ct. 2103, 2150 (2020).

ARGUMENT

I. JUDICIAL PREOCCUPATION WITH VIABILITY LEADS TO ERRONEOUS DECISIONS.

The district court viewed the case in exceedingly simple terms. It viewed *Roe v. Wade*, 410 U.S. 113 (1973), as "settled law" establishing that "the Fourteenth Amendment protects a woman's basic right to choose an abortion." *Currier* at 539. And, it viewed *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), as affirming what it termed "'the central holding of *Roe*'": "'Before **viability**, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure.'" *Currier* at 539 (emphasis added).

Since the district court concluded that the "established medical consensus" is that "**viability** typically begins between 23 to 24 weeks," and this law seeks to regulate abortions after 15 weeks, it was "unequivocally" unconstitutional, and no other legislative findings or facts would be considered. *Id.* at 539 (emphasis added).

Mississippi sought to focus attention on the State's interest in preventing pain and preserving life — considerations that both *Roe* and *Gonzales v. Carhart*, 550 U.S. 124 (2007), also recognized. However, the court would have none of those concerns, focusing laser-like on **viability**. Likewise, this Court granted

Mississippi's petition for certiorari limited to one issue: "Whether all **pre-viability** prohibitions on elective abortions are unconstitutional." Petition for Certiorari at i (emphasis added).

In elevating **viability** to constitutional talisman status, the judiciary has erred. From the moment of conception, the baby growing in its natural habitat — the womb[4] — is unquestionably viable, unless an abortionist intervenes and removes the baby. To be sure, a baby cannot survive outside the womb at 15 weeks given 2021 technology, but neither can a 24-week old baby or even an infant be deemed to be viable without significant care and feeding. With the advent of artificial wombs, a baby theoretically can develop and thrive never having been in a human womb. Should that scientific breakthrough alter the date after which the preborn can be protected, viability is arguably less meaningful than the standard of quickening (when the mother feels the movements), formation (when the baby begins to look human), or when a baby feels the pain of poisoning or cutting used to effect an abortion.

Viability depends upon context. It is an uncertain standard even for adults. A person who is brain dead but alive is not truly viable. A person on a respirator is not viable without the respirator. A deep sea diver is viable until his air hose is cut. An insulin-dependent diabetic is viable so long as he receives insulin. A

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[4] "Before I formed you in the womb I knew you, And before you were born I consecrated you." *Jeremiah* 1:5 (NASB).

person with advanced Alzheimer's and a host of other illnesses is not viable without care.

Indeed, the federal government has long protected babies in utero — particularly since the tragedy of the Thalidomide "wonderdrug" which led to fetal deformities. To prevent such an event in the future, the FDA requires that new approved drugs be evaluated for teratogenic risk to protect babies in the womb from the moment of conception — not viability.

Holy Writ asserts, and *amici* intercessors believe, that life begins not with viability, but at conception. "For you created my inmost being; you knit me together in my mother's womb. I praise you because I am fearfully and wonderfully made... Your eyes saw my unformed body...." *Psalm* 139:13-14, 16 (NIV). God hates "hands that shed innocent blood...." *Proverbs* 6:16-17 (KJV). *Amici* intercessors believe that the decision to sanction abortion based on "viability" embraces pagan values and rejects Biblical values. "The thief comes only to steal and kill and destroy; I have come that they may have life, and have it to the full." *John* 10:10 (NIV).

II. THIS COURT'S ABORTION JURISPRUDENCE IS BUILT ON A PAGAN FOUNDATION.

Roe v. Wade begins its defense of abortion based on a survey of pagan nations. The Court discussed "Ancient Attitudes," concluding that during Greek times and the Roman Era,"[a]ncient religion did not bar abortion" and abortion "'was resorted to without

scruple.'" *Roe* at 130. On the other hand, the "emerging teachings of Christianity were in agreement with" the view that "the embryo was animate from the moment of conception, and abortion meant destruction of a living being." *Id*. at 130-31. Thus, the Court properly viewed abortion to be very much a religious question, which the Court correctly understood to be a choice between Christianity and pagan doctrine:

> The **Christian** tradition from the earliest period says the unborn child is a human life that deserves respect and ought to be protected; the **pagan** view tells us it is not a legal person, and thus entitled to no protection.... Justice Harry Blackmun ... simply presents the pagan and Christian views as if both were entitled to respectful hearing — with the weight of the evidence going to the pagans. He thus tells us, almost in as many words, that **permissive abortion is a move away from Christianity to a resurgent pagan ethic**. [M.S. Evans, The Theme is Freedom (Regnery: 1994) at 127-28 (emphasis added).]

