Nos. 18-1323, 18-1460, VIDED

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 MELINDA THYBAULT, FOUNDER OF THE MORAL OUTCRY PETITION, INDIVIDUALLY AND ACTING ON BEHALF OF 264,500 SIGNERS OF THE MORAL OUTCRY PETITION IN SUPPORT OF RESPONDENT AND CROSS-PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Melinda Thybault (pronounced Tebo), the Founder of The Moral Outcry Petition is convinced, as are the other Signers of The Moral Outcry Petition, that this Court's abortion cases are a crime against humanity. "Severe criticism" of these cases and significant, major changes in circumstances constitute a compelling new mandate for the Court to do justice and annul *Roe v. Wade*, *Doe v. Bolton* and *Planned Parenthood v. Casey*.

While the Court has recognized that the child in the womb when it is aborted is an **"infant life,"** *Gonzales*, at 159, and the Court has reduced abortion from a "fundamental right" to a mid-level right subject to "undue burden" analysis in *Planned Parenthood v. Casey*,[2] (hereafter *Casey*), the Court has not yet fully reversed *Roe v. Wade*,[3] (hereafter *Roe*), *Doe v. Bolton*,[4] (hereafter "*Doe*"), and *Casey*. No American citizen should have to live in, nor as history tragically demonstrates, should they stand by silently, while their government

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

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

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

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

commits a crime against humanity. This is why *Amicus Curiae* Melinda Thybault, on behalf of The Signers is here to assist the Court.

Reversal is particularly appropriate now that all fifty states have eliminated the burden of unwanted child care for all women through the enactment of Safe Haven laws in each state. Melinda Thybault has currently collected over a quarter million signatures on The Moral Outcry Petition (264,500 as of December 8, 2019). The number of Signers (hereafter "The Signers") continually rises as more people hear about the Petition. A true and correct copy of the Petition is attached hereto as Appendix A. Melinda Thybault is filing this *Amicus Curiae* Brief, individually, while acting on behalf of all The Moral Outcry Petition Signers.[5] The Signers seek justice for the children, with mercy and compassion for the mothers, and love for the new families that will be created by Safe Haven laws.

Melinda Thybault and The Signers, as do all citizens, have the right to petition the United States government for redress of grievances. U.S. Constitution Amendment I. The Signers believe the Supreme Court is the part of their government which has committed this crime against humanity by forcing all states to legalize abortion. Therefore, they must bring their arguments to this Court. Many states, if not most, would make abortion a crime if they could do so in order to

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[5] The names of The Signers of The Moral Outcry Petition are available at https://www.dropbox.com/s/c189n709mcmc4fv/Signers%20of%20The%20Moral%20Outcry%20Petition.pdf?dl=0

perform one of government's most "self-evident" and important purposes, to protect and defend human life. Declaration of Independence.[6] Therefore, it is the duty of this Court to redress and correct this injustice which the Court itself created. A crime against humanity occurs when the government withdraws legal protection from a class of human beings resulting in severe deprivation of rights, up to and including death.

Obviously, abortion results in the death of human beings, as even the Supreme Court itself now calls children in the womb at the very time they are being aborted **"infant life."** The Court has stated: "*While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the* ***infant life*** *they once created and sustained.*" . . . "*Severe depression and loss of esteem can follow.*" *Gonzales v. Carhart*, 550 U.S. 124, at 159 (2007) (emphasis added) (hereafter "*Gonzales*").

Melinda Thybault and her husband Denny are passionate, committed practitioners and advocates for adoption. After raising three of their own biological children, they felt the call to adopt three children through domestic newborn adoption. Then with these three little adopted ones still in the home, and after reaching menopause, Mindy and Denny adopted four human beings at the frozen embryo stage. These four

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[6] "We declare these truths to be self-evident, that all men are created equal and endowed by their Creator with certain inalienable rights, among these is the right to **Life**. . . ." (emphasis added).

"unwanted" children were generated through another couple's in vitro fertilization process.

These "unwanted" children's biological sex (male or female) can actually be determined in the lab six days after fertilization. (*See* Appendix B for doctor's notes describing the sex and grading condition of each child). One was placed in Mindy's womb after being frozen for seven months. *See* App. C for his embryo photo. That child, Gideon Wilberforce Thybault, was born in 2018. *See* photo after his birth in Appendix D. This loving act of adoption is the opposite of abortion. Gideon's frozen life has blossomed into this beautiful child. The second child, John Booker Thybault, miscarried in early 2019. *See* photo in Appendix E. The third child, Isaac Jonathan Thybault, was placed in Mindy's womb on November 7, 2019, but miscarried on November 18, 2019.[7] *See* Appendix F.

The cry of Melinda's heart and the voice of her plea in this *Amicus Curiae* Brief echoes the ancient cry of Esther who dared, with trembling, prayer and fasting to humbly appeal to her King as follows:

> "*If it please the Court, and if I have found favor, let there be a decree that reverses the orders of this Supreme Court who ordered that infants in the womb throughout all of America should be destroyed. For how can I endure to*

[7] *See* photos of embryo children outside the womb, before implantation, at six days all were identified as biological males. *See* App. C, E, and F.

see my people and my family slaughtered and destroyed." Adapted from Esther (Est) 8:5-6.

