No. _____

In The
Supreme Court of the United States

JANE DOE, minor child who is unborn, by and through her father and next friend, John Doe,

Petitioner,

v.

MIKE HUNTER, in his official capacity as Oklahoma Attorney General; MARY FALLIN, in her official capacity as Oklahoma Governor; MATTHEW G. WHITAKER, in his official capacity as Acting U.S. Attorney General; U.S. DEPARTMENT OF JUSTICE; and THE UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of *Certiorari*
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF *CERTIORARI*

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QUESTIONS PRESENTED

Classed by law as a 'less-than,' and treated for some purposes as property rather than a person, Petitioner Baby Jane seeks constitutional equality under the law, as provided for in the three-prong equal protection test of *Levy v. Louisiana*, 391 U.S. 68 (1968). While the Tenth Circuit agreed she has a right to equal protection, it declined to hold the government responsible for its discriminatory law, holding that this Court's precedents of *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) absolve the government of traceability for an equal protection violation, thus setting up a circuit clash between the Tenth Circuit and the D.C. Circuit.

The questions presented are:

1. Whether, when a provision in state statute or the United States Code is based on judicial precedent, the government that adopted the law is absolved of traceability for standing purposes or whether traceability should be measured by the *Block v. Meese*, 793 F.2d 1303 (D.C. Cir. 1986) standard, affirmed by this Court in *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551 (2019).

2. Whether *Levy* and its three-prong test is the controlling precedent in equal protection challenges involving unborn children instead of *Roe* and *Casey* and whether *Roe* and *Casey* ought to be reassessed, overruled, and replaced with an explicit recognition of the inclusion of unborn children in Fourteenth Amendment protection for purposes of equal protection and substantive due process rights.

LIST OF PROCEEDINGS

- *Doe v. Hunter*, No. 19-5005 U.S. Court of Appeals for the Tenth Circuit. Judgment entered Dec. 6, 2019. Petition for panel rehearing denied Feb. 24, 2020, and mandate issued March 3, 2020.

- *Doe v. Hunter*, Case No. 18-cv-408, U.S. District Court for the Northern District of Oklahoma. Judgment entered Nov. 30, 2018.

There are no additional proceedings in any court Counsel is aware of that are directly related to this case.

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OPINIONS BELOW

The Tenth Circuit's final opinion is reproduced in the appendix ("App.") at 1a. The district court's order and opinion granting the Defendants' motion to dismiss is reproduced at App. 13a. The Tenth Circuit's February 24, 2020 denial of the petition for panel rehearing, is available at App. 20a.

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JURISDICTION

The court of appeals affirmed the district court's order dismissing Petitioner's case on December 6, 2019. On February 24, 2020, the Tenth Circuit denied Petitioner's timely petition for a panel rehearing. On March 19, 2020, this Court gave an order extending the time for filing a petition for a writ of certiorari to 150 days from the date of an order denying a timely petition for rehearing. This Court has jurisdiction under 28 U.S.C. S. 1254(1).

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Article III of the United States Constitution provides, in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States … to Controversies to which the United States shall be a Party …" U.S. Const. art. III § 2.

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall be … deprived of life, liberty, or property, without due process of law …" U.S. Const. amend. V.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "…[N]or 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." U.S. Const. amend. XIV § 1.

Pertinent statutes include 18 U.S.C. § 1841, 21 Oklahoma Statutes § 21-652, 21 Oklahoma Statutes § 21-691, and 63 Oklahoma Statutes § 63-1-730, and are reproduced at App. 24a–28a.

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

As a child yet to be born, Baby Jane began her life under the Sword of Damocles.

Unlike other children similarly situated, her constitutional rights were only partially safeguarded by Oklahoma and federal law. Glaring exceptions in 21 OK Stat § 21-691 (2014), 21 OK Stat § 21-652 (2014), and 18 U.S.C. § 1841 (2004) gave permission for her life to be extinguished, without notice, or opportunity to defend herself, until she reached a certain age, according to Oklahoma law, or birth, according to federal law. No other class of human beings has arbitrary milestones

attached to their realization of the Fifth and Fourteenth Amendment substantive rights to life and bodily integrity and to equal protection under the law.

The United States and Oklahoma recognize Baby Jane as a human being and a child for purposes of crimes against the person. If any person other than her mother or a doctor hired by her mother took her life, he could be prosecuted for homicide under Oklahoma and federal law. However, in relation to her mother and anyone hired by her mother, Baby Jane is re-classed as property; an entity without rights or recourse; a being to be disposed of at will. The exceptions in 21 OK Stat § 21-691 (2014), 21 OK Stat § 21-652 (2014), and 18 U.S.C. § 1841 (2004) class Baby Jane as no human being should be classed: a being, who, while human and a child, is without equal protection of the law. Equal and protected as opposed to some, but not as opposed to others.

Due to the conflict in applicable precedents, only this Court can effectively redress Baby Jane's injury. In similar circumstances, when a class of human beings is treated as "less than" and in a blatantly inequal manner, this Court has reconsidered and even overruled former precedent. No better example stands than that of *Brown v. Board of Education*, 347 U.S. 483 (1954).

Baby Jane has faithfully raised the equal protection precedent of *Levy v. Louisiana*, 391 U.S. 68 (1968), asserting that its three-prong test should be the controlling precedent for cases involving the equal protection of all children, no matter their age. *Id*. at 70. Not a word about *Levy* was uttered by the District Court or the Tenth Circuit, leaving Baby Jane to pray this Court should grant review,

resolve the conflict in precedent between *Levy*, *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) – finding the latter two egregiously violative of constitutional rights and original meaning – and reaffirm that all children who are human, who live, and who have their being fall under the Equal Protection Clause and Doctrine and have the right to life and bodily integrity.

The Tenth Circuit affirmed that an equal protection violation exists simply because the law denies equal treatment to a human being. *See* App. at 11a. Yet, though the court agreed Baby Jane suffered an equal protection injury, it puzzlingly held that the injury could not be traced to the government because the government was following a precedent handed down by this Court. This denial of standing left Baby Jane with no opportunity to remedy her rights, save a hearing by this Court. This Court's judgment is sorely needed, as the Tenth Circuit's discriminatory holding on traceability is in direct conflict with the D.C. Circuit's precedent in *Block v. Meese,* 793 F.2d 1303, 1309 (D.C. Cir. 1986), recently reaffirmed by this Court in *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551, 2566 (2019).