During the intervening years, science has developed to the point that we now know vastly more about the development of a preborn baby than was known in 1973. But science cannot determine how we should treat the unborn baby, and thus we are still, at base, left with a religious question. On that ethical and religious issue, the Court found persuasive the modern, secular views of organizations such as the

American Medical Association and the American Public Health Association.

The religious and moral nature of the issue is now further demonstrated by the fact that this Court's abortion decisions have led to the creation of a secondary market where the "products of abortion" are routinely collected, processed, packaged, and sold for a variety of purposes, including creation of "humanized mice" for research.[5] To the average American, merchandising in body parts is inhumane, but under *Roe*, it has become accepted practice within the medical and pharmaceutical industry.

The Court in *Roe* admitted, "The Constitution does not explicitly mention any right of privacy," but nonetheless concluded that the right "founded in 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."[6] *Roe* at 152-53. The Court

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[5] *See* M. Bilger, "Scientists Use Scalps From Aborted Babies to Create 'Humanized Mice'" *LifeNews.com* (Dec. 18, 2020).

[6] Former Law Professor and Founding Dean of Regent Law School Herbert W. Titus explained how *Roe* also violates the Equal Protection Clause:

> As the Supreme Court observed in the Slaughter-House Cases, 83 U.S. 36, 81 (1873), the Clause was specifically designed to protect former slaves who were being denied their rights to life, liberty and property because states were not enforcing the common law on their behalf.
>
> The Equal Protection Clause was designed to guarantee such common law protection by denying to the

relied in part (*id.*) on the right to privacy that Justice Douglas claimed to have discovered somewhere in the "penumbras formed by emanations" drawn from the Constitution.[7] *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). The Court never bothered to examine the meaning of "liberty" when the Fourteenth Amendment was ratified in 1868.

Since the term "privacy" has no textual or historical context, its use allows the Court to imbue it with any meaning desired. Here, it was interpreted to constitutionalize abortion, empowering unelected justices to be the final arbiter of moral law. In each abortion case, the threshold constitutional question is not the merits of the restriction, but "who decides" the most important moral issues of our day.[8]

By constitutionalizing social issues, the Justices have removed them from the ability of Americans to change policy through elections, undermining our constitutional republic. As Justice Scalia explained:

> States any power to classify or treat any human being as anything but a legally recognized person. That is exactly what states are doing when they follow the Supreme Court's ruling in Roe v. Wade.... [H. Titus, "Ending Abortion," *The Forecast*, Vol. 4, No. 4 (Jan. 1997) at 3.]

[7] The right of privacy came on the scene decades after the Fourteenth Amendment was ratified. *See* S.D. Warren & L.D. Brandeis, "The Right to Privacy," 4 HARV. L. REV. 193 (Dec. 15, 1890) 193-220.

[8] *See generally,* Amy Coney Barrett, "Justice Scalia and the Future of the Court," Jacksonville Univ. Public Policy Institute (Nov. 3, 2016).

"A system of government that makes the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy." *Obergefell v. Hodges,* 576 U.S. 644, 717 (2015) (Scalia, J., dissenting).