SUMMARY OF THE ARGUMENT

While This Case Can Be Upheld Under *Planned Parenthood v. Casey* and *Gonzales v. Carhart*, Legally, *Roe v. Wade* Should Be Reversed At This Time Under the Law of Judicial Precedent.

While the Louisiana statute at issue can be upheld even under *Casey* and *Gonzales*, this case does present an excellent opportunity to reverse *Roe, Doe*, and *Casey* while still giving women the freedom from unwanted child care that *Roe* allowed and as *Casey* desired to continue. **As a matter of law, there are no more unwanted children in America because of the major change in circumstances known as Safe Haven laws.**

The "Law of Judicial Precedent" co-authored by Justices Kavanaugh and Gorsuch, *et al.*, with a forward by Justice Breyer, states in § 47, "*A court may overrule a horizontal precedent if there are sound and necessary reasons to do so.*"[8] The Signers believe there are at least five sound and necessary reasons for the reversal of *Roe v. Wade*.

> "*Similarly, the courts consider whether there has been a* ***significant change in circumstances***

[8] Garner, *et al.*, *The Law of Judicial Precedent*, at 396, Thomson Reuters, 2016.

> *since the legal rule was promulgated*." The Law of Judicial Precedent, *supra*, p. 400.

The first "sound and necessary" reason is a major "change in circumstances" in that a better alternative to abortion exists through the Safe Haven laws in all fifty states. Freedom from "unwanted" child care can now be obtained without killing the **"infant life"** (per *Gonzales*, at 159) that this Court has already recognized exists in the womb when it is aborted. Under new Safe Haven laws, no woman has to take care of a child she does not "want." Even if states ban or restrict abortion completely, or if only one clinic exists in a state, no woman would have to take care of a baby she does not want or cannot take care of because of the Safe Haven laws in every state, including Louisiana.

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

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

> §47[D] "*The decision has been met with general dissatisfaction, protest or* ***severe criticism***." *Id.* at p. 398 (emphasis added)

Through The Moral Outcry Petition, over a quarter million Americans have correctly called legalized abortion "a crime against humanity" which is very, very "severe criticism." With due respect for the Court,

every single signature on The Moral Outcry Petition is by itself evidence under the *Law of Judicial Precedent* because each person calling abortion a crime against humanity is "severely" criticizing this Court's abortion jurisprudence. The Signers respect the Court and its desire to do justice, and believe the Court will find the wisdom, courage, and fortitude to change the law in light of these remarkable new "changed circumstances." The Court has an ethical and moral duty to never forget past crimes against humanity, to never stand by silently, and to rescue the perishing.[9]

The third reason or "new circumstance" is that substantial new evidence now shows that abortion hurts women. The Court thought it was helping women by freeing them from unwanted child care. The Court did not know in 1973 that millions of women would be devastated by "psychological" and often physical injury. Subsequently the Court has become painfully aware of abortion trauma and admitted it in *Casey* ("devastating psychological injuries") and *Gonzales* ("severe depression and loss of esteem can follow").

Fourth, new science, including but not limited to DNA testing and sonograms which were not available in 1973, show what the *Roe* Court did not know, that

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

life begins at conception. That is why the Court said in *Gonzales* that abortion terminates an **"infant life."**

Fifth, there are millions of Americans waiting to adopt newborn infants that could give these children loving homes instead of an early death. The result would be a more just, humane, and healthy society, even for women who might choose abortion today. Thus, it is time to advance to a society in which we provide justice for the **"infant life,"** mercy to the mother, and love to the **"infant life"** and the families that are longing to adopt them.

ARGUMENT

1. Safe Haven Laws, Like Louisiana's, Render Abortion Obsolete and Constitute a Major "Change in Circumstances." Therefore, They are a "Sound and Necessary" Reason to Reverse *Roe*, *Doe*, and *Casey* Under The Law of Judicial Precedent. Louisiana's Safe Haven Law Meets the Unwanted Child Care Needs of Women Without Killing "Infant Life" (*See Gonzales*), or Injuring the Woman With Abortion Trauma. Thus Act 620 Does Not Constitute An "Undue Burden" Since All "Burden" of Unwanted Child Care is Transferred From the Woman to Society.

Today, there is a better way to give women the freedom and liberty that was envisioned by *Roe* and *Doe* without killing **"infant life"** in the womb and

injuring the woman. That better way is the amazing social evolution in the law of criminal child abandonment called Safe Haven laws. La. Child. Code Ann. arts. 1149-53. Beginning in 1999, all fifty states have now adopted Safe Haven laws[10] which allow women to be free from the burden of unwanted child care without

