

Nos. 18-1323, 18-1460

In The
Supreme Court of the United States

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

Petitioners,

v.

DR. REBEKAH GEE, in her official capacity as Secretary
of the Louisiana Department of Health and Hospitals,

Respondent.

DR. REBEKAH GEE, in her official capacity as Secretary
of the Louisiana Department of Health and Hospitals,

Cross-Petitioner,

v.

JUNE MEDICAL SERVICES L.L.C., on behalf of its
patients, physicians, and staff, d/b/a HOPE MEDICAL
GROUP FOR WOMEN; JOHN DOE 1; JOHN DOE 2,

Cross-Respondents.

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

**AMICUS CURIAE BRIEF OF
ATTORNEY MARY J. BROWNING IN SUPPORT
OF CROSS-PETITIONER AND RESPONDENT**

ALLAN E. PARKER, JR.
Counsel of Record
THE JUSTICE FOUNDATION
8023 Vantage Drive,
Suite 1275
San Antonio, Texas 78230
Telephone: (210) 614-7157
Email: info@txjf.org
Counsel for Amicus Curiae

MARY J. BROWNING
MARY J. BROWNING, LLC
214 Cherry Street
Jefferson City, Missouri 65101
Telephone: (573) 893-4523
Facsimile: (573) 893-4591
Email:
mary@maryjbrowninglaw.com
Amicus Curiae

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICUS CURIAE</i>	1
A. Hiding No More	1
B. Who Will Protect the Children?	1
SUMMARY OF ARGUMENT	2
<i>A Rose By Any Other Name</i>	2
ARGUMENT.....	2
<i>A ROSE BY ANY OTHER NAME</i>	2
CONCLUSION	17

TABLE OF AUTHORITIES

	Page
CASE	
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007).....	16
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. XIX, ratified Aug. 18, 1920	14
U.S. Const. amend. XV, ratified Feb. 3, 1870.....	14
STATUTE	
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, enacted July 2, 1964.....	14
OTHER AUTHORITIES	
https://en.wikipedia.org/wiki/kermit_gosnell	15
https://en.wikipedia.org/wiki/David_Daleiden	16
https://literarydevices.net/a-rose-by-any-other- name/	16, 17
Hudson, Melissa, “Dr. Ullrich Klopfer Vilified in Life and Death” in the <i>Chicago Tribune</i> , Oct. 25, 2019, https://www.abc57.com/news/dr-ulrich- klopfer-vilified-in-life-and-death	15
Iati, Marisa, “More than 2,000 fetal remains found at home of State’s ‘most prolific’ abortion doctor,” <i>Washington Post</i> , Sept. 14, 2019, https://www.washingtonpost.com/nation/2019/ 09/14/more-than-fetal-remains-found-home- states-most-prolific-abortion-doctor/	15

TABLE OF AUTHORITIES – Continued

	Page
Mallon, Gerald P., “The Legend of Mary Ellen Wilson and Etta Wheeler,” Academic Journal Article, <i>Child Welfare</i> , March/April 2013, Vol. 92, No. 2	13
Operation Rescue: “Shocking Photos of Gosnell Murder Victims Included in Grand Jury Report,” Jan. 19, 2011, https://www.operationrescue.org/archives/shocking-photos-of-gosnell-murder-victims-included-in-grand-jury-report/	15
<i>Romeo and Juliet</i>	16
“The Woman Suffrage Movement, The Most Significant Achievement of Women in the Progressive Era,” https://www.Womenhistory.org/resources/general/women-suffrage-movement	14
Youtube: <i>The Futility Closet</i> , “Episode 238-The Plight of Mary Ellen Wilson”	13

INTEREST OF *AMICUS CURIAE*¹**A. Hiding No More.**

Amicus is an attorney in private practice, with a long history of advocacy on behalf of children. *Amicus* had an abortion at eighteen (18) and has had deep remorse. By coming forward, *Amicus* hopes to give voice and courage to other women who are similarly situated. Because of the shame and guilt around the issue of abortion, *Amicus* believes there are other women who are reluctant to come forward with their own stories. The court deserves to hear the whole story of the impact of its earlier decisions. There is another voice that has not been heard in the legal wrangling of *Roe* and its related case law, and that is the voice of the child. While *Amicus* cannot technically represent the voiceless aborted children, including her own child, she can provide a view for the Court through her window. *Amicus* has chosen to hide no more.