III. THIS COURT HAS CONSTITUTIONALIZED MORAL ISSUES AND UNDERMINED MORALITY.

America gradually has ceased to be a nation "of the people, by the people, and for the people," as this Court has stolen away our nation's most fundamental moral, cultural, and religious issues incrementally from the People and their elected officials. This Court's decisions sanctioning the termination of life in the womb, and many more as well, give the illusion of legal reasoning as a cover to raw political acts. Doing so, this Court has transformed our constitutional republic into an oligarchy. The American people are longsuffering, but are not oblivious, increasingly viewing this Court as just another political branch of the federal government. However, if this Court returns to its proper constitutional function of resolving "cases" and "controversies" according to the "authorial intent" of the Framers, rather than legislating from the bench, it could regain the trust of the American people.[9]

There have been occasional admissions from members of this Court that the constitutional text is

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[9] *See generally,* E.D. Hirsch, Validity in Interpretation (Yale Univ. Press: 1973) at vii, 1, 5, 212-23.

not supreme, including this one from nearly a century ago:

> At the constitutional level where we work, **ninety percent of any decision is emotional**. The rational part of us supplies the reasons for supporting our predilections. [Chief Justice Charles Evans Hughes as quoted in William O. Douglas, The Court Years, 1939-1975: The Autobiography of William O. Douglas (Random House: 1980) at 8 (emphasis added).]

Fast forward a half century, and another Chief Justice was quoted as putting his judgment over the text, continuing that ignoble tradition:

> Chief Justice [Earl Warren] ... was eager to have the court issue rulings that reflected **what was best for the country**, sometimes without worrying over legal technicalities or precedent. "He'd say, '**cut through the law**'." [Stuart Pollak, former Law Clerk to Chief Justice Earl Warren, as quoted in Philip Shenon, A Cruel and Shocking Act: The Secret History of the Kennedy Assassination (Henry Holt & Co.: 2013) at 278 (emphasis added).]

When Justice Kennedy was sworn in at a White House Ceremony, President Reagan made remarks about the new justice being someone who would follow the law rather than make it. Justice John Paul Stevens considered those comments to be "both offensive and inappropriate," and "decided not to

attend similar ceremonies at the White House in the future." John Paul Stevens, Five Chiefs: A Supreme Court Memoir (Little, Brown & Co.: 2011) at 207.

On the other hand, Justice Tom Clark warned of the consequences of lawlessness at any level of government: "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." *Mapp v. Ohio*, 367 U.S. 643, 659 (1961). What was true about police is much more true about this Court.

What should this Court do when it realizes it is off track on a matter of constitutional law? It once was the view that: "it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and are not of themselves laws. They are often reexamined, reversed, and qualified by the Courts themselves, whenever they are found to be either defective, or ill-founded, or otherwise incorrect." *Swift v. Tyson*, 41 U.S. 1, 18 (1842).

Often the doctrine of *stare decisis* is relied on to protect decisions that justices favor, even when clearly in error. However, in a case involving statutory construction, Justice Alito set out a principle that should doubly apply here in a constitutional case: "*Stare decisis* does not require us to retain [a] baseless and damaging precedent [which was] a bald act of policymaking." *Kimble v. Marvel Entertainment, LLC,* 576 U.S. 446, 466 (2015) (Alito, J., dissenting). The contrary view, that "[a]ny departure from settled precedent ... demands a 'special justification—over and

above the belief that the precedent was wrongly decided,'" must not be allowed to protect a decision as wrong as *Roe*. *Janus v. AFSCME*, 138 S. Ct. 2448, 2497 (2018) (Kagan, J., dissenting).

Consider the following exchange during oral argument in the *Obergefell* case, revealing how constitutional "law" evolves.

> Justice Scalia: "When did it become unconstitutional to prohibit gays from marrying?… Was it always unconstitutional?"
> Ted Olson: "It was [un]constitutional when we — as a culture determined that sexual orientation is a characteristic of individuals that they cannot control…."
> Justice Scalia: "I see. When did that happen?…"
> Ted Olson: "There's no specific date in time. **This is an evolutionary cycle**." [Oral Argument in *Hollingsworth v. Perry,* No. 12-144 (March 26, 2013) at 39-40 (emphasis added).]

These *amici* urge this Court to follow the guidance of Justice John Marshall Harlan II: "Evidently it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, **no matter how late** it may be that a violation of the Constitution is found to exist." *Chessman v. Teets*, 354 U.S. 156, 165 (1957) (emphasis added).