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[10] *See* www.nationalsafehavenalliance.org for a quick summary of every state with its own unique law. *See also* Ala. Code §§ 26-25-1 to -5; Alaska Stat. §§ 47.10.013, .990; Ariz. Rev. Stat. Ann. § 13-3623.01; Ark. Code Ann. §§ 9-34-201, -202; Cal. Health & Safety Code § 1255.7; Cal. Penal Code § 271.5; Colo. Rev. Stat. § 19-3-304.5; Conn. Gen. Stat. §§ 17a-57, -58; Del. Code. Ann. tit. 16, §§ 902, 907-08; D.C. Code §§ 4-1451.01 to .08; Fla. Stat. § 383.50; Ga. Code Ann. §§ 19-10A-2 to -7; Hawaii Rev. Stat. §§ 587D-1 to -7; Idaho Code Ann. §§ 39-8201 to -8207; 325 Ill. Comp. Stat. 2/10, 2/15, 2/20, 2/27; Ind. Code § 31-34-2.5-1; Iowa Code §§ 233.1, .2; Kan. Stat. Ann. § 38-2282; Ky. Rev. Stat. Ann. §§ 216B.190, 405.075; La. Child. Code Ann. arts. 1149-53; Me. Rev. Stat. tits. 17-A, § 553, 22 § 4018; Md. Code Ann. Cts. & Jud. Proc. § 5-641; Mass. Gen. Laws Ch. 119, § 39 1/2; Mich. Comp. Laws §§ 712.1, .2, .3, .5, .20; Minn. Stat. §§ 145.902, 260C.139, 609.3785; Miss. Code Ann. §§ 43-15-201, -203, -207, -209; Mo. Rev. Stat. § 210.950; Mont. Code Ann. §§ 40-6-402 to -405; Neb. Rev. Stat. § 29-121; Nev. Rev. Stat. §§ 432B.160, .630; N.H. Rev. Stat. Ann. §§ 132-A:1 to :4; N.J. Stat. Ann. §§ 30:4C-15.6 to -15.10; N.M. Stat. Ann. §§ 24-22-1.1, -2, -3, -8; N.Y. Penal Law §§ 260.00, .10; N.Y. Soc. Serv. Law § 372-g; N.C. Gen. Stat. § 7B-500; N.D. Cent. Code §§ 27-20-02, 50-25.1-15; Ohio Rev. Code Ann. §§ 2151.3515, .3516, .3523; Okla. Stat. tit. 10A, § 1-2-109; Or. Rev. Stat. § 418.017; 23 Pa. Cons. Stat. §§ 4306, 6502, 6504, 6507; R.I. Gen. Laws §§ 23-13.1-2, -3; S.C. Code Ann. § 63-7-40; S.D. Codified Laws §§ 25-5A-27, -31, -34; Tenn. Code Ann. §§ 36-1-142, 68-11-255; Tex. Fam. Code Ann. §§ 262.301, .302; Utah Code Ann. §§ 62A-4a-801, -802; Vt. Stat. Ann. tit. 13, § 1303; Va. Code Ann. §§ 8.01-226.5:2, 18.2-371.1, 40.1-103; Wash. Rev. Code § 13.34.360; W. Va. Code § 49-6E-1; Wis. Stat. § 48.195; Wyo. Stat. Ann. §§ 14-11-101, -102, -103, -108.

killing the child, or potentially injuring herself with post-abortion trauma or death.

Under the current legal abortion regime, women can kill the **"infant life"** but many suffer the associated trauma, grief, "devastating psychological consequences" per *Casey* and "severe depression and loss of self-esteem" per *Gonzales v. Carhart*.[11] Under Safe Haven laws, any woman can now drop off her baby at a hospital, fire station or other designated safe place in each state within a set period of time, which is 60 days in Louisiana.[12] She will suffer zero abortion related trauma, if there is no abortion.

The Safe Haven law is totally free, unlike abortion, therefore it is equally available to the rich and poor.[13] Denial of "access to abortion" is an issue raised by the abortionists in this case, yet the abortionists ignore the Safe Haven laws. Freedom from the child care problem is now absolutely and totally guaranteed in all states, with much wider availability than abortion, at no cost to the woman, unlike abortion. Even small communities usually have a fire station of some kind. Some type of "medical facility" is far more abundant than abortion facilities, as with the few abortion facilities that exist already in Louisiana.

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[11] *See also* Abortion Hurts Women Section 4 *infra*.

[12] *See* La. Child. Code Ann. arts. 1149-53, https://www.nationalsafehavenalliance.org/maps/Louisiana_Safe_Haven_Law.pdf.

[13] *See* Lynn Marie Kohm, "*Roe's Effects on Family Law*," Washington and Lee Law Review, Vol. 71, p. 139, 2014, discussing Safe Haven laws at 1354-1358.

Using Safe Haven laws, women don't have to suffer the grief and the trauma that many, many Louisiana women have experienced in the case of abortion. *See Amicus Curiae* Brief of 2,624 Women Injured By Abortion also filed in this case. And Safe Haven laws give women far longer (up to sixty days after birth in Louisiana) than the abortion industry does to decide which option they will choose – to personally care for the child or Safe Haven drop off. Abortionists constantly pressure women to make quick decisions about abortion claiming it is riskier the longer one waits, while also claiming it is "safe" no matter how late one has the abortion, up to the moment of birth. Safe Haven laws give the full length of pregnancy plus additional time to decide. Even 30, 60, 90 days or up to 1 year after birth in North Dakota.[14]

Under the Louisiana Safe Haven law, a woman has 60 days after birth to drop the baby off at a hospital or other designated safe place.[15] If she is poor, she can have Medicaid pay for her pre-natal care and delivery so she can have the child at no cost, with no legal obligation to care for the child whatsoever. The Safe Haven law eliminates the need for any woman of any color, income, or sexual orientation, to worry about the burden of unwanted child care. Low-income women are much better protected by the Louisiana Safe Haven law than they are by abortion, because baby drop off is free as opposed to an expensive abortion. Thus, while

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[14] www.nationalsafehavenalliance.org.