B. Who Will Protect the Children?

Amicus has prosecuted cases with child victims, cases with domestic violence, drug cases, as well as others. *Amicus* worked for a decade for the Missouri Department of Social Services with child welfare matters as part of her legal responsibility. *Amicus* has been

¹ The parties have consented to the filing of this *Amicus* brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

a family law practitioner for over fifteen (15) years, handling adoptions, minor guardianships, and many cases advocating for the best interests of children.



SUMMARY OF ARGUMENT

A Rose by Any Other Name

Abortion is the taking of a life. It can be called “women’s health,” “reproductive freedom”, “freedom of choice”, “right to choose”, “self-managed care”, “termination of pregnancy (TOP)”, removing “products of conception (POC)” or a “mass of tissue”, but that doesn’t change the nature of what it is. Abortion takes life.



ARGUMENT

A ROSE BY ANY OTHER NAME

This brief is going to be different than most of the briefs submitted in this case. There is probably nothing that could be written that hasn’t been written about the legal cases and the weight of the decision on the shoulders of the Court. *Amicus* does not take this fact lightly, however, it is possible the Court might benefit from seeing some facts through a different lens.

Here is the abortion experience of *Amicus*:

AFFIDAVIT

STATE OF MISSOURI)
)ss
COUNTY OF COLE)

COMES NOW the Affiant, Mary J. Browning and duly states and affirms the following: I am over twenty-one years of age and of sound mind. I have personal knowledge and experience and solemnly swear or affirm that the following facts are true:

I was born and raised in Macon, Missouri, a small town in the Mid-West. My parents were God-fearing people and raised me in the Catholic faith. When I was 18, 6 days before I was to be married, I learned that I was pregnant. The father, my future husband, did not want us to have the baby. It seems strange to me, now, but that seemed to be the deciding factor. I felt cornered, like I had no choice but to have the abortion. I believed I would be ostracized by my church and my family, as well as my future husband, if I did not have the abortion. I contacted a doctor in Columbia, Missouri, and scheduled an appointment for an abortion 5 days after the wedding. It was 1976 and I had graduated high school in May, 1976. On August 18, 1976, we cut our honeymoon short and I had an abortion.

Macon was a small town and the information related to the growth of the child in the womb was small. Ultrasounds were not

commonly, if ever, used to determine age or development of the unborn child. Information, today, has expanded exponentially to the point of having applications on our cell phones that can give us a day to day update of the size and growth of the child, in utero.

In 1976, I remember showing up for the appointment. I don't recall the payment particulars, but my husband and I would have paid for the abortion. There was no exam prior. I was put in the stirrups and situated for the "procedure". I don't recall being told how the abortion would be performed. There was no ultrasound of my baby and no consultation regarding adoption or other options. I dissociated when the doctor started. I felt nothing and watched the doctor between my legs from the ceiling. I don't recall pain. I believe dissociating was a response to the trauma of what was happening.

When it was completed, the doctor sternly scolded me and told me I was 16 weeks pregnant. I had told them the date of my last cycle, as I remembered it. Either I was wrong or something else had occurred. He seemed very upset that the baby was 16 weeks old, not the 12 he had assumed. Now, I think if he had performed a prior exam, he would have known the baby was 16 weeks old **before** he performed the abortion, not after.

My abortion was performed by a practicing gynecologist/obstetrician. He had hospital admitting privileges in the community. He

served as my physician for the first part of my pregnancy for my daughter that was born in 1979. I can't imagine having an abortion with a provider that did not have hospital admitting privileges in close proximity to the location of the procedure. I am thankful that I did not have complications but, if I had, it would be critically important to be able to obtain the services I needed to address any complications in a manner consistent with standard medical practices for any medical procedure.