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STATEMENT OF THE CASE

A. Baby Jane's American Story.

When Baby Jane's father brought this suit on her behalf, she was at 21 weeks gestation. Her story is not unique, though she is. Her story can be found at the beginning of each of our stories: a new, unique individual is created, and endowed with those same unalienable rights our first fathers enshrined in law. These rights did not attach to Baby Jane once she reached any particular milestone on her human journey. Instead, being unalienable, they attached to her at the earliest moment of her existence. As the Declaration of Independence states, men [and women] are "created equal," not born equal. To be created equal is at the root of every American story; a silver thread we each can trace, but one that judicial precedent must clearly recognize as *Levy v. Louisiana*, 391 U.S. 68 (1968) lays out in its simple, three-prong test. *Id.* at 70.

Instead of recognizing Baby Jane's natural rights as a human being and equally protecting her under the law, the federal government and Oklahoma discriminated against her. Her life was protected against some, but not all. Though most others could be prosecuted for homicide if they intentionally took her life, government-sanctioned exceptions were made, leaving Baby Jane without substantive rights or equal protection. She brought suit, challenging these violations of her constitutional rights and of her civil rights under 42 U.S.C. § 1983.

The federal district court originally had jurisdiction to hear Baby Jane's claim under 28 U.S.C. §§ 1331 and 1343.

B. The Exceptions to the Oklahoma Fetal Homicide Laws and the Federal Unborn Victims of Violence Act.

18 U.S.C. § 1841, known as the Unborn Victims of Violence Act (UVVA), allows the criminal prosecution of those who "intentionally kill[ ]" an unborn child in the womb during the commission of numerous acts, unless the child's life is taken through an abortion her mother agrees to. *Id*. at (2)(C)(b). The UVVA defines an unborn child as "a child in utero," which is defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." *Id*. at (2)(C)(d).

21 Oklahoma Statutes § 21-652 and 21 Oklahoma Statutes § 21-691 (Oklahoma fetal homicide laws) similarly provide for criminal prosecution and directly place the killing of unborn children under homicide, defining it as "the killing of one human being by another" and explaining, "'human being' includes an unborn child." *Id*. at (A), (B). Oklahoma defines an unborn child in 63 Oklahoma Statutes § 63-1-730(A)(4): "the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus."

Despite criminalizing the intentional killing of unborn children, both the UVVA and the Oklahoma fetal homicide laws make an exception for certain methods of intentionally killing an unborn human person. Oklahoma allows abortion as the only means of state-sanctioned homicide. *See* 21 OK Stat § 21-652(D)(1) and 21 OK Stat § 21-691(C)(1). The UVVA is broader, giving exceptions

for anyone involved in an abortion committed against the child, including an illegal abortion. *See* 18 U.S.C. § 1841(c)(1). The UVVA also gives an exception to the mother to kill her child who is unborn using any method she desires. *See* 18 U.S.C. § 1841(c)(3).

By granting the abortion exception, Oklahoma treats children who are unborn as a separate and unequal class of human beings. By granting an exception even for illegal abortions and for any method a mother may use to kill her child who is unborn, the federal government goes out of its way to treat children who are unborn as a separate and unequal class of human beings.

No other class of human beings is so discriminatorily treated, excluded from the fundamental constitutional rights to life and bodily integrity, and denied the equal protection of the laws in Oklahoma or federal law.

C. The Claims of Oklahoma and the United States

Oklahoma agreed with Baby Jane that she is member of the human race, recognized and protected by numerous state laws. The state did not dispute that Baby Jane was subject to the substantial risk of great and imminent injury, merely that Oklahoma was not responsible for any injury, due to the precedent of *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992). Oklahoma argued that it is being forced by the federal government to have its exceptions, but the federal government laid any potential blame on Oklahoma, and both blame the federal courts, specifically, this Court's precedent in *Casey* for forcing their hand and requiring the exceptions in the UVVA and state fetal homicide laws.

D. Lower Court Proceedings

On August 7, 2018, Baby Jane filed suit in the U.S. District Court for the Northern District of Oklahoma. On November 30, 2018, the District Court granted the motions to dismiss filed by Respondents, finding that Baby Jane had no standing, holding she had not shown injury, traceability, or redressability. The District Court failed to follow the Tenth Circuit's precedent of a presumption in favor of rejecting a 12(b)(6) motion, which Oklahoma filed.

On January 23, 2019, Baby Jane appealed to the Tenth Circuit, which disagreed with the District Court on the presence of an equal protection injury, stating that Baby Jane had raised sufficient facts to assert it. *See* App. at 11a. However, on December 6, 2019, the Tenth Circuit affirmed the dismissal, based on its finding that traceability was lacking. *See* App. at 11a-12a. The Tenth Circuit did not reach the issue of redressability, declining to analyze it. App. at 7a.

In affirming the dismissal for traceability reasons, the Tenth Circuit held this Court's precedents in *Roe* and *Casey* absolved the government from responsibility for an equal protection injury stemming from its own laws. Both the District Court and the Tenth Circuit refused to consider Petitioner's assertion that the three-prong test of *Levy* is controlling precedent instead of *Roe v. Wade*, 410 U.S. 113 (1973) and *Casey* in an equal protection lawsuit.

In so holding, the Tenth Circuit created a circuit split on traceability for standing purposes with the D.C. Circuit's longstanding precedent in *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) which this Court recognized shortly before the

Tenth Circuit's decision in Baby Jane's case in *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551, 2566 (2019). On February 24, 2020, the Tenth Circuit denied Baby Jane's request for a panel rehearing.

The Tenth Circuit holds *Roe* and *Casey* alone responsible for Petitioner's equal protection injury, telling Baby Jane her "real quarrel" is with *Roe* and *Casey*. App. at 12a.