[15] *See* La. Child. Code Ann. arts. 1149-53, https://www.nationalsafehavenalliance.org/maps/Louisiana_Safe_Haven_Law.pdf.

the abortion industry and its supporting *Amici* express concern for low-income women, Louisiana has decided this concern can be better served by providing free Safe Haven drop off and 18 years of child care through the state or by adoptions.[16] With the Baby Drop Off laws no abortion-related guilt or trauma from taking the life of one's own child will fall on the pregnant mother.

America is deeply divided on the issue of abortion. Everyone wants to help women in difficult pregnancy situations. Therefore, many view abortion as a necessary evil. Many people view it as simply "evil." With Safe Haven, abortion is now absolutely an "unnecessary evil." Since as *Gonzales* admits, abortion is the taking of **"infant life,"** it is in fact a crime against humanity. That is why even *Casey's* attempted compromise has been met with intense, "severe criticism," including being called "The Worst Constitutional Decision of All Time."[17]

The *Amicus Curiae* Briefs of Holly Alvarado, *et al.*, and Michelle Coleman Mayes, *et al*., and 365 Legal Professionals assert many compelling reasons why women would not want to care for a child, or even could not care for a child at a particular phase of life. But perhaps even these powerful lawyers are unaware of

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

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

the Safe Haven laws in every state. Indeed, Safe Haven laws did not exist in the past when many of these women had their abortions. The abortion industry does not inform women of these Safe Haven laws, instead simply telling them their risk of injury goes up if they delay an abortion. Obviously, this selective information aligns with the abortionists' business or ideological view of abortion as a positive good for every woman.

The burden of an "unwanted" child was a large factor in the Court's analysis in *Roe* itself.[18] But today, a far better alternative exists. As a matter of law, there are no unwanted children and legal transfer of responsibility is *free* to every woman for any or no reason.

Today society, in all fifty states, in a major "change of circumstances" as recognized in *The Law of Judicial Precedent*, has adopted this far more humane option. Allowing states to ban abortion or restrict abortion in any way they desire would increase justice for the child, mercy for the mother and create a more humane, just and healthful society than the current abortion on demand regime.

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

2. *Roe*, *Doe*, and *Casey* Are Truly a Crime Against Humanity Like *Dred Scott* and *Plessy v. Ferguson*. This Also Constitutes "Severe Criticism" of the Decisions Which is a "Sound and Necessary" Reason Under the Law of Judicial Precedent to Reverse Them.

Under *stare decisis*, a prior opinion that is merely wrong is not enough by itself for reversal. But a crime against humanity is a serious, one might even say, a grave wrong since society and the courts are now even dealing with burial statutes designed to give dignity to the **"infant life"** killed in the womb.[19]

Abortion is a crime against humanity like *Dred Scott v. Sanford*, 60 U.S. 393 (1857). The *Dred Scott* decision prevented national compromise from occurring and many commentators feel it eventually led to the Civil War.[20] A crime against humanity occurs when the government withdraws legal protection from a class of human beings.

Roe, *Doe*, and *Casey* also constitute a crime against humanity like *Plessy v. Ferguson*, 163 U.S. 537 (1896) (hereinafter *Plessy*). *Plessy* denied legal protection to a class of human beings, African-Americans, like *Dred Scott* did. *Plessy* ignored the plain language of the 14th Amendment. *Plessy* accepted the gloss that

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[19] *See Kristina Box, Commissioner, Indiana Department of Health, et al. v. Planned Parenthood of Indiana and Kentucky, Inc., et al*. (Docket 18-483) (*cert. denied*) (Concurrence by Thomas, J.).

[20] *See* https://civilwaronthewesternborder.org/encyclopedia/dred-scott-v-sandford-1857.

"separate but equal" is equal; *Roe* ignores the right to "life" explicitly mentioned in the 5th and 14th Amendments ("nor shall any state deprive any person of **life**, . . . without due process of law," (emphasis added) in favor of a judicially created right to "terminate" another human being. Unlike the briefs of opposing *Amici* and the abortion industry, which only mention "liberty" (but not "life" which is mentioned first in the same sentence), the 14th Amendment actually protects the right to life.[21] When the government withdraws legal protection from a class of human beings, it is the classic definition of a crime against humanity.[22]

The Signers remind this Court of its universally respected decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (hereinafter "*Brown*") for two major reasons. First, the Supreme Court reversed its own 58 year old decision of *Plessy v. Ferguson*. Reversal did not require a constitutional amendment or civil war. *Roe* is only 47 years old. Second, *Plessy*'s

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[21] *See* "Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?" Craddock, J., Harvard J. of Law and Public Policy, Vol. 40, No. 2, 2017 (concluding it does). Many commentators have called on the Court to reverse *Roe v. Wade*, e.g., most recently Forsythe, Clark, "A Draft Opinion Overruling *Roe v. Wade*," 16 Georgetown J. of Law & Public Policy, #2 (Spring 2018); *see also* Calabresi, Steven G. Text, Precedent, and the Constitution: Some Originalist and Normative Arguments for Overruling *Planned Parenthood v. Casey*, 22 Const. Commentary, 311 (2005).