IV. THIS COURT'S DECISIONS HAVE DE FACTO ESTABLISHED PAGANISM AS OUR NATION'S RELIGION.

This Court's *Roe* decision in 1973 can best be understood in the context of this Court's decisions that came before and after it — as part of establishing paganism as our nation's religion. In 1909, President Theodore Roosevelt described the threat to America posed by paganism:

> Progress has brought us both unbounded opportunities and unbridled difficulties. Thus, the measure of our civilization will not be that we have done much, but what we have done with that much. I believe that the next half-century will determine if we will advance the cause of Christian civilization or revert to the horrors of brutal paganism. The thought of modern industry in the hands of Christian charity is a dream worth dreaming. The thought of industry in the hands of paganism is a nightmare beyond imagining. The choice between the two is upon us. [cited in P. Lillback, Wall of Misconception at 31-32 (Providence Forum Press: 2007).]

Yet beginning well before *Roe*, Secular Humanism, understood by this Court to be another religion, has been the dominant force behind this Court's decisions. *See Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961). Thus, in one area of law after another, this Court has abandoned the Bible and embraced Secular Humanism and its ancient cousin: paganism.

A. Elevation of the Collective over the Individual.

Christianity is focused on individuals, each of whom is created in the image of God as an eternal being who will be held accountable after death. The Free Exercise Clause established a jurisdictional limit on government, making clear that the federal government has no authority to intrude into matters of "religion." This Court has never undertaken to define the noun "religion" but generally treats it as being best understood by activities which it would describe with the adjective "religious." Thus, the Court has created a divide between the sacred and the secular, which seeks to narrowly protect "religious" people engaged in "religious" acts — so long, at least, as there is not a "compelling governmental interest" to regulate that behavior. But the "religion" that the framers sought to protect from government intrusion is much more expansive than this Court allows. George Mason's Virginia's Declaration of Rights and James Madison's Memorial and Remonstrance Against Religious Assessments define the term "religion" as the duty which we owe to our Creator, which is enforceable only by reason and conviction, and not by force or violence — the weapons of the state. This Court has refused to protect this jurisdictional limit on government in important ways:

- *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) — The government has no right to mandate our medical choices, but this Court upheld a compulsory vaccine law on the theory that there is

a benefit to the collective by restricting individual liberty.

- *Buck v. Bell*, 274 U.S. 200 (1927) — Expressly building on the *Jacobson* case, this Court embraced the "science" of Eugenics, which is a distinctly un-Christian doctrine, and upheld a state statute permitting compulsory sterilization for the protection and health of the state.
- *Korematsu v. United States*, 323 U.S. 214 (1944) — This Court upheld President Franklin Roosevelt's Executive Order 9066, forcibly resettling Japanese Americans into internment camps. Even when this Court addressed its error in *Korematsu*, it declined to use the conventional language of "overruling" that prior decision — with Chief Justice Roberts simply saying it was "overruled in the court of history."[10]

B. Evicting God from Government Schools.

The Bible teaches that "[t]he fear of the Lord is the beginning of knowledge." *Proverbs* 1:7 (NIV). Nevertheless, through many decisions, this Court has misused the Establishment Clause to throw God out of the classroom.

- *McCollum v. Board of Education*, 333 U.S. 203 (1948) — "Released time" in public schools set aside for religious instruction is unconstitutional.
- *Engel v. Vitale*, 370 U.S. 421 (1962) — Official public school prayer is unconstitutional.

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[10] *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

- *Abington School District v. Schempp*, 374 U.S. 203 (1963) — State law requiring Bible reading in public schools is unconstitutional.
- *Epperson v. Arkansas*, 393 U.S. 97 (1968) — State law prohibiting teaching of evolution is unconstitutional.
- *Lemon v. Kurtzman*, 403 U.S. 602 (1971) — State funding of private school teachers using public textbooks and instructional materials is unconstitutional, fashioning the *Lemon* test.
- *Wallace v. Jaffree*, 472 U.S. 38 (1985) — One minute of silence in government schools for meditation or voluntary prayer is unconstitutional.