My husband was 20 years old and a student. I had a high school diploma and worked for barely more than minimum wage. We resumed our lives as if nothing had happened. But it had. I was plagued with the knowledge of what I had done. At the time of making the decision to abort, I had allowed myself to believe that my baby was a blob of tissue. I think I knew in my heart that wasn't true but there were external sources saying that the baby was not a living human being.

After a while, my husband quit school and became employed in the financial industry, then went into business for himself I worked and went to school. Three years after that abortion, I became pregnant. My first daughter was 9 months old when I started my undergraduate degree. When she was three, I became pregnant, again. When the girls were almost 1 and 5, I received my undergraduate degree and started law school. They were three and seven when I graduated law school

and four and eight when I obtained my law license that following Fall.

My husband was an abusive alcoholic who was unfaithful to our marriage. One time, he hit me so hard on both sides of my head, while I was holding one of our daughters and the other was clinging to my leg, that I thought both my eardrums were broken. I tried to separate from him at that time but did not have the support of my parents. I had not told them about the other problems in our marriage. I gave him “another chance”. That was not successful and we divorced when I was in my last semester of law school, after a little more than ten years of marriage.

My children are grown and have children of their own. When one of my daughters got pregnant, unexpectedly, her father suggested she abort her baby and told her that her mother, I, had had an abortion. Thankfully, she did not abort her wonderful, bright, talented, handsome son, my grandson.

Professionally, my legal career has been focused on matters involving children. I have been a prosecutor for crimes with child victims and for crimes of domestic violence. I have been the general counsel for our state’s social services and child welfare department, and served for several years as the Chair of our State Child Fatality Review Panel. I have had the privilege of being instrumental in crafting legislation to protect children. I was part of the task force that drafted legislation

for the Safe Haven Law in Missouri. This law allows the dropping off of a child at various locations for the purpose of transferring the rights and responsibilities of parenting the child along to someone else, without repercussions. Safe Haven laws are a compassionate response to an unplanned or unwanted pregnancy.

After leaving the State's employment, I started a private practice. I have been an advocate for abused and neglected children, handling adoptions, guardianships of minors and other matters. The slogan on my business card is: "Who will protect the children?" The inference in the question is, if not me, then who? The irony is not missed on me that the ultimate child abuse is murder. I always knew I had had my first child aborted (a/k/a killed).

I can't tell you the exact time I had the epiphany that I had taken a life. I always knew I had, I just chose to white wash what I had done with the propaganda language that made it palatable, acceptable. Until it wasn't.

I believe my first child was a boy. In making the decision to abort him, I wanted to avoid the shame, embarrassment and humiliation of having gotten pregnant before I was married. I also did not want to shame, embarrass and humiliate my family. And, having a child at that point was simply inconvenient. In coming public with my experience, I risk compounding for many others, as well as myself, that which I wanted to avoid. Even so, I cannot

be silent. I believe deception breeds on my silence, and the silence of other women like me.

I don't know what my life would have been like had I given my son the chance to live. I cannot say I would not have gone to law school or been able to accomplish the things I have. I went to law school with two small children and an abusive, alcoholic husband, as it was. Any projections I would make about how he would have affected my education are purely speculative. The bigger question is: What would he have accomplished? My life has continued. His life did not because I denied him the chance to live.

In 1976, I could "believe" that the life growing inside me was just a "blob of tissue". I can remain silent no more. I have read the book by Abby Johnson, "The Walls Are Talking". In reading the description of organizing the "products of conception", laying out the arms, legs, feet, torso, skull, et cetera, to be sure all the parts of the baby are recovered from the mother's body, I became physically ill. Even the language chosen by the abortion industry is designed to deceive the truth of what is taking place. "Products of conception" is actually "products of the child". I can be silent no more. Abortion is taking the life of a child. We can argue about when the heart beat can be detected, when the child is big enough to be viable, whether the child can feel pain in utero, whether the life growing in the mother's womb can be felt by movement. At the end of the day, there is really no denying that abortion is taking of a life.