[22] *See* Crime Against Humanity at https://www.law.cornell.edu/wex/crime_against_humanity and *see* U.N. Office, Genocide Prevention, Crimes Against Humanity, https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml; Treaty of Rome (1959).

segregation was well settled and relied upon by millions. Yet the Court courageously, justly, and wisely overturned its own 58 year old precedent, its own "crime against humanity" to use the modern expression. The Court was ultimately vindicated by widespread acceptance. *Roe* is still not uniformly accepted. For example, the last election was won by a President who vowed to reverse *Roe*.

Is civil war possible in America? Even 10 years ago, few would have thought such a thing possible, but the tortured nature of our judicial nomination hearings and other political benchmarks indicate that our nation is divided as it has not been since the Civil War. *Roe v. Wade* has perverted the judicial nomination process as even some members of the Court have recognized. For example, in 2016, Chief Justice John Roberts lamented: "When you have a sharply political, divisive hearing process, it increases the danger that whoever comes out of it would be viewed in those terms."[23]

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[23] "Is the Judicial Nomination Process Hopelessly Broken?" Ariane de Vogue, CAIN, March 3, 2019.

3. Why is There a Shortage of Hospital Admitted, Well-Credentialed Doctors Willing to Perform Abortions In Louisiana? Because Abortion is a Crime Against Humanity. The Reason for the Shortage of Abortionists Lies Not in the Law, But in the Inherent Nature of Abortion Itself.

The failure of the abortion industry to find hospital admitted, well-qualified doctors lies not in the nature of the law, but in the inherent nature of abortion itself. If abortion were simply "healthcare," then one would expect most, if not every, "healthcare" provider in Louisiana would be willing to provide it. If abortion is as simple and safe as the abortion industry misleadingly states, certainly most doctors would be willing to perform it. But just as the abortion industry lies to and deceives women (*see Amicus Curiae* Brief of 2,624 Women Injured By Abortion on file in this case), the abortion industry is lying to and deceiving this Court about the nature of abortion.[24]

But the abortion industry cannot fool the well-qualified, hospital admitted doctors in Louisiana as to the true nature of abortion. Thousands of obstetricians and gynecologists who want to deliver babies have hospital admitting privileges in Louisiana. There is no shortage of doctors who will remove actual warts, tumors or other true "masses of tissue," which is the

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[24] "Planned Parenthood's false stat: 'Thousands' of women died every year before *Roe*," Glenn Kessner, Washington Post, https://www.washingtonpost.com/politics/2019/05/29/planned-parenthoods-false-stat-thousands-women-died-every-year-before-roe/ (Four Pinocchios).

euphemism the abortion industry uses for the **"infant life"** recognized by this courageous Court in *Gonzales*. Most regular doctors have a conscience that is bothered by the taking of **"infant life"** per *Gonzales*. That is an undeniable fact, and killing that life can produce depression and trauma in anyone, including doctors, who take that life.[25]

There are over 15 cities in Louisiana with obstetricians and gynecologists belonging to the American College of Obstetricians and Gynecologists (ACOG) in Louisiana.[26] Why don't the ACOG doctors perform abortions? If Act 620 were allowed to go into effect, some might start performing abortions in their offices as *Roe* envisioned. But the dirty little secret is that the doctors do not want to perform the dirty deed of killing **"infant life"** themselves. They know abortion is a crime against humanity when they see it, but they want to help women in difficult circumstances, as we all do. The Safe Haven laws can now act as a social safety net for difficult circumstances rather than abortion.

Many former abortionists, either doctors or workers, have eventually come to the realization they are taking a human life and bear an incredible guilt and sorrow that they can only overcome by seeking repentance and forgiveness from Almighty God. For example,

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

[26] *See* www.ACOG.org.

Dr. Bernard Nathanson, the founder of NARAL and Abby Johnson, (Planned Parenthood Employee of the Year.)[27] Some will claim fear of attack deters some, but more doctors die in car accidents than at the hands of deranged individuals. Doctors are not cowards; they are healers on the whole.

Doctors know abortion is terrible because if you cut the baby into pieces through surgical abortion, you have to gather the pieces together for medical reasons to prevent sepsis and you see that this is a human being.[28] It is not a fish. It is not an amphibian; it is a human child, in a small but developed form. Per *Gonzales*, it is **"infant life."** That is why most regular doctors with hospital admitting privileges in Louisiana don't want to perform abortions in practice. "Lovely" theory, gruesome reality. Just like *Roe, Doe*, and *Casey*.

4. Abortion Hurts Women. A Unanimous Supreme Court, Planned Parent-hood and Abortion Business Owners Admit That Abortion is "Painful and Difficult" for Women.