Former Attorney General William Barr recently explained, the "notion that we can hermetically seal off religion from education [has been] refuted in rather spectacular fashion." W. Barr, Speech at ADF (May 20, 2021).

> We are rapidly approaching the point — if we have not already reached the point — at which the heavy-handed enforcement of secular-progressive orthodoxy through government-run schools is totally incompatible with traditional Christianity.... [I]t may no longer be fair, practical, or even Constitutional to provide publicly-funded education solely through the vehicle of state-operated schools. [*Id*.]

C. Rewriting the Establishment Clause to Undermine Christianity.

The incorporation of most, but not all, of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment so that they could be applied to the states has allowed the Supreme Court to rewrite the Constitution to suit the personal preferences of the justices. To be sure, some of the Bill of Rights could properly be applied to protect U.S. citizens from state action as "privileges or immunities clause" of the Fourteenth Amendment. *See, e.g., McDonald v. Chicago*, 561 U.S. 742, 806 (Thomas, J., concurring). However, the Establishment Clause was clearly designed to serve as a check on the power of the federal government — not state or local government. This Court's incorporation of the Establishment Clause has transformed that Amendment from a shield protecting the states from the federal government into a sword to be used by the federal courts to attack the authority of states and to erase from the public square any reference to Christianity.

- *Stone v. Graham*, 449 U.S. 39 (1980) — State law requiring posting of Ten Commandments is unconstitutional. (The design of the courtroom in which this Court sits incorporates the Ten Commandments, which someday could be removed if the Court continues on its present course.)
- *Lee v. Weisman*, 505 U.S. 577 (1992) — Nondenominational prayer at graduation is unconstitutional.

- *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000) — Student-led prayer at high school football games is unconstitutional.
- *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005) — Ten Commandments display by county is unconstitutional as an establishment of religion. (In *Van Orden v. Perry*, 545 U.S. 677 (2005), this Court upheld a Ten Commandments monument on Texas Capitol Grounds, but only as part of a historical display.)

V. THIS COURT'S DECISIONS TO EMBRACE PAGANISM HAVE OPENED THE PEOPLE TO GOD'S RIGHTEOUS TEMPORAL JUDGMENTS.

Dr. Herbert Schlossberg, a leading scholar on the relationship between Christianity and the societies in which it has existed, affirms that paganism is a religion:

> But anyone with a hierarchy of values has placed *something* at its apex, and whatever that is is the god he serves. The Old and New Testaments call such gods **idols**.... Western society, in turning away from Christian faith, has turned to other things. This process is commonly called ***secularization,*** but that conveys only the negative aspect. The word connotes the **turning away from the worship of God** while ignoring the fact that **something is being turned *to* in its place**. [H. Schlossberg, Idols for Destruction: The Conflict of Christian Faith and American

Culture (Crossway Books: 1990) at 5-6 (bold added).][11]

If it is true that "the Most High rules in the kingdom of men" (*Daniel* 4:17 (NKJV)), then it should concern us that the Bible also warns that nations "make idols for themselves to their own destruction." *Hosea* 8:4 (NIV). People have eternal life, and after death will face a judgment, and there are also temporal judgments that people face for disobedience. But, since nations do not have eternal life, their judgments are temporal. It would seem that government officials spend little time thinking about how God would view their decisions, but it is particularly critical to the nation that judges follow the rule: "Justice, *and only* justice, you shall pursue...." *Deuteronomy* 16:20 (NASB).

By constitutionalizing an atextual right of abortion, this Court has taken this issue out of the hands of elected officials. In response, at any point, Congress could have limited the appellate jurisdiction of this Court to negate *Roe*, but it has never done so. And the States and the People could have resisted this Court, as they did after this Court upheld the Fugitive Slave Act.[12] But that has not yet happened. In the

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[11] Bob Dylan penned a modern statement of this truth. *See* "Gotta Serve Somebody."