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REASONS FOR GRANTING THE WRIT

To have equality of protection under the law, every human being must be equally protected. Neither arbitrary milestones nor developmental and age requirements should mar the justice of law that demands every human being possess her own natural right to life. No judicial precedent can rightfully grant another human being the ability to strip life and bodily integrity from another innocent individual at will. The protection of innocent human life is the basis of countless laws in the United States and of all 50 states' criminal codes.

To be a person – as distinguished from being a citizen – for purposes of constitutional law, is to be a living human being; to be a unique individual who belongs to the human race. Nothing more is required, but only this Court can make this legal reality clear by confirming that *Levy v. Louisiana*, 391 U.S. 68 (1968), not *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) define the equal protection rights of all children. Neither the District Court nor the Tenth Circuit attempted a resolution of the glaring

conflict between *Levy* and *Roe* and *Casey*, recognizing that this Court's judgment is necessary.

Additionally, only this Court can resolve the circuit split created by the Tenth Circuit when it deviated from the longstanding precedent on traceability for Article III standing in *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) and reaffirmed by this Court in *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551 (2019). The Tenth Circuit declined to recognize, as *Block* and this Court did, that every government is responsible for the laws it creates and that the results of those laws are legally traceable to the government that adopted them, no matter the reason or motivation behind the laws. If other circuits follow the Tenth Circuit's lead, individuals could be dismissed from court when a government violates their equal protection rights, provided the government injuring them can claim a precedent of this Court undergirds its law. If all that is needed to dismiss a suit outright is a citation to an un-suable precedent, injured individuals will be left without remedy.

Petitioner asks this Court to resolve the pointed constitutional conflict between *Levy*, *Roe*, and *Casey* as well as the circuit clash on principles of traceability for standing and the Tenth Circuit's refusal to abide by this Court's affirmation of the *Block* standard.

Respectfully, review is warranted.

I. THIS COURT HAS NEVER RULED ON THE CONFLICT BETWEEN *LEVY*, *ROE*, AND *CASEY*, BUT IN SO DOING, THIS COURT CAN RESOLVE NATIONAL CONFUSION AND DECIDE A DISPOSITIVE ISSUE IN BABY JANE'S CASE.

Levy is in direct contradiction to *Roe* and *Casey,* but it should supersede them as the more relevant, modernly accurate, and constitutionally sound precedent. *Levy*'s roots run deep and are founded on solid judicial analysis, including the wisdom of Chief Justice Marshall, who wrote in *United States v. Palmer*, 16 U.S. 610 (1818), that the terms "person or persons" were broad enough to include "every human being" and "the whole human race." *Id.* at 631-32.

Levy is "the rule of law" and not "the rule of the strong" decried by this Court in *McGirt v. Oklahoma*, No. 18-9526, slip op. at 28 (U.S. Jul. 9, 2020). *Levy* struck down as unconstitutional state laws that burdened or disadvantaged children, and it defined a person for purposes of the Equal Protection Clause of the Fourteenth Amendment, holding that if individuals are "humans, live, and have their being" then "[t]hey are clearly 'persons' within the meaning of the Equal Protection Clause of the Fourteenth Amendment." *Levy*, 391 U.S. at 70. Baby Jane asserted multiple facts, including modern science, new law, and discoveries that occurred after *Roe* and *Casey*, supporting her contention that she fits well within this precedential definition and that, therefore, *Levy* is the proper precedent to apply. In fact, the Tenth Circuit's recognition that Baby Jane is a person for purposes of asserting an equal protection claim indicate the Tenth Circuit prefers *Levy* to *Roe* and *Casey* as

the applicable standard. However, the Tenth Circuit declined to fully work out an application of *Levy*, leaving Baby Jane with a dismissal and no remedy at law.

Gomez v. Perez, 409 U.S. 535 (1973), furthered this Court's holding in *Levy* by explaining the precedential standard that children cannot be grouped into different and unequal classifications, where some are awarded rights and others are not. *Gomez* cited *Levy* and *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972), saying: "Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that, once a State posits a judicially enforceable right on behalf of children…there is no constitutionally sufficient justification for denying such an essential right to a child… For a State to do so is 'illogical and unjust.'" *Gomez*, 409 U.S. at 538.

This Court has never ruled on the constitutional dichotomy posed by the conflict the trio of *Levy*, *Weber*, and *Gomez* has with *Roe* and *Casey*, particularly in light of fetal homicide laws passed by the overwhelming majority of states and the UVVA, passed by the United States in 2004, well after *Roe* and *Casey*. This passage of these laws should require a reassessment of *Roe* and *Casey*, in light of *Levy* and *Gomez*, which recognized children may not be treated discriminatorily by the law, specifically once the government "posits a judicially enforceable right on behalf of children." *See* Levy, 391 U.S. at 71; Gomez, 409 U.S. at 537-38.

In addition to the change in law, scientific facts are available to this Court today that it did not have at the time of *Roe* or even *Casey*. These facts lead to a

crystal-clear conclusion that *Levy* must supersede and, by application, overturn *Roe* and *Casey*. Baby Jane requests this Court take up the conflict in its own precedents, particularly since both lower courts ignored her request that *Levy* be applied even as they denied her standing.

A finding that *Levy*, undergirded by the "every human being" standard of *Palmer*, controls, would place Baby Jane fully under the Equal Protection Clause and Doctrine, redress her injury, and be dispositive in her case. *See Levy*, 391 U.S. at 70; *Palmer*, 16 U.S. at 31.

Such a ruling from this Court would also provide guidance nationwide where states constantly attempt to work out a way to protect the lives of all children, but are prevented from doing so by federal courts constantly citing *Roe* and *Casey* at the neglect of this Court's other precedents. If *Levy*, *Gomez*, *Weber*, and *Palmer* control and all children, born and unborn, rightfully fall under Fourteenth Amendment protection, much-needed clarity and uniformity will be brought to the contentious national issue of abortion.

A. *Levy* is a More Constitutionally Sound Precedent, Rooted in the Original Meaning and Most Reasonable Understanding of the Fourteenth Amendment.