The Supreme Court in *Gonzales v. Carhart* unanimously came to the conclusion that abortion is a

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[27] Grimes, New York Times, Feb. 21, 2011 "B.N. Nathanson, 84, Dies; Changed Sides on Abortion," https://www.nytimes.com/2011/02/22/us/22nathanson.html. "Unplanned," Abby Johnson, Tyndale Momentum (2010).

[28] "Pathologist Traumatized After Seeing 3 Pound Aborted Baby With Expression of 'Horror' on His Face," Sarah Terzo, Live Action, March 26, 2017, https://liveaction.org/news/pathologist-horrified-after-seeing-late-term-aborted-baby/.

"difficult and painful" procedure for women. Abortion is not something women want to go through as a joyful learning experience. No rational person considers the procedure of abortion itself a positive good. Abortion is something women want to avoid because of the "difficult" and "painful" nature of abortion. But they have no strength or desire due to circumstances to bring the child to birth. *Gonzales* stated, "*Whether to have an abortion is a difficult and painful moral decision.*"[29] The five person majority consisted of Justices Kennedy, Roberts, Thomas, Alito and Scalia. The four Justices writing in dissent, Ginsburg, Stevens, Souter, and Breyer, also said abortion was a "*difficult and painful*" decision, but left out the word "moral" as part of the difficulty. (*See Gonzales* FN 7, at 183, per Ginsburg dissenting). Thus, all nine justices agreed that abortion is "difficult" and "painful."

Planned Parenthood has recently admitted through its chief doctor in Missouri, that: "Sometimes the choice to end a pregnancy even when it is a highly desired one, is a really difficult one for people," Dr. Eisenberg, Planned Parenthood St. Louis Clinic Dir., NBC News, nbcnews.com by Ericka Edwards and Ali Galarte, May 28, 2019.

Amy Hagstrom-Miller, the abortion business owner in this Court's last abortion case admitted: "*Nobody gets pregnant to get an abortion.*"[30] To further understand

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[29] *Gonzales*, at 159.

[30] 5th Circuit ROA, 3091, line 17, *Whole Woman's Health v. Hellerstedt*, 790 F.3d 563 and 598 (2016).

the pain, *see Amicus Curiae* Brief of 2,624 Women Injured By Abortion filed in this case for sworn testimony of Louisiana Women Injured By Abortion, which also includes the Affidavit of Norma McCorvey, the "*Roe*" of *Roe v. Wade*'s experience working in the industry.

5. "Sound and Necessary" Reasons to Reverse *Roe*, *Doe*, and *Casey* Exist Independently Under the Law of Judicial Precedent on Grounds That Would Warrant Such a Course Even if the Makeup of the Court Had Remained Unchanged.

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

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

In a demonstration of the sufficiency of the reasons for reversal given in The Moral Outcry Petition, Appendix A, and this Brief, federal judges who have deeply considered these reasons have been persuaded by them that it is time to re-evaluate *Roe*, *Doe*, and *Casey*. For example, in a unanimous decision, the 8th Circuit recently urged this Court to consider re-evaluation stating: " . . . good reasons exist for the [Supreme] Court to reevaluate its jurisprudence." *MKB Management Corp., et al. v. Wayne Stenehjem, et al.*, 795 F.3d

768, at 733 (2015) (*cert*. *denied*). The Court further stated:

> "To begin, the Court's viability standard has proven unsatisfactory because it gives too little consideration to the 'substantial state interest in potential life throughout pregnancy. *Casey*, 505 U.S. at 876, 112 S. Ct. 2791 (plurality opinion).'"
>
> "By deeming viability "the point on which the balance of interests tips, *id*. at 861, 112 S. Ct. 279, the Court has tied a state's interest in unborn children to developments in obstetrics, not to developments in the unborn." *Id.* at 774 (2015) (*cert*. *denied*).

The MKB Management Corp. Court also concludes at 775:

> "Another reason for the Court to reevaluate its jurisprudence is that the facts underlying *Roe* and *Casey* may have changed. The State has presented evidence to that effect and the plaintiffs did not contest this evidence at the summary judgment stage. The State's evidence 'goes to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child.' *McCorvey*, 385 F.3d at 850 (Jones, J., concurring). First, '*Roe*'s assumption that the decision to abort a baby will be made in close consultation with a woman's private physician is called into question by' declarations from women who have had abortions. *Id.* at 851 (Jones, J., concurring). These declarations state women may

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

In addition, the Eighth Circuit cited the desire of Norma McCorvey, the former "*Roe*" of *Roe v. Wade* and Sandra Cano, the former "*Doe*" of *Doe v. Bolton* to reverse their own landmark cases through Rule 60 Motions taken all the way to this Court to which the Court denied *cert*.[31] And, finally the states' argument that by enacting "a law that permits parents to abandon their unwanted infants at hospitals without consequences, it has reduced the burden of child care. . . ." 795 F.3d at 776. After a massive review of evidence and literature, the Court stated: "In short, the continued application of the Supreme Court's viability standard discounts

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[31] *McCorvey (Roe) v. Hill*, 385 F.3d 846 (5th Cir. 2004) (*cert. denied*) (Supreme Court Docket No. 04-967). *Cano (Doe) v. Baker*, 435 F.3d 1337 (11th Cir. 2007) (*cert. denied*) (Supreme Court Docket No. 05-11641).

the legislative branch's recognized interest in protecting unborn children." *Id*.