[12] In 1859, this Court invalidated a state court decision for contradicting a decision of a federal court which upheld the Fugitive Slave Law of 1850. *See Ableman v. Booth*, 62 U.S. 506 (1859). In response to Justice Taney's decision for the Court, the Wisconsin Legislature declared the federal Fugitive Slave Act to

past, pro-lifers were able to take the position that if they did not participate in abortion, this national sin would not be laid to their charge. However, particularly with the Obamacare mandate to impose the costs of abortion on all insureds, with the threatened repeal of the Hyde Amendment, and the revocation of the conscience protection of health care workers, increasingly the People are being compelled by government to participate in or facilitate abortion. But even without individual participation, there are serious consequences for those who are part of the polity of a nation that has followed this Court's lead to destroy millions of unborn babies.

The Bible is clear — all humans are made in the image of God. *See Genesi*s 1:26-27. Whether male or female; whether young or old; whether white or black; whether Jew or Gentile; whether small or large; whether born or preborn — all are made in the image of God. The Bible is also clear that murder is a violation of God's law. *See Exodus* 20:13. Murder is deemed to be a capital offense. *See Genesis* 9:6; *Numbers* 35:30-34.

Because God is rich in mercy, an individual's participation in abortion is not unforgivable. Many women have been deceived into abortions by "trusted sources."[13] When the truth is realized, moral guilt can

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be "without authority, void, and of no force" in the state of Wisconsin. Wisconsin J.Res. 1859.

[13] "Testimonials of Women Who Have Had Abortions," *Pro-Life America.*

lead one to repentance, and to total forgiveness and spiritual restoration.[14] *See, e.g., Ephesians* 2:1-22; *1 Timothy* 2:4. But individual accountability is only one part of the issue, and often overlooked are the consequences of sin for a nation.

Governments appear to believe that they have latitude to allow the murder of persons made in the image of God, but they do not. If there is not justice — the bloodguilt is put upon the land and the community where the injustice was tolerated. This matter is of such importance that the Scriptures go into great depths to teach how a land and community can expiate the bloodguilt.

When a murder takes place, God's law is clear in *Numbers* 35:33 (NIV) that "atonement cannot be made for the land on which blood has been shed, except by the blood of the one who shed it." Hence, the death penalty. Bloodguilt certainly would apply where the murder of innocents is committed with the blessing and protection of the state.

This principle of bloodguilt applies to all nations. In Scripture, there is an identification of the criminal with both the land and the people. And unless the criminal is punished, justice is not met. When the murderer cannot be found, the elders of the nearby towns or cities were to measure the distance from their city to where the body was found in order to determine whose city was closest to the body. Once that was

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[14] *See generally*, R. Alcorn, "Finding Forgiveness After an Abortion," *Eternal Perspective Ministries* (Jan. 21, 2010).

determined, an unworked heifer was to be secured. To remove the bloodguilt, the elders were to take the heifer to the nearest valley with a flowing river and there kill it. The elders, each of them, then had to wash their hands over the heifer and declare — "Our hands have not shed this blood, nor have our eyes seen *it*." *Deuteronomy* 21:1-9 (NKJV).

America is awash with innocent blood from the murder of 61.8 million[15] preborn persons through the brutal means of abortion. We cannot say "[o]ur hands did not shed this blood, nor did our eyes seen it done." *Deuteronomy* 21:7 (NIV). All Americans know this shedding of innocent blood is occurring and has occurred for nearly 50 years. And we have tolerated it. Believing in the supremacy of this Court's constitutional decisions, the nation submitted to *Roe* and its progeny and increasingly yielded to and participated in this national sin.

America is under bloodguilt, and we should not be surprised that God may bring — or may now be bringing — His judgment upon America and Americans for all this shedding of innocent blood. Thomas Jefferson acknowledged this reality when he declared:

> I tremble for my country when I reflect that God is just; that his justice cannot sleep forever. [T. Jefferson, Notes on the State of Virginia (Harper & Row:1964) at 156.]

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[15] *See* American Life League, Abortion Statistics.