Baby Jane has contended from the original filing of her suit that the combination of *Levy*'s precedent, modern science and medical knowledge, the

illogical statutes she brings suit against,[1] and the original intent of the Fourteenth Amendment to include prenatal persons[2] make *Roe* and *Casey* unworkable precedent in a civilized society.

The Tenth Circuit hinted at, but did not fully deal with the original meaning of the Fourteenth Amendment. "Doe's averments that she is being discriminated against and denied the same protections as born human beings and other unborn human beings sufficiently allege an injury in fact." App. at 11a. By agreeing that Baby Jane could and did assert sufficient facts to demonstrate an equal protection injury, the Tenth Circuit opened the spigot of sound reason by finding something *Roe* and *Casey* denied: an unborn child, as a member of the human family, is

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[1] The statutes at issue in Baby Jane's case are hardly the only ones that have caused logic and law to collide across the nation when the lives of prenatal persons are considered. A robust treatment of the problem is provided in Roger J. Magnuson & Joshua M. Lederman, *Aristotle, Abortion, and Fetal Rights*, 33 Wm. Mitchell L. Rev. 766 (2007). *See also* 18 U.S. Code § 3596(b) for the prohibition on executing a pregnant woman until she has given birth, despite the mother being allowed to freely abort the same child the government would preserve. And *see* 21 OK Stat § 21-1685 (2014) that makes it a felony to saw the legs off of a dog or cat, while the law still allows those of a human child to be ripped off during a D&E abortion, a legal procedure.

[2] A historical examination of the Fourteenth Amendment illuminates its intent: to extend the equal protection against oppression to any class of human beings who would be discriminated against in the future. While the original public meaning and intentions of the Fourteenth Amendment may have been lost to time, they have been brilliantly recovered in Joshua Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, 40 Harv. J.L. & Pub. Pol'y 539 (2017).

covered under equal protection jurisprudence. This Court must turn the faucet on full-blast and contend with the unworkable and costly standards of *Roe* and *Casey* still applied by the Tenth Circuit to deny Baby Jane standing. Justice cannot allow a child to be injured through a deprivation of her equal protection rights and yet have no recourse.

The Tenth Circuit's hint that *Levy* is sounder precedent should be explicitly acknowledged and confirmed by this Court. *Roe* and *Casey* are fabrications without basis in our Constitution and, as Justice Thomas wrote: "[They] created the right to abortion out of whole cloth, without a shred of support from the Constitution's text. Our abortion precedents are grievously wrong and should be overruled." *June Med. Servs. v. Russo*, No. 18-1323, 63 (U.S. Jun. 29, 2020) (Thomas, J., dissenting). *Levy* comes to the rescue with a simple and sound test for inclusion under the Equal Protection Clause: if one is 1) human, 2) lives, and 3) has her being, she is a person for equal protection purposes. *See Levy*, 391 U.S. at 70.

Unlike *Roe* and *Casey* which have been roundly criticized through the decades for constitutional unsoundness, *Levy*'s test fits squarely within the original meaning of the Fourteenth Amendment. It was enacted to ensure America's shameful failure to respect the unalienable dignity and humanity of all human beings was not repeated; its design was to grant groups of marginalized people full rights, not to deprive them in the future.

Dictionary usage, common law precedent, state practice, and the intent of the text all indicate informed citizens understood the Fourteenth Amendment applied

to all members of the human race in these United States, without exception. *See* Joshua Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, 40 Harv. J.L. & Pub. Pol'y 539, 546-62 (2017). Indeed, the same Ohio legislative body that ratified the Fourteenth Amendment in 1867 enacted legislation criminalizing abortion, stating that abortion was "child-murder" and indicating the common understanding shared by many state legislatures at the time of the Fourteenth Amendment's passage and ratification that an unborn child was a human being worthy of equal protection. *Id.* at 558. Such children were widely understood to be included in the definition of "persons" and protected in law as such.[3] The Fourteenth Amendment cannot reasonably be interpreted to exclude a subset of individuals who were considered human beings at the time it was written. "[T]he history of the [Fourteenth] Amendment proves that the people were told that its purpose was to protect weak and helpless human beings." *Conn. Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77, 87 (1938) (Black., J., dissenting).

> The Framers expected the Fourteenth Amendment to protect every member of the human species. The Amendment was carefully worded to "bring within the aegis of due process and equal protection clauses every member of the human race, regardless of age, imperfection, or condition of unwantedness." Senator Jacob Howard, who sponsored the Amendment in the Senate, declared the Amendment's purpose to "disable a state from depriving not merely a citizen of the United

[3]*See* James S. Witherspoon, *Reexamining* Roe*: Nineteenth-Century Abortion Statutes and the Fourteenth Amendment*, 17 St. Mary's L.J. 29 (1985), for additional historical information on the understanding of legislatures and citizens at the time of the Fourteenth Amendment, in which he concludes: "[T]here can be no doubt whatsoever that the word 'person' referred to the fetus." *Id.* at 49.

> States, but any person, whoever he may be, of life, liberty and property without due process." Even the lowest and "most despised of the [human] race" were guaranteed equal protection. … Representative James Brown simply put it: "Does the term 'person' carry with it anything further than a simple allusion to the existence of the individual? The primary Framer of the Fourteenth Amendment, Representative John Bingham, intended it to ensure that "no state in the Union should deny to any human being . . . the equal protection of the laws." He described the Amendment as a remedy to the denial of basic human rights: "[B]y putting a limitation expressly in the Constitution . . . so that when . . . any other State shall in its madness or its folly refuse to the gentleman, or *his children or to me or to mine*, any of the rights which pertain to American citizenship or to common humanity, there will be redress for the wrong through the power and majesty of American law."

Craddock, *supra* at 559-60 (internal citations omitted).

In line with this original meaning, *Levy* recognizes innate, equal dignity for all living human beings. Contrarily, *Roe* and *Casey* encapsulate what O. Carter Snead refers to as "*contingent* dignity, because they do not ascribe equal worth to all living members of the human species, but only to those individuals who have met a certain threshold criterion (e.g., birth)." O. Carter Snead, *Human Dignity and the Law, in* HUMAN DIGNITY IN BIOETHICS: FROM WORLDVIEWS TO THE PUBLIC SQUARE 142, 148 (Stephen Dilley & Nathan J. Palpant ed., 1st ed. (2013) (emphasis in original). He further lays out the better justice that conceives of "an *intrinsic* conception of dignity – one that applies regardless of an individual human being's age, location, size, condition of dependency, usefulness, or value as judged by other…" *Id.* at 148-49 (emphasis in original).