It is ludicrous to think that a business entity that performs abortions (person or business, profit or non-profit) could effectively represent my position before the courts. It is simply not possible. There was no compassion, no guidance, not even an exam before my child's life was taken from my body. There was only the scolding, afterward, that my child was 16 weeks gestation. There was no follow up appointment.

These are my experiences. Coming to terms with the full acknowledgement of what I have done – acknowledging, first, to myself, then to others. White washing with words like “reproductive freedom”, just doesn't get it anymore. There is no freedom in the prison of living with the knowledge that I have taken a life. To say otherwise is to deny reality.

I have wrestled with this issue, being a professional woman and having professional women whom I consider dear friends and whom I value, immeasurably. These are thoughtful and caring women whose lives are deeply entrenched in the position that having access to abortion is integral to a woman's ability to be successful, professionally. It seems almost hypocritical to say I don't think other women should have access to abortion when I availed myself of that access. Even so, I did not know the heart ache that would come from the decision. I did not know the sleepless nights or the periodic bouts of deep grief – the fallout from that fateful decision. The years and years of wrestling with whether mercy was available

to me and, finally, accepting the love of a compassionate God who forgives me. I have now been divorced three times. I don't know what my life would have been like had I not made that choice in 1976. If had not made that choice, had my child lived, he would be almost forty-three (43) years old. More important than what would my life would have been, is the question of what **his** life would have been.

In 1976, I willingly drank the Kool-Aid. I bought the lie that my child was not a child and abortion was not the taking of that child's life. I can drink that Kool-Aid no longer. Drinking it has left a very bitter taste. Now, when I have seen the ultrasounds of my grandchildren and great-grandchild growing in the womb of their mothers, there is no denying that this is a child, not a choice.

At the core of the argument to keep the taking of life in the womb, legal, is the idea that a woman's life has to follow the same course as a man's to be successful; that child-bearing is an inconvenient disruption, rather than a privilege. Men and women were made differently, for a reason. Women are the only gender that can carry reproductive life. This is a blessing, not a curse.

My work in the child abuse and neglect arena has led me to information regarding Humane Society participants being active in early efforts in this country to protect children. That is to say, advocates for humane treatment for animals used their experience

and connections protecting animals for the benefit of the protection of a child, spawning a bigger child welfare effort. Some of our notions of whether life is valuable has been predicated on the notion that people are property. This has been true for women, for children and for people of color. While children don't vote and cannot advocate for themselves, in a civilized society, life is valued, no matter the chronological age, gender or race.

Had abortion not been legal, I would never have had an abortion. Having abortion available as a legal option gave me permission to alter the consequences of the conception of my child. The definition of **conception** is: "**the act of conceiving a child**". Abortion is the legalized taking of the life of a child, in the womb, after conception. It is currently used as a contraception, but that is a misnomer. You cannot prevent conception after it has occurred. The words of Shakespeare – *a rose by any other name would still smell as sweet* ring true here. Call it whatever you will – reproductive choice, right to choose, women's health – but abortion, by any other name, is still the taking of a life.

My work in adoptions has underscored the number of people who would like to conceive but cannot. Some people spend tens of thousands of dollars to be able to adopt a child. Some people wait years and years, longing and hoping, to be parents. There is a solution to the dilemma of an unplanned pregnancy. It does not have to be an inhumane solution. The nine months for gestation to delivery is, in the

big scheme of things, a timing inconvenience that can be transcended. Delaying well-made plans for obtaining an education or furthering a career does not mean derailing the plans. Adoption, as well as Safe-Haven laws, now make the easy passage from delivery and passing along your child to someone less fortunate, unable to conceive, the most viable option. Everyone lives.

I have read the above and foregoing statement and the same is true and correct, according to my best knowledge and belief.

Date this 10th day of December, 2019.

/s/ Mary J. Browning
Mary J. Browning

Subscribed to and sworn to before me, the undersigned, this 10th day of December, 2019.