When this Court sanctioned the right of men and women to murder their own sons and daughters, it encouraged those actions. This was not the proper role of government. The civil government has the duty and authority to bring those guilty of murder to justice. *See Romans* 13:1-4. If God-ordained authorities refuse to carry out their duty before a Holy God, He cannot deny Himself. The land itself will experience God's "eviction notice." The people and the land will suffer His just judgment.

The nation's lesser magistrates have all complied with this Court's decision and have failed to interpose on the theory that the Supreme Court has ruled and all we can do is obey.[16] Neither have the people demanded that their magistrates interpose against this shedding of innocent blood.

Abraham Lincoln understood bloodguilt. In his Second Inaugural Address, Lincoln stated:

> Fondly do we hope — fervently do we pray that — this mighty scourge of war may speedily pass away. Yet, if God will that it continue ... until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, "the judgments of the Lord, are true and righteous altogether." [A. Lincoln, Second Inaugural Address (Mar. 4, 1865).]

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[16] *See generally*, M. Trewhella, The Doctrine of the Lesser Magistrates (CreateSpace: 2013).

The biblical doctrine Lincoln was referring to when he observed that the Civil War was the result of the judgment of God was the doctrine of blood guiltiness. Close to 630,000 men died to atone for the sin of slavery. Our nation violated the liberty of black men and women. God warned our nation for several decades to let them go free. Our nation refused. The Civil War followed.

These are grave words for Americans. All suffered the just judgment of God. All were culpable. Not just those who shed blood, but all the people — because they tolerated the evil. One can only tremble to think what awaits our nation today due to the wholesale slaughter of our nameless sons and daughters. Americans have tolerated the evil being done to the preborn — and this brings us all under the just judgment of God.

God judges all nations, not just Israel, but the Lord then warns Israel to obey His law "lest the land vomit you out also when you defile it, as it vomited out the nations that *were* before you." *Leviticus* 18:28 (NKJV). The Lord's prophets declared His judgment upon Damascus, Gaza, Tyre, Edom, Ammon, Moab, Philistia, Egypt, Hazor, Elam, Babylon, Ninevah, and more. As it says in *Psalm* 110:6 (KJV), "He shall judge among the heathen." And as it says in *1 Samuel* 2:10, (NKJV) "[h]e shall judge the ends of the earth."

All nations are accountable to God's law, and God judges all nations. For example, the people of Canaan were in rebellion to the Lord. The Lord judged them and brought into Canaan His people Israel. The Lord

then listed the sins and crimes of the Canaanite people (*see Leviticus* 18:6-23) and then summarizes their consequences:

> Do not defile yourselves with any of these things; for by all **these the nations are defiled**, which I am casting out before you. For **the land is defiled**; therefore I visit the punishment of its iniquity upon it, and the **land vomits out its inhabitants**. [*Id.*, 18:24-28 (emphasis added).]

Judgment may be withheld for a time, such as in the days of Jeremiah — a prophet to the nations — who preached judgment for 50 years before it came upon Jerusalem and all of Judah. *See Jeremiah* 1:5. Similarly, Manasseh filled Jerusalem with innocent blood, but God's hand of judgment did not fall immediately upon Manasseh and his generation. *See 2 Kings* 24:4.

America is no different. When this nation will be judged for shedding innocent blood, only God knows. The blood of the innocent preborn cries out from the ground of our nation just as Abel's blood cried out from the ground to the Lord. *See Genesis* 4:8-11.

America should remember the words of the Psalmist:

> The nations have sunk down in the pit which they made; In the net which they hid, their own foot is caught. **The Lord is known *by* the judgment** He executes; The wicked is

> snared in the work of his own hands.... *Selah*. The wicked shall be turned into hell, ***And* all the nations that forget God**. [*Psalm* 9:15-17 (NKJV) (bold added).]

The Holy Bible promises that "[w]hen the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn." *Proverbs* 29:2 (KJV). This case presents a critical opportunity for this Court to act righteously and end the slaughter of the preborn and the shedding of innocent blood.

CONCLUSION

Amici Intercessors pray that this Court, as it recently did with *Korematsu v. United States*, would use the occasion of this important case to review and repudiate *Roe*, relegating it and its progeny to the dustbin of history.

Respectfully submitted,

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