A view based in the Fourteenth Amendment's original meaning, would decry "[t]he idea that one human being is entitled to kill another because he or she

adjudged that life to be unwanted, burdensome to others, not worth living, or an obstacle to one's full participation in social and economic life" as "contrary to the principle of equality on which the nation was founded." *Id.* at 50.

Justice Gorsuch detailed the underpinnings of the Fourteenth Amendment:

> Perhaps the most profound indicium of the innate value of human life, however, lies in our respect for the idea of human equality. The Fourteenth Amendment to the U.S. Constitution guarantees equal protection of the laws to all persons…This profound social and political commitment to human equality is grounded on, and an expression of, the belief that all persons *innately* have dignity and are worthy of respect without regard to their perceived value based on some instrumental scale of usefulness or merit. We treat people as worthy of equal respect because of their status as human beings and without regard to their looks, gender, race, creed, or any other incidental trait — because, in the words of the Declaration of Independence, we hold it as "self-evident" that "all men [and women] are created equal" and enjoy "certain unalienable Rights," and "that among these are Life."
>
> If one were to start from a different premise about the value of human life, assuming perhaps that different human lives bear different value depending on their instrumental worth to society or other persons, a critical rationale for equal protection would wither if not drop away altogether. … [T]he belief that human life is inherently valuable and worthy of protection "is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal."

Neil M. Gorsuch, *The Future of Assisted Suicide and Euthanasia* 159 (2006) (internal citations omitted) (emphasis in original).

The Fourteenth Amendment furthered American legal application of equality to all human persons, and *Levy* properly laid out a constitutionally sound test that includes all human children.

II. FEDERAL COURTS AGREE IT IS TIME FOR THIS COURT TO REEXAMINE *ROE* AND *CASEY*.

The Tenth Circuit's recognition of the validity of an equal protection injury for an unborn child is an invitation for this Court to reassess the viability of current abortion jurisprudence. An unborn child can only suffer an equal protection injury if the Equal Protection Clause and Doctrine applies to her, which the Tenth Circuit recognized in opposition to *Roe* and *Casey*. *See* App at 11a. Its holding that Baby Jane could suffer an equal protection injury but could not recover for it, largely due to *Roe* and *Casey*, requires a resolution only this Court can provide. *See* App. at 12a.

The Eighth Circuit has recognized that laws dealing with an unborn child as a separate, unique, living human being are scientifically accurate. *See Plan. Parent. Minn. v. Rounds*, 530 F.3d 724, 737 (8th Cir. 2008) "The law is presumed to keep pace with the sciences and medical science…" *Bonbrest v. Kotz*, 65 F. Supp. 138, 143 (D.D.C. 1946). Though science precisely shows the humanity of unique persons in the womb, most judicial precedent has not kept up, constantly citing *Roe* and *Casey* as barriers to the equality of autonomous human persons.

The Eighth Circuit agrees this Court should reconsider *Roe* and *Casey* because the precedents are modernly unsatisfactory. *See MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 773-74 (8th Cir. 2015). The Eighth Circuit spoke of the "advances in medical and scientific technology [that] have greatly expanded our knowledge of prenatal life," beyond the knowledge available when *Roe* was decided,

citing *Hamilton v. Scott,* 97 So.3d 728, 742 (Ala.2012) (Parker, J., concurring specially). *MKB Mgmt. Corp.*, 795 F.3d at 774.

This Court has asserted there is no requirement to follow precedent "when governing decisions are unworkable or are badly reasoned." *Payne v. Tennessee*, 501 U.S. 808, 809. "[W]hen convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions…this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions." *Smith v. Allwright,* 321 U.S. 649, 665 (1944). The Eight Circuit explicitly agrees *Roe* and *Casey* are badly reasoned, and the Tenth Circuit implies the same. Baby Jane asks this Court to look once more at *Roe* and *Casey* as "good reasons exist for the Court to reevaluate its jurisprudence." *MKB Mgmt. Corp*, 795 F.3d at 773.

A. This is an Ideal Case for an Evaluation of Stare Decisis as Applied to *Roe* and *Casey*.

Justice Frankfurter explained, "[t]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it." *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 491-92 (1939) (Frankfurter, J., concurring). Justice Douglas wrote that stare decisis in constitutional law is "tenuous" where a prior decision conflicts with the Constitution itself. William O. Douglas, *Stare Decisis*, 49 Colum. L. Rev. 735, 736 (1949). Justice Black concluded, "A constitutional interpretation that is wrong should not stand." *Connecticut General Co. v. Johnson*, 303 U.S. 77, 85 (Black, J., dissenting). Chief Justice Roberts similarly wrote that

stare decisis' "greatest purpose is to serve a constitutional ideal – the rule of law." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 378 (2010) (concurring opinion). In a concurring opinion citing multiple decisions by this Court, Justices Souter and Kennedy wrote of the precedential support and "practical sense" of overruling some prior precedents: "In prior cases, when this Court has confronted a wrongly decided, unworkable precedent calling for some further action by the Court, we have chosen not to compound the original error, but to overrule the precedent." *Payne v. Tennessee*, 501 U.S. 808, 842-44 (1991) (internal citations and footnotes omitted).

Justice Kavanaugh explains it well:

> In constitutional cases…the Court has repeatedly said—and says again today—that the doctrine of *stare decisis* is not as "inflexible." The reason is straightforward: As Justice O'Connor once wrote for the Court, *stare decisis* is not as strict "when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions." The Court therefore "must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*." It follows "that in the unusual circumstance when fidelity to any particular precedent does more to damage this constitutional ideal than to advance it, we must be more willing to depart from that precedent."