/s/ Theresa M. Schaefer
Notary Public

I am commissioned in Cole County, Missouri. My commission expires: _____

THERESA M. SCHAEFER
Notary Public –
Notary Seal
STATE OF MISSOURI
Cole County
Commission #13452968
My Commission Expires:
12-09-2021

One of the first children to be protected in this country was through the creative resources of attorneys involved with the Society for the Prevention of Cruelty to **Animals** (SPCA) (*emphasis added*).² That is correct – cruelty to animals. In 1874, Mary Ellen was an abused 10-year-old in New York. Her story is horrific and is cited in the footnote below. Lawyers active in protecting animals used creative resources to obtain Mary Ellen’s own protection. Mary Ellen’s case was the progenitor of more active child protection laws in this country (see footnote 2).

In one of the very first cases in which *Amicus* was involved relating to abused and neglected children, the animals were removed from the home before the children were removed. One may logically conclude that this lapse occurred due to the serious nature of removing a child from his home needing to be considered for a longer and more thorough time than the action of removing one’s animals, but in this case, it was merely a reflection of how human life has been de-valued in this country and how the significance of life has been determined, at times, by age, gender, or race.³

² Mallon, Gerald P., “The Legend of Mary Ellen Wilson and Etta Wheeler”, Academic Journal Article, *Child Welfare*, March/April 2013, Vol. 92, No. 2, and Youtube: *The Futility Closet*. “Episode 238-The Plight of Mary Ellen Wilson.”

³ *Amicus* was a law student, working an internship in the Juvenile Office for Boone County, Missouri, when the case of the children being left in the home after the animals had been removed came to light.

The Women's Suffragist Movement officially began in 1848. Women didn't earn the right to vote until 1920.⁴ Black men received the right to vote in 1870 and the Civil Rights Act was passed in 1964.⁵ We haven't arrived, as a country, culture or society, to the point of fully embracing the humanity and equality of our brothers and sisters regardless of their age, gender or race, as evidenced by the victims of the #metoo movement and the racial unrest that continues to this day. Even so, the federal law has set the public policy in this arena. Change is slow in hearts and minds. But even if civilized society falls short of living up to the standard – the bar is set.

For instance, many if not all, states allow recovery of damages for loss of an unborn child. Only this court can address the legal inconsistency that supports collecting of damages for loss of life in the womb and allowing termination of that life, by choice, up to delivery (and beyond for some states) without consequence.

A few names that may be familiar to most people in the United States are: Kermit Gosnell, Ullrich Klopfer, and David Daleiden.

⁴ "The Woman Suffrage Movement, The Most Significant Achievement of Women in the Progressive Era," <https://www/Womenhistory.org/resources/general/women-suffrage-movement>. U.S. Const. amend. XIX, ratified Aug. 18, 1920.

⁵ U.S. Const. amend. XV, ratified Feb. 3, 1870. The Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, enacted July 2, 1964.

Kermit Gosnell: Abortionist convicted of killing babies after birth. Kept trophies of babies' feet from abortions performed. Did not properly dispose of babies' bodies or severed baby body parts. Criminally convicted for three counts of murder for taking the life of children after they were born alive, as a form of abortion.⁶

Ullrich Klopfer. Abortionist. Approximately 2,500 babies found in jars, cars, and strewn throughout his Indiana property. Discovered after his death.⁷

David Daleiden. Journalist. Attempted to expose Planned Parenthood's selling of aborted baby body parts. Criminal prosecution against David Daleiden now pending.⁸

⁶ Operation Rescue: "Shocking Photos of Gosnell Murder Victims Included in Grand Jury Report," Jan. 19, 2011, <https://www.operationrescue.org/archives/shocking-photos-of-gosnell-murder-victims-included-in-grand-jury-report/>. Gosnell was convicted of 3 counts of first degree murder for the killing of three children after birth, one count of involuntary manslaughter for the death of a woman at his clinic, 21 counts of late term abortions and 211 counts of violating informed consent law, https://en.wikipedia.org/wiki/kermit_gosnell.