Also, 5th Circuit Court of Appeals Judge Edith Jones (concurring) has stated:

> "In sum, if courts were to delve into the facts underlying Roe's balancing scheme with present day knowledge, they might conclude that the woman's "choice" is far more risky and less beneficial, and the child's sentience far more advanced than the *Roe* Court knew." *McCorvey v. Hill* 385 F.3d 846 page 11 (5th Cir. 2004) (*cert.* denied) (Norma McCorvey, the "*Roe*" of *Roe v. Wade* filed a Rule 60 Motion to Set Aside the Judgment in her own case on the grounds "it was no longer just.").

In areas of constitutional concern, *stare decisis* is less binding and more flexible because "correction through legislative action is practically impossible."[32] It is far more difficult for the people of the United States to overturn a Supreme Court decision than for the Court to correct its own error. In a case of a crime against humanity, it is the duty of the Court to correct its own error.

Citizens who want to change *Roe* through the political process have elected a President who has and

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

will appoint judges who are open-minded, as all judges should be, to considering evidence that killing **"infant life"** in the womb is wrong, and that changes in circumstances have produced sound and necessary reasons for reversal. Those who support *Roe* work to elect Presidents and judges who will continue it. Most of these supporters do not know about the Safe Haven laws which would reduce support for *Roe*.

Even though it is inevitable for citizens to try to elect a President who will appoint judges in accordance with his or her supporters' constitutional philosophy, there must be more than a change of judges to justify a reversal. That is why *Amicus*' five reasons for reversing *Roe*, *Doe*, and *Casey* are so important. Because these and other reasons are sound and necessary in reality, then the fact that candidates have campaigned for or against reversing these cases *cannot be a justification to grant or deny reversal*. If the reasons for reversal are true, then fear of "political" allegations cannot be used to stop justice from being done. As always, courage to do the right thing is always the North Star, not what has happened in the electoral sphere. *Fiat justicia ruat caelum*, "Let justice be done though the heavens fall." *Somerset v. Stewart*, Lofft 1, King's Bench, Geo. 3, 1772.

The Safe Haven laws completely eliminate the "reliance" interest which so concerned the Court in *Casey*. Now, in exchange for relatively short *months* of pregnancy, society (the state or adopting parents) will provide 18 *years* of freedom from child care. This is a major, radical change in circumstances that has never

existed before in American history. Today in America every woman has a purported right to 1) kill her child in the womb – the **"infant life"** which used to be treated as murder in most states, or to 2) transfer responsibility for the child to the state, which used to be treated as criminal neglect or abandonment. The Signers believe the right to abort the "**infant life** she once created and sustained" should be eliminated in favor of Safe Haven transfer of responsibility as all fifty states have now allowed. This is the arc of history and justice, toward the inclusion of the vulnerable and the outcast, in this case, the **"infant life"** in the womb.

A well respected and diverse group of judges has written:

> "The only remedy for an erroneous constitutional decision within the authority of the political branches is a constitutional amendment, and it is an all-but-Sisyphean task to propose and ratify a federal constitutional amendment. Hence a high-court judge who determines that an earlier view on the interpretation of a particular provision of a constitution was in error may well confess the error and adopt a different view in a later case – despite the doctrine of stare decisis. Accompanied by many such judicial mea culpas are the memorable (and of-quoted) words of Frankfurter K.: 'Wisdom too often never comes, and so one ought not to reject it merely because it comes late.' "[33]

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[33] *Law of Judicial Precedent*, *supra* at 355. *E.g.*, *Ring v. Arizona*, 536 U.S. 584, 614 (2002) (Breyer, J., concurring in the

6. This Case Graphically Demonstrates the "Unworkability" of the "Undue Burden" Analysis, Specifically *Whole Woman's Health v. Hellerstedt*, But also *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*.

This case also illustrates the "unworkability"[34] of the Court's abortion jurisprudence as seen by the fact there is no stability in the Court's abortion jurisprudence, nor uniform application of the law, nor uniform social acceptance of the Court's rulings. The abortion industry has now sued five states to set aside every abortion facility regulation passed and upheld in many cases since 1995. *See Amicus* Brief of Indiana, *et al.*, in the *cert*. phase this case. The rule is subjective in several significant ways. For example, how much weight is to be given to the benefit? Is saving one life a great benefit or minor when considering abortions are so common? Does it depend on whose life it is? The second subjective area is the burden side of the analysis. How great is the burden? And finally, even the weighing of the benefit versus burden to determine an "undue burden" is subjective.

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judgment) (quoting *Henslee v. Union Planters Nat'l Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting) (agreeing with the Court's holding that the Eighth Amendment doesn't permit a judge to impose a death sentence and stating that his earlier contrary view was incorrect.)); *see also Boys Mkts., Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 255 (1970) (Stewart, J., concurring) (using the same quote to explain his change of heart in a statutory case); *Self v. Bennett*, 474 So.2d 673, 679 (Ala. 1985) (Embry, J., dissenting) (same).

[34] *Casey*, at 854-55.