Ramos v. Louisiana, No. 18-5924, 39-40 (U.S. Apr. 20, 2020) (Kavanaugh, J., concurring in part) (internal citations omitted) (emphasis in original).

A replacement of *Roe* and *Casey* with a more solidly constitutional precedent is necessary. Stare decisis should not serve as "an imprisonment of reason." *Guardians Ass'n v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 618 (1983) (Marshall, J., dissenting). This Court is in a position to clarify that the Fourteenth

Amendment specifically prohibits a state from sanctioning the taking of an innocent and living human individual's life. The Equal Protection Clause and Doctrine precludes government from purposely excluding certain classes of humans from the basic protection of its laws, including the right to life, and there should be no daylight between federal and state conduct when it comes to the interpretation of a fundamental right and the equality of that right across the nation, as laid out in *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Justice Kavanaugh's test for overturning precedent can be met by Baby Jane. *See Ramos*, No. 18-5924 at 41-43. First, the precedents in question – *Roe* and *Casey* – are grievously and egregiously wrong, both when first decided, as a matter of original intent, and when unmasked in the following decades as scientific fact, medical discoveries, and legal developments have caught up to the realities of human life. As Justice Gorsuch explained in his *June* dissent, "when the facts change, the law cannot pretend nothing has happened." No. 18-1323 at 128-29. And as he wrote in his *Ramos* concurrence, "stare decisis isn't supposed to be the art of methodically ignoring what everyone knows to be true." No. 18-5924, 23. Modernly, we know it to be true that a prenatal child is a human child, entitled to equal protection under the law. Justice Thomas wrote correctly in his *June* dissent: "*Roe*'s reasoning is utterly deficient – in fact, not a single Justice today attempts to defend it." No. 18-1323, 79.

Second, *Roe* and *Casey* have caused significant consequences jurisprudentially and in the real world. Since they were decided, the precedents

have become patently unworkable and millions of children are dead, with life generally devalued in the United States. Women, too, have been placed under a demanding standard that, because of abortion precedent, requires them to live like a man, act like a man, and become like a man to be afforded equal opportunities. The inherent differences that exist because a woman can become pregnant and bear children are no longer recognized or celebrated.[4] Women suffer needlessly through the continuation of ill-advised precedent that could be remedied:

> [L]ike *Lochner*, the Court in *Roe* and more explicitly in *Casey* illicitly appropriated into constitutional decision-making one particular "theory"…of women's liberty and equality…. As in *Lochner*, the Court inserted itself forcefully into a complex, emerging issue at a time of rapid societal change, putting the weight of the Court's authority on one particular way of responding to that change. The Court's intervention, arguably illegitimate as a matter of constitutional law, also disenabled innovative solutions to newly emergent cultural advances (*viz*, women's equality) in connection with the perennial need to care for dependents. *Casey* doubled-down on this intervention, making explicit the Court's view that societal "reliance" upon abortion for women's equality was an unmitigated good. Yet rather than promote women's authentic equality…the constitutional right to abortion actually hinders women's equality by promoting cultural hostility to pregnancy and motherhood, demanding that women model themselves after the normative "unencumbered male" with whom they seek to compete in the public sphere. Women's equality so conceived has rendered childbearing a consumer choice with harmful, unintended consequences for disadvantaged women especially, in both the home and workplace.

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[4] The equality of women is an inherent part of the conversation whenever abortion is considered by courts. Erika Bachiochi, *A Putative Right in Search of a Constitutional Justification: Understanding Planned Parenthood v Casey's Equality Rationale and How It Undermines Women's Equality*, 35 Quinnipiac L. Rev. 593 (2017) gives a full treatment to the disastrous effect *Roe*, *Casey*, and related abortion jurisprudence have had on women's equality.

Erika Bachiochi, *A Putative Right in Search of a Constitutional Justification: Understanding Planned Parenthood v Casey's Equality Rationale and How It Undermines Women's Equality*, 35 Quinnipiac L. Rev. 593, 600 (2017).

Finally, any reliance that exists would not be unduly upset by a reversal of *Roe* and *Casey*, particularly considering the overwhelming amount of practical and material help modernly available for women in unplanned pregnancies[5] and considering that a failure to reverse *Roe* and *Casey* will result in the deaths of hundreds of thousands of additional children annually and injury to countless women. Baby Jane's case should join the list of this Court's "most notable and consequential decisions" that "have entailed overruling precedent," as detailed by Justice Kavanaugh. *See Ramos*, No. 18-5924 at 37-38. Women would be better served by the decisions' reversal.

Baby Jane can also meet Justice Gorsuch's test on overturning precedent: "[W]hen it revisits a precedent this Court has traditionally considered 'the quality of the decision's reasoning; its consistency with related decisions; legal developments

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[5] Pregnancy resource centers (PRCs), where pregnant mothers in need can receive a wide variety of practical and monetary aid, outnumber abortion facilities in every state, save one. In Rhode Island, the number of PRCs equal those of abortion facilities. *See While Abortion Clinics Diminish, Crisis Pregnancy Centers Flourish*, MidWest Center for Investigative Reporting (Feb. 2019) (found at: https://investigatemidwest.org/2019/02/19/while-abortion-clinics-diminish-crisis-pregnancy-centers-flourish/).

since the decision; and reliance on the decision.' (*Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U. S. ___, ___ (2019) (slip op., at 17).)" *Ramos*, No. 18-5924 at 23.

The quality of *Roe* and *Casey* is severely lacking. The decisions are utterly inconsistent with *Levy, Gomez, Weber, Palmer*, and equal protection jurisprudence in general. Naturally, some persons will always rely on decisions of this Court, but such reliance on injustice did not prevent this Court from overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896) sixty years later, *Bradwell v. The State*, 83 U.S. 130 (1872) nearly 100 years later, or *Apodaca v. Oregon*, 406 U.S. 404 (1972) 48 years later, even despite this Court's consistent reaffirmation of *Apodaca* for decades, as Justice Alito laid out in his *Ramos* dissent. *See* No. 18-5924 at 67-68. "[T]he magnitude of a legal wrong is no reason to perpetuate it." *McGirt v. Oklahoma*, No. 18-9526, slip op. at 38, (U.S. Jul. 9, 2020).