⁷ Iati, Marisa, "More than 2,000 fetal remains found at home of State's 'most prolific' abortion doctor", *Washington Post*, Sept. 14, 2019. <https://www.washingtonpost.com/nation/2019/09/14/more-than-fetal-remains-found-home-states-most-prolific-abortion-doctor/>. Hudson, Melissa, "Dr. Ullrich Klopfer Vilified in Life and Death" in the *Chicago Tribune*, Oct. 25, 2019, <https://www.abc57.com/news/dr-ulrich-klopfer-vilified-in-life-and-death>.

⁸ David Daleiden attempted undercover efforts to expose abortion industry selling baby body parts. Ordered to pay \$870,000 to Planned Parenthood for violating privacy by infiltrating the ranks

It occurs to *Amicus* and hopefully to this Court that the *Roe* and *Doe* Courts could not have fathomed these outcomes at the time of those decisions.

It is time for the federal law to set the bar for protecting children, not to deny their existence or continue to authorize and legitimize, through legal sanction, their demise. In *Gonzales v. Carhart*, 550 U.S. 124, at 159 (2007), life in the womb has been identified as “infant life”. Children are defenseless and voiceless. If the Justices, who are charged with establishing public policy by interpretation of the Constitution and the law, courageously **do not deny the humanity of these offspring**, the right public policy will be established. Over time, hearts and minds will catch up. In the meantime, we will have the benefit of knowing those human beings, our national posterity, that are yet to be.

From experience, *Amicus* knows the real objective in abortion is to eliminate life and make it easy to pretend that a life has not been created. Abortion is an easy out to cover over our moral slips or regrets in having conceived a child – drop by your nearest Planned Parenthood, take a few pills, problem solved.

The quote: “*A Rose by Any Other Name Would Smell as Sweet*”, is attributed to Shakespeare and lines from *Romeo and Juliet*. In fact, Shakespeare did not write the words, exactly.⁹ *Romeo and Juliet* is a love

and exposing the body part selling by the abortion provider. https://en.wikipedia.org/wiki/David_Daleiden.

⁹ <https://literarydevices.net/a-rose-by-any-other-name/>.

story of two people from feuding families that fell in love. Juliet says that Romeo would still be the person he is, even if he were not a Montague. And that is the point.

One commentary summarized Shakespeare this way: “The importance of a person or thing is the way it is; not because of what it is called. Simply, it means the names of things cannot affect what they actually are. This line is, in fact, very profound, suggesting that a name is just a label to distinguish one thing from another. It neither has any worth, nor gives true meaning.”¹⁰

Abortion is called by many other names – choice, women’s health, reproductive freedom, self-managed care – it is still taking of a human life. Children are called by many other names – fetus, blob of tissue, products of conception, unwanted, unplanned, a choice, and treated as garbage. What a child is called while in the womb or how it is treated does not change the nature of the child.

◆

CONCLUSION

Abortion providers cannot achieve standing by claiming to represent women for whom they have so little regard. Petitioners’ and Cross-Respondents’ claims should be dismissed for lack of standing. *Roe*, *Doe* and *Casey*, should be reversed and the child growing in

¹⁰ <https://literarydevices.net/a-rose-by-any-other-name/>.

utero should be considered a human being and therefore receive all of the rights, privileges and protections afforded to all citizens under the Constitution and laws of the United States.

Respectfully submitted,

MARY J. BROWNING
MARY J. BROWNING, LLC
214 Cherry Street
Jefferson City, Missouri 65101
Telephone: (573) 893-4523
Facsimile: (573) 893-4591
Email: mary@maryjbrowninglaw.com
Amicus Curiae

ALLAN E. PARKER, JR.
Counsel of Record
THE JUSTICE FOUNDATION
8023 Vantage Drive, Suite 1275
San Antonio, Texas 78230
Telephone: (210) 614-7157
Email: info@txjf.org
Counsel for Amicus Curiae