The Court's "Undue Burden" analysis is difficult to apply, subjective, hard to follow and subject to widely varying good faith interpretations by different judges. It is impossible to apply it in a consistent and uniform national manner. The "Undue Burden" analysis should be dropped by reversing *Roe*, *Doe*, and *Casey*.

Finally, abortion proponents seem deeply concerned about the rule of law because of the variability in result. But they seem to forget as Martin Luther King, Jr. wrote from a Birmingham jail that "an unjust law is no law at all."[35] Of course, he was relying on Augustin and Aquinas as well.

7. Two Million People Are Waiting To Adopt Newborn Children Every Year Which is a "Major Change in Circumstances" Under the Law of Judicial Precedent.

As a further major "change in circumstances," at least one to two million Americans per year are now waiting to adopt newborn children. Far more people are waiting to adopt newborns than the number of aborted children per year.[36] This development satisfies *Casey*'s *stare decisis* reliance test because there is no longer a need for abortion to give freedom from child

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[35] "Letter from a Birmingham Jail," Martin Luther King, Jr., April 16, 1963.

[36] American Adoptions https://www.americanadoptions.com/pregnant/waiting_adoptive_families. *See also* Approximately 6 million women per year (10% of women of childbearing age) are infertile. Female Infertility, HHS.gov.

care to women. Women do not seek abortion for its own sake, they seek to be free of the child.

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

Today, there are approximately two million people per year waiting to adopt newborn infants, largely because of six million women per year experiencing infertility. *Id.* If women use Safe Haven, the supply of newborn infants waiting for adoption will eliminate the cost of adoption for waiting families which currently averages $10,000 – $20,000 per child. It also eliminates the vast bulk of any financial burden on society because the children will be adopted by families who are waiting to love newborns, as opposed to neglected or abandoned children in foster care whom the parents may not feel equipped to parent.

8. In 1973, the Court Stated, "At This Point in the Development of Man's Knowledge" the Judiciary Could Not "Speculate" When Human Life Begins. Now, Science Clearly Demonstrates That Life Begins at Conception. New Scientific Advances Justify Changing Prior Precedent Under *Stare Decisis*.

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

"We need not resolve the difficult question of when life begins. When those trained in the

> *respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus,* ***the judiciary, at this point in the development of man's knowledge****, is not in a position to speculate as to the answer."* At p. 160.

Supreme Court opinions should change when science advances. No society or court should be stuck in 1970's science. A whole Brief on this subject could be written on the new science, but one simple example is that DNA testing was not even used in the courts until the mid-1980s. Anonymous DNA testing of the **"infant life"** in the womb and a DNA sample from the mother would show two separate humans exist. Sonograms, another example which started after *Roe*, convinced Dr. Bernard Nathanson, the founder of NARAL, as it should this Court, that he was wrong to kill human life.[37]

If one believes in human rights today, the most important question should be "When do 'human rights' begin"? The answer should be when we become human – at conception. At conception a human being is created which never becomes anything but human – our species. Human fathers and human mothers produce humans. The Eighth Circuit Court of Appeals has already upheld South Dakota's law requiring abortionists (against their will and business self-interest) to tell a woman that "*abortion will terminate the life of a*

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

whole, separate, unique, living human being," defined as a member of the human species (Homo sapiens). *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (*en banc*). The Eighth Circuit reviewed the evidence and determined there was adequate scientific evidence to uphold the law, which was fact based, not opinion or ideology, just as this Court has courageously done in recognizing the child in the womb as **"infant life"** in *Gonzales*.

CONCLUSION

This Court in *Casey* attempted to end the controversy over abortion for all time. The Court was concerned about its legitimacy but it had not recognized the child as an **"infant life"** at that point. But 28 years has not quelled the controversy or made the Court stronger. Ending the crime against humanity which is *Roe*, *Doe*, and *Casey* will ultimately be shown to be as wise and just as *Brown v. Board of Education*, especially with the new social safety net of Safe Haven.

Obviously, the Court was wrong in thinking it could quell the controversy because of the inherent nature of abortion as a crime against humanity. Like slavery, the controversy will never go away as long as it is legal. On the other hand, the Safe Haven laws can someday eventually bring an end to the abortion wars. The Safe Haven laws allow the controversy to be resolved by stopping the killing of human beings, and still allowing women the general freedom from child

care that feminists and others desire. Safe Haven provides for a population with loving families and adopted children. It is a win-win for child, mother and society.[38]

Finally, why should the Constitution protect any "medical" procedure the vast majority of doctors consider too abhorrent? Why should it protect a procedure the vast majority refuse to perform? Why should the Constitution protect a crime against humanity, especially when a far more humane alternative exists? The Constitution does not. It should not. Let the Court give justice for the child – "Don't kill your child." Mercy for the Mother, "we will help you – you don't have to care for the child, don't hurt yourself." Finally, like the Founders, *Amicus* Melinda Thybault and The Signers believe "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are **Life**, ..." Declaration of Independence, USA.

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

PRAYER

Melinda Thybault respectfully prays this Court affirm the decision below, deny third-party standing to abortionists, and reverse *Roe v. Wade*, *Doe v. Bolton* and *Planned Parenthood v. Casey*.

Respectfully submitted,

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