Justice is necessary, even when some people rely on manifest injustice. A recognition of *Levy* as better precedent does not take away the autonomy of individuals; instead it fulfills the original meaning of the Fourteenth Amendment and limits the breadth of individuals' choices insofar as they damage another living human's rights. As law always does, when one person's choice invades rights that belong to another human being, that choice must necessarily be limited. "To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *McGirt*, No. 18-9526, slip op. at 42. As Justice Gorsuch wrote in *Ramos* "[i]t is something else entirely to

perpetuate something we all know to be wrong only because we fear the consequences of being right." No. 18-5924 at 29.

Roe and *Casey* can only continue if this Court is prepared to say, as it once did in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), that some groups of human beings are outside the moral, protected community of all other human beings; that some classes of humans are "property" under the Constitution. *Id.* at 395. *Roe* and *Casey* are irreconcilable with equal protection jurisprudence. Their overturn would be a watershed civil rights victory in the making of *Brown*. When it is discovered that a precedent allows discrimination against a class of human beings, this Court overrules, almost without fail. "[W]e have been extremely sensitive when it comes to basic civil rights and have not hesitated to strike down an invidious classification even though it had history and tradition on its side." *Levy*, 391 U.S. at 71 (internal citations omitted).

Justice and equality are greater than precedent, especially when an erroneous precedent that is egregiously wrong can be replaced with one that is constitutionally sound. In short, *Roe* and *Casey* should be overruled because they are "manifestly absurd [and] unjust," and therefore, not "*bad law*" but "*not law*." 1 William Blackstone, *Commentaries on the Laws of England in Four Books*, 70 (1753) (emphasis in the original).

III. THERE IS A CIRCUIT SPLIT ON TRACEABILITY FOR ARTICLE III STANDING PURPOSES THAT THIS COURT MUST RESOLVE IN THE NAME OF NATIONAL UNIFORMITY AND IN ORDER TO UPHOLD ITS OWN PRECEDENTS.

As detailed *infra*, at pp. 29-31, this Court has always allowed injurious statutes to be traced to the government that enacts them. If this standard is applied faithfully, *except in cases involving abortion*, it is arbitrary and unjust. This Court must resolve the D.C. and Tenth Circuit splits in favor of tracing the injury caused by a government law to the government that adopted it and affirm the importance of a uniform application of its own precedent on the matter, including *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551 (2019).

A. The Tenth Circuit Enacted a Discriminatory "Abortion-Only" Rule and is in Conflict with the D.C. Circuit.

After acknowledging Baby Jane provided enough facts to assert an equal protection injury, the Tenth Circuit agreed with the District Court that her case should still be dismissed, specifically for a lack of traceability to the state or federal government. *See* App at 12a. In so doing, the Tenth Circuit split from the D.C. Circuit and enacted what appears to be another "abortion-only rule." *June*, No. 18-1323 at 113-14 (Alito, J., dissenting).

In *Block v. Meese* 793 F.2d 1303 (CADC 1986), Justice Scalia noted that Article III standing did not require that the government be the "legal cause" of injury or the only one with whom the Plaintiff might have a quarrel. He wrote the

question of legal causation was "irrelevant to the question of core, constitutional injury-in-fact, which requires no more than *de facto* causality." *Id.* at 1309. A government that enacts a law is the de facto cause of an injury that arises under the law. This Court recently reaffirmed the *Block* precedent in *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551, 2566 (2019): "Because Article III "requires no more than *de facto* causality," *Block v. Meese*, 793 F.2d 1303, 1309 (CADC 1986) (Scalia, J.), traceability is satisfied here."

Even though Baby Jane also has a quarrel with *Roe* and *Casey*, this does not remove the reality that the exceptions in the UVVA and Oklahoma fetal homicide laws are invidiously discriminatory, a violation of equal protection, and a de facto cause of her equal protection injuries. Because of the Tenth Circuit's refusal to hear her claim – even after this Court reaffirmed that *Block* is the standard on traceability – Petitioner Baby Jane and millions of children throughout the nation are left without recourse. They cannot trace their injury to a nebulous precedent or transform a precedent into a defendant, as the Tenth Circuit suggests they do. No other plaintiffs are asked to do so, which is evident in the Tenth Circuit's assertion that its decision in Baby Jane's case is "not binding precedent." App at 2a.

A circuit court cannot depart from common precedent by refusing to recognize a particular plaintiff's standing while simultaneously refusing to apply the arbitrarily created standard to anyone else. This is what the Tenth Circuit did by throwing Baby Jane out of court for lack of traceability while declining to apply this new standard as precedent for anyone else.

By definition, the equal protection injury she has suffered can only be traced to the government. The Tenth Circuit's finding that Baby Jane properly asserted an injury *that could only be committed by the government*, while simultaneously ruling that the injury could not be traced to the government flies in the face of equal protection jurisprudence, as discussed *infra*, at pp. 29-31.

It is no more possible to bring suit against *Roe* or *Casey* directly than it is to sue the Constitution itself. Neither are concrete Defendants. "Government is not a body of blind forces. It is a body of men." Woodrow Wilson, *Constitutional Government in the United States* 54 (1908). Precedents do not have the power of self-implementation; that requires the act of government. Baby Jane should not be treated differently because it is an abortion-related law that has injured her. As Justice Alito wrote in his dissent in *June*, the perceived right to abortion is too often used as a "bulldozer to flatten legal rules that stand in the way." No. 18-1323 at 82.

Even if the denial of equal protection exists because Oklahoma and the United States believe they are required to do so by precedent, Baby Jane's injury is the same, and her ability to receive relief ought not to be cut off because the Tenth Circuit splits from the D.C. Circuit, common practice, and this Court in ruling that the legal fault rests with the only branch of government she may not sue.

B. The Tenth Circuit's Holding on Traceability Conflicts with Decades of This Court's Equal Protection Jurisprudence, Where Petitioners Are Not Shut Out From Suing the Government That Injures Them.

No matter the reason behind a statute – whether it is based on judicial precedent, the free will of the legislature or Congress, or the requirements of a constitution – this Court has consistently held that equal protection injuries satisfactorily asserted can be traced to the government and its official representatives as the de facto cause for Article III standing purposes.

In *Bradwell v. The State*, 83 U.S. 130 (1872), Ms. Bradwell claimed she had been injured by a decision of the Illinois Supreme Court, and yet it was the state she sued. Her injury was rooted in an application of common law, including longtime precedent. While Ms. Bradwell lost her case for other reasons, her standing was not denied for lack of traceability simply because judicial precedent underlaid her injury.

In *Brown v. Board of Education*, 347 U.S. 483 (1954), and the suite of cases consolidated therein, school boards were sued even though their respective states (specifically, Virginia and South Carolina) required them to segregate students. Even though the boards were following government directives from a body not their own, this did not absolve them of de facto causation or traceability. There was no question that the injury was traceable to the school boards.

The *Brown* plaintiffs were never asked to sue the state constitutions that required segregation or this Court that had upheld the principles behind segregation in *Plessy v. Ferguson*, 163 U.S. 537 (1896). Suing *Plessy* or the state constitutions would have been just as impossible for the *Brown* plaintiffs as it would be for Baby Jane to sue *Roe* and *Casey*. Well before *Roe* and its progeny, the D.C.

District Court decried "a myopic and specious resort to precedent to avoid attachment of responsibility where it ought to *attach*," holding that no human person ought to be "locked in the limbo of uncompensable wrong." *Bonbrest v. Kotz*, 65 F. Supp. 138, 241 (D.D.C. 1946).

This Court has consistently struck down state discrimination against a particular class of human beings, whether that discrimination was accomplished by outright action or by the sanctioning of optional action that, if chosen, would discriminate. *See Brown*, 347 U.S. 483; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Hernandez v. Texas*, 347 U.S. 475 (1954). No government can evade responsibility for its own laws by citing a precedent they believe orders them to sanction the optional killing of human beings. If judicial precedent erased what would otherwise amount to causation and traceability, *Plessy* would never have been scrutinized under the bright light of original Constitutional intent, new evidence, and modern sensibilities brought to it by *Brown*, as the state actors in *Brown* were following the Supreme Court precedent of their day.

As this Court has explained, the guaranty of "equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo*, 118 U.S. at 369. This equal law standard also applies to Article III standing. A separate standard of traceability, applied only when abortion is involved, is unequal. The Tenth Circuit has answered an important federal question on Article III standing in a manner that is opposed to this Court's precedential positions, and it must be reversed.

IV. THIS CASE CAN SOLVE THE CONSTANT AND EVER-INTENSIFYING DEBATE OVER ABORTION JURISPRUDENCE WHICH HAS A GREAT APPETITE FOR JUDICIAL TIME.

As this Court is well aware, abortion cases are constantly litigated in federal courts, many with the aim of persuading this Court to reassess and overrule the modernly unworkable precedents of *Roe* and *Casey*. There is no calm to be disturbed on the abortion front. If this Court accepts Baby Jane's petition, it can solve – or at least, lessen – the need for so much judicial time to be consumed with cases that, at their root, raise the same issue: the need for a reexamination of *Roe* and *Casey*.

While justice and the Constitution require Oklahoma and the federal government to provide equal protection to Baby Jane, both governments would surely find themselves back in court tomorrow if they did so. Proponents of abortion would no doubt sue the governments immediately, arguing that, due to *Roe* and *Casey*, the governments cannot equally protect children's substantive rights prior to birth. And yet, as the Tenth Circuit aptly recognized, equal protection does attach to Baby Jane, presenting a constitutional muddle only this Court can resolve: Does Baby Jane have the right to equal protection, or does she not? Does *Levy* control, or will *Roe* and *Casey* continue to devastate the true human equality of all children?

V. THIS CASE PROVIDES AN EXCELLENT VEHICLE FOR THIS COURT TO RESOLVE QUESTIONS OF LIFE AND DEATH SIGNIFICANCE IN A NATIONALLY UNIFORM WAY.

As detailed *supra* at pp. 13-18, the original meaning of the Fourteenth Amendment included a recognition that unalienable rights should be equally protected for every living member of the human race throughout the nation. The framers set out not only to protect former slaves, but also to simultaneously create a framework that would dissolve the bands of oppression for any future class of human beings who would be invidiously discriminated against. If *Roe* and *Casey* continue to control in the face of modern scientific fact, new medical discoveries, basic humanity, and new law, "[t]he equal protection clause would indeed be a formula of empty words if such conspicuously artificial lines could be drawn." *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 542 (1942).

There is no constitutionally sufficient justification for continuing to deny the equal protection of the law and the substantive right to live to all human children. This right innately belongs to them as members of the human race and must be guarded by a just government.

In this Court's most recent abortion case, *June Med. Servs v. Russo*, No. 18-1323 (U.S. Jun. 29, 2020), three Justices took the time to write that Louisiana had not asked for a reassessment of *Casey*.[6] Baby Jane could hardly be clearer as she

[6] Justice Kavanaugh in a footnote in his dissent: "The State has not asked the Court to depart from the *Casey* standard." *June*, No. 18-1323 at 137 n.30. Justice Alito in his dissent: "Unless *Casey* is reexamined—and Louisiana has not asked us to do that—the test it adopted should remain the governing standard." *June*, No. 18-1323 at 85. Chief Justice Roberts in his concurrence: "Neither

petitions this Court: Reexamine and *Casey* and *Roe*. Choose *Levy* in their place and overrule them. Choose equal protection under the law. As one of the oldest books of law states, "choose life, that…your descendants may live." *Deuteronomy* 30:19.

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CONCLUSION

It is within this Court's power to resolve the quarrel Baby Jane has with *Roe* and *Casey* and to give uniform, national guidance that *Levy* controls for equal protection purposes. Furthermore, this Court can ensure that no circuit arbitrarily denies traceability, based on an abortion-only rule. This Court's clear guidance is needed, and a petition for a writ of certiorari should be granted.

Respectfully submitted,

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party has asked us to reassess the constitutional validity of that standard [*Casey*]." *June*, No. 18-1323 at 49.